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PUBLIC MEETING

before

ASSEMBLY SELECT COMMITTEE ON TOURISM

Testimony on beach admission fees, parking facilities, and beach access points

July 27, 1987
Boardwalk at Brighton and
Ocean Avenues
Long Branch, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Anthony M. Villane, Jr., Acting Chairman
Assemblyman Joseph A. Palaia, Vice Chairman
Assemblyman Jeffrey W. Moran
Assemblyman Robert W. Singer

ALSO PRESENT:

New Jersey State Library

Anne C. Raughley
Office of Legislative Services
Aide, Assembly Select Committee on Tourism

* * * * *

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



F. MUZIANI
Chairperson
F. A. PALAIA
Vice-Chairperson
S. F. KOSCO
REY W. MORAN
BERT W. SINGER
PAUL DOYLE
TONY S. MARSELLA

New Jersey State Legislature
ASSEMBLY SELECT COMMITTEE ON TOURISM
STATE HOUSE ANNEX, CN-068
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MEMORANDUM

July 20, 1987

TO: Members of Assembly Select Committee on Tourism
Advisory Committee Members

FROM: Assemblyman Joseph Palaia
Vice Chairman

SUBJECT: MEETING NOTICE

(Address comments and questions to Anne Raughley, Committee Aide)

The Assembly Select Committee on Tourism will hold a public meeting on Monday, July 27, 1987 at 10:00 a.m. at the West End Beach on the Boardwalk on Brighton and Ocean Avenues in Long Branch. In the event of rain a new date for the meeting will be established.

During the meeting the committee will hear testimony on and discuss beach admission fees, parking facilities and beach access points.

CORRECTED COPY
ASSEMBLY, No. 3152

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 15, 1986

By Assemblymen VILLANE, PALAIA, Littell, Assemblywomen Muhler, Smith, Assemblymen Azzolina, Charles, McEnroe, Watson, Smith, Schwartz, Assemblywoman Garvin, Assemblymen Deverin, Hudak, Girgenti, Kavanaugh, Penn, Rafferty, Zangari, Dario, Arango, Gargiulo, Assemblywoman Donovan, Assemblyman Schuber, Assemblywomen Ogden, Crecco, Assemblymen Shinn, Baer, Colburn, Martin, Genova, DiGaetano, Catrillo, Miller, Frelinghuysen, Shusted, Loveys, Collins, Assemblywoman Cooper, Assemblymen Zecker, Kosco, Chinnici, Muziani, Felice, Assemblywoman Randall, Assemblymen Haytaian, Zimmer, Otlowski, Marsella, Kline, Franks and Bennett

AN Act concerning public access to the beaches of New Jersey and the amounts which may be charged therefor, providing for the preparation of beach management practices plans, amending P. L. 1955, c. 49, supplementing Title 13 and Title 40 of the Revised Statutes, and making an appropriation.

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

1 1. (New section) This act shall be known and may be cited as
2 the "Fair Beaches Act."

1 2. (New section) The Legislature finds that the longstanding
2 public trust doctrine provides that ownership, dominion, and
3 sovereignty over land flowed by tidal waters which extend inland
4 to the mean high water mark is vested in the State in trust for
5 the use by the people for the purposes of navigation, fishing, and
6 commerce; that the New Jersey Supreme Court has asserted that
7 the public trust doctrine also protects recreational uses; that this

Matter printed in italics *thus is new matter.*

8 right is meaningful only if it carries with it a right of access
 9 to the dry beach adjoining the wet sand beach, and that only
 10 reasonable fees, applied on a non-discriminatory basis, may ap-
 11 propriately be charged for such public access.

12 The Legislature further finds that the coastal waters and beaches
 13 of this State are invaluable and unique scenic and recreational
 14 resources; that the tourism industry, the second largest in the
 15 State, is dependent upon public access to, and enjoyment of, these
 16 coastal resources and protection of the ocean environment; and
 17 that it is State policy to link the receipt of shore protection fund-
 18 ing with the provision of reasonable public access.

19 The Legislature therefore determines that the State, together
 20 with the municipalities and counties in our coastal areas, have
 21 a special obligation to assure public access to, and proper man-
 22 agement of, these coastal resources without disruption of estab-
 23 lished property rights in coastal communities, and that in order
 24 to meet this obligation it is important for the Legislature to
 25 codify the principles enunciated by the State's courts in apply-
 26 ing the public trust doctrine to the public's right of access to,
 27 and use of, New Jersey's coastal beaches and waters, to clearly
 28 establish the rights of individual beach users, the corresponding
 29 responsibilities of municipailties to provide access thereto, and
 30 the obligation of the State to maximize utilization thereof, in
 31 part by maximizing transportation alternatives.

1 3. (New section) As used in this act:

2 "Beach" means any area of sand or shingle deposit adjacent
 3 to and fronting the shore of the Atlantic ocean ;

4 "Beach admission fee" means the fee or charge made by a
 5 beach municipality for access to, and use of, a beach area;

6 "Beach area" means the beaches, bathing grounds, and bathing
 7 and recreational facilities under the control, supervision and care
 8 of any beach municipality or political subdivision of this State;

9 "Beach municipality" means a municipality or other political
 10 subdivision of the State, an agency or instrumentality of the
 11 political subdivision, or an office, board, body or other agency
 12 established pursuant to P. L. 1964, c. 185 (C. 40:61-35.1 et seq.)
 13 or the "Interlocal Services Act," P. L. 1973, c. 208 (C. 40:8A-1
 14 et seq.) or any other law for the joint provision, maintenance and
 15 operation of a beach area;

16 "Commissioner" means the Commissioner of the Department
 17 of Environmental Protection;

18 "Daily admission" means the permission for access to, and

19 use of, a beach area at any time during one calendar day, or so
20 much thereof as the beach area is open to the public and for
21 which a beach admission fee is charged;

22 "Department" means the Department of Environmental Pro-
23 tection;

24 "Director" means the Director of the Division of Coastal Re-
25 sources in the Department of Environmental Protection;

26 "Public beach" means a beach which forms part of a place of
27 public resort under the management and control of a municipality
28 or political subdivision of this State pursuant to P. L. 1955, c. 49
29 (C. 40:61-22.20 et seq.) or any other law empowering the munici-
30 pality to maintain, improve, manage, and control beaches and
31 bathing grounds and facilities, or the State or federal government.

32 "Public trust lands" means tide-flowed land lying between the
33 mean high and low water marks and the ocean covered land sea-
34 ward thereof to the State's boundary.

1 4. (New section). a. Schedules for all categories of beach ad-
2 mission fees shall be calculated so as to permit the municipality
3 to collect revenues sufficient to recover the municipality's expenses
4 in providing services for the beach area. The allowable expenses
5 shall include additional costs incurred by a municipality directly
6 attributable to its beach operations, but need not be limited to
7 shore protection costs incurred by the municipality, cost of in-
8 surance, solid waste and sewage waste disposal costs, fresh water
9 costs, maintenance and personnel costs including those for life-
10 guards, police, first aid, and ticket collectors and any other costs
11 clearly associated with managing the beach area. Beach munici-
12 palities may recover expenses incurred outside the beach area,
13 but associated with providing services at the beach area, by sub-
14 mitting a separate accounting thereof to the division for approval.
15 To account for seasonal revenue losses attributable to inclement
16 weather or other factors which reduce attendance, a beach munici-
17 pality may calculate fees on a three-year average cost basis. The
18 fee schedule shall be submitted to the department pursuant to
19 subsection b. of section 6 of this amendatory and supplementary
20 act. The fees established pursuant to this section shall take effect
21 in the 1988 beach season.

22 b. A beach municipality may charge and collect a separate fee
23 for facilities not routinely provided with beach access, such as
24 lockers, cabanas, umbrellas, and swimming pools, but may not
25 charge and collect any fee or rental for the use of any structure,
26 facility, or equipment the use of which is mandatory under any

27 ordinance or other regulation of the beach municipality as a con-
 28 dition for access to, or use of, the beach and bathing grounds
 29 of a beach area.

30 c. No beach admission fee may be charged to persons 11 years
 31 of age or under, or 65 years of age or older, nor shall such fee
 32 distinguish between residents and nonresidents.

33 d. A beach municipality shall report beach operation revenues
 34 and expenditures in its annual budget submitted to the Division
 35 of Local Government Services, Department of Community Affairs
 36 pursuant to the "Local Budget Law" P. L. 1960, c. 169 (N. J. S.
 37 40A:4A-1 et seq.).

1 5. (New section) During any time as a beach area is open to
 2 the public and for which a beach admission fee is charged, the
 3 beach area shall be made available to the public, without distinc-
 4 tion or discrimination on the basis of residency or any other factor.

1 6. (New section) a. Every beach municipality shall file with the
 2 division a beach access and parking plan no later than January 15,
 3 1987 and every January 15 of every third calendar year there-
 4 after. Any proposed amendments to, or revisions of, the plan
 5 shall be filed with the division but shall not take effect unless
 6 approved by the division. The division shall act within 45 days
 7 of the date any proposed amendments or revisions are received.
 8 As part of the plan, each beach municipality shall demonstrate
 9 that its beaches are being maintained and provided unobstructed,
 10 so as not to impede public access. The plan shall address, but
 11 need not be limited to, the following:

12 Availability of pedestrian beach access points;

13 Availability of rest rooms, changing facilities and bathhouses;

14 Availability and duration of parking within one-quarter mile
 15 of a beach access point;

16 Availability of lifeguards;

17 Availability of access to publicly funded shore protection
 18 structures;

19 Availability of barrier free beach facilities for the physically
 20 handicapped;

21 Availability of access at oceanfront street ends.

22 b. Each beach municipality shall file with the department a
 23 beach admission fee and parking fee plan no later than Decem-
 24 ber 1, 1987 and annually every January 15, beginning in 1989.
 25 This plan shall include, but need not be limited to, the fee schedule
 26 for beach admission and its cost basis as calculated pursuant to
 27 section 4 of this amendatory and supplementary act, and the
 28 cost and terms of parking within one-quarter mile of a beach
 29 access point.

30 c. The department shall, by rule or regulation, adopt standards
31 for evaluating the access and fee plans required pursuant to sub-
32 section a. and b. respectively of this section, and shall review
33 the plans in sufficient time for the municipality to implement any
34 recommendations prior to the forthcoming beach season.

1 7. (New section) A beach municipality may apply for and re-
2 ceive from the department a grant to offset the costs of prepar-
3 ing the beach management practices plan required pursuant to
4 section 6 of this amendatory and supplementary act.

1 8. (New section) The department is authorized to issue grants,
2 within the limits of funds appropriated pursuant to section 21
3 of this act or otherwise made available therefor by the Legisla-
4 ture, to beach municipalities for the cost of preparing the beach
5 management practices plan required pursuant to section 6 of this
6 amendatory and supplementary act.

1 9. (New section) A beach municipality shall ensure that no
2 physical barriers or local ordinances unreasonably interfere with
3 access to, along, or across a publicly funded shore protection
4 structure.

1 10. (New section) A beach municipality may not vacate an
2 oceanfront street or street end without the approval of the division.

1 11. (New section) The department shall not grant any permit
2 or other approval the effect of which would be to reduce, limit,
3 or eliminate any existing beach or public access way unless the
4 department finds and expressly conditions the permit or approval
5 on the applicant's providing for replacement beach area or alter-
6 native public access to the beach functionally equivalent to that
7 which will be eliminated or reduced, and protecting such replace-
8 ment beach area or substitute public access way in perpetuity by
9 dedication, easement, or similar guarantee.

1 12. (New section) The department shall not approve an appli-
2 cation from a beach municipality for State funds for shore pro-
3 tection, conservation, or recreational projects if the department
4 finds that the beach municipality is in violation of this act unless
5 the failure to fund the project would result in danger to life or
6 irreversible harm to the natural resources of the State.

1 13. (New section) All State and federally operated beaches
2 shall comply with all provisions of the State Sanitary Code gov-
3 erning public recreational bathing.

1 14. (New section) The department, with the cooperation of
2 the Department of Transportation, shall, to the maximum extent
3 practicable and feasible, provide and promote the use of public
4 transportation between State and federally operated beaches and

5 proximate parking facilities and public transportation terminal
6 points.

1 15. (New section) a. A person or public entity which is an owner,
2 lessee, or occupant of a beach area owes no duty to keep public
3 trust lands adjacent to the beach area safe for entry or use by
4 others, or to give warning of any hazardous condition on the
5 public trust lands.

6 b. A person or public entity which is an owner, lessee, or occu-
7 pant of a beach area who grants permission to another to enter
8 upon the beach area only for granting access to public trust
9 lands or for the essential and reasonably necessary use of the
10 beach area in order to enjoy the public trust lands does not
11 thereby: (1) extend any assurance that the beach area or public
12 trust lands are safe for those purposes; or (2) constitute the
13 person to whom permission is granted an invitee to whom a duty
14 of care is owed; or (3) assume responsibility, or incur liability,
15 for any injury to person or property caused by any act of persons
16 to whom the permission is granted.

17 c. This section does not limit the liability which would other-
18 wise exist for willful or reckless failure to guard, or warn against,
19 a dangerous condition, use, structure or activity or for grossly
20 negligent supervision where supervision is provided.

21 d. This section shall apply only to causes of action which accrue
22 after the effective date of this amendatory and supplementary act.

1 16. (New section) a. The Commissioner of the Department of
2 Environmental Protection, or the Public Advocate at his own
3 discretion or on behalf of any aggrieved party, is authorized to
4 maintain an action in a summary proceeding in Superior Court
5 to secure injunctive, declaratory, or other suitable relief to estab-
6 lish or protect the public right of access to beach areas as herein
7 prescribed.

8 b. In an action brought pursuant to this section the court may,
9 in appropriate cases, award to the prevailing party reasonable
10 counsel and expert witness fees.

1 17. (New section) The department, within 20 days of the
2 effective date of this act and pursuant to the "Administrative
3 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) shall
4 adopt rules and regulations necessary to carry out the purposes
5 of this act.

1 18. (New section) The department shall, from time to time,
2 as appropriate, submit to the Legislature any recommendations
3 for legislative or administrative action to improve the mechanisms
4 through which the purposes of this act are carried out.

1 19. (New section) Nothing in this amendatory and supple-
2 mentary act is intended to infringe upon or restrict in any manner
3 lawful use of private property, nor to convey any rights for a
4 person to trespass on private property for any reason.

1 20. Section 1 of P. L. 1955, c. 49 (C. 40:61-22.20) is amended
2 to read as follows:

3 1. The governing body of any municipality bordering on the
4 Atlantic ocean, tidal water bays or rivers which owns or shall
5 acquire, by any deed of dedication or otherwise, lands bordering
6 on the ocean, tidal water bays or rivers, or easement rights therein,
7 for a place of resort for public health and recreation and for
8 other public purposes shall have, *except as may be provided by*
9 *law*, the exclusive control, government and care thereof and of
10 any boardwalk, bathing and recreational facilities, safeguards
11 and equipment, now or hereafter constructed or provided thereon,
12 and may, by ordinance, make and enforce rules and regulations
13 for the government and policing of such lands, boardwalk, bathing
14 facilities, safeguards and equipment; provided, that such power
15 of control, government, care and policing shall not be construed
16 in any manner to exclude or interfere with the operation of any
17 State law or authority with respect to such lands, property and
18 facilities. Any such municipality; *except for any municipality*
19 *bordering on the Atlantic ocean which are under the purview of*
20 *the "Fair Beaches Act" P. L. , c. (C.) (now*
21 *before the Legislature as this bill)*, may, in order to provide funds
22 to improve, maintain and police the same and to protect the same
23 from erosion, encroachment and damage by sea or otherwise, and
24 to provide facilities and safeguards for public bathing and recrea-
25 tion, including the employment of lifeguards, by ordinance, make
26 and enforce rules and regulations for the government, use, main-
27 tenance and policing thereof and provide for the charging and
28 collecting of reasonable fees for the registration of persons using
29 said lands and bathing facilities, for access to the beach and
30 bathing and recreational grounds so provided and for the use
31 of the bathing and recreational facilities, but no such fees shall
32 be charged or collected from children under the age of 12 years.

1 21. (New section) There is appropriated from the General Fund
2 to the Department of Environmental Protection the sum of
3 \$250,000.00, not less than \$200,000.00 of which shall be dedicated
4 to issuing grants to beach municipalities pursuant to section 8
5 of this amendatory and supplementary act, and the balance to
6 defray the cost of reviewing beach management plans submitted
7 pursuant to section 6 of this amendatory and supplementary act.

1 22. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to improve public access to the beaches of the State. The bill codifies certain principles enunciated by the State's courts in applying the public trust doctrine to public's right of access to, and use of, this State's coastal beaches and waters, and sets forth the rights of individual beach users and private property owners, and the responsibilities of municipalities and the State to improve access.

As provided in the bill, beach admission fees shall be calculated so as to permit the municipality to collect revenues sufficient to recover the municipality's expenses associated with operating the beach, but would exempt persons under 12 and over 65 years of age from admission charges. The bill would require that beach revenues and expenses be reported to the Department of Community Affairs.

The bill would further require beach municipalities to submit plans addressing beach access, admission fees and parking for approval by the Department of Environmental Protection. The bill would provide \$200,000.00 to be distributed as grants to assist in the preparation of these plans. In addition, the bill would prescribe certain measures to be taken by local governments to ensure the public's right under the public trust doctrine.

The bill would also limit the liability of owners, occupants or lessees of a beach area to persons using public trust lands.

Finally, the bill would require the State to, with respect to State and federally operated beaches, assure compliance with the State Sanitary Code governing public bathing, and to improve access by maximizing the accessibility by public transportation from proximate parking facilities and public transportation terminal points.

BEACHES AND SHORES

The "Fair Beaches Act."

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mjz: 1-76

ASSEMBLYMAN ANTHONY M. VILLANE, JR. (Acting Chairman): If I may have your attention, please. I really want to thank everyone for being here today. But, more than that, I think this is one of the first hearings we have ever had where the people will be able to interface with government in an area that they want to use, and want to be free to use at a reasonable fee. The genesis of this meeting was really a bill we wrote some time ago, called the Fair Beaches Act. There were a lot of complaints, really, in the northern part of New Jersey, about high beach fees and the inability of families to utilize the beaches, which is actually the public trust doctrine -- the doctrine that states that the beaches of New Jersey belong to everybody, and they ought to be able to use them at a reasonable fee.

The law, as it is presently written, provides that municipalities are in charge of providing access to the beaches for the public, and are allowed to charge a reasonable fee. The Public Advocate has argued what is reasonable and what is not reasonable and, in fact, has taken some of our municipalities to court, saying their beach fees are too high or are exclusionary. In some cases, I think the Public Advocate is exactly right.

We have taken the opportunity today to provide a questionnaire, so you can provide us with some information, so we can even improve on this Fair Beaches Act, and take into consideration exactly what the people want. So many times, meetings like this are held in borough halls or caucus rooms, and some nights they are held at seven or eight o'clock, and we really don't hit the people who use these facilities. So, today is an effort to provide a hearing process for the people who use the beaches.

The members of the Committee here today are: Assemblyman Jeff Moran, who has been a member of his Tourism Committee for some time, and is very much interested in

providing access to the beaches. This is Jeff Moran right here. Each one of the Committee members, I am sure, will have an opening statement. This is my colleague from the Eleventh District, and a veteran of this Committee, Assemblyman Palaia. And, on my left is an Assemblyman from Ocean County, Assemblyman Singer, who is also interested in the beach access problem. Assemblyman Kline could not be here. He sent his deputy, Ray Cox, to represent him. Assemblyman Doyle, I think, is on his way, and will probably catch up with us a little bit later.

The Chairman of this Committee, prior to my chairing this special task force, is Assemblyman Guy Muziani, who is presently very, very sick. He has asked me to do this for him in his absence, in order to hold these meetings during the important summertime.

I would like to open the meeting up with some comments from my colleagues on this Committee. They can provide for you their concerns about this process. Assemblyman Palaia?

ASSEMBLYMAN PALAIA: Just very briefly, I wish to thank everyone again for being here. Do you know what it took for us to clear the weather so we could have a day like this? Do you know what it was to order the storms yesterday, to get everything out of the way and clear the air? We are just so happy to see so many people here. I think it is an indication that people are interested in not only beach fees, but in cleanliness, what goes on with their beaches, and access.

We are here to listen to you. That is the bottom line. We want to know what you're thinking. The best way to accomplish that is to bring government to the people. I think that is what we are here for, and I look forward to all of the testimony that is going to take place today.

Thank you, Doc.

ASSEMBLYMAN VILLANE: On my right, Assemblyman Jeff Moran.

ASSEMBLYMAN MORAN: Thank you, Doc Villane. First of all, I want to welcome everybody here. It is a pleasure to be back into Committee meetings, since we have been out for a few weeks. I look forward to our session going back on August 3.

But I think today we are going to have the opportunity to listen to the people who have access to the beaches and the kinds of problems they have. I am also extremely pleased to see that representatives from DEP are here to listen, too, and to act with us to correct some of the things we have going on that are wrong; also the Division of Travel and Tourism and, most of all, the people from the community who are here. I thank you for coming, and hope we can get some of the major issues resolved, with your help.

Thank you, Doc.

ASSEMBLYMAN VILLANE: Thank you very much.
Assemblyman Singer, from Ocean County.

ASSEMBLYMAN SINGER: Thank you, Doc. As a member of the Select Committee on Tourism for the last two years, certainly things that affect tourism are our beautiful beaches and making sure they are accessible, and making sure that parking and everything else is there for people to come and enjoy them. Certainly, as we travel throughout the State, we hear those concerns. We are here today to hear your concerns -- exactly what problems you feel we might have with our beaches and how we can improve them. Certainly, tourism being a \$10 billion industry in the State of New Jersey, we must be concerned about that, and make sure that our beaches are accessible; available to the people of the State of New Jersey, as well as the people who come from out-of-state.

Thank you for the opportunity to be here today in your district, Doc. I appreciate the fact that you are chairing this meeting to bring this to the people.

ASSEMBLYMAN VILLANE: Thank you very much.

If I may, I would like to review some of the bills in the Legislature that are currently pending. There is the Fair Beaches Act, both in the Assembly and the Senate. There is an act provided by Senator Stockman, which would put a maximum fee of \$2 on any beach facility, regardless of what the accommodations are, whether you have changing facilities, or rest rooms, or even in some areas, a swimming pool. There is another piece of legislation that has been withdrawn, but is still in the files, that would provide a complete takeover of the State beaches. The Public Advocate, who is going to speak here today -- he is going to be one of our first speakers -- has made the proposal that either we control the beach fees in one way or another, or that the State should take them over, or a maximum fee applied.

So, those are some of the things that are happening in the State Legislature. Traditionally, and historically, you ought to know that the municipalities have always run the beaches in New Jersey over the last 100 years. It has not been the State that has run them. The local municipalities in our area have probably the highest beach fees anywhere in New Jersey. Monmouth County, and one town in Ocean County, provide the highest beach fees. We have the opportunity today to have the Mayor of one of the municipalities, Belmar, which has been charged with the problem of having one of the highest fees in Monmouth County. I will be very interested in hearing from Mayor Hernandez, when she comes up to testify.

Ocean County, Atlantic County, and Cape May County traditionally have had much lower fees than Monmouth County. So we started this meeting process right here in Monmouth County. I would like to announce today that the next meeting we are going to have is going to be in Belmar. We are going to provide the people of Belmar an opportunity to testify to this State Committee as to whether they think the accommodations or fees are too high, and also to comment on cleanliness and parking.

Ocean County, Cape May County, and Atlantic County have lower fees. In fact, in Atlantic County -- I'm not sure about Ocean County -- some beaches are free, and the municipality takes up the cost of running the beaches. Wildwood Crest, Wildwood, and Atlantic City have free beaches. In those municipalities, the permanent taxpayers provide the money to run those beaches.

In Long Branch, I would like to point out, the beach fees daily are \$2. Today, if you want to go on the beach, it will cost you \$2. If you come to the beach on holidays or Sundays, it is \$3. If you want to use the beach on a seasonal basis, the entire fee for the summer season is only \$20. So I think that Long Branch -- and we are going to hear from the Councilmen-- We have several Councilmen here who would like to testify.

I would like to start off, if I may, with someone from the Department of Environmental Protection. John Weingart is Director of the Division of Coastal Resources. He has come to this meeting predominantly on an informational basis, but if you would, John, please make some presentation to the Committee and to the members of the audience on what DEP's position is concerning beach access and beach fees.

J O H N W E I N G A R T: Thank you very much. Thank you for convening this meeting.

The Department of Environmental Protection has been a strong supporter of public access for many years. We have initiated a number of programs over the years to try to increase access, and we have worked with municipalities and our own State park systems developing a bus shuttle service that takes people from the Garden State Parkway to Island Beach State Park every weekend. I think public access, in general, has improved throughout the State. You would never guess that from reading the newspaper articles that come up every summer, which point to the problems with public access -- the places

where public access is not available, the places where it is not publicized as well as it should be, and the increasing problem in the last few years of high beach fees.

I think the Department of Environmental Protection's position is that there needs to be State legislation to address some of these problems. The problems are real. The obstacles to public access are real. But those obstacles and those problems are creating the impression that the problem is much worse than it is. As you, Assemblyman Villane, pointed out in your opening remarks, when you go south of Ocean County, the beaches are either free or very cheap. You can pay \$6 or \$9 a season for a beach badge in many municipalities in Cape May County, and many of the beaches have no charge at all. Whereas, the ones that get the publicity, are the ones that have a high fee, and they are also the ones that are most geographically proximate to many people who would like to come to the beach for a day -- the people who live in the northern part of the State, who do not want to spend an entire weekend, or can't afford to spend an entire weekend or week at the beach.

Not only are the fees high, but there is not adequate publicity on how to get to the beach, where you can park your car, where you can change your clothes, where you can go to the bathroom; or, what the fees are, and whether there are seasonal fees available, or weekly fees. All those factors are things I think could be addressed by legislation. The various bills that have been introduced by you, Assemblyman Villane, by Senator Pallone, by Senator Stockman, have no glaring inconsistencies between them. I think they could easily be merged into one bill that we could support.

The one change in the Department of Environmental Protection's position over the last year, is that we had opposed having a cap on beach fees in the past. In the last year, we have decided that that does make sense, for several reasons. One of the comments raised last year at a hearing the

Asbury Park Press convened, was that the municipalities that have a low beach fee do not want to be burdened with the paperwork of justifying why their fee is low, when there is no problem with it. By having a cap on a fee, you would eliminate a lot of the bureaucracy that might be created by some of the proposals to have municipalities justify their fees; to say that each municipality -- that no fee could be higher than a set amount, and if municipalities have needs beyond that, where the revenue they are losing creates a gap in their financing, that can be dealt with in a separate way.

But I think putting in that kind of a cap would be simple. Putting in a program where each municipality had to have a public access plan and have that certified by the Department of Environmental Protection, or another agency, would be something that most municipalities, or many municipalities, could do tomorrow. Many municipalities have plans that are fine. It is just a matter of having some standards, having an enforcement mechanism, so that when a beach access plan is violated, or when practices are undertaken in a given municipality that cause a problem, there is a procedure other than the cumbersome procedure we have now of having the Public Advocate or the Attorney General's office bring suit.

A State law could set up a procedure for detecting violations, enforcement of those violations, and getting those violations corrected.

I am mostly here to hear what other people have to say. Thank you for convening this meeting. I would be happy to answer any questions.

ASSEMBLYMAN VILLANE: Thank you very much, Mr. Weingart. The Committee has been working on this problem. In fact, this bill which was originally introduced, was introduced in September, 1986, and, of course, you helped us out in drafting this bill. As we have gone along, and as we have

taken some testimony, and from my Committee members in Ocean County and Cape May County and Atlantic County, they do not feel like low fees ought to be subjected to the same problems that we have in northern New Jersey. So, we have been toying with the idea of amending this bill -- this Fair Beach Access bill -- to provide that anybody under a certain fee -- a capped fee -- would not have to get their fee approved by the State, but those municipalities that have a higher beach fee than that maximum cap, could submit it, whether it be to the new Coastal Commission we are talking about implementing -- which the Governor has recommended -- or whether it be to DEP. But, for municipalities like Belmar or Monmouth Beach, which say, "We provide more. We provide changing facilities; we provide showers," we would like to waive the cap. We are looking at that amendment for our bill now. How would you feel about something like that?

MR. WEINGART: If there are those extra facilities provided, I think it is legitimate to have an extra charge. I think the goal should be that anyone throughout the State, or from other states, should know that they can come to a New Jersey beach for a reasonable charge, and that reasonable is \$2.00, \$3.00, \$3.50, whatever, but it is not \$8.00 or \$8.50, and to have some process, like the one you mentioned, for the municipalities that do provide changing facilities, something that is extra, makes sense. I think you have to be careful that it doesn't get into charges for things that are necessities. You have to find a place to park to go to the beach. You have to have a rest room you can use, at a minimum.

But I think we would be happy to work with you on something like that.

ASSEMBLYMAN VILLANE: One other thing, and my Committee members all have questions for you, John-- We are going to take this opportunity to really get some information from you. One of the major problems I have had in drafting the

legislation, is that people say, "You know, if the fair beach doctrine is that access is really our right in the State of New Jersey, why can't I traverse the beach from Long Branch to Deal to Asbury Park to Ocean Grove?" That is a constant question we get. They want to know why they are stopped as they go from one beach to the next beach. Do you have an answer to that?

MR. WEINGART: They shouldn't be stopped. The law is that you should be able to walk on any part of the sand where the tide flows, and you should be able to walk -- except for the fact that there are inlets -- from Sandy Hook down to Cape May. One of the things I would hope a beach access act would address is that issue, because when we are notified of violations of that, where a municipality, or a beach club, or a property owner has erected a fence, for example, we have no law we can point to. We have a lot of court decisions we can point to. We can say, "We know this is illegal," but the only enforcement action we can take is to threaten to go to court, and ultimately to go to court, unlike places where there are specific statutes, where another state would say, "You are violating this section of this law, and starting two weeks from now, if you don't remove it, there is going to be a penalty of 'X' dollars a day." I think it would be very helpful to have that addressed in the law.

In the meantime, until there is a law, those kinds of violations-- People who find them a problem, should bring them to our attention at DEP, or to the Public Advocate's attention, and we will try to pursue them.

ASSEMBLYMAN VILLANE: The last thing I would like to ask you is, some people say, "You know, I don't swim, I don't change my clothes there, and I don't take a shower on your beach. Why do I have to pay a fee to get on it?" What do we answer when people ask us those questions?

MR. WEINGART: I don't know. New Jersey is unusual, in the nationwide context, by having fees at all. Many of the

letters we get -- and I know the Governor's office gets -- from other countries-- They are just incredulous that we charge people to get on the beach. Given that in New Jersey we have decided to charge fees on most beaches, I think it becomes an enforcement problem, unless you say, "If you are wearing a tie, you don't have to pay a fee," but that seems silly. I don't know the answer to that.

ASSEMBLYMAN VILLANE: Well, of course, the other side of the coin is, all the lifeguards down here, the people who clean the beaches, and the people who collect the tickets all have to be paid. You know, we want to get the best lifeguards, and it is getting to be highly competitive to get them any more. We are going to have to pay them something to protect the people. Maybe it isn't fair that visitors ought to come free and taxpayers have to provide that cost out of their real estate property taxes.

MR. WEINGART: I think ideally if there were another way to finance all of those operations and people could walk on and off the beaches, that would be great. But I don't know the way to do that.

ASSEMBLYMAN VILLANE: Assemblyman Palaia, I think, has the first question for you.

ASSEMBLYMAN PALAIA: Yeah. John, I would like to take further the maintenance costs Assemblyman Villane alluded to previously. I'm sure DEP is aware of the high maintenance costs; that beaches aren't just cleaned in the summertime, but there is ongoing maintenance that takes place all year round. Under the amendments Doc is talking about, would that be included in a type of amendment to the bill we have to give fair access?

MR. WEINGART: Well, again, what I would like to see is a much simpler -- and this is different than what I said to similar committees last year-- I would like to see just a straight, no municipality can charge more than, whatever, \$3 a

day. If you just said straight out that no municipality could charge more than a certain amount, and had, maybe, some kind of variance procedure -- as Assemblyman Villane referred to -- that would make a much simpler process than charging DEP or DCA or some other department with becoming an accounting firm to try to assess whether this charge was correct, or whether they really do need another police officer because of the beaches.

What impresses me is, if you look at the pattern of beach fees in New Jersey, it doesn't seem to be related to what you would expect to be the expenses of running a beach. Here in Long Branch-- Long Branch is a fairly economically poor town, and has been for many years, and yet their beach fees are reasonable, whereas most of the municipalities where the beach fees are high, are considered to be wealthy towns. If you go further south, Atlantic City, even before gambling, has had free beaches. They thought that maintaining the beaches was part of their municipal budget, and they do that every year. I don't have any evidence that their beaches or Long Branch's beaches are any less clean than some of these towns that charge \$8.00 or \$8.50.

ASSEMBLYMAN PALAIA: Yeah, but, John, I think the problem is, some communities benefit a great deal from people at the beaches. Many times, in some communities, they come and they go. They don't stop and they don't spend a night or two nights or go to the restaurants or anything. Most of it is related to the beach itself. Now Atlantic City, of course, they probably have a stay of a week, two weeks, three weeks, and is benefiting from those people being there, and they figure, "We will pump that money back in." But, you take a community like Belmar, where they would have maybe 10 times more people than what you see at a lot of beaches-- Obviously, their costs are going to increase tremendously over what a normal beach would be, say, even in Long Branch. You have to consider the amount of people who are coming into a community,

you know, utilizing the facilities there. You have to have a lot of rest rooms, let's face it, in the Belmar area. You have to have a lot of parking; you have to have a lot more things than most communities would have. We just want you to be concerned about those, and I am sure you are.

MR. WEINGART: Oh, I am. The Public Advocate has recommended that the State take over the beaches, but I don't support that. The Department of Environmental Protection does not support that. But I think something short of that-- If there was a program where the State could provide funds to, say, Belmar, to put up the rest rooms or to improve the facilities, or things like that, I think that might be a good companion to lowering the fees. At the same time that one has to think about the finances of Belmar, one has to think about the finances of the family which does not live on the shore, which wants to come and spend the day here.

ASSEMBLYMAN PALAIA: Thanks, John.

ASSEMBLYMAN VILLANE: Assemblyman Singer?

ASSEMBLYMAN SINGER: John, I just have one concern, which we have talked about in the past. That is accessibility to State-run beaches. We had a meeting -- as a matter of fact, Mayor Tompkins was there with me -- with DOT, to improve letting the public know on the Parkway and on the roadways that the beach is not closed, that just the parking lot is full, and that they should be using the shuttle bus system. I would hope you would look, in the future, into either, number one, providing better parking off the beach area -- we're talking on the mainland side -- or notifying the public on their way down that, "By the way, the parking is full at the beach, but the beach is not full." It still goes on, and I hear it all the time on the radio, "The beach is closed. There is no more parking," yet people are unaware that they can also come down and park and take a shuttle bus over. I think we are going to have to start to use that kind of a system more, to allow more

people to come to the beaches, and yet know they can come down here, park their car conveniently, get on a shuttle bus, and take it over to the park.

We see that all the time and, of course, that creates a major traffic jam when they get onto the island -- when they turn around and they find out they can't park on the State beaches. That whole system there is very, very difficult. They can't turn around there. It becomes a terrible, terrible problem. So I would hope that certainly this year, you would take a hard look at the accessibility the State has, where they can provide better notification to the public, letting them know where they can go if the park is full, to at least park their car and take the shuttle bus over.

MR. WEINGART: I agree with you completely.

ASSEMBLYMAN VILLANE: Thank you, Assemblyman Singer. Assemblyman Jeff Moran?

ASSEMBLYMAN MORAN: Thank you, Doc. John, first of all, I want to congratulate you for being here, because it is not that often that you get a Deputy Commissioner from DEP to attend a public meeting outside of Trenton, and I give you a lot of credit.

MR. WEINGART: You have all elevated me. I am a Director of a Division, but thank you.

ASSEMBLYMAN PALAIA: You're doing well, though, John.

MR. WEINGART: I'll come here more often for titles like that.

ASSEMBLYMAN VILLANE: You never know what we have planned, John.

MR. WEINGART: Right.

ASSEMBLYMAN MORAN: Didn't you tell him? Well anyway, John, thank you for coming.

First of all, the criteria used for citing a cap-- I read through all of the bills, and I get confused when we start talking about -- and you made mention of it -- (inaudible) and

other things that some communities have and others don't. I think what we've got to do is set up -- if, in fact, this is the way we are going to be going -- so that the communities that provide these kinds of services are not discriminated against because they are providing these services, that their fee might be 25 cents or a dollar more. I think we have to take insurance factors into account, where we have liabilities and problems in some communities where they have had a poor track record. They are not the reasons why they have had the poor track record. It might have been an administration five years prior to that.

I think the utilities provided for the beach areas by the communities have to be taken into consideration. There is a multitude of things that-- In Ocean County, we take a great deal of pride in our beaches, and pride in the fact that we make them reasonable and affordable. In Monmouth County, I am not as familiar with them as Doc Villane is, and Mr. Palaia is. The difference is, we have to make criteria that is an equal yardstick for everybody.

The other thing I wanted to mention is, as you are well-aware, and as are most people here, we have a problem in Seaside right now with our lifeguards wanting more money. It is the beginning of something that is going to be a major problem before the end of this season, if not the beginning of next season. The criteria we have through the Department of Health to get lifeguards today is so stringent, that lifeguards have us in a position where they are starting to bargain on better terms than what we can as municipal officials and State officials. -- I think we have to look at that. We have to look at the criteria that is used to qualify people for lifeguards. Not that we should make it less than what it is now; if anything, we should make it more stringent. But we should, as a State agency, provide access to get those certifications throughout the year, and not two months before the season opens

when we are looking for lifeguards in communities such as yours here.

The closing thing I wanted to say is, Atlantic City's beaches are free access and open to the public, but how many of you have ever been down to the beaches in Atlantic City? They're empty. They don't have people on their beaches like we have here in Monmouth and Ocean Counties. Yesterday, I went over to the beach in Seaside. Let me tell you -- Mayor Tompkins is here someplace -- I don't know how they do it, and they don't have major incidents; they don't have major problems in that community and the other communities of Lavallette and Ortley. They have thousands of people. It is unbelievable. But, you go to Atlantic City, and if you find 100 people on the beach it is a lot.

You know, so, we are not talking apples and apples. We're talking apples and oranges. When we are expecting Mayor Tompkins and the mayors from Monmouth County to provide a service to the people at the beach -- be it police protection, be it safety with lifeguard protection -- we have to look at numbers. When you are going to have 1000 people per 100 feet on the beach, compared to 100 people per 100 feet on the beach, you are not talking apples and apples. I think we have to look at Monmouth County, and say, "Do the numbers warrant the kinds of dollars they are charging?" and, in fact, is that the case in Ocean County?

I think, knowing you, and dealing with you in the past, there is no one who I think has a more open mind and who understands the problems, and who will work with the mayors and the freeholders in the communities involved, and especially with the State legislators. Again, in closing, thank you very much for coming. It is always a pleasure to see you, and thanks for your input.

MR. WEINGART: Thank you. If I may just say one thing, and I don't mean this as an attack on the Legislature,

because it is true of DEP, too, but we all tend to focus on this every summer. Then, come September, we all stop focusing on it, and come the next spring, we all start focusing on it again. I hope we at DEP will take it as a challenge, and I hope we can all do that together, to try not to have to be here again next summer on the same subject.

ASSEMBLYMAN MORAN: I assure you that Assemblyman Singer has already told me on the way here, that next summer we are not going to be sitting in the sun on the boardwalk trying to resolve this. We are going to resolve it through the year.

MR. WEINGART: Great. Thanks very much. (applause)

ASSEMBLYMAN VILLANE: I want it to go on the record. That is the first time anyone from DEP has had a round of applause in about a year and a half. (laughter) Take that back to the Commissioner; take that back with you, John.

I'll tell you, the last time we held a hearing on fair beach access, it was held in November on a cold winter night -- or a fall night -- at the Asbury Park Press Building, and nobody was there from the public primarily. The only people there were State people and local politicians -- the councilmen and mayors -- and we really didn't hear from the public very much. I know that John Weingart was there that night.

John, I think that challenge is answered here today by this public meeting.

There are only two other people from State government we are going to hear from, and then we are going to hear from all of you.

One of the biggest complaints we get on the beaches is about litter and cleanliness, and it interfaces a great deal with tourism. Tourism is the second largest, and the cleanest business in the State of New Jersey. Today, we have a representative from the Division of Travel and Tourism, Department of Commerce and Economic Development, Noreen Bodman. Noreen, would you like to address our assemblage today?

N O R E E N B O D M A N: I like the way Doc says, "Would you like to address our assemblage?" You really don't have a choice here.

Just to reiterate what some people have said -- and I hope everyone can hear me; I have a pretty booming voice for a littler person -- it is an \$11.4 billion business a year for the State of New Jersey, over 250,000 jobs. So we at Tourism are very concerned about what is going on here. Doc mentioned the clean beaches campaign. Regina Desvernine from DEP is here. We have done a joint effort with Commissioner Dewling at DEP -- a litter campaign -- and you can see it on the T-shirts and the bags and things around, too. So, we are really interested in also helping out in different areas.

One of the other things we found out in our socioeconomic study from last year besides clean beaches, was transportation. I hope people are aware that New Jersey Transit has expanded on their shore lines -- on their trains and on their buses -- and are willing to work with people to do more of that, if they can help.

So, really, we are here as sort of a service agency of tourism to see what we can do to help solve the problem; to work with the Assembly Select Committee and really look forward to some of their solutions and things like that to help out.

I just wanted to let you know that we are here, and we are concerned with this. As Doc says, it is the second largest industry, and it means a lot of jobs.

ASSEMBLYMAN VILLANE: Thank you very much for being here. We appreciate your help.

Probably one of the most controversial people involved in this whole scenario of beach access and beach fees, who is nice enough to be with us here today -- Richard Shapiro, from the Office of the Public Advocate. He has been here in many of the local municipalities. Would you please address the panel and the audience, Richard?

R I C H A R D E. S H A P I R O: We have testimony that Gloria Wright is going to present, and then I will be available to answer questions.

ASSEMBLYMAN VILLANE: Okay. Gloria Wright is also from the Public Advocate's office. She is representing Mr. Slocum. Mr. Shapiro is the gentleman who has researched the beach fees along the coast. He has been instrumental in bringing suit against five municipalities on the beach front of New Jersey. Let's first hear the testimony.

G L O R I A J. W R I G H T: Thank you, Mr. Chairman. Members of the Assembly Select Committee on Tourism: We appreciate the opportunity to appear today on behalf of Commissioner Slocum. I am Gloria Wright, the Legislative Liaison for the Department of the Public Advocate.

The Department of the Public Advocate has been investigating beach issues since its inception in mid-1974. The genesis of our involvement with this issue was recognition of a fundamental factual and legal principle about New Jersey's ocean beaches, that these beaches are a unique and irreplaceable resource that belong to all of the people of this State.

Over the years, several New Jersey municipalities have imposed direct and indirect barriers to beach access that greatly impair the public's ability to enjoy the beaches and the ocean. These barriers on access have inordinately fallen on the shoulders of nonresidents. It has been our strong belief that the residents of all New Jersey municipalities are entitled, under law, to share in the enjoyment of these beaches.

In the past two years, we have received hundreds of complaints about various obstacles confronting New Jersey citizens in their efforts to enjoy our beaches. The most frequently reported complaint has been excessive beach fees, especially in certain Monmouth shore towns. As some people have complained, the cost for a day at the shore for a family of four could exceed \$40.

In response to these complaints, the Department of the Public Advocate conducted a study of the beach fee system in New Jersey and throughout the rest of the country, and released a 67-page report in May of this year. We detailed findings and recommendations on present barriers to beach access at the New Jersey shore. I would like to briefly discuss those findings and recommendations with you.

The Department reviewed the 1985 fees and expenditures of the five municipalities charging the highest daily fees, which are Avon, Bay Head, Belmar, Spring Lake, and Sea Girt. We found it very troubling that these municipalities had not developed a well-documented method of computing expenditures, but rather based their costs on subjective estimates. The method of setting beach fees by these municipalities, in many respects, appear to be more a function of attitude than of accounting. If beach fees are treated, as they are in several municipalities, as fair game to offset every municipal expenditure related either directly or indirectly, or even peripherally, to the operation and maintenance of the beach, or to the influx of summer visitors, then there will be no effective limit on appropriate costs or reasonable beach fees.

In contrast to the five municipalities, most other shore towns, both in and out of New Jersey, hold a different philosophy, which appears to be that beach fees should be kept affordable, so that ocean beaches remain available for the general public. This approach, rather than a subjective effort at developing estimates suggested by excessive and restricted beach fees, is more compatible with the public trust doctrine and statutory directives relating to beach fees.

Our Department obtained fee information from every state along the Atlantic, Pacific, and Gulf Coasts. This study unequivocally established that every coastal state in the country has lower fees than New Jersey. In most states, there are no fees charged for the use of the ocean beaches. All but

a few of the jurisdictions that do charge fees base them not on individuals, but on carloads, for instance, \$2 or \$3 per vehicle, rather than per head.

Based on our investigation of complaints of excessive beach fees and other obstacles to the public right of access to New Jersey beaches, we formulated eight recommendations to address these problems. The touchstone of our recommendation is the vindication of the paramount statewide policy crystallized in the public trust doctrine of encouraging broad public access to public beaches.

First, legislation should provide a uniform procedure for State review and certification of beach budgets.

Second, a specific allowable cost should be legislatively articulated and restricted to a very limited range of necessary expenses that are not reimbursable from other State or Federal programs.

Third, we strongly favor ultimately making the beaches freely available to the public. However, in the interim, we think that at the very least the Legislature should establish a uniform cap on daily beach fees. In imposing this cap, the Legislature should give particular consideration to the establishment of a method of State subsidies for municipalities where legitimate beach expenditures exceed revenues from a legislatively capped beach fee. Since the ocean beaches belong to all of the citizens of the State, we believe the State should assume some financial responsibility for the imposition of a cap on daily fees, to facilitate broad public access.

Fourth, every beach municipality should be required to file a beach access plan to be approved by the Department of Environmental Protection. This plan should provide reasonable assurances of eliminating the barriers to beach access which have been the source of frequent complaints to our Department.

Fifth, in addition to providing enforcement by DEP and the Public Advocate, there should be a citizens' suit provision

authorizing private individuals to initiate litigation to vindicate their rights under the cct. Such a provision, we believe, is a vital tool for preserving the public trust in ocean beaches. Assembly Bill 3152 addresses many of these areas in a fashion consistent with our recommendations. However, there are several issues that the bill does not address, which we would like to point out, that we think should be given some consideration:

First, we think that the legislation should set forth the responsibility of private beach associations to make available a reasonable quantity of daily, as well as seasonal badge memberships at reasonable fees to nonresident public. The New Jersey Supreme Court directed the Bay Head Improvement Association to make a reasonable quantity of daily and seasonal memberships available to nonresidents at reasonable fees.

There are several important reasons for legislatively addressing the obligations of private beach associations. Such legislation would increase the supply of available public beaches. It would also establish a policy that would not merely apply to Bay Head, but as a matter of fairness, would be applicable to all private beach associations. Moreover, it would ensure compliance with the dictates of the Matthews decision.

Second, we recommend that the Legislature require that municipalities report their beach budgets to the Department of Community Affairs, and also require that these budgets be certified by DCA prior to being implemented. This would provide State oversight of the beach fee-setting process and ensure that beach expenditures are not inflated.

Third, we recommend that the legislation explicitly state that DEP possesses the authority to approve or reject proposed beach access plans that do not conform to the agency's regulatory standards. This would clarify the agency's ability to guarantee that municipalities establish and implement effective public access plans.

Fourth, after having carefully studied the vast disparities in beach fees among shore municipalities, we have concluded that a legislative cap on beach fees is the best way to ensure uniformity and to promote the public trust doctrine. Because the ability of citizens to use the beaches depends upon the cost of access, there is a corresponding State obligation to establish an affordable beach fee.

Finally, we support the inclusion of the citizens' supervision, to enable individual citizens to enforce the provisions of the act. Often, State agencies do not have the resources to pursue every individual action designed to vindicate legislative policies. Citizens' supervision would allow persons to take appropriate action where the State agency is unwilling or unable to prosecute an individual claim.

In conclusion, I would like to emphasize that the most striking finding of our year-long investigation was the compelling need for legislative action in this area, to ensure that our precious ocean beaches can be shared equally by all citizens of New Jersey. There is simply no reason why a family of four in this State should be required to pay over \$40 for the opportunity to enjoy a resource that rightfully belongs to everyone.

The Department of the Public Advocate urges the passage of comprehensive legislation to ensure uniformity among municipalities in formulating beach fees and in protecting the public's broad rights to access to our precious ocean.

Thank you. (applause)

ASSEMBLYMAN VILLANE: Thank you very much, Gloria.

One of the gentlemen who has been very active and very busy in this whole beach access procedure has been Mr. Shapiro. Would you like to make some comment, in addition to Ms. Wright's comments?

MR. SHAPIRO: No. I think that this statement generally outlines the position of the Public Advocate, that we

initiated litigation because we thought it was important to establish some guidelines in this area. We have always felt, and we strongly recommend, that a legislative -- a comprehensive legislative approach is the most appropriate way to address this problem. In the absence of that, we have sought to develop some judicial guidelines that will assist both municipalities and the public in understanding what their rights are under the public trust doctrine.

ASSEMBLYMAN VILLANE: There are a couple of things, and either one of you may answer them for the Committee. I would like to just say at the onset, that one of the problems-- Today, I am happy to hear that you want to work legislatively -- with the Legislature. Until this point in time, I have never heard a comment from the Public Advocate about my piece of legislation. You know, it would have been very important to know that you had five major recommendations that would probably coincide with A-3152 -- if we had worked more closely together. It isn't good for the Legislature, or committees, to read in the paper what another branch of government is doing in municipalities that we represent. The best way to do those things is really for you and I, and the rest of the Legislature, to work out the problems. Most times, we can. We have had serious problems with DEP, and by working together we hammered those things out in the amendment form.

So, in the future, I think that would be a better way for State government to work -- together.

One of the things we talked about -- you talked about, Gloria, and I am sure that Mr. Shapiro has talked about -- is whether or not there is a fair and reasonable cost to operate the beaches. I have always wanted to ask the Public Advocate, is it fair to include in the operation of the beach the cost to the municipality to remove the litter and waste generated from beach activities? Is it fair for the town to say, "We take off the Long Branch beaches 10 tons of garbage every year, and it

costs us so much money to collect it, and it costs us so much money to dump it at the Monmouth County Landfill"? Is that reasonable?

MS. WRIGHT: I think the way the statute and the litigation reads, direct costs can be included in a reasonable fee. But there gets to be a point where, if you include an astronomical cost of cleanup into the charge to get onto the beach, whether or not the fee is reasonable. I am not sure--

ASSEMBLYMAN VILLANE: But, you see, the towns want to know. We don't want to layer it with a lot of bureaucracy. I'll tell you, I, for one, do not want to see State employees running the beaches. I don't want to see a lifeguard, when he is 60 years old, have tenure on the beaches because he is a State employee. That is not the way it should be. It ought to be an opportunity for college kids and high school kids to serve that kind of an interim internship.

But, you know, is it fair to charge-- Some municipalities have bathrooms. We have them here. Is it fair for the town to charge for a portion of the septic waste removal and the dumping of the solid septics at a landfill? Is that reasonable for Long Branch to do?

MS. WRIGHT: I think we need further clarification in this area. Is that one of the things, Rich, that we have sought as support to--

MR. SHAPIRO: Well, that is one of the issues in the litigation, but I think there are a variety of concerns related to that question. I think, first of all-- The fact is, some municipalities are willing to absorb those costs now, without passing those on to the public, in order to ensure that members of the public have free access to the beaches. So, the problem we see in New Jersey is, first of all, not just a question of what charges can be set off and what charges cannot be set off, but also the problem of some beaches being freely accessible, other beaches charging a modest amount, and other beaches

charging, in our view, an astronomical amount. So, there are various charges, and a great disparity along a single State's coastline, which, in our opinion, should not be the case.

Secondly, there are a lot of costs that can be set off against beach fees, and some costs which we feel should not be set off. From our experience, I think in both the municipal budgeting and the way in which they approach their responsibilities, this is very unclear. We are trying to develop some clarity in the courts, or in the Legislature, in that area. But, even if a municipality does set off some of its costs, we also think there has to be a limit in how much a municipality can charge to have people use something that essentially belongs to everyone in the State.

So, even if a municipality does choose to make astronomical expenditures on its beaches, it is not some game where it can then set those off to have a beach fee that is \$8, \$9, or \$10. We think that the guiding principle in setting a beach fee should be that the fee allows the members of the public to use the beach in a reasonable manner, and that it be freely accessible to all members of the public in New Jersey, and to people who come in from outside of the State.

ASSEMBLYMAN VILLANE: Let me ask you a question: You know, the towns and the people have to understand, and I think they want to know the answer to it. If you want the people to have access to the beaches, and if the municipalities -- the taxpayers -- don't want to provide rest rooms or changing facilities or showers, I mean, you would have a lot of access, but you wouldn't have very much protection or convenient things. Like, I spoke to a lady today. She needs a ramp to get down here. Should the town just add that to the municipal purpose taxes? Should they just increase the property tax for the people who live in Long Branch, to provide the lifeguards? The people want to know that.

I think what the Department has to do, is get specific. Can you include insurance costs? Can you include police protection? You know, some of our municipalities have 60,000 people on the beach, and I think they have to have policemen there. Arguments erupt over the simple use of a radio. So, I think the Department is going to have to work with us in providing what is reasonable and what is not reasonable.

MR. SHAPIRO: I think there are always going to be some areas, though -- gray areas. I think there are clear areas and unclear areas; areas that can clearly be used for beach fees, and areas, in our opinion, which clearly cannot. Then there are some gray areas. Hopefully, we will get some judicial clarification, or some legislative clarification of those gray areas. But I think the important principle has to be that even if we establish at some point that there are "X" number of costs that can be set off, there is still an obligation beyond that for a municipality to recognize -- for a shore-front municipality to recognize that there are benefits to that community from being a beach-front community; that it is not something where it should just be a complete set off of all expenses against beach fees; that the municipality does have to absorb expenses, in the same way that other municipalities that may be in commuter sheds, or may be in a location with a high number of commuters or traffic, have to absorb certain expenses within their city budgets.

If they can't, after all that-- If you look at that situation and a municipality is still in the red after taking into account all of those other factors -- the benefits to the community, the expenses -- then we propose the idea of a State subsidy, which is something like the in lieu of State property tax, where buildings that do not now necessarily have to pay a State property tax can get--

ASSEMBLYMAN VILLANE: You know, as Chairman of the Appropriations Committee--

ASSEMBLYMAN MORAN: Right.

ASSEMBLYMAN VILLANE: The thing the Chairman always hears is, "Take it out of general revenues." You know, take the cost of operating the beaches--

MR. SHAPIRO: I thought this was a novel idea.

ASSEMBLYMAN VILLANE: What we would really like to know-- I am going to challenge the Department to work with us, number one, in establishing what is reasonable, because that is what the law calls for -- to establish what is reasonable for municipalities to set aside against the costs of operation. And number two, how can they apply, if they want to provide other things? Some municipalities provide swimming pools, showers, changing facilities, lockers. How do we have a mechanism to provide for an exemption from a cap, or a maximum fee? I would like the Department to work with us in that area.

Also, while you have your thinking cap on, think about how we can generate a fund that would provide partial payment to the municipalities for excessive costs.

ASSEMBLYMAN MORAN: Doc, I have a question.

ASSEMBLYMAN VILLANE: We have several questions from the Committee, but Jeff Moran will be first.

Let me just say, this is the last person from State government who is going to testify, in addition to other representatives. So we really got into this a great deal. I want to be sure that everyone here, you know, mayors, councilmen, and just the general public have the opportunity to testify before our Committee. This is long testimony, but it is going to be over very shortly. Then you are all welcome to get into it. Okay, Jeff.

ASSEMBLYMAN MORAN: Richard, thank you for being here. The first thing I want to ask you is-- You know, the topic of conversation, from the beginning, has already started

out as the criteria used to set what the fees should, or would be. What was the decision, and what was the criteria-- I know what the decision was in the Bay Head case with the access, but what was the criteria used in setting what the fees should or should not be in Bay Head?

MR. SHAPIRO: What criteria did they use?

ASSEMBLYMAN MORAN: No, what criteria did you use?

MR. SHAPIRO: We used the \$2-- We have established what we think is a reasonable cost at \$2, assuming the State is now not willing to -- or assuming communities are not now willing to allow the public freely on the beach, which we think should be the case. We think \$2 is a reasonable cost for people to absorb.

ASSEMBLYMAN MORAN: Okay, but my question was-- You didn't answer my question. How did you come up with \$2? What criteria did you use to say that to get on the beach at Bay Head, you should pay \$2?

MR. SHAPIRO: In deciding on the \$2, we just set what we thought was a reasonable level. It had been the level that had been suggested in a legislative bill. We looked at that bill, and we thought that was reasonable. In the accounting-- In looking at Bay Head and the other municipalities, we found that in the context of our report, it was impossible to do the type of precise accounting we thought was necessary. That is one of the reasons why we initiated the litigation. But the \$2, essentially, came as a determination of what would be a reasonable cost, based partially on what we saw proposed in the legislation, and based partially on a judgment that \$2 appeared to be something that even a family of four, paying \$8 for a day, could afford, as opposed to the \$34 or \$35 cost that Bay Head was charging.

ASSEMBLYMAN MORAN: Okay. I still don't think we have gotten an answer. I don't have an answer to my question, and I thought maybe you did. But it is obvious that you don't

either. We have not sat down, we have not discussed, and even the courts haven't been able to decide, as to exactly what formula should be used, and what criteria should be used, to say that a \$2 fee or a \$3 fee is fair and reasonable.

I'll give you some examples: As I said before, you have some communities that have had litigation they have settled on, coming out of their own, over and above what their coverage was. They are including in their general operation being taxed with a local purpose tax to compensate for that increase, and that's not fair. The people in this community should not pay for liability that is incurred on this beach. The people who use the beach should.

The second thing is bonded indebtedness. I know this community has come to us on many occasions, through Doc Villane and Joe Palaia, to ask for money to repair the walls, or whatever. We have helped them in some cases; in other cases we haven't. But they have come up with half of the money. Now, should that half of the money come from the people who live in this community, or should it come from the people who come to the beach? It is not fair to the community to pay to provide access to this beach for the people who come to the beach.

We do not charge the State or the local municipality which the Parkway rides through a fee to go on the Parkway. You pay a user fee. If there is a major problem on the Garden State Parkway, we do not go to the people in Holmdel and say, "Since the Parkway goes through your community, and the people use that Parkway, then, in fact, you should pay for it." It is a user fee for the purpose of that particular service. I think every formula possible has to be taken into account for this beach and for every other beach in this State. To say that a \$2 fee is a reasonable and fair fee-- It might be, in one community, but it might not be in another, because the bonded indebtedness that this community has gone through -- I don't know the present outstanding debt they have to pay for that --

should not be borne by the people in the community. It should be borne by the users of that particular access.

The other thing is, we can't say we are going to have a formula in Belmar, in Spring Lake, and in Sea Girt different than the formula you are going to have in Seaside or anyplace else. It has to be fair, and it has to be consistent. As the Director from DEP said very well, you should be able to walk from Cape May to Sandy Hook, but that doesn't mean that when you go from Cape May, where the Army Corps and the State are spending millions of dollars to restore the beaches, and they are not spending millions of dollars to restore the beaches in Ocean and Monmouth Counties, that we should have the same fees here as they have there. They should also not be paying large amounts of moneys to go onto a pier, as they are paying in the southern part of the State, and not paying in Long Beach Island, because we have Federal and State moneys to pay for that project.

I think a lot of this has to be taken into consideration. I think between your office, and between the Senate and the Assembly, you have smart enough people to figure that out. You have enough people around here to give us input and ideas as to what's wrong and how to correct it. I think if we look at it with an open mind, as Doc Villane said, and we look at all of the problems -- not just segments of it and how it is going to affect me in Ocean County, or how it is going to affect Doc Villane in Monmouth County -- but how it is going to affect all of us up and down the coast-- If we do it fairly, and we do it consistently, it will be right. But if we don't do it fairly, and if we are not consistent, then it is not going to be right, and we are going to have the same problems in the future Bay Heads next year as we have had in the past.

Again, thank you for listening, and thank you for coming.

ASSEMBLYMAN VILLANE: We have a couple of other questions from the panel, and then I am going to provide access to the record to all of the people from the public, starting with the councilman and Senator Frank Pallone, and then Deputy Mayor Kapalko, and then Mayor Hernandez.

While we are asking the remaining questions from the panel of the Department, I would like to pass this among you (referring to witness list). For those of you who wish to testify, it is required that you give us your name, your organization, and your telephone number. If you would pass that around, I would appreciate it. Here's a pencil.

Assemblyman Singer, from Ocean County?

ASSEMBLYMAN SINGER: Thank you, Mr. Chairman. I have some concerns when you talk about the State taking over and doing things, only because this year-- In Island Beach State Park this year, they have cut \$100,000 out of the budget. Those things happen very freely when it comes to things like that. So, you know, when you talk about the State providing money, it sounds very good, but I think you and I both know that as soon as there is a budget crunch, we take the brunt of that down at the shore pretty fast. As a matter of fact, right now we cannot find a permanent funding source for shore protection. Whether it be a hotel/motel tax, or whether it be a real estate transfer tax, we still don't have a permanent source of moneys to protect our beaches.

Sometimes we talk about how we are going to get the money, and the State can do things, but it is another thing having that money, having that permanent funding source and knowing that that money is there.

I have to be concerned when you talk about a \$2 fee. As a local municipal official also -- I am Deputy Mayor of a community; I have been Mayor there, also -- there are many hidden costs we don't know about, and it is tough to put them together. I think that when we talk about this, we have to be

very realistic. You cannot put the exact penny to everything. There is always that gray area we are going to have to come to agreement on.

I am also concerned about budgetary times, and we are seeing that right now in the Seaside area, where all of a sudden the lifeguards want a substantial raise. As you know, our budgets are approved early in the year. The emergency situation has to be granted by DCA if you are going to have to change your budget. You already have your beach fees set. There is going to have to be some way that if we are going to set beach fees, there is an escape clause, and if something comes up you can make an appeal, and the Department of Community Affairs is going to listen to it. That is something that has to be in the bill, because otherwise what is going to happen is, you are going to end up either not being able to keep the beaches open because you don't have the money, or you are going to have a problem with your budgetary process at the municipal level. I don't know how you can do it once you strike the budget. If the money is not there, they cannot be certified, and you cannot increase people. You might have to end up having to close the beaches down, in a case where there would be no lifeguards.

Again, I want you to keep in mind that DCA is difficult to work with, when we talk about budgetary times. You have to keep the effect of what you want to do. I think, very honestly, that there are a lot of gray areas we are going to have to talk a lot about. Certainly you know that police protection, additional policemen, and training those policemen for the summer areas-- All of the things that have come about in the last year and a half have made things quite expensive. Certainly we have seen that with the Department of Health, with the lifeguards. These things have to be taken into account when we talk about the actual cost of the beach fee. It is not just keeping the beaches clean, but the offsetting costs of

keeping the surrounding area available also. Whether it be street maintenance or anything else, it is all part of the expense. I know you may not feel that way. We have discussed before exactly what is considered allowable and what is not.

I think you have to sit down with some of the shore mayors -- sit down and talk to them, and let them list what they consider some of their expenses -- some of their problems -- to at least get that input. Remember, there is only one beach we are talking about -- you have a concern about right now in Ocean County, and that is Bay Head -- one beach out of all of our beaches. Certainly it is our belief, and always has been in Ocean County, to make the beaches accessible and usable to the people. That is our tourist trade, and we want to see that; we don't resent that. But a concern we also have is parking down here. We have talked about that all the way down the line. Where are you going to put more parking? We just don't have the space. I think that is where we have to tie in with DEP for the shuttle bus type of situation, where people who do not know about that are made more aware of it.

MR. SHAPIRO: Well, that is precisely one of our recommendations; that the whole issue of parking has to be addressed in a concerted fashion. We did sit down with mayors -- with the four mayors in Monmouth and the Bay Head officials -- to review their expenses. We found that there were a lot of these indirect costs, many of which we disagreed with. The striking thing for us has been that-- First of all, nationally, New Jersey has the highest beach fees. There are large numbers of beaches throughout the country that are free. And secondly, within New Jersey, there are a lot of communities that have a large volume of traffic and large usage of their beaches, and they are able to charge either no beach fee or a low beach fee. The concern is that there is this great disparity, and that there really shouldn't be a disparity. In 127 miles, there should be the opportunity for people to freely

use the entire beach, not just little pockets of it that are available to the public and other parts that are only available to residents or certain members of the public who can afford those beach fees.

ASSEMBLYMAN SINGER: I just want to respond to that. For example, in my community we have free beaches at our lake. We guard them; we have liabilities; it is open to the public. There is no fee at all, and there is free parking. We are able to do that because we have the space -- we have the room -- and we are a larger municipality. In some of these small municipalities, where there is a very small base of year-round residents -- a lot of summer residents, but a very small base of year-round residents -- to provide the moneys you are talking about, in some cases, you would raise property taxes out of sight. You would force the low- or moderate-income persons who live in them out of those municipalities. That is what is happening, by the way, with shore properties. We are seeing throughout Ocean County that we are forcing the year-round resident, who has lived there for many, many years-- We are forcing him out of that community because of soaring property taxes. If you keep pouring things onto that, you will end up having strictly summer residents living down there, the wealthier people, as opposed to the low- to moderate-income person living down there. It is a big problem. That is something you have to realize, too.

MS. WRIGHT: I would like to reiterate a point that Rich stated earlier, Assemblyman. The \$2 cap was not the Public Advocate's idea. The Public Advocate just does not oppose the \$2 cap. But, it originated in the Legislature.

ASSEMBLYMAN VILLANE: You ought to note that the \$2 cap originated from the Legislature that lives in Trenton. (laughter) You ought to be aware of that.

MS. WRIGHT: It was not our idea. It was not the Public Advocate's idea.

ASSEMBLYMAN VILLANE: No. I doubt that he goes to the New Jersey beaches.

MR. SHAPIRO: Well, but that is a real concern, though, Assemblyman. The fact is, the beaches do belong to a lot of people throughout the State, and there has to be more interest on the part of interior legislators. I really appreciate your interest, Senator Pallone's interest, and the interest of this Committee. I think there should be more interest on the part of a lot of the interior legislators, too, to be both aware of the problems of the shore communities, but also to press for what we think is a reasonable fee for everyone in the State.

ASSEMBLYMAN VILLANE: We agree with you, but, you know, in order-- So many times, we try to do something to clean up the pollution or provide for shore protection, but we have to sell it to the whole Legislature. So, the rest of the Legislature has to understand that in order to get a reasonable fee, you know, we have to all work together on it, because you need a whole lot of votes to pass any legislation. I would like to just point out to you that, number one, the people's right to use the beaches is clear and simple. We all agree to that. That is why we wrote the bill. That is why we wrote the Fair Beaches Act. So, if we all work together to get something reasonable, we will have a good law in the State of New Jersey.

MR. SHAPIRO: I agree.

ASSEMBLYMAN VILLANE: Is there any other question? Joe Palaia has one.

ASSEMBLYMAN PALAIA: Just briefly, I want to say that the two best things I heard today were the recommendations, Gloria, that you had in your presentation. But I think that what Doc said is very important. You have to work with us. There is just no way we can accomplish what we want -- and that is fairness for everybody -- unless we work together. I am a co-sponsor of A-3152 with Doc, and I want to make sure that you are working with us.

The other thing is, you get what you pay for. If you want to bring people down, if you want to provide the services, you better make them decent so that they will come back again. I think services are the most important things we can provide for the people, besides the ocean. We have to provide the auxiliary things that go along with it.

We want to thank you for your testimony. You have been very interesting.

MS. WRIGHT: Thank you.

MR. SHAPIRO: Thank you.

ASSEMBLYMAN VILLANE: Thank you very much, Ms. Wright. Thank you very much, Mr. Shapiro.

I would like now, in fairness-- We have over a dozen people -- some 15 people -- who would like to testify. I would like to get some concise testimony in our presentations, so that everyone can be heard. I would like to start with Frank Pallone, who is President of the Council in Long Branch and a member of the State Legislature. Frank?

SENATOR FRANK PALLONE, JR.: Thank you. I want to thank you, Assemblyman Villane, and also the members of this Committee, for coming down here today. As you know -- and Doc of course knows -- both of us live in Long Branch, and we have, in many situations, taken the brunt of both those who favor some of the expansion of rights with regard to beach access, as well as those who are opposed to some of the problems we face with regard to the fees.

I just want to veer a little bit from maybe what has happened so far, and stress the physical access problems with regard to beach access. One of the reasons that I think both myself and Assemblyman Villane originally got interested in this whole subject, was because of the concern shore area fishermen had expressed to us about physical access problems leading to the beaches. The Fair Beaches Act, although it deals with the beach fee component and tries to deal with it in

a comprehensive way, probably has more dealing with the physical access problems than it does with the whole question of beach fees. I am afraid that to some extent the arguments over the beach fees, and particularly the \$2 cap, have kind of made it difficult for us to move ahead with some of the physical access provisions that we would like to see passed.

I mention that because the physical access problems are not going away. In fact, they are getting worse. Some of the Assemblymen mentioned the fact that there has been a lot of development at the shore, and that development, I think, is going to make it even more difficult and create more problems in terms of conflicts with physical access to the beach. Some of the things that are in the Fair Beaches Act that deal with physical access -- and I think I would like to mention them briefly-- One is the provision that would prohibit municipalities from vacating street ends. You know, a lot of the fishermen and people who want to walk down to the beach use these street ends, or right of ways leading to the beach, to get down there, and increasingly we have seen problems where municipalities have vacated those street ends and made it difficult for people to get to the beach. That process should not be allowed. I think it is illegal right now, but the legislation would qualify -- would basically explain that it is illegal, and would prohibit it.

Another thing that was mentioned was the parking. The Public Advocate mentioned a beach access plan that would be approved by DEP to eliminate barriers to the beach. Even those of you who may not like to see a beach access plan that deals with the fee part, I think would recognize the necessity of having municipalities submit a plan to deal with the physical access problems. Parking is going to be an increasing problem along the beach, and I think the municipalities do have to provide a certain amount of parking.

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Another thing that was mentioned was enforcement of barriers. Not only do we have problems with municipalities, but we also have problems with individuals who own property on the beach front who, in many cases, are a little overzealous, and put up fences or other barriers to make it difficult for people to walk up and down the beach or over the bulkheads. Long Branch -- and we have some of the Councilmen here today-- I happen to be one of them, and we have Councilman Palughi here. I think he is the only one I see. We did pass an ordinance in Long Branch that prohibits barriers up and down the beach front along the wet sand area, and specifically provides an enforcement mechanism so that citizens can go into our local Municipal Court and bring an action against an individual who does that. I think the enforcement part is important. We must, through this legislation, encourage municipalities to pass such ordinances, to make it more difficult for people to provide these types of barriers on the beach front.

I do want to mention a little bit about the fee part, because I was a little concerned when I heard some of the statements that were made by the Public Advocate. The statement was made that the cost should be limited to necessary expenses. That is what we are all about here today. We don't want any town charging more than necessary expenses. But I think Doc Villane, and some of the other Assemblymen, made the point that, really, the crux of the whole matter of beach fees is, what are necessary expenses? We who are local property taxpayers in the municipalities along the shore front do not want to be subsidizing other people coming down to use the beaches. I think the charge has to be in proportion to necessary expenses, but those expenses have to include not only the direct costs that the Public Advocate mentioned, such as your lifeguards and your ticket collectors, but also the indirect costs, such as your insurance, such as the cost of

shore protection, the cost of sewage disposal, whatever. All of these things have to be included and are, under the current law, included.

One of the reasons why a lot of towns in Monmouth County are charging more -- significantly more -- than other towns, in my opinion, is because they are simply charging off the direct and indirect costs. The towns that are charging less are doing so because they are willing to take and basically subsidize the operation with their local property taxes. The towns that are not willing to do that and are charging off all their direct and indirect costs are the ones that have the high fees. What I guess I'm saying is, I think they should be allowed to charge those fees, as long as they are in direct proportion to the costs.

So, I would not want to see this legislation -- and it doesn't now, as you know, Assemblyman Villane, it doesn't now-- I would not want to see this legislation changed to make it so that towns cannot charge off these direct and indirect costs. I think the whole idea -- and I am not going to be much longer because I know others want to speak -- that there should be a \$2 cap is totally arbitrary. The \$2 cap as was mentioned, was an idea that was mentioned by a legislator who happens to be in the Senate in Trenton. He came up with this fee, but I don't know how he came up with it. It doesn't have any relationship whatsoever to what the costs are of running the beaches. The idea of putting that cap on, and then saying we are going to subsidize the municipal budgets of the towns that are now charging more, to me, is going to go nowhere. I don't think the State is going to be willing to come up with the money to subsidize those towns so they can charge a lower beach fee.

A couple of things were mentioned also by the Public Advocate, saying that they were critical of the Fair Beaches Act and wanted some changes. The idea of having State

oversight of the fees by the Department of Community Affairs, rather than DEP, I think is a good idea. I think, Assemblyman Villane, you agree with me that we would rather see the budgets supervised by DCA instead of DEP. But I also heard mention -- and this is the last point I am going to make -- about the necessity of having private beach clubs make available a quantity of beach badges for nonresidents or people from other parts of the State. I think the Public Advocate, once again, is making a mistake in terms of interpretation of the law. The reason why, in the Bay Head case, the court said they had to provide access to other individuals -- because it seemingly was a private beach club -- was because in Bay Head the Improvement Association was taking on the responsibilities of a municipal government and, in effect, was acting like the town. But when you talk about the other private beach clubs along the beach front in New Jersey, they are truly private beach clubs. They are simply charging for access for their members to the upland sand area.

ASSEMBLYMAN VILLANE: I think what they said was a private beach association, but we will get that straightened out.

SENATOR PALLONE: I don't think that change should be made, and I just wanted to emphasize that to you today.

I am very pleased that the Committee came here today. I think we do have to move on this legislation, but let's stress the physical access, as well as the beach fee component, and let's not put an arbitrary fee on whether it is \$2 or whatever, because I think that would be unfair to the towns.

Thank you again. (applause)

ASSEMBLYMAN VILLANE: There are a lot of very important people here today, and I want everyone to testify. But I want to introduce two of the most important people here, my grandson and my granddaughter. (laughter and applause)

ASSEMBLYMAN PALAIA: Hi Anthony, hi Meg.

ASSEMBLYMAN VILLANE: I would like to now go down the list of people. I would like to thank the next witness for coming; number one, because she is the subject -- per municipality, the subject for a lawsuit, and we would like to hear what the Mayor of Belmar has to say. Mayor Hernandez? Is she here?

ASSEMBLYMAN PALAIA: Yeah, she was just here; I just saw her. Let's go with Paul.

ASSEMBLYMAN VILLANE: All right. Mayor Kapalko first, and then we will go to--

ASSEMBLYMAN PALAIA: Mayor?

D E P U T Y M A Y O R P A U L K A P A L K O: I appreciate the promotion there, Doc Villane.

ASSEMBLYMAN VILLANE: How about Deputy Mayor, Paul?

DEPUTY MAYOR KAPALKO: That's accurate. Thank you much.

Members of the Committee, members of the public: I am really concerned primarily with an aspect talked about by Senator Pallone, but I would like to just make a few gratuitous comments about something the Committee said today about beach access fees. First of all, I want to congratulate this Committee. I think many of the comments made today show a great deal of insight and knowledge about the problems the municipalities are facing in this area, and I think you have suggested some exceptional ways to deal with them, many of them suggested in the bill proposed by Dr. Villane.

I would also like to mention that if the Public Advocate is serious about the concept of subsidizing the municipalities for any losses they may incur over a \$2 fee, I would welcome that proposal, considering that in Asbury Park, just charging off on the direct costs, we suffer a significant operating loss on our beaches each and every year. If the government wants to provide us with additional moneys and take the burden off the real estate taxpayer in Asbury Park, I would

be more than happy to do that, but I am sure that the State wouldn't be pleased with it over the long haul. What we need is a fair method of determining what actual costs are. That means a formula, and I think that is what this Committee is suggesting; that is what this bill is suggesting, and I am all for it. I am sure Asbury Park is all for it as well. It is basically fair and reasonable, and that is what everyone is looking for.

But, the thing that I am concerned with, is the question of access. I think Senator Pallone made mention of it, and the Public Advocate made mention of it, when they said that it is not just important to set reasonable fees, but also to have sufficient access. I suppose that is true, but what I am concerned with is something that was mentioned by Assemblyman Moran; that is, that the fear that layers of bureaucracy are going to cause a great deal of stress to municipalities.

Asbury Park is a municipality that is facing just such a problem. If every time you have a street closing, or every time you change a parking space, you've got to go back to the Public Advocate and the Department of Environmental Protection, you are going to spend years and tremendous amounts of money making rudimentary, or mechanical decisions that should not require that type of consideration. Asbury Park, for example, is attempting to undergo a great revitalization in its beach front area, which means, probably, some street changing, street closings, and the like. It has already been subjected to a tremendous amount of legislative -- or I should say, scrutiny from administrations such as the Department of Environmental Protection, both State and Federal. To add another layer of bureaucracy on top of the layers that have already been placed upon municipalities that are attempting to do such things as Asbury Park is trying to do, is simply not appropriate, especially since bureaucratic agencies do have a tendency, on

occasion, to follow other agendas besides the agenda they are designed to follow. I think we have all, if we have been in municipal government, have experienced that problem.

So, if there is to be legislation which is going to deal with the question of street closings and access to parking spaces, I think it is going to have to be made explicitly clear what the rights of the municipalities are, as well as what the duties of the agencies that are going to be appointed to administrate them are. I think the ability of a bureaucracy to interfere with a municipality's decision in that regard should be severely limited, not expanded. I do not think it is appropriate for the State government, with occasionally its heavy hand, to get involved in municipal decisions, when the municipal officials are there on a firsthand basis and have much more knowledge and ability to deal with those particular types of issues.

I hope this Committee will take these suggestions to heart, and will work to clearly define what involvement any bureaucracy is going to have in something so important to the concerns of the local municipal officials.

ASSEMBLYMAN VILLANE: I would like to make two points, one frivolous and one very serious. One is, depending on where you are in government, the next layer up is bureaucracy. (laughter) I think in Asbury Park, the people probably think you are a bureaucrat, too, but I know you're not.

The serious point is-- You know, the question that is addressed in my bill, and in the Senate bill, is one about giving away street ends. It is very particularly in the bill, in that some municipalities, in order to impede normal access to the ocean front, have titled away, at no cost to the adjoining property owners, that property. DEP and the Public Advocate have looked at that, and they said that is not fair to do. We are about to do that in legislation.

Another thing that has happened is, there has been a tremendous amount of complaints, on a local level and on the State level, about the giving away of Ocean Avenue. It has happened right here in this municipality. A lot of people up and down the coast didn't realize in December, that when the local municipality gave away Ocean Avenue to the private property owners on either side, that they were going to do that. So, there ought to be something in the law that you can't give it away, or there has to be a referendum or public notice given. Those kinds of things-- I know Asbury Park is going through a development program, just as Long Branch is, but the public's right to access, and really to be able to traverse Ocean Boulevard, is something the people want to retain, Paul.

DEPUTY MAYOR KAPALCO: Doc, I would agree with you wholeheartedly that the key is public access. The question shouldn't be whether a particular street or byway is in some way changed, but whether the city or the municipality provides reasonable access to the citizens who are desirous of using the beach and the beach front.

Asbury Park has taken special care to do that, and we have provided a tremendous amount of access. Anyone who looks at our redevelopment plan -- and it is a public document; it is available for anyone to see -- will certainly be satisfied with the amount of access provided, but it is not specifically the amount that exists there today. Now, does that--

ASSEMBLYMAN VILLANE: I understand, Paul. I think the secret is the reasonableness of it.

DEPUTY MAYOR KAPALCO: That is correct.

ASSEMBLYMAN VILLANE: Some towns are more reasonable than other towns. Some towns are reasonable to the degree of exclusion, and we don't want that to happen.

DEPUTY MAYOR KAPALCO: I agree. I think if it is exclusionary redesign, there is a significant problem. But

somehow I think that the legislation ought to factor that in, and attempt to avoid the problem of a municipality -- for example, like Asbury Park, which does provide that reasonable access, but does change or limit the number of access points that were originally there -- having to undergo an expensive, time-consuming public scrutiny -- or, I should say, bureaucratic scrutiny. I think there must be a way to accomplish the needs of public access without having to continually involve bureaucratic government in that process.

Having seen how it affects redevelopment, even with the plans submitted thus far in Asbury Park, I can appreciate that you are talking about years of delay and tremendous expense to the municipality. That puts another burden on the taxpayer, and that is what everyone has been talking about in terms of indirect costs.

ASSEMBLYMAN VILLANE: You're right, Paul. You know, in the legislation created in the Coastal Commission, which the Governor has asked me to sponsor, we give special consideration to urban areas like Long Branch, like Asbury Park, like Neptune and Ocean Grove areas, where you need special things; where you are trying to bring an old city back up to financial credibility. We appreciate what you are doing down there. It's a big job.

Are there any questions of the Mayor?

ASSEMBLYMAN SINGER: Just one thing. I worked with Paul on a Committee on Tourism on this. You know, again, in the Asbury Parks, the Long Branches, and places like that, we want to see the tourists come down; we want accessibility to the beaches. That is important to the lifeblood of bringing back those communities. I don't think we are going to see problems in those areas. Again, I think the areas where we are seeing problems are in the small communities. They really want to be exclusionary about who is going to come to use their beaches. I think the comeback of Asbury Park, like Atlantic

City with its comeback, is something that is important to all of us in the shore area.

ASSEMBLYMAN VILLANE: Thank you very much, Mayor.

ASSEMBLYMAN MORAN: Doc?

ASSEMBLYMAN VILLANE: Jeff?

ASSEMBLYMAN MORAN: Paul, you're not the Mayor now, are you?

DEPUTY MAYOR KAPALCO: Deputy Mayor.

ASSEMBLYMAN MORAN: Deputy Mayor. Bob Singer is trying to confuse me here.

I just want to say that what you have been part of doing in Asbury Park, you should be extremely proud of. I am proud to visit there and to go to many meetings there, especially with the Assembly and various other committees that I serve on. But I don't think your community is a typical community. I think your community is a community that was fortunate to have the insight and the stamina of elected officials to do what had to be done in a community that was potentially a viable asset to the State and to the shore communities, but that was not reaching the mark. You people took the initiative, and I commend you for it.

But, we are not talking about taking a community such as yours and doing a master plan and reallocating access to the beach. I think what you did was make better use of the existing properties, so that you could draw more people, so there would be something to attract them to the beach area. So, I think when we look at the spectrum, you are on one completely opposite side.

I think what we are looking at for beach access-- We are looking at communities that are taking dead-end roads that go into the beach, and through the process of dividing the properties and giving them to the people on each side, for the cost of legal fees involved in acquiring those properties-- That is not fair. It might be fair to the two people who live

there, to have nicer and more attractive properties for beach access for themselves, but it is taking away that access from people such as us, who want to go to those communities.

I think what we have to look at -- and maybe this is one area that DEP should be more involved in -- is, whenever any community, be it by, as Doc Villane and Assemblyman Palaia have said, public referendum, be it a question on the ballot, or just a council resolution, or a township committee resolution-- I think what it should be is, if you are going to take away a right of way, let's say, this street here, and you are going to divide it between the owners of that property and that property, the community has to provide equal access within a reasonable distance for the public to be able to go onto the beach.

Now, this property here, on this street, might be a heck of a lot more valuable for commercial use or municipal use, than the property right next-door to this house here, and it would be equal access within a reasonable distance, which would be fair. That is what I think we've got to look at, not what your community did. Your community should be commended.

DEPUTY MAYOR KAPALKO: I appreciate that. Assemblyman, I agree with you 100%. My concern-- Being a lawyer, I know how phrases and legislation can be misconstrued on occasion and utilized in other manners. My concern is with the terminology of whatever legislation is passed, to ensure that it is the situation that you have just described, which is the subject of the bureaucratic administration, and not the situation that Asbury Park has undergone. I think, therefore, that what must be done is-- The legislation that is to be proposed must be tailored to make it specific and clear in that respect, because if it is not, and if it is overly broad or general, from past experience -- not personal experience, but from the observation of other experiences -- bureaucracy has a tendency to invade itself in both situations on occasion -- not

all the time, but on occasion. Therefore, the key is the clarification of the terminology. That is all I am suggesting today. I hope that when you consider the final language, it is done.

ASSEMBLYMAN VILLANE: Thank you, Paul.

DEPUTY MAYOR KAPALCO: Thank you all, gentlemen. I appreciate it.

ASSEMBLYMAN VILLANE: Our next speaker will be the Mayor of Seaside Heights, George Tompkins. Where's George? Oh, there he is. On deck will be the Mayor of Belmar, Mayor Hernandez.

M A Y O R G E O R G E E . T O M P K I N S: I certainly thank you, gentlemen, for allowing me to speak today. I didn't come up here with the idea of speaking. I came up here to listen, but I have heard a lot of comments made, and I would like to make a few myself. For a small town Mayor to address such a distinguished body, is a great pleasure.

ASSEMBLYMAN VILLANE: Thanks.

MAYOR TOMPKINS: We in Seaside Heights, of course, welcome the people. If you think the beach fees are too high where you are going, come on down. We're \$2 and \$3 -- \$3 on weekends and holidays. We try to keep our beach fees down. I cannot criticize the towns that are higher in price, because most of these towns are just putting the cost where it belongs, on the user. In our town, we want the people to come into our town. We want them to use our beaches, and hopefully we will get a little shot at them on our Boardwalk. We are not Atlantic City, where there is a luxury tax outside of the sales tax, where 3% goes to them and the other 3% goes to the State. We don't get any luxury tax. We don't have any large hotels. We don't have any large motels where we can charge heavy taxes to these people. We don't have any casinos that are willing to put money into rebuilding the town.

Seaside Heights has been in existence -- its beach -- for some 75 years. We have never had a fatality on our beach. We have never had a problem with our beach. We have always taken care of it ourselves. We have never gotten any State aid; we have never gotten any Federal aid for our beach. We have done it ourselves. The people who live in our town-- I would like the Advocate to take a run down in December, January, or February, when we are getting hurricanes and northeast storms and the various bad weather -- the snowstorms and so forth -- to see what the people who live in the town have to put up with. Come down there in the summertime and see our visitors, the way they treat the property owners in the town. They throw bottles in the yard. They urinate on their properties. They go down to the beach, and they throw things on the beach.

The beach towns have a tremendous problem and, of course, in Seaside Heights, we do not charge the user of the beach all of the costs of it. Most of the costs of that beach use are being borne by our taxpayers. Right now, we are in a situation where we have a strike by our lifeguards. We have our beaches manned, but we have lifeguards that want \$10 a day more. Now, you can picture, since the Board of Health has passed this new regulation where you have to give your lifeguards 55 hours of training before you can put them on a stand, and the water temperature in April and May is about 40 degrees-- I would like to know, how are you going to train a man to go out there and swim?

We open our beaches in May, when the weather is good. We put lifeguards on. We do not charge for the use of our beaches then. We carry it so that the young people coming down from the high schools and so forth to go swimming have some protection. After Mardi gras, we open up our beaches the month of September. We do not charge for the use of our beaches. People are welcome to come down and use the beaches free.

We have to clean our beaches all winter long. I mean, June to September might be what some people consider the beach season, but when you look at the amount of debris, the logs, the amount of garbage and so forth that washes up on the beaches at the shore-- If we were to allow that to accumulate, people coming down in the wintertime looking at the beaches would never -- people from out-of-state -- come back to Jersey, because they would say it was a garbage dump. So, we clean our beaches all winter long. We keep our beaches up. There are many times in the wintertime when we have to send front-end loaders down to move sand around to protect the Boardwalk and to protect the beach and so forth against the elements. These are all costs that are borne by the town.

As I said, the recent health edict with regard to the lifeguards for next year, is going to cause a bidding war with the motels for lifeguards, because now the motels have to have lifeguards at every pool -- every condominium. We are going to be in a bidding war with them. These kids are going to be taking training with us, and they are going to be going other places for a few bucks more. We are going to be having more strikes and more problems in the shore area. These are things you have to look at when you are talking about a \$2 cap on beach fees, which is the most ridiculous thing in the world.

While we're at it, why don't they take-- If they want to open up beaches and things, what about the golf courses that are owned by towns and by counties and so forth? Why don't they have free golf courses and let everybody on them? When you talk about the State subsidizing the beaches-- Take a look at Island Beach State Park. They were cut \$100,000 from their budget this year. They don't even know if they are going to maintain it after Labor Day. They may have to close their beaches and stop letting people down there, because they won't have the money. When you look at the amount of State Park you have down there-- We have one mile of beach front, and we

probably cater to maybe five times the amount of people who go down to Island Beach State Park, because they close the gates, and the only way you can get in is if you take the shuttle bus.

If you want to give money, I think the thing to do is look at the towns, and give them money to provide more parking. We in Seaside Heights would like to buy a strip of land that is available right now -- \$12 million. Now, how can my taxpayers come up with that kind of money? We will go for Green Acre funds on it. Whether we will get them or not is questionable. That would only pay some of it, or will be at low interest, but yet the taxpayer will have to subsidize that.

The towns have run these beaches all these years without any help from the State, and without any need for intercession. I would like to know, how many people in the State of New Jersey have complained about the high cost of beach fees, the access, and so forth? I imagine that when you take into consideration the amount of people who use the beaches in New Jersey and the amount of people who complain, it is a very small number. I imagine it is minuscule, by comparison.

If you are going to talk about putting caps on beaches, and stopping towns from trying to improve their beaches-- You have a 5% cap on municipal budgets now. How much can a town afford to dedicate to the beaches, if they can't charge off most of this cost? When you talk about cutting back on things, what are you going to do? You are going to have to cut back on cleaning the beach. We have to clean our beach every night. Beach cleaners are some \$80,000 or \$90,000. They wear out every couple of years. They need repair. The trucks to haul the debris off the beaches-- They wear out. When you are dealing with salt air and salt water and so forth, equipment does not last long at all. The stands -- the lifeguard equipment -- wear out. There are a tremendous amount of costs involved.

If you are going to start capping beaches, you are going to wind up with a garbage dump out there, because the first thing they are going to cut down on is the amount of cleanup. There are a number of beaches already where you can see debris and garbage. A good example, I think, was this year, when we had the wash-up on the beaches. We got hit very little in Seaside Heights. Seaside Park was hit very heavily, with a wash-up of sludge on its beaches. The town had to pay for the expense of hauling that sludge off. Now, if they can't charge it off to the users, who is going to pay for it, the taxpayers?

Most of the people living in these communities are senior citizens who have retired and moved down there to their summer homes. Again, as the taxes keep rising -- and they are rising -- and as I believe Mr. Singer said, more and more condominiums are being built, and the poor people, or the middle-class people are starting to move out because they can't afford the taxes in the shore areas, you are going to have nothing but condominiums owned by people with a lot of money, who are going to be able to use the shore area.

In conclusion, gentlemen, I say, be careful about what you do to the shore areas, because they have been there for a good number of years, and I think tourism is your number one industry. A lot of people say it is number two, but I believe in New Jersey, when you take all of the fallout from tourism, it is your number one industry. We have been very lucky under the present Governor to have a lot more money dedicated toward promoting tourism. Let's not ruin it by making a lot of changes in the rules and regulations, and let's not pass a lot of bills where we are going to turn it over to departments like DEP, and so forth. Once they get those bills, gentlemen-- They are not going to be the same bills that you wrote. They are going to be whatever they want to put into them. You know it, and I know it. If changes are made and you subject the towns to their jurisdiction, watch out.

Thank you very much for giving me the opportunity to express my opinion.

ASSEMBLYMAN VILLANE: Thank you, George.

ASSEMBLYMAN MORAN: If I may, George, before you leave, I just have a few questions to ask you. Your lifeguards-- During the period of time that you have your beaches open prior to your Mardi gras and their closing-- Are your beaches with lifeguards free during that period of time?

MAYOR TOMPKINS: Yes. Now, this year, we are hit already with a shortage of lifeguards, so much so that we had to take them off of our bay beaches. Lifeguards are at a premium. As I say, next year, forget it. I don't know what we are going to do, because if the Health Department is able to stand with that 55 hours of training, we are not going to have lifeguards.

ASSEMBLYMAN MORAN: Well, you know, Senator Connors is still working with the Department of Health to try to resolve that.

MAYOR TOMPKINS: Senator Connors made a telephone call, I believe, some time ago, at our Mayors Association meeting. He called the Lifeguard Association in California, which is the major headquarters. He questioned them as to how to train lifeguards in 40-degree water, and they said, "Well, we don't have that problem out here. We are open all year, and our water is 70 or 80 degrees." That is what the State Health Department has adopted -- the California plan. I think it is ridiculous. I think changes have to be made. You see what has happened this year with the police bills that have been passed. It has certainly decimated our police departments and our protection.

As I say, unless something is done, the shore area is not going to be like you see it today. The beaches are going to be garbage dumps unless you people see clearly not to put caps on these beaches, and not try to hogtie the municipalities.

ASSEMBLYMAN MORAN: I have two other very quick questions, if I may. You said your community subsidizes your beaches?

MAYOR TOMPKINS: Our taxpayers pay a lot of the costs of our beaches.

ASSEMBLYMAN MORAN: I heard that on Channel 9, in an interview -- "Meet the Mayor."

MAYOR TOMPKINS: There are so many things, Jeff, involving beach fees. We have a parking lot down on the bay front that has to be cleaned everyday. When the people leave, it is a garbage dump.

ASSEMBLYMAN MORAN: Even off season?

MAYOR TOMPKINS: Even off season, right, when they come in, in the fall of the year -- when the kids come in. It is a little different story today with families. You don't have families like there were years ago. Today, when a kid gets to be 13 or 14 years old, he doesn't want to go to the beach with his family any more. He goes on his own; he goes down with the gang. When they cross that bay bridge -- when they cross the Mathis Bridge coming into Seaside Heights -- I call it the "magic of the bay" -- these nice kids are changed into animals. Then, when they leave Seaside and cross the Tunney Bridge going back, the bay changes them back into nice kids again. But when they get in there, the beer bottles flow, the garbage, the debris, and these are all things that the towns have to pay for.

ASSEMBLYMAN MORAN: My last question is-- Some people are not familiar with the major crisis situation we had in late May, early June -- the sludge crisis. It is interesting that the Ocean County Utility Authority -- which I know, George, you served as a liaison to at one time -- has just awarded a \$37 million contract to take care of its sludge. It is presently trucking its sludge into a state-of-the-art landfill in Pennsylvania, at a cost in excess of 25% of what the dumping

cost would be at a landfill. Your beaches are being washed up with sludge from outside of our county.

MAYOR TOMPKINS: From barges that are coming down and dumping early, and so forth. Our users of the sewer in Seaside Heights-- The sewer tax went up 24% this year to cover the increase, which was ridiculous.

One other thing I would like to say, if I may, is, we have an Ocean County Mayors Association that is a very viable association. Bob has been there, and Jeff has been there, and Senator Connors, a number of times. They are at most of our meetings. As I say, we open the door to anyone, including the Public Advocate, if he wants to come down and talk to us, or discuss anything with us -- anything at all. We are always happy to listen to Assemblymen, Senators, any members of any departments -- DEP and so forth. We are always happy to listen. We invite you to come down.

ASSEMBLYMAN VILLANE: Bob?

ASSEMBLYMAN SINGER: Yeah, just one brief thing. First of all, George is the President of the Mayors Association of Ocean County. But I want to make one point that I think we all have to realize. We heard before from the Public Advocate their concerns about beach access and everything else like that. They do not -- and most of the other departments do not -- come and listen enough to the problems of the shore mayors themselves. A perfect example of how the government works without listening, is the situation with the lifeguards and the situation with the summer police. We have a critical problem in the shore communities because of this. No one sat down and talked to shore mayors to understand the problem in training the lifeguards. This was something decided inland, not at the shore. It sounds very good. It looks good on paper; it is the way it should be. But in actuality, it just doesn't work.

Right now, besides the lifeguards, George will tell you the horror stories about just getting police to direct

traffic. We are not talking about people carrying guns. We are talking about special officers, where we never had an incident; never had a problem. We just can't get enough of them. So, I really hope that in this case, they are going to take into account and listen to the problems of the shore mayors, and understand fully the effect of what they are doing. I hope this is really an example of what we will do.

ASSEMBLYMAN VILLANE: Thank you, George. We appreciate it.

MAYOR TOMPKINS: Thank you very much, gentlemen.

ASSEMBLYMAN VILLANE: The next speaker will be the Mayor of Belmar, Mayor Maria Hernandez.

MAYOR MARIA HERNANDEZ: Thank you. First, I would like to thank Assemblyman Villane, Assemblyman Palaia as Vice Chairman, and the Committee for having these hearings. I think we need them. I think we need to address this issue.

The Belmar Board of Commissioners is really committed to providing public access, but we want to do it at the lowest possible cost to the public, and without undue burden to our taxpayers and residents. That is an important issue to us.

For those of you who don't know, Belmar is one square mile. We have 6700 year-round residents. In the summer, on a given weekend, we could have anywhere from 50,000 to 70,000 people in town. We go from a small town to a big city overnight. Now, the problems that go along with that are extremely difficult. We have a good working operation, and we hope to keep it that way. But, to keep it that way, we need to have sufficient funding in order to have our beaches operate in an orderly fashion.

The \$2 fee that has been recommended would be catastrophic, in my opinion, for two reasons: Number one -- as Assemblyman Moran very succinctly put it before -- it is like comparing apples and oranges. If you have a beach area where you have a few thousand people visit, or you have a beach area

where you have 50,000 people visit, you cannot compare the costs and the impact of that upon a one square mile community. One of the things I think could happen with the \$2 cap, is that you would get more exclusionary beach front areas, instead of less exclusionary beach front areas. That is because if that is all the communities could charge, they would not have rest rooms and rest room attendants; they would not have the constant cleaning of their beaches; they would not have a fully staffed first aid station to handle crowds, where you might have incidents where people need help or first aid; they would not have all of those amenities we need, to have a good operation.

We in Belmar have about 30,000 season badge holders. Now, that compares to, like, maybe 2000, 4000, 6000 in the neighboring municipality. So, yes, Assemblyman Moran, you're absolutely right. You can't compare apples and oranges. A town that takes care of 2000 or 4000 people on a given Saturday or Sunday, cannot be compared, nor can the cost be compared with a municipality that handles 50,000 to 70,000.

We want to reduce our beach fees. In fact, this year, we reduced our daily fee from \$5 to \$4. We are trying to be more cost-efficient wherever we can, so that we can reduce the weekend fee, which I think is high. Next to that, we want to be certain that our taxpayers are not any more overburdened than necessary.

Most of the shore municipalities that have large beach front operations experienced high tax increases this year, and that includes Belmar. Some of our senior citizens, some of our people with large families, cannot afford to pay these additional taxes each year. That burden should rightfully fall on the user of the beach. I think what we need to do is find out exactly what we are talking about. I don't think there have been enough studies, or enough documentation to tell us exactly what these fees should be.

I recommended to Assemblyman Villane, and he has been very cooperative about it, that we establish legislation to allow the shore communities to have a beach utility of sorts, where all of the costs incurred at the beach front, or connected to the beach front operation, would be in one place in the municipal budget. Right now, it is spread throughout, so that no one really knows for sure. We have a very comprehensive list of charges, but because they are not in one spot in the budget, it is very difficult to prove it in. I think that is what we must do. We need that legislation; we need it desperately.

The other thing we need are parameters for what are legitimate expenses. I think anyone, whether he is from the shore area or whether he is from North Jersey, will understand that. In fact, if you don't think the North Jersey people understand, let me read you just part of an editorial from the North Jersey Herald News. They are beginning to understand what we at the shore have to deal with. We are talking about the guidelines that I just mentioned. This is a quote from their editorial:

"Until such guidelines are established, the Legislature should shelve proposals for uniform fees of \$2 a day. That legislation, based on no review of actual costs, could, as Mayor Hernandez fears, force shore municipalities to reduce beach maintenance, the number of lifeguards on duty, and other beach-related services. That obviously would not serve the public interest. It is equally clear that overdue development of realistic beach fee guidelines would."

Gentlemen, I want to pledge to you my support of your Committee. Anything that we in Belmar can do to help you, we are more than willing to do. We want complete access to our beaches, but we don't want our taxpayers to have to bear the burden of it. Anything we can do to help, we are more than willing to do. (applause)

ASSEMBLYMAN PALAIA: Very good, Maria.

ASSEMBLYMAN MORAN: For those of you who do not know Maria Hernandez, she has the unique distinction, after having been elected as Mayor for the first time, of being hauled into court 10 days after that to defend the beach fees of a previous administration. So, Maria has been working with the Committee, and we are going to work further with her.

Her suggestion-- There is a bill being written now that would provide that local municipalities could have a beach front commission, through which all expenditure costs could be paid out, so they would be easily identifiable for the Department of Community Affairs, the Public Advocate, DEP, the Coastal Commission, whoever wanted to look at them -- so they would be able to see where Belmar or Long Branch spends their money and how much is spent.

Thank you very much, Maria.

ASSEMBLYMAN PALAIA: Thanks, Maria. Very good. She's always good.

ASSEMBLYMAN VILLANE: I have a couple of seniors who want to testify. Ms. Rabinowitz, will you please come up? Ms. Rabinowitz is a resident of Long Branch; she lives on Howland Street.

M S. R A B I N O W I T Z (first name not available to transcriber): I am concerned primarily with Cottage Place Beach. Every morning, the bulldozers come through, pushing the sand from one place to another, and for some reason or another, they push the sand up into a hill at Cottage Place. The hill is comparable to Mt. Everest. Many of the beaches are level. We cannot understand why we are subjected to this large hill. If anyone would stand up on the Boardwalk, they would notice people coming up, huffing and puffing and clutching their chests. This is at the end of a day of recreation.

We would like to know the reason for this hill.

ASSEMBLYMAN VILLANE: I'll get the answer to that from the local people in Long Branch. I think it has something to do with erosion, or whatever, but I will find out the answer for you, Ms. Rabinowitz.

MS. RABINOWITZ: Why can't we have a ramp -- a wooden ramp -- pulled down, so that people could walk up much more easily than they do now?

ASSEMBLYMAN VILLANE: I will refer your question to the Mayor, Mr. Huhn. I'm sure Mr. Aurilio will get an answer for you.

MS. RABINOWITZ: Okay, thank you very much.

ASSEMBLYMAN PALAIA: Thank you, Ms. Rabinowitz.

ASSEMBLYMAN VILLANE: Did you make a note of that, Mr. Aurilio? (affirmative response from audience) Thank you very much.

Ms. Ruth Tilley?

R U T H H. T I L L E Y: Most of my questions were answered by the Mayor, Assemblyman, but there are two things I would like to say. One is, I really believe that if we could find some of these litterers on any beach along the whole coast, and fine them -- fine them, money, you know, hit them where it hurts the most-- I think if we could fine them, if we could find some way to enforce that, because it is not only here that is littered terribly, but all the next two blocks are littered completely. They leave litter in all the condominium places. They park in the condominium association's places. Of course, that is up to the condominiums. But I think on the whole, if we could enforce that, if we could have maybe one or two people extra enforcing that, that might help. Hit them with a sizable fee.

ASSEMBLYMAN VILLANE: Mr. Aurilio, I would like you to bring that to the attention of the Mayor and Council. Mr. Palughi, the Councilman, is here, in addition to Mr. Pallone. This is another problem which I think is a local problem --

littering -- and enforcement, especially in the summertime, I guess.

MS. TILLEY: Right. The other thing is, I think we all pay taxes in the whole State -- quite a bit of taxes -- but our taxes reflect Newark and North Jersey schools. Why couldn't North Jersey taxes reflect our beaches, or do they? (someone answers affirmatively) They do? Okay, that is my question. That's all. Thank you very much.

ASSEMBLYMAN VILLANE: Actually, Ms. Tilley, the last funding for shore protection was a \$50 million bond act--

MS. TILLEY: Yes, I know.

ASSEMBLYMAN VILLANE: --which Joe and I sponsored. That is paid for by everybody.

MS. TILLEY: Yes, okay.

ASSEMBLYMAN VILLANE: So, in some ways, they do participate.

MS. TILLEY: Okay, thank you very much.

ASSEMBLYMAN VILLANE: Thank you very much, Ms. Tilley. Mr. Olivadoti?

J O S E P H O L I V A D O T I: Committee: A few things. Number one, I think that somehow or in some way the State can help all of these cities and boroughs and towns around here to pay to clean the beaches. I know that every town has to bring their men to the beach, and probably a lot of them don't have enough help to clean it up, especially the shells from the mussels. Boy, they stink out there. I think the State should help there.

Plus, I think it should help to pay the water bills from all of the showers here, because I know it is thousands and thousands of dollars they pay for water.

Another thing -- I know it will never happen -- is, they talk about no parking around here. I think somehow they should make New Ocean Avenue going north, on the east side, parking all the way down, and they should make the lights like

in Asbury Park, where you hit one, and then you slow down and you get the next one -- the green one. This way here, you fly to make the next one, and you get stopped. Then you get a green light, you take off again, and you get stopped again. It's not right.

That's all I've got to say.

ASSEMBLYMAN VILLANE: Thank you very much, Mr. Olivadoti. We appreciate your staying here today. Ms. Olivadoti, would you like to--

A N N V. O L I V A D O T I: No. What I had to say was already addressed. Thank you.

ASSEMBLYMAN VILLANE: Thank you very much, Ann. Mr. Weller, an old friend of mine from a beach club long gone -- Julius Weller.

J U L I U S W E L L E R: I want to thank the Committee for the job they are doing. I particularly watch this Committee very closely, because I spend a vote on Anthony Villane, and I want to make sure he is doing a good job for my community, and what is good for my community, invariably is good for all the communities.

I believe the biggest single problem for people is the parking here during the summer. I think this should be the number one priority to be addressed.

The number two priority, I believe, is the cleaning of the beach. Now, whatever community has a beach, I believe they deal with their problem. If this Committee would come down in the evening, after a weekend -- a Friday night, a Saturday night, or a Sunday night -- and see the litter that is left on the beach-- I, for the life of me, cannot understand this, because I grew up in these United States, too, and I bring my garbage up and take it home. You supply litter cans down here, which no one uses.

In order to take care of these violators, I believe you ought to elevate your beach fees. I am a senior citizen,

but I have paid my way all my life. I think the beach fees ought to be elevated, and guards ought to be put on the beach to enforce this. To let the State pay it, or let the county pay it, or let the Federal government pay it, is going back to the well, and invariably the well is the taxpayer. You just don't give the taxpayer any relief.

I believe the people who come down here and leave all these drink and food containers-- If they can spend that kind of money here, they can spend another \$2, \$3, or \$4 down at the beach. If we can keep the beach clean, I think we will have whatever we are looking for pretty well licked.

I don't think we should have any more free lunch counters. That is a thing of the past. This should be a viable thing, and it should pay for itself.

Thank you.

ASSEMBLYMAN VILLANE: Thank you very much, Mr. Weller.

ASSEMBLYMAN PALAIA: Very good. I agree with him.

ASSEMBLYMAN VILLANE: We have a visitor from Glen Ridge. I am going to put Walter on next, but before I put Walter on, I am going to have Harold Byron, from Essex Avenue, Glen Ridge. He has something to say to the Committee.

H A R O L D B Y R O N: Thank you very much, Mr. Chairman. I happen to be a senior citizen collecting Social Security, and the father of six children. I just wanted to clarify that. I want to know, is it possible for these beach fees to be profit oriented? Should the people be making a profit off of the beaches?

ASSEMBLYMAN VILLANE: If you're going to answer that--

MR. BYRON: No, I would like to know. I mean, should people be making a profit off these beaches?

ASSEMBLYMAN VILLANE: State law requires that the beach fee assessed in each municipality be reasonable, and reasonableness means to cover their costs, not to make a profit.

MR. BYRON: Well, according to an article I read, Belmar, in 1985, made \$1.6 million profit -- \$1.6 million profit. So, I think if you are thinking about this--

Another factor is--

ASSEMBLYMAN VILLANE: If I may just answer that for you.

MR. BYRON: Sure.

ASSEMBLYMAN VILLANE: Maybe that would help you out, Harold.

MR. BYRON: Okay.

ASSEMBLYMAN VILLANE: I think I read that same article. Whether it is a profit or not a profit is up for some discussion. Belmar is saying that the cost for septic removal is an expense they incur; the cost of police protection; the cost of first aid protection. Not only that, but the cost of collecting the beach fees; the costs of accounting procedures. So, the discrepancy between what the Public Advocate says and what the Mayor of Belmar says is probably somewhere between those two things.

Another problem with profit on the beaches is, you know, what is a profit in 1987, with great weather like today, was not a profit in 1986, when you had eight rainy weekends. So, there ought to be some flexibility in setting beach fee costs as to a broad range of over a two- or three-year period.

MR. BYRON: Well, you have that in your bill.

ASSEMBLYMAN VILLANE: That's in the bill.

MR. BYRON: Certainly. So you already have it.

ASSEMBLYMAN PALAIA: The gentleman reads.

MR. BYRON: Sure. Of these bills-- Actually, there are three bills in the Senate now, and one in the Assembly. If you were a private citizen, would you have any particular choice out of any of these four bills?

ASSEMBLYMAN VILLANE: If I were a private citizen?

MR. BYRON: Yeah.

ASSEMBLYMAN VILLANE: If I were a private citizen, I would take my bill, because it is the best one. (laughter) My bill really talks to the reasonableness of fair beach access to the public, and a fair return of expenses to the municipalities.

MR. BYRON: Does your bill indicate any controls on the expenses at all? What if the entire town of Belmar took a job in the summer cleaning up the beaches? Is that allowable in your bill?

ASSEMBLYMAN VILLANE: No, it isn't. That is not reasonable.

MR. BYRON: The word is "reasonable" in your bill?

ASSEMBLYMAN VILLANE: Yes.

MR. BYRON: The words in your bill are "reasonable expenses"?

ASSEMBLYMAN MORAN: Correct.

MR. BYRON: Because I notice this gentleman's bill does not say "reasonable expenses," in the Senate bill.

ASSEMBLYMAN VILLANE: Oh, he will amend it to be like mine before it's over. Before it is over, he will change it.

ASSEMBLYMAN MORAN: Let's get a commitment from him now.

ASSEMBLYMAN PALAIA: We don't have to worry about that.

MR. BYRON: His bill should have actually been put on-- Another factor, too, is, this is something that--

ASSEMBLYMAN VILLANE: Your Assemblywoman is Mrs. Crecco?

MR. BYRON: Yes.

ASSEMBLYMAN VILLANE: Marion Crecco is a co-sponsor of the bill. Who is your other Assemblyman?

ASSEMBLYMAN PALAIA: Kelly.

MR. BYRON: Kelly.

ASSEMBLYMAN PALAIA: And Senator Orechio -- Carmen.

ASSEMBLYMAN VILLANE: I'm sure Carmen will be a good--

MR. BYRON: You know, another factor, whether you realize it or not, guys, is, your taxes are unbelievably low down here. My house is paid for. I spend \$400 a month for taxes and insurance -- \$400, and my house is paid for.

ASSEMBLYMAN MORAN: You don't want to talk to these local taxpayers; that's pretty cheap.

MR. BYRON: Cheap?

ASSEMBLYMAN MORAN: Yes, it is. Our taxes are pretty high down here.

UNIDENTIFIED SPEAKER FROM AUDIENCE: I pay \$3600 a year for taxes. I live in-- (remainder of sentence inaudible to transcriber)

ASSEMBLYMAN VILLANE: That's less than his. That's less than yours.

ASSEMBLYMAN MORAN: That's a one-bedroom apartment.

ASSEMBLYMAN VILLANE: That's without insurances.

(At this point, everyone is speaking at once, and it is difficult for transcriber to discern who is speaking.)

MR. BYRON: My house is 75 years old -- 75 years old.

ASSEMBLYMAN VILLANE: All right, let's-- We're taking testimony today.

MR. BYRON: Which bill do you think you are really trying to push through, of all these bills?

ASSEMBLYMAN VILLANE: Assembly Bill 3152.

MR. BYRON: And you have no cap in that bill whatsoever?

ASSEMBLYMAN VILLANE: No cap?

MR. BYRON: I mean, there is no \$2 cap?

ASSEMBLYMAN VILLANE: No, not yet.

MR. BYRON: But there is some control over expenses?

ASSEMBLYMAN VILLANE: Yes.

MR. BYRON: Who can turn down expenses, in the bill?

ASSEMBLYMAN VILLANE: The new Commission is going to be called the Jersey Shore Coastal Commission.

MR. BYRON: Who is on this Commission?

ASSEMBLYMAN VILLANE: That is a very complicated-- There are 15 members. It is made up primarily of people along the shore, the environmental community, the fishing industry, developers. It is going to be a broad-based Commission.

MR. BYRON: So, that Commission is really interested in keeping down expenses, you would say, especially since they are all along the shore?

ASSEMBLYMAN VILLANE: That's right.

ASSEMBLYMAN PALAIA: Definitely.

MR. BYRON: How about putting me on that Commission?

ASSEMBLYMAN MORAN: Talk to Kelly.

ASSEMBLYMAN VILLANE: I'll tell you, we are going to be taking people from all over the State, and it is going to be an appointment from the Governor's office.

Thank you very much, Mr. Byron.

MR. BYRON: Okay, thank you very much.

ASSEMBLYMAN VILLANE: We appreciate your being here.

ASSEMBLYMAN PALAIA: Very good.

ASSEMBLYMAN VILLANE: Probably no one knows more about the beaches in Long Branch than our next witness. He is one of our advocates of a clean Jersey shore -- Mr. Walt Frattin.

W A L T E R F R A T T I N: Assemblyman, Senator: I am very glad to see you here in Long Branch, and I hope that everyone is really doing something about this. Everything sounds good to me. My two Councilmen are here. My basic complaints are Long Branch complaints. One of the things is--

ASSEMBLYMAN VILLANE: The Mayor has a representative here. He's taking notes.

MR. FRATTIN: Okay. Two weeks ago, we were in Russia, when we went down to the beach in Long Branch. They asked me to open my food container. I have been carrying a lunch box for 41 years working. I am retired now. No one has ever asked me if he could look inside my lunch box. I am a very desperate

person. I won't do it. All right. So then the police were called to the beach. I'm wasting my taxpayers' money by having three police cars brought to the beach for one poor old guy, who has a six-pack size lunch box.

They asked me if they could look in my lunch box. Two of them were inclined not to look in it, because no one is allowed to look at your personal property. But the other one was adamant, and he wanted to take me to the police station. I did not want to not enjoy a day on the beach because of going to the police station, so I showed him. He wrote down, "Peaches, bananas, a sandwich, some grapes."

The very next week, I was away from home. I have a grandson here from California. He is 13, but he is very intelligent; he gets all A's. He said, "You're not looking in my lunch box, because my grandfather won't let you look in his." They called the policemen on the kid, and he showed them the lunch box.

Now, I have spoken to Senator Pallone, who is my Councilman, about it, and I hope something will be done, because that is a police state. We can't have that, going down to the beaches.

Ms. Rabinowitz said something about a hill on Cottage Place. Well, that hill exists on Chelsea Avenue -- no, Morris Avenue, South Bath, Cottage Place, right here in the west end. If you guys will get up and look, you will see that it is not sand. It is mixed in with dirt. When you walk through it, you can throw it up, and you can find dust in it. How they do this is, they take a bulldozer down to the beach, and I presume everyone knows what happens when you take machinery in salt water. If you put a car in salt water, the insurance companies will total it. So, we taxpayers in Long Branch are paying to have our bulldozers run in water and pile dirt up against the jetty. I heard someone say it is retaining the wall. It is not retaining the wall. In the other places where that wall

exists, the wall is standing there. That wall is going to get deteriorated if the ocean hits against it. Make no bones about it, it's gone. It is going in Sea Bright, and piling sand up against it won't do any good.

They are spending, I'd say, in the vicinity of \$4000 to \$10,000 on machinery to pile that sand up there, and they could make four sets of stairs at an arbitrary price of \$200 apiece, so all the senior citizens could walk up the stairs. That hill is too long -- it is too long a stretch for them to get up. Plus, if you look at it -- and I think I have said this before -- you can see the dirt in it, whereas in the flat part you can see sand. I don't know where this practice started, but it has been going on for about the last 10 or 15 years. Before that, we had steps to go down.

The only purpose that serves is when you get a northeaster. Now you send the Public Works Department to take tons of sand, because it slides right up from the wind, here and at the other four places. It is not doing anything. Long Branch beaches, I think, last year, lost \$20,000. I don't think Long Branch beaches have ever made money. Long Branch had the county park. My daughter counts the money from the county park. She runs that. Long Branch lost money at the county park. They spent \$7 million to buy all that property, and now the county makes \$120,000 profit a year from the park, so they must run it efficiently. I'm saying, Long Branch does not run its beaches efficiently. They have people wasted all over.

Oh, Long Branch does not clean the beaches. If you look down there now, you won't see any paper or debris, but do you know how Long Branch cleans the beaches? They have a piece of chain link fence behind a tractor, and they drag it. What do you think this does? You answer. What do you think this does?

ASSEMBLYMAN MORAN: I would guess--

ASSEMBLYMAN SINGER: It moves it around.

MR. FRATTIN: It smooths the footprints. It does not pick up the dirt. Either they buy a machine--- The county has one; other towns have one. They filter the sand and the debris, leave the debris behind, and the beaches are clean.

Plus, parking. If you stand up and look ahead of you, you will see a road about a quarter of a mile long. They are not using this road. Two bikes can go on it. They could have a bicycle path on the side, and I think they would have room for parking all the way down this, as far as the sea verge. That would at least take care of some of the parking. The Federal people gave Long Branch money to build a Boardwalk on the north end. This Boardwalk is 10 feet wide. Up there, it is going to be about 30 feet wide. They are taking more of our ocean front away from us, and they are making it out of cement. It pitches away from the ocean. Who are the engineers who do this? I have been in construction for 41 years. If you want to get rid of water, tip it toward the water. Don't bring it back inland. I don't know what is going on. Does anyone know anything about what they are doing? It is very, very bad. It's 30 feet wide. There aren't going to be 30 feet worth of people working there.

They didn't send out enough notices when they started doing this, and Federal funds are being wasted on this piece of -- not Boardwalk, but cement. Boardwalk is easy to repair. For cement, you need jackhammers. The ocean comes over that end of the sea wall every time there is a high tide. You don't even need a storm. God forbid that we get a storm here. And we are going to get a bad one. We haven't had a bad one in years. When it comes, and I don't know whether your Committee takes this into consideration--

Assemblyman Moran, you said the beach is clean in the wintertime. No, no, you said that.

ASSEMBLYMAN PALAIA: I did.

ASSEMBLYMAN VILLANE: Assemblyman Palaia.

MR. FRATTIN: Long Branch does not clean in the wintertime. You compared the beaches to the Parkway, but the Parkway is a completely different entity. You pay that toll and you drive through. You're gone. This is here constantly.

I am for free beaches, because where do they pay to go to the beach? New Jersey, New York, one beach in Connecticut, and I think one beach in Michigan. The rest of the world is free. Long Branch is supporting its own beaches, but they also have a bureaucracy. Every town has. The State would have. But, if the county can make money on the beaches, why can't the cities make money on the beaches? If the State has to step in and run them-- The county does better than the city. Can the State do better than the city and the county? I think they should step in and run it, if a town proves that it is ineffective, or has harassment, or anything else.

I think I have taken up enough time.

ASSEMBLYMAN VILLANE: Thank you very much, Walter. We appreciate your testimony.

We have a Councilwoman from Neptune City, Gerri Popkin.
C O U N C I L W O M A N G E R R I C . P O P K I N: I know the hour is getting late and we have heard a lot of the same testimony. But, personally, as a mother of three, I am finding it kind of expensive to get to the beaches. I really have to thank the Public Advocate today for at least-- Even though I don't think that their one-year study justifies a \$2 flat beach rate along the coast, I at least applaud them for bringing the matter to the attention -- to make hearings like this and discussion, and hopefully proper legislation eventually to address the entire situation. So, in that regard, I applaud them, and I am glad they were here to explain some of their points and how they arrived at them. I still do not feel, as a local official, that \$2 will cover what the costs really are. I am a friend of Mayor Hernandez. Even though I only have a

small river beach in my community, I would hope that all of us can work together to decide the expenses and add them up to what we need to run the beaches.

Just one question on your bill, where I need clarification, if you don't mind. If your bill, in fact, prohibits the giving away of street ends, should a town such as Long Branch be able to give away a large portion of Ocean Avenue, which is the first street next to the beach? I think that is a fair question.

ASSEMBLYMAN VILLANE: Well, I think if it is not included in our bill now, I think we ought to provide in the legislation that a municipality cannot vacate either the street ends or the first street adjacent to the beach, without either a public referendum or permission from the Coastal Commission.

I think what has happened in Long Branch is a dichotomy. In an effort to develop some parts of Long Branch, we have deeded away some of Ocean Avenue. In other areas, we have given away either side of Ocean Avenue to private ownership, must to the surprise of a lot of people who did not know what was happening in December. I think maybe there ought to be public input, or a referendum, or a longer notice, or at least a more definitive and more informative way to do that. If it is not in the bill now, Ms. Popkin, I am going to make sure that in the final draft of the bill it will be more difficult to give away public property to private ownership.

COUNCILWOMAN POPKIN: I think as a citizen that I speak for most people who would like that addressed in this bill. Thank you very much. Let's work on those fees and get them more fair.

ASSEMBLYMAN VILLANE: Okay. Is there anyone else? (no response) I want to hear from Mr. Palughi. Did you want to mention anything about the town, Tony? This is Councilman Anthony Palughi, from the City of Long Branch.

C O U N C I L M A N A N T H O N Y J . P A L U G H I :

First of all, I would like to thank the Committee for coming down to Long Branch today to address some of these problems. Also, I would like to say that everyone is not like Mr. Frattin here -- Walt -- who brings grapes to the beach, and a little provolone, you know. We have had a history of problems on some of our beaches, with people coming in and getting intoxicated, and even going so far as to bring drugs onto the beach. You know, there are family people here, there are seniors. They are here to enjoy the sun. So that might explain one of the reasons why people in the booth like to check to see what is inside a cooler. Whether it is constitutional or not, I am not here to make that ruling.

Number two, as Mr. Palaia said before -- Assemblyman Palaia -- about people coming down to our communities -- in and out of this community, littering up, and then going back to North Jersey, or South Jersey, or wherever they come from. I am in favor of everybody being able to enjoy God's ocean out there, but beaches do not get dirty on their own. I mean, I have seen it. I have come down here on a weekend, where 75% of our sanitation money is being spent here on the beaches from out-of-towners coming down to our community.

The same with our policing. I wish the State would come up with some kind of funding. Long Branch happens to be a unique community. We have rich, poor, and middle-income people. It is not like Bay Head, where you have a certain element of people going on the beaches. We have to allow our poor people to enjoy the ocean and the Boardwalk, also.

So, what you guys did today, I really appreciate, because you have addressed some of the problems. You know, we have a rich State here. Everybody is complaining about the beaches not being free, and I also agree to that. I have been to Florida, where the counties maintain the beaches, and they are well-kept. So maybe today something good will come out of

this. I would like to thank Doc and the rest of the Committee for coming here. I'm sorry I wasn't here to welcome you people to our city.

Thank you.

ASSEMBLYMAN PALAIA: Thanks for your hospitality, Tony.

ASSEMBLYMAN VILLANE: Thank you, Councilman. Is there anyone else from the public who would like to testify? (affirmative response from audience) Would you come up, please, and tell us your name?

M A R S H A L L S A S S: My name is Marshall Sass. I have been a resident of Long Branch for about four years.

ASSEMBLYMAN VILLANE: How do you spell your last name?

MR. SASS: S-A-S-S.

ASSEMBLYMAN VILLANE: And what is your address?

MR. SASS: My address is 661 Ocean Avenue.

ASSEMBLYMAN VILLANE: Okay.

MR. SASS: I think there should be a universal police code for the beaches, and an understanding on the part of all beach personnel as to what that police code is. Now, there is usually a consensus around the world that if you come into the beach from a boat, you may disembark from your boat and walk on the wet part of the beach, and then leave again. Or if you come from an area that is not restricted, you can walk through, you know, the mean tide thing.

Well, I have sat over here, and this is private property over there. But the beach isn't private property, you know; it's owned by the country, or God, or somebody -- everybody in the world. The workers here are not policemen. They are just checking badges. They yell at people for walking in the water. Now, that's not legal.

ASSEMBLYMAN VILLANE: Earlier, Marshall, so you know, one of the first questions we asked the Department of Environmental Protection was, how do we provide that people do, indeed, have free access to the wet portions of the sand? That

is something we are going to develop; that people ought to be able to traverse anywhere up the coast and not be harassed, even during the beach season when we charge a fee. We are going to be working on that in the legislation.

MR. SASS: But, isn't there already legislation about what is--

ASSEMBLYMAN VILLANE: Yeah. The public trust doctrine dictates that up to the high water mark is public access and free for the public to traverse. No one can be prohibited. The problem comes in where a municipality like Long Branch provides lifeguards or first aid services, and then someone walks on the beach and decides to stay on that beach and take advantage of the services and the amenities provided by the town, and not pay the beach fee. So, there has to be something worked out. That is a stickler both in the Senate and the Assembly bills -- how to provide free access, but people who participate in it helping to defray the cost.

MR. SASS: I am talking about a different issue, where they go from a public access beach. They have a beach pass for that public access beach, and they go onto land bordering that beach which is private property.

ASSEMBLYMAN VILLANE: They cannot be prohibited.

MR. SASS: Well, they're doing it. They did it two weeks ago.

ASSEMBLYMAN VILLANE: Well, we will bring that to the attention--

MR. SASS: The police are doing it constantly.

ASSEMBLYMAN VILLANE: Let's bring that to the attention of Mr. Pallone.

MR. SASS: In The New York Times article on Belmar, they said the police are going out into the water and arresting people -- out into the ocean. Well, are they going to go out three miles to a boat and say, "Where is your beach pass?" and get an alignment of compasses to see which town pays it?

ASSEMBLYMAN VILLANE: A very good point.

MR. SASS: What I am talking about is an understanding, in their head, on the part of all the policemen and beach workers, about what the laws are, and about what they can and can't do.

ASSEMBLYMAN VILLANE: I will bring that to the attention of--

MR. SASS: Because it is a very obnoxious arrogance.

ASSEMBLYMAN VILLANE: Mr. Aurilio, would you please convey some of these issues developed that are local issues to your Mayor and Council?

V I N C E N T A U R I L I O: Yes, and at the same time, will you kindly put in one of your bills about liability?

ASSEMBLYMAN VILLANE: Yes. In fact, in the Fair Beach Access Bill-- There is a limit of liability in that, absolving the municipalities of liability.

Thank you very much, Mr. Sass.

I would like to tell everyone that copies of the testimony provided here today will be available to anyone who would like to have a copy. In addition, when we get finished, a summary of all the questionnaires filled out and the concerns of the public will be made available to the public on demand.

With that, I would like to thank the members of my Committee, and those of you who have stayed here for most of the morning, for being here. I really do appreciate it.

ASSEMBLYMAN PALAIA: Thank you.

(MEETING CONCLUDED)

APPENDIX

BEACH ACCESS SURVEY

CONDUCTED BY THE ASSEMBLY SELECT COMMITTEE ON TOURISM

Name: _____ (Optional)

Address: _____ (Optional)

City: _____ State: _____ Zip: _____

(Please fill in city and State in which you reside; this information is necessary for survey purposes).

Please place a check mark to indicate your response for questions 1 through 9.

1a) Do you feel daily beach fees are:

Too High _____ Too Low _____ Fair _____ Other _____

b) Do you feel weekend beach fees are:

Too High _____ Too Low _____ Fair _____ Other _____

c) Do you feel monthly beach fees are:

Too High _____ Too Low _____ Fair _____ Other _____

d) Do you feel seasonal beach fees are:

Too High _____ Too Low _____ Fair _____ Other _____

2.) Do you feel beach admission fees for all New Jersey beaches should be:

_____ Free, run by the State. OR _____ Run by local municipalities based on services provided.

3a) Are parking facilities for the beach:

Too Far _____ Reasonably close _____

(OVER)

b) Are the fees charged for parking:

Fair _____ Too Expensive _____

4.) When do you usually arrive at beach? a.m. _____ p.m. _____
(before noon) (afternoon)

5.) When you arrive do you have trouble finding a parking spot?

Always _____ Sometimes _____ Never _____

6.) Do you feel there are enough public access points off the street to the beach?

Yes _____ No _____

7.) Are you pleased with the services offered (i.e. lifeguard, restrooms, showers, changing facilities, clean-up etc.)?

Very pleased _____ Moderately pleased _____ Not at all pleased _____

8.) What do you think could be done to make your visit to the beach more pleasant?

9.) Would you be willing to pay more for better services and facilities?

Yes _____ No _____

STATEMENT OF
THE DEPARTMENT OF THE PUBLIC ADVOCATE
BEFORE THE ASSEMBLY SELECT
COMMITTEE ON TRAVEL AND TOURISM

JULY 27, 1987

MR. CHAIRMAN AND MEMBERS OF THE ASSEMBLY SELECT COMMITTEE ON TRAVEL AND TOURISM:

I appreciate the opportunity to appear before you today to discuss public access to our ocean beaches. It is an issue that affects all New Jersey citizens.

The Department of the Public Advocate has been investigating beach access issues since its inception in mid-1974. The genesis of our involvement with this issue was recognition of a fundamental factual and legal principle about New Jersey's ocean beaches--that these beaches are a unique and irreplaceable resource that belong to all the people of this State. Moreover, although the beaches may be geographically located adjacent to certain New Jersey municipalities, this circumstance does not, under well-established legal principles, make the beaches the exclusive domain of these communities nor does it permit these municipalities to exercise unbridled discretion over beach fees or other matters relating to beach access. Over the years, several New Jersey municipalities have imposed direct and indirect barriers to beach access that gravely impair the public's ability to enjoy the beaches and the ocean. These burdens on access have inordinately fallen on the shoulders of non-residents. It has been our strong belief that the residents of all New Jersey municipalities are entitled under the law to share in the enjoyment of these beaches.

In the past two years, we have received hundreds of complaints about various obstacles confronting New Jersey citizens in their efforts to enjoy our beaches. These complaints have cited lack of available parking, lack of restrooms and changing facilities, and the scarcity of beach access points. Many have noted that non-residents are systematically denied seasonal passes to the Bay Head beach. Others have focused on excessive restrictions on beach area activities, police harassment, excess beach fees and the need for reciprocal beach badges.

The most frequently reported complaint has been excessive beach fees, especially in certain Monmouth County shore towns. As some people have complained, the cost for a day at the beach for a family of four could exceed \$40.00. In response to these complaints, the Department of the Public Advocate conducted an exhaustive study of the beach fee system in New Jersey municipalities and throughout the rest of the country. On May 19, 1987, a 67-page report was issued detailing findings and recommendations on present barriers to beach access at the New Jersey shore. I would like to discuss briefly these findings and recommendations, because they provide a back-drop for our testimony today.

Initially, the Department reviewed the 1985 fees and expenditures of the five municipalities charging the highest daily fees--Avon, Bay Head, Belmar, Spring Lake and Sea Girt. We

found it very troubling that these municipalities had not developed a well-documented method of computing expenditures, but rather based their costs on subjective estimates. Furthermore, in a variety of instances, the costs were not properly attributable to beach front operations or were overstated. We found that daily users or "daytrippers," many of whom were nonresidents, were disproportionately subsidizing the largely resident monthly and seasonal beach users. We concluded that the expenditures of these municipalities were frequently inflated and the beach fees were excessive. These five communities are now targets of individual lawsuits.

The method of setting beach fees by the municipalities seems in many respects to be more a function of attitude than of accounting. If beach fees are treated, as they are in several municipalities--as fair game to offset every municipal expenditure related, either directly, indirectly or even peripherally, to the operation and maintenance of the beach or to the influx of summer visitors--then there will be no effective limit on appropriate costs or reasonable beach fees.

In contrast to the five municipalities, most other shore towns both in and out of New Jersey, hold a different philosophy in determining what expenses will be passed along to users in the form of beach fees. Their philosophy seems to be that beach fees be kept affordable so that the ocean beaches remain available for the general public. This approach, rather than a subjective

effort at developing estimates to justify excessive and restrictive beach fees, is more compatible with the Public Trust Doctrine and the statutory directives relating to beach fees.

Our survey expanded to include nine other New Jersey shore municipalities, all charging lower beach fees. Only three of the nine towns claimed that beach fee revenues pay for all beach expenses. Most of the others understood that beach fee revenues should pay for only direct beach operation costs, lifeguards, beach tag checkers, beach cleaning, and not for the myriad of indirect costs subsidized in the five communities we are suing.

Our Department also obtained fee information from every state along the Atlantic, Pacific and Gulf Coasts. This study unequivocally established that every coastal state in the country has lower fees than New Jersey. In most states, there are no fees charged for use of the ocean beaches. All but a few of the jurisdictions that do charge fees base them not on individuals but on carloads--generally \$2-\$3 per vehicle.

Based on our investigation of complaints of excessive beach fees and other obstacles to the public right of access to New Jersey's beaches, we formulated eight recommendations to address these problems. The touchstone of our recommendations is the vindication of the paramount statewide policy, crystallized in the Public Trust Doctrine, of encouraging broad public access to our ocean beaches.

I want to focus today on our recommendation that the Legislature should enact comprehensive legislation addressing beach fees and operations as well as public access rights. In our report, we recommend that such legislation, at the very least, should address several concerns relating to beach fees and beach access.

First, legislation should provide a uniform procedure for state review and certification of beach budgets. Second, the specific allowable costs should be legislatively articulated and restricted to a very limited range of necessary expenses that are not reimbursable from other state and federal programs. Third, we strongly favor ultimately making the beaches freely available to the public. However, in the interim, we think that, at the very least, the Legislature should establish a uniform cap on daily beach fees. In imposing this cap, the Legislature should give particular consideration to the establishment of a method of State subsidies for municipalities where legitimate beach expenditures exceed revenues from a legislatively capped beach fee. Since the ocean beaches belong to all the citizens of the State, we believe that the State should assume some financial responsibility for the imposition of a cap on daily beach fees to facilitate broad public access.

In addressing an analogous issue, the State currently provides "in lieu of tax payment aid," to municipalities in order to make up for lost tax revenues because of nontaxable State

property located within their borders. N.J.S.A. 54:4-2.2a et seq. There are compelling reasons for treating ocean beaches in a similar fashion. The Public Trust Doctrine establishes a statewide policy of maximizing public access to our beaches. In effect, the ocean beaches are State property held in trust for all of our citizens by the municipalities. If municipalities can demonstrate to appropriate State officials the unlikely circumstance that the benefits do not offset legitimate and necessary beach expenditures because of the cap on daily fees, the State should similarly consider providing subsidies to offset lost beach revenues in the affected municipalities. In this fashion, the municipalities would not be burdened with expenditures that should rightfully be shared by all taxpayers of the State.

Fourth, every beach municipality should be required to file a beach access plan to be approved by the Department of Environmental Protection (DEP). This plan should provide reasonable assurances of eliminating the barriers to beach access, which have been the source of frequent complaints to our Department. An effective beach access bill should include provisions to require necessary facilities, access points and adequate parking. Additionally, the plan should include the specific delineation of access rights of the public and the corresponding obligations of the municipalities and the owners of private dry sand beach areas to provide appropriate access to the

beaches. Fifth, in addition to providing for enforcement by the DEP and the Public Advocate, there should be a citizen suit provision authorizing private individuals to initiate litigation to vindicate their rights under the act. Such a provision, we believe, is a vital tool for preserving the public trust in ocean beaches.

A-3152 addresses many of these areas in a fashion consistent with our recommendations.

However, there are several issues identified by our study which are not addressed in this bill. First, we think that legislation should set forth the responsibility of private beach associations to make available a reasonable quantity of daily as well as seasonal badge memberships at reasonable fees to the nonresident public. In Matthews v. Bay Head Improvement Association, 95 N.J. 306 (1984), the New Jersey Supreme Court directed the Bay Head Improvement Association (B.H.I.A.) to make a reasonable quantity of daily and seasonal memberships available to nonresidents at reasonable fees. However, the Court stopped short of requiring all other private associations along the New Jersey coast to open their memberships to nonresidents. Unfortunately, we are not aware of any private beach associations that have voluntarily responded to the spirit and language of the Court's decision by opening up their memberships to the nonresident public.

There are several important reasons for legislatively addressing the obligations of private beach associations. Such legislation would increase the supply of available public beaches. It would also establish a policy that does not merely apply to Bay Head but, as a matter of fairness, is applicable to all private beach associations. Moreover, it would ensure compliance with the dictates of the Matthews decision.

Second, we recommend that the Legislature require that municipalities to report their beach budgets to the Department of Community Affairs, and also require that these budgets be certified by the DCA prior to being implemented. This would provide State oversight of the beach fee setting process and ensure that beach expenditures are not inflated.

Third, we recommend that the legislation explicitly state that DEP possesses the authority to approve or reject proposed beach access plans that do not conform to the agency's regulatory standards. This would clarify the agency's ability to guarantee that municipalities establish and implement effective public access plans.

Fourth, after having carefully studied the vast disparities in beach fees among shore municipalities, we have concluded that a legislative cap on beach fees is the best way to ensure uniformity and to promote the Public Trust Doctrine. Because the ability of citizens to use the beach is dependent

upon the cost of access, there is a corresponding State obligation to establish an affordable beach fee.

Finally, we support the inclusion of the citizen suit provision to enable individual citizens to enforce the provisions of the Act. Often, state agencies do not have the resources to pursue every individual action designed to vindicate legislative policies. A citizen suit provision would allow persons to take appropriate action where the state agency is unwilling or unable to prosecute an individual claim.

In conclusion, I want to emphasize that the most striking conclusion of our year long investigation was the compelling need for legislative action to ensure that our precious ocean beaches can be shared equally by all citizens of New Jersey. There is simply no reason why a family of four in this State should be required to pay over \$40 for the opportunity to enjoy a resource that rightfully belongs to everyone. The Department of the Public Advocate urges the passage of comprehensive legislation to ensure uniformity among municipalities in formulating beach fees and in protecting the public's broad rights to access to ocean beaches.

Thank you for the opportunity to testify.