

PUBLIC HEARING

before

SENATE COMMITTEE ON INDEPENDENT AUTHORITIES

on

S-1408

**(Requires certain authorities to hold public hearings
in municipalities where proposed projects will be located)**

April 17, 1986
Township of Bloomfield
Municipal Building
Bloomfield, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Carmen A. Orechio, Chairman
Senator Thomas F. Cowan
Senator S. Thomas Gagliano

ALSO PRESENT:

Spiros Caramalis
Office of Legislative Services
Aide, Senate Committee on
Independent Authorities

* * * * *

Public Hearing Recorded and Transcribed By
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New Jersey State Legislature

SENATE INDEPENDENT AUTHORITIES COMMITTEE
STATE HOUSE ANNEX, CN-088
TRENTON, NEW JERSEY 08625
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April 2, 1986

NOTICE OF A PUBLIC HEARING

The Senate Independent Authorities Committee has scheduled a public hearing on Senate Bill No. 1408 (1986) which requires certain independent State and regional authorities to hold public hearings in the municipalities in which proposed authority projects are to be located prior to entering into any contract or agreement therefor.

The public hearing will be held on April 17, 1986, in the council chambers of the Municipal Building at the Municipal Plaza in Bloomfield Township, Essex County. The hearing will commence at 10 a.m.

Anyone wishing to testify should contact Spiros J. Caramalis, Committee Aide at (609) 984-7381.

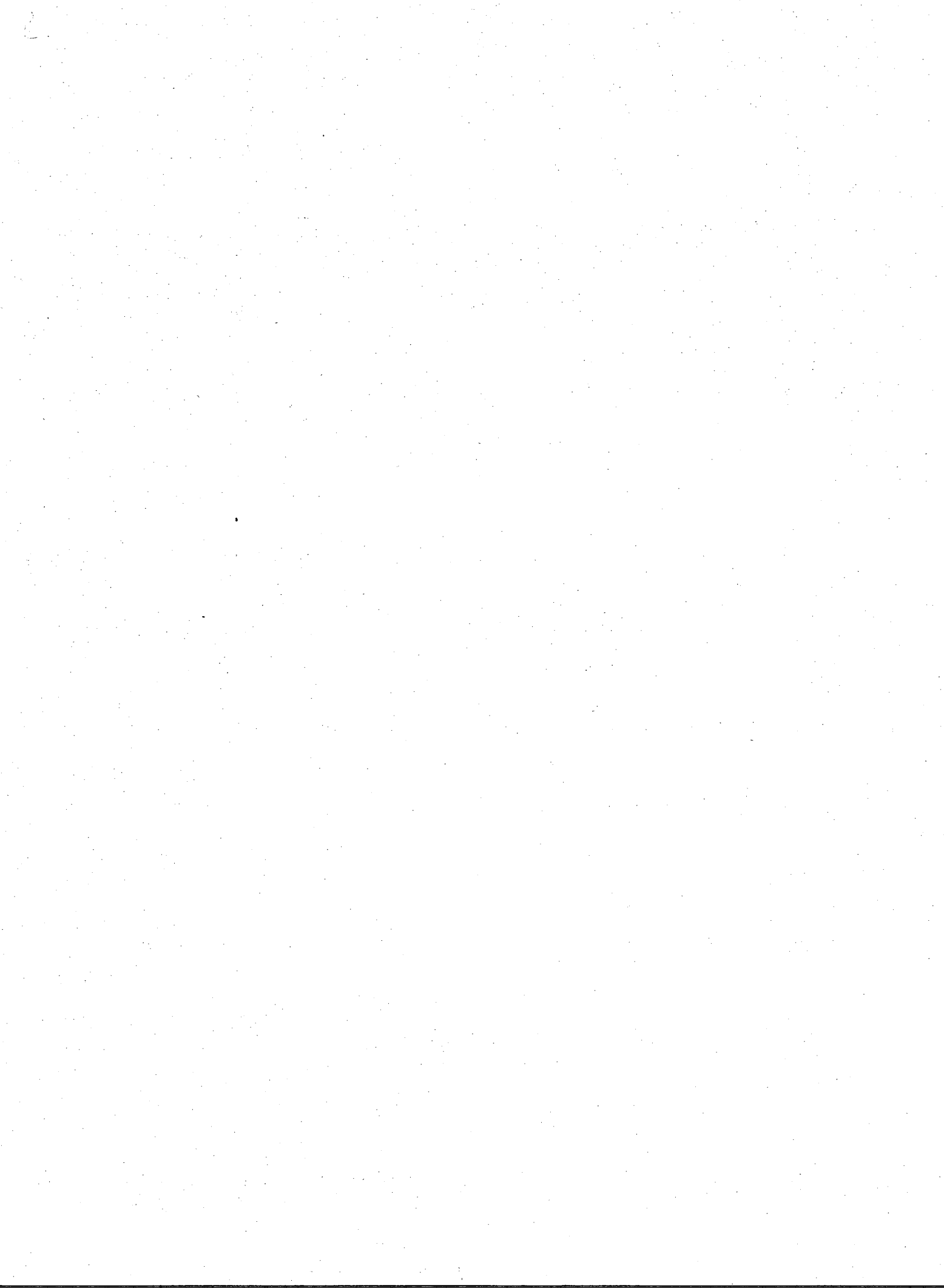


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SENATE, No. 1408

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION
By Senator ORECHIO

SENATE, No. 3431

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 18, 1985

By Senators ORECHIO and RUSSO

Referred to Committee on Transportation and Communications

AN ACT concerning certain State authorities, amending P. L. 1981,
c. 120 and repealing section 7 of that act, and supplementing
Title 52 of the Revised Statutes.

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 "County and Municipal Information and Participation Act."

1 2. (New section) This act shall apply to the following authori-
2 ties:

3 a. the New Jersey Sports and Exposition Authority, established
4 pursuant to P. L. 1971, c. 137 (C. 5:10-1 et seq.);

5 b. the New Jersey Educational Facilities Authority, established
6 pursuant to P. L. 1966, c. 106 (C. 18:22B-1 et seq.) and now con-
7 stituted under N. J. S. 18A:72A-1 et seq.;

8 c. the New Jersey Health-Care Facilities Financing Authority,
9 established pursuant to P. L. 1972, c. 29 (C. 26:21-1 et seq.);

10 d. the New Jersey Transportation Trust Fund Authority, estab-
11 lished pursuant to P. L. 1984, c. 73 (C. 27:1B-1 et seq.);

12 e. the New Jersey Highway Authority, established pursuant to
13 P. L. 1952, c. 16 (C. 27:12B-1 et seq.);

14 f. the New Jersey Expressway Authority, established pursuant
15 to P. L. 1962, c. 10 (C. 27:12C-1 et seq.);

16 g. the New Jersey Turnpike Authority, established pursuant to
17 P. L. 1948, c. 454 (C. 27:23-1 et seq.);

18 h. the New Jersey Economic Development Authority, estab-
19 lished pursuant to P. L. 1974, c. 80 (C. 34:1B-1 et seq.);

20 i. the New Jersey Building Authority, established pursuant to
21 P. L. 1981, c. 120 (C. 52:18A-78.1 et seq.); and

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

- 22 j. the New Jersey Water Supply Authority, established pur-
23 suant to P. L. 1981, c. 293 (C. 58:1B-1 et seq.).
- 1 3. (New section) a. Before any of the authorities listed in sec-
2 tion 2 of this 1985 amendatory and supplementary act engages in,
3 enters into a contract for, or grants credit or loans for the fi-
4 nancing, construction, acquisition, reconstruction, rehabilitation,
5 repair, or improvement of a project, as defined in the law consti-
6 tuting that authority, the authority shall conduct a public hearing
7 on the project in each municipality in which the project is to
8 be located. The hearing or hearings shall be scheduled to provide
9 for maximum participation by local residents and officials.
- 10 b. The authority shall cause notice of the hearing to be pub-
11 lished at least 15 days prior to the date of the hearing in:
- 12 (1) the official newspaper or newspapers designated by the gov-
13 erning body of the municipality pursuant to R. S. 40:53-1; or
14 (2) in the absence of such a newspaper, in at least one news-
15 paper published and circulating in the municipality; or
16 (3) in the absence of such a newspaper, in the official newspaper
17 or newspapers designated by the governing body of the county
18 in which the municipality is located pursuant to R. S. 40:23-13; or
19 (4) in the absence of such a newspaper, in at least one news-
20 paper published in the county in which the municipality is located
21 and circulating in the municipality; or
22 (5) in the absence of such a newspaper, in at least one news-
23 paper published in the State and circulating in the municipality.
- 24 The authority shall also file the notice at least 15 days prior to
25 the date of the hearing with the governing body of the county and
26 municipality or municipalities in which the project is to be located.
- 27 c. The notice shall describe the project and specify where and
28 how additional information may be obtained, including a description
29 and identification of the environmental impact of the project and
30 a site-plan for the project.
- 31 d. The authority shall prepare and distribute to the governing
32 body of the municipality and the county in which the project is to
33 be located at least 15 days prior to the date of the hearing a descrip-
34 tion and identification of the environmental impact of the project
35 and a site-plan for the project.
- 36 e. All testimony presented at the hearing and all material sub-
37 mitted to the authority within 15 days following the hearing shall be
38 included in a hearing record to be prepared and made available to
39 the public by the authority.
- 40 f. The governing body of the municipality or the county in receipt
41 of the notice and materials prescribed in this section may file with

42 the authority, within 15 days following the hearing, a written
43 objection to the project, stating in detail the nature of the objection.

44 g. The authority shall respond in writing to any objection filed
45 pursuant to this section, including specific responses to the data,
46 views, and arguments contained in the objection, prior to engaging
47 in, entering into a contract for, or granting credit or loans for the
48 financing, construction, acquisition, reconstruction, rehabilitation,
49 repair, or improvement of a project.

1 4. Section 6 of P. L. 1981, c. 120 (C. 52:18A-78.6) is amended to
2 read as follows:

3 6. Prior to the acquisition or constructoin of any project, or
4 any reconstruction, rehabilitation, repair or improvement of a
5 project, the cost of which undertaking is estimated to exceed
6 \$100,000.00 the authority shall:

7 a. Prepare a project report which shall describe the nature and
8 scope of the project, including but not limited to its location, size,
9 cost, and purpose, a list of all entities which will occupy the project
10 and the amount of space each will occupy, the anticipated annual
11 State appropriation for lease agreements, the total State appro-
12 priations necessary in each year until the total indebtedness
13 attributable to the project is paid or retired and a statement of
14 anticipated annual receipts and expenditures for the project;

15 b. Submit the project report to the Commission on Capital
16 Budgeting and Planning for its review and its findings as to
17 whether the project is necessary and convenient to meet the needs
18 of the State agencies which are to utilize the project, whether the
19 project is consistent with the State Capital Improvement Plan,
20 and whether it meets the criteria otherwise established by the
21 commission for its approval of State capital projects;

22 c. [Conduct a public hearing in the municipality in which the
23 project is to be located as provided in section 7 of this act, and
24 make all responses required by that section; except that this
25 requirement shall not apply in the case of the reconstruction,
26 rehabilitation, repair or improvement of an existing building or
27 facility owned by the State and which will continue to be used for
28 substantially the same purpose after completion of the project,
29 nor shall it apply to a project which qualifies as a State investment
30 project under section 4 of P. L. 1983, c. 139 (C. 40:55C-46a)]
31 (*Deleted by amendment; P. L., c.*);

32 d. Submit to the Legislature the project report, the findings of
33 the Commission on Capital Budgeting and Planning, the tran-
34 script of the public hearing, and all responses required by section 7
35 of this act;

36 e. Submit to the Legislature documentation that:

37 (1) Plans and specifications for the project assure, or will
38 assure adequate light, air, sanitation, and fire protection;

39 (2) There is a feasible method for the relocation of families and
40 individuals displaced from the project area into decent, safe and
41 sanitary dwellings in accordance with the provisions of the "Reloca-
42 tion Assistance Act of 1967," P. L. 1967, c. 79 (C. 52:31B-1 et seq.)
43 and the "Relocation Assistance Act," P. L. 1971, c. 362 (C. 20:4-1
44 et seq.), whichever is applicable;

45 (3) Plans and specifications for the project assure that the
46 project will comply with all applicable standards and requirements
47 prescribed by State and federal law which promote the public
48 health, protect the environment or promote the conservation of
49 energy, and that, where practicable and appropriate, consideration
50 shall be given to the generation or cogeneration of electrical power
51 on the project site or in conjunction with other facilities;

52 (4) Plans and specifications for the project assure that it will
53 comply with the requirements of the "State Uniform Construction
54 Code Act," P. L. 1975, c. 217 (C. 52:27D-119 et seq.);

55 (5) The location of the project is consistent with the State's
56 urban policy of concentrating public investments in distressed
57 urban centers and assisting in the revitalization of the older mu-
58 nicipalities, except for a project intended to serve a region which
59 contains no such urban center.

60 For the purposes of this section "cost" means, in addition to the
61 usual connotations thereof, the cost of acquisition, construction,
62 reconstruction, rehabilitation, repair, improvement and operation
63 of all or any part of a project, and includes, but is not limited to,
64 the cost or fair market value of construction, machinery and equip-
65 ment, property rights, easements, privileges, agreements, fran-
66 chises, utility extensions, disposal facilities, access roads and site
67 development deemed by the authority to be necessary or useful and
68 convenient therewith, discount on bonds, cost of issuance of bonds,
69 engineering and inspection costs and legal expenses, cost of finan-
70 cial, professional and other estimates and advice, organization,
71 administrative, insurance, operating and other expenses of the
72 authority or any person prior to and during any acquisition or
73 construction, reconstruction, rehabilitation, repair or improvement,
74 and all other expenses as may be necessary or incident to the financ-
75 ing, acquisition, construction, rehabilitation, repair or improvement
76 and completion of the project or part thereof, and also provision
77 for reserves for payment or security of principal of, or interest
78 on, the bonds during any such undertaking.

1 5. Section 7 of P. L. 1981, c. 120 (C. 52:18A-78.7) is repealed.

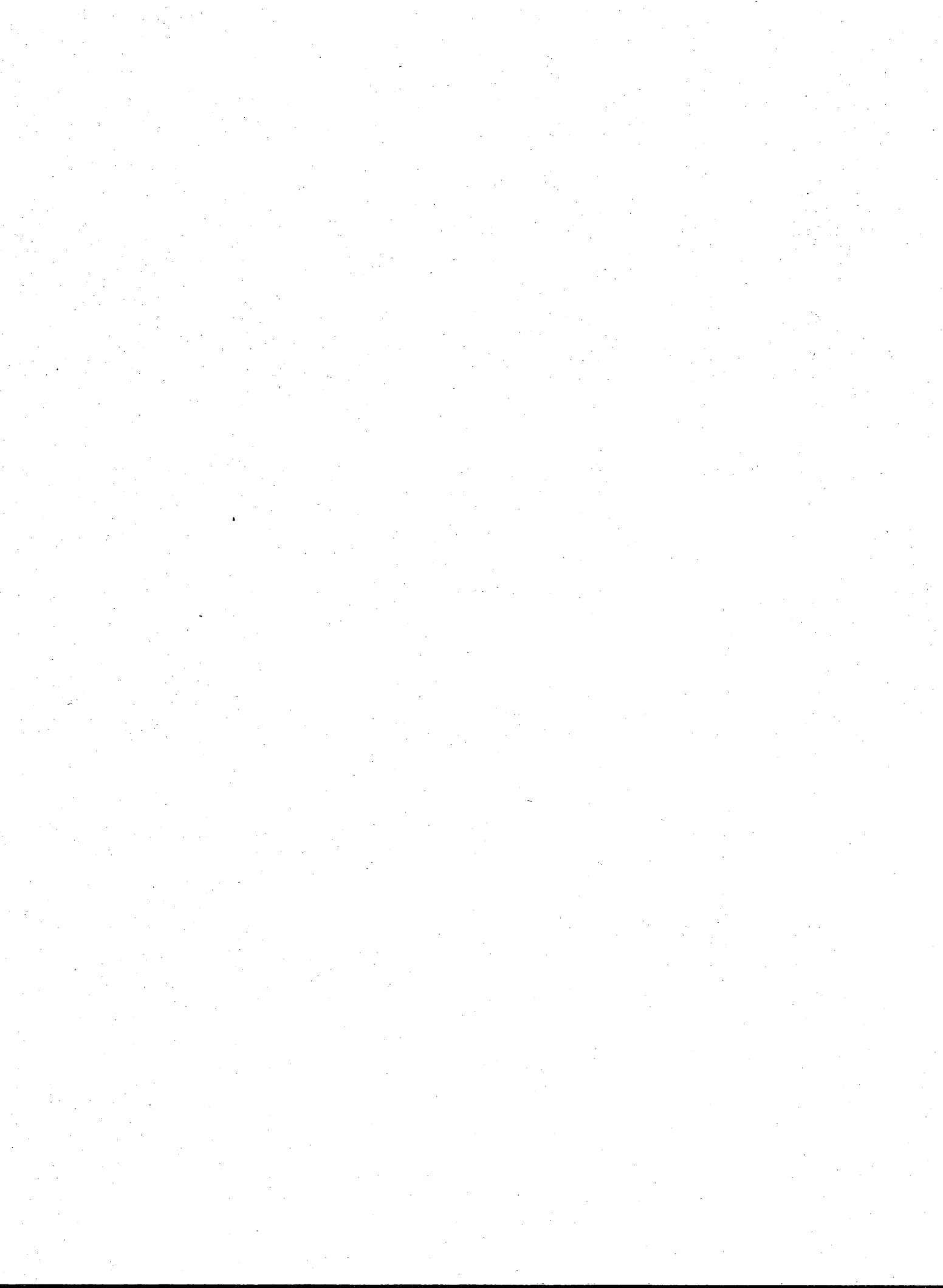
1 6. This act shall take effect immediately.

STATEMENT

This bill requires the New Jersey Sports and Exposition Authority, the New Jersey Educational Facilities Authority, the New Jersey Health-Care Facilities Financing Authority, the New Jersey Transportation Trust Fund Authority, the New Jersey Highway Authority, the New Jersey Expressway Authority, the New Jersey Turnpike Authority, the New Jersey Economic Development Authority, the New Jersey Building Authority, and the New Jersey Water Supply Authority to conduct a public hearing in each municipality in which a project is to be located prior to engaging in, entering into a contract for, or granting credits or loans for the financing, construction, acquisition, reconstruction, rehabilitation, repair or improvement of the project. The hearing or hearings shall be scheduled to provide for maximum participation by local residents and officials.

The bill provides for public notice of the hearing and mandates that the authority shall prepare and distribute to the governing body of the municipality and the county in which the project is to be located a description of the environmental impact of the project and a site-plan for the project.

The bill also requires that an authority respond in writing to any written objection by the governing body prior to engaging in a project.



SENATOR CARMEN A. ORECHIO, Chairman: Good morning, we're ready to start our hearing. As I indicated earlier, I'm sorry that we're getting a late start, but we did have members of the Committee who had to come from distant places, and with the weather being what it is, they're late getting here.

Before we begin I would like to introduce members of the Committee. On my left is the Minority Leader, Senator Tom Gagliano, Monmouth County; in front of him is Spiros Caramalis the Committee Aide, and on my right is assistant counsel Garry Furnari of the Committee; Senator Tom Cowan on his right, and Rob Pignatella, my administrative assistant.

And before we begin, if anyone wishes to address the Committee this morning, would you please list your name with our Committee Aide so that you will be given the opportunity to present your position on this bill.

I would like to preface my remarks by saying that the genesis of the bill had to do with the situation regarding the Highway Authority's decision to build a restaurant -- McDonald's Restaurant -- in north lane of the Parkway. And as a result of that, and because of the fact that there were not public hearings, there was no notice, my feeling was that authority's having the tremendous power and inherent authority in the law to almost do what they want to do on behalf of the -- what they felt was -- the public interest, that in many cases -- in this case particularly -- it appears to me they ride roughshod over local authority. For example, an advertisement in a Woodbridge newspaper, which happens to be the Township where the Highway Authority is located, is not noticed to local authorities in the Township of Bloomfield. And secondly, there was no public hearing on this particular project that they contemplated, wherein local residents, and local officials, would have an opportunity to express themselves in terms of the impact of a project of this scope.

So, as a result, the entire spectrum of authorities, covering about ten of them, is being examined at this point, and I have a bill that we introduced in November that addresses some of the problems that we anticipate can be eliminated by virtue of having this bill enacted into law, and at the same time, the concern about the public interest can also be addressed. To use a good illustration, I guess, which would be a more ambitious program, the Turnpike Authority, for example, is involved in a \$2 billion program in widening the Turnpike. That particular project has tremendous impact on transportation in general, has impact on the environment, has impact on the ability for the State -- New Jersey Transit especially -- to develop mass transit programs to have fewer automobiles on the highways and make traffic congestion a minimal problem. And it also -- and a particular case -- would have a very dramatic effect, for example in the widening of the Turnpike as it effects the Berry's Creek project, which is in the making in the Meadowlands development area.

So, in that instance, I mean, I think that's a pretty good illustration of why we have to have some reins on authorities; there has to be public hearings, notice, and also an opportunity to evaluate whether or not State law or local ordinances are being observed, and as well as, certainly, a review of the master plan -- that community -- and how the project fits in with the development of the master plan.

Our first speaker this morning -- and normally what we do is we begin with our ranking officials, and my Republican colleagues would normally be first, but I wish a deference to a young lady who has a job to go to, and who is losing salary every minute she remains here. I would like to call on Emily Vargas, who wishes to address this Committee. Emily?

EMILY VARGAS: Good morning. Thank you for letting me go first, members of the Committee and Senators.

I'm here to share with you my tale of my experience in buying a home on Lindbergh Boulevard in the midst of the

McDonald's crisis, and problems that Senator Orechio was just addressing, because of the absence of such a bill, and why I feel it's very, very important to have this bill and keep the constituents in the townships informed.

We decided to purchase a house, or were in the process of making the decision to purchase a house -- a very large investment in today's market situation -- on Lindbergh Boulevard, and we were very concerned because the back of the house faces the Garden State Parkway. We did a lot of research. We started with the Bloomfield Town Clerk, Mr. Galvin, and we were told by Mr. Galvin that it was Garden State Parkway property, but that he was kind of sure that Garden State wouldn't act without advising the town. However, to be sure, he instructed me to call the Chief Engineer's office at the Garden State Parkway, and about July 16th I phoned the Garden State Parkway Authority in Woodbridge, requested to speak to the Chief Engineer's office, and was certain that I was speaking to the Chief Engineer's office, and I spoke to a Mr. Schultz. I provided him with the lot, the block number, and the map number of the property in question. I gave him a description of the property, quote, "siting the exit, northbound side, McDonald's, Trooper's barracks;" there's no doubt that he knew exactly what I was referring to. I asked him very specific questions about widening the highway, possible construction on the property in and around that area, use of the deceleration lane, and use of the service road. And I was assured by Mr. Schultz that there was no construction planned for that area.

In fact, I was told the only type of construction that was in the area would be some repair work on the bridge. I spent probably about five or six minutes on the phone questioning and requestioning, because this was a very large purchase as you can imagine. Based on the information provided to me by Mr. Schultz we made a fair market value offer for that

home. On or about September 19th, when information about the project became public, we were advised that the value of our house was in question, and needless to say, it had a negative financial impact on the value of our home. We had to take a lower mortgage out in order to purchase the home.

It was a very traumatic experience. I have no explanation why the Chief Engineer's office was either uninformed, or did not inform us of this project, but we had no information on it until it hit the local newspaper. And we tried very hard to pursue that, and as I said, it did have a negative financial impact on the value of our home, and most likely on the value of our neighborhood.

That's it.

SENATOR ORECHIO: Thank you very much, Emily.

MS. VARGAS: Thank you.

SENATOR GAGLIANO: May I ask a question?

SENATOR ORECHIO: Yes, Senator Gagliano?

SENATOR GAGLIANO: You did close title on the home?

MS. VARGAS: Yes.

SENATOR GAGLIANO: And, have you, by percentages -- I'm not interested in actual dollars -- but, by percentages, what would you say that the impact has been in terms of lessening value of your property?

MS. VARGAS: Well, we were about to go to court on it, and the agreement made in order to expedite the sale and satisfy the mortgage was about 3%.

SENATOR GAGLIANO: You reduced your-- Your price was reduced about 3%?

MS. VARGAS: Yes.

SENATOR GAGLIANO: Since then, has the project gone forward?

MS. VARGAS: No.

SENATOR GAGLIANO: It has not?

MS. VARGAS: No.

SENATOR GAGLIANO: It has been in litigation, correct?

MS. VARGAS: Which project are we referring to?

SENATOR GAGLIANO: The McDonald's.

MS. VARGAS: I don't know if that's in litigation.

SENATOR ORECHIO: Senator Gagliano, the latest report we have occurred in December when the Governor had indicated that the project would not be--

SENATOR GAGLIANO: Oh.

SENATOR ORECHIO: --structured in that particular location.

SENATOR GAGLIANO: Oh, okay.

SENATOR ORECHIO: And that's the position we're travelling under.

SENATOR GAGLIANO: We're at now-- Okay, so that's on hold. What I'm saying is, when you close--

SENATOR ORECHIO: As far as we're concerned, the project is over, there. I mean, they're trying to find another location.

SENATOR GAGLIANO: Okay.

SENATOR ORECHIO: Thank you very much, Emily. Assemblywoman Marion Crecco, please? I think for the benefit of everyone concerned, if all of those addressing the Committee and this group today would come up to the desk here where the councilmen normally sit, it might be better. This way, everyone can hear. Marion, so if you may want to come around. Is there an opening there? Okay, sure.

A S S E M B L Y W O M A N M A R I O N C R E C C O: Thank you, gentlemen.

I commend you, Senator Orechio, for your interest in this problem, and I am grateful for the cooperation. However, I feel that 15 days notice, and 15 days to respond, is inadequate. And in the interest of maximum participation by the municipalities, I urge that more time be allotted, as specified in A-1936. It must be kept in mind that the

governing body, the planning board, the zoning board, the engineering department, and the citizens of the affected municipalities should have input into the response. Therefore, A-1936 requiring 60 days prior notice and 45 days to respond-- This is -- other than that -- this is all I have to say. And I thank you.

SENATOR ORECHIO: Thank you. Assemblyman John Kelly?
A S S E M B L Y M A N J O H N V. K E L L Y: Senator, thank you for inviting me. I'll be brief.

I strongly support this legislation, however, I think there should be one other thing added to it, and I offer it for your consideration. I fully understand, when the State wants to build a highway, or a bridge, or a jail, I can understand that. But when they want to build a restaurant, I think that they should be subject to the same rules and regulations as any individual sitting in this audience would have to do. They would have to appear before a board of adjustment, or whatever, and no way could you put a restaurant in a residential district -- in a residential area -- without permission from the governing body. And I just feel it's wrong for the State to put a restaurant in a residential district. And I would just offer that for your consideration. That's all I have to say, and I thank you for inviting me.

SENATOR GAGLIANO: Assemblyman-- Excuse me, Mr. Chairman?

SENATOR ORECHIO: Senator Gagliano?

SENATOR GAGLIANO: Assemblyman Kelly, may I ask a couple questions?

ASSEMBLYMAN KELLY: Sure.

SENATOR GAGLIANO: Your testimony is then, that if it's an authority which is going ahead with a project, which is, in the ordinary sense, governmental, such as a road -- I'm sorry I can't see you--

ASSEMBLYMAN KELLY: Yeah, okay, I can hear you, though.

SENATOR GAGLIANO: --which is a road, or a bridge, or another lane to a road or a ramp, or something like that, that you're not that concerned that that be a part of the notice provisions?

ASSEMBLYMAN KELLY: Well, I can be concerned, but not that concerned, really. Okay.

SENATOR GAGLIANO: Okay. But if it's a-- If it is a project that would otherwise be the type of project that would be done by private enterprise--

ASSEMBLYMAN KELLY: That's correct.

SENATOR GAGLIANO: --private ownership, that that definitely should have to go through the same process that private ownership would go through?

ASSEMBLYMAN KELLY: That's all.

SENATOR GAGLIANO: Which, in most cases, would be site plan approval, variances if necessary, if it's within a zone that is not zoned for that purpose. I'm going to ask you, because this has been on my mind. I happen to reside in Holmdel, and it was before I lived there, but the Garden State Arts Center was started, and was constructed after we moved in, as I recall. But at any rate, it was in the 1960s. The Township of Holmdel had absolutely nothing to say about the Garden State Arts Center when the Garden State Arts Center was constructed. So, your proposal is, I take it, that an arts center would be what, more of a private organi--

ASSEMBLYMAN KELLY: That's an entertainment center, as far I'm concerned.

SENATOR GAGLIANO: So, it's similar to a theater, or whatever?

ASSEMBLYMAN KELLY: Right.

SENATOR GAGLIANO: And would, therefore, have to have the site plan approval by the local boards.

ASSEMBLYMAN KELLY: I agree 100%.

SENATOR GAGLIANO: You know, the interesting thing is that I'm convinced that if the Arts Center, at the time, had been given local scrutiny that today we probably would have had a facility that could be used all year round, instead of four months a year, because it is an outside auditorium. And it has always bothered many people in the area that the Arts Center was built, as it was, without local information, or suggestion, or input -- whatever you want to call it. And without, say the local people being involved -- the school boards and others -- who would love to use that as a facility, because it's a beautiful place, it holds, what, 5,000 people, but it's wide open. It has a roof on it, and it's open on three sides, so you can't use it except in very good weather.

So, I basically agree with you, and I-- The other part of the problem that I am having is though that, with respect to the Turnpike, the widening of the Turnpike without local involvement I feel -- I think as the Chairman probably does -- that there should be some measure of local involvement, even in an area where the authority is doing something which is generally governmental. The issue is whether or not they should at least give notice, and give people an opportunity to be heard. Because, let's face it, the engineers, and the attorneys, and the members of the authority, do not know everything, and they can get some very good ideas from people in the local area just by listening. And the truth of that is shown with the Department of Transportation which now has this community involvement program, and before they do a project of any consequence, the Department of Transportation has information sessions. And those sessions might last 6 - 8 hours, where anybody can come in, say from 2 o'clock in the afternoon 'til eight o'clock at night. And if you have an idea on that project, you put it on the record, and it must be reviewed by the DOT engineers.

And so, I think that out of all of this, I hope that we can come up with legislation that meets our needs. Because I think that the authorities have gone too far without local involvement. So, thank you.

ASSEMBLYMAN KELLY: I agree.

SENATOR ORECHIO: Thank you, Assemblyman Kelly. I think your point's well taken, Jack. Highway Authority's basic measure of responsibility is to build roads, and I think ancillary projects, especially including restaurants -- I'm not so sure about gas stations -- certainly are projects that are outside the scope of, I think, what the intent of the law was. And this matter had been addressed in a 1954 decision, that was instigated by the Township of Bloomfield. And that's an issue that, certainly, we're going to have to debate, and hopefully, enact into law mandating that local input is essential in the granting of a highway authority that kind of absolute authority.

The next speaker is Mayor Kinder, Mayor of this Township of Bloomfield. Mayor Kinder?

Before you start, Mayor, we want to thank you for permitting us to use this chamber this morning for our hearing.

MAYOR JOHN W. KINDER: Thank you Senator.

Senator and Chairman Orechio and members of the Senate Independent Authorities Committee, let me welcome you to the Township of Bloomfield, the home of the "Big Beef". (laughter)

As you all know, the Township of Bloomfield should be considered as the catalyst for Senate Bill Number 1408, the subject of this hearing.

On behalf of the governing body and the citizens of the Township of Bloomfield, I thank you for your concern and response to the recent difficulties that the Township has suffered with the New Jersey Highway Authority.

The truth is no man is above the law. We in Bloomfield are of the opinion that no independent authority is

above the law either. We had hoped that various governmental authorities, on all levels, would have recognized this principle, but if this bill is necessary for them to realize this, then so be it.

The citizens and the governing body of Bloomfield applaud, support, and cheer the purposes and goals of Senate Bill number 1408. This bill will, hopefully, permit compromise, reconciliation, and justification of ideas, and desires, and needs.

This bill will give to all concerned the right and ability to speak up and be heard on the quality of life we all desire.

One of the definitions in Webster's Dictionary for the word "independent" is "not subject to control of others." We in Bloomfield are not seeking to control the New Jersey Highway Authority, or any other authority. In return, we ask that they not seek to control us.

We ask that all citizens, whether individual, governing bodies, or authorities, recognize the other side and cooperate with each other as responsible people should. Perhaps with the implementation of the purposes and goals of this bill, your Committee can delete the word "independent" from its title.

I have reviewed the Bill number 1408, and the provisions therein, and offer the following suggestions:

- 1) Section 3B be amended to provide at least 30 days notice of a hearing. It is my opinion that a 15 day notice is much too short a time frame within which to properly digest and evaluate the scope and effect of a project upon the municipality which the project is contemplated.

- 2) For basically the same reasons, sections 3D should provide for a 30 day period.

- 3) Section 4 of this bill, amending section 6 of the Public Law of 1981, chapter 20, be amended to include a

provision that, regardless of who is undertaking the cost of the project, this law applies.

For example, an attorney (speaker says "attorney", however his submitted statement reads "authority" at this point in testimony) would not be exempt or immune from this bill when enacted into law by the fact that a third party is picking up the cost and not the specific authority involved.

The remainder of this bill concerns itself with the report to the Commission on Capital Budgeting and Planning and our State Legislature, and I expect the interested parties thereof will make their appropriate comments to this Committee.

In closing, I reflect on President Abraham Lincoln's Gettysburg Address, and I respectfully offer his closing remark on that memorable day:

"That this Nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth."

Thank you, and good morning.

SENATOR ORECHIO: Thank you, Mayor Kinder. The next speaker is Vincent Biunno. Vincent Biunno, I might add, has been the, I guess, Chairman of the Board of "Big Beef," and who's been very aggressive and tenacious in his opposition of this project -- the McDonald's project that is -- and I have to commend him publicly, as well as Mayor Kinder who, from a municipal point of view, had his counsel engaged in hopefully litigation to stop the project from a legal standpoint. And I think in this particular instance, as far as Bloomfield's concerned, and they're well represented, namely by the Mayor, who from municipal thrust did what he had to do in order to guarantee that the quality of life of Bloomfield residents was not jeopardized, and Vin Biunno, representing the citizenry who were directly effected by this project that had been contemplated, applying his tenacity and, I guess every waking hour of Vin Biunno ate, slept, and then I don't know if he

drinks, but this project was number one on the agenda for him. And I have to really commend him for the tremendous work that he did.

Mr. Biunno?

V I N C E N T J. B I U N N O: Thank you, Senator.

Mr. Chairman, members of the Committee, my name is Vincent J. Biunno. I am a resident at 60 Lindbergh Boulevard in Bloomfield, New Jersey. I have lived at that address since 1953 and it represents my only place of residence where I have raised my family of two children, who are now married and live outside of the town.

I am testifying here today in favor of passage of Senate Bill 1408 as the only means of protecting innocent citizens from the devastating effects of the unlimited powers that threaten the very basic rights of individuals.

Lindbergh Boulevard is a residential Class A area in what is known as the Brookdale section of Bloomfield. It is bounded and runs parallel to a portion of the northbound lane of the Garden State Parkway. It represents one of the most expensive taxable areas of Bloomfield and the homes on Lindbergh Boulevard are all one family dwellings which have been kept in good repair and reflect many improvements by the individual homeowners at their own expense.

Between the Parkway and the Boulevard is a 20 acre site which now houses a State Police barracks and a gasoline station. Back in 1954, when the Parkway was built, there were plans for this area that included a snack bar and a maintenance facility aside from the Police barracks and the gas station. At that time, at the request of the property owners, Governor Robert B. Meyner arranged a meeting with Lindbergh Boulevard residents and the then Authority Chairperson, Katherine Elkes White, who is now deceased.

The meeting resulted in a compromise agreement whereby the Authority offered the residents the option of accepting

placement of the police barracks and the gasoline service station, both considered necessary to the successful operation of the Parkway in exchange for the guarantee that the maintenance building and restaurant would never be built at that site.

In August of 1985, without notification to the Township representatives or to the residents on Lindbergh Boulevard, the Authority and McDonald's Corporation signed a pact to build a restaurant behind Lindbergh Boulevard.

Like thieves in the night, workmen hired for this purpose by McDonald's and the Authority began to rape the land and uproot trees from this beautiful area without prior notification and without any application to Bloomfield for work permits. This is the kind of wanton disregard for the public that is reflected in the present powers of this Authority.

Thanks to the neighborhood vigil of residents who are community minded and alert we were able to expose this conspiracy against the most residential areas of our Township with a commercial restaurant not considered, in our opinion, an essential service to the travellers on the Garden State Parkway.

Fortunately, with the help of our elected representatives in government, from our Mayor and Council, including our previous Assemblyman and current Assemblywoman, and, of course, our own Senator Orechio with the help of the media, we were able to affect an edict from Governor Kean to stop the project and move it out of Bloomfield somewhere else on the Parkway.

Emphasizing the need for this legislation is the fact that even the Superior Court of New Jersey was powerless to help remedy this terrible wrong. Judge Paul Thompson ruled that McDonald's had every right to build another Parkway restaurant because an authority is an autonomous body, answering at this time to no one but itself. What the Judge had said was that authorities can do whatever they want.

Like all official and quasi-official bodies, authorities should serve the public interest. However, when the public interest is cast aside by the legal tyranny of an impersonal autonomous body, it is time to put limits on the powers allowed. Senate Bill 1408 is needed badly, and it's needed now.

I also have attached to my testimony a letter from a local real estate broker attesting the effects of such disregard for the public interest, and what it could mean in loss of economic well being of affected property owners. I won't take the time to read it, because I have copies for all the members of your Committee. (copy of letter in transcript appendix)

SENATOR ORECHIO: Thank you very much.

MR. BIUNNO: Any of the Senators have any questions?

SENATOR ORECHIO: Any questions?

SENATOR GAGLIANO: Mr. Biunno, that was an excellent statement, and I thank you for it. I, in reviewing some of the correspondence which we have received from the autonomous authorities -- we won't call them independent, maybe -- from the autonomous authorities, they make the claim -- and since you have a long history with this, I thought maybe you had some information on it -- they make the claim that to give the local municipality or the local county the opportunity to review or to require certain changes or even to do away with a certain project would be a violation of the bond covenants which they have executed with the people who have purchased those bonds.

I have never felt that that was totally so. I have always felt that that was a good skirt to hide behind, and I still believe that. But I'd like to know if you have, through the attorneys you've worked with and yourself, had any opportunity to research that issue, and just to what extent the authority has the unlimited power because it has signed documents that says it has, and that therefore we are in a

position of having to interfere with their constitutional contractual rights if we pass legislation at this time? I think that's part of the nub of the problem that we'll get to, eventually, and I just wondered if you had any research on it.

MR. BIUNNO: No, I don't, but let's go back to this particular thing. It's a restaurant which doesn't exist now, which they want to put in, which isn't part of the bonding plans for anybody that's holding any of these bonds. It's not going to make the difference. It'll make a difference on the profit, but it's certainly not going to make a difference on what the anticipated revenues would be; the tolls and the other income would provide that.

I think that, in my opinion, it's not an essential service at this particular place and at this particular time, because there are service areas that are close enough for a travelling motorist to reach to get food if he needed it. As far as physical relief, he can get that at the gas station, comfort station, and so forth.

The fact is that the Parkway restaurant on the other side -- on the southbound side -- from which people can access by foot or by vehicle from Bloomfield, according to reports that we have seen, netted the Authority and McDonald's about 49% of their revenue came from the townspeople. And it's my suspicion that the reason the Authority likes this site, it would give them the same opportunity from the other side of the Parkway at the expense of existing commercial restaurants in our town, and for their own personal gain, and with no due regard to the cost to us in terms of equity loss.

Now, I've lived in that house for around 3 years, my equity is in that house. If it's going to be destroyed by something like this, I'm going to fight as hard as I have to fight for it. And I think we have a younger group of neighbors living there, and they paid a lot more money than I paid, and they have an anticipated future for their families. And I

think that to deny them of that opportunity is to take away basic rights. I'm sorry I don't have an answer about the question you asked me.

SENATOR GAGLIANO: That's okay. We will have to ask staff to research that, Mr. Chairman. That's going to be, I think, a key issue, this question of whether or not-- I guess the argument's going to be McDonald's, if we bid it and McDonald's builds it and they put all their money into it, and then they give a percentage or a certain amount of rent to the Parkway, that that goes in with the toll revenues and all other revenues, and therefore, is used to meet expenses including bond amortization. And I think that that's something we have to think about. I don't agree with it, because I think there are certain ancillary facilities that they would like to build which may or may not bring in a profit, but it's not quite like collecting tolls.

So, by saying this I'm putting it on the record that Spiros here will have to research that issue, because I think it is important. Thank you.

SENATOR ORECHIO: Senator Gagliano, as I understand it, the Legislature has the power to immunize independent authorities from provisions of local zoning and building regulations. That authority the Legislature has also at the same time, if we want to temper that immunity, notwithstanding any covenants -- agreements -- with bondholders, I think that particular situation prevails. So, whatever agreements that have been worked out -- and maybe this has to be done prospectively -- but seems to me that the ball's in our court in terms of what kind of authority we want to continue to give these authorities to be able to practice.

SENATOR GAGLIANO: I, basically, agree with you that we can do things, I feel, prospectively. My concern, Mr. Chairman, is that if a project has been planned, and if bonds are outstanding -- and I think just about every authority that

I can think of has bonded indebtedness outstanding -- then their argument is going to be that our interference -- not just with the restaurant in Bloomfield, I'm talking about anything up and down any road or near any facility -- they're going to argue that our passing a bill now will create a situation whereby it is alienating their right to contract which they've already done.

And I only put that on the record because I know we'll hear more about it. And I know you're familiar with it, and I think we'll have to face it.

SENATOR ORECHIO: Yes. I just want to make one brief statement, and that is, the State of New Jersey is a sovereign entity. We create the municipalities, the counties, and the so called independent authorities. And, in accordance with the doctrines of public policy and the beneficial aspects of a project as it effects the public, I think really has to be the major thrust of our consideration on any legislation, or even the parameters of how an authority operates within the State of New Jersey. So, you know, even though in some instances they've been given immunity, and they've been given some autonomy, that autonomy can be curved or reduced too, at the will of the Legislature.

SENATOR COWAN: Mr. Chairman, do we have some people here from the authorities who will be testifying?

SENATOR ORECHIO: We have representatives from the Authority; they have given us statements, and they haven't indicated they want to testify, but I imagine if we want to ask them some questions I'm sure they will cooperate and come up here and answer questions.

SENATOR COWAN: I do think the question that is being raised now, so far as a bonded indebtedness and covenants, are concern. Of course, in my own opinion -- I have an opinion on it -- I'm not a legal person, but I would think that all of that is based on tolls, not on service stations or other

ancillary factors that do accrue to them, otherwise, they wouldn't have much, and I would say their interest rates would be rather high.

SENATOR GAGLIANO: If they were counting on McDonald's to pay their bills.

SENATOR ORECHIO: Okay, the next speaker is Mr. Sylvester Bonelli. Mr. Bonelli, for the benefit of those who are present, is an expert in tax assessments of real property, and now retired, but is thoroughly familiar with the area that would have been impacted by this McDonald's project. And I give you now, Sylvester Bonelli.

S Y L V E S T E R B O N E L L I: Thank you Senator, and all the other members of the Committee.

I want to start off by saying that I don't think I stand alone when I say that the tactics and the procedures of the Garden State Parkway Commission, when dreaming up new projects, should be carefully, very carefully, looked into. It seems as though nothing matters but their selfish goals, and that's all it amounts to. It seems as though they hide behind the phrase, "the best interests of the motoring public." They must be served.

But I'm asking, to what end does this interest go? Does it go towards disrupting people's home life, create social problems, traffic and economic pressures? They don't pay for any sewer or water services that I know of where they have services and installations in Bloomfield. They have two toll booths, they have a gasoline station, they have a now-operating McDonald's and also a State Trooper's barracks.

I've asked in town many places, but I can't seem to find out anywhere where they are responsible for any of these services. They use sewer services, they use the water services, but no one seems to know when, where, why, or how. I don't think that they have the power to go slipshod over the whole town in this respect.

With your permission, Senator, I'd like to briefly speak about the economic impact. I have here a market impact study made for the Garden State Parkway Authority, 40 pages long. It's a firm known as Brody, Jenkin, Isenberg, and Associates. It's a written appraisal with highly qualified appraisers with good highly qualified jargon. Believe me, it's a great report.

In my opinion, if this report is relevant to the Garden State Parkway Commission's project in Bloomfield, it's purely coincidental. It's a good report in that it develops the theory of lands highest and best use. I thought the Garden State Parkway Commission's use was to develop their land for highway use and traffic, and other uses were secondary, such as gas stations, public restrooms, and reasonable locations for restaurants for the good of the motoring public.

This report acknowledges and supports that if a facility was built in Bloomfield, and I quote from the report, "the properties that may be directly impaired are those on the west and east sides of Lindbergh Boulevard, and approximately a half block to the east." We're coming up with the conclusion that we know there's going to be an economic impact in this area. The Garden State Parkway Authority appraisers admit this.

My study -- which I made, and I have copies of which I will gladly give to the Senators through Senator Orechio's office -- shows that the properties affected that they refer to, could lose 20% to 21% of ratable value. That's if the project goes through, and the character of the zone changes. And I -- of course it's only rumor, but -- I heard of one of these noise fences put up that looks like the Berlin Wall. That surely will not add to the beautiful effect we have in the Brookdale area now. This ratable loss that I'm referring to could reflect in a shortfall of anywhere between 500,000 and 600,000 a year for the Town of Bloomfield. And it would reflect a tax -- I'm sorry, that's the amount of tax dollars

that it would reflect. It would reflect close to a \$10 million ratable loss, which in turn means 500 to 600 thousand dollars in shortfall and taxes to the treasury of Bloomfield.

Of course, it's not going to be a shortfall in that the other residents in town will have to pick up the slack. There's no such thing as a ratable loss in one part of town that would affect the tax base or tax rate. The rest of the town is going to have to pick it up.

I have copies of an agreement between the Garden State Parkway Authority and McDonald's, and I think it bears close scrutiny by you and your legal staff. Believe me, there are passages in here that I, as a lay person, wouldn't even begin to understand, and I would hope that your legal staff would kind of sort it out a bit.

Now, I will gladly forward my economic study to you through Senator Orechio's office. And if you want them, I'll have copies forwarded to your offices.

I want to thank you, again, for allowing me to speak for the people of Bloomfield.

SENATOR ORECHIO: Thank you very much, Mr. Bonelli. The next speaker will be John Galvin, who serves as Bloomfield's Township Clerk, but who is here in another capacity representing the New Jersey League of Municipalities. John?

J O H N G A L V I N: Thank you, Senator Orechio, Senator Cowan, Senator Gagliano. Although I am the Bloomfield Township Clerk, I also serve on the League of Municipalities' Legislative Committee and I have been asked to appear to testify in support of this bill by Bill Driscoll, the Assistant Director.

The League of Municipalities, as you know, represents 567 municipalities throughout New Jersey, and the League -- at their last Annual Business Meeting, held on November 22, 1985 in Atlantic City -- went on record with a resolution in support

of the concept of this bill. I would like to read that resolution into the record. The resolution reads:

"WHEREAS, Executive Orders issued by the Governor have the force of law in this State; and,

"WHEREAS, unlike the legislative process, there is currently no procedure for the public to have input to Executive Orders affecting them; and,

"WHEREAS, public participation in the Executive decision-making process, as well as in the legislative process, is vital to a free and self-governing society and contributes to enlightened and informed decisions, taking all viewpoints into account; and,

"WHEREAS, failure to obtain public input to Executive Orders has needlessly generated predictable hostility and opposition by those persons adversely affected, which has resulted in avoidable delays, change of plans, waste of money, and inefficiency in the provision of public service and facilities; now, therefore,

"BE IT RESOLVED that the New Jersey State League of Municipalities, in conference assembled, supports and works toward methods of obtaining public input, wherever feasible, prior to promulgation of Executive Orders; and,

"BE IT FURTHER RESOLVED, That the President of the New Jersey State League of Municipalities shall appoint the committee to develop appropriate proposals for achieving such public input and to seek the support of the Governor and his staff to implement such proposals; and,

"BE IT FURTHER RESOLVED, That copies of this resolution shall be forwarded to the Governor and each member of the New Jersey Legislature."

Now, this has been done, and the concept of this bill is addressed by this resolution of the League. The League, as I say, which represents all of the municipalities in New Jersey, strongly supports this bill.

Thank you, Senator.

SENATOR ORECHIO: Thank you very much, John. The next speaker to address us will be Cy Cedlak.

FROM AUDIENCE: He may not be here yet.

SENATOR ORECHIO: Oh, okay. Mr. John Bannon.

J O H N B A N N O N: Thank you, and good morning. My name is John Bannon. I am a resident of West Passaic Avenue. That is the street that Lindbergh Avenue ends on, just before the bridge over the Garden State Parkway.

I want to add some points of interest to this bill. It has my support, as it does all of the committee with the "Big Beef" and the people in our neighborhood. But I want to get into some of the sections in the bill to see if it would cover our situation as it exists today.

Let me go back a little bit and go over what has happened here. As Vinnie pointed out, in the darkness of night they came there and started tearing up the turf, and started a project that is known as the "McDonald's Project," on the north side of the Garden State Parkway. As is our right, and our duty as citizens, we, of course, banded together and went to our local elected officials -- Mayor Kinder and the Council people here. We had their wholehearted support. In fact, they brought suit in court, and we lost.

Failing that, we went to our local elected officials in the State, Assemblyman Buddy Grecco at the time -- not Buddy Grecco, Buddy Fortunato -- and then later on, Mrs. Crecco, when she was elected, and Assemblyman John Kelly, and Senator Orechio. And we had their wholehearted support. When we failed there, the Senator himself, one of the most powerful Senators in the State, went down and had a personal meeting with Governor Kean. And Governor Kean and Senator Orechio finally came to an agreement. The Governor suggested that they cease and desist and stop this project, and that they build it elsewhere, somewhere other than Bloomfield.

Now in spite of all this -- the people have spoken in this community, the local elected officials have spoken in this community, the local State elected officials, right up to and including the Governor, have spoken in opposition to this project -- it is still there. The Garden State Authority has not said they are going to stop it. As a matter of fact, as far as I know, according to Vince, they have petitioned the Governor on two occasions to reopen the matter and to continue with the project.

They have never made public to us what their thinking was, the line of thinking or reasoning why this particular project should be built there. As far as we can perceive from where we sit in the local community, it is for a profit-making reason, not profit making from the highway itself from tolls, but profit from the restaurant business. I think if you look at the recent article -- a very tiny article in The New York Times about a month ago -- the projection for McDonald's is that they have 8500 stores in the country at this moment, and the projection for this year is 500 additional locations nationwide. Someone in their higher management has projected these figures based on gross profit and net profit. We know that the existing McDonald's on the Parkway in New Jersey -- as far as we can understand and have been able to obtain the information -- is the most profitable store they have in the State.

So, it's purely a profit motive by a restaurant chain why they are persisting and forcing the issue on the building of this site in our neighborhood. What we can't understand is, why an Authority -- although it is autonomous -- that was created by the State Legislature in 1952, does not accede to the wishes of the highest elected officials in the State and the local community.

I think, in looking at your bill, that I would like to test the provisions of this bill now against what our existing

situation is. Suppose this bill was in effect two years ago and we were faced with this situation. They gave us 15 days' notice and we had the hearings, and we still didn't disagree. They wanted to put the restaurant in there; we didn't want them to put the restaurant in there, and then they followed up with reports and all of the procedures they have outlined here. When we got to the end of the procedures and the people had spoken and the elected officials had spoken, and yet the Authority wanted to continue with the building, would this bill stop them?

SENATOR ORECHIO: This bill would not veto the project.

MR. BANNON: It could not veto the project?

SENATOR ORECHIO: No, it could not.

MR. BANNON: Then what recourse would we have if they went ahead anyway?

SENATOR ORECHIO: Well-- In fact, one of the purposes of the hearing on this bill is to get some reaction from all those concerned. We are not going to vote on the release of the bill today, only after we review the transcript. There will no doubt be amendatory language offered, and at that point the Committee will decide in what form the bill will be released and how the law would be eventually formulated.

MR. BANNON: I would hope that there would be some procedure in there that if we did come to loggerheads in a situation like this, that the Governor, or maybe the Legislature, which created this Authority, would have the final say.

SENATOR GAGLIANO: Mr. Chairman?

SENATOR ORECHIO: Yes?

SENATOR GAGLIANO: May I make a comment on that?

SENATOR ORECHIO: Sure, Senator Gagliano.

SENATOR GAGLIANO: Mr. Bannon?

MR. BANNON: Yes?

SENATOR GAGLIANO: Mr. Bannon, it is my understanding that an autonomous authority basically is autonomous and could go through the process that you have described, under the bill or not under the bill. However, the Governor of the State of New Jersey, with respect to the New Jersey Highway Authority, the Turnpike Authority, the Sports and Exposition Authority, and various other authorities, including the Port Authority of New York and New Jersey-- The Governor of New Jersey could veto the minutes of the meeting at which time they approved, for example, the contract with McDonald's. If the Governor vetoed those minutes, that would be the end of it. That is a part of our body of law.

So, the Governor has the final say on all of these projects, and I'm sure that is the reason they backed off on the Bloomfield proposal, because the Governor could say, "If you don't back off, I will veto your minutes," and that would be the end of it.

So that is the only hook that I see with respect to these autonomous authorities. Your testimony, though, reminded me that maybe we should also ask staff to research the issue of what -- at what point an authority's actions may be questioned. Now, for example, a municipality-- The Mayor and Council here of the Township of Bloomfield make certain decisions. Let's say it's a zoning decision. Let's say they rezone the Brookdale area for business, for restaurants, and the people are incensed and institute suit. The test there is before the court. Was the action of the Mayor and the Township Council arbitrary, unreasonable, or capricious? And if it was, the court would set aside that action.

I frankly do not know whether or not the autonomous authorities are subject to that same test. If they were, and they did something that bordered on the ridiculous, or was capricious, or hurt people without proper consideration, then the court may set it aside. I really don't know, and by saying

this I'm putting it on the record-- I'm asking staff to check that, because if that were the case and the bill were in place, and the testimony was that this was going to have a severe adverse impact on the neighborhood -- on property values, on local traffic, whatever it might be -- and to proceed with this would be arbitrary, unreasonable, or capricious, then a court could set it aside. So you would have two ways of stopping it, either through the Governor's office -- the Governor himself -- or the courts.

MR. BANNON: Is it my understanding then that you would include this type of language in this bill if it is not already there, and it would cover that.

SENATOR ORECHIO: Well, let me say this. If this bill were in place and was law, we would have been able to generate the interest that has been generated now at this point. It would be sufficient to apprise the Governor and the Township of the citizens' objection to this project, and also request him to veto the minutes. But at this point, we are beyond that. If this bill were in place and was law, then I think that kind of consideration would have been given.

Secondly, as I indicated earlier, the State is a sovereign entity. We create the authorities. We can give absolute immunity to these authorities, or the immunity can be tempered to meet local statutes or any other State regulation. So, at that point, there is some flexibility there as well, in terms of future legislation and wanting to curb the power and authority of independent autonomous agencies.

But this bill here, if it had been placed and was law, we would have been able to give the Governor sufficient attention and express our interest as to why he should not approve the minutes of the Highway Authority, but should veto, for the reasons we are opposed to that project.

MR. BANNON: I would just like to point out for the record that -- I know you know it, Senator, and your staff -- the Governor has already signed the minutes for this project.

SENATOR ORECHIO: I know that.

MR. BANNON: So technically they can thumb their noses at the Governor and say, "We're going ahead with it."

SENATOR ORECHIO: You're absolutely right.

MR. BANNON: That's a political reality; they can.

SENATOR ORECHIO: You're absolutely right.

MR. BANNON: There is one other section I would like to point out.

SENATOR ORECHIO: That is the reason for the bill, because there was no public hearing; there was no notice. It was after the fact, after they did their excavating, when the neighbors were apprised that something was going on. The question was, "What is going on?" Then it was learned that they were going to contemplate the project.

MR. BANNON: I would like to point out one other section. I see a possible problem. Unfortunately, the arrogant stance of the Authority and the McDonald's people has generated a great distress among the populace, at least in this area. So anything I perceive that might be a loophole-- I see there might be some problems for somebody 10, 20, or 30 years down the road -- as Vinnie knows full well. I refer you to Page 3, Section c., where it says, cites: "Conduct a public hearing in a municipality in which the project is to be located as provided in Section 7 of this act, and make all responses required by that section."

SENATOR ORECHIO: That section has been deleted, Mr. Bannon.

MR. BANNON: You're going to delete it?

SENATOR ORECHIO: Yeah. Those brackets mean it has been deleted.

MR. BANNON: Oh, okay. So, in other words-- They said there is an exception. Is it contained anywhere else? I just gave a quick read of this where, if they were expanding upon an existing facility -- like a men's room or a gas

station-- What I have in mind is, suppose they came in here and took that gas station with that rest room facility and said, "Let's double or triple the size," and put maybe 50 vending machines in there, with tables. Could that happen under this bill? (discussion among Committee members)

SENATOR ORECHIO: Yeah, they would have to go through the process and submit to local regulations.

MR. BANNON: They would have to submit to local regulations under the bill?

SENATOR ORECHIO: They would, yeah.

MR. BANNON: All right. I want to thank you very much for your attention, and I want to commend you, Senator, for your activities on our behalf. I think our people believe that this would not have been turned around except for your personal intercession with the Governor. I thank you for that.

SENATOR ORECHIO: Thank you, Mr. Bannon. The next speaker is John Rosta.

J O H N R O S T A: Senator Orechio, members of the Committee: My name is John Rosta. I am a resident at 84 Lindbergh Boulevard. As a resident of Lindbergh Boulevard, I do have a vested interest in the passage of your bill. I acknowledge that right up front. I would just like to say that construction of this particular restaurant would have been within 100 feet of my house. Even though it would be on Bloomfield property, the restaurant would have been on Parkway property. It's within 100 feet, not of my property line, of my house.

Besides the obvious economic impact that the construction would have on our home values, there are two equally important aspects which I think we should also consider. One would be the potential threat to the safety of the children in our neighborhood. Because of the transit nature of the traffic going up and down the Parkway, people would stop in the restaurant, they would see a residential area

here, and it would be very easy to go in and burglarize vacant homes, empty homes.

Another equally important point I think we should consider would be the impact on the quality of our neighborhoods and on the environment within the neighborhoods. The people in the area work very hard to maintain their properties. This represents for many of us, if not all of us, our largest single investment. If that restaurant would have been constructed, that investment would have gone down the drain. All of our hard work would have been in vain. I think that that really touches all of us.

So, Senator Orechio, Assemblywoman Crecco, Assemblyman Kelly, Mayor Kinder, thank you for your interest and your continued support in this matter. Thank you.

SENATOR ORECHIO: Thank you. Has Mr. Cedlak arrived yet? (negative response)

Senator Gagliano initially had raised a question about the rights of bondholders under the laws that govern covenant rights. I was wondering whether or not somebody from the Authority -- the Highway Authority or the Turnpike Authority -- would want to address his question. Mr. Powers?

T O M P O W E R S (speaking from audience): Senator, it is very difficult for me to address this question. First of all, I am not an attorney. (Next sentence indiscernible since Mr. Powers was not near a microphone.) I could get the information back to you-- I don't know whether it's true or it's not true, but I will get that answer back to you.

SENATOR ORECHIO: Does anyone on the Committee have any questions they may want to ask Mr. Powers, who represents the Highway Authority?

SENATOR GAGLIANO: Mr. Chairman, I think the Highway Authority has submitted--

MR. POWERS: They have.

SENATOR GAGLIANO: --a letter. We can make the letter a part of the record, with Mr. Powers' permission, and some of those issues would also be important to the Committee, I'm sure.

SENATOR ORECHIO: Maybe Mr. Powers-- You can, of course, respond on the basis of your knowledge. As has been expressed by letter, as well as orally, I have been led to believe that the Highway Authority, since the McDonald project, has now, as a matter of policy, established that due notice will be given to municipalities, as well as public hearings held, as a matter of standard operating procedure for your agency. I was wondering whether or not you know that to be a fact.

MR. POWERS: I don't know about hearings. You talked about hearings; I don't know if we have had any or not. I believe they have notified-- You will find, in addition to the statement from the Director, copies of letters which have been written to various officials in the towns-- (Remainder indiscernible; Mr. Powers still speaking from out in the audience.)

SENATOR GAGLIANO: These appear to be all 1985s, Mr. Chairman -- '85s or '86s.

MR. POWERS: These letters go back to December, 1985. Actually, it's November 26, 1985. (remainder indiscernible)

SENATOR ORECHIO: Our counsel here brings out a point. From some of the correspondence we have received, we understand that in a belated way the Highway Authority gives notice, but only after a contract is awarded. We are concerned about notice before, while a project is on the drawing board, and before contracts are let out, and before there is an approval. That is what our concern is. In terms of the timing, I don't think in this correspondence that I see here, wherein letters were sent to mayors of various communities that the Highway Authority was involved in a project, that that demonstrates what the bill would address.

You know, we want to have some notice, and we want to have a public hearing before the project gets off the ground, so to speak, so there is some public input that may influence the outcome of your plan.

MR. POWERS: As I said, Senator, I do not have the authority to speak, but I will relay your message back (remainder indiscernible)

SENATOR ORECHIO: Okay. Mayor Kinder, yes?

MAYOR KINDER (speaking from audience): Senator Orechio, we are discussing something-- I am sure that none of us here in the audience know what you are discussing with the Parkway Authority. If they have submitted some kind of documentation-- We have made our documentation known to the Committee here in a simple submission. Is this my understanding? Am I accurate in this, that they have submitted to this Committee their -- a letter with a statement?

SENATOR ORECHIO: Yeah, on April 15. We just received it the other day.

MAYOR KINDER: May I have a copy of that?

SENATOR ORECHIO: We will give you a copy, absolutely; sure.

MAYOR KINDER: I think this is typical of the type of attitude that the Garden State Parkway Authority strikes. We have here a hearing by a Senate Committee, and the Parkway Authority seeks not to take the stand here to read something into the testimony to allow the other people here, who are here for the purposes of the hearing-- (indiscernible) to submit this kind of testimony to the Committee, without giving us the opportunity to hear what they have to say.

SENATOR ORECHIO: Well, what we plan to do is-- First of all, as far as the Township of Bloomfield is concerned, and anybody else who is concerned and wants a copy of any communication we have received-- You indicated to us that you want a copy and, of course, we will give you everything we have.

Number two, these statements will become part of the public record and, if a second hearing is required to elicit a response or reaction that we may have to their statement and to their belief, that will be done.

MAYOR KINDER: Senator, we would be very much interested in what the Parkway Authority has to say at this point, and I would like that copy.

SENATOR ORECHIO: Okay, Mayor Kinder. Senator Gagliano?

SENATOR GAGLIANO: Mr. Chairman, I certainly agree with that. Mr. Powers told me that he would submit a letter because the Parkway people were meeting today. I understand that.

We also have a letter from the Turnpike Authority dated April 16, 1986.

SENATOR ORECHIO: Well, that person is actually going to testify.

SENATOR GAGLIANO: Right. And we have one from the New Jersey Education Facilities Authority dated April 16. I don't remember getting any other letters in my office or here on this issue, but I do think that Mary Elizabeth Garrity, who is here, who has been an attorney for the Turnpike Authority for a while, would be able to address us, Mr. Chairman. I think she is up to date on some of the issues that I have raised, which, in turn, have been raised in their correspondence.

SENATOR ORECHIO: Okay, we will now hear from Mary Elizabeth Garrity, who represents the Turnpike Authority. If you would, please come up to the microphone. I think everyone would be able to hear you better, as well as our transcriber. I'm sure he would be happy, too.

M A R Y E L I Z A B E T H G A R R I T Y: Senator Orechio, members of the Committee, ladies and gentlemen in the audience: My name is Mary Elizabeth Garrity. I am an attorney for the New Jersey Turnpike Authority.

The Authority has submitted a written response concerning Senate Bill 1408. I was not specifically authorized to testify at the hearing today; however, I am more than willing to answer any questions of the Committee, or perhaps the members of the audience, if they have any questions as well, regarding the Authority's position on this bill.

Our major concern with the bill as a public Authority is the constitutional concern, the rights of the bondholders, vis-a-vis the projects that the bonds are issued on. The New Jersey Constitution provides that there should be no impairment of contract where there is a contract entered into. I am not an expert in that area of law, and would be prepared to have submitted to the Committee a legal opinion regarding that. However, it has always been my understanding that there should be no impairment of the rights of the bondholders regarding these projects. And that has been the opinion of the courts as well.

SENATOR ORECHIO: Well, of course, I would imagine in terms of the timing of your proposal and project, before even bonds are sold, I think what we would then have would be a situation wherein public input, the public hearing process, and so forth-- I don't think there would be an infringement on those rights if we raised objections and had the duly constituted public hearings that we should have.

But, I have some questions overall in your statement, and I'm sure that Senator Gagliano may want to get an expanded answer on his concern. In your communication to us, a conservative estimate was made for the cost of a public hearing in the amount of \$15,000. I find that an astronomical figure. I'm wondering how that number was arrived at. If you know, can you tell us?

MS. GARRITY: Yes, it does appear to be an extremely high figure. The costs involved involve the costs of the consultants. It is necessary, in order to put on a public

hearing, that the public -- that their questions be fully answered. We have to bring consultants in to answer their questions, as well as our own staff, as well as the rental of the hallway, as well as the transcription of the record, as well as the receipt of comments from the public and our responses to same. It is necessary for us to expend a great deal of time and money in order to put on a hearing, and to answer the public fairly. We can't send them a form letter back and say, "Thanks for your comment," and not respond to them at all. It's necessary, many times, to do research into the comments made by the public regarding projects.

The Authority does have a policy of conducting public hearings. In the case of the widening, there was a great deal of publicity in the newspapers. We published notices--

SENATOR ORECHIO: Well, let me say this.

MS. GARRITY: --in several newspapers regarding the widening. We have had three major hearings -- public hearings -- at which the public introduced comments. I'm sorry, I didn't mean to interrupt you. We also had what we call an "Informational Center," which was referred to earlier, which the Department of Transportation has, wherein the public is invited to come to the Center, view maps, plans, and drawings showing what the project is, and speak to our people, who are there at the Center to answer their questions. They can get an idea of what we are planning to do, and they can develop a response to what we're planning to do. Then they come to the public hearing and deliver their comments. This was opened to the public and to members of the Senate and Assembly. Notices were given to these elected officials so that they might come and deliver their thoughts on it.

SENATOR ORECHIO: Let me just say this to you, in terms of the numbers. When we're talking about the stenographer, we're talking about a figure of about \$350. If we're talking about experts-- Now, you have in-house experts

who are on salary, and I'm sure there is no additional money required for their presence. But, if you had a half a dozen experts you had to hire, and we use a very, very generous figure of \$100 an hour, and for four hours, multiply that by five -- there's \$2000.

In terms of a hall, any municipality or government entity that is going to be affected by your project, I'm sure, would donate their facilities free. So, I mean, I think that number is probably grossly exaggerated by six or seven times. I really think 15 is very high.

And as to the right of the public to be heard on an issue that has such a dramatic and devastating impact, in most cases, in terms of their life style and their quality of life, I think that is a very exaggerated number.

Senator Gagliano, were you satisfied with Ms. Garrity's answer?

SENATOR GAGLIANO: No, no. I think, Mr. Chairman-- I've known Ms. Garrity for quite a long time, and she is a very highly regarded and competent attorney. I feel slighted because certainly the Turnpike Authority did not spend \$15,000 on this hearing. In fact, just sending Ms. Garrity over here, I don't think is appropriate, not that I am not happy to see you, I am, but I feel that the Legislature indicated its concern at the time this legislation was filed. The sponsor of the legislation was the then Senate President, and the Co-sponsor was the Majority Leader, who is now the Senate President. We are concerned because in the Legislature we do not want to trample on the rights of anybody, especially the people, but also the Authorities.

Now I think, in order for us to get at more of what the Authority's concerns are, we have to have another hearing because we are not getting sufficient information. For example, is an authority in New Jersey subject to the basic rule that a municipality must be guided by, that the action

cannot be arbitrary, unreasonable, or capricious? If the Mayor did something that was arbitrary, unreasonable, or capricious in the Township of Bloomfield, that would be set aside by a court. I don't know that answer, and I certainly would appreciate whatever information you have on that because I think it bears on the subject we are talking about.

In addition to that -- and I am going to refer to something the President was talking about -- we can't trample on the rights of bondholders, but the basic issue is whether or not it was right, for example, for the Turnpike to issue \$2 billion worth of temporary financing bonds, and then hold public hearings, because that puts the cart before the horse.

The expenditure -- not the expenditure, but the bonds having been issued, the Authority has signed a contract with bondholders, or let's say banks, on a temporary basis. How then can we argue that the people are going to be treated fairly when they make their comments, or even if comments are allowed, because it would be too late. You are then saying, "Well, no, you can't say that. You can't tell us not to do that because that is going to interfere with our bondholders' rights." Do you see what I'm saying? These are important issues which I'm sure you, Ms. Garrity, can't make decisions on, but there are people who can in the hierarchy of the Turnpike. The same way with the Parkway.

Frankly, I am a little upset that people who could answer these questions are not here. I had to come-- It took me about an hour and 20 minutes to get here. I had to prepare for this hearing, and I know others did. I wish you would convey that message because it's just as important that we get the information for this hearing as it is for the Authority to proceed on any of these projects. A letter is not enough.

SENATOR ORECHIO: Ms. Garrity, I'm sure you were instructed to come here this morning, and I'm sure that you can't speak on behalf of or defend your superiors. But I think

Senator Gagliano is absolutely right. I think it was a very cavalier attitude, to mildly describe the reaction of the Authority with respect to their invitation to testify here this morning. Of course, on the one hand, we can reason that maybe they have no objection to the bill, but by the same token, as a matter of common decency, I think they should have been here to answer some questions that may have been posed in terms of present procedures that are observed by the various agencies and are, in turn, affected by this legislation.

I certainly don't want to add to your being uncomfortable, and we don't want to put you on the spot, but I think Senator Gagliano was right. I think you ought to convey the message to your superiors that somebody should have been here who could certainly -- maybe one of the attorneys, or the Executive Director, to answer questions we may have had that directly affect this kind of legislation.

As a matter of fact, you know, I think it is also fair to say that public hearings really involve a search, a search for information. They may involve impact, they may involve amplification. They may involve definition that is projected in terms of language that would become law and, as a result, I think all of this kind of dialogue is important for all of us, those of us involved in the law-making process. It is necessary for the citizens to get, I think, a reaction, an expression of opinion by those so-called autonomous agencies which operate within the State of New Jersey, and for the benefit and well-being of all concerned. Hopefully, the Committee-- I think they will all agree that we will send out a very strong letter to the Authorities indicating that we are going to have a second hearing, and we would like to have each Authority represented to at least answer questions that the Committee may feel should be presented to them, as well as any concerns that the residents may have.

Thank you very much.

MS. GARRITY: Sir, I can assure you that no disrespect was meant to the Committee by my attending in lieu of someone else. I do apologize for any disrespect that you do feel. I'm sorry that this is the case. I had hoped that you would consider the Authority's comments submitted in their letter, but I will, of course, convey your feelings and the feelings of the Committee and Senator Gagliano to the appropriate parties at the Turnpike Authority, so that your questions may be answered then.

If you like, also, the questions that you raised during the hearing today-- I can, in a memo, advise everyone down there of your concerns and, if you would like, they will submit a letter to you regarding them.

SENATOR ORECHIO: Well, what we'll do is, we'll address them, too, in terms of getting some answers that we may want.

You know, I would also like to point out that this attempt on behalf of the Senate to establish this Committee was not an idea that was a willy-nilly one just to establish another committee. I think the genesis of the bill in the Committee really evolved around this McDonald's project in terms of the Senate. Of course, the Assembly had created a comparable Committee in that house two years ago. But it seems to me that the unbridled authority and atonomy that these agencies have had over the years, and the application of those powers, certainly, I think, motivated, as well as mandated, that we have a Committee functioning so that these Authorities could come before us and explain their positions from time to time on how they procedurally deal with these projects and why local input and local public hearings are necessary so that the citizens and the lawmakers are involved in due process.

SENATOR GAGLIANO: Mr. Chairman?

SENATOR ORECHIO: Yes, Senator Gagliano?

SENATOR GAGLIANO: I really have to apologize to Mary Elizabeth Garrity. I'm sorry about that. I did not mean to put you on the spot. I just get a little-- I get a little upset sometimes when we get these three-page letters, and then they walk away from us. I certainly don't blame you. But there were suggested questions that staff prepared and, Mr. Chairman and Senator Cowan, with your permission, I want to read those questions into the record -- we'll give you a copy of them -- so that the people who are here who are taxpayers, and who represent others or represent themselves, will understand what we thought we were going to get at today from the experts.

"One: Describe your agency's project planning and site selection processes. If relevant, distinguish by types of projects.

"Two: What opportunities does your agency afford for local involvement by public officials or residents in your planning processes? Describe, and if applicable, identify at what stages of project development and site selection processes local viewpoints are solicited.

"Three: What efforts are made to comply with municipal development regulations and applicable county, or for that matter, State plans? Describe in terms of Authority's project planning, site selection, and site planning processes.

"Four: What studies are prepared as to environmental, social, economic, or other effects of a proposed project on the host and neighboring communities? What opportunities are afforded for public review and comments on the studies?

"Five: What are your agency's recommendations for providing or improving consultations with local officials and concerned residents?" And I think if we get answers to those questions, we will then have both sides of the issue so that we can come up with some fair legislation. Not being able to get that today, Mr. Chairman, I would hope that the representatives

of the authorities who are here would go back to their agencies, and at least answer those questions.

SENATOR ORECHIO: Senator Gagliano, it is my intention that this Committee will send a letter to each of the agencies affected by the legislation, especially those who aren't present today, that they get these questions, that they supply those answers, and that they appear -- or the representatives who would have the authority to speak on behalf of the agency -- so that we can have them at our next hearing. This hearing will continue.

SENATOR COWAN: I think, Mr. Chairman -- if I may, please?

SENATOR ORECHIO: Senator Cowan?

SENATOR COWAN: What we are talking about now, of course, is the progressive -- what's going to happen in the future. But what has been brought out at this meeting today-- I think the residents are still very apprehensive, because if we did have some of the authorities here that could testify, and we could direct questions to them as to what they intend to do, as has been stated here by several of the witnesses, the minutes have already been approved, and there's nothing that you have verbally, on the record, from any of the authorities, is that correct? And I think that's important for this issue -- in fact, a key issue out here today.

SENATOR ORECHIO: All right. We have two more who will be testifying. Mr. James Hughes, the Executive Director of the Economic Development Authority.

Mr. Hughes, I guess you have the advantage of having the concern of the members of the Committee, in terms of being present here and the fact that you were able to make this meeting, and I guess, at the appropriate time, we may want to ask you some questions. Mr. Hughes?

JAMES HUGHES: In light of what I have just heard, I am delighted to be here. I would have come anyway. Thank you.

I appreciate the opportunity. I am not here to take a position one way or another on S-1408, but merely to reflect with you upon the severe hardship this would place upon the Economic Development Authority, and to ask for relief from that hardship.

Our Authority operates a number of programs which would be affected by S-1408. I would like to briefly run through these programs with you, and tell you how we will be impacted, and I think I can address Senator Gagliano's questions in the rest of my testimony, which is very brief.

The major activity of our authority is the issuance of tax-exempt, industrial development bonds -- IDBs. We issue these bonds for the benefit of business projects, meaning low-cost financing for fixed assets such as land, building, and equipment. The interest earned on the bonds is tax-exempt and therefore it lowers the cost of interest to the borrower.

The bonds are purchased by private investors. I should emphasize, what we do is privately funded. They pass the interest savings on to the business. Repayment of the bonds is the sole responsibility of the business borrower. The Authority nor the State is under no obligation to repay the loan, and no public funds are involved. IDBs are the largest program of the Authority, representing over 99% of the more than \$1 billion a year in financing that we do.

The Economic Development Authority is also the largest issuer of industrial bonds in the United States. We have close to \$7 billion in financing outstanding right now.

A second program that we do is the urban industrial park program. This, using-- The beginning of this program was State appropriations back in 1977 and '78. There have been no State appropriations since then. This enabled us to set up, in conjunction with other Federal and local funds, the ability to acquire and improve large tracts of land in existing plants and urban areas, and sell subdivided parcels and buildings to

private companies. We have seven such industrial parks throughout the State of New Jersey at this time.

A third major program is direct loans and loan guarantees. We guarantee conventional loans for working capital purposes, fixed assets; and guarantees of IDBs are also provided to business and economically-targeted communities. Direct loans of up to \$250,000 are available for businesses in these locations that cannot obtain financing on their own. The total amount of these programs are about \$60 million at this time.

We already have in place various procedures which require public and local government input into when most of our projects, or they, at the very least, facilitate it. And if I may summarize those:

First of all, we adhere to the Open Public Meetings Act, for monthly Board meetings at which projects are presented for approval. Our Board meets the first Tuesday of every month. Notice of the meeting is sent to the Newark Star-Ledger and the Trenton Times 48 hours prior to the meeting, and a meeting notice is posted on the Secretary of State's bulletin board at the State House.

Furthermore, the Tax Equity and Fiscal Responsibility Act of 1982 -- a Federal law -- required that we adhere to certain public notice requirements or projects seeking our approval. Public notice of the public hearing for projects is published at least 14 days prior to the public hearing. The notice is published in the Trenton Times, the Star-Ledger, and a local newspaper of general circulation available to residents in the municipality in which the project will be located.

Information in the notice includes application number, the name of the owner/operator/manager, project address, maximum aggregate face amount of the bond issue, total project cost, and the description of the project. Members of the public have an opportunity to comment on proposed Authority

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projects at the Board meeting. Copies of project applications are available to the public upon request. Minutes of the meeting are printed and available to the public. All this takes place before a project is finally approved.

All project contemplated by the Authority are brought before the Authority Board for discussion and approval at a public meeting. These include industrial development bond projects, direct loan and loan guarantee requests, purchase of industrial parks, sale of parcels within the parks, and contracts for site improvements.

Site plan and subdivision approval of proposed urban industrial parks is required from a local planning board. Municipal endorsement of a proposed park is essential to a park's success. Unless our Authority is assured of municipal support for the park, it will not proceed, since it relies on tax-abatement incentives and other forms of municipal contribution to make the park feasible.

All projects approved by the Authority are subject to normal local and State requirements that any business must meet. Generally, local zoning and planning approvals must be in place, or there must be written assurance of municipal support for a project before a project can close. Funds are not dispersed until permits are secured, such as a building permit, and other approvals obtained which are essential for the project to proceed.

In terms of our direct loan program, the Authority does not provide interim financing. Funding is not provided until a certificate of occupancy has been issued, which means the project has been approved locally. In terms of a guarantee, a bank will not disperse loan funds until it's assured a project can go forward, and again, this means the project has gone through the necessary local review process.

Up 'til now, sales of the Authority's industrial parks that involve vacant land or buildings requiring substantial

rehabilitation (indiscernible) all local building permits have been necessary. If a new ownership involved a change of use, a local variance would have to be obtained, as in any private undertaking.

Although the Authority-- Although the law allows the Authority to exercise eminent domain in urban aid communities, and for its parks to be exempt from land use ordinance, the law also says that these actions would be authorized only with the consent of the local governing body.

There are several specific provisions in S-1408 that concern us. Section 38, page two, line six: Conducting a public hearing in each municipality is impractical. In 1958, we completed over 500 projects in 175 municipalities, approximately the same amount that were completed in the prior year. Conducting and organizing meetings, which would be in excess of 10 a week in three different municipalities a week spread around the State of New Jersey, is something which would be -- and many of them virtually simultaneous -- would require logistical measures beyond our comprehension, if not our ability -- not to mention the obstruction of the business objectives of authority assistance.

Section 4, page three, line 15: Submitting a project report to the Commission on Budget and Planning for review and findings does not seem applicable to the Authority's programs. The Commission was not established to review private business financial assistance, which is what we do; and is neither structured nor staffed to do so with reliability or confidence. The purpose of the Board of the New Jersey Economic Development Authority is to perform such a review, which it has done since 1974. This Board has been structured and staffed to perform such a review for consistency with overall State economic policy objectives, and the public interest.

Section 4, page four, line 55: Locating New Jersey

Economic Development Authority projects consistent with the State's urban policy, except for projects intended to serve a region which contains no such urban center, limits the present program purposes and operations of the Authority. The Authority encourages the overall economic development of the State, particularly economic depressed areas, whether urban or not; and industries and business activities important to the State's economic expansion and continued prosperity.

Finally, the proposed broadened definition of a project. In the last few years, the Authority has arranged financing for about 500 projects in each year. We have about 4,000 projects outstanding now, not including our industrial parks development. Many of the projects involve acquisition of equipment, to modernize manufacturing operations. The impact of the equipment on the community is the form of increased jobs and revenues through increased production capabilities. The equipment does not usually have an environmental impact, so subjecting the business to a public hearing and other requirements of the proposed legislation seems an infringement on a company's business prerogatives.

The description of the Authority's existing programs I hope assured you we do provide for local input. We do assist projects that must adhere to applicable local rules. Furthermore, local public hearings for 500 projects -- in excess of 500 a year -- would be an administrative nightmare, with the end result being a delay of worthwhile projects that would otherwise create jobs and ratables for New Jersey's municipalities, and revenues for this State. I would re-emphasize these projects are financed, for the most part, with private funds.

The Authority has no quarrel with the intent of S-1408, but we believe we more than meet the purpose of the bill as proposed. Given that other authorities which require municipal approval before proceeding with a project have already been

exempted from S-1408, the New Jersey Economic Development Authority thinks it should also be exempted on this basis. It further believes its inclusion in the legislation would be detrimental to the economic development of the State. Thank you.

SENATOR ORECHIO: Mr. Hughes, in terms of your procedures -- industrial parks, development, and so forth -- I would take it that a request to be exempted from the provisions of this bill would be because you already did adhere to local regulations and ordinances that govern construction in a particular municipality?

MR. HUGHES: And Federal public -- Federal regulations regarding public hearings.

SENATOR ORECHIO: And State law as well?

MR. HUGHES: Yes, sir; correct.

SENATOR ORECHIO: Anyone on the Committee wish to ask Mr. Hughes any questions? Senator Gagliano?

SENATOR GAGLIANO: No. I think it was a fine statement, and I don't really see at this point any reason why the Economic Development Authority should not be exempted, because I think their notice requirements that they've imposed -- either through law or Federal law, or upon themselves -- meet the criteria of what we're talking about.

SENATOR ORECHIO: What I would like -- I think the questions that were prepared, maybe if you could bring them back with you and maybe give us some answers in writing, that we can make part of the record at that point, then we could consider an exemption from the bill.

MR. HUGHES: Yes, sir. I have written copies of my testimony, if you'd like them.

SENATOR ORECHIO: Fine. Thank you very much. It was a very good report.

MR. HUGHES: Thank you, sir.

SENATOR ORECHIO: The next speaker is Edward Bambach,

who represents the New Jersey Educational Facilities Authority.

Mr. Bambach?

E D W A R D J. B A M B A C H: Thank you, Senator, gentlemen of the Committee. I'm Edward Bambach, Executive Director of the New Jersey Educational Facilities Authority. Our Authority was created by the Legislature in 1966, the purpose being to provide a tax-exempt facility for the New Jersey colleges and universities, to provide financing for their capital needs on a tax-exempt basis.

Since that time, we've funded projects at approximately 24 of the New Jersey colleges and universities, public and private, and we have approximately \$500 million worth of bonds outstanding in support of those projects for the higher education community. We may service no one other than the duly licensed and approved institutions of higher education in this State.

Not incidentally, the Authority heartily supports the position of the citizens of Bloomfield. You shouldn't have a restaurant where you don't want a restaurant. However, we have a prospective client in your community, and I would like to give just an illustration of what might happen to us if this proposed legislation became law, and Bloomfield College -- your good neighbor -- decided to seek funds for a particular project from us.

Let's say they want to replace some roofs on the campus, and the Board of Trustees decides that they'd like to borrow the money from our Authority. And the Authority decides that yes, we feel that the college can repay the loan in accordance with certain requirements. It would be necessary for the Authority to seek the approval of the local community for the replacement of that roof. It would be necessary for the Authority to seek the approval of the State Commission on Capital Budgeting for the replacement of that roof, and we would have to go through a certain reporting procedure with

the Legislature on the basis of that project in order to apprise that body of the intentions of the Authority. I submit that is an inappropriate stricture that would be placed both on the particular independent college as well as the Authority.

At the present time, when the Authority undertakes a project, although the structure of public notice is not as formal as described by Mr. Hughes for the Economic Development Authority, it is the policy of the Educational Facilities Authority that each institutional applicant will have made known to the local municipality its intention of proceeding with a loan with our Authority.

It's important to remember that for all practical purposes, this Authority would not fund any projects that are outside the existing campus limits of the New Jersey institutions with whom we work. To involve the local municipality -- to involve the State Commission on Capital Budgeting -- in a decision that a Board of Trustees might make in regard to doing something as mundane as replacing a roof we think is clearly inappropriate. The Authority receives, nor do the colleges receive, any public funds for the support of loans that come through the -- that come from the Authority. The Authority's bonds are not guaranteed by the State of New Jersey, and the Authority provides for payment of its bonds only on the basis of its revenues that it receives from the projects that are funded.

As this bill would relate to the public colleges and universities, I think it further would have the tendency to impinge on powers that the Legislature has already delegated to the New Jersey Board of Higher Education. That Board is responsible, in the public sector, for the development of capital needs, the determination of facilities for the public colleges, and to the extent that the Educational Facilities Authority can fund those projects for revenue-producing facilities, it feels that appropriate public notice is given

through the public meeting of the Board of Higher Education when it approves a public college project, as well as through the public meeting procedure of this Authority.

The role of the Capital Planning Commission, as it would relate to a State college project, I think is inappropriate because State bonds are not involved. Again, the Board of Higher Education has been charged by the Legislature with the responsibility to determine the overall needs of the public sector institutions. The Boards of Trustees have similarly been charged for the stewardship of their institution. The-- I believe one of your houses has already passed the autonomy bill for the New Jersey State colleges, giving those trustees still further powers. To subject the decisions of the Board of Trustees of those colleges to the particular interests of the State Commission on Capital Budgeting, when that Commission has no financial interest in the project, we think is inappropriate.

For the reporting section of your proposed legislation, I would like to indicate that under present law, the Authority already reports annually to the Governor and to both houses of the Legislature. This is done on an annual basis, on a project-by-project report; and to impose upon us an additional reporting requirement on a project-by-project basis would appear to be a hardship on a rather limited staff.

Thank you, sir.

SENATOR ORECHIO: Mr. Bambach, I have a question. About 10 years ago, Montclair State College wanted to fill a cavity within their campus, and that cavity was going to be filled by garbage. There was great concern by the residents about the effect of leachate and the environment in general, and as a result, 10 years later -- I guess as recent as maybe six weeks ago, the Legislature and the Governor agreed to reimbursing the contractor, who was named Carrino, to the tune of over a million dollars. What I would like to know is, what

is the extent -- or, if any involvement the Educational Facilities Authority would have had as related to that project. Would you have to give approval, for example, to that project that involved an in-campus construction effort?

MR. BAMBACH: Let me comment. The property on which the Carrino landfill work proceeded is not Authority property; it's property of the college -- the State, if you will. That project was not a project of the Educational Facilities Authority. The filling of the Houdaille quarry to which you refer was a project of the Educational Facilities Authority, and the playfields, athletic fields, lockerroom facilities that were developed in that area along Clove Road, were developed by Authority bonds. The Authority was not involved in the landfill activity.

SENATOR ORECHIO: Any questions from members of the Committee? Senator Gagliano?

SENATOR GAGLIANO: Yes. Mr. Bambach, the way I understand your testimony, you really serve two areas: you serve the private colleges and their quest for low finance -- low interest loans; and you serve the public colleges in the same area. Is that correct?

MR. BAMBACH: Yes, sir.

SENATOR GAGLIANO: So that, with respect to a private college, it's my understanding, based on my recollection of zoning and planning law, a private college such as Bloomfield College or Princeton or whatever it might be, would be subject to local planning and zoning ordinances -- local development regulations. And so therefore, for example, if Princeton, on the main street -- I don't know whether it's Nassau Street or whatever the main street is-- If Princeton came to you and said, "We want to build a McDonald's," and it sounded like the most wonderful project that could ever happen because it's got to be a money-maker, being on the main street of Princeton, you would say, I would think, that even if you like the idea, you

would say, "Well, you have to get that past the local zoning board, planning board, or whatever board and local governing body," before you would ever touch it in terms of lending them any money, isn't that correct?

MR. BAMBACH: We would probably make a decision prior to the loaning -- before the local zoning clearances, Senator.

SENATOR GAGLIANO: But I mean, if you liked it-- even if you liked it, you would say that they'd have to-- It's my understanding, at least, that they would have to go through the local agencies.

MR. BAMBACH: It's our policy with the independent colleges and universities that they meet the local zoning requirements overall; that the project meet the provisions of the Uniform Construction Code and all other pertinent safety and health codes.

SENATOR GAGLIANO: Okay. So therefore, with respect to this bill -- if the bill provided an exemption for any authority which has as its policy the requirement that local municipalities be involved in terms of their boards and agencies, that would -- that aspect of it would be agreeable to you?

MR. BAMBACH: It would be agreeable, Senator, to the extent that -- and again, using this local illustration, I think if Bloomfield College wants to fix the roof, I don't think the local municipality should have the opportunity of deciding, "No, we don't want them to fix the roof."

SENATOR GAGLIANO: That's a repair item-- That's a repair and maintenance item. Suppose-- Just let me give you an example. I do not know the Bloomfield College campus. Let me give you an example. Let's say they were running out of room, and they had a lot of students that were coming there, and they projected the next four or five years as being a period of tremendous growth, and let's say they're in an area which is basically single-family residential, and Bloomfield

College -- or any other college -- said, "We have to build a 15-story, high-rise apartment building-type dormitory for our students, which we project to be in great numbers in years ahead." It would be my understanding that that building could not be built without prior approval of the local agencies, because they're subject to locals-only control. And so even if you thought it was a great project, it would seem to me, you wouldn't fund it.

And taking that one step further, if that were the case, and all of the hearings required by law, and the municipal land use law and other laws were required, then that would be fine, I think, with us, as far as our legislation is concerned. But on the other hand, with respect to a public college, if Montclair State or Trenton State -- also being in residential areas -- decided to build a 12 or 15 story building, they would not be subject to local zoning, because they are State agencies, and the notice provisions would not be applicable.

So, do you see our dilemma there? You've got two--

MR. BAMBACH: Yes, I do.

SENATOR GAGLIANO: --separate procedures in connection with your lending. So--

MR. BAMBACH: But with the public college projects, sir -- if I might just rebut -- again, they have an action taken by a Board of Trustees at a public session, and again, with appropriate due notice of those meetings being available to the public, you have a public action of the Board of Higher Education acting within the powers that the Legislature have delegated to it -- began with citizens having the opportunity to respond, and they have and did in the incident at Trenton State College some years ago, Senator. The college was interested in buying an apartment house, in private ownership, anticipating the vacation of that apartment house and for use subsequently as a student dormitory. Our Authority was aware

of that proposed action. The Authority was prepared to fund that project, provided that there was approval within the local community that that project should proceed.

In addition to that proviso, it is the Authority's policy with a public college that it will not proceed with a project until the Board of Higher Education has given its approval to the project. For that particular apartment house, and because of the appearance and opposition of local citizens -- it was in Lawrenceville -- the Board of Higher Education, at its meeting, decided that Trenton State College shall not apply for funding for that project, and it stopped.

SENATOR GAGLIANO: Thank you.

SENATOR ORECHIO: Senator Cowan, any questions?

SENATOR COWAN: No questions.

SENATOR ORECHIO: Thank you very much, Mr. Brambach.

MR. BAMBACH: Thank you.

SENATOR ORECHIO: Anyone else wish to be heard? Yes? Miss, I'm sorry. Did you indicate that you wanted to speak before?

J U N E D U G G A N: Yes, I did.

SENATOR ORECHIO: Oh, I'm sorry. Okay.

We will now hear from Miss June Duggan, who represents the Health Financing Authority. Ms. Duggan?

MS. DUGGAN: My name is June Duggan. I am a Project Officer with the New Jersey Health Care Facilities Financing Authority.

The Authority would like to acknowledge the benefit of projects being heard in a public forum. However, in the case of health care facilities, we feel that that forum already exists. Prior to a project being presented to the Health Care Authority, it must have something called certificate of need approval. Certificate of need approval requires that the project be reviewed on a local level by the health systems agency in which that project resides. That health systems

agency consists of public members who review and make recommendations to the State Healthwide Coordinating Council on that project. Those meetings are open to the public.

The Statewide Health Coordinating Council then also reviews those meetings. Those meetings are open to the public, and the Public Advocate also sits on the Statewide Health Coordinating Council. All projects are reviewed on the basis of their need, financial feasibility, impact on quality of care, and in order to coordinate an effective health care delivery system.

Once that project has a certificate of need approval, it can then come to the Authority and ask that they be considered for financing. The Authority has, at a minimum, two meetings on each project. All meetings are open to the public.

They also-- The public also has the opportunity of reviewing and commenting on each project, when a project goes before the Hospital Rate Setting Commission to get approval that that project's costs be incorporated into the hospital's rate structure.

So we would like to state that one, the Authority's meetings are open to the public. Our meetings are public a year in advance. Each year, at our annual meeting, we list our meeting dates, and that therefore, we would like to be exempted from the provisions of Senate Bill 1408.

SENATOR ORECHIO: Thank you very much. Any questions of Miss Duggan? Senator Gagliano?

SENATOR GAGLIANO: Are all of the institutions to which you lend your support are subject to local municipal land use law requirements?

MS. DUGGAN: Yes.

SENATOR GAGLIANO: So that if a hospital decides that it wants to add 100 beds, besides the certificate of need, it must go to the local planning board or zoning board, as the case may be, or the governing body, as the case may be, for

approval, and must go through that process. Is that correct?

MS. DUGGAN: That's correct.

SENATOR GAGLIANO: In other words, until they've gone through that site plan approval process, you will not authorize the lending of the money?

MS. DUGGAN: That's right.

SENATOR GAGLIANO: I mean, the actual-- You might say, okay, subject to local zoning, but you do not actually pay out money or allow construction to proceed without local approvals?

MS. DUGGAN: Right.

SENATOR GAGLIANO: Okay. Thank you.

SENATOR ORECHIO: Senator Cowan, questions?

SENATOR COWAN: I just think that, Mr. Chairman, that out of the several who have requested exemptions, that they would submit to the Committee what that criteria -- the rules and regulations for submissions for loans, whatever -- that they do request so we could have it on our records what is indicated, what has been said.

SENATOR ORECHIO: We'll do that, as well as -- also, we'll send them questions that we have framed for their response.

Thank you very much. This concludes our hearing this morning. I want to thank all of you who participated, and actually, what we'll be doing is continuing this hearing at a future time. We have-- Unless we have a notice that you're present here and you want to list your name so you can be apprised of the next meeting; that way we can tell you when that meeting will be held.

And we will also attempt to have the meeting -- continuing meeting held in these chambers again. Thank you very much.

(HEARING CONCLUDED)

APPENDIX A
(Written testimony
presented by witnesses)

PARTIAL TESTIMONY OF JAMES J. HUGHES, JR, EXECUTIVE DIRECTOR

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

before the

NEW JERSEY SENATE INDEPENDENT AUTHORITIES COMMITTEE

on S. 1408

April 17, 1986, Bloomfield, N.J.

The N.J. Economic Development Authority operates a number of programs which would be affected by S. 1408. A brief overview of these programs and the Authority's existing public hearing procedures and opportunities for local input will help contribute to a meaningful discussion of the provisions of the proposed bill.

1. A major activity is the Authority's tax-exempt industrial development bond (IDB) program. The Authority issues bonds for the benefit of business projects needing financing for fixed assets such as land, buildings and equipment. The interest earned on the bonds is exempt from federal taxation. The bonds are purchased by private investors who pass the interest savings on to the business using the bond proceeds. Repayment of the bonds is the sole responsibility of the business borrower. The Authority is under no obligation to repay the loan and no public funds are involved. IDBs are the largest program of the Authority and represented 99% of the financing arranged through the Authority in 1985.

2. Urban Industrial Parks Program - Using state appropriations, a variety of federal and local funds, and its own resources, the Authority acquires and improves large tracts of land and existing plants in urban areas and then sells the subdivided parcels and buildings to private companies.

3. Direct loans and loan guarantees - Guarantees of conventional loans for working capital purposes and fixed assets and guarantees of IDBs are provided to businesses located in economically targeted communities. Direct loans of up to \$250,000 also are available to such businesses in these locations that cannot obtain financing on their own.

The Authority has in place various procedures which facilitate public and local governmental input into these projects. These procedures can be summarized as follows:

a) Adherence to Open Public Meeting Act for monthly Authority Board meetings at which projects are presented for approval. Notice is sent to the Star Ledger and the Times at least 48 hours prior to the meeting and a meeting notice is posted on the Secretary of State's bulletin board at the State House.

b) Adherence to the public notice requirements of the federal Tax Equity and Fiscal Responsibility Act of 1982 for projects seeking IDB assistance. Public notice of the public hearing (Authority Board meetings) for projects seeking IDB assistance is published at least 14 days prior to the public hearing. This notice is published in the Times, Star Ledger and a newspaper of general circulation available to residents of the municipality in which the project will be located. Information in the notice includes the application number, name of owner, operator or manager, project address, maximum aggregate face amount of the bond issue, total project cost and a description of the project. Members of the public have an opportunity to comment on proposed Authority projects at the Board meeting. Copies of project applications are available to the public upon request. Minutes of the meeting also are printed and available to the public.

All projects contemplated by the Authority are brought before the Authority Board for discussion and approval. These include IDB projects, direct loan and loan guarantee requests, proposed purchase of industrial parks, sale of parcels within the parks, and contracts for site improvements.

c) Site plan and subdivision approval of proposed urban industrial parks from local planning board. Municipal endorsement of a proposed park is essential to a park's success. Unless the Authority is assured of municipal support for the park, it will not proceed since it usually relies on tax abatement incentives and other forms of municipal contributions to make its parks feasible.

d) All projects approved by the Authority are subject to the normal local and state requirements that any business must meet. Generally, local zoning and planning approvals must be in place or there must be some written assurance of municipal support for the project before a project can close. Funds are not disbursed until necessary permits are secured, such as a building permit, and other approvals obtained which are essential for the project to proceed. In terms of the direct loan program, the Authority does not provide interim financing. Funding is not provided until a certificate of occupancy has been issued which means that the project had to be approved locally. In terms of a guarantee, a bank normally will not disburse loan funds until it is assured a project can go forward; again, this means that the project has gone through the necessary local review process.

Up to now, sales in the Authority's industrial parks have involved vacant land or buildings requiring substantial rehabilitation, so local building permits have been necessary. If the new ownership involved a change of use, a local variance would have to be obtained as in any private undertaking.

The Authority law allows the Authority to exercise eminent domain in Urban Aid communities and for its parks to be exempt from land use ordinances and regulations but only if these actions have been authorized by the local governing body.

There are several provisions of S. 1408 that concern the Authority.

1. Section 3a, page 2, line 6. Conducting a public hearing in each municipality is impractical. In 1985, 175 municipalities were involved in the Authority's program and approximately the same amount were involved in each of the recent years. Conducting and organizing meetings in such volume through the year, many of which would have to be virtually simultaneous, would require logistical measures beyond practicality, not to mention obstruction of the business objectives of Authority applicants.

2. Section 4, page 3, line 15. Submitting a project report to the Commission on Budget and Planning for review and findings does not seem applicable to the Authority's programs. The Commission was not established to review private business financial assistance applications and is neither structured nor staffed to do so with reliability or confidence. The purpose of the Board of the N.J. Economic Development Authority is to perform such a review, which it has done since 1974. The Board has been structured and staffed to perform such a review for consistency with overall state economic policy objectives and the public interest.

3. Section 4, page 4, line 55. Locating NJEDA projects consistent with the State's urban policy, except for projects intended to serve a region which contains no such urban center, limits the present program purposes and operations of the Authority. The Authority encourages the overall economic development of the State, particularly economically depressed regions

- whether urban or not - and industries and business activities important to the State's economic expansion and continued prosperity.

4. The proposed broadened definition of project. In the last few years, the Authority has arranged financing for about 500 projects in each year. This does not include its industrial parks development. Many of its projects involve the acquisition of equipment to modernize manufacturing operations. The impact of this equipment on the community is in the form of increased jobs and revenues through increased production capabilities. This equipment usually does not have an environmental impact, so subjecting the business to a public hearing and other requirements of the proposed legislation seems an infringement on a company's business prerogatives.

The description of the Authority's existing procedures shows that the Authority does provide for local input and assisted projects must adhere to applicable local laws. Furthermore, local public hearings for 500 projects would be an administrative nightmare with the end result being a delay of worthwhile projects that would otherwise create jobs and ratables for New Jersey's municipalities and revenues for the State.

The Authority has no quarrel with the intent of S. 1408 but believes that it already meets the purpose of the bill. Given that other authorities which require municipal approval before proceeding with a project have been exempted from S. 1408, the N.J. Economic Development Authority thinks it also should be exempted on this basis. It further believes its inclusion in the legislation would be detrimental to the economic development aims of the State.

A-5x

QUALIFICATIONS

*Active in Real Estate Appraising since 1965. Associated with the J.M. Cleminshaw Co. from 1962-1973. Field supervisor for 1969-1973. Certified by the STATE of NEW JERSEY as a TAX ASSESSOR, 1972.

*Participated as appraiser and/or supervisor in the following municipalities in New Jersey, New York and Delaware that have been revalued.

NEW JERSEY

Borough of Avalon
Township of Bernards
Township of Boonton
Town of Boonton
Township of Bridgewater
Borough of Butler
Borough of Cape May Point
Borough of Chatham
Town of Clinton
Town of Cranford
Borough of Glen Ridge
Borough of Hawthorne

Borough of Livingston
Township of Millburn
Borough of Midland Park
Town of Montclair
Borough of North Vale
Township of Princeton
Town of Roselle
Village of South Orange
Township of Warren
Borough of Washington
Township of Washington
Township of West Windsor

NEW YORK

Town of Ramapo
Village of Hillburn
Village of Sloatsburg
Village of Suffern

DELAWARE

City of Seaford

*Testified before Cape May and Essex County Boards of Taxation.

*Municipal Tax Assessor and Deputy Building Inspector for the Boroughs of Glen Ridge and Verona, New Jersey, from March 1973 to November 1979.

*Tax Assessor of the Borough of Avalon, New Jersey from November 1979 to June 1982. Member of the Planning Board of Avalon for four years.

*Course Work completed at Rutgers, the State University, Extension Division:

Property Tax Administration I, 1969
Real Property Appraisal I, 1969
Real Property Appraisal II, 1971
Case Study: Capitalization Methods, 1975
Basic Capitalization, 1976
Case Study - Appeal Procedures, 1978
New Jersey Assessors' Continuing Education Program, 1975, 1976, 1977

Sylvester A. Bonelli
Sylvester Arthur Bonelli

A-6x

Potential Effect on Bloomfield Tax
Revenues Caused by Construction of McDonalds

Assumptions:

Average market value of the 375 homes
in the Brookdale Section which would be
directly affected by the construction
of McDonalds \$ 140 thousand

The anticipated revaluation, 1986-1987
would reflect a value of \$ 52.5 million
with a tax rate at approximately 65% - 5.92/100

Construction of McDonalds would change the
character of the area from an A1 Residential
to one adjacent to a commercial zone with
air-noise pollution and 24 hour restaurant-type
activity where before there was none.

Study of sales along Lindbergh Blvd. tend to
show locations farthest from commercial activity
increases value. Thus the construction of
McDonalds would lower values up to 20% or more . . . \$ 10.5 million

The immediate ratable loss of a possible
\$ 10.5 million would reflect a tax shortfall
for the first year at a 5.92/100 rate of \$ 621,000

This loss could increase yearly because value
appreciation would be slower than normal and
Bloomfield could lose a taxable value of 375
homes at an average of 35,000 each or \$ 13, 125,000

This relates to an approximately yearly tax
shortfall at a \$6.00 rate of \$ 787,500

All township residents would be responsible for
this Tax Revenue Shortfall.

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Reflection of Sales

| <u>Year</u> | <u>Average Sale</u> |
|---------------------|---------------------|
| 1975 | \$ 644,000.00 |
| 1980 - 82 | \$ 98,000.00 |
| 1982 - 85 | \$140,000.00 |

THIS TREND COULD REVERT TO A LOWER APPRECIATION RATE
IF A MCDONALDS IS BUILT IN THIS AREA.

Sylvester A. Bonelli

WILLIAM A. GRIFFIN
REALTOR

42 WEST PASSAIC AVENUE • BLOOMFIELD, NEW JERSEY 07003
338-4422

September 15, 1985

Lindbergh Boulevard
Residents Group
Lindbergh Boulevard
Bloomfield, NJ 07003

To Whom It May Concern:

This writer was today, September 15, 1985, informed that plans are in progress to erect a "McDonalds" on the northbound side of the Garden State Parkway. If information contained in the attached petition is correct, it is my opinion as a local Realtor that this will adversely impact both the saleability and ultimately the selling prices of homes on Lindbergh Boulevard.

William A. Griffin Realty has been actively engaged in the sale of real estate in the subject area for over 20 years. Homes on Lindbergh Boulevard have always been negatively affected to a small degree by the presence and the traffic noise of the Garden State Parkway. However, this is a minor buyer objection compared to the potential adersion to a fast-food restaurant with the associated noise, lights, odors and commercialism. Lindbergh Boulevard currently maintains its residential character which would be undermined if this commercial establishment is completed.

My opinions are based on experience in the Real Estate brokerage business servicing this area of the Brookdale section of Bloomfield. I am a member of the Local Board of Realtors as well as the State and National Association of Real Estate Brokers.

Very truly yours,



William A. Griffin

Bloomfield residents assail plan for fast-food eatery on Parkway

Forty residents, members of the Committee with a Big Beef, turned out for the Bloomfield Council meeting last night to oppose the construction of a fast-food restaurant on the Garden State Parkway.

They said they were opposing the McDonald's because it would be close to homes and charged it might create environmental problems.

Bloomfield is suing the New Jersey Highway Authority, saying that the authority should comply with Executive Order 53, instituted by Gov. William Cahill in 1973. The executive order states that all departments and agencies of the state must prepare and submit to the Department of Environmental Protection an impact statement for construction projects exceeding \$1 million.

But the highway authority contends it is an independent body and not a state department or agency. On Nov. 14, Superior Court Judge Paul B. Thompson ruled that the authority is exempt from going to the state environmental department since it is neither a state agency nor department.

"We have shown our position, the council has shown its support but, unfortunately, we built up our expectations," said Mayor John Kinder. "We thought we had something good going to court. I don't understand this decision."

The restaurant would be on the northbound side of the Parkway above the Watchung Avenue exit. Jack Roster, whose property is 93 feet away from the building, protested.

"I'm very concerned," said Roster. "Today I had a chance to look at the site plan and the loading dock. The

dumpster and loudspeaker are within 100 feet of homes."

Next Saturday at 10 a.m., residents plan to picket a McDonald's located on Broad Street in Bloomfield. A

public meeting will be held by the council next Monday at 7:30 p.m., and residents have invited representatives of the highway authority, McDonald's and the Governor.

Bloomfield residents told eatery is scrapped

By JERRY THOMAS

Senate President Carmen Orechio (D-Berlin) said yesterday that the New Jersey Highway Authority's plan to build a McDonald's fast-food restaurant on the Garden State Parkway within 100 feet of homes in Bloomfield has been scrapped and that the agency has been asked to look for alternative sites.

Orechio said he communicated the decision to Bloomfield residents, whose lives have been disrupted by the construction of Gov. Thomas Kean, who agreed the project should be stopped.

"Gov. Kean agrees with me that this location so close to a residential neighborhood is not the place to construct a fast-food restaurant," Orechio said.

The Governor said he will intervene and ask the highway authority to stop construction immediately, he added.

Officials for the highway authority were unavailable for comment yesterday.

A spokeswoman for the McDonald's Corp. said, "They (McDonald's) did halt the project." She said she was unable to release any other information.

Paul Wolcott, a spokesman for Kean, said the Governor asked the authority to scrap its plans and come up with a new proposal that would not affect nearby residences.

Orechio said the authority began the construction of the restaurant, which it intended to lease to McDonald's, without ever consulting area residents or township officials on its environmental impact or public safety concerns.

"These residents had legitimate concerns that a fast food restaurant in their backyards would have detrimental effect on property values and the quality of life in their neighborhoods," he said.

Vincent Blunno, chairman of the Committee with a Beef, said yesterday that his group, which held several forums in opposition to the highway service area restaurant, has "no more beef."

"We are delighted with the news," said Blunno, "We never lost faith that we would win. This means it will not be built here. It will be moved out of Bloomfield, where it is too close to residential property."

Blunno said he understands that Orechio, who met with Gov. Kean Thanksgiving Eve, "made an impassioned plea on our behalf. We are grateful to everyone," he said.

Orechio said he was also pleased that the township would not have to continue to wage an expensive court battle to stop the construction on the northbound side of the Parkway in the Brookdale section of the township.

Orechio said Bloomfield Mayor John Kinder had charged the McDonald's project violated a 1973 executive order that requires all state agencies planning construction projects costing more than \$1 million to submit an environmental impact statement to the Department of Environmental Protection.

He added that municipal officials had planned to appeal an early lower court ruling that found the highway authority did not have to file the environmental impact statement because it was an independent agency.

An official from Orechio's office said the senator recently introduced legislation that would require all independent agencies, such as the highway authority, to give public notice to residents living near a proposed construction site in the future. He said a Senate committee will review the bill.

He said a Senate committee will review the bill.

A-11

New Jersey News

Wednesday, December 4, 1985 • Section B

Kean halts Parkway restaurant

By Theresa Nance
Staff Writer

BLOOMFIELD — The New Jersey Highway Authority's construction plans to build a McDonald's restaurant on the northbound side of the Garden State Parkway have been halted by Gov. Thomas H. Kean.

Senate President Carmen A. Orechio, D-30th-Essex, said Tuesday he voiced the township's concerns to Kean recently and advised him that Lindberg Boulevard residents would have their lives disrupted if the fast-food chain were built.

While chairing a public hearing last week, Orechio assured residents that he would lobby on their behalf to halt the much debated project.

After listening to Orechio, the

'Governor Kean agrees with me that this location so close to a residential neighborhood is not the place to construct a fast-food restaurant.'

— *Carmen A. Orechio*

governor agreed that the project should be stopped, said Robert Pignatello, Orechio's legislative aide.

"Gov. Kean agrees with me that this location so close to a residential neighborhood is not the place to construct a fast-food restaurant," Orechio said.

The governor said he would intercede and ask the NJHA to stop construction immediately, the senate president said.

The NJHA, Orechio added, had begun to construct the restaurant which it intended to lease to McDonald's without ever consulting area residents or township officials regarding the environmental impact or public safety concerns.

Residents living near the site argued that having the restaurant in their "backyards" would have a detrimental effect on property value and the quality of life in

the neighborhood.

Orechio recently introduced legislation that would require state agencies such as the NJHA to give public notice to residents living near a proposed site in the future. A senate committee will consider the bill Thursday, he said.

The senate president also indicated he was pleased that the municipality would not have to continue to wage an expensive court battle to stop construction in the Brookdale section.

"I'm glad we have been able to save taxpayers money," he said.

The municipality had vowed it would appeal an early Superior Court ruling that stated the NJHA did not have to file the environmental impact statement because it was an autonomous body.

Handwritten mark



New Jersey Highway Authority

EXECUTIVE OFFICES • WOODBRIDGE, NEW JERSEY, 07095 • (201) 442-8600

Garden State Parkway
Garden State Arts Center

COMMISSIONERS

ARTHUR M. STANLEY, Chairman
WELMUT M. LEVEY, Vice-Chairman
HAROLD S. SAMBOL, Secretary
FRANK K. ROBINSON, Treasurer
FRANK J. PADOVANO, JR.
JOSEPH P. MIELE
GEORGE BUCKWALD
GEORGE P. ZILCCHI
Executive Director

April 15, 1986

The Honorable Carmen A. Orechio
Chairman, Senate Independent Authorities Committee
State House Annex, CN-068
Trenton, New Jersey 08625

Re: Senate Bill No. 1408

Dear Senator Orechio:

The purpose of this letter is to express this Authority's concern with the captioned Bill.

The Bill would create a public hearing requirement for the independent authorities listed before any action could be taken on much of the work performed by the authorities in meeting their legislative mandates.

The Bill also provides notice provisions describing work to be done, where information might be obtained regarding same, including a description and identification of the environmental impact of the work and a site plan of the project.

The Bill has been reviewed by our Engineering Staff and our Chief Engineer is of the opinion that the provisions for hearings in each municipality in which the project is located would require multi-hearings on road construction. As a case in point, our Chief Engineer indicates that present work on a microprocessor would, in all probability, be unconscionably delayed since portions of the microprocessor system are located in some 50 municipalities from one end of our State to the other. It is the opinion of our Chief Engineer that the delay occasioned by the need to conduct multi-public hearings, prepare the plans, reports and documents required by the Bill, and address all concerns which may be generated at the hearings, would occasion substantial delay. It is his view that our five-year capital improvement plan, under the provisions of this Bill, would take ten years and further, that engineering costs

A-13x

would increase 10%, with an overall construction cost increase of a minimum of \$4 million. The \$4 million figure would represent the cost of complying with the notice and hearing requirements of the Bill. There is the additional possibility that the suggested delay, owing to the nature of increasing costs would, in all likelihood, add substantial construction costs before work required could be completed.

A further difficulty with the Bill is that it tends to promote factional interests at the expense of the public at large. As a practical matter, the legislation provides a powerful tool to those who may have a parochial objection to a particular project which would advance the public interest of all residents of our State. It, of course, would also seriously hinder this Authority and other autonomous agencies in their efforts to meet the public need for which they were created. Most of the agencies subject to the Bill provide essential government services without creating a tax burden. They are, for the most part, self-supporting with the sale of Revenue Bonds and use fees. These authorities were created by the Legislature as independent entities and given broad powers to accomplish important beneficial public goals. In creating these agencies, the Legislature well understood that subordinating the various authorities' powers by creating control in local government agencies would subvert their ability to carry out projects in the public interest.

In New Jersey Turnpike Authority vs. Sisselman, 106 N.J. Super 358 (App. Div. 1968), the court recognized the beneficial legislative intent to maintain the independence of authorities from local control when it held that a proposed alignment of the New Jersey Turnpike Authority was not subject to regulation by a local planning board. In reaching that conclusion, the court stated that to rule otherwise would ". . . delay, disrupt, fragmentize and possibly delay completion of this necessary public project." The court's comment may well be applied to the consequences of this proposed Bill.

Notwithstanding our indicated concerns with the Bill, we would like this Committee to clearly understand that it is not our intent to foreclose informed participation by local governing bodies and their residents on certain works conducted by the Authority in carrying out its responsibilities.

As you know, in recent months, this Authority has been involved in a dispute with the Township of Bloomfield over the construction of a McDonald's Restaurant at its Brookdale North Service Area. At the time that project was planned, the Authority went to great lengths to prepare a press release announcing the construction

April 15, 1986

of the proposed restaurant. Unfortunately, the press release did not reach those persons most interested in the proposed construction. As a consequence of that difficulty, as a matter of procedure, the Authority now, in writing, advises municipalities and counties of work to be undertaken in their respective communities as a matter of course.

The Legislature, under certain circumstances, has determined when and where environmental studies are required for development. This Authority has and will continue to prepare whatever environmental impact studies may be necessary under existing legislation to that effect.

It is our opinion that the Bill, while addressing an important public concern--notice to municipalities of pending work by independent authorities--does so in a fashion which is costly in terms of delay and expenditures of quasi-public funds and in light of the fact that this Authority has, along with other similar agencies, concluded that it is in the public interest to notify municipalities and counties of work being contemplated in their respective jurisdictions, and may well be unnecessary legislation. The attached letters to city and county officials evidence our concern with providing such information to interested municipalities and counties.

For these reasons, we respectfully request that the Bill not be recommended for reporting out to full committee or passed in its present form.

We would appreciate a further opportunity to consult with you, members of your Committee, and appropriate staff persons if you believe such action is appropriate and necessary in light of our concerns as expressed in the foregoing.

Sincerely,

George P. Zilocchi
Executive Director

GPZ/fm

cc: Members, Senate Independent
Authorities Committee

A-15x

Testimony regarding Senate Bill NO. 1408 before Senate Committee on Independent Authorities.

Testimony of Vincent J. Biunno, Chairman of the Committee with The Big Beef, Thursday, March 17, 1986 in the Town Council Chambers of Township of Bloomfield, Bloomfield, New Jersey

Mr. Chairman, Members of the Committee:

My name is Vincent J. Biunno. I am a resident at 60 Lindbergh Boulevard in Bloomfield, New Jersey. I have lived at that address since 1953 and represents my only place of residence where I have raised my family of two children who now are married and live outside of Bloomfield.

I am testifying here today in favor of passage of Senate Bill No. 1408 as the only means of protecting innocent citizens from the devastating effects of the unlimited powers that threaten the very basic rights of individuals.

Lindbergh Boulevard is a residential Class A area in what is known as the Brookdale section of Bloomfield. It is bounded and runs parallel to a portion of the north bound lane of the Garden State Parkway. It represents one of the most expensive taxable areas of Bloomfield and the homes on Lindbergh Boulevard are all one family dwellings which have been kept in good repair and reflect improvements by the individual homeowners at their own expense.

Between the Parkway and the Boulevard is a 20-acre site which now houses a State Police Barracks and a gasoline station.

A-16x

Back in 1954, when the parkway was built, the plans for this area included a snack bar and a maintenance facility. At that time at the request of the property owners, Governor Robt. B. Meyner arranged a meeting with Lindbergh Boulevard residents and the then Authority Chairperson, Katherine Elkes White, now deceased.

The meeting resulted in a compromise agreement whereby the Authority offered the residents the option of accepting placement of the police barracks and the gasoline service station, both considered necessary to the successful operation of the Parkway in exchange for the guarantee that the maintenance building and restaurant would never be built at that site.

In August of 1985, without notification to the Township representatives or to the residents on Lindbergh Boulevard, the Authority and McDonald's Corporation signed a pact to build a restaurant behind Lindbergh Boulevard.

Like thieves in the night, workmen hired for this purpose by McDonald's and the Authority began to rape the land and uproot trees from this beautiful area without prior notification and without any application to Bloomfield for work permits. This is the kind of wanton disregard for the public that is reflected in the present powers of this Authority.

Thanks to the neighborhood vigil of residents who are community minded and alert we were able to expose this conspiracy against the most residential areas of our township with a commercial restaurant not considered an essential service to the travellers on the Garden State Parkway.

Fortunately with the help of our elected representatives in

A-17x

Government from our Mayor and Council including our previous assemblyman and current assemblywoman and, of course, our own Senator Orechio with the help of the media we were able to affect an edict from Governor Kean to stop the project and move it out of Bloomfield somewhere else on the Parkway.

Emphasizing the need for this legislation is the fact that even the Superior Court of New Jersey was powerless to help remedy this terrible wrong. Judge Paul Thompson ruled that McDonald's had every right to build another Parkway restaurant because an authority is an autonomous body, answering at this time, to no one but itself. What the Judge had said was that Authorities can do whatever they want.

Like all official and quasi-official bodies, authorities should serve the public interest. However, when the public interest is cast aside by the legal tyranny of an impersonal autonomous body, it is time to put limits on the powers allowed. Senate Bill No. 1408 is needed badly and it is needed now.

Attached to my testimony is a letter from a local Real Estate Broker attesting the effects of such disregard for the public interest and what it could mean in loss of economic well being of affected property owners.

A-18x

1.

SENATOR AND CHAIRMAN ORECHIO AND MEMBERS OF THE SENATE INDEPENDENT AUTHORITIES COMMITTEE, WELCOME TO THE TOWNSHIP OF BLOOMFIELD (HOME OF THE BIG BEEF).

AS YOU ALL KNOW, THE TOWNSHIP OF BLOOMFIELD, SHOULD BE CONSIDERED AS THE CATALYST FOR SENATE BILL No. 1408, THE SUBJECT OF THIS HEARING.

ON BEHALF OF THE GOVERNING BODY AND THE CITIZENS OF THE TOWNSHIP OF BLOOMFIELD, I THANK YOU FOR YOUR CONCERN AND RESPONSE TO THE RECENT DIFFICULTIES THE TOWNSHIP HAS SUFFERED WITH THE NEW JERSEY HIGHWAY AUTHORITY.

THE TRUTH IS "NO MAN IS ABOVE THE LAW" - WE IN BLOOMFIELD, ARE OF THE OPINION THAT NO "INDEPENDENT AUTHORITY IS ABOVE THE LAW EITHER".

WE HAD HOPED THAT VARIOUS GOVERNMENTAL AUTHORITIES, ON ALL LEVELS, WOULD HAVE RECOGNIZED THIS PRINCIPLE, BUT IF THIS BILL IS NECESSARY FOR THEM TO REALIZE THIS, THEN SO BE IT.

THE CITIZENS AND THE GOVERNING BODY OF BLOOMFIELD APPLAUD, SUPPORT, AND CHEER THE PURPOSES AND GOALS OF SENATE BILL NO. 1408.

THIS BILL WILL HOPEFULLY, PERMIT COMPROMISE, RECONCILIATION, AND JUSTIFICATION OF IDEAS, DESIRES AND NEEDS.

A-19x

2.

THIS BILL WILL GIVE TO ALL CONCERNED THE RIGHT AND ABILITY TO SPEAK UP AND BE HEARD ON THE QUALITY OF LIFE WE ALL DESIRE.

ONE OF THE DEFINITIONS IN WEBSTER'S DICTIONARY FOR THE WORD " INDEPENDENT" IS " NOT SUBJECT TO THE CONTROL OF OTHERS".

WE IN BLOOMFIELD ARE NOT SEEKING TO CONTROL THE NEW JERSEY HIGHWAY AUTHORITY, OR ANY OTHER AUTHORITY. IN RETURN WE ASK THAT THEY NOT SEEK TO CONTROL US.

WE ASK THAT ALL CITIZENS, WHETHER INDIVIDUALS, GOVERNING BODIES, OR AUTHORITIES, RECOGNIZE THE OTHER SIDE AND COOPERATE WITH EACH OTHER AS RESPONSIBLE PEOPLE SHOULD.

PERHAPS, WITH THE IMPLEMENTATION OF THE PURPOSES AND GOALS OF THIS BILL, YOUR COMMITTEE CAN DELETE THE WORD " INDEPENDENT" FROM ITS TITLE.

I HAVE REVIEWED SENATE BILL NO. 1408, AND THE PROVISIONS THEREIN, AND OFFER THE FOLLOWING SUGGESTIONS:

- 1- SECTION 3B - BE AMENDED TO PROVIDE AT LEAST 30 DAYS NOTICE OF A HEARING. IT IS MY OPINION THAT A 15 DAY NOTICE IS MUCH TOO SHORT A TIME FRAME WITHIN WHICH, TO PROPERLY DIGEST AND EVALUATE THE SCOPE AND EFFECT OF A PROJECT, UPON THE MUNICIPALITY WITHIN WHICH THE PROJECT IS COMTEMPLATED.

A-20x

3.

2 - FOR BASICALLY THE SAME REASONS, SECTIONS 3D SHOULD PROVIDE FOR A 30 DAY PERIOD.

3 - SECTION 4 OF THIS BILL, AMENDING SECTION 6 OF PUBLIC LAW 1981, CHAPTER 20, BE AMENDED TO INCLUDE A PROVISION THAT REGARDLESS OF WHO IS UNDERTAKING THE COST OF THE PROJECT THIS LAW APPLIES.

FOR EXAMPLE, AN AUTHORITY WOULD NOT BE EXEMPT OR IMMUNE FROM THIS BILL WHEN ENACTED INTO LAW, BY THE FACT THAT A THIRD PARTY IS PICKING UP THE COST AND NOT THE SPECIFIC AUTHORITY INVOLVED.

THE REMAINDER OF THE BILL CONCERNS ITSELF WITH THE REPORT TO THE COMMISSION ON CAPITAL BUDGETING AND PLANNING AND OUR STATE LEGISLATURE, AND I EXPECT THE INTERESTED PARTIES THEREOF WILL MAKE THEIR APPROPRIATE COMMENTS TO THIS COMMITTEE.

IN CLOSING, I REFLECT ON PRESIDENT ABRAHAM LINCOLN'S GETTYSBURG ADDRESS AND I RESPECTFULLY OFFER HIS CLOSING REMARK ON THAT MEMORABLE DAY -

"THAT THIS NATION, UNDER GOD, SHALL HAVE A NEW BIRTH OF FREEDOM, AND THAT GOVERNMENT OF THE PEOPLE, BY THE PEOPLE, FOR THE PEOPLE SHALL NOT PERISH FROM THE EARTH."

THANK YOU AND GOOD MORNING.

A-21X



NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY

SUITE 205 • 133 FRANKLIN CORNER ROAD • LAWRENCEVILLE, NEW JERSEY 08648 • (609) 530-4377

EDWARD J. BAMBAC
Executive Director

April 16, 1986

Senate Independent Authorities Committee
State House Annex
CN-068
Trenton, NJ 08625

Gentlemen:

The Educational Facilities Authority has been asked to comment concerning Senate, No. 3431, an Act concerning certain State authorities and amending P.L. 1981, c. 120. This Authority opposes several sections in the proposed Bill:

1. The requirement for a hearing in the municipality in which the project is to be located is time consuming and unwieldy, further, to the extent that such a hearing encourages the local municipality to assume that it has power of approval over the initiation of a project is contrary to the powers delegated by the Legislature to the Educational Facilities Authority as it administers State college construction projects. The hearing process, again, if approval by the municipality is inherent, also is in conflict with the powers and duties of the New Jersey Board of Higher Education which has been delegated the duty of determining State college capital needs under its Statute 18A:64. The Board of Higher Education is specifically empowered to deal with policy making issues, determination of needs for facilities and overall policy matters for the New Jersey public college system. It is inappropriate that a municipality have veto power over the actions of that Board.
2. Section 6 of the Act will require approval of the Commission on Capital Budgeting and Planning for projects at the State colleges. Again, this is the responsibility of the Board of Higher Education and the Board of Trustees of the individual colleges. State appropriations do not flow to Authority projects, and accordingly, State agencies should not have veto power over activities in which they have no financial

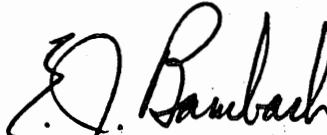
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interest. The Legislature has been quite specific in delegating powers to the Board of Higher Education, the Boards of Trustees of the State colleges and the Authority. This proposal for project report, review and approval by other than those Boards is not in keeping with the provisions of earlier legislation.

3. Paragraph d. of Section 6 requires the filing of a report with the Legislature. The Authority, by law, is required to report annually to the Governor and the Legislature and does so in a timely fashion. To submit reports for individual projects while in the planning stages, during construction, or later, I respectfully submit appears to impinge on the separation of the powers of the several branches of government.

Thank you for your consideration.

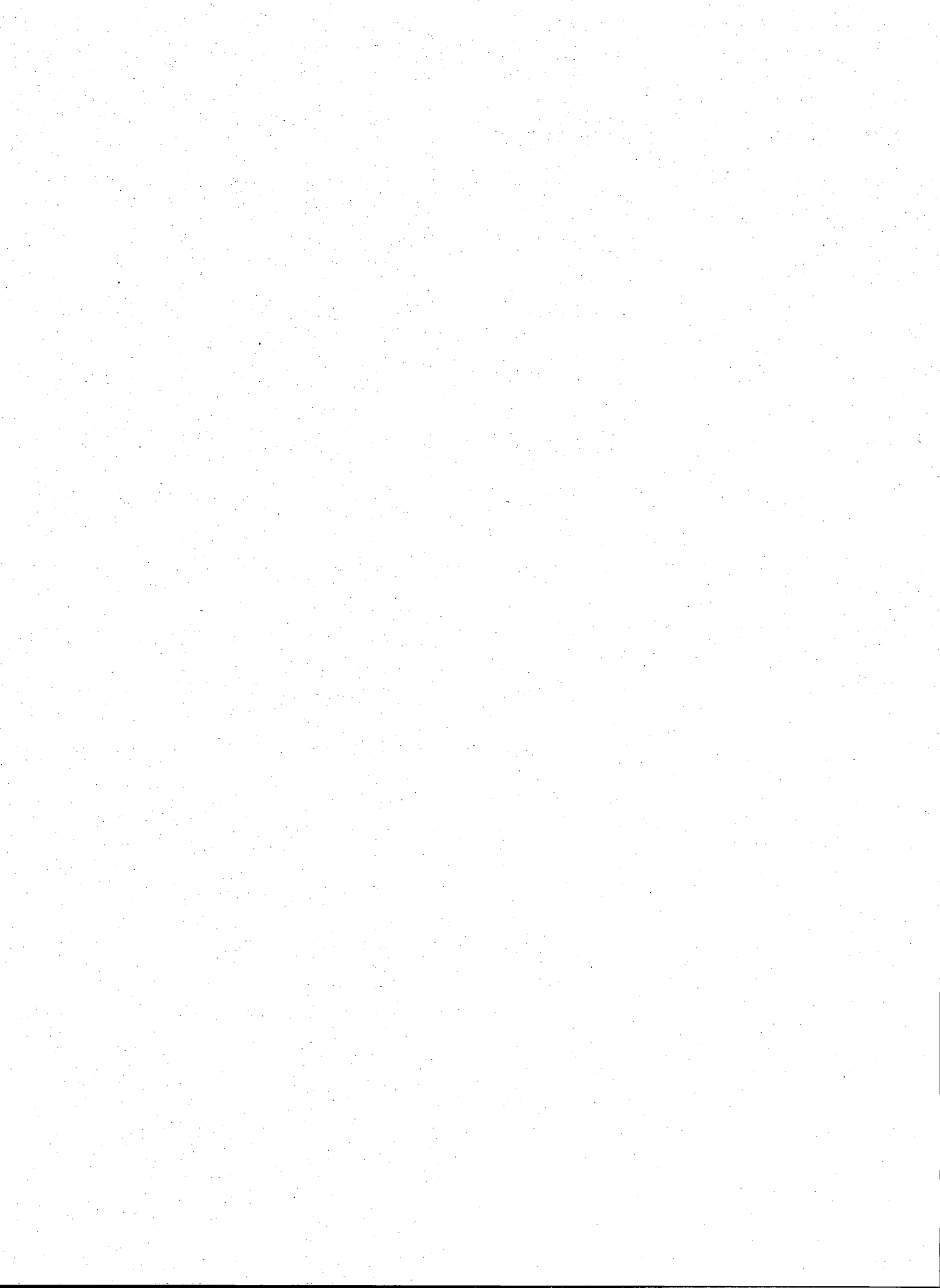
Sincerely,



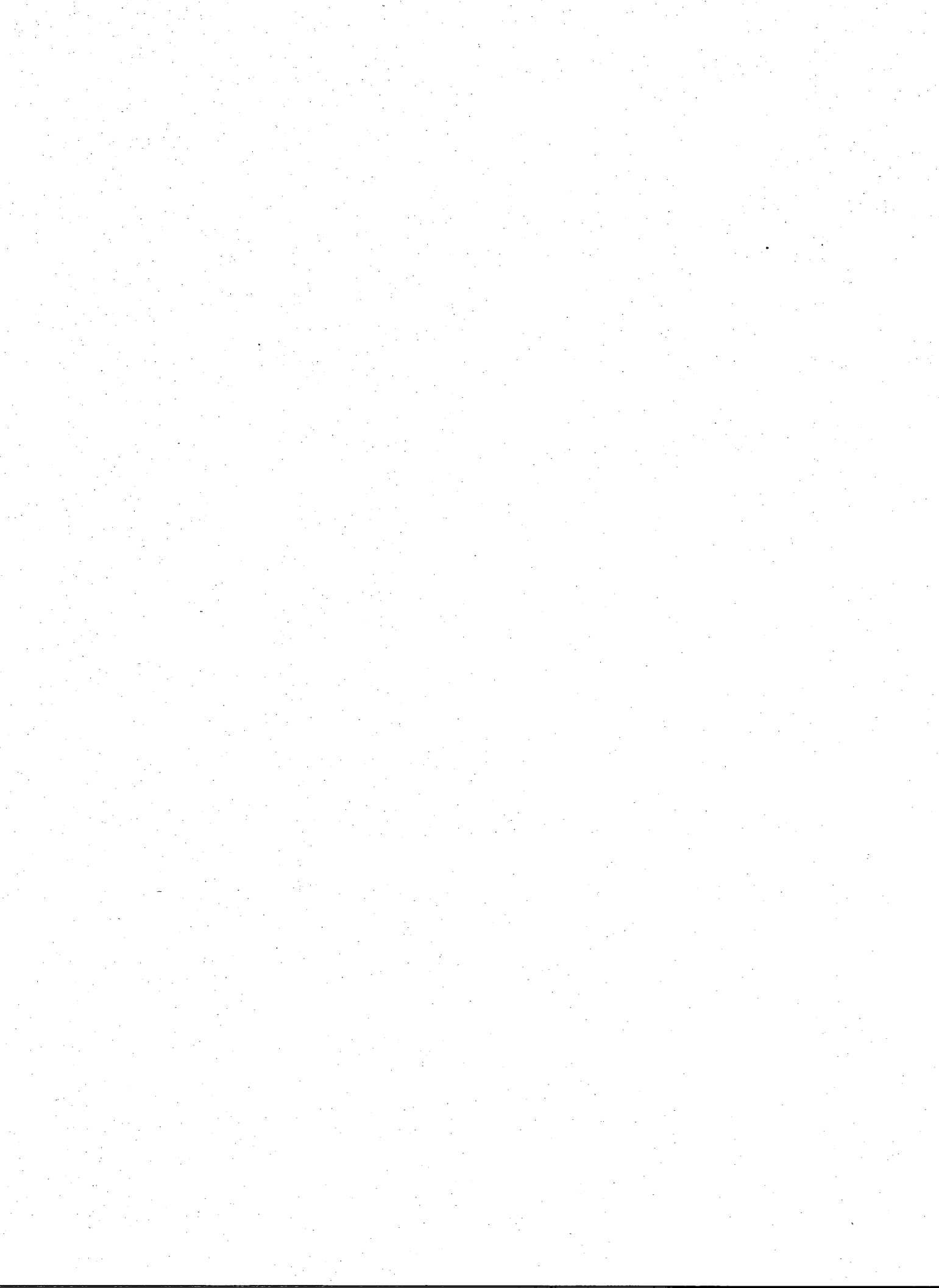
Edward J. Bambach
Executive Director

EJB/ckz

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APPENDIX B
(Responses to inquiries
from Committee members)



April 21, 1986

M E M O R A N D U M

TO: State Independent Authorities

FROM: Spiros J. Caramalis, Aide
Senate Independent Authorities

SUBJECT: Questions submitted by Senate Independent Authorities
Committee in conjunction with public hearings being
held on Senate Bill 1408

- (1) Describe your agency's project planning and site selection processes. If relevant, distinguish by types of projects.
- (2) What opportunities does your agency afford for local involvements by public officials or residents in your planning processes? Describe and, if applicable, identify at what stage(s) of project development and site selection local viewpoints are solicited by your agency or, if the project application is submitted by another public agency, by that agency (identify and describe).
- (3) What efforts are made to comply with municipal development regulations and applicable county or for that matter, State plans? Describe in terms of authority's project planning, site selection and site planning processes.
- (4) What studies are prepared as to environmental, social, economic or other effects of a proposed project on the host and neighboring communities? What opportunities are afforded for public review and comments on the studies?
- (5) What are your agencies recommendations for providing or improving consultations with local officials and concerned residents?
- (6) Is it the view of your agency that the provisions of Senate Bill 1408 would violate authority covenants with bondholders? If so, please submit legal arguments in support of your position and copies of the pertinent provisions of the bond covenants in question.
- (7) Are authority actions subject to review by the courts on the grounds that an action is arbitrary, unreasonable or capricious?
- (8) What is the legal force of local development regulations and county and state development plans and policies on authority projects? Distinguish by types of projects.

B-1x



New Jersey Economic
Development Authority

Borden R. Putnam
Chairman

James J. Hughes, Jr.
Executive Director

April 25, 1986

Spiros J. Caramalis, Aide
Senate Independent Authorities Committee
State House Annex, CN-068
Trenton, New Jersey 08625

Dear Mr. Caramalis:

I would like to thank the Senate Independent Authorities Committee for the opportunity to present testimony on S. 1408 at the April 17th meeting of the Committee. Although I did provide written testimony at that time, I think it might be helpful to address the specific questions raised by the Committee. Basically, my responses will restate the testimony submitted to the Committee.

- (1) Describe your agency's project planning and site selection processes. If relevant, distinguish by types of projects.

The Authority operates three programs which are relevant to S. 1408:

- Industrial Development Bond (IDB) program - The Authority issues bonds for the benefit of business projects needing financing for fixed assets such as land, buildings and equipment. The interest earned on the bonds is exempt from federal taxation. The bonds are purchased by private investors who pass the interest savings on to the business using the bond proceeds. Repayment of the bonds is the sole responsibility of the business borrower. The IDB program is the largest program of the Authority and represented 99% of the financing arranged through the Authority in 1985.

- Urban Industrial Parks Program - In an effort to attract and retain jobs and industry in depressed areas, the Authority acquires and improves large tracts of land and existing plants and sells the subdivided parcels and buildings to private companies.

- Direct loans and loan guarantees - Guarantees of conventional loans for working capital purposes and fixed assets and guarantees of IDBs are provided to businesses located in economically targeted communities. Direct loans of up to \$250,000 also are available to such businesses in these locations that cannot obtain financing on their own.

The projects assisted through the Authority's tax-exempt bond, direct loan and loan guarantee programs are all private projects, not public projects. These projects are conceived and carried out by the private business sector so the Authority does not participate in the project planning and site selection processes.

If the Authority identifies a potential site or facility under its industrial parks program, it conducts feasibility studies on soil conditions, the structural integrity of the buildings and marketability. If it determines that a project is feasible, the Authority will develop a master plan for its redevelopment.

- (2) What opportunities does your agency afford for local involvements by public officials or residents in your planning processes? Describe and, if applicable, identify at what stage(s) of project development and site selection local viewpoints are solicited by your agency or, if the project application is submitted by another public agency, by that agency (identify and describe).

The Authority has in place various procedures which facilitate public and local governmental input into these projects. These procedures can be summarized as follows:

- a) Adherence to Open Public Meeting Act for monthly Authority Board meetings at which projects are presented for approval. Notice is sent to the Star Ledger and the Times at least 48 hours prior to the meeting and a meeting notice is posted on the Secretary of State's bulletin board at the State House.
- b) Adherence to the public notice requirements of the federal Tax Equity and Fiscal Responsibility Act of 1982 for projects seeking IDB assistance. Public notice of the public hearing (Authority Board meetings) for projects seeking IDB assistance is published at least 14 days prior to the public hearing. This notice is published in the Times, Star Ledger and a newspaper of general circulation available to residents of the municipality in which the project will be located. Information in the notice includes the application number, name of owner, operator or manager, project address, maximum aggregate face amount of the bond issue, total project cost and a description of the project. Members of the public have an opportunity to comment on proposed Authority projects at the Board meeting. Copies of project applications are available to the public upon request. Minutes of the meeting also are printed and available to the public. All projects contemplated by the Authority are brought before the Authority Board for discussion and approval. These include IDB projects, direct loan and loan guarantee requests, proposed purchase of sites for industrial parks, sale of parcels within the parks, and contracts for site improvements.

c) Site plan and subdivision approval of proposed urban industrial parks from local planning board. Municipal endorsement of a proposed park is essential to a park's success. Unless the Authority is assured of municipal support for the park, it will not proceed since it usually relies on tax abatement incentives and other forms of municipal contributions to make its parks feasible.

(3) What efforts are made to comply with municipal development regulations and applicable county, or for that matter, State plans? Describe in terms of authority's project planning, site selection and site planning processes.

All projects approved by the Authority are subject to the normal local and state requirements that any business must meet. Generally, local zoning and planning approvals must be in place or there must be some written assurance of municipal support for the project before a project can close. Funds are not disbursed until necessary permits are secured, such as a building permit, and other approvals obtained which are essential for the project to proceed.

In terms of the direct loan program, the Authority does not provide interim financing. Funding is not provided until a certificate of occupancy has been issued which means that the project had to be approved locally. In terms of a guarantee, a bank normally will not disburse loan funds until it is assured a project can go forward; again, this means that the project has gone through the necessary local review process.

Up to now, sales in the Authority's industrial parks have involved vacant land or buildings requiring substantial rehabilitation, so local building permits have been necessary. If the new ownership involved a change of use, a local variance would have to be obtained as in any private undertaking. The Authority law allows the Authority to exercise eminent domain in Urban Aid communities and for its parks to be exempt from land use ordinances and regulations but only if these actions have been authorized by the local governing body.

The Authority Board includes the cabinet officials of the Departments of Commerce and Economic Development, Labor, Community Affairs, Treasury and Environmental Protection. If any of these departments have a concern about a particular project, they can bring it up for discussion at the Authority Board meeting.

- (4) What studies are prepared as to environmental, social, economic or other effects of a proposed project on the host and neighboring communities? What opportunities are afforded for public review and comments on the studies?

The Authority does not prepare studies on business projects receiving financing assistance. As a part of the application process, it does request information relating to job creation and retention, project use, and construction/rehabilitation plans, since its mandate is to promote employment opportunities, the local and state tax bases and a diversified economy. As stated before, Authority assistance is rendered to private enterprises, not public projects, so these projects are subject to all applicable environmental and other local and state regulations including any studies which are required.

B-6x

The Authority's industrial parks also must comply with environmental and other regulations for redevelopment to proceed. Proposed contracts for site improvements and other redevelopment work are brought before the Authority Board for review and approval before any agreements are signed.

- (5) What are your agencies recommendations for providing or improving consultations with local officials and concerned residents?

The Authority believes that its existing procedures provide adequate opportunities for local governmental and public input.

- (6) Is it the view of your agency that the provisions of Senate Bill 1408 would violate authority covenants with bondholders? If so, please submit legal arguments in support of your position and copies of the pertinent provisions of the bond covenants in question.

Not applicable.

- (7) Are authority actions subject to review by the courts on the grounds that an action is arbitrary, unreasonable or capricious?

The Authority is a "sue and be sued" agency (C.34-1B-5).

Any decision, action or administrative rule of the Authority may be appealed to the Superior Court Appellate Division.

- (8) What is the legal force of local development regulations and county and state development plans and policies on authority projects? Distinguish by types of projects.

Authority projects are subject to local, county and state development regulations. The Authority may not override these rules except with the express permission of the local governing body as cited above.

hope you will find this information helpful in your review of S. 1408.

Sincerely,


James J. Hughes, Jr.
Executive Director

JH, Jr: jaw

B-7x



**New Jersey Economic
Development Authority**

**Borden R. Putnam
Chairman**

**James J. Hughes, Jr.
Executive Director**

May 14, 1986

**MEMO TO: Honorable Carmen A. Orechio, Chairman
and the Members of the
Senate Independent Authorities Committee**

**FROM: James J. Hughes, Jr.
Executive Director**

SUBJECT: S. 1408

I hope you have had an opportunity to review my testimony and recent correspondence relating to S. 1408. From the materials provided, I also hope you have gotten the sense that the N.J. Economic Development Authority is cognizant of the public aspects of its activities and has acted in a responsible manner to accommodate the need for public and local governmental input.

To summarize my previous submissions, projects receiving financing assistance through the Authority are considered private sector endeavors and therefore are subject to the normal local, county and state requirements that any business must meet when it undertakes construction or renovation activities. In regard to the Authority's industrial parks program, the Authority insists on a strong display of municipal support before it proceeds with a site and also secures site plan and subdivision approval from the local planning board for its proposed redevelopment plans.

The vast majority of projects assisted by the Authority involve some form of participation by a private lender. Private lending institutions as a general rule will not disburse funds until they are assured that a project can proceed - this means the project must have the necessary local approvals and permits.

The Authority keeps the public and local officials abreast of proposed projects under consideration by the Authority through several vehicles: notification of monthly Board meetings in compliance with the Open Public Meeting Act; adherence to the public notice requirements of the federal Tax Equity and Fiscal Responsibility Act of 1982 for projects seeking tax-exempt bond assistance; and public access to project applications and to minutes of Authority Board meetings.

Hon. Carmen A. Orechio &
the Members of the
Senate Independent Authorities Committee
May 14, 1986
Re: S. 1408

I believe that the Authority's existing procedures and policies satisfy the intent of S. 1408, which is to insure adequate opportunity for local government and public input. Certain authorities have been excluded from the provisions of S. 1408 because these entities require municipal approval before proceeding with a project. For the reasons I have stated, I feel the Authority's practices are comparable to those of these exempted agencies and, therefore, the N.J. Economic Development Authority should be excluded from the provisions of the legislation.

Additionally, in 1985, 175 municipalities were involved in the Authority's programs and assistance was granted to approximately 500 projects. With this kind of volume, I am concerned about the consequences of subjecting the Authority to the local public hearing requirements of the bill. I feel these requirements will seriously impair the Authority's ability to carry out its mandate to promote the state's economic development.

If I can be of further assistance in your discussions of S. 1408, please feel free to call upon me again.

TH x


jb

c: Commissioner B. Putnam
Michael Cole
Dina Sama
Norma LoSavio

B-9x



New Jersey Highway Authority

EXECUTIVE OFFICES • WOODBRIDGE, NEW JERSEY, 07095 • (201) 442-8600

Garden State Parkway
Garden State Arts Center

COMMISSIONERS

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JOSEPH P. MIELE
H. GEORGE BUCKWALD

GEORGE P. ZILOCCHI
Executive Director

May 9, 1986

Mr. Spiros J. Caramalis
Aide to the Committee
Senate Independent Authorities Committee
State House Annex CN-068
Trenton, NJ 08625

Dear Mr. Caramalis:

Enclosed find original and fourteen copies of the New Jersey Highway Authority's response to the questions transmitted in your letter of April 21, 1986 regarding Sentate-1408.

Should you have any questions, or need any further information in this regard, please contact me at (201)442-8600 Ext.307.

Sincerely,

GEORGE P. ZILOCCHI
Executive Director

GPZ:rb
Enclosures:

B-10x

Questions submitted by Senate Independent Authorities Committee in conjunction with public hearings being held on Senate Bill 1408.

Question No. 1

Describe your Agency's project planning and site selection processes. If relevant, distinguish by types of projects.

Answer:

The need for a project such as the widening of an area on the Garden State Parkway or the construction or renovation of a new service area is determined by the needs of the motoring public. The Authority constantly measures flow of traffic on the Parkway. Annual traffic volume reports are prepared and analyzed by the Authority's traffic engineers. Based upon the traffic analysis, report of restaurant sales, and fuel sales from service area operations and other pertinent data, the Commissioners adopt a five-year capital improvement program setting forth all proposed projects. This program is adopted at a regular meeting of the Authority. Full details of the program are provided to the Department of Transportation, the press and are available to government officials and the general public on request.

Most of the Authority's construction work consists of reconstruction or widening of the Parkway roadway and bridges and takes place within existing right-of-way. Expansion of service areas, maintenance yards, and police barracks also generally occur within land owned by the Authority.

Question No. 2.

What opportunities does your agency afford for local involvements by public officials or residents in your planning processes. Describe and, if applicable, identify at what stages of project development and site selection processes local viewpoints are solicited.

Answer:

Before the Authority is permitted to impose a new toll or raise the toll at any toll plaza, it is required by law to obtain the approval of the Governor, and the Treasurer or Comptroller, and to conduct a public hearing. Subsequently, the Commissioners must adopt a regulation to implement the new toll or increased toll. This action is subject to veto by the Governor.

While the Authority is generally not subject to local regulation, it nonetheless desires to be a good neighbor. The Authority has always had a policy of advising local officials of impending construction projects which would

affect adjoining municipalities. In the past, this contact has been made primarily through the Authority's consulting engineers who designed the projects. The Authority now undertakes this program directly by notifying county and municipal officials of proposed construction as early in the design stage as possible so as to hear the legitimate concerns of those officials. The Authority believes that this program protects the interests of all parties.

Question No. 3

What efforts are made to comply with municipal development regulations and applicable county or, for that matter, State plans. Describe in terms of Authority's project planning, site selection and site planning processes.

Answer:

Where the Authority widens the Parkway, it frequently is subject to regulation by the New Jersey Department of Environmental Protection, the Federal Environmental Protection Agency, the United States Corps of Engineers, or the United States Coast Guard. The Authority regularly submits applications to these regulatory agencies for CAFRA permits, Pinelands development permits, waterfront development permits, stream encroachment permits, water quality permits, etc. On every construction project, where the ground must be disturbed, which is almost every construction project, the Authority applies for plan approval from the appropriate Soil Conservation District. When the Authority constructs a building, it is required to file the plans with and obtain approval of the State Department of Community Affairs to insure compliance with the State Uniform Construction Code.

The Authority works closely with the New Jersey Department of Transportation to coordinate its plans. In addition to frequent meetings with NJDOT, a representative of the NJDOT attends every Authority meeting. The Authority endeavors to adapt its plans to county master plans where they exist.

Where Parkway interchanges connect with municipal and county roads, the Authority cooperates with the municipality and county in an effort to develop plans which are agreeable to all parties.

We believe the Authority has a good record in assisting counties and municipalities in improvement of highway facilities in the vicinity of its interchanges. At Newman Springs Road in Monmouth County, for example, the Authority entered into an agreement with the County for the construction of a traffic light at the western ramp terminal of Interchange 109. The County designed the improvement,

awarded the construction contract, supervised the work and the Authority paid the cost. When the construction cost exceeded the County estimate by over 40%, the Authority agreed to increase its contribution to pay the full construction cost and the County assumed only the design cost.

Question No. 4

What studies are prepared as to environmental, social, economic or other effects of a proposed project on the host and neighboring communities? What opportunities are afforded for public review and comments on the studies?

Answer:

Where the Authority is required by law or by regulations of the New Jersey Department of Environmental Protection to prepare environmental impact statements, it does so. Such statements are usually prepared to obtain a CAFRA permit and may be required to obtain other environmental permits, such as Pinelands development permits, stream encroachment permits, water quality permits, etc. In the case of stream encroachment permits, for example, if the permit is considered to be a major application, the Authority is required to notify the officials of the affected municipality and county of its plans for construction in the stream. Where law or regulation requires that a public hearing be held prior to issuance of a permit, it is conducted by the agency issuing the permit. The requirement for environmental impact statement applies primarily in the CAFRA area from the Raritan River South to Cape May County.

Where the Authority operates sewage treatment plants in service areas, it is required to obtain, and periodically renew, permits from the Department of Environmental Protection. In some instances, the Department conducts a public hearing before granting or renewing such a permit. The Authority is also required to obtain permits from the Department of Environmental Protection for underground fuel storage tanks.

Question No. 5

What are your agency's recommendations for providing or improving consultations with local officials and concerned residents?

Answer:

The Authority believes its present policy of notification to affected municipalities and counties during the early design phase of a project is more than adequate to provide the opportunity to hear the legitimate concerns of those municipalities and counties.

The Parkway is operated entirely from revenue obtained from its toll paying customers. The Authority is willing

to respond to the needs of the municipalities and counties through which the Parkway passes so long as those needs do not adversely affect its patrons or its bondholders. If the Authority were to construct a new interchange at every location desired by every municipality, the Parkway would soon become a city street and not an expressway.

The Authority found it possible to enter into an agreement with the State several years ago to contribute \$10 million a year towards the construction of local highways because the Authority has managed its affairs efficiently and economically. Since 1980, the Authority has widened major portions of the Parkway in Bergen County, through Essex and Union Counties and in Monmouth County. The Authority is now beginning the widening of the Parkway in Ocean County. If the Authority were required to abide by municipal regulations in each municipality through which the Parkway runs, most of the widening already in use would still be on the drawing board.

S-1408

Question No.6

Is it the view of your agency that the provisions of Senate Bill 1408 would violate authority covenants with bondholders? If so, please submit legal arguments in support of your position and copies of the pertinent provisions of the bond covenants in questions.

Answer:

It is the Authority's position that the provisions of S-1408 may violate the Authority's covenant with its bond holders. Section 501 of the Authority bond resolutions (copies attached) establishes a lien of Authority revenues running to its bond holders. Tolls charged the users of the Garden State Parkway which is operated by the New Jersey Highway Authority are the primary source of funds to pay the bonds both principal and interest. "Section 9 of the New Jersey Highway Authority Act (NJS 27-12B:9) specifies the provisions which the Authority may include in any bond resolution and provides that such a resolution shall constitute a contract with bond holders..." NJHA vs. Sills 109 N.J. Super 424 (1970) at p.427.

"Pursuant to section 9 of the act, the Authority's general bond resolution of July 8, 1953 and its junior bond resolution of July 7, 1962 contain covenants as to the rates of tolls and other charges. For example in the general resolution (1) section 501 pledges the tolls and other revenues of the Authority for the benefit of the bonds issued pursuant to the resolution; (2) various sections establish funds into which the revenues of the Authority are to be paid;" ibid p.427. Subsequent resolutions of the New Jersey Highway Authority authorizing the sale of bonds contain similar provisions. The Sills Court further noted, at page 431:

"Art. IV § VII, par. 3 of the New Jersey Constitution (1947) forbids our Legislators from passing any "law impairing the obligations of contracts***." Art. I §10 of the United States Constitution provides that no state shall pass any "Law impairing the Obligations of Contracts***. First National Bank of Boston v. Maine Turnpike Authority, 153 Me, 131, 136 A.2d 699 (Sup.Jud.Ct.1957), is particularly in point because it involved a modern toll road and held unconstitutional a statute which would have had the effect, if valid, of reducing somewhat the total revenues available for bond holders to whom those revenues had been pledged by contract".

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The provisions of S-1408 will, in the opinion of our Chief Engineer, generate additional engineering costs of \$5.5 million in connection with the Authority's existing \$550 million-five year expansion and maintenance program. Our Chief Engineer is also of the opinion that the time consumed in meeting the requirements of S-1408 will occasion a delay of approximately five years, extending our five-year expansion and maintenance program from a projected completion date of 1991 to 1996. Further, our Chief Engineer is of the view that this delay will substantially increase construction costs owing to possible increases in costs for materials, labor and land acquisition required to meet our expansion goals. In his view the increased costs could reach as much as \$100 million over a period of time which, as we know, must be paid by the users of the Garden State Parkway.

In New Jersey Highway Authority vs. Sills, 111 N.J. Super 313 (1970), the Court concluded that the loss of \$27,300.00 which would be occasioned as a consequence of legislation exempting national guard and army reservists from paying tolls while using the Garden State Parkway under certain circumstances would "impair the obligations of the contract with the bond holders and their trustees. The position of every bond holder will have deteriorated to some extent." ibid.p.319. In reaching that conclusion the Court earlier observed that the loss of \$27,300.00 when compared to the Authority's total revenue in 1969 of \$46,942,171.00 would in all likelihood not cause a default on bonds outstanding nor a situation threatening default, it, nevertheless, reduced bond holders rights under the terms of its contract. The Court further observed that "the possibility of a early call is part of the bond holders contract. The difference between having and not having \$27,300.00 per year will not cause a default, but when viewed as a loss of the means to retire bonds each year, by call or open market purchase, the impact of the statutes become more important." ibid p.316.

The Sills Court, having held that the laws under review constituted an impairment of the bond holders' contract, went on to consider whether these statutes were a valid exercise of the state's police power as to represent a permissible impairment. (emphasis added) p.319.ibid The Court concluded that the laws being considered there could not "stand in the face of the constitutional prohibitions against impairment of contract obligations and that they are unconstitutional." p.321. In its analysis the Court observed that the statutes are "not an attempt to solve an emergency problem and are not addressed to any problem of statewide importance..." ibid p.320.

S-1408 by its terms applies exclusively to the independent authorities named in the bill. Its provisions are not of general application and there is no indication that the bill purports to deal with any emergency problem. The \$5.5 million in increased engineering costs standing alone is at least as significant as the \$27,300.00 loss of revenue addressed in the Sills cases.

Finally, the bill is in direct contravention of the provisions of N.J.S.27-12B:11, wherein the State of New Jersey pledged to holders of New Jersey Highway Authority bonds that it, the State, would not limit or restrict the rights vested in the Authority to fulfill the terms of any agreement made with the holders of its bonds. That section of the statute went on to say that the Legislature would not act in any way to impair the rights or remedies of such bond holders.

For the reasons stated, we are of the opinion that the proposed bill may constitute an impermissible impairment of contract violative of the contract clauses of the Constitution of the United States and the State of New Jersey.

Question No.7

Are Authority actions subject to review by the Courts on the grounds that an action is arbitrary, unreasonable or capricious.

Answer:

Since Authority actions constitute government actions they are subject to review by the courts on the grounds indicated. I might point out, however, that to the best of my knowledge no Court has ruled adverse to the Authority on the indicated grounds on any occasion since the Authority was created by legislation in 1952.

Question No.8

What is the legal force of local development regulations and county and state development plans and policies on authority projects? Distinguish by types of projects.

Answer:

The New Jersey Highway Authority is an independent state authority created by the Legislature in 1952 to construct and operate projects including the Garden State Parkway. The Legislature, in creating the Authority, deemed it to be an instrumentality exercising public and essential governmental functions and the powers were and are held to be an essential governmental function of the State N.J.S. 27:12B-4. The question of the impact that local regulations have on the N.J.H.A. has been addressed by the courts in Township of Bloomfield vs New Jersey Highway Authority 18 N.J. 237 (1955). There the Court, in interpreting the Authority's enabling act, concluded that the New Jersey Highway Authority was not subject to local zoning and building regulations.

It is interesting to note that Township of Bloomfield involved a suit by the Township of Bloomfield for an injunction and declaration that the New Jersey Highway Authority was subject to local zoning and building regulations in the erection of a restaurants and gasoline stations at service areas on the Garden State Parkway within the territorial limits of the Township of Bloomfield. In reaching its conclusion that the Authority was not subject to local regulations, the Court addressed the history of the Garden State Parkway and the rationale for the creation and use of independent authorities to achieve essential statewide governmental purposes. In doing so, the Court made what I believe to be pertinent observations which should assist the Committee in reaching a judgment on the merits of S-1408.

"In his First Annual Message after the adoption of the Constitution of 1947, Governor Driscoll pointed out that our highway requirements were so acute and the current income of the State so limited that it was necessary to consider alternative methods for the financing and construction of needed 'freeways, parkways and inter and intra-city and township highways.'" p.240.

"In his discussion of Authorities And How To Use Them, 8 Tax Review 47 (1947), Luther Gulick discusses the policy arguments pro and con; one of the familiar arguments pro is that the Authority "can reach across political boundaries, across city lines, county lines and even state lines, without raising the stubborn problems of annexation or fulminating the explosive passions of entrenched political organisms." p.240

"With the light of all the foregoing, Governor Driscoll, in his Annual Message to the Legislature dated January 8, 1952, recommended that an Authority be created to complete 'the Garden State Parkway promptly as a revenuefinanced facility.' The Parkway had its origins in 1945 legislation (L.1945,c.83; Abbott v. Beth Israel Cemetery Ass'n of Woodbridge 13 N.J. 528, 533 (1953) but lack of funds has so limited construction by the State that only 22 miles were completed in six years." p.242

It should be noted that following the Authority's creation by the Legislature in 1952, it took two years for the completion of the 174 mile multi-lane Parkway. The Garden State Parkway, which permitted the economic development of much of the central and southern parts of the State, resulted in the creation of hundreds of thousands of jobs in highway and residential construction and additional services to meet the needs of persons since located in those portions of our State. It can also be added that Atlantic City casino gambling would have been impossible without the easy vehicular accessibility which is provided by the Garden State Parkway.

This Authority, notwithstanding its immunity from local regulations and ordinances has, for the most part, over the years of its existence considered and accommodated local, county and state development plans and policies where such accommodation could be reached consistent with its Legislative mandate.

GENERAL BOND RESOLUTION ESTABLISHING
ISSUE OF AUTHORITY BONDS
July 8, 1953

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the limitations of the Resolution) only to pay costs and expenses properly and directly attributable to the construction or acquisition of Pledged Projects and are hereby pledged, pending application to payment of such costs and expenses, for the security of the payment of the principal of and interest on the Bonds and shall at all times be subject to the lien of such pledge.

(2) The proceeds of the Bonds of any Series paid into the Construction Fund, together with interest earned on obligations purchased as an investment of such proceeds and any profit arising on the sale thereof, shall be applied to payment of expenditures for the purpose for which such Bonds are authorized as specified in the Supplemental Resolution authorizing such Bonds. The Authority may from time to time in accordance with the applicable provisions (if any) of such Supplemental Resolution, pay out from the Construction Fund, free and clear of any lien or pledge created by this Section or the Resolution, any amounts required for such expenditures. If there shall have been filed with the Trustee an Engineer's Certificate setting forth that in the opinion of the signer the Minimum Parkway Completion Date has passed, then, unless otherwise provided by such Supplemental Resolution, whenever the amount of such proceeds, interest and profit remaining in the Construction Fund exceeds the amount then or thereafter required, in the opinion of the Authority, for such expenditures, the Authority may withdraw the excess from the Construction Fund and shall forthwith deposit the amount so withdrawn in the Revenue Fund, provided that, if the amount so withdrawn includes any proceeds of Guaranteed Bonds, the amount so withdrawn shall be deposited in the Guaranteed Bond Service Account and used only to pay the interest on or principal or Redemption Price of Guaranteed Bonds.

ARTICLE V.

Revenues and the Application Thereof.

SECTION 501. *Pledge of Revenues and Other Funds.* A pledge of the Revenues, and of all moneys, securities and funds held or set aside or to be held or set aside by the Authority or any Fiduciary under the Resolution, is hereby made, and the same are hereby pledged, to secure

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the payment of the principal and Redemption Price of and interest on the Bonds and any Sinking Fund Installments for the retirement thereof, subject only to the rights of the Authority to apply amounts to other purposes as provided in Section 503 and Section 507. This pledge shall be valid and binding from the time when it is made; the Revenues so pledged and then or thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery or further act; and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof.

SECTION 502. *Creation of Funds.* (1) There are hereby established and created the following several funds:

- (a) Revenue Fund
- (b) Bond Service Fund
- (c) Bond Reserve Fund
- (d) General Fund
- (e) Bond Redemption Fund.

(2) Each of such Funds shall be held by the Authority, except the Bond Redemption Fund, which shall be held by the Trustee.

SECTION 503. *Revenue Fund.* All Revenues shall be collected by or for the account of the Authority and deposited daily, so far as practicable, in the Revenue Fund. The Authority shall (a) out of the moneys in the Revenue Fund, pay, free and clear of any lien or pledge created by the Resolution, all amounts required for reasonable and necessary Operating Expenses, and (b) at all times retain in the Revenue Fund reasonable and necessary amounts for working capital and reserves for Operating Expenses including expenses which do not recur annually.

SECTION 504. *Disposition of Revenues.* The Authority shall, out of the moneys in the Revenue Fund not retained therein pursuant to Section 503, on or before the twentieth day of each month make pay-

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PARKWAY REVENUE BOND RESOLUTION

V-1

November 15, 1984

SUPPLEMENTAL RESOLUTION #1 RELATING TO THE
1986 BOND ISSUE CONTINUING THE PROVISION OF
PARKWAY REVENUE BOND RESOLUTION November
11, 1984

ARTICLE V

Establishment of Funds and Application Thereof

Section 501. The Pledge Effected by the Resolution. Subject to the prior pledges created by the Prior Lien Bond Resolutions, a pledge of Net Revenues and of all moneys, securities and funds (other than those used to pay Operating Expenses pursuant to Section 505) held or set aside or to be held or set aside by the Authority under the Resolution, is hereby made, and the same are hereby pledged to secure the payment of the principal or Redemption Price (if applicable) of and interest on the Bonds and the principal and redemption price (if applicable) of and interest on the Junior Indebtedness. The pledge and lien created by the Resolution for the Bonds is superior in all respects to the pledge and lien created for the Junior Indebtedness.

This pledge shall be valid and binding from the time when it is made. The Net Revenues and other amounts so pledged and then held or thereafter received and held by the Authority shall immediately be subject to the lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be binding and valid against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof.

Section 502. Establishment of Funds. The following Funds are hereby established and are to be held by the Authority:

- (1) Parkway Construction Fund,
- (2) Parkway Revenue Fund,
- (3) Parkway Senior Debt Service Fund,
- (4) Parkway Senior Debt Reserve Fund,
- (5) Parkway Junior Indebtedness Fund,
- (6) Parkway Maintenance Reserve Fund,
- (7) Parkway State Payment Fund, and
- (8) Parkway General Reserve Fund.

Section 503. Construction Fund. 1. There shall be paid into the Construction Fund the amounts (if any) required to be so paid by the provisions of the Resolution, and there may be paid into the Construction Fund, at the option of the Authority, any moneys received by the Authority for or in connection with the Parkway System from any other source, unless required to be otherwise applied as provided by the Resolution.

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NEW JERSEY TURNPIKE AUTHORITY

(201) 247-0900

NEW BRUNSWICK, N. J. 08903

May 9, 1986

The Honorable Carmen A. Orechio and
Members of the Senate Independent
Authorities Committee
State House Annex
CN 068
Trenton, New Jersey 08625

Attn.: Spiros J. Caramalis
Aide to the Committee

RE: Senate Bill No. 1408

Gentlemen:

The appropriate departments at the Turnpike Authority have reviewed Mr. Caramalis's letter enclosing the eight (8) questions regarding S. 1408 and assisted in the preparation of this response. The answers to those questions follow the order of Mr. Caramalis' letter. Additionally, in the interest of brevity, the Authority has not repeated the contents of its April 16, 1986 letter concerning S. 1408 and incorporates that letter (a copy of which is attached hereto) into this response.

1. Generally, there are two types of projects performed by the Authority. First are Annual Capital Budget Projects which are prepared in the Engineering Department with input and suggestions from Maintenance, Operations, Data Processing and other departments. Annual Capital Budget Projects consist of major maintenance work such as repaving or resurfacing, bridge deck repair, parapet repair, repainting of structures and replacements of building systems such as air conditioning, heating, electrical or plumbing work. This work is done within the Turnpike Authority's right-of-way line and usually does not have an impact upon local communities, with the exception of work that may conflict with local traffic patterns, such as work involving overpasses or underpasses.

In these cases, the Authority coordinates the work with the local police and governmental agency having jurisdiction over the affected road. In order to select projects for Annual Capital Budget Projects, the Authority causes an annual bridge inspection to be performed. The results of that inspection are given to the

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NEW JERSEY TURNPIKE AUTHORITY

Hon. Carmen A. Orechio
Senate Bill No. 1408

May 9, 1986
Page 2

Authority's engineering consultant in the Fall of the preceding year together with the projection of the next year's budget for Annual Capital Budget projects. The consultant reviews the inspection together with the proposed budget and the suggestions from the Engineering, Operations, Maintenance and other affected departments and prepares a list of projects for the coming year.

The other type of project is major construction off Turnpike Right-of-Way. These projects are planned in the Engineering Department with input from the other departments as well as affected Federal, State and local governmental agencies. An example of this type of project would be the installation of water and sewer lines, construction of a new interchange, or widening of the roadway. In the case of water or sewer lines, the Authority internally reviews the matter to see if there is a need for this construction. After preliminary internal review is complete the designated project engineer contacts the appropriate governmental agency, such as the municipal utility authority, to discuss the proposed connection and obtain the necessary permit applications. The concerned Authority departments assist in preparation of the application for the permits.

2. In the case of Major Construction Off Turnpike Right-of-Way, the authority does provide for public involvement by residents and governmental officials. In these projects, the Authority directly contacts the officials of the affected communities by letter and conducts preliminary informational sessions with them. Press releases regarding the proposed project are given to local newspapers for publication. The Authority always is cognizant of the public's concern regarding major construction projects and does solicit the public's comments at the earliest possible stage in the planning process. However, particular procedures vary from project to project depending upon applicable federal and state requirements. As an example, for the 1985-90 Widening Program, information centers have been held in affected communities after substantial prior notice was given. At these centers, individuals were encouraged to ask questions of technical experts in the fields of noise, engineering and real estate. Additionally, three hearings were held in the geographic areas affected by the project at which members of the public placed their comments on the record. Those comments are being considered in the planning process and will be reviewed and responded to in connection with preparation of the Final Environmental Impact Statement.

3. Since major construction projects do not come within the class of projects which trigger local zoning review, there is no requirement that the Authority comply with those codes. Of course, the requirements of all applicable state construction codes are observed during construction of Turnpike Authority improvements.

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The Authority's enabling statute provides that each Turnpike project opened to the public must be maintained and kept in good condition and repair. See N.J.S.A. 27:23-14. The Annual Capital Budget projects have, at most, only a minimal impact on local communities since the projects consist of maintenance, repair and/or replacement of existing roadway structures within the Turnpike Authority's right-of-way. It would not be necessary or appropriate for a municipality to comment on such work. The Authority has a program of annual maintenance and small construction projects which serves to upgrade Turnpike facilities and to keep the high standard of safety which the Turnpike Authority has set for itself. The Authority has an enviable reputation for the safety record of its roadway and the Annual Capital Budget projects contribute positively to that reputation. Naturally, the Authority conforms the Annual Capital Budget projects to the highest applicable engineering standards.

4. The Authority strives to coordinate its projects with those of other State, Federal and bi-State agencies. To that end, it maintains a close working relationship with such agencies as Department of Transportation, the Port Authority of New York and New Jersey, and the New Jersey Highway Authority. Because the annual Capital Budget projects are mainly for maintenance and repair, there is neither legal obligation nor practical reason to prepare any environmental, social, economic or other studies for said projects.

Applicable law requires that before construction of certain major Construction projects, such as the proposed 1985-1990 Widening can begin, preparation of environmental impact statements or assessments concerning their effects on the surrounding localities must be prepared. A preliminary Draft Environmental Impact Statement has been prepared already for the Widening by Louis Berger and Associates. After the informational centers, the three public hearings and the extended comment period, a revised Final Environmental Impact Statement will be prepared to incorporate the public comments and the Authority's consideration of and response to those comments.

Additionally, for the Widening, the Authority held informational centers in all the affected municipalities. These centers were open from 10:00 AM to 5:00 P.M. and 7:00 P.M. to 10:00 P.M. Present at these sessions were the Authority's consultants to answer questions raised by the public. Extensive, detailed maps, drawings, aerial photographs and other documents depicting all aspects of the proposed widening were presented, explained, and used to answer inquiries of interested individuals.

The Authority also held three (3) public hearings in the north, south and central regions affected by the Widening. These hearings were open to the public from 4 P.M. to 10 P.M. A hearing officer from the Authority moderated the sessions and accepted oral and written comments from the public officials and citizens

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who attended. Each party had ten (10) minutes to speak. A slide show depicting the proposed Widening routes was shown at each hearing. The Authority has accepted all written comments submitted for a period of 45 days after the close of the last hearing. All comments whether written or oral will be reviewed, considered and addressed in the final Environmental Impact Statement. The final Environmental Impact Statement will be available for public review in the local public libraries of the affected municipalities, in the State library, at various municipal buildings, and at the Authority itself.

Additionally, in the case of the 1985-1990 Widening, the Army Corp of Engineers, and the Coast Guard, with the assistance of the Federal Highway Administration, as well as the State Department of Environmental Protection are also reviewing the project prior to issuance of various permits. The public as well as other interested governmental agencies has a similar ability to submit comments to those review agencies.

5. The Authority takes pride in the fact that it provides extensive advance notice to the public concerning major construction projects. Of course, it is sensitive to the needs of the local communities and respects their viewpoints. However, on the questions of safety and transportation issues, the Turnpike Authority's enabling act requires that it act for the benefit of the State of New Jersey as a whole, its motorists and other users of the roadway, rather than simply the limited interests of communities along its right of way.

6. The Authority currently has several bond issues outstanding, namely the Turnpike Revenue Bonds 1984 Series and the New Turnpike Revenue Bonds 1985 Series Bi Modal, multi-term format. The bond covenants for these series are substantially similar. A copy of the covenants is attached for your review. Initially, the Authority agrees to pay promptly the bonds' principal and interest as provided on the bonds. See Section 701. Significantly under Section 705, the Authority agrees to defend, preserve and protect the pledge of revenues and other funds against all claims and demands. Under Sections 706 and 712, the Authority also pledges to construct, reconstruct, maintain, improve, operate and repair the roadway.

One of the Turnpike Authority's major concerns about S. 1408 is that it is unconstitutional as an impairment of contracts in violation of the Constitution of New Jersey as well as the Constitution of the United States. The Constitution of New Jersey expressly provides that the "Legislature shall not pass...any law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made." Art IV, Section VII, par. 3. The courts have interpreted this clause to mean that covenants between bondholders and public authorities may not be substantially impaired. U.S. Trust of New York v. New Jersey, 97 S. Ct. 1505, 1522, 431 U.S.

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Hon. Carmen A. Orechio
Senate Bill No. 1408

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1, 31 (1977) reh.den. 97 S.Ct. 2942, 431 U.S. 975 (1977); New Jersey Sports and Exposition Authority v. McCrane, 61 N.J. (1972).

Quite simply, S. 1408 appears to constitute too severe an impairment of the Bond Covenant, because it permits a diminution of the revenues and reserves pledged to the bondholders. The bill places both an economic impediment as well as a substantial burden upon the ability of the Authority to perform its legislative mandate to design, construct maintain and operate a safe high-speed, limited access roadway. In particular, the extensive hearing and notice provisions could cause substantial delay in repair, maintenance, improvement and reconstruction of the roadway, contrary to the reasonable expectations of the bondholders. The costs imposed upon the Authority by S. 1408 include the publication of notices, hall rentals, transcripts and court reporter charges, consultants' fees, and extensive staff time in manning the hearings and reviewing and responding to all comments submitted. Based on Authority experience a conservative estimate for the cost of one public hearing is approximately \$15,000.00 including but not limited to hall rental, preparation and distribution of the transcript, salaries, and consultants' fees. In the case of the proposed 1985-90 Widening, where approximately 18 municipalities and 6 counties are affected, the costs would have to be multiplied by 18, just for the public hearings.

The costs generated by this bill are simply unnecessary because they are duplicative. Salutory though the aim of the proposed legislation may be, it overlooks existing comprehensive and complex environmental requirements, which adequately address informational and participation concerns of local governmental units and residents. Currently, myriad state and federal environmental laws obligate the Authority to hold public hearings on, and prepare and disseminate various environmental impact assessments of many of its projects. These statutory schemes ensure that any major construction activity of the Authority will not only be subject to rigorous review by federal and state agencies but also will be subject to extensive input by local governmental officials as well as local residents.

Thus, onerous requirements for public notice and hearings in each municipality affected by a Turnpike project disserves the residents of the State, by duplicating efforts, squandering limited resources, causing delay and increasing labor and financial expenditures, all without any appreciable increase in participation or dissemination of information at the local level. To enact such a measure at such great cost with so little gain would be directly contrary to the principles of efficient government.

It must be remembered that the Authority's activities are financed by the sale of bonds and toll revenues, not tax dollars.

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As such, the bond holders have a strong interest in the financial activities of the Authority. The enabling legislation for the Authority provides that the credit of the State is not pledged to secure repayment of the bonds. Instead, the Authority's repayment obligations to the bond holders are secured by tolls, other revenues and proceeds of such bonds. N.J.S.A. 27:23-2, -5(f), -7, -9. See also Bond Resolution adopted August 16, 1984 (creating an immediate lien in favor of the bond holder upon collection of toll revenues.) The overall effect of S. 1408 would be to impair the Authority's contract with the bond holders by placing a substantial burden upon the Authorities' mandate to construct, maintain, repair and operate its projects. These costs do not appear to be within the scope of legitimate expectations of the bond holders, and therefore, imposing them upon the Authority exposes it to litigation without providing any appreciable public benefit. See, e.g. Fidelity Union Trust Co. v. New Jersey Highway Authority, 85 N.J. 277 (1981) app. dsmd. 454 U.S. 804 (1981).

7. The Legislature has authorized that the Turnpike Authority, as an administrative agency, necessarily be vested with wide discretion to perform its functions such as selection of particular routes that the roadway will traverse. It simply would not be feasible for the Legislature to attempt, without any staff of engineers or surveyors, to fix in minute details the course of particular highways. Of course, this does not mean that the action of an administrative agency like the Authority are completely beyond review. No actions of the Authority may take effect until the Governor has approved the Authority's minutes concerning that action. With regard to judicial review, the actions of the Turnpike Authority, like those of other administrative agencies, are subject to judicial review where they constitute a palpable abuse of discretion, or are arbitrary, capricious or unreasonable.

8. The Turnpike Authority, and other similar legislatively created agencies authorized by the superior governmental authority of the State, are immune from local and county planning and zoning regulations and the scrutiny of local planning boards. To hold otherwise would delay, disrupt, fragmentize and even defeat necessary public projects which pass through several municipalities. Indeed, the idea that any and every local or county authority along the route of the Turnpike could effectively veto either its location or the manner of its construction by a withholding of consent is in direct conflict with the very concept of a turnpike designed to serve the best interest of the whole state rather than merely those of particular localities.

We are unaware of any current State development plans and policies which substantially affect Turnpike projects. In the past, the Authority always has attempted to cooperate with other State and local agencies and their programs and plans to the extent feasible. Naturally, the Authority will cooperate with the State Planning Commission in the development and implementation of

NEW JERSEY TURNPIKE AUTHORITY

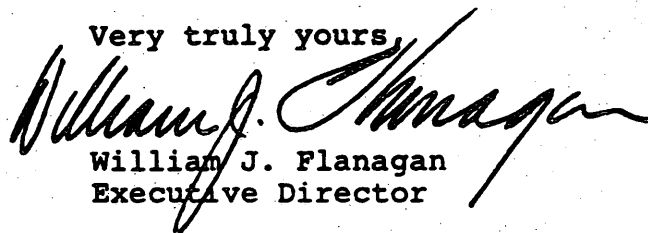
Hon. Carmen A. Orechio
Senate Bill No. 1408

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a State Development and Redevelopment Plan pursuant to N.J.S.A.
52:18A-196 et seq.

For the foregoing reasons, on behalf of the Authority, I urge
that this bill not be enacted into law.

Very truly yours,

A handwritten signature in cursive script, appearing to read "William J. Flanagan".

William J. Flanagan
Executive Director

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NEW JERSEY TURNPIKE AUTHORITY

(201) 247-0900

NEW BRUNSWICK, N. J. 08903

April 16, 1986

The Honorable Carmen A. Orechio
and Members of the Senate Independent
Authorities Committee
State House Annex, CN 068
Trenton, New Jersey 08625

RE: Senate Bill No. 1408 (formerly S-3431)

Dear Senator Orechio and Members of the Committee:

I am writing to you on behalf of the New Jersey Turnpike Authority to express the Authority's concerns with Senate bill No. 1408. The bill was formerly introduced as S. 3431 in the Senate where it was voted out of Committee on December 5, 1985. However, no action was taken on it prior to the end of the session in January, 1986.

S. 1408 would amend the New Jersey Building Authority Act and supplements Title 52. The new section is to be known as the County and Municipal Information and Participation Act. The bill purports to create a public hearing requirement for the Turnpike Authority and also other autonomous authorities prior to any action on a project, i.e., the advertising of contracts, financing and condemnation. The Authorities are to publish notice of the hearing, forward copies of all plans to the affected municipality, prepare and distribute copies of the hearing record, and answer in writing all objections filed by the municipality or county.

The Turnpike Authority's major concern about 1408 is that it is unconstitutional as an impairment of contracts in violation of Art. 4, 7, par. 3 of the State Constitution. The New Jersey Constitution provides that the "Legislature shall not pass...any law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made." The Authority's activities are financed by the sale of bonds and toll revenues. As such, the bond holders have an interest in the financial activities of the Authority. The enabling legislation for the Authority provides that the credit of the State is not pledged to secure repayment of the

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bonds. Instead the Authority's repayment obligations to the bond holders are secured by tolls, other revenues and proceeds of such bonds. N.J.S.A. 27:23-2, -5(f), -7, -9. See also Bond Resolution adopted August 16, 1984 (creating an immediate lien in favor of the bond holder upon collection of toll revenues.) The practical effect of S. 1408 is to impair the Authority's contract with the bond holders by placing a substantial burden upon the authorities' mandate to construct, maintain, repair and operate its projects.

A conservative estimate for the cost of a public hearing is \$15,000.00 including but not limited to rental of the hall, preparation and distribution of the transcript, salaries and consultants' fees. In the case of the proposed 1985-90 Widening of the Turnpike Authority, where approximately 18 municipalities and 6 counties are impacted, the costs could be \$360,000.00 just for the public hearings. Another factor to be considered is the man hour costs which will be added to each project.

The costs posed by this bill are unnecessary because they are duplicative. Salutary though the aim of the proposed legislation may be, it overlooks existing comprehensive and complex environmental measures which adequately address informational and participation concerns of local governmental units and residents. Currently, myriad state and federal environmental laws obligate the Authority to hold public hearings on and prepare and disseminate various environmental impact assessments of its projects. These statutory schemes readily assure that any major construction activity of the Authority will not only be subject to exhaustive review by federal and state agencies but also will be subject to rigorous review by local governmental officials as well as local residents. Thus, public notice and hearings in each municipality affected by a Turnpike project disserves the residents of the State by duplicating efforts, taxing limited resources, causing delay and increasing labor and financial expenditures, all without any appreciable participation or information gain at the local level. To enact such a measure in view of adverse costs benefit analysis is contrary to principles of efficient government.

The Authority already has held public hearings on its projects in the affected municipalities. In conjunction with the hearings the Authority has solicited and responded to comments from interested parties. The bill adds another layer of hearings to those already scheduled. Specifically, in the case of the 1985-90 Widening, the Turnpike Authority must provide hearings as required by the U.S. Coast Guard, Army Corps of Engineers and the New Jersey Department of Environmental Protection. In addition,

The Honorable Carmen A. Orechio
Senate Bill No. 1408

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hearings have been held in three (3) geographic areas affected by the Widening. Under S. 1408, the Authority would be holding hearing after hearing at great cost of money and time, which expenses will be added to the final cost of the project. This would be government at its most inefficient.

A further criticism of the bill arises from its tendency to promote factional interests. To this end, the legislation gives county and municipal governments a powerful tool to defeat or seriously hinder a project which advances the public interest of the residents of New Jersey. This is clearly illustrated by the "objection response provision" which would allow local governing bodies to inundate the Authority with objections reflecting the self interest of a few who will be directly impacted by a given project.

The Authorities were created by the Legislature as State Entities and given broad powers to accomplish their goals. The Legislature understood that to subordinate the authorities' powers to the control of municipalities would subvert its ability to carry out projects in the public interest. In the case of New Jersey Turnpike Authority v. Sisselman, 106 N.J. Super 358 (App. Div. 1968), the court ruled that the proposed alignment of the Turnpike Authority was not subject to regulation by the local planning board. Id. at 366. The court stated that to rule otherwise would "...delay, disrupt, fragmentize and possibly delay completion of this necessary public project." In this case, where the Authorities have previously been able to establish a uniform service in the operation of public highways, now it will be subject to the conflicting and often competing views of several municipalities. This bill, if enacted, will be a disservice to the citizens of New Jersey as it would hamper the ability of the autonomous Authorities to address serious public problems which cannot be handled by orthodox state agencies. S. 1408 would in effect be a derogation of sovereign powers from a State Authority to local government unit.

It must be understood that the Authority does not seek to foreclose informed participation of local governing bodies and their residents. Nor does the Authority diminish the individual concerns of those persons who will be directly affected by a project. Rather, it needs to be underscored that essential governmental projects will always necessitate a balancing of the individual concerns and the general public interest. The appropriate balance must take account of limited governmental resources and cost-benefit principles. As discussed heretofore, this legislation fails to adequately balance these considerations and thereby impairs the general public interest.

In conclusion, while S. 1408 has an important public purpose in achieving local government participation, it duplicates existing measures to secure those goals. In balancing the need

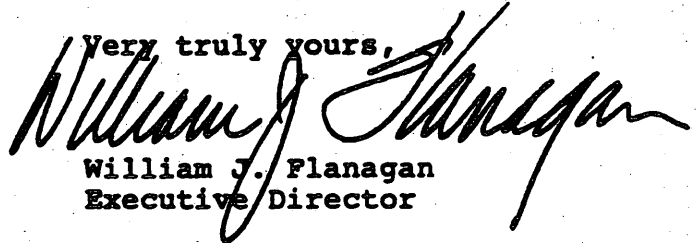
NEW JERSEY TURNPIKE AUTHORITY

The Honorable Carmen A. Orechio
Senate Bill No. 1408

April 15, 1986
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for autonomy versus meaningful public participation, S. 1408 destroys the concept of independent agencies without achieving its goal. For that reason, we respectfully request that the Bill not be passed in its present form.

Very truly yours,

A handwritten signature in cursive script, appearing to read "William J. Flanagan". The signature is written in dark ink and is positioned above the typed name and title.

William J. Flanagan
Executive Director

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NEW JERSEY HEALTH CARE
FACILITIES FINANCING AUTHORITY

CAPITAL PLACE ONE-SUITE 802

200 SOUTH WARREN STREET

MAILING ADDRESS

CN 366

TRENTON, N.J. 08625

(609) 292-8585

May 7, 1986

Spiros J. Caramalis
Aide to the Committee
Senate Independent Authorities Committee
State House Annex CN-068
Trenton, New Jersey 08625

Re: NJHCFFA response to questions submitted by Senate Independent
Authorities Committee regarding Senate Bill 1408

Dear Mr. Caramalis:

In response to your April 21, 1986 letter to June Duggan and subsequent telephone conversations with both June and me, I am attaching herewith our Authority's response to the eight questions submitted by the Committee in conjunction with public hearings held on Senate Bill 1408.

As you may recall, June attended and provided oral testimony at the April 17 public hearing and is both knowledgeable about Authority operations and authorized to represent the Authority's views on policy matters.

Both Bob Lackey and I are available to answer any questions the Committee or you may have regarding our operations and are pleased to provide written comments to Senate Bill 1408. As you will note from the attachments to our written response, we have forwarded a copy of your questions to our Deputy Attorney General, John Kelly, and to bond counsel, Ballard, Spahr, Andrews & Ingersoll. We have included in our reply some information provided by them and have attached as Appendices E & F the full text of their response.

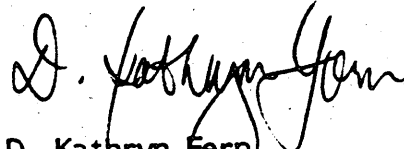
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Spiros J. Caramalis
May 7, 1986
Page #2

It is our intention to have June continue to represent the Authority at subsequent public hearings and we trust the information provided in the attached response will be seen by the Committee as indicative of our willingness to cooperate and provide both timely and complete information on any matters impacting our operation.

If you have any questions involving the information presented or would like us to expand on any issue, please feel free to call us.

Sincerely,



D. Kathryn Fern,
Deputy Executive Director

DKF/cha

Enclosure

cc: J. Robert Lackey
June Duggan
John Kelly, Deputy Attorney General
William Scott, Esquire

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NJHCFFA RESPONSE TO QUESTIONS SUBMITTED BY SENATE
INDEPENDENT AUTHORITIES COMMITTEE IN CONJUNCTION WITH PUBLIC HEARINGS HELD
ON SB 1408

Q1. Describe your agency's project planning and site selection processes. If relevant, distinguish by types of projects.

A1. The New Jersey Health Care Facilities Financing Authority (NJHCFFA) was created by an Act of the Legislature in 1972 (N.J.S.A.26:21-1 et. seq. approved May 25, 1972) to provide financing assistance to the State's not-for-profit health care industry.

The capital formation process for health care facilities has changed dramatically in recent years, reflecting the tremendous changes taking place throughout the industry. Traditional sources of capital financing, such as philanthropy and governmental grants, direct loans and loan guarantees, have been replaced by an ever increasing reliance upon debt financing.

The Authority plays a vital role in this regard through its issuance of tax-exempt bonds or notes, which has become the primary mode of capital formation for health care facility construction, modernization/renovation and equipment. The Facilities Financing Authority provides financing to eligible healthcare projects. Project eligibility is determined in accordance with the Authority's enabling legislation a full copy of which is attached as Appendix A. N.J.S.A. 26:21-6 of the statute states:

"Notwithstanding any other provision of this Act, the Authority shall not acquire or authorize the acquisition, the commencement of construction or rehabilitation of any project or hospital facility to be leased to a participating hospital, in respect of any project where such acquisition or work is to be done by the Authority, nor advance loan funds to any participating hospital - respect of a project involving a loan to such hospital, until (i) the estimated project cost shall have been approved by the Commissioner and (ii) the participating hospital shall have entered into a regulatory agreement with the Commissioner. Such regulatory agreement shall contain such provisions as shall be deemed adequate by the Commissioner to assure that the project shall be constructed maintained and operated in a manner consistent with the purposes of this Act and the Health Care Facilities Planning Act, P.L. 1971 c. 136 (C.26:2H-1 et. seq.)."

The Health Care Facilities Planning Act established the process by which a State Health Plan is developed and implemented. The State Health Plan describes the current medical delivery system as well establishes short and long term goals for the future delivery of health care. The State Health Plan is developed through an extensive public process which involves consumers and providers of health care services. See Chart A, Appendix B for a detailed description of this process.

Once the State Health Plan has been adopted, compliance with its goals and objectives is required. This is effected through the Certificate of Need (CON) process, a public process which is identical to the plan development process described in Chart B, Appendix B.

The CON process requires all projects to have site selection and planning completed prior to filing an application for approval. For more detail, please refer to Appendix C, "Certificate of Need Application and Review Process", page 5, paragraph (u). Since a borrower seeking financing from the Authority must have received CON approval, the planning and site selection process is completed prior to the application for financing.

Q2. What opportunities does your agency afford for local involvement by public officials or residents in your planning processes? Describe and, if applicable, identify at what stage(s) of project development and site selection local viewpoints are solicited by your agency or, if the project application is submitted by another public agency, by that agency (identify and describe).

A2. Opportunities for local involvement in the planning process of a specific healthcare project are provided through the CON review process. The current Certificate of Need review process is briefly described as follows:

- (1) Ninety days prior to submission of the CON application, a letter of intent is filed with the Department of Health (DOH) indicating the general nature of the project.
- (2) Applications for CON approval are filed and reviewed simultaneously on a state and regional basis. The state review process is performed by the Department of Health (DOH) who reviews and approves/denies a project on the basis of its compliance with the State Health Plan and other state regulations, guidelines and requirements.
- (3) After completion of its review, the DOH forwards a recommendation to the Statewide Health Coordinating Council Review Committee which reviews projects considering both Health System Agency (HSA) and DOH recommendations.
- (4) The Review Committee makes its recommendations to the full Statewide Health Coordinating Council (SHCC). The SHCC currently consists of 31 members, 18 of which are healthcare consumers, (one of the consumer representatives is a representative of the Office of the Public Advocate), and 13 members are health care providers. All meetings of the SHCC are open to the public and provide opportunity for public comment. A list of SHCC members is attached as Appendix H.
- (5) Simultaneous with the DOH's review, the project is reviewed by regional HSA's and local County Councils comprised of consumers and providers of healthcare services in a specific area. The regional

review is completed by the applicable (HSA) which are five in number. (See Appendix D - Health Systems Agency Map). The Health Systems Agency Board consists of consumers and providers of healthcare services within a particular geographical region.

- (6) Prior to completing its review and forwarding a recommendation to the SHCC Review Committee, the HSA solicits a project review and recommendation from the applicable County Council. The County Council is made up of representative health care consumers and providers of services in the county affected by a project. Recommendations of the County Council are considered in the HSA review process.
- (7) Once this process is completed, the HSA forwards a recommendation to the Review Committee of the SHCC.
- (8) The Statewide Health Coordinating Council receives the recommendation from the SHCC Review Committee and the Health Systems Agency and conducts a further review of the project.
- (9) Upon completion of its process, the SHCC forwards its recommendation to the State Commissioner of Health who may approve or deny the project.
- (10) Appeal opportunities (before the Office of Administrative law) exist for applicants, the SHCC and the HSA's.
- (11) The Health Care Administration Board (HCAB) makes the final decisions in contested cases and denials. A copy of the HCAB member listing is attached as Appendix I.
- (12) Further appeal is taken in State Court..

It should be emphasized that the members of these Boards and Committees are members of the public and that all meetings are subject to the Open Public Meetings Act (NJSA 10:4-6 et seq.) where the opportunity for public comment is provided. Further, once a project has received CON approval and applies for financing through the Authority, all deliberations of the Authority are conducted in a public meeting held pursuant to the Open Public Meeting Act and are subject to judicial review and penalty for failure to comply with the Act's requirements regarding notice, project approval, etc.

Q3. What efforts are made to comply with municipal development regulations and applicable county or for that matter, state plans? Describe in terms of Authority's project planning, site selection and site planning processes.

- A3. Under the typical Authority financing, both the hospital and its counsel must certify that the institution has complied with all pertinent laws, ordinances, rules, regulations and orders applicable to the Institution and that it has or will comply with all applicable ordinances, laws, rules, regulations and orders of the Government of the United States, the State of New Jersey, and the municipality in which the project is located. This includes all applicable zoning, subdivision, building, land use and similar laws and ordinances. Failure to comply with such laws would generally render the project ineligible for Authority financing. Further, as has been noted, the project must receive the Department of Health approval, which would subject the project to the Department's extensive Certificate of Need application and review process. See N.J.A.C. 8:33-1.1 et seq. Failure to obtain such approval would render the proposed project ineligible for financing.
- Q4. What studies are prepared as to environmental, social, economic or other effects of a proposed project on the host and neighboring communities?
What opportunities are afforded for public review and comments on the studies?
- A.4 Healthcare projects are reviewed in accordance with the CON process, for compliance with the State Health Plan. The State Health Plan has been developed to guide the State in the development of a cost effective, cohesive health care delivery system. The financing of an eligible health care project often times requires a financial feasibility study to be performed. The purpose of such a study is to analyze the impact of a particular project on the financial viability of the Institution as well as assess certain social and economic effects of the proposed project on the host as well as neighboring communities.
- Q.5 What are your agencies recommendations for providing or improving consultations with local officials and concerned residents?
- A.5 As we've stated in our response to process questions raised earlier, the Authority strongly believes that an effective forum for public participation already exists in the current planning and review process. While the requirement imposed by SB 1408 would not be in direct violation of any of the Authority's bond covenants, it may unnecessarily increase the cost and time involved to complete a financing which the planning and review process have already deemed necessary and compliant.
- Q6. Is it the view of your agency that the provisions of Senate Bill 1408 would violate authority covenants with bondholders? If so, please submit legal arguments in support of your position and copies of the pertinent provisions of the bond covenants in question.
- A6. As was stated in our answer to Q5 above while certain provisions of SB 1408 would not be in direct violation of any of the Authority's covenants with its bondholders or interfere with outstanding single hospital financings, we do believe that it could present an unnecessary and potentially serious obstacle to the Authority's pooled hospital financing programs.

Most of the Authority's bond issues have been for single hospital construction projects. In these issues the general terms of each financing are set out in a General Health Care Facilities Registered Bond Resolution, as modified by a Series Resolution for the particular hospital issue. The covenants for the benefit of bondholders contained in these resolutions and in the hospitals mortgage secure each series of bonds separately from other bond issues for other hospitals. Since each of these bond issues stands alone (except where there are multiple issues for the same hospital), the hearing and reporting requirements of Senate Bill 1408 would not interfere with prior outstanding bond issues. However, as noted above, the requirements of Senate Bill 1408 would substantially duplicate the local and state health planning review required for obtaining a Certificate of Need under the Health Care Facilities Planning Act and could unnecessarily increase cost and delay projects which the Certificate of Need process has deemed necessary.

In addition to single hospital financings, the Authority has three outstanding pooled hospital financing issues where a single bond issue is used to finance projects for numerous hospitals, on a first-come, first-served basis. These pooled hospital programs are cost effective because the issuance expenses for each bond issue can be spread among a number of hospitals. In addition, one of these programs has a revolving fund feature, so that the principal repayments received from one hospital can be used to make new loans to other hospitals. In all of these programs, federal tax regulations require that unused bond proceeds remaining after three years may not be committed to make hospital loans, but must be applied to retire bonds. All of these factors mean that it is very important that loan closings proceed in a timely and efficient manner. Adding a requirement of a hearing and filing reports under Senate Bill 1408 would unnecessarily delay these programs to the detriment of other hospital borrowers and add to the already high cost of health care.

Q.7 Are Authority actions subject to review by the courts on the grounds that an action is arbitrary, unreasonable or capricious?

A7. Any project which the Authority considers must have been first reviewed and approved by the Commissioner of Health as to cost and have complied with the Department's Certificate of Need regulatory review requirements, see N.J.S.A. 26:21-6. Any action concerning project approval must also be taken by the HCFFA Board pursuant to the Open Public Meeting Act, N.J.S.A. 10:4-6, et seq., and is subject to judicial review and penalty for failure to comply with that Act's requirements regarding notice, project approval, etc., see N.J.S.A. 10:4-15, 16, 17.

As to specific judicial review, N.J.S.A. 26:21-5(d) states that the Authority may sue and be sued. A party objecting to an HCFFA action has the legal right to petition the courts for redress based on whatever remedies of law may be applicable. Further, N.J.S.A. 26: 21-12 provides that bondholders are authorized to enforce their rights under the bond documents at law or in equity by suit, action, proceeding in lieu of prerogative writ or any other proceedings available.

Q8. What is the legal force of local development regulations and county and state development plans and policies on Authority projects? Distinguish by types of projects.

A8. As indicated in our response to Question 3, the New Jersey Health Care Facilities Financing Authority law specifically requires that no project may be undertaken by the Authority without the prior issuance of a Certificate of Need. Hospitals financing their projects through the Authority are not relieved of any other legal requirements for obtaining local, county or state approvals for the project.

New Construction. A Hospital in New Jersey wishing to undertake new construction must obtain all required local zoning and planning approvals, sewer extension permits (if necessary) from the State Department of Environmental Protection and building permits. The Authority requires that each Hospital submit copies of all these approvals, together with State Department of Health approval of the hospital's construction plans and specifications, prior to the issuance of Authority bonds to finance the hospital's project. In its loan documentation with the Authority, each hospital covenants that the hospital and its project will remain in compliance with all applicable federal, state and local laws and that the construction project is in compliance with "all laws and ordinances." The Authority's requirements are rooted in prudent business practices and are consistent with the Authority's role as a lender as opposed to an operator of projects. Moreover, if these approvals were not in place prior to a bond financing, a lawsuit filed after the Authority's bonds were issued could delay construction, resulting in complicating federal tax problems and (possibly) an unexpected early redemption of the Authority's bonds. For these reasons, the Authority not only acknowledges the force of state and local regulatory requirements, but requires those health care facilities which finance projects through the Authority to comply with those requirements.

Refinancings. Since no construction is involved, development plans and policies do not come into play in a refinancing. Nevertheless, the Authority's standard loan documentation mandates continuing compliance by a hospital with the applicable zoning and land use requirements as described above. It also should be noted any hospital undertaking a refinancing must obtain approval from the State Hospital Rate Setting Commission of any changes in its rates resulting from the refinancing.

LIST OF APPENDICES

- A Chapter 29, Laws of New Jersey 1972 Health Care
Facilities Financing Authority
- B Governor's Advisory Committee on Capital Expenditures for
Health Care Facilities, Briefing Papers, March 1984
- Chart A, p. 31
 - Chart B, p. 33
 - Chart C, p. 34
- C Certificate of Need Application and Review Process
- D Map of Health Systems Agencies with List of Addresses
- E April 30, 1986 Memorandum from Department of Law and
Public Safety, Subject: Senate Bill 1408
- F May 1, 1986 Memorandum from Ballard, Spahr, Andrews and
Ingersoll, Subject: Senate Bill 1408
- G Proposed Amendments to the Hospital Manual
- H List of Statewide Health Coordinating Council Members
- I List of Health Care Administration Board Members



NEW JERSEY WATER SUPPLY AUTHORITY

P.O. BOX 5196 • CLINTON, N.J. 08809 • (201) 638-612

April 25, 1986

Statement of R. D. Ricci
Proposed Legislation S-1408
"County and Municipal Information
and Participation Act"

Senator Carmen A. Orechio, Chairman, and
Members of the Senate Independent Authorities Committee

The New Jersey Water Supply Authority was created on October 7, 1981 by enactment of the New Jersey Water Supply Authority Act (PL 1981 c 293). As a result the Authority has financed, operated and properly maintained the existing 60 mile Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoirs system. These facilities are the source of water supply through contracts with public and private water utilities for 1,200,000 people in central New Jersey. Additionally, the Authority can design, finance, construct and operate a variety of water supply facilities provided that it does not retail the water supply.

The New Jersey Water Supply Authority Act (58:1B-6) includes a provision which requires "All projects undertaken by the Authority shall conform to the recommendations of the New Jersey Statewide Water Supply Plan". This Statewide Water Supply Plan is maintained and updated by the Department of Environmental Protection and is accomplished with the opportunity for extensive public involvement. Further, any new project which would be built by the Authority in conformance with the Statewide Water Supply Plan would have a cost in excess of \$1,000,000, the threshold for compliance with Executive Order 53. The responsibility for implementing Executive Order 53 is vested with the Department of Environmental Protection. Compliance with Executive Order 53 results in the preparation of an environmental assessment report by the Authority. The work includes the presentation of all relevant information to the public at a number of public meetings throughout the proposed service area.

As a matter of policy the Authority has carried out an extensive public information and hearing program for all of its significant projects. These projects include a \$250,000 soil dredging project at its pumping station in Hunterdon County, the \$20,000,000 dredging program for 32 miles of the Delaware & Raritan Canal through Hunterdon and Mercer County and the new \$51,000,000 Manasquan Water Supply System in Monmouth County.

A brief discussion of the Authority's public information and public involvement efforts for the Manasquan project will illustrate that the Authority has gone well beyond the minimal requirements of the Statewide Water Supply Plan and Executive Order 53. The Authority formed a 15

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member Citizens Advisory Board (CAB) to review interim and draft reports of the consultants and to make recommendations on all aspects of the feasibility studies. The project which is now in final design benefitted greatly from the input of the CAB and its task forces involving approximately 90 people. The participants represented a broad cross section of the regions population and interests. Since 1983, there have been 22 meetings of the Citizens Advisory Board and its task forces, 7 public information meetings, 2 public hearings. Numerous meetings have been held with public officials throughout the area.

As indicated there are already ample legal, regulatory and Authority policy requirements in place to assure extensive public involvement in the development of significant Authority projects. There are also a number of planned and emergency repair, rehabilitation and maintenance projects carried out by the Authority. Our enabling legislation, bond covenants and good business dictate that these projects are carefully planned, financed and implemented. All affected parties are made aware of the planned programs through the distribution of the Authority's Annual Report which includes the five year capital program. A copy of our Annual Report is being provided to the Committee for your review.

Therefore, in view of the above we respectfully urge the Committee to exclude the New Jersey Water Supply Authority from the provisions of the proposed legislation S-1408.

New Jersey Expressway Authority



"FARLEY SERVICE PLAZA"
P.O. BOX 351 - HAMMONTON, N.J. 08037
PHONE 609-985-6060

PHONE 609-348-3174

DONALD B. VASS
EXECUTIVE DIRECTOR

April 28, 1986

Hon. Carmen A. Orechio
& Members of the Senate Independent
Authorities Committee
State House Annex, CN065
Trenton, NJ 08625

Re: Senate Bill No. 1408 (formerly S.3431)

Dear Senator Orechio & Members of the Committee:

I am writing to you in my capacity as General Counsel to the New Jersey Expressway Authority to express the Authority's concerns relating to Senate Bill No. 1408. The Bill was originally introduced as S.3431 in the Senate where it was voted out of committee on December 5, 1985. However, no action was taken on the Bill prior to the end of the session in January 1986.

The Bill would amend the New Jersey Building Authority Act and supplement Title 52. The new section is to be known as the "County and Municipal Information and Participation Act". The Bill in its present form imposes a public hearing requirement on the Expressway Authority and also on other autonomous state authorities. Such hearings must be held prior to engaging in or entering into a contract or agreement for an authorized project of that Authority. The authorities are required to publish notice of the hearing, forward copies of all plans to the effected municipalities, prepare and distribute copies of the hearing record, and answer in writing all objections filed by a municipality or county.

The Expressway Authority's major concern relating to the Bill is that it would substantially impair the rights of holders of Authority bonds by placing a substantial burden upon the Authority's mandate to construct, maintain, repair and operate its projects. Such an impairment of the contract rights of the Authority and its bond holders would be in violation of Article 4, Section 7, paragraph 3 of the New Jersey State Constitution as a law impairing the obligation of contracts. Further, the Bill is expressly contrary to the pledge and covenant contained in the Authority Act in N.J.S.A. 27:12C-41 which states:

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April 28, 1986

Hon. Carmen A. Orechio &

Members of the Senate Independent Authorities Committee

Re: Senate Bill No. 1408 (formerly S.3431)

"The State of New Jersey does hereby pledge to and covenant and agree with the holders of any bonds or notes issued pursuant to authority of this act that the State will not limit or alter the rights or powers hereby vested in the Authority to acquire, construct, maintain, improve, repair and operate any project, or to perform and fulfill the terms of any agreement made with the holders of such bonds or notes . . ."

The Bill places a substantial burden on the Authority and will have extremely adverse effects on the Authority's mandate to construct, maintain, repair and operate its projects. As the Authority's ability to repay its obligations to its bond holders are secured by tolls, other revenues and proceeds of its bonds, any impairment of the Authority's power to perform its mandate will impair its ability to repay its obligations. Such an impairment would be unconstitutional and contrary to the State pledge contained in the Authority act.

A second major concern of the Authority is the substantial cost in both time and money which the Authority will be forced to incur in complying with the Bill. The nature of the Expressway, beginning 10 miles east of Philadelphia and extending 44 miles to Atlantic City, and the projects it undertakes will require repetitive public hearings in numerous municipalities. The cost of such hearings and the notice and publication requirements contained in the Bill will be a substantial burden to the Authority and may, standing alone, destroy the feasibility of otherwise beneficial projects.

As stated in the Bill, the purpose of the Bill is to provide for "maximum participation by local residents and officials." While this goal is desirable, it fails to consider the practical element of all Authority projects. In order to comply with existing requirements, whether under State or Federal environmental laws or otherwise, the Authority is required to hold public hearings on and prepare and disseminate various assessments of its projects. These statutory schemes readily assure that any major project of the Authority will not only be subject to exhaustive review by Federal and State agencies but also will be subject to rigorous review by local governmental officials as well as local residents. Further, the Authority Act in N.J.S.A 27:12C-5 states that:

"The Authority shall consist of the members thereof who shall be appointed . . . as follows: 1 resident each from the counties of Camden, Cape May and Gloucester, and 2 residents from the County of Atlantic."

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April 28, 1986

Hon. Carmen A. Orechio &

Members of the Senate Independent Authorities Committee

Re: Senate Bill No. 1408 (formerly S.3431)

As the members of the Authority are drawn from the communities which the Authority impacts, the interest of local residents and local governing bodies are protected during all deliberations and evaluations concerning prospective Authority projects. Lastly, all actions taken by the Expressway Authority are taken at open meetings at which any person may appear and participate in the residents of the State by duplicating efforts, taxing limited resources, causing delay and increasing labor and financial expenditures, all without any appreciable information gained at the local level. To enact such a measure in view of the adverse cost benefits analysis set forth above is contrary to principles of efficient government.

A final criticism of the Bill arises from its tendency to promote fractional interest. As was stated in the Authority act in N.J.S.A. 27:12C-4:

"The Authority shall constitute a political subdivision of the State established as an instrumentality exercising public and essential governmental functions to provide for the public safety, convenience, benefit and welfare, and the exercise by the Authority of the powers conferred by this Act and the acquisition, construction, maintenance, improvement, repair and operation of projects shall be deemed and held to be an essential governmental function of the State."

As is clear from the above, the Authority, as all independent authorities, was created by the legislature as state entities with broad powers to accomplish their goals. These broad powers are based on the realization that independent authorities exercise their powers to fulfill public and essential governmental functions for the State as a whole. The Bill in its present form gives county and municipal governments a powerful tool to defeat or seriously hinder the authorities in exercising their functions in the public interest of the residents of New Jersey. Under the Bill, local residents and local governing bodies are allowed to inundate the Authority with objections reflecting only the self-interest of a few who will be directly impacted by a given project, which would totally ignore the public interest of the residents of New Jersey. The Bill would make Authority decisions on projects subject to the conflicting and often competing views of several municipalities. This Bill, if enacted, would substantially hinder the ability of independent authorities to carry out their function: that is, to perform projects in the public interest of the residents of New Jersey.

The Authority does not seek to limit informed participation of local residents and local governing bodies. Nor does the Expressway seek to diminish the individual concerns of those persons who will be directly affected by a

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April 28, 1986

Hon. Carmen A. Orechio &

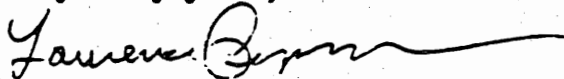
Members of the Senate Independent Authorities Committee

Re: Senate Bill No. 1408 (formerly S.3431)

project. However, the participation of such individuals is assured under the existing law. The Authority hereby seeks to underscore the basic principal that essential governmental projects will always necessitate a balancing of individual concerns and the general public interest. Such a balance must fully consider the limited resources of government and must be made on a cost benefit analysis. As set forth above, the Bill fails to adequately address these considerations and therefore does not accurately protect the general public interest.

In conclusion, it is the Authority's position that while the Bill does seek to achieve the important public purpose of local participation, the bill duplicates existing measures to secure these goals. Further, the Bill substantially impairs the ability of independent authorities to discharge their function of entering projects in the public interest of the residents of New Jersey. For these reasons, we respectfully request that the Bill not be passed in its present form.

Very truly yours,



Lawrence Pepper, Jr.
General Counsel

(HAC/Letter)
(4/29/86 slm)

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ROGER A. BODMAN
COMMISSIONER

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
1035 PARKWAY AVENUE
CN 600
TRENTON, N. J. 08625
609-292-3535

April 21, 1986

Spiros Caramalis
Senior Research Associate
Office of Legislative Services - Authorities Section
State House Annex, Room 376
CN 068
Trenton, NJ 08625

Dear Spiros:

Attached please find the Department's statement to Senate Bill 1408. The Office of Community Involvement provides for public participation in the Department's planning and project development process; identifies appropriate stages for community involvement; arranges and conducts community hearings; prepares mailings and media announcements; conducts and records public hearings; serves as liaison with public, private concerns and public officials; and provides answers to questions from the public. The opportunity for a public hearing is offered when a project: (1) requires acquisition of significant amounts of right of way; (2) substantially changes the layout or function of connecting roadways or of the facility being improved; (3) has a significant adverse impact on abutting real property; or (4) otherwise has a significant social, economic, environmental, or other effects.

Should you need additional information, please contact Ms. Carolyn S. McCallum, Director, Office of Community Involvement and Governmental Affairs, whom is responsible for implementing the above outlined process.

Sincerely,

Neal C. Tully
Chief
Office of Policy Analysis

mkd
Attachment

cc: Carolyn S. McCallum

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4/14/86

New Jersey Department of Transportation
Statement To
S-1408

This bill, sponsored by Senator Orechio, would require State authorities, including the Transportation Trust Fund Authority (TTFA), to conduct a public hearing in each municipality in which a project is to be located prior to entering into a contract or engaging in activity on the project. While the Department agrees with the principal of public input we believe that the bill inappropriately includes the TTFA and further requires excessive activity.

The Department opposes the inclusion of the TTFA in the bill. The TTFA exists to finance transportation projects. The Authority has no input into the planning, design, construction or operation of transportation projects. Since the Authority does not involve itself with these steps, it would be impossible for the Authority to hold the hearings required by this bill, since site plans, environmental impact statements, and other supporting data is often not available at the time a hearing would be held on a "project. Indeed, the propriety of the TTFA intervening in a process which is the province of the DOT is questionable.

Once a project is considered and implemented, it is subject to extensive public input and review. The DOT is required to hold public meetings under State and, where Federal funds are involved, Federal Highway Administration (FHWA) procedures. In the 24 steps through which a project passes in its development, there are 18 in which the public, local governing bodies and other public agencies have input.

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By requiring the TTFA to hold unnecessary hearings, resources will be diverted from the Trust Fund to prepare for such hearings. Such an expenditure of time and money would result in Trust Fund monies being expended on purposes other than transportation projects.

The Department expressed these concerns to the Senate Transportation and Communications Committee last December. That Committee removed the TTFA (as well as the Economic Development Authority) from the agencies listed in this bill's predecessor, S-3431 (1985). As introduced, this bill does not contain the amendments agreed to by the Committee.

To reiterate, (1) the TTFA does not undertake projects; it merely finances them; and (2) many opportunities already exist for public input in transportation projects. The Department therefore urges, as a minimum, the Committee to adopt those amendments agreed to in December, 1985.



State of New Jersey

STATE BUILDING AUTHORITY

CN-219

TRENTON, NEW JERSEY 08625
(609) 633-7618

MORTON A. SIEGLER
CHAIRMAN

April 24, 1986

To: Spiros J. Caramalis
Aide, Senate Independent
Authorities Committee

This is in response to your letter of April 21 regarding Senate Bill 1408. The State Building Authority is a financing vehicle which arranges for permanent financing of office facilities approved by the Legislature. The Authority operates without full-time staff. My firm is engaged as financial consultant to the Authority, and we provide bookkeeping, requisition approval and board meeting services as well as advice on structuring and execution of financing transactions. We do not speak for the Authority on matters of policy or the desirability of proposed legislation. I would suggest that William Stringer in the State Treasurer's Office be contacted on these matters. As to the questions you have circulated, I have tried to answer where I have relevant knowledge. Perhaps the person best qualified to answer questions about the planning process for projects which eventually receive Authority financing is James Kennedy, Assistant State Treasurer for General Services.


David T. Beale
Financial Consultant

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State of New Jersey
STATE BUILDING AUTHORITY
CN-219
TRENTON, NEW JERSEY 08625
(609) 633-7618

MORTON A. SIEGLER
CHAIRMAN

1. The State Building Authority plays no role in project planning and site selection. It provides financing for projects after those projects have been proposed by the Treasury Department and approved by the Capital Planning Commission and both sides of the Legislature. Questions about project planning should be directed to James Kennedy, Assistant Treasurer for General Services.
2. Section 7(a) of P.L. 1981, Ch. 120, requires that the Authority conduct a public hearing, before submitting a project for legislative approval, within the municipality in which the project is to be located. Notice of the hearing must be published 15 days in advance and specific notice must be filed with the municipal and county governments.
3. This question should be directed to James Kennedy.
4. Same as above.
5. Same as above.
6. No.
7. This is a question for the Attorney General's Office. I suspect the answer is yes.
8. Again, I would refer this question to James Kennedy.

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