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PUBLIC HEARING

before

ASSEMBLY APPROPRIATIONS COMMITTEE

ASSEMBLY CONCURRENT RESOLUTION NO. 122 1R  
(Requires the deposit of public utility tax revenues  
into funds for financial assistance to municipal governments)

January 19, 1989  
Room 403  
State House Annex  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

- Assemblyman Rodney P. Frelinghuysen, Chairman
- Assemblywoman Joann H. Smith
- Assemblywoman Clare M. Farragher
- Assemblyman Patrick J. Roma
- Assemblyman John S. Watson
- Assemblyman Byron M. Baer
- Assemblyman Robert G. Smith

ALSO PRESENT:

- Michael J. Basarab  
Office of Legislative Services  
Aide, Assembly Appropriations Committee

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



ASSEMBLY APPROPRIATIONS COMMITTEE  
STATEMENT TO  
ASSEMBLY CONCURRENT RESOLUTION, No. 122

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 9, 1989

The Assembly Appropriations Committee reports favorably Assembly Concurrent Resolution No. 122 with committee amendments.

Assembly Concurrent Resolution No. 122, as amended, proposes to amend the Constitution of the State of New Jersey, Article VIII, Section II by adding a new paragraph which requires that revenue collected by the State from the taxation of public utilities, that is designated by permanent statutory law for distribution to municipalities, will be deposited into newly established funds for the sole purpose of providing financial aid to municipalities. Currently, these monies are deposited into the General Fund with a portion being retained by the State for general State expenditures.

After legislative approval of this concurrent resolution, the proposed amendment will be submitted to the voters of the State at the next general election for consideration.

COMMITTEE AMENDMENTS:

The Committee amended the bill to make technical language changes and added a schedule indicating that the dedication of revenue commences in the calendar year following voter approval.

ASSEMBLY CONSTITUTIONAL RESOLUTION NO. 122

with amendments

W. J. JEFFREY

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Committee report favorably  
No. 122 with committee  
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at New Jersey Article VII  
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ASSEMBLYMAN RODNEY P. FRELINGHUYSEN (Chairman): The purpose of this public hearing this morning is to take testimony in accordance with Article 9, paragraph one, of the State Constitution, the Rules of General Assembly on Assembly Concurrent Resolution No. 122 1R. This is a proposed constitutional amendment which would require revenue collected by the State from the taxation of public utilities that is designated by permanent statutory law for distribution to municipalities, be deposited into newly established funds for the sole purpose of providing financial aid to municipalities. The Chair would like to recognize the presence of several of his Assembly colleagues, and others that are expected; Assemblyman Roma, Assemblywoman Farragher, and my good friend -- our good friend -- Assemblyman John Watson.

We have a number of witnesses. Some have signed up; some have not signed up. It's my pleasure to recognize Senator Wesley Lance who I understand at one time was the Chairman of the Appropriations Committee during his service in the Legislature. I've known Senator Lance for a long time. I knew of him before I came down to the Legislature and it's indeed a pleasure to recognize him for any testimony he'd care to give on this Assembly Concurrent Resolution. Good morning, Senator.

W E S L E Y L. L A N C E, E S Q.: Thank you. I didn't learn about this hearing until last night. Consequently, this will probably be your shortest witness of the day. It's my privilege to have been Chairman of this Joint Committee at one time. Also, when I was a young Assemblyman, the State budget was 40 million general funds and 40 million State highway -- total of \$80 million.

I am the attorney for the Township of Lebanon in the County of Hunterdon which has a-- Is this hooked up?

ASSEMBLYMAN FRELINGHUYSEN: Senator, the microphone you're using is for the tape. The other one with the white button, if you push that, that will amplify your voice. Move towards you.

MR. LANCE: I am the attorney for the Township of Lebanon in the County of Hunterdon which is the recipient of funds under the gross receipts and franchise taxes of utilities by virtue of the fact that they have an electric generating station. I understand that one of the aims of the constitutional amendment is to prevent the -- or prohibit the so-called "skim," which is all right with me.

However, I am concerned about one sentence. Well, the whole thing is only one sentence, but I'm concerned about the phrase, "Providing financial aid to municipalities." And I just raise that point so that there's no possibility of the generating station municipalities being excluded.

I always thought that the gross receipts and the franchise taxes were in nature of in lieu -- something like that -- going back to Chapter 4, Chapter 5, Chapter 6 in the 1940s which incidentally I voted on in the Assembly.

And I can sum up what I have to say in one sentence. That as long as the wording, "financial aid to municipalities," includes what before has been gross receipts and franchise taxes, this constitutional amendment is all right with me. Thank you.

ASSEMBLYMAN FRELINGHUYSEN: Thank you very much, Senator. I appreciate you taking the time to be here with us. Pleasure to recognize William G. Dressel, Jr., Assistant Executive Director of the New Jersey State League of Municipalities. Good morning, Bill.

W I L L I A M G. D R E S S E L, J R.: Good morning, Mr. Chairman, members of the Committee. I am Bill Dressel, Assistant Executive Director of the State League of Municipalities. I have a formal statement I would like to read into the record and then I would like to make some additional comments if I may, Mr. Chairman. Thank you.

Thank you for the opportunity to testify in support of the ACR-122. This constitutional amendment, if approved by the

electorate, will permanently correct an injustice which has been inflicted upon municipal governments in the early 1980s.

That injustice is the diversion of large sums of gross receipts and franchise taxes from municipalities for State purposes. When gross receipts and franchise taxes were first instituted back in 1917 they were intended to compensate municipalities for permitting utilities to put transmission lines, gas mains, generating stations, and other facilities within their borders.

These taxes were assessed and collected locally and there was no question that those revenues were intended for municipal purposes. It was not until 1980 when the law was changed providing that the State collected and distribute those monies back to the communities, that the State's chief executive began to skim these monies to pad the State budget.

Since 1982 the State has retained nearly 1 billion in revenue from these taxes. The current budget diverts 115 million in growth for Fiscal 1989 from the regular apportionment. In addition, the State cut the Municipal Purposes Tax Assistance Fund by 34 million in the present budget.

The MPTAF monies are a vital funding element of the franchise and gross receipts revenues in that they go to approximately 360 of the State's 567 municipalities. The reduction of these monies in this year's State budget caused severe fiscal hardship for several communities.

Again, these monies are not State aid. Public utility taxes are municipal taxes. They are, apart from property taxes, probably the most important revenue source.

We realize the State has a right to retain a portion of these revenues to cover its administrative expenses, but we find it hard to believe that those expenses will amount to \$149 million. If we would have received these monies all along, local government officials would not have had to turn to Trenton for fiscal assistance each and every year.

We believe this constitutional amendment makes good common sense. Its passage would surely go a long way towards achieving property tax relief. And if given the chance, we are confident the taxpaying public would exercise their common sense and vote, "Yes," on ACR-122.

The point that I've made in my formal statement is a point that the League has consistently made since 1982; that we believe that the State has a responsibility, if not a moral obligation, to return these back to the municipalities where they rightfully belong.

ACR-122 will correct a wrong. And it will set the record straight and permanently earmark utility tax monies for municipal purposes by a constitutional mandate. We applaud the sponsors of this legislation and we thank this Committee for their expeditious consideration of this matter.

Mr. Chairman, that is the remainder of my presentation, and I'd be glad to address any questions that you or your members might have.

ASSEMBLYMAN FRELINGHUYSEN: Thank you very much for your testimony, Mr. Dressel.

MR. DRESSEL: Thank you.

ASSEMBLYMAN FRELINGHUYSEN: The Chair would like to recognize -- and there may be others that have not signed up and are surely welcome to testify -- Richard Keevey, Deputy Director of the Office of Management and Budget, Department of Treasury, who I believe is outside in the corridor and will be with us shortly. Is there anyone else who would care to testify? Frank Haines, I'm not sure what a labor of love you put into your testimony. Could you give me an inkling of how long it might be because I know that Mr. Keevey has a--

UNIDENTIFIED MEMBER OF AUDIENCE: He's coming.

ASSEMBLYMAN FRELINGHUYSEN: Is he coming? Is he in the building or--

UNIDENTIFIED MEMBER OF AUDIENCE: He'll be here in a minute.

ASSEMBLYMAN FRELINGHUYSEN: All right, Frank, I'm sorry to have you wait. Mr. Haines would you come forward, please? Mr. Keevey's been delayed. Thank you very much for your patience. The Chair's pleasure is to recognize Mr. Frank Haines. Good morning.

F R A N K H A I N E S, J R.: Thank you, Mr. Chairman, ladies and gentlemen of the Committee. My name is Frank Haines, Jr., I live in Ewing Township. I've been a taxpayer since 1952. I speak from a long background of close observation of State government which goes back to 1951.

Mr. Dressel has given a very brief history of the background of the gross receipts and franchise tax where the situation that developed almost 10 years ago when the State budget was in somewhat difficulty and determined that the tax, -- instead of being classified as a local property tax, would become a State collected locally shared tax and the State would utilize portions of the money to balance the budget.

I'm very sympathetic to the position of the State's municipalities. It really hurts when you have had a continuing source of revenue which has gradually grown, and then all the sudden the growth of it is restricted.

We had the same experience with Federal General Revenue Sharing and I think it's unfortunate that once a municipality, or any level of government for that matter, has to receive a source of money which starts to dry up, it feels that historically it has a right -- a vested right -- to those revenues in perpetuity. And I don't think that is the nature of government, the way I see it.

I think every government -- whether it be local or even State -- would like to have a major source of revenue that it didn't have to raise itself, but had the opportunity to spend, with very limited restrictions.

You, therefore, can probably guess where I come from because my philosophy is that the Legislature should not dedicate revenues by constitutional amendment. And I think that my position today, if I may be so bold as to quote, is some doctrine -- the recommendations of the New Jersey State and Local Expenditure and Revenue Policy Commission report, which came out not too long ago and in some of the budget process issues which the Commission addressed is one on the subject of dedication of revenues. And I use this essentially because it reflects my personal views.

In summary, the recommendation was, and I quote: "There should be no further constitutional dedication of revenues. The present dedication of the proceeds of the lottery, gross income tax, and tax on casino revenues should be reconsidered. Where earmarking of revenues is appropriate as with some user fees, the earmarking should be accomplished by statute."

If you have time, I'd just like to read a little further the commentary and the rationale just to get this on the record. If you feel that this is superfluous then I'll just extract it so the recorder can add it to the record.

ASSEMBLYMAN FRELINGHUYSEN: It's quite appropriate. We're here to take public testimony.

MR. HAINES: Thank you, sir. On page 84 of the report -- and this happens to be a printed copy which I hope you have received from the Commission; it's not the original copy that was originally distributed -- on the subject of dedicating revenues -- and again, I am quoting all the way: "Revenues are considered dedicated or earmarked when their use is restricted to the support of a particular program. The restriction may be narrow, such as requiring that fees on parking meters be used only for maintaining meters and collecting fees abroad such as New Jersey's constitutional

requirement that revenues from the gross income tax be used for property tax relief. The restrictions may be constitutional or statutory.

"The Commission believes that the constitutional dedication of revenues can distort budgeting and inhibit the flexibility of lawmakers to respond to changing needs or conditions. The Commission therefore recommends: 1) that there be no further constitutional dedication of revenues, 2) that the present dedication of the proceeds of the lottery, gross income tax, and tax on casino revenues be reconsidered, 3) that where earmarking of revenues is appropriate, it be done by statute.

"The Commission is aware that some revenues such as user fees may appropriately be used to support a specific service or program. When these fees cover the full cost of service they may operate as an indirect pricing mechanism for those who enjoy the benefits of the service. In those instances where the connection between the benefits and the fees clear, the Commission believes that revenues may appropriately be dedicated to providing the service.

"The Commission recommends that the dedication be by statute rather than embodied in the Constitution so that budgetary flexibility is preserved." The end of quote, the end of position.

I would only add my views that it is my philosophy that one of the principal reasons for having a legislative body -- one of their major duties is that of deciding on an annual budget; that is, the expenditures of the State and the revenues to finance them. And I'm concerned about what I view as sort of a present trend in some states as well as New Jersey, of legislators saying to the people, "We can't be trusted to make the right decisions. Accordingly, we want you to approve a constitutional amendment which restricts our discretion." And this is an example of a restriction, as I see it, of legislative discretion.

There were good reasons at the time for changing this tax and the State utilized it. It is unfortunate, I think, that at this point in time it suddenly becomes a matter of utmost importance in the overall timing and picture of things. I do not recall in my observations of the Legislature any of what I would describe as vociferous objections by legislators, particularly some of those legislators who were in the Legislature in recent years and who considered the budget by who did not -- in those past years where they had an opportunity to change this through the budget process -- determine that that was the right time.

I do not see this as being any more the right time as it might have been anywhere over the past decade or whatever the life of that -- we call "skim" laws. And so this is one of the things that concerns me, that at this point in time it becomes a key matter of decision and almost of a crisis nature.

Those are my views and those of the SLERP Commission which reflect my personal views, Mr. Chairman. I thank you for the opportunity that you've given me to express my opinion and to read that position into the record.

ASSEMBLYMAN FRELINGHUYSEN: Thank you, Mr. Haines, for your testimony.

Mr. Keevey, good morning. Thank you for coming. I introduced you prior to your arrival so I won't introduce you again. Thank you very much for coming.

R I C H A R D F. K E E V E Y: Thank you, Mr. Chairman. My name is Rich Keevey and I'm the Deputy Director of the Office of Management and Budget. I don't have prepared testimony, but I did want to make a couple of observations from our point of view, and it basically comes to two points.

One, the State can't afford it. This would be, in effect, a \$150 million net removal of revenues from the State budget structure. If it was done, for example, in this current fiscal year we would have at this moment a deficit in the fund

balance in the State of New Jersey. There would not be sufficient funds to cover it.

And in planning for the 1990 budget, obviously these revenues have already been built into the proposal that you will receive next week. And it too, would create the same situation in next year's situation.

So from that point of view we object to that in terms of the overall funding structure of the State. Secondly, we oppose it on the basis of budgetary flexibility. Each year the executive and legislative committees and ultimately the Legislature and the Executive approve a budget based upon individual decisions and revenue structures in that particular year and how they plan into the future.

And we believe the earmarking of these monies or the dedicating if these monies by the constitutional amendment would be inappropriate. It would preempt future budgetary flexibility. It would preempt future decision making by future governors and future legislators. And on that basis we would object to it also.

So basically, for the record, they're the two points that the Office of Management and Budget wanted to bring to your attention: 1) that we can't afford it. It would, in fact, create a deficit in the current year and in the future years, at least at the present way that the budget is now structured, and, 2) we're opposed to it on the basis of the dedication of it. Thank you, Mr. Chairman.

ASSEMBLYMAN FRELINGHUYSEN: Thank you, Mr. Keevey, appreciate your time. Is there anyone else who's signed up to testify this morning? Oh yes, Mayor Jack McKenna. Mayor McKenna of Malapan -- Manalapan. It shows where I'm from, Jack. I apologize.

MAYOR JACK MCKENNA: Mr. Chairman, Committee people, good morning. Mr. Chairman, I'd like to lend my voice in support of ACR-122. Like many other municipalities we are

feeling the burden of trying to come up with funds every year to stave off increase in taxes. In a community such as ours where 18% to 20% are senior citizens, it really presents a problem. As you are well aware, they are living on a fixed income and anytime you talk about a tax increase they get quite concerned about it.

Last year alone with the State mandated program on recycling, it cost us an extra \$200,000. If it were not for that program we would not have had a tax increase. This year we're facing another increase, and that is for the tipping fees, which is of course a county expense. But we're talking another 258% increase. In Manalapan Township we're figuring that to be about another \$180,000, just to remove garbage.

It's very very difficult to explain to people why those figures are there and how it has an effect on them.

There's just one other thing I would like to know. Since this is going to be a constitutional amendment and there's the very likelihood of any of those monies coming to us within the next year or so is kind of remote, one thing I would like to know is, is the possibility-- As the funds are distributed right now, they are distributed, I believe, three times a year. Is there any possibility those funds could be distributed at the beginning of the year so the municipalities could invest that money and then come up with anywhere, in our case, a figure of \$150,000 to \$200,000, which would certainly help us? As it is right now, the State has that money and we don't get the benefit of it.

The other thing I would like to know is has this Committee given any thought on how this is going to affect municipalities on the State program for redevelopment? One of the catches in this program is that it's based on the growth in a particular municipality. And with the redevelopment program, is there going to be a percentage allotted to those towns that are not going to be allowed to grow?

If you're in a tier that says you're a non-growth area, how will that affect you? What is the benefit of a municipality in a non-growth area for this? I would like this Committee to give some thought to that. That's all I have to say. Thank you.

ASSEMBLYMAN FRELINGHUYSEN: Thank you, Mayor. I think your points are well taken and the questions you posed are ones which the Committee considers and will consider.

MAYOR MCKENNA: Thank you very much.

ASSEMBLYMAN FRELINGHUYSEN: Thank you. The Chair is pleased to recognize Assemblyman Alan Karcher. Good morning, Alan. Thank you for coming.

ASSEMBLYMAN ALAN J. KARCHER: How is everybody today? I want to make a few observations about the gross receipts tax. And some of them are very pleasant. It's always delightful to come to a point where you are able to see that other people have seen the light and there's a certain amount of vindication and satisfaction and gratitude involved in that.

This constitutional amendment would be so much better Mr. Chairman, members of the Committee -- so much better if it were made retroactive for the last seven years. And I like to always look to the future, but we would be remiss if we did not spend a few moments talking about the past -- and that past in which I was intimately involved; and some other members, I think, may have been as well.

You will recall that in 1982 was the first discussion about how we would deal with the gross receipts tax. It was in that given year funded as per the formula; the formula that had been with us since the early '30s; formulas that had been the product of a great deal of intense study during the '30s so that a fair and adequate recompense for municipalities could be had. That law had basically remained untouched and always honored by every governor until 1982. In 1982 what we found

was of course the exercise within the budget document of a skim. We could politely call that a lot of other things but the truth of the matter is the Governor took the money. He took it out of what was the constitutional -- the mandated, statutorily mandated distribution formula.

And I should also put this into context by saying, it was not only the product-- The gross receipts formula was not only a product of such intense study during the 1930s, but had been reviewed and discussed and debated.

But it always held firm, and successfully withstood every legislative effort to readjust. In the 1970s we found even a court challenge; a very strong court challenge in the case McKenney v. Byrne. At that time, Mayor McKenney was the Mayor of Roselle. She brought that litigation having on her side a very, very able attorney -- a very able attorney. So able, that his credentials were that he had just come from the Attorney General's office where he had been in charge of the Division of Taxation. And he apparently -- although he was unsuccessful in that litigation -- his credentials were unmarred because he was then chosen to be one of the very first judges of the tax court.

Richard Conley is an extraordinarily able young man and a great tax expert. He led that litigation and led the plaintiffs in that litigation. That litigation went through the Law Division. That litigation was heard through the Appellate Division. That litigation was ultimately determined by the Supreme Court.

At each one of those levels of the judiciary, not withstanding that Mayor McKenney had extraordinarily able counsel, the argument was rejected. And you had ultimately the Supreme Court's imprimatur placed upon the distribution formula for the gross receipts tax.

That brings us to the 1980s. The 1980s saw additional litigation prompted by the Governor's "skimming" -- and that's,

I think, a moderate word. Some mayors refer to it as theft. People who are more inclined to be sympathetic to what the Governor did, call it a readjustment. Whatever the term might be, it was taken from where it rightfully belonged as a distribution to the municipalities -- not a distribution, if you will, of somehow State aid. This was not some type of bonus or extraordinary relief given to municipalities. This was an entitlement paid to municipalities for a burden which those municipalities carried.

That's the way the Supreme Court recognized it -- the way it was interpreted; a legitimate compensation to the municipalities for a burden, which they, in fact, carried. I participated on the McKenney v. Byrne litigation on the defendant's side, participated in the brief writing, and the thrust of the argument made to the court was that there was a special, particular "impaction" -- impactment if you will -- upon the quality of life of those people who were residents of towns with large generating stations.

That argument was upheld and endorsed. And as I said, the Supreme Court gave its imprimatur saying, "Yes, that is legitimate compensation for those towns who carry this burden."

Back to 1982 which precipitated another bit of litigation -- that litigation being known as Karcher v. Kean. Regrettably the Supreme Court shifted gears to some extent and said, as its ultimate bottom line finding, was that the Governor had the ability to withhold the funds from the gross receipts distribution but did not have the ability to reallocate them. So what we had is a one-year gap period where the money was withheld from one budget, fell into surplus, and then reallocated in a manner to the very, very same thing. It was clandestine, it was surreptitious. It was candidly, a taking, after a proud tradition that had gone on in the State for years, of additional monies going back with the State serving as the clearing house and as the collecting agency for

revenues for distribution, always making the claim that they could do it more efficiently if done on the State level. They could then pass them back to the municipalities.

This was -- and I don't think the language was too harsh -- this was a perversion of a 50-year long tradition in the tax system of this State. Time after time separate items of legislation were introduced either by myself or Senator Weiss, who was my district Senator, to restore and to fully fund gross receipts taxation. Those bills were vetoed. Those bills were voted against -- the votes on all those bills if you look back in legislative history, were strictly party line votes, party line votes. And the attempts to override the Governor's veto of those supplemental restitution -- supplemental bills restoring full funding of gross receipts tax -- were once again both houses divided solely on a party line vote.

Now having said all that by way of history, you can understand why I feel so elated and so overjoyed and so happy that we come now to 1989 -- the end of 1988, the beginning of 1989 -- and suddenly there is compunction, there is a catharsis, a desire to cleanse the spirit and soul for all of those misdoings that took place in the early '80s. And I'm all for that. I'm a great believer in the prospect of redemption. Everybody should have a chance to see their sins and do penance for them and mend their ways.

What we have now though -- and if I thought that was what is being done, particularly in this constitutional amendment, all well and good. There is only one other factor that has now intervened that would call what would otherwise appear on the surface to be a simple matter of recognizing the errors of our way and past sins and wanting to do penance for them and wanting to make good and wanting to make justice for the people who had been cheated. And I go back to that -- I think the constitutional amendment would be delightful. If

we're retroactive for seven years and we gave back to the taxpayers of my district and everyone else's district the money that the State stole from them, it would just be delightful. I'm sure Assemblywoman Smith would like to see her constituents reimbursed for the money that was stolen from them.

So, some consideration should be given to having the State do justice and give that money back. The one intervening factor and why I call this particular effort into question -- and don't get me wrong, there's nothing I'd like to see better, nothing I'd like to see better than every town get its full, just desserts with regard to the gross receipts tax -- those of us who tolerate and endure with generating stations in their districts with the networks, the intricacies, and the interstices of this web of high power lines going through our district, depreciating other real estate values, etc., etc., etc., causing environmental impaction that is unquestioned.

We deserve the money. My constituents in Woodbridge, and in Edison, Perth Amboy, in Salem; we deserve the money. We always did. It was taken from us and I just wish that the voices now raised saying, "Hey, this is the greatest thing since sliced bread," recognize that sliced bread has been around for the last 60 years. And that during the early '80s, instead of saying, "This is the greatest thing since sliced bread," they were very happy to say, "Let the Governor work his will. We're going to stand by and not just mutely stand by. We're going to side with him as he steals this money." That's the true history of this. So maybe, the salvation -- the level of salvation is even greater than I indicated before.

Let me just discuss the intervening which is a factor which I think is what this Committee must bear upon and focus upon at the moment. Over the last three years I've served, and I like to think that I've served as a very diligent member of the so-called SLERP Commission, and this is a Commission, by the way, that is not some kind of convocation of radicals or

leftists. You know, it's headed by Bruce Coe, Chairman of New Jersey Business and Industry. The Vice Chairman is Dr. Bradford, who is an economic advisor to Ford, to Nixon, to Reagan. Not exactly what you'd-- You know, it doesn't fit the profile of a radical.

These are the kinds of people who have met and convened and worked very diligently and very hard to come up with an overall comprehensive approach to how to reform taxes in New Jersey. The adoption of this has to be measured on what it would do to that plan. The adoption of this has brought forward on my estimation, at this time-- Although I would have no reservations saying, "Sure, my constituents want every dime back. They not only want every dime in the future that they're entitled to, but they want every dime back that was stolen from them." Because that is the only word -- and I know it's a harsh word -- but it's an accurate word. And sometimes we have to use words that are true. And they might sound a little grating, and they might sound a little tough, but that is a true word. These monies were improperly, unlawfully, unstatutorily stolen from the property taxpayers of every town in this State, which is why property taxes in this State have escalated by 70% in the last five years -- one of the reasons.

But this Committee must resolve before you vote this out, what impact is this going to have upon the overall, very delicately balanced proposition, of the State and Local Expenditure and Revenue Commission. Are you going to engage in what might superficially look like a very attractive idea and will it, of necessity, sabotage? And is that the unwritten agenda? Is this truly designed to sabotage real tax reform on a broad base -- the kind of broad base that SLERP has recommended?

If that is the desire and that is the intention, but most of all, if that is the consequence, Mr. Chairman, then it seems to me that that is-- My judgment would be that it leans

in that direction, that the secret agenda here is to sabotage SLERP, to sabotage the recommendations of SLERP. More importantly, one of the things that the longer you serve -- and I've put 15 years in this Legislature, going on 16 -- two over in the Governor's office and two over in the Senate, a long time, 20 years of it. There's one thing I learned is that you deal with a zero sum game.

If you're going to do this -- and maybe it's proper and right and good that you should. There's no question I think in anyone's mind that what we have seen over the last seven years has moved in totally the wrong direction. The State has kept much much more money and there's been fewer and fewer dollars of the total collected here in Trenton going back to municipalities.

The inexorable consequence of this has been that we have had enormous obscene increases in property taxes. It leaves a hole in the State budget. It's very easy to do that. It's very facile to do that. It's very politically expedient to do that.

It's nice to go to the folks back home and thump your chest and wave your arms and say, "I'm getting your money back." But until this Committee can respond to the legitimate inquiries made by a serious amount of legislators as well as the Governor's office and the Treasurer's office, where's the money going to come from? Sure give this money back, but do it in a responsible, intelligent, thoughtful, farsighted, practical and just manner. And until you can do that, you shouldn't move on this.

Now let me just sum up by saying there's those two unanswered questions. One, is the real secret agenda here to try to devastate and undermine and sabotage the recommendations of SLERP so that we are all sent back into confusion and chaos without a clear-cut, definitive plan on how to reform taxes in New Jersey? And secondly, where's the \$160 million in the

State budget come from again? If you're here to say, "Well yes, we don't mind. We think \$160 million should be redistributed to the cities and the towns." And the \$160 million hole in the State budget is going to be made up with gasoline, or sales or income tax, fine; then you're doing the responsible thing. But if you're not doing that, then you're engaging in what is really a diversion and a digression and an attempt to divert people's attention from what are the crying serious needs of the State.

I thank you for your attention. I thank you for letting me spend so much time on the history lesson. But it's good for all of us early in the morning to contemplate and reflect. That we don't operate in a vacuum. These things don't pop up somehow. There is a history to them; a long history in regards to the gross receipts tax, a rather sordid history. Thank you, Mr. Chairman.

ASSEMBLYMAN FRELINGHUYSEN: Thank you, Mr. Karcher.

ASSEMBLYMAN KARCHER: Unless there are any questions?

ASSEMBLYMAN FRELINGHUYSEN: No questions. Thank you very much.

ASSEMBLYWOMAN SMITH: Good to see you, Alan.

ASSEMBLYMAN KARCHER: Nice to see you.

ASSEMBLYMAN FRELINGHUYSEN: Any other individuals care to testify at this public hearing? (positive response) Yes, Marie Curtis from the League of Women Voters.

M A R I E C U R T I S: Good morning.

ASSEMBLYMAN FRELINGHUYSEN: Good morning, welcome.

MS. CURTIS: I apologize to the Committee. I do not have written testimony with me today which is unlike the League's normal procedure and policy. However, we do feel that it is a necessity that we come here and restate our long held position against the dedication of specific taxes.

The League has long held that dedicated taxes, indeed, do limit the flexibility of the Legislature and that rarely

does a specific tax income exactly equate to that specific need and outgo. And without such an equality taking place, you obviously are going to have a surplus. You're going to have deficits in some years. And to have a dedicated position which does not allow this body through its appropriations process the flexibility to utilize those funds in the best manner possible or to make up deficits when the need arises, we think is really being short-sighted.

In addition, the League, by statute, is required to be present and very active as a participant in the State and Local Expenditure and Revenue Policy Commission. As such, we have been monitoring the progress of that report. We have looked over that report and we are strongly of the belief that most of the recommendations in that report are very well-founded. And that, indeed, it would be premature to constitutionally dedicate at this time, any kind of tax or income reform because the entire SLERP recommendation, as was indicated earlier, comes as a balanced package. It does not come as one little piece here one little piece there. And to remove a major component of this very intricate mechanism would indeed cause the whole thing possibly to flounder.

We're of the strong opinion that this is maybe premature. Perhaps this Appropriations Committee should be looking at the entire SLERP package and taking that into consideration before going forward with yet another dedicated tax which, as I said, we do have to oppose on principle.

I would like to add one other little comment on my predecessor's testimony. I think indeed it is a little harsh to say that one level of government is stealing from another level because whatever level you're talking about you're all serving the citizens and, indeed, working in their best interest at whatever level with whatever services may be supplied. So I think "stealing" is perhaps a very strong term there. Thank you.

ASSEMBLYMAN FRELINGHUYSEN: Thank you for your testimony. Marie could you state your name for our recorder?

MS. CURTIS: I'm sorry. Marie Curtis, Legislative Vice President, League of Women Voters of New Jersey.

ASSEMBLYMAN FRELINGHUYSEN: Thank you very much, Ms. Curtis.

MS. CURTIS: Thank you, Chairman.

ASSEMBLYMAN FRELINGHUYSEN: Are there any other individuals that would like to give public testimony? (no response) Seeing that, I would like just to record and I appreciate the presence of Assemblywoman Smith as well as Assemblyman Bob Smith and Assemblyman Byron Baer, and I've recognized the others so we have it in matter of record. Thank you very much everybody for coming.

Is there anyone further who cares to testify? (no response) If not, this concludes this public hearing. Thank you for coming.

**(HEARING CONCLUDED)**

**APPENDIX**

APPENDIX

## GEBHARDT &amp; KIEFER

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\* ALSO MEMBER OF MINN. BAR

Appropriations Committee  
 New Jersey Assembly  
 State House Annex  
 Trenton, NJ 08625

RE: Proposed Constitutional Amendment  
 Bill #ACR-122

Dear Committee Members:

We are attorneys for Holland Township, Tewksbury Township and East Amwell Township in Hunterdon County.

We learned at the end of the day yesterday that a hearing by the Assembly Appropriations Committee was scheduled for 10 A.M. this morning on Bill #ACR-122, which proposes a Constitutional Amendment affecting the public utility taxes.

On behalf of the above municipalities, which of course ultimately receive the revenues from these taxes, we ask that the Legislature add a phrase to the end of the new Paragraph 5 proposed to be added to Article VIII, Section II of the State Constitution.

With the added language, the proposed Paragraph 5 would read as follows:

"5. All revenues collected by the State from the taxation of public utilities, as may be defined by law, that are designated for distribution to municipalities by permanent statutory law in effect at the time of the adoption of this amendment shall be deposited in to such fund as shall be established by law for the sole purpose of providing financial aid to municipalities, recognizing that such revenues relate to public utilities' property within municipalities."

The gross receipts and franchise taxes now collected by the State and distributed to municipalities are in lieu of local property taxation on utility franchises and other properties within municipalities. This basis for the taxation has been recognized both by the State

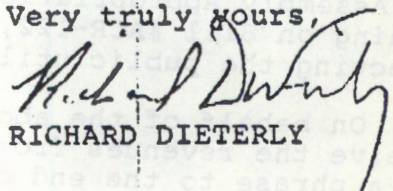
Appropriations Committee  
New Jersey Assembly  
January 19, 1989  
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Legislature and by the Courts. The language of the proposed Paragraph 5, referring to "providing financial aid to municipalities," recognizes the fact that these taxes are now collected by the State and then returned to municipalities under the heading of "State Aid" in the State's budget. The language which we propose be added would emphasize that the real basis for returning this money to municipalities is not simply to provide aid to needy municipalities, but to recognize that these taxes originate in the first place because utility properties are exempt from other forms of taxation to which other types of taxpayers are subject.

For example, one of the municipalities we represent, Holland Township, has an electricity generating station which is largely exempt from real estate tax, but gross receipts tax proceeds replace this real estate tax loss. Also, this Township has approximately 10% of its land area under public utility easements, radiating like a spider web from this utility station. The land subject to these easements is impaired in its development value, and consequently in its real estate tax assessments. Here again, utility tax revenues returned to the Township compensate it for the fact that real estate tax proceeds cannot be generated.

Thank you for your consideration of this request.

Very truly yours,



RICHARD DIETERLY

RD/km

cc: Mr. Michael Basarab,  
Office of Legislative Services, Revenue Section  
Ms. Doris Windle,  
Assembly Majority Office

