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PUBLIC DISCUSSION

before

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

ASSEMBLY BILL NO. 109 ACA (2R)

(The "Fair Beaches Act," appropriates \$250,000)

and

SENATE BILL NO. 1374 SCA (2R)

(The "Fair Beaches Act," appropriates \$200,000)

September 18, 1989
Municipal Courtroom
Belmar Municipal Building
Belmar, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman J. Edward Kline, Chairman
Assemblyman Bernard F. Kenny, Jr.

ALSO PRESENT:

Gerald M. Dowgan
Office of Legislative Services
Aide, Assembly Municipal Government Committee

New Jersey State Library

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Public Discussion Recorded and Transcribed by
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State House Annex
CN 068
Trenton, New Jersey 08625



J. EDWARD KLINE
Chairman
JOHN E. ROONEY
Vice-Chairman
JOHN A. GIRGENTI
BERNARD F. KENNY, JR.
JEFFREY MORAN

New Jersey State Legislature
ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 292-1596

MEMORANDUM

TO: MEMBERS OF THE ASSEMBLY MUNICIPAL
GOVERNMENT COMMITTEE

FROM: ASSEMBLYMAN J. EDWARD KLINE, CHAIRMAN

DATE: SEPTEMBER 11, 1989

SUBJECT: PUBLIC DISCUSSION - SEPTEMBER 18, 1989

(Address comments and questions to Gerald M. Dowgin,
Committee Aide - 292-1596)

The Assembly Municipal Government Committee will meet in the municipal courtroom of the Belmar Municipal Building, located at 601 Main Street, on Monday, September 18, 1989 at 10:00 a.m.

Testimony will be taken from interested parties on two bills, both called the "Fair Beaches Act," that aim to improve public access to the beaches of the State. The bills are: A-109 ACA(2R) and S-1374 SCA(2R).

Issued 9/11/89

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblymen VILLANE and OTLOWSKI

AN ACT concerning public access to the beaches of New Jersey
and the amounts which may be charged therefor, providing for
the preparation of beach ²[management practices] access and
fee² plans, ²and² amending P.L. 1955, c. 49, supplementing
Title 13 ²[and Title 40]² of the Revised Statutes, and making
an appropriation.

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

1. (New section) ²[This] Sections 1 through 19 of this² act
shall be known and may be cited as the "Fair Beaches Act."

2. (New section) The Legislature finds that the longstanding
public trust doctrine provides that ownership, dominion, and
sovereignty over land flowed by tidal waters which extend inland
to the mean high water mark is vested in the State in trust for
the use by the people for the purposes of navigation, fishing, and
commerce; that the New Jersey Supreme Court has asserted
that the public trust doctrine also protects recreational uses;
that this right is meaningful only if it carries with it a right of
access to the dry beach adjoining the wet sand beach, and that
only reasonable fees, applied on a non-discriminatory basis, may
appropriately be charged for such public access.

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AMG committee amendments adopted June 9, 1988.

² Assembly AAP committee amendments adopted June 23, 1988.

2 The Legislature therefore determines that the State, together
with the municipalities and counties in our coastal areas, have a
special obligation to assure public access to, and proper
4 management of, these coastal resources without disruption of
established property rights in coastal communities, and that in
6 order to meet this obligation it is important for the Legislature
to codify the principles enunciated by the State's courts in
8 applying the public trust doctrine to the public's right of access
to, and use of, New Jersey's coastal beaches and waters, to
10 clearly establish the rights of individual beach users, the
corresponding responsibilities of municipalities to provide access
12 thereto, and the obligation of the State to maximize utilization
thereof, in part by maximizing transportation alternatives.

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

"Beach" means any area of sand or shingle deposit adjacent to
16 and fronting the shore of the Atlantic Ocean;

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

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

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

30 "Commissioner" means the Commissioner of the Department
of Environmental Protection;

32 "Daily admission" means the permission for access to, and use
of, a beach area at any time during one calendar day, or so much
34 thereof as the beach area is open to the public and for which a
beach admission fee is charged;

36 "Department" means the Department of Environmental
Protection;

38 "Director" means the Director of the Division of Coastal
Resources in the Department of Environmental Protection;

1 "Division" means the Division of Coastal Resources in the
2 Department of Environmental Protection;¹

3 "Public beach" means a beach which forms part of a place of
4 public resort under the management and control of a
5 municipality or political subdivision of this State pursuant to
6 P.L. 1955, c. 49 (C. 40:61-22.20 et seq.) or any other law
7 empowering the municipality to maintain, improve, manage, and
8 control beaches and bathing grounds and facilities, or ²under the
management and control of² the State or federal government.

9 "Public trust lands" means tidal-flowed land lying between
10 the mean high and low water marks and the ocean covered land
11 seaward thereof to the State's boundary.

12 4. (New section) a. ¹[Schedules] Beach municipalities shall
13 calculate schedules¹ for all categories of beach admission fees
14 ¹[shall be calculated]¹ so as to permit the municipality to
15 collect revenues sufficient to recover the municipality's
16 expenses in providing services for the beach area ¹but ²beach
17 admission fees thereunder² shall not exceed \$3 for a daily
18 admission and \$5 for a weekend admission, unless a waiver is
19 obtained from the Division of Local Government Services in the
20 Department of Community Affairs¹. The allowable expenses
21 shall include additional costs incurred by a municipality directly
22 attributable to its beach operations, but need not be limited to
23 shore protection costs incurred by the municipality, cost of
24 insurance, solid waste and sewage waste disposal costs, fresh
25 water costs, maintenance and personnel costs including those for
26 lifeguards, police, first aid, and ticket collectors and any other
27 costs clearly associated with managing the beach area. Beach
28 municipalities may recover expenses incurred outside the beach
29 area, but associated with providing services at the beach area,
30 by submitting a separate accounting thereof to the ¹[division for
31 approval] Division of Local Government Services ²[.] in the²
32 Department of Community Affairs¹. To account for seasonal
33 revenue losses attributable to inclement weather or other
34 factors which reduce attendance, a beach municipality may
35 calculate fees on a three-year average cost basis. The fee
36 schedule shall be submitted to the department pursuant to
37 subsection b. of section 6 of this ²[amendatory and
38 supplementary]² act. The fees established pursuant to this

section shall take effect in the 1989 beach season.

b. A beach municipality may charge and collect a separate fee for facilities not routinely provided with beach access, such as lockers, cabanas, umbrellas, and swimming pools, but may not charge and collect any fee or rental for the use of any structure, facility, or equipment the use of which is mandatory under any ordinance or other regulation of the beach municipality as a condition for access to, or use of, the beach and bathing grounds of a beach area.

c. No beach admission fee may be charged to persons ²[12] 11² years of age or under, or 65 years of age or older, nor shall ²[such fee] any beach admission fees² distinguish between residents and nonresidents.

d. A beach municipality shall report beach operation revenues and expenditures in its annual budget submitted to the Division of Local Government Services ¹in the¹ Department of Community Affairs pursuant to the "Local Budget Law ^{2,2}" ²[P.L. 1960, c. 169 (²N.J.S. 40A:4A-1 et seq. ²)]².

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

6. (New section) a. Every beach municipality shall file with the division a beach access and parking plan no later than January 15, 1989 and ²[every] no later than² January 15 of every third calendar year thereafter. Any proposed amendments to, or revisions of, the plan shall be filed with the division but shall not take effect unless approved by the division. The division shall act within 45 days of the date any proposed amendments or revisions are received. As part of the plan, each beach municipality shall demonstrate that its beaches are being maintained and provided unobstructed, so as not to impede public access. The plan shall address, but need not be limited to, the following:

Availability of pedestrian beach access points;

Availability of rest rooms, changing facilities and bathhouses;

Availability and duration of parking within one-quarter mile

of a beach access point;

2 Availability of lifeguards;

4 Availability of access to publicly funded shore protection
structures;

6 Availability of barrier free beach facilities for the physically
handicapped; ²and²

Availability of access at oceanfront street ends.

8 b. Each beach municipality shall file with the department a
beach admission fee and parking fee plan no later than
10 December 1, 1988 and annually every January 15, beginning in
1990. This plan shall include, but need not be limited to, the fee
12 schedule for beach admission and its cost basis as calculated
pursuant to section 4 of this ²[amendatory and supplementary]²
14 act, and the cost and terms of parking within one-quarter mile
of a beach access point.

16 c. The department shall, by rule or regulation, adopt
standards for evaluating the access and fee plans required
18 pursuant to ²[subsection] subsections² a. and b. ²[respectively]²
of this section, and shall review the plans in sufficient time for
20 ²[the] a² municipality to implement any recommendations prior
to the forthcoming beach season.

22 7. (New section) A beach municipality may apply for and
¹shall¹ receive from the department a grant to offset the costs
24 of preparing the beach ¹[management practices plan] access and
fee plans¹ required pursuant to section 6 of this ²[amendatory
26 and supplementary]² act.

28 8. (New section) The department is authorized to issue
grants, within the limits of funds appropriated pursuant to
section 21 of this act or otherwise made available therefor by
30 the Legislature, to beach municipalities for the cost of
preparing the beach ¹[management practices plan] access and
32 fee plans¹ required pursuant to section 6 of this ²[amendatory
and supplementary]² act.

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

38 10. (New section) A beach municipality ²[may] shall² not
vacate an oceanfront street or street end without the approval

of the division.

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

12 12. (New section) The department shall not approve an
application from a beach municipality for State funds for shore
14 protection, conservation, or recreational projects if the
department finds that the beach municipality is in violation of
16 this act unless the failure to fund the project would result in
danger to life or irreversible harm to the natural resources of
18 the State.

13. (New section) All State and federally operated beaches
20 shall comply with all provisions of the State Sanitary Code
governing public recreational bathing.

22 14. (New section) The department, with the cooperation of
the Department of Transportation, shall, to the maximum extent
24 practicable and feasible, provide and promote the use of public
transportation between State and federally operated beaches
26 and proximate parking facilities and public transportation
terminal points.

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

b. A person or public entity which is an owner, lessee, or
34 occupant of a beach area who grants permission to another to
enter upon the beach area only for granting access to public
36 trust lands or for the essential and reasonably necessary use of
the beach area in order to enjoy the public trust lands does not
38 thereby: (1) extend any assurance that the beach area or public
trust lands are safe for those purposes; or (2) constitute the

person to whom permission is granted an invitee to whom a duty of care is owed; or (3) assume responsibility, or incur liability, for any injury to person or property caused by any act of persons to whom the permission is granted.

c. This section ²[does] shall² not limit the liability which ²[would] may² otherwise exist for willful or reckless failure to guard, or warn against, a dangerous condition, use, structure or activity or for grossly negligent supervision where supervision is provided.

d. This section shall apply only to causes of action which accrue after the effective date of this ²[amendatory and supplementary]² act.

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

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

17. (New section) The department, within 120 days of the effective date of this act and pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) shall adopt rules and regulations necessary to carry out the purposes of this act.

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

19. (New section) Nothing in this ²[amendatory and supplementary]² act is intended to infringe upon or restrict in any manner the lawful use of private property, nor to convey any rights for a person to trespass on private property for any reason.

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

1. The governing body of any municipality, bordering on the Atlantic ocean, tidal water bays or rivers which owns or shall acquire, by any deed of dedication or otherwise, lands bordering on the ocean, tidal water bays or rivers, or easement rights therein, for a place of resort for public health and recreation and for other public purposes shall have, except as may be provided by law, the exclusive control, government and care thereof and of any boardwalk, bathing and recreational facilities, safeguards and equipment, now or hereafter constructed or provided thereon, and may, by ordinance, make and enforce rules and regulations for the government and policing of such lands, boardwalk, bathing facilities, safeguards and equipment; provided, that such power of control, government, care and policing shall not be construed in any manner to exclude or interfere with the operation of any State law or authority with respect to such lands, property and facilities. Any such municipality¹_;¹ except for any municipality bordering on the Atlantic ocean ¹[which are] that is¹ under the purview of the "Fair Beaches Act" P.L. , c. (C.) (now before the Legislature as this bill), may, in order to provide funds to improve, maintain and police the same and to protect the same from erosion, encroachment and damage by sea or otherwise, and to provide facilities and safeguards for public bathing and recreation, including the employment of lifeguards, by ordinance, make and enforce rules and regulations for the government, use, maintenance and policing thereof and provide for the charging and collecting of reasonable fees for the registration of persons using said lands and bathing facilities, for access to the beach and bathing and recreational grounds so provided and for the use of the bathing and recreational facilities, but no such fees shall be charged or collected from children under the age of 12 years.

(cf: P.L. 1955, c. 49, s. 1)

21. (New section) There is appropriated from the General Fund to the Department of Environmental Protection the sum of \$250,000.00, ²[not] of which no² less than \$200,000.00 ²[of which]² shall be dedicated to issuing grants to beach municipalities pursuant to section 8 of this ²[amendatory and supplementary]² act, and the balance may be used to defray the

cost of reviewing beach ²[management] access and fee² plans
submitted pursuant to section 6 of this ²[amendatory and
supplementary]² act.

22. This act shall take effect immediately.

MUNICIPALITIES

Beaches and Shores

The "Fair Beaches Act," appropriates \$250,000.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 109

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 23, 1988

The Assembly Appropriations Committee favorably reports Assembly Bill No. 109 [1R] with committee amendments.

Assembly Bill No. 109 [1R], as amended, requires municipalities to charge a fair beach admission fee in order to recover the municipalities expenses associated with the operation of the beach. The beach fees are not to exceed \$3.00 for a daily admission and \$5.00 for a weekend admission, unless a waiver is obtained from the Division of Local Government Services in the Department of Community Affairs.

The bill requires beach municipalities to submit plans addressing beach access, admission fees and parking, for approval by the Department of Environmental Protection (DEP).

Beach admission fees which exceed a threshold amount shall be calculated so as to permit the municipality to collect revenues sufficient to recover expenses associated with operating the beach. No beach admission fees would be charged to persons under age 12 or persons age 65 or older. The fees shall also not distinguish between residents and nonresidents. Beach revenues and expenses shall be reported to the Department of Community Affairs.

FISCAL IMPACT:

The bill appropriates \$250,000.00 from the General Fund to the Department of Environmental Protection. Of that amount at least \$200,000.00 shall be distributed as grants to beach municipalities for preparing the beach access and fee plans.

COMMITTEE AMENDMENTS

The amendments are of a technical nature and further clarify the intent of the bill.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 109

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: June 9, 1988

The Assembly Municipal Government Committee favorably approves Assembly Bill No. 109 with committee amendments.

The purpose of A-109 as amended by the committee, is to improve public access to the beaches of the State. The bill codifies certain principles enunciated by the State's courts in applying the public trust doctrine to the public's right of access to, and use of, this State's coastal beaches and waters, and sets forth the rights of individual beach users and private property owners, and the responsibilities of municipalities and the State to improve access.

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

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

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

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

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator STOCKMAN

AN ACT concerning public access to the beaches of New Jersey, limiting the amounts which may be charged as beach fees, providing penalties for violations, amending P.L.1955, c.49, supplementing Title 13 ²[and Title 40]² of the Revised Statutes, and making an appropriation.

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

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

2. (New section) The Legislature finds and declares that the longstanding public trust doctrine provides that ownership, dominion, and sovereignty over land flowed by tidal waters which extend inland to the mean high water mark is vested in the State in trust for the use by the people for the purposes of navigation, fishing, commerce, and recreation.

The Legislature further finds that the coastal waters and beaches of this State are invaluable and unique scenic and recreational resources; that the tourism industry, the second largest in the State, is dependent upon public access to, and enjoyment of, these coastal resources and protection of the ocean environment; and that it is State policy to link the receipt of shore protection funding with the provision of public access.

The Legislature therefore determines that the State, together with the municipalities and counties in our coastal areas, have a special obligation to assure public access to, and proper management of, these coastal resources, and that in order to meet this obligation it is important for the Legislature to codify the principles articulated by the State's courts in applying the public trust doctrine to the public's right of access to, and use of, this State's coastal beaches and waters, and to clearly set forth the rights of individual beach users and responsibilities of

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SNR committee amendments adopted January 12, 1989.

² Senate SRF committee amendments adopted February 6, 1989.

municipalities and other political subdivisions, as well as the State, to improve access.

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

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

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

"Beach area" means the beaches, bathing grounds, and bathing and recreational facilities which are under the control, government and care of any beach municipality or political subdivision of the State.

"Beach municipality" means a municipality or other political subdivision of the State, an agency or instrumentality of the political subdivision, within whose jurisdiction there is a beach, or any other quasi-public entity established to provide beach services, or an office, board, body or other agency established pursuant to P.L.1964, c.185 (C.40:61-35.1 et seq.) or the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.) or any other law for the joint provision, maintenance, and operation of a beach area;

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

"Daily admission" means the permission, for which a beach admission fee is charged, for access to, and use of, a beach area at any time during one calendar day, or so much thereof as the beach area is open to the public;

"Department" means the Department of Environmental Protection;

"Director" means the Director of the Division of Coastal Resources in the Department of Environmental Protection;

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

"Public trust lands" means tide-flowed land lying between the mean high and low water marks and the ocean covered land seaward thereof to the State's boundary;

"Publicly funded project" means any jetty, bulkhead, ¹dune, beach fill,¹ or other ¹[structure constructed with public funds and used for] approach to¹ shore or beach protection ¹paid for with public funds¹.

4. (New section) a. ²[Beach] Except as provided in subsection e. of this section, beach² admission fees for any beach area ²[may] shall² not exceed \$2.00 per daily admission ¹[and a beach municipality's beach admission fee schedule for all categories of beach admission shall be calculated so as to permit the beach municipality to collect revenues sufficient to recover its expenses in providing services for the beach area]¹. ¹[The] Each beach¹ municipality shall post near its beach access points, or otherwise make readily available, the fee schedule for all categories of beach admission. The fee schedule shall be submitted to the department as part of the beach management practices plan prepared pursuant to section 6 of this amendatory and supplementary act. The fees established pursuant to this section shall take effect in the 1989 beach season.

b. A beach municipality may charge and collect a separate fee for facilities not routinely provided with beach access, such as lockers, cabanas, umbrellas, and swimming pools, but ²[may] shall² not charge and collect any fee or rental for the use of any structure, facility, or equipment the use of which is mandatory under any ordinance or other regulation of the beach municipality as a condition for access to, or use of, the beach and bathing grounds of a beach area.

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

d. The department shall compile, and make available generally throughout the State, a digest of the beach admission fee schedules for all beach municipalities.

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

²e. A beach municipality may apply to the commissioner for an increase in its beach admission fee in excess of \$2.00 if the

revenues generated from the fee are insufficient to recover the expenses of any one or more of the following: providing beach litter control and disposal, repairing and maintaining only those boardwalks which provide access to the beach, and providing lifesaving and lifeguard services in the beach area. In the application, the beach municipality shall include information concerning the amount generated from the beach admission fee, the costs of providing those services in the beach area and any other information the commissioner may require. Upon receipt of an application from a beach municipality, the commissioner may determine to increase the maximum daily beach admission fee for that beach municipality if the commissioner determines that costs of maintaining the beach services have increased so that a beach admission fee of \$2.00 or less is insufficient to recover expenses of providing those services in that beach area. The commissioner shall, at least 30 days prior to increasing the maximum beach admission fee for any beach municipality, provide notice in writing to the Governor and the Legislature of the amount of the increase.

f. All revenues from beach admission fee collections shall be deposited in a separate fund maintained by each municipality in order that beach admission fee collections and expenditures thereof by a municipality may be separately accounted for.²

5. (New section) During any time that a beach area is open to the public and a beach admission fee is charged, the beach area shall be made available to the public, without distinction or discrimination, including distinction or discrimination with respect to residency, for daily, weekly, monthly, or seasonal admissions.

6. (New section) Every beach municipality shall file with the department a beach management practices plan no later than October 1, ¹[1987] 1989¹ and every October 1 of every third calendar year thereafter or by another date specified by the department. Any amendments to, or revisions of, the plan shall be filed with the department within 30 days of adoption. The plan shall include the following information as well as any other information required by the director to determine compliance with this act:

The fee schedule for beach admission ¹[and its cost basis as

calculated pursuant to section 4 of this amendatory and supplementary act]¹, ²[their sales] the² locations ²at which admissions are sold², and the number ²of admissions² for sale;

Availability of lifeguards, rest rooms, changing facilities and bathhouses;

Availability of pedestrian beach access points, location and delineation of all public rights-of-way including oceanfront street ends, and any conditions or limitations on the use thereof;

Delineation of all publicly owned lands having the potential for use to provide public access to beach areas, including the location and extent of, or limits on, public access;

A summary of traffic regulations including the availability, cost, and duration of parking within ¹[one-quarter mile of an oceanfront] the municipality¹;

Availability of access to publicly funded shore protection structures;

Availability of beach facilities for physically handicapped persons;

Provision of public transportation to the oceanfront;

Long-range plans which may increase or decrease public access.

The department shall, by rule or regulation, adopt standards for evaluating ²and approving² the adequacy of the plans and shall ²[act on] approve or disapprove² the plans, providing sufficient time to implement the plans in the next calendar year.

7. (New section) A beach municipality may apply for and receive from the department a grant to offset the costs of preparing the beach management practices plan required pursuant to section 6 of this amendatory and supplementary act.

8. (New section) The department is authorized to issue grants, within the limits of funds appropriated pursuant to section 20 of this act or otherwise made available therefor by the Legislature, to beach municipalities for the cost of preparing the beach management practices plan required pursuant to section 6 of this amendatory and supplementary act.

9. (New section) A beach municipality shall provide reasonable public access, without distinction or discrimination, to its beach areas for use and enjoyment by the public. Public access shall include adequate provisions for the use of public rights-of-way, including oceanfront street ends, by physically handicapped

persons. All public rights-of-way, including oceanfront street ends, provided pursuant to this act shall be clearly delineated and may include a posting of any reasonable restrictions on the use of a right-of-way. The contents, nature, and manner of posting of public rights-of-way may be prescribed pursuant to regulations by the Department of Environmental Protection.

10. (New section) A beach municipality shall not ¹[adopt or amend] have among its municipal ordinances¹ any traffic, including parking, ordinances or any other law that would have the effect of limiting or interfering with public access to ocean front rights-of-way, except insofar as may be necessary for safety and to facilitate traffic flow upon public highways.

11. (New section) A beach municipality shall ensure that no physical barriers or local ordinances unreasonably interfere with access to, along, or across beach areas, public rights-of-way providing access to beach areas, or publicly funded shore protection structures.

12. (New section) The department shall not grant any permit or other approval the effect of which would be to reduce, limit, or eliminate any existing beach or public access way unless the department finds that the applicant has provided replacement beach area or alternative public access to the beach functionally equivalent to that which will be eliminated or reduced, and that such replacement beach area or substitute public access way will be protected in perpetuity by dedication, easement, or similar guarantee; and such permit or approval shall in every case be expressly conditioned on the applicant's making such provision.

13. (New section) The department shall not approve an application from a beach municipality for State funds for shore protection, conservation, or recreational projects if the department finds that the beach municipality is in violation of this act unless the failure to fund the project would result in danger to life or irreversible harm to the natural resources of the State.

14. (New section) a. An owner, lessee, or occupant of a beach area owes no duty to keep public trust lands or publicly funded projects adjacent to the beach area safe for entry or use by others or to give warning of any hazardous condition on the public trust lands or publicly funded projects.

b. An owner, lessee, or occupant of a beach area who grants permission to another to enter upon the beach area only for granting access to public trust lands or for the essential and reasonably necessary use of the beach area in order to enjoy the public trust lands does not thereby: (1) extend any assurance that the beach area or public trust lands are safe for that purpose; or (2) constitute the person to whom permission is granted an invitee to whom a duty of care is owed; or (3) assure responsibility, or incur liability, for any injury to person or property caused by any act of persons to whom the permission is granted.

c. This section does not limit the liability which would otherwise exist:

(1) For willful or reckless failure to guard, or to warn against, a dangerous condition, use, structure, or activity; or

(2) For injury suffered in any case where permission to enter the beach was granted for a consideration other than the consideration, if any, paid to the landowner by the State; or

(3) For injuries suffered by any person entering or using the public trust land, beach area, or publicly funded project where the proximate cause of the injury was an unnatural condition of the land placed there by the owner, lessee, or occupant of the beach area.

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

15. (New section) a. The Commissioner of the Department of Environmental Protection is authorized to maintain an action in a summary proceeding in Superior Court to secure injunctive, declaratory or other suitable relief to establish or protect the public right of access to beach areas as herein prescribed.

b. Any person ¹or any beach municipality¹ who violates the provisions of the act, or any rule, regulation, or order promulgated pursuant to this act, is liable to a civil administrative penalty of not more than \$1,000.00 for the first offense, not more than \$2,500.00 for the second offense, and up to \$10,000.00 for the third and each subsequent offense. If the violation is of a continuing nature, each day during which it continues subsequent to receipt of an order to cease the violation constitutes an additional, separate and distinct offense. No civil

administrative penalty shall be levied except subsequent to the notification of the violator by certified mail or personal service. The notice shall include a reference to the section of the statute, regulation, order or permit condition violated; a concise statement of the facts alleged to constitute the violation; the course of action necessary to correct the violation; a statement of the amount of the civil penalties to be imposed; and a statement of the violator's right to a hearing. The violator shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing and upon a finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order upon the expiration of the 20-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied.

c. The department is authorized to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances, including the posting of a performance bond by the violator.

16. (New section) a. Any person may maintain an action in a court of competent jurisdiction against any other person ¹or beach municipality¹ to enforce, or restrain the violation of, this act or any regulation or ordinance adopted pursuant to this act; or for declaratory or injunctive relief to enforce any other common law or statutory right of the public to the use of, or access to, beaches; or to restrain the infringement or denial of those rights.

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

17. (New section) The department, within 120 days of the effective date of this act and pursuant to the "Administrative

Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary to carry out the purposes of this act.

18. (New section) Nothing in this amendatory and supplementary act is intended to infringe upon or restrict in any manner lawful use of private property, nor to convey any rights for a person to trespass on private property for any reason.

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

1. The governing body of any municipality bordering on the Atlantic ocean, tidal water bays or rivers which owns or shall acquire, by any deed of dedication or otherwise, lands bordering on the ocean, tidal water bays or rivers, or easement rights therein, for a place of resort for public health and recreation and for other public purposes shall have, except as may be provided by law, the exclusive control, government and care thereof and of any boardwalk, bathing and recreational facilities, safeguards and equipment, now or hereafter constructed or provided thereon, and may, by ordinance, make and enforce rules and regulations for the government and policing of such lands, boardwalk, bathing facilities, safeguards and equipment: provided, that such power of control, government, care and policing shall not be construed in any manner to exclude or interfere with the operation of any State law or authority with respect to such lands, property and facilities: Any such municipality, except for any municipality bordering on the Atlantic ocean which is under the purview of the "Fair Beaches Act," P.L....., c..... (C.....) (now before the Legislature as this bill), may, in order to provide funds to improve, maintain and police the same and to protect the same from erosion, encroachment and damage by sea or otherwise, and to provide facilities and safeguards for public bathing and recreation, including the employment of lifeguards, by ordinance, make and enforce rules and regulations for the government, use, maintenance and policing thereof and provide for the charging and collecting of reasonable fees for the registration of persons using said lands and bathing facilities, for access to the beach and bathing and recreational grounds so provided and for the use of the bathing and recreational facilities, but no such fees shall be charged or collected from children under the age of 12 years.

(cf: P.L.1955, c.49, s.1)

20. There is appropriated from the General Fund to the Department of Environmental Protection the sum of ²[\$250,000.00, not less than]² \$200,000.00 ²[of which shall be dedicated to] for² issuing grants to beach municipalities pursuant to section 8 of this amendatory and supplementary act ²[, and the balance to defray the cost of reviewing beach management plans submitted pursuant to section 6 of this amendatory and supplementary act]².

21. This act shall take effect immediately.

MUNICIPALITIES
Beaches and Shores

The "Fair Beaches Act," appropriates \$200,000.

SENATE REVENUE, FINANCE AND
APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 1374

with Senate committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 6, 1989

The Senate Revenue, Finance, and Appropriations Committee reported Senate Bill No. 1374 [1R] favorably with committee amendments.

Senate Bill No. 1374 [1R], as amended, establishes \$2.00 as the maximum fee which a beach municipality shall charge for daily admission to a beach. Persons 65 years of age or older or 11 years of age or younger are exempt from paying a fee. The Department of Environmental Protection (DEP) is required to make available a digest of all municipal beach fee schedules. As amended, the bill provides that a beach municipality may apply to the Commissioner of DEP for an increase in its daily beach admission fee above the \$2.00 maximum if revenues generated by the fee are insufficient to recover the expenses of providing beach litter control and disposal, repairing and maintaining only those boardwalks which provide access to the beach or providing lifesaving and lifeguard services in the beach area. Upon receipt of an application, the commissioner shall determine whether or not to increase the beach admission fee for that beach municipality.

In addition, the bill requires beach municipalities to submit beach management practices plans for approval by DEP. The bill appropriates \$200,000 to offset the cost of preparing these plans.

The bill also prescribes certain measures to be taken by local governments to ensure the public's right under the public trust doctrine. A municipality shall not adopt any traffic, including parking, ordinances to interfere with public access, or erect physical barriers or adopt any local ordinances which unreasonably interfere with access to, along, or across beach areas, public rights-of-way providing access to beach areas, or publicly funded shore protection structures.

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COMMITTEE AMENDMENTS

The committee amendments delete the appropriation of \$50,000 to DEP for administration. The committee amendments also provide a mechanism by which a beach municipality may apply to the commissioner for a daily beach admission fee increase above the \$2.00 maximum. In addition, the amendments provide that the beach admission fee collections shall be deposited in a separate fund to be maintained by each municipality so that collections and expenditures of the beach admission fees may be separately accounted for. Other amendments clarify certain provisions of the bill, including the provision that beach fees shall not exceed \$2.00, or are technical in nature.

FISCAL IMPACT

This bill, as amended, appropriates \$200,000 from the General Fund to the Department of Environmental Protection as aid to municipalities in offsetting the costs of preparing beach management plans.

Based on information from DEP, 14 beach municipalities charge more than \$2.00 per day as access fees and may potentially lose approximately \$2,000,000 in revenues. The Office of Legislative Services has estimated that the \$200,000 appropriation in the bill is insufficient to cover the costs of the beach management plans, resulting in additional costs to municipalities.

SENATE NATURAL RESOURCES
AND AGRICULTURE COMMITTEE

STATEMENT TO

SENATE, No. 1374

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 12, 1989

The Senate Natural Resources and Agriculture Committee reports favorably and with committee amendments Senate Bill No. 1374.

As amended, this bill would establish \$2.00 as the maximum fee which a beach municipality may charge for daily admission to a beach. Persons 65 years of age or older or 11 years of age or younger would be exempt from paying a fee. The Department of Environmental Protection would be required to make available a digest of all municipal beach fee schedules.

The bill would require beach municipalities to submit beach management practices plans for approval by the Department of Environmental Protection. The bill would provide funding to municipalities to offset the cost of preparing these plans.

In addition, the bill would prescribe certain measures to be taken by local governments to ensure the public's right under the public trust doctrine. A municipality may not adopt any traffic, including parking, ordinances to interfere with public access, or erect physical barriers or adopt any local ordinances which unreasonably interfere with access to, along, or across beach areas, public rights-of-way providing access to beach areas, or publicly funded shore protection structures. The committee amended the bill to prohibit such ordinances to be among a municipality's existing ordinances. In addition, the committee amended the definition of the term "publicly funded project" to include dune and beach fill projects.

The committee also amended the bill to require that the beach management practices plan summarize parking regulations throughout the municipality, not within only one-quarter mile of an oceanfront. Finally, committee amendments allow penalties to be imposed on beach municipalities for violations of this act and allow citizen actions to be brought against beach municipalities.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported the bill includes the changes required by technical review which has been performed.

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ASSEMBLYMAN J. EDWARD KLINE (Chairman): I'd like to call this meeting to order -- the Municipal Government Committee meeting.

I'd like to state, ladies and gentlemen, that the issue that we're speaking on is an important issue. It's an important issue to the shore communities, as well as to the State of New Jersey.

Being the Chairman of the Municipal Government Committee, I have decided to hold hearings in the shore communities, as well as other hearings that will be held in Trenton, to discuss this issue. We wanted to make it accessible to you, the local people. Rather than driving all the way to Trenton, we felt it would be nice to come to you to have a hearing. I think, to give us an overview of the bill, we're going to call on Assemblyman Joe Palaia.

Before I do that, I'd like to introduce myself. I'm Assemblyman Edward Kline. I'm the Chairman of the Municipal Government Committee, and I'm also the Mayor of Brigantine -- which is a shore community -- which I do charge beach fees for. So it does hit close to home and I'm interested in what transpires.

I have Assemblyman Kenny with me today. He drove down. We don't know whether there's another committee hearing being held on shore protection and shore pollution, so some of the other legislators will be coming in and out. With that, I'm going to ask Assemblyman Joe Palaia to give us an overview of this bill.

ASSEMBLYMAN JOSEPH A. PALAIA: Thank you, Mr. Chairman and Assemblyman Kenny. You both came from opposite ends of the State. So we appreciate you coming down to Belmar to hold these hearings, because we have a lot of our mayors and local citizens that do want to be heard.

I never felt that any bill that I've ever put in is a panacea for everything. I believe that holding hearings such

as this, your Committee would get an insight into what the problems are at the local community level during the summer.

I basically feel that it's not fair for our coastal communities, though, to bear the burden of running the beaches in this State, at a great inconvenience to the residents who live in these communities. We cannot place the financial burden squarely on the shoulders of these communities any longer. Actually, that is really what is taking place. We have found that having to charge only a \$2 beach fee has caused real problems amongst our communities. Where does it all end up? It ends up with the taxpayers; and I just don't know where it says that we, as municipalities along the shore, have to be our brother's keeper throughout the State of New Jersey.

In fact, the OLS -- the Office of Legislative Services -- estimates that one of the bills that you have before you today by Senator Stockman, will cost beach municipalities a total of \$2.5 million in Fiscal Year 1990, assuming the beach plan filing date is changed in the bill from October 1, 1987 to October 1, 1989. That's \$2.5 million that have to be made up by local communities. I just don't believe that it's fair. I don't know where the \$2 fee came from. To me, it was an arbitrary figure and arrived at with no rhyme nor reason to it. It just said, "Well, we have to have a beach fee. Let's make it \$2."

I think what the judge in Monmouth County, Judge Milberg, has said makes sense. He said, "Well, let's look for some criteria that we can use." I think that's the most sensible thing I've heard throughout all these different hearings that we've had.

I know there are lot of people, Mr. Chairman, that want to be heard, and you're going to be hearing from me throughout the day. So if you don't mind, I'll stop my testimony here and you can go on with the hearing.

ASSEMBLYMAN KLINE: Okay. Today's purpose is to take testimony to hear both sides of the issue so we can look at what is best for the State of New Jersey and try to meet some kind of middle-of-the-road agreement.

I think, before I call on our next speaker-- Assemblyman Kenny, is there anything you would like to say at this time, before we take testimony?

ASSEMBLYMAN KENNY: Thank you, Mr. Chairman. Just that it is a pleasure to be here. I'm from the 33rd Legislative District, which is northern Hudson County, the towns of Hoboken, Union City, West New York, Guttenberg, and Weehawken.

UNIDENTIFIED MEMBER OF AUDIENCE: Please speak through the microphone so we could hear you.

ASSEMBLYMAN PALAIA: Is it on?

ASSEMBLYMAN KENNY: Can you hear me?

MR. DOWGAN (Committee Aide): Use the little one.

ASSEMBLYMAN KENNY: Oh, the little one? This one? Okay, there you are.

My name is Bernard Kenny. I'm the Assemblyman from the 33rd Legislative District -- which is in Hudson County -- the communities of Hoboken, West New York, Union City, Guttenberg, and Weehawken. I'm glad to be here and I'm looking forward to this testimony. Thank you.

ASSEMBLYMAN KLINE: Okay. Did you pay your 35 cents in the parking lot?

ASSEMBLYMAN KENNY: Yeah, several times.

ASSEMBLYMAN KLINE: Only in America, right? Okay, as we stated, there are other committee hearings going on in the State today; therefore, our first speaker will be another Assemblyman. John Villapiano would like to speak first. He's an 11th District Assemblyman from Monmouth County.

ASSEMBLYMAN JOHN A. VILLAPIANO: Good morning, Mr. Chairman. Good morning, Assemblyman Kenny.

My name is Assemblyman John Villapiano. I represent the 11th District of which quite a bit of this stir and controversy has surrounded. I appreciate the opportunity to speak in front of the Committee this evening -- or this morning. I do have some remarks that I'd like to make on behalf of Assembly Bill No. 109, on behalf of other Assembly bills that are in the hopper, and also on behalf of Senator Stockman's bill.

My remarks will be couched in two different areas. I'd like to, number one, talk on the concept of Assembly Bill No. 109 and also on Senator Stockman's bill; but then also talk on the entire beach issue in general.

First of all, I'd like to make two supporting statements and that is I am supportive of any measure to keep beach fees as low as possible throughout the State of New Jersey. I don't think it's fair for the residents of the 11th District to pay inordinately high beach fees, as well as I don't think it's fair for any of the residents of the State of New Jersey, whose taxpayer money goes into shore protection projects and other very, very worthwhile causes, to pay an inordinately high beach fee.

Secondly, I have to be supportive of Judge Milberg's decision that certain municipalities, in time, have exceeded their authority and have charged entirely too much as is concerned with beach operations in the town.

The reason, though, that I am written down as being opposed to voting out Assembly Bill No. 109 this evening -- or this morning -- is that number one, Assembly Bill No. 109 calls for a \$3 per day beach fee on weekdays, and a \$5 beach fee on weekends. Clearly, by Judge Milberg's decision, that is no longer a legal act. There is no justification for two different fees that should be charged. Judge Milberg was very clear in his decision that beach fees had to be uniform throughout the week. This bill-- I don't see any amendments that are on the board; therefore, I would say that the bill

cannot be voted out and would go directly in the face of Judge Milberg's decision, or we would be just inviting another lawsuit.

Secondly, \$3 and \$5 is a legitimate figure and it's more than the \$2 that Senator Stockman's bill would produce. But if Senator Stockman's bill already passed the Senate, I don't understand how a bill that is going to be \$1 higher on weekdays and \$3 higher on weekends, would then have a prayer in the Senate committee process?

That would bring me around to the overall point of my comments this morning, and that's on the conception of this entire process and on this entire issue.

We, as legislators, as in the courts, and as taxpayers, have been viewing this entire issue on the revenue side. I have gone from shore town to shore town and will go into any municipality in the State of New Jersey and support the concept that I have pushed forth in Assembly Bill No. 4164. And that concept is-- Let's take for a moment the revenue issue and set it aside. Let's concentrate on the expense issue. Now, Judge Milberg's decision very clearly designated that direct expenses of beach operations would be allowable as far as a beach plan is concerned. I believe, and I think that everybody I've spoken to believes, there are a certain amount of indirect costs that municipalities have to provide in order to operate their beach; whether it's purchasing from the administrator, or town council and mayor and council time, or what have you. It goes on and on. There are certain indirect expenses that are involved.

We at the shore -- and I'm sure you too, Mayor and Assemblyman -- want to see the beach fees as low as possible. But you would also want to make sure that the taxpayers of your town are not inordinately burdened by the amount of subsidy that must be given from the local taxpayers' pockets into the beach operation that, therefore, would show the operation open to the entire State.

So what I have been calling for is the State of New Jersey, through the Department of Community Affairs, to come up with a professional to give us a standard formula that you can use in Brigantine, and, Assemblyman Kenny, you could even use in Hudson if you had beaches up there. But a standard formula allocation for costs, both direct and indirect, that would be based on the formula that is used from the State of New Jersey to receive moneys back from the Federal government. Therefore, it would be justifiable in a court of law. If the Public Advocate saw that there was true, accepted, accountable procedures that are used in determining beach fees, then there would be something that we could hang our hat on as opposed to just an arbitrary capricious figure of \$2. Or, I have to say, an arbitrary capricious figure of \$3 and \$5. Three dollars naturally is more revenue than \$2, but if we're going to truly operate government as a business, we should know what the cost -- the actual costs are, and the formula involved should make those costs--

The final point that I'd like to make this morning, is that our beaches cannot be set in a mode of status quo. We have moved quite far in the past five or 10 years in enhancing our beaches with dune restoration projects, growing projects, and other acceptable measures as far as beach erosion control is concerned.

If we, as a Legislature, are to determine that this is the fee, and the fee will not be raised or lowered according to costs, then we can never again reinvest without asking Mr. Weingart to go for another bond issue; we can never reinvest in the improvements in the beach.

I, for one, want to see the beaches get better as the year 2000 comes on. I don't want to see them stay the same. I don't think Mother Nature will allow them to stay the same. So, a portion of a line item of a beach plan should allow for municipalities to reinvest in those beaches, and that should be

considered an acceptable expense -- the improvement of, or the enhancement of the beach. I don't see in Assembly Bill No. 109 or in Senator Stockman's bill that we are allowing for the enhancement or the improvement of our beaches. The ocean is our number one tourist attraction in the State of New Jersey. We have to do everything possible within our parameters to make sure that it not only is reasonable and fair for all State residents to use, but it can be improved in the future. Assemblymen, I would respectfully request that this bill not be voted out of Committee today. Thank you.

ASSEMBLYMAN KLINE: We are not going to vote the bill out of Committee.

ASSEMBLYMAN PALAIA: No, I wasn't even looking for it to be voted out today because I think there -- and my bill included, Mr. Chairman -- is too much that we have to be doing with it.

ASSEMBLYMAN KLINE: Yes.

ASSEMBLYMAN PALAIA: This is really just the initial -- the beginning of the whole thing.

ASSEMBLYMAN KLINE: Correct.

ASSEMBLYMAN PALAIA: So, I'm not looking for any passage.

ASSEMBLYMAN KLINE: John, you'll have an opportunity to testify again in Trenton. So you keep an eye on it, and we'll keep you updated.

ASSEMBLYMAN VILLAPIANO: Thank you.

ASSEMBLYMAN KLINE: Okay. Frank Heine?

F R A N K E . H E I N E , E S Q . : Right here, sir.

ASSEMBLYMAN KLINE: I see you have to leave, so why don't we-- Frank is the Spring Lake attorney. He has to go to another hearing, so he would like to speak and get on the road.

MR. HEINE: Well, just a few comments. I'm the borough attorney for Spring Lake; I have been for quite a few years. Spring Lake was one of the cases which was involved

with the Public Advocate. We were one of the municipalities which settled with the Public Advocate for a fee of \$2.50 daily admission plus the creation of a beach utility -- which Assemblyman Villapiano referred to -- which we have done. We have kept very close tabs on our expenses for the year 1989.

Sometime in October or November, part of our agreement with the Public Advocate is to meet with him and to go over these expenses to see whether the \$2.50 is a reasonable fee.

What we have discovered, however, for the year 1989, is that the \$2.50 fee has discouraged the purchase of seasonal badges. Quite frankly, the same people who would buy a seasonal badge or people who would come to the beach -- generally the same group of people -- instead of buying a seasonal badge, they bought daily badges.

I think you'll find in all the communities at the shore the seasonal badges which, in effect, is the backbone of our revenue -- money which we have always counted upon to run our beaches -- has declined very appreciably. For example, in Spring Lake in the year 1988 which was a poor year, we sold 5360 seasonal badges. However, in the year 1989, we only sold 2066 badges and 73 half-season badges. So what's happened is that-- Well, when we set the fee so low, it impacts upon what people pay for a seasonal badge. Our daily badges have gone up considerably. Last year-- This year, we took in \$168,000, and last year we took in \$103,000.

Well, one thing that you might keep in mind is that when you set the daily fee, it's not in a vacuum. It also impacts upon the seasonal fee. I think probably-- We didn't change our seasonal fee this year for the very reason that we hoped to get the information -- didn't change it from '88 -- so that when we sat down with the Public Advocate we could show that we kept the same type of charge for both years.

I also think in this bill, which you speak of, where you exempt people 65 years of age and over-- I find no great

push for that. In a community like Spring Lake and some other communities, we may have 15% to 20% of our bathers 65 years of age and over. They've never asked for a free beach, so to speak. But what you do for a town like Spring Lake, and perhaps Sea Girt and Avon and so forth-- What you will do will reduce the revenue by maybe anywhere from 10% to 20%.

What we have here is that our communities-- Assemblyman Palaia speaks of erosion, and others say reserves and so forth. We have no reserves, we have no money; we have no money set aside. In fact, Justice Hall, who heard the first Supreme Court case, interpreted the statute by indicating that there should be a reasonable provision for erosion control and beach improvement and so forth. We have none of that. We have-- For this year, we had in our beach budget-- We had budgeted \$670,478 for anticipated revenue. Our actual revenue was \$565,000, so we're about \$104,000 or \$105,000 short. I think you'll find that's true of Avon, and you'll find that's probably true of Belmar. You have your representatives here, but I think you'll find that communities have a large shortfall. I do think -- to get back to the 65 -- if that's a public policy-- I think the State should provide money for-- In other words, if you're going to let everybody 65 years of age and over from not only New Jersey, but from the whole world, come here, I don't think it's fair for the shorefront communities to provide parking, provide lifeguard protection, rest rooms, boardwalk, everything else, and receive nothing for it.

All I have to say in summary, is when you set the fee, or when you come to a daily fee, keep in mind that it affects the seasonal fee, too. There has to be-- I don't know what the ratio is, probably eight to one, or something like that. Maybe, anything above eight to one, people buy a seasonal badge. But if we don't have the seasonal revenue, we're in bad shape especially this year. We got a fair amount of daily revenue..

It was a pretty good year compared to other years. The weather was good on the two big holidays. There was the absence of pollution or medical waste. But if we had a poor year like '87, not only would we have a shortfall of \$105,000, but it could be \$200,000. For a small town like Spring Lake it impacts, as you well know, if there's a-- In our beach utility here, for example, as the present law is, if we have a deficit, we have to put that in taxation for next year. That's what happened in Manasquan. In Manasquan they had to cut out police protection and other items. I think this needs very careful consideration, and I would hope that you would consult with the people in the shore communities who have had, say, years of experience in running these beaches.

I thank you for the opportunity to speak.

ASSEMBLYMAN KLINE: We thank you for your testimony. That's the idea of the hearing: to hear what everyone has to say about this issue.

MR. HEINE: Thank you very much, sir.

ASSEMBLYMAN PALAIA: Thanks, Frank.

ASSEMBLYMAN KLINE: Thank you. Okay, our next speaker is John Weingart, Director of the New Jersey Division of Coastal Resources. John?

J O H N W E I N G A R T: Thank you.

ASSEMBLYMAN KLINE: Good morning.

MR. WEINGART: Thank you for holding this hearing and for the opportunity to testify. Since I came from Trenton, I will try to be brief so that the other people that are more local can speak.

I just returned last week from a delightful beach vacation in Spring Lake, where I stayed in a Spring Lake hotel and spent money in Spring Lake restaurants. I went there because the beaches were there.

There are two aspects to the two bills-- There are two bills on public access that are before the Legislature.

There's A-109, sponsored by Assemblyman Palaia, and there's also S-1374, sponsored by Senator Stockman in the Senate. I understand Assemblyman Collins is planning to introduce that in the Assembly.

There are two aspects to each of these bills. One is the issue of beach fees, which is what has gained all the attention. The other is beach access plans. I want to talk briefly about each of those aspects.

The beach access plans are very important. The two bills are fairly similar -- essentially similar in how they address those issues, the issues of beach access plans. But the plans would, for the first time, give the State and beach goers an opportunity to know in advance what the policies in each municipality was and what the availability of facilities in each municipality was for parking, for changing clothes, for getting onto the beach, where the points are you can walk onto a beach, where the points are where you can go fishing, whether there are restrictions in terms of the hours of the day, the seasons of the year, and so forth. That information is not available at the moment. What we have, instead, is a collection of laws and policies and regulations, some of which are enforced, some of which aren't, that end up with every year people being arrested for fishing in the wrong spot, people going to a beach and not being able to get on, people getting to a beach and finding no place to change their clothes, and just a whole set of factors that make it very difficult for some people to have an enjoyable time at the beach.

The plans that are required in each of these bills would take us past that. We recognize-- I think everyone recognizes that the shore is very developed and there's a limited amount of space to accommodate all of the people who want to come to the beach. But the provision for plans and the requirement that those plans be approved by a State agency and that there be some power to enforce them -- and enforce them

without going to court necessarily, and without years of litigation -- is very important.

In terms of the beach fees, it's also important to recognize where this hearing is being held -- in Belmar. They are a municipality. There are maybe 35 beachfront municipalities. Most of them, the overwhelming majority, have beach fees that are in the \$2 or \$3 range or less. Some municipalities are free. Some of them are very cheap. I think in Brigantine it's fairly low. It is just this handful of municipalities that have beach fees of -- that have had them up to \$6 or \$8 a day and have given the whole shore a black eye as a result. The perception has grown that beach fees statewide are high, that the beach is exclusionary, that the beach practices are exclusionary and discriminatory, and it's hard to spend an enjoyable day at the beach.

The result is that-- I know in DEP every spring, when June comes along, we get phone calls from newspapers in New York and Philadelphia saying, "Is it true that you can't get on the beach unless you live there? Is it true that the beach fees are \$10 wherever you go?" Things that to some extent are untrue. But the perception grows because of this handful of municipalities. I think that should be stopped. I think the only way that's going to happen is through, I guess, some combination of court suits and legislation. But legislation might be a whole lot quicker and a whole lot clearer.

Assemblyman Villapiano spoke about linking shore protection spending and beach fees. Well, that doesn't happen. It's true that the State spends money for shore protection. We've spent over \$40 million for shore protection in the last seven years, up and down the shore. But none of that money has come from beach fees. The beach fees have gone into paying for lifeguards and paying for other beach related services. But the \$40 million came from taxpayers throughout the State who paid for the bond fund. The local

municipalities have had to come up with 25% of the funds for those projects. They've done that, again not through beach fees, but through other sources of revenue.

So, in conclusion, let me just say, I think the Senate bill that has been introduced -- and as I say I expect will be introduced in the Assembly -- is a better bill. But either one would be a vast improvement over what we have now, and either one ought to be passed. These bills have been kicking around for years. The ideas about beach access have been kicking around for years. I think the State would be well served to have one of these bills. I applaud you for holding this hearing.

I would suggest that you might think about holding a hearing, perhaps, in Hoboken, or Cherry Hill, or Hightstown, or other parts of the State where there are people who like to spend days at the beach and have difficulty doing so, and might have an easier time if one of these bills was passed.

Thank you very much. We will have-- I have some minor comments about the bills that I will submit to you in writing, or perhaps at a future hearing.

ASSEMBLYMAN KLINE: Good. Fine. John, one thing I want you to-- Four-wheel drive accessibility-- I know in my town -- in Brigantine -- we have four-wheel drive permits. We allow them on the beach.

MR. WEINGART: Yes.

ASSEMBLYMAN KLINE: I see that growing and growing in numbers. I worry about my little town of Brigantine. Where are we in the State? Has that issue come up?

MR. WEINGART: Yeah, the issue comes up repeatedly. For the State, it comes up with Island Beach State Park -- the State beach that the State runs. There are regulations allowing four-wheel drive vehicles onto the beach at certain times and in certain parts of the beach. There's much debate about the impact they have on the beach. I think, in

particular, if they can be kept off dunes, that's the highest priority. In most parts of the State, there's too many people on the beach to even think about it. It's just a safety problem. The few areas-- You're lucky in Brigantine to have enough beach to--

ASSEMBLYMAN KLINE: We do. I don't know whether to include that regulating of them with this legislation or not.

MR. WEINGART: I think it probably should be. I mean, I think it probably should be something that's done consistently statewide and should be included.

ASSEMBLYMAN KLINE: That's why I'm bringing it up. I'd like you to be thinking about it in the near future, because some municipalities charge a fee for the four-wheel drive permits. Should we limit them? Should we have statewide regulations about staying off of our dunes? I think that's something that's-- Four-wheel drives are becoming more popular.

MR. WEINGART: Yeah.

ASSEMBLYMAN KLINE: You see them growing in numbers.

MR. WEINGART: Right. I will think about that and get back to you on that.

ASSEMBLYMAN KLINE: Think about that.

MR. WEINGART: Let me just mention, since Island Beach State Park came up, that Island Beach State Park -- which is a State-run beach-- The beach fee is \$4 a day per carload. That includes parking, as well as access to the beach, for however many people are in the car. That's a pretty marked contrast to \$6 or \$8 a day per person just to get on the beach.

ASSEMBLYMAN KLINE: Okay. Thank you. Any questions for John?

ASSEMBLYMAN KENNY: Is there legislation addressing a requirement for rest room facilities?

MR. WEINGART: Yeah. What the legislation does, without spelling out formulas-- It says that as part of the municipality's beach access plan, they would have to provide

that. We've just gone through that. What we have done in DEP, under State legislation, is require that before we give shore protection assistance to a municipality, that they have a beach access plan that meets our specifications. We've just gone through that with Sea Bright in Monmouth County to a greater extent than we ever had with any other municipality. It was a long process -- but I think it worked out very well -- that everybody recognized there was a limited amount of space, a limited amount that could be accomplished. But as a result, they developed a plan that includes more rest room facilities, includes more public beach, includes more areas for parking, includes a bike way, and various things that wouldn't have been there in the past. I would expect with one of these bills, that type of process would take place in every municipality. Okay?

ASSEMBLYMAN KENNY: Thank you.

MR. WEINGART: Thanks.

ASSEMBLYMAN KLINE: Okay. We have another speaker who'd like to go to the other hearing, so we'll call on Paul Kapalko?

P A U L A. K A P A L K O: Kapalko. (corrects Chairman's pronunciation)

Thank you Mr. Chairman. Members, good morning. Mr. Chairman, if I may-- In addition to being an Assembly candidate, I've served in municipal government for four years. I was on the City Council of the City of Asbury Park.

ASSEMBLYMAN KLINE: Could you speak up?

MR. KAPALKO: Yes. It occurs to me, having just recently concluded that tenure, that the municipalities are under siege.

ASSEMBLYMAN KLINE: Okay. The little one on there is the one you have to talk into. (referring to microphone)

MR. KAPALKO: Okay, very good. Thank you. The municipalities are under siege. There's no question about it.

Financially, municipalities are in big trouble. They primarily rely upon real property taxes and whatever user fees they can obtain in order to fund their municipal services. The property taxes in the State of New Jersey -- and certainly in the coastal districts -- have skyrocketed in recent years. The local newspapers have been carrying the articles. I don't think there's any question about that.

Now we're coming to an issue, once again, where the State of New Jersey deems it appropriate to affect -- through mandate -- the local process. I can appreciate some need to do that. Obviously, charging exorbitant fees in excess of what is appropriately associated with the use of the facility is a problem. It does inhibit the use of a natural resource that belongs to us all. I can understand that. Therefore, a fair middle ground needs to be struck. But I'm here to speak on behalf of the \$3 and \$5 rates as opposed to the \$2 cap rate to the municipalities.

It seems to me that if we're going to accept a proposal that is going to cap at \$2 what a municipality can charge, and then expect somehow that the State is going to be able to find sufficient appropriations on an annual basis to fund the shortfall, I think it's pie in the sky. We're all familiar with the status of the State Budget -- a \$400 million shortfall this year, and an anticipated shortfall next year. The municipalities are asking for relief, and instead of getting relief, what they're getting is additional mandated costs without additional revenue to cover it.

We're looking to fully fund education. We're looking for a whole host of other things that are going to cost additional moneys out of the State Treasury. Is it likely to assume that we're going to be able to find the additional revenues to subsidize the operation of the beaches? Doesn't it seem to make more sense to give the municipalities a fair dollar amount to charge for the users of the facility itself?

I think that that seems to be, by far, the most appropriate process.

In addition, assuming even that it would be appropriate to allocate sufficient moneys out of the State to cover the shortfall, how are we going to determine what is a fair amount to recompense the municipality? What formula is going to be used? What indirect costs that a municipality does incur on an annual basis, are they going to be allowed to recuperate?

For example, are we going to allow the municipality to charge back the cost for lighting on the boardwalk? Are we going to allow them the additional money that it costs for repaving on a regular basis, and the other infrastructure costs that are incurred periodically? Are we going to allow for the additional police officers and the additional time in the court system that the municipal courts incur as a cost? What about tipping fees, as additional waste is picked up by the municipality from the users of the beaches? And we all know what the tipping fees have gone up to in recent years. Are we going to be allowed to get a percentage of that back for the municipality as well, to include in this formula?

See, my problem is, it may sound good on its face to say the State is going to come back with the money and recompense the municipalities over the \$2 rate, but as I say, it's pie in the sky. What's the formula? How are we going to figure out exactly how much money is due back? How are we going to be sure that the money is going to be there in the General Treasury year after year, when we're facing a \$400 million deficit and so many other pressing needs?

I would ask the members of this Committee to seriously consider the alternative bill of a \$3 and a \$5 rate. I think that those are numbers that most municipalities can, and probably should, live with. It means that those people that use the facility are going to pay a reasonable and fair dollar

amount for the use of the facility, and not create a situation where once again the municipalities and the local property taxpayers are going to be forced to pick up the tab. I don't think that's something that the taxpayer can afford to do in the State of New Jersey any longer, nor can the municipality. Thank you, Mr. Chairman.

ASSEMBLYMAN KLINE: Thank you. Any questions?

ASSEMBLYMAN KENNY: Nothing.

ASSEMBLYMAN KLINE: Okay, thank you.

MR. KALPALKO: I appreciate your time. Thank you, Mr. Chairman.

ASSEMBLYMAN KLINE: Okay. I see we have a Councilman here. Councilman Harms from the Borough of Seaside Park.

C O U N C I L M A N H O W A R D H A R M S: Good morning. Thank you, gentlemen, for allowing me the opportunity to come here and speak. Unfortunately, our Mayor is tied up in a meeting in our own town on ocean pollution, as probably you know.

I'd like to talk a little bit on the Senate bill -- of course, that has been already passed, S-1374 -- on the negative effects that we feel that this type of a bill would have on the shore communities.

The taxpayers, right now, on the basis of a \$2 bill, would end up subsidizing the beaches to maintain them as we presently do. In our particular town, better than 50% of our community are senior citizens. These are people on fixed incomes. I'm sure that most of you are aware of a article which was in the Asbury Park Press as of yesterday, "Taxed to the Max." Quite frankly, this is a problem I think that every community is up against. But if you're expecting the people in our Borough to subsidize other people coming in to use our particular facilities, I don't think this is correct.

With a decline in income and having a \$2 beach fee, we would end up having to cut down on the amount of services that

we would give: This would mean on the basis of cleaning of the beaches; this would mean on the basis of the number of swimming beaches where they would have patrols. These would all have to be cut back, if we were going to do this without increasing taxes and asking our people to subsidize these beaches.

I think the other big problem we have is that when you fix a certain rate as we have in this bill of \$2, all communities are not the same. However, you are putting us all in the same envelope. We all have different costs, whether they are on the basis of collective bargaining agreements, on the type of services which we present to the people on the basis of these beaches. The cost of insurance-- A typical example was, we had an insurance broker in, and we were going over insurance costs. This was at budget time. We looked at other communities and there was a community similar to ours just up the block a little ways. We noted that theirs was \$50,000 less than ours. We asked, "Why?" They said, "Well, you have a daily beach." So, in other words, we are being penalized on the basis of \$50,000 for insurance coverage because we have a daily beach.

Now, you know, we've been through a great deal of problems in regard to the whole beach area. We've been running these beaches for, quite frankly, a lot longer than the State has been involved in the beaches. We go back to close to 1900, where we've had our beaches. I think that we have done, over the years, a commendable job. We've had little or no complaints in regard to these beaches. We've had safe beaches. Safe beaches mean you've got to have lifeguards out there. These people, quite frankly, are costing a lot of money.

Now, people in the State Legislature-- You came in with new bills which mandate new equipment; you mandate a different type test for lifeguards. They're now getting, quite frankly, in a competitive situation. We have many of the communities battling back and forth as to who's going to pay

the most to get the lifeguards. This again, will affect us on the basis of this \$2 beach fee.

I heard somebody mention just a few minutes ago -- I did come in late -- about beach buggies. We do allow them after the season. We allow, also, our surfers. They have a relatively large beach. I think we're one of the few people who do have an actual protected beach for surfers.

I think the other big problem we have here is people tend to look at beach communities and the way they run their beaches as a Memorial Day to Labor Day operation. Believe me, it's a 12-month operation. We have equipment that has to be repaired; we have dressing of the dunes; we have the maintenance of the boardwalks; we have lifeboats that have to be repaired, painted. This goes on 12 months of the year. It is not strictly a three-month operation. But, unfortunately, I think some people seem to think that is the case.

I think the other thing here is that by putting us all in the same boat with a \$2 beach fee, there is no longer any competition from one beach to another. Now, if we have one beach, say next to us that is charging \$4, and we're charging, say, \$2.50 to get on, obviously the people then have a choice; if they want to spend \$4 or whether they want to spend \$2. They have to look at it from the standpoint of the services that are being provided by the particular community. If you put everybody in the same boat of a \$2 beach fee, there's no longer any competition here.

We feel, in Seaside Park, that we have the finest beach that you can find on the East Coast. We get people who come back, and they've been all over the world-- And they still come back and they say, "This is the best that we can find."

I do wish that our Public Advocate would take the same amount of time and effort, and perhaps put some of that into the problems that we have with regard to car insurance, rather than spending so much time on this other. However, that, I guess, is a different story.

I think that basically sums up our opinion. We certainly do not like the \$2 beach fee. We cannot do it, quite frankly, without cutting back on our services. I appreciate you allowing me to speak. Thank you.

ASSEMBLYMAN KLINE: Thank you. How many lifeguards do you have on your staff? In the ballpark of 50 or 60?

COUNCILMAN HARMS: We have about 35.

ASSEMBLYMAN KLINE: Thirty-five?

COUNCILMAN HARMS: Thirty-five, right.

ASSEMBLYMAN PALAIA: Big operation.

COUNCILMAN HARMS: Yeah.

ASSEMBLYMAN KLINE: Okay. The public works department cleans the beaches every day?

COUNCILMAN HARMS: We have a group of six men that go down to the beach every morning. Then we also have mechanical sifting that goes through. That is every day.

ASSEMBLYMAN KLINE: Right. What number of your staff are collecting beach-- How many of your staff are beach badge inspectors?

COUNCILMAN HARMS: About the same amount.

ASSEMBLYMAN KLINE: Same amount?

COUNCILMAN HARMS: Yeah.

ASSEMBLYMAN KLINE: Any questions?

ASSEMBLYMAN KENNY: What type of fees are you charging now?

COUNCILMAN HARMS: We're charging now, \$2.50 for weekdays and \$3.50 for a weekend. We did start a weekend pass this year, and, oh boy-- I think it was \$6. This was through August. Then we also have a weekly badge of \$12. And we have a season badge of \$22, if purchased before the Fourth of July weekend. Then it goes to \$25.

These fees, quite frankly, have remained relatively stable over the past few years.

ASSEMBLYMAN KLINE: Okay. That's why we're having these hearings; to get as much information as we can. Thank you.

COUNCILMAN HARMS: Thank you.

ASSEMBLYMAN KLINE: Mr. Harms brought up the question of the Public Advocate's Office. We have Richard Shapiro here, so about this time we will have the Public Advocate's Office say a few kind words.

Good morning, Rich.

R I C H A R D E. S H A P I R O: Good morning, Mr. Chairman, Assemblyman Kenny.

On behalf of the Public Advocate, I'm appearing here to present our views on S-1374 and A-109. We started over 10 years ago looking into the entire issue of beach access and beach fees. In 1974, we started concentrating on the issue of beach fees, because of a large concern across the State that the beaches in New Jersey were being priced out of a level that was affordable to large levels of people. Correspondingly, there was an attitude that was entering into certain municipalities' beach fee-setting practices which was that the beaches really belong to those municipalities and were not resources that rightfully belonged to everyone in the State.

That attitude, in the Public Advocate's view, was contrary to the Public Trust Doctrine which mandates that there should be equal access for all New Jersey citizens to all New Jersey beaches.

After filing a 67-page report, which we distributed widely to members of this Committee and to other members of the Legislature detailing the results of an investigation in Avon, Belmar, Spring Lake, Sea Girt, and Bay Head which at that time were the communities charging the highest beach fees, we initiated litigation against all of those communities.

Before the summer of 1988, the Bay Head Improvement Association, which operates the Bay Head beach, settled for a

beach fee of \$2. We have made the same arrangement with them that we've made with other settling parties, which is, when they provide us with data that indicates the \$2 fee is not meeting their legitimate expenses related to the beach and the expenses that are necessary for the operation of the beach, then we will sit down and talk with them about that and discuss adjustments. The same type of arrangement was made with Sea Girt, Spring Lake, and Avon before this summer, at a level of \$2.50 for the daily fee. We are currently waiting for the information from those three communities regarding both revenues and expenses because, as Assemblyman Villapiano indicated before, this cannot just be looked at by reviewing one side of the ledger, because the effect on revenues is only understandable if you also look at what the municipality is seeking to charge the beach goer. I think when I talk a little bit about the litigation in Monmouth County, that the reason for that will be obvious.

Belmar elected to go to trial. We had an eight-day trial in May, where I think it's fair to say we exhaustively reviewed the beach fee-setting practices and the beach fees in Belmar for the period from 1984 to 1986. On August 29, 1989, Judge Milberg issued a 34-page opinion in which he analyzed the evidence that was presented at that trial. His conclusions were that Belmar's beach fees and beach fee-setting practices during that period were arbitrary and unreasonable. He also determined that Belmar's beach fees discriminated against nonresident beach goers. I've circulated that 34-page opinion to members of the Committee. I think it's very useful to read that, to get a sense of the concerns that Judge Milberg identified.

But I'd like to highlight some of the specific findings, because I think they go to the heart of what is happening in this controversy; also, to what I think is occurring and what in our view is occurring in the beach

areas. Belmar, in that sense, is not very unique from some of the other northern Monmouth -- I mean Monmouth and northern Ocean -- communities. We do think that certain communities are charging a reasonable price. We have focused on these areas where the prices have been priced in a manner that denies access to many people.

Judge Milberg found that Belmar breached its duties and obligations as a trustee over its beach areas to the beach goers, who the court found to be the beneficiaries of the public trust. Belmar improperly increased beach admission fees, rather than real estate taxes, in order to raise the borough's general revenue. So it was really using beach fees to subsidize municipal expenses. Belmar failed to keep clear and adequate records of beachfront expenditures, and the expenditures, when subjected to scrutiny in court and scrutiny by accountants, were not traceable to any records maintained by the borough, but were rather based upon mere speculation and guesses by the borough clerk and staff.

Significantly, Judge Milberg found that Belmar operated the beach areas as though it was a commercial business enterprise, for the sole benefit of its taxpayers. He also found that Belmar's practices resulted in surplus beach fee revenues being used to subsidize other municipal expenditures, rather than being set aside to meet future beach-related costs. This was significant because the Public Advocate's experts, in analyzing the beach fees and the beach fee budgets during the 1984-1986 period, found that beachfront surpluses or profits -- in a commercial enterprise sense -- in the four beachfront communities sued by the Public Advocate, ranged from over \$3 million in Belmar to approximately \$175,000 in Sea Girt. The surpluses in these communities were large enough to offset a reduction in daily fees to \$2 in 1984, 1985, and 1986.

Judge Milberg also found that there was no legal or factual basis for a higher weekend fee -- as Assemblyman

Villapiano has already indicated -- since any additional costs that Belmar might incur in operating and maintaining the beach should be offset by the increased number of beach goers on the weekend.

Finally, in an extremely significant finding, Judge Milberg found that daily beach goers -- or the day trippers as we're called, or as some people at the shore refer to them, "the bennies," most of whom are nonresidents -- were subsidizing the season badge holders, who were largely residents, because of the disproportionately and inequitably high fee imposed on daily and weekend beach badge purchasers.

The seasonal badge was priced so low in relationship to the daily badge, that it was operating to discriminate against the day trippers.

As a result of these findings, Judge Milberg issued certain directives with respect to the 1990 summer season in Belmar:

- 1) He found, in fixing its future reasonable beach admission fees, that Belmar is required to allocate its beachfront costs in the manner determined by the court. As you will see from the court's opinion, Judge Milberg reviewed 30 separate categories of costs which Belmar had asserted were related to the operation and maintenance of its beachfront.

The court determined then which costs Belmar may properly allocate to beach goers as beach fees. In 95% of these categories, I think it's fair to say, the court found that Belmar was charging its beach goers for costs in excess of what it was lawfully able to do.

- 2) Judge Milberg also held that, in revising its daily beach admission fees, Belmar is required to fix a single daily admission fee for both weekdays and weekends, so as not to discriminate against the weekend beach goer.

- 3) He found that in fixing the seasonal fee, Belmar is required to insure that the seasonal admission fee does not

discriminate against the daily beach goer. In other words, this disproportionate relationship between the seasonal and daily fee has to be changed, so that the seasonal fee does not remain such a bargain, which is a bargain -- primarily for residents.

4) Belmar is required to maintain complete, accurate, and traceable records documenting beachfront costs.

5) Belmar is required to maintain a separate beach account, where all revenues from beach admission fees and any other beach user fees must be kept, from which all legitimate beachfront related expenditures should be paid.

With respect to the seasonal fees, I just want to emphasize one point, because I think this sometimes gets lost in the discussion about this: The Public Advocate's position is not that seasonal beach fees in some of these communities aren't bought by a majority of nonresidents. In other words, that nonresidents don't make up a large portion of the season beach fee population.

The Public Advocate's position is that residents' needs to get on the beach are adequately taken care of through seasonal fees. So if you have a disproportionate daily fee in relationship to the seasonal fee, the residents who have access to the seasonal badges will principally be able to use seasonal badges at that greatly reduced price over the course of the season, whereas, nonresidents are the primary purchasers of daily badges.

So while a community can come up and say, "Well, yes, but most of our seasonal badges are purchased by nonresidents," that doesn't answer the question. The real question is the majority-- "Are your residents' needs being taken care of by seasonal badges?" In that situation, the evidence demonstrated that that was the case. Are the majority of non -- of daily purchasers nonresidents? And again, the evidence in this case, and the evidence in the other four municipalities that were

under court suit, showed that the majority of those purchasers were nonresidents.

In concluding, the court made a significant observation. I think it's very important for considering the importance that the court ascribe to what you're doing today, and what the Legislature has to do in this area. I quote: "Beachfront municipalities have been at odds over what the Legislature meant by reasonable fees and legitimate costs associated with beachfront expenses. Since the fixing of beach admission fees is a legislative function, future legislative action may be helpful in resolving these issues." I think that's a significant -- almost a request from the court, that this is an area that the Legislature can address in a comprehensive way.

Now, with respect to the two bills before the Committee today, I have several brief comments. These are detailed in my written testimony. I don't want to take up the Committee's time. I'm very anxious to hear the comments of people from the shorefront areas and the elected officials, so I appreciate that the Committee will have the benefit of this. But I do want to make a couple of points.

One is that the Public Advocate strongly believes in a low uniform cap of not more than \$2. The Stockman bill does recognize that if the communities can show that their costs in a limited number of areas that are related to beachfront services will not be offset by a \$2 fee, the bill does provide an opportunity for that type of an adjustment. But more significantly, to date we have not been presented with any evidence that a capped daily fee will produce insufficient revenue to meet the legitimate costs necessary to operate and maintain a public beach.

While we've heard numerous complaints about a reduction in revenue from the 1989 season resulting from the significant lowering of daily beach fees, we have not yet had

an opportunity -- and we anticipate taking this opportunity as part of our settlements-- We have not yet had the opportunity to look at the municipal expenditures, particularly the legitimate municipal expenditures, in accordance with Judge Milberg's decision, to determine whether even with the reduction in revenues, the municipalities did gain or lose revenue this summer. So we want to carefully look at this in terms of revenues, compared to legitimate expenditures and not the inflated categories of expenses that Judge Milberg rejected, that frankly, the municipalities have used in the past.

We do think that the beach access plans, as a number of people have testified, are extremely significant and important. We strongly endorse the need for a quick and expeditious enforcement mechanism. We think that there should be a citizens' suit provision, so that individuals who really are the principal beneficiaries -- the public beach goer, the Public Trust Doctrine -- should have the opportunity to sue a person or a municipality in order to enforce the provisions of the law, and they should have available attorney's fees and costs to offset the expense of that litigation. We think there should be provisions to ensure that the fiduciary obligations which Judge Milberg recognized as being essential to the Public Trust Doctrine, are properly maintained by the preservation of separate beach utility accounting, both with respect to revenues and expenditures. We encourage the Committee -- although I guess the Committee properly recognizes it is biting off a big subject as it is -- to seriously think about private beach associations which control large tracts of private beaches over the New Jersey coast -- which involve large tracts of land that are presently walled off entirely to beach goers, when, in fact, the Public Trust Doctrine indicates that should not be the case.

In conclusion, I just want to offer our Department's assistance to the Committee. We've tried to lay out some of our concerns in our testimony. If there's any additional information that you need about our experience or about the results of the litigation, we'd be happy to provide that to you. We look forward to future hearings. I certainly look forward to the additional comments today on these bills.

ASSEMBLYMAN KLINE: Goo. okay.

ASSEMBLYMAN KENNY: Question: The \$3 million figure-- You refer to a surplus, a \$3 million surplus in Belmar. What was that again? Over what period of time?

MR. SHAPIRO: '84 to '86. That was the period that the parties agreed we would look at, and our accountants looked at.

ASSEMBLYMAN KENNY: And what did that represent exactly?

MR. SHAPIRO: That represented our accountants' view of what legitimate expenditures were, and the surplus of revenues over expenditures for that period. Which meant that money was essentially channeled into subsidizing general municipal services for that period -- because there was no separate beach utility during that period -- so that surplus was not carried over to reduce costs, to offset costs the following year. It was used to subsidize general services.

Now, Judge Milberg's decision disagreed with some of our accountant's findings -- but in a small number of categories. So I don't think we're significantly off when we talk about that \$3 million figure. We may be off by 10% or so -- I'm not even sure it's to that extent -- but it was a significant surplus that was funneled into the general municipal revenues during that period.

ASSEMBLYMAN KLINE: Joe?

ASSEMBLYMAN PALAIA: Yes, Mr. Chairman, through you. Mr. Shapiro, you know, keeps talking about going to court and everything else.

Rich, do you have any idea what the cost to the State for -- the legal cost involved -- in pursuing these suits? Do you have any figures -- any round figures -- \$100,000, \$200,000, \$300,000?

MR. SHAPIRO: Oh, no, no, there's nothing of that nature.

ASSEMBLYMAN PALAIA: Nothing? You're sure?

MR. SHAPIRO: No, I think-- You're talking about attorneys' fees?

ASSEMBLYMAN PALAIA: I'm talking all the way through -- what it takes. Because you're tying up a lot of staff; you're tying up a lot of legal people; you're tying up a lot of different individuals to pursue this. Now, you know the State is fine, and the reason why these local municipalities settled was for a simple reason. They couldn't "fight City Hall." They couldn't fight the State because the State had an unending flow of money through the legal process. They didn't, as a local municipality. Now, you mean to tell me that the cost has not come to \$100,000 or more?

MR. SHAPIRO: For all the cases?

ASSEMBLYMAN PALAIA: Yeah.

MR. SHAPIRO: It may approximate that, yeah.

ASSEMBLYMAN PALAIA: Mr. Chairman, I believe-- Not that it's a point that has to deal with these particular bills, but by the same token, I think the people in New Jersey have to know how much is this costing us, to pursue the process that we're going through right now, and I would hope that maybe Mr. Shapiro -- if you could, Rich-- I'm sure if you sat down by the time the Chairman has another hearing, we might have figures so we could just be apprised of what's happening with legal fees. That's all.

MR. SHAPIRO: Certainly I could check on that information, if the Committee requests it.

I do want to point out that this is a case where the original claims of the Public Advocate made four years ago, after we issued a report based on our own investigation of the beach fee-setting practices in these communities, which then proceeded through litigation have been substantially, if not wholly vindicated by the court. So this is not a case where the State was undertaking a fool's errand, but it was a case where the State was stepping into a breach-- Or the State was stepping into a breach and trying to address a significant issue. I think that part of the reason some of the municipalities settled, is that when subjected to the kind of scrutiny that Belmar's beach fee-setting practices and beach fees were subjected to -- because Belmar went to trial -- they would have been seen as lacking and as failing to meet State standards.

So, I think that while we can talk with all due respect about the costs that they might have felt they had to assume, the fact is when their practices were subjected to the kind of scrutiny that was necessary, because the municipalities were saying, that unless you can prove-- They were saying to the judge that the burden is on the Public Advocate -- the burden is on the State -- to show that we're doing something wrong. We don't have to show that we're doing something right. So we were asked to establish -- to look into their records, to look into a situation where they had not maintained any records, and to look into a situation where their estimates as to beach fee expenses were based on their speculation, their subjective estimates, and to come up with an analysis of that situation.

So again, with all due respect, I would say that the expense was one which has demonstrated that there is something that has to be done. The court found that there is something that has to be done. And hopefully, the Legislature will address this area so that the cost to taxpayers through

litigation and the cost to taxpayers and nonresidents who have to subsidize municipal expenses that they shouldn't have to subsidize on the beachfront, will stop. And we can continue to make our beaches available at a reasonable price to all people throughout the State in a way in which, unfortunately in some communities, it hasn't been the case in the past.

ASSEMBLYMAN PALAIA: One other question, Mr. Chairman. Rich, how do you address the problem of OLS -- this is the Office of Legislative Services, not Joe Palaia-- It says, "The beach municipalities' costs, at a loss, will be \$2.5 million in Fiscal Year 1990." Now, how did they come up with that figure? And how can the Public Advocate address that and tell a taxpayer -- I don't care if you're talking Belmar, Avon, Bradley Beach -- and say to those people, "Gee, I'm sorry. You're going to lose \$2.5 million, coastal communities. We're sorry about that, but that's the way it is." How do you address that?

MR. SHAPIRO: Well, I address it in two ways, Assemblyman.

One is, that-- And I've already addressed it, because that issue has been presented to us by a number of legislators -- shore legislators.

First of all, we've indicated that looking at revenues is only one side of the equation. Again, as I said before, you have to look at what the legitimate expenditures are. For too long, a lot of the communities have been subsidizing general municipal expenses, particularly in the communities we looked at, through beach fees.

So when we talk about a reduction in revenues, to really determine what the overall impact is, you have to also look at what are their legitimate expenditures, and whether -- even with this reduction in revenues -- they will be able to meet the legitimate expenditures.

I mean in the period from 1984 to 1986, Belmar for example, could have said, "Yes, our revenues for a reduced fee in 1984 would have been \$1 million less." That wouldn't have made any sense unless you looked at their expenses. If we looked at their expenses and found that actually they were charging \$1 million more in expenses than they should have been, then it's a wash; which is what it's intended to be, not as Judge Milberg found, a commercial enterprise for its taxpayers.

Secondly, I think that both your bill-- Although our Department favors a lower cap than your bill, I think both your bill and the Senate bill now contain a provision where if the municipality can show that its legitimate cost -- and we favor a very restricted category of legitimate costs-- But if the municipality can show that its legitimate costs exceed the cap, then there's a mechanism to raise its fees.

So that if we're really talking about a shortfall in revenue that has an overall revenue impact, there is an opportunity in this legislation. If we're really talking about a shortfall in revenue that doesn't have any overall economic impact because the expenditures are inflated as Judge Milberg found they were in Belmar, then I think it's only looking at one side of the problem. I think that we've cautioned against making premature judgments just based on the OLS figures, because OLS conceded that they only looked at one side of this equation.

ASSEMBLYMAN PALAIA: It's one last question. Rich, who do you think should set these guidelines? I notice that the Public Advocate has said, "You submit these guidelines, and we'll tell you whether it's good or it's bad."

Where does it say that the Public Advocate's Office has become, you know, an expert in setting beach guidelines about what they can be charged? I'm sure that's what you said.

MR. SHAPIRO: No, I--

ASSEMBLYMAN PALAIA: In other words, you want to get involved in setting these guidelines, correct?

MR. SHAPIRO: I would like nothing more than to-- My life during the past few years has been devoted to beach fees. I think I would like nothing more than to focus on, and address some of the other pressing issues that people say the Public Advocate -- people are asking us to address, and I think we've tried to address as best as we can. I would like to get out of the beach fee-setting business. (laughter) You know, I'm not interested in that. I think our position is that it is something, though, that should be subjected to some degree of scrutiny by the State.

ASSEMBLYMAN PALAIA: Absolutely.

MR. SHAPIRO: And that we're that-- I think that the Legislature should make the initial decision about the cap, and where the Legislature decides to reside that function in State government. That body should make those decisions. But please, you don't have to think about the Public Advocate when you're deciding who should do that.

ASSEMBLYMAN KLINE: I would think DCA should handle it. That's the area I'm looking for. They know municipal budgets; not that you don't, but they know.

ASSEMBLYMAN PALAIA: Thank you, Rich.

MR. SHAPIRO: We are doing it with respect to our settlements, because the parties agreed in the absence of anything else, to do it that way.

ASSEMBLYMAN KLINE: Right.

MR. SHAPIRO: But that's the limited area where we're doing it. Thank you very much.

ASSEMBLYMAN KLINE: Okay.

ASSEMBLYMAN KENNY: Thank you.

ASSEMBLYMAN PALAIA: Thanks, Rich.

MR. SHAPIRO: Appreciate it.

ASSEMBLYMAN KLINE: Now that the Public Advocate has spoken and said so much about Belmar, maybe the Mayor of Belmar would like to make a few remarks. So could we have the Mayor come forward, Maria Hernandez?

Welcome. Or we should be saying thank you, for allowing us to use your building.

MAYOR MARIA G. HERNANDEZ: Thank you. You picked the opportune time to invite me to come up to speak to you.

ASSEMBLYMAN KLINE: We saved that for you.

MAYOR HERNANDEZ: Mr. Chairman, Assemblymen, and all of the people who are here today, I would like to welcome you to Belmar.

You're in a little one-square-mile community that's almost completely surrounded by water. We have 6700 year-round residents. In the summer, our population multiplies many, many times.

I'd like to start out by letting you know that when I ran for this office in 1987, one of the planks in our platform was quite clearly to reduce beach fees. It was plastered on the window of our campaign headquarters and was part of most of all our campaign literature. Since that time, we have done so. We have reduced the fees each year by a small amount.

I think that it's our intention to keep beach fees as low as possible, without placing the burden on the taxpayers of this community.

Shore taxpayers on low or fixed incomes are worrying about losing their homes due to escalating property taxes. Like the rest of the State, these municipalities have faced increases in garbage disposal and landfill costs up to 300% and 400%. In addition, they faced decreases in State and Federal aid, as well as normal increases in other costs. However, the major and most crushing impact was felt by decreasing beach revenues.

In 1987 and 1988, beach revenues were dramatically reduced due to both the real and perceived ocean pollution. The 1989 season started out well, but 27 to 32 days of rain, depending on which report you believe, was really the final blow to the shore economy. I think all of us have felt that. Assemblyman Kline, I'm sure you felt it in Brigantine as much as we did here.

The public confidence in water quality was low at the beginning of the 1989 season, as witnessed by dramatic drop-offs in season badges in almost all of the municipalities in this area along the shore. By the same token, there were significant increases in daily badge sales.

For the first time in many years, we found that confidence was coming back in water quality. I know in Belmar you could swim out to the second barrel and see the bottom. We hadn't been able to do that in a couple of years. So a lot of people felt more confident about the water quality; consequently, they started returning to the beaches.

Now, some very interesting and enlightening statistics have clearly indicated the catastrophic results of a \$2 beach fee, were it imposed.

In Belmar 1989, beach revenues were down by about 14% over 1988. Had the \$2 beach fee been in effect this year, our revenues would have been down by 35%, and this municipality would have been on the brink of bankruptcy.

Although revenues were down overall, our daily badges, Monday through Friday -- and we charge \$3 during the week -- were up by 59%. On the weekends -- Saturday and Sunday -- we charge \$6, and they were up also by 59%.

Now the towns on either side of us were charging \$2.50. So it's apparent that people are willing to pay for the services and the facilities that they like to enjoy.

Now our seasons were down by 48%. This is really especially serious because the funds that we get for season

badges at the beginning, are really our operating money. We need that money in order to operate our beachfront.

If you look at some of the other places around the State -- and I know down in South Jersey; and Assemblyman Kline, I'm sure you're familiar with this -- some of the fees are lower, considerably lower. There are towns which charge, let's say, \$10 for a season badge and \$8 for a weekly badge. But they don't have daily badges.

Now if you drive down from Hoboken and go to Belmar beach for a day, you pay \$6 to get on, on a Saturday or Sunday. But if you drive a little further to some of the southern communities which only have the weekly badges of \$8-- They pay \$8 to get on for a day. There's no difference. They're actually paying more on a daily basis to go to southern Jersey.

So I think that we need to take a look at that. Believe me, I don't think this is going to stop here. If we have beach fees so restrictive here, it's going to spread throughout the State. Those of us who live in beachfront communities understand the impact of what happens when we have so many people coming into a small area at once.

The years 1984 through 1986 were banner years here. If we wanted to look at last year when we had a \$461,000 shortfall, that had catastrophic effects on our tax rate, that might change the picture considerably. We looked at three banner years in which we were ill equipped to handle the capacity of the crowds who visited. The impact on the infrastructure is tremendous.

We have-- Well, you can just drive through the town and see. You can't get to the beach without driving through the town. We have roads that need to be repaired; we have an old sewer system; we have an old water system; we have so many things that really need major overhauling. The heavy usage-- We go from small town to city overnight, and the usage on every single municipal service is just tremendously impacted.

We did go to a utility this year. I thought that was a good idea, because back in 1987, shortly after the Public Advocate filed the suit, we presented a report to the Public Advocate. We asked that instead of a suit, we have a number of other things be implemented. One was establishment of a utility. We also asked that the State take a look at defining the expenditures allowed in the calculation of beach fees; that municipalities be provided with detailed parameters for calculating appropriate charges. We asked that we establish cost accounting procedures for municipalities to follow in determining beach-related costs.

Up to that time, this municipality and other municipalities, had followed the State guidelines. Our budgets were done by the prescribed guidelines that were given to us by the State. They were signed off by the Division of Local Government Services. We were following those guidelines which we had followed over the years which had been approved by the State. However, we suggested cost accounting procedures. A couple of months later, we were told we had to establish cost accounting procedures for the years of '84 through '86.

In other words, go backwards now, and establish cost accounting procedures that don't exist, or didn't exist at the time. It's like saying to you, "Can you tell me how much you spent on tissues and apples and oranges and soda for the years 1984, 1985, and 1986?" Would you necessarily have your expenses broken out in that manner? I doubt it.

ASSEMBLYMAN KLINE: Seven-hundred-and-twenty-nine dollars and fifty cents. (laughter)

MAYOR HERNANDEZ: All right, great.

So it was a very difficult procedure and a costly procedure. It took up almost full-time, the time of the people who work in our municipality, just trying to reconstruct under a different form what we had never been asked to do before. But we did it to the best of our ability.

We also asked, back in '87, that we be allowed to keep home rule whenever possible, as long as it was not detrimental to the public. We also asked that it be recognized that each municipality has its own unique problems. We asked for legislation to provide the ability to establish a beach fee and the same guidelines that would apply for everyone -- not just for one municipality, but for all municipalities the same, recognizing the unique differences in beachfront communities. Also, we felt that this would be of great assistance to us in doing it in a logical and prescribed manner.

At the time, Assemblyman Villane was in office, and we met several of the shore-- Elected officials met with him and we had a committee that got together and tried to put together ideas to come up with some fair and equitable ways to accomplish this goal. That bill is now the one that Assemblyman Palaia has before the Assembly. It's a good bill. There are a few minor things that I might like to see looked at, but I think basically, it's a very good bill. I support it completely.

Senate Bill No. 1374, with an arbitrary \$2 beach fee, I think would be absolutely catastrophic for us, not just here in Belmar, but across the shore. It isn't really fair, I don't think, to penalize shore taxpayers. This is something that has existed for many years. It makes absolutely no sense to me to plunge the shore towns into a condition where the tax structure will cause low-and middle-income people to face the loss of their homes because of a tremendously inflated tax rate.

Obviously Belmar was saved from a total disaster this year by not settling the Public Advocate's suit. But the town still faces a dramatic impact on the tax rate if a \$2 beach fee is arbitrarily adopted. I think it's going to place a really cruel burden on our taxpayers.

The bill really only allows you to take expenses for litter control and disposal, repairing and maintaining -- not

boardwalks -- but only the entrances to the beach, only that part of the boardwalk that's an entrance to the beach, and lifeguards. As anyone who's in a shore community knows, there are many, many other expenses that have a major impact on the beachfront area.

Some towns which have more of a commercial beachfront have other sources of revenue. I'm not against an alternate source of funding if there is an alternate source of funding around, but I think what will happen is, if we take this option away from the municipalities, you're going to have municipalities not willing to pay out of their taxpayers' pockets for commercial operations at their beachfront, and you're going to turn your beaches into parks. I'm not sure that's really in the public interest, nor what the public really wants. I think they're willing to pay for the services and the amenities that they would like to enjoy while they're at the beach.

Now, we have many visitors in our one square mile. It's kind of hard to explain that, because it doesn't mean anything. The other day, I happened to be looking through Steve Burnbaum's book about Disney World -- if any of you are familiar with it? In the book they have a chart. It tells how big the crowds are at different times of the year at Disney World. It was interesting to me, that except for Christmas week, the size of the crowds at Disney World are not much different than the size of the crowds in Belmar during the summer. Now we're one square mile, so try to picture it. If any of you have been to Disney World, just try to relate the people there, in this little one-square-mile community. If you think that you can take care of all those people and provide services for \$2, you're absolutely wrong. We can't do it. This town cannot afford it, and I think that most of the other towns in the area will agree. Some of them already have.

I think that we would far better meet our needs if we were able to come up with a bill that would be reasonable and would allow us to operate our beaches in the manner in which we have over the years. We think we have one of the most beautiful beaches in not only New Jersey, but in the world. We want to keep it that way. We will do everything we can to keep our fees low, but we cannot do it on the backs of our taxpayers. They just can't afford it.

This year, after the shortfall-- Last year, I had so many people -- not just in Belmar, but in shore towns around here -- call me and come over and talk to me, and say, "If this continues, we don't even know if we can even afford to keep our homes. We're going to have to sell them." Well, no person -- not one -- should have to sell their home to subsidize the operation of the beachfront where people all around the State and all around the country can come to visit. You have a user fee that's been working for years. If it's not acceptable, then let's look for an alternate source of funding. But that alternate source of funding should not be on the backs of the taxpayers who live in these small shore municipalities. Thank you very much.

ASSEMBLYMAN KLINE: Okay, thank you. Wait a minute. We have a question or two, Mayor. (applause) How many lifeguards do you have -- ballpark?

MAYOR HERNANDEZ: Over 50.

ASSEMBLYMAN KLINE: Fifty, okay. Is the complexion of your city changing? I'm just curious. I know in some shore towns some motels have converted to condos; some boat yards have converted. How's your town: duplexes, developments?

MAYOR HERNANDEZ: We are pretty much like, I think, most of the shore towns in this area. We've changed over the last 10 years. We are becoming more year-round in character. Little by little, the little summer bungalows are disappearing. Although, we still do have quite a number.

ASSEMBLYMAN KLINE: Okay. I'm looking at other tourist-like-- Is the tourist attraction still there as much, or do you think it's more the residents using the beach? I'm trying to get a--

MAYOR HERNANDEZ: Oh, well--

ASSEMBLYMAN KLINE: You know, like the motels aren't-- Have any of your motels converted to condos?

MAYOR HERNANDEZ: Not really. We don't have very many motels or hotels in Belmar. But we had some rooming houses and-- The interesting part that you mentioned -- and I thought this was kind of interesting -- about do we handle more residents than nonresidents, it just reminded me of something that Mr. Shapiro mentioned earlier.

They seem to feel that our season badges give some sort of an advantage to our residents. I disagree wholeheartedly. We have 6700 year-round residents. I venture to guess that not more than 2000 of them even go to the beach. We have between 10,000 and 27,000 season badge holders. Now there's no way that the majority of those people could be residents of this town. It's logistically impossible. So the majority of people who buy our season badges, do not live in Belmar. That's a fact, a proven fact.

So I don't think that gives any advantage whatsoever. What it does is, it provides the town with some operating expenses. Our beachfront operation is very large. I don't know if you've had an opportunity to be here during the summer, but it's an extremely large operation. We provide showers on the beaches; we have lifeguards; we have a fully staffed first aid station; we have a number of amenities that people seem to enjoy. We have facilities on the beach for volleyball. We really bend over backwards to keep our beaches clean and pleasant for visitors. But it's at the point where we can no longer do it if it's going to mean that the money to pay for it has to come out of our taxpayers' pockets.

ASSEMBLYMAN KLINE: How many times did you get to the beach this summer, as a private citizen?

MAYOR HERNANDEZ: As a private citizen, I'm down there all the time. I would say I'm down there just about every day. But I don't get to sit on the beach, I'm usually running around working. But I do make it a point to at least get down there and visit just about every day.

ASSEMBLYMAN KLINE: Very good. Assemblyman?

ASSEMBLYMAN KENNY: Yes. Mayor, I appreciated your remarks. I can certainly understand your advocacy for Belmar and for the coastal communities. The arguments that you make are very familiar to me, coming from the city -- up in Hudson County. We make the same type of arguments where our identity, as an urban area, brings with it certain costs. You know, this has been a very informative hearing for me, because it makes me just wonder how we're approaching the problem of municipalities being able to support themselves with the property tax system that we have in the State.

Hoboken is also one square mile. We have 45,000 people within the town, 365 days a year. We have coming through Hoboken, the Holland and Lincoln Tunnels. They're actually-- One's in Weehawken, one's in Jersey City, but they're right on our parameters. We have Route 3 and we have the connecting roads from Jersey City and Weehawken through Hoboken. We're burdened with hundreds of thousands of cars in the course of any given week coming through our city and near it.

We have a disproportionate number of poor people who live in Hoboken, who live in the cities of Hudson County, who demand services that are paid for by taxpayers. We have the criminal justice system which we bear the brunt of, through our county taxes. The criminal justice system in the urban areas is a tremendous part of our budget.

Without getting into the whole debate on property taxes and who shares the burden for what, your point is really the same point that we make when we go to Trenton and argue for equity; that we are carrying and bearing costs in the cities that are tremendously outside of our ability to pay. And taxes -- property taxes, as you know -- up in Hudson County, have just gone through the roof. We have a higher percentage, or as high a percentage of senior citizens as the shore communities do, right in our Hudson County cities. So I'm sympathetic. I can understand where the line that's drawn as to what is a legitimate expense can get to be a hard line to draw.

I just want to let you know we have the same problem. But the State is a State of finite resources. I suppose many communities can make the case that they have burdens to bear that should not be their burdens. I don't know how we allocate that burden -- where we say it's fair for the rest of the State to share, and where it's fair that the community has to share it by itself.

But that's the issue that's before the people of the State. As we get into these November elections and as we get into how we're going to afford services in the State of New Jersey, it's a very difficult question. I think that's really what this debate is about, along the shore with beach fees. It's really the same type of issue.

I just wanted to share with you that we have similar concerns in our community, and we're looking for relief. Of course, many of my constituents come down to the Jersey shore. A great number of former Hudson County residents live down at the Jersey shore. I have relatives down here, and I come down here myself in the summer. Many people have brought up to me the concern of the amount of money they have to spend for day trips to the shore, so it's a concern from that end as well. I think these hearings are very informative. I'm sure as we continue, it's going to shed light on the issue.

But, let me ask a specific question: In addition to litter, lifeguards, and access points, what are some of the other areas you feel should be legitimate areas of beach fees?

MAYOR HERNANDEZ: I think-- Well, of course, police would be one of the major expenses. But also, those police not only are at the beach, but when you have this number of people coming into your community, you need police at the other end of town to direct the traffic to get them down to the beach. Every single service that's impacted by that large influx-- It's not like you're prepared for that number of people every day. You have an influx coming in all at once. It's just like if suddenly, in Hoboken, instead of 45,000 people, for three months you had 450,000 to accommodate. How do you think you could accommodate that change? It's exactly the same thing, and you can put it in those terms.

My husband, by the way, is a former Hudson County resident, so I get a lot of the input from the feeling of people who live in Hudson County. Often it seems like you'd like to come down to the beach and go to the beach for nothing, but you go to other recreational places and you're willing to pay. If you go up to the ski slopes, you're willing to pay to go down the slope. If you go to wherever it may be, you're willing to pay for those services.

If you have in place, something that's working-- I'm not advocating a new feudalism. What I'm advocating is that if you have communities that are working well and that are able to pay their own way, why change it? Broad-based taxation is good in many instances to help communities like yours, because perhaps you do have very special and unique problems -- different than ours. But we are able to provide these services and provide them well, provided we can charge the user and there are beaches along the shore. Many beaches have very heavy commercial interests where they don't charge to go on the beach, because the commercial interests are paying for it. So

people have the opportunity to go to those beaches, if they don't want to pay.

If they want to come to a beach where we are providing through taxation or through a beach fee the different types of amenities that they like, then I think they should have a choice.

Otherwise, I really feel-- I know the same thing with you in Hoboken. When you get to the point where you don't have any money left, what happens? The services have to be cut back. That's what will happen here.

So I guess the question is, do we want to see the shore as it has been, or do we want to change it into something very different? Because my fear is that it will be very different if the municipalities are not allowed to have enough funds to operate in a reasonable manner.

ASSEMBLYMAN KENNY: You mentioned before, infrastructure. Are you arguing that you should have infrastructure relief through beach fees?

MAYOR HERNANDEZ: Well, what I'm saying is if you have a community of-- Do you get anything for any roads that lead up to the Lincoln Tunnel?

ASSEMBLYMAN KENNY: Oh, the State roads, yes.

MAYOR HERNANDEZ: Right. So the State pays for those. The State doesn't pay for our roads. There is a highway that comes in, but all of the roads that go to the beach are mostly all municipally owned. There are, well, two county, but mostly all municipally owned. So we, as a little community, bear the burden of all those thousands and thousands of cars going down our roads in the summer. We have to bear that cost.

ASSEMBLYMAN KENNY: Well, when I say State roads-- We don't have any State roads in Hoboken, but the State roads at access points, of course-- No, the taxpayers in Hoboken pay for all of their roads--

ASSEMBLYMAN PALAIA: Sure.

ASSEMBLYMAN KENNY: --all those infrastructure services. Thank you.

ASSEMBLYMAN KLINE: Okay, Marie. Great.

MAYOR HERNANDEZ: Okay. Anything else?

ASSEMBLYMAN KLINE: Thank you, Marie.

ASSEMBLYMAN KENNY: Thank you.

ASSEMBLYMAN PALAIA: Thank you, Mayor.

MAYOR HERNANDEZ: Thank you.

ASSEMBLYMAN KLINE: Okay. Just to let everyone know our plan and schedule today, we're going to go right through until 1 o'clock. At 1 o'clock, we will conclude. We have a few more speakers, so we're going to stay right with it. When we break at 1 o'clock, that will be it for today. It will be continued in Trenton at the next hearing, so we'll go right through.

The next speaker will be Linda-- Is it Horsager?

C O U N C I L W O M A N L I N D A H O R S A G E R:
Horsager.

ASSEMBLYMAN KLINE: Horsager, okay. Borough of Sea Bright Councilwoman.

COUNCILWOMAN HORSAGER: Thank you for this opportunity.

Sea Bright, as you know, is a very small community and we have a very small beach operation. Simply, we have eight lifeguards. However, we also have a very small tax base in terms of taxpayers.

Our beach fees are not any different than what's being proposed in A-109, so you know, we are not looking for relief from difference in tax in the beach fees. We charge, I think it's \$3 during the week and \$3.50 on weekends, which we feel is certainly not an exorbitant amount for beach goers. To come to the beach and spend that amount for a day's entertainment, I think, is very, very reasonable.

A couple of things, though, in A-109 that might be -- someone might take under consideration: One is the fact that I don't necessarily agree with the under 12 years old, free. Perhaps younger than that, free. Perhaps, six or seven. But I find that at that young age -- let's say eight to 12-- They create a lot-- They make up a pretty good population at the beach. They also create work for the staff, both in terms of lifeguarding and in terms of cleanup crews and that sort of thing. So I don't necessarily agree with that age limit in terms of free access.

The other thing that might be put under consideration is some way that-- One of the problems with our beach is, it seems like it's either feast or famine. One year, you know, we make money in terms of having an excess of what we thought perhaps we might get, and the next year we run at a deficit. It seems to me there would be some way to form a fund where actually that money could be left in from year to year, so some years you could use it for capital outlay, improvements, and things on the beach, also for funding deficits, perhaps, in the next couple of years; some way that you could use it from year to year, rather than starting at ground zero every year, because it's very unpredictable. We don't know what the weather's going to be. We don't know, necessarily, what all of our expenses are going to be at the beginning of the year when we do our budgets. We don't know what the lifeguard situation is going to be; if we're going to have to pay more for lifeguards. So it seems to me there could be some way we could run a fund so we could hold over money. I don't know. You know, not being a legislator, I don't know how that would work, but you know, just as a thought of mine.

ASSEMBLYMAN KLINE: We don't have a magic wand.

ASSEMBLYMAN PALAIA: It's not a bad point.

COUNCILWOMAN HORSAGER: I know that. Also, I think there has to be some provision for paying all of the costs,

both direct and indirect. I think that's been discussed some. I think that it's true. There are indirect costs that are brought upon the taxpayers that are directly due to beach goers.

I mean, I think we have to be able to pay some of our police -- special police particularly -- that we put on in the summertime, you know. If we could assign a policeman's salary -- in our case, it would be partial, a salary for a partial policeman during the summer, because we're so small. We should be able to charge that to legitimate beach costs.

We, in Sea Bright, do not try to discourage beach goers. Certainly, we depend on them. The businesses in Sea Bright depend on -- many of them -- the summer beach goers, so we welcome beach goers. I think that we certainly have proven that with our public access plan that we have agreed upon with the State -- that Mr. Weingart has already mentioned. I think it's going to work out very well. So, I think that we have on record, proven that we welcome, you know, access for the public. We just are very, very much opposed to having the taxpayers subsidize people that come to the beach. We just don't think that's fair, and we don't expect that we can do that.

We always hope that we can maintain as much home rule as possible. I can see already-- I think Sea Bright has run its beach fairly well without any interference. Because of what's coming about from these bills, we are going to have more paperwork, more red tape, more reports, and whatnot. I think that we are being put upon. The beaches have been run fairly and equitably. I think we're going to suffer the consequences of all the State, shall I say, meddling. Thank you very much.

ASSEMBLYMAN PALAIA: Mandated would be a good word. Thank you, Linda.

ASSEMBLYMAN KLINE: I have a better word, but we're at a public hearing so I can't say it. (laughter) Okay, thank you very much. Any questions? (no response) Okay.

Next is Timothy Crammer from the Borough of Belmar.

T I M O T H Y M. C R A M M E R, E S Q.: Mr. Chairman, Mr. Kenny, good morning.

ASSEMBLYMAN PALAIA: Good morning, Tim.

MR. CRAMMER: Good morning Assemblyman. My name is Timothy Crammer. I'm the municipal attorney for the Borough of Belmar. I was involved in the litigation that Mr. Shapiro discussed with you a few moments ago.

I would like to point out, as Mr. Shapiro told the Committee members, his accountant -- and probably Judge Milberg under his opinion -- would have found that Belmar generated surplus revenues, probably to the tune of \$3 million in '84 through '86.

Assemblyman Kenny, I think you focused in on that and hit it right on the head. What does that mean? What this means is that Judge Milberg found that under existing legislation, Belmar estimated its costs in too expansive a manner during those years. Belmar, and I would venture to say a majority of all shore municipalities in this State, have estimated their beachfront-related expenses in a more expansive manner than either the Public Advocate of this State or Judge Milberg found to be appropriate under existing legislation. It's important to note that Judge Milberg was construing existing legislation when he rendered his opinion. He was not talking about constitutional law. He was talking, in a sense, about the Public Trust Doctrine, but was clearly construing legislation which can be changed. It can be changed by the Legislature to accomplish whatever ends the Legislature desires to accomplish.

That really is the crux of the entire matter and the focus of the two bills that this Committee now has in front of it. That is, what are the kinds of expenses the shore municipalities incur that can be recouped through beach fees? What's fair and what isn't fair?

In Belmar's case, as our Mayor has already told you, we're a one-square-mile community surrounded by water with a lot of, I think, major access roadways that give us access from all different parts of the State and both of the major metropolitan areas that surround us. We've experienced, in good years in the past, influxes of approximately 50,000 to 60,000 people. Those 50,000 to 60,000 people don't come here by boat; they don't helicopter in. They come through the western portions of our town through those access highways, and as they go through town, they require this municipality to expend services and to provide facilities that cost money. Litter isn't just litter on the beachfront. And, by the way, they're welcomed visitors to the Borough of Belmar.

When these folks come to the Borough of Belmar, they don't just leave litter, for example, on the beachfront. Litter is left throughout the town. When they do place burdens on the infrastructure -- and burdens on the infrastructure are placed by the numerous people that do come to visit us on a seasonal basis -- it's not just the infrastructure at the beach; it's the infrastructure throughout the entire town.

When police problems and other problems are generated because of packing so many people in such a small area, they don't occur just east of Ocean Avenue; they occur throughout our town. Belmar expends the money to provide services and facilities to cope with those problems, so that everyone has a beautiful and enjoyable oceanfront with as few problems as possible. When problems do occur, they can be coped with.

My problem with the Senate bill that's under consideration by this Committee, is that it too narrowly defines what those legitimate costs are. I also have problems with A-109, but only in the sense that I believe that its definitions are also too narrow.

Assemblyman Kline, I'm sure you realize as a Mayor of a shorefront municipality, how beach fees are calculated. The

very first thing that a beachfront municipality does in the beginning of the year is, it tries to estimate what its different expenses are going to be. If we know what those expenses are, we can do that. Then what you do is, you try and anticipate how many people are going to buy the different kinds of beach badges that you have so that you can set the different prices to recoup that amount of money that's in your expense pool.

Now, each of these bills imposes a cap -- a waivable cap, under both of the provisions -- but still a cap, on what can be charged. That, to me, reflects a philosophy that may not be entirely appropriate for the way shore municipalities work. If each of these bills is going to focus on what a legitimate expense is-- And that's fine. We believe, in Belmar that's what the Legislature should do.

But if you're going to focus on what legitimate expenses are, then your cap has to be large enough to allow for the diversity; for the different kinds of costs the different municipalities in this State incur, so that you don't have everybody immediately running to John Weingart for a waiver or to DCA for a waiver, as soon as we construct our beach budget, which is exactly what's going to happen, I would suggest, with the \$2 fee, and may likely occur with the \$3 and \$5 fees. It should be a high enough cap so that everybody's not running around, immediately going for waivers. Give the town some flexibility, once you define what your costs are going to be. But that rarely is the key problem: What are those costs?

I would suggest that it is unrealistic to limit the costs to the east side of Ocean Avenue, to the physical sand beach and to the kinds of facilities and services that are expended down in that end of town. And the reason is this: If you do that, the shore municipalities are faced with a choice. They have other options for dealing with the kinds of problems that occur because of the folks that come here to enjoy our

beaches. They'll be forced to exercise those options. They're probably not viable options.

Our shore municipalities in this State are a part of an approximate \$9 billion tourist industry that benefits the entire State. It benefits Belmar, it benefits Seaside Park, it benefits Brigantine, and it benefits Hoboken. Towns should be permitted, in the way that those expenses are defined, to recover those costs through the user fees, so that the tourist industry is encouraged, not discouraged.

Shore towns don't, for example, have to provide boardwalks. One of the problems that we're now going to face in Belmar because of Judge Milberg's decision, is that certain types of boardwalk expenses are not permitted as far as allowable expenses that we can charge beach fees for.

If we can't charge beach fees, or charge those expenses through our beach fees, what's the option that the municipality has? It will either continue to provide the service or the facility and will fund it through local property taxes, or it will not provide the service or the facility any longer. For certain categories of expenses that you'll read about in Judge Milberg's opinion, Belmar is seriously considering not providing the services or facilities any longer. Not that it wants to, but that it doesn't feel that its local residents should bear the burden through their property taxes, for providing those things. And they're discretionary matters.

Water doesn't have to be provided on beaches -- fresh water. Showers don't have to be provided on beaches for people to wash off the salt when they come out of the ocean. Bathroom facilities don't have to be provided; boardwalks don't have to be provided.

Some of the towns that were not involved in litigation with the Public Advocate don't charge any beach fees, but I went to some of those towns during the course of this

litigation. Mr. Shapiro lived beach fees for three years; I lived with him. I went down to those different towns to see why they weren't charging any money. Some of the towns had no bathroom facilities whatsoever, had no concessions -- literally had nothing but an empty beach where you could walk through a dune cutaway to get onto the beach and enjoy yourself. And that's fine. There probably should be beaches in this State that have that sort of scenario. Those towns may be able to get away with not charging a whole lot for their daily admission fees because they don't have a lot of services to provide in relation to some of the other towns.

But mandating a set fee -- and particularly a low set fee, such as a \$2 set daily fee -- you're going to destroy that diversity. You're going to force towns that have to pay for those services and facilities to go down to a common denominator. And all of your beaches are going to look exactly the same. People probably aren't going to like the way they look, because that's the choice that the local municipalities that support those facilities and services have before them.

Hopefully, not presumptuously, I took the opportunity to make a suggested revision of A-109. By the way, I support A-109. I support A-109 because of it is broader, at least in its present form, compared to the Senate bill's definition of costs and expenses. I think that it approaches the problem in the right manner and has the right concept. I have suggested some revisions, and I will make them available to the Committee.

Probably the most important revision, in my opinion, should be in section 4 of the Act -- which is the definition of allowable expenses for beach fees. If I may, I'll just read it:

"I would suggest that beach fees" -- pardon me -- "that the bill be amended to provide that the allowable expenses include all costs directly related to the operation, maintenance, protection, and improvement of the beach and the beach area; including, but not limited to, the cost of

insurance, solid waste collection and disposal costs, fresh water costs, costs for the construction, repair, and maintenance of boardwalks, jetties, and other structures, other capital costs, and personnel costs, including those for lifeguards, police, first aid, and ticket collectors.

"And that in addition, allowable expenses shall also include the cost of providing services and facilities outside the beach area, which are required due to the seasonal influx of visitors to the municipality, and which would not be incurred except for that seasonal influx of visitors; including, but not limited to costs for additional personnel, equipment, overtime pay for employees, and a planned surplus not to exceed 10% of the total anticipated amount of the other allowable expenses."

I would suggest to the Committee that this bill should be amended to allow for a planned surplus, because if you're going to tie your beach fees directly to your costs and say that you really can't go over that-- In some cases, you will go over because you either under-anticipated your expenses or you over-anticipated your revenues, or vice versa, and you may find yourself a little short.

But if you're immediately required to correct that situation in the following year in the municipal budget, you're going to have beach fees that are going to go up and down like this. (witness gestures) I would suggest that that's not in anybody's best interest. It's probably a good idea for the Committee to consider a planned surplus -- a dedicated planned surplus -- not one that would allow municipalities to take that money and use it to fund other things, but dedicated to the kinds of beachfront expenses that the bill allows for. So that it would be acting, in essence, like a rate stabilization fund. That's good; it's good for the public, and it's good for the towns. As long as it's dedicated, it shouldn't cause anybody any problems with municipalities using those monies to

fund other municipal services. So those are my suggestions for the Committee, respectfully submitted.

In closing, again I would like to note that Belmar was found to have a pricing structure in this beach fee litigation in Monmouth County -- a pricing structure and high daily fees that discriminated against nonresidents. And the basis for that finding was the fact that our expense pool was really much smaller than we thought it was. We set our beach fees in 1984 through 1987 based on a good-faith interpretation of what we could include in that expense pool. We were found by the court to be wrong. The court, itself, has suggested that the Legislature should look at this matter, should review it carefully, and clarify legislation which defines what that expense pool is.

The Committee does have the two bills in front of it. I would respectfully request that the Committee give careful consideration to A-109 with revisions, that would expand that expense pool so that we don't have shrinking facilities and services at the shorefront which will really act as a detriment to the entire State. Thank you.

ASSEMBLYMAN KLINE: Okay, thank you. Any questions?
(no response)

One area we have to address: I hear the numbers being talked about and I think the Mayor should -- or an elected official should -- be thinking, "in fact, there is a deficit, if we reduce the beach fees, is it going to affect you with a cap law?" That has to be addressed. That should be addressed in this bill because we will be definitely doing a bill that affects these beach fees. You'd better take a look. I'm hearing some pretty large numbers today. If we lower your beach fees and there's a deficit in your budget, can you handle that with a 5% cap law? It's something to think about. We have to look at that legislatively.

Okay, we have another Councilman from the Borough of Seaside Heights. What's your-- I can't read your writing.

C O U N C I L M A N R I C H A R D A . M I R A N T I : Dr.
Richard Miranti.

ASSEMBLYMAN KLINE: Now I know why. He thinks this is
a prescription for a drug store. Geez. (laughter)

COUNCILMAN MIRANTI: Councilman Kline, Assemblyman
Kenny--

ASSEMBLYMAN KENNY: Yes.

ASSEMBLYMAN KLINE: Why don't you read your name for
the record again, please?

COUNCILMAN MIRANTI: Miranti -- Richard Anthony
Miranti.

ASSEMBLYMAN KLINE: Doctor?

COUNCILMAN MIRANTI: Yes, sir.

ASSEMBLYMAN KLINE: Very good, thank you. Have a seat.

COUNCILMAN MIRANTI: Thank you.

You know that last remark you made is something I'd
like to address first. Last year we took a \$200,000 wallop in
our budget. It worked as a double-edged sword in this year's
appropriations. We wound up assessing \$400,000 -- a \$200,000
loss. Because of the structure of the budget process, not
being able to anticipate more than we had taken in last year,
it was passed on to the taxpayers as a \$400,000 package if you
will, with about eight cents on our tax rate. And certainly
that's what we were afraid of seeing in the near future.

Assemblyman, I'm also from Hudson County. I was
educated in Hoboken at Stevens Academy, which is no longer
there. I was born in Margaret Hague in Jersey City. I was
raised until about the age of 25 in that environment, coming
down to Seaside Park on weekends and summers. Starting as a
lifeguard, I moved down here and have been practicing dentistry
for the past 15 years. We've lived in a residence across the
street from the beach. We've been fortunate enough to live in
that location for about 25 years.

I love the ocean; I love the municipality I reside in. I'm in complete agreement with the remarks of Mayor Hernandez, except for one. Seaside Park has the most beautiful beaches in the world. (laughter) I have a slight difference with her, but Belmar has the most beautiful Mayor in this State.

I'm also in full agreement with the letter that Senator Connors has issued on May 5. I'm certain that you gentlemen are aware of it. I have a few minor points I would like to touch base on in that regard.

Our seasonal-- This is another question that, Assemblyman Kline, arose. Our seasonal beach badge breakdown is about 70/30. Seventy percent of the seasonal badges, which are usually \$25 badges -- unless bought early, then there's a discount -- go to out-of-municipality residents, mostly those folks living in Toms River, Dover, the Lakewood region, and many of the folks that are in the retirement villages.

As has been expressed by Mayor Hernandez, I think that many of the people who live in our municipality on a seasonal basis, never, ever get to the beach. Probably, about 40% of the town's residents use the beach facility. Most of them are employed in other pursuits during the summer.

During the summer, our municipality, too swells about 250%. It's an enormous tax on every one of our services. And I think that has to be considered in this bill, in terms of roadways, police, sanitation, water, and sewer. All of those agencies are taxed to this-- The municipal offices are taxed to that greater amount of this mass increase of tourists and summer residents coming down. That's not reflected in the proposed legislation which I'm speaking against.

Our town is the beach. There's no separation from our town to the mainland. You go one block to the east and you're in the Atlantic Ocean; you go one block to the west and you're in the Barnegat Bay. We don't have any dirt. We have all sand, and tarmac, and some gravel. We are the beach.

Everything we do there has an impact on the beach. We certainly have some questions with the DEP and arguments over what sand we can sweep off to keep our boardwalk intact -- which is a mile-and-a-half of probably one of the most scenic areas in the world. We've been working on a dune project; the place is gorgeous. I don't know if you gentlemen have been down there. If you're available, September is one of the finest months to be in our town. You don't need a beach badge. Come on down.

Every possible impact is an impact on our town due to our peculiar geographic location. We are just a strip of sand. We are one whole piece of beach.

Last year, when we were giving consideration about membership in the JIF of Ocean County, it was stressed to us, because of this exposure -- the beach exposure -- our estimated rate was \$100,000 greater than that of some other municipalities in the JIF. So that's a reflection on our insurance that is strictly beach related. We've got to have that liability insurance. The body of that liability insurance -- or its cost -- is due to that reflection.

I'm certain that if you've been reading the papers last week, with the storm seize that we've had, there have been fatalities on unprotected beaches. This is something else that impacts on us -- on our volunteer services and our local police services.

We find that the State has not really assisted the local municipalities in certain of these areas. I was at a DOT hearing earlier this year when they were cutting back on existing bus lines to the shore municipalities from the urban centers. This I found to be an impediment to those people who can least afford a cutback on bus service to get out of town during the summer, to come down to the shore -- to go to the country for some relaxation.

Consequent to that, the cutback on the service to Ocean and Monmouth County beach areas, was an increase in

service to Atlantic City. I think that is not rational -- is not warranted, for several reasons: Urban people don't need to go to Atlantic City and lose what money they have at the tables; they need a day at the shore. They need some sunshine and some relaxation. Given the history of the bus rides to Atlantic City -- I understand there were three or four major accidents on the Parkway -- I don't think we need the additional traffic. But that's my own personal opinion on that.

Pretty much, I guess those are the body of my remarks. I'm in agreement, as I said before, with my colleagues, Councilman Harms and Mayor Hernandez. Probably the gist of the comments made here. I did not hear Mr. Weingart or Mr. Shapiro's comments. I thank you very much.

ASSEMBLYMAN KLINE: How many lifeguards do you have on your staff?

COUNCILMAN MIRANTI: We have about 30 -- no, about 28. We've cut back a little bit because of-- I'm glad you brought that up, having been a lifeguard for 10 years, and also a volunteer fireman, and having looked into first aid work for awhile.

One of the things that the State is doing to impede those services, I think, is to add on all of these requirements, as well as hours of training. I can see the same thing coming up with U.S.L.A. regulations beginning to develop in lifeguarding.

Now if the State mandates from a third party -- from a source such as U.S.L.A., which is recent to the New Jersey shore because of their national stature -- they're going to start to make equipment demands on us that are only going to increase our costs.

We used to use Hankins lifeboats. Mr. Hankins is going to retire this year. You'll never get another wooden boat, I don't think, made of that quality ever again. We switched over to Van Dyne 10 years ago. We've got 10-year-old Van Dyne boats which we are constantly repairing.

I think, just as a lifeguard item, the new Japanese water scooters, if you will, are probably going to be something of the wave of the future, because they can cut through a wave very rapidly. But if it becomes mandatory to us that each stand, or each beach location, have X, Y, and Z equipment, who's going to pay for it?

The problem that the State has had with some of these ideas in terms of summer police -- the Class 1 and Class 2 officers -- is that they have mandated 400 -- 300 or 400 hours of extra training -- which is the whole summer, and they have not paid for it. They have not seen fit to finance it, leaving the burden on the local municipality -- i.e., the local taxpayer.

This has put a damper into those people who would volunteer for volunteer services. First aid is an example of it. You begin to see it also in volunteer fire companies. I was on a local company for five years. I enjoyed it very much. I thought it was a highest morale organization, and certainly one of the most professional organizations I've ever belonged to. But they're constantly being impacted for upgrading equipment by statutes that are coming out and approved by the State. Whereas we have reliable equipment -- not the latest, but reliable, and safe, and effective equipment -- we've got to abandon it and replace it.

These costs that keep creeping into our budget cannot be borne by the taxpayer. Of the taxes that we take, 28% go to the municipal use. The rest go up to county or to the local school boards. So we're running our town on a quarter of what we're drawing in. I hope that answered that question.

ASSEMBLYMAN KLINE: Interesting. Okay, thank you.

COUNCILMAN MIRANTI: Thank you, sir.

ASSEMBLYMAN KLINE: Okay, our next speaker is Mr. Bennett from the American Littoral Society.

Good afternoon, now?

D E R R Y B E N N E T T: Hi.

ASSEMBLYMAN KLINE: How are you doing?

MR. BENNETT: Good. Is this on? Is this on?
(referring to microphone)

ASSEMBLYMAN KLINE: No, the bottom one is on.

ASSEMBLYMAN PALAIA: That's close enough.

MR. BENNETT: Oh, okay. The Littoral Society is a national environmental organization interested in coastal issues. We have about 8000 members. About half of them are in New Jersey.

We are here to encourage the Committee to get legislation passed. We would lean toward the Senate version. I'll talk a little bit about that as we go along. But I think it's important to get something done.

And I think as Joe Palaia said -- or asked a question about how much it was costing the Advocate's Office to pursue the cases-- The Littoral Society has to take some of either the credit or the blame for getting the Advocate involved in this. We have been working on access cases since right after the Neptune-Avon case, in Deal, in Allenhurst, in Spring Lake, and in Sea Bright.

We've been in court and we've been encouraging the Advocate to get involved in this. Then, I'm afraid a couple of years ago, we kind of walked away and let them carry the ball for awhile. I'm sure they have other things they could do. I think one of the answers would be to get some legislation in place so that we can get on about the business.

As I say, I think a bill ought to be passed. The concern I have with A-109 was emphasized by the speaker, not before me, but just before that -- when he wanted to add even more things that would be considered direct costs of administering the beach.

He mentioned two things that caught my ear. One was jetties. I don't think we ought to be considering shore protection, either replenishment of soft structures or hard

structures, as part of the cost. I think of the beach replenishment and the jetties, growing sea walls and whatever, more as real estate protection. In fact, indeed, a sea wall and a jetty is really anti-beach rather than pro-beach. So I don't think that those kinds of things can be added. I think it's one good reason to stick with a narrow definition of those direct costs that the beach fees should cover.

I also agree that I don't think there should be an increase in the fees on the weekends. I don't see a rational reason for it.

It's very important, I think, that there be a plan. Both bills have that plan. I think that's a key ingredient. I think that it's important that the plan be very specific and there not just be a casual approach to, "Yes, we will at some time provide parking and rest room facilities," but that the plan be very specific. Because if it isn't, and our experience with shore protection funds in the past is that the funds get allocated and spent-- And, indeed, the plans for beach access and some other things seem to not happen because they cost money and take time, and they just go away. So I think they ought to be up-front.

Lastly, my instinct is to go with the \$2 fee. I think if you asked me this question 15 years ago, I would have said I think there should be no fees for swimming on the beaches. But I think I have been turned around to the point where I think that a person who uses the beach should expect to, and will, pay a fee.

At Sandy Hook, they give you another number. It's \$3 per car. This is a national seashore. It's \$3 per car from Memorial Day to Labor Day for parking. You can go to Sandy Hook and if you don't use the beach parking, you can walk to the beach, so that you don't have a beach badge. You pay to get in certain parking lots. So, if you're willing to walk an extra 500 yards or so, you can park free. In fact, it's free at Sandy Hook. Just as another number.

I don't have a strong feeling about the economics. I suspect that Mr. Shapiro and the other people could be in court another 20 years arguing about whether it's a direct or indirect cost.

My instinct, without appearing to be critical of any and all municipalities, is that they will naturally tend to try to load it as much as they can, and that the public that is from Hoboken and from other parts of the State will not be quite as well organized because they're only down here for a certain amount of time in the summer. We, on the other side, will tend to load it on the low side. Somewhere between fifty cents and \$500 a day, there is a number. (laughter) I don't know what that number is. I guess that's one of the reasons you're having the hearing.

I think the answer here, is to get as specific as you can with what are the costs of the municipality. I think we can estimate the revenues, and obviously at the end of the year you'll know exactly what the revenues are. So I think it may depend on whom you ask. Ask good people and try to get a very good idea of what those expenses are.

But we do encourage some legislation, because I think it's overdue. I think as towns become year-round communities rather than just summer communities, and as this wave of the population moves south and -- correct me if I'm wrong-- I think one of the fastest growing counties in the State right now is Cape May. So it's going to happen all up and down, not just in Monmouth County. Thank you.

ASSEMBLYMAN PALAIA: Thanks Derry. Good seeing you again.

ASSEMBLYMAN KLINE: Okay, thank you.

Next is Philip Herr, President of the Ocean Grove Meeting Association.

P H I L I P C. H E R R, II: Good morning. My name is Philip C. Herr, II. I serve as the volunteer President of the

Ocean Grove Camp Meeting Association. We are here supporting Assembly Bill No. 109 and opposing Senate Bill No. 1374.

Ocean Grove Camp Meeting Association is grateful for the opportunity to appear before this esteemed legislative Committee to make comment on these two bills, both of which are entitled, "The Fair Beaches Act."

At the outset, I wish to point out that the beachfront in Ocean Grove, which is in Neptune Township, is, as of today, owned entirely by the Ocean Grove Camp Meeting Association, a private corporation. Therefore, we are not a "beach municipality" as defined in either bill. Nor are our beaches "beach areas" as therein defined.

However, the matter does not rest there, for we are daily in competition with public beaches to the north and to the south of us.

I want to put to rest a prevalent misunderstanding which many unknowledgeable persons seem to have. All Ocean Grove beaches are open to the public on a completely nondiscriminatory basis. The Ocean Grove Camp Meeting Association has no members, and those persons who support us receive no discount nor entrance fee reduction, nor any other special treatment which is not accorded to the general public. In fact, Ocean Grove beaches operate in precisely the same manner as every other public beach with two notable exceptions:

- 1) To and including 1989, the Ocean Grove Camp Meeting Association pays real estate taxes to the Township of Neptune on its beachfront. In 1989, this will amount to a total of about \$45,000. Application has been made for qualification for exemption in 1990 from real estate taxes with the Green Acres Program. That's N.J.S. 54:4-3.63. A determination is awaited.

However, it must be noted that this will be advisory only, as an exemption, and must be granted by the township, the same township which appeared at the hearing at Green Acres and opposed our application.

The second point of difference between Ocean Grove beaches and municipal beaches, is that the Camp Meeting does not have the luxury of passing any deficit in beach operation along to the taxpayer. The long and short of it is, that we must cover any shortfall by soliciting our constituency for contributions, that same constituency which pays the exact same beach rate as any other member of the public. Or the alternative would be for us to deplete our assets.

In 1987, 1988, and 1989, our beach rate structure was \$4.50 weekdays, \$5.50 weekends. We gave a group discount for 15 or more persons of \$3.75; a weekly badge at \$15.50; a monthly badge at \$31.25; and a season badge at \$500. We offered a 25% senior citizen's discount and an early bird discount of 10% to those who purchased their beach badges early.

Unlike many of our neighboring communities, we have no parking meters located in Ocean Grove. No charge is made for the very limited off-street parking, which we do have available. It is entirely accessible to the public on a first-come, first-served basis.

In 1988 -- principally as a result of ocean pollution from our neighboring communities which closed our beaches for 16 days in the latter half of July -- we suffered an actual cash loss on the beach of \$60,417.80, on gross revenues of \$233,000 before depreciation and before any allocation of any administrative overhead. Now that's just cash to cash for beach items only. It does not include many of the items which Judge Milberg said were includable.

In 1987, which has been described as a banner year, we had a cash profit of \$4858.29 on gross revenues of \$316,000 before, again, any depreciation or any allocation of administrative overhead.

In a crash, cost-cutting program, in 1989, which may be reflective of what the municipalities will have to do, we closed two of our four beaches. We cut services and beach

staff to the barest minimum required by the State certification. Gross revenues amounted to \$263,000 against a budgeted amount of \$260,000. Because of timing of insurance payments, delayed purchases of boardwalk materials and repairs, and fall beach bulldozing expenses, it is impossible to accurately predict the outcome of the 1989 operation. However, I can say, based on budgeted expenses of \$256,000, I feel certain that the beach will break even or show a slight cash surplus again, before any depreciation or allocation of administrative overhead. Remember that this was on a weekday fee of \$4.50 and a weekend of \$5.50.

We have made some very rough projections for 1990, based on a \$5 weekend and \$3 weekday rates as provided in Assembly Bill No. 109. We believe that we can break even at these rates and provide somewhat improved beach cleaning and guarding. Provided:

- 1) that we are relieved of real estate taxes;
- 2) there is no pollution crisis; not only no beach closings, but no perception by the public that the North Jersey beaches are polluted;
- 3) that there is no more than a normal amount of rainfall; and
- 4) that the senior citizens' discounts are not eliminated.

I will address that in a minute.

I believe that I can categorically say that the \$2 beach rate provided by Senate Bill No. 1378, will generate a substantial cash deficit under any operation of the beach by the Camp Meeting Association.

Due to the economic necessity of holding beach rates within a competitive range, we have been unable to engage in any meaningful refurbishment program of our deteriorating boardwalk, other than the Band-Aid type of occasional replacement of broken and rotted boards.

As a non municipality, we are not able to qualify for Green Acres grant, funding, or a loan program, for any major refurbishment. Although we have offered our beachfront to Neptune Township at virtually no cost, our overtures have fallen on deaf ears. Therefore, I emphatically urge this Committee to consider an amendment to the pending bills, similar in nature to N.J.S. 54:4-3.63, which is the real estate tax exemption I was talking about which would qualify any 501C3-type charity for Green Acres funding and loans, where the lands held by that charity are irrevocably dedicated to public use, where those lands qualify for the real estate tax exemption under the Green Acres Act in Jersey, and that charity which agrees to comply with the Fair Beaches Act.

This would allow us to fund our public boardwalk refurbishment and replacement from public sources, and service low-cost debt from our beach revenues in an economical fashion. We want to, and would guarantee, to provide exactly the same service to the public as our neighboring communities, and it would make it possible for us to do that on a level playing field.

Another point of concern, addresses the recent litigation involving our sister community in Belmar. There, the judge held that the boardwalk lighting -- that is, for the lights along the boardwalk -- was not part of the beach expense. With all due respect to the court, we submit that this is an erroneous conclusion which must be changed by statute. The proper rationale is that it is precisely because the boardwalk borders the beach in Ocean, that it holds attraction to the evening stroller. It is a "recreational facility" within the definition of the beach area under the proposed bills. Lighting on the boardwalk is as much a part of the beach expense as is boardwalk repair, providing public rest rooms, or security provided during non-beach hours to protect the facility -- that is the boardwalk, the benches, the

rest rooms, and the pavilions -- against vandalism, as well as provide safety for those beach goers and other members of the public who also enjoy the beach and ocean from the boardwalk during the evening hours.

Aside from the unrealistic rate of \$2 per day in Senate Bill No. 1371 as previously noted, we would like to make the following comments: Both bills provide free access to the beach for persons 65 years of age or older. While we understand that it is politically popular, and a reduced senior citizen rate may be justified for those living on fixed income, we do not believe that shifting the entire burden of the beach expense to the younger persons who are struggling to acquire homes and educate their children, is entirely fair either. Personally, I believe that a discount from the fixed rate of \$3 and \$5 of perhaps \$1, would be an acceptable compromise.

The unrealistically low rate of \$2, as provided in Senate Bill No. 1374, deserves no discount for the senior citizens. We believe a \$2 a day beach fee, certainly cannot present any impediment to beach use even to the senior citizen on a fixed income. I see no more justification for offering a free beach to those 65 or older, than I do for offering them free lottery tickets, which studies show are purchased in significant quantities by senior citizens on fixed incomes.

It really comes down to a question of where do you wish to spend discretionary funds, and in making this choice, there is absolutely no reason why the beach should be free and a lottery ticket not.

If senior citizens wish to go to the beach, they should pay a discounted beach fee. If they wish to buy lottery tickets, they should pay for them. Although it may be politically unpopular, as I said, to give away the beaches to this powerful and vocal bloc of voters, in your most rational moment I know you will believe that I am absolutely right, particularly when you consider the burgeoning number of those

that are attaining age 65 and older, plus the demographic shift of those persons to the Jersey seacoast.

Our best estimate is that a free pass -- that is as opposed to a discount -- to the Ocean Grove beaches for all those aged 65 or older, will cause a minimum of a 10% increase in the entire price for all other persons using the beach. We must garner this revenue from somewhere.

For the record, we would like to state that we do not make any charge for persons aged 11 or under as is the State law as we understand it today.

We find paragraph 14 of the Senate Bill No. 1374, and paragraph 15 of Assembly Bill No. 109 addressing the liability issues, to be very confusing and apparently contradictory. As an example, on one hand the owner is relieved of liability for not warning the user of a dangerous condition, while on the other hand, liability is imposed -- or at least undisturbed -- if the failure to warn is either willful or reckless.

Now, if you read the law and decide not to give notice, it would appear that would be a willful act. I ask you, under which provision would you come?

If the intent of the Legislature is to achieve a reduction in insurance costs, my judgment is that you've missed the mark in these bills.

Let me say, in closing, that the Ocean Grove Camp Meeting Association will continue to operate its oceanfront as a public beach area. We must be able to break-even on a competitive basis. To do that, we need realistic rates applied to all persons aged 12 and older, and we need access to Green Acre funding for refurbishment to the improvements which service the beach.

With these noted modifications, we would strongly urge you to adopt Assembly Bill No. 109 with the proposed amendments. We thank you for your time and attention.

ASSEMBLYMAN KLINE: Okay, thank you, Phil.

Next is Rebecca Krikorian.

R E B E C C A K R I K O R I A N: It's actually good afternoon now, isn't it?

ASSEMBLYMAN KLINE: Yeah.

MS. KRIKORIAN: Okay, I wanted to come to this meeting as just a concerned citizen of Belmar. I've read both S-1374 and A-109 in detail. I've been studying the outcome of the Milberg case. I feel very strongly -- as my taxes have gone up as a property tax owner here in town -- that I don't think that I should be subsidizing the public access to the beaches. If the public wants access and desires the access, then the public should pay for it. The expenses that are incurred for the beach should be maintained and paid for by the beach fees.

I agree with Mayor Hernandez totally, except for the area where the expenses are drawn as far as indirect and direct costs. But she would know better than I, because she is the Mayor and she knows the municipal costs, and so forth, better. But I do believe that it's important for the citizens of the shore communities to be involved. I believe that they have to understand that if this \$2 beach fee passes, our property taxes are going to skyrocket again. It is going to cause catastrophic effects to the shore communities. Thank you very much.

ASSEMBLYMAN KLINE: Thank you. Ellie Shenck?

E L L I E S H E N C K: Thank you for allowing me to address the Committee today. I am not a politician and I am not a professional speaker, so you'll have to bear with me, I hope.

I want to express my opposition to the bill, S-1374 by Senator Stockman.

I live in Avon-by-the-Sea. Avon-by-the-Sea cannot afford its sea anymore, or at least the beach that's attached to the sea, if we use the \$2 maximum daily fee. My property taxes this year increased in one year by almost \$1700. Much of

that increase was related to the indirect expenses incurred at the beach. This is going to continue.

I agree with Assemblyman Villapiano. We really need to outline and look at this, not just from a revenue issue, but also from an expense issue. There are many expenses related to the beach that are not directly involved with the beach. This is very, very important.

I want to say something about Avon. People talk about towns. Well, Avon is only 2500 people. It's only six blocks wide. We do not have a marina; we do not have big restaurants on our beachfront. We have a little tiny snack stand. We give free parking -- free parking -- to everyone that uses our beach. I think these are things-- We're not a tourist town. It's a very small town, and you're welcome to come through it. We have beautiful beaches there. We cannot afford to subsidize the entire State of New Jersey and other states. It's simply not possible.

People, you know-- Well, people are not going to sell their homes, but they're going to have to make some adjustments. It will ruin our community. It will even ruin our school system, because they'll impact that and we'll have to downgrade our educational resources because of it. There's talk in town of people getting rid of the school because, you know, that'll lower property taxes. This is all directly related to the beach. We cannot afford to do this, in our town especially.

Now, Avon is losing-- According to the officials, we're losing money at \$2.50 a day. How can we possibly make it when we have a \$2 maximum daily fee, and you're going to allow senior citizens free? How is that going to be possible? It is not possible. It cannot be. The people who use the facilities should pay for them. No one complains when they go to the Sea View Mall and spend \$6.50 to see a movie. So why should they complain if they spend \$3.50 or \$4 for a beach, for all day?

They can sit there from eight o'clock in the morning until whenever. I think that's what we need to consider here.

I also think you need to consider-- I don't believe also, that there should be a weekend fee. I think it should be one flat fee. I think it'll be simpler to administer, and I think it is unfair to discriminate on weekends. But certainly we cannot have a \$2 maximum fee. I cannot reinforce that to you more strongly.

Another area that I have to discuss, too-- I want to tell you, I was listening to one of the gentlemen from -- I'm not quite sure what he represented -- when he spoke about the jetties and the groins. I want to tell you and leave you with this story of Palm Beach.

I have occasion to spend time in Florida, in the town of Palm Beach. When you think of Palm Beach, what do you think of? You think of the most beautiful beach in the world, don't you? Well, let me say to you, I live four doors from the beach -- the public beach -- in Palm Beach. The public beach is smaller than this room here. Do you know why it's smaller than this room? Because they have let the groins go, because they could not afford them. It has ruined the beach. There is no beach. And do you know, the little part of the beach that is there, is covered in disgusting seaweed and debris. It's appalling, because they cannot afford to maintain it with the other expenses. There's one lifeguard. He sits in a little stand. There's hardly anyone that goes there, because it's unattractive. The beach is free, yes, but you have to pay for parking. It's 25 cents for 15 minutes. If you park on the side streets down the way, where you might have public access, if you get a ticket there-- It's all by permit parking. It's \$50 for a ticket, so you're not going to park there.

Yes, there are some beaches in Florida that are free. They're free, but you pay a \$10-per-car limit to go there. I must say, I can walk to Donald Trump's house, Miralago

(phonetic spelling), on the beach in Palm Beach. Our beach in Avon is far superior to his. I would certainly like to keep it that way. But it will never be kept that way, if you enforce this \$2 maximum daily fee. Thank you.

ASSEMBLYMAN KLINE: Thank you. The last speaker of the day is Joseph Quigley. Joe put on here that he's just an average shore resident.

ASSEMBLYMAN PALAIA: That's the way to go. They're the best kind.

ASSEMBLYMAN KLINE: Just average, eh Joe?

J O S E P H N. Q U I G L E Y: Just average.

ASSEMBLYMAN KLINE: Good.

MR. QUIGLEY: Maybe a little below average. But anyway, I'm grateful to you for letting me speak.

I have a longstanding debt to Belmar. I also came up to see and meet Maria Hernandez. I hope I don't embarrass my two elected Councilmen. I was also glad to see Mr. Shapiro and Mr. Weingart here.

The reason I came-- What my credentials are, besides being an average guy-- My credentials are, I'm a U.S. citizen, and I take my oath of allegiance to the U.S. seriously; I love the coast of New Jersey and the people on it.

Now with this in mind, I submitted-- I just mailed it last night; maybe I should have held onto it until the meeting was over-- But, I sent a letter to my Assemblyman, Mr. Singer, in the form of an exhortation. With your permission, I'll read it. It won't take long. It's entitled-- Whether it meets protocol or not, I don't know. But anyway, it's an exhortation to the New Jersey State Legislature, through Robert W. Singer, Assemblyman, 10th District. Subject: Reasonable beach user fees. My idea, do not-- I exhort you, do not establish a flat dollar rate.

Now the exhortation: Like people, municipalities are diverse and unrepeatable. No shore community has exactly the

same legitimate expenses with respect to beach operation as any other town.

The New Jersey Supreme Court, framers of the Public Trust Doctrine -- which by the way I'm a little familiar with on lay terms-- I don't know about the new bills that are pending. Where was I?

The New Jersey Supreme Court, framers of the Public Trust Doctrine, were astute enough not to establish a fixed dollar amount as a beach user fee. Judge Milberg, in Public Advocate v. Belmar, also refrained from imposing a flat dollar rate for a beach user fee.

Some of us United States citizens believe that a flat dollar rate will only postpone final resolution of this State-introduced contention. It will also leave the shore communities vulnerable in the future, if a new Public Advocate should emerge who never heard of unity through diversity.

In view of the above, and believing that the Public Trust Doctrine was promulgated by intelligent, fair-minded New Jersey Supreme Court Justices, for the guidance of oceanfront municipalities on an individual basis, this exhortation is submitted. That's the end of the exhortation.

Now in the rationale, I said regarding Neptune City v. Avon-by-the-Sea -- which is commonly known as the Public Trust Doctrine-- It is clear that the bottom line of the Public Trust Doctrine -- Neptune City v. Avon -- after appeal, holds that municipalities may validly charge reasonable fees for use of their beaches, but may not discriminate in any respect between residents and nonresidents. This is in the synopsis of that law.

In my perception, the Public Trust Doctrine is very clear with respect to oceanfront municipalities on the following salient points: ownership of the dry sand beach, municipalities; ownership of the tided land, State; reasonable fees based on legitimate expenses; uniform fees; no

discrimination between resident and nonresident. The Public Trust Doctrine also authorizes a reasonable reserve; a municipality may limit the number of people on the beach at any one time; and the Doctrine should not be considered fixed or static, but should be molded to meet changing conditions. This is right in that document. This document here. (witness holds up document) Neptune City v. Borough of Avon-by-the-Sea. But I guess you know more about that than I do.

The State will probably keep insisting that the Legislature come up with a reasonable beach fee. If so, I submit that the fee should be based on a percentage of each individual municipality's legitimate expenses. Simply put, compute the fee based on 125% of the legitimate expenses. This way a reasonable reserve would be built up in accordance with the Public Trust Doctrine. Also, the property rights clause in the New Jersey and U.S.A. Constitutions would be satisfied.

Again, speaking for the average U.S. citizen living in a shore community, we are happy with the spirit and intent of the Public Trust Doctrine. We believe that the uniform fees apply to each municipality in particular, and not to the whole coast in general. We further believe, that a fixed dollar fee for the whole coast would not continue the spirit and intent of the Public Trust Doctrine, which has worked since 1972. It would tend to destroy the economy of some towns, while enhancing the economy of others. We don't feel that consensus among legislators would ever take place. It would be a regressive, un-American solution, with overtones of State control and price fixing.

The writer submits the above as a civic duty and as a way of fulfilling his oath of allegiance as a U.S. citizen. And I signed it. You may have a copy of it.

ASSEMBLYMAN PALAIA: Thank you, Joseph. I appreciate it.

MR. QUIGLEY: If I had time, I was going to tell you a little joke. (laughter)

UNIDENTIFIED MEMBER OF AUDIENCE: Okay, let's hear it.

MR. QUIGLEY: You want to hear that?

I grew up in Newark. When I reached "benny" age, I used to come down here to Fifth Avenue on the beach in Belmar. That's why I owe a debt of gratitude. Because they did charge me 50 cents to get on the beach, sometimes I jumped over the fence, but most of the time I paid the 50 cents. But I never really complained that it was too much, although I didn't have any money. But anyway, we used to come down here.

As I say, I grew up in Newark. There was a story going around at the time, that these two buddies -- one a Jewish fella, the other an Irish guy, like myself-- They graduated from school. The Irish guy went to work. We'll call him Pat. Pat went to work, and he was making out okay. The Jewish lad -- we'll call him Sam -- went into business. He started making pies for a living, fruit pies.

Time went on and they both were going along pretty well. Both got married, started to have a family. Lo and behold, Pat lost his job. He's desperate. He's walking around the streets looking for work. He ran into Sam. Sam's doing great. Pat said to Sam, "How are you doing?" Sam said, "I'm doing okay. I haven't seen you for a long time. How are you doing?" Pat says, "I was doing great, but I lost my job." Sam said, "Why don't you start making pies. There's enough room in the town for us. It costs you a buck, sell them for \$1.50. It works great." Pat says, "Yeah, okay." So he started making the pies.

A couple of months later he ran into Sam. Sam says, "How are you? I hear you're selling pies for 50 cents. That's not going to do you any good. You're going to run out.

It's no good." And all Pat says is, "Yeah, but look at the business I'm doing." Well, that was funny when I heard it.

But anyway, if you have any questions, I'll be glad to answer them. If not, thank you.

UNIDENTIFIED MEMBER OF AUDIENCE: Let him tell another one.

ASSEMBLYMAN KLINE: No, not now. Thank you. We have one more speaker. Thank you, Joe. We appreciate your remarks.

We had one Mayor who just walked in late. We're going to let him say a few words, then we will conclude the meeting. That's Mayor Kamber. Step forward, please. You're our last speaker.

MAYOR GERALD KAMBER: Mr. Chairman.

ASSEMBLYMAN KLINE: Good afternoon, Gerry.

MAYOR KAMBER: Assemblymen and other elected officials: I'm not going to restate what has been stated so eloquently this morning by all of my fellow elected officials at the municipal level. But we do have in Loch Arbor, a slightly special situation which I will briefly outline for you.

That is, Loch Arbor is the smallest and actually the only true village in the State of New Jersey, with less than 400 population. We have a beautiful beachfront, consisting of two beaches -- a northern beach and a southern beach. The northern beach and southern beach were both privately owned. We were given the opportunity, about 12 years ago, to buy the northernmost beach and we bought it. It was an investment, a capital investment, which was paid for by the increased taxes of the residents of Loch Arbor. So that beach belongs to us now. We just didn't find it there; we bought it.

We are now trying, and exploring the possibility of buying the southernmost beach, because we are very concerned with ecological preservation. I think that's a very dangerous situation. There has been a proposition -- which we luckily rejected -- to build condos on the southernmost beach. I feel

that would be an undue strain on the ecology as well as, of course, on the infrastructure.

Our infrastructure, incidentally -- I might mention parenthetically -- has been taxed beyond what it really was designed to hold, to take care of, by the fact that the Main Street Bridge over Deal Lake has been closed, so that we are now routing all traffic through the Norwood Avenue Bridge. Of course, people are driving through Loch Arbor from Deal and West Oakhurst and so forth, to get to that bridge. So our streets are now filled with perhaps, four times the traffic that they were designed to hold, that we normally did have. This, of course, is part and parcel of the beach use and infrastructure degradation of the beach area.

So as I say, we cannot afford to buy our beach and increase the taxes still more. I might mention also, in passing, that Loch Arbor is probably the highest taxed municipality in Monmouth County and one of the highest in New Jersey. We really cannot buy that beach if we're going to be unable to charge equitable beach fees -- equitable from our point of view, that is -- which would enable us to absorb some of that cost.

Also, I feel that the price of the beach must be in relation to the cost of the services that we provide. We, too, have a snack bar, toilets, showers, and lifeguards. We have just entered into an agreement with Allenhurst to buy a bulldozer, a tractor, and a beach cleaning machine. All of these things, as you well know, are expenses. We hope to accommodate everybody we can at a reasonable price. But a reasonable price, in our opinion, is not \$2.

There also must be relief from inflation. If this beach fee goes in, you well know there's an increase of 8% to 10% approximately, per annum. We simply want to break-even by 1990 or 1992 if we do engage in these projects which I mentioned. So I strongly support A-109 as opposed to S-1374. Thank you very much for this opportunity.

ASSEMBLYMAN KLINE: Thank you, Mayor. Good points. We have to address those issues.

This concludes our hearing today on this particular issue. We look, as this Committee, to at least hold one to two more hearings in Trenton. I want the people to realize I look at-- There probably will be a bill that addresses beach fees in this State. You have to look now from the testimony given in public hearings, as to what is the right amount of fee.

One issue that wasn't discussed that concerns me, is a percentage increase. If we mandate a fee, shouldn't we also put in some kind of mechanism that allows increases each year? How do we address those increases? And where do you go if, in fact, you do mandate a fee? It's something of interest, I think, to the elected officials. Definitely think about the cap law. The cap law plays an effect on your budget. If we start changing and regulating beach fees in your budget structure, the cap law will come back to bite you. I'll use that word. It could sneak up on you. We have to look at how we address that in this legislation, because I believe if we do a beach fee bill and then try to do something for the cap outside of it, it might not make it through the Legislature. I believe that should be addressed equally with this bill.

We have to look at what part DCA will play. That amendment should definitely be in there, so that we give them the guidelines and the regulations that need to be addressed in this bill. Assemblyman Kenny?

ASSEMBLYMAN KENNY: Thank you, Mr. Chairman. I enjoyed hearing the testimony today. It was very informative. I learned a lot about the issue and the subject. I probably don't speak -- and shouldn't speak -- for urban legislators in general, but being one, I think the issue that's most important to me is the issue of access. Now that's that people from the urban areas have access to the beaches; that they have sufficient access points; sites for, of course, swimming and

fishing; parking; facilities for the family; lifeguards and safety in general. I think those are the things that are paramount to us.

Although there is a relationship, of course, between fees and access, I don't think we should use fees-- We should not have unreasonably low fees in order to promote access. That would not work to the public interest of the shore communities, and it wouldn't work in providing the type of facilities and safety, and access points that the public needs throughout the State.

So although the issues are related, I think we have to intellectually look at them somewhat separately and find a reasonable fee that will be in the interest of the entire State. I feel that we're on the right track. The Chairman, as indicated, is going to be posting a bill. I think we ought to continue the input as we reconvene in Trenton. Thank you.

ASSEMBLYMAN KLINE: Assemblyman Joe Palaia?

ASSEMBLYMAN PALAIA: Just to wrap up, Mr. Chairman, and Assemblyman Kenny, I really do appreciate you both coming down at this time to be with us. I know my piece of legislation, A-109-- I heard some excellent suggestions here today. I think my legislation needs some fine-tuning. There's no question in my mind. I'm not one of these people to come forward and say, "It's mine, or nothing." Mine does need a little fine-tuning. The one part that bothers me, is the weekend fee. I think we have to address the weekend fee. This was recommended to us, the \$3 and the \$5, but I think the \$5 has to be addressed in another manner. I believe -- with the resident from Avon, Ellie -- that has to be looked at and maybe have one set fee for the entire week.

There are other things, too. Phil Herr made some excellent suggestions, too. So I know I'm going to fine-tune my bill, and I know the Committee has its work cut out for it. But one thing is very important, Mr. Chairman, and that

is that local municipalities are trying to set their budgets, as you know.

ASSEMBLYMAN KLINE: Correct.

ASSEMBLYMAN PALAIA: Time is of the essence for us to address this problem as soon as we possibly can. We give them some guidance for the next year. As you know, as a Mayor, you know it's like pie in the sky. You don't know what you're dealing with if you don't know what kind of fees you can charge and if the Legislature is, in effect, going to do anything.

So, to me, it's very important that we move on it and move on it in an expeditious manner.

ASSEMBLYMAN KLINE: Yeah, I don't look to introduce new legislation; I look to amend your bill.

ASSEMBLYMAN PALAIA: Yeah.

ASSEMBLYMAN KLINE: To make it the model bill that we need.

ASSEMBLYMAN PALAIA: I have no problems with that, Mr. Chairman.

ASSEMBLYMAN KLINE: So, we'd like to work that way.

ASSEMBLYMAN PALAIA: Yes, I'd like that.

ASSEMBLYMAN KLINE: Okay, good. Thank you, and thank everyone for attending. The meeting is adjourned.

(PUBLIC DISCUSSION CONCLUDED)

APPENDIX

STATEMENT OF
THE DEPARTMENT OF THE PUBLIC ADVOCATE
BEFORE THE ASSEMBLY MUNICIPAL
GOVERNMENT COMMITTEE
ON
SENATE BILL 1374
AND
ASSEMBLY BILL NO. 109

September 18, 1989

MR. CHAIRMAN AND MEMBERS OF THE ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE:

On behalf of Alfred A. Slocum, the Public Advocate of the State of New Jersey, I am appearing to present our Department's views on the critical issue of public access to our ocean beaches. Senate Bill 1374 and Assembly Bill No. 109 would cap daily beach fees; the Senate bill caps these fees at \$2.00 per day, while the Assembly bill provides for a \$3.00 cap on weekdays and a \$5.00 cap on the weekends. Both the Senate and Assembly bills would require beach municipalities to submit beach management plans for approval by the DEP and would provide certain statutory mechanisms to enforce the public trust doctrine.

The Department of the Public Advocate has been investigating beach access issues since its inception in mid-1974. The genesis of our involvement with this issue was the recognition of a fundamental factual and legal principle about New Jersey's ocean beaches--that these beaches are a unique and irreplaceable resource that belong to all the people of this State. Moreover, although the beaches may be geographically located adjacent to certain New Jersey municipalities, this circumstance does not make the beaches the exclusive domain of those communities nor does it permit municipalities to exercise unlimited discretion over beach fees or other matters relating to beach access. Unfortunately, over the years, several New Jersey municipalities have imposed direct and indirect barriers to beach

access that gravely impair the ability of nonresidents of these communities to enjoy the beaches and the ocean.

In particular, over the past three years we have received numerous complaints about various obstacles confronting New Jersey citizens in their efforts to enjoy our beaches. These complaints have cited the lack of available parking, lack of restrooms and changing facilities, and the scarcity of beach access points. Many noted that nonresidents were systematically denied access to beaches because the owners of adjoining property considered the beaches to be private. Others have focused on excessive restrictions on beach area activities and police harassment.

However, the most frequently reported complaint has been excessive beach fees, especially in certain Monmouth County shore towns. As some people have complained, the cost for a day at the beach for a family of four could be prohibitive in New Jersey. In response to these complaints, the Department of the Public Advocate conducted an exhaustive study of the beach fee system in New Jersey municipalities and throughout the rest of the country after the 1986 summer season. In May 1987, a 67-page report was issued by the Public Advocate detailing findings and recommendations on present barriers to beach access at the New Jersey shore and documenting that New Jersey had the highest beach access fees in the country. A copy of this report was provided to the members of this Committee at that time. Subsequent to the issuance of this report, our Department initiated lawsuits against Avon, Belmar, Spring Lake, Sea Girt

and the Bay Head Improvement Association. By selecting the communities charging the highest daily fees in the State, we hoped to establish standards to guide other New Jersey municipalities.

As you are probably aware, prior to the 1988 summer season, we settled our lawsuit with the Bay Head Improvement Association. Under this settlement, daily and weekend beach fees were reduced from \$6 and \$8 to a flat \$2 daily rate. In addition, the number of seasonal badges available to nonresidents of Bay Head was substantially increased. This year we also reached agreements with Spring Lake, Sea Girt and Avon; these agreements called for a test period during the 1989 summer season with a \$2.50 cap on daily fees and other restrictions on beach fee setting practices. We will soon be meeting with representatives of these municipalities to evaluate the effect of the test period on beach revenue and expenditures during the past summer.

Only Belmar elected to go to trial, and an eight day trial focusing on the propriety of Belmar's daily beach fees and fee setting practices was conducted in the Spring of this year. The parties agreed to utilize a three-year period from 1984-86 to assess the municipalities' methods of setting beach fees and to determine the legitimacy of the expenses charged to beachgoers through beach fees. On August 29, 1989, Superior Court Judge Alvin Y. Milberg a 34-page opinion concluding that Belmar's beach fees and beach fee setting practices were arbitrary and

unreasonable. He also determined that Belmar's beach fees discriminated against non-resident beachgoers.

I would like to share with this Committee several important conclusions reached by the Court after its careful evaluation of the evidence presented in this case. Significantly, these findings, while specifically relating to Belmar, are equally applicable to other shorefront municipalities whose fee-setting practices do not differ in material respects from those of Belmar:

- (1) Belmar breached its duties and obligations as a trustee over its beach areas to the beachgoers, who the Court found to be the beneficiaries of this public trust;
- (2) Belmar improperly increased beach admission fees, rather than real estate taxes, in order to raise the Borough's general revenues;
- (3) Belmar failed to keep clear and adequate records of beachfront expenditures, and its expenditures were not traceable to any records maintained by the Borough but rather were based upon mere speculation and guesses by the Borough clerk and staff;

- (4) Belmar operated the beach areas as though it was a commercial business enterprise for the sole benefit of its taxpayers;
- (5) Belmar's practices resulted in surplus beach fee revenues being used to subsidize other municipal expenditures rather than being set aside to meet future beach-related costs. Indeed, the accounting firm retained by the Public Advocate, which has had extensive experience in municipal accounting, had found that the beachfront surpluses or "profit" in the four beachfront communities sued by the Public Advocate ranged from over \$3 million in Belmar to approximately \$175,000 in Sea Girt during the 1984-86 period. Parenthetically, the surpluses in each of these communities were large enough to offset a reduction in daily beach fees to \$2.00 in 1984, 1985 and 1986;
- (6) There was no legal or factual basis for a higher weekend fee, since any additional costs that Belmar might incur in operating and maintaining the beach

should be offset by the increased number of beachgoers on the weekend;

- (7) Daily beachgoers, or daytrippers, most of whom are nonresidents, were subsidizing the season badge holders, who were largely residents, because of the disproportionately and inequitably high fee imposed on daily and weekend beach badge purchasers.

Based on these findings, the Superior Court ordered Belmar to revise its beach fee schedule, commencing with the 1990 summer season, in the following manner:

- (1) In fixing its future reasonable beach admission fees, Belmar is required to allocate its beachfront costs in the manner determined by the Court. To provide detailed guidance in this area, the Court reviewed 30 separate categories of costs which Belmar had asserted were related to the operation and maintenance of its beachfront. The Court then determined which costs Belmar may properly allocate to beachgoers through its beach fees.

- (2) In revising its daily beach admission fee, Belmar is required to fix a single daily admission fee for both weekdays and weekends so as not to discriminate against the weekend beachgoer.
- (3) In fixing the seasonal fee, Belmar is required to ensure that the seasonal admission fee does not discriminate against the daily beachgoer.
- (4) Belmar is required to maintain complete, accurate and traceable records documenting beachfront costs.
- (5) Belmar is required to maintain a separate beach account where all revenues from beach admission fees and any other beach use fee must be kept and from where all legitimate beachfront related expenditures should be paid.

In its concluding passage, the Court made the following observation about the need for legislative action in this area: "Beachfront municipalities have been at odds over what the Legislature meant by reasonable fees and legitimate costs associated with beachfront expenses. Since the fixing of beach admission fees is a legislative function, future legislative action may be helpful in resolving those issues."

It is against this legal backdrop that our Department appears before you today to emphasize the need for comprehensive legislation addressing beach fees as well as public access rights in a uniform fashion.

First, although our Department is committed to making the beaches freely available to the public, we accept the compromise view that, at the very least, a low uniform cap on daily beach fees of no more than \$2.00 should be set. The identical cap should be imposed on weekday and weekend fees in order to avoid discrimination towards weekend beachgoers. Such a cap would significantly reduce the discrimination towards non-residents that Judge Milberg condemned in the Belmar decision.

Moreover, we have not been presented with any evidence that a capped daily fee will produce insufficient revenue to meet the legitimate costs necessary to operate and maintain a public beach. While Avon, Belmar, Spring Lake and Sea Girt have publicly complained of a loss of revenue during the 1989 summer season, we have not yet had an opportunity to review their legitimate beachfront expenses for the period to determine the overall effect of the reduced fee on the municipality. Along these lines, I ask you to recall our accountants' findings that each of these municipalities generated substantial beachfront related surpluses in the past when their revenues were compared to legitimate expenditures -- and not the inflated categories of expenses that Judge Milberg rejected.

To the extent the Legislature provides an exemption from the cap, beach communities should only be entitled to raise fees over the cap to meet a limited category of expenses that may be allocated to the beachgoer. We have found that broadening the allowable costs invites the inclusion of a range of expenses that benefit the municipality rather than the beachgoer. The danger in this approach is that the beachgoer ends up subsidizing general municipal expenditures that should more appropriately be borne by the residents of the beach community. Judge Milberg found this practice in Belmar to be a clear violation of the Public Trust Doctrine.

Second, we must emphasize the need for beach municipalities to develop beach access plans that provide reasonable assurances of eliminating the existing barriers to beach access which have been the source of frequent complaints to our Department. The development of such plans, in conformance with standards established by the DEP, and subject to the agency's approval, rejection or modification, would provide a necessary degree of uniformity in the beach access practices of shore municipalities, so that people using the State's beaches would not be subject to a web of conflicting requirements when they stroll down the shoreline from one municipality to another on a warm summer day. These plans might also include provisions for reciprocity between communities so that, for example, a daily user of a beach might stroll into a neighboring beach without

being subjected to harassment or, as we have found in some cases, to criminal prosecution.

Third, one of the most significant problems in addressing beach access complaints is the lack of a ready and expeditious enforcement mechanism for violations of the public trust principles governing beach access. The enforcement mechanism created by these bills will provide appropriate authority for State intervention by the DEP when a person or municipality is unwilling to abide by the dictates of State law. The availability of financial penalties in S. 1374 is certainly an effective incentive for compliance by municipalities and individuals violating the law.

Fourth, the addition of a citizen suit provision would enable individual citizens to sue a person or municipality in order to enforce the provisions of the act. Often, governmental agencies do not have the resources to pursue every individual action designed to vindicate legislative policies. A citizen suit provision would allow persons to take appropriate action where the state or federal agency is unwilling or unable to prosecute an individual claim against a person or municipality. Such a provision is essential for preserving the public trust in ocean beaches and for vindicating the legislative and judicial mandates in this area.

Fifth, Judge Milberg concluded that under the Public Trust Doctrine, municipalities have a basic fiduciary

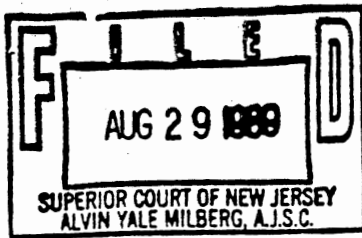
obligation of both loyalty and accountability to New Jersey beachgoers. This responsibility includes, under appropriate municipal accounting standards, the strict segregation of the expenses for the operation and maintenance of the beach from the general funds of these municipalities.

Finally, we think that the Committee might also consider whether the bills, which presently address the operations of municipalities, and in the case of Senate Bill No. 1374, quasi-public entities that operate and maintain public beaches, should also set forth the responsibility of private beach associations to make available a reasonable quantity of beach badges at reasonable fees to the nonresident public. In Matthews v. Bay Head Improvement Association, 95 N.J. 306 (1984), the New Jersey Supreme Court directed the Bay Head Improvement Association to make a reasonable quantity of daily and seasonal memberships available to nonresidents at reasonable fees. However, the Court stopped short of requiring all other private associations along the New Jersey coast to open their memberships to nonresidents. Unfortunately, we are not aware of any private beach association, other than the Bay Head Improvement Association, that has responded to the Court's decision by opening up its membership to the nonresident public.

There are several important reasons for legislatively addressing the separate and distinct obligations of private beach associations. Such legislation would increase the supply of

beaches available to the public. It would also establish a policy that does not merely apply to Bay Head but, as a matter of fairness, is applicable to all private beach associations. Moreover, it would insure compliance with the principles embodied in the Matthews decision.

In conclusion, I want to emphasize that the most striking conclusion of our extensive investigation and litigation in this area is the compelling need for legislative action to ensure that our precious ocean beaches can be shared equally and fairly by all citizens of New Jersey. There is simply no reason why an individual or a family in this State should be prevented, either by excessive fees or other obstacles to beach access, from enjoying a resource that rightfully belongs to everyone in New Jersey. The Department of the Public Advocate perceives a compelling need for the passage of comprehensive legislation to insure uniformity in formulating beach fees and in protecting the public's broad rights to access to ocean beaches.



NOT FOR PUBLICATION WITHOUT THE WRITTEN
CONSENT OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH COUNTY
DOCKET NO. L-073027-87EPW

ALFRED A. SLOCUM
PUBLIC ADVOCATE OF THE
STATE OF NEW JERSEY

Plaintiff

Civil Action

- v -

O P I N I O N

THE BOROUGH OF BELMAR

Defendant

Richard E. Shapiro for plaintiff (Alfred A. Slocum,
Public Advocate of New Jersey, attorney).

Timothy M. Crammer for defendant (Crammer & Covelli,
attorneys).

MILBERG, A.J.S.C.

In this prerogative writ action, Public Advocate of the State of New Jersey, Alfred A. Slocum, challenges the reasonableness of the beach admission fees charged by the defendant, Borough of Belmar, for the use of its ocean beach area, and seeks the following declaratory and injunctive relief from this court:

- 1) That the defendant establish a beach admission fee setting process that conforms to the requirements of an appointed public trustee;

2) That the court direct Belmar to institute a test year at a "\$2" daily beach admission fee for the remainder of the 1989 summer season and for the 1990 season; and

3) That any beach admission fee revenue collected by Belmar in excess of that lawfully recoverable under N.J.S.A. 40:61-22.20 be refunded to the public in the form of future reductions of beach fees.

The complaint in this case was filed on May 22, 1987. The parties engaged in extensive discovery.¹ Prior to trial, Belmar's third party complaint seeking relief against 22 other New Jersey shorefront communities was dismissed, and Belmar's motion for partial summary judgment barring plaintiff's claim for repayment of beach admission fee overcharges under the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., was denied. Public Advocate v. Belmar Bor., 233 N.J. Super. 437 (Law Div. 1989). Six expert witnesses testified on behalf of the litigants in an 8 day trial.

In resolving this controversy, the court is required to address the following issues of law:

¹A 3 year test period including 1984, 1985 and 1986 was utilized to determine Belmar's beachfront related expenditures.

1) Whether Belmar's beach admission fee setting policies conform to the municipality's duties and responsibilities under the Public Trust Doctrine as a trustee of a public beach area;

2) Whether Belmar's daily beach admission fees operate as a bar to public access, thus discriminating against non-residents in violation of the Public Trust Doctrine and Article 1, Paragraph 1 of the New Jersey Constitution; and

3) Whether the daily beach admission fees charged by the Borough of Belmar violate N.J.S.A. 40:61-22.20.

Specifically, this court must determine whether the beach fees imposed by Belmar produce revenues in excess of that necessary to offset legitimate beachfront related expenditures and therefore exceed the fees permissible under N.J.S.A. 40:61-22.20; and whether the beach admission fees imposed by Belmar are unreasonably high and unaffordable to many beachgoers.

I. FACTS

Belmar is an oceanfront resort community located in Monmouth County, New Jersey, maintaining a year round population of approximately 6,700 residents which nearly doubles during the summer months. In addition to the summer increase in resident

population, Borough Clerk Charles Ormsbee, testified that as many as 25,000-35,000 people visit Belmar on peak summer days. The reason for the influx of seasonal residents and day visitors in the summer is Belmar's ocean beach.

Belmar's land area is approximately one square mile, with a beachfront area that extends 1.4 miles along the eastern boundary of the municipality. Belmar's ocean beaches run the entire length of the municipal border east of Ocean Avenue. Ocean Avenue is parallel to the boardwalk and connects Belmar with Avon to the north, Spring Lake to the south, and Shark River to the west.

The average width of Belmar's beaches, depending upon the tide and the location, is 270 feet. This provides approximately 46.9 acres of beach. According to Borough Engineer, William Birdsall, the recreational capacity of the beach, using the "comfort zone" standard of 870 people per acre/per day, is just over 40,000.

An elevated wood boardwalk, which is 30 feet wide, runs the entire length of the beach at its western edge. Access to Belmar's boardwalk is provided at 21 points by both ramps and stairways to Ocean Avenue and to the beach itself. Drinking fountains and freshwater showers are located on the beach at the base of each access ramp. Public facilities on the boardwalk include five restrooms, lockers for bathers, a pavilion, a first aid station, numerous benches and trash containers. All of the facilities and equipment on the beach and boardwalk are owned and

maintained by Belmar.

To the west of Ocean Avenue, there are many commercial establishments, including numerous restaurants, bars and retail shops, as well as Belmar's "Playland." Additionally, on Shark River there is a municipally owned marina and a public parking lot servicing the Borough and its visitors. These attractions generate a substantial amount of summer season traffic "irrespective of the beach."

Several major roadways provide access to the municipality from almost every part of New Jersey, as well as the Philadelphia and New York metropolitan areas. State Highway 35, which runs in a north-south direction through Monmouth and Ocean Counties, is Belmar's westernmost roadway. The eastern end of Interstate 195 terminates in Belmar. An entrance-exit interchange for the Garden State Parkway is located at the Parkway's intersection with Interstate 195, approximately 3 miles west of Belmar. New Jersey Transit provides rail and bus access from the Newark and New York areas.

Belmar began charging a beach admission fee in 1933. Today the purchase of a beach badge is required for admission onto Belmar's beaches from 9:00 a.m. until 5:00 p.m. throughout the summer season. Belmar's summer season opens on the Saturday of the Memorial Day weekend, and continues until Labor Day. Badges are not required on weekdays until approximately June 15th.

Under Belmar's beach fee ordinances, children under the age of 14 are not required to have beach badges. Senior

citizens, defined by the Borough as anyone over 65 years of age, are offered a discount on the price of season badges. No badge is required and no fee is charged for the summer season use of the beach after 5:00 p.m. and before 9:00 a.m., as well as for any time during the non-season. Furthermore, no badge is ever required for the use of the boardwalk. Currently, for the 1989 season, Belmar charges "\$3" for daily weekdays, "\$6" for daily weekend fees, and "\$40" for a seasonal pass. This year, Belmar has formed a beach utility to oversee the operation of the beach and its related accounts.

II. THE PUBLIC TRUST DOCTRINE

The Public Trust Doctrine has always been recognized in New Jersey and is deeply engrained in our common law. Van Ness v. Bor. of Deal, 78 N.J. 174, 179 (1978); Arnold v. Mundy, 6 N.J.L. 1 (Sup. Ct. 1821). The doctrine is premised on the common rights of all citizens to use and enjoy tidal land seaward of the mean high water mark. Lusardi v. Curtis Point Prop. Owners Ass'n, 86 N.J. 217, 228 (1981). It acknowledges that ownership, dominion, and sovereignty over land flowed by tidal waters, that extends to the mean high water mark, is vested in the State in trust for the people. Matthews v. Bay Head Imp. Ass'n, 95 N.J. 306, 312 (1984). The Supreme Court in Bor. of Neptune City v. Bor. of Avon-by-the-Sea, 61 N.J. 296 (1972), extended the Public Trust Doctrine to include the upland sand area as well.

[W]here the upland sand area is owned by a municipality - a political subdivision and creature of the state - and dedicated to public beach purposes, a modern

court must take the view that the public trust doctrine dictates that the beach and the ocean waters must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible.

Avon, 61 N.J. at 308-309. [Emphasis added]

The Court further stated:

The public rights in tidal lands are not limited to the ancient prerogatives of navigation and fishing, but extend as well to recreational uses, including bathing, swimming, and other shore activities.

Avon, 61 N.J. at 309.

Furthermore, the Public Trust Doctrine should not be considered fixed or static, but should be molded and extended to meet the changing conditions and needs of the public it was created to benefit. Avon, 61 N.J. at 309. Accordingly, in order to exercise rights guaranteed by the Public Trust Doctrine, the public must have access to municipally owned dry sand areas as well as the foreshore. Matthews, 95 N.J. at 321-322.

The Public Advocate contends that Belmar has failed to adopt beach fee setting policies that conform to the municipality's duties and responsibilities under the Public Trust Doctrine as a trustee of a public beachfront. Belmar claims that the fact that it is required to administer its dry sand beach in trust for the use and enjoyment of all the citizens of the State does not convert the municipality into a trustee.

A trustee is defined as the person appointed, or required by law, to execute a trust; one in whom an estate,

interest, or power is vested, under an express or implied agreement to administer or exercise it for the benefit of another. Black's Law Dictionary 1357 (5th ed. 1979). Generally, the duties of a trustee depend upon the terms of the trust, and where there is no provision, express or implied, within the terms of the trust, the trustee's duties are determined by principles and rules evolved by courts of equity. Branch v. White, 99 N.J. Super. 295 (1968), certif. den. 51 N.J. 404 (1968).

N.J.S.A. 40:61-22.20 impliedly appoints Belmar as trustee over its beaches.

40:61-22.20 Lands bordering on ocean, tidal water bays or rivers; government and policing; fees.

The governing body of any municipality bordering on the Atlantic ocean, tidal water bays or rivers which owns or shall acquire, by any deed of dedication or otherwise, lands bordering on the ocean, tidal water bays or rivers, or easement rights therein, for a place of resort for public health and recreation and for other public purposes shall have the exclusive control, government and care thereof and of any boardwalk, bathing and recreational facilities, safeguards and equipment, now or hereafter constructed or provided thereon, and may by ordinance, make and enforce rules and regulations for the government and policing of such lands, boardwalk, bathing facilities, safeguards and equipment; provided, that such power of control, government, care and policing shall not be construed in any manner to exclude or interfere with the operation of any State law or authority with respect to such lands, property and facilities. Any such municipality may, in order to

provide funds to improve, maintain and police the same and to protect the same from erosion, encroachment and damage by sea or otherwise, and to provide facilities and safeguards for public bathing and recreation, including the employment of lifeguards, by ordinance, make and enforce rules and regulations for the government, use, maintenance and policing thereof and provide for the charging and collecting of reasonable fees for the registration of persons using said lands and bathing facilities, for access to the beach and bathing and recreational grounds so provided and for the use of the bathing and recreational facilities, but no such fees shall be charged or collected from children under the age of 12 years. L.1955, c. 49, p. 165, sec. 1, eff. June 7, 1955. [Emphasis supplied.]

The statute grants the municipality the power to make and enforce rules and regulations for the governing and care of the beach and its facilities. New Jersey courts have traditionally recognized that the sovereign's ownership is "in trust for the benefit of the public." Cobb v. Davenport, 32 N.J.L. 369, 378 (Sup. Ct. 1867), reh'g 33 N.J.L. 233 (Sup. Ct. 1868); Arnold, 6 N.J.L. at 71. The New Jersey Supreme Court recognizes the municipality's trustee obligation over public beaches by characterizing the lands subject to the Public Trust Doctrine as "trust lands." Avon, 61 N.J. at 306, 308. Accordingly, Belmar is a trustee over its beach area and the public is the beneficiary of the trust lands. As such, I find that Belmar has breached its duties and obligations as a trustee.

A public trustee is endowed with the same duties

and obligations as an ordinary trustee. That is, the trustee owes to the beneficiary a duty of loyalty, Branch, 99 N.J. Super. at 295, a duty of care, Commercial Trust Co. of N.J. v. Barnard, 27 N.J. 332 (1958), and a duty of full disclosure, Branch, 99 N.J. Super. at 306-307. Additionally, a trustee has the duty to keep clear and adequate records and accounts. In re Herr, 22 N.J. 276 (1956). When the trustee fails to keep proper accounts, all doubts are resolved against him and not in his favor. Societa Operaia, etc. Villalba v. Di Maria, 40 N.J. Super. 344, 349 (Ch. Div. 1956).

I find that the Borough, as trustee, has shown little care and foresight in regard to its beneficiaries - the beachgoing public. The evidence in this case clearly indicates that Belmar breached its duty of loyalty to the public by increasing beach admission fees, rather than real estate taxes, in order to raise the Borough's general revenues. The Borough failed to keep clear and adequate records of beachfront expenditures. Belmar's expenditures were not traceable to any records maintained by the Borough but rather were based upon guesses and estimates by the Borough clerk and staff. Belmar commingled its general revenues with its beachfront related revenues. It operated the beach area as though it was a commercial business enterprise for the sole benefit of its taxpayers. This conduct resulted in surplus beach fee revenues being used to subsidize other municipal expenditures for the exclusive benefit of the residents of Belmar, rather than being set aside to meet future beach-related costs.

These actions place the interest of Belmar residents before those of the beachgoers, in violation of the Borough's duty under the Public Trust Doctrine. Additionally, I find that the appointment of a trustee, as requested by the Public Advocate, is unnecessary. Belmar, as trustee over its beach area, shall follow the guidelines set forth by this court in this opinion to ensure that the interests of the beachgoing public are protected.

III. DISCRIMINATION AGAINST NON-RESIDENTS

The Public Trust Doctrine mandates that the beach be open to all on equal terms without preference. Van Ness, 78 N.J. at 179. The Court in Avon stated that the enactment of a statute authorizing a municipality to charge beach user fees did not manifest legislative intent to authorize discrimination in fees between residents and non-residents. Avon, 61 N.J. at 301. The Court went on to hold that municipalities may validly charge reasonable fees for use of their beaches but may not discriminate in any respect between residents and non-residents. Avon, 61 N.J. at 310.

This court finds that Belmar's price structure for beach fees discriminates against non-residents by imposing a disproportionately and inequitably high fee on daily and weekend beach badge purchasers.

Active discrimination is a mental process in which one willingly chooses one alternative over another. Parker v. Dornbierer, 140 N.J. Super. 185, 188-189 (1976). This intent to discriminate is found by examining what was said and done in the

circumstances of the entire transaction. Parker, 140 N.J. Super. at 188-189.

Belmar experienced extreme overcrowding on the beach and boardwalk during the 1985 season. There was tension and antagonism among community residents towards outsiders. This outcry led the Commissioners to raise the 1986 fee, effectively precluding many non-residents from using the beach. The October 7, 1985 Commissioners' agenda meeting, and the testimony presented at trial clearly show that Belmar intended to discriminate against non-resident beachgoers.²

Evidence of Belmar's intent to discriminate is apparent by the double fee charged on weekends as compared to weekdays. Any additional costs that Belmar may incur in operating and maintaining the beach on weekends should be offset by the additional revenues that will be collected by the increased number of beachgoers. Additionally, the disproportionate price gap between seasonal and daily admission fees is further evidence of Belmar's intent to discriminate against non-residents. The majority of weekend badge purchasers were non-residents and the difference between the cost per day for a seasonal badge and the cost per day for a weekend daily badge was quite extreme. By paying a vastly greater per day price for their badges, the daytrippers have been subsidizing season badge holders.

²The cassette tape of the October 7, 1985 Commissioners Agenda meeting was marked P-37 in evidence. A listening of the tape by the court revealed the Commissioners concern over the amount of people coming to the Belmar beach and the potential problems that would result from such a large crowd.

Additional proof of this discrimination is the fact that Belmar, without justification, has raised the price of daily and weekend badges faster than the price of seasonal badges.

IV. REASONABLE FEES UNDER N.J.S.A. 40:61-22.20

N.J.S.A. 40:61-22.20 sets forth the statutory authority to charge beach user fees. The Public Advocate claims that the statute only includes costs associated with the operation and maintenance of the beachfront. Belmar contends that beach related expenses include all those expenditures which the municipality would not incur if it was not a beachfront community.

The avenue this court must take in resolving this issue is one of statutory interpretation. The primary aim in interpreting a statute is to determine the fundamental purpose for which the legislation was enacted, and where a literal reading will lead to a result not in accordance with the essential goals of the act, the spirit of the law will control the letter. New Jersey Builders, Owners & Managers Ass'n v. Blair, 60 N.J. 330 (1972). Where there is no explicit indication of a special meaning, statutory words are given their ordinary and well understood meaning. Matter of Schedule of Rules for Barnett Memorial Hospital, 92 N.J. 31 (1983); Levin v. Parsippany-Troy Hills, 82 N.J. 174 (1980). In this case, the phrase "reasonable fees" requires statutory interpretation.

It is clear that N.J.S.A. 40:61-22.20 was enacted for the purpose of authorizing shore municipalities to charge beach user fees in order to reimburse the municipality for its

costs associated with the beachfront. The determination of what costs may be reasonably allocated to the beach badge purchaser is the thrust of this case.

The Court in Avon acknowledged the burdens placed upon oceanfront municipalities and discussed the rationale behind the statute. The Court found that in determining a reasonable fee, municipalities "may consider all additional costs legitimately attributable to the operation and maintenance of the beachfront, including direct beach operational expenses, additional personnel and services required in the entire community, debt service of outstanding obligations incurred for beach improvements and preservation, and a reasonable annual reserve designed to meet expected future capital expenses." Avon, 61 N.J. at 311. [Emphasis supplied.]

It is clear that the statute directs its "reasonable fee" standard to the municipality, however, this fee must be reasonable in relation to the municipality's expenses incurred as a result of the beachfront. That is not to say that Belmar can "fantasize" that it is an inland community and allocate any additional costs above and beyond its imaginary expenses as an inland community.³

Belmar, as a beachfront municipality, benefits overall from the shore attraction. This is an added benefit, or

³ Trial testimony revealed that Belmar estimated its costs by assuming that Belmar was moved 22 miles inland. It then allocated a wide range of municipal expenses, both during the summer and the off season, to the summer beach badge purchaser on the ground that such expenses would not exist if Belmar were an inland community.

in some cases, a burden to the municipality that comes with the territory. See Van Ness, 78 N.J. at 174; Avon, 61 N.J. at 299. The collection of reasonable fees directly related to the beachfront was designed to offset these community burdens. The legislature understood that there would be an enormous impact on the community spirit, as well as the community finances. Thus, the statute is designed to subsidize the costs related directly to the beachfront.

It is this court's obligation to determine what constitutes reasonable expenditures in light of N.J.S.A. 40:61-22.20 for the benefit of both the beachgoer and the Belmar community.

Michelle Bowman, an expert in the field of accounting, with a special emphasis on trust accounting, financial reporting and cost allocation, testified on behalf of the Public Advocate. The testimony of this witness, supported by a written report, examined 30 separate items of expenditure relating to beachfront activities and recommended how each of these items should be allocated to the operation of Belmar's beachfront facility. In support of Belmar's position, Robert Hulsart, a certified public accountant, registered municipal accountant, and expert auditor in municipal finance, testified that the allocations of beach related expenses devised by the Borough Clerk, Charles Ormsbee, were reasonable under N.J.S.A. 40:61-22.20. This court finds Bowman's allocations to be more credible and reasonable than Belmar's, and accordingly adopts a majority of

the Bowman findings relating to legitimate beachfront expenditures. Additionally, this court finds that Belmar's allocations are mere speculations, unsupported by any explanation or records. Belmar's allocations are arbitrary, unreasonable and discriminatory against the beach badge purchaser; the revenues derived are more than are needed to defray the operational costs permitted under the statute.

Accordingly, this court determines that the beach admission fees charged by Belmar under N.J.S.A. 40:61-22.20 are unreasonable.

V. REIMBURSEMENT

The Public Advocate seeks a reimbursement to the beachgoing public of all beach admission fee revenues collected in excess of that lawfully recoverable under N.J.S.A. 40:61-22.20. The Public Advocate's expert calculated the amount to be "\$3,144,143" for the 1984-1986 time period.

It has been held that money voluntarily paid with full knowledge of the facts, even if for an unjust claim, or if paid under protest can not be recovered. Brinkman v. Urban Realty Co. Inc., 10 N.J.L. 89, 112 (Sup. Ct. 1871). Recovery is permitted in a limited number of cases.

Money paid by mistake, or upon a consideration which happens to fail, or for money got through imposition, express or implied, or extortion, or opposition, or an undue advantage taken of the plaintiff's situation. Contrary to laws made for the protection of persons under those circumstances.

McGregor, 35 N.J.L. at 112.

In Los Angeles Gas & Electric Corp. v. R.R. Comm'n of California, 289 U.S. 287, 313, 53 S. Ct. 637, 77 L. Ed. 1180, 1197 (1933), the Supreme Court held:

Deficits in the past do not afford a legal basis for invalidating rates, otherwise compensatory, any more than past profits can be used to sustain confiscatory rates for the future.

See also In re Intrastate Industrial Sand Rates, 66 N.J. 12, 23 (1974).

A reimbursement of the overcharged beach fees is inappropriate in the present case. No one was forced to use Belmar's beaches, and the fees were not involuntarily paid. The public had full knowledge of the beach admission fees; there was no element of fraud or duress. The beachgoers also had alternative options available to them. In close proximity to Belmar, there are many beach municipalities that charge lower beach admission fees. These beachgoers had the choice of visiting any one of these beaches rather than Belmar. They chose not to do so. See e.g., Brinkman, 10 N.J. at 120.

Additionally, too many unidentified people have visited Belmar's beaches during the past 5 years for there to be a just and fair return on the amount overcharged. There is no evidence or assurance that the same beachgoers would return to Belmar in the future and take advantage of the reduced rates. While this remedy may benefit the public at large, it would not benefit the actual aggrieved parties.

Furthermore, Belmar's records are inadequate and incomplete, and as such it is not possible to define the exact

amount of profits generated by the Borough in relation to the Borough's costs. Belmar most likely relied upon these revenues to create its budgets for the future years; and it would be unfair to the taxpayers of Belmar to have to recoup the losses for the past actions of the Borough Commissioners.

Accordingly, this court denies plaintiff's requested relief for reimbursement of past admission fee charges.

VI. REMEDIES

N.J.S.A. 40:61-22.20 authorizes Belmar to charge a reasonable beach admission fee in order to raise funds to defray the costs associated with the operation and maintenance of its beachfront.

This court has found that the beach admission fees currently charged by the Borough of Belmar pursuant to N.J.S.A. 40:61-22.20 are unreasonable and discriminatory to the beachgoing public and therefore, must be revised commencing with the 1990 summer season.

The Public Advocate, as a remedy, suggests that there be a test period during which time this court order that the beach admission fee be fixed at a flat rate of "\$2" for both weekdays and weekends. However, it is not a judicial function to fix beach admission fees. The court may only determine whether or not the beach admission fee charges are reasonable under the applicable statute. When the court determines that the fees are unreasonable, it becomes a legislative function to fix the reasonable fee. See In re Intrastate Industrial Sand Rates, 66

N.J. at 19; Automatic Merchandising Council, 102 N.J. 125, 127 (1986). Where a court invalidates a license fee ordinance as excessive, it may not then set the proper fee because to do so would be an intrusion into the legislative prerogative. Automatic Merchandising Council, 102 N.J. at 127.

The court in In re Intrastate Industrial Sand Rates, 66 N.J. at 19, citing Chief Justice Gummere stated:

The power to fix rates is not a judicial function, but a legislative one, and the state has created the Board of Public Utility Commissioners as its agent for that purpose. An attempt by the Supreme Court to fix a rate is in its essence an attempt to exercise a sovereign power which has not been delegated to it by the state, but which presides solely in the legislative and executive branches of the government. [Hackensack Water Co. v. Pub. Utility Bd., 96 N.J.L. 184 (E. & A. 1921)].

It is, however, the function of this court to interpret the language set forth in N.J.S.A. 40:61-22.20 and to define what costs, if any, Belmar may allocate to its beachfront related expenses. The Supreme Court in Bor. of Neptune City v. Bor. of Avon-by-the-Sea, 61 N.J. 296 (1972) specified the legitimate costs that may be allocated by a municipality for its beachfront related expenses.

The allocation of Belmar's beachfront related costs is the major dispute in this case. Relying upon the Supreme Court's decision in Avon, and considering the testimony taken at the time of trial, this court will provide Belmar with further

guidance as to which costs may be properly allocated to its beachfront expenses.

The expert witnesses testified that there are 30 separate categories of legitimate costs which may directly or indirectly relate to the operation and maintenance of Belmar's beachfront facility. This court shall now review each of the 30 categories of costs and shall determine which costs Belmar may properly allocate to its beachfront related expenses.

1. Police - Salaries and Wages

Belmar included 90% of the total salary and wage costs of all special police regardless of what they did and when they did it. Special police used all year to fill in for regular officers who were out sick were also included by Belmar, as well as those officers called for the Halloween Parade and on St. Patrick's Day.

Bowman included only the identifiable costs for special beach police that patrol the beach, as well as other specials and costs associated with the beachfront as identified by Police Chief Daniel Moynihan. These costs included 1 roving car post, 6 special officers directing traffic from 10:00-6:00 p.m., 2 scooter posts and special assignments posts related to the beachfront.

Belmar allocated the full salary costs for 5 regular police officers for the entire year, while Bowman included the average salary of 2 officers on the day time shift each day for the full summer season. According to Chief Moynihan, there

was an average of 3 officers on duty during the day for 3 years. The police shift schedule indicates that there are 2 patrol officers and 1 supervisory officer on duty at any one time, together with a civilian dispatcher. Bowman allocated 2/3 of the total number of officers working during this period. Additionally, Bowman noted that only 4% or less of the calls for service for the year occurred at or near the beachfront during the time when badges were required.

Belmar allocated 50% of the salary for both civilian police dispatchers and clerical workers while Bowman allocated nothing for this category.

Belmar allocated 75% of the Police Department's gross overtime, while Bowman allocated the full amount of summer overtime to the beach badge purchaser. Belmar allocated "\$4,000" in salary expenses for South Belmar dispatching without acknowledging the reimbursement received by Belmar. At trial, Ormsbee conceded that this was improper. Bowman did not allocate anything to the South Belmar dispatching.

The court rejects Belmar's allocations for this category as overbroad, speculative, and unsupported by any records; Belmar included non-beach related events such as the Halloween and the St. Patrick's Day Parade in its calculations. The court accepts Bowman's allocations for this category as being credible and reliable. However, the number of car posts, number of special officers and assignments related to the beach are subject to change from time to time depending upon need.

2. Beachfront Operating & Cleaning - Salaries and Wages

In defining this amount, Belmar used anticipated budget amounts rather than actual expenditures. Bowman allocated 100% of the actual salaries of all part time summer employees hired for the beachfront. These include the beach supervisor and assistant, ticket sellers, lifeguards, gate persons, locker attendants, laborers, and lavatory attendants.

The court accepts Bowman's findings.

3. Beachfront Repair & Maintenance - Salaries and Wages

For this category Belmar merely allocated 8 public works employees. Bowman allocated all of the salary of 2 regular public works employees and all wages of temporary summer employees assigned to the beachfront. Additionally, Bowman allocated 4 additional public works employees to account for additional beachfront related tasks, as testified to by Superintendent Paul Greco, 1/2 of the actual full year compensation of the department's equipment operator and 30% of the total mechanic's salaries.

Belmar's allocations are speculative and not based on any facts. The court accepts Bowman's allocations as to which employees should be included in this category, however, the number of employees may change from time to time depending on need.

4. Garbage & Trash Removal - Salaries and Wages

Belmar included 35% of the total salaries and wages. Included in this figure were costs related to summer rentals in Belmar as well as changes in the summer season.

Bowman's allocations included the total employee hours required for the beach, boardwalk and Ocean Avenue pick-ups multiplied by the hourly rate of compensation. In addition, Bowman included an allocation for summer overtime.

The court accepts Bowman's allocations for this category and finds that Belmar arbitrarily allocated 35% of the total salary and wages to the beach badge purchaser.

5. Municipal Court - Salaries and Wages

Both parties agree, and this court finds, that allocation of municipal court expenses is improper especially since the revenues exceed the costs in this category.

6. Administrative - Salaries and Wages

Bowman includes 2 administrative staff persons who generally performed beachfront related administrative functions. All of their actual salary and wages were included in the allocation. Bowman did not include Ormsbee's salary since he would receive the same salary with or without the beachfront.

The court finds that the administrative staff required for the running of the beach utility, if continued, should be included in this category.

7. Construction Code, Fire & Board of Health - Salaries and Wages

Both parties agree, and the court finds, that the expenses in this category should not be allocated to the beach badge purchaser since the Borough generates revenue by charging a fee.

8. Parks & Recreation - Salaries and Wages

Belmar allocated 20% of the salaries of parks and playground employees, and 10% of the salaries of recreation employees. Bowman allocated nothing for this category since these are not beachfront related activities.

The court accepts Bowman's conclusion as to those facilities not located on the beach but finds that any recreation facility provided on the beach for use by the beach badge purchaser must be included in the beach budget.

9. Parking Meter Maintenance - Salaries and Wages

Belmar and Bowman's figures were identical for the category, and as such, the court accepts both Bowman's and Belmar's figures.

10. Police - Other Expenses

Belmar had no separate allocation for this category. Bowman analyzed all of the direct and indirect beachfront related other expenses for the Police Department. For summer clothing, as a direct cost, Bowman calculated its allocation by multiplying the applicable summer clothing allowance for each year by the number of special beach police officers.

Belmar did not make any separate allocation for traffic and paint supplies, however, Bowman allocated 100% of these costs to the beachfront since they are related to the summer parking lines.

Belmar did not segregate the expenses for ammunition supplies; Bowman adopted Chief Moynihan's estimate that

50% of all ammunition expenses were beachfront related.

Belmar did not segregate the expenses category for psychological testing; Bowman allocated "\$300" for each new special police recruit who would be used at the beachfront.

Belmar used a 40% figure to allocate the entire "other expense" budget line, while indirect costs were allocated by Bowman based upon the ratio of indirect police beachfront salaries to total police salary costs.

For police vehicles, Belmar allocated 100% of the cost of acquiring all police cars. Bowman based its figures on 2 factors: (1) their useful life; and (2) the extent of their beachfront usage.

The court accepts Bowman's findings for summer clothing, but also finds the remainder of Bowman's allocations in this category to be too conservative. As such, this court finds that traffic and painting supplies which are used along Ocean Avenue should be allocated to the beach. Ammunition supplies are not to be charged to the beachgoer. Psychological testing, or any expenses incurred in the hiring of special police, are to be included in the beach budget. Furthermore, two vehicles amortized over a 3 year period are to be included in the category for police vehicles.

11. Beachfront Operation & Cleaning - Other Expenses

Belmar used raw numbers from the budget expenditure line for this category, while Bowman took the actual expenditures charged each year against the budget line entitled "bathing beach-

-other expenses" and adjusted these figures to identify the appropriate charges to beachgoers for each year. For example, for 1985, Bowman removed a "\$3,000" charge for a lifeboat, and recategorized it under capital costs, to reflect its useful life. For 1985, the costs of 2 vehicles were also recategorized as capital costs; and in 1986 a once-only "\$20,000" charge for water and sewer usage was eliminated.

The court finds that the purchase price and maintenance of 2 vehicles used at the beachfront should be included in accordance with Bowman's findings.

12. Beachfront Repairs & Maintenance - Other Expenses

Belmar allocated the full amount of these charges to the beach badge purchaser.

Bowman included all non salary and wage expenses of the public works department which are related to the beachfront. Bowman also included all beachfront related costs under beachfront maintenance with the exception of a "\$770" lighting charge in 1985 which was not considered to be beachfront related.

For public buildings, Belmar included the costs associated with the Ninth Street Mall in its allocations, while Bowman allocated 100% of the "other expense" costs associated with the beachfront pavilion, such as tile, paint and a return air system.

Belmar did not separately allocate the direct costs for road repair and maintenance, while Bowman's allocation for this category reflects the clothing allowance for the staff

assigned to the beachfront.

Belmar applied the arbitrary 30% figure against these indirect costs, while Bowman's allocations for the indirect "other expenses" relating to road repairs and maintenance were proportional to the allocation of salary costs for the beachfront.

Belmar allocated 30% of all of the charges for equipment maintenance. Bowman applied the 30% indirect labor factor that it had used for salaries and wages under that category.

The court finds that the "\$770" boardwalk lighting charge should not be allocated to the beach badge purchaser. The boardwalk during the evening hours is not an appendage of the beach, but rather an attraction in and of itself for nighttime entertainment. While lighting of the boardwalk should not be included, boardwalk repairs are a permissible allocation.

Additionally, the court finds that as a result of the increased volume of traffic on the streets during the summer months, Belmar is entitled to allocate a small percentage of road repair costs. Belmar may fix a fair and reasonable amount.

13. Garbage and Trash Removal - Other Expenses

Belmar used an arbitrary 35% figure for its allocation.

Bowman's allocations for the "other expenses" relating to garbage and trash removal were calculated by identifying all "other expense" charges, eliminating the charges for capital equipment and sanitary landfill, and allocating the

remainder in proportion to the allocation of salaries and wages for this category.

The court finds that allocating 35% to the beach badge purchaser is unreasonable. The summer garbage collection season amounts to approximately 8 out of 52 weeks. Not all of the summer collection is from the beach alone; the majority of the additional garbage is from summer rentals. Between 5-7% of this cost is a more realistic amount to allocate to the beachfront.

14. Legal Services & Municipal Court - Other Expenses

Belmar allocated 100% of all the bar related expenses for legal services as well as certain unidentifiable other legal services.

Bowman allocated 100% of all legal service charges related to beach ordinances, bids and contracts related to the beachfront, and lawsuits resulting from beach injuries. No allocation was made for charges for legal services related to the bars and other licensed premises.

None of the "other expenses" related to the municipal court were allocated by Bowman for the same reason that none of its salary and wage expenses were allocated.

Belmar conceded that its 60% allocation was inappropriate.

The court accepts Bowman's findings.

15. Boardwalk Lighting - Other Expenses

Belmar allocated each year a flat 15% of the total budgetary expenditures for street lighting for the entire

municipality.

Bowman allocated nothing for boardwalk lighting because it did not consider these expenditures to be properly chargeable to the beach badge purchaser.

The court accepts Bowman's findings.

16. Insurance - Other Expenses

Belmar gave no explanation for its allocation while Bowman allocated Workmen's Compensation in proportion to its calculation of the Borough's total beachfront related salaries and wages.

Belmar used a 30% figure supplied by Ormsbee for the cost of coverage for contractor's equipment. Bowman allocated it in proportion to the Borough's use of such equipment for beachfront related purposes.

Belmar gave no explanation for the cost of auto and other vehicle coverage, while Bowman allocated it in proportion to the Borough's use of such vehicles for beachfront related purposes.

Belmar gave no explanation for the cost of police liability coverage. Bowman allocated it in proportion to the overall police salary and wage cost related to the beachfront.

Belmar gave no explanation for property and liability insurance costs. These costs were allocated by Bowman in accordance with figures supplied by Mr. William Hooper, the Borough's Insurance Agent, with a modified seasonal adjustment.

The court accepts Bowman's findings.

17. Engineering Fees - Other Expenses

Belmar's allocations were based on an arbitrary 25% figure.

Bowman's allocations for engineering fees were based on its detailed review of all invoices for services. The invoices which reflected engineering services in any way related to the beachfront were allocated 100%.

The court accepts Bowman's findings.

18. Hospitalization Costs

Belmar gave no explanation for this category, while Bowman based its allocations on its identification of the actual monthly premiums paid on behalf of all beachfront related employees. The allocations were made in proportion to employees beachfront related salaries and wages.

The court accepts Bowman's findings.

19, 20, 21. Social Security, PERS AND PFRS

Belmar charged the beach badge purchaser with 60% of the Borough's total cost for social security in both 1984 and 1985. Bowman's allocation was based on the applicable annual employer's contribution rate multiplied by the Borough's total beach related salaries and wages.

Belmar gave no explanation for its PERS (Public Employee's Retirement System) allocation. Bowman applied the applicable employer contribution rate to the Borough's total eligible beachfront related salaries.

Belmar allocated nothing for PFRS (Police and Fireman's Retirement System) while Bowman applied the applicable employer contribution rate to the Borough's total eligible beachfront related police salary and wages.

The court accepts Bowman's findings.

22. Sanitary Landfill

Belmar allocated 35% of the Borough's total sanitary landfill charges.

Bowman's allocations were based upon its identification of incremental summer costs for these charges.

The court finds that a reasonable formula should be devised focusing on the actual use by the beach.

23. Parks - Other Expenses

Belmar allocated 20% of the "other expenses" for parks and playgrounds and 25% of such charges for recreation.

Bowman did not allocate any "other expenses" since they were not related to the beachfront.

The court accepts Bowman's findings.

24. Storm Damage - Other Expenses

Belmar recognized the entire "\$200,000" budgetary appropriation for storm damage in 1984 despite the fact that only "\$118,989.53" was spent on the beachfront, and despite the fact that the Borough was reimbursed for all but 12.5% of these costs.

Bowman allocated nothing for this category but recognized actual storm damage costs under category 28, the Debt Service category.

The court finds that only the actual loss to the beach, less any state or federal reimbursements, should be included in this category.

25. Administrative - Other Expenses

Belmar allocated 20% of the total "other expenses" for this category.

Bowman allocated the "other expenses" related to the administrative department in two steps. First, it identified direct beachfront related costs and allocated 100% of such costs and second, it allocated the remaining miscellaneous "other expenses" in proportion to the beachfront related salaries and wages for this department.

The court accepts Bowman's findings.

26. Construction Code, Fire, Board of Health - Other Expenses

Belmar allocated 50% of these charges for the Board of Health and nothing for either construction code or fire inspection.

Bowman allocated nothing in this category for the same reasons that it did not do so for this category's salary and wage costs.

The court accepts Bowman's findings.

27. Parking Meter Maintenance - Other Expenses

Both parties agree to this category, however, only parking meter maintenance on Ocean Avenue should be included.

28. Debt Services

Belmar allocated 11% for principal and 8% for interest across each of the three years.

Bowman identified all beachfront related projects funded by both long term bond sales and short term bond appreciation notes (BAN). Additionally, Bowman calculated the percentage of the proceeds from each bond and BAN sale represented by beachfront related projects. Next, Bowman determined the total annual principal and interest costs related to the beachfront for all outstanding long term bond issues. Finally, Bowman determined that Belmar incurred no beachfront related costs for BANs, since the only BANs issued were for non-beachfront related purposes.

Bowman's year by year analysis resulted in allocating between 5.8% and 7.1% for principal and between 4.9% and 9.1% for interest.

The court accepts Bowman's findings.

29. Equipment Reserves

Belmar allocated nothing for this category, however, it allocated 100% of the full purchase price for equipment in the year of purchase under category 30, Capital Costs.

Bowman identified 23 different kinds of beachfront related equipment used by the Borough. A 3 or 5 year use for life was assumed for this equipment in accordance with New Jersey's recognized "minimum period of usefulness" set forth in N.J.S.A. 40A:2-21.

The court accepts Bowman's findings.

30. Capital Costs

Belmar charged 100% of all costs for the year in which they were incurred.

Bowman only included the cost of boardwalk and pavilion improvements over a 15 year period.

The court accepts Bowman's findings.

Belmar shall review and revise its beach admission fee schedule in accordance with the findings of the court in this opinion. In fixing its future reasonable beach admission fees, Belmar shall allocate its legitimate beachfront costs as determined by the court in this opinion. In revising its daily beach admission fee, Belmar shall fix a single daily admission fee for both weekdays and weekends so as not to discriminate against the weekend beachgoer. Belmar, in fixing the seasonal fee, shall ensure that the fee fixed for a seasonal admission fee does not discriminate against the daily beachgoer.

Commencing with the 1990 summer season, Belmar shall maintain complete, accurate, and traceable records documenting the costs relating to its beachfront facilities. Belmar shall maintain a separate beach account where all revenues collected by the Borough from beach admission fees and any other beach use fees shall be deposited and from which all expenditures for beach related costs will be paid.

Belmar's revised beach admission fee schedule shall be adopted and published prior to February 1, 1990.

This case, as well as the 3 other beachfront cases in Monmouth County, have been pending for more than 2 years. They have received extensive media publicity,¹ and in fact, the New Jersey Legislature, in Senate Bill No. 1374, is now considering legislation to amend N.J.S.A. 40:61-22.20.²

This court, however, in determining which legitimate costs a municipality may allocate to its beachfront expenses is bound by the Supreme Court's interpretation of N.J.S.A. 40:61-22.20 in Avon. The Supreme Court's interpretation in Avon as to what costs may be allocated to Belmar is much broader than Senate Bill No. 1374.

The interpretation of the existing statute, N.J.S.A. 40:61-22.20, has resulted in numerous costly lawsuits in both Monmouth and Ocean Counties. Beachfront municipalities have

¹In 1987, the Public Advocate filed suits against Avon, Belmar, Sea Girt, and Spring Lake challenging the reasonableness of the beach admission fees. In all of these cases, with the exception of Belmar, a settlement for a test period at "\$2.50" daily admission fee was reached.

²On May 4, 1989, by a vote of 24-4, the New Jersey State Senate passed Senate Bill No. 1374, "The Fair Beaches Act." This Bill is presently pending in the Municipal Government Committee awaiting Assembly action. In essence, the Bill provides for a "\$2" cap on beach admission fees and limits the expenses which may be recovered by the municipality to providing beach litter control and disposal, repairing and maintaining only those boardwalks which provide access to the beach, and providing lifesaving and lifeguard services in the beach area. The Bill also requires that a separate fund be established and maintained by each municipality in order that the beach fee collections and expenditures may be separately accounted for.

been at odds over what the legislature meant by reasonable fees and legitimate costs associated with beachfront expenses. Since the fixing of beach admission fees is a legislative function, future legislative action may be helpful in resolving these issues.

VII. CONCLUSION

For the reasons previously stated, the beach admission fees charged by the Borough of Belmar are unreasonable, arbitrary and discriminatory under both N.J.S.A. 40:61-22.20 and Avon. As such, they shall be revised for the 1990 summer season in accordance with the guidelines set forth in this opinion.



OCEAN GROVE CAMP MEETING ASSOCIATION

OCEAN GROVE, NEW JERSEY 07756
AREA CODE 201 775-0035

September 19, 1989

Hon. J. Edward Kline,
General Assembly
Municipal Government Committee
1333 Atlantic Ave., Suite 303
Atlantic City, NJ 08401

Dear Assemblyman Kline:

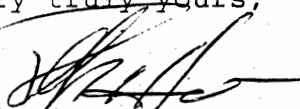
It was a pleasure to appear before your committee Monday morning and present my testimony on behalf of Ocean Grove Camp Meeting Association which owns and operates the Ocean Grove beach.

I am pleased to enclose a typed copy of that testimony. In that testimony I made the suggestion that an amendment be attached enabling charities such as Ocean Grove access to Green Acres funding where they meet certain specifications. This can be found on page four.

The remainder of my testimony in essence states that we support Assembly Bill 109, but would suggest that the free beach to persons 65 or older be eliminated or at least replaced by a discounted fee, that boardwalk lighting be an item allowed in the beach budget and that paragraph 15 be clarified.

Thanking you in advance, I am.

Very truly yours,



Philip C. Herr, II

PCH, II:el

Enclosure

cc: Diane Wiacek

50X

STATEMENT OF PHILIP C. HERR, II, PRESIDENT
OCEAN GROVE CAMP MEETING ASSOCIATION, TO
ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE
SEPTEMBER 18, 1989, BELMAWR, N.J.

The Ocean Grove Camp Meeting Association is grateful for the opportunity to appear before this esteemed legislative committee to make comment upon Assembly No. 109 and Senate 1374, both entitled the "Fair Beaches Act." At the outset I wish to point out that the beach front in Ocean Grove (Neptune Township) is, as of today, owned entirely by the Ocean Grove Camp Meeting Association, a New Jersey not-for profit corporation. Therefore, we are not a "Beach municipality" as defined in either bill nor are our beaches, "Beach Areas" as therein defined.

However, the matter does not rest there, for we are daily in competition with public Beach Areas to the North and South of us.

I also want to put to rest a prevalent misunderstanding which many unknowledgable persons seem to have. All Ocean Grove beaches are open to the public on a completely nondiscriminatory basis. The Ocean Grove Camp Meeting Association has no "members"; and those persons who support us receive no discount on entrance fees or any other special treatment not accorded the general public.

In fact, Ocean Grove beaches operate in precisely the same manner as every other public beach - with two notable exceptions. First - to and including 1989, the O.G.C.M.A. has paid real estate taxes to Neptune Township on its beach front. In 1989 this will

total about \$45,000. Application for qualification for exemption from 1990 real estate taxes has been made under the Green Acres Program (N.J.S.A. 54:4-3.63 et seq.) for 1990 and a determination is awaited; however it must be noted that this will be advisory only, as exemption must be granted by the Township which appeared at the Green Acres hearing and opposed our application.

The second point of difference between Ocean Grove beaches and any municipal beach area, is that the Camp Meeting does not have the luxury of passing any deficit in beach operations along to the taxpayer. The long and short of it is that we must cover any short fall by soliciting our constituency for contributions - that same constituency which pays the exact same beach rates as any other member of the public - or in the alternative, we must deplete assets.

In years 1987, 1988 and 1989 we set our beach rates as follows:

	<u>1988 - 1989</u>	<u>1987</u>
Weekdays	\$ 4.50	4.50
Weekends	5.50	5.50
Group Discounts	3.75	3.75
Weekly	15.50	15.00
Monthly	31.25	30.00
Season	50.00	45.00
Sr. Citizens	25% discount	
Early Bird Disc.	10% discount	
Beach party permit	20.00	20.00

Unlike our neighboring communities, we have no parking meters in Ocean Grove, and make no charge for the limited offstreet parking we do have available. It is entirely accessible to the public on a first come first serve basis.

In 1988, principally as a result of ocean pollution from our neighboring community which closed our beaches for sixteen days

in the latter half of July, we suffered a cash loss from beach operations of \$60,417.80 on gross beach revenue of \$233M before depreciation and before any allocation of administrative overhead. In 1987 we had a cash profit of \$4,858.29 on gross beach revenues of \$316M before depreciation and any allocation of administrative overhead.

In a crash cost cutting mode for 1989, we closed two beaches and cut services and beach staff to the barest minimum required by State certification. Gross revenues amounted to \$263,000 against a budgeted income of \$260,000. Because of timing of insurance payments, delayed purchases of boardwalk materials and repairs, and Fall beach bulldozing expenses, it is impossible to accurately predict the outcome of 1989 beach operations; however based upon a budgeted expense of \$256,000, I can state with a fair degree of certainty that the 1989 beach operations will break even or show a slight cash surplus, again before depreciation and allocation of administrative overhead.

Remember this was on weekday fees of \$4.50 and weekend rates of \$5.50 per day.

We have made very rough projections for 1990 based upon a \$5.00 weekend and \$3.00 weekday rates as provided in Assembly Bill No. 109. We believe that we can break even at those rates and provide improved beach cleaning, and guarding, provided:

1. We are relieved of real estate taxes.
2. There is no pollution crisis - not only no beach closing, but no perception of the public that the North Jersey beaches are polluted.

3. That there is no more than a normal amount of rainfall.
4. Senior citizens discount rates are not eliminated
(addressed later).

I believe that I can categorically say that the \$2.00 daily rate provided in Senate Bill No. 1374 will generate a substantial cash deficit under any operation of the beach by Camp Meeting Association.

Due to the economic necessity of holding beach rates within a competitive range, we have been unable to engage in any meaningful refurbishment program of our deteriorating boardwalk, other than a "band-aid" type occasional replacement of broken and rotted boards. As a non-municipality we are not able to qualify for Green Acres grant funding or loan programs for major refurbishment of our boardwalk. Although we have offered our beach front to Neptune Township on virtually a no cost basis, our overtures have fallen on deaf ears.

Therefore I emphatically urge you to consider an amendment to the pending bills (similar in nature to NJSA 54:4-3.63 which gives real estate tax exemption) which would qualify any 501(c)(3) type charity for Green Acres grant and loan funds (1) where lands held by that charity are irrevocably dedicated to public use, (2) where those lands qualify for real estate tax exemption under the Green Acres act NJ 54:4-3.63 et seq. and (3) where that charity complies with the Fair Beaches Act.

This would allow us to fund our public boardwalk refurbishment and replacement from public sources and service low cost debt from

beach revenues at an economically feasible level. We want to, and we would guarantee to provide the exact same service to the public as our neighboring communities; and such an amendment would enable us to provide them on a level playing field.

Another point of concern addresses the decision of Judge Milberg in the recent litigation involving our sister community Belmawr. There the Judge held that boardwalk lighting was not a part of beach expense. With all due respect for the Court, we submit that this is an erroneous conclusion which must be changed by statute. The proper rationale is that it is precisely because the boardwalk borders the beach and ocean and is an integral part thereof that it holds attraction to the evening stroller. The boardwalk is a "recreational facility" within the definition of the "Beach Area" of the bills. Lighting of the boardwalk is certainly as much a part of beach expense as is boardwalk repair, provision of public restroom or security provided during non-beach hours to protect the facilities (boardwalk, restrooms, benches and pavilions) against vandalism and the safety of those beach goers and other members of the public who also enjoy the beach and ocean from the boardwalk in the evening hours.

Aside from the unrealistic rate of \$2.00 per day in Senate Bill 1374 previously noted we would like to make the following comments.

Both bills provide free access to the beach by persons 65 years of age or older. While we understand that this is politically popular and a reduced senior citizen's rate may be

justified for those living on fixed incomes, we do not believe shifting the entire burden of beach expense to younger persons who are struggling to acquire a home and educate their children is entirely fair either. Personally I believe a discount from the fixed rate of \$3.00 and \$5.00 of perhaps one-dollar would be an acceptable compromise. An unrealistically low rate of \$2.00 as provided in Senate Bill 1374 deserves no discount for senior citizens. A \$2.00 per day beach fee in the Senate Bill 1374 certainly can not present an impediment to beach use even to a senior citizen on a fixed income.

I see no more justification for offering a free beach to those 65 or older, than I do for offering them free lottery tickets, which studies show are purchased in significant quantities by senior citizens on fixed income. It really comes down to a question as to where one wishes to spend "discretionary" funds; and in making this choice there is absolutely no reason why the beach should be free and lottery tickets not. If seniors wish to go to the beach, they should pay a discounted beach fee - if they wish to buy lottery tickets, they should pay for them.

Although it may be politically popular to "give away" the beach to this powerful and vocal block of voters - in your most rational moment you know I am absolutely right, particularly when you consider the burgeoning number of those attaining age 65 and older plus the demographic shift of those persons to the Jersey sea coast. Our best estimate is that a free pass (as opposed to a discount) to the Ocean Grove beach to all those age 65 or older

will cause a minimum of a 10% increase in the entrance price for all others. We must garner this revenue from somewhere. For the record, we make no charge for persons 11 years of age and under, which we understand to be the state of the law of New Jersey at this time.

We find paragraph 14 of Senate Bill 1374 and paragraph 15 Assembly Bill 109 addressing liability issues to be very confusing and apparently contradictory. As an example, on the one hand the owner is relieved of liability for not warning the user of a dangerous condition, while on the other hand liability is imposed or at least undisturbed if the failure to warn is "willful or reckless." If you read the law and decide that no notice is required, then it would appear to be "willful" failure to give notice. If the intent of the legislation is to achieve a reduction of insurance costs, my judgement would be that you have missed the mark.

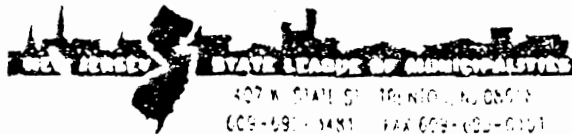
Let me say in closing that the Ocean Grove Camp Meeting Association will continue to operate its ocean front as a public beach area, but we must be able to break even on a competitive basis. To do that we need: (1) realist rates applied to all persons age 12 and older, and (2) access to Green Acre funding for refurbishment and improvements.

With these noted modifications we would strongly urge you to adopt Assembly Bill 109.

Thank you for your time and attention.

Ocean Grove Camp Meeting Association
Philip C. Herr, II, President

Legislative Viewpoint



JOHN J. COUGHLIN, JR., President
WILLIAM J. COUGHLIN, Jr., Vice President
JOHN J. COUGHLIN, Jr., Secretary
JOHN J. COUGHLIN, Jr., Treasurer

Re: Senate 1374

Dear :

We can readily appreciate the concern which motivated the Legislators who have sponsored the "Fair Beaches Act." We understand that many of your constituents find it difficult to gain access to coastal areas, and have complained about "high" beach fees in certain areas.

The League feels, however, that the issue involves more than one right or interest. Clearly the legislation would benefit beach goers, but it must also be "fair" to the residents and governing bodies of coastal communities. It is from this concern that we question both philosophical and procedural aspects of this bill.

The legislation's premise is founded quite appropriately on the "public trust doctrine." Yet this doctrine doesn't simply apply to coastal areas, because much of New Jersey's natural and exploitable patrimony lies inland. We therefore ask residents and officials of the numerous communities with natural (or even historical) Attractions, to keep in mind how they might react if the State began to "regulate tourism" for them.

As drafted, the "Fair Beaches Act" commits no language to such concerns. Don't these residents have the right to pursue a certain quality of life? Don't their governing bodies have the obligation to maintain sound development policies which best serve the community?

The answer is "yes." This legislation's failure to acknowledge these vested rights and obligations allows a misconception to be perpetrated: that all coastal communities seed and benefit from a "resort economy." In fact, many of these municipalities do not prefer to host an annual summer pilgrimage which may disrupt community life. Many do not have high commercial ratables related to tourism, hence their property taxpayers must foot the bill for beach services and infrastructure. And among those which have sought and benefited from resort economies, several have discovered a "law of diminishing return"; that once inundated, lit up and paved over, these areas lose their original attraction to resident and non-resident alike.

Thus our first recommendation would be that this legislation adopt a tone which acknowledges that hosting a beach community brings burdens as well as benefits. The adjustment in philosophy would certainly help alleviate some of our other concerns, the first of which deals with the beach fee cap


The sponsor proposes a beach fee cap (section 4a) of \$2.00. By doing so, a clamp is placed on the municipal budget. We have no assurance this arbitrary cap will not debilitate ashore community trying to provide a safe, clean beach. And we ask is it reasonable to impose a cap that provides a financial benefit to all beach goers (including the many thousands who do not even reside in New Jersey) when it could threaten the safety and cleanliness of our beaches?

Our next concern is with the newly mandated "beach management practices plan." There is no limit on the administrative burden imposed on our shore communities complying with this plan. Not only are the requirements specified in the bill potentially cumbersome, the DEP'S Director of the Division of Coastal Resources can require any additional information he deems necessary. We adamantly oppose legislating omnipotence for a bureaucrat in the Executive branch, Particularly when such omnipotence supercedes the Home Rule prerogatives of local officials from 126 shore communities, who must address diverse economic problems. A major concern with this administrative burden is based on the fact that there is no guarantee the beach management practices plan, will receive such grants. The language should be changed to guarantee no financial loss to a municipality complying with this mandate.

"Punishment" for non-compliance with this act is described in section 13 of the bill, and it is outrageous. The provision further threatens the safety and cleanliness of our beaches! Municipalities are denied funds for "shore protection, conservation or recreation projects...unless the failure to fund the project would result in danger to life or irreversible harm to the natural resources of the State." There is an inherent contradiction in this statement. Why would the Legislature provide such funds unless they were intended to protect our citizens and our environment?

In this and previously related concerns, we question whether advocates of Senate 1374 might give more attention to the coastal communities and residents themselves. Without such due consideration, the Fair Beaches Act is, quite frankly, unfair.

Very truly yours,


William G. Dressel, Jr.
Assistant Executive Director

WGD:jg

cc: Honorable W. Thomas Renkin, Committee Member, Dover Township
Honorable Philip D. Huhn, Mayor, Long Branch Township
Honorable Maria G. Hernandez, Mayor, Belmar Borough

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