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PUBLIC HEARING

before

SENATE COUNTY AND MUNICIPAL GOVERNMENT COMMITTEE

SENATE BILL NO. 2963

(Provides for mandatory statewide on-site improvement standards)

SENATE BILL NO. 3423

(Establishes the "Permit Reform Act")

May 22, 1989  
Room 408  
State House Annex  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Paul Contillo, Chairman  
Senator Thomas F. Cowan, Vice Chairman  
Senator Frank X. Graves, Jr.  
Senator Leonard T. Connors, Jr.

ALSO PRESENT:

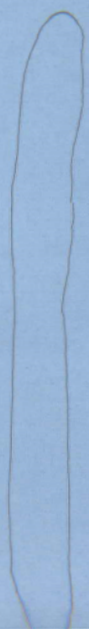
Hannah Shostack  
Office of Legislative Services  
Aide, Senate County and Municipal  
Government Committee

*New Jersey State Library*

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

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**New Jersey State Legislature**

**PAUL CONTILLO**  
*Chairman*  
**THOMAS F. COWAN**  
*Vice-Chairman*  
**FRANK X. GRAVES, JR.**  
**JOSEPH BUBBA**  
**LEONARD T. CONNORS, JR.**

**SENATE COUNTY  
AND MUNICIPAL GOVERNMENT COMMITTEE**  
STATE HOUSE ANNEX, CN-068  
TRENTON, NEW JERSEY 08625  
TELEPHONE: (609) 292-1596

COMMITTEE MEETING AND PUBLIC HEARING NOTICE

**TO: MEMBERS OF THE SENATE COUNTY AND  
MUNICIPAL GOVERNMENT COMMITTEE**

**FROM: SENATOR PAUL CONTILLO, CHAIRMAN**

**SUBJECT: COMMITTEE MEETING/PUBLIC HEARING  
MAY 22, 1989**

(Address comments and questions to Hannah Shostack,  
Committee Aide at (609) 292-1596)

The Senate County and Municipal Government Committee will meet on **Monday, May 22, 1989 at 2:00 P.M. in Room 408 of the State House Annex, Trenton.**

The Committee will consider the following bills:

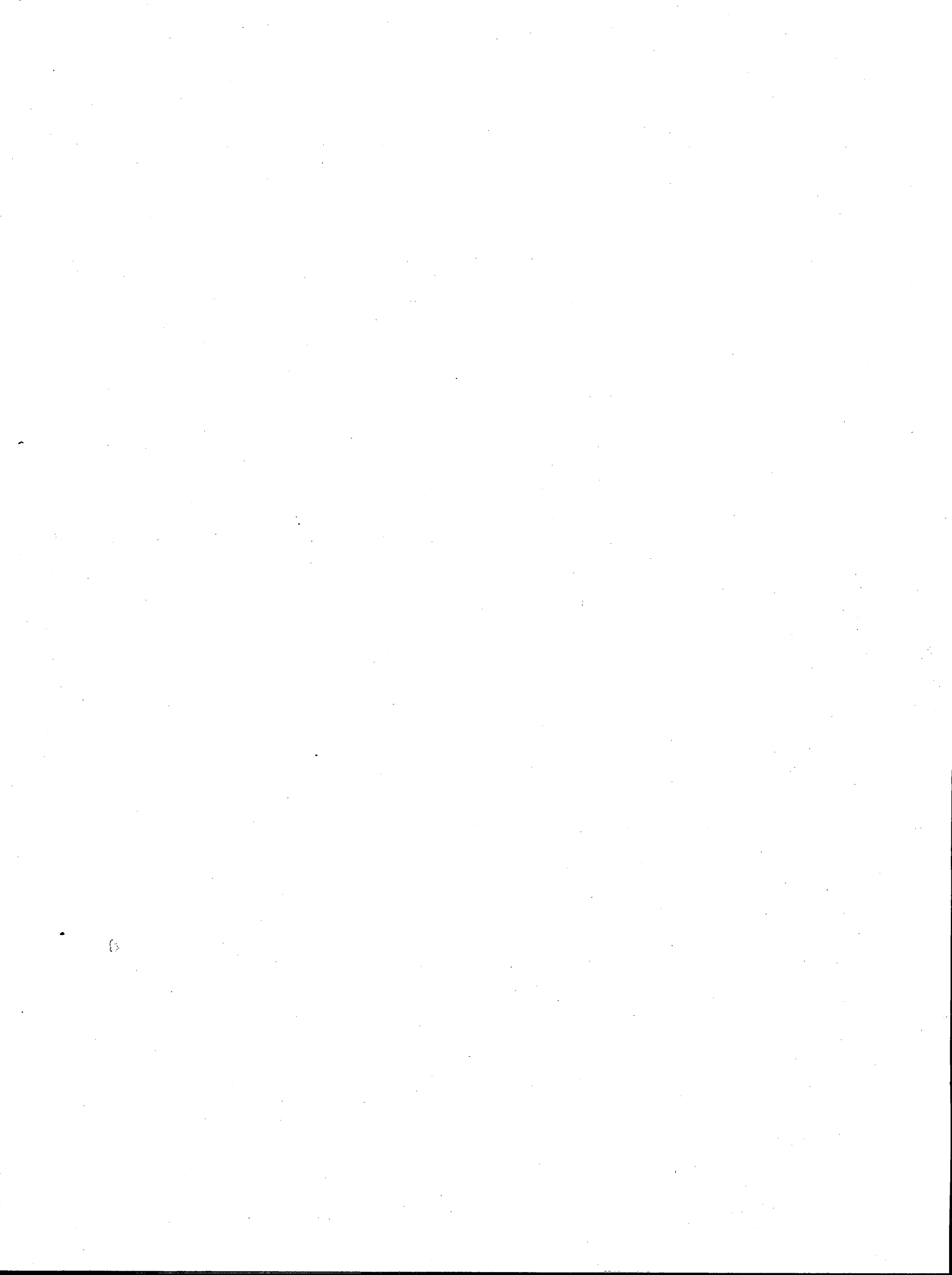
- S-388** Permits the pledging of municipal gross receipts  
Lynch tax revenues toward debt service on municipal  
qualified bonds.
- S-3311** Changes certain provisions regarding appointment  
Orechio of sheriff's investigators.
- A-3669** Changes standard for valuing certain properties  
Moran/Albohn in granting zoning variances.

**PUBLIC HEARING (immediately following meeting)**

- S-2933** Provides for mandatory Statewide on-site improve-  
Lesniak ment standards.
- S-3423** Establishes the "Permit Reform Act."  
McManimon

Legislation being prepared to establish a development impact fee, pending introduction by Senator Contillo.

Issued (5/12/89)



SENATE, No. 2963

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 29, 1988

By Senators LESNIAK, VAN WAGNER and PALLONE

1 AN ACT concerning site improvement standards and  
supplementing Title 40 of the Revised Statutes.

3

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

1. As used in this act:

7 a. "Board" means the Site Improvement Advisory Board  
established by this act:

9 b. "Commissioner" means the Commissioner of the  
Department of Community Affairs; and

11 c. "Department" means the Department of Community Affairs.

2. a. There is established in, but not of, the department a Site  
13 Improvement Advisory Board, to devise Statewide on-site  
improvement standards pursuant to section 2 of this act. The  
15 board shall consist of the commissioner or his designee, and eight  
other members, to be appointed by the commissioner. The other  
17 members shall include one representative each from:

(1) The New Jersey Society of Professional Engineers;

19 (2) The New Jersey Society of Municipal Engineers;

(3) The New Jersey Association of County Engineers;

21 (4) The New Jersey Federation of Planning Officials;

(5) The New Jersey Society of Architects;

23 (6) The New Jersey Builders' Association;

(7) The New Jersey Chapter of the American Planning  
25 Association; and

(8) The New Jersey Institute of Technology.

27 b. Among the members first appointed, two shall be appointed  
for terms of two years each, three shall be appointed for terms of  
29 three years each, and three shall be appointed for terms of four  
years each. Thereafter, each appointee shall serve for a term of  
31 four years. Vacancies in the membership shall be filled in the  
same manner as original appointments are made, for the  
33 unexpired term. The commission shall select from among its  
members a chairman. Members may be removed by the  
35 commissioner for cause.

1 c. Board members shall serve without compensation, but may  
be entitled to reimbursement, from moneys appropriated or  
3 otherwise made available for the purposes of this act, for  
expenses incurred in the performance of their duties.

5 3. a. The board shall, no later 180 days following the  
appointment of its full membership, prepare and submit to the  
7 commissioner recommendations for Statewide on-site  
improvement standards. The standards shall implement the  
9 recommendations of Article Six (with the Appendix thereto) of  
the January, 1987 "Model Subdivision and Site Plan Ordinance"  
11 prepared for the department by The Center for Urban Policy  
Research at Rutgers, the State University, as such Article may  
13 be amended or supplemented by The Center for Urban Policy  
Research, except to the extent that the recommendations set  
15 forth in the "Model Subdivision and Site Plan Ordinance" are  
inconsistent with the requirements of other law, provided,  
17 however, that, in the case of inconsistency between the "Model  
Subdivision and Site Plan Ordinance" and the "Municipal Land  
19 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), the standards  
recommended by the board shall conform to the provisions of the  
21 "Model Subdivision and Site Plan Ordinance." At the time the  
board submits its recommendations for Statewide on-site  
23 improvement standards, the board shall submit to the  
commissioner, the Governor and the Legislature any  
25 recommendations it may deem necessary and pertinent to the  
recommended on-site improvement standards, for changes in the  
27 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

b. The commissioner shall review the recommendations  
29 submitted by the board and, following his review, shall establish,  
by regulation adopted pursuant to the "Administrative Procedure  
31 Act", P.L. 1968, c. 410 (C. 52:14B-1 et seq.), a set of Statewide  
on-site improvement standards.

33 c. The board shall annually review the regulations adopted  
pursuant to subsection b. of this section, and shall recommend to  
35 the commissioner any changes in those regulations which the  
board deems necessary.

37 4. Notwithstanding any provision to the contrary of the  
"Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.),  
39 each municipality shall revise its planning and zoning ordinances

1 to conform to the standards set forth in the regulations adopted  
2 pursuant to subsection b. of section 3 of this act. Such revision  
3 shall be effectuated no later than 360 days following the  
4 effective date of the regulations adopted pursuant to subsection  
5 b. of section 3 of this act.

6 5. This act shall take effect immediately.

7

9

STATEMENT

11 This bill provides for the creation of a Site Improvement  
12 Advisory Board, in but not of the Department of Community  
13 Affairs, to develop mandatory Statewide on-site improvement  
14 standards. The board will base its recommendations on the  
15 "Model Subdivision and Site Plan Ordinance" prepared for the  
16 Department of Community Affairs by the Center for Urban  
17 Policy Research at Rutgers University. The standards will be  
18 submitted to the Commissioner of the Department of Community  
19 Affairs who will, after reviewing the recommendations, adopt  
20 regulations setting forth mandatory on-site improvement  
21 standards. The bill requires that all municipalities adopt these  
22 standards.

23

25

LAND USE AND PLANNING  
Municipal Development

27

Provides for mandatory Statewide on-site improvement standards.



SENATE, No. 3423

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1989

By Senator McMANIMON

1 AN ACT establishing the "Permit Reform Act," and establishing  
a State Development Policy Code Board in the Department of  
3 Community Affairs, amending P.L.1975. c.217 and  
supplementing Title 52 of the Revised Statutes.

5

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

1. (New section) This act shall be known and may be cited as  
9 the "Permit Reform Act."

2. (New section) The Legislature finds and declares as follows:

11 a. The several agencies, boards, authorities and commissions  
heretofore established in the State government, at regional levels  
13 and at the county level each have a unique expertise which is  
necessary to ensure the orderly development of the State and the  
15 preservation of our natural environment;

b. A proliferation of agencies and permit requirements has  
17 created a complex and confusing pattern of overlapping and  
duplicative construction and land use regulatory programs which  
19 would be both more effective and more efficient if they were  
organized into an integrated regulatory system;

21 c. The numerous county, regional, and State permit and review  
requirements which have been established have eroded the key  
23 role which municipal governments must play in the development  
review process and thereby weakened this State's commitment to  
25 home rule in land use matters;

d. The numerous independent codes of development regulatory  
27 requirements which currently exist have created a regulatory  
process that is unpredictable and, at times, contradictory;

29 e. There is a need for one clear and comprehensive set of  
State, regional, and county land use and development policies  
31 which, while continuing to be developed and adopted by the  
agencies with that special expertise, are combined into one  
33 integrated and coordinated development policy code;

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.

1 f. There is a need to eliminate duplication of project review by  
the various State, regional, county, and local agencies and bodies  
3 currently undertaking such reviews, to the greatest extent  
possible, while ensuring that the primary focus of development  
5 regulation continues to be at the local level;

g. The "State Uniform Construction Code Act," P.L.1975,  
7 c.217 (C.52:27D-119 et seq.) was intended, among other  
objectives, to supersede and eliminate restrictive, obsolete,  
9 conflicting and unnecessary construction regulations that tended  
unnecessarily to increase construction costs. While uniform  
11 construction standards have indeed made it possible for  
construction costs to be lower than they would otherwise have  
13 been, development costs which are directly attributable to  
requirements imposed by agencies of State and county  
15 government, and the delays associated with multiple development  
reviews continue to add to the cost of building construction, in  
17 many cases unnecessarily;

h. Coordination and streamlining of development regulations  
19 can best be achieved by the establishment of a board empowered  
to review both existing and proposed development regulations and  
21 to either approve or disapprove such regulations in accordance  
with the standards established by this act, when they are  
23 proposed for adoption or readoption; and

i. Such a board is most appropriately established in the  
25 Department of Community Affairs because of that department's  
experience and ongoing involvement in the development of  
27 uniform, efficient standards for building construction and its  
expertise in working in support of local governments.

29 3. (New section) This act shall be liberally construed to  
effectuate the purposes and intent thereof.

31 4. (New section) As used in this act, unless the context clearly  
indicates otherwise:

33 "Development regulation" means any rule or regulation of any  
State, regional or county agency of this State which controls the  
35 kind or type of land use, intensity of land use, location or  
improvements to the land or which governs the issuance of any  
37 development permit or approval except those standards applying  
solely to construction work undertaken by a public agency for a  
39 public purpose;

1 "Development agency" means any State agency or authority,  
regional agency or authority, county agency or authority which is  
3 empowered by law to adopt and enforce development regulations  
or issue any development permit or approval; and

5 "Development permit or approval" means any permit or  
approval which is required under any development regulation or  
7 which is a precondition to the issuance of a construction permit  
or a certificate of occupancy pursuant to the State Uniform  
9 Construction Code Act, P.L.1975, c.217 (C.52:27D-119 et seq.).

5. (New section) a. There is hereby established in the  
11 Department of Community Affairs a State Development Policy  
Code Board, hereinafter referred to as the "board." The board  
13 shall consist of fifteen members. Nine shall be public members,  
each of whom represents one of the following: municipalities,  
15 counties, municipal engineers, county engineers, planning  
officials, local environmental commissions, home builders,  
17 commercial developers and professional planners.

b. In addition to the representatives of the above interests, the  
19 board shall include as ex officio members the commissioners of  
Community Affairs, Environmental Protection, Transportation  
21 and Commerce, Energy and Economic Development and the  
Secretary of Agriculture, or any of their respective designees,  
23 and the Executive Director of the State Planning Commission.

c. The members appointed pursuant to subsection a. of this  
25 section shall be appointed by the Governor with the advice and  
consent of the Senate. Among the members first appointed,  
27 three shall be appointed for terms of two years each, three shall  
be appointed for terms of three years each, and three shall be  
29 appointed for terms of four years each. Thereafter, each  
appointee shall serve for a term of four years. Vacancies in the  
31 membership of the board shall be filled in the same manner as  
original appointments are made, for the unexpired term. The  
33 Commissioner of Community Affairs or his designee shall serve  
as chairman of the board. The board shall elect a vice-chairman  
35 and may designate such other officers as it may deem  
appropriate. Members appointed by the Governor may be  
37 removed by the commissioner for cause.

d. Members of the board shall serve without compensation, or  
39 additional compensation to ex officio members, but may be

1 entitled to reimbursement, from moneys appropriated or  
2 otherwise made available for the purposes of this act, for  
3 expenses incurred in the performance of their duties.

4 6. (New section) Any development regulation proposed to be  
5 adopted by any development agency shall not be adopted or  
6 readopted without first having been submitted to, and approved  
7 by, the State Development Policy Code Board, except as provided  
8 otherwise in section 8 of this act.

9 7. (New section) The board shall approve any such  
10 development regulation only if it finds that:

11 a. The proposed regulation does not conflict with, overlap, or  
12 duplicate other development regulations;

13 b. The proposed regulation is within the parameters  
14 established by the applicable enabling legislation and is not within  
15 an area of land use or environmental concern that is subject to  
16 the jurisdiction of another agency;

17 c. The adopting agency had found that the public interest  
18 requires the adoption of the proposed regulation and has set forth  
19 the basis for that finding;

20 d. The adopting agency has found that the cost to the public is  
21 reasonable in light of the overall benefit to be derived from the  
22 proposed regulation and has set forth the basis for that finding;

23 e. The proposed regulation is not ambiguous or vague, in whole  
24 or in part;

25 f. Regulatory requirements are set forth in performance  
26 terms, wherever possible, and any proposed regulation which  
27 establishes a performance standard also includes an accepted  
28 testing or evaluation methodology for determining compliance  
29 with the proposed regulation;

30 g. The regulation will result in review of development  
31 applications by only one agency or level of government, at the  
32 lowest level of government having technical competence to  
33 undertake the particular review, in order to verify compliance,  
34 with established and published standards and with applicable  
35 regulations of all levels of government having jurisdiction, and  
36 will provide the applicant with a right of administrative appeal to  
37 the next higher level of government or to the head of a State  
38 agency;

39 h. Any nationally-recognized specifications, published

1 standards, and model codes prepared, adopted, or recognized by  
2 consensus standards generating organizations, such as the  
3 American National Standards Institute (ANSI), that may be  
4 appropriate have been incorporated into the proposed regulation  
5 to the greatest extent possible and with the least amendment  
6 possible. If an existing nationally-recognized specification,  
7 published standard, or model code does not adequately address  
8 the objectives of the agency proposing to adopt the regulation, a  
9 statement defining the inadequacy shall accompany the proposed  
10 regulation when it is submitted to the board. If no applicable  
11 nationally-recognized specification, published standard, or model  
12 code exists, the agency proposing to adopt the regulation shall  
13 submit a statement to that effect to the board;

14 i. Qualification standards for persons authorized to determine  
15 whether or not there is compliance with the proposed regulation  
16 are duly established by statute or regulation;

17 j. The format of the proposed regulation is consistent with  
18 that adopted by the board;

19 k. The proposed regulation is consistent with the State  
20 Uniform Construction Code and the Uniform Fire Code and any  
21 other applicable law or regulation made pursuant to law;

22 l. The proposed regulation provides for enforcement in an  
23 effective, efficient and timely manner and includes reasonable  
24 time limits for approval or denial by the development agency; and

25 m. Nothing herein shall be deemed to supersede the applicable  
26 requirements of the Administrative Procedure Act, or of any  
27 other statute intended to ensure due process in the proposal and  
28 adoption of regulations.

29 8. (New section) The board shall consider the determinations  
30 and analysis of the adopting development agency regarding each  
31 of the criteria for approval set forth in section 7. Any  
32 determination of that agency regarding subsections c. or d. of  
33 section 7 of this act shall be considered conclusive by the board  
34 unless the board specifically finds, and sets forth its reasoning in  
35 writing, that such determination is arbitrary and capricious or  
36 substantially unsupported by the evidence. Whenever the board  
37 makes such a finding or determines that a proposed regulation is  
38 inconsistent with any of the other standards set forth in section 7  
39 of this act, it shall return the proposed regulation to that agency

1 for a reexamination of its original determination. If that agency  
3 has not been approved by the board, then that agency may  
5 supplement its findings and factual determinations and return the  
7 proposed regulation to the board for further consideration. The  
9 board shall publish its findings and those of the development  
11 agency and conduct a public hearing on the proposed regulation  
13 after which it shall notify that agency whether it approves or  
15 disapproves of the proposed regulation. If the board disapproves  
17 it shall set forth its reasons in writing. If the development  
19 agency still wishes to proceed it may adopt the proposed  
regulation 60 days after having given written notice to the board  
as to the reasons why that agency believes that the disputed  
regulations or part thereof are consistent with the standards set  
forth in section 7 of this act and, if appropriate, neither arbitrary  
and capricious nor substantially unsupported by the evidence.  
Where an agency adopts regulations after having given such  
notice, the board shall incorporate the regulations in State  
Development Policy Code provided for in section 9 of this act.

21 9. (New section) a. In cooperation with the Office of  
23 Administrative Law, the board shall compile all development  
25 regulations subject to its review and shall publish them in  
27 volumes, collectively designated as the State Development Policy  
Code, each of which shall contain all regulations pertaining to  
each particular type of project or to each region of the State for  
which special development regulations have been established.

29 b. The board shall examine all existing development  
31 regulations and shall, where appropriate, recommend such  
33 changes as may be necessary to ensure that, to the maximum  
35 extent consistent with public health and safety, there be only one  
37 review of each project to ensure compliance with the applicable  
established and published rules and regulations of all levels of  
government having jurisdiction and that it be conducted at the  
lowest level of government at which such review can be done by  
persons certified in accordance with subsection b. of section 13  
of this act. Any such review process, however, shall be subject to  
the oversight of the State agency having primary responsibility  
for that area of development regulation.

39 c. Recommendations for any regulation changes necessary to

1 carry out the policy of this act shall be made to the development  
agency and recommendations for statutory changes shall be made  
3 to the Governor and the Legislature.

5 10. (New section) Any existing development regulation which  
has not been incorporated into the code by the board within five  
years of the effective date of this act shall be of no further force  
7 and effect.

9 11. (New section) Any application for development made to  
any development agency shall be evaluated on the basis of the  
regulations in effect pursuant to the Administrative Procedure  
11 Act and this act on the date of application and no additional  
action shall be required of any applicant that is not required  
13 pursuant to the regulations in effect on the date of application.  
Where possible, agencies shall afford persons intending to file  
15 applications the opportunity to have pre-application conferences  
with appropriate agency officials from each involved level of  
17 government.

19 12. (New section) No development agency which reviews  
applications or issues permits for development shall impose or  
enforce any requirement which is not incorporated in the State  
21 Development Policy Code nor shall it establish any condition for  
approval unless the requirement or condition is incorporated in  
23 the State Development Policy Code. Where an agency imposes a  
requirement which it believes to be a reasonable interpretation of  
25 a requirement in the code but an applicant believes that the  
requirement has not been established in the code then the  
27 applicant shall have the right to appeal such determination to the  
board. In the conduct of such appeals the board shall be  
29 authorized to provide a dispute resolution process based on  
mediation and arbitration as an alternative to a fair hearing  
31 before the board or the Office of Administrative Law.

33 13. (New section) a. Notwithstanding any other provision of  
law to the contrary, any development agency shall have the  
authority to delegate all or some of its review and permit  
35 authority, but not its rulemaking authority, to any other agency.

37 b. Any agency making a delegation authorized by this section  
shall have the authority to establish such certification or  
licensing requirements as may be necessary to ensure a  
39 competent review at the lower or other level.

1 c. Any such agency shall also have the authority to review the  
performance of any agency or level of government to which  
3 authority has been delegated and shall retain the authority to  
withdraw any such delegation where the authority delegated is  
5 not being properly and correctly administered. The board shall  
have the authority to review such withdrawals when requested to  
7 do so by an affected party and reverse such withdrawal if the  
agency involved cannot establish cause to the satisfaction of the  
9 board.

d. Any agency delegating review or permit authority under this  
11 act shall retain concurrent jurisdiction and shall be authorized to  
exercise that jurisdiction where necessary to correct or prevent  
13 an imminent hazard to the public health, safety, or welfare.

e. Any local government shall have the authority to accept or  
15 reject any delegation of permit issuance responsibility provided  
for by this act. Where a local government is not willing to accept  
17 any delegated review or permit authority, any other local  
government having jurisdiction shall be given an opportunity to  
19 accept the delegation.

14. (New section) Notwithstanding any other provision of the  
21 law to the contrary, any development agency shall have the  
authority to enter into agreements with federal and State  
23 agencies to provide insofar as practicable:

a. single agency review of development plans and inspection of  
25 construction work; and

b. intergovernmental acceptance of such review and inspection  
27 to avoid unnecessary duplication of effort and fees. Any such  
agency shall have the power to enter into such agreements  
29 although the federal or other standards are not identical with the  
standards of the agency; provided that the same basic objectives  
31 are met. Any such agency shall have the power through such  
agreements to bind the State and all governmental entities  
33 deriving authority therefrom.

15. (New section) a. There is hereby created and established  
35 in the Department of Community Affairs a non-lapsing revolving  
fund to be known as the Revolving Community Development  
37 Training Trust Fund, which shall consist of:

(1) all moneys appropriated and made available by the  
39 Legislature of this State for inclusion therein;

1 (2) all proceeds from the Community Development Training  
Fee authorized by subsection b. of this section;

3 (3) any other moneys made available to the department from  
any other source, which the commissioner shall determine to use  
5 for the purposes authorized by this act; and

(4) all funds currently held in the Uniform Construction Code  
7 Revolving Fund established pursuant to section 2 of P.L.1979,  
c.121 (C.52:27D-124.1).

9 b. The commissioner shall have the authority to adopt, amend  
and repeal rules and regulations providing for the charging of, and  
11 setting the amount of, construction permit surcharge fees to be  
collected by all enforcing agencies established pursuant to the  
13 State Uniform Construction Code Act and permit surcharge fees  
to be collected pursuant to the "Uniform Subdivision and Site  
15 Improvement Act," P.L. , c. , (now pending before the  
Legislature as A. of 1989), and remitted to the department to  
17 support the activities authorized by this act. The surcharge fees  
established pursuant to this subsection shall be referred to as the  
19 Community Development Training Fees. This surcharge fee shall  
include and replace the fee heretofore collected pursuant to  
21 subsection h. of section 6 of P.L.1975, c.217 (C.52:27D-124).

c. Moneys appropriated from the fund shall be used for the  
23 administration and enforcement of this act, the preparation and  
conduct of educational training, and certification programs  
25 designed to meet the needs of all persons administering  
development regulatory programs at the State, regional, county  
27 and local levels, the preparation and administration of  
certification examinations, the conduct of continuing education  
29 programs for community development professionals and members  
of the development community, and the provision of technical  
31 support and assistance to persons and agencies engaged in  
development regulation. Moneys appropriated from the fund may  
33 also be used for any of the purposes heretofore authorized for  
funds in the Uniform Construction Code Revolving Fund.

35 16. (New section) a. Permit review, inspection, and  
enforcement activities required pursuant to development  
37 regulations promulgated pursuant to this act shall be paid for by  
fees charged to applicants; provided, however, that such fees  
39 shall be so calculated as to reasonably cover, but not

1 substantially exceed the cost of effective and timely  
enforcement, and shall be applied only to that purpose.

3 b. All fees received pursuant to a State development  
regulation or permit application shall be deposited in a revolving  
5 fund established by the Director of the Division of Budget and  
Accounting in the Department of the Treasury and shall be  
7 expended only for the purpose of enforcing the requirements of  
the law or regulation under which the fees were collected.

9 c. Any other provision of the law notwithstanding,  
development regulatory fees shall be set by the agency having  
11 jurisdiction in accordance with the Administrative Procedure Act  
or other relevant provisions of law.

13 d. All such fees shall be subject to review by the board, either  
upon its own motion or upon the complaint of an affected party.  
15 All development agencies shall provide the board with such  
information as it may require to determine that any such fees are  
17 in accordance with the policies established by this act. Where  
the board finds that fees are not in accordance with the standards  
19 established by this act then the board shall have the authority to  
require such actions as may be necessary to bring them into  
21 compliance with the standards.

17. (New section) a. Where any party affected by  
23 development regulation believes that applications or reviews are  
not being processed in a timely manner because the responsible  
25 agency is not staffed adequately for its workload, then that party  
may petition the board for a review.

27 b. If the board, upon preliminary review, makes a  
determination that processing is not timely due to staffing  
29 problems, then the board may hold hearings on the petition and  
determine those measures which are necessary to correct the  
31 problem after careful review of public testimony, testimony from  
the agency involved, and such other inquiry as the board may  
33 deem appropriate.

c. When requested to do so, the Director of the Division of  
35 Budget and Accounting shall assist the board in its review and  
analysis. He shall take such steps as the board may deem  
37 necessary to provide authorization for sufficient personnel,  
subject to the availability of funds. Where deemed appropriate  
39 by the board, the Director of Budget and Accounting may initiate

1 studies designed to ensure that the involved agency is carrying  
out its responsibilities as efficiently as necessary but in no case  
3 shall needed staff not be authorized pending completion of such  
studies. Where such studies suggest improvements which will  
5 permit the needed work to be accomplished with fewer staff the  
involved agency shall implement those improvements as soon as  
7 possible but staffing shall not be reduced until the improvements  
make staff reductions possible without a loss in the timeliness of  
9 review or permit actions.

18. (New section) The Commissioner of Community Affairs  
11 shall adopt such regulations as may be necessary for the  
implementation and administration of this act, which shall  
13 include but not be limited to:

a. Procedures for the incorporation of agency rules into the  
15 State Development Policy Code;

b. Procedures providing for public comment on rules proposed  
17 for incorporation and provisions for public petitions for changes  
to the code; and

c. Rules governing timeliness of review and standards for  
19 development fees.

19. (New section) Nothing in this act shall be interpreted as  
21 limiting the authority of municipalities to establish development  
policy standards pursuant to the Municipal Land Use Law,  
23 P.L.1975, c.291 (C.40:55D-1 et seq.) nor shall this act be  
interpreted as modifying any of the procedures set forth in, or  
25 time elements for, municipal review established by the Municipal  
27 Land Use Law.

20. Section 6 of P.L.1975, c.217 (C.52:27D-124) is amended to  
29 read as follows:

6. Powers of the commissioner. The commissioner shall have  
31 all the powers necessary or convenient to effectuate the purposes  
of this act, including, but not limited to, the following powers in  
33 addition to all others granted by this act:

a. To adopt, amend and repeal, after consultation with the  
35 code advisory board, rules: (1) relating to the administration and  
enforcement of this act and (2) the qualifications or licensing, or  
37 both, of all persons employed by enforcing agencies of the State  
to enforce this act or the code, except that, plumbing inspectors  
39 shall be subject to the rules adopted by the commissioner only

1 insofar as such rules are compatible with such rules and  
2 regulations, regarding health and plumbing for public and private  
3 buildings, as may be promulgated by the Public Health Council in  
accordance with Title 26 of the Revised Statutes.

5 b. To enter into agreements with federal and State of New  
6 Jersey agencies, after consultation with the code advisory board,  
7 to provide insofar as practicable (1) single-agency review of  
8 construction plans and inspection of construction and (2)  
9 intergovernmental acceptance of such review and inspection to  
10 avoid unnecessary duplication of effort and fees. The  
11 commissioner shall have the power to enter into such agreements  
12 although the federal standards are not identical with State  
13 standards; provided that the same basic objectives are met. The  
14 commissioner shall have the power through such agreements to  
15 bind the State of New Jersey and all governmental entities  
deriving authority therefrom.

17 c. To take testimony and hold hearings relating to any aspect  
18 of or matter relating to the administration or enforcement of this  
19 act, including but not limited to prospective interpretation of the  
20 code so as to resolve inconsistent or conflicting code  
21 interpretations, and, in connection therewith, issue subpoenas to  
22 compel the attendance of witnesses and the production of  
23 evidence. The commissioner may designate one or more hearing  
24 examiners to hold public hearings and report on such hearings to  
25 the commissioner.

27 d. To encourage, support or conduct, after consultation with  
28 the code advisory board, educational and training programs for  
29 employees, agents and inspectors of enforcing agencies, either  
30 through the Department of Community Affairs or in cooperation  
31 with other departments of State government, enforcing agencies,  
educational institutions, or associations of code officials.

33 e. To study the effect of this act and the code to ascertain  
34 their effect upon the cost of building construction and  
35 maintenance, and the effectiveness of their provisions for  
insuring the health, safety, and welfare of the people of the State  
of New Jersey.

37 f. To make, establish and amend, after consultation with the  
38 code advisory board, such rules as may be necessary, desirable or  
39 proper to carry out his powers and duties under this act.

1 g. To adopt, amend, and repeal rules and regulations providing  
3 for the charging of and setting the amount of fees for the  
5 following code enforcement services, licenses or approvals  
7 performed or issued by the department, pursuant to the "State  
9 Uniform Construction Code Act":

(1) Plan review, construction permits, certificates of  
occupancy, demolition permits, moving of building permits,  
elevator permits and sign permits; and

(2) Review of applications for and the issuance of licenses  
certifying an individual's qualifications to act as a construction  
code official, subcode official or assistant under this act.

(3) (Deleted by amendment, P.L.1983, c.338).

13 h. [ To adopt, amend and repeal rules and regulations providing  
15 for the charging of and setting the amount of construction permit  
17 surcharge fees to be collected by the enforcing agency and  
19 remitted to the department to support those activities which may  
21 be undertaken with moneys credited to the Uniform Construction  
23 Code Revolving Fund.]

(Deleted by amendment, P.L. , c. ).

i. To adopt, amend and repeal rules and regulations providing  
for:

(1) Setting the amount of and the charging of fees to be paid  
to the department by a private agency for the review of  
applications for and the issuance of approvals authorizing a  
private agency to act as an on-site inspection and plan review  
agency or an in-plant inspection agency;

(2) The setting of the amounts of fees to be charged by a  
private agency for inspection and plan review services; provided,  
however, that such fees shall be identical to those adopted and  
charged by the department when it serves as a local enforcement  
agency pursuant to section 10 of P.L.1975, c.217 (C.52:27D-128);  
and

(3) The formulation of standards to be observed by a  
municipality in the evaluation of a proposal submitted by a  
private agency to provide inspection or plan review services  
within a municipality.

j. To enforce and administer the provisions of the "State  
Uniform Construction Code Act." P.L.1975, c.217 (C.52:27D-119  
et seq.) and the code promulgated thereunder, and to prosecute or

1 cause to be prosecuted violators of the provisions of that act or  
the code promulgated thereunder in administrative hearings and  
3 in civil proceedings in State and local courts.

k. To monitor the compliance of local enforcing agencies with  
5 the provisions of the "State Uniform Construction Code Act,"  
P.L.1975, c.217 (C.52:27D-119 et seq.), to order corrective action  
7 as may be necessary where a local enforcing agency is found to  
be failing to carry out its responsibilities under that act, to  
9 supplant or replace the local enforcing agency for a specific  
project, and to order it dissolved and replaced by the department  
11 where the local enforcing agency repeatedly or habitually fails to  
enforce the provisions of the "State Uniform Construction Code  
13 Act."

(cf: P.L.1985, c.21)

15 21. This act shall take effect 180 days after enactment,  
except that section 5 shall take effect immediately.

#### 19 STATEMENT

21 This bill is intended to establish an integrated regulatory  
system that will eliminate overlapping and duplicative permit and  
23 review requirements for construction and land use and thereby  
remove a source of delay and of consequent unnecessary added  
25 expense that is ultimately borne by the purchasers and other  
users of new homes and other buildings. A State Development  
27 Policy Code Board is established in the Department of  
Community Affairs that will have the power to review all  
29 development regulations proposed, whether initially or for  
readoption, by all State, regional and county agencies having  
31 jurisdiction over any aspect of land development. Nine of the  
members shall represent municipalities, counties, municipal  
33 engineers, county engineers, planning officials, local  
environmental commissions, home builders, commercial  
35 developers and professional planners. The other six members  
shall be the commissioners of Community Affairs, Environmental  
37 Protection, Transportation, and Commerce, Energy and Economic  
Development, the Secretary of Agriculture and the Executive  
39 Director of the State Planning Commission.

1 The board will approve a regulation only after finding that it  
2 does not duplicate or conflict with other regulations, that it  
3 complies with the enabling statute and does not impinge upon the  
4 authority of another agency, that the adopting agency has found  
5 the regulation to be required by the public interest and to be cost  
6 justified, that it is clear, that it establishes requirements in  
7 terms of performance standards, where possible, and provides for  
8 an accepted means of determining whether there has been  
9 compliance, that it results in review with regard to the subject  
10 matter only at the lowest level of government having technical  
11 competence to undertake the review, that national specifications  
12 and model codes have been incorporated into the regulation to  
13 the greatest extent possible, that qualification standards for  
14 persons making the determinations are established by law, that  
15 reasonable time limits for review and appeal procedures are  
16 established and that there is compliance with all applicable  
17 procedural requirements.

18 The board is required to give consideration to the  
19 determinations made by the adopting agency. However, it is  
20 given the right to reject the regulations for inconsistency with  
21 the standards established by this bill. The agency may then  
22 return the regulation, subject to the right of the board to again  
23 reject the regulation after a public hearing. The agency,  
24 however, may then still adopt the rule 60 days after giving notice  
25 to the board of the reasons it considers the regulation to be  
26 consistent with the provisions of this bill.

27 The board is also required to review all existing regulations and  
28 statutes dealing with development and to recommend such  
29 changes as it may deem appropriate to the agencies that  
30 promulgated the regulations or, in the case of a statute, to the  
31 Governor and the Legislature. The board is empowered to  
32 incorporate all development regulations into a single State  
33 Development Policy Code and to hear and decide appeals from  
34 persons who are required by agencies to comply with standards  
35 which they claim are not set forth in any regulation that is part  
36 of the State Development Policy Code.

37 Development agencies are authorized to delegate all or some  
38 of their review and permit authority to other agencies of  
39 government and to establish such certification or licensing

1 requirements as may be needed to assure competent review by  
those other agencies.

3 A training fund is established, to be funded through permit  
surcharges and other sources, to be used to educate persons  
5 administering development regulatory programs and community  
development professionals.

7 The board is given authority to investigate cases in which  
reviews are not being done in a timely manner due to staffing  
9 problems. The Director of the Division of Budget and Accounting  
is directed to take such steps as the board may deem necessary to  
11 correct such problems, subject only to the availability of funds.

13 The bill does not limit municipal authority under the Municipal  
Land Use Law.

15

STATE GOVERNMENT

17

Building and Construction

19

Establishes the "Permit Reform Act."

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SENATOR PAUL CONTILLO (Chairman): I'm going to call this meeting to order. I apologize for being late, but we had a swearing in ceremony to attend. Call the roll, please?

MS. SHOSTACK (Committee Aide): Senator Contillo?

SENATOR CONTILLO: Yes.

MS. SHOSTACK: Senator Graves?

SENATOR GRAVES: Yes.

MS. SHOSTACK: Senator Connors?

SENATOR CONNORS: Yes.

SENATOR CONTILLO: There are five bills on the agenda, and there are two or three for the public hearing on the site plan. Those three bills I'm going to hold. There will be no further action today on the Moran A-3669, on the Lynch S-388, and the Orechio S-3311. (discussion among Committee members)

We'll now go into a public hearing on bills S-2963 and S-3423.

SENATOR GRAVES: Mr. Chairman, I understand what your goals are, according to the press today, which seems to be reliably reporting it--

SENATOR CONTILLO: The press is reliably reporting it?

SENATOR GRAVES: Yes, reliably reporting it. It seems there's been a number of amendments which took place on Friday, and over the weekend.

In fairness to people like myself, who have municipal interests, too, I feel that we should become fully acquainted with that, because, if, through the process that you've outlined at the public hearing, or through advanced notice of the intentions of the sponsors -- or those who are portraying to be the sponsors -- if they changed this bill, or they are constructing changes-- You should publicly say-- There will be no vote on this today?

SENATOR CONTILLO: Correct.

SENATOR GRAVES: If there is going to be a meeting, may I recommend to you that we do at least one regional meeting, so that we get the impact from many municipalities? That can be done in either an evening meeting or weekend meeting. Some of these mayors might be in a part-time posture. They flood our mails with resolutions, but they may want to give some in person input.

So, I respectfully request that we have such a hearing scheduled. I see what you seem to be doing, as to not draw any questions in the immediate future, but to bring out your thoughts through the use of a stenographer. So, I assume you'll give us all copies of the pros and cons, but I think it is most important that we get some advance notice on the changes, if the newspaper is, in fact, correct.

Would you respond to whether that is a fact or not? Did it take place or didn't it?

SENATOR CONTILLO: Okay, Frank, obviously we're going to have a public hearing on it, a package of bills of this magnitude. If we were to accomplish this before the summer's end, it would probably be short of a miracle. I want to get started. I want the people to lay out the reason for the bill.

First, today, the Commissioner himself is here to tell us why and how, and we will take some initial reaction to those that are here. The changes are not monumental. The changes, some of which I instituted myself, are simply made to clarify and improve the bill.

Here's what I intend to do--

SENATOR GRAVES: Your track record on important pieces of legislation-- It usually takes you 10 years.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Move the bill.

SENATOR CONTILLO: We've had our fun. Let's invite the Commissioner to testify on the two bills, or the general thrust of the bills.

C O M M. A N T H O N Y M. V I L L A N E, JR.: Senator, thank you very much.

SENATOR CONTILLO: You obviously went into the administration in the executive branch, rather than the Senate.

COMMISSIONER VILLANE: I learned one thing. You never insult the Chairman.

SENATOR CONTILLO: Only another Chairman would do that.

COMMISSIONER VILLANE: Senator, I thank you very much for the early consideration, at least in the hearing process, of these important bills.

This morning I sat on a panel. The panel had to do with nonprofits and people that had to do with housing and homeless. Their question to me was: Why do we have a problem in the State of New Jersey with housing? And I tried to think of the best bottom line that I could find to analyze it. And I think the best bottom line is that there's not an adequate supply of housing that's reasonable for moderate- and low-income people to buy or rent, and as a result of that, the average house in the State of New Jersey costs \$165,000 to \$180,000 to buy. And people that make \$15,000 or \$18,000 or \$20,000 or \$30,000 or \$40,000 can't afford to buy a house. Nobody in the State of New Jersey is building rental housing. When that happens, your children and my children, and maybe your mother and my mother, can't afford to live where they are. They can't afford to rent, and can't afford to buy.

When I came into the Department, I tried to find out almost immediately just what the problem was. Why does housing in New Jersey cost more money than housing in other places in America? And that's where we got our start.

I'd like to tell you about what we found out about the bills. The three bills, taken together, represent the most important reform of our development in the regulatory system ever undertaken in the State of New Jersey. Together, these three bills streamline and bring about a consistency to our permit and plan review process, while eliminating the system of illegal and informal extractions that exist today between towns and developments.

Things are happening in New Jersey that should not be happening. As you know, the package has bipartisan sponsorship, and coming from the Assembly after seven terms, I know what is needed to make a bill successful when the houses are split. So, I've suggested, and I've gotten Democrats and Republicans to endorse these bills. It's now the Legislature's turn to put in its input on this package.

I want to compliment you, Senator, for recognizing the urgent need for legislative review. I want to assure you that you will have the complete cooperation of myself, my staff, and the entire Department as you complete your work on the package. I've tried my best, during the last six months, since Governor Kean gave the last State of the State address this past January, to craft the package that involves as many of the legitimate concerns expressed by individuals and groups with whom we met.

I have to take this issue aside to tell you that I've met with a number of individuals and groups, but most of the work has been done by my Division Directors in Housing, and, of course, my Deputy Commissioner and Assistant Commissioners in Housing. They bent over backwards, and they met, time and time again, with groups, attempting to form a consensus of opinion, and a group of bills we could all live with.

Included in the groups are the Urban Aid to Mayors, New Jersey Public Affairs Research Council, Home

Builders' Association, Nonprofit Housing Agencies, land use experts from Rutgers and Princeton's Woodrow Wilson School, Alliance for Affordable Housing, League of Women Voters, Association of Counties, Alliance for Action, Association of Public Housing Authorities, State Planning Commission, State AFL-CIO, Department of Environmental Protection, Mrs. Phyllis Elston-- Each mayor and legislator received a copy of our paper outlining what the bills do. That paper was generated as a result of the meeting with the League of Municipalities in my offices.

Let me tell you what I've learned over the past six months from these meetings. There's a general agreement that our developmental regulatory system is in chaos. Too many actors are involved with overlapping responsibilities and inconsistent standards. Let me be the first one to say that I probably wrote and supported some of the bills that have to do with the red tape that goes along with slowing down building in the State of New Jersey.

As legislators, when we passed legislation, we passed it because we thought it was extremely important. We've done so many of them that we've made it extremely complicated and overlapping. Too many of the projects are permitted and reviewed in Trenton where departments are understaffed and therefore cannot do the job in a timely fashion. Everyone agrees that the cost of these delays is substantial.

Let me point out to you, Senators, that whatever costs are developed in the construction of a home -- whether it be in the subdivision process, or the land use process, the environmental studies, the applications to all the agencies -- those costs are never eaten by a builder. They are never sacrificed out of his bank account. Those costs, that we have mandated over the years, are given to the homeowner.

The problem is not with the policy standards -- like the environmental standards that you and I developed -- but rather with the implementation of the standards. For example, is it really necessary for six different governmental entities to review and approve projects on drainage plans, as is the case here in Mercer County? That's a fact. There are six different applications, and six different approvals must be met, to do it here in Mercer County.

Policy considerations are outside the scope of this package. Policy will remain. It's important, and it's a legislative mandate. Local home rule over zoning decisions -- what can be built, where it can be built, and by whom -- must remain solely at the municipal level. Home rule has to remain, and home rule must dictate what you can build, where you can build it, and whom you can have build it. This includes the question of project design. No State agency should talk about project design. Whether it be a designer of buildings or a designer of streets or landscaping, that must remain on the local level. These bills do not anywhere near approach that.

The proposed reform package must be evolutionary, one that we can develop over a number of years, and not revolutionary. Any free form package that would change the regulatory system overnight will cause too much fear -- as this bill has done with the League of Municipalities -- and too much uncertainty.

Changes must come from within the organization and not be imposed from without. That's important. We've tried to make sure we included most of that input. The reform package establishes a series of procedures that will lead to greater streamlining and consistency and cost savings as implemented. However, the governments themselves determine the pace and extent to which they participate in this reform procedure.

I'd like now to highlight the purpose of each one of the bills. If I can, Mr. Chairman, I'd like to start with the Permit Reform bill. While the Permit Reform bill creates a single State Development Policy Code containing all of the development regulations of the State, county, and regional governments, the affected governments themselves determine what is to be put into the codes.

The bill is to be reviewed within five years, and all proposed regulations, for consistency. Sometimes our regulations are not consistent. It will be reviewed for conflicts with existing regulations.

SENATOR CONTILLO: I'm glad you said regulations and not laws.

COMMISSIONER VILLANE: That's right, and existing regulations of other levels of government. Sometimes we have different criteria -- whether it be on the municipal, county, or State level -- in the regulation area. It will be reviewed for ambiguity. Lots of times, each level of government interprets differently. Or, indeed, an application is interpreted differently at different times. And for performance measurement, or whether or not the agency has the legal right to issue the regulations-- Sometimes agencies assume more than the Legislature allows them to assume. Regulations sometimes go beyond what the intent of the written legislation was.

I think we can all agree to that. I can say, as a former legislator, and I think we can agree -- I need not emphasize that the Board is solely advisory -- through public hearings and satisfactory meetings, the Board will work with the departments to improve regulations. However, the government agencies are not bound by the recommendations of the Board. That's very, very important.

I believe, however, that the process will create better regulations at all levels. Let me emphasize: No rule-making or policy-making authority is lost in any

government. This will expose regulations to more light and, there will be more information to really talk about. The things we talk about are consistency, conflict, existing regulations, performance standards, and also whether or not the agency has the legal right to pass those regulations.

Finally, the Permit Reform Act allows State, county, and regional governments the option of delegating the permit and plan review authority to municipal and county governments that are capable of doing the permitting and want to do the permitting. The responsible agencies determine the extent and the degree of delegation, and, furthermore, local governments have the option of accepting or rejecting the delegation. It's not forced on them; they don't have to do it. There's no increased cost to local government, and the review and delegation is considered to be part of the licensing and certification standards which should be created by the delegating government. The local government would receive all fee revenues.

If we delegate, or decide to delegate, and the municipalities decide to accept that delegation, they must have the trained personnel, and also have the money generated, to be able to pay for that without additional burden on local municipalities. That's the permit, and that's the one that speaks to overburdening State agencies, State commissioners in those regulations that we write.

The second bill in the package, Mr. Chairman, is the Site Improvement Performance Standards Act. Now, these things that I'll tell you now, Senator, address some of the amendments which have been hammered out with the sponsors and principal parties. I agree, they do make sweeping changes. We did that because we wanted to allay the fears of a lot of people who were worried about it.

First, it creates a Site Improvement Board to establish performance standards for engineering and

technical regulations of municipal subdivisions and site improvement. Examples include technical standards for the width and slope of a street, the pavement depth, sewer pipe size, soil grading, and water requirements for domestic and fire fighting purposes. Technical standards are developed at the present time by 567 municipal engineers in 567 different municipalities, but these are just technical standards that we're talking about that should be laid out and established.

The Site Improvement Board will consist of 11 members -- not a State commissioner like me, saying, what the standard should be. But the Site Improvement Board would consist of 11 members -- controlled by municipal government representatives -- two municipal engineers, two municipal planners, a member from the League of Municipalities, a member of the Municipal and Environmental Commission. This means the municipal government, which we protect so greatly in the State of New Jersey, would control the standards developed for their own use. This was a point made by several municipalities who commented on our plan.

The Board would not create ticky-tacky towns all similar to one another. The design issues are outside the scope entirely of this bill, as are the zoning decisions. Nobody would seek to design in these regulations. Nobody would seek, so to speak, zoning. The Board would create as many zoning standards on technical things as are needed, found within our varying municipalities. Performance standards mean that rather than set a single formula, it would be used to calculate the pavement depth. Using relevant factors, those relevant factors would have to be with the vehicle used, number of cars used, and purely technical uses for roads, sidewalks, curbs, or parking lots.

The Board, controlled by the municipal government, would have the final say on all municipal

performance standards. The Commissioner of DCA cannot overrule or rewrite the Board's recommended standards. That was a fear that was expressed to you and me, and my Deputy agreed immediately that we would step back from that responsibility and leave it locally to the boards.

Environmental groups were concerned that the municipal standards would preempt the State Department's ability to regulate municipal standards when State law has given the State power, such that it has in the Wetlands Protection Act. The bill protects the State's rights. It protects the environmental laws to overrule municipal standards where needed. That is, I think, important.

I think the things that we've hammered out for the environment in the State of New Jersey over the last 10 years have to be protected. This bill, in its present form, will guarantee that protection for the environment.

I know we don't have a sponsor in the Senate yet for the third bill.

SENATOR CONTILLO: It depends on your presentation right now.

COMMISSIONER VILLANE: I think you're going to like your bill, Senator, really. This is the easiest bill to pass, but these bills, when you think about them, Senator, ought to be considered together. It reforms State practices. It reforms some legal practices, and, in the third place, it reforms some things that happen on the local level in negotiations with builders.

Now, the impact fees would make it legal to collect impact fees for off-site sewer, flood, transportation, parks, recreation, schools, public safety, capital improvement costs. Without this bill, it's not legal. It allows for the collection of fees to finance affordable housing, which is an extremely important problem in the State of New Jersey. It requires municipal government to enact ordinances outlining the capital

projects eligible for impact fees, funding and for the \$4 million used to calculate the amount of the fees.

Right now, it's spin the wheel and see what number comes up. That's not right. It's not legal. It's not fair. I'm going to tell you that this package is not carved in stone or that it is the last and best program possible. It won't make everyone happy, and maybe that's the best evidence that it's a workable program. It does take into account the legitimate concerns of many of the groups that we've met within the last six months. It's my best attempt at a compromise package.

I would urge you, as you listen to today's testimony, to ask those groups of individuals critical of the package how they would improve it, because the bottom line is that housing costs too much in the State of New Jersey, and the status quo guarantees that none of your kids will be able to afford to buy a house in this State. We need to make a change. It's too late for stonewalling or to be unconstructive, and it's too late not to do something. We must do something, and you have the opportunity in this package to do it.

The economy of our State and affordable housing needs of our citizens demand your attention -- your attention as the men and women that control the laws in our State. As you go through the testimony today, try to see if there are ways to make it better. The end result, I hope, will be to come up with something that will allow us to build housing that people can afford. Thank you, Senator.

SENATOR CONTILLO: Commissioner, before I open it up to the rest of the members, I have to take exception to what you lead off with, that the cost of housing in this State ranges from \$150,000 on up. There are houses for sale today in Smithville for \$55,000, which reenforces what we both know, that the land cost is what is devastating,

unless you're telling us that the cost of land is increased by the cost of development--

COMMISSIONER VILLANE: What it has taken, Senator -- this is from a study done at Rutgers-- If you take the average cost of the house in Bergen County and the average cost of the house in Smithville, if you put them together, you'll find that the average cost of the housing is about \$163,000.

SENATOR CONTILLO: But the biggest portion of that--

COMMISSIONER VILLANE: Is land cost, what it costs developers to build in New Jersey. A good portion of that, in the Rutgers study -- some 30% of the cost of building in New Jersey -- is regulatory layering. I don't believe it's 30%. I have to tell you that I think it may be somewhere between 10% and 20% or 25%. But there is a definite cost. You make an application in Mercer County for a subdivision and it takes 12 permits, 12 fees, and 12 approvals. And it takes a long, long time to do it. Because, if you get to number 11 application, and there's a modification at number 11, you have to go back to number 1 and modify every application that you have for subdivision and land use.

SENATOR CONTILLO: You made a comment at the beginning that the State could override. Is that only for DEP or each department?

COMMISSIONER VILLANE: Each department. My department would be able to override, if we felt that fire safety regulations were watered down by this bill, or the board that would review the regulations as presented. It would protect-- It would give the departments the commitment that they would have to take another look at it.

When the board said my fire safety codes are too strict, I would have a second look and say, maybe you're right, or maybe you're wrong. I think that houses that

have handicapped kids should have it. I'd insist, and I think that I would prevail.

SENATOR CONTILLO: I think you partially recognized that we accept as legislators that we over-legislate sometimes. You can attest to the fact that we cannot recognize the legislation after it gets into the various departments. If the rules and regulations are burdensome, they are rarely what the legislators meant.

COMMISSIONER VILLANE: Senator, let me tell you, Senator Graves, all of you probably know that I went to the Department not as outside Commissioner, but I went as a legislator. One of the things we're doing in our Department is taking another look at regulations that we feel are maybe costing people too much money, taking a look at asbestos and the way we regulate it.

You gave us the legislation. We wrote the regulations. We're taking a look at fire safety. You wrote us the bill. I was on the Commission when we wrote it, but we may be over-regulated. We're going back to take another look at this thing. I remember sitting there with you, where you are. You're right, you don't recognize them when you're done.

SENATOR CONTILLO: Maybe we're lucky to have a Commissioner who sat on each side of the fence.

SENATOR GRAVES: Yes: I guess I'm going to have to read the stenographer's input as to what takes place today. Sometimes I can better understand by reading than I can by listening, but I'm not so sure that I can agree with your outline.

I think most of the problems with municipalities in our State is the over regulation by the State. The State has its hands in everything that a municipality does, to the point that it threatens it to the conformance of its duties and responsibilities, and will overrule it. And I'm not so sure that what you have outlined convinces me of

anything other than my original thought; that this will be the straw that breaks the camel's back as far as municipal government is concerned in this State, because, in my reading the bill, I get a different interpretation.

COMMISSIONER VILLANE: You haven't seen the amendments. I think you made a very good point to the Chairman. A number of amendments have been made to the bill to directly reflect the concerns of the League of Municipalities and other concerned mayors, and what we've done is try to craft into the amendments some of those concerns.

For instance, the Permit Reform Act is a State bureaucracy that has developed over the last 10 or 15 years. The permits are overwhelming. If a builder wants to come into your town, he has to come to the State 8 or 10 times. He's got to go to DOT and me.

SENATOR GRAVES: Not because of statutes, because of regulations.

COMMISSIONER VILLANE: Because of statutes that permitted the regulations. What we're saying is we're going to make it easier to build housing quickly. You can't argue with that.

SENATOR GRAVES: I haven't seen it here.

COMMISSIONER VILLANE: You'll see.

SENATOR GRAVES: As I said to the Chairman, with all due respect for him, I'm a friend of his. You can't possibly analyze this so we have before us a bill, as it stands, that does more to deteriorate the municipalities' ability to govern than anything I've seen before in the history of this State. Maybe your amendments have softened this, but I have not seen those amendments. I've got to read it and digest it.

I have talked to planners, and they say this could be the most troublesome combination of bills that were ever fostered, that are supposed to help

municipalities, but, in fact, absolutely strip the municipality of its ability to govern.

And one other thing that you just said: You said that these 11 people will be making decisions that you cannot usurp or know other commissioners cannot usurp. Are they going to be a continuing body? Are they going to sit 10 hours a day, five or six days a week?

COMMISSIONER VILLANE: Eleven people primarily control at the municipal level.

SENATOR GRAVES: I know who you said, the engineers, the planners. I heard the description. But, you know, how much are they going to need to hear? The case of the municipality--

COMMISSIONER VILLANE: What they are going to utilize are the subcommittees in the areas. Those subcommittees will be made up of experts that talk to technical standards. Before we had the Uniform Construction Code in the State of New Jersey, there were 50 of them out there. And there was no uniform code. All we're talking about at the local level is, number one, codifying or simplifying the technical standards. No town should be threatened by saying there should be some technical background or reason for how thick a driveway should be. Those are technical standards. Engineers should say that.

SENATOR GRAVES: Did I read just the opposite? You're going to tell me what the curb is going to be, the thickness of the pavement?

COMMISSIONER VILLANE: I'm not going to tell you. This 11-member board will take the advice of technical people, for such things as how big buses are going to be in order to get into a drive-by at a supermarket. You're not going to leave it up to 567 municipalities.

SENATOR GRAVES: By the traffic pattern on the street-- You didn't say pattern, but you said traffic on the street. How can you judge the traffic pattern on the street, the weight of a fire engine that may have to go on a street that's going to have less density, offsetting the ability to hold forth? It seems to me that this legislation, and maybe rightfully so-- Maybe I'll be convinced after I read everything, that this is the right way to go. This will do more to strip the municipality of its ability to govern itself than I have ever heard of before or read.

SENATOR CONTILLO: When the BOCA Code was first introduced in the early '70s -- he was not in the Assembly at the time, but I was -- I heard the exact same arguments I'm hearing today.

SENATOR GRAVES: That I'm giving, you mean?

SENATOR CONTILLO: That you're giving now. Everyone wanted to know, why the BOCA Code?

SENATOR GRAVES: That argument has been given before, absolutely. Make no mistake about it.

SENATOR CONTILLO: It has. Okay.

SENATOR GRAVES: Maybe what you're doing, the BOCA Code has -- anyone here with the municipal government -- eliminated, maybe rightfully so-- We can go further in support of this. This about tells you everything you can do in the municipality, except what time you can go to the bathroom.

SENATOR CONTILLO: The BOCA Code was not created by municipal and county officials in each area. This is what he's proposing, to get at those very departments that drive you crazy now. You will go into those departments and make suggestions. You're really going to be doing what the department head should be doing, instead of having one single bureaucratic department. The municipalities will have the--

SENATOR GRAVES: I don't want to prejudge it. I'm going to listen to what he said and step out of it until such time as I see everything in writing.

SENATOR CONTILLO: Okay, Frank.

SENATOR GRAVES: Have a nice trip.

SENATOR CONNORS: Taking the figures that were put out by Rutgers, the average, let's take New Jersey-- One hundred sixty-five thousand dollars is the figure that you used, and some people say 30%. I don't think it's 30%. Some people say 10%. You have mentioned somewhere between 10% and 20%, or something. We're still talking about an awful lot of money. For a person with a \$40,000 income, if we were to take 20% off the \$165,000, it would still come down to a price of \$132,000, which would still put them out of the ballpark when it comes to the first home rule, making this assumption that we were successful in doing this.

Now looking at another bill that calls for impact fees -- and believe me, as a Mayor of a municipality, I'm well aware of impact, and impact rules -- if we move toward impact fees, isn't that putting the financing right back into the cost of the housing again and defeating the purpose that we set out to attain in the first place? In final observation, I note you may not have an answer for this. I certainly don't. I'm asking it as a true question.

I'd like to make a statement. I have been in the home building business for a long, long time and was successful, by my standards anyway. In 1973, I retired from that industry. And in 1987, I again picked up the tools and built one house. I was absolutely amazed. I built it for a member of my family. I built one house on one lot in southern Ocean County, and I was absolutely amazed at the amount of money that was being charged for the materials. It's not unheard of to spend \$10,000,

\$12,000, \$15,000 for just the window units to have an energy efficient unit. Where, in 1973, we were paying for a single unit, window unit, double-hung window, which is old fashioned now, and so forth, the window unit might be \$27. Now it's \$400. It's unbelievable. Lumber-- It was just mind-boggling.

A house that you might have figured just the materials-- Remember, I built this just for love of a member of my family, so, there was no fee for me. Just from what I would ordinarily figure back in 1973, I could see probably five or six times what we were paying what that house probably should have cost: lumber and labor that we used, masonry, as far as the foundation is concerned, probably would be close to \$90,000 when it was completed.

In the final analysis, first-time home buyers, maybe we should start looking at the amount we tax. If the State really wants to do something-- We make sure we get 6% on every dollar of two-by-fours, shingles and windows, doors, trim, and so forth, not for the second- and third-time home buyers, maybe first-time home buyers. I offer that as a suggestion.

COMMISSIONER VILLANE: You're absolutely right. If you were to enact the impact legislation, all you would do is increase the cost of housing in the State of New Jersey. But when you speak about taxes, if you allow development without allowing impact fees, you'll never reduce the impact on a municipality, because, if you build 1500 units in a town, you have a school problem. All things considered, impact fees are fair; fair for the municipality--

SENATOR CONTILLO: Aren't they being charged one way or another?

COMMISSIONER VILLANE: In the form of a fire engine, yeah. But, Senator, if you think a reduction in

the cost of a \$165,000 house by \$32,000 doesn't mean a lot-- You know it does, because you and I have children the same age. That means a whole lot if \$30,000 is carried over a 30-year mortgage. It amounts to \$30,000 or \$40,000 more in payments.

SENATOR CONNORS: I am not pooh-poohing that. What about the impact fees?

COMMISSIONER VILLANE: Not to that degree. If they are reasonably expressed for true impact, it would be a much smaller fee for the municipality.

SENATOR CONTILLO: If the fees are spent properly.

SENATOR CONNORS: If this would happen, we would not be fighting here today.

SENATOR CONTILLO: Impact fees will go for school roads. That will not be spent as taxation on the same people.

SENATOR CONNORS: Understand, I am not opposed to impact fees. I think they are good, and they should be taken into consideration, especially when you have large developments to address.

COMMISSIONER VILLANE: And commercial properties.

SENATOR CONNORS: But the impact was to be--

COMMISSIONER VILLANE: You see, the municipality will get commercial--

SENATOR CONNORS: The only savings we will have is not in the individual lot owners. The only savings we're going to have in housing is not going to be individual building lots. It's going to be for that developer who goes and builds 1500 houses. That's where he's going to be tied up. That's where these regulations are going to be important, because, when push comes to shove, you can go out anyplace in the State of New Jersey, buy one building lot, as a building lot -- I'm not talking

about anything that needs to be subdivided or anything else -- you have a building, a set of plans, go to the building inspector--

COMMISSIONER VILLANE: You better do some soil conservation, water analysis, erosion controls. You better know whether you have enough water for fire fighting.

SENATOR CONNORS: You're not going to do away with that. It's still going to be there. So, the savings is going to be in multi-unit developments -- multi-unit, not individual.

COMMISSIONER VILLANE: Let me bring out one point. I know you're a builder. I've been in the building business myself, to some degree. If you're concerned about--

SENATOR CONNORS: I'm not a builder by trade.

COMMISSIONER VILLANE: Impact fees help reduce taxes on the whole town. Impact fees help to reduce the property taxes on the municipality.

SENATOR CONNORS: I am not opposed to the impact fees.

COMMISSIONER VILLANE: Good.

SENATOR CONNORS: Again, when we started off, we started off with a \$165,000 house. And it was our drive to consolidate these regulations, so we wouldn't have the average being a \$165,000 house. Making that assumption, that we reduced it somewhat by 20%, what will impact fees do to that 10% or 20%? How much are we into it?

COMMISSIONER VILLANE: I'm going to take one minute and try to explain why I think the package is important.

This package of bills addresses State regulations and the complications of building houses because of that. It addresses subdivision and land development at the municipal level, and how different it is all over the State of New Jersey to get subdivisions only

because we're addressing only technical standards, not design, not zoning, not building, height or width, only technical standards about subdivision.

The third leg on the stool is impact fees. So, the State gives a little bit. The municipality gives a little bit. Because they give a little bit, they get the permit process. The builders give a little, by giving impact fees.

SENATOR CONNORS: In your opinion, that combination will reduce that some \$165,000 for the \$40,000 a year person for the first-time home buyer?

COMMISSIONER VILLANE: I think you're getting to what we're trying to deliver, Senator.

SENATOR CONTILLO: Thank you, Commissioner.

For a different point of view, New Jersey Society of Municipal Engineers, Lee Talbot.

A. L E E T A L B O T: I have prepared position papers on both pieces of legislation. One of them is fairly lengthy. Do you want me to read it into the record -- summarize it?

SENATOR CONTILLO: We can incorporate it into the record as you wrote it. Give a copy to each one of the members. I know Senator Graves is dying to read it, but you can summarize it here for us. We really only have about a half hour more today. Have you seen the bill as it's been updated?

MR. TALBOT: I read it about quarter to two.

SENATOR CONTILLO: Could you first tell me your interest in this?

MR. TALBOT: I've represented municipalities as their engineer for approximately 18 years in the State of New Jersey. I've been practicing engineering for approximately 25 years.

Just to give you a real quick overview, the Society of Municipal Engineers' concerns really look out for the municipalities.

SENATOR CONTILLO: Not for your own organization?

MR. TALBOT: That's correct. We are made up of municipal engineers.

SENATOR CONTILLO: You're concerned about whom?

MR. TALBOT: We represent the municipality as their engineer. We do set the design standards for the individual municipalities, both in new developments, and also in the repair and replacement of infrastructure.

SENATOR CONTILLO: Okay, what's wrong with the statewide standard with a formula for thickness of pavement?

MR. TALBOT: A formula makes sense. Engineers use formulas. Our objection, in a nutshell, is that we, are professional engineers, are designated as the only people that can do design work for construction projects of public infrastructure.

SENATOR CONTILLO: That's a law we made. We can change that. We're in the process of doing that now.

MR. TALBOT: I understand that. Design by consensus results in compromise to the individual municipalities and the residents.

SENATOR CONTILLO: You think there's 700 different formulas for thickness of pavement in the State?

MR. TALBOT: No, the model subdivision and site plan ordinance was really done by a committee, by a consensus, and that's the term which is used in the proposed legislation. The State has said, and I think rightly so, that professional engineers have the knowledge and training in, and are personally and professionally responsible for, making sure there's not a drainage problem or flooding problem where it will ice up, and somebody gets hurt in an accident.

We had the traffic signal works, whatever it is. We are trained to do those kinds of things. And, as I say, we are liable for those kinds of things. If they do not work, we get the phone calls. We get them month after

month. If there's a drainage problem because someone designed the baseball field improperly, because of the angle of the base the kid couldn't see and gets hurt, these are the concerns that we have.

SENATOR CONTILLO: That's design. I don't think this bill deals with design of a development. It clearly does not deal with design.

R O B E R T V. K I S E R: Robert Kiser, Municipal Engineers, as well, also Municipal Engineer for Princeton Township, which is located here in Mercer County, and I beg to disagree -- respectfully disagree with you. This bill does, in fact, deal with design. Going through the bill -- and we've analyzed it for a number of weeks now -- my hands will be tied in terms of guiding developers in designing developments within my municipality. This bill not only deals with pavement thickness, but also the amount of open space, recreation areas, design and layout of parking lots, sanitary sewage collection system, woodland protection, street and highway access, and traffic control. This bill does, in fact, deal with design.

SENATOR CONTILLO: Again, my understanding is, we're not dealing with the design and the development.

MR. KISER: That is incorrect.

A R T H U R J. M A U R I C E: I don't think he has a copy of the amendments that we gave out Friday. If he had, I think he would see that that was all excised.

SENATOR CONTILLO: I've gone through this, and others have gone through this, prior to the meeting. He makes a good point. It's difficult for you to discuss a bill. That's why I asked you before you started to testify if you had read the most recent amendments.

MR. TALBOT: I received a copy that was here on the table, yes.

SENATOR CONTILLO: Okay, go through your presentation. We have gone to that point that we do not want to allow that. So, you agree with us.

MR. KISER: If you can accomplish that. I've briefly gone over the amended bill. I don't know that that's in there.

MR. TALBOT: Let me go through our position paper on S-2963. On the front I've put a two-page executive summary which kind of lists the bottom line. Let me go more towards the background, if that's okay, which would be the following pages. I've broken it up to five sections; the first relates to the background of the bill.

Basically, the premise of the bill is that the uniform site approval would avoid unnecessary costs and insure predictability. Also, the price of housing is determined by market forces. That's really our feeling. Even if the cost of construction is lowered, we believe that bottom line is going to be whatever the market mechanism will determine will be the price of the house.

Also, under background, we made a comparison of the Uniform Construction Code analogy. We don't believe -- and you can read in detail why we don't believe -- that the Uniform Construction Code is really a proper analogy. We're really again dealing with the design of physical improvements, and one of our concerns-- It sets up a 9- or 11-member Committee. We have architects on there, planners, and builders. I'm not convinced, in my own mind, that any people that are not trained as engineers can properly size a suitable pumping station.

For example, that 11-member board, there are only three--

SENATOR CONTILLO: It seems to me the engineers will set up the original formulas, and the town engineers will still review them to see that they can comply.

MR. TALBOT: That sounds very, very good. I served on the committee that, frankly, it was a compromise, and I chatted with one of the individuals that helped write it, from Rutgers. He said the same thing today in our

conversation. One example is the minimum street slope is half a percent, which is very, very flat.

I know, as a municipal engineer dealing with developments, you can't pave to a half a percent without creating bird baths. There's a picture on page 272, which shows a puddle on something that they hold up as being an example of good construction. If that puddle freezes in the winter, there can be an accident there. My concern is setting design standards, not looking out for the public health, safety, and welfare. That's my concern. That's the concern of the Society.

SENATOR CONTILLO: You're saying those who, in effect, created those standards and formulas were not competent, but how would you describe them?

MR. TALBOT: Not personally or professionally responsible or liable.

SENATOR CONTILLO: Were they engineers?

MR. TALBOT: Well, there were also contractors and builders. It's the same general approach that's being--

SENATOR CONTILLO: Are you simply trying to protect your own fiefdom?

MR. TALBOT: I'm trying to protect the--

SENATOR CONTILLO: Not the professional?

MR. TALBOT: We take an oath.

SENATOR CONTILLO: Does this bill somehow create less work for professional engineers?

MR. TALBOT: No, it sounds like a tremendous amount of work.

SENATOR CONTILLO: Any questions?

SENATOR CONNORS: I have a question. Maybe you might know the answer. If, as a result, making an assumption, rather, that this bill is passed-- As a result of the passage of this bill, the municipality now is locked into the law. If an accident happens, or if something with that puddle on the street happens, who's liable?

MR. TALBOT: It's been my experience in a court case that they go-- The litigants go after whoever they can, and our name appears on the plan.

SENATOR CONNORS: Presently, if this bill were signed into law, and there was a deficiency in the design, proven in a court of law, would the municipality, under this bill-- To be honest with you, I haven't seen that in the bill. Is there some type of indemnification of the State of these designs? Do you understand what I'm saying?

SENATOR CONTILLO: You keep saying design. And--

SENATOR CONNORS: Specifications.

SENATOR CONTILLO: Okay, I'll accept specifications.

SENATOR CONNORS: Now, as a municipality, we're always being sued. Under the bill, is there any--

SENATOR CONTILLO: Yeah, I would think so. Yeah.

SENATOR CONNORS: You could?

SENATOR CONTILLO: If you're following street thicknesses and you build this the way it should have been, and you followed everything, and it collapses, then--

SENATOR COWAN: No immunity?

SENATOR CONTILLO: I don't know. Do you want to respond to that question?

MR. MAURICE: If it's a State regulation that's at fault, then certainly the State can be held accountable for that, sure. I don't see why we would be off the hook.

SENATOR CONTILLO: Before I call another witness, Senator Cowan brings up a good point. It's difficult for you to testify without knowing-- We might have been better off the way it was. The way I saw it, as Committee Chairman, there are certain parts of it that should not have been heard. We've gone through it and tried to make it a more reasonable bill, but, in doing so, I think a lot of you are at a disadvantage. You're not really up to par as to the final amendments.

I didn't realize you all didn't have them. They were faxed to my office on Friday. I would give first preference to those who have read the amendments and want to testify, and I'll still continue until four o'clock, based on those who have listed themselves.

Do you want to summarize?

MR. KISER: If I can make some additional comments, the sponsor of the bill mentioned the BOCA requirements, and how the BOCA system is working. The proposal before us is much more far-reaching than the BOCA process that we're presently using. It's one thing to build a structure on a parcel of land, start with the foundation and build up, because you really have control over the environment. When you're talking about constructing a subdivision, developments, site plans, with the natural environment, God gave us all different sorts of substances to be concerned with.

We have to be concerned with drainage, wetlands, slopes-- We have to be concerned with rocks, trees, and all of these natural environmental items that provide for a good design and good development. It's extremely, extremely difficult to put together a set of specifications that apply for every instance of construction. South Jersey is much different than North Jersey, than Central Jersey.

SENATOR CONTILLO: We've taken these into consideration; different soil conditions, different road patterns, different road usages, wetlands. I understand that.

MR. KISER: It seems to be much different than what's contained--

SENATOR CONTILLO: You're reading a bill, and the Commissioner dealt with an amended bill.

MR. KISER: Yes, I have the amended bill. If there's a problem with the development, if there's a

problem with drainage or the road breaking up, if something goes wrong, we're the people that get called, and we're the people that are viewed as not doing the job, as not really properly inspecting.

SENATOR CONTILLO: This is what went on in 1973, when the building directors and local engineers told us that the BOCA Code would not work, "That we have certain requirements in our town. We have this. We need this, in reality." It's impossible for an out-of-town builder to come in and build, because the local municipality has a closed-- It's unfair in many cases, and we heard the same exact words, "It won't work. They don't understand our area of the State." And it's worked fine.

MR. KISER: But that's a controlled environment. In this particular case, you have much, much more complex--

SENATOR CONTILLO: Granted, it is more complex, but I think a lot more effort has gone into this. That's why we're starting out here to find out what has to happen to develop a set of standards that are fair, and rational, and you have full professional input into. There's no reason on this earth that there should be 600 different sets of standards in 600 different towns. You'll never convince me of that.

MR. TALBOT: I'm not going to focus on it today. I would like to focus in the future on the definition of "design," because I think we're hearing different things, and DCA's book is something that is here--

And I would like to get that clarified, that I have a position--

SENATOR CONTILLO: Before you go on to the next bill, I would appreciate it from your Society, a recommendation of how you think the standard should be drawn, if you think those are improper? Because we're going to get something out. We might as well have some input.

MR. TALBOT: I appreciate that. We have to-- With regard to the Permit Reform bill, on 2963, we did address what we felt were the differences between the Uniform Construction Code and what happened in the '70s and where we are here.

I would like to focus on that -- whether you have an opportunity -- in our position paper. As far as the Permit Reform Act, we're definitely in favor of permit reform. It takes us three years to get a bridge approved for reconstruction, and that type of thing. We have the same problems everybody else does.

Again, we're not convinced that a board is necessarily the way to go. I will go back to our Society and see if we can come up with positive suggestions. We're not totally negative. I'm concerned about where my children will live also.

MR. KISER: Mr. Stires and Mr. Holzmann are here from the municipal engineers.

SENATOR CONTILLO: You had your time, fellows. Thank you.

Let me have the next person here, for future homeowners, Vincent Grassia.

V I N C E N T L. G R A S S I A, J R.: Thank you. Good afternoon, Senators. I'd like to thank you and the Committee members. My name is Vincent Grassia, presently residing in Elizabeth, New Jersey. I hold an M.B.A. from Seton Hall University.

My presentation today does not have the support of a large lobby, nor is it represented by graphs, charts, or mass mailings. I'm not here to--

SENATOR CONTILLO: I did not get your affiliation. Who do you work for and who do you represent?

MR. GRASSIA: I'm an average person trying to--

SENATOR CONTILLO: Who are you employed by?

MR. GRASSIA: New Jersey Transit.

SENATOR CONTILLO: How can you get to work?

MR. GRASSIA: Exactly.

SENATOR CONTILLO: That throws an interesting light on the testimony.

MR. GRASSIA: I hold an M.B.A. from Seton Hall. My presentation does not have the support of a large lobby. I'm not here to recite statistics and numbers to Committee members. I am here to represent hard-working, middle-class people who dream of owning a home in New Jersey. I'm here today on behalf of all future homeowners in the State.

In January of this year, The Newark Star-Ledger published a series of articles on the housing crisis in New Jersey, based upon the Rutgers study which we've heard talked about today.

The article suggests that nearly 30% or 35% of the cost of new homes is often unnecessary and duplicated. This duplication has been found to be bureaucratic red tape and overkill.

My wife and I, and many of our friends, are just starting out and find it disheartening trying to own a home in New Jersey. There is a bureaucratic maze of applications and forms. That only increases the cost of a new home. Developers need to regain this cost of awaiting approval for construction. That passes on to the new homeowner.

The report also states that many municipalities practice what I classify as bureaucratic blackmail, allowing development in the communities, often allowing these developments that the builder has agreed to build and along come new taxes for a new school, or for a new fire engine.

Again, who pays for this; who also pays additional property tax that some of these established neighbors in the community may not pay? Because of this

basic housing environment, sellers of older homes in established neighborhoods would undoubtedly market his house, equal to that of, if not more than, what newly constructed homes are listed for.

There are enough valid market conditions in New Jersey in close proximity to add to the cost of housing without the bureaucratic overkill in home rule needlessly adding to the cost. Each day, I read of new and creative initiatives being undertaken by State agencies, such as in the bold steps being taken on the housing front from DCA to enable people like myself to be able to own a new home. Eight percent -- HFA just announced -- has been established by the Commissioner, and other numerous programs.

Senators, you should be angered by the unnecessary bureaucratic red tape taking place in the government. In effect, State housing solutions and services are trying to solve a problem which has been made worse by all levels of government. The bills before you for your consideration are stepping stones to reducing this bureaucratic red tape and are, in effect, reducing housing costs.

The bottom line, Senators, is affordable housing in New Jersey. The resources in the market to buy are there. Thanks to the governmental regulatory overkill, people in businesses are being priced out of the State in search of affordable housing.

It's no wonder our economy is beginning to sour. Affordable housing means housing for everyone, not just the lower class, not just lower-income people -- which the municipalities have defined it as -- but for everyone, standardization of codes and streamlining.

Home rule has become unproductive at the State level. It's time to set these aside in State agencies and municipalities and work towards a coherent, intelligent, and effective housing strategy for New Jersey.

Hard-working people of this State are frustrated. We deserve to have a fair shot at home ownership. We demand quick and decisive action on these bills. Thank you for your time.

SENATOR CONTILLO: Marcy Crimmins from Princeton Community Housing.

M A R C Y C R I M M I N S: Thank you, Senator. I am Marcy Crimmins, the Executive Director of Princeton Community Housing. We are a nonprofit corporation that's been dedicated to creating affordable housing since 1967.

DCA has provided, to date, 328 rental units; 240 in 1975, 88 in 1985. Griggs Farm, our latest development, has 240 units, 93 of which will be rental. Griggs Farm is the first development implementing Princeton Township's affordable housing ordinance, providing for 50% affordable, and 50% market. I hope we are beginning to realize that to provide the number of affordable housing units that are needed, perhaps the builders' remedy is merely covering our landscape with more expensive units that are needed and not enough of the affordable units that are needed.

Griggs Farm has a \$25 million budget, of which \$2.8 million will be provided by two grants, one by NJHFP and the other from the housing program of the HFA. It would have been more expeditious to have completed one. Risks are involved in any type of development securing financing from the private sector. Minimizing the risk is essential. Time delays are expensive.

The Commissioner has already stated that to go for our detention basin, storm water control is a six-application process in the County of Mercer. I have a chart with me that shows you the number of permits that are needed to develop this basin, which we prepared in 1986. This was, and still is, incomplete, because there is no master list of what is needed to provide this sort of housing.

SENATOR CONTILLO: An awful lot of that I must lay at the feet of the different departments. Although we've written legislation, I think the way that the departments have interpreted it -- and the rules and regulations that they promulgated-- Sometimes the rules and regulations are five times longer than the bill we write, particularly DEP.

MS. CRIMMINS: We generally support the Permit Reform Act. Speaking of DEP, a portion of our site was located in an area not designated to be sewered. Princeton Township applied for an amendment, offering to replace this portion with a larger, separate parcel that would be designated not to be sewered in the township.

These township plans required review by -- among others -- the operating committee, Montgomery Township, Mercer County, and review of the permit by DEP. The application was submitted to DEP in April of 1987. Approval was received in February of 1988. This 10-month process represented an expedited review.

I must say that the team with whom we worked at DEP was cooperative and did agree to several meetings, but it was a very lengthy process before we could even start. We had an option on our land in 1985.

Thirdly, with DOT, the application for a State highway access was submitted in December of 1987. Two months later, February, 1988, DOT requested revisions and additional data. Four months later this was submitted to DOT, in June of 1988. Three months later, in September, our application was deemed complete. As we were starting construction at this point, the resolution of this application was crucial. DEP took a risk starting construction, because we had purchased the land. The interest rates had gone from 9% to today, we are paying 11.75%, and the risk of delaying was greater than the risk of going ahead without the DOT approval.

From September through February -- September of '88 through February of '89 -- I phoned DOT once a week. I asked for an update, and I asked for a meeting. No one would meet with us during that entire time.

In late February, 1989, we received access approval, but with conditions so onerous as to render the approval worthless. We are providing -- I will remind you -- 50% affordable housing in this development. DOT wanted us to widen 206 to four lanes, with 12-foot shoulders, for a length of 600 feet, which would have required condemnation proceedings for at least five properties.

The second condition was for major improvements. We are looking at a minimum -- already in construction -- of a one-year delay, and additional development hard costs of at least \$1.5 million.

Four years later we find ourselves in a marketplace that is difficult. We have 140 affordable units, and 1400 applications. We need to move forward, and we need to move forward more quickly. Thank you very much.

SENATOR CONTILLO: It's really past the hour. The Mayor of Trenton is here, and a representative from Sharpe James' office, and Calvin West is here.

SENATOR COWAN: Marcy, I would like to ask a question. What is the average unit of these homes that you're talking about, one- or two-bedroom?

MS. CRIMMINS: One-, two-, and three-bedroom units.

SENATOR COWAN: What is the average cost of the market?

MS. CRIMMINS: Two-bedroom \$142,500, and the three-bedroom is \$154,500. Thirty percent income for rental -- and a calculation -- which would make the cost of the purchased units affordable at 28% of a person's income. Each unit is being individually priced, either for rental or for sale.

SENATOR COWAN: Originally priced according to income?

MS. CRIMMINS: Minimum income is 30% of the area median.

SENATOR COWAN: What is that?

MS. CRIMMINS: Today it is approximately \$8000. The minimum income, in order to make the rental budget feasible, is \$8000.

SENATOR COWAN: Thank you.

SENATOR CONTILLO: Mayor Holland.

M A Y O R A R T H U R J. H O L L A N D: Senator, members of the Committee, I did not expect to be able to make a personal presentation, so I prepared a letter for submission.

SENATOR CONTILLO: I'll incorporate this letter into the record.

MAYOR HOLLAND: The Mayors of Urban Aid Cities, at a meeting on March 8 of this year, heard a presentation by the Department of Community Affairs Commissioner Anthony Villane concerning this legislation.

It was the consensus of the Mayors that the objective of the legislation, streamlining and providing some uniformity in the construction development process, had merit. While I am sure that there are concerns about specific provisions of the proposed legislation, I would hope that necessary changes in language in the legislation could be worked out to satisfy the concerns of municipalities.

I understand that the Department of Community Affairs has already agreed to support changes to the legislation to accommodate the interests of municipalities. Given that spirit of cooperation, an accommodation with municipal interests should be able to be achieved.

I chaired that meeting, and was unaware that Bill Dressel and Calvin West are here representing Sharpe James, and as members of the League had an opposite viewpoint. We will give the League an opportunity at our next meeting to present their viewpoint.

But, I'm reporting what I believe to be the sense of that meeting at that time. We had to get on to -- and you can appreciate this -- something called distressed cities.

SENATOR CONTILLO: I saw you sitting there. I thought, in due respect to your office, you want to be able to get home from Trenton safely tonight.

Mr. West? I think this will be the final person, because it's quarter after four now.

C A L V I N W E S T: Mr. Chairman, members of the Committee, my name is Calvin West. I'm a Legislative Aide to Wesley Nauer. In deference to the former speaker, he said there was a consensus of opinion of the Mayors. Our position was crystal clear with the present bill -- that we were totally in opposition to it.

SENATOR CONTILLO: It was prior to the amendments.

MR. WEST: I will state, as far as Newark is concerned, I will be that much concerned about the Mayor. Our engineer in the town has also been opposed to this. As history will indicate in the City of Newark, if the State wanted to build a penal institution, they would bring it in there without saying anything. If they wanted to bring a transfer station into the City of Newark -- not without calling the Mayor to say, "I want to study this" -- it would be without saying anything.

They might call up and say, "We're going to put a transfer station on Frelinghuysen Avenue. I want you to be down there at a certain hour." If they were to bring an AIDS hospital into the City of Newark, they wouldn't say, "I want you to study this." They would just bring it in.

Unfortunately, we're strapped with that kind of situation. I recognize what government is about. I used to be a legislator myself, not of your station, but as a Councilman in the City of Newark. I recognize there are certain things that take place. My only thought is this -- and that of the engineer and the Mayor of the City of Newark: Home rule is very important to us. At such time, in terms of curb sizing, sidewalks, things of that nature, we must recognize our engineer, and what it's all about.

It's nice to hear that the Commissioner of Community Affairs said there will be a board wherein, perhaps, two engineers will sit and two other persons, but I must agree with the Senator from Paterson, and also the Mayor, Mayor Graves, who indicates how long will they sit? How long will it be?

It's refreshing to know that for the first time the municipalities are going to have some consideration before there's some sort of final adoption. I would hope, with these amendments and whatnot, that we have an opportunity to read them and whatnot. We should network more. I think we had one meeting in February where there was a diverse group of people who sat down concerning this matter. We have not come together since that time, as far as I know. I think the only way to do it would be for the State to go into a partnership with municipalities or whatnot. They should network more.

I would also disagree with the fact that there is no rental housing being built in the City of Newark. In the State of New Jersey, rental housing is being built. I would also suggest, as far as the Commissioner is concerned, the builders, and the Mayors of the State of New Jersey -- be it perhaps the sweet 16 urban Mayors in the State of New Jersey, or Mayors as a whole -- if the Commissioner, the builders, and the Mayors sat down in a capital improvement program over a period of time, I'm

quite certain that some Mayors have land available but don't have the money available to build houses. If there's some direction that can be given, I think that would be healthy, as far as the State of New Jersey is concerned.

Until such time as we have a further opportunity to look at the amendments or whatnot, we are opposed to it.

SENATOR CONTILLO: I thank you. Okay, I'll close the meeting now. As you see, we have a lot of work ahead of us yet, but at least we have a relatively complete bill that you can all review again, and we'll be back in June, same station. Hopefully, we'll have a more extended period of time to deal with it, and maybe we'll have the sponsors here.

**(HEARING CONCLUDED)**

**APPENDIX**

**New Jersey State Library**

WINDY CREEK ROAD

TESTIMONY OF

COMMISSIONER ANTHONY M. VILLANE JR., D.D.S  
DEPARTMENT OF COMMUNITY AFFAIRS

BEFORE THE SENATE COUNTY AND MUNICIPAL GOVERNMENT COMMITTEE

MONDAY, MAY 22, 1989

IX

Chairman Contillo,

- . Thank you for agreeing to this public hearing on S-3423 McManimon (Permit Reform Act), S-2963 - Lesniak (Site Improvement Performance Standards Act) and on a yet to be introduced impact fee bill which you (Chairman Contillo) has agreed to sponsor.
- . These three bills taken together represent the most important reform of our development regulatory system ever undertaken by this state. Together these three bills streamline and bring consistency to our permit and plan review process while eliminating the system of illegal and informal exactions that exist today between towns and developers.
- . As you know the package has bipartisan sponsorship in both Houses.  
  
It's now the Legislature's turn to put its imprint on this package. I want to compliment you for recognizing the urgent need to begin that legislative review.
- . Having come from the Legislature, I want to assure you that you will have the complete cooperation of myself, my staff and the entire department as you complete your work on the package. I've tried my best during the past six month since Governor Kean endorsed the reform effort in last January's State of the State Address, to craft a package that resolves as many of the legitimate concerns expressed by individuals and groups with whom we've met.

These groups include the:

- Urban Aid Mayors
- League of Municipalities
- Conference of Mayors
- New Jersey Future
- New Jersey Public Affairs Research Council
- SEED
- Home Builders Association
- Non-Profit Housing Agencies
- Land use experts from Rutgers  
and Princeton's Woodrow Wilson School
- Alliance for Affordable Housing
- League of Women Voters
- Association of Counties
- Alliance for Action
- Association of Public Housing Authorities
- State Planning Commission
- State AFL-CIO
- Environmental Lobby (Phyllis Elston
- David Moore of the Conservation League

Additional each mayor and legislator received a copy of our "White Paper" outlining our position on the bills.

2X

- . Let me tell you what I've learned over the past six months through these meetings.
1. There is a general agreement that our development regulatory system is in chaos. Too many actors are involved with overlapping responsibility and inconsistent standards. Too many projects are permitted and reviewed in Trenton where departments are understaffed to do the job in a timely fashion. Everyone agrees the cost of these delays are substantial.
  2. The problem is not with policy standards like environmental protection standards but rather with their implementation. For example, is it really necessary for six different government entities to review and approve project drainage plans as is the case here in Mercer County.

Policy considerations are outside the scope of this package.

3. Local home rule over zoning decisions (what can be built, where and by whom) must remain solely a municipal responsibility. This includes questions of project design, whether it be design of buildings or design of streets and landscaping.
4. The proposed reform package must be evolutionary not revolutionary. Any reform package that would change the regulatory system overnight will cause too much fear and uncertainty.

Changes must come from within organizations not be imposed from without.

The reform package establishes a series of procedures that will lead to greater streamlining and consistency and cost savings as implemented. However, the governments themselves determine the pace and extent to which they participate with the reform procedure.

. I would now like to highlight the purpose of each bill:

Permit Reform Act

- Creates a single State Development Policy Code, containing all development regulations of state, county and regional governments. The affected governments themselves determine what is to be put into the code.

3X

- Creates an advisory board to review all existing development regulations within five years and all proposed regulations for consistency and conflicts with existing regulations of other levels of government, for ambiguity, for performance measurement standards, for whether or not the agency has the legal right to issue the regulations.

I need to emphasize the board is only advisory. Through public hearings and staff meetings, the board will work with the departments to better regulations.

However, the government agencies are not bound by the recommendations of the board. I believe, however, that the process will create better regulations at all levels.

Again, let me emphasize, no rule making or policy making authority is lost to any government.

- Finally, the Permit Reform Act allows state, county and regional governments the option of delegating permit and plan review authority to municipal and county governments. The responsible agencies determine the extent and degree of delegation. Furthermore, local governments have the option of accepting or rejecting the delegation. Of course, where permit and review delegation is considered, licensing and certification standards should be created by the delegating government and local governments would receive all fee revenues.

#### Site Improvement Performance Standards Act

- Creates a site improvement board to establish performance standards for engineering and technical regulations of municipal subdivisions and site improvements. Examples includes technical standards for the width and slope of streets, pavement depths, sewer pipe size, soil grading and water requirements for domestic and firefighting purposes.
- The site improvement board would consist of 11 members, controlled by municipal government representatives. (Two municipal engineers, two municipal planners, a member of the League of Municipalities, a member of a municipal environmental commission.

4X

This means that municipal governments would control the standards developed for their use. This was a point made by several municipalities who commented on our plan.

- The board would not create ticky-tacky towns all similar to one another. Design issues are outside the scope of this bill as are zoning decisions. The board can create as many performance standards as it decides are needed for the differing types of development found within municipalities.
- Performance Standards means that rather than set a single numeric standard for the size of street paving, for example, a formula will be used to calculate pavement depth using relevant factors such as average number of car trips, type of vehicle and number of cars using the road.
- The board controlled by municipal governments would have the final say on all municipal performance standards. The Commissioner of DCA cannot overrule or rewrite the board's recommended standards.
- Environmental groups were concerned that the municipal standards would preempt state department's ability to regulate municipal standards when state law has given the state power -- such as in wetlands protection.

The bill protects the state's right to overrule municipal standards where needed.

Impact fees

- Makes it legal for municipal governments to collect impact fees for off-site sewer, flood, transportation, parks, recreation, schools and public safety capital improvement costs.
- Allows for collection of fees to finance affordable housing
- Requires municipal governments to enact ordinances outlining the capital projects eligible for impact fee funding and the formula used to calculate the amount of the fee.

5X

I'm not going to tell you that this package is carved in stone and is the last, and best, program possible. It won't make everyone happy and maybe that's the best evidence of a workable program. It does take into account the legitimate concerns of the many groups we've met with over six months.

It's my best attempt at a compromise package.

I would urge you as you listen to today's testimony, to ask those groups of individuals critical of our package how they would improve upon it.

It's too late for stonewalling or unconstructive criticism. The economy of our state and the affordable housing needs of our citizens demands action now.

6X

# New Jersey Society of Municipal Engineers, Inc.

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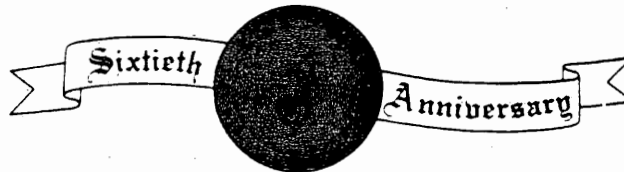
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1929-1989

## NJSME POSITION PAPER

Bill: S-3423  
A-4435  
Permit Reform Act

Sponsor: Senator Francis J. McManimon  
Assemblyman Robert D. Franks

### Background on the Bill:

The premise for this legislation is that reforming the regulatory process can greatly reduce costs. It is intended to codify all applicable non-municipal development standards and delegate their enforcement to municipal and/or county governments, at the option of the local government. A 15 member board (nine voting members) under the auspices of DCA will review all non-municipal permitting processes and establish a single set of review standards and fees which will be implemented at a lower level of government. This will, however, be overseen by the state.

### Executive Summary of NJSME Position:

1. From the municipal prospective, we have as much of a problem obtaining state permits as anyone else, and favor simplifying the process.
2. The bill in its present form is extremely confusing and needs substantial rewriting.

3. The method of implementation is unclear and leaves a number of questions unanswered. If passed, this legislation in its present form would end up creating more problems than now exist.

The sponsor or DCA should investigate and present an operational definition of how a municipality would process such applications as a county road opening permit, a state highway occupancy permit on a section of highway where a corridor study is being performed, and a sewer main extension. A full investigation of these typical permits will exemplify the questions which are unanswered.

The sponsor or DCA should also identify all of the permits which will be affected by this legislation. This will give additional insight into the extent and complexity of what is being proposed.

4. Many of the permit requirements are extremely technical in nature and we question if a nine member voting board (two of whom are professional engineers) can possibly (or even legally) establish an engineering design criteria. This is inconsistent with the requirements of Title 45:8-39 regarding the practice of engineering without a license and Chapter 40 of Title 13 of the Administrative Code. We disagree with consensus standards.

5. The legislation will overburden some municipalities and counties who are not equipped to deal with this additional work. We question if this type of review and enforcement is practical at the local or county level.
6. The issue of municipal and/or county liability has not been addressed, and will create a number of problems.
7. Having the process subject to the review of the state agency having primary responsibility for that area of development regulation has not worked in the past.
8. DCA is not qualified to train technical people to perform engineering reviews.

On the basis of the foregoing, the New Jersey Society of Municipal Engineers is opposed to this legislation as written. We do, however, support the concept of reforming the regulatory process but it should be done by reforming and reorganizing the State agencies. These issues are so complex that they must not be addressed by hastily prepared legislation.

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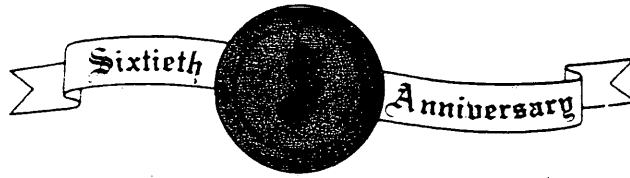
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1929-1989

## NJSME POSITION PAPER

Bill: S-2963  
A-2915  
Uniform Subdivision and Site Improvement  
Standards Code Act  
DCA Proposed Committee Substitute for S-2963  
(Revised 3/28/89)

Sponsor: Senator Raymond Lesniak  
Assemblyman J. Edward Kline

### Background on the Bill:

The state has tried for a number of years to provide and/or to encourage affordable housing. Unfortunately, they have experienced only limited success. Its most recent effort promoted by the N.J. Builders Association, involves a trilogy of bills intended to cut red tape and save builders' costs. The premise is that this, in turn, will cause the builders to reduce housing costs, presumably to an affordable level. This Position Paper will focus on S-2963 which is one of the three Bills. Subsequent Position Papers will be developed for the other two Bills as they progress.

### Executive Summary of NJSME Position:

1. The premise of the Bill is flawed.
2. The Uniform Construction Code analogy is improper.
3. There is little or no relationship between the cost to build a home and the sale price.

10X

4. The New Jersey Law mandates that only Licensed Professional Engineers may be responsible for design and construction details for all public improvements. The Site Improvement Board and the use of the Model Subdivision and Site Plan Ordinance violates this law.
5. The use of performance standards does not make sense for most municipal improvements.
6. Giving the Commissioner of DCA the right to supersede all subdivision and site plan improvement standards established by any municipality under the authority of the Municipal Land Use Law is not proper.
7. DCA is not equipped to provide engineering training.
8. This Bill will have a negative impact on the entire Master Planning process.

On the basis of the foregoing, the New Jersey Society of Municipal Engineers, Inc. is opposed to the Bill.

The following is NJSME's detailed analysis of S-2963. Further information may be obtained from any of those listed on the Society's letterhead.

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NJSME DETAILED ANALYSIS OF S-2963 (Revised 3/28/89)

This analysis is divided into five sections. The first summarizes the background of the Bill and the state's rationalization for its creation. The next three sections outline the key elements of the Bill, and include the creation of the Site Improvement Board, the Model Site Plan and Subdivision Ordinance, and the Implementation. The last section lists some positive aspects of the state's proposal.

A. BACKGROUND

1. The Premise

The premise of the Bill is that "uniform" site improvements will help "avoid unnecessary cost in the construction process"; and will "ensure predictability", provide for objective standards rather than discretionary review, and improve the "efficiency of the application process" by establishing uniform "consensus" standards. The unstated objective is to make housing more affordable.

Neither the premise of the Bill, nor the objective, is supported by any competent documentation. It has clearly not been demonstrated, except perhaps from the builders' perspective, that this type of legislation is either needed or that it will be effective.

The price of housing is determined by market forces, not by the requirements of local officials. The often quoted 30-35% increase in housing price attributable to excess local regulation is unsubstantiated and grossly exaggerated.

2. The Uniform Construction Code Analogy

The DCA, in promoting this Bill, uses the analogy to the Uniform Construction Code and points to the benefits of such Uniform Code. The analogy is flawed and inappropriate for at least the following reasons:

- a. Prior to the UCC, municipalities had a choice of adopting a number of nationally recognized model codes for building, plumbing, electrical and other related areas (or perhaps their own). Such a multiplicity of recognized codes does not exist for site improvements - and perhaps for good reason. Soil conditions, traffic conditions, climate and even lifestyles vary throughout the country making a uniform, nationally recognized site improvement Code probably impractical to

formulate. By the time all the varying conditions are taken into account. The Code is no longer "uniform".

Adoption of one set of nationally recognized Building Codes to achieve uniformity is a different animal than creating a board to develop a new Code by "consensus".

- b. A major objective of the UCC was to "professionalize" building inspectors and other code officials. A new bureaucracy was established and licensing requirements were created.

Municipal Engineers who provide plan review and construction inspection services are already licensed professionals. We are already regulated by a state board, and further regulation by the DCA is unwarranted, unwelcome and inappropriate. We object to this kind of regulation as much as attorneys who counsel planning boards and government bodies would if the DCA attempted to regulate their professional practice.

- c. The UCC is a consumer protection oriented code because the eventual homebuyer is not present during construction to protect his interest. Public improvements constructed by developers, under the inspection of the municipal engineer, must be designed by a licensed professional engineer as any other public improvement constructed by the municipality. Municipalities do not need the DCA to protect their interests.
- d. At the working level, there is often confusion in implementing the regulations. It is not uncommon for an unscrupulous builder (when given an interpretation of the code which he does not like by the Construction Code Official) to call DCA, misrepresent the facts, and have DCA over-rule the local Construction Code Official. This necessitates that the CCO call DCA, track down whomever the builder talked to, explain the facts (usually local conditions with which the DCA employee is unfamiliar), and wait for a clarification.

The Uniform Construction Code of 1975 resulted from an entirely different background of construction codes and the non-licensing the Building Inspector.

There is no comparison to this proposed legislation where the duly appointed Municipal Engineer is

educated, licensed and totally (personally and professionally) responsible for the review, inspection and approval of improvements all in accordance to State law.

3. Responsibility and Liability of the Licensed Professional

New Jersey State law is very specific with regard to the licensing and practice of Professional Engineers, as well as licensed surveyors, planners and architects. Title 45:8 of the Revised Statutes, specifically, Sections 45:8-41 and 42, requires that only a licensed professional engineer shall be in responsible charge of the design, construction and maintenance of public works. The licensed professional engineer is personally and professionally responsible and liable for those projects which he designs, reviews, and inspects.

Chapter 40 of Title 13 of the N.J. Administrative Code, Subchapter 7, defines the division of responsibility for the design of certain improvements. For example, only a licensed professional engineer can design include the design and construction details of all public improvements including street pavements, curbs, sidewalks, sanitary sewage, and storm drainage facilities.

4. Performance Standards

Performance specifying started in the early 1960's in California in an attempt to find a more efficient method of school construction. Since then, it has been utilized primarily for building construction. In the past, most municipal improvements have been specified in the "prescriptive mode" rather than the "performance mode". One is a means and the other is an end.

In the prescriptive mode, the products are specified and the results are left unspecified. In the performance mode, the results are specified and the contractor is free to select the means. While prescriptive specifications allow the contractor little freedom in the choice of materials, fabrication technique, or method of installation, performance specifications give the contractor the opportunity to use inventiveness and ingenuity in fulfilling the contract requirements in an efficient and economical manner. A performance specification is more formally defined as: A statement of required results with

criteria for verifying compliance but without unnecessary limitations on the methods for achieving the required results.

This is a complex method and inappropriate for municipal improvements. The alternative which has been the practice for years is to have the manufacturer of a new product meet with the municipal engineer and present documentation on the use of new products.

#### B. SITE IMPROVEMENT BOARD

The Bill provides for the establishment of a Site Improvement Board in DCA. This Board is to be made up of the following voting members: one municipal governing body member, one environmental commission member, two engineers, two developers, two planners, and one architect. There will also be four non-voting ex official members. The composition and authority of this Board is inappropriate for the following reasons:

1. The Commissioner need not select an individual recommended by his or her profession. The establishment of this type of procedure could create a situation where the mainstream of a given profession is not represented. Also, the Commissioner's appointees, rather than those selected by a given profession, may feel obligated to the Commissioner and therefore may experience some difficulty in representing his or her profession in the best possible manner.
2. This Board of interested parties is established in the DCA, a department with no professional engineering experience or expertise to our knowledge, a department operating under the illusion that site improvement standards are as readily codified as building codes, a department whose commissioner is empowered to adopt by regulation a "statewide Uniform Subdivision and Site Improvement Code" and to amend those regulations, and further to establish "voluntary" (for how long?) certification programs for persons involved in enforcement of the code.
3. Due to the structure of this Board, S-2963 undermines the engineering profession as a whole and is in violation of certain administrative rules and regulations governing the licensure of professional engineers and land surveyors. Specifically, there would be a violation of Title 45:8-39 regarding the practice of engineering without a license. Also, Chapter 40 of Title 13, Governing the Administrative Rules and Regulations of Professional Engineers and

Land Surveyors, Subchapter 7, reviews permissible divisions of responsibility regarding site plans and subdivisions. As indicated by the Code, there is a very definite division of responsibility of which certain responsibilities can only be undertaken by a licensed engineer, architect, planner or land surveyor.

It is clear from the above that only engineers should be allowed to establish design policy relating to engineering matters, planners relating to planning matters, land surveyors relating to certain aspects of major subdivisions and architects relating to their field of expertise. The proposed composition of the Board does not provide for each profession to establish their own design policy.

4. Since there are 9 voting members, presumably the majority will rule. On certain issues, the engineer representatives could be outvoted by a 2 to 7 margin, thereby enabling non-engineers to make judgements on the basis of consensus regarding technical engineering matters.
5. Section 7.C of the proposed act provides for the Board establishing certain criteria regarding 1) General site design, 2) Arrangement and design of open space, 3) Landscaping design standards, and 4) Standards for the classification and arrangement of streets. Each of these items are best decided on the local level and it is innappropriate for the State government to dictate to the local community how they should preserve and/or enhance the character of their community.

C. MODEL SUBDIVISION AND SITE PLAN ORDINANCE

Sections 6 and 7 of the Bill requires that the Board "shall appoint technical committees...and shall, insofar as possible, develop specific standards through a consensus process." "In developing the recommended technical and engineering, standards shall give great weight to the recommendations contained in the Model Subdivision and Site Plan Ordinance prepared for the New Jersey Department of Community Affairs in January of 1987 by the Center for Urban Policy Research at Rutgers, the State University." This is inappropriate for the following reasons:

1. This model ordinance was only intended to be utilized as a guide and was never intended to be adopted as the required design manual to be utilized on a state-wide basis. The fact is that members of the New Jersey Society of Municipal Engineers who assisted in the development of the Model Subdivision and Site Plan Ordinance stipulate that the final Ordinance was a

compromise document, with the Home Builders taking one extreme position and municipal representatives (whose sole objective is the health, safety and welfare of the public) taking the opposite position. (Paranthenetically it is noted that the funding for this document came, in part, from the Homebuilders.)

2. The prospect of DCA developing engineering design standards through a consensus process and utilizing the Model Subdivision and Site Plan Ordinance circumvents the State licensing laws and is professionally and technically unsound.
3. This model ordinance has been utilized and found to be inaccurate, inconsistent, and in some cases wrong.

#### D. IMPLEMENTATION

After the Site Improvement Board is established and promulgates standards, there are a number of implementing measures which are questionable.

##### 1. The Municipal Land Use Law

Paragraph 7.g states "At the same time the Board submits its recommendation for state-wide uniform on-site improvement standards to the Commissioner, it shall also submit to the Commissioner, the Governor and the Legislature such recommendations as it may deem appropriate for amendments to the Municipal Land Use Law... to facilitate the purposes of this act." Also, paragraph 8 of the Act indicates "Upon adoption, the regulations adopted by the Commissioner pursuant to this act... shall supersede all subdivision and site improvement standards established by any municipality under authority of the Municipal Land Use Law..." We question the wisdom of disassembling a piece of legislation which has become the corner stone of development in New Jersey over such a long period of time.

##### 2. Training Programs

Paragraph 7.h of the Act provides that "The Commissioner shall have authority, after, consultation with the Board, to make subsequent amendments to those regulations and to establish by regulation, training and voluntary certification programs for persons involved in the enforcement of the state-wide uniform on-site improvement standards". Will these people be licensed professional engineers? If not, it appears they certainly would not be qualified to perform the enforcement and/or site inspections in accordance with Title 45:8 or Chapter 40 of Title 13 of the

Administrative Code pertaining to professional engineers and land surveyors. Also, what may be created here is a duplication of efforts where inspections are conducted both by the Department of Community Affairs, as well as a licensed professional engineer, thereby creating additional costs to the developer and a higher cost of housing.

### 3. The Master Plan

One of the major items which will be lost if this act is adopted is the interfacing of new development with community master plans. Specifically, the municipal engineer, through the Municipal Land Use Law, provides for the construction of roads, sewers, water mains, etc., to be integrated in a manner to serve the community as a whole. If this legislation is adopted, we fear that municipal officials will have their hands tied in approving certain projects on a piecemeal basis, thereby losing the big picture. The model ordinance lacks proper planning and foresight whereby a residential collector street may be built by a developer when really an arterial is needed. Also, there may be no consideration in prohibiting lots facing on a future major through street so as to eliminate individual driveways entering onto the thoroughfare. The same logic applies to all utilities and infrastructure which needs to be planned out and integrated within the community on a community-wide basis.

It is certainly much more economical for the developers as a whole to build one one 12-inch water main than three 8-inch water mains to serve three separate developments.

### 4. Cost

\$200,000 is appropriated to implement the legislation. If the DCA is to be staffed professionally, the cost to the taxpayers will be orders of magnitude greater.

## E. SOME POSITIVE NOTES

Based on our review of the background for the proposed legislation and our analysis, we are in agreement with the following:

1. Housing prices should be reduced. Unfortunately, in the current market place there is little or no relationship between the cost to build a home and the sale price.

2. Red tape should be cut. Unfortunately, the red tape is at the State level, with DEP being the worst problem. That is where the cutting should start, not at the municipal level where the ultimate price for design compromise will be borne by all of the tax payers.
3. Training of review and inspection personnel is desirable. The N.J. Society of Municipal Engineers has established a Certified Municipal Engineer's program to train Municipal Engineers in the specific details of that discipline. Additionally, most Municipal Engineers and employees attend a variety of seminars and educational activities throughout the year.



OFFICE OF THE MAYOR  
CITY OF TRENTON, NEW JERSEY 08608

ARTHUR J. HOLLAND  
MAYOR

May 19, 1989

The Honorable Paul Contillo  
Chairman  
Senate County & Municipal Government Committee  
State House Annex  
CN-068  
Trenton, New Jersey 08625

Dear Senator Contillo:

It is my understanding that the Senate County and Municipal Government Committee will be having a hearing on May 22 to consider a series of bills dealing with the construction permit process which are supported by the New Jersey Department of Community Affairs. This legislation includes S.2963 and S.3423.

Mayors of Urban Aid cities, at a meeting on March 8 of this year, heard a presentation by Community Affairs Commissioner Anthony Villane concerning this legislation. It was the consensus of the mayors that the objective of the legislation in streamlining and providing some uniformity in the construction development process had merit. While I am sure that there are concerns about specific provisions of the proposed legislation, I would hope that necessary changes in language in the legislation could be worked out to satisfy the concerns of municipalities.

I understand that the Department of Community Affairs has already agreed to support changes to the legislation to accommodate the interest of municipalities. Given that spirit of cooperation, an accommodation with municipal interests should be able to be achieved.

Sincerely yours,

*Arthur Holland*

AJH/rpg

cc: The Honorable Anthony Villane

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# AMERICAN LITTORAL SOCIETY

SANDY HOOK • HIGHLANDS, NEW JERSEY 07732 • 201-291-0055

May 22, 1989

COMMENTS BEFORE THE SENATE COUNTY AND MUNICIPAL GOVERNMENT COMMITTEE  
ON S-3423, THE PERMIT REFORM ACT.

The American Littoral Society is a private, non-profit coastal conservation group with 8,000 national members, 3,000 of whom call New Jersey home. ALS is concerned about how existing and future land use regulations affect the natural resources and habitats in our coastal zone.

We have read, with a great deal of care and concern, S-3423, The Permit Reform Act, and Commissioner Villane's justification for it, his "White Paper" dated April 14, 1989.

We are tempted to go over this bill section by section and line by line, to give its specifics a full public airing and we welcome any desire the Committee may have to question us on our understanding of those specifics. But we think it will be more to the point to examine the false assumptions behind the bill and the negative impacts it will have upon most of the important pieces of land use environmental legislation in our State.

This bill indicts bureaucracy and red tape as its chief villains. Too many conflicting and duplicative "development regulations" are alleged to be the reason for New Jersey's housing costs being twice the national average, to have led to a regulatory process that is unpredictable, and to have eroded the "key role which municipal government must play" in overseeing development.

Let us state, first of all, that we do not accept the figures or the

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premise that it is our state's development regulations that have primarily driven up the costs of housing. We think that overall, market forces are responsible for driving up the costs of housing and land between Boston and Washington, D.C., and especially between New York and Philadelphia. We acknowledge that fees and regulatory burdens have not made these costs any cheaper, but we will reserve judgment on their actual contribution until we see a Consumers Union report analyzing the many other factors that contribute to housing costs, such as lack of innovation in materials, construction and labor practices, a certain drift upward, perhaps, in profit margins between 1950 and 1989, and the effect that the vast private sector real estate bureaucracy has on the entire process.

We also find it interesting to hear cries of "foul" and "unfair" concerning risk and uncertainty issues coming from the development and home builders' lobby. One would expect a great deal of acceptance and even relish in risk taking from a group committed to the free play of market forces and the inevitable uncertainties that such forces entail. ALS has had first hand experience in assessing some regulatory statistics about the "uncertainty" of approvals. We maintain, and we have not been challenged in public by the Division of Coastal Resources on the figure, that between 95 and 98 percent of all CAFRA applications wind up with approvals if they are not turned away by the pre-application conference meeting. One wishes that all areas of life and business had such fine outcomes for risk taking. Even under the Governor's hated Emergency Rule of this past fall, "DEP records show that, as of the end of March" out of the 177 applications that were reviewed, "169 were approved, eight were denied ...", an approval rate of 95% (Asbury Park Press, 4/11/89).

And what about the premise behind a major thrust of this bill, the

*Ad. X*

one that aims to consolidate as many development regulations as possible into a one-agency review process and to have it take place at the lowest level of government? ALS comes here to testify about what such a premise would mean for environmental protection, especially in regards to our wetlands laws, but also for our Pinelands Commission, Hackensack Meadowlands Commission and the CAFRA statute.

We are not pleased with what we see before us. Indeed, we are alarmed by the composition of the proposed board and see nothing but bad news for the environment in the way that deck has been stacked in Section 5, and in the "disincentive section," Section 10, where we find the "if we don't get to it - it expires" provision. But now for a little history about the role of local governments in "protecting" the environment.

It is our reading of the way environmental laws have developed in our state that local governments, at the lowest possible level, were always free to pass the strictest environmental laws the courts would allow to protect their air and water quality, their wetlands, and any special habitats that might be found within their jurisdiction. Did they, in most cases, do that? The answer is a resounding no. The federal and state governments were the first to become alarmed by threats to our natural resources and to design legislative answers, even though almost all local governments had potential solutions through their powers of zoning and land use ordinances. The real question is why municipal governments were so slow in responding? In our minds, the answer is because the values and ethos that good conservation thinking rests upon, the ability and inclination to ask what the cumulative effects of today's land use practices will be upon natural resources ten and twenty years

down the road, simply was not present in enough municipal officials, elected or appointed. We hope, sincerely, that this situation can change. We have some indications that it might, but not yet enough to allow us to accept the trusting premises that this legislation is based upon.

When Governor Kean held a National Wetlands Policy Forum meeting last May (1988) at the Summit Hotel, I heard a panelist from Connecticut describe that state's unhappy experience with the delegation of wetlands' protection to the local municipalities. They simply did not succeed in carrying out the intent of the law and the local government employees involved had to be called back for more training by the state agency that initiated the program. We don't want to repeat that experience with our wetlands.

We think that this bill will at best do nothing positive for the environment, and at worst it will do a great deal of harm, either by weakening or abolishing good existing laws or causing the parent agency precious staff time, that they can ill afford to lose, in defending their regulations through the process outlined in Section 8. We therefore will not attempt to do a "patch and paste" job to make this a better bill. We do not want to see it or anything like it pass. Its premises and methodology are not sound, as we intend to show. But we will offer a simpler, less expensive remedy for some of the problems of regulatory duplication and overlap that it purports to solve.

We cannot help but wonder, out of concern for both the environment and the public interest, why Commissioners and Directors are not held more directly accountable by Governors for their inability to solve the alleged red tape/overlap problem. We also note, at this point, that there are no case-studies contained in Commissioner Villane's White Paper.

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We wonder why? Surely the development community has a few specific examples burned into their memory and probably even court record documentation of such duplication and contradiction. For now, let's assume they do. Why then, as an alternative to this bill, can't there be the insistence by the Governor (with follow-up by his staff), that the Directors and Commissioners who serve at his pleasure, meet in joint committee to correct the duplications, or where the duplication cannot be avoided, to state publicly their reasons for retaining the status-quo? We fail to see why and how a new bureaucracy, whose members don't have the specific insights that the Division Directors and their staffs have, especially about the history and intent of the relevant regulations, is going to be any more successful in straightening out the problems than the more directly involved parties would be.

We want to ask the supporters of this bill some direct questions. If it is so necessary and pressing, if the abuses under existing regulations have been so flagrant that the alleged victims have produced such a poor remedy, why haven't we seen any Commissioners or Directors of the agencies involved dismissed for failure to straighten out the alleged problems? If the development community has the specific duplications and overlaps in hand and has made and documented good faith attempts through the relevant Departments to clear up the conflicts (and pointed them out to the Governor) and can document the failures or refusals to budge, then we want to know why heads haven't rolled for the failures?

One of the sorriest parts of this legislation can be found in Section 7. This section merely duplicates the rule promulgation and public hearing process that most environmental regulations currently undergo before their adoption. In fact, the guidelines in Section 7 are a lawyers

delight - and their own words contradict the rule at 7(e) - that the "proposed regulation is not ambiguous or vague, in whole or in part."

In short, Senators, we think that something strange is going on in this bill, besides just cutting red tape. We think it will turn review power for existing and future environmental regulations over to a proposed State Development Policy Code Board whose very composition as specified in Section 5 ought to scare the hell out of anyone who wants to protect what remains of our wetlands, Pinelands, Meadowlands, and other sensitive coastal areas.

If the committee will allow them, here are some closing thoughts on the problem of efficiency and inefficiency in public bureaucracies, a topic addressed in Section 17 of this bill. On this subject a decade's perspective supplies the best insights. We have witnessed over the past ten years, at the national and state level, a fairly steady drumbeat of elected indignation, of direct scorn, heaped upon the heads of our despised bureaucrats. One would think it is just about the lowest job one could hold, to be a "Bennie or Shoubbie" from Trenton, trying to tell our local elected shore officials how to best manage "their" coast. No matter that we had lost over 50% of our coastal marshes before we had state legislation to protect them and some state wetlands biologists to map them. When one idealizes risk-taking entrepreneurs and castigates environmental bureacrats for nearly a decade, it doesn't take a MBA from Harvard Business School to figure out the effects such treatment has on employee morale and therefore efficiency within those bureaucracies.

An alternative approach should be obvious. Go inside these alleged monsters, get your hands dirty in the cogs and wheels of the regs, see where they are failing, set standards and goals for changes and hold the top appointed officials to a timetable for corrections, and axe 'em if they

can't correct the situation. No magic cure is needed at all; just a sincere desire to make them work, rather than to dismantle them, undermine public confidence in them, or just plain override them by creating yet another layer of bureaucracy to "reform" them.

And finally, isn't there a delicious irony contained in the proposal to send in the Director of the Division of the Budget and Accounting to straighten out staffing and timeliness problems in the environmental bureaucracy, as called for in Section 17. This, after we have just seen our state go from budget prince to pauper in under a year, with projected revenue off not ten or twenty million, but hundreds of millions. As best as we can discover, the official explanation is that our state budget people were working with inherited, newly developed federal projection tools. Again, no heads have rolled over this performance collapse.

We are very skeptical about the outcome from sending in this same department to correct understaffing problems, in, for example, our wetlands' enforcement units.

Thank you for your time and consideration.

Respectfully submitted,

*William R. Neil*

William R. Neil  
NJ Coordinator

P.S.

We haven't yet seen mentioned, in the bill or the White Paper, the role that the legislative process and the alleged victims of the bureaucracy themselves play in making regulations unnecessarily complex. Anyone who writes regulations knows that they can be made simpler and more comprehensible but therefor more arbitrary only at the risk of judicial reprimand and objection from very specific regulated parties. The federal tax code has been a perfect example of this, with endless, often disguised special favors addressing very limited situations, put in for conscious benefit of an of an often unnamed party, leaving the final result incomprehensible to all but the most inside of **players**. So please, we're all political adults in this room, let's not pretend that all the red tape is imposed upon the regulated; they beg for no small part of it themselves, or at least leave the regulated with the implanted fear of their wrath if they don't take care of the potential objections, sometimes before they are even spoken of.

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STATEMENT BY WILLIAM G. DRESSEL, JR.  
NEW JERSEY STATE LEAGUE OF MUNICIPALITIES  
OPPOSING S-2963 AND S-3423  
BEFORE THE SENATE COUNTY MUNICIPAL GOVERNMENT  
MONDAY MAY 22, 1989  
AT 2:00 P.M.  
ROOM 408  
STATE HOUSE ANNEX

The League has reviewed the proposed amendments to S-2963. We believe that this initiative is an unnecessary, ill-conceived and unreasonable attempt to centralize, in the State's Bureaucracy, a function which is, and of right ought to be, retained at the municipal level.

As you may have guessed, the League stands unalterably opposed to S-2963.

We have likewise reviewed S-3423. And, while we applaud the basic concept of this initiative, we are not yet prepared to endorse it, as currently drafted. In its current form, the bill could become a Trojan Horse; which, when put in the hands of an overzealous State Development Policy Code Board, could be used to circumvent the public's local defenses and facilitate the abduction of our Helen -- Home Rule.

What follows is a more detailed discussion of our opinions of the two bills.

I. The Statewide Mandatory Subdivision and Site Improvement Standards Act

This bill is based upon a flawed premise. That premise is that the price of housing in New Jersey is unnecessarily inflated by the diversity of subdivision and site plan requirements among our 567 municipalities. At first we were led to believe that these standards are responsible for 30% of the cost of residential housing. But D.C.A.'s own documents show that builders themselves estimate that municipal requirements account for only 7.8% of the cost of a new home. We believe that even that estimate is overblown (DCA Developer Residential Survey attached).

Existing site plan and subdivision review provisions of the Municipal Land Use Law were explicitly designed to protect the public health, safety and welfare. Those provisions recognize the geographic, topographic and ecological differences which distinguish our State's diverse municipalities. Those provisions are not only adequate; they are, in fact, a nationally recognized model. Further, those provisions were drafted by a committee which included home builders and they have actually been faulted by some municipal officials for being biased in favor of the applicants.

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Under the amended version of the bill, municipal boards will still have to conform to specific standards set forth in several model community designs. There is no more room for local decision-making within each model than there was in the original version of the bill. The original "cookie-cutter" approach has been substituted with a "multi-cookie-cutter" approach.

Similarly, we question how "uniform technical and engineering standards which vary based on differing local geographic, economic and environmental characteristics" in section 7c could (1) ever be determined in one set of uniform standards except in the most general way; and (2) ever be applicable to every situation since topographical and related environmental conditions often change from area to area. They are site specific.

The new language, which appears in Section 7d, is particularly distressing. Earlier recommended amendments attempted to accommodate the diversity of our State's 567 municipalities, by limiting the scope of the new State Board's authority. But, according to the proposed substitute, the Board could mandate not only technical, engineering standards, but also such things as landscaping, distance between shade trees, open space design and bicycle paths. This goes far beyond anything envisioned by the original bill. This is no longer a uniform. This is a straitjacket.

We are especially troubled by section 7f which allows all state permitting agencies to incorporate their existing rules into the standards, and section 8 which provides that these standards will supersede all subdivision and site improvement standards now existing pursuant to the M.L.U.L. The result will be a state multi-agency uniform code which will usurp the subdivision and design policy-making prerogatives that rightfully rest with local planning boards.

For these reasons, we remain unalterably opposed to the proposed committee substitute for S-2963.

## II. Permit Reform

Let me assure you that we would welcome greater permitting coordination at the State level. Though the current leadership at D.C.A. may not realize it, municipal government is, like the builders, forced to negotiate the byzantine maze of state regulation before it can commence construction of important public works. We, therefore, would welcome such coordination and, if that were as far as the bill went, we would readily support it.

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Our specific concerns, however, are as follows.

Section 2 c draws an analogy between Permit Reform and the Uniform Construction Code. We fail to see how that comparison applies. Construction methods can be standardized in a more coherent manner. And, of course, the U.C.C. sets minimum standards. This bill seems to tend toward absolute standards.

Section 4 wherein "Development permit or approval" is defined, seems to include municipal requirements. The question arises because the sponsor uses the phrase ". . . any permit or approval which is required under any development regulation . . ." We believe that this definition requires clarification; especially since the previous Section (Section 3) calls for a liberal judicial construction of the Act.

Section 7. c seems vague and, therefore, subject to differing interpretations. Is the goal of permit reform one agency review of each development application or municipal review plus one other agency review? Will local government be by-passed, if the Board judges that we lack the "technical competence" to undertake any particular review? Could this language be "liberally construed" in such a manner that the municipality loses all control over development applications? If a municipality is able to recruit "technically competent" staff, how much will we have to pay them? When we lose them to the private sector, who will pay for the training of new people -- people who will, in effect, be executing the will of the State Board? What restrictions, fees and penalties will be attached to the administrative appeals process?

Section 9. b, again, could lead to the annulment of local regulations. The Board is directed to "examine all existing development regulations" and to maximize the availability of "one review of each project."

Section 11 states that "No action shall be required of any applicant that is not required pursuant to the regulations in effect on the date of application." Does this mean that a developer can ignore local regulations, so long as his or her application conforms with the proposed State Development Policy Code?

Section 12 (coupled with the mandate for liberal construction contained in Section 3) poses similar problems. "No development (enforcement) agency . . . shall impose or enforce any requirement which is not incorporated in the Development Policy Code nor shall it establish any condition for approval unless the requirement or condition is incorporated in the Development Policy Code." And, again, the questions relating to free and unlimited appeals crop up.

Section 13. c raises the following questions. What are the guidelines? How is this decision made? What is the time frame? Who pays the costs associated with "staff-up" or "staff-down" that result from any adverse actions?

Section 13. e is likewise, problematic. What is meant by "any other local government having jurisdiction . . ." ? Sewerage Authority? Fire District? School Board? There is an obvious need here for more precise language.

Section 14, similarly, cries out for better draftsmanship.

Section 15. d. Raises serious questions. What are projected funding needs, allocations and shortfalls, and what is their timing? Is there excess money in the U.C.C. Revolving Fund? If so, why? If not, won't the transfer adversely effect U.C.C. operations? Is it desirable to give the Commissioner the discretion to transfer any D.C.A. revenues into this new account?

Sections 15. b through 16 raises such questions as these. How does the municipality receive funds? What is the time frame? Who establishes staffing levels? By what criteria are fees established? Who collects the fees? Are they established and distributed with local needs in mind? Why the unnecessary cross-reference to the Uniform Subdivision and Site Plan Bill?

Section 17 raises these questions: How long will this review take? What are the rules that will govern the review? How rapidly will affected parties have to wait for relief? Who will pay for the review?

Section 19 needs clarification. While we, explicitly, retain the authority to "establish" development standards, will we still have the authority to enforce those policies, given the "liberal" construction mandate and all that comes before?

These, then, are our specific concerns with S-3423. We believe that if all interested parties were to come together, some sort of accommodation would be possible. We hope that such a meeting could be arranged and we stand ready to participate.

Thank you for your time and attention.

RESIDENTIAL DEVELOPER SURVEY  
by Susan Lentz

Question: What percent of the selling cost of new residential structures is attributable to the following:

Land Costs	27.5
Zoning & Subdivision approvals	5.7
Labor Costs	22.1
State Permits	2.2
Municipal Permits	2.1
Material Costs	27.01
Architectural and Engineering	4.2
Financial	5.0

NOTE: Total cost of Zoning and Subdivision approvals and municipal permits 7.8%

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# MSM

MIDDLESEX-SOMERSET-MERCER REGIONAL COUNCIL, INC.

## Statement of MIDDLESEX SOMERSET MERCER REGIONAL COUNCIL on three bills proposed by the Department of Community Affairs.

During the past few weeks readers of Central New Jersey's popular press have been introduced to an interesting notion that probably has enough truth in it to be attractive to many. The notion starts with the common observation that housing in New Jersey is too expensive by any standard and that all areas of our economy will suffer if something isn't done about the situation. Next, the notion is expanded to identify unnecessary and inefficient regulation as the cause of the situation and anecdotal evidence is heaped upon regulatory agencies of every stripe. Finally, specific "remedial" legislation is proposed to right the situation, Committees meet to perfect the bills, and the way to affordable housing is found and embarked upon.

Some of the readers in Central New Jersey are unconvinced and want go back over some of the steps leading from problem to solution more carefully. The Middlesex-Somerset-Mercer Regional Council (MSM) counts itself among the unconvinced and believes that it can contribute to the processes of defining and solving the problem. Our statement here is a beginning.

- MSM believes that housing in New Jersey is too costly -- there is ample evidence of that. However, we are not convinced that the delays in processing applications for development are to blame or that the delays are as widespread as the press and anecdotal evidence suggest. To explore this issue, MSM will carry out a quick survey of a sample of applications from its region. The results will be available in 3-4 weeks.

This issue, notwithstanding, MSM believes that reforming development regulations and streamlining permitting processes is important -- the State has been grappling with it for years --. However, the State Development and Redevelopment Plan is equally important. It provides the conceptual planning context for all three of the bills under consideration here and it is a context that they must fit. Because the two efforts must be coordinated MSM believes that "on site improvements", "permit reform", and "impact fees" should be dealt with by the Office of State Planning. To insure that legislative intent is clear, review boards should be appointed by the Governor, the President of the Senate, and the Speaker of the House. To ensure proper representation, board members should be nominated by professional associations and agencies that are involved in the planning, regulating, and permitting processes.

- MSM believes that the "Uniform Subdivision and Site Improvement Standards Code Act" should be carried out in several, sequential

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efforts that build upon progressive analysis and understanding. First

a "blue ribbon" panel should attempt to extend the "Model Subdivision and Site Plan Ordinance" (Rutgers, 1987) to cover the eleven plan factors proposed. This effort in itself will be terribly difficult because the standards must be "uniform" yet "sensitive to location, environmental conditions, and economic considerations." Furthermore, the role of judgement (not "discretion") and the meaning of "performance" standards will have to be thought out and clarified. When this has been accomplished the panel's "uniform" codes should be negotiated with New Jersey's municipalities and counties, and modified where necessary through a "cross acceptance" process. Finally a sensible administrative system should be designed to be compatible with the codes since they will be known at that point.

- MSM believes that the "Permit Reform Act" should also be divided into sequential stages. A similarly constituted "blue ribbon" panel should first undertake documentation of duplication and interference among state agency regulations. Creation of the State Development Policy Code would follow and an administrative system would be the final design step.

The current bill before this Committee is an attempt to collapse these steps and to provide the final design before the intermediate results are known. For example, in order to provide the blueprint of an administrative system that can handle any regulatory complexity the authors have provided for vertical and horizontal delegation of authority that is subject to options, limitations, and interagency reviews. The result, rather than providing developers with "predictability", will show a unique profile of review agencies for each regulation and, quite possibly, a unique profile for each municipality in which the regulations are applied. This will certainly not be helpful.

We believe that the permit reform undertaking is both important and promising nevertheless. It is complex and must be given every chance to succeed according to a well thought out, sequential plan. The effort should be undertaken by the Office of State Planning in order to provide coordination with the State Development and Redevelopment Plan and to provide cross acceptance among state and local agencies.

- Finally we ask that you turn your attention to Bill A-1570 and "impact fees". This subject is of immense importance to most New Jersey municipalities that are faced with shrinking revenues from the State, overburdened ratable bases for the property tax, and outstripped infrastructure. Impact fees have held out promise of rescue but the Courts have made it clear that enabling legislation is necessary if impact fees are to be of use beyond the narrowest, on site applications.

The bill under consideration and some of the reviews of it that we have seen raise the issue of whether impact fees should be calculated by general formulae that are applicable statewide or regionally or whether they should be based on planning for

specific infrastructure projects that have a basis in local

Master Plans. Of course we recognize that general formulae are going to fit statewide variation very poorly and so we are driven to the planning based solution. On the other hand, we recognize that most municipal capital improvement plans are tenuous at best and so we move back. The solution probably lies in a general strengthening of capital planning (which is coming anyway) combined with formulae when the two yield similar results. When the two approaches yield dissimilar results a solution might be negotiated between the developer and the municipality. The County may be a choice for this because of its review of local plans per the State Development and Redevelopment Plan. In any case we look forward to the help that the final version will provide for municipalities that are struggling with infrastructure needs.

MSM commends you for the job you are doing with this important legislation. We also thank you for this opportunity to provide our thoughts and offer our help if we can assist in the future.

35X

New Jersey

PHILIP K. BEACHEM  
President

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# ALLIANCE for ACTION INC.

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P.O. Box 6438 • Raritan Plaza II • Edison, New Jersey 08818  
FAX (201) 225-4694 • (201) 225-1180

TESTIMONY

OF

PHILIP K. BEACHEM

VICE PRESIDENT

NEW JERSEY ALLIANCE FOR ACTION INC.

ON

PERMIT REFORM ACT

SITE IMPROVEMENT STANDARDS ACT

DEVELOPMENT IMPACT FEE ACT

BEFORE

SENATE COUNTY AND MUNICIPAL GOVERNMENT COMMITTEE

STATE HOUSE ANNEX, ROOM 408

ON

MONDAY, MAY 22, 1989

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My name is Philip Beachem, Vice President of the New Jersey Alliance for Action. The Alliance for Action is a statewide organization representing business, labor, professional, governmental and civic organizations.

For the past two years the Alliance has been actively working towards reforming the building permit process in New Jersey. We have conducted two statewide public hearings regarding problems associated with the building permit process in our State. The Alliance has also been involved and represented on various statewide committees which have addressed this issue. These include the State Commission on Regulatory Efficiency (SCORE) and the Cabinet and Citizens Committee on Permit Coordination.

In short, we fully support in concept the reforms as proposed by the Department of Community Affairs. We recognize that the Permit Reform Act, and the Site Improvement Standards Act are integral parts of making the system work for all concerned. A fair, predictable impact fee system which provides for proportioning fees on the basis of a rational statewide standard is far more preferable than the existing arbitrary system.

The Alliance believes that the regulatory system in New Jersey should work for both the general public and for those regulated by the system.

We are happy to lend whatever assistance we can to the Department and to this committee in an effort to make the system work better and more efficiently.

TESTIMONY  
OF  
WAYNE L. KARNELL  
FIRST VICE PRESIDENT  
NEW JERSEY BUILDERS ASSOCIATION  
ON  
REGULATORY REFORM  
BEFORE  
THE  
SENATE COUNTY AND MUNICIPAL GOVERNMENT COMMITTEE

MAY 22, 1989

38X

Mr. Chairman, members of the committee, I am Wayne Karnell, Vice President of the New Jersey Builders Association, a state-wide trade association, representing 3100 firms who provide the citizens of New Jersey with places to live and work.

I thank you for the opportunity to appear before you today to discuss these important measures of regulatory reform. We are pleased to see that the Legislative branch of government has begun to assert itself, and we believe that true progress can be made in reducing some of the unnecessary regulation which exists today.

The housing sector is the most regulated industry in New Jersey; in fact, the Department of Community Affairs reports that the cost of building and housing is more severe in New Jersey than anywhere else in the nation with few exceptions, and much of that cost is directly attributable to regulations. Some rules are vitally necessary to protect the health and safety of our citizens and the environment, but we all recognize that over the decades the proliferation of unnecessary and redundant regulation is clearly unacceptable.

As recently reported by the State Commission on Regulatory Efficiency (SCORE), based on an analysis conducted by the Center For Urban Policy Research at Rutgers, the cost of housing is inflated between 25 and 30 percent by "unnecessary and redundant regulations". The SCORE report went on to say..."that for every one billion dollars of new housing built in New Jersey, the homebuying public is paying up

to \$300 million in invisible taxes for regulations that neither protect the health and safety of our citizens nor improve the quality of our life or environment..." In addition, a recent series of articles in the STAR LEDGER alerted the public to a serious need for regulatory reform to reduce housing costs. Other press articles have served to heighten public awareness (e.g., the recent WALL STREET JOURNAL editorial on "Housing's High Costs").

We at the New Jersey Builders Association have dubbed the cost of unnecessary and redundant regulations--the CURR Tax. In the real estate sector alone, the CURR Tax totaled in excess of 1.5 billion dollars last year, enough money to purchase about 10,000 new homes at current prices...enough money to house one third of New Jersey's homeless population in single family detached homes. Staggering statistics!

FOR ADDITIONAL BACKGROUND INFORMATION SEE APPENDIX:

- A. NJBA TESTIMONY BEFORE SCORE
- B. STAR LEDGER SERIES
- C. ARTICLE/WALL STREET JOURNAL

It is against this backdrop that we present our support for the two bills under discussion today; S-2963, as introduced by Senator Lesniak, which provides for statewide on-site improvement standards; and S-3423 as introduced by Senator McManimon, the Permit Reform Act.

While NJBA acknowledges that these bills represent a solid beginning, they are by no means the end of reforming our regulatory system. There are other changes which must follow with regard to regulatory reform. These further recommendations are more succinctly stated in NJBA testimony before SCORE which is included as Appendix A to my formal statement.

It is also relevant to stress that New Jersey's housing sector is already in recession, both in the new and resale segments of the market. The NJBA projects that the number of new housing starts in the current year will be about one-half the levels achieved in 1986 and 1987---somewhere around 25,000 to 28,000 thousand housing starts. New Jersey's economy has already begun to reflect the decline which is readily apparent in the decline of sales tax and realty transfer revenues.

We urge you to deliberate on these two legislative proposals and to act with urgency to respond to the inefficiencies that characterize the current system.

Why do we need these two bills? We need uniform standards state-wide which are reasonable and cost effective, which protect the public health and safety of our citizens, but do so effectively and efficiently. These efficiencies can be translated into direct savings for the homebuyer.

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## S-2963 Uniform Site Improvement Standards

A Uniform Site Improvement Code would result in statewide standards for building sites, much as the Uniform Construction Code covers the construction of units of housing. Uniformity brings with it certain economies of engineering and familiarity with the standards which allows for cost savings. A builder would face the same site preparation standards in one municipality as would be required in the next.

The legislation, as originally introduced by Senator Lesniak, has many safeguards to balance community needs with efficient regulations. First of all, it creates a Site Improvement Advisory Board to recommend to the Commissioner of DCA statewide improvements of subdivision site plans. The standards will be based on a document entitled "Model Subdivision and Site Plan Ordinance." This document was prepared for the Department of Community Affairs by the Center for Urban Policy Research at Rutgers, the result of a two-year study by a team of technical consultants working with subcommittees of municipal and consulting planners, engineers, builders and attorneys. In fact, the document acknowledges over thirty agencies, organizations and individuals who provided input in developing the model ordinance.

We are convinced that the expertise utilized in developing the model site plan guidelines have produced a uniform set of performance standards far superior to any which might be developed by an individual

municipality. The standards which are researched and quantified permit variation within the land use determined by the municipality. Once a town makes a choice of a certain land use, the uniform site improvement code will provide the performance standards for site preparation to which the municipality must conform.

We have seen several revised versions of Senator Lesniak's bill. They contain some improvements and some stop short of our goals. To comment on the draft, dated 3/28/89, NJBA believes that the language in the original version is far superior. We believe that the initial standards should be tied to the Rutger's study, the study which represents a consensus of all points of view from the experts who participated.

Also, with regard to the representation on the advisory board, we feel strongly that the membership should include representatives from specific organizations that will present knowledgeable perspectives of the groups involved in the process. These organizations should be inserted explicitly in the bill. We recognize that those who oppose this proposal will question the impact on "home rule". These arguments are reminiscent of those which opposed the UCC when it was adopted eleven years ago. The "home rule " argument was ill advised then and it is ill advised today. This proposal will not impair home rule; it simply establishes the improvement standards that are to be followed just as the Uniform Construction Code Act standardized the structural requirements governing the construction of housing. Time has

demonstrated that uniformity in construction standards does not delimit home rule.

We believe that Uniform Site Improvement standards will provide enormous savings for New Jersey's citizens who need housing. Further, municipalities will save money in engineering and planning reviews, and it will save municipalities the considerable expense of preparing and updating individual ordinances. A statewide uniform set of standards will also serve to protect municipalities from the possible costly legal challenges which may occur to local standards and rules.

The NJBA urges your support for the original version of S-2963 as a major step forward in reducing the regulatory costs associated with housing.

#### S-3423 The Permit Reform Act

The intent of this legislation is to standardize the development review process and further consolidate all development rules into one code. Under the proposed Permit Reform Act, all land use regulations issued by state, county and regional authorities would be reviewed by a special advisory commission. The purpose of the commission would be to eliminate duplication and set specific performance standards for the regulations which would be published in a single statewide land use code.

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The NJBA applauds the intent of this legislation. The concept should be pursued and explored. No doubt, the legislation will cut the costly delays faced by builders when seeking the myriad of permits required by the various state, local and regional authorities. Let us be mindful; however, that the purpose of the legislation is to reduce to a single statewide land use code all regulatory requirements; let us not be so venturesome and ambitious as to include too many provisions in the bill thereby bogging it down and achieving nothing.

We are concerned with the extent to which all agencies of the Executive Branch are committed to this proposal. In addition, we recommend that the representative of the State Planning Commission not be included on the State Development Policy Code Board. Given the fact that the State Planning Commission has proposed in excess of 300 pages of new regulations governing development in New Jersey, it is clear that they do not share the commitment to regulatory reform and streamlining of the process.

With those general comments, we offer NJBA's cooperation in working with the state agencies and the Legislature as well as other groups to assist in forging a workable bill which will truly eliminate costly duplication and delays.

#### Impact Fees

Regarding "impact fees", the NJBA finds it ironic that this issue is raised in the context of a legislative package which is ostensibly

designed to cut housing costs since an "impact fee" is clearly a cost increase and a tax on the new home buyer.

Let it be known that the Association has supported builder contributions in lieu of improvements when they are directly linked to the costs of new infrastructure that the new construction necessitates. In fact, the NJBA participated with the Department of Transportation and legislators in crafting a bill (soon to be law) which provides for transportation development districts where counties provide for regional transportation needs through the assessment of fees on development. There were several key provisions in that bill that assure that the contributions bear a rational nexus to the projects on which they were assessed. NJBA supported the final version and worked over a course of six months in this cooperative effort.

The NJBA is participating on a national infrastructure task force dealing with the issue, which must be considered in its complex dimensions. The nation's problems with infrastructure result from several factors including: historic under-investment, foregone maintenance, changes in performance standards, as well as the creation of new homes and workplaces. Only some of these needs can be attributed to growth, new jobs, new housing. To address these needs equitably and efficiently, we need an inventory of our current infrastructure and our future needs. It is unfortunate that the Office of State Planning has failed to do this, as they were directed to do so by the State Planning Act. This failure of the State Plan impedes our efforts to devise a rational financing approach.

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The development community recognizes its responsibility to pay for the direct impact on the infrastructure demands, i.e., roads, water, wastewater and drainage. But we cannot ask young families to pay for other societal needs. It is critical here to distinguish between impact fees and linkage fees, since linkage fees have a far more nebulous relationship between the creation of new houses and the demand for social services. Once again, the building community already invests in substantial infrastructure, and it is the building community which is the singular source for the creation of moderate and low income housing. New fees should not impair our ability to provide New Jersey with places to live and work.

In closing, we thank you for your consideration of these two major issues of regulatory reform and look forward to working with you to develop the proposals so that they reflect the best interest of housing and all the citizens in our state.

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TESTIMONY

OF

PATRICK J. O'KEEFE

BEFORE:

THE STATE COMMISSION ON REGULATORY EFFICIENCY

APRIL 5, 1988

PATRICK J. O'KEEFE  
EXECUTIVE VICE PRESIDENT  
NEW JERSEY BUILDERS ASSOCIATION

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Mr. Chairman, Members of the Commission, I am Patrick O'Keefe. I am the Executive Vice President of the New Jersey Builders Association, a statewide trade association, representing 3,100 firms who provide the citizens of New Jersey with places to live and work.

I thank you for the opportunity to appear before you today. You have a demanding task and you have pursued it with vigor.

To put my comments in context I would like to make four general observations.

First, some personal background. Over the past 20 years, I have worked in both the public sector -- at both the federal and state level -- and in the private sector. Over the course of those two decades, I have gained substantial familiarity with regulatory processes and the impact of regulations on the economy.

When I served as the Deputy Assistant Secretary of the United States Department of Labor -- as the chief operating official of the Employment and Training Administration, an agency that expended approximately \$25 billion a year -- one of my major accomplishments was directing the transformation of the federal training employment system from the Comprehensive Employment and Training Act (CETA) to the Job Training Partnership Act (JTPA). In the course of directing that transformation, we promulgated regulations affecting expenditures in excess of \$7.5 billion per year for services to an estimated 5 million individuals each year.

My current job, as the Executive Vice President of NJBA, places me at the most interesting and challenging nexus between the public and private sectors. The building industry is the last bastion of the free enterprise system. It is composed of literally thousands of entrepreneurs whose very essence is risk taking. It is a highly competitive sector of the economy and provides one of the three basic factors of subsistence: shelter -- food and clothing being the others.

The building industry is highly regulated, however. We are, therefore, most sensitive to the efficiency and effectiveness with which the public sector accomplishes its mission.

The second point of context is one that goes without saying. We are not here to debate policy; rather, we meet to discuss its effectuation and management through the regulatory process.

A third point of context: in discussing economic regulation, the choices are not between the ideals of laissez-faire capitalism and social utopianism; instead, we are dealing in the real world of competing objectives and finite resources. Those twin constraints -- competing objectives and finite resources -- attend both the public and private sectors. All too often, unfortunately, it appears that regulators assume resources in the private sector to be infinite.

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With rare exceptions (e.g., explicit prohibition) public policy pursues its objectives by either overt taxation and expenditures, or legislative/regulatory incentives that alter the economic equation.

I state the obvious for two reasons:

First, because a regulatory system implicitly taxes and spends, but it does so through the process of private sector decision making. In brief, regulations reallocate resources as directly as fiscal policy, but they do so less visibly.

Second, to emphasize that all public policy has real economic costs; although regulations are less visible than fiscal instruments, they are no less significant. Indeed, in New Jersey, one can safely assume that the economic impact of the regulatory reallocation of resources exceeds the impact of state and local government expenditures.

My last point of context is that regulation is inherently inefficient. I say that as a matter of fact, and not pejoratively. Because regulations are generic rules applied to specific circumstances, they inevitably have secondary impacts and unintended consequences that divert resources from more productive uses. For example, the interpretation of regulation inevitably gives rise to litigation, which diverts resources from other economic activities. While this is not an intended consequence of regulation, nor is it avoidable, it is inefficient. Further, regulations are rigid, while society and the economy are dynamic; therefore, regulations are not only cumbersome, they are overtaken by changes in technology and reactive arrangements -- both of which result in economic activities that are devised to accommodate the regulation, not necessarily to maximize efficiency. Unfortunate though this may be, it is the cost of doing business in a complex world.

What is unacceptable, however, is the degree of inefficiency in our state's current regulatory system. Let me use an example from my sector of the economy.

Several years ago, our state university, Rutgers, conducted a study of the impact of regulation on the housing sector. Their exhaustive study concluded that somewhere between 25 and 33 % of the cost of a house results from unnecessary and redundant regulation. The price impact that Rutgers identified was attributable not to rules and regulations necessary to protect the health and safety of the citizenry, or the environment. The 25 to 33% -- let's call it 30% -- was attributable to regulations in excess of what is necessary.

In other words, approximately 30% of the price of housing in New Jersey is due to the cost of unnecessary and redundant regulation. It is a tax from which no benefit is derived. There is no increase in health, safety or environmental protection.

For every \$1 billion of new housing built in New Jersey, the home buying public is paying \$3 hundred million in invisible taxes just to

pay the costs of unnecessary and redundant regulation (CURR) -- which I will refer to as the CURR tax. Last year, the CURR tax totalled in excess of \$1.5 billion, enough money to provide about 10,000 new homes at current average prices. In human terms, one-third of New Jersey's homeless could have been given single family detached homes for what we spent on the CURR tax.

In that context, Mr. Chairman, the activity of the SCORE Commission is as important as any body currently reviewing New Jersey's governmental activities.

While the CURR tax is the disease, its causes are found in the structure of our government. Others have testified before you on the salient causes, so I will only briefly touch on them. They include:

- \* Our state's constitution provides perhaps the strongest executive branch in the nation. Unless the other branches remain aggressively vigilant, the executive has a tendency to be expansive.
- \* The courts, perhaps recognizing the constitutional predisposition toward executive branch authority, have proven to be generously deferential to executive actions, interpretations and regulations.
- \* The Legislature has tended to be weak on legislative oversight; more likely to move toward "new issues", rather than to assess the effects of previously adopted legislation.
- \* The Legislature lacks the institutional infrastructure to assess the implementation of policy and the performance of agencies.
- \* Record-keeping in the Legislature is inadequate to establish clear legislative history. This is particularly troublesome since, the legislature appropriately defers to the executive agencies to "flesh out" the policy direction that is only broadly encapsulated in law.

As a consequence of the foregoing (and several other factors), we have a regulatory system that lacks discipline (i.e., there are few internal checks and balances). Further, the few constraints that do exist (e.g., the Administrative Procedures Act) are weak because the courts have not been rigorous in the enforcement of them. This leads to a situation where:

- \* Regulations often go far beyond the language of the law.
- \* Regulations are promulgated without structured assessment of their economic consequences, or the relationship of their benefits to their costs.
- \* The process of obtaining public comment on rules yields few substantive changes and, based on reading of the response

documents, indicates that little analytical regard is given to public comments.

- \* Challenges of regulations before the state courts are largely an exercise in futility. Is this because our regulators are virtually infallible, or does it display other tendencies?

In sum, we have in New Jersey a regulatory process in which the preferences of the agencies appear to outweigh all other factors. In such a circumstance, it is not surprising that our CURR tax approximates 30% in some sectors of the economy.

You have heard it all before. I could provide you with horror stories to illustrate it. Instead, I would like to propose some ideas that would rectify the situation. I will organize them by branches of government.

### LEGISLATURE

Frankly, until the legislative branch of government begins to assert itself, little true progress can be made in reducing the CURR tax. This is not because of perverse motivations of the other branches of government; instead, it reflects the condition where checks and balances (i.e., the equivalent of competition in the political market place) are weak or non-existent.

I put forward my recommendations with respect to the legislative branch first, therefore. They include:

1. Requiring transcripts of all committee hearings/meetings and all floor deliberations. This will provide legislative history to guide both the executive branch and the courts as they interpret the legislation.
2. Establish the equivalent of a General Accounting Office (GAO) in the legislative branch of New Jersey's government. As an arm of the Legislature, the GAO will be responsible for: (a) monitoring, evaluating and reporting to the legislature on the implementation and execution of the public laws; (b) auditing and reporting on the fiscal performance of all government agencies; and, (c) assessing the management and efficiency of state agencies in their rule making. This office should be adequately funded and staffed.
3. Establish a General Accounting Committee composed of representatives of both chambers of the legislature. This committee would be responsible for overseeing the work of the GAO. It would also be responsible for reporting to the full legislature and the appropriation committees in particular.
4. Require the GAO to review and comment on all economic impact statements in regulations with an emphasis on: (a) methodological rigor; (b) data base validity; (c) unaddressed issues; and, (d) the benefit/cost ratio of the regulation.

5. Finally, the Legislature must commit itself to regular oversight hearings on all major programs.

Mr. Chairman, my foregoing recommendations, as with several others that will follow, would cost money. That is why, at the outset of my remarks, I pointed out that the CURR tax in the housing sector alone exceeds \$1.5 billion per year. If my proposals were successful in reducing this by only one-third, the citizenry and the economy would be benefitted many times over.

#### JUDICIARY

The courts have been an accomplice in the imposition and increases of the CURR tax. Since the judiciary lacks certain tools (e.g., formal records of legislative history), their role in CURR tax increases is somewhat understandable.

Assuming that the recommendations made above are followed, three recommendations affecting the courts emerge:

1. The judiciary should no longer presume the validity of a regulation, implicitly demanding that the private sector litigant demonstrate compellingly that the executive branch agency has overstepped its bounds. Instead, with more precise legislative history and more rigorous economic impact statements, the courts should demand that the administrative agency demonstrate the justification for its rule. In this regard, my recommendation below re specific statutory citations within the text of the regulations would also improve the process.
2. Where the statute is ambiguous, or open to several interpretations, the record of legislative history should be relied upon to determine which interpretation has the greatest validity. If the courts were to insist that a regulation be firmly rooted in the language of the statute and the formal legislative history, substantial progress would be made toward reducing the CURR tax.
3. Finally, the courts should demand strict adherence to the requirements of the Administrative Procedures Act. Recently, several rulings have indicated that the courts are, finally, becoming sensitive to the looseness with which executive branch agencies have conformed to the APA requirements. Unfortunately, the standards are still too loose.

#### EXECUTIVE BRANCH

While the CURR tax is imposed by the executive, my view is that this is accomplished with considerable complicity by the other branches of government. The executive could take several steps to constrain (even reduce) the CURR tax. These include:

1. Others have argued for the creation of a regulatory czar. For a variety of reasons, I do not believe that this will accomplish the intended purpose. In the interest of time, I will not rehearse those reasons. Instead, I would recommend that the Office of Management and Budget be removed from the Department of Treasury and placed in the Office of the Governor. This recommendation is essential to regulatory reform. While time does not permit me to explicate fully the reasoning behind this, let me summarize briefly:

- \* New Jersey's constitution requires a balanced budget;
- \* Regulations can substitute for expenditures;
- \* The Department of Treasury has fiscal responsibility for all government agencies and is, therefore, predisposed to substitute regulations for expenditures;
- \* The only external review of agency rules is by the Attorney General's office, and then for strictly legal purposes;
- \* There is a need for someone within the executive to assess the performance of the agencies and the economic impacts of their regulations; this entity also needs to induce the state agencies to modify their programs and regulations;
- \* To accomplish this an agency will need clout, which budget review would give it.

I would recommend, therefore, an OMB within the Office of the Governor.

2. Every substantive paragraph of every rule should cite specifically the statutory basis for the rule.
3. The economic impact statement of rules should be conducted rigorously, stated explicitly in the notice of rule making, and be available for analysis by the GAO and the general public. The economic theory and the methodologies to assess benefit cost ratios are well established; in New Jersey, unfortunately, they are woefully under-utilized.
4. In its review of agency response documents, the Attorney General's office should insist on adequate responses to public comments.

#### CONCLUSION

Mr. Chairman, my remarks are long and, yet, I feel like I have only touched on the surface. Let me close with a few final, hopefully brief, observations.

First, there are far more sweeping changes than the proposals I have put forward. For example, strong support exists for constitutional changes to authorize tools such as a legislative veto of agency rules. I have not discussed these because I believe that other, more immediate, steps are available to curtail the alarming growth in the state's CURR tax.

Second, the CURR tax is essentially a problem of inefficiency. Like most inefficiency, the true cause lies in poor management. The CURR tax is reaching such alarming rates, however, that one is tempted to classify it as gross mismanagement. Irrespective of the typology, it is a management problem that rests at the feet of all three branches of government. Its resolution, therefore, requires action by each of them.

Finally, the CURR tax is enormous and growing. Most troubling, perhaps, is that it is grossly inequitable. The CURR tax, because it works through the price mechanisms of the private sector, injures most those who can least afford it. And since it provides no benefits whatsoever, the CURR tax reduces the quality of life for everyone. In my sector of the economy, the CURR tax literally denies tens of thousands of families the opportunity of owning their own home.

It has been said that in New Jersey regulatory forces are more determinative of housing costs than are market factors. Further, it has been observed that over-regulation is the major culprit in the rapid rise of New Jersey's homeless population. If it is true in my sector of the economy, then I can only believe that it is equally true elsewhere.

In that context, Mr. Chairman, to the extent that you and your colleagues at SCORE are able to reduce the CURR tax, or even to slow its rate of increase, the welfare of all of our fellow citizens will be improved.

Thank you.

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STATEMENT

OF

JAMES P. GRASSI

ON BEHALF OF

NEW JERSEY FEDERATION OF PLANNING OFFICIALS

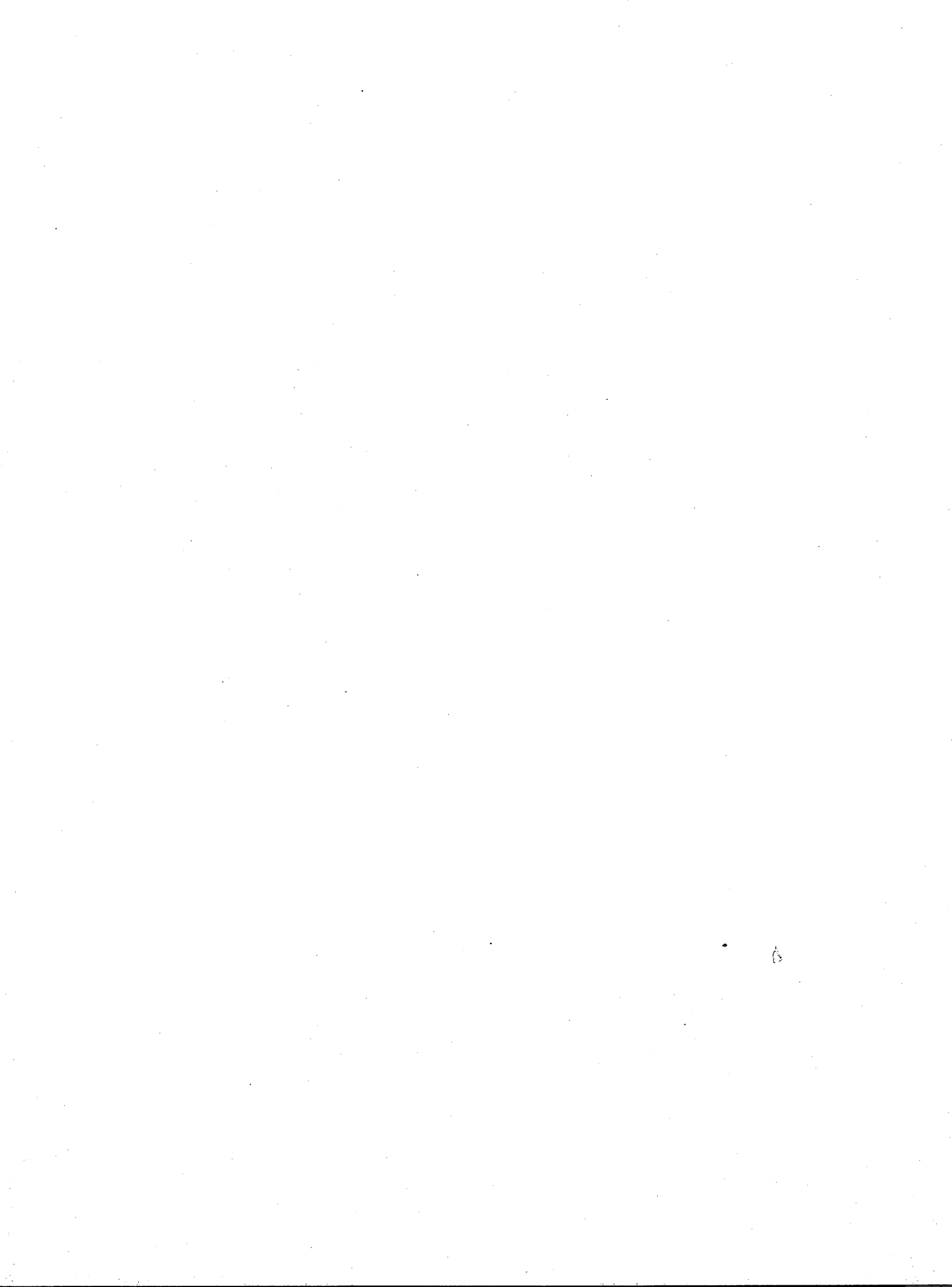
BEFORE

SENATE COUNTY AND MUNICIPAL GOVERNMENT COMMITTEE

TRENTON, NEW JERSEY

MAY 22, 1989

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S-2963 MANDATORY STATEWIDE ON-SITE IMPROVEMENT STANDARDS

GOOD AFTERNOON. MY NAME IS JIM GRASSI AND I AM THE EXECUTIVE DIRECTOR OF THE NEW JERSEY FEDERATION OF PLANNING OFFICIALS.

THE NEW JERSEY FEDERATION OF PLANNING OFFICIALS IS AN ORGANIZATION OF LAY, VOLUNTEER MEMBERS OF COUNTY AND MUNICIPAL PLANNING AND ZONING BOARDS. OUR PURPOSES ARE: TO PROMOTE PUBLIC INTEREST IN MUNICIPAL AND REGIONAL PLANNING; TO FOSTER THE CO-OPERATION OF PLANNING BOARDS AND ZONING BOARDS OF ADJUSTMENT THROUGHOUT NEW JERSEY IN FURTHERING THE AIMS OF PLANNING, TO ASSIST LOCAL PLANNING BOARDS AND ZONING BOARDS OF ADJUSTMENT WITH ADVICE; AND TO ENCOURAGE THE DEVELOPMENT OF REGIONAL COUNTY AND STATE PLANNING AS AN AID TO LOCAL PLANNING. OUR PRIMARY SERVICE IS TO PROVIDE EDUCATIONAL PROGRAMS AND INFORMATION TO THE INDIVIDUALS WHO SERVE ON MEMBER BOARDS.

FEDERATION MEMBERSHIP CONSISTS OF 580 PLANNING AND ZONING BOARDS, WITH 7000 MEMBERS THROUGHOUT THE STATE. THERE ARE ALSO 180 PROFESSIONAL MEMBERS IN THE FEDERATION. THIS MEMBERSHIP CATEGORY CONSISTS OF PROFESSIONAL PLANNERS, ATTORNEYS AND ENGINEERS.

MY PURPOSE IN APPEARING TODAY IS TO STATE OUR OPPOSITION TO S-2963, UNIFORM SITE AND SUBDIVISION STANDARD CODE ACT. WE HAVE BEEN IN OPPOSITION TO THE BILL SINCE WE REVIEWED ITS FIRST DRAFT. THE COMMENTS I AM EXPRESSING TODAY HAVE BEEN CONVEYED TO TO COMMITTEE MEMBERS AND DCA STAFF IN PREVIOUS CORRESPONDENCE. HOWEVER, WE BELIEVE IT NECESSARY TO LIST OUR POINTS OF CONTENTION ONCE AGAIN BEFORE THE COMMITTEE.

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S-2963 MANDATORY STATEWIDE ON-SITE IMPROVEMENT STANDARDS

THE FEDERATION OBJECTS TO THIS BILL FOR THE FOLLOWING REASONS:

1. THE BILL IS A REWRITING OF THE MUNICIPAL LAND USE LAW (MLUL) AND SHOULD BE REFERRED TO THE MLUL DRAFTING COMMITTEE WHICH HAS ALREADY WRITTEN PRECEDENT SETTING LEGISLATION. WE SENSE AN INFLATED URGENCY TO PASS S-2963. THE ADOPTION OF THE MLUL REQUIRED SEVERAL YEARS AND THE IMPUT OF MANY ORGANIZATIONS. FRANKLY, WE ARE AT A LOSS TO UNDERSTAND WHY THE MLUL DRAFTING COMMITTEE WAS NOT CONSULTED AND INCLUDED AS AN INTEGRAL PART OF THE BILL'S PREPARATION.

PRIOR TO 1981 DCA WAS THE PLANNING ARM OF STATE GOVERNMENT. SINCE THAT TIME DEPARTMENT OBJECTIVES HAVE BEEN ESTABLISHED FOR OTHER PRIORITIES. WHEN THE STATE PLANNING COMMISSION WAS CREATED, IT WAS PLACED IN THE TREASURY DEPARTMENT, NOT DCA. WE MUST QUESTION WHAT NEW PLANNING KNOWLEDGE DCA HAS ACQUIRED WHICH SUPERSEDES THE EXPERTISE OF THE MLUL PROFESSIONALS.

2. THE BILL STIPULATES THAT THE NEW STANDARDS WILL TAKE PRECEDENCE OVER ALL CURRENT IMPROVEMENT STANDARDS ESTABLISHED UNDER THE MLUL, COUNTY APPLICATION AND SOIL CONSERVATION SERVICE REVIEWS, DEP REVIEWS CONCERNING DRAINAGE, STREAM ENCROACHMENT WETLANDS, SEWER CONSTRUCTION OR EXTENSION AND ALL REVIEWS BY THE DOT. THERE IS NO EVIDENCE THAT THE NEW LEGISLATION WILL REDUCE COSTS. AND IF COSTS ARE SOMEHOW REDUCED, WILL THE REDUCTION BE PASSED ALONG TO THE HOME BUYER?

PERHAPS OUR MAJOR PROBLEM WITH THE BILL IS ITS VAGUENESS. FROM CURRENT LANGUAGE NO ONE CAN DETERMINE THE TRUE IMPACT ON MUNICIPALITIES AND THE ENVIRONMENT. UNTIL THIS SITUATION IS RECTIFIED WE DO NOT SEE HOW THE BILL CAN RECEIVE BROAD BASE SUPPORT. THIS IS ONE AREA IN PARTICULAR WHERE THE MLUL DRAFTING COMMITTEE CAN BE OF ASSISTANCE.

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S-2963 MANDATORY STATEWIDE ON-SITE IMPROVEMENT STANDARDS

3. THE BILL IS AN INTRUSION INTO LOCAL AUTHORITY AND THE ABILITY OF THE MUNICIPALITY TO RETAIN THEIR OWN UNIQUE CHARACTERISTICS. IN SOME CIRCUMSTANCES UNIFORMITY IS DETRIMENTAL. EXPERIMENTATION AND CREATIVITY LEAD TO BETTER PROCEDURES.

4. THERE IS NEED FOR A THOROUGH FINANCIAL ASSESSMENT REGARDING THE IMPACT ON MUNICIPALITIES. THE CURRENT APPROPRIATION IS WOEFULLY INADEQUATE FOR A PROGRAM OF THIS MAGNITUDE.

5. THE COMMISSIONER OF DCA HAS TOO MUCH AUTHORITY IN THE PROPOSED BILL. NO SINGLE PERSON SHOULD HAVE THE ABILITY TO OVERRIDE AN ENTIRE BOARDS' RECOMMENDATION.

6. AS A POINT OF INFORMATION, THE RESPONSE WE RECEIVED FROM OUR MEMBERS HAS BEEN ONE OF TOTAL OPPOSITION TO THE BILL. SEVERAL TOWN COUNCILS AND PLANNING BOARDS HAVE SENT US RESOLUTIONS STATING THEIR OPPOSITION.

WE OFFER THESE COMMENTS IN CONSTRUCTIVE FASHION. WE ARE GRATEFUL FOR THE OPPORTUNITY TO EXPRESS OUR OPINIONS.

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S-3423, PERMIT REFORM ACT

GOOD AFTERNOON. MY NAME IS JIM GRASSI AND I AM THE EXECUTIVE DIRECTOR OF THE NEW JERSEY FEDERATION OF PLANNING OFFICIALS.

THE NEW JERSEY FEDERATION OF PLANNING OFFICIALS IS AN ORGANIZATION OF LAY, VOLUNTEER MEMBERS OF COUNTY AND MUNICIPAL PLANNING AND ZONING BOARDS. OUR PURPOSES ARE: TO PROMOTE PUBLIC INTEREST IN MUNICIPAL AND REGIONAL PLANNING: TO FOSTER THE CO-OPERATION OF PLANNING BOARDS AND ZONING BOARDS OF ADJUSTMENT THROUGHOUT NEW JERSEY IN FURTHERING THE AIMS OF PLANNING, TO ASSIST LOCAL PLANNING BOARDS AND ZONING BOARDS OF ADJUSTMENT WITH ADVICE: AND TO ENCOURAGE THE DEVELOPMENT OF REGIONAL COUNTY AND STATE PLANNING AS AN AID TO LOCAL PLANNING. OUR PRIMARY SERVICE IS TO PROVIDE EDUCATIONAL PROGRAMS AND INFORMATION TO THE INDIVIDUALS WHO SERVE ON MEMBER BOARDS.

FEDERATION MEMBERSHIP CONSISTS OF 580 PLANNING AND ZONING BOARDS WITH, 7000 MEMBERS, THROUGHOUT THE STATE. THERE ARE ALSO 180 PROFESSIONAL MEMBERS IN THE FEDERATION. THIS MEMBERSHIP CATEGORY CONSISTS OF PROFESSIONAL PLANNERS, ATTORNEYS AND ENGINEERS.

THE FEDERATION CONCURS THAT THE ROLE OF STATE AGENCIES IN THE DEVELOPMENT REVIEW PROCESS MUST BE SCRUTINIZED. THIS COMPLEX TASK SHOULD BE UNDERTAKEN IMMEDIATELY.

THE FEDERATION AGREES WITH THE CONCEPT OF AN INDEPENDENT BOARD TO REVIEW AND MONITOR THE STATE AGENCIES' ROLE IN THE DEVELOPMENT PROCESS.

90X



S-3423, PERMIT REFORM ACT

WE OPPOSE ANY EFFORT TO REFORM ANY OTHER PROCESS UNTIL STATE AGENCY OVERLAP AND OVER-REGULATIONS ARE CORRECTED. WE CAN THEN ASSESS THE REVIEW PROCESS OF COUNTY OR REGIONAL AGENCIES.

IT IS INAPPROPRIATE TO ATTEMPT TO CHANGE THE ENTIRE SYSTEM UNTIL WE KNOW THE TRUE EFFECT OF STATE REFORM. THE PROPOSED BOARD SHOULD HAVE THE RESPONSIBILITY OF CODIFYING ALL THE APPROPRIATE STATE REGULATIONS AND PROCEDURES TO BE FOLLOWED. THE BOARD CAN ACT AS A CLEARING HOUSE OF INFORMATION ON STATE REGULATIONS. ONCE THIS HAS BEEN ACCOMPLISHED, METHODS FOR LOCAL, COUNTY AND REGIONAL PLANNING GROUPS INTERACTING WITH THE BOARD CAN BE ESTABLISHED.

WE OBJECT TO THE LEGISLATIVE LANGUAGE CONCERNING BOARD REPRESENTATION. IT IS TOTALLY INAPPROPRIATE TO ASSIGN INDIVIDUALS TO THIS BOARD WITHOUT PRIOR DELINEATION OF ORGANIZATIONAL REPRESENTATION.

WE CERTAINLY SUPPORT EFFORTS BY THE STATE TO CORRECT A STATE CREATED PROBLEM, HOWEVER, BEFORE ASSIGNING ANY NEW RESPONSIBILITIES TO THE MUNICIPALITIES, WE MUST KNOW THERE IS ADEQUATE LOCAL FUNDING AND ANSWER QUESTIONS CONCERNING TRAINED PERSONNEL. THE IMPACT ON SUCH PRECEDENT SETTING LEGISLATION, ESPECIALLY IN THE TRANSPORTATION AND ENVIRONMENTAL FIELDS MUST ALSO BE ANSWERED.

IF THE STATE AGENCIES ARE REMOVED FROM THE REVIEW PROCESS, MUNICIPALITIES WILL REQUIRE FINANCIAL SUPPORT TO ADEQUATELY



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PROCESS DEVELOPMENT APPLICATIONS. THE AMOUNT SUGGESTED IN S-2963 IS TOTALLY INSUFFICIENT.

WE FURTHER QUESTION THE TIMING OF THIS BILL. WE FEEL IT COULD HAVE A NEGATIVE IMPACT ON THE STATE DEVELOPMENT AND REDEVELOPMENT PLAN. WE, AS A STATE, ARE IN THE MIDDLE OF CROSS-ACCEPTANCE, A PROCESS WHICH TOOK YEARS TO DEVELOP. WE DO NOT NEED ANY FURTHER CONFUSION OR DELAYS.

THROUGHOUT ALL THE DISCUSSIONS OF THE HIGH COST OF DEVELOPMENT, COMPLYING WITH REGULATIONS HAS BEEN BLAMED FOR 30% OF THE COST OF HOUSING IN NEW JERSEY. WHILE THIS NUMBER CONTINUES TO BE BANDIED ABOUT, WE HAVE NOT SEEN ANY EVIDENCE TO SUPPORT THIS STATEMENT. IT IS OUR CONTENTION THAT THE COST OF LAND AND LABOR FAR OUTWEIGH APPLICATIONS AND PERMITTING FEES.

THE FEDERATION IS EQUALLY FRIGHTENED BY THE IMPLICATION OF "REMEDIAL LEGISLATION" AND "LIBERALLY CONSTRUED" ' AS MENTIONED IN THE LEGISLATION.

OUR CONCERNS ARE EXTENSIVE. WE URGE YOU TO DELAY ACTION ON ANY BILL UNTIL THE STATE AGENCIES INTERACT IN EXPEDITIOUS FASHION.

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