

PUBLIC HEARING

before

ASSEMBLY INSTITUTIONS, HEALTH AND WELFARE COMMITTEE

on

A-1823

(Institutional Bond Issue)

Held:  
June 26, 1980  
Room 218  
State House  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman George J. Otlowski, Chairman  
Assemblyman Raymond Lesniak  
Assemblyman Richard F. Visotcky  
Assemblyman Charles Mays  
Assemblyman C. Louis Bassano  
Assemblyman John W. Markert  
Assemblyman Clifford W. Snedeker

ALSO:

John D. Kohler, Research Associate  
Office of Legislative Services  
Aide, Assembly Institutions, Health and Welfare Committee



I N D E X

	<u>Page</u>
William Fauver Commissioner, Department of Corrections	1
Senator William Hamilton, Jr. District #17	4
Gerald Reilly Assistant Commissioner, Department of Human Services	8
Frank Brill New Jersey Association of Health Care Facilities	13



ASSEMBLYMAN GEORGE J. OTLOWSKI (Chairman): This hearing will be open. It is a continuation of a recessed hearing, and we are continuing the hearing with Commissioner Fauver.

Before the Commissioner says anything, I just want to lay down a couple of general rules as a result of some of the things that we have to consider. Commissioner, I would like to suggest, number one, that we are just going to talk to you about giving you more time today so that you have that time to spend looking for several sites and then coming up and recommending specific sites. That is number one. We are talking about giving you until July 28th. That is almost a whole month. All other people that are here, if they have any testimony they want to offer, we will take that in writing from them, and that will be referred to John Kohler, so that he will be able to make an evaluation. That is the way we are going today, because we are going to be in session at twelve o'clock.

ASSEMBLYMAN LESNIAK: Commissioner, I would like to suggest through the Chairman another possibility that was discussed among the members, and that would be to study the proposal for expansion of county facilities through a program where the State would provide them with matching funds along with their agreement to take a certain amount of State prisons. That would accomplish a few purposes. One would be to upgrade the facilities that we know need upgrading now, and some under court order. Two, it would keep many of the prisoners in their locality, and three, it may attract a broad base of support that may be necessary for this type of proposal to pass.

ASSEMBLYMAN VISOTCKY: Or anything along the line, it may be 75-25, or whatever.

ASSEMBLYMAN OTLOWSKI: Commissioner, with that understanding, we are going to recess this hearing, probably until July 28th, so that the public hearing, for all intents and purposes, will continue and by that time, we will give you an opportunity to come back.

On that basis, can we hear from you at this point?

COMMISSIONER WILLIAM FAUVER: Mr. Chairman, I have some proposals to make, but I think this would have been one of them, that there could be a longer time. We had thought on Monday about three weeks would be enough time, and then we got into Thursday as a date to come back. Obviously, I have made some contacts, but nothing---

ASSEMBLYMAN OTLOWSKI: Just for your own information, the consensus of this Committee, of course, since we are recessing - is we are not going to vote either of the bond issues out, the general institutions, or the penal institutions, and we are going to recess the hearing so that we may be in the position to vote the thing out on the 28th, depending upon what you come up with.

ASSEMBLYMAN VISOTCKY: We should have a public hearing Friday, too. That transcript should be in our hands before we vote on that.

ASSEMBLYMAN OTLOWSKI: We will probably have the hearing before the 28th.

MR. JOHN KOHLER: What the requirement does say is, the public hearing must be held on every bond issue before the bond issue goes on the board, and the transcript has to be placed on the desks. However, if we adjourn

this hearing today, that fulfills that requirement. You can hold another public hearing, but I believe this public hearing does fulfill that requirement.

ASSEMBLYMAN OTLOWSKI: At the moment, we would recess this public hearing until July 28th at 10 A. M., unless there are other reasons---

ASSEMBLYMAN VISOTCKY: We would have to meet two days prior to that.

ASSEMBLYMAN OTLOWSKI: We will then probably meet on July 26th to meet that requirement. Oh, that is a Saturday, then we will not meet on July 26th. (Laughter)

ASSEMBLYMAN MAYS: Mr. Chairman, I would like to follow up on what Assemblyman Lesniak has said. The counties that are under the court order, could you give us that list?

COMMISSIONER FAUVER: Yes, I can give that to you.

ASSEMBLYMAN OTLOWSKI: Excuse me, can you give me the dates of the Committee hearing, so I can make a date for the Committee to meet on this?

MR. KOHLER: I think you are meeting on the 28th.

ASSEMBLYMAN OTLOWSKI: What day of the week is the 24th?

MR. KOHLER: Thursday.

ASSEMBLYMAN OTLOWSKI: The Committee after today will meet on the 24th of July and we will meet at 10 A. M.

In the meantime, Commissioner, I think you are getting some idea here today what the Committee expects. Number one, they would expect a site or several sites. Number two, there is talk, too, about the fact that the Committee would like to explore the possibility of joining counties in joint ventures of beefing up and renewing, or maybe even rebuilding or rehabilitating county facilities and then tying them in with State facilities. Charlie just suggested to you that he wants the figures of those county jails as to their populations, and particularly their conditions. I think that is important to this Committee.

Now, does any other Committee member at this point have anything else they want to ask the Commissioner?

ASSEMBLYMAN MARKERT: Mr. Chairman, I have something I would like to state, not ask. And, that is, you have just basically been charged by the Chairman as to what information he is looking for at our next meeting on the 24th of July, and in his statement he did mention a site or two, which could be or three or four or five or six, and I personally as a member of this Committee am not looking for that. I am looking for a representative approach by your Department to say, "This is where we feel it should be built, if it is going to be built." And, we are not going the other route. If we are just going to use the county facilities, that is one thing, but if we are going to build a facility, if we are going to build a prison, I really feel that I would like your expertise on telling me where. You have it; we haven't.

COMMISSIONER FAUVER: For example, if we are saying 400 beds, if 200 beds could be taken care of by the counties---

ASSEMBLYMAN MARKERT: Then maybe you will only want to build a 200 bed facility---

COMMISSIONER FAUVER: You are not saying to preclude that option, just one site---

ASSEMBLYMAN MARKERT: Right, I don't just want site A, B, C, and

you flip and coin and tell me which one you are going with. I don't want that.

ASSEMBLYMAN VISOTCKY: You are telling him something different than what the Chairman is telling him.

ASSEMBLYMAN MARKERT: No, no, the Chairman has asked for two types of situations to be explored, and the only difference or exception I took with the Chairman--- And I do believe that the Chairman basically wanted to go that route from his previous comments, was that we are looking for a definite---

ASSEMBLYMAN OTLOWSKI: Excuse me, John Kohler has called my attention to something, and I was trying to do several things at one time here. I asked the Commissioner, number one, to come up with several sites, not any one particular site, but several that would be suitable. Secondly, I asked him then to come up with a report on the county thing that we were talking about. Now, are you saying something else?

ASSEMBLYMAN MARKERT: No. I took no exception to what you said, other than I tried to maybe amend your one statement where you said several sites, and and I isolated it down to one site, or two if there is going to be a situation where we have a 200 bed unit. I would like to have the Department use their expertise rather than giving us a selection whereby we could then make---

ASSEMBLYMAN OTLOWSKI: Excuse me, remember, we have all been saying, and this is something that we can't run away from, that basically this is a political decision and it belongs to a political body and the political body is the Legislature, so we have to take that basic position, that ultimately the decision is ours. The best that we can hope from the Commissioner is help in making the decision.

ASSEMBLYMAN MAYS: Mr. Chairman, the Commissioner should know that the Judiciary Committee did a study on the county units, and he should have that report.

ASSEMBLYMAN OTLOWSKI: That is fine. I don't think he expressed any problem with that. I think he said he can have that ready. He has said that he can have that ready.

COMMISSIONER FAUVER: We do county jail inspections, and we have statistics on that.

ASSEMBLYMAN OTLOWSKI: As a matter of fact, just another thing, and I am going to talk to John Kohler on this, I am going to ask the President of the Association of Counties to meet with the Commissioner just to discuss that in even greater detail.

ASSEMBLYMAN LESNIAK: Since there appears to be a general concensus on our Committee that we want to address the problem of building a prison, whether it is one facility, two facilities, I would like to suggest that--- It is my opinion that the people realize that there is not only a need for another prison, but that they want to see people being put in jail instead of being sent out, because of overcrowded conditions, being put out in the street, and I am willing to sponsor whatever proposal this Committee comes up with. Therefore, I would suggest that we break the prison off from the regular bond issue, so that we can proceed with that. As long as there is a commitment that we are going forward with the proposal, Rich---- My objection to that proposal was based on whether we are going to---

ASSEMBLYMAN OTLOWSKI: Would you support breaking the prison part off from the other bond issue?

ASSEMBLYMAN LESNIAK: As long as we have specific dates that we are going to hear from the Commissioner, which we have outlined now, yes, I would.

ASSEMBLYMAN OTLOWSKI: Assemblyman Visotcky takes the same position. Do you support that position?

ASSEMBLYMAN LESNIAK: Well, so that we can be assured that we get the other part, the institutional---

ASSEMBLYMAN MARKERT: Well, we are not under the gun at this particular time. Why not try to accomplish what we had originally intended to accomplish?

ASSEMBLYMAN VISOTCKY: Suppose you can never accomplish that.

ASSEMBLYMAN MARKERT: Then we still have the opportunity of breaking. Then we will have to break.

ASSEMBLYMAN LESNIAK: Well, my concern is that we are putting in jeopardy--- Because, this has to go through our house, and through the Senate Committee, and through the Senate, so I feel we are putting in jeopardy the entire bond issue. I will make that in the form of a motion.

ASSEMBLYMAN OTLOWSKI: Before I entertain that motion, Senator Hamilton, did you want to say something on this particular issue, on breaking it off? That is all I want to hear.

SENATOR HAMILTON: Assemblyman Visotcky and I spoke about that this morning, I thought it made a lot of sense, and I think the way it is articulated by Assemblyman Lesniak it makes a lot of sense. There has not been a serious question raised about need. In my mind there is certainly a question to be raised about the site more fundamentally grasped by the planning process, although the Commissioner would differ with that. He has said that he has planned too many already, and he is tired of planning different sites.

I think it makes sense where there is a commitment to come back and do something for two reasons. There has been a criticism in the past about the late start that bond issues get. And, if you hold it until late July, there is no clear signal from the Legislature that it is going to pass.

Secondly, whether the Governor holds it on his desk and sends it back with a conditional veto once you are satisfied with the \$26 million or some amount in for one prison or two prisons, or a county plan, I think it would make a whole lot of sense.

As long as I have the floor, there are states that have a county system. And in the annual report of the Department of Corrections, and the Capital Improvement Plan, medium security prisons are not in there, but what is in there is the very clear language about additional issues needed to be addressed, and among these is the development of additional medium security beds, and questions of policy regarding local corrections and county jails are especially significant.

It says later on, the issue of the local correctional center for less serious offenders now have some state institutions, and they maintain the community or institutional facilities under local jurisdiction remains to be addressed.

I think the direction that you are starting to focus on that we talked about before this meeting started makes a whole lot of sense. It may have its own series of problems, but I think it makes some sense, and it would seem to me that the Commissioner has indicated at least a willingness to explore those and get back to you. I would urge you to go in that direction.

ASSEMBLYMAN OTLOWSKI: All right, now, we get back to Assemblyman Lesniak. You were ready to make a motion. What is the nature of your motion?

ASSEMBLYMAN LESNIAK: First of all, the motion is based on the fact that we do have a specific date to come back here and discuss the prison issue, and now that we have that in place, I would like to move that we amend the legislation to exclude the \$26 million for the prisons.

There is \$7 million for renovations---

ASSEMBLYMAN OTLOWSKI: You are not touching that.

ASSEMBLYMAN LESNIAK: I think we probably ought to leave that in, except that is going to confuse things if we have a separate---

That will force us to come up with a solution and delete the \$7 million.

ASSEMBLYMAN OTLOWSKI: That forces you into faster action. There is a motion on the floor. Is the motion seconded?

ASSEMBLYMAN VISOTCKY: I second it.

ASSEMBLYMAN OTLOWSKI: The motion is seconded.

ASSEMBLYMAN MARKERT: Mr. Chairman, I would like to have a discussion on the motion. I seriously feel that we have a very, very strong need for the building of new penal institutions in the State of New Jersey. I feel that it has gone too long without consideration. We are pouring people out because of the fact that we cannot institutionalize them in a prison. We have prisons that are in very poor shape that we must eliminate in the State of New Jersey, because some of them date back, I guess, to the dark ages.

I hope that we as a Committee are not sticking our heads in the sand and refusing to really make a decision with reference to the penal institutions. Now, I can understand the purpose of being able to get this bond issue out, so that we will have an opportunity for discussion, and we will have an opportunity for the Governor's review. But, I don't know how sure we can be to concern ourselves with the need---

ASSEMBLYMAN OTLOWSKI: Would you just hold it for one minute, please? I have a little problem here I have to get squared away. I am sorry.

ASSEMBLYMAN MARKERT: I realize at least now what we have done is force our hand slightly by pulling out the \$7 million. I am glad your motion included that, Ray, because I will tell you right now, you would have had absolutely no support from me if you had not done that. You don't need my vote to get this bill.

ASSEMBLYMAN VISOTCKY: We need everybody's vote.

ASSEMBLYMAN MARKERT: You have four votes---

ASSEMBLYMAN OTLOWSKI: But I thought we said this was our problem.

ASSEMBLYMAN MARKERT: It is our problem. I am going to reluctantly help with this and become a part of the affirmative vote. But, I want you to know what my position is and I want you to know that on July 24th, I will be ready for a motion to amend this particular piece of legislation if I have to, to include the penal institutions.

ASSEMBLYMAN SNEDEKER: Mr. Chairman, I can't support cutting out the penal institutions. The reason we are doing this is for only one reason and that is because of site location. It is going to be very difficult to come up with a site location, no matter where you go. There has been no indication from anyone on this Committee, or any of the Senators that we have talked to,

that there is not a need for this. There is a need for a new correctional facilities, possibly with county facilities, possibly a complete new State facility. I think we are starting to hide now. We are really running and starting to hide, because wherever you pick that site, if you put that site on the ballot, or you make the Commissioner pick a site location out at this time, or next month when you come back, the individuals in that area are not going to be happy with that site; no one is going to be happy with a penal institution in their particular area. There is a need for it. I think we have to bite the bullet and today is the day to bite the bullet and either hold this up and put it all into one, or defeat it and take it out completely.

I think what you are doing today is defeating the construction of a new penal institution for the State and I think you are going to affect problems in New Jersey in the future, and I can't support that motion.

ASSEMBLYMAN OTLOWSKI: I can appreciate that everybody has their own opinions about this, and they are honest and sincere opinions for a difficult problem.

ASSEMBLYMAN VISOTCKY: Yes, but one of the big questions is--- I was speaking to the Commissioner early this morning, and if we talked about Yardville for argument's sake, and we put 200 beds there, Yardville can't take it because of the recreational facilities and so on down the line. We need a completely new--- Am I correct?

Okay, so that almost can eliminate that. But, we are talking about maybe 100 beds there. We are talking about maybe 200 beds in Annandale, and we are talking about our kind of facilities, fine, then we have a plan. Right now we are shooting at nothing. We are saying, "Here is \$26 million, Commissioner, do what you want to do with it." We have done this in the past. If we come up with a concrete proposal, we are going to see it and vote on it.

ASSEMBLYMAN SNEDEKER: You can hold the whole issue up until the 28th; what is the difference?

ASSEMBLYMAN OTLOWSKI: In that connection, I think what we are doing here today is we are giving the Commissioner a month to come up with some of these thoughts that we have expressed here today, after some great deliberations by us individually and as a matter of fact, we have been talking to each other, so I have no apologies for the track that we are on.

ASSEMBLYMAN MARKERT: May I ask, Mr. Chairman, what is going to be your thoughts on entertaining such an amendment to this issue if we have the facts and figures that we need---

ASSEMBLYMAN OTLOWSKI: You make it at that time, and you will see.

ASSEMBLYMAN LESNIAK: I believe it would have to be done through a separate bond issue bill, unless the Governor conditionally vetoed the one that has gone to the breakoff.

ASSEMBLYMAN OTLOWSKI: I have a motion on the table that has been seconded---

ASSEMBLYMAN VISOTCKY: I think you should leave the \$7 million in there.

ASSEMBLYMAN OTLOWSKI: There is a motion now to amend that motion to leave the \$7 million in. Is there a second to that motion---

MR. KOHLER: Mr. Lesniak's motion was first, so it has to be voted on. And, then Mr. Visotcky's motion can be dealt with.

ASSEMBLYMAN MARKERT: He can withdraw his motion, and then take his, if you want to do it that way.

ASSEMBLYMAN LESNIAK: It is withdrawn.

ASSEMBLYMAN VISOTCKY: I make a motion to just take out the \$26 million.

ASSEMBLYMAN LESNIAK: Seconded.

ASSEMBLYMAN OTLOWSKI: Okay, the motion is made and seconded to just take out the \$26 million and leave the \$7 million in; is that correct?

ASSEMBLYMAN VISOTCKY: Right.

ASSEMBLYMAN OTLOWSKI: All right, are there any questions on that motion?

ASSEMBLYMAN MARKERT: There are no questions, except what you have done is eliminated what I feel was an almost chance of being able to consider the \$26 million again as an amendment possibly and since now I understand the Governor would have to come up with a conditional veto, that I would like you to understand that my remarks no longer hold true as to my support.

ASSEMBLYMAN OTLOWSKI: Are there any other comments on that position?

ASSEMBLYMAN SNEDEKER: I can't support it.

ASSEMBLYMAN OTLOWSKI: You have made your position, and I can understand that. We are ready for the vote. May we have the vote on that?

MR. KOHLER: On the motion to separate out the \$26 million from the new correctional facility, Mr. Otlowski.

ASSEMBLYMAN OTLOWSKI: Aye.

MR. KOHLER: Mr. Lesniak.

ASSEMBLYMAN LESNIAK: Aye.

MR. KOHLER: Mr. Mays.

ASSEMBLYMAN MAYS: Yes.

MR. KOHLER: Mr. Visotcky.

ASSEMBLYMAN VISOTCKY: Aye.

MR. KOHLER: Mr. Markert.

ASSEMBLYMAN MARKERT: No.

MR. KOHLER: Mr. Snedeker.

ASSEMBLYMAN SNEDEKER: No.

MR. KOHLER: The motion is carried.

ASSEMBLYMAN OTLOWSKI: All right, Commissioner, is there anything else that you want to add at this point? I think you have your work cut out for you. We have given it to him. We are going to meet again on the 24th and by that time we hope that you will have something ready for us.

COMMISSIONER FAUVER: I will be here.

ASSEMBLYMAN OTLOWSKI: If the Commissioner hasn't anything to add, first of all, I want to express my thanks to you for coming here and being helpful to us today. As a matter of fact, you have indicated that you are going to continue to be of help to us. I want to express my thanks and the thanks on behalf of the Committee.

I just wanted to ask Senator Hamilton, did you want to add anything to the testimony that was given here by the Commissioner?

SENATOR HAMILTON: No, but I would like to be able to come back on the 24th.

Let me say that I agree with you and the members of the Committee who expressed the opinion that they are prepared to consider any plan whether it is county oriented or State-County oriented, or State oriented, and certainly I would be happy to be a part of that process with all of you, or with my own Committee in the Senate. I appreciate it very much, Mr. Chairman.

ASSEMBLYMAN OTLOWSKI: The other thing that we are confronted with, from what John Kohler tells me is not voting this thing out.

MR. KOHLER: There are a number of other amendments.

ASSEMBLYMAN OTLOWSKI: There are amendments. What are the amendments.

ASSEMBLYMAN SNEDEKER: I have a question on the \$10 million.

MR. KOHLER: I think Mr. Snedeker has a question.

ASSEMBLYMAN OTLOWSKI: Let's just take this. Within the hearing, you have a question, Mr. Snedeker?

ASSEMBLYMAN SNEDEKER: Yes, I would like to have somebody from the Department of Human Services with regard to the item of development of 1000 to 1500 nursing home beds.

ASSEMBLYMAN OTLOWSKI: Who is going to speak on that issue? Mr. Reilly?

COMMISSIONER REILLY: Yes.

ASSEMBLYMAN SNEDEKER: Through you, Mr. Chairman, at the last meeting, we went over this rather quickly and it was my understanding that the Department was going to start a loan program of \$10 million to work out something with the Department of Health concerning the Certificate of Need to finance private nursing homes with 10% down by the individual and 90% down by the Department with the idea - and correct me, Commissioner, if I am wrong - that 80% of the patients would be patients on medicare---

COMMISSIONER REILLY: Medicaid.

ASSEMBLYMAN OTLOWSKI: Assemblyman, may we have a little order here, please?

ASSEMBLYMAN SNEDEKER: It would be an agreement with that individual that was to borrow that funding or apply for that funding that he or she would have to take at least 80% of the patients in medicaid.

COMMISSIONER REILLY: Yes, sir.

ASSEMBLYMAN SNEDEKER: Has this now been tried any place else, or has it been agreed to by nursing homes that they would take that percentage of medicaid patients and borrow that kind of money?

MR. REILLY: To recap a bit, the \$10 million sets up a loan guarantee fund. The public funds are not, in fact, loaned to a nursing home operator. They sit in the Treasury as a guarantee against any default. The loan funds will come from commercial lending institutions. The idea of 80% Medicaid is being carried into the concept document, the proposal document which we submitted to the Capital Needs Commission. The reason why we would put the public general obligations bonds in a guaranteed fund is to try to improve practices for medical assistance clients. The number, 80%, was a preliminary number. There were some discussions with the nursing home industry about this number. At this time, the number is not fixed. That number would be discussed in the context of the necessary enabling legislation. I don't know what the precise number would be, but I think it certainly should be high enough to justify the use of public funds to back a loan guarantee, but it also has to reflect the realities of what it takes to operate a nursing home. For example, it would be wholly unrealistic, I think, to insist on 100% medical assistance participation in order to move into the loan guarantee fund. On the other hand, something as low as 55% or 60% might really be too low to justify the use of public funds as the loan guarantee mechanism.

ASSEMBLYMAN OTLOWSKI: Excuse me. Assemblyman, what is the point that you are trying to make?

ASSEMBLYMAN SNEDEKER: Well, the point is, I'm not quite sure that we ought to get into the loan guarantee basis, since we do have an EDA program and we ought to have this Department run a \$10 million program on backing up loans for private nursing homes in the State of New Jersey for several reasons. These were brought at the hearing and I think you all saw the copies that I have here. One, the New Jersey court requires now that the nursing homes accept a reasonable number of indigents. How has that been working?

MR. REILLY: That court decision just came down within the past month and it is estimated that that could produce as many as three or four hundred beds when the 80 or 90 homes in the State that do not now participate, when their licenses come up for renewal and they then do participate. It is also unknown to us whether that decision may be appealed to a higher court. But, that will be helpful, but it will only be a very small piece of beginning to solve the whole problem.

ASSEMBLYMAN VISOTCKY: That's thirty percent, isn't it?

ASSEMBLYMAN SNEDEKER: Thirty percent of 1,000.

MR. REILLY: Assemblyman, presently, there are 6,500 beds in the state for which certificates of need have been granted that are not now under construction. A lot of that has to do with the inability to secure appropriate financing. This proposal does not attempt to address that whole need. It only attempts to address a part of that need, 1,000 to 1,500 beds at the outset. If the proposal works and is cost effective for the state, then, perhaps, it could be expanded. But, 1,000 to 1,500 does not begin to meet the need. So, the 300 beds, if we get 300 or 400 beds out of this court decision, that will be helpful too, but we presently have 2,600 people waiting for placement in nursing homes in New Jersey and that understates the case. There are a lot of people in our institutions who are merely geriatric and really should be placed, but we stopped preparing them for placement because there just aren't bed available. So, 2,600 understates the actual present waiting list.

MR. HOROWITZ: Herbert Horowitz, Assistant Commissioner of the Department of Human Services. I mentioned that we would be running the guarantee program.

We have been working with, very closely with EDA and the Health Care Facilities Authority and the Health Department in trying to get these additional nursing home beds built.

ASSEMBLYMAN OTLOWSKI: What about the question that the Assemblyman is raising? He has some feeling about having the Department or the State guarantee a loan that comes from your Department when we already have the EDA.

MR. HOROWITZ: This would be run through EDA and HCFA. They, in fact, would be administering the program. The applicant would apply to either of those two authorities in accord with their normal procedures. But, right now they cannot guarantee a loan. They would have this extra tool available to them, which is to guarantee the loan for the applicant.

ASSEMBLYMAN SNEDEKER: Why can't they guarantee a loan now?

MR. HOROWITZ: Their legislation does not provide for that.

ASSEMBLYMAN SNEDEKER: Well, then they would have to change the legislation to guarantee a loan with the money that you would back them up with.

MR. REILLY: We would need enabling legislation to carry forward the concept outlined here.

ASSEMBLYMAN OTLOWSKI: I think that what the Assemblyman is saying is that he would rather have the EDA be responsible for the administration and be responsible for the--

ASSEMBLYMAN SNEDEKER: Why not give them the \$10 million?

ASSEMBLYMAN OTLOWSKI: That's what you are saying, isn't it?

ASSEMBLYMAN SNEDEKER: Well, yes, Mr. Chairman. If it is a need, you can change one set of rules and the EDA would get the additional \$10 million and they could run the program.

MR. HOROWITZ: Well, you have two authorities that can deal with nursing homes right now, the Health Care Facilities Authority and--

ASSEMBLYMAN SNEDEKER: That's what worries me. I have sat here now for six years and I hear the certificate of need and the problems that some of these people talk to me about, about getting a certificate of need to do certain things and one department doesn't talk to another. Now, I can see that we're still not going to be--

MR. REILLY: I think, Assemblyman, this would begin to get at some of the problems that you have heard over a number of years.

ASSEMBLYMAN SNEDEKER: Commissioner, I disagree with you for the simple reason, number one, you have 6500, from your figures, approved nursing homes. They probably can't get the money at this point at the interest rate. I don't think they are going to agree with your figures to take 80% medicaid patients or 50% medicaid patients and have to line up with the rules and regulations of your Department and the Health Department on their back, along with the EDA.

MR. REILLY: I don't think that is true. Right now, about 70% of the beds in the state, on the average, are medical assistance already.

ASSEMBLYMAN SNEDEKER: That's not true. You mean the 6500?

MR. REILLY: We now pay for about 19,000 or 20,000 beds in the state. There are about 28,000 or 30,000 beds, overall, available. That means that better than two thirds of the present system are paid for out of medical assistance. I understand that you hear complaints from providers about the rates and you hear complaints from providers about the certificate of need process and it is a very complicated process. I think this will serve to begin to simplify it because

it will make available a very effective way to finance the construction of a long-term care facility. In fact, I think it will ease the certificate of need process because often times a question in that process is the availability of financing and have they sought out the least cost financing. This will provide a mechanism to induce them to use the authority structures to finance their capital construction, That, in turn, will save the public a good deal of money because we wind up paying for those capital costs and we wind up paying for those high interest charges. So, if we can get the interest charges down, the homes benefit and the public benefits and the Treasury benefits. In my sense, and perhaps some people from the industry might want to speak, but my sense is that the long-term care industry, who understands all the problems of the present system, is in favor of this proposal and feels that this proposal would be a step in the right direction. It is not a panacea, but it is a step in the right direction.

ASSEMBLYMAN SNEDEKER: I can't support the Department going into a guarantee loan basis of \$10 million. If it is a good idea, and I think there has to be a lot more debate on this \$10 million, I think the money should go into the EDA and the three departments could get together and work out, we can work a bill out on how the money would be loaned out. But, I don't see us starting a \$10 million fund in the Department of Human Services for them to back up and to be operated by the EDA and to be inspected by your department and the Health Department. I think that we're getting more government regulations and really going to cause a problem for ourselves and the industry.

ASSEMBLYMAN VISOTCKY: Where is it written in the bill that it is guaranteed 80%?

MR. REILLY: It is not written in the bill.

ASSEMBLYMAN VISOTCKY: Well, I think before we vote for anything, it should be guaranteed at some percentage.

MR. REILLY: This question came up earlier, Assemblyman, and because this is a new concept, it was felt that enabling legislation was necessary and appropriate and these kinds of issues of how much medicaid participation will be required; what percentage of the loan will be guaranteed, ranging from thirty to ninety percent; these issues should be considered after full deliberation and full discussion in the enabling legislation. The difficulty is that it would be necessary to move now on the concept of using the general obligation bond funds so that we would be ready sometime after November. By that time, hopefully, the legislation will have been fully considered. The thought was not to put too many of those kinds of provisions in the bond issue itself.

ASSEMBLYMAN VISOTCKY: The average person will say, if you get a person on Medicaid, 80% of the beds, people will probably buy it. If you're going to go down to twenty or thirty or fifteen, forget about it. I wouldn't vote for it myself.

MR. REILLY: I understand your point. It has to be some reasonable interest for the public.

ASSEMBLYMAN LESNIAK: Mr. Chairman, why are we debating the implementing legislation?

ASSEMBLYMAN SNEDEKER: I think you have to have that.

ASSEMBLYMAN MAYS: Say this passed. You still need the legislation to pass for the EDA to take this money. Suppose that bill doesn't pass. Then, this whole bill is killed, right?

MR. REILLY: The \$10 million is only for this purpose. The general obligation bonds are authorized on a referendum and then must be appropriated by the Legislature through the Bond Oversight Committee and then the full Legislature. So, if the enabling legislation were not forthcoming, these bonds would never be appropriated and in fact would never be sold.

ASSEMBLYMAN SNEDEKER: Mr. Chairman, this is the first time that I have ever been in a position to appropriate money and to pass legislation after. I've always been in the position to pass the legislation and then to appropriate money into that or get another bond issue the next time around. I think \$10 million needs a lot more discussion than sitting here talking about whether we need 80% or 50% or 20% or it is workable or it is not workable. I would like to hear from the EDA. What is their opinion on this? I would like to hear from the Health Department. Are they agreeable to relaxing their certificate of need rules and regulations to allow us to do this with the requirements of 50% or 80%? I've gone through too many of these bond issues with, "This is a great idea, but..." When the "but" comes around after the bond issue is passed, we find that we can't use it or people aren't agreeable to this. \$10 million is too much to pass without these things being answered for me. We talked about \$26 million for prisons. We want to know where it is going and we think there is a need for it. I think there is a need for this also, but I want to make sure it is going to work and I think we need a lot more discussion than just passing it here today.

MR. HOROWITZ: If I can, I would like to stress that this proposal has been developed in conjunction with EDA, with the Health Department, with the Health Care Facilities Financing Authority. They have all testified to that effect before the Capital Commission. It has been worked, also, with bond counsel to both authorities and they have been involved with it and they have advised us that we could actually do this without passing any enabling legislation, other than the bond issue referendum itself and the appropriation. However, at the Capital Commission meeting, they suggested that enabling legislation would be preferred and we certainly agreed with them.

ASSEMBLYMAN OTLOWSKI: Who said that enabling legislation would be preferred?

MR. HOROWITZ: The Capital Budgeting and Planning Commission.

ASSEMBLYMAN OTLOWSKI: The enabling legislation would have the nature of--

MR. HOROWITZ: Of spelling out some of the details of this proposal and picking up the rules and regulations pertaining to these proposals. But, basically, a lot of the money is to be channeled to the EDA and Health Care Facilities Authority, setting up the legal authority to do that. But, basically, the rules and regulations would spell out the medicaid bed requirement that Deputy Commissioner Reilly said would have to be very high. That is the purpose of the proposal, to get medicaid beds.

ASSEMBLYMAN SNEDEKER: Mr. Chairman, through you, I have a question. Is it a fact or is it not a fact that the Division of Medical Assistance and Health is considering revising its reserve bed policy so that a nursing home patient will not lose his or her nursing home bed should the patient enter an acute care hospital where there are beds available.

MR. REILLY: Yes, that is a fact.

ASSEMBLYMAN SNEDEKER: Well, then--

MR. REILLY: But, that doesn't have anything to do with this problem.

ASSEMBLYMAN SNEDEKER: Why?

MR. REILLY: It has very little to do with this problem. That's the question that--people are in a nursing home and they get sick and have to go to the hospital. In the past, we have not paid for their bed in the nursing home on the premise that it would be a double payment. You are paying for them while they are in the home and while they are in the hospital. The problem has been, because of the extreme shortage of beds, that people get into the hospital and can't get back into the nursing home. So, for that reason--

ASSEMBLYMAN OTLOWSKI: Excuse me for just a moment. I think that one of the things that is bothering members of the Committee is the percentage of medicaid patients that would be taken into these facilities that would take advantage of this proposed legislation. I would just want you to relinquish the chair for a moment and I would like to hear from the Nursing Home Association on this point because they are the people that deal with the nursing homes. Now, for the record, would you identify yourself?

F R A N K B R I L L: Yes, Mr. Chairman. My name is Frank Brill and I represent the New Jersey Association of Health Care Facilities, which is essentially the nursing home industry in this state. We are very much in favor of the proposal as it stands. We think we face a real crisis in this state in the shortage of nursing home beds and it has to be addressed. As far as the actual percentage to be fixed now on medicaid beds, we are willing to go along with a percentage, but we prefer to see it not attached to this bill now, but rather to be worked out with the enabling legislation later on.

ASSEMBLYMAN OTLOWSKI: Why don't you want to see it now?

MR. BRILL: The problem is, we could possibly go along with an 80% medicaid bed figure right now. The problem is with the reimbursement rates. We know that Health is having problems with their budget right now. They have a shortfall in funding and we don't know how the rates are going to be in a year or two. Right now, 80% might be agreeable to us.

ASSEMBLYMAN OTLOWSKI: How would enabling legislation be able to cope with that?

MR. BRILL: Well, by the time that comes along we would have a better idea--we would just rather wait until that time to see what the funding situation will be in medicaid. It is in a flux right now.

ASSEMBLYMAN VISOTCKY: In the meantime, you would like to take the money and then say, "We don't have to take the 80%."

MR. BRILL: We're not going to use the money to build any facilities. It is just a guarantee to the market.

ASSEMBLYMAN MARKERT: Then you are getting the money. The reason you are getting the money is because of a guarantee that is coming through to give it to you.

MR. BRILL: That's right. There is going to be no nursing home construction in this state without some sort of guarantees. We just can't get the money to build them.

ASSEMBLYMAN VISOTCKY: We look at the guarantees too, for our people.

MR. BRILL: We're willing to go along with percentages on medicaid as long as they are reasonable with the time. We would just rather wait until the

time comes and we're going to apply it. What I am saying is that right now, we could go for 80% and build a home and expect to make a reasonable profit.

ASSEMBLYMAN OTLOWSKI: Excuse me. The enabling legislation would be absolutely necessary as a sequel to make this thing work?

ASSEMBLYMAN LESNIAK: Yes.

ASSEMBLYMAN OTLOWSKI: It would be absolutely necessary? What you are saying, then, in that necessary enabling legislation you would then be able to put the percentages in?

MR. BRILL: Yes, Mr. Chairman or we could go for a clause at the time that would say that the percentages would be set by regulation by the Health Care Finance Agency and Human Services.

ASSEMBLYMAN VISOTCKY: Look at this from the voter standpoint. He or she says, "At least we are guaranteed 80% medicaid patients going into these facilities. We'll go along with that." We find out that the enabling legislation says 30% or 20%. Forget about it. They're not going to vote for it.

MR. BRILL: Assemblyman, the only problem with that is, if we go along with that now, and possibly we could go along with it, and then the money, the reimbursement rate, is not there when it comes time to build a facility, the lenders are not going to lend the money anyway because they know that a profit is not going to be made.

ASSEMBLYMAN MARKERT: Also, you are going to have to make the decision whether to take the money, whether to go ahead with your construction based on how much you are going to get back and if it is not enough, then you don't go. You would go out and get privately financed without any guarantees.

MR. BRILL: Actually, what will happen, there won't be any construction.

ASSEMBLYMAN MARKERT: All right, but that would be your decision.

ASSEMBLYMAN SNEDEKER: If we put this through without any limit on it, no 80% or anything else, then you agree to 80% later on and the medicaid rates are lowered five years after you take the loan, what happens? Let's suppose you agree to the 80%. We agree to put this through and someone starts to expand their facility and the medicaid rates do not go up as they have not been going up and they have been having a problem. Now, the state has now guaranteed a loan to someone for a couple million dollars. You put up 20% of that or 10% of that. The federal government has not increased the medicaid rates. What happens?

MR. BRILL: The home is going to fail.

ASSEMBLYMAN LESNIAK: Mr. Chairman and members of the Committee, if we lock in a certain percentage now, and I agree with Mr. Brill, we don't know what the economic conditions of the industry are going to be at the time the legislation goes through, at the time we're going to make a commitment. There has to be some kind of flexibility in terms of the operation of the program. What we may be doing, especially if we put it into the bond issue, is totally locking it into a position where we just may be doing a fruitless act. Maybe they will have to adjust it five or ten percent. I don't see any problems with that if that is the economic analysis, the feasibility studies done by the Department. I don't see how we can lock ourselves into a position that may not be economically feasible and maybe we are just doing a fruitless act at this time and raising people's expectations that we're going to be doing something about creating additional nursing home facilities and not actually, in fact, doing anything.

ASSEMBLYMAN MARKERT: Ray, isn't the overall picture to be able to get this bond issue passed and voted upon, because we feel the need for it? And, I think every little thing that we do to help hinder it is going to hurt.

ASSEMBLYMAN OTLOWSKI: Excuse me. The Speaker has the board open. I'm going to suggest this, that we adjourn the public hearing on this question, on this bond issue because the other one we have open and we're going to have a public hearing on the prisons.

ASSEMBLYMAN LESNIAK: Mr. Chairman, why can't we just terminate the public hearing?

ASSEMBLYMAN OTLOWSKI: We're going to terminate the public hearing on this phase of it, on the Human Services. The prison thing, we're going call a hearing on that on July 24. So, we can adjourn the public hearing on this bill.

ASSEMBLYMAN LESNIAK: I move to adjourn the public hearing.

ASSEMBLYMAN OTLOWSKI: Do I have a second? (No response)

ASSEMBLYMAN VISOTCKY: I'm not voting for the bill, so it doesn't bother me. I want a guarantee for the people on medicaid.

ASSEMBLYMAN LESNIAK: That has to do with the bill. We can debate the bill in Committee. Do you need any input from the public? That's all we're doing, moving to adjourn the public hearing.

ASSEMBLYMAN VISOTCKY: But, we don't even have answers to the questions yet. I want answers.

ASSEMBLYMAN LESNIAK: Then I withdraw my motion.

MR. BRILL: Mr. Chairman, could I make one more point? Commissioner Klein is faced with the situation now where she is talking about the possibility of cutting medicaid rates on, I believe, July 1, if she doesn't get a supplemental appropriation. I just throw that out as evidence that we may have some nursing homes that may have to fold then at that point because of medicaid funding. If we tie ourselves to a certain percentage now and that type of scenario unfolds, you can see the problems that will happen.

ASSEMBLYMAN VISOTCKY: You know, I'm sick and tired of hearing that. People throughout the State of New Jersey are trying to get into nursing homes in the worst way. They can't get in. If they are paying with a regular plan and paying \$500 a week, there are plenty of rooms. There is no room for the people who really need it and I'm tired of that and I want a guarantee for the people.

MR. REILLY: Assemblyman, I understand what you are saying. As I said earlier, I think it has to be a high number of medicaid beds in order to justify using public funds to guarantee it. I understand the people's reluctance to pin it down at this point because of the relationship with the rates and the cost. I just throw out the notion, to get us off that center, they are very concerned about the 80%. They say that 80% is okay now, but they are concerned about the future. What if the suggestion was 70%, so that the minimum guarantee would be at least 70%? The notion is probably in the enabling legislation and it would come before this Committee. This is the Committee that has jurisdiction. We could design it and relate it to the rates so it would be fair to the industry and fair to us or at least a minimum guarantee of at least 70%.

ASSEMBLYMAN VISOTCKY: We dropped 10% already. Why can't we make it a minimum guarantee of 80%?

MR. REILLY: As far as I am concerned, that's fine.

ASSEMBLYMAN VISOTCKY: Well, then, let's have a nursing authority in New Jersey for once and for all. Let's have our own authority and get something done for the people.

MR. REILLY: I would implore you, Assemblyman, that this bill is very important, this proposal is very important to get us off center and moving to respond to the nursing home problem. It's not perfect.

ASSEMBLYMAN VISOTCKY: Jerry, can you tell me any nursing home right now where the present law is 30%. I'll take your nursing homes. There aren't 30% medicaid patients in those nursing homes.

MR. REILLY: The law doesn't stipulate 30%.

ASSEMBLYMAN VISOTCKY: Roughly 30%.

MR. REILLY: The average is around 65 or 70%.

ASSEMBLYMAN VISOTCKY: Take the ones up in North Jersey. You can't even find them.

ASSEMBLYMAN OTLOWSKI: Let me say this because we have run out of time. Are there objections to adjourning this public hearing? I think that what we have here. I think you know what you are going to do. But, I think that we have exhausted anything that we want with the public hearing on this bond issue unless you feel that there is additional discussion and additional people that should be heard on this, but I think that we have heard everything that we want to hear on this particular bond issue and I don't see the point of continuing this hearing because you will be able to get the stuff that you are talking about across when we vote to release the bill. But, my own thinking is that I would like to adjourn this part of the hearing so that the hearing on the 24 would be just reserved for the penal institutions. In addition, you would have a chance to do whatever you wanted before the bill was released. But, I don't think we can learn any more from the public hearing on this phase of it. So, can I have a motion to adjourn the public hearing?

ASSEMBLYMAN LESNIAK: I so move.

ASSEMBLYMAN OTLOWSKI: Do I have a second?

ASSEMBLYMAN MAYS: Second.

ASSEMBLYMAN OTLOWSKI: Could we have a voice vote on the motion.

(at which time the motion passed)

ASSEMBLYMAN OTLOWSKI: Very well. This public hearing is adjourned.

(At which time the hearing was adjourned)



