
Public Hearing

before

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

SENATE COMMITTEE SUBSTITUTE FOR SENATE CONCURRENT RESOLUTION Nos. 41 and 60 of 1996

(Amends Constitution to dedicate 4 percent of Corporation Business Tax revenues to fund hazardous discharge cleanup, underground storage tank improvements, and surface water quality projects)

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: June 3, 1996
11:30 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Robert E. Littell, Chairman
Senator Peter A. Inverso, Vice-Chairman
Senator John H. Ewing
Senator Joseph M. Kyrillos Jr.
Senator Dick LaRossa
Senator Bernard F. Kenny Jr.
Senator Wynona M. Lipman



ALSO PRESENT:

Aggie Szilagyi
Office of Legislative Services
Aide, Senate Budget and Appropriations Committee

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SENATOR ROBERT E. LITTELL (Chairman): Senator Bennett, in 10 words or less, tell us why we ought to do what you want. I know as a good lawyer you could not do it in 10 words or less.

SENATOR JOHN O. BENNETT: Because it is the right thing to do. How's that?

SENATOR KYRILLOS: I'll move the resolution. (laughter)

SENATOR BENNETT: Okay.

SENATOR LITTELL: Please go ahead.

SENATOR BENNETT: Thank you, Mr. Chairman.

Members of the Budget Committee: Today, I come before you to urge the Committee to vote in the affirmative on Senate Concurrent Resolution No. 41, known as the Pollution Cleanup Act.

On May 16, this Concurrent Resolution was voted out of the Senate Environment Committee. The legislation before you today represents the collective efforts of the sponsors of SCR 41 -- myself, Senator Hank McNamara, and Senator John Adler. In addition, the sponsors have worked with members of the business community and the environmental community to craft what I feel is one of the most important legislative initiatives of the year.

Your vote in the affirmative today will bring us one step closer to establishing a constitutionally dedicated source of funding to remedy the most serious environmental issues outstanding in this State. Specifically, these funds will be used for the cleanup of New Jersey's hazardous waste sites, underground storage tanks remediation, and for ensuring that our State's water sources remain environmentally safe.

We owe the citizens of New Jersey and the children who will inherit our legacy a guarantee that the aforementioned environmental issues will be addressed. Unless we get serious about eradicating the puddles of poison that endanger our environment and our children, we will share blame along with those who have polluted our State.

It is unacceptable for our generation to waste this opportunity and pass the buck to the subsequent generations. I believe that if we do not act, that is exactly what we will be doing. The constitutional amendment you are voting on today dedicates 4 percent annually of the existing Corporate Business Tax. For this year, that sum of money will be approximately \$48 million, and each year thereafter it is estimated that that amount will grow as the revenues from the Corporate Business Tax grow.

No administration and no Legislature can later divert these moneys for other purposes. In the past, that is exactly what happened. When the Legislature appropriated funds for hazardous waste cleanups, prior administrations used these funds for other purposes. As a result, our environmental problems remain, and the funding necessary for the cleanups has vanished.

Of the 4 percent of the Corporate Business Tax to be utilized, one-half will be set aside for hazardous discharge cleanups, one-third will be allocated, until December 31, 2008, for underground storage tanks projects, and a minimum of one-sixth, or a minimum of \$5 million, will be for water quality projects.

We owe the citizens of New Jersey the right to decide whether they support the dedicated funding of these programs. If this legislation is

reported out of Committee today and is subsequently passed by three-fifths of each House, in November of this year we will give the electorate the ability to decide whether cleaning up the environment is an important priority to them.

I am confident that the public will agree with those on this Committee who will cast a vote in favor of SCR-41. A vote in the affirmative is a vote to pass on to the next generation a better State than the one we inherited. I believe present and future residents of New Jersey deserve a clean environment and a State that they can be proud of, which is free of uncontrolled poisons and toxics.

Thank you, Mr. Chairman, and members of the Committee.

SENATOR LITTELL: Thank you, Senator Bennett.

Senator Adler. How about you, can you do it in 10 words or less?

SENATOR JOHN H. ADLER: As well as he could.

Mr. Chairman, members of the Committee: Thank you for your attention this morning. For too long, New Jerseyans have lived side by side with toxic waste dumps, with leaky underground storage tanks, with unclean water. Each year, we have had the temptation to balance the budget because it is a constitutional requirement, but to do so by taking moneys away from funds that were supposed to be for the cleanup of our environment.

We have a chance with this legislation -- with this resolution which will change our State Constitution to protect, on a long-term basis, our environment, to protect our economy, to put potentially useful fields back into economic activity, to create jobs in the long run, to create a stronger economy for our State, to create a better, healthier, cleaner, more prosperous New Jersey.

It is easy for us to do it if we show the willpower today and allow the voters to show their willpower with us, as I am sure they will, to dedicate just 4 percent of our Corporate Business Tax revenues to help clean up our environment. We will have a better New Jersey for many, many years to come. It is easy, sometimes, to overlook long-term solutions. This is an opportunity to do the right thing for New Jersey for many, many years to come.

I urge your support for this resolution.

SENATOR LITTELL: Thank you, Senator Adler.

Joseph McNamara, Local No. 625.

J O S E P H M c N A M A R A: Good morning, Senators.

My name is Joe McNamara. I am here representing the Labor/Employers Cooperation Trust. This organization is a management/labor structure that represents the construction and environmental remediation industries, so this bill is obviously very important to us. It is certainly a proenvironment, proeconomy bill.

The Senators emphasize the health benefits of dedicating this source of funds, and we certainly support that. But this bill is also-- This resolution is also very important to our economy. If we do not clean up the sites, we lose the opportunity to attract and retain business. That is a very, very important part of our strategy to bring business into this State.

The other aspect, from the business development standpoint, is that this could also be tied into an urban development/economic development strategy. Many of these sites, by definition, are located in urban areas, places where we had manufacturing and some of our businesses in the earlier part of our century, when often we were not as environmentally sensitive as we should

have been. So the cleaning up of these sites will allow us to market them and bring business into areas like Newark and Jersey City, which are close to our port and our airport, so that we can market this State as a good place to do business.

We have not necessarily shown the progress that we should have. This resolution helps us to address that. We have to show our citizens and businesses that we are doing this in a systematic way by dedicating the source of funds, funds that are already earmarked for this, the very key to this process. This Committee knows very well that there are a lot of pressures to divert moneys to other worthy causes, but this is too important to do that. It is good for the economy, and it is good for our environment.

So my organization, the people I represent, are very happy to support this resolution.

SENATOR LITTELL: Thank you, Mr. McNamara.

Jerry Ferrara and William Dressler, New Jersey Gasoline Retailers.

JERRY M. FERRARA: I don't know why they changed seats, we are not going to be that long.

SENATOR LITTELL: I know you can do it in 10 words or less.

MR. FERRARA: I am Jerry Ferrara, Executive Director, New Jersey Gasoline Retailers, representing approximately 3000 service stations. My colleague alongside of me is William Dressler, who hears the problems when our dealers call looking for funding.

As you know, funds have been unavailable to us completely. We have tried banks. I have served on several loan boards. We couldn't get any money of any type, low cost or otherwise. We met with the Director of the

EPA Underground Storage Tanks in Washington, and her assistant. Even there the ability to obtain money is negligible. In fact, we took a copy of the Lender Liability law that they felt had been passed around. We mailed it to all of our members to give to their local banks, in order to try to educate the banks that we are not as bad as we are as far as underground storage goes.

We urge the passage of this bill because we are mandated to upgrade our stations. Hopefully, we will see it passed.

WILLIAM DRESSLER: Mr. Chairman, we have until 1998 to facilitate this work. Without funding as we had in the past, we simply do not have the ability to do that. Many of our people, their ability to stay in business is going to be perpetuated simply by some funding being made available to them.

So, again, echoing Jerry's sentiments, we, as individuals, urge that this bill be passed so as to do two things: First of all, clean up the environment, which is a responsibility we are all obligated to, and secondly, to keep our people in business to make them available to the consumers of this State.

Thank you.

MR. FERRARA: We just want to make one thing clear about the dedicating of funds. We know that in the past funds that were supposed to go to cleanup, not one dollar was spent, while the money was used for administrative costs, and otherwise. So we strongly urge this particular-- We know how difficult it may be, but it is necessary in order to assure that the funding will be there, and will not be wasted.

SENATOR LITTELL: Thank you very much, Mr. Ferrara and Mr. Dressler.

Jim Sinclair, New Jersey Business & Industry Association.

JAMES SINCLAIR: Thank you, Mr. Chairman.

I am here to support the portion of this bill that deals with site remediation activities, Senator Bennett's effort to develop an adequate funding for the cleanup program almost 10 years ago -- something that we supported then -- after the business community supported an increase in the Corporate Business Tax, which generated about a quarter of a billion dollars. Very little of that money went for actual cleanups. This is Senator Bennett's effort to sort of dedicate that portion of the existing Corporate Business Tax now to do the cleanup activity that the business community thought that it paid for during the 1980s and into the 1990s.

This Legislature has a number of issues on site remediation that this bill does not address at all. Today, in another committee, we are going to hear from Senator Scott, who is going to look at the Spill Fund and how the Spill Fund is used basically to pay for administrative costs at DEP. This is an important issue, an important component, and we hope the Legislature looks at the total program and how it is funded, where administrative costs come from, and how we pay those administrative costs. We would like to see the Spill Fund used to do cleanup activities, and not for administrative costs.

The business community really cannot be out front in supporting the rest of the bill, because it is being attacked by the organizations that they believe are fronting for the environmental union workers at DEP with this polluter-pays concept. They are running ads right now. If this was a polluter-

pays bill, then the Corporate Business Tax would not be used and dedicated to pay for residential storage tanks, or there would be a priority given to commercial underground storage tanks in the bill.

As far as watershed permitting goes and the watershed monitoring, right now, on point source discharges, we have the highest fees in the nation. This Legislature -- and, I believe, this Committee -- passed-- Actually, the Senate passed a bill -- Senator Scott's -- saying that the Department has gone beyond legislative intent in its fee system for the NJPDES program. Well, how do we correct that? We correct it by either streamlining the program, or by paying for the portion of the NJPDES program that other states pay for that are not directly related to point source discharges. We believe, but we are not sure, that there is enough flexibility in this language to provide that kind of determination to pick up those nonpoint source charges that are in the existing fee system. That we do not know, but that is something that should be looked at in the context.

When you put these components together, these are really either the most important parts of our environmental program that are not funded now, or they are marginal activities that are being added on to the program. If they were important, one would suppose that the Legislature would have it in the budget. But because in the past there have been other sources of funding and the money has been used differently, this bill is basically requiring that these activities be funded and given a priority over the other items in the budget.

As I said before, we support -- the business community supports the efforts on the site remediation. We would like to see that effort go

forward. We know that this does not involve new projects until after the turn of the century, but the existing projects have to be funded, and the Department is running out of money.

Thank you.

SENATOR LITTELL: Thank you, Mr. Sinclair.

Fred Sacco, David Gilbride, and Eric DeGesero for the Fuel Merchants Association of New Jersey.

F R E D S A C C O: Good morning. I am Fred Sacco, from the Fuel Merchants Association. We have been here a number of times over the last several years to try to put something in place that would assure us an opportunity to provide loans so that our members can either complete their service stations, or help the owners of service stations that we supply.

I have with me Dave Gilbride, who is the Northern Vice President for Motor Fuels. Dave's story is a story that could be repeated for some 79 of our 400 members. So I would like to turn it over to Dave so you can get a picture of the kinds of problems that he has encountered trying to meet both the State and Federal laws.

D A V I D G I L B R I D E: Good morning. My name is Dave Gilbride. I am President of the Spartan Oil Company. We are located in Dover, New Jersey. We serve predominantly the northern half of the State, Morris, Sussex, and Warren Counties in particular.

The company was started in 1940 as a family fuel business. It grew, by the late 1980s, to have 16,000 residential fuel customers in those three counties, 110 retail service stations, under various brands, and between 130 and 150 employees, depending on the seasonal aspects of things.

In the service station business, the types of stations that we supply are generally too small for the major oil companies to have an interest in, or are in rural areas where the major companies distribution systems are not efficient.

We realized late in 1988 that we had to do something to upgrade the service stations that we controlled to be environmentally responsible and to be prepared for what was coming in the 1990s. I guess around 1988, we began to invest what totaled out in the end to be \$4.5 million on these upgrades. We were trying to meet the 1998 Federal standards, which were accelerated by New Jersey to 1993, and then later, diverted to 1998, in any case.

Of our 110 outlets, we first eliminated outlets that we felt could not survive, or did not justify the kind of investments required. Twenty-five of our owned and leased outlets were brought up to standards. Those are complete, and we are probably in better shape than any of the other members of Fred's organization.

The 32 additional outlets that are owned by individuals and individual families, of those only 9 are now complete. We have been unable to get financing certainly for ourselves, and these dealers -- as Mr. Ferrara mentioned -- have no access to capital to make these types of improvements. The money that we invested in the early 1990s, the Gulf War pricing version, coupled with a series of warmer than normal winters and the pressure of having to do these upgrades and perform some cleanup and remediation work that was identified in the process, forced us into default on our financing arrangements. We were faced with the prospect of having to sell half of the

company, and we chose to sell the retail fuel businesses, the regional oil companies up north, to finance that.

Some of the proceeds, what little was left after the tax and the debt bailout, are being used, and have been used to finance individual dealers' upgrades where they had no access to financing. Now, to this point, we have only been able to complete nine of these with partial funding from ourselves, and the recent events in the world that have caused the margins on gasoline to shrink for people like us now have projects delayed in areas like Vernon and Westwood. We have been able to complete locations in Stewartsville, Oldwick, Irvington, and Piscataway within the last year.

We are pretty much out of the resources we would need to help these individual dealers, and feel that this type of program is the only alternative for most.

Thank you.

SENATOR LITTELL: Thank you, sir.

MR. SACCO: We have at least 100 companies that have these kinds of efforts underway to improve their facilities. We worked very hard with Congress to get lender liability legislation that we thought would open up the traditional lending sources. Well, Senator, they have not opened up.

If this vehicle is not provided to the business community that we represent in the form of loan ability, many of our members will not be able to keep some of the service stations that they supply.

Not only that, Senators, but we, the Fuel Merchants Association membership, supply most of the municipal/county operations. Many of them have not been able to get upgraded, because they are forced to do bonding and

increase their real estate taxes in order to accomplish this. So this would provide an opportunity for many of the smaller municipalities, either a vehicle for loans or grants. I think this is a very creative piece of legislation that would benefit New Jersey very much.

Eric?

ERIC DeGESERO: Just one final point, Mr. Chairman: After that date, if these sites are not taken care of, the State will be responsible for them by virtue of the fact that they will wind up as part of the Publicly Funded Site Remediation Program. So I think that in the long-run, public-policy interest of the State, it is in the best interest to keep businesses that have been around for two, three, and, in some cases, four generations -- keep those sites active while we are cleaning up the environment at the same time and keeping folks on a payroll, as well as bringing revenue into the State.

Thank you, Senators.

SENATOR LITTELL: Thank you, gentlemen.

Rick Gimello, Assistant Commissioner, Department of Environmental Protection.

ASST. COMM. RICHARD J. GIMELLO: Good afternoon, Senator, and members of the Committee. I have with me Tony Farro, who is the Director of the Publicly Funded Division in the Site Remediation Program. I will make my comments brief, Senator.

I would like to take this opportunity to thank Senator Bennett, Senator Adler, Senator McNamara, and the others who have worked very thoroughly to help us address the funding shortfall for the Site Remediation Program and to help with the Underground Storage Tank Program and the

Watershed Management Program in the State. These are critical issues. I appreciate the efforts of everyone who has worked.

These moneys will be critical in the Department's effort to protect human health and the environment. For that reason alone, the Department and Commissioner Shinn strongly support this bill.

I want to stress, however, this morning, that while we do support this unequivocally, it does not fund completely the needs of the Publicly Funded Site Remediation Program. The Program's needs for projects, as an example, on a yearly basis, are in the area of \$35 million to \$45 million a year. This bill would provide about \$20 million toward that effort. While Tony's side of the Program requires about \$17 million in admin money a year, the current bill would provide \$4.2 million.

I want to stress that for two reasons: Number one, it is a significant shortfall, but I expect the Department, myself, and Mr. Farro will be seeking the support of the members of this Committee, and others, on an annual basis to help us to deal with the remaining portion that we were not able to address through Senator Bennett's efforts.

Our funding needs -- and this is another critical issue -- deal with projects that -- and you will excuse the pun -- are already in the pipeline. This does not envision that we will have dollars to address any new sites. If we were to find a new site today that needed public attention, it would go to the bottom of the list. It would not be able to be addressed with this particular funding mechanism.

We hope, as we move forward with these cleanups, that responsible parties will come to the fore and take over in our stead, that

additional dollars will be freed up. We do not see beginning any new sites at least through the year 2000. I think that is critical, because in New Jersey, as all of you are aware, there are a number of sites that are going to need attention by both the Federal government and the State government, and it is a long-term proposition.

I want to jump very quickly to the underground storage tank issue. As you know, another critical element of this bill -- as you heard Mr. Sacco and others mention -- was the funding for loans and grants to upgrade and clean up underground storage tanks in this State, again, a critical need. Let me just give you an overview.

In our experience to date, we have found that about 25 percent of the tanks coming through the Program have discharges that have resulted in soil contamination. So about 50 percent of the tanks in the Program are leaking. About 25 percent of that 50 percent have soil contamination, and about another 25 percent of that 50 percent have impacted groundwater. So in addition to the upgrades that Mr. Sacco talked about, there is also a direct environmental impact that needs to be addressed, and this bill points us in the right direction for addressing some of those tanks.

In 1995, there was a study financed by an organization called Environmental Information Limited that showed that the average cleanup -- not closure or upgrade, as Mr. Sacco talked about earlier, but just the cleanup associated with underground storage tanks nationwide averages about \$80,000. So, again, a significant problem, and one that we will take a nice bite out of in terms of this bill.

The good news is that this issue was debated by the Legislature several years ago and, since that time, people with underground storage tanks have worked hard to upgrade. The numbers that need attention are dropping, but it is still a significant number that need attention.

I would also like to briefly mention the Department's appreciation for the sponsors' efforts to secure sufficient staffing and funding for watershed planning and nonsource point programs. These moneys will be helpful as sort of a codicil to the general appropriations dollars that we need to move forward on our watershed planning initiatives. As you know, it is a key element of Commissioner Shinn's approach to environmental management. This bill will help us to secure at least partial funding and a dedicated way to address those.

So, again, those are the three key elements of this bill. We appreciate your consideration of this critical need.

Thank you.

SENATOR LITTELL: Thank you, sir.

Senator Kyrillos?

SENATOR KYRILLOS: Thank you, Mr. Chairman.

I am just trying to get a sense of the General Fund impact from this measure. In aggregate, what are we spending right now on all the various provisions of Senator Bennett's constitutional amendment, and what do you anticipate-- Based on the current revenue, what is 4 percent of the Corporation Business Tax?

ASSISTANT COMMISSIONER GIMELLO: Thank you, Senator.

Based on the current figures we have from the Treasurer's Office, we are assuming about \$1.2 billion total revenue in the Corporate Business

Tax. So 4 percent of that would be \$48 million. Under the wording of Senator Bennett's bill, the Site Remediation Program would be eligible for \$24 million, one-half of the \$48 million, of which \$4.2 million would be used for direct administration costs. The watershed management element is \$5 million, and the underground storage tank part provides \$16 million for a revolving loan and grant program.

SENATOR KYRILLOS: What is the difference, then? Have you tied it up?

ASSISTANT COMMISSIONER GIMELLO: Our current admin numbers for the Site Remediation Program are about \$12 million in direct admin costs.

SENATOR KYRILLOS: But in total sum of all the various programs to be affected-- How much more money would come out of next year's General Fund? You may not have that figure.

ASSISTANT COMMISSIONER GIMELLO: Somewhere in the \$20 million range. It really depends on some other things, Senator: How successful we are in getting moneys back from people. In the other side of the Program, we do direct billing. As you know, we have talked to a number of people on your behalf. So it really depends on some unknowns at this time. I would say that the shortfall, if you will, the money we may need attention for from the Legislature in upcoming years, could be as high as \$20 million, but I don't want to be locked into that number, because it is going to vary.

SENATOR KYRILLOS: I just wanted to get a sense.

Thank you. Thank you very much.

Mr. Chairman, thank you.

SENATOR LITTELL: Are you finished, Senator Kyrillos?

SENATOR KYRILLOS: Yes.

SENATOR LITTELL: Senator Ewing had a question.

SENATOR EWING: What if the revenues are much, much higher? Rich, if the revenues go up to \$600 million, do you still get 4 percent?

ASSISTANT COMMISSIONER GIMELLO: As I understand the provisions in the bill, Senator, as the Corporate Business Tax increases, then these percentages increase in proportion to the way they are designed in the bill. So if the money would go up, then the represented -- the one-sixth of the \$48 million, as an example, for underground storage tanks, and the one-third for--

SENATOR EWING: No, we have that breakdown.

ASSISTANT COMMISSIONER GIMELLO: That would go up in accordance with the increase.

SENATOR EWING: Shouldn't there be a ceiling on this thing, though?

ASSISTANT COMMISSIONER GIMELLO: I am not sure. I have not seen the latest draft.

SENATOR KYRILLOS: Senator Bennett says, "No."

SENATOR BENNETT: No. In fact, what we did on this was-- We had originally proposed higher percentages for dedication.

ASSISTANT COMMISSIONER GIMELLO: Six percent.

SENATOR BENNETT: Six percent, which would have been on today's dollars \$69. But the estimates of the problem, or the magnitude of the problem far exceeds even the amount of dollars that we are going to have

dedicated. So if the economy does, hopefully, continue to improve, it is estimated that the Corporate Business Tax may grow at the rate of 1 percent a year. That would be wonderful, because that would then mean that in approximately two years we would be back up to the \$60 million that we originally proposed. The need is so substantial in our State for both of these sites that it would take us far into the next century before we would have to talk about any change in it.

So we are hoping that that would put us back in the situation. We didn't cap it. We only capped the administrative percentage. That is the only capping we have done in the bill. I believe that is at 9 percent.

ASSISTANT COMMISSIONER GIMELLO: That is correct.

SENATOR BENNETT: The rest of the bill is all based on percentages. The same way if the Corporate Business Tax revenues went down, then we would not be locked into a fixed amount of money either. It would go with what the economy was.

SENATOR EWING: What are the controls where they use the money, where we are saying it is going to be in the bill? Is there a report back to JBOC or somebody, or do we just have to trust to luck?

SENATOR BENNETT: Well, the enabling legislation could deal with that. This would be a constitutional dedication for these purposes that we have in the constitutional amendment. So, therefore, they couldn't take it for any of those purposes other than what is set forth. We are going to have another bill -- if the voters approve this one -- which will be the enabling legislation to deal with some of the other issues that have been raised today. That is how we would implement it after the voters pass it.

SENATOR EWING: Yes, but the administration today is taking money from a nonlapsing fund and they are going to use it generally. I mean, so they can do what they want to, unless we have some real strong language in here so we have some oversight on it. That's all I'm saying.

SENATOR LITTELL: The constitutional amendment will protect the funds. That is why Senator Bennett chose this way, because the last time he appropriated money, they skimmed the money, and he never got it to spend for the cleanup.

SENATOR BENNETT: Two hundred and fifty million dollars is gone.

SENATOR EWING: I agree with you, but how do we know it is not being skimmed again?

SENATOR LITTELL: Because of the constitutional amendment.

SENATOR EWING: Oh, come on. That hasn't stopped it.

SENATOR BENNETT: Don't tell me that doesn't work.

SENATOR LITTELL: Oh, yes, it does.

SENATOR EWING: Yes, but who is going to look to see that it--

SENATOR LITTELL: Me. I'll stay here and watch it, Jack.

SENATOR EWING: Then somebody has to watch you.

SENATOR LITTELL: Constitutional amendments dedicating funds from whatever source are absolute. There is no way for a governor or a Legislature to divert those funds.

SENATOR EWING: Well, is that true on nonlapsing funds?

SENATOR LITTELL: No, it is not true on nonlapsing funds.

SENATOR BENNETT: Because they are statutorily created.

SENATOR LITTELL: All that kind of language does is give a sense to the administration and to the Legislature what a prior governor and a prior Legislature thought ought to happen. They are not bound by it. They are only bound by constitutional dedication of revenue.

SENATOR EWING: Okay.

SENATOR KYRILLOS: You know, Mr. Chairman, Senator Ewing is concerned that he may not be here a couple of years from now.

SENATOR EWING: Yes, I will. I'm staying. (laughter)

SENATOR KYRILLOS: Someone better call Kavanaugh and let him know. Without being here, I am not sure the money is safe.

SENATOR LITTELL: Senator Inverso?

SENATOR INVERSO: I have spoken to Senator Bennett and I have spoken to others about my reservation concerning a constitutional amendment. I think it is a sad commentary when we have to resort to a constitutional amendment to instill in us the discipline that we should have to deal with these things within the framework of the budget.

To me, the Constitution should only be changed for things of such a substantive nature, not to provide dollars to fund an operating component of a program. I recognize what we have here and what the needs are. I was there with the 1.6 percent, or pennies, on gasoline to help the underground storage tank situation a couple of years ago. We were there for that. That didn't fly. It just seems to me that we, as government officials, should have the metal, and the commitment, and the integrity to say, "This is a significant Program. We have to address it within the confines of our budget," and not

turn our backs on our obligations, and say, "Well, let the people decide whether they want to do it by constitutional amendment."

Now, I am troubled by that. I am really troubled by that. On the other hand, except for some of the administrative costs that I may have some questions on, the other components, what we are trying to achieve, are important for the State and, from a public policy standpoint, we should be doing those things. But to have to kind of relegate it to a constitutional amendment to get it done is really a sad commentary on all of us. I am really troubled by this.

I want to support the essence of the bill. I don't want to do it through the constitutional amendment. I don't know if there is any other choice. I mean, I will vote to release the bill, because I think it is important. But I am saying that this is one of those things that, really, you do, and you say, "I wish to God I didn't have to resort to this kind of an approach to do the things that this State should be doing in terms of its water quality, in terms of the underground storage tank problem, where we know we have a drop-dead date in 1998 and we kind of turned our backs on it." It is a sad commentary.

Having said that-- I just had to get it out of my system, because I think we ought to look in the mirror and reckon with what we have here and what we are dealing with here. We are talking about the environment, we are talking about it in small business situations, all combined together.

I want to compliment Senator Bennett and Senator Adler for being the prime sponsors, to come to this point. To think of the raids that have occurred over the last eight years or so -- six years -- on the budget -- it boggles my mind. I am really disturbed by it. To go to a constitutional

question troubles me. We should not, at the drop of a hat, be going to the people and saying, "Change our State Constitution."

In 1947, it was 200 years later, almost, before we touched our Constitution, revised our Constitution. Now it seems like at the drop of a hat we are ready to go to the people and say, "Let's have a constitutional amendment, because we do not have the fortitude or the commitment to do what has to be done." That really troubles me.

I understand your frustration, Senator. I know you have been working on this. But I am frustrated that we are at this point where we have to do it with a constitutional question.

SENATOR LITTELL: Well, thank you, Senator Inverso. I will give you my point of view on the 1947 Constitution.

The reason dedicated taxes were done away with in the 1947 Constitution -- if you read the minutes -- is because in the State of Michigan a Governor by the name of Soapy Williams was confronted with two accounts, a general fund and a dedicated fund. He had money in the dedicated fund, but he didn't have any money in the general fund and was unable to pay the state employees. Conventional wisdom, at that time, did away with all of the dedication, with the exception of the fish and game fees.

Subsequent to that, it was 1969 when the first constitutional amendment to dedicate revenue from the State Lottery Fund was put to the voters and approved. Since then, we have had the constitutional amendment to dedicate the income tax for property tax relief, one of Senator Kenny's favorite amendments, and one that I sponsored. We had the dedication of the gambling casinos and the Transportation Trust Fund.

But prior to the 1947 Constitution, all of the gasoline tax, all of the Motor Vehicle revenue, and all of the revenue from the registration of motor vehicles was dedicated to transportation, and we had the best highway system in the country.

So there is a lot to be said for dedication. You shouldn't fear it.

SENATOR INVERSO: My problem -- in response, that is -- is that we have shore protection concerns, \$15 million that we tiebarred with housing. I mean, there are so many critical needs out there that one could take the same approach on -- constitutional amendments so we would get them done. That is why the people elect us, to get things done.

I did not mean to pontificate. I am just troubled.

SENATOR LITTELL: I understand. Neither did I, but I figured I had to give you my point of view.

Senator LaRossa?

SENATOR LaROSSA: Thank you, Mr. Chairman.

I, too, share Senator Inverso's concerns. I would vote for a piece of legislation that would do this in a heartbeat. I am equally as troubled that a constitutional amendment is the way to do this. I think part of the problem is that we are abdicating the responsibility of the Legislature. At this point, why don't we just get rid of the Legislature, get rid of the Appropriations Committee, get rid of both Houses, get rid of government, period, and just have everything done by some referendum on the ballot that somebody has put out there? I am sure a lot of people would be more than happy to go along with that, but I just think it is an abdication, people just burying their heads in the sand, rather than dealing with an issue that needs to be there.

The second issue I have -- I don't understand this, and maybe you can help me with it -- I would like to know how we provisioned the bill dedicated for the remediation of sites -- hazardous sites, and so on -- how that-- (remainder of sentence indiscernible) How is that impacted by a bill that the Senate put out last week, which was Senator Gormley's bill to dedicate "X" amount of sales tax that was produced on a site? It seems to me that there is a redundancy here. Again, how high is up?

With all due respect to what you can and can't do in terms of what funding is, you can be sure that some Legislature somewhere down the road and some administration somewhere down the road are going to find a way and say, "It is overfunded, ergo you do not need that much money."

Forgive me. I do not believe in the tooth fairy, because the Easter Bunny told me not to. But I would like to know: How does that particular provision, you know, compare with what Senator Gormley's bill is doing? Do we need both?

ASSISTANT COMMISSIONER GIMELLO: Yes, I think we do, Senator. They address distinct needs. In the Site Remediation Program, we deal with sites where there is not a responsible party or developer interested in remediating that site and bringing it back into useful taxpaying status. So what we have -- in Tony's Program -- are sort of the orphan sites in this State, the ones we need to match to secure Superfund dollars. Those are the sites -- the sites that are not going to measure up in terms of development, that do not present that opportunity as the sites that will--

In Senator Gormley's bill, I think the assumption there -- the underlying assumption -- is that we have sites that are going to be put to some

development use, that the developer is not a responsible party, to step in and replace the responsible party, in essence, replace the State and dedicate funds on a potential return on investment.

So the difference is, these dollars will address those sites for which there are not responsible parties or developers who are willing to risk their capital to clean them up. To the extent that that happens, to the extent that a developer says, "You have a site that you are going to spend public dollars on. I want to step in," that is going to free up more money so I can bring some additional sites into the queue.

SENATOR LaROSSA: Okay. The other question I have-- I am looking at the notes where it talks about a sixth of the total, or we administer programs at 9 percent of the total, etc.

My question is -- and it is a two-part question -- we already have DEP-administered programs to monitor water quality, and I believe we also have some DEP programs to monitor -- not do, to monitor -- hazardous site remediation. Is that not correct?

ASSISTANT COMMISSIONER GIMELLO: Yes, Senator, that is correct.

SENATOR LaROSSA: Why then, if we already have money in the budget, we already have that as an activity -- why, then, are we passing a bill which strikes me as having a huge portion dedicated to administrative expenses, not to the remediation. With all due respect, Rich, if we are going to put this money out there, if we are going to look at this, I want to see it go to getting the job done, not to putting more people on so they sit there and shuffle paper and make it harder to get it done.

ASSISTANT COMMISSIONER GIMELLO: Senator, that is obviously a fair statement. Let me take the site remediation aspect of it first.

In Tony's Program -- as I indicated earlier -- we have an admin cost -- direct administration, salaries for the personnel working in Tony's Program -- which has decreased significantly in the past three years, at \$12 million. We have, as a result of some language in last year's budget, added indirect and fringe to that. So the total admin cost for the Publicly Funded Site Remediation Program is \$17 million. That is down significantly over the past three years.

This bill will give me \$4.6 million, I believe -- \$4.2 million toward that \$17 million. So it is significant dollars that I am not going to have for administration that is going to require a lot of work on the part of this Legislature and the Governor's Office to help us to figure out to best deal with that.

In terms of watershed monitoring, I think the efforts of the Senator are just a secure funding to make sure that the program, the shift away from our traditional point source sort of attention to a broader watershed planning is, again, available for a long-term definitive time. I don't think that a lot of that \$5 million will be traditional admin, other than in a sense that it is going to be used for planning and actually to support some of the monitoring as well.

SENATOR LaROSSA: I am just going to restate two concerns, and address what you just said also, as well, Rich.

I am going back to what Senator Inverso said, that is, if it is important, we should be able to do that. We represent the people in this State. We should be representing them accordingly in getting these things done.

The second part of it that I am troubled by is that what would strike me as-- If we are going to set aside, vis-a-vis a constitutional amendment, "X" amount of dollars for a specified purpose, one of the other areas I have considerable concern about is that it articulates in the amendment itself -- not in the enabling legislation -- the specific appropriation-- I think that is the wrong place to do that. I think if there is going to be \$40 million -- "Here is what it is to be used for. Here are the four categories" -- and you don't go in and, if you will, identify the particular percentage, you are going to end up somewhere down the road where somebody is going to say, "Well, I really need 8.5 percent more here, I need 14 percent there." You know, I don't know that that isn't part of the appropriations process.

I think the only way that I can support this is either as a direct piece of legislation or take the enabling language out and let that become another bill somewhere down the road, because enabling language is very different than the amendment. I think what we have integrated into this is enabling legislation. You know, I agree with Senator Inverso. I do not like the idea that we are abdicating a particular responsibility, but if, in fact, we are going to make this dedication, I think somewhere in there-- The Legislature has to be in there somewhere down the road to say, "Here is where some of this is going to go," and establish the priority, because you know as well as I that a year from now, two years from now, five years from now, the priorities that are articulated here based on however much money there is, could just as easily

change and need to be shifted, and we are going to be sitting there with our ankle in a bear trap, not being able to do a doggoned thing about it.

Those are a couple of concerns I have. I hope that before we take a vote on it that they are things we can address. I would like to see the enabling language, if you will, not the amount of money, not where it is to be used, but the specific (indiscernible) eliminated and have that be part of the enabling legislation, because we are trying to do two things at one time. It is one thing not to do the appropriation -- as Senator Inverso said -- but I think it is another thing to do-- I think that totally abdicates our responsibility, and I have a real problem with that.

Thank you, Mr. Chairman.

SENATOR LITTELL: Thank you, Senator LaRossa.

Thank you, Commissioner Gimello and Tony. I appreciate your being here today.

ASSISTANT COMMISSIONER GIMELLO: Thank you, sir.

SENATOR LITTELL: Dolores Phillips and Sharon Finlayson, New Jersey Environmental Federation.

D O L O R E S P H I L L I P S: Thank you, Mr. Chairman, for the opportunity to comment. I am Dolores Phillips. I am the Legislative Director for the New Jersey Environmental Federation. With me is Sharon Finlayson, who is the Chair of the Board of the New Jersey Environmental Federation.

I want, first of all, to thank the Chairman for posing this bill today and allowing it to have the opportunity to come before the voters in November.

I also wish to thank Senators Bennett, Adler, and McNamara for their leadership in moving this piece of legislation forward so that we can address these concerns.

Sharon Finlayson would like to make a comment, and then I will make a comment on our position.

SENATOR LITTELL: Go right ahead.

MS. PHILLIPS: We will keep it short, Senator.

SHARON FINLAYSON: Yes, we will.

As Dolores mentioned, I am the Chairperson of the Board of the New Jersey Environmental Federation, but I would also like to mention that I am a member of the South Jersey Work on Waste, which is a coalition of environmental groups based in Camden County.

Senator Littell and Committee people: Thank you for this opportunity to ask you to support SCR-41/60.

As we all know, and as we have been hearing more of this morning, New Jersey has serious, complex pollution problems due to the intensive use, generation, and release of toxics. We have minimal resources with which to address these problems. This is an extremely important effort. Our public is becoming more and more aware of the effects of pollution, not only the devastating impact of pollution on our air, water, and soil, but we receive daily information that evidence linking pollution to serious health problems is increasing. These health problems include various cancers, such as breast cancer and prostate cancer, upper respiratory infections and asthma, immune system diseases, lower sperm count in men, fertility problems in women, and birth defects.

While information about pollution and its effects are increasing, the willingness to address these critical issues surrounding pollution has been steadily decreasing. It is the responsibility of elected officials and government agencies to protect the health and safety of our residents first and above all else, yet our government has been backing away from the environment as if these issues are too hot to handle.

This resolution dramatically reverses this trend. It not only validates the seriousness of our pollution problems in New Jersey, but it also validates the intent of our governing bodies to address our pollution problems and to protect the health of our citizens.

I have been involved in environmental issues for 11 years. As an environmental activist, I recognize the significance of this resolution. But much more importantly, as a citizen and a mother, I appreciate this resolution and I commend all of you who support it.

Thank you.

MS. PHILLIPS: In addition, Mr. Chairman, and to the Committee, we believe that this legislation is historically significant today. For the first time, the citizens of New Jersey will have an opportunity to vote on an amendment to the Constitution to incorporate into the Constitution the word "environment" and to permanently dedicate moneys to the environment itself.

We believe, from the polling we have taken, that this legislation, in fact, will pass, once it is put before the voters in the fall. We have quantitative data that actually show support for not only this measure, but also quantitative data to show the problems that still exist within the State and, in

addition to that, what the most serious problems in New Jersey are, and what deserves priority.

As Mr. Sinclair pointed out earlier, yes, the Legislature is establishing and enumerating priorities within this legislation for the Department of Environmental Protection. That is precisely the point. There are areas that desperately need money in terms of site remediation. Both site remediation and underground storage tanks are hazardous waste problems that continue to pollute our groundwater.

In addition to the water quality issue, the reason that those fundings were incorporated by Senator Bennett into the legislation is because the need has already been established by the Department of Environmental Protection. The needs are there, because currently only 8 percent of New Jersey's waterways are actually monitored by the Department of Environmental Protection.

In addition to that, we have a problem with funding, both this year and over the last several years, for the Department of Environmental Protection, which has steadily declined. As you know, this year, the Department of Environmental Protection has had its budget deteriorated even further to where they are not able to move forward on the work that needs to be done now and the work that needs to be done in the future to reduce costs and protect health.

The Environmental Federation would like to again thank the Committee for hearing this bill today, and we strongly urge your support. We believe the need is there. We believe these moneys are critical at this time.

We are asking you to give the public the opportunity to vote on this legislation in the fall.

Thank you.

SENATOR LITTELL: I thank both of you. We appreciate it very much.

Jane Nogachi, Coalition Against Taxes.

JANE NOGACHI: (speaking as she approaches microphone; comment indiscernible) Well, I am against those, too -- the Coalition Against Taxes.

Senators, I will be brief.

Chairman Littell and members of the Committee: The Coalition Against Toxics is a grassroots group in Gloucester, Burlington, and Camden Counties. We are in support of the resolution before you today.

To give you an example, there isn't any municipality that is untouched by the problem of hazardous waste sites. There are over 7000 identified in the State. In my municipality, which is a relatively suburban/rural town, Marlton, New Jersey, there are six sites. Four of them are leaking underground storage tanks at gasoline stations, and two of them are municipally owned, one at the municipal garage and one at the school bus garage. This is typical. Municipalities and small businesses need assistance in cleaning up these storage sites. In a city like Clifton, New Jersey, in Passaic County, there are 63 of these uncleaned-up hazardous waste sites, so there isn't a town that isn't touched by this problem.

We strongly encourage your support for this legislation, which is a step forward toward making a constitutional protection to clean up hazardous waste sites.

Thank you very much.

SENATOR LITTELL: Thank you. I am sorry I misidentified you. Kevin Monaco, Utility and Transportation Contractors Association?

SENATOR BENNETT: I think he had to go, Mr. Chairman. He is for the bill. He has testified for the bill, in fact.

SENATOR LITTELL: Yes, he is in favor.

That concludes our hearing.

I want to put everyone on notice that this bill cannot be amended without going through the whole process again. The bill was put on the desks of all of the members of both Houses when we were in session last week. The Constitution requires that the hearing be held and that there be a 20-day waiting period from the date the bills were laid upon the desks. If there are any amendments made to the proposal, it would set it back substantially.

I now conclude the hearing and go back into our regular meeting.

(HEARING CONCLUDED)