

PUBLIC HEARING

before

SENATE TRANSPORTATION AND COMMUNICATIONS COMMITTEE

on

SENATE BILL 3137

(New Jersey Public Transportation Act of 1979)

Held:
March 28, 1979
Senate Chamber
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator John M. Skevin (Chairman)
Senator Francis X. Herbert
Senator S. Thomas Gagliano

ALSO:

Joseph P. Capalbo, Research Associate
Office of Legislative Services
Aide, Senate Transportation and Communications Committee



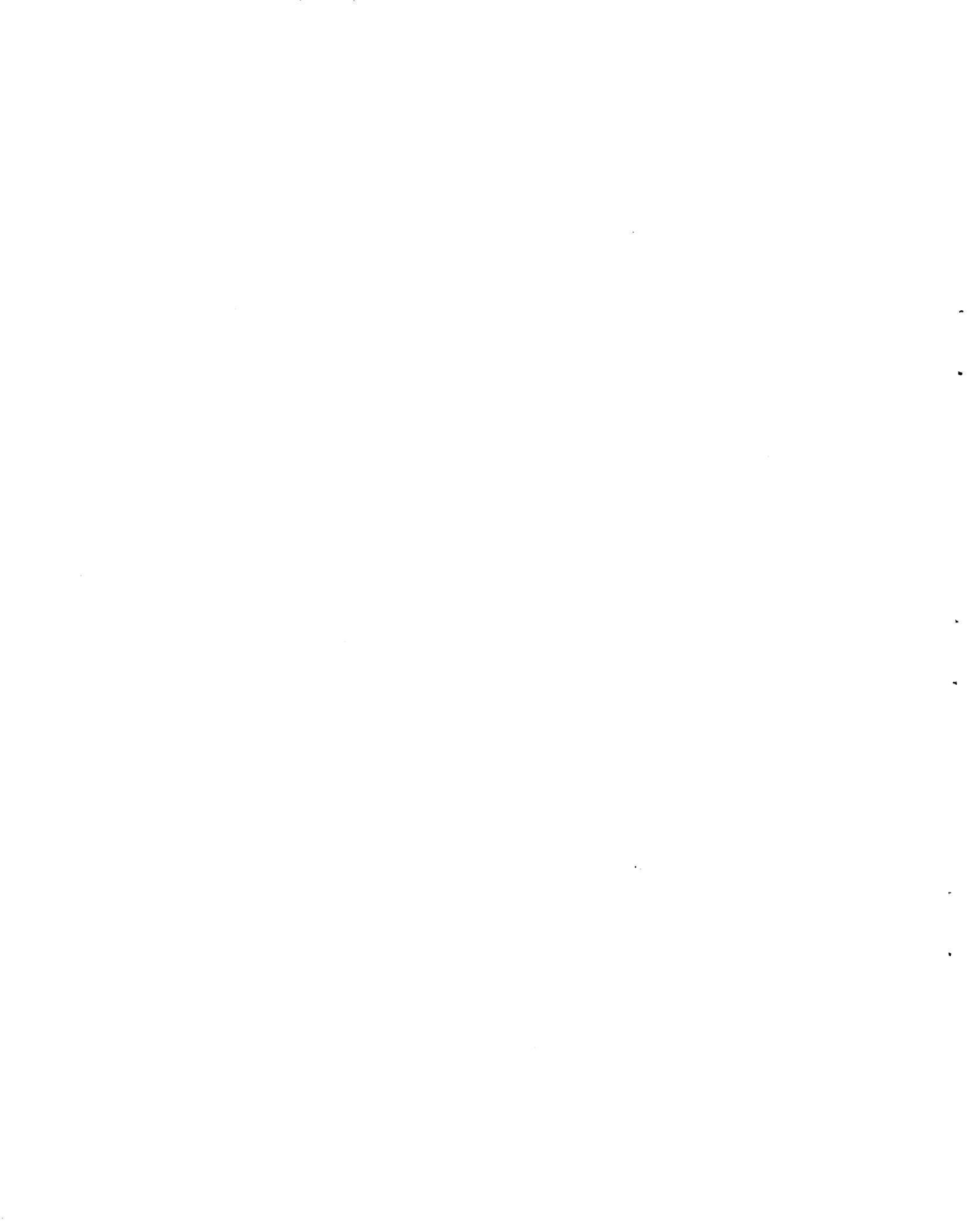
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SENATE, No. 3137

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 26, 1979

By Senators HERBERT, ERRICHETTI, LIPMAN, J. RUSSO,
MERLINO and HIRKALA

Referred to Committee on Transportation and Communications

AN ACT creating a public corporation within the Department of Transportation empowered to acquire, operate and contract for the operation of public transportation services and facilities, prescribing its powers and duties and revising parts of the statutory law.

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

1 1. This act shall be known and may be cited as the "New Jersey
2 Public Transportation Act of 1979."

1 2. The Legislature hereby finds and declares that:

2 a. The provision of efficient, coordinated, safe and responsive
3 public transportation is an essential public purpose which promotes
4 mobility, serves the needs of the transit dependent, costers com-
5 merce, conserves limited energy resources, protects the environ-
6 ment and promotes sound land use and the revitalization of our
7 urban centers.

8 b. As a matter of public policy, it is the responsibility of the
9 State to establish and provide for the operation and improvement
10 of a coherent public transportation system in the most efficient
11 and effective manner.

12 c. In the development of public transportation policy and plan-
13 ning, participation by county and municipal governments should
14 be encouraged.

15 d. In the provision of public transportation services, the State
16 should consider, consistent with the purposes of this act, the utili-
17 zation of effective private management.

18 e. In furtherance of these findings and declarations, a public
19 corporation shall be created with the necessary powers to accom-
20 plish these purposes, including the power to acquire and operate
21 public transportation assets.

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

1 3. As used in this act:

2 a. "Corporation" means the New Jersey Transit Corporation.

3 b. "Motorbus regular route service" means and includes the
4 operation of any motorbus or motorbuses on streets, public high-
5 ways or other facilities, over a fixed route and between fixed ter-
6 mini on a regular schedule for the purpose of carrying passengers
7 for hire or otherwise, in this State or between points in this State
8 and points in other states.

9 c. "Capital equipment and facilities" means and includes, in
10 connection with public transportation service, passenger stations,
11 shelters and terminals, automobile parking facilities, ramps, track
12 connections, signal systems, power systems, information and com-
13 munication systems, roadbeds, transit lanes or rights of way,
14 equipment storage and servicing facilities, bridges, grade crossings,
15 rail cars, locomotives, motorbus and other motor vehicles, mainte-
16 nance and garage facilities, revenue handling equipment and any
17 other equipment, facility or property useful for or related to the
18 provision of public transportation service.

19 d. "Paratransit services" means and includes any service, other
20 than motorbus regular route service and charter services, includ-
21 ing, but not limited to, dial-a-ride, nonregular route, jitney or
22 community minibus, and shared-ride services such as vanpools,
23 limousines or taxicabs which are regularly available to the public
24 and are not reserved for the private and exclusive use of individual
25 passengers.

26 e. "Public transportation or public transportation service"
27 means rail passenger service, motorbus regular route service,
28 paratransit service, motorbus charter service or rail freight ser-
29 vice.

30 f. "Motorbus charter service" means and includes subscription,
31 school bus, charter, tour or other special motorbus services.

32 g. "Rail freight service" means and includes the operation of
33 a railroad, subway, street, traction or electric railway for the pur-
34 pose of carrying freight in this State or between points in this
35 State and points in other states.

36 h. "Rail passenger service" means and includes the operations
37 of a railroad, subway, street, traction or electric railway for the
38 purpose of carrying passengers in this State or between points
39 in this State and points in other states.

1 4. a. There is hereby established in the Executive Branch of the
2 State Government the New Jersey Transit Corporation, a body
3 corporate and politic with corporate succession. For the purpose of

4 complying with the provisions of Article V, Section IV, paragraph
5 1 of the New Jersey Constitution, the corporation is hereby allo-
6 cated within the Department of Transportation, but, notwithstand-
7 ing said allocation, the corporation shall be independent of any
8 supervision or control by the department or by any body or officer
9 thereof. The corporation is hereby constituted as an instru-
10 mentality of the State exercising public and essential governmental
11 functions, and the exercise by the corporation of the powers con-
12 ferred by this act shall be deemed and held to be an essential
13 governmental function of the State.

14 b. The corporation shall be governed by a board which shall
15 consist of five members including the Commissioner of Transporta-
16 tion and the State Treasurer, who shall be members ex officio,
17 another member of the Executive Branch to be selected by the
18 Governor who shall also serve ex officio, and two other public
19 members who shall serve at the pleasure of the Governor. The
20 board shall designate a secretary who need not be a member.

21 c. Board members other than those serving ex officio shall serve
22 without compensation, but members shall be reimbursed for actual
23 expenses necessarily incurred in the performance of their duties.

24 d. The Commissioner of Transportation shall serve as chairman
25 of the board. He shall chair board meetings and shall have
26 responsibility for the scheduling and convening of all meetings of
27 the board. Each ex officio member of the board may designate one
28 or more employees of his department or agency to represent him
29 at meetings of the board, and each such designee may lawfully vote
30 and otherwise act on behalf of the member for whom he constitutes
31 the designee. Any such designation shall be in writing delivered
32 to the board and shall continue in effect until revoked or amended
33 by writing delivered to the board.

34 e. The powers of the corporation shall be vested in the members
35 of the board thereof and three members of the board shall con-
36 stitute a quorum at any meeting thereof. Actions may be taken and
37 motions and resolutions adopted by the board at any meeting
38 thereof by the affirmative vote of at least three members. No
39 vacancy in the membership of the board shall impair the right of a
40 quorum to exercise all the rights and perform all the duties of the
41 board.

42 f. A true copy of the minutes of every meeting of the board shall
43 be delivered forthwith, by and under the certification of the secre-
44 tary thereof, to the Governor. No action taken at such meeting by
45 the board shall have force or effect until approved by the Governor
46 or until 10 days after such copy of the minutes shall have been

47 delivered. If, in said 10-day period, the Governor returns such
48 copy of the minutes with veto of any action taken by the board or
49 any member thereof at such meeting, such action shall be null and
50 of no effect. The Governor may approve all or part of the action
51 taken at such meeting prior to the expiration of the said 10-day
52 period.

1 5. In addition to the powers and duties conferred upon it else-
2 where in this act, the corporation may do all acts necessary and
3 reasonably incident to carrying out the objectives of this act, in-
4 cluding but not in limitation thereof the following:

5 a. Sue and be sued;

6 b. Have an official seal and alter the same at pleasure;

7 c. Make and alter bylaws for its organization and internal
8 management and for the conduct of its affairs and business;

9 d. Maintain an office at such place or places within the State
10 as it may determine;

11 e. Adopt, amend and repeal such rules and regulations as it
12 may deem necessary to effectuate the purposes of this act, which
13 shall have the force and effect of law; it shall publish the same
14 and file them in accordance with the "Administrative Procedure
15 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) with the Director of
16 the Office of Administrative Law;

17 f. Call to its assistance and avail itself of the service of such
18 employees of any Federal, State, county or municipal department
19 or agency as it may require and as may be available to it for said
20 purpose;

21 g. Apply for, accept and expend money from any Federal, State,
22 county or municipal agency or instrumentality and from any
23 private source; comply with Federal statutes, rules and regula-
24 tions, and qualify for and receive all forms of financial assistance
25 available under Federal law to assure the continuance of, or for the
26 support or improvement of public transportation and as may be
27 necessary for that purpose to enter into agreements, including
28 Federally required labor protective agreements;

29 h. Plan, design, construct, equip, operate, improve and maintain,
30 either directly or by contract with any public or private entity,
31 public transportation services, capital equipment and facilities or
32 any parts or functions thereof, and other transportation projects,
33 or any parts or functions thereof, which may be funded under
34 section 3 of the Federal Urban Mass Transportation Act of 1964,
35 P. L. 88-365 (49 U. S. C. § 1602), or any successor or additional
36 Federal act having substantially the same or similar purposes or

37 functions; the operation of the facilities of the corporation, by the
38 corporation or any public or private entity, may include appro-
39 priate and reasonable limitations on competition in order that
40 maximum service may be provided most efficiently to the public;

41 i. Apply for and accept, from appropriate regulatory bodies,
42 authority to operate public transportation services where nec-
43 essary;

44 j. Purchase, lease as lessee, or otherwise acquire, own, hold,
45 improve, use and otherwise deal in and with real or personal prop-
46 erty, or any interest therein, from any public or private entity,
47 wherever situated;

48 k. Lease as lessor, sell or otherwise dispose of on terms which
49 the corporation may prescribe, real and personal property, includ-
50 ing tangible or intangible property and consumable goods, or any
51 interest therein, to any public or private entity, in the exercise of
52 its powers and the performance of its duties under this act. In
53 order to provide or encourage adequate and efficient public trans-
54 portation service, the corporation may lease or otherwise permit
55 the use or occupancy of property without cost or at a nominal
56 rental;

57 l. Restrict the rights of persons to enter upon or construct any
58 works in or upon any property owned or leased by the corporation,
59 except under such terms as the corporation may prescribe; perform
60 or contract for the performance of all acts necessary for the man-
61 agement, maintenance and repair of real or personal property
62 leased or otherwise used or occupied pursuant to this act;

63 m. Establish one or more operating divisions as deemed nec-
64 essary;

65 n. Set and collect fares and determine levels of service for
66 service provided by the corporation either directly or by contract
67 including, but not limited to, such reduced fare programs as deemed
68 appropriate by the corporation; revenues derived from such service
69 may be collected by the corporation and shall be available to the
70 corporation for use in furtherance of any of the purposes of this
71 act;

72 o. Set and collect rentals, fees, charges or other payments from
73 the lease, use, occupancy or disposition of properties owned or
74 leased by the corporation; such revenues shall be available to the
75 corporation for use in furtherance of any of the purposes of this
76 act;

77 p. Deposit corporate revenues in interest bearing accounts or in
78 the State of New Jersey Cash Management Fund established pur-
79 suant to section 1 of P. L. 1977, c. 28 (C. 52:18A-90.4);

80 q. Delegate to subordinate officers of the corporation such
81 powers and duties as the corporation shall deem necessary and
82 proper to carry out the purposes of this act;

83 r. Procure and enter into contracts for any type of insurance
84 and indemnify against loss or damage to property from any cause,
85 including loss of use and occupancy, against death or injury of any
86 person, against employees' liability, against any act of any member,
87 officer, employee or servant of the corporation, whether part-time,
88 full-time, compensated or noncompensated, in the performance of
89 the duties of his office or employment or any other insurable risk;

90 s. Promote the use of public transportation services, coordinate
91 ticket sales and passenger information and sell, lease or otherwise
92 contract for advertising in or on the equipment or facilities of the
93 corporation and;

94 t. Enter into any and all agreements or contracts, execute any
95 and all instruments, and do and perform any and all acts or things
96 necessary, convenient or desirable for the purposes of the corpora-
97 tion, or to carry out any power expressly or implicitly given in this
98 act.

1 a. The corporation may enter into contracts with any public
2 or private entity to operate rail passenger and rail freight service
3 or portions or functions thereof. Where appropriate, payments
4 by the corporation for services contracted for under this section
5 shall be determined in accordance with the Federal Regional Rail
6 Reorganization Act of 1973 (45 U. S. C., 701 et seq.), the Federal
7 Rail Passenger Service Act of 1970 (45 U. S. C. 501 et seq.), any
8 other applicable Federal law, and any and all rules, regulations
9 and standards, promulgated thereunder and decisions issued pur-
10 suant thereto. In all other cases, payments shall be by agreement
11 upon such terms and conditions as the corporation shall deem
12 necessary.

13 b. The corporation may enter into contracts with any public or
14 private entity to operate motorbus regular route, paratransit or
15 motorbus charter services or portions or functions thereof. Pay-
16 ments shall be by agreement upon such terms and conditions as
17 the corporation shall deem necessary.

1 7. The corporation or any public or private entity under contract
2 to the corporation operating regular route motorbus service may
3 provide motorbus charter service provided that the carrier com-
4 plies with applicable State and Federal statutes, rules and regu-
5 lations with regard to any such operations.

1 8. a. The authority hereby given the corporation pursuant to
2 this act with respect to fares and service, shall be exercised by the
3 corporation directly or through contract without regard or refer-
4 ence to the jurisdiction vested in the Department of Transportation
5 by sections 48:2-21, 48:2-24 and 48:4-3 of the Revised Statutes.
6 The Department of Transportation shall resume jurisdiction over
7 service and fares upon the termination and discontinuance of a
8 contractual relationship between the corporation and a private or
9 public entity relating to the provision of public transportation
10 services operated under the authority of certificates of public con-
11 venience and necessity previously issued by the department or its
12 predecessors; provided, however, that no private entity shall be
13 required to restore any service discontinued or any fare changed
14 during the existence of a contractual relationship with the corpora-
15 tion, unless the Department of Transportation shall determine,
16 after notice and hearing, that the service or fare is required by
17 public convenience and necessity.

18 b. Notwithstanding any other provisions of this act, all vehicles
19 used by any public or private entity pursuant to contract autho-
20 rized by this act, and all vehicles operated by the corporation
21 directly, shall be subject to the jurisdiction of the Department of
22 Transportation with respect to insurance, maintenance, specifica-
23 tions and safety to the same extent such jurisdiction is conferred
24 upon the department by Title 48 of the Revised Statutes.

25 c. Before implementing any fare increase for any motorbus regu-
26 lar route or rail passenger services, or the abandonment of any
27 such services, the corporation shall hold a public meeting in the
28 area affected during evening hours. Notice of such meetings shall
29 be given by the corporation at least 10 days prior to such meeting
30 to the governing body of each county whose residents will be
31 affected and to the clerk of each municipality in the county or
32 counties whose residents will be affected; such notice shall also
33 be posted at least 10 days prior to such meeting in prominent places
34 on the railroad cars and buses serving the routes to be affected.

1 9. In any proceeding before the Department of Transportation
2 for decreasing or abandoning service, any contract payments
3 offered by the corporation for continuing service shall be considered
4 as available revenues by the department, in making any determi-
5 nation on the petition.

1 10. In order to conserve, improve, and promote public trans-
2 portation service necessary for public use pursuant to the provi-
3 sions of this act, the corporation may purchase and improve capital

4 equipment and facilities, including, but not limited to, the design,
5 planning, acquisition, construction, reconstruction, relocation, in-
6 stallation, removal, establishment, repair or rehabilitation of such
7 equipment or facilities. The powers herein granted shall be exer-
8 cised by the corporation, notwithstanding the provisions to the
9 contrary of P. L. 1948, c. 92 (C. 52:18A-1 et seq.) and chapters 25,
10 32, 33, 34 and 35 of Title 52 of the Revised Statutes, and in ac-
11 cordance with procedures set forth in section 11 of this act.

1 11. a. All purchases, contracts or agreements pursuant to this
2 act shall be made or awarded directly by the corporation, except
3 as otherwise provided in this act, only after public advertisement
4 for bids therefor, in the manner provided in this act, notwithstand-
5 ing the provisions to the contrary of P. L. 1948, c. 92 (C. 52:18A-1
6 et seq.) and chapters 25, 32, 33, 34 and 35 of Title 52 of the Revised
6A Statutes.

7 b. Whenever advertising is required: (1) specifications and
8 invitations for bids shall permit such full and free competition as
9 is consistent with the procurement of supplies and services neces-
10 sary to meet the requirements of the corporation; (2) the adver-
11 tisement for bids shall be in such newspaper or newspapers selected
12 by the corporation as will best give notice thereof to bidders and
13 shall be sufficiently in advance of the purchase or contract to
14 promote competitive bidding; (3) the advertisement shall desig-
15 nate the time and place when and where sealed proposals shall
16 be received and publicly opened and read, the amount of the cash,
17 certified check, cashiers check or bank check, if any, which shall
18 accompany each bid, and such other terms as the corporation may
19 deem proper.

20 c. The corporation may reject any or all bids not in accord with
21 the advertisement of specifications, or may reject any or all bids
22 if the price of the work materials is excessively above the estimate
23 cost or when the corporation shall determine that it is in the public
24 interest to do so. The corporation shall prepare a list of the bids,
25 including any rejected and the cause therefor. The corporation may
26 accept bids containing minor informalities. Awards shall be made
27 by the corporation with reasonable promptness by written notice
28 to the responsible bidder whose bid, conforming to the invitation
29 for bids, will be the most advantageous to the State, price and
30 other factors considered.

31 d. A proposal bond equal to at least 50% of the bid executed by
32 the contractor with such sureties as shall be approved by the
33 corporation in favor of the State of New Jersey, shall accompany
34 each bid and shall be held as security for the faithful performance

35 of the contractor in that, if awarded the contract, the bidder will
36 deliver the contract within 10 working days after the award,
37 properly executed and secured by satisfactory bonds in accordance
38 with the provisions of N. J. S. 2A :44-143 through N. J. S. 2A :44-147
39 and specifications for the project. The corporation may require in
40 addition to the proposal bond such additional evidence of the
41 ability of a contractor to perform the work required by the contract
42 as it may deem necessary and advisable. All proposal bonds which
43 have been delivered with the bids, except those of the two lowest
44 responsible bidders, shall be returned within 30 working days after
45 such bids are received.

46 e. If the bidder fails to provide a satisfactory proposal bond as
47 provided in subsection d. of this section, his bid shall be rejected.

48 f. The corporation shall determine the terms and conditions of
49 the various types of agreements or contracts, including provisions
50 for adequate security, the time and amount or percentage of each
51 payment thereon and the amount to be withheld pending completion
52 of the contract, and it shall issue and publish rules and regulations
53 concerning such terms and conditions, standard contract forms and
54 such other rules and regulations concerning purchasing or procure-
55 ment, not inconsistent with any applicable law, as it may deem
56 advisable to promote competition and to protect the public interest.

57 g. Any purchase, contract or agreement pursuant to subsection a.
58 hereof may be made, negotiated or awarded by the corporation
59 without advertising in any manner which the corporation may
60 deem effective to promote full and free competition whenever
61 competition is practicable;

61A (1) When the aggregate amount involved does not exceed
61B \$7,500.00; or

62 (2) In all other cases when the corporation seeks:

63 (a) To acquire used public transportation equipment or
64 existing public transportation facilities or rights of way; or

65 (b) To acquire subject matter which is that described in
66 section 4 of P. L. 1954, c. 48 (C. 52:34-9); or

67 (c) To make a purchase or award or make a contract or
68 agreement under the circumstances described in section 5 of
69 P. L. 1954, c. 48 (C. 52:34-10).

70 h. The corporation shall require that all persons proposing to
71 submit bids on improvements to capital facilities and equipment
72 shall first be classified by the corporation as to the character and
73 amount of work on which they shall be qualified to submit bids.
74 Bids shall be accepted only from persons qualified in accordance
75 with such classification.

1 12. a. The corporation shall have the power to acquire by pur-
2 chase, condemnation, lease, gift or otherwise, on such terms and
3 conditions and in such manner as it may deem proper, for use by
4 the corporation or for use by any other public or private entity
5 providing public transportation services, all or part of the facility,
6 plant, equipment, property, shares of stock, rights of property, real,
7 personal, tangible, intangible or mixed rights in property, reserve
8 funds, employees pension or retirement funds, special funds, fran-
9 chises, licenses, patents, permits and papers, documents and
10 records of a public or private entity providing public transportation
11 services within the State, subject to any outstanding obligations
12 relating to such items as might be agreed upon by the parties,
13 together with all or any part of the right of way, equipment, fixed
14 facilities and other property of any kind of any such entity ending
15 beyond the boundaries of this State.

16 Such properties upon acquisition by or lease to the corporation
17 shall become and be operated as part of any public transportation
18 services by the corporation or any entity designated by the corpo-
19 ration and the corporation shall have all powers in connection with
20 such properties and such operations as are conferred by this act.

21 b. The corporation shall also have the power to acquire by pur-
22 chase, condemnation, lease, gift or otherwise, on such terms and
23 conditions and in such manner as it may deem proper, any land or
24 interest therein, including land under water and air rights, which
25 it may determine is reasonably necessary for the purposes of the
26 corporation under the provisions of this act and any and all rights,
27 whether for immediate or future use, title and interest in such
28 land and other property, including public lands, parks, playgrounds,
29 reservations, highways or parkways, owned by or in which any
30 county or municipality, borough, town, township, village, or other
31 political subdivision of the State has any right, title or interest, or
32 parts thereof or rights therein and any fee simple absolute or any
33 lesser interest in private property, and any fee simple absolute in,
34 easements upon, or the benefit of restrictions upon, abutting prop-
35 erty to preserve and protect corporation projects.

36 c. The corporation, if it proceeds to acquire any public or private
37 entity engaged in the provision of public transportation service,
38 or any part thereof by condemnation, shall have the power to take
39 control of and operate such entity immediately upon the filing and
40 approval of the complaint for condemnation, if the corporation in
41 its discretion, determines such action to be necessary. This power
42 shall include the possession of all right, title and other powers of
43 ownership in all properties and facilities described in the petition.

44 Such action shall be effective upon service of a copy thereof on
45 the condemnee. In the determination of the fair value of any such
46 entity, there shall not be included any value attributable to expend-
47 itures for improvements or payments made to the entity by the
48 corporation, the Commuter Operating Agency or the Department
49 of Transportation.

50 d. Upon the exercise of the power of eminent domain by the
51 corporation the compensation to be paid thereunder shall be
52 ascertained and paid in the manner provided in the "Eminent
53 Domain Act of 1971," P. L. 1971, c. 361 (C. 20:3-1 et seq.) in so far
54 as the provisions thereof are applicable and not inconsistent with
55 the provisions contained in this act. The corporation may join in
56 separate subdivisions in one petition or complaint the descriptions
57 of any number of tracts or parcels of land or property to be con-
58 demned, and the names of any number of owners and other parties
59 who may have an interest therein and all such land or property
60 included in said petition or complaint may be condemned in a single
61 proceeding; provided, however, that separate awards shall be
62 made for each tract or parcel of land or property; and provided,
63 further, that each of said tracts or parcels of land or property
64 shall be wholly within or have a substantial part of its value be
65 wholly within the same county.

66 e. Upon the filing by the corporation of a complaint in any action
67 to fix the compensation to be paid for any property or at any time
68 thereafter, the corporation may file with the clerk of the county in
69 which such property is located and also with the clerk of the
70 superior court a declaration of taking, signed by the corporation,
71 or such employees of the corporation as may be designated by the
72 corporation, declaring that possession of one or more of the tracts
73 or parcels of land or property described in the complaint is thereby
74 being taken by and for the use of the corporation. The declaration
75 of taking shall be sufficient if it sets forth (1) a description of each
76 tract or parcel of land or property to be taken, (2) a statement of
77 the estate or interest in the property being taken, (3) a statement
78 of the sum of money estimated by the corporation to be just com-
79 pensation for the taking of the estate or interest in each tract or
80 parcel of land or property described in said declaration, and
81 (4) an allegation that, in compliance with the provisions of this act,
82 the corporation has established and is maintaining a trust fund
83 as hereinafter provided.

84 f. Upon the filing by the corporation of a declaration of taking
85 and the depositing with the clerk of the superior court of the amount

86 of the estimated compensation stated in the declaration, the
87 corporation, without other process or proceedings, shall be entitled
88 to the exclusive possession and use of each tract or parcel of land
89 or property described in said declaration and may forthwith enter
90 into and take possession of said land or property, it being the intent
91 of this provision that the action to fix compensation to be paid or
92 any other proceedings relating to the taking of the land or property
93 or interest therein or entering thereon shall not delay the taking of
94 possession thereof and the use thereof by the corporation for the
95 purposes authorized by this act. The corporation shall not abandon
96 any condemnation proceeding subsequent to the date upon which
97 it has taken possession of the land or property as herein provided.

98 g. The corporation shall cause notice of the filing of a declaration
99 of taking of property as provided in this act and of the making of
100 the deposit required by this act with respect thereto to be served
101 upon each party to the action who resides in the State, either
102 personally or by leaving a copy thereof at his residence or business
103 address if known, and upon each such party who resides out of the
104 State, by mailing a copy thereof to him at his residence or
105 business address, if known. In the event that the residence of
106 any such party or the name of such party is unknown, such
106a notice shall be published at least once in a newspaper published
107 or circulating in the county or counties in which the property is
108 located. Such service, mailing or publication shall be made within
109 30 days after filing such declaration. Upon the application of any
110 party in interest and after notice to other parties in interest,
111 including the corporation, the Superior Court may direct that the
112 money deposited with the clerk of the superior court or any part
113 thereof be paid forthwith, without deduction of any fees or com-
114 missions, to the person or persons entitled thereto for or on account
115 of the just compensation to be awarded in said action; provided,
116 that each such person shall have filed with the clerk of the superior
117 court a consent in writing that, in the event the award in the action
118 shall be less than the amount deposited, the court, after such notice
119 as the court prescribes and hearing, may determine the liability,
120 if any, for the return of the difference or any part thereof and
121 enter judgment therefor.

122 If the amount of the award as finally determined shall exceed
123 the amount so deposited, the person or persons to whom the award
124 is payable shall be entitled to recover from the corporation the
125 difference between the amount of the deposit and the amount of
126 the award, with interest at the rate of 6% per annum thereon from

127 the date of making the deposit. If the amount of the award so
128 determined shall be less than the amount so deposited, the clerk
129 of the superior court shall return the difference between the
130 amount of the award and the deposit, including all accrued interest
131 thereon, to the corporation unless the deposit or any part thereof
132 shall have theretofore been distributed, in which event the court,
133 on application of the corporation and notice to all persons interested
134 in the award and affording them an opportunity to be heard, shall
135 enter judgment in favor of the corporation for the difference
136 against the party or parties liable for the return thereof.

1 13. The corporation may appoint an executive director, directors
2 of operating divisions, divisions, and other such additional officers,
3 all of whom need not be members of the corporation, and may
4 employ consulting architects, engineers, auditors, accountants,
5 construction, management real estate, operations and financial ex-
6 perts, supervisors, managers and such other professional consult-
7 ants and officers and employees, and may fix their compensation,
8 as the corporation deems advisable; and may promote and dis-
9 charge such officers and employees, all without regard to the pro-
10 visions of Title 11 of the Revised Statutes. In developing an
11 employee compensation schedule, the corporation shall consult
12 with appropriate authorities of the State and file such schedule
13 with them upon completion. The corporation shall by October 31
14 of each year submit to the Governor and the presiding officers and
15 the Transportation and Communications Committees of both
16 Houses of the Legislature, a list of all full and part-time officers
17 and employees of the corporation and the salaries, wages and com-
18 pensation received by said officers and employees during the pre-
19 ceding fiscal year.

20 Persons holding positions in the classified and unclassified service
21 of the State who are presently enrolled in the Public Employees'
22 Retirement System shall, while employed by the corporation, con-
23 tinue as members of that retirement system and retain all rights
24 and protection provided them by said retirement system. Persons
25 employed by the corporation who are members of a State-admin-
26 istered retirement system other than the Public Employees' Re-
27 tirement System shall, upon acceptance of their employment with
28 the corporation, be required to transfer their membership to the
29 Public Employees' Retirement System.

30 Employees of the corporation who are not presently enrolled
31 in any State-administered retirement system shall be enrolled in
32 the Public Employees' Retirement System if they are eligible

33 under the terms of section 73 of P. L. 1954, c. 84 (C. 43:15A-73).
34 Employees who are ineligible for enrollment in the Public Em-
35 ployees' Retirement System shall retain membership in any non-
36 State retirement system under which they have accrued benefits
37 or rights or shall be eligible to join such system.

1 14. The exercise of the powers granted by this act shall be in
2 all respects for the benefit of the people of the State, and since
3 the improvement, operation, and maintenance of public transporta-
4 tion services by the corporation constitute the performance of
5 essential governmental functions, the corporation shall not be re-
6 quired to pay any taxes or assessments upon any public trans-
7 portation project or any property acquired or used by the
8 corporation under the provisions of this act or upon the income
9 therefrom.

1 15. All expenses incurred by the corporation in carrying out
2 the provisions of this act shall be payable from funds available
3 to the corporation therefor and no liability or obligation shall be
4 incurred by the corporation beyond the extent to which moneys
5 are available. No debt or liability of the corporation shall be
6 deemed or construed to create or constitute a debt, liability, or a
7 loan or pledge of the credit of the State.

1 16. Real property and rolling stock owned or used by the cor-
2 poration shall be exempt from all claims of creditors and from
3 levy, execution or attachment.

1 17. Notwithstanding any of the provisions of the "New Jersey
2 Contractual Liability Act" (N. J. S. 59:13-1 et seq.) to the con-
3 trary, contract claims and suits against the corporation shall be
4 governed by said act.

1 18. a. The corporation shall, by September 15 of each year, file
2 with the Commissioner of Transportation a report in such format
3 and detail as the Commissioner may require setting forth the actual,
4 operational, capital and financial results of the previous fiscal year,
5 the operational, capital and financial plan for the current fiscal
6 year and a proposed operational, capital and financial plan for the
7 next ensuing fiscal year.

8 b. On or before October 31 of each year, the corporation shall
9 make an annual report of its activities for the preceding fiscal year
10 to the Governor and to the presiding officers and the Transporta-
11 tion and Communications Committees of both Houses of the Leg-
12 islature. Each such report shall set forth a complete operating
13 and financial statement covering its operations and capital projects
14 during the year.

15 c. All records of minutes, accounts, bills, vouchers, contracts
 16 or other papers connected with or used or filed with the corporation
 17 or with any officer or employee acting for or in its behalf are hereby
 18 declared to be public records and shall be open to public inspection
 19 in accordance with P. L. 1963, c. 73 (C. 47:1A-1 et seq.) and regu-
 20 lations prescribed by the corporation.

21 d. The corporation shall cause an audit of its books and accounts
 22 to be made at least once each year by certified public accountants
 23 and the cost thereof may be treated as a cost of operation. The
 24 audit shall be filed within 4 months after the close of the fiscal
 25 year of the corporation and a certified duplicate copy thereof shall
 26 be filed with the Division of Budget and Accounting in the De-
 27 partment of Treasury.

28 e. Notwithstanding the provisions of any law to the contrary,
 29 the State Auditor or his legally authorized representative may
 30 examine the accounts and books of the corporation.

1 19. All real or personal properties purchased heretofore for
 2 public transportation purposes in the name of Commuter Operating
 3 Agency, Department of Transportation, its predecessors or the
 4 Commissioner of Transportation, shall be deemed to have been
 5 purchased in the name of the State by and through the corporation
 6 and shall henceforth be deemed to be and shall actually be the
 7 property of the corporation.

1 20. This act is intended to protect and promote the public health,
 2 safety and welfare, and shall be liberally construed to obtain the
 3 objectives and effect the purposes thereof.

1 21. If any provision of this act or the application thereof to any
 2 person, or circumstances, or the exercise of any power, or authority
 3 thereunder is held invalid or contrary to law, such holding shall
 4 not affect other provisions or applications or affect other exercises
 5 of power or authority under said provisions not contrary to law,
 6 and to this end, the provisions of this act are declared to be
 7 severable.

1 22. Section 5 of P. L. 1966, c. 301 (C. 27:1A-5) is amended to
 2 read as follows:

3 5. The commissioner, as head of the department, shall have all
 4 of the functions, powers and duties heretofore vested in the State
 5 Highway Commissioner and shall, in addition to the functions,
 6 powers and duties invested in him by this act or by any other law:

7 (a) Develop, from time to time revise and maintain a compre-
 8 hensive master plan for all modes of transportation development,
 9 with special emphasis on public transportation:

10 (b) Develop and promote programs to foster efficient and eco-
11 nomical transportation services in the State;

12 (c) Prepare plans for the preservation **[and]**, improvement
13 *and expansion* of the **[railroad]** *public transportation* system, with
14 special emphasis on **[commuter railroads]** *the coordination of*
15 *transit modes and the use of highways and public streets for public*
16 *transportation purposes*;

17 **[(d)** Develop plans for more efficient public transportation
18 service by railroads and motor bus operators; develop statistics,
19 analyses, and other data of use to railroad and bus operators in the
20 provision of public transportation service; facilitate more effective
21 coordination between bus service and other forms of public trans-
22 portation, particularly the commuter railroads; review petitions
23 for motor bus franchises in areas served by the commuter railroad
24 system and make appropriate recommendations on such petitions.]

25 *(d) Enter into contracts with the New Jersey Transit Corpora-*
26 *tion for the provision and improvement of public transportation*
27 *services*;

28 (e) Coordinate the transportation activities of the department
29 with those of other public agencies and authorities;

30 (f) Cooperate with interstate commissions and authorities, State
31 departments, councils, commissions and other State agencies, with
32 appropriate Federal agencies, and with interested private indi-
33 viduals and organizations in the coordination of plans and policies
34 for the development of air commerce and air facilities; **[and]**

35 (g) Make an annual report to the Governor and the Legislature
36 of the department's operations, and render such other reports as
37 the Governor shall from time to time request or as may be required
38 by law**[.]**; *and*

39 (h) Promulgate regulations providing for the charging of and
40 setting the amount of fees for certain services performed by and
41 permits issued by the department, including but not limited to the
42 following:

- 43 (1) Providing copies of documents prepared by or in the
44 custody of the department;
- 45 (2) Aeronautics permits;
- 46 (3) Right-of-way permits;
- 47 (4) Traffic signal control systems.

1 23. Section 2 of P. L. 1973, c. 126 (C. 27:1A-65) is amended to
2 read as follows:

3 2. For the purposes of this act, unless the context clearly in-
4 dicates otherwise:

5 a. "Commissioner" means the Commissioner of Transportation;
6 provided, however, that he may delegate any of his powers or duties
7 under this act to any subordinate division, agency or employee of
8 the Department of Transportation *or to the New Jersey Transit*
9 *Corporation.*

10 b. "Carrier" means any individual, copartnership, association,
11 corporation, joint stock company, public agency, trustee or receiver
12 operating motor buses or rail passenger service on established
13 routes within this State or between points in this State and points
14 in adjacent states.

15 c. "Motor bus" means "autobus" as defined in R. S. 48:4-1, and
16 includes those autobuses, commonly called jitneys, as defined in
17 R. S. 48:16-23.

18 d. "Offpeak times" means the hours from 9:30 a.m. to 4 p.m.
19 and from 7 p.m. to 6 a.m. during the weekdays, and all day on
20 Saturdays, Sundays and holidays.

21 e. "Senior citizen" means any individual 62 years of age or over.

22 f. "Handicaped citizen" means any individual who, by reason
23 of illness, injury, age, congenital malfunction, or other permanent
24 or temporary incapacity or disability, is unable without special
25 facilities or special planning or design to utilize mass transporta-
26 tion facilities and services as effectively as persons who are not so
27 affected.

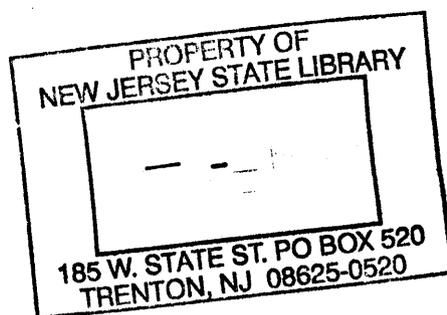
1 24. Section 73 of P. L. 1954, c. 84 (C. 43:15A-73) is amended to
2 read as follows:

3 73. a. The Public Employees' Retirement System is hereby
4 authorized and directed to enroll eligible employees of the New
5 Jersey Turnpike Authority, the New Jersey Highway Authority,
6 Palisades Interstate Park Commission, Interstate Sanitation Com-
7 mission, the Delaware River Basin Commission and the Delaware
8 River Joint Toll Bridge Commission.

9 In the case of the Delaware River Joint Toll Bridge Commission,
10 the eligible employees shall be only those who are employed on the
11 free bridges across the Delaware river, under the control of said
12 commission.

13 The said employees shall be subject to the same membership, con-
14 tribution and benefit provisions of the retirement system as State
15 employees.

16 b. The State University of New Jersey, as an instrumentality
17 of the State, shall, for all purposes of this act, be deemed an em-
18 ployer and its eligible employees, both veterans and nonveterans,
19 shall be subject to the same membership, contribution and benefit
20 provisions of the retirement system and to the provisions of chapter



21 3 of Title 43 of the Revised Statutes as are applicable to State em-
22 ployees and for all purposes of this act employment by the State
23 University of New Jersey after April 16, 1945, and for the purposes
24 of chapter 3 of Title 43 of the Revised Statutes any new employ-
25 ment after January 1, 1955, shall be deemed to be and shall be con-
26 strued as service to and employment by the State of New Jersey.

27 c. The Compensation Rating and Inspection Bureau, created and
28 established pursuant to the provisions of R. S. 34:15-89, shall, for
29 all purposes of this act, be deemed an employer and its eligible em-
30 ployees, both veterans and nonveterans, shall be subject to the same
31 membership, contribution and benefit provisions of the retirement
32 system and to the provisions of chapter 3 of Title 43 of the Revised
33 Statutes as both are applicable to State employees.

34 The retirement system shall certify to the Commissioner of In-
35 surance and the Commissioner of Insurance shall direct the Com-
36 pensation Rating and Inspection Bureau to provide the necessary
37 payments to the retirement system in accordance with procedures
38 established by the retirement system. Such payments shall in-
39 clude (1) the contributions and charges, similar to those paid by
40 other public agency employers, to be paid by the Compensation
41 Rating and Inspection Bureau to the retirement system on behalf
42 of its employee members, and (2) the contributions to be paid by
43 the Compensation Rating and Inspection Bureau to provide the
44 past service credits up to June 30, 1965 for these members, both
45 veterans and nonveterans, who enroll before July 1, 1966.

46 d. The New Jersey Sports and Exposition Authority, created
47 and established pursuant to the "New Jersey Sports and Exposi-
48 tion Authority Law," P. L. 1971, c. 137 (C. 5:10-1 et seq.) shall
49 for all purposes of this act, be deemed an employer and its eligible
50 employees both veterans and nonveterans, shall be subject to the
51 same membership, contribution and benefit provisions of the re-
52 tirement system and to the provisions of chapter 3 of Title 43 of
53 the Revised Statutes as are applicable to State employees.

54 (1) Eligible employees as used herein shall not include persons
55 who are not classified as salaried, or who are compensated on an
56 hourly or per diem basis, or whose employment is normally
57 covered by other retirement systems to which the authority makes
58 contributions.

59 (2) Eligible employees previously permitted to enroll in the re-
60 tirement system shall redeposit the contributions previously made
61 by them and all service credit shall then be restored and future
62 contributions made at the date of contribution as originally

63 assigned. The authority shall redeposit the employer payments
64 it had made, with interest to the date of redeposit.

65 c. *The New Jersey Transit Corporation created and established*
66 *pursuant to the "New Jersey Public Transportation Improvement*
67 *Act of 1979", P. L. 1979, c. 301 shall for all purposes of this act,*
68 *be deemed an employer and its eligible employees both veterans*
69 *and nonveterans, shall be subject to the same membership, con-*
70 *tribution and benefit provisions of the retirement system and to*
71 *the provisions of chapter 3 of Title 43 of the Revised Statutes as*
72 *are applicable to State employees. Eligible employees as used*
73 *herein shall include persons in management, professional or clerical*
74 *positions but shall not include persons who are not classified as*
75 *salaried or who are compensated on an hourly or per diem basis*
76 *or whose employment is normally covered by other retirement*
77 *systems to which the corporation may make contributions.*

1 25. a. The following are repealed:

2 P. L. 1966, c. 301, § 15-27 (C. 27:1A-15 to 27:1A-27);

3 P. L. 1966, c. 301, § 29-32 (C. 27:1A-29 to 27:1A-32);

4 P. L. 1975, c. 371, § 1, 2 (C. 27:1A-18.1 and 27:1A-18.2);

5 P. L. 1967, c. 138, § 1, 2 (C. 27:1A-24.1 and 27:1A-24.2);

6 P. L. 1976, c. 119, § 1-7 (C. 27:1A-28.7 to 27:1A-28.13).

7 b. The repealer of these acts and part of acts shall not in any
8 way affect any contracts, agreements, determinations, orders,
9 rules or regulations heretofore made or promulgated, as the case
10 may be by the Commuter Operating Agency or the Department
11 of Transportation pursuant to any authority heretofore granted
12 but such contracts, agreements, determinations, orders, rules and
13 regulations shall be continued by the corporation with full force
14 and effect until otherwise amended, repealed or terminated in
15 accordance with the terms thereof or pursuant to the provisions
16 of this act.

1 26. Whenever in any law, rule, regulation, contract, document,
2 judicial or administrative proceeding or otherwise, reference is
3 made to the New Jersey Commuter Operating Agency, the same
4 shall mean and refer to the New Jersey Transit Corporation.

1 27. Until such time as the corporation and its board are legally
2 constituted pursuant to section 4 of this act, the Commuter Operat-
3 ing Agency is authorized to exercise all of the powers granted the
4 corporation by this act. On the date that the corporation and board
5 are legally constituted pursuant to section 4 of this act, the Com-
6 muter Operating Agency shall no longer exercise any of its powers
7 pursuant to P. L. 1966, c. 301 as amended and supplemented by
8 P. L. 1976, c. 119.

9 Anticipatory actions appropriate and necessary to effect the
10 establishment of the corporation and the implementation of its
11 duties are authorized to be accomplished as promptly as possible by
12 the Commuter Operating Agency in advance of the date that the cor-
13 poration and its board are legally constituted, including the making
14 of authorized appointments and within the limits of applicable
15 appropriations to the Department of Transportation, the expendi-
16 ture of funds for payment of salaries and expenses incident thereto.
1 28. This act shall take effect immediately, but section 25 shall
2 remain inoperative for 60 days after enactment.

STATEMENT

Massive public investment in capital and operating assistance to New Jersey's network of predominantly privately owned and operated public transportation services has failed to increase ridership, stabilize fares or substantially rationalize and improve services. The inability of the State to select effective management of public transportation resources has further impeded progress toward these goals. The program of State assistance to private owner-operators was designed 10 years ago as an interim measure and is gravely deficient as the basis of a stable and effective public transportation network for the State.

This bill thus represents a comprehensive effort to replace the "interim" program with a long-term program designed to insure the stable delivery and improvement of public transportation services. It provides for broad authority to effectuate these ends. The existing Commuter Operating Agency is abolished and replaced by a New Jersey Transit Corporation, a public corporation located in the Department of Transportation. The corporation will be directed by a five-member board including the Commissioner of Transportation who shall serve as chairman. The corporation is empowered with extensive authority to own, operate and contract for the provision and improvement of public transportation services, including bus and rail service, paratransit service, and motor-bus charter service. It is also empowered to exercise independent authority to purchase goods, services and property.

Actions of the corporation are subject to the veto of the Governor. An annual report to the Governor and Legislature is required to be submitted by October 31 of each year.

SENATOR JOHN M. SKEVIN. My name is John Skevin, Chairman of the Senate Transportation Committee. With me this morning is Senator Gagliano from Monmouth County. Senator Walter Shiel has other commitments, and Senator Frank Herbert will be our first witness.

I would like to take this opportunity to outline as briefly as possible some of the criteria I have in mind for these public hearings. First, I believe the hearings should be public. In that regard, I have made the suggestion -- and the Committee has made the suggestion -- that we go public in the true sense of the word by going to the public. We have suggested that public hearings be held in the Port Authority Bus Terminal in New York City where we can expect to find the true subject of these hearings, those who use the buses. I would hope we could ask the commuter to testify on a number of questions which can provide background information for this Committee. Just how bad is the current system, are the buses running on schedule, are the commuters themselves being treated with courtesy, and what specific suggestions they might make for improvement?

I suspect there is a general feeling among "experts" as to how much the commuters know. After all, they only use the system -- they don't operate it. I suggest that we at least make the effort to find out.

Second, I want to state to all those who will testify before this Committee that I have some questions of my own which I hope will be answered in the course of these hearings. In addition to whatever material witnesses may choose to present -- and that choice is certainly theirs -- I hope we will be told in detail:

1. Just how much will the takeover cost, and how much will each company receive? I want to have those figures on a company by company basis. I would also want some indication of how those figures measure up to any "market place" figure for those companies and their assets.
2. How much will it cost to operate the system?
3. Where will we find the money?
4. What specific plans can we anticipate for improvements in facilities? For example, how many new buses will be bought? To where will they be assigned, and by what logic? How much will they cost and where will we find that money?
5. And what about the rights of those now employed by the bus companies? Will the unions be allowed to exist? If so, will they retain their right to strike? How will pension rights of current employees be protected?

What I am trying to indicate by these few questions is that I do not believe this Committee will be persuaded by emotional arguments or by vague promises of improved bus service. The commuter has heard all of that before. What we will require before we can reach a judgment on a proposal of such import are hard facts and thorough documentation for any claims which may be made.

Finally, I must express my concern regarding the report by the Governor's Commission on

Budget Priorities. That Commission is against any takeover at this time.

It is not the Commission's recommendation for a twelve month study that gives me concern -- though I am inclined to agree with those who might say we already have too many studies -- but rather the Commission's conclusion that there is no factual evidence which now exists to support the proposal for a takeover. I would hope the Commissioner of Transportation will be able to shed some light on that statement.

I am possibly more disturbed by a statement from the Chairman of that Commission which appeared in the press last Sunday, stating that the Commission would now reconsider its findings. Why? The report in question was only released in January of this year and now the Commission would want to reconsider those findings, apparently only because it may be interjected into these proceedings.

It is, of course, proper that the findings be disputed if facts and reasons to the contrary are known. However, it hardly seems proper that the findings should be disputed by the same Commission. Accordingly, I would like to extend an invitation to the Chairman of that Commission to appear before this Committee at his earliest convenience to discuss his Commission's report with us.

Incidentally, this Committee does not have copies of the "Task Force" preliminary and final reports by the Commission on Budget Priorities. We have at our disposal only the summary report.

I am not sure all of us here agree that the function of this Committee is to determine the facts. I am sure we all agree that all the facts should be heard and that we are not expected to simply rubber-stamp a step of this magnitude. In that regard, I believe we would be delinquent in our duty to the people of this State if we did not give as much time to a report which counseled caution, as we do to those who urge prompt action. The first witness will be Senator Herbert, sponsor of the bill.

SENATOR FRANCIS X. HERBERT. Thank you Senator Skevin. Senator Gagliano. Ladies and gentlemen. Senate Bill number 3137 addresses the present crisis in transportation in our State, namely, the failure of our bus subsidy program.

On May 1st, 1969, the New Jersey Department of Transportation issued a report entitled: BUSES--CRISIS AND RESPONSE. In that report the Department recommended a short-range subsidy program to insure the preservation of essential services on many bus lines in our State. That program, originally funded for \$500,000 has grown to nearly \$50 million in the present fiscal year and threatens to approach \$100 million within the next couple of years. In their 1969 report, the Department of Transportation said, "Subsidy arrangements with individual companies, operating in most instances with deteriorated equipment and capital plant, would be a very expensive method of providing service for any extended period of time." The Department's prediction has come true. It is very expensive. The Department's concluding recommendation was "for a short-term bus subsidy transit program which will maintain essential services in urban

areas through July 1st, 1970, until the longer-term program of public ownership and acquisition can be developed and implemented."

Ladies and gentlemen, we submit that in spite of massive public investments of capital and operating assistance, the existing bus system in New Jersey has failed. It has failed to increase ridership, it has failed to stabilize fares, and it has failed to rationalize and improve service. It needs to be replaced and it needs to be replaced with the kind of public accountability which Senate Bill 3137 demands and implements. I should like to give this Committee certain hard facts about the whole issue of public ownership vs. private enterprise in this particular field. First of all, paranthetically, I tend to view transportation services of today as an important and vital area of our way of life. As the fuel crisis deepens, these services may take on the most essential importance in a life and death struggle to maintain civilization as we know and enjoy it today. With this point of view, I look upon this bill as providing the kind of protection to our citizens which such services as public safety, waste disposal, and consumer protection give us now.

Here are some facts which the Committee should consider when studying this bill. First, New Jersey stands virtually alone in its artificially preserved private enterprise situation in its bus services. Throughout the world, private enterprise in mass transportation has virtually disappeared. Second, the bulk of New Jersey's private bus system could not presently operate without the massive infusion of public funds. Third, subsidized carriers presently transport 80 percent of New Jersey's bus passengers. Fourth, State and Federal funds provide at least one-third of the total operating costs of subsidized carriers. And last, State and Federal resources will soon provide virtually 100 percent of the capital costs for buses. By 1981, the State will own approximately 80 percent of all the buses operating within its orders.

Almost every year in the past, the Legislature has discovered more problems with the existing program and almost each year the Legislature has urged the Department of Transportation to try harder to make this program work successfully. Almost every year someone has reminded us and the DOT that this bus program was only meant to be temporary but it has always been extended another year despite all its problems. The bus subsidy program has been studied to death in the past and now we have as our Commissioner of Transportation, a nationally recognized transit management professional, Commissioner Gambaccini. He has spent a lot of time putting together a carefully thought out proposal for positive improvements. The Department of Transportation has done its homework on this one and I am impressed that they have looked carefully at New Jersey's experience and at all the experiences around the country. They figured out which managements have worked best elsewhere and have designed the one with the most promise for New Jersey. I don't believe that we can ignore the recommendations that Commissioner Gambaccini has made to us after all his careful study. Here's one of the top professionals in the country telling us -- based on first-hand experience -- that the current system doesn't work and that he has a proposal that will deliver high quality service with better results for every dollar which we spend. He

and the DOT have prepared explanations and have done analyses in great detail in order to arrive at these recommendations. I hope that everyone concerned with this decision reads his analyses because they present a convincing case to me. What we need is a major overhaul and that the public corporation provides the best arrangement for the future. We in the Legislature ought to take it very seriously when a Commissioner in the Executive Branch with the expertise and experience of Mr. Gambaccini, tells us what is necessary to achieve success in his major field of responsibility. Senator Skevin has some hard questions, and I am sure that Commissioner Gambaccini has the answers to the concerns that may be expressed about this proposal by Senator Skevin and anyone else.

I believe a new institutional arrangement is needed for providing public transportation in New Jersey and it should meet the following criteria:

1. It should assure the ability to increase ridership and direct service to meet public goals of mobility, air quality, energy conservation, and urban revitalization.
2. It should provide public control over personnel, equipment and facilities at a level equal to the public's financial involvement. This will assure quality service with cost effective control.
3. It should assure an opportunity for coordination of different modes of transportation and service.
4. It should assure responsiveness to executive policy direction and should force the close interaction with the other State agencies.
5. It must recognize and include local and regional interests in the decisions which affect transportation services in their areas.
6. It should assure our ability to recruit and keep a highly competent professional staff which will be responsible for the important day to day decisions necessary for an effective operation.

For the record, gentlemen, I have included the major portions of the bill in the following part of my presentation.

Senate Bill 3137 has the following main provisions:

- A public transportation corporation should be created with a separate Board of Directors.
- The corporation should acquire the bus and rail assets of the COA and the assets of the subsidized and unsubsidized private carriers whose acquisition is deemed to be in the public interest.
- The board of the corporation should include the Commissioner, the Assistant Commissioner for Public Transportation, the Treasurer, and two other members appointed by the Governor.
- The corporation could contract for the provision of public transportation services

with private management firms or county agencies, or could operate bus service directly or could contract with unacquired profitable or unprofitable carriers. Acquisitions deemed to be in the public interest will be carried out during an orderly process of transition. The corporation could operate or contract with rail carriers for services.

- Some private bus carriers, both subsidized and unsubsidized, would continue to operate. Unsubsidized carriers would be subject to regulation by the ICC or the DOT, and would receive continued capital assistance. Mercer County may, at local option, continue to operate its own services with State support.
- By consolidating functions and rationalizing services, the public corporation will provide existing services, at better quality, within a similar or smaller budget level than would have been required by the current fragmented system to provide the existing service levels.
- In order to locate decisions on service close to the needs for services, regional operating divisions should be established for North and South Jersey, and local officials should be encouraged to participate actively in the planning of public transportation service improvements.
- The counties may contract with the corporation for services in addition to those existing today, or may operate or contract with other carriers for additional services which are not in competition with the corporation.
- The DOT will maintain budgetary control over the corporation's capital and operating expenditures, will do long-term planning, and will continue to regulate private carriers not under contract to the corporation.
- In order to achieve tight cost control and accountability to the Executive and the Legislature, the corporation's budget should be divided into three cost categories: support for existing services; special social programs; and service expansions.
- The corporation acting with the authority to acquire bus companies in the public interest could establish a plan for prompt implementation of service and cost reduction improvements including transfers, coordination of services, service rationalization, coordinated marketing, consolidation of maintenance and support functions, better fleet assignment and improvements in management procedures.

In a white paper entitled, BUS TRANSPORTATION IN NEW JERSEY: THE LONG TERM SOLUTION, the New Jersey Department of Transportation made the following conclusions:

"The ten year history of the State bus subsidy program is a case of a limited and temporary expedient being applied to an increasingly complex and long-term problem. The fact is that virtually no one defends the present system. For most bus lines, the notion of a private free market is fiction. Operating losses are picked up by the State, and capital

improvements including new buses are nearly 100 percent publicly financed. Continuing ...

"In reality, the State already serves as the party responsible for the buses. Both those who ride the buses and the taxpayers who help support them look to the State government for accountability about service and cost. Yet, under the present subsidy program, the State in fact lacks the day to day oversight to respond to public complaints and needs. The systems are financially supported by a different group of officials from those private managers who actually run the lines. Thus, it seems no one is accountable for what happens. This is an unacceptable arrangement.

"Elsewhere, across the nation, the response to these circumstances has been the creation of a public agency with direct responsibility for bus transportation. The public agency then selects qualified managers, either public or private, who are fully accountable for assuring that bus services support important goals. Rather than patch-up the present system which isn't working, the time has come for New Jersey to take this action.

"The recommendation for a public corporation is a recognition of present realities about the bus business in New Jersey. The arrangement would place operational management responsibility in the same agency that has the fiscal responsibility. This would be a return to sound business principles that apply to either private or public sector services. It offers New Jerseyans the best chance for an improved and efficient bus system."

Gentlemen of the Committee, ladies and gentlemen, this bill is an important one. I am willing to work in this workshop of the Legislature to strengthen it, to improve it, to alter it if necessary. But until anyone comes up with a better solution, it is the only way out of the present morass in which we find ourselves. No one enjoys watching government increase its scope and responsibilities less than I do. I know there are dangers and difficulties ahead of us in the years to come but the present program has been on probation for nearly 10 years. It has failed and the bill aims to deal with those areas in which the present program has failed us. It is going to take courage, vision and commitment, but I feel our responsibilities are plain. I urge your support of the bill. Thank you very much.

SKEVIN. Thank you Senator. I have no questions. Senator Gagliano.

SENATOR S. THOMAS GAGLIANO. Just one question Senator. In preparing the bill, accountability is a very big item. Did you take into account the possibility of, for instance you say "...Thus it seems no one is accountable for what happens--this is an unacceptable arrangement". Did you take into consideration the possibility that we could change the subsidy program so that it would more aptly fit what we are trying to do? For example, you talked about the State picking up the losses; the State being responsible for the expenses but not having management prerogatives. Was there any thought given to the possibility of, for instance, paying out subsidies on the basis of what is produced? For example, if a company sends a bus from Bergen County to New York and there are 40 people on the bus there would be a subsidy to that extent.

HERBERT. Of course that was taken into consideration.

GAGLIANO. That would, then, allow continuation of private ownership.

HERBERT. Yes. Return on investment was a big consideration as well as accountability I'm sure. In fact the private bus owners made a proposal I think about two or three years ago, that the subsidy program be expanded and those bus companies which produced got subsidies and those which did not produce did not. You have got to take into consideration that many of the urban areas especially, need bus service and if they fail -- and if in fact we say "well, you're not producing here, you're not getting your subsidy this year" -- they would, in fact, close down. With the tremendous impact upon the urban problems of people getting to work on time and so on which attended that closure, I think under this arrangement the accountability would be in the corporation. I think the managers of the corporation would see to it that the taxpayers got a good return on their investment.

GAGLIANO. I guess what I was trying to say too, was why couldn't the bill be so drafted that in the event there was not a responsiveness to the requirements of the department or the corporation that might be set up, in respect to service, that would then trigger the possibility of State ownership? I realize that we have one major bus company which is probably the keynote or the keystone of the problem -- not the problem, but something that has to be reckoned -- is one very large company which carries, I guess, most of the commuter population anyway. I guess what I'm concerned about is the possibility that the public corporation, once formed, can go in and say whether a company is doing well. "Uh-huh. We have the right of condemnation. We are taking you, here's your notice. Declaration of taking has been filed. Complaint has been filed. We now own you." And that's the way the bill has been written. From that day on the State Transit Corporation is running the company. The company gets 6 percent on its judgment when it gets the money.

HERBERT. Senator, I would hope that the public members of the corporation would make it very very plain during the operation of take-over, that the interest of the bus company is protected. One of the big problems you have with the incentive program -- two big problems. First of all the incentive program will give carriers more money for doing exactly what they should have done in the first place -- providing on-time service. The second is you can give them more money but it may not result in better services under the same management. That's a real problem.

GAGLIANO. How do we know that we're going to get better service, Senator Herbert?

HERBERT. We don't.

GAGLIANO. How do we know we're going to get better service with this State operated Transit Corporation?

HERBERT. The problem is, under the present arrangement, I don't know how much farther we can go with the increase of the burden of the taxpayers in the subsidy program. How much farther

can we walk this line? Looking down the future to \$200-300 million in subsidies without the kind of accountability that I think is necessary.

SKEVIN. May I add to Senator Gagliano's question, Senator Herbert? In the original program the Department of Transportation was charged with the responsibility of creating incentives for efficiencies, and disincentives for inefficiencies. Today we find that the DOT has failed to establish such a program. Where is the guarantee now that a new program would improve....?

HERBERT. Directed to me that's a rhetorical question. I'm sure that Commissioner Gambaccini can answer that later.

SKEVIN. It's along the same lines that Senator Gagliano was directing the question to you and I'm giving the Commissioner the forewarning, and I'm sure he is well prepared to answer that question.

HERBERT. I'm sure.

SKEVIN. With that we'll ask the Commissioner to come forward. Thank you very much.

C O M M I S S I O N E R L O U I S G A M B A C C I N I. Mr. Chairman, Senator Gagliano, Senator Herbert, I'm pleased to be here this morning to testify on behalf of the Department of Transportation. With your permission, Mr. Chairman, what I would like to do is read a statement then call on two of my colleagues from other departments of State Government -- the Department of Energy and the Department of Environmental Affairs -- and I would like to conclude with a short slide presentation which I think will tie the presentation back together again, and then, of course, be available for whatever questions you might have. Is that acceptable?

Chairman Skevin, Senator Herbert, Senator Gagliano, I believe that S-3137, the legislation which you are considering today, is the most important matter which I will ever have the honor to discuss with you. I will personally devote as much time as you desire, because of its great significance to the future of transportation in New Jersey.

You have the text of my statement before you, I won't read the quotation -- Senator Herbert already has quoted the report of the Department of ten years ago that underscores the judgment and, indeed, the prophetic wisdom at that time, that a stop-gap program of subsidies would help to stabilize the situation for a year but was no long-term solution. Indeed, that any effort to continue down that course would be terribly wasteful, terribly ineffective, and I think history proves the prophesy was well founded.

As you know, following that report, the response was to enact an emergency law providing for a short term subsidy program. But rather than serving as an interim measure while a permanent solution could be achieved, the "temporary" measure hung on for ten years and all the negative predictions of the report have come true.

The program, to quote Governor Byrne, has been a "bad deal" for passengers and for taxpayers as well. We are now paying private carriers \$50 million a year in subsidies, up from the original half million dollars a decade ago. And if you ask anyone in New Jersey who depends on bus

transportation what they think of the service, be prepared for an outpouring of anger and frustration over poor equipment, unreliable service, complicated transfers, broken air conditioners and heaters, and the outcry that "you can't get there from here."

As a transit professional for more than 16 years, I can state unequivocally that the "bail out" subsidy program adopted by the Legislature a decade ago -- and a bail out is all that it was -- is totally unacceptable as a statutory framework for improving and developing New Jersey's mass transit system in the 1980s. It hasn't worked in the last decade and it won't work in the next decades.

An efficient bus system that will attract more riders is critical to our economy and the overall quality of life in New Jersey. From a purely economic standpoint, our road system could not effectively deliver the goods our society requires if there were no mass transit system to carry a portion of the population. New Jersey is the most densely populated state in the country and we have more vehicles per mile of road than any other state. If everyone who now uses buses and trains got into their cars, our road system would, quite literally, come to a halt from one end of the State to the other. We are under a federal mandate to reduce air pollution which means we must act now to divert some existing trips, and for the most part the best preponderance of future trip growth, from automobiles to mass transit systems. And perhaps the most urgent is the need to develop a viable bus transportation system to counteract the forces of changing gasoline prices and/or supplies. As it stands now, New Jersey is one of the states most vulnerable to a gasoline crisis because of its heavy reliance on foreign oil -- that is imported oil -- while at the same time we have one of the worst systems for providing bus transit, a logical alternative to the automobile. We have lagged far behind the rest of the country in recognizing the public responsibility for bus transit. If we don't get our act together now, we will risk a paralysis in transportation if the signs of an impending gasoline crunch are accurate.

For these reasons, and others, I seek your considered analysis and swift approval of S-3137, the New Jersey Public Transportation Act of 1979.

The key element of the public transit corporation is the authority to acquire a private carrier when it is in the best interest of the public and either to operate that service directly or through contracts with private professional transit managers. That single key can open the door to a variety of improvements and efficiencies I will detail later, that would begin to make sense out of the chaos we now have and better meet the needs of current and future bus riders. It would recognize what the rest of the country and even the world has long accepted -- that mass transit is in fact an essential public service along with police and fire protection, sewers and road systems.

In the not so distant past, New Jersey boasted an outstanding bus transportation network. As recently as 1970, in the first year of the emergency subsidy program, New Jersey's bus system

carried 313 million riders -- over a million passengers a day. Most bus service did not then require a subsidy. Now that figure is 186 million passengers a year, and about 625,000 per day.

New Jersey, however, was not immune from the economic forces affecting transportation in most urbanized states since the mid 60s, the suburban sprawl and the increased automobile travel it brings, the concurrent reduction in city populations where mass transit is available, and the overall heightened passion in the American love affair with the automobile. We have simply been slower to react to them with effective long-range programs. While the rest of the country went to public ownership and increased ridership, New Jersey let vital city routes die, clung to operating routes set up decades ago, and presided over a costly and inefficient subsidy program to private carriers. We now subsidize 80 percent of all bus travel in the State. We own half the buses on the road now and will soon own 80 percent.

What have we gotten for our money? The only tangible benefit we can honestly claim is that in the last two years we have finally stopped the decline in service and ridership, and achieved a measure of stability in fares. Without subsidies, many short trip base fares would surely be well over \$1.00. Such a fare structure would be reprehensible public policy, with major negative impacts on our urbanized areas and our transit dependent populations. Further, we can say with reasonable assurance that without subsidies, much more of the essential non-peak hour service that we have been able to preserve would have been eliminated.

Outside of these limited and very recent achievements, the program has been a disaster. While nationwide, bus ridership rose by 11 percent since 1970, New Jersey experienced a 41 percent drop. Thus, most, if not all other areas of the country have had much greater success in stabilizing fares and preserving or restoring essential services and they have done it with publicly owned systems.

Our subsidy program has failed because of the inherent underlying conflict of public and private interest. The public goals are the best quality service at the lowest possible cost. The private goals are, understandably, to earn a profit. While the two goals are not necessarily totally irreconcilable, they are usually in serious conflict. This conflict is evident in the unsatisfactory transit service delivered and in the day to day administration of the program.

First, the basic program is an administrative nightmare. Currently 21 carriers provide service. Separate contract negotiations, preparation and processing of payments, auditing and other administrative functions are extremely costly in time and dollars.

Second, very few operators coordinate their efforts. Service changes are slow and cumbersome. Service and fare improvements of any type are, for all practical purposes, subject to the approval of private operators, DOT staff attempts to negotiate such changes with typically little cooperation from the operators. Such negotiations often take many months of staff time. As a result, we are rendered virtually impotent with respect to rationalizing service.

Third, monitoring of service and maintenance quality is a near impossibility. The DOT is constantly thwarted in its efforts to insure proper maintenance of equipment. Even if sufficient manpower were available, we still possess no real enforcement powers to insure compliance with our leases, short of repossession. In the case of repossession the only losers are the riders.

With regard to insuring service quality, we are similarly frustrated, since the existing program was only intended to be an "interim measure," it was designed as a "voluntary" program. The private carriers are responsible only to themselves. We have no means of penalizing carriers for poor management or rewarding good managers by increasing their responsibilities. For example, there are no positive means to counter the misuse of subsidy funds. Efforts to improve management techniques and methods are frequently rebuffed.

The only sanction is withdrawal of funds. Again, only the riders would suffer if the services are withdrawn or if fares rise.

Fourth, the program suffers from continuing instability. DOT/Carrier conflicts over operational and financial problems often result in carriers' threats to discontinue service. Such threats not only create short term crises, but also have long term deleterious effects on ridership stability. If we are to attract more riders the first thing we must achieve is stability, the guarantee that service will be there day to day and year to year.

Fifth, protecting the public's purse is becoming increasingly difficult. Subsidies are paid on the basis of allowable expenses minus fare revenues. Some carriers inflate expenses or reflect non-reimbursable expenses in their calculations. Although these items are caught in subsequent audits, they obviously undermine day to day working relationships between DOT staff and the carriers. And because the subsidy law was only meant to last one year, it did not address the critical questions of how to treat affiliates of subsidized carriers. Consequently, the 21 subsidized carriers have a total of 56 affiliates -- one has 13 affiliates and only one has no affiliates. These affiliates generally operate the profitable service such as school and charter work, while the essential but unprofitable routes are operated by the subsidized carrier. There have been instances of carriers improperly charging expenses of affiliates to the subsidy account. Detecting these improprieties becomes extremely complicated when various affiliates share the same garage facilities, which is frequently the case. We can't insure strict adherence to the law even if we could station a person full time to every garage and office of every carrier.

To digress from the text, I would say again, overwhelmingly, the key problem is the extreme fragmentation -- the over 200 carriers and 21 subsidized carriers.

I would like to emphasize that few assisted operators have much equity but some of their affiliates have significant equity value. One carrier, for example, which uses State buses for almost all of its service, received a subsidy of over \$300,000 in fiscal year 78, reported revenues of approximately \$300,000, and reported that the owner's equity in the subsidized company was approximately \$1,600. Its affiliate, on the other hand, under the same ownership,

reported equity value of over \$100,000. It is clear that the State now makes virtually all the investments in the unprofitable services.

Sixth, the problem of "old debts." Pre-existing debts are not allowable expenses. However, many carriers enter the program in poor financial shape with substantial past debts. As a result, they have three alternatives: foreclosure, reduction of service or the use of subsidy money to pay the old debts. In the first two instances, the riders are the clear losers. The last alternative simply delays the problem until they are audited and caught. When that happens, they usually have no funds with which to reimburse the State and either drop out of the program or go bankrupt, owing the State money. Again, the riders suffer.

Before I describe the specific benefits I am certain will derive from enactment of S-3137, I feel compelled to address a somewhat contradictory fear of public involvement. New Jersey's "private" operation is more illusory than real and is artificially preserved through heavy subsidies of public funds. New Jersey transit is already considerably "public" in nature. Publicly assisted carriers carry the vast majority of transit passengers (approximately 80 percent). We will shortly own 80 percent of all buses in service. State and federal funds provide at least one-third of all the operating costs of the 21 subsidized carriers. Each year we pay out, in subsidies, a total amount which is twice as great as the actual worth of the private carriers. Nationwide, the dwindling role of private ownership in serving public transportation passengers is markedly evident, since 91 percent of all public transit passengers are now carried by publicly owned systems. We, the taxpayers, are footing a tremendous bill without control over the heart of the service -- the routes and the direct operations. In short, public involvement is already a reality. The only question is that of degree. What we have in New Jersey is a clear and irreversible public financial commitment to mass transit without requisite or appropriate and proportional degree of control. I can think of no other state program that claims \$50 million a year in public funds with so little effective public control.

The Benefits

Let's look more closely at the specific benefits which a Transportation Corporation could provide.

1. BETTER CONTROL

Today the Commuter Operating Agency contracts with private carriers which own the operating rights, garages and some of the buses. The COA pays the difference between operating expenses and revenues. Under S-3137 the Transit Corporation would have the authority to acquire all of the necessary assets of the bus system and put the public in full control of the service it now pays for. The Corporation will be able to select managers, not simply be forced to accept the bad with the good as it must today. Instead of an arrangement whereby private owner-operators are constantly working at cross purposes with the Department to protect their investments, the role of the private sector under S-3137 might be that of a true vendor of management services

contracting with the government. This approach is far more likely to succeed than the present subsidy arrangement.

2. RESPONSIVENESS

The existing system divides the authority into so many compartments that it is responsible to no one. Its complexity renders accountability virtually impossible. Under the corporation, a fuller measure of public control, regional operating divisions, the involvement of county and local officials, and a strong marketing capability will assure sensitivity to local conditions and needs.

3. SERVICE IMPROVEMENTS

The Corporation will have the power to undertake the kind of improvements you have been demanding -- justifiably -- for a decade: a more rational and simple fare structure; rational and integrated services; route extensions when they are needed; elimination of duplicative routes; coordinated routes; services and fares; improved communications; and unified expanded marketing techniques. Such improvements are common across the country and are integral to the success and production of ridership increases.

With numerous carriers all pursuing separate private goals, the achievement of each proposed improvement becomes an arduous, if not virtually impossible, task. For instance, a system-wide bus transit marketing program is hardly imaginable under today's arrangement. The point again is that the "bail out" program was not intended and cannot be expected to improve service except in limited and halting ways. A comprehensive and coordinated set of service, fare, and marketing improvements can only be implemented by an entity with responsibility for control and the authority for providing public transportation.

4. EFFICIENCIES

No comprehensive estimate has been prepared with regard to the maximum potential efficiencies which could be implemented. We know of some areas, however, in which we could make significant improvements in the quality and amount of service that we receive for every dollar we spend. First, the elimination of rentals -- payments currently made by subsidized carriers to their affiliates for garage and bus rentals can yield significant savings. The total payments in a recent year were \$1.9 million. The State wouldn't necessarily save all of this in the very short term because the Corporation wouldn't acquire all subsidized carriers immediately. Next, there are substantial opportunities to reduce insurance and safety costs because of the ability to spread risks across a larger system. Third, improvements in efficiency can derive from the reorganization of maintenance and administrative functions by using existing personnel more effectively. Strong central management through corporate staff assures efficient assignment of personnel. The current fragmented system wastes personnel, because too many must be assigned to duplicative functions or to the wrong functions. If the Corporation could merely improve

administrative and maintenance productivity to the average achieved by other large publicly owned bus operations, we could use many personnel more productively on needed tasks not currently performed. It is likely that we could make much better use of several millions of dollars in resources through improvements in administration and maintenance -- if we just reach the average efficiency of public systems. And these three categories do not even include efficiencies attributable to route and service rationalization.

With regard to route rationalization, we haven't recently calculated a maximum potential savings. A 1976 Simpson and Curtin estimate calculated that if subsidized carriers were acquired a savings from route restructuring of \$4.6 million might be feasible. From that type of savings financing can be obtained for new service needs which the Corporation could identify. Since any route rationalization plan would require local discussion, no single estimate of increased efficiency could be projected.

I would further like to point out that I believe the initial reorganization of the bus system in New Jersey could be achieved without layoffs of existing transit personnel. I am reasonably confident that the efficiencies we described above can be achieved through better use of existing personnel and any manpower economies would be offset by the restoration of needed services and improved levels of service.

5. COSTS

Many questions have been raised about the costs of acquisition. It is important to bear in mind that from a financial point of view the cost of acquisition is a small matter compared to the costs of operation which we support today. For example, we pay one carrier an annual subsidy 250 times the value of its capital assets. Even if we were to acquire all presently subsidized carriers, the total cost of their physical assets, as set forth in their own reports, would probably not exceed \$25 million. Note, however, that most carriers will assert the existence of other "intangible" values which are more difficult to estimate if they exist at all. However, such costs in recent bus acquisitions have never amounted to more than a modest percentage of capital costs. These values may be more than offset by the pension liabilities of the carriers, which the State has been paying off. The final cost may even be substantially less than the \$25 million, which could be funded up to 80 percent by the Federal government.

With regard to operating costs, I want to destroy the myth that somehow public ownership automatically translates into skyrocketing costs. Surely, examples of poor management can be found, but there are many more examples of public agencies that are providing excellent service in an efficient and cost-effective manner. Most often, where cost increases under public ownership have occurred, they are mostly due to service expansion and social policies, along with normal inflation factors. Whether public or private, a bus transit operation is subject to the same key cost elements -- fuel, insurance and wages. In addition, the current system hardly encourages carriers to bargain effectively with labor or achieve maximum operating efficiencies

because they will look to the subsidy program to pay the costs.

We intend to institute tight financial management of the New Jersey Transit Corporation. To this purpose, I propose that the public corporation's budget be submitted in three categories:

- . The cost of existing services
- . The cost of special programs, such as for the elderly and handicapped and other such social programs, and
- . The cost of new services, extension of routes and new routes.

I am confident that the corporation's cost of existing services would be less than what we would have spent under the existing system. The DOT and the Legislature will have before them each year an estimate of the costs of service expansion and special social programs. The proposal before you is intended to assure that the State Executive and Legislature control such decisions, and that service expansions and social programs with additional costs can be fully justified before they are undertaken.

Obviously, changing only a single company from private to public will not increase passengers unless something is done to coordinate service or to make it more reliable. The public transit corporation will be able to coordinate its own bus services with rail services, and also with the services of other subsidized and unsubsidized bus operators. Thus, we expect that the corporation can achieve ridership gains, even if the same miles of service are run.

6. SHORT-TERM BENEFITS

While each of the broad category of benefits just described are likely ultimate results of the enactment of S-3137, what can we reasonably expect to occur in the very near future? I expect that the initial focus of the corporation will be on rationalization, increased efficiency, and marketing so that a system will be in place that can respond to our future needs. But if petroleum does become very scarce in the near future, transit policy would include substantial expansion. We need the organization to meet the challenge.

Putting a severe energy shortage aside, the short-term actions that I would expect the corporation to take include:

First, TNJ Acquisition

I anticipate the corporation will take the steps necessary to acquire Transport of New Jersey and Maplewood Equipment.

Secondly, Fares

The corporation would try to simplify the fare structure and transfer system to make them more understandable. Innovative fares used elsewhere might be implemented: reduced off-peak fares, rail to bus transfers, simplification of zone fares, special weekend fares, weekly and monthly passes and employer discounts for bulk purchases would all be pursued.

With respect to Rider Information Improvements, a short-range program to improve rider information services could include: better telephone information service; easier to read timetables; a

simple statewide ride guide; consistently recognizable bus stop signs throughout the State; improved methods to distribute information including timetable racks at major activity centers; direct mailing and advertising; and an initial effort to implement a graphics program that makes transit bright and noticeable.

Service Improvements

An important effort beginning in the first year will be route rationalization -- restructuring routes to eliminate gaps in service, improving transfer opportunities, eliminating overlapping services and coordinating bus and rail services. While the corporation improves efficiency through rationalization, it will also insure that existing riders are not adversely affected. Improvements might include eliminating "closed door" operations where appropriate; interconnecting routes to reduce the number of transfers; encouraging private operators to trade routes and to consolidate service areas; providing improved feeder service to rail stations; and extending some routes to provide better connections.

Some new services may also be implemented. The corporation will develop, in coordination with private carriers and local groups, a set of criteria and standards for providing transit service. Many of the service improvements which can be implemented quickly will build on the current efforts of the DOT to develop objective measures of system and route productivity. These analyses will enable the Corporation to monitor route performance to identify deficiencies and promising markets, and to allocate transportation resources in an equitable manner.

Consequences of Inaction

At this point I must direct my remarks to one of the very serious consequences which may result from continued reliance on the existing law. As you know, I have taken the position that costs allocable to the funding of Transport of New Jersey's pension obligations incurred before the inception of the COA's contract with Transport in 1974 should not be paid by the State but instead by TNJ or its parent, Public Service Electric & Gas Company, which are legally obligated to pay them.

Since February 1 of this year TNJ and Public Service have agreed to accept the continuation of these payments by the COA as a credit against any future purchase price in an eventual acquisition of the TNJ. I feel obligated to advise you that Public Service has informed me that it will no longer permit TNJ to enter into an agreement recognizing State payment as a credit against the acquisition price after June 30, 1979, unless bona fide negotiations for the acquisition of the bus company are under way and give evidence of prospective resolution. Obviously, eventual resolution involving acquisition will not be possible without statutory authority.

Past and future pensioners should not be unduly disturbed by this state of affairs because in any event their pension rights will be protected.

As we move closer to June 30, 1979 I remain firm in my belief that the State should not

bear a cost that a private corporation is legally obligated to pay. I do not intend to change that position if this legislation is not enacted. Therefore, the Commuter Operating Agency and TNJ may well be on a collision course because assuming both parties stick to their positions, TNJ will not enter into an operating assistance contract after June 30, 1979.

In such case, the service provided by the State's largest carrier may be in serious jeopardy. While this reason is only one of many valid reasons which should compel swift action on S-3137, I urge that you bear this particular situation in mind during your deliberations. The bill provides both PSE&G and the State with the opportunity to reach a reasoned agreement in the best interests of all affected parties, especially the transit users and taxpayers of the State.

This is only one of the potential adverse consequences of continuing the existing system. As we have documented in great detail, it is impossible to make the current system work effectively. I would not be optimistic about our success in working under the current arrangement to provide expanded public transportation services in case of a prolonged energy shortage.

What we face is not a choice between two relatively meritorious alternatives. It cannot even be characterized as a choice between mediocrity and excellence. It is, instead, a choice between an administrative nightmare on the one hand, and sound public policy on the other; between continuing instability, conflict and stagnation on the one hand, and a management alternative which gives the public the tools it needs to assure its dollars are effectively spent.

While I have lived in New Jersey for many years and closely watched mass transit developments here, this is the first time that I have been a participant in a major policy decision with you affecting the future of the State's transit program.

I know that what we are proposing is a historic step and that there will be critics. I hope that they are more reasonable than some of the opponents of public ownership and management over recent years.

Undoubtedly, one can find examples of poor management in public transit systems, but I submit that for every bad example, there are ten examples of excellent public operations. I have had the privilege in my career of viewing the major transit facilities in this country and in various locations across the world -- all of them publicly-owned -- and I can honestly say that knowledgeable people would point to New Jersey as a perfect example of how not to run a system.

The fact that no area or state seriously considers returning to the situation of the past when private interest controlled their public transportation system -- a situation that New Jersey still tolerates.

There are many examples of excellent public operators who provide good service in the public's interest and at reasonable cost. The false argument made by special interests in the past -- that there cannot be good public management -- is overwhelmingly refuted by the facts and by the experience around the country.

You are being handed copy of a letter received yesterday from Governor Hughes of Maryland

responding to Governor Byrne's request for information on Maryland's public transit system -- the system which is most similar to the proposal you have before you in S-3137. As the letter indicates, in Maryland they are quite pleased with the step they have taken to public ownership. I won't take the time to read the letter but I think it is a very significant addition to the record. Here is a Governor who had a major role as a former Commissioner of Transportation in Maryland, who now must live with the consequences of that decision and finds that it was an overwhelmingly right decision and that it is testified to in the attitudes of the Legislature and the citizens at large. I have been a Commissioner of Transportation now for about one year and my staff and I have devoted much energy and time to a very careful analysis of how to best improve New Jersey's transit. Before I came here I was a professional transit manager for a public agency working to turn a bankrupt and deteriorated operation into a modern, convenient, and reliable system. The challenge at PATH was of a different kind, but no less difficult than the challenge we have before us today.

The system we have here doesn't work today. It won't work tomorrow, and there is nobody in the world who can make it work. No similar system has been made to work anywhere else at any other time. Tinkering with the subsidy approach, or throwing in more resources, just won't succeed.

Speaking as a transit professional, I've told you what I sincerely believe is the best and most practical proposal for improvement. The arrangement I have proposed has proven itself in other places. We have been slow to get organized in New Jersey but we have learned a lot from that wealth of experience. I believe this system can be reorganized and turned around in the next two years, if you take positive action on the proposal before you, and give us a chance to make it succeed.

All problems won't be resolved immediately, but we'll be able to structure a system that will deliver today's level of service more effectively and with better quality and reliability. We will have a more businesslike arrangement, in which the responsibility for finance and the responsibility for operations will be put together, and not kept separate and apart. We'll have a system which will be able to meet new needs if they arise in the future -- due to energy shortages, environmental issues, or the need for more mobility in our urban and rural areas.

We are asking that public transportation be reorganized based upon facts and realities, and that the myths be rejected as a basis for decision. At heart, what I am asking is that public transportation be given the opportunity to succeed.

Next, I'd like to call on...

SKEVIN. Commissioner, we're going to have to interrupt your reply and lengthy presentation and interject some questions. We didn't realize the length of your statement and we want everyone to continue their presence and interest here while we have the opportunity.

GAMBACCINI. Surely.

SKEVIN. If I may interrupt that presentation with some questions which Senator Gagliano and I have. From my opening remarks you can understand my concern with the report of the Governor's Commission on Budget Priorities which was issued in January of this year. In that report which was a summary -- of course it was not a private group, it was a public group of prominent citizens who met with the Governor, they were appointed by the Governor, and they went through a process which is described in their introduction to the summary report. In their findings and recommendations, Commissioner, number 3 -- and I'm quoting -- "There is at present no factual base for a conclusion that a take-over in whole or in part is the answer to the problems as they exist." In light of that statement I am interested in knowing whether you or anyone in your Department talked to any members of the Commission before they issued the report.

GAMBACCINI. Yes, I met with the entire group and I met several times with the author of this recommendation. I can only conclude, or say, that there was underlying the recommendation, a pervasive caution about which that particular individual, who in fact made the recommendation and was supported by the rest of the Commission, considered a final and irrevocable step. The major thrust of the recommendation is "Wait another year and study some more." I find that, frankly, a bit incredible since we have now waited ten years with a system that was designed to be a stop-gap for one year, and have had several intensive studies and recommendations. Some three years ago the State paid a half a million dollars to two eminent consultants who studied this whole matter very intensively and made recommendations very closely akin to what is being recommended in S-3137. I submit after ten years, and on the order of close to \$200 million in cumulative subsidies, close to half a billion dollars of State money outgo, and several lengthy studies done three years ago, and done over the course of the last ten months, that we have done all the studies requisite to see where New Jersey is in relation to other cities and areas of the country and to have analyzed what's wrong with the present system. I don't know, therefore, what could be accomplished by a further year's delay except considerable more public expense and inadequate service delivered.

SKEVIN. Did you see the full Task Force report?

GAMBACCINI. Yes, I have a copy of it.

SKEVIN. Did your Department provide the Committee with a copy of those reports?

GAMBACCINI. The Committee?

SKEVIN. The Transportation Committee.

GAMBACCINI. I didn't assume it was our responsibility -- indeed, I didn't know that we were supposed to have gotten a copy. This was a report to the Governor with respect to the budget. So, the answer to your question is that I am not aware that we did.

SKEVIN. Ok. Do you have these reports?

GAMBACCINI. I have a single copy and I'll be happy to give it ...

SKEVIN. The Task Force report. I'm talking about the detailed report.

GAMBACCINI. Oh, I'm sorry. I misunderstood you. All I have is this one document which is the summary report. I have nothing beyond that.

SKEVIN. And it's that Task Force report that the summary was based upon. Wouldn't you be interested in finding out what was in those reports?

GAMBACCINI. I'm not aware that there is any back-up report beyond this. I know that we have had several meetings and that they collected a lot of data, but I'm not aware that there is any supportive reports of this recommendation.

SKEVIN. You've read this summary report isn't that correct?

GAMBACCINI. Yes.

SKEVIN. And in that report they referred to Task Force reports.

GAMBACCINI. I read that to mean an oral report. I don't know whether there is a written report. I certainly will enquire into it.

SKEVIN. I think that all the members of the Committee would be interested in finding out if there was any...

GAMBACCINI. I'll be happy to report to you and the Committee on my findings.

SKEVIN. In this summary the Commission refers to a take-over which was done in Nassau County four years ago which proved to be a financial and administrative disaster. They go on to say "Such a move by New Jersey should be avoided at all costs." Did anyone from your Department contact the people in Nassau County?

GAMBACCINI. Yes we have.

SKEVIN. And what was the result.

GAMBACCINI. We got very different judgments about whether or not it was a disaster or a success. I've had the personal experience over the years, of hearing loose talk from many points around the country, about the awesome deficits and the rise in deficits -- and ergo, a financial disaster. I submit that the approach we took in our report comparing some two hundred measures of performance of each of the major carriers around the country is a more responsible way to test performance -- effectiveness and efficiency of performance -- rather than off-hand remarks or judgments by people who may or may not have a full evaluation of the system. I'm not here to defend Nassau particularly. There have been other allegations in the past about one or two other cities. There are some cities that are better than others in some areas and measures of performance, and there are some cities overall who obviously have done better in gross control of costs. There's also a great divergence in different policies about whether to keep fares low or let them rise, or whether to expand service or to contract service. These all are variables on whether the bottom line, financially, is good or bad and I submit that the bottom line financially is no measure of effectiveness or efficiency. It's an appropriate public policy to opt for improved service at increased costs because in the judgment of those officials, society benefits proportionately greater than those costs. I'm sorry, sir, it's a long answer but I am trying to put it in

perspective.

SKEVIN. That's alright. You're taking issue with the Commission's conclusion that there was a financial and administrative disaster in Nassau County.

GAMBACCINI. Yes. Yes. That is a glittering generality. I'd prefer to submit it to the same test of analysis. We have the data on that firm and would be happy to submit it to the Committee.

SKEVIN. Have you spoken to Nassau officials?

GAMBACCINI. I haven't directly, but my staff has.

SKEVIN. Your staff has!

GAMBACCINI. In fact, I'd be happy to give you a short paper on that subject.

SKEVIN. Would you recommend that we bring in the Nassau people?

GAMBACCINI. I would have no problem with that. Indeed, if you do bring in outside witnesses I would welcome the opportunity to provide several from around the country elsewhere as well.

SKEVIN. The Commission also comments on the take-over in Rhode Island and Connecticut. Do you have any knowledge how that has worked out?

GAMBACCINI. Based upon the conversations I've had with my opposite numbers in the State Departments of Transportation, I feel that they generally have accepted the inevitability. They could not continue with what previously was their situation, similar, but nowhere near as grievous as ours, they had far fewer carriers to contend with but the inevitable pressure for subsidies deteriorating service. And again in our data we can demonstrate to you where they stand in the evaluation of performance measures. I believe that Connecticut, Rhode Island, and Maryland -- all of which were state acquired transit systems as against public regional bodies in most other parts of the country, that they stand in relatively good order on effectiveness and efficiency.

SKEVIN. Do you think we ought to have the people from Connecticut and Rhode Island come in?

GAMBACCINI. I leave that to your judgment, Mr. Chairman.

SKEVIN. The Governor's Commission on Budget Priorities made certain recommendations and I would like to read them into the record.

"During the next twelve months, while the present subsidy program with all its faults, is continued, a thorough study of the weaknesses in the present program should be made and recommendations proposed to make it workable. Every effort should be made to establish and implement the previously mentioned incentives and disincentives. At the same time a study should be made of the successes and failures of those cities and states that have taken over bus operations."

Would you care to comment on that, Commissioner?

GAMBACCINI. I think I commented on it with respect to the need for an additional year's study. We have published four rather voluminous reports and given wide distribution to them, one of which was an analysis of what's wrong with the present program; another was comparative data on other operations around the country; a third was a proposal for the new corporation;

and fourth was a comparison of TNJ with other carriers -- no, I mentioned that one. Excuse me. The four reports were:

1. An analysis of the current program;
2. A report on institutional arrangements from other states;
3. TNJ comparisons with other carriers around the country; and
4. A proposal for the establishment of a Transit Corporation to get on top of this problem.

SKEVIN. But at this point we have a conflict -- a clear conflict -- between a Commission of the Executive Branch and the Department of Transportation as far as the bus take-over is concerned.

GAMBACCINI. I would hasten to add that these reports were not available to them at that point. One of two were but not all. And I think they felt the pressure of a deadline in not having all the reports in hand and wanted time, and that by the way is a very human and a very common practice -- to keep deferring a tough decision, looking for more and more data and more and more studies -- and I am submitting to you that if we continue to play out that game, the costs are astronomical and we don't get the improved service that I feel is overdue.

SKEVIN. But there's no question there is a conflict as to the conclusion of the Commission, that there's no factual basis at this point.

GAMBACCINI. I don't know that there's a conflict. I think it's a question of timing. They were compelled to render a report before we were prepared to provide our recommendations. Indeed, I've had conversations with the Chairman and I think he would be receptive to reconvening the Commission to reconsider, based on these reports, the position of the Commission.

SKEVIN. You talked with the Commission, isn't that correct?

GAMBACCINI. That's right.

SKEVIN. And he had the benefit of your input at that time.

GAMBACCINI. That's right.

SKEVIN. And they came to a conclusion there was no factual basis -- isn't that correct?

GAMBACCINI. That's what the summary report seems to indicate. Yes.

GAGLIANO. I think first of all, Commissioner, I again want to reiterate and state my faith in you as a Commissioner of the Department of Transportation of the State of New Jersey. I find you to be an excellent administrator and I think that you've really got the Department moving in the right direction. For that I thank you and I'm sure Senator Skevin does. I do have a couple of questions. I know you have only been on the job for about a year, and I've only been on the job for about a year, and what is bothering me here is that we seem to be going in one step, from the nightmarish situation that no one but you would face, really, over the past several years, except for those who made studies at great expense to the State, and we are leap-frogging to the end result which you are now asking for -- in your considered judgment -- to be the only way to go and that is, in effect, public control and ownership. And yet, referring now

to what Senator Skevin read from in the summary report, "Every effort should be made to establish and implement the previously mentioned incentives and disincentives." So what I'm trying to say here, and what I'm trying to ask you to comment on is, we go from the nightmarish situation which really I don't think anybody has addressed seriously from a legislative and administrative standpoint about the ten-year period, and we go to public ownership. I did not see any indication of a statutory set-up which would bring about the incentive and disincentive program. Not having tested that, in my opinion, we might be going too quickly to public ownership. I raise that because commuters have raised it with me and I would like your comments on it because I think instead of doing things in a practical imperical way, we seem to be going to the top of the pyramid rapidly.

Now, I can understand your position. You certainly are an expert in the area. I am asking this really as a member of the Committee who has to be satisfied in my own mind that we have taken each step logically and sensibly, then come up with a decision that incentives in our subsidy program won't work.

GAMBACCINI. Senator. I'm doing a very poor job of communicating apparently because to me it seems overwhelming in the factual basis of the bad deal that the State is now getting. We have committed close to \$500 million dollars at the end of the next fiscal year. In a situation where we are trying to breathe life into 21 carriers to protect that nebulous thing called "private interest" or "private enterprise", where their investment is minimal and their control is great, and we have been frustrated in the extreme in trying to get rationality to the whole process. I submit that the voter, the taxpayer, and the passenger are being "had" to an extreme degree. Now you put all that together and then put it in the context of what the whole rest of the United States and the world has done and it seems inconceivable to me that the logic is not overwhelming that we must develop a better degree of control. What we are proposing is not irrevocable and it's not final or ultimate. There are 200 plus carriers. We are proposing that a public corporation, with public directors, in its judgment deliberate about what's in the public interest. We are saying categorically we want to preserve some carriers in private operation who have good performance and are not working at cross purposes with the public interest, that we want to continue the subsidy program where it can be demonstrated and justified. But we have to break out of the absolute vise we're in, totally victimized by individual carriers who say -- as they have said -- "You are the lesser or junior partner, we'll do certain things that you pay for but otherwise we make the decisions around here." We have to break out of the vise that says "Unless you put up the money we'll drop out of the subsidy program and we'll raise fares or cut service." Again, who'se the looser? Now our stake is a major one, we are paying a fantastic sum. There have been charges about astronomical growth in costs under public operation. What could be more astronomical that one hundredfold increase in costs in nine years under the subsidy program, and two hundredfold in the next ten years.

GAGLIANO. Surely. What could be more astronomical.

GAMBACCINI. The point is, are we getting dollar value in return? I'm not saying we're going to go into profit or significantly improved financial position. We are going to get a lot more back for the taxpayer's buck and deliver a better service to the passenger.

GAGLIANO. I guess, Commissioner, we're not communicating -- you're right. I am asking whether or not, in your professional opinion, there is any sense to creating -- before we go to the step of this bill -- a true incentive program?

GAMBACCINI. That makes it very clear and my answer is, in my professional opinion there is no sense in going in that direction. When you read the report on what's wrong with the present program and have to live with the fragmentation of that number of different carriers and have extreme frustration in being able to get them to perform to any standards that we would set, like the simple matter of running air conditioners or coordinating routes or services or information services. With that frustration all I see as a result of incentives is more administrative headaches in a higher cost figure; a delivery of benefits to carriers who don't need it; and insufficient delivery of funds to those who do need it. So you're not putting the money where the need, or required preservation of service, is. I see that but nothing more than a further extension of the tangled web of conflicting values and goals that are throughout this whole system. I have been confronted almost weekly with crisis after crisis where the options open to me were -- "Can you throw more money at us by picking up some of our past indebtedness in buses, if you don't we're going to go out of business?" This has happened time after time. That's the Hobson's choice, over and over. "More money or... we go out of business...we cut service...we raise fares."

GAGLIANO. Let's say we have this bill exactly as it is without the right of condemnation. By the way, I would like a memorandum at some point to the Committee with respect to the acquisition by, in effect, eminent domain under our constitution of personal property and tangible assets such as licences and ICC rights. I would like to see a legal memorandum on that and I am sure Mr. Robins has it right on the tip of his tongue ready to dictate. I question that.

I am wondering, if you had this bill in place without the right of eminent domain with respect to the acquisition could you operate with less of a nightmarish situation? In other words, if someone came to you and said "We're on our last legs, Commissioner, we can't cut it any more, we would like to keep our charter system; the ten buses we use in charter, we would like to turn over the thing to you for whatever you want to do with it. If you feel it is not going to help the public corporation then close it down, or merge the line with someone else. I am asking, whether you could do this without the right of eminent domain?

GAMBACCINI. I would say that we could operate better than we can presently, with the right to negotiate and conclude acquisitions where there is mutual agreement. But I would say that it would be a serious flaw that we'd live with and probably want to correct in due course. Fundamental to this whole thing is a State grant of a right to operate and to have certain

monopoly rights in the public interest. I think we are at a stage in society where the State needs to reexamine its stake -- and society's stake at large -- in relation to the historic backdrop of routes that were granted some thirty or forty years that may or may not have financial worth, but should not have eternal right to exist in the context of changes in society and the dynamic needs -- energy conservation, air pollution control. Finally, I would submit that even the condemnation process assures due process to provide equitable return to the condemnees. But I think it is an important ingredient. I can foresee leverage absent that right that would force much higher settlements and costs flowing to the State than otherwise. I would prefer to leave to the judges or to due process of law what an equitable distribution of payments and rights are in that situation.

GAGLIANO. Next question, Commissioner. With respect to the make up of the corporation -- assuming that the bill can get sufficient votes to pass the Legislature and I have mentioned this to you before -- would you have any tremendous objection to increasing the size of the public corporation board so that, for example, there could be room for one member to be a representative of the county transportation coordinating committees? Again, maybe chosen by the Governor but with the idea that we would get more of a cross-section of the public who not only use it but have to run the public transportation system. For instance, if we could increase from five to seven, the number of members of the public corporation, I would kind of like that and I just wonder what you feel.

GAMBACCINI. Senator, I would like to reserve judgment on it. I am sympathetic to it but I would like to think through the full range of consequences. As you know, the present proposal increases from zero to two, representation to the public at large in a situation where 100 percent of the funding is either State or Federal and I thought that was a substantial improvement. Indeed, we have had a lot of requests to enlarge the Commuter Operating Agency to one representative of county or other public...

GAGLIANO. We have a bill pending.

GAMBACCINI. So, we're proposing two additional representatives. I'll give thought to and certainly will be happy to report back to the Committee our recommendation on whether that is a good or not a good idea. I am sympathetic in general.

GAGLIANO. There's another point that I would like to make. This isn't really addressed to you, it is addressed to the sponsor, and I have discussed this briefly with him whether or not there would be agreement with respect to the public members that they would require to have the advice and consent of the Senate of New Jersey before being actually placed on the board.

HERBERT. I can answer that one. When I saw a draft of the bill we have worked over, I inserted that provision, but unfortunately it did not come out in the printed version. As a matter of fact I would recommend that to the Committee, that the two public members be appointed by the Governor with the advice and consent of the Senate.

GAGLIANO. Or more....

HERBERT. Yes.

GAGLIANO. I make that point, Commissioner, because while you are right, it is to a very great extent State and Federal funds that will be operating this corporation. The commuters themselves put the money in the fare box and maybe we should look toward having some representation from that group. Maybe you can answer this. How many people do you feel actually commute by public transportation in New Jersey to work, and return from work the same way? What is your guesstimate of the number of persons?

GAMBACCINI. Senator, I think you have to look at it in two or three ways. As a percentage of the gross trips annually or daily, it is on the order of about 8 percent. In the framework of journey to work in the peak periods, it is on the order of 18 to 20 percent. However, in the journey to work to the CBD's of the larger cities, it can range anywhere from 50 to 80 percent who journey to work. Sorry for the long answer but I think it is important to see these different perspectives. Transit is vital during the peak periods -- journey to work to the cities -- and disproportionate to the appearance of those other statistics of only 8 percent of all other trips.

GAGLIANO. Do you have any idea of the numbers? For example, we have seven and a half million people in New Jersey. How many New Jerseyans, do you guess, use public transportation?

GAMBACCINI. Bus riders daily are 625,000, and train riders are on the order of 140,000, so they represent 20 percent. So, if you can extrapolate -- I don't know the corresponding figure for auto, but you can figure it out.

GAGLIANO. My point there is that maybe and somehow, the public members should come from those people who use the facility.

GAMBACCINI. I hear you, Senator, and yet I'm concerned -- as I am about other aspects of the Department's operations -- that we not get overly pressed by narrow interests. Commuters are a major important interest and they must be heard from but I am reluctant to try to earmark specific public members for specific interests. I'd rather have public members in general reflect the broad public perspective because in the last analysis it is the taxpayer across the board who is paying the full freight, whether it be Federal taxes or State taxes.

GAGLIANO. There are so many issues, and I am sure you can address yourself to all of them but we don't want to keep the people all day with one witness. For example, when we deal with a public takeover, how do you envision dealing with the representatives of those who labor for the present companies -- for example, the unions? We have received recommended amendments to the bill from one of the transit unions (I don't remember the name); rather far-reaching requests for amendments. What's your philosophy on how we're going to approach this? If, for example, we control on a State level all public transportation by bus, would we then be dealing with one union, would we eventually then be dealing with one contract? And would that contract come due at a certain particular time as Mike Quill used to talk about, right after New Year's Eve there'll

be no more riders in this city.

GAMBACCINI. Senator, that's possible but very unlikely. I've had experience dealing with some 13 brotherhoods and have concluded close to one hundred collective bargaining agreements in my 16 years on PATH. Initially I thought I would want to try to move in that direction. There was tremendous resistance by the organizations to preserve their own jurisdictions and their own seniority rosters and their own working conditions as they've had them over the years. My reading is that that is probably the likely result. One can fashion all kinds of scare situations. I don't think, as a practical matter, that that would happen. You asked about my philosophy, I have a good feeling at least about my 16 years with 13 organizations. Axiomatic to that acquisition was that we would honor and protect the working conditions, the rights, and the collective bargaining agreements. By the same token over the course of the years, we developed a very healthy mutual respect that permitted us, as managers, to make operational changes including dislocations of staff. We respected that opportunity and right by going to great lengths to avoid layoffs and to provide retraining opportunities and to provide such reductions in staff as had to take place through attrition only. That is my philosophy. Given that philosophy, hopefully we can avoid undue statutory or contractual restraints on operating flexibility but in responsible exercise of such opportunity that we show all due concern and sincere purpose in protecting the employees, many of whom have given forty and fifty years of their life to their work.

GAGLIANO. A couple of other questions. Briefly. Sorry, Mr. Chairman, I have been waiting for this for a long time. Would you envision that the public corporation would have control over school buses from the standpoint of going to and from school?

GAMBACCINI. Senator, that is not envisioned at all.

GAGLIANO. You have the statutory authority I presume. You have it with respect to charter on school buses in the bill and I'm not so sure that that could be extended, that's why I asked that question.

GAMBACCINI. We didn't intend that there would be the rights to acquire through condemnation or through unilateral decisions, school bus operations. There are some school bus operations that are incident or tangential to existing carriers and if we acquire those carriers in their entirety that would have to be addressed or continued until other arrangements were made. But I was about to add, in general, the fragmentation I described with 200 plus carriers also obtains with a lot of other services. We have school bus services; we have elderly and handicapped services. Society is paying a dear price for a lot of redundancy. I would hope, down the road, that the corporation can look very closely at opportunities mutually beneficial to school districts and cities, and perhaps try to integrate some of these functions.

GAGLIANO. Is there any specific language in the bill which says that part of it would be to coordinate these functions? If there isn't would you be willing to put it in?

GAMBACCINI. Absolutely. We would be willing to put it in.

GAGLIANO. That there would be a direction, as part of the requirement.... I don't recall reading it, Commissioner, that's the reason I ask. That there would be a direction in the legislation which would compel the public corporation to work toward coordination of these services.

GAMBACCINI. Senator, I recall general language to that effect. If you want to strengthen it I'd be all for it.

GAGLIANO. Could we get Mr. Capalbo to draw an amendment for it?

GAMBACCINI. Indeed, that pervades the whole thrust of the bill -- to improve opportunities for coordination and consolidation, and more efficient delivery of better service at lower cost.

GAGLIANO. Thank you, Mr. Chairman.

SKEVIN. Commissioner, I have a few additional questions. I don't want to be outdone by my colleague from Monmouth County in his remarks about your ability and your leadership. You certainly have provided excellent leadership, and have turned the Department of Transportation around. Excellent job.

GAMBACCINI. Thank you.

SKEVIN. I would like to just get back to the Commission on Budget Priorities and I don't want to harp on this, Commissioner, but it is very important to this Committee and a bill of this magnitude, to get all of the available information and in terms of the Commission report and their Task Force reports, I had the impression -- and correct me if I'm wrong -- that you said their preliminary reports were oral in nature.

GAMBACCINI. Senator. No. I said that I thought the mention in the summary report to a Task Force report was a reference to an oral report. I just have no knowledge about whether there is any written Task Force report. I will enquire and get back to you with what I find.

SKEVIN. Ok. The reason why I say that, in the introduction, and I'm quoting "The full Commission met on January 3rd, 1979 to file their Final Task force reports. And again on January 22nd, 1979 to approve the final language of this summary report." Now that wouldn't indicate an oral report would it? To file a report. That would not indicate an oral report when they say "file."

GAMBACCI. I think it is an inference but I don't know that that's the case. Filing a report I think can be a phrase to say it can also reflect an oral report. I just don't know.

SKEVIN. But we'd like to get those reports before they're subject to revision.

GAMBACCINI. I will undertake to try to see if there is such a report, and if there is, to make sure the copies are made available.

SKEVIN. We wouldn't want those reports to be put under wraps.

GAMBACCINI. No. I'm sure that there is no hint or intention along those lines. As I say, the Commission was very open in meeting with me and wanting to hear from me, but I think they

felt the pressure of time.

SKEVIN. To get back to the incentives that Senator Gagliano mentioned, that perhaps the intermediary step -- as I understand it, you conclude that there is no alternative except the proposal set forth in this bill.

GAMBACCINI. I'm sure that sounds harsh but I think in general that's where I am. And again, let me underscore that it is not a step to set up a czar or a bureaucracy, it's a step to set up a public forum. We call in the bill for an annual report, we call for justification to demonstrate a decision in the public interest to take the step. There is no way that the corporation in one year could move very far down the road of acquisitions anyway -- just the sheer time-consuming nature of negotiations and integration of different companies.

In your letter from Governor Hughes of Maryland you will note that it was several years before they got around to acquiring additional companies. But I think the charge should be in a public body, with public meetings, and justification and annual reports to demonstrate and justify the decisions thus made and that the Legislature should have a role in oversight to see that that execution of public authority is reasonable and fair, and in the public interest.

SKEVIN. At this point your conclusion is that there is no alternative to the present system.

GAMBACCINI. In my personal judgment there is not. And again I cite the worldwide experience. I am not saying that the rest of the world may not be wrong and New Jersey might be right, but I think together with all the data -- it is such an overwhelming picture -- that I think there has to be a reason why the rest of the United States and the rest of the world has gone this route. A lot of varied reasons, decisions, and judicial people have gone through this process everywhere else and came to this almost uniform conclusion, with differing modifications on institutions -- some have regional authorities, some have State authorities, some operate out of State DOT -- but they all had to take that ultimate last step in the light of these overwhelming numbers. Half a billion versus a couple of million in equity for all the frustration and paralysis that that implies.

SKEVIN. Commissioner, I don't want to be antagonistic or perhaps interject humor in this, but along the way someone probably took the same position with the United States Post Office, isn't that correct?

GAMBACCINI. Yes. And if I could, then, make a short speech in favor of public officials. I'm not going to try to justify or defend the post offices, I just don't know what their ills and problems are. I'm sure one of the keys to their frustration is the pressure for increased service, perhaps undue acceding to wages, but I am familiar with Amtrak, ConRail, and some other public corporations who have gone through the agonies of trying to orchestrate pressures from proved social service, labor protective arrangements that freeze in certain bodies of employees, limited flexibility in operation, and limited capacity to raise rates or fares. It's an extremely frustrating thing. Indeed, some of those corporations have reached out to get some of the most

successful businessmen who were frustrated by the totality of that challenge. It's been my experience since I have been in Trenton, to find, and really to my great pleasure and surprise, some outstanding public officials. And I guess I'm reacting to charges I've heard over the last year about the incapacity of government to do things efficiently. The proof is otherwise, and I could show you in this report, in the data that we have amply described in slides -- there are excellent public operations by various types of public supervision.

SKEVIN. You will equally agree that there are a number of public operations that are not as efficient as in the private sector.

GAMBACCINI. I would submit that in some cases there are, let's say, patronage or other intrusions in the process that produce less than in the "efficient results by business standards." But, public operation connotes public values including, as in some cities, services that can't be justified economically but have high social value. Now you add that service, and add to the deficit -- and there are a lot of gloating defenders of private enterprise who will say "uh-huh, look at that inefficiency." It isn't inefficiency. It's a valid public policy decision, and you get what you pay for. I feel very deeply on this subject because I've had the pleasure of working with some very, very effective, efficient, competent managers on the transit scene and I would compare their abilities with the best to be found anywhere in private enterprise. And I'll be happy to introduce you to some and bring them forth as witnesses along the way if you wish.

SKEVIN. Thank you Commissioner. Senator Gagliano.

GAGLIANO. I just want to finish with a couple of things. Mr. Chairman with your permission, and certainly not limited to these things, I would like while the Commissioner is here, to suggest that Mr. Capalbo prepare for all of our consideration an amendment which would increase the board from five to seven members. I would like to have an amendment considered. Again, just to think about it, the exemption of school buses. I think you'll have your hands full enough, and I think that if you do acquire a school bus system by happenstance -- for example, you acquire ABC bus company and they had eight or ten school buses, it seems to me that they should be phased out of the system as rapidly as possible rather than kept in. Now that's just my reaction. I have looked at the bill again and although in essence you are talking about coordination, I don't see a clear directive to the corporation that all of the various typical services that would be given by public transportation corporation would be coordinated. I saw coordination of sales of tickets. We've had hearings on the bill which would provide for coordination -- I didn't see it.

Next is a very minor constitutional question I guess. We can't take private property without adequate compensation -- I forget the term used in the constitution -- I wonder if 6 percent interest (and maybe I shouldn't speak this way being a representative of the State of New Jersey) after a declaration of taking has been filed, and we have taken over the company, whether that is fair and will stand the constitutional test in court in view of the current interest rates which exceed 10 percent I'm sure.

And one other point, and that has to do with the idea of incentives. I just wonder, Mr. Chairman, and I'm asking this rhetorically of the Commissioner, whether or not the public body corporate -- if it does exist -- should be required for some period of time to attempt an incentive program with a particular carrier before having the right to condemn that carrier. I realize that this might sound strange and foreign but my problem is that we've gone from point A which started with a half million dollars as you say in subsidies and emergency programs, to \$50/60 million at this point, and nowhere have we really worked at an incentive program. You're the expert. You may know when an incentive program will not work. But an incentive program usually works in this system of ours, and I just wonder if we should provide that on a step by step basis whereby bus company A, you are now on an incentive program and if they don't respond to that, they don't live up to the incentives which have been outlined by the public corporation, maybe in twelve months or some particular period of time they would be eligible to be taken over.

GAMBACCINI. Senator, may I comment on that last point? It is our intent, through the corporation to experiment with incentives. There are other examples including New York State, Chicago and elsewhere where even though the regional authority has the power -- and has exercised the power -- to acquire some of the larger companies, that they have in fact provided either contract service agreements or per capita subsidies on an incentive basis with some other carriers. I think critical to that determination should be the flexibility of a duly constituted responsible public body to do so when it is in the public interest to do so and continue it -- if it's reasonable to continue it -- or to discontinue it if it's in the public interest to discontinue it. What I'm saying is there are a lot of examples where public acquisition has occurred to a substantial degree where coexistence with private operation on an incentive basis has worked very well and I would propose that the corporation would go that route.

GAGLIANO. Thank you. But you see, unless it's spelled out in legislation once it passes and is signed by the Governor, we don't know whether or not the public corporation directors or trustees will actually carry that out.

GAMBACCINI. We intended it. We do provide the authority for the corporation to continue subsidies and the intent was that we spell it out....

GAGLIANO. I know. I realize that. I guess the question is whether or not it could be a regular procedure and before the declaration of "taking" could be filed in the Superior Court there would have to be proof by statute that the various programs have been attempted, and if they fail then they fail, then the acquisition takes place.

GAMBACCINI. I'd be receptive to that Senator, the only caveat that I would be concerned about is that it not be in absolute terms limiting the flexibility and the judgment of the board to do what's in the public interest. Thank you.

SKEVIN. Thank you, Commissioner. Appreciate it.

GAGLIANO. Thank you Commissioner.

GAMBACCINI. Mr. Chairman. I know the time is moving on. I would like to call on two colleagues representing the Department of Energy and the Department of Environmental Protection. First Steven Pico, Assistant Commissioner of the Department of Energy representing Commissioner Jacobson who wanted to be here but because of illness could not make it at the last minute, and asked Mr. Pico to substitute for him. Steve.

S T E V E N P I C O. Thank you Commissioner. Senators Skevin and Gagliano, ladies and gentlemen. My name is Steven Pico, I am Assistant Commissioner of the New Jersey Department of Energy and I'm pleased to be here this afternoon on behalf of Commissioner Jacobson to support S-3137 the New Jersey Public Transportation Act of 1979.

It is my belief that S-3137 would not only greatly strengthen New Jersey's ability to provide adequate mass transportation for New Jersey but would also accrue significant energy, environmental, and economic savings as well. It would certainly help those commuters faced with the mass transit system that takes them nowhere slowly. S-3137 embodies many of the policy recommendations specified in the Department of Energy's master plan. These policy recommendations specifically address many of the inequities that exist in the current bus subsidy program and outline the basic solutions to these problems.

Leaving aside the question as to the reason behind recent petroleum products shortages, the availability of gasoline in New Jersey is becoming an increasingly serious situation. While the duration of the current supply program is unknown, New Jerseyans must, and should, support a strategy that seeks to divert automobile trips to mass transit. While the commitment to institute the necessary changes in the bus program has been voiced in many quarters, the institutional mechanisms of reform have been sorely lacking. For instance, while the State Department of Transportation has been providing increasingly larger subsidies to State bus carriers, the State has never had effective control over how the money has actually been spent. In addition, the emergency legislation that established the bus subsidy program in 1969 does not even require operators to conform to standard performance and quality criteria to insure a minimal acceptable level of service. The Department of Energy feels that energy savings for New Jersey can be realized in at least two ways by proposed legislation. According to figures supplied by the Department of Transportation in their analysis of the current bus program, daily bus ridership has declined by approximately 41 percent -- or 400,000 fewer passengers per day -- since 1970. This is translated into an estimated 300,000 additional cars per day on New Jersey's roads. Not only has this resulted in increased consumption of gasoline within the State, and a consequent transfer of income resources out of the State, but it has also led to accelerated deterioration of the State's highways and bridges. This necessitates enormous projected capital outlays between now and the year 2000 to the tune of several billion dollars. While it would be difficult to estimate the potential savings that might accrue due to the creation of a public transit corporation, a range of savings can be estimated. If the public transit corporation

were to result in daily average increase in patronage of 5 to 10 percent -- a not unreasonable figure -- the following energy savings are projected by the Department. If the ridership increase is about 5 percent we estimate the savings in gasoline would range from 13,600 gallons to 16,600 gallons per day. If the present increase were in the area of 10 percent the savings would be in the area of 27,200 gallons to 33,300 gallons per day. The methodology on how we arrive at those figures is attached to my testimony.

These are energy savings that would have both short and long-term benefits. For instance, a reduction in our gasoline demand also helps reduce New Jersey's dependence on imported oil -- the primary source of New Jersey petroleum usage. With this dependence on foreign oil translated to increased economic strength in New Jersey as its energy sources become more reliable, more efficient and less costly. As New Jersey is currently opposing a Federal proposal to have standby authority to close gasoline stations on week-ends, any additional savings that New Jersey can project, strengthens its case against the Federal government. Our proposal is that by increased use of our allocation authority, New Jersey can match any desired level of energy conservation established by the Federal government. The savings that are set forth in this testimony helps substantiate New Jersey's position.

The related matter, the establishment of a public transit corporation, would also strengthen New Jersey's ability to respond to an energy emergency. For example, let us suppose that the proposed public transit corporation was operating and a gasoline shortage were to develop this summer, as the State's summer economy is so heavily dependent on tourism -- a two billion dollar industry with travel generated tax revenues amounting to about \$170 million yearly -- it would be incumbent on the State to make whatever provisions appear necessary to insure sufficient access to the shore areas which account for the vast majority of our tourist revenues.

Under the current system the State would have no ability to change schedules for routes of buses to enable people who might be deterred from travelling to the shore, with an alternative means of travel. However, with public transit corporation having full control of bus routes and scheduling, special arrangements could be made to pick up people at "Park-n-Ride" facilities or from unused or excess shopping center parking facilities throughout the State.

Finally, and most importantly, the Department of Transportation's relationship to the semi autonomous public corporation would allow an increase in the flexibility to coordinate bus marketing activities with car and van pools and commuter rail services. If New Jersey had the ability to coordinate all these disparate functions, then we would be finally on the way towards improving -- if not solving -- our mass transit and energy related problems. S-3137 represents the first comprehensive recognition that bold innovative action is needed to meet and solve the related transportation, energy and environmental issues facing our State. The Department of Energy is proud to voice its support for S-3137. Thank you.

GAGLIANO. Thank you Mr. Pico. Mr. Pico, the only thing I would refer you to is an article

by Assemblyman Richard J. Cody of Orange wherein he talked about the decrease in ridership over the years and he says "Ridership levels in New Jersey reflect a certain correlation, but in the opposite direction. Ridership has declined by 41 percent since 1970 but it is important to note that Transport of New Jersey -- the largest bus operator in the State -- reduced its miles of service by 36 percent in the same period." I think what you're saying here is passage of this bill would give the State the opportunity to increase the number of buses and thereby increase the ridership which would, in turn, take cars off the road.

PICO. I also, in that specific example, take a look at two or more bus lines and to coordinate some of the routes so that in the instance where Transport of New Jersey cut down, perhaps a subsidiary service could be expanded to take up the slack created by that decrease of service. Right now there is not that mechanism in existence.

GAGLIANO. Regardless of how the bill comes out the discussion could not be more timely because we are all very much concerned about the price of fuel and whether or not we're going to have enough. Commissioner, do you have a comment on that?

GAMBACCINI. If I may, Senator. I would like to add to what Mr. Pico responded on this last point that besides extensions of existing service there is considerable potential for increased capacity and increased ridership even on a reduced service basis. On PATH, within a year after acquisition and as a result of computer simulation studies, we reduced the total number of trains operated in a twenty-four hour period, increased the number in the peak periods of demand, provided a better service at a substantial increase in ridership without adding any further trains from that reduced level. So there is that potential to a fare-thee-well in this situation because of the extent of redundancy of service or routes. And I think that will come through very graphically in one of the slides or series of slides that I will show you shortly.

PICO. Just one final note. The savings that we're projecting in this testimony almost match what the Federal government projects should be the energy savings for New Jersey under their plan. The President's plan imposes all kinds of economic burdens on New Jersey. Here we have one idea from one State agency which just about meets all the energy savings that it took the Federal government three years to come up with. It makes a lot of sense from our viewpoint.

GAGLIANO. Thank you very much. Your next witness.

GAMBACCINI. Senator, yes. I would like to introduce George Tyler, Director of the Division of Environmental Quality in the Department of Environmental Protection.

G E O R G E T Y L E R. Thank you, Commissioner. Good afternoon Mr. Chairman, members of the Committee. My name is George Tyler, Director of the Division of Environmental Quality and I am pleased to be here this afternoon representing the New Jersey Department of Environmental Protection.

S-3137 before you today, is one of the most significant pieces of legislation to be considered in many years. It's objective -- the establishment and operation of a coherent, effective and

efficient public transportation system for New Jersey presents a unique opportunity to deal with New Jersey's transportation, energy, and environmental quality needs simultaneously. In the years to come the 1970s will be seen as a decade during which events forced the reevaluation of long-held assumptions about the American way of life. If we are successful in preserving the quality of life we have enjoyed it will be because today's leaders responded vigorously and responsively to the challenges of this decade. It is critical that we become fully aware of the consequences of our actions in the area of environmental quality and in the conservation of precious natural resources. New Jersey has long been one of the leaders in responding to the challenges that we, as a nation, are facing but no one would dispute the fact the choices when made have been difficult and the way has not always been clear.

One challenge for our State and for the nation (which has been made abundantly clear by current events) is the need to rethink our basic assumptions concerning transportation. It is clear that excessive reliance on the private automobile as a primary means of transportation cannot go unchecked. S-3137 is a positive response to this challenge; it presents an opportunity to help prepare New Jersey for the future in a sensible way.

No one would seriously argue that public transportation in New Jersey today provides an attractive alternative to the use of private cars. The statistics bear this out. This is a position we simply cannot afford from an environmental viewpoint. The Federal Clean Air Act as amended in August of 1977 calls for each state to develop and implement a plan to assure that the air we breathe is clean and meets all health standards. In New Jersey carbon monoxide and photochemical oxidants which are related primarily to motor vehicle use, remain as our toughest air pollution problems. Indeed, we have made significant progress in the area but much more is needed. For example, carbon monoxide emissions have been cut by 40 percent since the beginning of New Jersey's air pollution inspection program for cars since 1974. But monitors in 18 cities still indicate that routine violations of the standards for carbon monoxide are occurring. Moreover, we have estimated that violations of this health standard would be measured in 76 other cities as well if the air there were measured for carbon monoxide.

Federal mandates for cleaner exhaust pipes alone cannot be expected to do the job for us. They are only part of the answer. New Jersey has more cars for every mile of road than any other state in the union. The only way we can be assured that air quality will improve is to use our cars less often.

We are committed to achieving this goal through voluntary action and through the cooperation of everyone affected, and not by restrictive regulations. We have already formulated plans to decrease reliance on cars with the help and advice of local government, the New Jersey Chamber of Commerce, the New Jersey Business and Industry Association, and a number of labor unions. My Department is participating in an interagency task force for the purpose of coordinating state government's response to the problem. We expect results from this approach, and we expect that

they will be substantial but we cannot afford to sit back and hope for the best. Failure to insure reasonable progress toward attainment of air quality standards, or failure to maintain those standards after they are met will have very serious economic consequences for the State. Where states fail to act to control air pollution, the Federal Environmental Protection Agency is authorized to prohibit the construction of new sources of air pollution, EPA can also act to cut off highway construction funds in such cases. More important are the health hazards to which our citizens will be exposed if air pollution standards are not met.

An effective, extensive and economical mass transportation system must be an integral part of any plan designed to meet our air quality goals. Merely by recapturing the riders who have abandoned the bus transit system since 1970, we have estimated that about 6,000 tons a year of hydrocarbon emissions would be prevented from entering the atmosphere; that 50,000 tons a year of carbon monoxide pollution would be eliminated, and that 3,500 tons a year less oxides of nitrogen would be emitted. There is no question that these are significant reductions which are needed to protect our physical and our economic health. We believe that S-3137 will lay the groundwork for creating the kind of mass transportation system that can produce these results.

Passage of S-3137 will not make every energy and air quality problem go away overnight. Alternatives to this approach to public transportation management may exist somewhere but these facts are clear. First, public transportation as it now exists in New Jersey is not the answer. Citizens are receiving poor service with dilapidated equipment that goes too few places too slowly and they pay millions in subsidies to boot. Secondly, publicly owned mass transportation is the basic format which is used in nearly every other major urban area in the United States. Finally, we believe that this bill represents an approach whose time has come in New Jersey, an approach we believe will be responsive to the issues of environmental quality and conservation of natural resources I have discussed above. Thank you very much for this opportunity to present this testimony.

GAGLIANO. Mr. Tyler, in connection with attempting to clean up the environment, has your department made any specific recommendations to DOT or any of the Federal authorities or agencies with respect to specifically making it easier for buses to get back and forth for example to New York or Philadelphia, in terms of separate lanes, separate toll booths or whatever? Have you made specific suggestions which would maybe save a commuter ten or fifteen minutes and thereby make it more interesting in that regard?

TYLER. In general, yes, we have followed the Federal Environmental Protection Agency. As of December our State implementation plan which is required under the Clean Air Act and included in that plan is a large number of transportation related measures, many of which are not as specifically defined as your question put it -- some of which are. We can make details of those projects available. A lot of them as I said, are not specifically defined yet but they will be through the ongoing transportation planning process. Working with the Department of

Transportation we have become an integral part of that process so there is a close relationship.

SENATOR GAGLIANO: When do you think that plan might be ready?

MR. TYLER: The plan itself - the generic plan - is ready now, together with the appendices for those projects that are now on the books. The remaining projects will be evolved over the years and then mandated by the Federal government, both in the Clean Air Act and in the Federal Highway Act. Now that air quality related projects get a high priority in the transportation planning process, to the extent that those plans are now on the books, we can make them available to you, and we can, of course, make them available to you on a continuing basis.

SENATOR GAGLIANO: The reason I raised the point is that so many times what government does to private enterprise is destroy it, and then turns around and says we have to take it over now because it is destroyed. For example, if we had maybe over the years provided the bus lanes more quickly in terms of letting time go by. And if we had provided any better facilities where they could make up ten or fifteen minutes in a run and been able to operate more efficiently themselves rather than be in with the pack so to speak, perhaps then they would have been more attractive from the standpoint of the rider and therefore they might have had less empty buses. It is kind of circular I know but you do see government move in, kind of almost destroy an industry and then say, "Gee, we'd better take it over because it's destroyed."

COMMISSIONER GAMBACCINI: If I could comment on a couple of points you've made. One, your first comment about bus lanes and exclusive toll booth entry - we are working as a department in moving ahead on exclusive lanes. Of course you know about the highly successful reverse lane at the Lincoln Tunnel - there you had tremendous volumes and access to a lane that was not otherwise used and it worked out very successfully. We're moving to try to capture new lanes as in the case of the Garden State Parkway before they are put into service and used to full capacity of automobiles, on an experimental basis to see if we can't give public transit a boost. We also have studies under way, largely as a result of urgings from commuter groups in your area, to look at exclusive toll booth lanes at interchanges. That looks quite favorable. What is at work here is that if these things succeed, it will only be because of the pressure from federal levels to get on top of air pollution and the spectre of energy shortage. Your major point on whether we've driven private industry into bankruptcy and then picked up the pieces, I submit, is wide of the mark. The public at large through a series of concessions, tax relief and other things over the years, has tried to preserve and maintain private enterprise. What was at work was the overwhelming flight to the suburbs and to the automobile. There was just no economic viable base. There are some private carriers who say that it is because they are private enterprise that they can produce a profit. I say flatly that if you look at public transportation service as an entity that it is overwhelmingly a loss leader, a deficit, and it is everywhere in the world. What you have is a piecemealing of some selective routes that can be preserved and profitable. But, the total entity is, in fact, of necessity and intrinsically, a loss or a deficit in character. If there were any private operator or company that offered to take the full burden of all public transportation in the State, I would be the first to say let's scrap this bill and move in that direction - would that there were such an offer.

SENATOR GAGLIANO: Commissioner, the reason for my comment was that we've spent billions and billions of dollars on new roads, especially the inter-state system, so I'm saying there we created the situation which caused the thousands of

tons of hydrocarbons and the rest of it that we talked about. Of course, moving to the suburbs was a big item too, I was born in the suburbs so I didn't move there. But, my point is that we have built the billions and billions of dollars worth of roads and yet we've been very vocal about the subsidies to public transportation when we have subsidized the car tremendously and encouraged its purchase and its love affair.

COMMISSIONER GAMBACCINI: Senator, I think as Pogo says, "The enemy is us." We still favor our automobile. Indeed, some of the things you mention - exclusive bus lanes and the like - have a lot of resistance to them by auto drivers who feel that they should have equal access. So, it is still anything but a clear mandate or consensus on how we ought to go. There are very logical approaches that have been spelled out in this State implementation plan on Air Pollution Control. The chief disability is public acceptance and political difficulty in getting acceptance to things that would impede the free access or use of the automobile or go to great lengths to favor transit over automobile. But, I think we're on the threshold because of energy and air pollution crises that increasingly we're going to have to force decisions in those directions.

SENATOR GAGLIANO: The next witness is ---

SENATOR SKEVIN: Frank Gallagher---

COMMISSIONER GAMBACCINI: Senator, I did have, and I would like, with your indulgence, to run through very quickly a slide presentation. I know you've seen some of these slides. We have added to them and there are several you ought to see that are new. I'll try to accelerate the pace because I know we're running late.

(Slide presentation)

COMMISSIONER GAMBACCINI: Senator, not only because you've seen some of these slides but also because some of it has been covered in the oral testimony, I'll race through some of these. The first two slides simply are excerpts from the report ten years ago that I mentioned and that is covered in the written testimony. This is the year-by-year growth, the hundredfold growth from '69 to '78 in the subsidy program and the ridership drop in the same period as the rest of the country went up 11% in ridership, New Jersey saw a 41% decline in ridership. And these are individual cities' results. It's significant that the two largest drops in ridership are the two remaining privately owned operations. And, indeed, the third largest drop, Buffalo, suffered most of its loss before it went into public ownership. We've said over and over that it's not a question of private or public; it's only a matter of degree. Already the public subsidies are supporting 80% of all the bus riders in the State daily. We have gone, in the same period, from virtually no capital ownership of buses to a point today where we own half of them and within a year we will own 80% of all the buses. So, we are very substantially into the operation financially of capital and operations. To sum that up, we are saying it is indeed a phony issue if there were a bona fide private option, we'd grab it. The fact is, we have been progressively required to get more and more deeply into the operations to the extent of 33% of the operating costs, 100% of the capital costs, and again, it's only a matter of degree. We do propose, as did Maryland, to consider and use, where prudent, management firms to operate companies acquired. This is the trend picture of private ownership in '67, -58% of all the passengers in the country were carried on publicly owned systems. In '70, 77% were carried and in '78, 91% were carried. Problems with the existing, we discussed at length in the testimony - failure to

increase ridership, stabilize fares, or rationalize and improve service. The inherent defects are the extreme fragmentation, the intrinsic conflict between the goals and motivations of public and private, and the nightmare of administration to handle 22 subsidized carriers, to negotiate, administer, and audit those agreements, to audit 129 carriers who are using State owned buses, and to regulate some 200 plus carriers. We have the responsibility; we have not the effective authority to control. I'd like to just run through this quickly. This is southern Passaic County - Paterson, Wayne, Clifton area, Passaic area --- This is a map of that area with the faint background as the overlay of bus routes. But, you can see the number of different carriers that are operating in this small area. This is the Garfield-Passaic Transit Line in red, Passaic Athenia Bus Company in black, Community Bus, Inter-City, Manhattan, Associated, Fairlawn, DeCamp, Lakewood, TNJ, and then, all together, this is the spaghetti. I submit that there must be a more rational way to organize routes at a lesser cost and at a better service level. I mentioned the affiliate game that is at work here, of the 21 assisted carriers there are 56 affiliate corporations. The affiliates almost entirely operate all the profitable things. The profits are not used, for the most part with one or two minor exceptions, to reduce subsidies. It's perfectly legal but it's certainly not in the public interest to continue this process. Here's one such company with some 13 affiliates, I believe, and another case where a company is getting its subsidy on the order of \$300,000, is collecting \$300,000 in revenues, is virtually using all State buses, and has a net equity of less than \$2,000. At the same time, that same company owns another affiliate using only their own buses that produces a revenue of \$100,000 with an equity of \$110,000. Public versus private - this is the trend line that shows for six companies that were originally private and went public, the virtual innate nature of certain base costs. The costs per hour as these private carriers went into public ownership were on almost the same trend line. It's not a reflection of public versus private; it's more deeply related to the fundamental cost of fuel, of equipment, and of wages --- and the same curve with respect to the cost changes per mile, public and private for the same six companies. In the case of Baltimore, again referring to Governor Hughes' letter, here was a public takeover that in the first two years of public ownership saw increased patronage of 7%, an increase of service of 2% in miles of service, expenses were held constant, expenses per passenger were down 4%, in a context where inflation was rising at a rate of 10%. We will have, by the end of '80, committed close to \$500 million in cumulative subsidies and capital input to the bus program. The reported net worth of physical assets is now \$24 million, of those 21 carriers. We have every reason to expect that we could get 80% federal aid which means that for a price tag of on the order of \$4 or \$5 million for the physical assets, we could, in fact, get complete control to really protect the equity of that \$500 million and the future course of transit. The objectives are, therefore, to provide responsive service, the potential for increased ridership, improved mobility, improved air quality, energy conservation, to rationalize and coordinate service, and to assure improved public involvement in the process. I won't belabor this. It's outlined in the bill - the concept of the corporation's five-member Board of Directors with the authorities to subsidize, operate, or contract for service with emphasis on county and municipal involvement in advisory capacities. Again, the outline of the organization chart - Executive Director - the concept is regional organization close to the scene of the operation.

I mentioned earlier the budgeting on the basis of existing, expanding, and social programs in order to assure that we keep our eye on the ball of what causes increases when and if they occur.

Now, this is the last slide I will present. It's a listing that I mentioned in my presentation of the kinds of things that we could address. I would like to take just about, hopefully, four or five minutes to ask my newly appointed Marketing Director to give you a quick panorama of how these things have materialized elsewhere around the country. Nick? Incidentally, if I may, Nick Bade has had diverse marketing experience including for Greyhound and for the Federal Urban Mass Transportation Administration. I hired him out of the savings from my aborting a \$500,000 marketing study on the basis that we don't need studies. We know what marketing is needed. The frustration Nick is already experiencing almost to the point of paralysis is the inability to produce what you will see in these further slides in a context of the extreme fragmentation - again, to underscore, the inability to really work with the present chaos.

N I C K B A D E: Thank you, Commissioner, Senator Gagliano, ladies and gentlemen. They say one picture is worth a thousand words so I'm going to show you 20 pictures that will hopefully replace 20,000 words. What we'll do is show you what other cities around the country, and, indeed, the world, are doing through the creation of a single public transportation corporation. Out in Seattle several years back, they faced the same problem we had - they had a series of small bus companies, faced a declining ridership, mounting subsidies. They created a single public corporation and this enabled them to adopt uniform standardized graphics throughout the public transportation product. The bottom line is public transportation awareness increased in the community because it is uniform. Second of all, people can see the product, they better understand it, they feel more comfortable with it. As a result, transit ridership in Seattle is increasing.

Over in Denver they did the same thing. We all recognize, for example, that public transportation has a very poor image in many cities and certainly here in New Jersey. Once again, by having a single public transportation corporation, you are able to adopt uniform standardized graphics and other design elements that enable you to project the kind of image that we know transit has to have today if people are going to use public transportation. In many cases we find they have good transportation services but the image is very bad. One way to improve the image is to give transit a bright modern, contemporary image like you see here in Denver.

The same story is true in many other cities. Again, this is Minneapolis. Once again through a coordinated public transportation system, you are able to carry the consumer elements - things the public sees - down to the smallest detail be it the exterior of the vehicle, the interior. In many cities, again Seattle, the detail, the public orientation is carried down to things like driver uniforms. And, I think you'll agree what you see here presents a very good image for public transportation. The important thing is the message from all these cities is - we can do the same thing in New Jersey. Once again, because we have coordination under a single roof, we can begin looking at services from the standpoint of the user - the public, the current rider but also the potential rider. The consequence is we can rationalize routes, we can extend routes, we can improve services. Again, this is what they have done in Minneapolis.

In many instances the driver is our salesperson - literally our first contact with the public. Again, if you have a single coordinated public transportation agency, we can coordinate training, we can take advantage of economies of scale so that we can produce an employee who has greater awareness of the needs of the public. The bottom line - it's better service for the public and it's possible through a single

coordinated public transportation agency. You can carry the passenger orientation to every little detail. With a single corporation, you know who is responsible for serving the public. In this case, we can go into a statewide passenger shelter program. We know we need them in New Jersey. We have very few. We know what the weather is like in the winter. Once again, these are the kinds of things we can do if we have a single corporation. We can rationalize fares; we can have a fairer fare program; we can have a simpler easy-to-understand structure because throughout the State the program will be the same. The fare levels will always be the same. For example, they will vary according to distance but it will be uniform and you will be able to understand it. Again, with a single corporation, we can begin various types of PATH programs. We can work with major employers, for example, so that employees can buy passes on a payroll deduction plan where they work. We make it easier and more desirable for people to use public transportation. Something we need badly throughout the State are bus stop markers. With a single corporation, we can adopt an uniform, standardized bus stop marker so people can find out where buses stop. In many instances, people don't even know where to catch a bus in our State. This is the type of thing we can address with a single coordinated public transportation corporation. The type of information we can provide can fit the need. This is Cleveland, Ohio and how they meet some of the information needs. This is Boston and this is Belgrade in Yugoslavia. The point is, whether it is throughout the United States or around the world, when you have a unified public transportation system you can meet people's basic information needs, you can make it easier to use public transportation.

Another thing that is simplified is the distribution of information. With a single corporation bringing together the information from various carriers and various routes, we can send information to people's homes, where they work, we can distribute it through various types of kits, we can have public timetable distribution racks. Once again, the process is simplified. We can even take information out to where people shop or in some cases, as they do in Minneapolis, Rochester, Cleveland and scores of other cities, we can have portable booths and teams that go out to factories and offices. Best of all, with a single corporation we can have a One Call Does It All public transportation information number. Literally, we can offer a dial 800, dial the word "transit" public transportation information center. No more looking in the Passaic County phone book and wondering which of the 10 or 15 phone numbers to dial. You dial one number. One corporation has the responsibility. At the same time, it simplifies our sales program. We are going to be speaking with one voice. We can have one message - why you should use public transportation. So, once again, from a marketing standpoint there are many advantages to coordinating and unifying in a single corporation. Thank you.

COMMISSIONER GAMBACCINI: Thank you, Nick. Mr. Chairman, Senator Gagliano, you've been very patient. I appreciate the opportunity for letting us make our presentation and presenting other witnesses as well. I know you have several other witnesses to hear from. I feel that this is the most important thing probably that I will be involved with with the Legislature over the next couple of years and do intend to stay around throughout today and the remaining hearings to be available. I would hope that I would have the opportunity toward the end of the hearings for a chance to have a brief summation of the Department's views and my views. I would like to make myself and my staff available throughout the hearings as needed to be of assistance. Thank you.

SENATOR SKEVIN: We thank you for your fine presentation, Commissioner. You certainly will have the opportunity to sum up. Are you talking about after today's hearing or the ---

COMMISSIONER GAMBACCINI: I was thinking of the final hearing.

SENATOR SKEVIN: You certainly will have that opportunity. At this time we'll recess and we will return promptly at 2:45.

(recessed)

AFTERNOON SESSION

SENATOR SKEVIN: This is the Committee's Public Hearing and our next witness will be Frank Gallagher of the New Jersey Private Bus Association.

F R A N K G A L L A G H E R : Senator Skevin, Senator Gagliano, my name is Frank Gallagher. I serve as the President of the New Jersey Motor Bus Association.

SENATOR SKEVIN: Frank, could you speak a little --- I don't know if it is the microphone or the acoustics at this moment but ---

MR. GALLAGHER: Is that better? Our members are independent operators, subsidized as well as self-supporting carriers, engaged in short-haul transit, long-haul commuter and charter operations.

We operate buses for a living. We know what it takes to make a line profitable and we can recognize a loser when we see one, that is, a bus route which has absolutely no potential for profit. It's a skill which, we think, the State has only begun to develop.

It's with a mixture of professional and personal interest that we have reviewed S-3137. We agree with the drafters of the bill that bus service in New Jersey is not as stable or as rational as it could be. But we couldn't disagree more on a solution - a State takeover with no other details spelled out.

Let's start by defining the problem. The State today is subsidizing a number of transit lines which, without State aid, would be enormous losers. They are losers because they don't carry enough passengers at a proper fare. They are subsidized because the State has made a political and social decision that continued operation is in the public interest.

The decision to preserve these lines with subsidy payments rests with the Commuter Operating Agency. But, the Agency has no criteria on which to make their judgments. The overall result of their decisions has been a largely irrational network of subsidized bus lines.

S-3137 recognizes this problem. So do we. So do the newspapers. So do many legislators. But S-3137 says that the missing ingredient needed to turn disorder into order is merely a new agency, very much like the Commuter Operating Agency, but with the power to buy and operate its own buses. The logic of this proposal escapes us.

The Commuter Operating Agency today serves as the ghost manager of all of the State's subsidized bus lines. With its subsidy contracts, the COA tells bus companies who will operate X number of buses during X number of hours for so many days a week. If the results are unsatisfactory today, how could they be any better if the COA owned the buses and they were driven by State employees? We'd still have X number of buses operating X number of hours, so many days a week.

But there's more to this bill than the COA changing its name to the New Jersey Transit Corporation and operating under-utilized transit buses. The bill would give the new transit corporation expanded powers to engage in charter operations, school busing and limousine services. We wonder why. These are the lucrative parts of bus operation, where private enterprise can make a decent profit. Why have the drafters of this bill decided that it's in the public interest for the State to compete with private enterprise and to erode profits of companies which today need no State assistance?

Increased ridership seems to be the State's primary goal. Commissioner Gambaccini this week was quoted as saying, "I believe ridership will be higher under public ownership and a public corporation." Passenger statistics of publicly owned bus lines in other states are cited as proof that the Transit Corporation will succeed where private ownership has failed. And yet, statistics can be misleading. Here in New Jersey, we have discontinued or curtailed service - all as the result of State policy - whereas elsewhere new routes have been added. Many of these routes have generated only marginal ridership; since profit is not a factor with publicly owned corporations, even marginal additional ridership can be justified. So the only connection we can see between public ownership and ridership is that public bus companies elsewhere have expanded service without regard for cost, and have attracted new passengers. If the COA had followed this policy over the last five years, we in New Jersey could also point to increased ridership. But understand that such ridership comes at a high cost.

As you review this bill, there should be no doubt in your minds that competition from a State owned and operated transit corporation will erode and eventually ruin otherwise viable private companies. S-3137 would not compel the State to operate buses at a profit; indeed, it's probably in the public interest to operate at a loss. Short-haul transit lines won't last long once the State starts operating with lower fares and more frequent schedules. The same goes for school bus and charter operators. So, once a public takeover has started, there will be no turning back. One by one, private companies will find themselves on the auction block as the State erodes their viability. Will the end result be superior to today's system? On the contrary, it will be worse.

First, even if the total miles of service provided by the Transit Corporation were to remain the same, costs would go up. With public ownership, there is no profit motive and, thus, no reason to increase fares to keep pace with rising costs. But it's quite likely that miles of service will be increased, so there is little question that costs will be dramatically higher.

If the State is really interested in increasing ridership, and if costs really aren't a concern, we can increase ridership today at a fraction of the cost of the Public Transit Corporation. This could be done simply by expanding today's mid-day reduced fare program for all riders instead of senior citizens.

Let's take a look at labor costs, both near-term and future. Commissioner Gambaccini has said that UMTA would fund 80% of the acquisition costs of acquiring privately owned companies. But these funds come to New Jersey with strings attached. The biggest string - or should we say noose - is a 13 (c) labor protective agreement which would require the Transit Corporation to continue to employ bus drivers at least at the same levels prior to a State takeover. So this would pre-empt labor savings by route rationalization or consolidation.

Now in the future, how would the State hold up in labor negotiations,

particularly in the face of a strike which could shut down all of the State's commuter buses? We don't see how the State can do anything but cave in to labor's demands. There is no question that survival of the firm will no longer be a consideration for labor. If the State owns it, the firm must survive.

Even if State takeover were a good idea - and it's not - this bill is an imperfect means to achieve that result. For example, legislative oversight is minimal, so the Transit Corporation would not have this higher authority to which it should regularly respond.

Today, for example, if a bus company wants to start a new service, it must submit a detailed description of the proposed service to the COA. This must include schedules, equipment and a projected income statement showing revenues and expenses. But the Transit Corporation wouldn't have to do any of this to start a new service. This underscores my earlier point that revenues and expenses are meaningless to publicly owned transportation companies. Amtrak's record speaks for itself.

There are few rules and standards to guide today's subsidy program, and we have little reason to expect that the Transit Corporation would develop any meaningful rules or standards by which the Legislature could judge its performance. The subsidy program has been studied and restudied, reports have been written and suggestions have been made. Except for its size, the program is no better today than it was ten years ago. We say the problem with the subsidy program is in its management, and these are the same managers who would own and operate buses under S-3137. These are the same people who have never decided whether they want more riders or lower costs, and S-3137 doesn't give us a clue as to how that question would be resolved.

We are not alone in these concerns. We've read in the papers where numerous legislators, as well as the Governor's Commission on Budget Priorities have expressed serious reservations. We hope the Senate Transportation Committee will give this bill a long, hard look before it schedules a vote.

If there's one thought that New Jersey Motor Bus Association wants to leave with you, it's this: A State takeover - like Vietnam - is practically irrevocable. Once it's started, it's difficult if not impossible to turn back. We don't want this and we hope you don't either. Senator, on my left is Buzz Rukin who I think both senators know. On my right is Vic Capitani. These are Vice Presidents of New Jersey Motor Bus. So, if you have any questions, you can direct them to any of us.

SENATOR SKEVIN: Mr. Gallagher, I only ask one question and perhaps you or any of your associates can answer. That question would be what would you propose as an alternative to the present program which, apparently we all agree, is not a workable program?

MR. GALLAGHER: Exactly right, Senator. We take the position that basically we have a 15 zone ride here and we've gone from zone 1 to zone 15 without any of the intermediate fares. We feel that since all the studies have been done in the State, none of them have been acted upon. We think we should have a program of incentives and that should be tried long before we start getting into a takeover proceeding. I think Senator Gagliano expressed that thought before.

SENATOR SKEVIN: Senator Gagliano.

SENATOR GAGLIANO: I really don't have any questions of Mr. Gallagher. However, I would like to ask that in addition to exempting the takeover of school busing, I would like to have an amendment that the Committee can consider at some future date prepared by Mr. Capalbo that we would exempt the takeover of charter operations and limousine services. And, I'm glad Mr. Gallagher brought these to

my attention. Again, I don't know how I would vote on the question of the amendment, just as I don't know how I'm going to vote on the bill at this time. But, I think that these are things we should take into consideration since they are in private enterprise now and they are profitable, it would appear, or at least they are serving a purpose. I don't see why we would, at this time, take those over. And, if one happened to be taken over, I don't see why we couldn't have the State turn that back somehow into private enterprise. I was interested in your indicating you would expand today's mid-day reduced fare program. That would increase ridership. Do you think it would dramatically increase the amount of money coming into the fare box?

MR. GALLAGHER: Senator, as with the senior citizen program, it hasn't dramatically increased the amount of money into the fare box. But, this is the problem that the bus owners are confronted with - is the State more interested in reducing costs or are they interested in trying to create ridership? You have the service out there mid-day anyway. The rationale for the reduced fare for senior citizens is - your vehicles are on the road, you're paying the bus driver mid-day and let's make it as competitive with other means of transportation as we possibly can to induce ridership in the off-peak hours. The reason it was not included into the peak hours is that your costs dramatically increase with every peak-hour vehicle you have to put on the road. So, I say that since the buses are out there and since the State, as evidenced by this bill, is more concerned with the ridership aspects and increasing ridership, that maybe they could put that service in for all citizens in the mid-day.

BARNETT RUKIN: Mr. Chairman. On the amendment on the charter side, may I suggest that one of the most insidious problems with public operation is what happens down the road from the initial takeover stage. If the operations are that bigger losers than anyone anticipated, the next step will be to make use of the under-utilized equipment or the under-utilized manpower and it becomes a very difficult procedure politically to fight those arguments once the system and the institutionalization is in place. So, although an amendment to protect against entering certain types of business is important, it is also important to consider what the longer term implications of that might be.

SENATOR SKEVIN: Thank you. Peter Allen, New Jersey School Bus Owners Association.

PETER ALLEN: My name is Peter Allen and I represent the New Jersey School Bus Owners Association. There are approximately 10,000 school buses operating in New Jersey with about 20,000 school bus drivers employed. This trade association represents about 2/3's of those buses.

It has been the understanding of the members of this association that this bill was supposed to provide for the State takeover of Transport of New Jersey and other bus companies included in the State subsidy program. We further understood that the reason for this was because the subsidy program was not working effectively. However, this bill goes far beyond our original understanding of the takeover move. The bill provides for not only the takeover of bus companies operating under the subsidy program but for every other bus company in New Jersey including charter bus service and school bus service.

This bill provides vast and almost limitless power over a segment of the business community in our State. This power is further centralized in a newly created super agency under the control of three persons who obtain their positions by means of political appointment.

If enacted, this new super agency can acquire by purchase or condemnation, any private bus company and do so on its own terms as is stated in Section 12(a). It also has the same power to acquire any land or property as stated in Section 12(b). In other words, in order to operate a public transportation service in New Jersey, this agency will have the power to take over, through purchase on its own terms or by condemnation, any private, profit-making business it deems necessary for its own purposes.

As we see it, this agency will scrap the existing subsidy program and instead take over those bus companies providing regular commuter service which are now included in the subsidy program. As this agency grows and expands, it will seek out additional private bus companies and operations to fill its needs, wherever necessary. As costs go up and the need for more and more revenue grows, and we all know that once an agency is created, its budget grows each year, this agency will then begin to look for profit-making corporations which will produce the additional revenue it seeks. These profit-making operations will include not only well-run and efficient regular bus routes, but also private charter bus operations and private school bus transportation businesses. This bill goes so far as to include taxies, jitneys, livery service, dial-a-ride and vanpool services, presumably meaning vanpools presently operated by private companies for its employees.

Before long, this super agency will own, operate and control every conceivable means of transportation short of the private automobile in New Jersey. As government grows bigger, it doesn't get better. Look at Conrail and the postal service as examples and we'll cite some other examples.

At present, many small and medium sized private bus companies providing school bus transportation and charter transportation are operating safely, efficiently and at a profit. They are well run because they are small; the owner is usually the general manager and has a working knowledge of the day-to-day needs and problems, and they are competitive. Every contract for school transportation is obtained through competitive bidding. We're opposed to the concept of abandoning everything that is right with these privately owned and operated businesses and substituting for it another government bureaucracy, which is wrong. These privately owned, profit-making companies are the backbone of our very economy. They pay taxes to support government, provide full employment for their workers and fulfill a needed service. Why then should a government agency go into competition with these businesses or worse yet, have the power to take them over and use them for its very own purposes?

Speaking of profit, the profit motive is the incentive to run well managed and cost-efficient businesses. Once taken over by the government bureaucracy, these incentives are destroyed. Many school bus operations, for example, use a combination of full time and part time employees many of whom, by the way, are housewives and parents who supplement their family income. Many of these workers have 15, 20 or more years of service with their companies or in the industry. Visualize the cost of replacing this kind of a work force with the Civil Service System. Also, where do these workers stand in relation to civil service regulations once their company is absorbed by this agency. And what happens to the seniority they have with their present companies? We'd like to know what is the overall price tag, not only initially, but also projected over the next 5 or 10 years to run this agency? And when I refer to price tags, I am not talking about dollars alone but what are the human costs involved when businessmen and businesswomen have their livelihoods taken out from under them and workers' jobs are disrupted.

This bill is not the answer to the subsidy problem. I refer to the first two sentences in the statement attached to the bill wherein it refers to the "inability of the State to select effective management of public transportation resources..." If the State cannot manage a \$40 or \$50 million subsidy program, how does it possibly expect to manage the super agency envisioned in this bill? If the subsidy program is not working, the DOT should fix it or scrap it or devise some other means to provide basic commuter bus service. Creating another major bureaucracy with the power to take over non-subsidized businesses which are operating efficiently, making a profit, paying taxes and providing employment, is not the answer. This bill, therefore, is not the answer either. Our members strongly recommend that the DOT go back and devise a plan to deal with the subsidy program and basic commuter transportation which will be acceptable to all the people in New Jersey and not just acceptable to the DOT.

Mr. Chairman, there are a couple of bus owner-operators with me today and perhaps they could tell you a little bit more about how a bill of this sort would affect their private businesses.

SENATOR GAGLIANO: Mr. Allen, we'd love to hear from them but we have a list and they are not on the list. You were named as representing the School Bus Owners Association. We still have three more witnesses this afternoon.

MR. ALLEN: Mr. Chairman, with all due respect, when I did call to get on the list I mentioned that there were other individuals who would be coming down with me. It was suggested that my name only go on the list. And also, with respect, Mr. Chairman, I think the testimony of myself and two of these other gentlemen will be far shorter than the testimony of the individual witnesses that presented their stories today. I'm talking probably about 4 or 5 minutes of each of the witnesses.

SENATOR GAGLIANO: All right, go ahead.

J. B. R O L F E: My name is J. B. Rolfe. I'm a school bus contractor.

The free enterprise system has been the greatest stimulus for industrial development, economic growth and the social well-being of this country.

Pride of ownership is a motivating force that has no equal. What kind of a person or who is the school bus contractor? He is an ambitious person willing to risk his money and inexhaustible energy to prove his ability, to satisfy his ego and to strive for monetary success. Because he knows his territory, he routes his vehicles effectively and efficiently. His concern for safety is manifested in the high caliber equipment he operates and his proficient maintenance program. He is a competent professional dedicated to successfully providing safe, efficient and economic pupil transportation in a competitive market without any subsidies from anybody.

Rarely is the impact of bureaucracy more evident than in the school bus industry. From the Congress of the United States, Department of Transportation, National Highway Traffic Administration, Environmental Protection Agency and Energy Office to the New Jersey State Legislature, Department of Education, Department of Law and Public Safety, Division of Motor Vehicles, State Ecology, Environment and Energy Departments, Federal and State Department of Labor down to the County Superintendent and district Boards of Education, all have their pet projects, some valid and good, others ridiculous, the result of vested interest pressure groups, but, all, nonetheless, requiring compliance.

And requiring compliance and very substantial contributions are the Federal, State and local tax departments, exacting their tolls on the school bus owner.

License fees of \$140 per school bus returns the State approximately a million and a half dollars annually. Federal and State income taxes, corporate tax, business and personal property tax, real estate and fuel taxes are some of the levies imposed and to which the school bus contractor contributes.

But enough for the attributes of private ownership and operation of school buses, let us compare these virtues with the benefits and drawbacks of the proposed legislation. It is legislation to create an autonomous corporation to virtually be the sole and exclusive entity to regulate, operate and maintain the transportation system for the entire State of New Jersey.

Substantial evidence bears out the contention that government takeover or assignment to an autonomous authority or corporation has not been successful. Amtrak, the New York City transit system and the postal service give glaring testimony of the ineffectiveness and ineptitude of government intervention and takeover. United Parcel Service, a private corporation, offers better service at comparable or lower rates and makes a substantial profit while the post office continues to receive substantial subsidies for reduced and inferior service. The Port Authority of New York and New Jersey, in spite of ever increasing volume, with complete disdain and disregard for the public, with a dependent and captured clientele, saw fit to raise the Hudson River crossing toll by 50%. They extended their sphere of operation and interest into the real estate business and built the Twin Towers of the World Trade Center, surely of no benefit or asset to New Jersey. The octopus effect of ever reaching out for more and greater power.

As an autonomous agency, the New Jersey Transit Corporation would be above compliance with the rules and regulations for school bus safety formulated over the years by the State Department of Education, the Division of Motor Vehicles, the State Police, the County Superintendents of Schools and the local school districts. Transit and inter-city buses without the distinctive appearance of the time-tested yellow school bus could be used to transport the children. Gone would be the bi-annual school bus inspection at the Motor Vehicle inspection station and the on site inspections by the D.M.V. strike force. In jeopardy would be the New Jersey claim of no fatalities on a school bus.

While school buses are subjected to compliance with exhaust system air pollution regulations, mass transit buses are not.

And gone would be the millions of tax dollars paid into federal, State and local coffers. There is absolutely no indication or prospect that the Transit Corporation would make up for this loss of revenue by savings. In fact, all indications are that increased subsidies would be required to operate this transit monster. The whole concept of State takeover and operation of the transit system by the Corporation is predicated on subsidy funds being available from the Urban Mass Transit Agency. What happens if the UMTA program is discontinued?

With the profit motivation eliminated, inefficiency and rising costs become inevitable accompanied by the lack of deep personal concern and involvement evident in owner-management transportation.

Approximately 15,000 housewives, college and vocational students, senior citizens and moon-lighters who cannot work full time but nonetheless desperately need the money derived from part-time school bus driving or vehicle aides would lose this source of income. Also, the loss of innumerable positions as routers, dispatchers, mechanics, body repairmen, typists, bookkeepers would likewise follow.

Gone would be the availability of economical transportation for educational and recreational groups throughout the year, but particularly during the summer.

In the event there should be a disagreement between any segment of the employees and the Transit Corporation management, the entire mass transit system of the whole State could be paralyzed to the complete disregard of the riding public. Currently, while inconvenience may result from a disruption of service, alternate means of travel can usually be found nearby. When Transport of New Jersey was on strike, its riders found other means or routes to travel. People being creatures of habit, many of them remained with their newly found transportation media and ridership never returned to its former level.

School transportation in New York has been brought to a virtual halt because of the attempt to return pupil transportation to competitive bidding and eliminate the transportation monster the City created by negotiation. When competitive bids were taken and opened this year, it was evident that competition was the greatest constraint to runaway prices.

In Ridgewood, New Jersey, right here in Bergen County, the School Board received bids and subsequently contracted for the transportation of its pupils at a per bus cost that was less than the salary alone of the driver on the district owned bus.

I am reasonably certain that you have all read the article by Assemblyman Richard J. Codey that appeared in the New York Times on Sunday, March 18th. If perchance you missed it, I highly recommend it to you for your consideration.

Louis J. Gambaccini, Commissioner of the Department of Transportation, is one of the staunchest advocates of the State takeover of transportation, as we heard today. Commissioner Gambaccini would have us believe that public ownership and operation, where instituted, has resulted in increased ridership. The facts indicate that increased ridership under public takeover only occurred where increased service and mileage were instituted. The correlation seems to be that usage increased as the mileage serviced increased and vice versa. It decreased where the mileage was decreased.

In conclusion, I should like to point out that even Commissioner Gambaccini agrees that the present subsidy program is a failure. If the Commissioner's Department of Transportation and COA were unable to provide the leadership, direction and administrative know-how to the operators and management of subsidized lines to function efficiently if not profitably; if the DOT and the COA, armed with the tremendous financial clout of the subsidy program were unable to supervise a viable transportation program, what makes anyone think that the New Jersey Transit Corporation can autonomously administer, manage and operate all the aspects of a complete transportation system without bringing the State of New Jersey to its financial knees because of mismanagement and incompetence? Industrial New Jersey cannot afford to have only one omnipotent corporation running the State's entire transportation program. New Jersey can hardly afford to give this group, or any group, a blank check. Perhaps one of the current shortcomings of our transportation system is that TNJ has become too big and unwieldy and consequently inefficient.

We must not permit the creation of an autocratic New Jersey Transit Corporation. We must not permit hundreds of independent, tax-paying, community-serving school bus operators and contractors to be put out of business, thousands of employees to become unemployed, the State to lose millions of dollars of revenue and the safety of the children being transported to and from school to be put in jeopardy.

Senate Bill 3137 must never be passed. Thank you.

SENATOR SKEVIN: Thank you. I have no questions. Can we have Judge Labrecque as the next witness please?

J U D G E T H E O D O R E L A B R E C Q U E: My name is Theodore J. Labrecque. I am Legislative Chairman of the County Transportation Association of New Jersey. This association consists of representatives of transportation committees, transportation coordinating committees, transportation planning committees of the various counties of the State. I have on my left our Vice Chairman, Mr. Frank Tilley, who is Executive Director of the Bergen County Board of Transportation and our Secretary, John Hoschek, who is Gloucester County Transportation Planning Director. We'll have the rest of our officers at your next session, we hope. We suffer from listening to the ills of many many people throughout the State. As you can see from where we come from, we hear it from all sides. In particular, from Monmouth County, as Senator Gagliano knows, we've been hearing it and hearing it loudly, particularly from the bus commuters in the Route 9 corridor. So, we are here, if representing no one else, representing the commuters, the people that ride, the consumers of this service.

We're deeply appreciative of the problems posed by the subsidization of transportation services under the present method and for the need in a change of policy which would permit the State to more directly control and enforce the requirements for clean, comfortable, and on-time service which are due its people. We recognize the facts of life - that as matters presently stand, the only means available of enforcing contracts for adequate and on-time service fall far short. Indeed, they often leave the State in a position where in order to invoke the only penalties available to it, they would hurt the commuter more than the operating carrier. In effect, the State is in many respects a paper tiger so far as furnishing services are concerned. It puts up the money, more and more but the service cannot be enforced under the present system. Something has to be done.

Our association has been considering the situation for a long time. At its last regular meeting, we were convinced that the COA was not the answer. Something had to be done. We had bill S-3137 and we spent most of the evening going over the bill. At the conclusion, it was the opinion - unanimous - of all of us that the bill in its essential form should be supported. And, we adopted a resolution, a copy of which has been sent to the Committee, and a copy which will be annexed to my report which I will leave with you. It supports the principles represented by the bill while recommending that a provision be made for a Review Board to be made up of representatives appointed by the Freeholders of the 21 counties of the State. These are to be divided up into south Jersey, middle Jersey, and north Jersey with the idea that they would be sort of an advisory committee to be advised of what this agency is purporting to do and be able to furnish input as to their recommendations regarding its activity. We think that this will greatly strengthen the new program which Commissioner Gambaccini has espoused and which we are espousing here today. We will have more to say about that later.

The association is aware at this time of the urgent necessity for a bill which will not only set up a new entity vested with adequate power to enforce and carry out its obligations to the traveling public, but also a bill whose provisions and makeup will convince the people of the State that it represents a positive step forward in the State's administration of public transportation. And for that reason, it is entitled to universal support. To this end, the association is suggesting a number of improvements to the bill which it believes will help to generate additional public confidence in the bill's ability to bring about the results sought.

We believe that Section 4(b) is one of the key provisions of the bill. We would recommend that this be reworded so as to read as follows, " The corporation shall be governed by a board which shall consist of five members, including the Commissioner of Transportation and the State Treasurer who shall be members ex officio, and three other public members who shall be appointed by the Governor for three years staggered terms and until their successors are appointed and qualified." This is to prevent absences by expiration of term where the term is not filled for a long period of time. "Each public member may be removed from office by the Governor for cause. Any vacancies in the membership of the agency occurring other than by expiration of terms, shall be filled in the same manner as the original appointment, but for the unexpired term only. The first appointments shall be for one, two, and three years respectively and thereafter for terms of three years, as stated. The three public members shall be chosen because of their special qualifications, knowledge and experience in matters concerning public transportation. The board shall designate a Vice Chairman and a Secretary and the Secretary need not be a member." We feel that this is very very important. One of the troubles of the COA in our eyes has been the fact that it has consisted mostly of ex officio people whose service is co-extensive with their terms and who could designate substitutes and who did the work of the COA as a kind of an adjunct to all the other jobs which they had to do for the State - their various primary obligations. We have felt that that is one of the reasons why the COA has fallen into such disrepute. And we believe that having a responsible agency like this which has the connection the COA has with the State Treasurer and the Commissioner of Transportation and yet will have three responsible people selected by the Governor with regard to their particular expertise in the field of transportation - and that doesn't mean you have to drive a bus, it's a general familiarity with the field - with three people like that, they will be in a majority, you will have responsibility. People will know that they have three people there whose prime job is to do this particular job that has become so important to the State of New Jersey.

We say that it should be for staggered terms because one of the difficulties of the COA and the Department of Transportation has been that its services of its top men have been coextensive with the Governor's term. Each time we change Governors, we change pretty nearly everybody at the top. The result has been that it took a long time to educate the new men that came in. We weren't always lucky to get a man like Lou Gambaccini who had experience and isn't afraid to say what he thinks. Lots of times we weren't so fortunate and so we've had to educate those people. That's not disparaging them it's just saying that if I or a lot of other people were given that job, we would have to educate ourselves too the same way. This will insure that there will be continuity in management. Assume you'll get a new Governor, you'll get a new State Treasurer, you'll get a new Commissioner of Transportation, perhaps. But, you'll have three people there. The Governor can move one that year, one the next year and one the next. But there will be a gradual turnover and people will feel - both the people who contract with the State and the people who ride with the State - that we have something there more responsible than we had before. Now, these men are removable for cause by the Governor. That's a very reasonable proposition. It's the Executive Department and if they're not doing their duty, he has the right to bring them up on charges and remove them. Just as in any other Executive Department, it is a normal situation.

We feel that there should be a Vice Chairman and a Secretary instead of just a Secretary. That is for very many reasons as you'll see as we go along.

Our association discussed, of course, the number of men on the board. We thought we were recognizing the facts of life when we opted to five members. I've heard it said today by Senator Gagliano and others that seven would be preferable. I can readily understand that. And I think if you took a vote of our members that they would feel that way too. You would have better distribution, better support from all over the State and better responsibility if you had seven men, five of whom served staggered terms. Then you would really have a continuity and yet the new Governor would have control just the same. But, I think we're going to appear before you again on the 4th of April and we hope that by that time we'll have something on that. But, I think that our members would feel that that is a very good idea.

We think that Section 4(d) could very well be reworded. It's not much of a change but I think it could be helpful. It would read something like this, "The Commissioner of Transportation shall serve as Chairman of the Board. He shall chair board meetings when he is present. He shall have responsibility for the scheduling and convening of all members of the board. In his absence, the Vice Chairman shall chair the board meeting. Each ex officio member may designate one or more employees of his department or agency to represent him at meetings of the board. Each such designee may lawfully vote and otherwise act on behalf of the member for whom he constitutes the designee. Any such designation shall be in writing delivered to the board. It shall continue in effect until revoked or amended by a writing delivered to the board." Now, we think it is important that the Chairman of the Board should be the Commissioner of Transportation. When he is there, he should chair it. We think that the Committee should appoint a Vice Chairman and the Vice Chairman should chair the board meeting in the absence of the Chairman. Now, this might seem, as you look at it on paper, to be unimportant. And yet, if the Commissioner of Transportation designates one of his deputies who is interested in the very thing that is coming up before the board, many people who come to COA meetings don't think that it is fair for him to preside at the meeting in which something which he has planned or worked up for action is being presented. This would eliminate the possibility of that to a great extent and would let the board furnish its own Vice Chairman. I must say, in all fairness to Commissioner Gambaccini, that at every meeting I've been to so far, he has been at the meeting. But, in effect, this would insure that that same quality continues whether he's there or not.

Now, on Section 4(f) on page 3, line 44 - the provision regarding the 10 day minutes, we think that that should be changed so it covers not only the Governor but the Acting Governor. Matters which often have to be handled by the COA now are really emergencies. As a matter of fact, there is an emergency every time the COA meets. There are going to be emergencies here too. Some of these things can't wait. And if the Governor happens to be unavailable or out of the country or out of the State and there is an Acting Governor, the Acting Governor should have the right and be required to read the minutes and make his decision regarding them without waiting for the Governor to come back. I'm not saying that that could happen but it should be provided for so there will be no accidents and nothing will be left. Sometimes they are just waiting for the clock to go - the ten day to be up - in order for some very important public thing to go. It shouldn't be held up because of a technicality like that, and that could be taken care of.

Now, we have another suggestion for an amendment that's very important

particularly to commuters, to consumers. That refers to paragraph 7(c) on page 7, line 25 - that's the one that talks about fare increases for motor bus regular route or rail passenger service. We've gone through that in Monmouth County and I guess in a lot of other counties too. So, we particularly suggest that this might require a change. We suggested that - starting at line 25 - be amended to read as follows, "Before implementing any fare increase or any motor bus regular route or rail passenger service or their curtailment or abandonment of any such services, the Corporation shall hold a public hearing in the area affected in the evening hours. Notice of such hearings shall be given by the Corporation at least 10 days prior to the hearing to the governing body of each county whose residents will be affected, and to the clerk of each municipality in the county or counties whose residents will be affected. Such notice shall also be posted at least 10 days prior to such hearings in prominent places on the railroad cars and buses serving the routes to be affected. There should be exempted from this, requests for minor changes in routing or scheduling applied for by the governing body of the municipality or the counties affected. Nor should it apply to minor service modifications, so-called, as defined in New Jersey Administrative Code Title 60, Chapter 53, Section 1.1." Now on page 16, line 12, subsection c which deals really with the obligations of the Commissioner, we suggest that it be reworded to read, "Prepare plans for the preservation, improvement, and expansion of the public transportation system with special emphasis on the coordination and improvement of transit modes and the use of rail rights of way, highways, and public streets for public transportation purposes." The rail rights of way was the addition there and I'm sure it was inadvertant and it should be included. Again, on page 16, line 30, paragraph f we suggest could well be reworded to read, "To cooperate with interstate commissions and authorities, State departments, councils, commissions, and other State agencies, appropriate federal agencies, county agencies..." That's the addition. "... and interested private individuals and organizations in the coordination of the plans and policies for the development of air commerce and air facilities." We feel that some of these amendments you may find well worthy of consideration. We urge that you do so. We are continuing our study of the bill and have been and will be monitoring comments today. We will be happy to appear again at the next meeting and present the association's further suggestions and comments to your Committee.

SENATOR SKEVIN: We appreciate your comprehensive remarks, Judge Labrecque. I'm going to yield to your son-in-law, Senator Gagliano.

SENATOR GAGLIANO: Judge, would you, also in connection with the comments that your group is going to make, address yourselves to the question of jurisdiction over school buses and jurisdiction over taxicabs and various other forms of charter buses and whether or not they should be in or out of the bill?

JUDGE LABRECQUE: We will be ready to answer that at the next hearing when we appear.

SENATOR GAGLIANO: Furthermore, if you could come up with a recommendation possibly along the lines of seeking out incentives - in other words let's presume that the bill is in place and the authority exists - do you think it would be appropriate to include language which would compel the authority to consider incentives in connection with subsidies before actually going out to acquire the particular company?

JUDGE LABRECQUE: We'll be ready for a comment on that.

SENATOR SKEVIN: The representative from the Amalgamated Transit Union.

F R A N K A R M E N N A N T E: Mr. Chairman, members of the Committee, my name is Frank Armennante and I am a Vice President of the AFL-CIO. I am appearing here today on behalf of New Jersey State AFL-CIO, President Charles Marciante, as Secretary-Treasurer, Edward Pulver, and the 750,000 members of this organization. On behalf of the AFL-CIO I wish to express our support for the concept of the public ownership of transit systems in New Jersey and, therefore, our support for S-3137. Our support, however, is not unqualified. It is rather contingent upon the amendment of this bill to include adequate safeguards to protect the substantial rights and benefits of our workers currently covered by existing collective bargaining agreements with the private companies. Any bill which fails to provide satisfactory protection for our workers will not receive the support of the AFL-CIO or its affiliated unions. We urge the Committee to give the utmost consideration to the workers' protection amendments submitted to you and further to the comments provided by Walter Bierwagen, the international Vice President of the ATU. Thank you for your consideration and the opportunity to address you in this matter.

W A L T E R B I E R W A G E N: Thank you, Mr. Chairman and members of the Committee. My name is Walter Bierwagen. I appear here at the direction of Daniel Maroney, International President of the Amalgamated Transit Union and at the request of the officers and delegates of the New Jersey State Conference Board of Amalgamated Transit Union locals. These locals represent other principal representatives of the employees of Transport of New Jersey. Appearing here with me today is James LaSala on my right also an ATU Vice President, and Frank Carroll, State Business Agent and Chairman of the New Jersey State Conference Board. Also with us is the International Union Representative of the Transport Workers Union. Initially, I want to thank the members of the Committee on behalf of our 5,000 members residing in the State and working for the transit systems within the State, for this opportunity to present our views and our concerns about S-3137, the proposed New Jersey Transportation Act of 1979.

The Amalgamated Transit Union which I have the honor to serve as International Vice President and legislative representative, is the principal and dominant union in the inter-city bus and local transit industries in the United States and Canada as well as in New Jersey. Throughout most of our 87 years of continuous existence, we have been a private enterprise oriented union, subject to federal laws, protected in our right to bargain collectively, and to withhold our services if circumstances required. Within our own union laws, however, we do have a provision that requires our local unions to offer to settle our disputes with our employers by final and binding arbitration. Only if the employer refuses to arbitrate, do our laws permit a strike to be sanctioned. I mention this in order to highlight this union's long standing and unique expression of concern for the public interest. What I'm trying to say with these few historical facts is that the Amalgamated Transit Union is an experienced, self-respecting, obviously law-abiding institution - a microcosm of American democracy. Even though some of the transit systems of our great cities, such as Boston, Chicago, Detroit, went public very early on, the rest of the industry remained in private hands for most of the years of our long history. We became, and remain strong advocates of the private enterprise transit industry. Some time ago, in 1968 to be exact, we discovered to our chagrin, however, that the private entrepreneurs within the transit industry had for the most part jumped ship, even while they were urging us on to defend them. We reassessed our position. We consulted with our friends in the labor

movement. We studied very closely the experience of our city transit systems under private enterprise and also the newly organized public transit systems. Meanwhile, as citizens, we observed with alarm the ever increasing reliance on the private vehicle for urban transportation needs. We saw the resulting pollution of traffic on our streets. We could all see the gathering poisonous fumes being excreted by these millions of internal combustion engines spewing over 80 million tons of pollutants - poisonous pollutants - into our air annually. Throughout all of this, we observed the steady erosion of our mass transit systems as the highly subsidized private auto became the dominant vehicle providing the transportation needs in our urban area. Mass transit ridership dropped sharply and consistently to a very low point in 1970 - approximately 1/4 of its previous peak in the mid forties. Employment in the industry followed the same pattern. The State of New Jersey exemplifies this pattern by continuing it even to the present day. In 1973, for instance, TNJ employment was 4,600. Today, it is 3,100. It is obvious from this loss of 1,500 in the numbers of employees that service has been curtailed and ridership substantially reduced, thus aggravating the problems of transit dependents and further complicating the problem of air and traffic pollution and environmental pollution. It is also obvious that this is contributing nothing to the national effort towards energy conservation and to the need to reduce the balance of trade deficit. It was clear to us that private enterprise had failed - miserably failed - in performing its role in the transit industry. Together with our peers in the labor movement as well as with millions of other citizens, civic leaders, public authorities, we became convinced that mass transit had to be looked upon as a public service necessary for the survival of our urban areas and a vital necessity for millions of our citizens who had no other choice but to depend upon mass transit systems in our urban areas. As has been pointed out many times in the public press within this State, mass transit under the so-called private ownership and operation in this State has continued to decline. It is no secret that private companies are concerned with the profit line. We don't blame them. That is their principal purpose - to make a profit. But, we think it is time to change that. We think it is time that this State recognizes that a transit system must be concerned with people rather than profit. We think that it is time that the State of New Jersey looks to the example of other states and other cities where transit systems have been integrated and regionalized, where such systems operate as public entities in the public interest and operate efficiently and reliably. If the State does not or will not recognize these necessities and if it allows the bus industry to remain so severely fragmented and the service so inefficient and uncoordinated, nothing will prevent the industry's ultimate collapse. We have noted in the public press recently that some of the State legislators are concerned about the monetary costs and the obligations if the State should take over the transit system. In these days when inflationary costs are taking their toll, we can understand the reason for this concern. As important as it is, the dollar cost cannot and must not remain the sole criterion for the ultimate decision of whether or not to go public. Failure to stop this erosion of our transit systems will force greater reliance on the private auto. Such a course would be contrary to our national aspirations and needs - witness the oncoming energy crunch and this nation's continuing increased reliance on foreign oil imports. We all must surely want to do our share here in New Jersey to help reduce this reliance on foreign imports - imports which bring about increasing deficits in our balance of trade and thus contribute vastly to inflationary pressures. It is at least a national hope - expression of hope -

that oil foreign imports must be reduced by a minimum of 10%. If this is to happen, we must develop efficient, improved, coordinated, and effective mass transit systems so as to meet the ultimate transit needs of the citizens. We favor public ownership of New Jersey Transport and of the other transit systems within the State. We favor the coordination and the integration of these systems into a single, effective, coordinated, efficient, public-owned mass transit system. We favor the elimination of duplication of routes and services, the elimination of waste and inefficiency. As presented, however, S-3137 is not the proper vehicle for this purpose - as presented. We find it contains a major defect. It does not contain appropriate employee protection for those who are providing this essential public service, many of whom have spent a life time in doing so. We cannot support and will, in fact, oppose enactment of legislation that provides for public ownership, operation, and control of the transit systems with inadequate or unacceptable protections for the employees.

We have submitted for the consideration of this Committee appropriate amendments to correct this defect within S-3137. We strongly urge you to include these amendments within S-3137. In proposing them, we are not asking this Senate Committee or the New Jersey Legislature or the State to plow new ground. Twenty four states have enacted similar levels of protection for transit employees of publicly owned transit systems. This very Legislature - the New Jersey Legislature - has previously enacted protections for the transit employees in Mercer County and Atlantic City. This Committee and this Legislature is not being called upon then to try something new, something untested, or to plow new ground. The amendments we have proposed to this Committee are included in the legislation enacted by the Legislature of the State of Illinois a few years ago creating the most recent regional transit system, a multi-county transportation system in northeast Illinois, including Chicago's Cook County. The Northeastern Illinois Rapid Transit District is operational and the employee protective provisions of that Act are effectively in use.

In summary, the labor relations program we have submitted to you includes employee protections required by federal law when federal funds are used. The legislation provides for submission of disputes concerning these protections or any other disputes to final and binding arbitration. It spells out with some precision proposals that enable the Public Transit Corporation to establish and maintain a system of pensions and retirement benefits for employees ineligible for enrollment in the Public Employees Retirement System, provides for the continuation of coverage under the federal Social Security Act, the Federal Insurance Contributions Act, and the Federal Railroad Retirement Act. It provides for written and signed labor agreements and the assumption and obligation of all applicable labor agreements and pension obligations of the employees of acquired transit systems. Further, it provides that trust funds in existence and under the joint controls of acquired transportation systems and the participating employees be transferred to the trust funds to be established, maintained, and administered jointly by the corporation or the transportation agency and the representatives of participating employees. Further, it provides that all federal statutes applicable to railroad employees will continue to be applicable to railroad employees affected as a result of corporation acquisition and operation of the railroad. Disputes concerning displacement of employees or rearrangement of the working forces are subject to submission to final and binding arbitration by an impartial arbitrator. Under the proposed

employee protection provisions, all labor disputes not resolved through negotiations are subject to fact finding or in the alternative, to a board of arbitration. The legislation includes a definition of the corporation's obligations concerning the costs of rights, benefits, and protective provisions. Representation questions are subject to resolution by an impartial arbitrator. It is our view that the Illinois State Legislature has exercised wisdom in carefully expressing the legislative will in these matters rather than to rely solely on administrative interpretation or interpretations which may result in possible confrontation and costly litigation. The Amalgamated Transit Union and the Transport Workers Union respectfully request and urge the adoption of these provisions and inclusion in S-3137 and that this Committee favorably report out the bill as thus amended and support and vote for its enactment by the Senate of the State of New Jersey.

Just departing for a brief moment from my prepared text, I'd like to add this footnote for the edification of the Committee. We believe our proposals for a labor relations program are reasonable and are responsive to the lessons of past experience. We understand that the administration, although in agreement with the concept of employee protections, does question some of the specifics within our proposed amendments. We are taking steps, with the cooperation of the DOT, to identify those areas and seek to narrow and hopefully eliminate those differences. Again, on behalf of the Amalgamated Transit Union we want to express our appreciation for this opportunity to thus express our views on and concern for these important legislative proposals. And, we thank you for listening.

SENATOR SKEVIN: We thank you for coming and we appreciate your remarks. I understand that the unions feel that the existing federal statutes are not adequate to protect your employees' status at this point.

MR. BIERWAGEN: This is correct, Senator. The bill as it is written does continue the federal protections when federal funds are used but those protections are absent in the event State funds or local funds are used.

SENATOR SKEVIN: Do you have any idea what the cost factor would be if we extended the protections for your employees in their entirety?

MR. BIERWAGEN: Well, this is a difficult question to respond to because I don't know what you refer to as cost. I might put it this way - I have asked at previous hearings that the State Department of Transportation identify the costs that it has expended as a result of the application of Section 13 (c), the federal employee protections. I must tell you that they couldn't identify the first dollar that was actually spent. Perhaps there is a cost in that there is a deterrent on the part of the law to prohibit the administration from willfully and without reason cutting wages and so forth. I would assume that anybody can operate a system if you change the rules and do it more effectively, more efficiently. If private transit must operate at a certain level and if the public operator comes in and is permitted to operate at a different level of wage structures, surely it can operate cheaper. Anybody could do that. It doesn't take a college graduate to be able to operate a system that way. Over the country there are two or three reports by the Department of Labor, the Government Accounting Office, by the University of Wisconsin, I believe, and perhaps one other report in which they have been called upon to try to identify these costs and to see what the furor is all about. Generally the reports - even the GAO report - say there is more smoke than substance to all these charges. The identifiable costs amount to a few thousand dollars throughout the whole country. I can't give you any more definitive answer than that.

SENATOR SKEVIN: Thank you Mr. Bierwagen. Frank Reilly of the Association of Management Employees

F R A N K B. R E I L L Y, JR.: Thank you Mr. Chairman, my name is Frank B. Reilly, Jr. I am a member of the law firm of Ozzard, Rizzolo, Klein, Mauro and Savo of Somerville and I represent here today the Association of Management Employees of Transport of New Jersey. Mr. Chairman, is submitted a written statement this morning to Mr. Capalbo and I would request that this statement follow my oral remarks in the record.

The Association of Management Employees of Transport of New Jersey is a voluntary organization. It consists of 220 active employee management personnel of Transport of New Jersey out of a total of 250 employees. We also have as members a majority of the retired management employees of TNJ who are presently receiving pension benefits under the Transport of New Jersey pension plan for non-union employees. The organization was organized on an ad hoc basis primarily in response to, in our view, the lack of adequate protection for pension, welfare benefits, and employment assurances under the bill which today is under consideration. I would like to stress that the organization is a voluntary organization. Members have come to the organization with their concerns. I might add our concern here is a grave concern for, in our judgment, a total disregard of certain basic guaranteed rights which appear to have been ignored under the bill.

I would also like to emphasize that the views expressed by the association are the views of the individual members of the association and are not in any manner whatsoever to be construed as the views of Transport of New Jersey.

As a profile on our membership, active employee management members in the association have on the average 20-25 years of active service with Transport of New Jersey or its predecessors. Retired members who are presently receiving pension benefits have on the average in excess of 30 years of service. As I indicated, our concern here is for, in our judgment, a total disregard for protection of promised pension benefits, welfare benefits and employment assurances. Based upon the years of service of our members, this, in our view, represents an investment of careers which at the end of the road is to be paid in the form of promised pension benefits. Failure to provide adequate protection, in our judgment, will reduce these promised benefits to nothing more than an illusory and empty promise.

We are also concerned that the issue of pension benefits has been taken as a leverage factor and used not only by the Department - as indicated this morning - is being used, in our judgment, as a lever perhaps to force a public takeover. We submit that an issue of this magnitude and of concern which affects individuals and promised pension benefits should not be reduced to political expediency.

I would also like to note that our primary obligation, again, is inadequate protection for pension benefits. And, in this regard, I think the Committee and the public should be aware of the facts as was requested this morning. One - we are dealing here with 550 individuals who are participants under the Transport of New Jersey pension plan for non-union employees. Under this plan there is presently an unfunded accrued liability in excess of \$13 and a half million. In addition, the present value of vested benefits under this plan is presently in excess of \$11 and a half million. Finally, the fair market value of the plan assets are less than \$400,000. Our concern here is who will guarantee payment of pension benefits, who will provide funding in the future to pay pensions? Who will assume this obligation in the event of a public takeover? I think the Committee should also be aware, in

an attempt to determine the facts of this matter, of certain basic legal rights which are germane to the matter here.

Basically, the first area I would like to discuss is the application of the Employee Retirement Income Security Act of 1974 more popularly known as ERISA. As most of you are aware, this historic legislation was enacted on Labor Day 1974 and represents a sweeping protective measure to protect private pensioners, private pension plans. One of the requirements of ERISA is an obligation upon an employer to satisfy minimum funding requirements. Under the Transport of New Jersey plan, this plan was a pay-as-you-go plan, namely, benefits - retirement benefits - were paid from current operating revenues. There was no funding. Effective March 1, 1976 the plan was obligated to recognize a past service liability of \$13 and a half million which it is obligated to amortize over a 40 year period. The plan is presently meeting this requirement albeit in the form perhaps of a portion of the subsidy payments which are presently being received. In addition, under ERISA, to the extent there are vested benefits under the plan, ERISA would prohibit a forfeiture of vested benefits. In our situation, with respect to management employees, retired management personnel, these vested benefits today amount to \$11 and a half million. ERISA also requires a detailed procedure concerning plan termination insurance. This procedure was put in to ERISA after a great deal of Congressional study, hearings which looked into abuses in this area, most notably the Studebaker acquisition and curtailment, and basically it provides a system whereby a public agency, namely the Pension Benefit Guarantee Corporation, will insure certain guaranteed benefits in the event of a plan failure. In such event the Pension Benefit Guarantee Corporation will look for reimbursement back to the plan employer. Under our situation, we are concerned with the procedures, perhaps, on a public takeover, query, whether a plan termination will result, if so, perhaps the procedures and statutory requirements which would be applicable here. Precisely, we're concerned with the procedures on mergers and reorganizations and also, perhaps, on an asset sale where the proposed Transit Corporation, perhaps, may not have the ability or the financial capability to assume the liabilities of the plan and act as a successor employer.

In addition to ERISA rights, I think the Committee should be aware of the 1972 agreement which has been reported to the press between Public Service Electric and Gas, the parent of Transport of New Jersey, and Transport of New Jersey whereby Public Service agreed at that time to assume a \$76 million unfunded liability under all TNJ pension plans including the management pension plan. I might add, under this agreement, there is a provision concerning a public takeover of Transport of New Jersey by means of eminent domain. As pointed out this morning, there is a Constitutional issue here as to the application of a taking by eminent domain and I suggest that this is an item that certainly has a bearing on the rights of the members of our association pursuant to this 1972 agreement. We are also concerned, in the bill, with the eminent domain authority that perhaps this may be used as a lever, in effect, to force a public takeover of TNJ during the legislative deliberations. We do not feel this is an intelligent approach to the problem and we think the matter requires a great deal of deliberation and a great deal of study. Further, in that our members, namely active management employees and retirees, have certainly a vested benefit in this matter, it would appear to us as a legal matter that as a condition to any takeover that their consent may perhaps be required with respect to the treatment of the existing pension plan. To leave this matter to the negotiation process after legislation is enacted would, in our judgment, lead to un-

necessary legal implications, unnecessary costs, perhaps protracted litigation and unnecessary results. Again, I think, caution is needed. Hindsight has shown, in a transit takeover situation involving the city of Portland where this issue was left to the negotiation process, that there was not an agreement and unfortunately, it resulted in protracted litigation, unnecessary expense to the city, and lost benefits to certain employees.

We are also concerned with respect to certain legal and constitutional issues which, in our judgment, have not heretofore been considered. Primary of these considerations is the possibility of rights which presently exist to participants under the plan, under ERISA, which conceivably could be forfeited in the event of a public takeover and assumption of the existing plan by the proposed Transit Corporation. As you may be aware, these rights include rights to vesting, minimum funding, certain fiduciary-type obligations which generate into rights to employees. In our judgment, if the plan were to be taken over by the proposed corporation, in effect, the plan has become a governmental plan and as such is expressly exempted from ERISA. To cause this result by means of State legislation and cause a forfeiture of federally granted rights, in our judgment, raises serious constitutional questions and certainly ought to be addressed by the Committee before further action on this bill.

Our other constitutional concern is with the financial ability of the proposed corporation to assume the plan, if this course of action is taken, in our judgment, this would also generate a constitutional problem - a New Jersey constitutional problem. Assuming this is not possible, then we are faced with the problem of who will guarantee this unfunded liability? Who will meet this promise to pay pension benefits? On this note we are also concerned that a study has not been performed to date to analyze the various options which are available in the event of a public takeover. The form and structure of the acquisition process with respect to the plan and its liabilities may be crucial with respect to the various options which are available. For example, it may be possible, assuming proper guarantees are provided up front, whereby the existing plan, in effect, can be frozen whereby accrued benefits are properly guaranteed and then active management personnel covered under the plan, perhaps become eligible under the State administered pension program. This, however, requires a great deal of thought and also a great deal of planning with respect to other alternatives. Each one of these have different consequences. It may be possible, for example, to avoid the plan termination sanctions where they are otherwise not appropriate. This certainly would have a bearing on the timing, perhaps, of liabilities that may be triggered and certainly alternative methods of accomplishing our hope-to-achieved result.

Another area under the bill which causes us great concern is the provision which states that salaried employees of the proposed corporation will become eligible under the pension system maintained by the State of New Jersey. As drafted, the bill leaves many many questions unanswered - certainly very important questions. These have to do with, for example, vesting, ability to make up contributions, parity of benefits in comparison to the existing plan, years of service for accruing benefits, portability of benefits in the event the prior plan is being terminated, and so forth. In our judgment, this issue likewise requires further deliberation, certainly the input from the Department of Pensions, and certainly, perhaps, an actuarial study.

We are likewise concerned with the bill in that there is a total lack of provisions concerning eligibility for welfare benefits and welfare benefits which

are presently made available not only to active employees but more importantly, pensioners. The bill is totally silent on this point and, in our judgment, this matter needs to be addressed. Again, further study is required, cost estimates ought to be obtained, and again, the input from the Division of Pensions would appear necessary.

We are also alarmed by the fact that the bill does not address the necessary protections required by Section 13(c) of the Urban Mass Transport Act of 1964. We are concerned that there is no indication in the bill that these protections which are required as a matter of federal law for purposes of federal funding will apply to all employees. It is our understanding this is how the Department of Labor will administer and has administered these provisions. And, any attempt to follow the approach taken in the enabling legislation with Mercer County Metro whereby management employees were excepted from these required protections will be vigorously and strongly opposed.

And on this subject, we are also concerned with the failure to address employment assurances for management personnel of Transport of New Jersey. Indeed, the stated purpose of this legislation is to attract qualified professional transit people to operate a public system. I submit to the Committee and to the public that we know of no better pool of managers within the State of New Jersey than those that are presently employed by Transport of New Jersey. To ignore this pool of qualified managers, to fail to guarantee them jobs in the event of a public takeover, we think is a gross error, an oversight.

As indicated, all of the above issues, in our judgment, have not been explored in detail prior to the drafting of this bill nor, in our judgment, in the preparation of the four reports which were mentioned this morning by the Department of Transportation. We feel that continued review and deliberation of these matters is necessary in order to avoid future hardships and disadvantages to existing management personnel and retirees under Transport of New Jersey. I might note in this regard, we are not dealing with equipment, buses, tangible assets, we're dealing with people. We're dealing with their investment which is represented in years of service and promised pension benefits. I submit that this is an area where we ought to proceed with prudence.

Taking up Mr. Chairman's remarks this morning with respect to the report of the Governor's Commission on Budget Priorities, I quote from page 8 of the summary thereof, "A takeover by a state would be irrevocable and once taken, if not done with proper research and deliberation, could become a mistake of incapable correction." Again, what could be done here which would be irrevocable is, perhaps, lost benefits, welfare pension benefits, and again, opportunities for employment. The results here can be harsh. They will be damaging. And, I submit, again, they have not been adequately explored.

We request the Committee and we also request the Department to allow us to assist in further deliberation on this subject. We make ourselves available to provide any input or information which may be appropriate and we also request the Committee to allow us to come back to make additional testimony or, perhaps, information which may be helpful with your deliberations.

I might add in conclusion, the association through its members, namely, active management and retirees under Transport of New Jersey do not take a position on the concept of a public takeover. We feel at this point our immediate concern is protection for pension welfare benefits and assurances of employment.

Mr. Chairman, on behalf of every member of the association, we thank you for giving us this opportunity to present our views.

SENATOR SKEVIN: Mr. Reilly, on behalf of the Committee we certainly appreciate your comprehensive and excellent comments and statement. We certainly welcome your input and we will welcome your further participation on this very important bill. I want to compliment you on your presentation even though it's the last one of the day. The dimming of the lights is no reflection on your comments. I noticed with great admiration that you presented your clients' case with very, very few references to your notes. I think you are the only witness today who didn't read his statement so I appreciate very much your presentation.

MR. REILLY: You are welcome, Mr. Chairman. We were trying to save the best for last.

SENATOR SKEVIN: This will be the conclusion of the first part of our hearings. We will continue next Wednesday, April 4th for additional public hearings. Then, thereafter there will be further public hearings to be announced. Thank you.

(Hearing concluded)



HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT

ANNAPOLIS, MARYLAND 21404

March 27, 1979

Honorable Brendan T. Byrne
Governor of New Jersey
State House
Trenton, New Jersey 08625

47716

Dear Governor Byrne:

Thank you for your recent letter with regard to the Baltimore Metropolitan Transit System.

The State of Maryland took over the private transit system in the Baltimore area on April 30, 1970. The State employed a management company to supervise the takeover and to manage the operation subsequent to that date.

The former private operator had experienced a steady decrease in passengers for many years and there had been a series of strikes and continuing labor unrest. In general, the public was disillusioned with the transit system and unsure of its dependability prior to takeover.

In the first full year of operation under State control there was an increase of one percent in ridership and an additional three percent increase in the second year. There were further increases each year until the fares and zones were drastically adjusted in early 1976.

In 1973, the management company, within a twelve month period, negotiated for the purchase and takeover of the six remaining privately owned suburban carriers in the transit district. Prior to takeover these operators were experiencing large passenger losses and had drastically reduced service; thus, transit services were preserved for many areas that the private carriers intended to abandon.

At the time of the takeover in 1970 the labor contract within the operating division had expired and an agreement was worked out with the union to arbitrate a new labor contract. Since the takeover, the MTA has had continuing labor peace and has successfully negotiated or arbitrated ten contracts with the three unions represented on the property.

MAR 27 1979

In 1976-1977, a marketing study was made in the Baltimore area under an Urban Mass Transportation Administration demonstration grant. The consultants found that a vast majority of the bus patrons were very satisfied with the service levels of the operation. It is generally accepted by the Legislature, the State Department of Transportation, and local government agencies that the system operates and performs its functions very satisfactorily.

For the first fifteen months of operation after the State take-over, operating costs per mile and hour were held at a constant level despite increases in inflation and the system operated at a profit of approximately \$1,500,000. Through Fiscal 1978, a period of over eight years, operating receipts have contributed 75 percent of the cost of operating the system exclusive of Federal operating subsidies. At the present time revenues are contributing more toward operating cost than any system in the United States of comparable size.

The success of the Maryland system may be due to the unique management approach we have used. State policies, procedures, and fiscal restraints remain the responsibility of State government. Of particular importance is the issue of labor relations in the transit industry. The transit industry has a peculiar and unique manner of collective bargaining and people involved in labor negotiations should have a very high degree of expertise and familiarity within this area. It is furthermore desirable to develop a buffering of the collective bargaining process from direct political involvement which can best be obtained through the auspices of our present structure rather than through the participation of government employees.

The operational and managerial functions are, as previously noted, vested in a private management company which is required to meet acceptable performance criteria in order to continue their management role. This blend of governmental control and private management efficiencies is proving a satisfactory arrangement for the operation of this transit system.

I hope you find this letter and enclosure responsive to your needs.

Sincerely,

Governor

APPENDIX APotential Petroleum Energy Savings as a Result of Increased Bus Ridership due to Public Transit Corporation

Bus ridership in New Jersey is estimated to be approximately 640,000 passengers/day. As bus ridership increased nationwide at a rate of 4.3 percent, it is fair to assume that an efficient public transit corporation would increase bus ridership anywhere from 5-10 percent annually. The potential additional bus ridership is shown in Table 1 below.

Table 1 - Potential Additional Bus Ridership

Current Average Bus Passengers Per Day	Range of Increase		Net Increase In Bus Ridership	
	5%	10%	5%	10%
640,000	672,000	704,000	32,000	64,000

The assumption is then made that this increase in bus ridership is inversely related to a decline in auto usage. Using an average auto occupancy value of 1.4 persons per vehicle, the potential number of automobiles that would be removed from the road is shown in Table 2 below. We are assuming that none of these new riders are switching from another energy saving mode, such as car-van/pool, commuter rail, etc.

Table 2 - Estimate of Number of Automobiles Reduced for Commutation as a Result of Increases in Bus Passenger Ridership

Potential Number of Increased Bus Riders/Day	Average Commuter * Auto Occupancy Value	Potential Number of Automobiles Reduced from Commuting/Day
32,000	1.4	22,857
64,000	1.4	45,714

*(Source: Nationwide Personal Transportation Study. Report No. 1, Automobile Occupancy, US DOT, FHWA, April, 1972)

A potential range of automobile passenger miles of travel reduction is estimated in Table 3 below. It is based on the assumption of an average commutation work trip of 9-11 miles.

Table 3 - Estimated Reduction in Automotive Passenger/Commuter Miles of Travel (in Passenger/Commuter Miles of Travel)

Average Length of Commutation Trip (miles)	Range of Automobiles Reduced as a Result of Increased Bus Ridership	
	22,857	45,714
9	205,713	411,426
10	228,570	457,140
11	251,427	502,854

(Source: Nationwide Personal Transportation Study: Report No. 7, Household Travel in the United States, US DOT, FHWA, December, 1972)

Table 4 - Conversion of Passenger Miles of Travel Saved to BTU's Saved

Range	Estimated Passenger Miles of Travel Saved by Auto	Petroleum Energy Requirement for an Average Auto (BTU's)	Potential Savings in BTU's (in Billions)
5 percent	205,713	8280*	1,703,303.6
	228,570		1,892,559.6
	251,427		2,081,815.5
10 percent	411,426		3,406,607.2
	457,140		3,785,119.2
	502,854		4,163,631.1

*This is expressed in terms of modal energy. Modal energy is a combination of line-haul energy and the energy used in gaining access to a particular mode, adjusted for the circuitry of the trip relative to the same trip made by automobile and measured in BTU's per passenger-mile of travel.

(Source: Transit Energy Usage Assessment System Design Concepts, Inc., Dec. 1978.

Prepared for the Urban Mass Transportation Administration)

Table 5 - Potential BTU Energy Savings Converted to Gallons of Gasoline

Potential Energy Savings in BTU's/Day	BTU's Per Gallon of Gasoline	Potential Energy Savings in Gallons of Gasoline/Day
1,703,303.6	125,000	13,626
1,892,559.6		15,140
2,081,815.5		16,655
3,406,607.2		27,253
3,785,119.2		30,281
4,163,631.1		33,309

County Transportation Association of New Jersey

Public Transportation Is A Public Necessity And Has Become A Public Responsibility

Arthur L. Reuben
Chairman
Somerset County
Administration Bldg.
Somerville NJ 08876
201: 725-4700

RESOLUTION

WHEREAS, for almost a decade the State of New Jersey has been financially assisting a deteriorating bus service at costs that have been increasing by quantum leaps; and

Frank E. Tilley
Vice Chairman
Bergen County
Board of Transportation
29 Linden Street
Hackensack NJ 07601
201: 646-2855

WHEREAS, the present system of financially assisting private bus companies has proven unproductive both in route operations and in attracting ridership when compared with the rest of the country; and

John P. Hoschek
Secretary
Gloucester County
Transportation Program
N. Delsea Drive
Clayton NJ 08312
609: 881-1200

WHEREAS, there exists an urgency to conserve energy, reduce traffic congestion and traffic fatalities, improve the quality of life in the State of New Jersey, and in particular, in our urban areas; and

WHEREAS, there is a critical need for the State of New Jersey to exercise quality controls over the expenditure of government funds for transit;

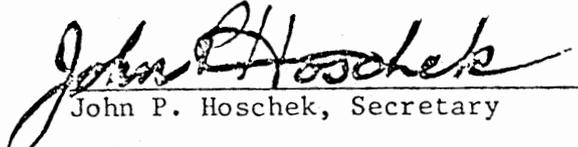
THEREFORE, BE IT RESOLVED, that the County Transportation Association of New Jersey endorses the major thrust of the "New Jersey Public Transportation Act of 1979" creating a public transit corporation, subject to the suggestions of the County Transportation Association of New Jersey, which will follow; and

BE IT FURTHER RESOLVED, that this legislation be amended to create an official Review Board, which may have subcommittees representing the various operating districts of the Corporation to be composed of a designee of the Governing Body of each county; and

BE IT FURTHER RESOLVED, that the Review Board shall have the obligation to preview and review the actions of the public transportation corporation; and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Commissioner of Transportation, all state Legislators, and the Governor.

Passed: Unanimous
March 15, 1979
Newark, N.J.


John P. Hoschek, Secretary

LABOR RELATIONS PROVISIONS TO BE ATTACHED TO
THE "NEW JERSEY PUBLIC TRANSPORTATION
ACT OF 1979" (S 3137, AS FILED ON 2/26/79)

New Sections

Section 13A [Policy With Respect to Protective Arrangements, Collective Bargaining and Labor Relations.]

It is the intent of this Act that:

(a) The Corporation shall insure that every employee of the Corporation and every employee of any other public or private entity providing public transportation services under this Act ("transportation agency") shall receive fair and equitable protection against actions of the Corporation which shall not be less than those established pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. Sec. 1609(c)), and Section 405(b) of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. Sec. 565(b)), and as prescribed by the United States Secretary of Labor thereunder, at the time of the protective agreement or arbitration decisions providing protection.

(b) Notwithstanding the provisions of any law to the contrary, there shall be no limitation on freedom of association among employees of the Corporation or transportation agency nor any denial of the right of employees to join or support a labor organization and to bargain collectively through representatives of their own choosing.

(c) The Corporation or transportation agency and the duly accredited representatives of employees shall have the obligation to bargain collectively in good faith, and the Corporation or transportation agency shall have the power and duty to enter into written collective bargaining agreements with such representatives.

Section 13B [Employee Protection.]

(a) The Corporation shall insure that every employee of the Corporation and of transportation agencies shall receive fair and equitable protection against actions of the Corporation which shall not be less than those established pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. Sec. 1609 (c)), and Section 405(b) of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. Sec. 565(b)), and as prescribed by the United States Secretary of Labor thereunder, at the time of the protective agreement or arbitration decision providing protection.

(b) The Corporation shall negotiate or arrange for the negotiation of such fair and equitable employee arrangements with the employees, through their accredited representatives authorized to act for them. If agreement cannot be reached on the terms of such protective arrangement, any party may submit any matter in dispute to arbitration. In such arbitration, each party shall have the right to select non-voting arbitration board members. The impartial arbitrator will be selected by the American Arbitration Association and appointed from a current listing of the membership of the National Academy of Arbitrators, upon request of any party. The impartial arbitrator's decision shall be final and binding on all parties. Each party shall pay an equal proportionate share of the impartial arbitrator's fees and expenses.

(c) For purposes of Sections 13A through 13G: "actions of the Corporation" include its acquisition and operation of public transportation facilities and services, the execution of purchase of service agreements and other

contracts made under this Act for the operation of public transportation facilities and services, whether competitively bid, or otherwise, and the coordination, reorganization, combining, leasing, merging of operations or the expansion or curtailment of public transportation service or facilities by the Corporation, but does not include a failure or refusal to enter into a purchase of service agreement or other contract.

Section 13C [Employee Pensions.]

The Corporation may establish and maintain systems of pensions and retirement benefits for such employees of the Corporation as may be ineligible for enrollment in the Public Employees' Retirement System; may fix the classifications therein; may take such steps as may be necessary to provide that persons eligible for admission to such pension systems as employees of the Corporation or of any transportation agency whose operations are financed in whole or in part by the Corporation, shall retain eligibility for admission to or continued coverage and participation under Title II of the federal Social Security Act, as amended, and the related provisions of the Federal Insurance Contributions Act, as amended, or the federal Railroad Retirement Act, as amended, and the related provisions of the Railroad Retirement Tax Act, as amended, as the case may be; and may provide in connection with such pension systems, a system of benefits payable to the beneficiaries and dependents of any participant in such pension systems after the death of such participant (whether accidental or otherwise, whether occurring in the actual performance of duty or otherwise, or both) subject to such exceptions, conditions, restrictions and

classifications as may be provided by the Corporation. Such pension systems shall be financed or funded by such means and in such manner as may be determined by the Corporation to be economically feasible.

Section 13D [Labor Contracts.]

(a) Notwithstanding the provisions of any law to the contrary, the Corporation shall deal with and enter into written contracts with employees of the Corporation, through accredited representatives of such employees authorized to act for such employees concerning wages, salaries, hours, working conditions, and pension or retirement provisions. Nothing in this Act shall be construed, however, to permit hours of labor in excess of those prohibited by law or to permit working conditions prohibited by law.

(b) Whenever the Corporation acquires the public transportation facilities of a transportation agency, either in proceeding by eminent domain or otherwise, and operates such facilities either directly or by contract with a transportation agency, all employees actively engaged in the operation thereof shall be transferred to, and appointed as employees of the Corporation or transportation agency, subject to all the rights and benefits of Sections 13A through 13G, and the Corporation or transportation agency shall assume and observe all applicable labor contracts and pension obligations. These employees shall be given seniority credit and sick leave, vacation, insurance, and pension credits in accordance with the records or labor agreements from the acquired transportation system. Members and beneficiaries of any pension or retirement system or other benefits established by the acquired transportation system shall continue to have rights, privileges, benefits,

obligations and status with respect to such established system. The Corporation or transportation agency shall assume the obligations of any transportation system acquired by it with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or retirement provisions for these employees. The Corporation or transportation agency and the employees, through their representatives for collective bargaining purposes, shall take whatever action may be necessary to have pension trust funds presently under the joint control of such acquired transportation system and the participating employees through their representatives transferred to the trust funds to be established, maintained, and administered jointly by the Corporation or transportation agency and the participating employees through their representatives.

(c) Whenever the Corporation shall take any of the actions specified in Section 13B, subsection (c), it shall do so only after meeting the requirements of Section 13B, subsection (b), and in addition, whenever the Corporation shall acquire and operate the public transportation facilities of a transportation agency engaged in the transportation of persons or freight by railroad, it shall do so only in such manner as to insure the continued applicability to the railroad employees affected thereby of the provisions of all federal statutes then applicable to them and a continuation of their existing collective bargaining agreements until the provisions of said agreements can be re-negotiated by representatives of the Corporation and the representatives of said employees duly designated as such pursuant to the terms and provisions of the Railway

Labor Act, as amended (45 U.S.C. 151 et seq.); provided, however, that nothing in this subsection shall prevent the abandonment of such facilities, or the discontinuance of such operations pursuant to applicable law, or the substitution of other operations or facilities for such operations or facilities, whether by merger, consolidation, coordination or otherwise. In the event new or supplemental operations or facilities are substituted therefor, the provisions of Section 13E shall be applicable, and all questions concerning the selection of forces to perform the work of such new or supplemental facilities or operations, and whether the Corporation shall be required to insure the continued applicability of the federal statutes applicable to such employees shall be negotiated and, if necessary, arbitrated, in accordance with the procedures set forth in Section 13E.

Section 13E [Labor Relations Procedures.]

(a) Whenever the Corporation proposes to operate or to enter into a contract to operate any new public transportation facility or service which may result in the displacement of employees or the rearrangement of the working forces of the Corporation or of any transportation agency, the Corporation shall give at least 90 days' written notice of such proposed operations to the representatives of the employees affected and the Corporation shall provide for the selection of forces to perform the work of that facility or service on the basis of agreement between the Corporation and the representatives of such employees. In the event of failure to agree, the dispute may be submitted by the Corporation or by any representative of the employees affected to final and binding arbitration by an impartial

arbitrator to be selected by the American Arbitration Association from a current listing of arbitrators of the National Academy of Arbitrators.

(b) In case of any labor dispute not otherwise governed by this Act, by the New Jersey Employer-Employee Relations Act, by the Labor Management Relations Act, as amended, the Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective agreement involving the Corporation or any transportation agency financed in whole or in part by the Corporation and the employees of the Corporation or of any such transportation agency, which is not settled by the parties thereto within 30 days from the date of commencement of negotiations, either party may request the assistance of a mediator appointed by either the State or Federal Mediation and Conciliation Service, who shall seek to resolve the dispute. In the event that the dispute is not resolved by mediation within a reasonable period, the mediator shall certify to the parties that an impasse exists. Upon receipt of the mediator's certification, any party to the dispute may, within 7 days, submit the dispute to a fact finder who shall be selected by the parties pursuant to the rules of the American Arbitration Association from a current listing of members of the National Academy of Arbitrators supplied by the AAA. The fact finder shall have the duty to hold hearings, or otherwise take evidence from the parties under such other arrangements as they may agree. Upon completion of the parties' submissions, the fact finder shall have the power to issue and make public findings and recommendations, or to refer the dispute back to the parties for such other

the parties do not reach agreement after the issuance of the fact finder's report and recommendations, or in cases where neither party requests fact finding, the Corporation or transportation agency shall offer to submit the dispute to arbitration by a board composed of 3 persons, one appointed by the Corporation or transportation agency, one appointed by the labor organization representing the employees, and a third member to be agreed upon by the labor organization and the Corporation or transportation agency. The member agreed upon by the labor organization and the Corporation or transportation agency shall act as chairman of the board. The determination of the majority of the board of arbitration thus established shall be final and binding on all matters in dispute; all contract conditions shall remain undisturbed and there shall be no lockouts, strikes, walkouts, or interference with or interruption of service during the arbitration proceeding. If, after a period of 10 days from the date of the appointment of the two arbitrators representing the Corporation or transportation agency and the labor organization, the third arbitrator has not been selected, then either arbitrator may request the American Arbitration Association to furnish from a current listing of the membership of the National Academy of Arbitrators the names of 7 such members of the National Academy from which the third arbitrator shall be selected. The arbitrators appointed by the Corporation or transportation agency and the labor organization, promptly after the receipt of such list, shall determine by lot the order of elimination, and thereafter each shall in that order alternately eliminate one name until only one name remains. The remaining person on the list shall be the third arbitrator. The term "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries,

hours, working conditions, or benefits, including health and welfare, sick leave, insurance, or pension or retirement provisions, but not limited thereto, and including any controversy concerning any differences or questions that may arise between the parties including but not limited to the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, and the interpretation or application of such collective bargaining agreements, any representation disputes, and any grievance that may arise. Each party shall pay one-half of the expenses of such arbitration.

Section 13F [Employee Protection Costs.]

The Corporation shall assume all costs of rights, benefits and protective conditions to which any employee is entitled under this Act from any transportation agency in the event of the inability of the transportation agency to meet its obligations in relation thereto due to bankruptcy or insolvency, provided that the Corporation shall retain the right to proceed against the bankrupt or insolvent transportation agency or its successors, trustees, assigns or debtors for the costs assumed. The Corporation may mitigate its liability under this Section and under Section 13B to the extent of employment and employment benefits which it tenders.

Section 13G [Representation Questions.]

Any question of representation not otherwise governed by this Act, the New Jersey Employer-Employee Relations Act, the Labor-Management Relations Act, as amended, or the Railway Labor Act, as amended, involving employees of the Corporation or employees of any transportation agency whose operations are financed in whole or in part by the Corporation, may be submitted by any labor organization

claiming to represent such employees in an appropriate unit, or by the employer to whom such a claim has been made to an impartial arbitrator to be selected by the American Arbitration Association and appointed from a current listing of the membership of the National Academy of Arbitrators, upon request of either party. Any previously existing representation of the employees involved in any existing bargaining unit shall remain in full force and effect and shall be binding upon the Corporation or other employer of the employees involved until such question of representation is resolved. In resolving any question which may arise with respect to whether a majority of the employees in an appropriate unit or units desire to be represented by a labor organization, the arbitrator shall promptly hold a public hearing after due notice to all interested parties and shall thereupon determine any and all issues which have been duly raised and presented at such hearings in regard to such claim, and if it is established by the arbitrator that a question of representation exists in a unit or units appropriate for collective bargaining, he shall provide for the conduct of a secret ballot election to determine the question of representation and shall certify the results of the election to the parties. In deciding any questions in regard to the representation proceeding, including the determination of the appropriate unit or units, the adequacy of the representation claim, the conduct of hearings and elections, the arbitrator shall apply and be guided by the relevant federal law and administrative practices developed under the Labor-Management Relations Act, as amended, to the extent that such law and practices

are consistent with this section, other state and local laws which may be applicable, and with any prior history of collective bargaining and representation of the employees involved. Any certification by the arbitrator of a labor organization to represent or act for the employees in any collective bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation within such collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later; provided that no collective bargaining agreement shall be construed to be a bar to a representation proceeding for a period of more than three (3) years.

STATEMENT BY THE NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PROTECTION BEFORE THE
SENATE COMMITTEE ON TRANSPORTATION
AND COMMUNICATIONS

Good morning. My name is George Tyler, Director of the Division of Environmental Quality. I am here representing the Department of Environmental Protection. S-3137, before you today, is one of the most significant pieces of legislation to be considered in many years. Its objective - the establishment and operation of a coherent, effective and efficient public transportation system for New Jersey - presents a unique opportunity to deal with New Jersey's transportation, energy and environmental quality needs simultaneously.

In the years to come, the 1970's will be seen as a decade during which events forced a re-evaluation of long-held assumptions about the American way of life. If we are successful in preserving the quality of life we have enjoyed, it will be because today's leaders responded vigorously and responsibly to the challenges of this decade. It is critical that we become fully aware of the consequences of our actions in the areas of environmental quality and in the conservation of precious natural resources. New Jersey has long been one of the leaders in responding to the challenges that we, as a nation, are facing. But no one would dispute the fact that choices, when made, have been difficult and that the way has not always been clear.

One challenge for our state and for the nation (which has been made abundantly clear by current events) is the need to re-think our basic assumptions concerning transportation. It is clear that excessive reliance on the private automobile as the primary means of transportation cannot go unchecked. S-3137 is a positive response to this challenge. It presents an opportunity to help prepare New Jersey for the future in a sensible way.

No one would seriously argue that public transportation in New Jersey today provides an attractive alternative to the use of private cars. The statistics bear this out. While the rest of the nation has experienced an 11% increase in bus ridership since 1970, here in New Jersey 41% of the people who used motorbus transportation in 1970 have since abandoned it - or, rather, it has abandoned them. Under these circumstances, it is plain that failure to provide an attractive alternative to private transportation will reduce government exhortations to "leave the car at home" to mere rhetoric.

This is a position we simply cannot afford from an environmental viewpoint.

The federal Clean Air Act, as amended in August, 1977, calls for each state to develop and implement a plan to assure that the air we breathe is clean and that it meets all health standards.

In New Jersey, carbon monoxide and photochemical oxidants, which are related primarily to motor vehicle use, remain as our toughest air pollution problems.

We have made significant progress in the area but more is needed. For example, carbon monoxide emissions have been cut by 40% since the beginning of New Jersey's auto pollution inspection program in 1974. But monitors in 18 cities still indicate that routine violations of the health standard for CO are occurring. Moreover, we have estimated that violations of this health standard would be measured in 76 other cities as well if the air there were monitored for CO.

Federal mandates for cleaner exhaust pipes alone cannot be expected to do the job for us. They are only part of the answer. With an average of 125 cars per mile, New Jersey has more cars for every mile of road than any other state in the Union. The only way we can assure that air quality will improve is to use our cars less often.

We are committed to achieving this goal through voluntary action and through the cooperation of everyone affected, and not by restrictive regulations. We have already formulated plans to decrease reliance on cars with the help and advice of local government, the New Jersey Chamber of Commerce, the New Jersey Business and Industry Association, and a number of labor unions. My Department is participating in an interagency task force for the purpose of coordinating state government's response to the problem. And we seem to be getting results. Responsible business and labor leaders have acknowledged the seriousness of the problem and are helping to devise ride-sharing, van-pooling and other plans to reduce reliance upon private transportation. Just recently, plans have been co-finalized to send out letters to some 8,000 manufacturers and businesses in New Jersey by the State Chamber of Commerce or the Business and Industry Association requesting their membership's cooperation in a voluntary effort to reduce the use of private automobiles. We expect results from this approach and we expect that they will be substantial - but we cannot afford to sit back and hope for the best. Failure to ensure reasonable progress toward attainment of air quality standards, or failure to maintain those standards after they are met, will have very serious economic consequences for the state. Where states fail to act to control air pollution, the federal Environmental Protection Agency is authorized to prohibit the construction of new sources of air pollution, EPA can also act to cut off highway construction funds in such cases. More important, of course, are the health hazards to which our citizens will be exposed; if air pollution standards are not met.

An effective, extensive and economical mass transportation system must be an integral part of any plan designed to meet our air quality goals. Merely by recapturing the riders who have abandoned the bus transit system since 1970, we have estimated that about 6,000 tons/year of hydrocarbon emissions would be

prevented from entering the atmosphere, that 50,000 tons/year of carbon monoxide pollution would be eliminated, and that 3,500 tons/year less oxides of nitrogen would be emitted. There is no question that these are significant reductions which are needed to protect our physical and our economic health. We believe that S-3137 will lay the groundwork for creating the kind of mass transportation system that can produce these results.

Up to now, I have been talking about the potential beneficial effects that a rational transportation management system would have, even if our present state of affairs was to remain static for some time. But we know that dynamic changes are occurring in New Jersey and will continue to occur whether we prepare ourselves to deal with them or not. Our transportation system must be capable of responding quickly if we are to avoid waste and encourage rational growth. The impetus for growth in areas like the Hackensack Meadowlands or in Atlantic City will continue for a time despite the lack of comprehensive public transportation facilities. But the lack of sound public transportation will eventually choke off that growth. In the meantime, we cannot continue to create air pollution problems and then use unpopular stop gap measures to correct them after the fact. Our present transportation management system simply does not provide the kind of flexibility or overall planning capability we need to cope with our rapidly shifting patterns of growth.

Finally, let us consider our need to conserve our natural resources and preserve our cities. Conserving resources includes not only petroleum products, but other precious resources such as open space and green areas. The need to reduce gasoline use is obvious today. Mass transportation improvement is the single most important step that state government can take to meet that need.

Furthermore, The effective statewide transportation planning that this bill can provide is essential if we hope to end the erosion of our cities and the resulting inefficient land use patterns which follow. Planners today support the concept of urban "infilling" or the "recycling" of our cities and their environs to receive the fullest benefit from the assets we already have. But in many areas where continued planned development is needed, plans are threatened by ever-increasing traffic density caused by excessive reliance on private transportation. Thus, new development tends to string out farther from the existing urban infrastructure. The resulting costs in capital expenditure to duplicate that infrastructure are great and the costs in terms of the steady and unnecessary erosion of green and open spaces for future generations are greater. Responsive public transportation planning can help to alleviate this problem.

Certainly, S-3137 is not a panacea for the resolution of all the issues I have been discussing. Passage of the bill will not make these problems go away overnight. Alternatives to the approach to public transportation management we have before us

may exist somewhere. But these facts are clear. First, public transportation as it now exists in New Jersey is not the answer. Citizens are receiving poor service, with dilapidated equipment that goes to too few places too slowly and they pay millions in subsidies to boot. Secondly, publicly owned mass transportation is the basic format which is used in every other major urban area of the United States, with the exception of New Orleans. Finally, we believe that this bill represents an approach whose time has come in New Jersey, an approach we believe will be more responsive to the issues of environmental quality and conservation of natural resources we have outlined above.

I believe S-3137 should be enacted into law.

Thank you very much.

11/2/80

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STATEMENT OF FRANK B. REILLY, JR.
ON BEHALF OF THE
ASSOCIATION OF MANAGEMENT
EMPLOYEES OF
TRANSPORT OF NEW JERSEY
BEFORE THE
COMMITTEE ON TRANSPORTATION AND COMMUNICATIONS
STATE OF NEW JERSEY SENATE

March 28, 1979

STATEMENT OF FRANK B. REILLY, JR.
ASSOCIATION OF MANAGEMENT EMPLOYEES
OF TRANSPORT OF NEW JERSEY

My name is Frank B. Reilly, Jr. I am a member of the Somerville, New Jersey law firm of Ozzard, Rizzolo, Klein, Mauro & Savo, and I represent the Association of Management Employees of Transport of New Jersey (hereinafter referred to as the "Association").

The Association is a voluntary membership organization comprised of approximately 220 of the total 250 nonunion management, professional, and clerical employees of Transport of New Jersey (hereinafter referred to as "TNJ") and a majority of the 240 total retired nonunion employees of TNJ who are presently receiving pension benefits under the Pension Plan of Transport of New Jersey For Nonunion Employees (hereinafter referred to as the "Plan").

The Association was organized on an ad hoc basis in response to a lack of adequate protection in S3137 for employee pension and welfare benefits presently made

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available or promised by TNJ. For the Committee's information purposes, active employee members in the Association represent the entire cross section of management of TNJ and have on the average 20-25 years of service with TNJ or its predecessors. Retired members had on the average 25-30 years of service at the time of their retirement from TNJ. These individuals have invested their careers in the service of TNJ and its predecessors in return for promised pension and welfare benefits upon their retirement. It is the position of the Association that S3137 does not adequately protect the financial integrity of this commitment of retirement benefits but rather reduces each member's right to benefits to an illusory and empty promise without certain basic minimum standards and protective measures guaranteed by law.

We would like to emphatically state that the position of the Association with respect to S3137 represents the collective view of individual management employees and retirees of TNJ. Our position does not in any manner whatsoever represent the position of TNJ nor should it be so construed. Further, the Association has not taken a position concerning the concept of public ownership and operation of public transportation systems as contemplated by the S3137. However, to the extent a public takeover of TNJ will endanger promised pension and welfare benefits

or otherwise endanger the interests of the members of the Association, we strongly oppose this measure.

Summary of Association Position

A. Section 12(a) of S3137 does not adequately address the obligation of the proposed New Jersey Transit Corporation (hereinafter referred to as the "Corporation") and TNJ and its parent, Public Service Electric and Gas Company (hereinafter referred to as "PSE&G") to fund and guarantee payment of pensions and accrued benefits under the Plan as of the date of a public takeover of TNJ. The bill should clearly set forth that a substantial liability exists under the Plan for unfunded accrued benefits and that this liability shall be fully guaranteed to the satisfaction and all affected employees prior to the approval of a public takeover.

B. The approach taken by S3137 concerning a public takeover of TNJ raises many fundamental legal and constitutional issues which should be fully considered and resolved prior to further consideration of legislation on this subject. These issues include continued employee rights under the Employee Retirement Income Security Act of 1974 subsequent

to a public takeover of TNJ with respect to accrued benefits under the Plan; constitutional limitations upon an infringement of these rights by state legislation and the ability of the Corporation to adequately extend a financial guarantee for unfunded accrued benefits; the extent and efficacy of the guarantee of PES&G for unfunded accrued benefits under the Plan; the adequacy of Federal guarantees for vested accrued benefits under the Plan; the availability of legal remedies to supplement these guarantees; and the possible legal implications to the Plan, TNJ, PSE&G, and members of the Association which will depend upon the steps taken concerning accrued benefits under the Plan in the context of a public takeover of TNJ.

C. Sections 13 and 73(d) of S3137 do not clearly define the rights of members of the Association concerning standards for eligibility, retirement benefits, and rate of employee contributions under the Public Employees Retirement System, nor does it guarantee parity of benefits in comparison with the existing Plan.

D. S3137 does not in any manner whatsoever address protection of existing welfare benefits presently made available to members of the Association by TNJ nor eligibility under the State Health Benefits Program subsequent to

a public takeover.

E. S3137 does not in any manner whatsoever require that fair and equitable arrangements be made concerning the protection of the interests of members of the Association upon a public takeover of TNJ as required by Section 13(c) of the Federal Urban Mass Transportation Act of 1964.

F. In view of the importance of S3137 upon existing rights of the members of the Association, it is imperative that these issues be fully considered and resolved in public hearings prior to further legislative consideration of S3137.

I. Guarantee of Unfunded Liabilities for
Accrued Benefits Under the Plan

The Annual Report of the Plan for Plan Year ended February 28, 1978 discloses the following concerning participants under the Plan:

100% Vested	226
Partially Vested	-0-
Nonvested Employees	33
Retired, separated, or deceased participants whose benefits are 100% Vested	<u>279</u>
TOTAL PARTICIPANTS	<u>538</u> ¹

The actuary for the Plan reported that the present value of all benefits provided by the Plan for Plan Year beginning March 1, 1977 was \$15,488,600.00.² The present value of vested benefits was reported to be \$11,658,000.00. The fair market value of Plan assets for this period was reported by the Plan's auditors to be \$377,300.00.³ Based upon the foregoing, the Plan actuary reported an unfunded past service liability of \$13,381,900.00.

Prior to the enactment of the Employee Retirement Income Security Act of 1974 (hereinafter referred to as "ERISA") employers were not required by law or as a condition for deductibility of contributions to a plan for tax purposes to amortize unfunded accrued liabilities under a pension plan. Effective March 1, 1976, the Plan was required as a matter of Federal law to amortize its unfunded past-service liability as of this date (\$13,584,400.00) over a period of 40 years. This requirement is currently being satisfied in connection with the minimum funding standards imposed by ERISA.⁴

As the result of Congressional and governmental investigation of pension plan terminations resulting from plant closings, mergers, and discontinuance of plans, and the devastating effect thereof on lost pension benefits⁵,

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a Federally administered insurance system was enacted to provide guaranteed pension benefits upon the termination of a pension plan. This system is administered by the Pension Benefit Guaranty Corporation (P.B.G.C.), and is presently financed in part by mandatory insurance premiums paid by private employers maintaining covered pension plans. As a general rule, the P.B.G.C. will insure certain guaranteed benefits upon the termination of a plan to the extent plan assets are insufficient to cover these benefits. Under these circumstances, the employer maintaining the plan would be liable to the P.B.G.C. for the amount of the deficiency up to a maximum of 30% of the net worth of the employer. An employer for purposes of these rules include certain corporations under common control.⁶ This is intended to preclude corporate arrangements such as the isolation of an underfunded plan in a wholly owned subsidiary to avoid contingent employer liability upon a plan termination. Further, detailed procedures and contingent employer liability rules are set forth for acquiring employers in mergers, consolidations, liquidations, and other types of corporate reorganizations.⁷ These provisions supplement basic guarantees for preservation of accrued benefits upon the merger of plans in an acquisition and are intended to protect plan terminations subsequent to an acquisition.⁸ Employer liability upon an asset

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sale where the successor employer assumes the provisions of a plan is not clearly covered by ERISA, although the P.B.G.C. has administratively set forth rules governing this type of situation to preclude abuses.⁹

Based upon the above criteria, it is clear that members of the Association have certain guaranteed benefits as a matter of Federal law in the event of a termination of the Plan. It is also clear that in the event of a public takeover of TNJ, and absent an assumption of this liability by a successor employer and a sufficiency of plan assets to cover guaranteed benefits, TNJ and PSE&G would remain liable upon a termination of the Plan subsequent to a takeover for any deficiency in plan assets after payment of guaranteed benefits. Since plans maintained by state governments are expressly exempted from all requirements of ERISA, the assumption of the plan and its liabilities by the Corporation in theory could eliminate the Federal protection now provided as a matter of right to the members of the Association concerning benefits accrued prior to a takeover. This, however, would not in our view be consistent with the clear purpose and intent of ERISA in that the Corporation's ability to service a debt of this magnitude is questionable and the plan assets presently in the Plan are grossly insufficient to cover guaranteed benefits.

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Therefore, full compliance with existing Federal law, and enforcement thereof by applicable Federal agencies, would in our view mandate continued employer liability upon TNJ and PSE&G in the event of a public takeover of TNJ.

The above Federal guarantee of benefits is supplemented by a basic prohibition against forfeiture of vested benefits mandated by ERISA and by certain common law rights with respect to vested accrued benefits under the Plan. Paramount to this consideration is the rights of members of the Association under the 1972 Agreement between TNJ and PSE&G concerning the latter's assumption of the then \$76,000,000.00 unfunded past-service liability under all TNJ pension plans, including the plan under discussion. The provisions of this agreement are a matter of public record and their implication in connection with the Federal guarantees discussed herein must be considered in depth prior to further legislative action on S3137. Further, it would appear that under basic principles of contract law the prior approval of all members of the Association as beneficiaries of the Plan and the 1972 agreement are required before this issue may be resolved legislatively or in the negotiation process of a public takeover.

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The approach taken in S3137 concerning this issue is an attempt to either avoid the issue or leave the matter to the negotiations involved in the acquisition process. We submit that this approach totally ignores the basic rights of those persons who may be adversely affected by a public takeover, namely the management employees and retirees of TNJ. Hindsight has shown where legislative inadvertance has produced protracted litigation and unfortunate results to plan participants in a public transit takeover involving pension benefits.¹⁰ Therefore, the obligation of the Corporation, TNJ and PSE&G to fund and guarantee the payment of pensions and accrued benefits under the Plan as of the date of a public takeover of TNJ should be carefully examined in further public hearings with full participation by all affected Plan participants.

II. Legal and Constitutional Issues

As hereinbefore discussed, the Plan is presently subject to ERISA which confers certain Federal rights upon Plan participants and imposes minimum Federal standards concerning the operation of the Plan and the obligations of TNJ and PSE&G with respect thereto. The purpose of ERISA is to protect promised retirement benefits by requiring standards of participation, vesting, funding, fiduciary and disclosure obligations and plan termination insurance. All members of the Association, as participants under

the Plan, presently enjoy these protections. However, to the extent the Plan is assumed by the Corporation, it becomes a governmental plan and as such, may be exempt from the minimum standards imposed by ERISA. Accordingly, Plan participants should be entitled to similar protections under S3137 as they presently enjoy under Federal law. Failure to provide these rights under a state statute which authorizes a state agency to assume an ERISA covered plan may raise serious legal and constitutional questions concerning the forfeited rights of plan participants.

Section 15 of S3137 sets forth a disclaimer concerning debts of the Corporation as being a debt or obligation of the State of New Jersey. This provision is important in consideration of the ability of the Corporation to guarantee accrued benefits under the Plan in the event of a public takeover. Constitutionally, the Corporation would be precluded, notwithstanding the disclaimer, from assuming this liability.¹¹ This, of course, presupposes that at the time of the takeover the Corporation was willing to assume and service this debt.

The legal issues concerning the obligation of TNJ and PSE&G concerning accrued benefits under the Plan has

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heretofore been briefly discussed. It should be emphasized, however, that the formalities of the acquisition of TNJ and the procedure concerning the structure of a new pension program for affected Plan participants will determine in large part the timing concerning the recognition of this liability, the triggering of the plan termination insurance sanctions by the P.B.G.C. and the legal remedies available to Plan participants. For example, after a full public hearing on this issue it may be possible, if certain guarantees are present, to avoid a plan termination under existing P.B.G.C. rules while at the same time "freeze" the Plan and adequately protect Plan participants. This approach coupled with immediate eligibility under the Public Employees Retirement System as explained hereinafter may offer the most practical solution to all concerned. However, before this may be accomplished, legislation on this subject should be deferred until all applicable issues are publicly considered and all relevant data is evaluated. Failure to follow this approach would certainly result in impaired rights to Plan participants and unnecessary and protracted legal proceedings.

III. Eligibility for the Public Employees Retirement System

Sections 13 and 73(d) of S3137 provide that salaried employees of the Corporation shall be enrolled in the

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Public Employees Retirement System(PERS). Unfortunately, the bill leaves open many unanswered questions concerning the administration of PERS as applied to members of the Association. These questions include prior service with TNJ for purposes of vesting, ability to make up contributory payments, parity of benefits, years of service to be included for purposes of accruing benefits, and portability with respect to vested benefits under the Plan in the event it is deemed terminated upon the public takeover of TNJ. We respectfully submit that proper guarantees for accrued benefits under the Plan as of the date of a public takeover coupled with immediate eligibility, full vesting, and benefit accruals for service subsequent to the takeover under PERS may prove to be a fair and equitable solution to this problem. However, caution must be exercised in conjunction with a complete public review of this issue prior to a final recommendation.

IV. Employee Welfare Benefits

Active employees and retirees of TNJ are presently entitled to various benefits under a welfare benefits plan which is representative with most private employer plans. S3137 does not address eligibility of employees of the Corporation for this type of program. These benefits are equally as important as accrued pension benefits and

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detailed eligibility and benefit standards should be contained in the bill. Consideration of this issue should include parity with benefits heretofore available to members of the Association. Under no circumstances should these benefits be curtailed or rights of members of the Association to the same impaired.

V. Section 13(c) of the Federal Urban Mass Transportation Act of 1964

S3137 does not contain a direction concerning fair and equitable arrangements to be made concerning the protection of interests of members of the Association. This requirement is intended to be worker protective and applies to all employees of TNJ. Failure to include proper Section 13(c) protections to members of the Association will preclude Federal funding for a public takeover of TNJ and more importantly would leave an opportunity for impairment of pension and welfare benefits and assurances of employment. In connection with the latter, one of the objectives of S3137 is to obtain experienced and qualified managers to assist the Corporation in the operation of a statewide public transportation system. To achieve this stated purpose and to preserve the pool of experienced managers

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for the public benefit, a clear and definitive assurance of employment must be set forth in any legislation on this subject. Further, it is our understanding that the Department of Labor will refrain from making the necessary determination of compliance with Section 13(c) in the event nonunion employees are excluded from the required Section 13(c) protective arrangements. Accordingly, any attempt to parallel the approach taken by the legislation authorizing Mercer County Metro (N.J.S.A. 40:37A-94) will be vigorously and strongly opposed by the members of the Association.

VI. Legislative Review and Analysis of Problems

It appears from our review of the applicable published reports of the New Jersey Department of Transportation that none of the issues discussed herein were the subject of an in-depth review and analysis prior to the introduction of S3137. It is submitted that these issues are of grave importance and concern to the members of the Association as well as to the general public. It is also submitted that these issues should be carefully evaluated in detail by the Committee prior to any further legislative consideration of S3137. In this respect, we request the Committee to

allow the Association the opportunity to provide additional information and data on this subject and also to participate fully with the Committee, its staff, and all other parties interested in this matter before further action is taken on S3137. Adequate preservation of basic benefits attributable to substantial years of service with TNJ would in our view justify the opportunity and right to assist the Committee in further deliberations and a possible solution to a rather complicated matter.

On behalf of each member of the Association we would like to thank the Chairman and each member of the Committee for the opportunity to present our views.

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Page 17 (FOOTNOTES)

- 1 Form 5500. This report is part of the reporting and disclosure obligations of an employer as required by Section 103 of the Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829 (1974) (29 U.S.C. 1023).
- 2 Certificate of Actuarial Valuation, Martin E. Segal Company, dated June 21, 1977.
- 3 Opinion of Touche Ross & Co., dated June 9, 1978.
- 4 Section 302.
- 5 Department of Treasury and Department of Labor Study of Pension Plan Terminations--1972--Final Report--August, 1973; Hearings on Private Pension Plans before the Subcommittee on Fiscal Policy of the Joint Committee, 89th Cong. 2nd Session.
- 6 ERISA, Section 4001 But cf., Pension Benefit Guaranty Corporation v. Ouimet Corporation, et al., Masters Report submitted to United States District Court, District of Massachusetts, No. 76-1314-T (May 13, 1977). On the constitutional argument concerning the prohibition against forfeiture of vested benefits in relation to an employer's disclaimer of liability, See Nachman Corp. v. Pension Benefit Guaranty Corporation and International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, Nos. 77-2146 and 77-2147, (7th Cir. January 23, 1979).
- 7 ERISA, Section 4062(d).
- 8 ERISA Section 208.
- 9 P.B.G.C. Opinion Letters 78-29 and 78-9.
- 10 Rose City Transit Co. v. Portland, 525 P2d 1325 (9th Cir., 1974).
- 11 New Jersey Constitution, Article 8, Para. 3.

