Assemblywoman Alison Littell McHose
District 24, Sussex-Morris-Hunterdon
13 Main Street, Suite 8
Sparta, New Jersey 07871
973-726-0954

Statement from Assemblywoman Alison Littell McHose to the Assembly Transportation and Public Works Committee regarding A-3686, Prohibits foreign ownership of certain transportation infrastructure
February 26, 2007

First of all I want to thank Chairman Wisniewski and Vice Chair Stender for having this discussion today on the privatization of the Turnpike and for discussing my bill, A-3686.

Today, I urge my colleagues on both sides of the aisle to support this legislation that would prohibit the sale or lease of certain New Jersey transportation structures to foreign entities.

A-3686, is vital to the security of the state and nation. Senator Lesniak without a doubt has worked tirelessly on this issue and I credit him for his due diligence. However, his legislation does not address the issue of foreign ownership of the state's transportation infrastructure. As a result, it is very possible the state's highways may be sold or leased to foreign interests.

Almost a year ago, and yes with some debate due to the partisan tone of the original language in the resolution and rhetoric, the Assembly voted in a bi-partisan fashion to oppose the sale of major U.S. ports to Dubai Ports World, a subsidiary of the United Arab Emirates, with Assembly Resolution 138. In fact, members of the Transportation Committee were proud sponsors of that resolution and I applaud Vice Chair Stender and Assemblyman Prieto for their hard work to get the resolution passed. I ask that we work in the same bi-partisan manner concerning our transportation assets. Homeland Security is not a Democrat issue. Homeland Security is not a Republican issue. Safety and security is an issue that affects every New Jerseyan.

Senator Lesniak's legislation leaves too much to chance. It leaves the door wide open for the selling or leasing of our state's roads and other projects to questionable foreign interests. But as far as I'm concerned, our state and nation's security is not for sale or lease. Not now, not ever.

My legislation, A-3686, would prohibit the state or any official acting on behalf of the state from entering into a contract or private agreement for the sale, lease or operation of the state highway system with a foreign entity. It also would prohibit the New Jersey Turnpike Authority and the South Jersey Transportation Authority from selling or leasing the New Jersey Turnpike, Garden State Parkway and Atlantic City Parkway, including management of tolls or other revenue, to a foreign country or corporation.

Because of our proximity to New York, Philadelphia and Washington, D.C., we are constantly reminded of the threats posed to our nation and our state by foreign countries that harbor and aid terrorists. Let's use some common sense here. Let's move forward employing the lessons we have learned from the Dubai port incident. I strongly encourage my fellow legislators to support this bill as it is in the best interests of our residents, our state and our nation.

UTCA UTILITY and TRANSPORTATION CONTRACTORS ASSOCIATION UTCA

Testimony of Robert A. Briant, Jr., CEO
Assembly Transportation Committee
February 26, 2007

Chairman Wisniewski, Members of the Assembly Transportation Committee, thank you for allowing me the opportunity to extend some brief remarks about the critical issue the panel is reviewing today. I am Robert A. Briant, Jr. CEO of the Utility and Transportation Contractors Association of New Jersey (UTCA/NJ). Our organization currently numbers 1,100 firms active in all phases of transportation, infrastructure, and environmental remediation construction throughout the state. Many of our members work as contractors on both DOT and State Authority projects, including the New Jersey Turnpike, the Garden State Parkway, NJ Transit, the Port Authority of New York and New Jersey, and on many local and county road and bridge projects. UTCA firms are New Jersey businesses employing approximately 110,000 trades-people, professionals and support staff.

Let me begin my testimony by stating that UTCA supports Governor Corzine's efforts to reduce the State's structural deficit and to provide for budgets that match recurring revenues to expenditures. UTCA also agrees with our Governor that the best way to overcome the fiscal difficulties that New Jersey faces is to grow our economy. Improving our transportation infrastructure is a major component of any economic recovery plan, and UTCA appreciates that the Governor recognizes this factor as well.

However, as an Association that focuses on our State's transportation and infrastructure assets, UTCA reminds our legislative leaders that the State's aging transportation infrastructure has numerous and expensive structural needs and that the funding system used to pay for transportation improvements faces serious fiscal challenges.

A recent U.S. DOT report on spending strategies found that only 46 percent of the state's highway system is in an "acceptable condition." Further, a recent federal ranking of road conditions found New Jersey roads be the 7th worst in the country, while the State's bridges are the 8th worst in the nation.

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These needs grow every year with the increased volume of vehicles using our state's roads and bridges. Meeting this increased demand with an adequate transportation infrastructure system is not only an issue of cost, but one of ensuring safety for the motoring public and the economic vitality of the State.

On the fiscal side, as it stands today, the TTF debt is approximately $8 billion. Under the current program, that amount is expected to reach approximately $15 to $16 billion by 2011. The current debt for the NJ Turnpike and Garden State Parkway is approximately $7 billion. The figures speak for themselves.

Unfortunately, there are limited options as to how the State can pay for both the debt payments and the critically needed transportation infrastructure improvements. Some have suggested cuts in government spending, but realistically it is probably impossible to cut $15 billion from the State Budget. Chairman Wisniewski and others have suggested an increase in the gas tax. This is an option that UTCA fully supports, and the Association stands ready and willing to assist the Chairman in an effort to move a gas tax proposal through the Legislature. We would point out that the gas tax would need to be raised approximately .30 cents in order to pay off the current TTF debt and to provide for a working capital program. Unfortunately, to date, there has been no political will to address this matter.

Finally, we come to asset monetization, a proposal that Governor Corzine has suggested as a way to alleviate the State's tremendous debt problems and to provide funding for capital programs.

Though our Association shares the Governor's concerns regarding the fiscal situation our State faces, at first glance, UTCA has concerns with the concept of leasing the NJ Turnpike and other state toll roads to a private entity. We recognize that no proposal has been formally introduced by the Governor and under the current situation where raising user fees such as tolls or the motor fuels tax is an option that has not been embraced by our elected officials, our organization believes that it is prudent to reserve our judgment relative to the final details concerning a potential NJ Turnpike lease. In the absence of a lease proposal, UTCA wishes to go on record that our organization would oppose any proposal that does not address the following concerns:

1) If a private entity takes control of the NJ Turnpike, there is no guarantee that the company would continue to publicly bid construction projects to the "lowest responsible bidder," as the current bidding statutes dictate. This

causes great concern amongst our members. In our review of the other public entities that have utilized this model, they have contracted with large corporations which employ their own construction divisions. If such a scenario were used in New Jersey, our members would most likely be relegated to being subcontractors to a multi-national construction company, and the benefits of the State's "low bid" process would be lost to the toll payers.

2) Based on the Indiana model, UTCA is concerned whether the private entity would continue the NJ Turnpike's 10-year construction program and maintain the current level of annual construction funding for the remainder of the lease-term, including adjustments for annual construction inflation. In Indiana, there was an acknowledgement by State transportation officials that within the next 5-6 years the money set-aside for transportation improvements will be expended!!!

3) There is a concern that the NJ Turnpike, under a private entity, may not maintain the current requirement that the New Jersey Prevailing Wage Law continue to be applied to all construction and maintenance projects. Both the contracting and labor communities fully support continuing the protections provided by the State's Prevailing Wage law for our working men and women who labor on these infrastructure improvements.

4) UTCA would have great concern about leasing the state's most valuable transportation asset (as in the case of the NJ Turnpike) and using the proceeds from that lease for non-transportation purposes, especially when considering the fiscal viability of the State's Transportation Trust Fund under the current program.

If a decision is made to borrow against NJ Turnpike revenues, UTCA believes it would be in the State's best interest to have the existing NJ Turnpike Authority be the entity to securitize the tolls. If such a scenario was employed, we suggest coupling the proposal with an increase in the gas tax and include an annual increase at the rate of the CPI. The proceeds from these proposals should be used expressly for transportation purposes. Using these proceeds to pay down the TTF debt and relying on the constitutionally dedicated revenues, (after paying off the Turnpike and Parkway debt) would allow the state to reestablish a viable transportation spending program that meets those critical needs. Additionally, paying down the TTF debt falls in line with Governor Corzine's mandate to reduce the State's debt load.

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However, if the Governor intends to monetize the NJ Turnpike tolls through a lease to a private entity, UTCA is committed to requiring all of the following conditions:

1) All assets realized from the NJ Turnpike lease must go to retiring the entire TTF and NJ Turnpike/Parkway debt.

2) All NJ Turnpike construction and maintenance projects continue to be publicly bid and awarded to the "lowest responsible bidder" under the same bidding statutes currently stipulated by the NJ Turnpike Authority.

3) Maintaining the current requirement that the New Jersey Prevailing Wage Law is applicable to all construction and maintenance projects.

4) Fund the NJ Turnpike's 10-year construction program and maintain the current level of annual construction funding for the remainder of the lease, including adjustments for annual construction inflation.

5) Allow the current NJ Turnpike staff to plan and administer the NJ Turnpike construction and maintenance program.

Again, we remind our governmental representatives that the State's critical transportation infrastructure needs and the serious fiscal problems our transportation funding program faces in the immediate future should significantly factor into any discussion centered on State debt and the ability to pay for future State capital requirements. We reiterate our willingness to partner with our leaders on a proposal to increase the gas tax. We recognize that the Governor is exploring numerous options that may or may not include leasing the Turnpike to a private entity and that we must see what the proposal is before the Association takes its formal position. But we ask that the Administration and Legislature to measure the impact of leasing the NJ Turnpike to a private entity on New Jersey's transportation construction industry which is a vibrant sector of the State's economy. We respectfully request that the UTCA be included in any discussions when it comes to deciding this major policy change. And we ask that any proposal of this magnitude is not made at the eleventh hour.

Thank you once again for allowing me the opportunity to speak. I'd be happy to answer any questions the Committee may have.

UTILITY and TRANSPORTATION CONTRACTORS ASSOCIATION

Memorandum

To: Assemblyman John Wisniewski, Chairman
Members of the Assembly Transportation Committee

From: Robert A. Briant, Jr., CEO
Doug Hritz, Director, Legislative/Regulatory Affairs

Date: February 26, 2007

Re: **Please Support A-3649 (Wisniewski)**

UTCA, an Association that currently numbers 1,100 firms active in all phases of heavy, highway, marine, utility and environmental remediation construction throughout the state, wishes to express our full support for A-3649 and urges the members of the Assembly Transportation Committee to support the bill on Monday, February 26, 2007.

A-3649 provides for partial payment schedules for transportation work performed by contractors for the New Jersey Turnpike Authority and establishes the amounts that may be withheld from payments to contractors by the authority for such work. The bill establishes that two percent of the amount due on the total contract price is to be withheld pending completion of the contract, except that upon substantial completion of the work one percent would be withheld.

Currently, all projects bid by Municipal, County and NJDOT require 2% retainage held from each monthly progress payment to contractors. Requiring the NJ Turnpike to this standard brings uniformity to the bidding process, and allows contractors to lower bid prices because the cost to finance a public construction projects will be much lower.

The bill also allows contractors to provide bonds in lieu of cash retainage. This common requirement is current law for municipalities and counties, and the NJDOT also follows this procedure. Again, this process will bring uniformity to the construction industry while allowing contractors to lower bid prices.

The bill provides for an effective date of January 1, 2008 to provide the NJ Turnpike Authority adequate time to adjust to the new retainage requirement. The legislation will only apply to new projects.

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Securitization of the New Jersey Turnpike

Presentation before the New Jersey Assembly Committee on Transportation and Public Works

8x

Peter Humphreys
(212) 547-5427
February 26, 2007

Introductory Statement

Good morning. My name is Peter Humphreys. I am very pleased to be here this morning to testify about possible securitization structures which could be used to raise revenue for New Jersey.

I live in Short Hills, New Jersey and have lived in the state for almost 24 years. I am a partner in the law firm of McDermott Will & Emery based in New York City where I am head of the securitization practice. We are the 13th largest law firm in the United States and have over 1100 lawyers worldwide.

Securitization has been the fastest growing method of financing in the United States over the past 20 years. Last year almost $1.5 trillion was raised in the capital markets through asset securitization. Laws, government regulation and accounting rules all operate to facilitate securitization and the investor community understands it and is comfortable with its structures.

Securitization has had enormous impact on our economy. It has enabled both large and small companies to raise capital at favorable rates. It has fuelled the growth of consumer lending by providing a funding source for increased mortgage and credit card lending. Over the past 20 years I have worked on securitization transactions of mortgage loans, credit card receivables, auto loans, health care receivables, trade receivables, leases, utility receivables and franchise loans. Our motto: "If it has a cash flow we can securitize it." But so far, government involvement in raising money by utilizing securitization of government assets has been very limited.

Today I will give an overview of what securitization is and how it could be used to raise money for New Jersey. Securitization is not borrowing. Securitization is not selling or leasing the turnpike. In a securitization deal, control and operation of the turnpike would remain with the New Jersey Turnpike Authority. The aim of securitization is to raise capital today by using revenues which will be paid in the future.

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What is Securitization?

10x

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Securitization Generally

- The packaging of financial assets with similar characteristics for sale to investors as securities. Examples of financial assets used in securitizations:
    - Mortgages
    - Credit Cards
    - Auto Loans

- Servicing of the assets generally remains with the originating institution.

- Deals are normally rated AAA, usually a much higher rating than that of the originator or the underlying assets. The New Jersey Turnpike Authority is currently rated A3 by Moody's Investor Service Inc.

- A requirement for securitization is the true sale of a "financial asset" to a Special Purpose Entity (an "SPE"), which eliminates insolvency risk of the originator.

Special Purpose Entity ("SPE")

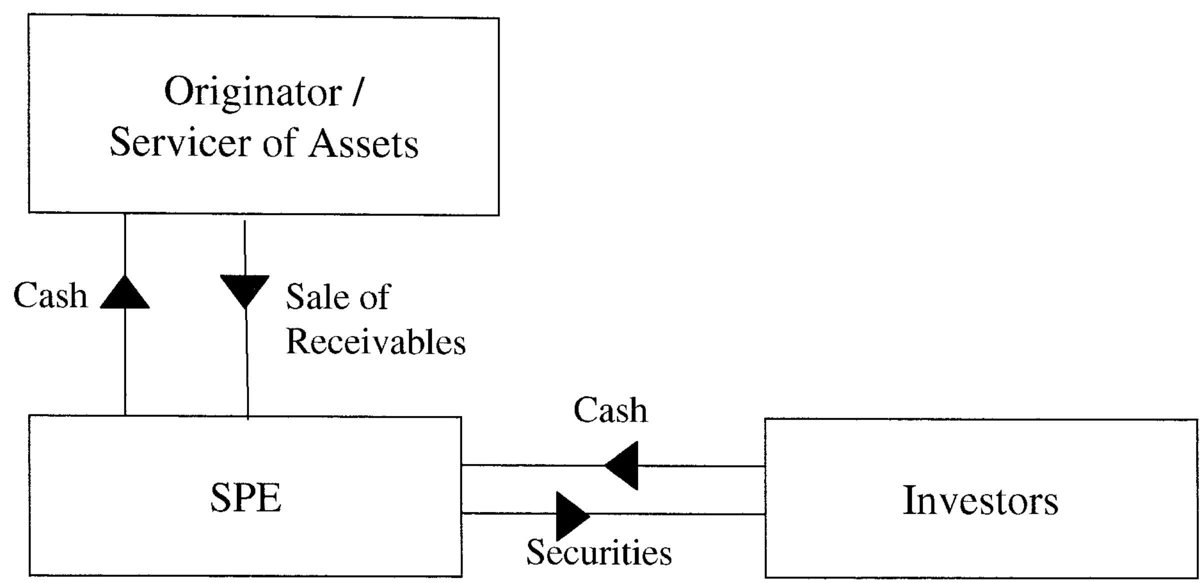
- Securitizations use SPEs.

- A special purpose entity is created to facilitate the securitization of a particular pool of assets. The orginator transfers assets to the SPE, which in turn will package the assets and then sells securities to investors.

12x

- What are its characteristics?
  - Limited power and limited purpose
  - Separate from the entity which created it
  - Bankruptcy remote, not exempt

Typical Securitization Structure



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Credit Card Securitization Structure

- Bank issues credit cards to consumers.
- Consumers charge receivables (purchases).
- Bank sells the entire pool of receivables to an SPE.
- SPE issues securities backed by receivables.
- Deal is rated based on past payment history of the credit card holders not the rating of the bank.
- Bank retains the relationships with the credit card holders.

14x

Problems with Securitization of Tolls

- There aren't any receivables.
  - People either pay cash or use E-Z Pass to pay toll.
- Typically, securitizations are the packaging of <u>existing</u> financial assets.
- Toll revenues are future expectations.

15x

Past Solutions to Similar Problems

16x

Securitization structures used in New Jersey

- Stranded Costs: Securitization undertaken in order to recover the stranded costs of public utilities in the electricity sector.

17x

- Tobacco: As part of the Tobacco Litigation Settlement, an SPE was created (the Tobacco Settlement Financing Corporation) in order to issue securities funded by receipts from the sale of tobacco in New Jersey.

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The Stranded Cost Securitization Model

- The New Jersey Electric Discount and Energy Competition Act of 1999 permits electric public utilities to issue securitization bonds to recover above-market power generation and supply costs following the restructuring of the electric industry in New Jersey (“Stranded Costs”).

- The level of the charge (the “Transition Bond Charge”) is determined by the New Jersey Board of Public Utilities. The asset securitized is called a Transition Bond Charge, an additional charge included on each customer's monthly electric bill.

- The State of New Jersey, by statute, created a property right in the Transition Bond Charges.

- Electric public utilities were statutorily permitted to sell all of their property rights in these Transition Bond Charges to an SPE.

- The SPE issues securities that are secured and backed by Transition Bond Charges.

19x

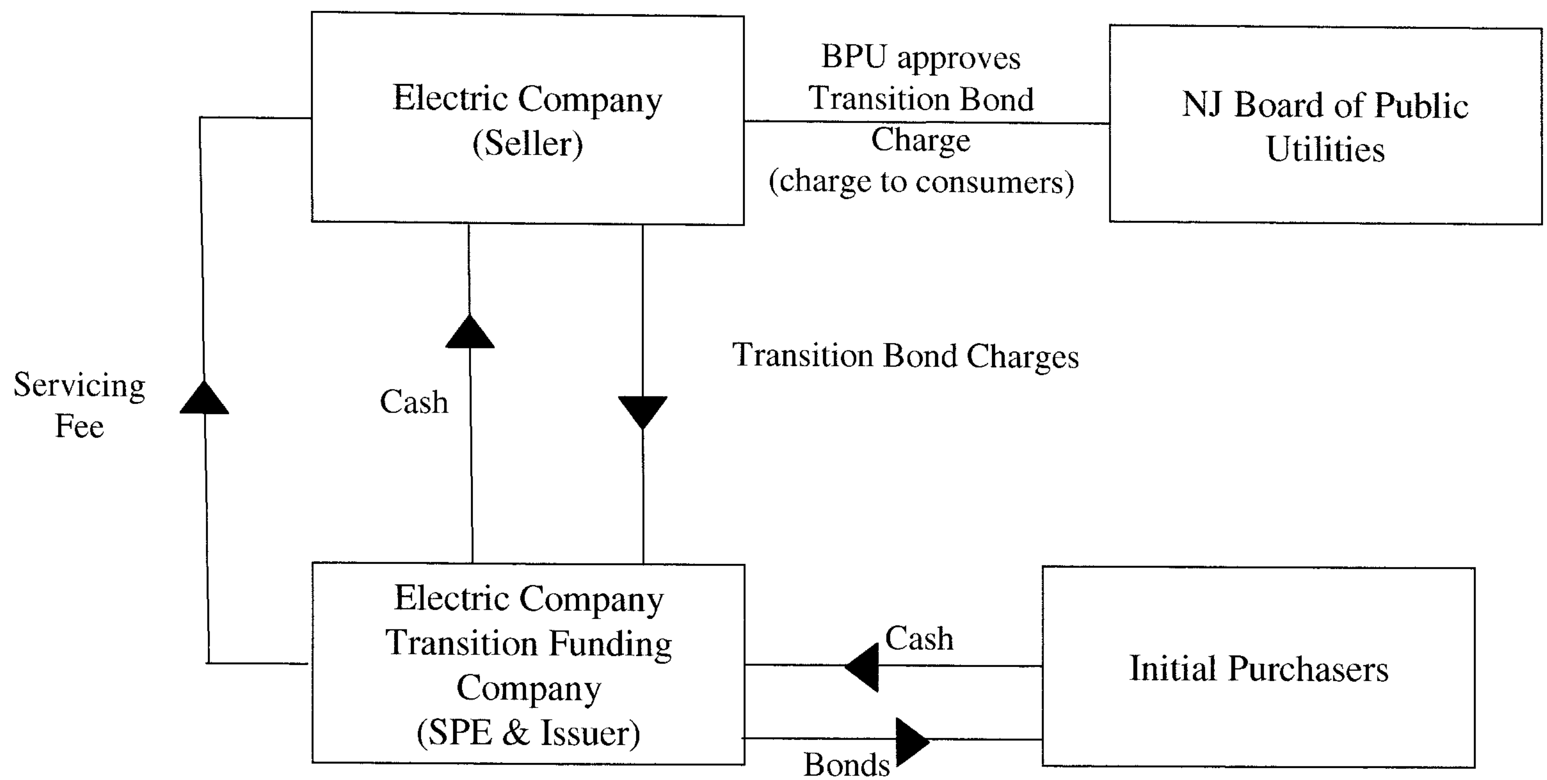
Stranded Costs (continued)

- *True-up*: if the collections of the Transition Bond Charges are insufficient to make payments on the securities, the amount charged to consumers can be increased.

- *Non-bypassable*: the inclusion of the Transition Bond Charge on each of the electric bills was non-bypassable; that is each current and future electric provider in the State of New Jersey was statutorily mandated to include this charge on their current and future bills.

- The securitization of Transition Bond Charges was atypical from standard securitizations (which involve the packaging of existing financial assets) because Transition Bond Charges are future charges that represent expectations of payments.

Stranded Costs Securitization Structure



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How Toll Securitization Could Work for New Jersey

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Securitization Process

- New Jersey would pass a statute similar to the Stranded Costs statute. The statute would create a "Toll Bond Charge," representing a property interest in the future payment of part of future tolls.

- The Toll Bond Charge could be an allocation (e.g., 5%) of the current toll or an increase over the current toll.

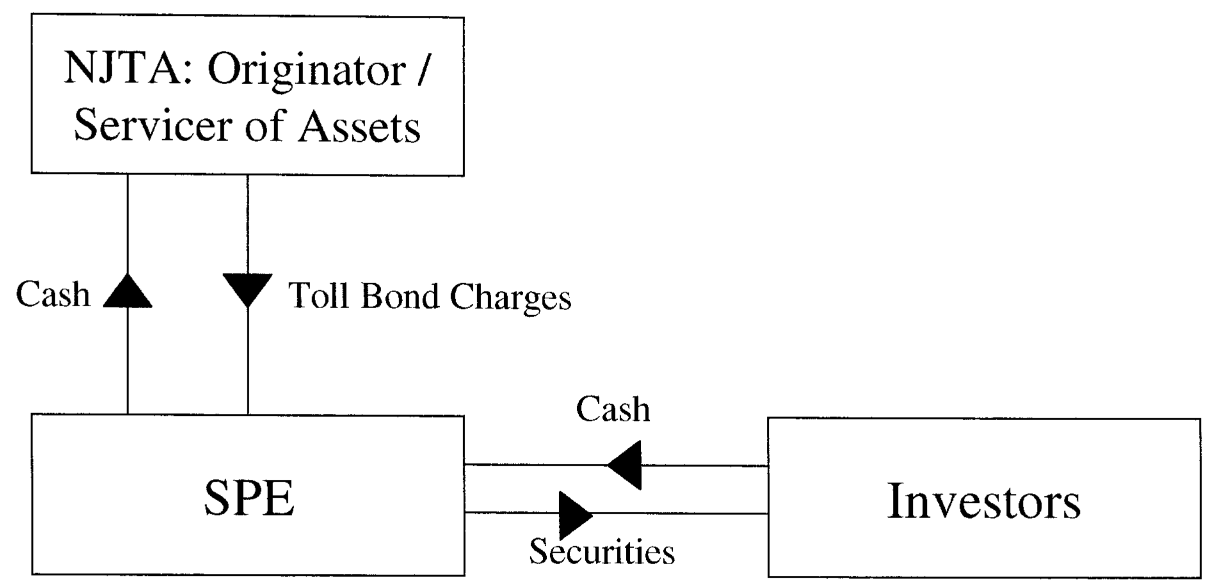
22x

- Authorize an SPE to engage in the securitization of Toll Bond Charges.

- The SPE would pool all of the Toll Bond Charges and create securities that are backed by the pool. The SPE would then sell the securities to investors.

- *True-up*: If collections of Toll Bond Charges are insufficient to make payments on the securities the amount of the Toll Bond Charge would be increased to "true-up" the Toll Bond Charge to make the necessary payments to investors.

Securitization of Toll Bond Charges



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Benefits of Securitization

- Maintain ownership and control of the New Jersey Turnpike
- Not a borrowing by the New Jersey Turnpike Authority
- Raise capital several times over
  - Several series of bonds can be issued over many years
  - Prior debt can be paid down
- Improved ratings for the bonds – AAA rated – also saving money for the NJTA
- Seller can have access to an alternative investor base – the asset-backed market, not just municipal investors

24x

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EASTERN REGIONAL OFFICE
P.O. Box 554 • Cranbury, NJ 08512
104 Interchange Plaza • Suite 301 • Monroe Twp., NJ 08831-2038
Phone: (609) 860-2887 • Fax: (609) 860-2845

TESTIMONY BEFORE THE ASSEMBLY TRANSPORTATION COMMITTEE ON ASSET MONETIZATION

February 26, 2007

Submitted by: Raymond M. Pocino
Vice President & Eastern Regional Manager
Laborers' International Union of North America

HEADQUARTERS:
905 16th Street, NW
Washington, DC
20006-1765
(202) 737-8320
Fax: (202) 737-2754

Chairman Wisniewski, members of the committee, I appreciate the opportunity to testify on this important issue.

At your last hearing, Chairman Wisniewski asked the question, "If the State were not in such dire financial straits, would we even be talking about leasing the Turnpike?" I believe the Chairman is asking the wrong question. Rather than dismissing out-of-hand a proposal he has never seen, he should be asking the question: "can we make this work for our state?"

Here's what not being said. The debate about asset monetization seems to be divorced from the very real fact that New Jersey *is* in dire financial straits, *has* few reasonable options available and *will not* solve our problems through inaction. Bold leadership is required.

We all know that New Jersey borrows too much, taxes too much and offers too little to its residents. Yet, the demands placed on New Jersey are only increasing, while it has little or no ability to meet those needs. At the same time that we acknowledge the problems New Jersey faces, many are unwilling to offer real solutions to these problems.

Let me give one example that I understand well. In 2002, I was a member of a blue ribbon panel that examined New Jersey's transportation infrastructure needs. At that time we determined New Jersey needed at least a 12.5-cent gas tax to begin to meet its growing transportation needs. I understand that was not a popular recommendation, but it was a responsible one. Instead, two different Governors continued the Transportation Trust Fund (TTF) down the path of refinancing and issuing more debt. Today, the TTF has over $8 billion in outstanding debt obligations. Payments on that debt will continue to increase until 2011 when all revenue dedicated to the TTF will be consumed, leaving nothing for capital investments. At that time, New Jersey will be staring down the barrel of a 30-cent gas tax, moving us from the third lowest to the highest gas tax in the country. Compounding the problem, that 30 cents would only get us back to what we are spending today, which is already not enough to meet New Jersey's needs.

The TTF is just one of many doomsday scenarios that will soon become doomsday realities. That is why our leaders must not close the door on options, but must open up to new ideas.

Unfortunately, many of our elected leaders have already decided leasing the Turnpike is a bad idea. They point to two recently completed deals in Chicago and Indiana and see their worst elements. Instead, they should look at those two deals as instructive on what should or should not be considered when putting together a lease agreement..

I do not pretend to have all the answers or even know all the questions to ask. But it is incumbent upon all of us to demand more from our leaders than negative knee jerk reactions. We need creative minds to solve these problems.

Case in point, opponents argue that a Turnpike lease will lead to increased tolls and decreased service; therefore the entire idea is bad. I believe New Jersey already has a potential solution for this criticism. Right now, many of our major utilities are owned and operated by private companies. Yet, New Jersey retains oversight of these important assets through the Board of Public Utilities. They approve rates, conduct audits, take action on behalf of our residents and help establish the ground rules that the private companies must follow. I am not advocating the BPU gain jurisdictional oversight for leased assets. I am merely pointing out that this problem has arisen before and creative leaders found a solution.

Our state of affairs is this: We are lacking funds, lacking options and lacking leadership. Yet only leaders can create the opportunities to get us out of this mess.

I am not offering monetization as a panacea to New Jersey's problems. I am merely asking our elected officials to at least consider how public-private partnerships could work for New Jersey.

ADDITIONAL APPENDIX MATERIALS

SUBMITTED BY THE

ASSEMBLY TRANSPORTATION AND PUBLIC WORKS COMMITTEE
for the
FEBRUARY 26, 2007 MEETING

Ron Marsico, "P.A. likely to pick up airport's lease," *The Star-Ledger,* January 25, 2007.

Patrick McGeehan, "4th Major Hub For Air Traffic Moves Ahead," *The New York Times,* January 25, 2007.

Tom Hester Jr., "Jersey state Senate panel backs move to expand N.Y. airport," *Home News Tribune,* February 9, 2007.

Senator Robert Singer, "Turnpike lease a bad idea," *Asbury Park Press,* February 22, 2007.

Ken Kusmer, "N.J. not only state looking to sell off roads, lotteries or welfare work," *Burlington County Times,* February 22, 2007.

Raju Chebium, "Privatization of toll roads gaining momentum," *Home News Tribune,* February 22, 2007.

Nick Clunn, "Transportation chief says toll road sale not a good gamble," *Asbury Park Press,* February 21, 2007.

Assemblywoman Jennifer Beck, "Toll-road sale just a ploy to avoid tough decisions," *Asbury Park Press,* February 21, 2007.

Editorial, "State shouldn't give up toll roads for a lifetime," *Courier-Post,* February 21, 2007.

Bill Graves, "Sell New Jersey's highways? Not so fast," *The Record,* February 20, 2007.

Bill Graves, "States leasing highways are veering onto dangerous roads," *The Press of Atlantic City,* February 20, 2007.

Tom Hester Jr., "Won't buy the Brooklyn Bridge? How about the New Jersey Turnpike?" *Courier News,* February 19, 2007.

ADDITIONAL MATERIALS, Continued
Assembly Transportation and Public Works Committee Meeting, February 26, 2007

Damien Newton, "Better enforcement needed of New Jersey's traffic laws," *Home News Tribune,* February 19, 2007.

Brian Ianieri, "Beesleys Point Bridge stuck in limbo," *The Press of Atlantic City,* February 18, 2007.

The Associated Press, "It's no joke: many reject least idea," *Asbury Park Press,* February 17, 2007.

Jonathan Tamari, "Road sale gets cool reception," *Asbury Park Press,* February 16, 2007.

Jonathan Tamari, "Lawmakers slam plan to sell toll roads," *Courier-Post,* February 16, 2007.

Jonathan Tamari, "Bumpy hearing for toll-road lease proposal," *Home News Tribune,* February 16, 2007.

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Tom Feeney, "Lawmakers uneasy about leasing out highways," *The Star-Ledger,* February 16, 2007.

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Tom Davis, "Lawmakers say toll roads aren't for sale," *The Record,* February 16, 2007.

Assemblyman Sean Kean, "Corzine's old firm pushing road-lease deals," *Asbury Park Press,* February 16, 2007.