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# *Public Hearing Committee Meeting*

of

SENATE ENVIRONMENT AND ENERGY COMMITTEE

Senate Concurrent Resolution No. 107

*(Proposed constitutional amendment providing for reduced property taxes for certain privately held lands permanently preserved as open space)*

*“Testimony on the status of the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund; and the Hazardous Discharge Site Remediation Fund”*

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**LOCATION:** Committee Room 10  
State House Annex  
Trenton, New Jersey

**DATE:** June 2, 2011  
10:00 a.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator Robert M. Gordon, Vice Chair  
Senator Linda R. Greenstein  
Senator Christopher "Kip" Bateman  
Senator Jennifer Beck



**ALSO PRESENT:**

Judith L. Horowitz  
Amy Denholtz  
*Office of Legislative Services*  
Committee Aides

Kevil Duhon  
*Senate Majority*  
*Committee Aide*

Christina Gordillo  
*Senate Republican*  
*Committee Aide*

***Meeting Recorded and Transcribed by***  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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**SENATOR ROBERT M. GORDON (Vice Chair):** Ladies and gentlemen, Senator Smith is not available for today's meeting, so I will be chairing. And some of us have other commitments late morning, so I thought for a change we might start on time. (laughter)

**SENATOR BATEMAN:** We like that. (laughter)

**SENATOR GORDON:** How do you like that?

Why don't we begin with the Pledge of Allegiance? Would you please rise and join me? (audience recites the Pledge of Allegiance)

Good morning, everyone.

On our agenda today are a number of bills, but we are also taking -- we are also having a hearing on the Underground Storage Tank Remediation Fund and the Hazardous Discharge Site Remediation Fund. We are getting a status report from the two agencies that jointly administer them: the Economic Development Authority and the DEP.

As I think we all know, these Funds have been depleted. We have an interest in understanding the factors that contributed to that. And I'm hoping that we'll hear some recommendations on where we go from here. But this is certainly the beginning of the conversation and not the end. And I understand that Deputy Commissioner of the DEP, Irene Kropp, is here; and the CEO of the Economic Development Authority, Caren Franzini, is here.

Could you two please join us and give us a status report on where we are with these two funds?

**DEPUTY COMMISSIONER IRENE S. KROPP:**  
Good morning, Mr. Chair and members of the Committee.

**SENATOR BATEMAN:** All two of us. (laughter)

I just want to -- for the record, Irene Kropp, Deputy Commissioner of DEP.

**C A R E N F R A N Z I N I:** And Caren Franzini, the CEO of the Economic Development Authority.

**SENATOR GORDON:** Please proceed.

**DEPUTY COMMISSIONER KROPP:** Sure.

So, let me-- I just wanted to give a brief overview of where we are with the Fund right now and where we have been in the past; and then pass it over to Caren to talk a little bit more about EDA and where we are going in the future.

But I guess I want to paint the picture, first, for those who are here and listening, that the money that we're talking about today -- the money that's used for the Underground Storage Tank program and for the HDSRF program -- which is brownfields program -- for investigation and cleanup of sites in municipalities comes from the Corporate Business Tax, and it's a constitutionally dedicated amount of money that comes to the Department. The money that comes to us in the DEP from the CBT -- the Corporate Business Tax -- goes to a bunch of different programs. I just want to highlight them for a second, because there's an interrelationship between them.

The money that we received originally went to our brownfields program, HDSRF. It went to our watershed cleanup program, our publicly funded cleanup program, and underground storage tanks. Over time, through ballot questions as approved by the voters in the State of New Jersey, those amounts of money have changed -- and consistent with

legislation that has been passed as well. So there is this interrelationship of what we used to get to what we get today.

One of the things that I need to talk about is the fact that around 2006, the amount of money that came to the Department was taken from -- again, by the voters and Legislature -- from the publicly funded program and went to help with diesel retrofits -- very important thing, especially in overburdened communities. And then, in 2007, there was another ballot question and a constitutionally reallocated amount of money that went to fund parks reconstruction projects -- construction -- capital construction projects. We have about \$400 million worth of parks -- capital construction projects in the queue at DEP.

So the question we constantly get is: Well, you had this money for a very long time -- up to about \$100 million in the Underground Storage Tank Fund -- where did it all go? And let me start with the Underground Storage Tank Fund -- very, very successful program; victim of its own success. We were giving out money at about \$8 million a year in the early years of having the Fund. The money goes to homeowners, primarily. It went to regulated tanks for a long time, but that stopped in 2010. And the money goes to take out homeowner tanks to remediate contamination, first with leaky tanks; and then about 2006-2007 it was also expanded, through legislation, to take care of nonleaky tanks. It's a very good cause, because nonleaky tanks -- if we take them out, we're preventing contamination in the future. Other legislative changes allowed the money to be used by fire stations, rescue squads, and nonprofit organizations.

So we had a pot of money we were giving out. We were kind of giving it out a little bit slowly. It built up to about \$90 million, \$100

million. There was interest to take some of that money and use it for parks. We used it for parks. Slowly we saw, as some people predicted, (laughter) that the amount of money going out the door was going to go out a lot faster and to a greater category of users. So the money has gone down dramatically. However, we did put a safety net in. The Legislature put a safety net in that allowed that whenever the UST Fund went below \$20 million, that money would go back into the Fund. So the Fund is replenished annually by CBT moneys. Right now, we'll be getting \$20 million going forward for underground storage tanks. And that money is being used, again primarily at this point, for homeowner tanks. And how it's being used is consistent with priorities that are in the legislation.

MS. FRANZINI: Just to step aside for one minute -- it's when the Fund goes below \$20 million. Then the amount of money goes 55 percent into the Underground Storage Tank. Not \$20 million necessarily -- 55 percent of the amount collected; and 45 percent then goes to Hazardous.

I'm sorry. We tag team.

DEPUTY COMMISSIONER KROPP: No, that's okay. We are tag teaming. (laughter)

So DEP gets approximately \$25 million a year to \$30 million a year from CBT revenues. But obviously those have gone up and gone down over time. The amount of money that goes in -- Caren's correct -- goes partially to HDSRF and partially to Underground Storage Tanks as we go forward.

So where are we now? We have a lot of money in the -- applications in the queue. We've done outreach to the mayors, we've done outreach to contractors, we've done outreach to homeowners, basically

letting them know that the money is not available right now. We'll get about \$16 million per year going forward. We will take those applications as they come in, prioritize them consistent with the legislation that's out there right now, and process approximately \$16 million worth of underground storage tank applications as we go forward. Every time we get an application, we send a letter saying, "We date stamped it. It's sitting here. You're not going to get your money until we can process it through the queue."

And just to make sure that everyone understands the pipeline, the pipeline is -- applications come to the DEP for the technical review. Once we do the technical review, it goes off to EDA, and then EDA does the processing of the money.

SENATOR BATEMAN: Irene--

If I may, Mr. Chair, can I just ask a question?

SENATOR GORDON: Senator.

SENATOR BATEMAN: I mean, that \$16 million-- Every one is different, but what's the average? I mean, what would \$16 million fund, as far as tank removals?

DEPUTY COMMISSIONER KROPP: Great question, and it's really different whether it's a leaky or nonleaky tank. The leaky tanks are much more expensive, because then you're dealing with somebody's well, cleaning out the soil, etc., potentially vapor intrusion problems. So that's a really wide range. It can be anywhere from \$10,000 to \$100,000. The removal for the leaky (*sic*) tanks is a standard amount. I think it's \$3,000.

SENATOR GORDON: Nonleaky.

DEPUTY COMMISSIONER KROPP: Nonleaky is \$3,000, and that's the amount of money they get to take out the tank and then replace it with an above-ground tank.

SENATOR BATEMAN: Thank you.

MS. FRANZINI: And then everyone who applies doesn't necessarily get the money. Because even if it goes through the DEP approval process on the technical side, we then do a financial analysis based on the financial test outlined in the legislation. So if someone makes too much money, they may not be eligible for the funding as a grant under the program.

SENATOR BATEMAN: Thank you.

DEPUTY COMMISSIONER KROPP: So we have a lot more in the queue than we can deal with at this particular point in time. We have-- In the Underground Storage Tank program, I think we have -- I can't even remember--

MS. FRANZINI: Around \$33 million.

DEPUTY COMMISSIONER KROPP: That's it, \$33 million worth of applications that are in-house right now, and there is \$16 million worth of applications that have been approved that are at EDA.

MS. FRANZINI: Correct.

And then people should also-- One of the key issues-- The question we get is: "Well, if I'm already part of the way through my cleanup, am I -- all of a sudden don't have the money to finish it up?" The amount of money was approved for that project. That money is already committed. So the numbers we're giving you are already taken away -- all the commitments for the projects. So someone who has a DEP and an EDA

-- both approvals, and are in the process-- Just because their contractor said they were approved does not mean they're approved. They have to have an official DEP/EDA approval. If they have -- they're midway through, there's funding to finish those projects; we've already accounted for that in our commitment of funds.

DEPUTY COMMISSIONER KROPP: And we did receive some questions in the past with regard to whether this was a voucher program -- either the leaky or the nonleaky tank program. And it's not a voucher program, and it's not upfront funding. It's truly that the homeowner puts out the money and then comes in for reimbursement to DEP and EDA.

SENATOR GORDON: If I could just interject a question-- I saw in the press a story about someone who literally had a hole in the ground and was told that funding wasn't available. Are there a lot of people like that? And do you have any thoughts on how we can prevent that sort of situation from arising?

DEPUTY COMMISSIONER KROPP: I do believe there will be situations that exist out there, again, because this is a program where you needed to get DEP approval, put out the money, and then get reimbursement. So because we have a lot already in the queue, I'm sure there's work that is being done. And the money is not going to be available until Fiscal Year 2012, 2013, 2014, going forward, because the amount is down, again, to about \$16 million.

So there has been work that has been done. Homeowners have to put out that money, and there is no guarantee, unless they get approval from the Department, that they're going to get the money. And then it has

to go through the process at EDA. Hence the outreach that we've done to mayors, to real estate associations, to DOBI, etc., to basically get the word on the street that, "Please don't go forward if you cannot finance it on your own. You have to be able to finance it and get reimbursement, not be strapped as a homeowner." Priorities, however, do deal with the fact that if there is an immediate environmental concern, if there is contamination in wells, if there is a health risk, if there is contamination impacting surface water bodies -- those are cases that we would prioritize and take care of, because there is a true environmental risk there. And if need be in situations, we would supplement that with public funds to make sure that there are no adverse impacts to the environment and people's health.

SENATOR GORDON: Have contractors been inappropriately telling their customers that they can go ahead with a project and, "Don't worry, you're going to get reimbursed?" Is there-- Do we need to tighten up that process at all just to prevent that situation from occurring?

DEPUTY COMMISSIONER KROPP: I think that the Fund had so much money in the past that it was a given that if you did the work, you would get a very timely reimbursement -- whether it was six months or a year, depending upon how we were staffed at the time. So there was a legitimate recommendation to homeowners that you would get reimbursement. The amount might vary as to what a contractor would charge and what we would approve. Right now, we have been working with the contractors at the Fuel Merchants Association to get the word on the street that you need to be able to fund this yourself if you're going forward.

SENATOR GORDON: Okay.

Caren, do you have anything to add?

MS. FRANZINI: No, I think the word is now out on the street. And when you have a couple of bad apples, and then you make it known that this is not acceptable-- That word, I think, is now being met.

DEPUTY COMMISSIONER KROPP: I don't know if there is anything else to talk about with the underground storage tanks other than to say that we are processing what we have in-house. We will continue to process approximately \$16 million a year, depending upon the CBT revenues that come into the Department. We started processing, again, at around \$8 million. The reason we're a victim of our own success is, last year we processed \$40 million worth of Underground Storage Tank funds.

We have tried to get the word out, not just through the letters that we've sent out in the last six months, but also through some of the annual reports that we have to provide. So we have been saying this is coming, and working together with the Fuel Merchants Association to try to get the word on the street to address this. But I guess one of the concerns that people say is, the program is dead. The program is not dead. It just can't fund what is in the queue right now.

And the same thing-- I just want to talk very briefly about -- for the Hazardous Site Discharge Fund money that goes to brownfields investigations and cleanups in municipalities. Again, we used to get a lot more money. The money that we get now is going to be divided -- the DEP gets now -- is going to be divided between UST and HDSRF -- which, again, is municipal brownfields redevelopment. So each program will get somewhere around \$13 million to \$16 million going forward. We've put out anywhere from \$40 million to \$50 million per year to municipalities for doing investigations so those sites could be redeveloped. Anything that

we've approved will continue to disperse moneys through invoices that are submitted to the Department. But we are not reviewing any new applications for HDSRF money through the brownfields program at this particular point in time.

One of the things that EDA and DEP are focusing on right now is looking at the funds that we have obligated, and deobligating where that money has not been spent so we can take that money and put it back into the pot so it can be used. Because some municipalities have not stepped forward with the money that they've been offered and done the work that needs to be done.

MS. FRANZINI: And I just want to mention, with that program as well-- With legislative changes over time, the amount of users and the size of funding availability per project has also increased dramatically. So now you can actually receive a \$5 million grant for certain projects annually, and that's a lot-- When it's a grant, that just makes that fund decrease very quickly. So the demand side on that is a much larger dollar amount, because obviously to clean up large-scale contaminated sites -- which is something we want to do anyway; we want to make them profitable -- it's a good thing to do. When you have a large-scale brownfields site that has not been collecting taxes or has not been put to good, productive use, you clean it up. It's good for the environment, and it's good for ratables by having a brownfields site redeveloped. So it is-- Again, it's like Underground Storage Tank, but on the development side it's been extremely important to put these projects back on the tax roles.

DEPUTY COMMISSIONER KROPP: And one other point, also, in terms of priorities for HDSRF money-- It's pretty much, when you

submit your application -- you're the first in, you're the first out. So there's no -- other than immediate environmental health threats, HDSRF is about first in, first out, in terms of applications.

And I just want to say again, publicly -- because people keep submitting applications, and calling, and asking for us to dedicate money to specific projects -- we're not processing any applications at this time. We have -- again, it's like \$33 million worth of -- if not more--

MS. FRANZINI: Seventy-one million.

DEPUTY COMMISSIONER KROPP: --\$71 million worth of applications in-house that have yet to be processed. And all of those have to go through prior to any new applications even being looked at.

SENATOR BATEMAN: A question for both of you, because I think we're meeting later on this very topic in one of my towns: If you're in the system, if you're in the pipeline, you should continue-- I mean, you're not going to cut off a project that has already received the funding. It's like being part way through on the underground storage tanks. You're not going to-- So if you're in the system--

DEPUTY COMMISSIONER KROPP: If you're in the system, you've been approved through HDSRF and the brownfields grant program. As you submit your invoices, we are processing them and paying them. However, it may get to a point a third of the way in the year, half the way into the year, that there is no money left in the Fund in order to process. Because next year, for HDSRF, we're going to get approximately, again, \$13 million. So a lot of the invoices that come in are \$100,000, \$200,000. It's not the original application, and you get the whole \$2 million or \$5 million upfront.

SENATOR BATEMAN: Right. I understand.

MS. FRANZINI: And also, prior to this year, the HD program got all of the allocation, because the money in the Underground Storage Tank was above \$20 million. So, all of a sudden, here is a fund that was getting all of the allocation and is now getting 45 percent of it. It's having a dramatic impact on the program.

SENATOR BATEMAN: Are there ongoing discussions, at least in the budget, to increase the funding for either one of these programs?

DEPUTY COMMISSIONER KROPP: It's hard to actually increase the funding because, again, it's constitutionally dedicated. We'd have to go to the ballot question. So we can't really even get anything out by this November, I don't believe. And so that's kind of where we're stuck at this particular point in time.

However, again, we are processing all of the applications that come in. We're very sensitive to the fact that some developers' financing could be contingent upon -- even though there was no solid guarantee -- could be contingent upon the funding. So we're having ongoing discussions with developers, municipalities on a regular basis. And we have held-- EDA and DEP last February, I believe it was -- or August -- held stakeholder meetings with a lot of the large developers, attorneys, folks who are involved with the brownfields redevelopment to talk about potential changes that we might need to make, going forward, with legislation and other recommendations.

MS. FRANZINI: Thank you, Irene.

I think that's a kick-off to-- We've been seeing this problem arising. We reported only a year ago that it was a concern in the making.

And so-- And it's not one silver bullet that is going to solve it all. I think what we need to do is-- We're looking holistically at both programs -- of all the eligibility, all the requirements. From a public policy point of view, it was, "What can we do to enhance what we have today?" But then, also, financially, how can we get some of these same projects going? And maybe the financing structure changes. We have a lot that's grant; maybe some should be loans. We don't have it all finished yet. But just so you know, we're looking at a whole panoply of different options because I think we have to -- limited funds. And when you have limited funds, you also have to be more creative to say, "We have a public policy goal that we want to clean up these sites, we want to help homeowners, but let's figure out the best way financially." And there may be different things for different kinds of projects. It's not one-size-fits-all. And so I think there are going to be several different ways of looking at. We don't have an end product today. We want to get more stakeholder feedback, because a lot of the people from the private sector who are in banking may have ideas about financing -- developers, contractors. So I think we're at a good point to get feedback and input that will help us come to multi-level decisions -- recommendations on both programs.

DEPUTY COMMISSIONER KROPP: And one other point to be made also is, there were some changes in the insurance industry with regards to providing environmental underground storage tank riders to help homeowners deal with the fact that their own tank leaked or, more importantly, their tank impacted other third parties like neighbors, etc. So I think that's another issue that was an impact, especially in the

underground storage tank world. And it's something that we need to start to think about at the State level also.

SENATOR GORDON: Any questions?

Senator Beck.

SENATOR BECK: Thank you, Chair -- new Chair. (laughter)

SENATOR BATEMAN: Temporary Chair.

SENATOR BECK: Temporary Chair.

SENATOR GORDON: Acting Chair.

SENATOR BECK: Not you, Bob wouldn't like that. (laughter)

Just a couple quick things: Since there may be some communication issues -- because I know I have this *Star-Ledger* story with Mr. Lippman (*sic*) stranded in Maplewood. And I'm sure we've all gotten the calls, as I have in my legislative office from folks who are unclear -- and I would say both residents and contractors.

And I think this is more of an EDA issue, because most people are worried about the money. Once they've been approved by DEP, the biggest concern is: "How am I paying for this?" And so can you talk to me a little bit about what EDA is doing in terms of communicating individually to contractors to say, "This is where your payment stands, this is when you're going to get it or you're not going to get it." And I think for residents too, because I think sometimes you're sending checks to residents, right? So I'd just like to hear a little bit about that, because I think that communication over this next year is really important.

SENATOR BATEMAN: If you got here on time you would have heard that. (laughter)

SENATOR BECK: I know, I'm sorry. Thanks, Kip. Thank you, Senator, for throwing me under the bus. I appreciate that.

SENATOR BATEMAN: You're a busy woman. I understand.

MS. FRANZINI: Senator Beck, I didn't answer--

SENATOR BECK: So indulge me. I'm sorry to make you repeat your answer.

MS. FRANZINI: No, and I didn't answer it fully.

SENATOR BATEMAN: Good answer. (laughter)

SENATOR BECK: Beautiful.

MS. FRANZINI: The communication is two-fold. We have been doing a lot jointly, because it is a joint program. So people have to know from the very beginning that just because you got a DEP approval doesn't necessarily mean you'll get an EDA financing approval, because you may make too much money to be eligible for a grant. And a lot of times -- or you sold your property, you have moved, and now you want to come back and apply for it. So we have done a lot of work to have our frequently asked questions really honed in to make it as easy as possible for people to understand. We also have a call-in number. It takes you to a menu, and then you get a person. So we have a call-in center where we've trained the people how to answer questions. And then you get to actually talk to individuals about your individual projects.

So as a homeowner-- And there's thousands of these a year that we literally approve -- probably around 200 a month. So every homeowner has their own story. So our (indiscernible) spend a lot of time talking to individuals. But that's after the fact. You don't want to get someone after the fact. It's really more on the proactive side. So talking to

the contracting community and communicating to developers and homeowners in a variety of manners -- on the upfront side.

Once they've gotten an EDA letter that they're approved, then they're okay, then they're going to get the rest of the project financed. So if people out there are nervous because they're hearing there is no money-- If they have an EDA and a DEP -- they can't get an EDA approval without a DEP approval. So once they get our letter, they're done, they're approved, they're golden. So the rest of the project will be funded.

DEPUTY COMMISSIONER KROPP: And can I just--

MS. FRANZINI: And one thing--

I'm sorry, we work together.

But if their contractor isn't submitting the invoices with the material that DEP needs to say-- We don't want the contractor to charge them \$2,000 and the cost is really \$500. That's a separate issue of which we then -- DEP is approving the invoices. They know what these things cost.

SENATOR BECK: There's another piece that I've heard, which is a little different. So the resident does get approved, or maybe the resident represents that they've been approved, but they haven't.

MS. FRANZINI: Right.

SENATOR BECK: And the contractor is relying on this individual's assertion, right? So is there some way-- I mean, in some ways I think we also need to be communicating not just with the resident, but also -- if they have identified a contractor and selected one -- so that everyone is on the same page. Because a contractor doesn't want to undertake work and find out, "Oh, God, I'm \$12,000 into a job, and right now this person

wasn't approved at all, and they don't want to pay for it, and they are now arguing with me about the bill."

MS. FRANZINI: Yes.

DEPUTY COMMISSIONER KROPP: Senator, one of the things that we have done -- and we work very closely, again, with the contractors. And there is really a set group that deals almost exclusively in this field. So we have sent letters to the contractors, we talk to the contractors, we sent -- we've had conversations with the Fuel Merchants Association, we've sent letters to all the mayors, we've put things up on our website. The issue has tended to be, in the past, that because we were so successful, and because there was so much money out there, contractors have been saying to homeowners, inappropriately, "There's money there. Don't worry, we can take care of this." Unfortunately, now, the money is not there. And so that's sort of the misstep that we have right now.

But we have tried, and we will continue to try, to do a lot of outreach, as we did in the past, to say, "The program is great, come in." "Hey, the program is still great, but there's a limited amount of money. You'll get your money." If you're eligible and you're consistent with our cost guidelines, you'll get your money, but it's just going to be a delayed process.

MS. FRANZINI: And the other issue with nonleaky tanks -- the contractors must be DEP-certified contractors. So there is a limited pool. These are the guys who get certified by DEP. So they should be following the rules and knowing that they should not be starting the work and billing a homeowner until they have the EDA approval letter in hand.

There is a defined group out there, so they should be paying attention to the rules.

SENATOR BECK: Do we have a sense of how much of the work that's pending, that has been approved both by EDA and DEP, is supplemental? Because you have to file a second application, and then you've got to get the financials updated, which-- I actually get a lot of complaints about having to update financials a second time, but that's neither here nor there. I guess maybe you probably hear the same -- you get the same pushback, because it's time consuming. And sometimes not that much time has passed, so you're getting the exact same financials that were already given. So it seems like an unnecessary step. I mean, I guess if a lot of time has passed it makes sense.

But with supplementals -- because that is usually where there was a leaking tank -- and they've come back for additional funding because the project is larger in scope and, maybe sometimes, unpredictable in terms of cost. Do we have a sense of the projects that are outstanding that maybe fall into that category?

DEPUTY COMMISSIONER KROPP: Not off the top of my head. You're talking about the fact that we've given an approval of, let's just say, \$100,000, and they came back and said, "Boy, it hit 10 more wells, and now it's \$200,000."

SENATOR BECK: Exactly. And they've come back and said, "So, we're going to need supplemental funding, because this is not what any of us thought. And now that we've begun the project, it's much broader in scope."

DEPUTY COMMISSIONER KROPP: That's a very, very small percentage of the cases that we deal with.

SENATOR BECK: Which is good news.

DEPUTY COMMISSIONER KROPP: The majority of the cases are literally pull the tank, remove a certain amount of soil for, let's just say, \$10,000, \$15,000, and you're done. There are occasions, especially in the areas like fractured bedrock or really smooth sands where it may travel. But those are rare compared to the overall universe of the cases that we deal with. And if there is an immediate environmental concern associated with the remediation, that would be a priority, per the legislation, that we spend the money on.

SENATOR BECK: And my last was to your final point, Irene, about the issue of insurers and not covering this as part of the homeowners' policy. At one time, I think, they issued riders, but now oftentimes they're doing just the opposite. So we have a lot of folks who are out there who are not covered. And I would be interested in working with you on maybe a legislative solution to that issue. Because I do think it merits it. I think it's a serious enough issue that we need to take a closer look at that.

MS. FRANZINI: And we should coordinate with DOBI on that.

DEPUTY COMMISSIONER KROPP: Correct.

SENATOR BECK: Yes.

Thank you.

SENATOR GORDON: Senator Greenstein.

SENATOR GREENSTEIN: Thank you, Mr. Chairman. You look very nice over there. (laughter)

Good morning, folks. How are you?

DEPUTY COMMISSIONER KROPP: Good morning.

MS. FRANZINI: Good morning.

SENATOR GREENSTEIN: As I understand it right now, 15 percent of the Corporate Business Tax goes to diesel, and that will be until 2016 when that is supposed to end. And there is a decision that that money would then go to parks. I was wondering if you think, as a matter of policy -- whether the Administration thinks that that 15 percent, instead of going to parks at that point, might go for this underground storage tank program. Is that something that's being considered, or is that--

DEPUTY COMMISSIONER KROPP: I would say that this is a conversation that we have not had with the Governor's Office, and it clearly is the Governor's Office's decisions. (laughter)

SENATOR GREENSTEIN: I got it; out of the pay grade. (laughter) I didn't know if, perhaps, discussions had been held on it.

DEPUTY COMMISSIONER KROPP: Not at this point.

SENATOR GREENSTEIN: Okay. All right, thank you very much.

SENATOR GORDON: I know you're waiting to hear from the stakeholders and want to get their input. Do you have any initial thoughts on how we can make this program more solvent? I mean, given our fiscal distress in this State, I would think we would want to take a look at tightening up the program, perhaps prioritizing the leaking tanks, or changing the income eligibility requirements, or just tightening the eligibility in some way. Do you have any initial thoughts on that?

MS. FRANZINI: I think, Senator, those are all the things that we're looking into right now. It is a whole panoply. As you say, it's not just one, but it -- those are all the things that are on the table that the stakeholder group has also come in and made suggestions on as well.

DEPUTY COMMISSIONER KROPP: And two other points also: We are looking at funds that we've obligated that we will deobligate to increase, because people aren't using those funds. We're also looking at cost recovery. There have been times when developers have taken over a project and done the remediation, but there was a liable party under the Spill Act that we can still go back to and take cost recovery to bring money into the program.

And also, one of the things that we had talked about with the Committee in the past, when we were doing the Site Remediation Reform Act changes, was: Do we want to ban the use of certain tanks in the State of New Jersey? Whether we say you can't sell them, or they absolutely cannot be used. Because there are tanks that people still put in the ground that are not underground storage tank, that are not for that purpose. So there are some other things that we should probably talk about from the overall perspective of underground storage tanks, as related (*sic*) to just the money.

SENATOR GORDON: And I believe there are new tank designs. I want to call them *double hulled*, like the oil tankers -- but tanks that are less prone to a leak.

DEPUTY COMMISSIONER KROPP: Correct. There are a lot of technology issues that we should probably have discussions about going forward.

SENATOR GORDON: Okay.

Any other questions? (no response)

I have just one, really, process question. I know that you've indicated that the annual reports, I think, from EDA were indicating that funds are starting to go out faster than they're coming in. Can you-- Is there some way we can improve the early warning system for the Legislature so that we-- I think some of us were actually taken by surprise, even though there may have been public comments about the state of the Fund.

DEPUTY COMMISSIONER KROPP: I was going to say, absolutely in the reports. Also, for example, Commissioner Martin made it clear in his testimony in the budget this year. So I think that there are a couple of ways that we can highlight this to the Legislature going forward.

SENATOR GORDON: Any other questions? (no response)

Do we have anyone else signed up for this? (affirmative response)

Thank you, both, very much.

DEPUTY COMMISSIONER KROPP: Thank you.

MS. FRANZINI: Thank you.

SENATOR GORDON: Eric DeGesero, Fuel Merchants Association.

Eric.

**E R I C D e G E S E R O:** Chairman Gordon, members of the Committee, thank you.

Eric DeGesero, Fuel Merchants Association of New Jersey.

I think that Caren Franzini and Irene Kropp did a good job of giving the history of what has happened relative to funding for the Fund;

that the Legislature and, ultimately, the people of the state decided there were other equally worthy projects -- be it diesel emissions, park maintenance, and what have you -- that funds for the UST Fund should be redirected to. And that, in part, has put us where we are. But those were worthy programs that wouldn't have received funding otherwise. But it's our estimation that it's a little over \$230 million that had been redirected, if the original funding formula of 1996 had never been altered. But, again, that's \$230 million for other -- HDSRF, or emissions, or park maintenance -- that wouldn't have had funding.

I think it's important to recognize that this is a program that is, as Irene Kropp said, a victim of its own success. You have a program where money earmarked for a specific purpose was spent on that specific purpose and spent very well. And the question, relative to the UST Fund, is: Where do we go from here? And we should look at the UST Fund not as an end in and of itself, but as a means to help with larger public policy objectives, namely providing assistance to homeowners, as we have done for those homeowners who do not have the means to pay for remediation otherwise; or, more importantly, to take care of an issue before one occurs, relative to a discharge, by mitigating it. And the Legislature certainly has been -- we've been successful. Approximately 9,000 nonleaking tanks have been replaced since the Legislature allowed that in the late summer of 2006.

I think it's constructive to look at: Where do we go from here though? And before we do, I need to just -- allow you to please indulge me for a moment, relative to how remediation of underground storage tanks are paid for. Because then, I think, that's going to help inform where -- part of where we think we need to go in the future.

“I own my own property, and I have a discharge. I am not covered, I never have been covered. There is generally an owned property exclusion in an insurance policy. And therefore, if I have something that contaminates the soil on my property only -- my property -- that I have to find a means to pay for that.”

We, as an industry, have worked for close to 20 years. We developed a service agreement program that helps fill that historic void in the marketplace. However, if I have a discharge on my own property, and it migrates off-site -- impacts a third party or, more importantly, impacts the groundwater on my property -- I have now impacted a third party. The groundwater-- Various court decisions have held -- State court decisions have held that groundwater is -- the State owns it as a trustee for the people of the state. So even though the discharge might not leave my own property, I now have impacted a third party. And for many years, homeowner insurance carriers covered that just as if my dog had bitten somebody walking down the street, my tree had fallen on my neighbor's property, any other third-party impact.

Beginning in 2003, the Department of Banking and Insurance allowed the homeowner carriers to exclude that coverage from the underlying policy and require -- and allow the homeowners to buy it back as a separate endorsement with a separate supplementation on their policy, which is somewhat understandable. It is not a risk that the carriers necessarily were thinking of when they first underwrote the property. However, the problem is that it was a one-bite-at-the-apple offer. And I've included with my testimony a list of all the carriers that have been granted the right to exclude third-party coverage since 2004 or late 2003. I think

there are 37 on there. And behind that, we also have a list of all of the separate supplementations and what have you.

The Department of Banking and Insurance required that the carriers offer the homeowner one opportunity to buy it back. I would hazard a guess, if I am representative of homeowners at large, that when I get a bill from anybody I take out my statement or my invoice and I throw the rest of it in the garbage. And if that was my one-time notification, maybe I didn't know that I had my one-time opportunity to buy it back. And now I have a third-party exposure that I don't have coverage of with my homeowners carrier, and I don't have the backstop of the UST Fund there to help me.

So the question is: What happens in those instances? I think it's very clear that the-- Oh, and that doesn't take into account what if I'm a homeowner and I don't even know I have a tank on my property. What if I have an aboveground tank and didn't know that I had an underground tank there previously? What if I use another source of heat for my house and seven homeowners ago that decision was made, and it was prior to tanks being an issue? And now, when I go to sell my property, an environmental sweep is done. It's sort of a space-age looking lawn mower that they wheel over your property and say, "Oh, you have a tank there. You are the responsible party, you own it, you own any discharge."

So I think there is a very real potential that this would hamper-- We're in a situation now where homeowners have little to no equity in their home to begin with. If they have a UST in need of remediation, there is no third-party coverage through the carrier, there is no State fund available, and there is no equity for them to pay for it. You've

now had a very, very detrimental impact on a very important aspect of our economy, residential real estate.

I think that, going forward, there are a couple of things that we need to look at relative to this, and I will come back to carriers in one minute. I think the first one -- and I've circulated a letter to you that I sent last week to the Governor and Senate President, as well as Assembly Speaker, and copied the Legislature on, requesting an additional appropriation in this year's budget based on my calculation -- and this is always a floating number and, therefore, I'm using the numbers that the Treasurer gave before the Budget Committees the week -- last week -- or the week before last, rather -- that the Corporate Business Tax is expected to generate \$2.107 billion for Fiscal Year '11. If that's the case, if we come in at that number, you then set aside 4 percent of that. And of that 4 percent, UST and HDSRF are 25 percent. Again, one of the changes that we did was to reallocate that one-third of the 4 percent down to one-half of that 4 percent. And then since the UST Fund in the current fiscal year is under \$20 million -- in the following fiscal year, as Caren Franzini noted, it's a 55-45 split. That works out to about \$11.6 million for FY '12 -- and assuming that the folks at OMB move the money on July 2, so there's \$11.7 million in there. There is a \$2.7 million appropriation request for underground tanks in the budget as it has been proposed, and we are recommending an additional \$10 million on top of that to bring the total appropriation to \$24.9 million, which is roughly half of the \$49 million in total outstanding liability there is, as was testified to earlier. So we think that that's number one.

And then the follow-up to that would be a comparable appropriation in FY '13, which then clears the backlog of May 2, 2011. We haven't addressed everybody who has been date stamped and time stamped, and where that goes from there. So that's number one.

Number two: Senator Greenstein mentioned the change in the formula that there is as the diesel cycles through in the future. Maybe relooking at the allocation of the constitutional amendment is something to do. I have the benefit of sitting on this side of the table where, of course, my priority is the only priority; and you have the responsibility of sitting on that side of the table, trying to weigh all of these priorities. But that is something that we could certainly look at.

I think something-- And, again, Irene Kropp and Caren Franzini mentioned that we've had some preliminary discussions with them about things going forward, relative to income eligibility and prioritizing leaking tanks. I do think one thing that we need to keep in mind going forward is the return that there is for taking a tank out prior to it leaking, and the real bang-for-the-buck, if you will -- the ounce of prevention being worth a pound of cure. So anything that we might look at going forward-- I think that there is some part of that that needs to be protected or carved out in any fix going forward.

And then the big one, in terms of the fourth thing of where we go from here. I have a lot more question marks than I do periods, because I don't know that I have the answer -- that we have the answer. But I think that there is a need to have to get the homeowner carrier industry back to the table. As I said before, homeowner carriers have the right to earn a profit, just like everybody in this room woke up this morning to do. But I

think there are questions that we might need to have, as far as a dialogue: is there a way of restructuring things so the UST Fund pays up to a certain amount and the carriers come in after that? Do you do the corollary -- the converse of that? Do you have the carriers have a fixed number so they can actuarially plan that out, and the UST Fund would come in over that? Would there be a requirement that a homeowner would have to purchase the coverage so there wouldn't be an adverse selection issue, so carriers could appropriately pool the risk? What if those-- I think it's-- One thing to discuss is that you can't -- there can't be an expectation that a carrier would take on a loss and be legislatively mandated to do it. So if there is a requirement that somebody have their tank assessed before -- if the carriers were forced back to the table, what happens if somebody fails that assessment? A carrier can't be made to take that on. What do we do in that instance? What do we do in the instance where there is no knowledge of a tank? Irene Kropp also mentioned things that the Department is doing in recognition that maybe residential tanks aren't the same as larger facilities, and that there are changes that are possibly contemplated there.

I usually like to come before you with rock-solid recommendations: "Do this, do this, do this, and it's resolved." And only asking for \$10 million in this budget environment is the easy part.

SENATOR GORDON: Good luck with that. (laughter)

MR. DeGESERO: But what we do relative to, kind of, the bigger picture going forward, I think is more of an iterative process where we have to have discussions with interested stakeholders. And I think Chairman Gordon hit it on the head when he opened this hearing by saying

that this is the beginning of the process of having a dialogue, not that we're going to have all the answers when we finish here today.

So I would be happy to answer any questions that you might have. And thank you for your time and your interest in this important issue.

SENATOR GORDON: Thank you, Eric.

Any questions?

SENATOR GREENSTEIN: I have a quick one.

SENATOR GORDON: Senator Greenstein.

SENATOR GREENSTEIN: Good morning.

MR. DeGESERO: Good morning, Senator.

SENATOR GREENSTEIN: The list that you have here -- if a company is not on it, that means that they have not opted to take this out, but they may have a particular policy that doesn't have this coverage, right?

MR. DeGESERO: Homeowner insurance is not a regulated line by the State. Carriers don't have to prefile with the Department their underwriting guidelines. So if there is a carrier that isn't on that list, that doesn't necessarily mean they're writing that as a risk, because they may have an internal underwriting guideline that's proprietary to them. The Department of Banking and Insurance, over the years, has published regulations, that were subsequently withdrawn, to mandate that underwriting guidelines be published and adhered to, primarily because of wind damage east of the Parkway, hurricane coverage-type issues. But just because someone is on there -- if a company isn't on there, that doesn't necessarily mean that they're writing. And if a company is on there, that doesn't necessarily mean they're writing new business. I, in the past few

weeks, have had a number of inquiries from members relative to-- “I thought some of the carriers had this as an exclusion. How come this homeowner-- If this specific risk is being precluded, why can’t they get an underlying policy for their home?” And all of that information is -- we file - - counsel files a quarterly OPRA request at DOBI, and that’s -- all that information is public information from the Department of Banking and Insurance.

SENATOR GREENSTEIN: Thank you.

SENATOR GORDON: Any other questions? (no response)

Thank you, Eric.

MR. DeGESERO: Thank you, Chairman.

SENATOR GORDON: We have a number of others who have signed up to testify.

Anthony Salvemini, Meridian Environmental.

**A N T H O N Y S A L V E M I N I:** Thank you, Mr. Chairman and Committee. I appreciate the opportunity to speak to you today.

My name is Anthony Salvemini. I’m the President of Meridian Environmental. We’re based in Toms River New Jersey. We have 22 people on staff who primarily handle leaking and nonleaking, of course, underground storage tanks primarily in homes. So this program is very integral to those jobs.

I’ll try to minimize repeating what has already been said today. Everyone else has covered a great deal of information. I’m going to focus mostly on who the primary beneficiaries are of this program: obviously a homeowner who could be caught in a situation where they cannot afford to pay for remediation that is mandated by the State, and puts them in a

tough spot when they go to sell, when they go to refinance, and also when they seek a new insurance carrier if their insurance was dropped for some reason. We've had people in that situation where they cannot get another policy put into effect, besides the fact that -- short sales and foreclosures, which have already been mentioned. They are the primary beneficiaries, the homeowners.

As was also mentioned, many tanks are in use and you know you have it. But many tanks are out of use, and it's a surprise that comes up when the home goes up for sale and it rears its ugly head. And there is no coverage in that case, as was mentioned, so it does fall to the grant for all those people who financially qualify.

Obviously, the next in line, as far as who benefits, is my industry, clearly, because there is funding there to pay for that work that may not be there, as for someone who clearly can't afford it. Obviously, as I mentioned, I have a staff that it supports. And, clearly, that money trickles down to our vendors, subcontractors, suppliers, etc., with, I would say, 99 percent of the money staying in the state, as far as our picture of where the money goes. Everything from subcontractors, to suppliers -- everything is local.

This also, of course, helps heating oil dealers, because they can keep their customers happy on oil, keep them safe, and also allow them to install new modern tanks, as was touched on, which there are many great alternatives now. So the technology is there.

Obviously, to the point of being able to sell a home, it also helps with the real estate transaction part of the equation -- real estate brokers and the associate jobs that go along with that.

Clearly, the towns benefit in the sense that -- and communities, neighborhoods, etc. -- because you're not going to wind up with so many houses that are abandoned, foreclosed on, fall into disrepair because they cannot be sold. It's hard to put money into your home if you know that it's polluted and you can't sell it, and so you're not going to get the money back. So I know it's not a large factor, but it's there.

Of course, the environment benefits, clearly. Because without it we would have a harder time protecting the groundwater, which is the primary medium that we're trying to protect with the laws in the state; also, health of the occupants in the homes, etc., by having funding to clean up these issues.

The expansion of the program to include nonleaking tank reimbursements -- nonleaking oil tank removal reimbursements in '06 really jumpstarted the pipeline of the claims into the Fund. It was very effective. As was mentioned, it was very proactive and it was a great idea. As was also mentioned -- and I'm sorry to be redundant -- the program was a victim of its own success in that regard.

As was mentioned, how did someone not see it coming, as far as the money depleting? And to that, I can say that it would have been very hard to see it because of the way it ramped up. I hate to use the analogy of a tidal wave, but off shore it's a very small ripple. But then, when it all comes into shore, it causes quite a bit of destruction. And in this case -- it's a poor analogy, I'm sorry -- but in this case it could clearly sneak up on everyone because of that.

The nonleaking grants caused more people to remove tanks, which was the objective. Primarily, they hadn't leaked -- so a majority of

them were nonleaking. But it also caused leaking tanks to be discovered. And in that case, by the time it got down the pipeline -- through trying to get an insurance claim covered, going through that procedure, then getting it submitted to the DEP and the EDA -- it took quite some time. It could take over a year, maybe longer. And it starts to build up. So in the defense of the EDA, it did -- you can look at the statistics that were mentioned -- it really ramped up at the end there. So we can see that is why that happened.

The point of supplemental funding requests is -- being prioritized is incredibly important to us. There are many projects that you can't just stop. You may be underneath someone's house. You can't just say, "Uh-oh, there's another 20 tons of dirt. We're going to go over our budget. There is additional groundwater." We can't just stop; we have to finish. So on the contractor end, the fact that the supplementals will be prioritized is very important to us. And I would love to, if possible -- if they can look at it statistically and set aside a few dollars, so we don't burn through what might be the \$12 million to \$16 million this year -- hopefully \$26 million if we can get the other \$10 million -- and then, all of a sudden, we have supplementals, and we have to wait a year. That would be detrimental. And we're not putting ourselves in that position on purpose; it just happens on occasion. And, again, it's not the majority, it's the minority of the cases, but it does put us in jeopardy in that regard.

To the point of communication with the EDA, the only thing I'd like to see on my end is a-- The DEP does copy the contractor when an application is approved, so you know where you are in the process or that homeowner is. But at the EDA -- and I understand the financial

relationship between the EDA and the homeowner -- and I don't need to see the financial information of the homeowner, even though many times I helped them fill out the application. But I don't need to be privy to that. But at that point, it would be wonderful to actually get a copy so we know -- not a copy of the financials, but a copy stating that, "Your application is being processed," or "Your application has been approved," or, "Your invoice has been approved," because that allows us to know where it is in the process and allows us to then not even have to bother the EDA inquiring, which may help them with their caseload.

I think I can stop there.

I just want to thank you for your time.

SENATOR GORDON: Thank you very much. Those were very helpful comments.

Any questions from anyone else? (no response)

Thank you very much.

MR. SALVEMINI: Thank you.

SENATOR GORDON: We have a couple of others who have signed up. In the interest of expediting the process, I'm going to bring you up in groups. Vincent Martino, testifying for himself; and Patrick McCarthy, also testifying for himself.

Gentlemen, welcome. And could you identify yourselves before beginning?

**PATRICK M c C A R T H Y:** Good morning, Senator.

My name is Patrick McCarthy. I'm a resident of South Amboy. I'm having some problems with the tank removal process.

My wife and I did all the application work, paid the \$250 fee, did the right thing. Our insurance company recommended we get the tank taken out. It was nonleaking. We had the ground tested and everything. We sent in all the paperwork, and we were sent letters that-- When I called, they said they didn't get our application. Well, we had a signed paper that somebody did get the application.

And from the beginning of the process, it seemed like we were constantly getting the runaround. And they were saying they were really busy, and this and that. And it just gave me a very bad feeling. And then when I saw the article the other Senator mentioned about Senator Smith, I called his office. And he graciously listened to my concerns. I gave him copies of everything, and I said, "You know, it's just--" There was no communication. If I tried to get in touch with the EDA, I got the runaround on the phone. "Oh, this woman is not in. She's at a meeting. She's working from home." I couldn't get any information. The job is done. They said they didn't get invoices. One company did the whole job.

And the reason I'm here today is just to voice my opinion about my displeasure. I mean, we were trying to do the right thing.

SENATOR GORDON: Thank you very much.

Actually, Senator Smith shared your correspondence with me, which I looked at last night. You know, as all of us in the Legislature know, programs don't always run smoothly, there are problems in the bureaucracy. That's why -- one of the reasons why you have legislators to intercede and try to solve the process problems, and also resolve the problems of our constituents. So we appreciate you sharing this information with us, and I'm hopeful that we're going to tighten up this program as it goes forward.

Any questions or comments?

Senator Beck.

SENATOR BECK: Just to say that I think on behalf of all of us, I'm sorry you felt that way. And I'm sure that you're right. I'm sure that you maybe didn't get the responsiveness that you should have received. But you're in good hands with Senator Smith and Senator Gordon. And I'm sure that they will be good advocates for you to make sure that your issue is addressed and resolved.

MR. McCARTHY: I appreciate it.

SENATOR BECK: And I think we all try to do that as legislators. I think because sometimes the volume -- not to make excuses, because there really shouldn't be any excuses; we're here to serve the public. We should be serving them. But on occasion, things don't get handled the way they should. And I'm glad that you reached out, and we'll make sure we get on top of it.

MR. McCARTHY: It just seems like there is a terrible lack of communication between the DEP and the homeowners. And when you try to call somebody, you get the runaround.

SENATOR BECK: It's frustrating. Your time is valuable.

SENATOR GORDON: Sometimes legislators get the runaround as well. (laughter)

SENATOR BECK: Yes, actually, funny that you say that. (laughter)

SENATOR GORDON: Senator Greenstein.

SENATOR GREENSTEIN: I do want to say I would encourage you -- and it should not be happening. It should be -- communication

should be good. But I do want to reiterate what the Senators have said -- that using your legislative office for these purposes is exactly what we're there for. We all have constituent-relations people who have different liaisons, and they can sometimes cut through that. But it really shouldn't be happening. In an ideal world, you should have that communication directly.

MR. McCARTHY: I understand there are a lot more important issues going on, but I really appreciate your concern.

SENATOR GREENSTEIN: There really is no more important issue. This is the kind of issue that is very important. And it's unfortunate sometimes people do get that feeling of getting the runaround. But sometimes calling the legislator should help, whoever is your local legislator.

MR. McCARTHY: I was quite surprised.

SENATOR GORDON: Mr. Martino.

**VINCENT R. MARTINO:** Yes.

My name is Vincent Martino. I live in Port Reading, New Jersey, which is Woodbridge Township.

I -- going on four years coming -- this October coming -- four years I've had a tank removed. It leaked. I had a reputable contractor engaged who did it -- licensed by the State and everything. Took the tank out, then I had to meet the criteria for cleanup, which we did. Bogart -- I had insurance -- Bogart was my insurance company at that time, which is special insurance just for tanks. I had them. Once you hit groundwater -- and I was told this when we first started by a friend of mine -- "Hope they don't hit groundwater. Because if they hit groundwater, you have to put monitoring wells in and take samples. They have to take -- licensed people

-- samples." Fine. Put the monitoring wells in-- Over a period of time -- put injections into the ground with a chemical. Over a period of time -- a year or so -- I met the one part per billion that's required -- two times -- two months. The contractor sent the report in to Trenton -- the DEP. October 26, September 26 -- I'm sorry, October, November, December, January, February -- March I get an answer.

In the meantime, the new caseworker comes in. He wants another test. Okay, we do another test. By then, my -- the insurance company -- I resolved it with my homeowners. They only paid two-thirds; I have to pay one-third. But I want to get out of this mess. Okay, take another test. They do another test, and it comes in .10. How could that be? Where they took the tank out -- the whole area -- they dumped in fresh, bank run gravel. And I don't know where it's coming from, if it's coming from anywhere. The test was done approximately a week or so, I would say, after we had that big rain in April of this year. There was a big rain in April that came. And now I have to go into either digging some more to see if there is any contamination or injection. And I don't know what it is. But it's a tremendous expense.

One of the bright lights was that I would be eligible for the grant. Now there is no more grant. Well, there is a grant, but there is no more money. So you get-- If you get lucky, you'll be able to get covered.

But some questions I have are this -- and I don't mean-- Certainly, I don't want to pollute anything, and I don't want to be responsible for suggesting that I do. But is one part per billion for groundwater -- is that one -- it's achievable, I know it's achievable. Is it necessary in a town like where I live? I don't think there's any well water in

Woodbridge Township, unless they want well water-- Wells are 400 feet to 500 feet deep. I have city water, but I have to meet one part per billion.

Now, I don't know what to do. I did some research on some things. There was a tank -- I live right by the Port Reading Fire House. I was a fireman for 42 years, and I was there that night. In 1989, a tank wagon rolled over, dumped 4,000 gallons of gasoline. How they didn't level the town -- I haven't figured that one out yet. But they ponded it at that time. Ponds -- got vac trucks in -- vacuumed it up. Thank God we didn't have a fire.

It's possible, from people I've spoken to -- several engineers -- fortunately I know a lot of engineers, doctors, and what not -- and I say -- I raise several questions. Because benzene is a -- I understand is part of the gasoline mix. Benzene down in the ground a block away -- a block from where the accident happened. And it went down and-- As a matter of fact, I have a story here on it. I went back to the paper -- newspaper and went through it.

In the course of conversation, I ask a lot of people -- I'll switch gears right now -- I ask a lot of people, "What is one part per billion?"

SENATOR GORDON: If I could just respond to your question about that, this is a bigger issue that this Committee and others are addressing, and that's the subject of groundwater standards. We've had conversations here about that in the past. It's not something we'll be able to address today. But it certainly is a reasonable question about whether we should have the stringent standards that we do everywhere, regardless of the likelihood of human contact. I'm not taking a position on that now, but it's certainly an important policy question.

I'm hopeful that your problems are going to get addressed and expedited. I would hope the Committee would bring your case back to the DEP to see if you could get a little bit more attention and your questions addressed.

MR. MARTINO: Thank you.

My reason for commenting on this -- about the parts per billion -- was to reduce the actual cost, you wouldn't have to go into the grant money that deep.

SENATOR GORDON: Right.

MR. MARTINO: Thank you.

SENATOR GORDON: Any other questions for these witnesses? (no response)

Thank you both very much.

MR. McCARTHY: Thank you.

SENATOR GORDON: Let me bring up, together, James Raleigh -- I hope I'm pronouncing that -- Friends of Monmouth Battlefield; and Jeff Tittel.

**J E F F T I T T E L:** Thank you. I'll be brief.

I just wanted to put a couple of things on the record after testifying. One was that this program goes back to two things that the Sierra Club was very much involved with. One was the underground tank program and designing it with Senator McNamara. And two was the Corporate Tax dedication, which was -- John Bennett was the lead on. And the Sierra Club worked in writing both pieces of legislation and the dedication.

But I just wanted to put a couple of things out there after listening to the testimony. And I think there are a couple of points that I want to make. And the big one is that budgets have consequences. One of the reasons that the funds have been depleted is not just because we're shifting it to some other areas. It's also because every time we cut the Corporate Business Tax, or there is a recession, the fund loses money because that's what it's tied to. When we decided to create the Urban Transit Hub bill -- which is a fine bill and does some good things -- it takes money from other programs. There is no free lunch in this world. So when we eliminate a Corporate Business Tax on doing work out of state, or whatever you want to, it has consequences. And some of that money that we're now giving as tax breaks used to go to direct programs where it created jobs directly and had direct environmental benefits. So there's always a consequence, and I wanted to put that out there.

Also, when you talk about DEP and the program area, those areas are all down by about a third in staffing in the last 10 years. And the other point is, money from the Fund does get diverted for salaries as well.

So the reason I'm saying all this is that we really should -- and I support the Fuel Merchants Association's proposal for a supplemental, because I really think we need it. And I will explain why. This is a very successful program that really works, and it was really a gold-standard as programs work. There were companies that would actually do the work up front and wouldn't even bill you, because they knew the rebate was coming right away, because within six months they usually got the money. So it was very good for homeowners, and it made it very successful. Now, because of different factors, there is less money there and there's delay. But

the problem with delay is that even with tanks that aren't leaking -- that we're creating ticking time bombs in the ground all over New Jersey; that when people go out there and remove these tanks, they're removing a potential threat to groundwater, and a threat to their neighbors, and pollution. And I think that's really why we need the supplemental.

When there isn't money there, it also means that a lot of people who are thinking about doing it won't do it and, therefore, it makes things even worse. And what is a small problem now could become a major disaster later. And one of the problems with a groundwater issue isn't just potable. I think there's a big issue environmentally that we know -- that if you have a leaking underground tank, it's not just that it could impact the well. But if you're in an area -- there was a big leak at a tank in Titusville. It was going right into the D&R Canal, which is a drinking water source. It was going into neighbors' basements. One of the things about groundwater is, things become mobile in groundwater. And if you live in areas with high water tables, you end up with vapors in people's basements. And oil -- whether it's heating oil or other forms -- has a lot of toxic chemicals in it. And so that's one of the reasons why you really want to concentrate on those areas where there is impact to groundwater.

So we think that we really do need to come up with a solution so that we can keep this program fully funded.

Thank you.

SENATOR GORDON: Thank you, Mr. Tittel.

Sir.

**J A M E S T. R A L E I G H:** My name is Jim Raleigh, and I'm President of Friends of Monmouth Battlefield. And I have been quite

disturbed at some of the testimony I've heard here today, particularly about communications within DEP and how often they try to put the responsibility of protecting the environment on the Legislature, particularly the changes over the years with the Corporate Business Tax.

As President of the Friends of Monmouth Battlefield, I had an opportunity to work with the "State" on an office for our organization. The State would not maintain it. We finally had to evacuate it because the ceiling was falling down. But somehow the State has convinced you that they've taken care of all their tanks. I happen to know that-- I have one, at least, that hasn't been taken care of. And the entire park depends on wells. It also feeds into water supply. But that's, you know-- I was going to say, how do you trust DEP? I did say it; I'm sorry.

The DEP fix of oil tanks is creating another problem. Propane is heavier than air. So they decide that we should put propane tanks in the ground where they don't show. One day we're going to find some of our historic sites blown up to pieces with an electrical spark because we have a leaking propane tank in the ground.

Those are just minor problems in trying to get to understand what is going on. Now, I'm not an expert on this. I have a 10 kilowatt solar system on my house. I paid to remove my oil tank at my own expense because I had three appeals from the oil supplier to provide me insurance to encourage me to take it out. Fortunately it wasn't leaking and it got taken care of. But when I listened that we're diverting the Corporate Business Tax for park maintenance it's one thing, but if they won't maintain a place for the volunteers to help the park, and they're planning on spending Corporate Business Tax money for a new visitors' center at Monmouth

Battlefield instead of repairing the one we've got, I think we have big problems in DEP.

SENATOR GORDON: Well, sir, I would encourage you to take those issues -- and I will take them to the State Government Committee, which is also responsible for historic preservation. We certainly want to do whatever we can do protect the great asset we have in the Monmouth Battlefield. And we thank you for bringing these issues to our attention.

Thank you very much.

MR. RALEIGH: Thank you.

SENATOR GORDON: That concludes, I believe, the testimony that we have on the Underground Storage Tank Fund and HDSRF. We will proceed, at this point, to a public hearing on SCR-107, a bill from Senator Beck and Senator Sweeney regarding a constitutional amendment providing for reduced property taxes for certain privately held lands permanently preserved as open space. We had dealt with this issue briefly at a prior meeting.

Senator Beck, do you wish to make any kind of comment on this legislation?

SENATOR BECK: Just a very quick one, because I think in the last meeting I tried to walk folks through the logic of this approach and why we were doing it.

I handed out to Committee members -- and for those in the public who are interested as well -- some information about New York and Pennsylvania, and the statutory framework that they have for open space, woodland, and agricultural lands, which is different than New Jersey -- not

to say that theirs is better or worse. But it's different, and I thought it was helpful to take a look at it.

When we started looking into the issue of farmland assessment and raising up the revenue requirement-- Right now, constitutionally, you have to have five acres of land, it has to be actively devoted to agriculture or horticulture for at least two years. So that's the constitutional provision. And it requires two years back taxes if you change it from agricultural use to another use. Statutorily, in 1964, we put in place the requirement that \$500 in revenue had to be generated on that five acres, \$5 per acre every acre thereafter, and for woodland it's only \$0.50.

This constitutional issue that we're looking at now would expand a little bit and develop an open space program. And one of the reasons we did it is because our farmland assessment revenue number of \$500 for five acres is being revisited. We're considering raising that to \$1,000, and then requiring a review of that number by the Department of Agriculture, the Board of Agriculture, and the Division of Taxation every three years. So that's under a separate piece of legislation.

But Rutgers did an extensive analysis, which I pointed out the last time I was here, which took a look at the potential impact of raising that revenue requirement. And one of the things that they said is, by looking at how much revenue a farm generates today, they could try to make some projections as to how much land would no longer qualify. If you raise it to \$1,000, they suggested that 47,000 acres today would no longer qualify. Now, they didn't-- They admit that they didn't look to say -- if they increased cropping intensity, if they planted different products that maybe sold for a higher value, etc. They admit that they didn't take

that -- they looked just purely at how much is the farm generating today and would -- how many acres of land would not meet the \$1,000 threshold? And it was 47,000 acres.

That caused us to look at this issue of trying to move folks who may not be real farmers -- they may be fake farmers simply trying to get a tax benefit -- away from developing the land and into an open space program. And the bill, as we discussed last time, requires that the land must be subdividable under existing zoning in order to qualify. And secondarily, you have to permanently give up your development rights.

It's interesting, because New York state does something similar, not exactly the same. They require you to give up your development rights permanently, forever. But instead, they actually give you a tax credit on your income tax versus on your property tax.

I know the League of Municipalities has some concerns. One of the things I'd like to suggest -- that it is my instinct that if we were also to advance the farmland assessment bill, you will actually see more revenue coming into municipalities. Because the farmland assessment is so generous in discounting taxation -- 98 percent of your property taxes are waived under our farmland assessment program -- that you actually will see growth in revenue if some of this 47,000 acres moves to the open space program and gives up their development rights.

With that said, I'm happy to take questions, and I look forward to hearing the testimony.

SENATOR GORDON: Thank you, Senator.

Any other questions or comments? (no response)

All right, let's begin with Ed Wengryn and Rich Nieuwenhuis, the Farm Bureau.

Gentlemen.

**R I C H A R D N I E U W E N H U I S:** Thank you very much, Chairman Gordon and Committee members.

Overall-- I think you all have a copy of what I'm going to say, so I'm not going to go through the whole thing word for word. But overall, we think that there are real merits in this program, but we do have some concerns.

The main one-- The concern that we have is, basically, to boil it down -- the first bullet point there is, that the difference between this new tax rate and the farmland assessed tax rate -- that there's a big enough differential there that will not take land out of active agriculture and put it into these conservation easements. Because you've got to always bear in mind that more than half of the land that's actively devoted to agriculture in the State of New Jersey is leased land, especially in the grain industry, which is quite large in New Jersey. They need that land base. So we're looking at that as a potential issue that-- As long as there is a big enough differential there -- and I think, obviously, that needs to be studied maybe a little bit more to see what that differential will wind up to be. But that's one of our main concerns.

The other thing is, the documentation for the assessed value of open space land meeting the terms of this bill -- like to see some documentation of some kind of study -- what this is actually going to entail.

The other thing is that we're all very familiar with the Farmland Preservation Program and those deed restrictions-- The deed restriction

that's going to go along with this-- And as you see here, i.e. -- will the people who have the conservation easement who give up their development rights -- are they still going to be able to make some kind of an income off of that land, as in-- You know, a lot of open space gets leased out to fishing clubs, and to hunting clubs, and that kind of thing. And then, of course, you get into the other area where, would you be allowed to put up a wind turbine, would you be able to put up solar panels, these kinds of things? This is-- And this is all stuff that's very current right now -- what's going on right now on farmland preserved ground. So this is something that we really would like to know. And, obviously, some of this stuff will be addressed in implementing legislation as we go down the pike here.

SENATOR BECK: That's the answer.

MR. NIEUWENHUIS: But, again, we would like to possibly be at the table there to bring some of these points forward.

And then the other thing is regarding the enforcement. As in farmland assessed land, it's up to the local tax assessor to do that enforcement. We've seen reports that some of that is pretty lax in some areas. But, again, are we going to put that burden on the local tax assessor to enforce this, look into this? They'll tell you in a heartbeat that they're overworked now already, that they really don't have the resources to do this kind of thing. So those are just--

You know, again, notwithstanding those questions, we like the idea of another level of taxation somewhere in there. But, again, those are some of our concerns that we have.

SENATOR BECK: Through the Chair, if I may.

SENATOR GORDON: Senator.

SENATOR BECK: I want to thank you, first and foremost. The Farm Bureau has been enormously helpful to me personally in both working on the issue of farmland assessment and also on this initiative. So you have been a resource of great information. And I know that over the last several years I've learned an awful lot about this issue.

You've raised excellent points. The answer is that those specifics will be worked out in enabling legislation; that this is the constitutional amendment that lays out the baseline provisions, which would have to be approved, of course, by our voters. But things like enforcement, and what kind of conservation deed would be implemented, and who holds the deed, and -- those are all things that I would love to work with you on to craft implementing legislation to make sure we do it right.

I do have one question for you, because I'm not sure if I clearly understand your point about the leased farms. Because I did read your testimony before you came up. Is it that you're concerned that I might be actively farming a piece of land, but find this easement and this benefit so interesting that I stop farming the land and, instead, preserve my open space and don't farm it any longer? Is that what you're saying?

MR. NIEUWENHUIS: Yes, that is basically-- But it's more of the issue of leased ground where the landowner now looks at this program and says, "You know, for a couple bucks more, I don't have to have somebody drive a tractor up and down my field. They don't have to come in my driveway," that kind of thing. "And for just a couple bucks more, I can get into this other bracket of taxation and not have to put up with the farmer."

SENATOR BECK: That's what I thought you meant.

MR. NIEUWENHUIS: The other thing is that, again -- and this goes to enabling legislation -- a lot of these pieces that we're concerned about are small parcels, like a homeowner who has, say, 15 acres, 5 of them they have for their home and whatever; and then the other part they're leasing to a farmer or even allowing them to use it -- paying them to farm it. But it's contiguous to all the other parcels that they farm. What we are concerned about is that if the difference between the tax rate is not that great, the homeowner may say, "You know what? I'm going to go into this conservation easement thing." And that conjures up another thing immediately in our minds. You have to understand, what we're thinking about with this is, that now these folks let this piece of land grow up into invasive species and wildlife habitat, and they're going to eat the farmer out of house and home on both sides of where they're farming.

SENATOR BECK: Sure, and I understand your point, Richard; and I think that's a fair point.

I will tell you though, from the research that I've read -- and actually I'm going to call out Andy Clurfeld who did a lot of that research -- that the differential is so great that, indeed, the benefit of having farmland assessment property is so significant that this isn't going to come anywhere close. You're talking about taking the assessed value of your property and reducing that by 50 percent, and having your property taxes valued against that. It's not going to come any-- I mean, you still are going to be paying a decent amount in property taxes. It still will be, financially, much more in your interest to be farmland assessed.

But we-- But the fear -- and you had brought this-- In tandem with wanting to see actively devoted agricultural land, in our conversations in the past -- at least my conversations with the Farm Bureau in the past -- that the biggest concern was, if we change the guides statutorily for farmland assessment, we have to make sure that folks don't develop the land. We really want to see that preserved. So we're trying to create that incentive.

We will do more homework. I'm a trustee of the Monmouth Conservation Foundation, and they are doing some of this legwork for me already. But I think that that's not something that we have to fear, and we will collect data to ensure that. And of course, again, I look forward to working with you on the enabling statute.

MR. NIEUWENHUIS: And I can tell you that some of our research -- that we've contacted some local assessors who are very active with farmland-- They have basically told us the same thing. They don't really think that that's going to be a major-- But it's a point that we--

SENATOR BECK: Sure, and it's a fair point. It's something we need to--

MR. NIEUWENHUIS: And I'll tell you, that was one of the first points, when we looked at this, that came up.

SENATOR BECK: Of course. And we need to have some certainty about it. But with the research that's out there now-- And the Tax Assessors Association has been very vocal and active on this bill, as well as on the farmland assessment bill -- that it is the instinct of those involved that it is not as significant a tax break as farmland assessment -- not in the same ballpark.

MR. NIEUWENHUIS: Good.

Thank you, and I appreciate the offer to work with you.

SENATOR BECK: Sure, absolutely. Any time.

Thank you.

SENATOR GORDON: Thank you, Rich.

Ed, do you--

ED WENGRYN: I was just here if anybody else had any questions or technical support.

SENATOR GORDON: Okay. Any questions from the Committee? (no response)

Thank you very much. Thank you, gentlemen.

Let's hear next from Alison Mitchell, New Jersey Conservation Foundation; along with Jeff Tittel from the Sierra Club.

ALISON E. MITCHELL: Thank you, Mr. Chairman and members of the Committee.

My name is Alison Mitchell. I'm the Policy Director for New Jersey Conservation Foundation.

And just by way of a little bit of background about our organization: In addition to public policy related to land preservation and stewardship of natural resources, the majority of our staff actually works on specific transactions protecting parcels of land, and a lot of that is farmland. And we've been doing that for 50 years. So we've got quite a bit of background and understanding about the farmland assessment act, and actually have studied it. I don't think we know the details to the same degree that the Farm Bureau does, but as far as the establishment of the

program, and its intent, and general application, we have some expertise in that.

I think on first reading of this resolution, we are supportive of it. And I really appreciate, Senator, your going back over kind of what your thinking was in introducing it. Because unfortunately I missed that section of the last Committee meeting. So that was real helpful.

I think for us the question is-- It's kind of the flip side of the conversation that you just had with the Farm Bureau about not pulling land out of agriculture. I would agree with that. I would actually say I don't see -- and it would be great to hear if there is some research on this -- I don't see this having very much impact, actually, because farmland assessment is so widely used, it's so generous. And even with the changes that are proposed -- the \$1,000, which I think we're fine with. And the cropping intensity standards -- I guess it would depend on how far they went. But I would be concerned about going too far with that also. Because like with animal agriculture, I don't think most people in New Jersey want to see--

SENATOR BECK: That actually came out of the bill.

MS. MITCHELL: --like super-intense farm operation.

And I think also, going back to the leased land issue-- When you have a lot of land that's leased -- and some of it is smaller parcels -- it can be tough to say, "Well, that parcel has to be super intense also," because a farm unit often has all different pieces to it. So I can-- And I know there's going to -- the Committee will look at that and try to tease that out. But I think there is no harm, certainly, in this. It could, conceivably, encourage the donation of some easements for people who can afford to pay more than farmland assessment and would rather not have

their farm -- you know, have their property farmed, especially if the standards are increased a little bit.

But because it's-- Because you don't have to preserve your land under farmland assessment, because the tax deal is so much greater, I don't know that it's going to apply to very many people. And so I don't feel like it's really an equivalent program to the Farmland Assessment Program for open space. But, again, I'm not saying that we have any objection about it. Those are just some thoughts that have come up as I've been looking at this and looking at the bill that focused on farmland assessment.

SENATOR BECK: Thank you. Those were great comments.

The bills are intended to be moved in tandem, but they're in different committees, of course.

Through the Chair, the farmland assessment bill has changed greatly, by the way.

MS. MITCHELL: Okay.

SENATOR BECK: The one that is currently published online is different than the amended version, which would be heard in Committee. The cropping intensity standards, and so forth, we've taken out after sitting with the Board of Agriculture, and the Farm Bureau, and the Secretary of Agriculture. We've met probably seven times over the course of the last four years and changed those greatly. The State Board of Agriculture, under the new vision, will establish basic guides to guide a tax assessor as to what they should be looking for when they go to review if a property is being actively devoted to agriculture. And we leave that entirely in the hands of the Board of Ag, since they know it best. That's what they live and they breathe.

The revenue generation, which is set at \$1,000, will be reviewed every three years and raised. It can't be lowered, but it will be raised as needed. And then the tax assessors will be given more tools to actually enforce the farmland assessment law, because really it's so minimal what you have to do to qualify. Five acres and \$500 is-- And the roll-back taxes only being two years. When you look at Pennsylvania, it's six years, plus 6 percent interest. When you look at New York state, if you have forest land that's 50 acres -- which is their qualifying number -- and you choose to change its use, they charge you 2.5 times the property taxes you paid in the current year back for 10 years. So there are huge disincentives to change use, whereas in New Jersey, that roll-back period-- And that's something I've been advocating as well, that my bill originally did not get into. But I think we have to look at that roll-back period, because it encourages land banking, which is an issue that Jeff Tittel has talked to me about previously. And I agree with him. We want farms to be real farms. We don't want people taking advantage of the program just for the tax break, but not being, truly, farmers. Because the rest of our citizens pick up their share in terms of taxation for what we view as a public benefit of having a farm.

I'm hoping that the way we've structured this encourages people to permanently preserve their land. We don't have anything else on the books. New York state's, I think, is probably not as generous because they only allow you to deduct from your income taxes up to \$5,000 -- I'm saying *only* -- but this would be a much more significant reduction in your property tax bill than that. But you're right, not anywhere as near as generous as farmland.

But I think the intent is that as we crack down on fake farmers-- Or the opposite. Maybe you have a person who has farmed for 50 years, and now they're 72. Now they, frankly, can't do it anymore. But they really don't want to sell their farm to be developed. They'd like to keep it as open space, but they can't afford the property taxes if they're not farmland assessed. Maybe this would be something appealing to those folks. Because I've had some farmers come to me with that situation, as well.

I don't know. As I got into this issue, it was much more complex than I realized and there are so many moving parts. And we have to be careful as we shape the public policy. But certainly as we're working on the enabling legislation, maybe you'd be willing to give me some guidance on that as well.

MS. MITCHELL: Yes, definitely. And thank you. It sounds good -- the changes that you've made to the farmland assessment bill, taking out the intensity standards. That sounds great.

SENATOR BECK: It got to be too crazy.

MS. MITCHELL: Yes.

SENATOR BECK: We were like, "So you're going to have one for peas, and one for carrots, and one for artichokes." (laughter) I mean, it just got to be too--

MS. MITCHELL: Cows, peas.

SENATOR BECK: Yes. So it was not-- It was an idea that we decided wasn't going to work.

MS. MITCHELL: One other thing I wanted to mention-- Back in 1997, we did a report -- which we still have copies of and we'd be happy

to share with the members -- on farmland assessment, looking at the rollback, looking at it in different states. Now, it's changed since then. So you have more updated information about what the penalties for withdrawal from the program are now.

SENATOR BECK: I'll make sure I share this with you.

MS. MITCHELL: Yes, that would be great.

But I'm happy to provide that, because we looked at that from sort of a holistic perspective about this question about: Is it preserving open space, and agriculture; and how does it compare to other states, and what's been the outcome and speculation on land, based on farmland assessment being such a cheap way for developers to hold property? So all of that we did put in there. I don't know if that would be helpful, but I will just pass it along just in case.

SENATOR BECK: That would be very helpful. I mean, one of the things New York state -- and the Committee members have this, but you don't, and I'm happy to share it with you. And, again, a little plug to the Rutgers program that did this 2008 report, which is fabulous. If you had-- In New York, there's no minimum acreage requirement. But if you have less than seven acres of land, you have to generate \$50,000 a year in gross revenue. If it is more than seven acres, it's \$10,000 in gross revenue. So you automatically have set up a system where-- So you're not discouraging-- What if one acre of land in Asbury Park is a great thing to have farmed? Okay, but you're going to have to generate a lot of money on it to really justify getting the break. And I think there is some merit to that. But New York state is a different -- I don't know -- geographically than we

are too. I mean, they're not as urbanized -- metropolitan as we are -- with the exception of New York City, obviously.

SENATOR GORDON: Thank you, Senator.

Jeff.

MR. TITTEL: Thank you.

The reason it's in the New York law, by the way -- they have greenhouse complexes in the South Bronx. That's why that--

SENATOR BECK: Oh, is it?

MR. TITTEL: And that's why they get all that money, because they serve the restaurants in the East Side and West Side of Manhattan. So they make a lot of money.

SENATOR BECK: Oh, interesting.

SENATOR GORDON: You're sure it's food produce they're raising? (laughter)

MR. TITTEL: Never mind. I think that's more in the Village, but never mind -- or Soho. (laughter)

Anyway, I think that this is an important piece of legislation to go forward and go on the ballot, because I think it helps handle the kinds of projects that local governments, or county governments, or land trusts can't do -- these small, isolated pieces of property or these oversized lots that are throughout our communities. And to try to buy development rights -- there are too many of them. The amount of work to save three acres is just way too much.

And I think by coming up with a program where you can save on your taxes makes sense, and will hopefully lead to a lot of donations so we don't have to worry about these properties. And many of them are

environmentally sensitive in parts of the state -- whether it's in the Pinelands or Highlands -- where you don't want to see more subdivisions and more development of septic. And so it gives an incentive to save these properties in a way that can be done -- because really government can't do that, and neither can nonprofits. So we think this is a very good idea. And it's sort of common sense that really, I think, will help move open space forward in New Jersey. It's especially important now, because we really need to develop a stable source of funding and long-term ways of meeting our goals.

I have a couple of things that are really more for probably the implementation legislation, and I will just go through them very quickly. When they do the easement, and how it's done -- one of the things that we're going to be concerned about is that on the property that's now saved -- that it really gets a conservation easement, that they don't stick accessory uses on it like a swimming pool or tennis court. And in New Jersey, an accessory use is also an air strip. Ringwood lost that case -- that was before my time on their planning board. So to make sure that it's really preserved and also that it doesn't be used -- it's not used for double-dipping. And what I mean by *double-dipping*: being bought for open space at some later point. And we've seen that happen in Bergen County and others, where there have been some scandals where lands that couldn't be developed ended up getting purchased for open space. There was a reason somebody up there was indicted. I won't go into any detail. (laughter) And then the other is that it shouldn't be used as replacement lands for diversion of open space, which is another concern that we have.

SENATOR BECK: All great points.

SENATOR GORDON: Thank you.

I don't see Enid Torok.

MR. TITTEL: He left.

SENATOR GORDON: Okay. Our final two witnesses: Jon Moran, of the New Jersey League of Municipalities; and Mr. Raleigh -- James Raleigh, again, from Monmouth Battlefield.

Mr. Moran.

**J O N R. M O R A N:** Thank you, Mr. Chairman and members of the Committee.

I'm Jon Moran, League of Municipalities.

You've got our correspondence, and I think you all know what our concern is. It's in Article VIII, Section II, paragraph 5 -- concerns State pay for State mandates. We fear that this amendment would, of course, not violate the letter but violate the spirit of that amendment.

There is a price tag to this benefit. It could be a significant reduction in property taxes. The only revenue source provided to fund for the benefit is the property tax. So we're looking at property tax relief for some coming at the expense of others. We'd also like to point out that there are local options for the preservation of open space -- local open space taxes and county open space taxes.

Again, our fear is it's going to result in a shift in the property tax burden, and that's the reason for our opposition.

SENATOR GORDON: Thank you. And I believe there have also been concerns raised about the distributional impact of this -- that the people likely to own five acres or more are likely to be in upper income

groups. But, of course, open space preservation is an important policy goal as well.

SENATOR BECK: Chairman, could I just quickly address--

You know, one of the things Jeff Tittel hit on, about the ability of government to purchase enough open space to actually maintain a level of open space in this state, was one of the drivers for developing a private-land conservation program.

And I'm not so sure that you're accurate. I'm not sure that this ends up eroding property taxes. I actually think just the opposite. As we move forward with the farmland assessment legislation, that will make it harder for those fake farmers who are not truly farmers -- qualifying for that program. They are likely, I think, going to move to this program, because they will also be able to receive a benefit. And they may view it as a significant benefit that they don't have to continue to pretend they're farmers. So you actually may see additional revenues coming on the tax rolls that you have been writing off in farmland assessment. And as you know, we have a million acres of open space in this state. So it's a lot of land that's out there. And I know Rutgers' study is sort of a rough estimation, but they felt that by raising the revenue requirement, that maybe 47,000 acres or so would not qualify and so, hopefully, you'd take a look at having those folks moved to this program and actually generate more revenue for municipalities.

MR. MORAN: Just in response to that, Senator -- and we do want to commend you for your leadership on farmland assessment issues. But we're not comfortable assuming that one is going to pass -- that one might not pass and the other won't. We're going to address this hearing

today and not talk about implementing legislation or any other possible amendments to the Constitution.

And if, in fact, there is going to be no cost to local property taxpayers, then we'd like to see maybe a further amendment that would guarantee State funding if, by chance, there is.

SENATOR BECK: Jon Moran never supports any of my bills, just so everyone knows. (laughter)

SENATOR GORDON: Thank you.

Mr. Raleigh.

MR. RALEIGH: As you know, I'm President of Friends of Monmouth Battlefield. In this there are a couple of words I wanted to try and use to simplify this discussion, in terms of acquiring open space or farmland.

A few years ago we used Green Acres and DOT Highway Enhancement to acquire 1.3 acres of land near Monmouth Battlefield. Because we did that, when we were looking at expanding the Green Acres Program under Governor Christie Whitman, we were able to broker a deal for 288 acres in 1996 at 1981 prices -- I was instrumental in that deal -- because the landowner wanted to build a new Bell Labs there. And it was back when we were going to have the American Bell and all the rest of that.

I happen to have been an employee of Bell Labs, and I was concerned about losing my pension. (laughter) I went to the Agriculture Board and said, "Until this landowner bought it, it had been in farming before the Revolution." Guess what? They decided to put it back into farming to collect their tax. But it took the land out of development,

whether it was an executive golf course, a shopping mall, or an industrial park--

The important point to work with-- I want to see this go onto the ballot. And I want to thank Senator Beck for discussing it here today. But the two additions that I would like to suggest: In enabling, we consider the land adjacent to open space and to preserved farmland, and give some encouragement that where we've already preserved land we can encourage the landowners.

In the New York case -- New York state case, this has been going on for years, particularly in the Catskills and the Adirondacks in what they have -- they call *in-holdings*, where they've got people who own land for generations, and they're trying to encourage them to sell at a reasonable price to expand the park.

Thank you.

SENATOR GORDON: Thank you very much.

I believe that concludes the testimony on this proposed constitutional amendment. And I want to formally close the hearing on this. I want to thank Senator Beck for her obvious great investment of time and effort in this legislation. And the process will move forward.

We don't take a vote on this; we just close the hearing.

Thank you very much.

**(MEETING CONCLUDED)**