A 103SEP2003

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.**; as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, a citizen and a taxpayer Plaintiffs/Appellants, v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants/Respondents, and **HONORABLE RICHARD J. CODEY**, President of the New Jersey Senate; and **HONORABLE ALBIO SIRES,** Speaker of the Assembly Intervenors/Defendants/ Respondents.	*SUPREME COURT OF NEW JERSEY* *DOCKET NO: 56,643* CIVIL ACTION *DIRECT CERTIFICATION FROM* *SUPERIOR COURT OF NEW JERSEY* *APPELLATE DIVISION* *DOCKET NO: A-103-03* *ON APPEAL FROM* *SUPERIOR COURT OF NEW JERSEY* *LAW DIVISION: COUNTY OF MERCER* *DOCKET NO: MER-L-1633-04* SAT BELOW: HON. LINDA R. FEINBERG, J.S.C.

PLAINTIFFS/APPELLANTS BRIEF IN SUPPORT OF EMERGENT DECLARATORY RELIEF AND PRELIMINARY INJUNCTION

On the Brief:
Mark D. Sheridan
Mark D. Villanueva
James K. Webber, Jr.
Peter J. Gallagher
Lauren D. Godfrey
Thaddeus Maciag
W. Timothy Howes
Andrew T. Fede

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES

CONSTITUTION

PRELIMINARY STATEMENT

This controversy presents the Court with monumental issues of first impression, the resolution of which will have historic implications. Defendants' actions threaten to nullify two of the most important provisions of the New Jersey Constitution, the Balanced Budget Clause and the Debt Limitation Clause. The first is a structural protection for State taxpayers, designed to prohibit profligate elected officials from burdening future generations with the consequences of their poor decisions. The second implicates perhaps the most sacred right the citizens of a democracy enjoy, granting the voters of the State, and only the voters of the State, the ultimate say as to whether the State should incur substantial debts. Only this Court can save those critical constitutional provisions from their complete nullification.

Defendants have enacted a budget in the form of the Fiscal Year 2005 Appropriations Act that treats $1.93 billion dollars of proceeds from the sale of bonds by the Economic Development Authority as "revenue" for purposes of "balancing" the budget. This type of deficit financing has never before been attempted in New Jersey. The reason for that is simple: the Balanced Budget Clause and the Debt Limitation Clause of the New Jersey State Constitution prohibit it.

The court below did not uphold those provisions, however. In so doing, it effectively granted the Governor unfettered discretion to interpret and ignore the constitutional provisions at issue. The court contradicted the common understanding of the term "revenue," and even its own intuition and understanding of the term. Instead, it chose to rely on faulty legislative history from a provision that never became law. Moreover, the decision below ignored the historical treatment of all previous bond issuances by the State of New Jersey.

The lower court's tortured reading of the Balanced Budget Clause flies in the face of 60 years of its interpretation by our elected officials. Just a sampling of past governors' statements regarding the clause is instructive. For example, in his February 1957 Budget Address, Governor Robert B. Meyner stated: "By constitutional mandate, the Budget must be balanced. This budget is balanced. Like Mr. and Mrs. Housekeeper, we have planned future expenses and fitted them into estimated future revenues." (emphasis added). In 1962, Governor Richard J. Hughes noted: "Meanwhile, we have a balanced budget, as required by our Constitution." (emphasis added). Ten years later Governor William T. Cahill acknowledged the difficult consequences of maintaining this constitutional requirement: "To balance the budget, as required by the State Constitution, we can either reduce the proposed expenditures or recommend ways to raise the

necessary additional revenues. In my judgment, any substantive reductions of this proposed budget would impair essential services or programs. The only alternative, thus, is to raise taxes." (emphasis added).

Indeed, not so long ago even Defendant Governor McGreevey recognized the need to protect these valuable principles: "[w]e simply cannot avoid our responsibility by spending money we do not have or engaging in flagrantly unconstitutional deficit spending." - Governor James McGreevey, June 26, 2003. As Defendant Governor McGreevey noted: "[d]eficit spending may be acceptable in Washington, but it will not, and never can be, acceptable in the State of New Jersey. It never has been and it never will be." - Governor James McGreevey, June 26, 2003 (emphasis added to written version).

Despite the decades of protection and respect elected officials have given the Balanced Budget Clause, and despite even the statements of the present administration, Defendants now seek, for all practical purposes, to destroy that crucial instrument of fiscal responsibility. Only this Court stands in their way.

PROCEDURAL HISTORY

On June 24, 2004, Leonard Lance, Alex DeCroce, Joseph M. Kyrillos, Jr., Steven Lonegan, Bret Schundler, and Robert Lindmark (collectively referred to as "Plaintiffs") filed this

lawsuit against James E. McGreevey, the Governor of the State of New Jersey; John E. McCormac, the Treasurer of the State of New Jersey; and the New Jersey Economic Development Authority (the "EDA") in the Law Division of the Mercer County Superior Court. (Pa1). In the Verified Complaint, Plaintiffs sought (i) a declaration that the proceeds of the sale of bonds by the EDA is not "revenue" as that term is used in Article VIII, Section II, Paragraph 2 of the New Jersey State Constitution and thus the FY 2005 Appropriations Act is unconstitutional as the appropriations exceed revenues by roughly $1.5 billion; (ii) an injunction enjoining Governor McGreevey from certifying the proceeds of the sale of bonds by the EDA as "revenue;" (iii) a declaration that the proposed sale of bonds by the EDA is unconstitutional as the bonds were not approved by a majority of the legally qualified voters of the State as required by Article VIII, Section II, Paragraph 3; (iv) an injunction enjoining the EDA from issuing bonds authorized by Assembly Bills 3108 and 3109 that were not approved by a majority of the legally qualified voters of the State as required by Article VIII, Section II, Paragraph 3; (v) an injunction enjoining Treasurer McCormac from expending any funds either actually received from the sale of the proposed bonds or funds which represent future proceeds from the sale of the proposed bonds; and (vi) attorneys' fees and costs of suit. (Pa12).

Upon filing their Complaint, Plaintiffs also filed an Order to Show Cause seeking temporary and permanent restraints against Defendants. Plaintiffs' Brief in Support of the Order to Show Cause was submitted to the Superior Court on June 24, 2004.

On June 25, 2004, Defendants submitted their initial opposition, asserting that the separation of powers and political question doctrines preclude judicial interference in the legislative process. The parties appeared for oral argument before Judge Feinberg, A.J.S.C., on June 25, 2004. Inasmuch as the Governor had not yet signed the legislation at issue, the Court held that the issue was not ripe for determination, denied injunctive relief, and postponed ruling on the merits until July 1, 2004. (Pa89). The Court ordered that all opposition papers to Plaintiffs' Complaint be provided to Plaintiffs' counsel by noon on June 29, 2004, and that Plaintiffs would then have until noon the following day to reply. (Pa90).

On June 29, 2004, Plaintiffs' counsel received opposition briefs from: (1) the Governor; (2) the Economic Development Authority; and (3) intervenors the President of the Senate and Speaker of the Assembly. Simultaneously, the Defendants Governor McGreevey and Treasurer McCormac filed the certification of Charlene M. Holzbaur, Comptroller of the Treasury and the Director of the Division of Budget and

Accounting (the "Holzbaur Certification") in support of their papers.

Plaintiffs also received on June 29, 2004, a notice of motion on short notice to intervene from the New Jersey Senate and the New Jersey General Assembly. Judge Feinberg entertained oral argument on the motion to intervene on June 30, 2004. The court denied the application to intervene as of right, but granted Senate President Richard J. Codey and Speaker of the Assembly Albio Sires permissive intervention in accordance with Rule 4:33-2.

On July 1, 2004, the parties appeared before Judge Feinberg for oral argument. Following oral argument, Judge Feinberg set forth her findings orally on the record, and also issued a written opinion denying all claims made in Plaintiffs' Verified Complaint and dismissed the Complaint in its entirety. (Pa95). Immediately after the entry of the Order of dismissal, Plaintiffs filed an appeal in the Appellate Division. (Pa128). Given the significant constitutional issues at stake, Plaintiffs moved for Direct Certification to this Court on July 1, 2004. (Pa130). Plaintiffs Motion for Direct Certification was granted on July 7, 2004.

STATEMENT OF FACTS

James E. McGreevey, as Governor of the State of New Jersey, has certain constitutional and other legal responsibilities with

respect to the annual budget for the State of New Jersey. Those duties include, but are not limited to, proposing an annual budget before the State Legislature, certifying the revenues of the State, enacting an annual appropriations act, and ensuring that the State's finances are utilized in a manner consistent with that annual appropriations act. N.J. CONST. ART. VIII, §2, ¶2. Pursuant to Article VIII, Section II, paragraph 2 of the State Constitution, the Legislature has approved and the Governor has signed an Appropriations Act for fiscal year 2005, which began on July 1, 2004, and ends on June 30, 2005. Prior to signing the FY2005 Appropriations Act, the Governor signed two other bills into law, the Cigarette Tax Securitization Act of 2004 (the "Cigarette Tax Act") (Pa48) and the Motor Vehicle Surcharges Securitization Act of 2004 (the "Surcharge Act") (Pa59) (the Cigarette Tax Act and the Surcharge Act are hereinafter collectively referred to as the "Deficit Bond Acts"). The FY 2005 Appropriations Act recognizes as "revenue" more than $1.9 billion to be derived through the issuance of deficit bonds by the New Jersey Economic Development Authority pursuant to the Cigarette Tax Act and the Surcharge Act. Lance v. McGreevey, MER-L-1633-04 (Law Div. July 1, 2004), Slip Op. at 4 (Pa100).

The Cigarette Tax Act: 1) authorizes the EDA to issue bonds for sale and to deposit the proceeds from their sale in the

newly created "Cigarette Tax Securitization Proceeds Fund"; 2) grants the EDA the authority to withdraw those funds at the request of the State Treasurer and to pay them into the General Fund of the State Treasury, where they may be used by the State for any lawful purpose; 3) identifies the proceeds of the sale of the bonds as revenue of the State upon their transfer to the General Fund at the State Treasurer's request; 4) authorizes the EDA to pledge any contracts entered into with the State Treasurer to secure payment of the bonds; 5) creates in the Department of the Treasury a non-lapsing fund to be known as the "Cigarette Tax Securitization Fund" which is to be funded beginning July 1, 2006, with an amount equal to the dedicated cigarette tax revenues after the payment of any other obligations for which the State has pledged the proceeds of those revenues; 6) provides that the funds contained in the "Cigarette Tax Securitization Fund" may be transferred to the EDA to repay the proposed bond obligations; and 7) provides that the State is only obligated to make those payments if the State Legislature appropriates funds for this purpose. (Pa48)

The Surcharge Act: 1) authorizes the EDA to issue bonds and deposit the proceeds from their sale in the newly created "Motor Vehicle Surcharges Securitization Proceeds Fund"; 2) grants the EDA the authority to withdraw those funds at the request of the State Treasurer where they may be used by the State for any

lawful purpose; 3) identifies the proceeds from the sale of the bonds as "revenue" of the State upon their transfer to the General Fund at the State Treasurer's request; 4) authorizes the EDA to pledge any contracts entered into with the State Treasurer to secure payment of the bonds; 5) creates in the Department of the Treasury a non-lapsing fund to be known as the "Unsafe Driving Surcharges Fund" which is to be funded beginning July 1, 2006, with all unsafe driving surcharges; 6) provides that the funds contained in the "Unsafe Driving Surcharges Fund" may be transferred to the EDA to repay the proposed bond obligations; and 7) provides that the State is only obligated to make those payments if the State Legislature appropriates funds for that purpose. (Pa59).

Pursuant to the terms of the Deficit Bond Acts and the FY05 Appropriations Act, the EDA is authorized to sell more than $1.93 billion in bonds and to transfer the proceeds of that sale to the General Fund of the State. Lance v. McGreevey, Slip Op. at 3-4 (Pa99-Pa100). The FY05 Appropriations Act identifies the bond proceeds as anticipated revenue. Ibid. The FY05 Appropriations Act, absent the recognition of this $1.93 billion as "revenue," would show a deficit of approximately $1.5 billion. Ibid.

Plaintiffs claim that the fiscal year 2005 budget, as enacted, will result in the downgrade of New Jersey's bond

rating, which will in turn result in negative consequences for the State such as higher interest rates for future issuances of State debt. (Pa4). Plaintiffs assert that the budget violates paragraph 2 of Article VIII, Section II of the New Jersey State Constitution, which requires the Governor to certify that there will be sufficient revenue available to meet the appropriations enumerated in the Appropriations Act. (Pa8). Plaintiffs further argue that the issuance of the bonds violates the Debt Limitation Clause since the State failed to obtain the approval of a majority of the legally qualified voters prior to authorizing the issuance of debt. (Pa10).

Defendants argue that the Governor is designated as the executive power in Article V, Section I, paragraph 1 of the State Constitution and that the power to approve bills, including bills that appropriate funds, is vested solely in the Executive Branch, by virtue of Article V, Section I, paragraph 14(a). N.J. CONST. ART. 5, §I, ¶14. Defendants state that in order to enact an appropriations bill, the Governor must certify that there will be sufficient revenue either on hand or anticipated to meet the appropriations enumerated in the annual appropriations act for the upcoming fiscal year. Lance v. McGreevey, Slip Op. at 5-6 (Pa101-Pa102). Defendants claim that the proceeds from the sale of bonds by the EDA pursuant to the Deficit Bond Acts constitute "revenue" for purposes of the

Balanced Budget Clause. Ibid. Further, Defendants assert that the bonds issued pursuant to the Deficit Bond Acts are not subject to the Debt Limitation Clause of the New Jersey State Constitution. Ibid.

In dismissing Plaintiffs' Complaint, Judge Feinberg ruled that "the anticipated receipt of $1.9 billion from the sale of bonds constitutes revenue that may be applied to meet appropriations during the next fiscal year." Id. at 8 (Pa104). Judge Feinberg noted that "[n]othing in the [Balanced Budget] Clause expressly prohibits the Governor from including the proceeds of bond sales by an independent authority as revenue for the purposes of enacting an Appropriations bill." Id. at 10 (Pa106). Further, Judge Feinberg concluded that since there is "no limitation on the Governor's revenue certification" in the New Jersey State Constitution, it is exclusively the Governor's duty to determine what constitutes "revenue" on hand and anticipated for a fiscal year. Id. at 11 (Pa107).

In her discussion on the meaning of "revenue," Judge Feinberg considered dictionary definitions, legislative history, the State's Comprehensive Annual Financial Reports, prior budgets, and the Holzbaur Certification. Id. at 9-20 (Pa105-Pa116). After considering those sources, Judge Feinberg concluded that while the receipt of $1.93 billion from the sale of bonds "may not be considered revenue for other purposes, they

are clearly revenue when considered in the context of and given the intent of, the Appropriations Clause." Id. at 20 (Pa116).

With respect to Plaintiffs' claims that the bond issuance violates the Debt Limitation Clause of the New Jersey State Constitution, Judge Feinberg noted that the bond issuance does not fall within the purview of the Debt Limitation Clause since the debt is not legally enforceable against the State. Id. at 22-30 (Pa118-Pa126). Judge Feinberg relied on those cases addressing the Debt Limitation Clause, the most recent of which was decided last year. Id. (discussing Lonegan v. State 176 N.J. 2 (2003) (Lonegan II)). Judge Feinberg rejected Plaintiffs' contention that the purpose of the proposed bond issuance distinguishes Defendants' financing scheme from the bond issuance in Lonegan II. Id. at 28-29 (Pa124-Pa125).

LEGAL ARGUMENT

I. Defining Revenue

A. REVENUE MUST BE DEFINED ACCORDING TO ITS COMMONLY UNDERSTOOD MEANING.

Plaintiffs contend that the Court below erred in finding that the Balanced Budget Clause and the Debt Limitation Clause do not prohibit the use of loans to "balance" a budget in which anticipated "revenues" fall short of appropriations.[1]

The New Jersey State Constitution requires that "the State's finances be conducted on the basis of a single fiscal year covered by a single balanced budget." See City of Camden v. Byrne, 82 N.J. 133, 151 (1980); N.J. CONST. ART. 8, §2, ¶2. The New Jersey State Constitution specifically states that:

> [n]o general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor.

N.J. CONST. ART. 8, §2, ¶2 (the "Balanced Budget Clause"). This provision actually a requires a "balanced budget," and not

---

[1] Because the decision below was focused on issues of constitutional law and statutory interpretation, issues legal in nature, they are not entitled to any special deference. Manalapan Realty v. Tp. Committee, 140 N.J. 366, 378 (1995).

merely a requirement that the State be able to obtain enough monies, even through borrowing, to pay its appropriations.[2] See City of Camden 82 N.J. at 151. It is thus required that the State's anticipated yearly appropriations equal its anticipated yearly "revenue." The State has fallen $1.5 billion short of its obligations for fiscal year 2005.

The fiscal year 2005 budget proposed by the Governor recognizes as "revenue" $1.93 billion from the proposed sale of bonds by the New Jersey Economic Development Authority. The proposed bonds are being sold for no other purpose than to "balance" the State's budget. With this financing scheme Defendant Governor McGreevey attempts to pull off two feats which are unprecedented in State history. First, never before have bonds of any type been sold solely for the purpose of using the proceeds to meet general operating expenses. See Letter dated July 6, 2004 from Richard Fair, Independent State Auditor, to Assemblyman Alex DeCroce. (Pa166). Second, proceeds from the sale of the bonds have never been characterized as "revenue." This treatment of borrowed funds as "revenue" is

---

[2] Defendant Governor McGreevey also acknowledged this balanced budget requirement in Executive Order 2 (2002) creating the Budget Efficiency Savings Team Commission (the "BEST Commission"). The Governor charged the BEST Commission with making recommendations regarding government spending to "ensure a balanced budget and the delivery of critical State programs and assistance." See Executive Order No. 2 at ¶6.

directly contradictory to the commonly understood meaning of "revenue," the budget's own definition of "revenue," the State's calculation of "revenue" for its year-end financial statement, the Governor's own statements regarding such funds and indeed, the past sixty (60) years of budgeting history. Finally, permitting proceeds from the sale of bonds by an authority to be considered "revenue" will render the Balanced Budget Clause of the New Jersey State Constitution meaningless.

Plaintiffs ask that this Court interpret the meaning of "revenue" as used in the Balanced Budget Clause of the Constitution and determine whether the financing scheme proposed in the current budget qualifies as "revenue" for purposes of balancing the budget. Given its charge to interpret the constitutionality of the laws of New Jersey, the judiciary maintains the exclusive responsibility to examine and evaluate the language of legislation and the "precise language used by the drafters" of the Constitution. State v. Trump Hotels & Casino, 160 N.J. 505, 527 (1999). Courts presume that constitutional language has been "carefully measured and weighed to convey a certain definite meaning with as little as possible left to implication." Atlantic City Racing Ass'n v. Attorney General, 98 N.J. 535, 546 (1985) (citations omitted). Courts "inquire as to the meaning the symbols of expression would most naturally and plainly convey, the sense most obvious to the

common understanding." Ibid. However, where language of a constitutional provision is susceptible to multiple interpretations, courts may rely on sources outside of the Constitution itself to ascertain its meaning. Trump, 160 N.J. at 527-28.

It is a basic tenet of constitutional construction that the words contained in a constitution are to be given their ordinary and well-understood meaning absent an explicit indication of special meaning from the drafters. See, e.g., Vreeland v. Byrne, 72 N.J. 292, 302 (1977) ("It is a familiar rule of construction that where phraseology is precise and unambiguous there is no room for judicial interpretation"). In this case, the "phraseology" of the Constitution is precise - it requires that the total amount of appropriations not exceed the "total amount of revenue on hand and anticipated by the State." N.J. CONST. ART. VII, Section II, paragraph 2. When the term "revenue" is given its unambiguous meaning, the State's efforts to use a loan -- in the form of proceeds from the sale of bonds by an "independent" authority -- to balance the budget are revealed as inappropriate and unconstitutional.

Black's Law Dictionary defines "revenue" as the "gross receipts" realized by a party as a result of sales, services rendered, or interest earned. See BLACK'S LAW DICTIONARY 1319 (6th ed. 1990). "As applied to the income of a government,"

Black's Law notes that "revenue" includes "all public moneys which the state collects and receives, from whatever source and in whatever manner." Ibid. (emphasis added). In addition, Black's Law Dictionary defines a "public revenue" as "[t]he income which a government collects and receives into its treasury," including "[a]nnual or periodical yield of taxes, excise, custom, dues, [and] rents" Ibid.[3] (emphasis added). Also informative on the point is the definition of "revenues" assigned by the Governor in the Glossary to Reader's Guide for the Fiscal Year 2004-2005 Budget. See Reader's Guide to Fiscal Year 2004-2005 Budget (referred to hereafter as the "Reader's Guide"). In the Reader's Guide, "revenues" are defined as "[f]unds received from taxes, fees or other sources that are treated as income to the state and are used to finance expenditures." (emphasis added). The Glossary's definition of "revenue" as being tantamount to "income" also appears in the

---

[3] This Court endorsed and cited to this definition in Trump, 160 N.J. at 535-36 (1999), noting that "[c]onceptually, we generally understand the term 'State revenue' to mean the money received by the State from taxes, fees and other levies that may thereafter be used by the State for public purposes." The Court subsequently held that the proceeds from certain bonds purchased from a State agency did not "resemble" revenue to the State agency because "[o]n [the agency's] balance sheet, the bond proceeds represent borrowed funds subject to an obligation to repay the principal in full and pay interest at the stated rate." This is what the State's balance sheet should show with regard to the EDA loan.

glossaries of the last five (5) budgets, including the budgets of the Whitman and DiFrancesco administrations. Significantly, none of the definitions offer loans or other liabilities as examples of "revenue." While these definitions admittedly are not offered to provide an exhaustive catalogue of the different forms "revenue" can take, the absence of loans as an example is telling.

Importantly, each of the aforementioned definitions equates "revenue" with "income." That correlation reveals the State's effort to characterize the loan from the EDA as "revenue" to be misguided. "Income" is defined as "[t]he gain derived from capital, from labor or effort, or conversion of capital." See BLACK'S LAW DICTIONARY at 763. Conversely, a "loan" is defined as the exchange of money "upon agreement, express or implied, to repay it with or without interest." Id. at 936. The proceeds from the sale of bonds pursuant to the Deficit Bond Acts clearly do not constitute "income" as the EDA anticipates repayment of the proceeds over the next several decades. The bond proceeds, therefore, cannot constitute "revenue." Even a cursory review of the Deficit Bond Acts demonstrates that the proposed bonds fall squarely within the definition of a "loan" - the EDA agreed to turn the proceeds over to the General Fund in exchange for the State's agreement, subject to annual appropriations, to repay the proceeds from the sale of the bonds with "revenues"

generated by the Cigarette Tax and the Motor Vehicle Surcharge. Moreover, it is axiomatic that if a person takes out a mortgage on his home, the proceeds of that mortgage are not "income."[4] It follows that the State cannot have an "independent" authority issue bonds solely for the purpose of turning the proceeds from the sale of those bonds over to the State to be considered "revenue." As the proceeds of the proposed bond sales do not constitute revenue, the FY 2005 Appropriations Act contains a $1.5 billion deficit and is therefore unconstitutional.

Application of the long-standing rules of statutory construction requires that "revenue," as it appears in the Balanced Budget Clause and indeed, everywhere in the New Jersey State Constitution, be given its commonly understood meaning as being tantamount to "income" and therefore, not include proceeds from the sale of bonds by an "independent" State Authority. See Levin v. Parsippany-Troy Hills Twp., 82 N.J. 174, 182 (1980). Nevertheless, Judge Feinberg, in her decision below, determined that "revenue" should be construed more broadly than it is commonly understood. See Lance v. McGreevey, Slip. Op. at 7-20 (Pa103-Pa116). Judge Feinberg's determination in this regard

---

[4] Notably, the New Jersey Division of Taxation does not treat the proceeds of a loan as "income." See N.J.S.A. 54A:5-1 et seq.

results from a flawed analysis that consequently renders the Balanced Budget Clause superfluous and meaningless.

B. JUDGE FEINBERG ERRED BY DEFINING REVENUE TO INCLUDE PROCEEDS FROM THE SALE OF DEBT.

The decision below determines that the Balanced Budget Clause does not require that the budget actually be balanced, i.e. that income must equal expenditures without borrowing. Rather, it concludes that the provision's sole purpose is simply to require that the State have monies on hand sufficient to cover its expenditures, i.e. that the State can't spend more money than it has. Aside from rendering the provision superfluous (obviously one can't spend more than he has) -- the support for this proposition is dubious. The first analytical error of the decision is its assignment to the Governor of the unfettered power to define what is "revenue." As explained elsewhere in this brief, he enjoys no such power. The opinion bolsters its erroneous conclusion by relying upon the legislative history behind a provision that was proposed to be included in the 1944 Constitution, soundly rejected, and then omitted from the proposed Constitution in 1947, the Constitution which was enacted. Id. at 13-14 (Pa109-Pa110).

The decision below begins its analysis of the Balanced Budget Clause by determining that "[n]othing in the [Balanced Budget Clause] expressly prohibits the Governor from including

the proceeds of bond sales by an independent authority as revenue for purposes of enacting an Appropriations bill." Id. at 10 (Pa106). This conclusion ignores the fact that the definition of "revenue" itself prohibits the inclusion of proceeds from the sale of bonds. Further, the Balanced Budget Clause does not grant the Governor the right to define "revenue." Rather, it simply allows him to certify what the anticipated "revenue" of the State will be. As discussed below, it is the sole province of the Court to define "revenue."[5] While the Governor's powers are indeed significant, as the decision below notes, they are not unchecked.

Judge Feinberg's reliance on the legislative history behind the Single Fund Act is equally unavailing. The United States Supreme Court, as well as New Jersey Courts, have found that "failed legislative proposals are 'a particularly dangerous ground on which to rest an interpretation of a prior statute.'"

---

[5] Doing so, this Court would not interfere with the Governor's authority to certify what the revenue of the State is. Rather, as discussed more fully in the sections of this brief relating to "Separation of Powers" and "Political Questions," this Court would simply be exercising its constitutional mandate, just as it has done in connection with defining numerous other powers of the Executive and the Legislative branches. See Board of Chosen Freeholders of the County of Morris v. State, 159 N.J. 565 (1999); State v. Apportionment Commission, 125 N.J. 375 (1991); Hackensack Water Co. v. Ruta, 3 N.J. 139, 144 (1949); State v. Wurts, 63 N.J.L. 289, 293-94 (E. & A. 1899); State v. Rogers, 56 N.J.L. 480 (1894); State v. Pritchard, 36 N.J.L. 101, 113-16 (1873)).

United States v. Craft, 535 U.S. 274, 287, 122 S. Ct. 1414, 1425 152 L. Ed. 2d 437, 451 (2002) (quoting *Pension Benefit Guaranty Corp. v. LTV Corp.*, 496 U.S. 633, 650, 110 S. Ct. 2668, 110 L. Ed. 2d 579 (1990)); see also Edwards v. Carter, 580 F.2d 1055, 1060-61 (D.C. Cir. 1978) (noting "[t]hat those who framed and ratified the Constitution rejected several express attempts to limit the treaty power in the manner now urged... [which] greatly undermines [the usefulness of reliance on such attempts in] the interpretation of that power."). Where statutory language is rejected by the legislature and not enacted into law, "it provides an indication that the legislature did not want the issue considered." Weintraub v. Director, Div. of Taxation, 19 N.J. Tax 65, 74 (N.J. Tax Ct. 2000). Judge Feinberg's examination of language used in a failed statutory provision in an effort to define "revenue" in the Balanced Budget Clause is improper.

Even if consideration of the Single Fund Act is appropriate, a point Plaintiffs do not concede, Judge Feinberg's conclusion that "revenue" includes "all moneys available for expenditure for public purposes, regardless of its source," is an overly broad interpretation of the term. The Framers did not propose that all moneys of the State Government, from whatever sourced derived, be deposited into the General Fund; rather, the Framers specifically proposed that all "revenue," from what ever

source derived be placed into the General Fund. The language of the Single Fund Act is clear. The Framers proposed that only the moneys that constituted "revenue," irrespective of the source of that "revenue," be deposited into the General Fund. Judge Feinberg failed to properly construe the language of the Single Fund Act by failing to recognize that the term "revenue" limited the phrase "from whatever source derived." As such her conclusion that "from whatever source derived" was intended to broaden the definition of "revenue" is obviously in error.

C. THE STATE'S HISTORICAL TREATMENT OF BOND PROCEEDS BELIES DEFENDANT GOVERNOR McGREEVEY'S AND DEFENDANT McCORMAC'S PROPOSED TREATMENT OF THE PROCEEDS OF THE PROPOSED BOND SALES UNDER THE DEFICIT BOND ACTS.

Leaving aside the common understanding of "revenue" as not including proceeds from the sale of bonds, the State's historical treatment of proceeds from the sale of bonds is telling. For the last six years the Comprehensive Annual Financial Report of the State has not included proceeds from the sale of bonds, general obligation or authority issued, as "Revenue."[6] Likewise, the budgets for each of the last five years have not included proceeds from the sale of bonds within the

---

[6] Proceeds from the sale of bonds, to the extent the appear at all, appear in *de minimus* amounts, and are instead categorized as "Other Financing Sources" in the Comprehensive Annual Financial Report. See Affidavit of Charlene Holzbaur submitted in opposition to Plaintiffs' Order to Show Cause at ¶8.

calculation of "revenue."[7] Defendants take issue with that proposition and rely on the Holzbaur Certification to rebut it. Judge Feinberg relied upon the Holzbaur Certification in reaching her conclusion that proceeds from the sale of bonds have constituted "revenue." Lance v. McGreevey, Slip Op. at 15-19 (Pa111-Pa115). When analyzed closely, however, the Holzbaur Certification is misleading and does not support such a conclusion. Importantly, it is entirely consistent with Plaintiffs' position. However, through selective omissions, it provides an incomplete understanding of the historical treatment of bond proceeds.

Ms. Holzbaur contends that:

> In each of the years when I have acted as Comptroller of the Treasury and the Director of the Division of Budget and Accounting, both the revenue estimate of the Governor's proposed budget and the Governor's revenue certification delivered in connection with the enactment of the annual appropriations act have included interfund transfers to the General Fund as revenue.
> Id. at 17-18 (Pa113-Pa114) (quoting Holzbaur Certif. ¶9)

The Holzbaur Certification further states that these interfund transfers included in the Governor's revenue certification can include proceeds from the sale of general

---

[7] The proceeds of bonds sold by the Tobacco Settlement Financing Corporation are distinguished below.

obligation bonds, but only if permitted by law.[8] Id. Indeed, upon reading the Holzbaur Certification one is led to believe that all interfund transfers are from funds containing bond proceeds - that is simply not the case. See Letter from Richard Fair, State Auditor, to Senator Leonard Lance dated July 8, 2004 (Pa167). The vast majority of interfund transfers involve transfers from funds supported by independent revenue sources such as taxes or fees. (Pa 168). The Holzbaur Certification also fails to note, as set forth in the State Auditor's letter of July 8, 2004, that a majority of the funds created with the proceeds from the sale of general obligation bonds permit the transfer of interest earned those proceeds to be transferred to the General Fund. (Pa167). Plaintiffs do not take issue with the treatment of earned interest as "revenue."[9] The Holzbaur Certification demonstrates, and the State Auditor's letter of July 6, 2004 confirms what Plaintiffs have maintained since the

---

[8] The Holzbaur Certification omits any discussion as whether the laws authorizing the issuance of the general obligation bonds permit the proceeds from the sales of those bonds to be used for any purpose or only for expenditure on items that were incidental to the project for which the bonds were issued.

[9] As discussed below, Plaintiffs are, without a forensic accounting, unable to determine whether the monies transferred by interfund transfer to the General Fund, even though minimal, are actually proceeds from the sale of general obligation bonds or if they are interest earned on the investment of general obligation bond proceeds.

beginning, no prior budget has treated proceeds from the sale of authority-issued bonds as "revenue." (Pa 166). The Holzbaur Certification, in its failure to address the issue directly helps show that proceeds from the sale of authority-issued bonds have never been treated as "revenue."[10]

The revenue certification of Governor Whitman in 2001 (the "Whitman Revenue Certification"), relied upon by Ms. Holzbaur, reveals the accuracy of Plaintiffs' position. For fiscal year 2001, the Whitman Revenue Certification indicates that $1,079,051,000 was credited to the General Fund via "Interfund Transfer" and that those monies were used to offset appropriations. The Holzbaur Certification asserts that those interfund transfers were similar to what is proposed here, and thus the historical treatment of bonds proceeds is not as Plaintiffs' suggest. As the State Auditor's letters of July 6th

---

[10] Defendants, in their opposition to Plaintiffs' Motion for Direct Certification, make much of the statement in Plaintiffs' reply brief below that proceeds from the sale of general obligations bonds are appropriately considered revenue for purposes of the of the Balanced Budget Clause. While admittedly Plaintiffs' statement was in-artfully drafted, as will be discussed in more detail in the main portion of this memorandum, the intent was to convey the idea that proceeds from the sale of general obligation bonds can only properly be used to offset appropriations when they are in an amount equal to less than 1% of the annual appropriations and used to offset costs incidental to the specific purpose for which the bonds were issued. See Opinion of Albert Porroni, Legislative Counsel, Office of Legislative Services. (Pa23).

and 8th point out, the Holzbaur Certification ignores that, unlike the interfund transfers contemplated by the Deficit Bond Acts, none of the interfund transfers in the FY2001 Appropriations Act involved proceeds from authority-issued debt. (Pa 166-Pa167) A thorough examination of the interfund transfers to the General Fund in the FY2001 Appropriations Act, reveals that less than $50 million of the $1 billion in interfund transfers identified in the Whitman Revenue Certification were derived from funds, Special Revenue or otherwise, supported by the proceeds of the sale of general obligation bonds.[11] (Pa167)

To the extent those interfund transfers did involve transfers from funds supported by proceeds from the sale of general obligation bonds, those transfers are irrelevant to the case at hand as, unlike the present situation, they totaled less than 1% of the total amount appropriated for the year. (Pa167). Historically, the use of proceeds from the sale of general obligation bonds to offset expenditures has been minimal. (Pa167). In all cases they have been less than one percent of State expenditures and therefore did not violate the Balanced

---

[11] Again, Plaintiffs note that they are unable to determine whether or not these monies represent actual proceeds from the sale of the general obligation bonds that were used to support the fund or if they represent interest earned on those proceeds.

Budget Clause and the Debt Limitation Clause. (Pa167). As the Independent State Auditor's letter of July 8, 2004 demonstrates, this was precisely the case in FY2001 and FY2002.[12] (Pa167).

Defendant Governor McGreevey does not recognize the proceeds from the proposed bonds in the same way as past bond issuances. Historically, all of the bond proceeds that have been transferred into the General Fund for appropriation for operating expenses in the annual appropriations act have been proceeds from the sale of general obligation bonds. (Pa167). Additionally, all such transfers have been in an amount equal to less than one percent of annual appropriations. (Pa167). As the State Auditor points out, "I am not aware of any instance where bonds have been issued by authorities which are then directly used to support the general operating expenses of the State." (Pa167). Simply put, that is because the bonds issued pursuant the Deficit Bond Acts are unlike anything that has heretofore been encountered in New Jersey budgetary history. (Pa166).

The Holzbaur Certification truthfully but misleadingly indicates that for fiscal years 2003 and 2004, the Governor's revenue certification included funds that were the proceeds of the sale of bonds by the Tobacco Settlement Finance Corporation

---

[12] In FY2001 interfund transfers from all funds supported by proceeds from the sale of general obligation bonds totaled $36,870,000 or .17% of the appropriations for that year.

- a State Authority. Judge Feinberg relied heavily on that misleading portion of the Holzbaur Certification in her opinion, yet acknowledged during argument that the treatment of proceeds of which Ms. Holzbaur speaks were significantly different than the treatment being afforded the proceeds of the proposed bonds under the Deficit Bond Acts. While it is true that the monies that were transferred from the Tobacco Settlement Fund to the General Fund were at one time proceeds of the sale of the bonds, there is a significant omission in Ms. Holzbaur's Certification. (Pa166). It ignores what is precisely explained by the State Auditor, that while the Tobacco Settlement Finance Corporation issued bonds and received those proceeds into its coffers, that bond issuance was not a mere financing mechanism created by the State. (Pa166). Rather, the transaction that occurred involved a real asset and further that, unlike the present situation, the State had no liability to the authority that issued the bonds. (Pa166). The Tobacco Settlement Financing Corporation used the proceeds from the sale of bonds to buy the State's entitlement to future payments from tobacco companies in connection with the nationwide settlement of the tobacco litigation. (Pa166) Thus, the Tobacco Settlement Financing Corporation took the proceeds from the sale of bonds and paid those proceeds to the Tobacco Settlement Fund in exchange for the State's sale and assignment of an asset. (Pa166). As the State Auditor indicated that is one

or has historically been treated by the Treasury Department or the State, the budget as proposed is unbalanced and unconstitutional. Plaintiffs are thus entitled to a declaration that the Fiscal Year 2005 Appropriations Act is unconstitutional.

D. DEFENDANT GOVERNOR McGREEVEY'S AND DEFENDANT McCORMAC'S PROPOSED TREATMENT OF PROCEEDS FROM THE SALE OF BONDS UNDER THE DEFICIT BOND ACTS RENDERS THE BALANCED BUDGET CLAUSE OF THE CONSTITUTION MEANINGLESS.

Assuming, *arguendo*, that the Court is unmoved by the State's own historic and current treatment of proceeds from the sale of bonds, Governor McGreevey's attempt to issue bonds to comport with the constitutional mandate of a balanced budget must be declared unconstitutional on the grounds that it renders the Balanced Budget Clause of the New Jersey State Constitution a nullity. By proceeding in the manner proposed, the Governor seeks to perpetuate a sham by declaring his intent to "balance the budget" only to borrow $1.93 billion to satisfy that mandate. Such a subterfuge must not be countenanced. The concept of a "balanced budget" inherently means that total "revenue" will be equal to or greater than expenditures. If this Court allows the State to borrow money through straw men such as the EDA, using devices such as bonds to achieve that equilibrium, then the term "balanced budget" will be meaningless

in New Jersey.[14] The Court should not allow Defendants Governor McGreevey and Treasurer McCormac to deceive the people of New Jersey with a clever manipulation that nullifies the balanced budget requirement of the New Jersey State Constitution.

If loan proceeds can be considered "revenues," as Judge Feinberg's opinion suggests, it is inconceivable how the budget could ever not be "balanced." Such a ruling would perpetuate the fiction that even the federal budget is "balanced," which no one would suggest. Indeed, Defendants' proffered reading of the term "revenue," if taken to its logical extreme, would permit the Governor to declare a tax holiday once every four years and simply fund the State's expenditures in that year solely with proceeds of bond sales by the State's authorities. Surely that is not what the Framers intended at the time the Balanced Budget Clause was enacted.

---

[14] Indeed, the attempt by the Governor and the Treasurer to use the EDA to hide the State's debt is eerily similar to the creative accounting utilized by Enron to hide its debt through the creation of dozens of dummy corporations to smokescreen actual debt carried by Enron. Taken to its logical extreme, there is simply no limit on the amount of debt the State could mask, or the amount of artificial "revenue" the State could create via the issuance of bonds through created "shell" authorities. Only this Court can prevent this creative mistreatment of the New Jersey State Constitution by Defendant Governor McGreevey and Defendant McCormac.

II. The Proposed Bonds Are Unconstitutional Pursuant to the Debt Limitation Clause of the New Jersey State Constitution.

A long and well-examined body of case law has applied the Constitution's Debt Limitation Clause to myriad bonding mechanisms by the State, but rarely has a court held a bonding scheme unconstitutional. Just last year, a closely divided New Jersey Supreme Court upheld several bonding schemes in "Lonegan II". This case presents issues unlike any case before, however. A ruling in favor of Plaintiffs therefore need not disturb any precedents of this Court. The bonds proposed to be issued by the Deficit Bond Acts are a radically new breed of financial instrument for New Jersey: bonds floated for the sole purpose of covering the operating expenses of the State traditionally covered by the State's General Fund. As such, they are unconstitutional.

A. HISTORY OF THE DEBT LIMITATION CLAUSE

New Jersey adopted its Debt Limitation Clause in an effort to protect against the financial disaster that many states experienced in the depression years that followed the economic boom of the 1830's. See Lonegan v. State, 174 N.J. 435 (2002) ("Lonegan I") (internal citations omitted). In that decade, many states issued long term debt in connection with various public improvement projects including roadway, railroad, and canal development. Ibid. In years of prosperity, states easily

sold their bonds and became highly leveraged to support those and other public improvement projects. Ibid. Due to the failure of American crops in the late 1830's, however, the economy plummeted, the banking industry collapsed, and many states defaulted on their obligations. Ibid. The unrest and instability caused as a result marred that period in our nation's economic history.

Although New Jersey was not a defaulting state, it adopted the Debt Limitation Clause in 1844 to avoid burdening New Jersey "with a debt which would encumber it from generation to generation." Id. at 444 (quoting Proceedings of the Constitutional Convention of 1844, at 519 (1942)). The Clause prevents "one Legislature from incurring debts [that] subsequent Legislatures would be obligated to pay, without prior approval by public referendum." N.J. Sports & Exposition Auth. v. McCrane 61 N.J. 1, 13-14 (1972). In relevant part, the Debt Limitation Clause states:

> The Legislature shall not, . . . create in any fiscal year a debt or debts, . . . which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctly specified therein. . . . [S]uch law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal thereof within thirty-five years from the time it is contracted; and the law shall not be repealed until such debt or liability and

the interest thereon are fully paid and discharged. No such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon.
[N.J. Const. Art. VIII, § 2, ¶ 3 (emphasis added).]

As enacted in 1844, the Clause provided for a $100,000 debt limit. See WILLIAMS ROBERT F., THE NEW JERSEY STATE CONSTITUTION: A REFERENCE GUIDE page 117 (Rutgers University Press) (1990). In 1947, Senator Van Alstyne, a delegate from Bergen County and Chairman of the Joint Appropriations Committee, presented an amendment to increase the $100,000 debt limit to one percent of annual appropriations. Ibid.

B. CASE LAW INTERPRETING THE CLAUSE PRE-LONEGAN

In his concurring and dissenting opinion in Lonegan I, Justice Stein offered a comprehensive and lucid summary of this Court's Debt Limitation Clause jurisprudence. Lonegan I, 174 N.J. at 466 (Stein, J. concurring and dissenting). In short, he concluded that no opinion of the Court had established the principle that the Debt Limitation Clause is inapplicable to so-called "contract debt." Id. at 493. A brief review of the most salient of those cases confirms the point.

In New Jersey Turnpike Authority v. Parsons, 3 N.J. 235, 238 (1949), the Court addressed the constitutionality of an act that authorized bonds to be issued by the New Jersey Turnpike Authority to finance construction of the New Jersey Turnpike.

The Court held that the act did not violate the Debt Limitation Clause because the State is not liable for debts owed by an independent authority, and thus, the bonds did not constitute a debt of the State. Id. at 242-43. The Court further noted that the bonds were to be repaid from revenues generated by the project itself, i.e., Turnpike toll revenue. Id. at 246.

In Clayton v. Kervick, 52 N.J. 138, 141 (1968), the Court addressed the validity of a statute establishing the New Jersey Educational Facilities Authority. Under that statute, the Authority was empowered to issue bonds in order to fund projects such as the construction of college dormitories. Ibid. The State Treasurer challenged the statute under the Debt Limitation Clause, but the Court held that the statute did not violate the Clause because the lease payments for these facilities would be used to pay off the bonds. Id. at 155-56.

Meister v. Board of Trustees of the Passaic Cty. College, 59 N.J. 60, 64 (1971), concerned the constitutionality of a statute authorizing counties to issue bonds from which the proceeds would be devoted to paying the State's share of the costs incurred in constructing capital projects for County Colleges. Under the statute, State appropriations were to be used to pay off the bond's recurrent interest payments and the bond's principal at maturity. Ibid. However, the statute expressly stated that only the county issuing the bonds, not the

State, was required to repay those bonds. Id. at 65. The Court held that the statute was constitutionally permissible. Id. at 66.

In Bulman v. McCrane, 64 N.J. 105, 107 (1973), a taxpayer sought to enjoin the State from signing a twenty-five year lease on a storage facility. Under the terms of the lease, the State had the option to buy the building in the tenth, fifteenth, and twentieth year of the lease. Ibid. Title would revert to the State at the end of the twenty-five year lease term if it did not exercise one of its prior options to buy. Ibid. The plaintiff argued that the transaction in question actually constituted a purchase agreement and thus, the lease payments should be considered debt. Ibid. The Court held, however, that the transaction constituted a bona fide lease rather than a purchase, and that the State had not incurred any debt by obligating itself to make future rent payments. Id. at 117-18.

In New Jersey Sports & Exposition Auth., 61 N.J. at 9, the Court addressed the constitutionality of an act that was adopted to bring about the construction, operation, and maintenance of a sports complex, including a racetrack for horse racing. To facilitate construction of the complex, the act established the New Jersey Sports & Exposition Authority ("NJSEA"). Ibid. The act further empowered the NJSEA to issue bonds in order to finance the construction. Id. at 10. Those bonds were to be

paid off using revenues derived from the NJSEA's facilities. Ibid. The constitutional issue arose because of a constitutional provision that provides that the State shall receive a reasonable revenue from horse racing with pari-mutuel gambling. Id. at 13 (citing N.J. Const. Art. IV, § VII, ¶ 2). Under the act, the State dedicated that revenue to the NJSEA for the repayment of the bonds it issued. Id. at 10. The Court held that allocation of that revenue to a state agency satisfies the requirement that the state receive a reasonable revenue from horse racing with pari-mutuel gambling. Id. at 23. The dissent argued that dedicating that revenue to the NJSEA created a debt in violation of the Debt Limitation Clause. Id. at 48 (Weintraub, J., concurring in part and dissenting in part).

Enourato v. New Jersey Building Authority, 90 N.J. 396, 399 (1982), involved a constitutional challenge to the New Jersey Building Authority Act. That act authorized the New Jersey Building Authority ("NJBA") to issue bonds to be used to fund the construction of office facilities for state agencies. Id. at 399. The NJBA was obligated to repay those bonds using revenue collected by leasing its facilities to the State. Id. at 402. The State, however, was not obligated to repay the bonds. Ibid. In addition, the State's liability regarding its lease payments to the authority did not "create any debt of the State. Both the statute and the lease make clear that all rent

payments from the State are subject to legislative appropriations." Id. at 410. Thus, the Court rejected plaintiff's contention that the act violated the Debt Limitation Clause. Ibid.

In Spadoro v. Whitman, 150 N.J. 2 (1997), the Court dismissed plaintiff's challenge of the PBFA as moot and so the constitutionality of the act was never firmly established. In a concurrence and dissent, Justice Handler nevertheless addressed the merits of the claim. The act provided "for the issuance of approximately $2.7 billion in bonds by the Economic Development Authority ("EDA"), with the proceeds to be used to pay the State's obligations for the unfunded accrued liability of several state pension systems." Id. at 2-3. (Handler, J., concurring in part and dissenting in part). Under the act, the State would pay off the interest and principal on the bonds, "subject to future legislative appropriations." Id. at 3. Importantly, the proceeds from the sale of those bonds never entered the State's General Fund, and were not used for general operating expenditures. In concluding that the act violated the Debt Limitation Clause, Justice Handler distinguished that case from prior decisions, stating that "[i]n other cases, the independent authorities were clearly separate government entities that served special and discrete governmental purposes." Id. at 9. He further noted that in Spadoro, "the

EDA . . . serves no governmental function other than to issue the bonds for the State . . . [while] in other cases a separate source of income had been created by the independent authorities as a basis for funding their separate operations and fulfilling their specific public purposes." Id. at 10.

In sum, each of the cases described above fall into one or more of the following categories of obligations incurred by the State on behalf of future taxpayers:

- bonds issued by independent authorities to finance capital projects, see N.J. Tpke. Auth., 3 N.J. 235; and Clayton, 52 N.J. 138;
- bonds issued by political subdivisions with independent taxing authority, see Holster, 59 N.J. 60 (1971);
- bonds issued by independent authorities for the establishment of those authorities, which are intended to be self-sustaining through the collection of fees and revenues, see NJ Sports & Exposition Auth., 61 N.J. 1;
- bonds issued for the purpose of being deposited into a specific State fund for a specific purpose, Spadoro, 150 N.J. 2; and
- long-term lease arrangements, see Bulman, 64 N.J. 105; and Enourato, 90 N.J. 396.

As will be demonstrated below, the proposed bonding schemes at issue are unlike any of the schemes analyzed before, and in, Lonegan I and II.

C. LONEGAN I AND II

i. Lonegan I

In 2000, Plaintiff Lonegan sued the State, Roland M. Machold, then-Treasurer of the State of New Jersey, and several independent State agencies and authorities to enjoin them from undertaking bond financing without voter approval. Lonegan I, 174 N.J. at 441. At issue was the application of the Debt Limitation Clause to so-called "contract debt" by those agencies and authorities. "Contract debt," broadly speaking, is debt which the State has not backed with its full faith and credit, but rather, has entered into a contract with the issuing agency or authority to support the debt with annual appropriations. The Lonegan I defendants won summary judgment at the trial court, and a divided panel of the Appellate Division affirmed. Id. at 441-442. This Court heard the Plaintiffs' appeal as of right.

The Court also affirmed the grant of summary judgment as to one of the statutes at issue, the Educational Facilities Construction and Facilities Act ("EFCFA"), but it reserved judgment on the other challenged statutes and bonding mechanisms. In so doing, the Court recognized that the question at issue was unique, as it concerned a statute that was enacted to satisfy the constitutional mandate of the Education Provision of the Constitution, Article VIII, Section 4, paragraph 1. "The

contract debt authorized by EFCFA is *sui generis*. We are unaware of any other authorized state bonds dedicated to the provision of constitutionally required facilities." Id. at 460. The Court pointed out that the Legislature and the Governor had enacted EFCFA to satisfy its constitutional obligations. Ibid. The Court also credited a reliance interest on the part of its coordinate branches of government in that the Court had enforced the Education Provision's mandate in Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V") and political branches has responded to that holding. Id. at 461. The Court also cited its precedents regarding the Debt Limitation Clause, which "spann[ed] more than fifty years and cover[ed] a wide variety of bonding mechanisms adopted by the Legislature to meet the capital funding needs of the State." Id. at 439, 461-62. The combination of those factors makes Lonegan I unique, and, though obviously informative to the case at bar prevents it from being dispositive of the issue at hand.

In Lonegan I, Justice Stein concurred in part and dissented in part, arguing that "the issuance of debt without voter approval by an independent state authority, unsupported by an adequate independent revenue source and to be amortized primarily or exclusively by annual legislative appropriations, violates the Debt Limitation Clause notwithstanding that the State has no legal liability for repayment of the debt." Id. at

467 (Stein, J., concurring and dissenting). Justice Stein concurred with the narrow holding of the Court, however, on the grounds that his preferred ruling should be applied prospectively. Id. at 500.

The Lonegan I Court also invited further briefing in order to reconsider its precedents sustaining contract debt. Id. at 464 - 65. One of the questions the Court asked to be briefed was whether "ordinary expenses of government," can be differentiated from pension contributions, similar to those at issue in Spadoro, and, presumably, other State expenditures. Id. at 465. That issue was never taken up in Lonegan II, and it is the central issue in the case at bar.

ii. Lonegan II

In Lonegan II, the Court analyzed a broader challenge to the following statutes: The New Jersey Economic Development Authority Act, N.J.S.A. 34:1B-1 to -21.15; the New Jersey Transportation Trust Fund Authority Act of 1984, N.J.S.A. 27:1B-1 to -31; New Jersey Sports and Exposition Authority Law, N.J.S.A. 5:10-1 to -38; New Jersey Educational Facilities Authority Law, N.J.S.A. 18A:72A-1 to -71; County College Capital Projects Fund Act, N.J.S.A. 18A:72A-12.1 to -12.8; and the Tobacco Settlement Financing Corporation Act, N.J.S.A. 52:18-B-1 to -14. Lonegan II, 176 N.J. at 10. The Lonegan II plaintiffs focused their challenge on bonds that are unsupported by an

independent revenue stream and are to be amortized by annual appropriations. Id. at 11. Although the Court upheld the validity of appropriations-backed debt in each instance, those statutes are very different from Assembly Bill 3108 and Assembly Bill 3109.[15]

The thrust of the plaintiffs' arguments in Lonegan II was that, due to the pressures of the bond market, "subject to appropriation bonds" are effectively "full faith and credit

---

[15] A review of all of the relevant provisions of the statutes in question reveals just how unique the proposed bonds at issue are. See, e.g., N.J.S.A. 5:10-1 et seq. ("New Jersey Sports and Exposition Authority Law"); N.J.S.A. 18A:72A-2 et seq. ("New Jersey educational facilities authority law"); N.J.S.A. 18A:72A-12.2 et seq. ("County College Capital Projects Fund Act"); N.J.S.A. 18A:72A-12.6 et seq. ("Dormitory Safety Trust Fund"); N.J.S.A. 18A:72A-40 et seq. ("Higher educatio equipment leasing fund act"); N.J.S.A. 18A:72A-49 et seq. ("Higher Education Facilities Trust Fund Act"); N.J.S.A. 18A:72A-59 et seq. ("Higher Education Technology Infrastructure Fund Act"); N.J.S.A. 18A:72A-72 et seq. ("Higher Education Capital Improvement Fund Act"); N.J.S.A. 18A:74-14 et seq. ("New Jersey Library Construction Incentive Act"); N.J.S.A. 27:1B-1 et seq. ("New Jersey Transportation Trust Fund Authority Act of 1984"); N.J.S.A. 34:1B-1 et seq. ("The New Jersey Economic Development Authority Act"); N.J.S.A. 34:1B-7.20 et seq. ("Public School Finance Assistance Act"); N.J.S.A. 34:1B-7.45 et seq. ("Pension Bond Financing Act of 1997"); N.J.S.A. 34:1B-21.1 et seq. ("Good Driver Protection Act of 1994"); N.J.S.A. 34:1B-36 et seq. ("New Jersey Local Development Financing Fund Act"); N.J.S.A. 34:1B-124 et seq. ("Business Employment Incentive Program Act"); N.J.S.A. 34:1B-144 et seq. ("Port Unification and Financing Act"); N.J.S.A. 52:18B-1, et seq. ("Tobacco Settlement Financing Corporation Act"); N.J.S.A. 52:27BBB-1 et seq. ("Municipal Rehabilitation and Economic Recovery Act"); N.J.S.A. 52:27BBB-66 et seq. ("Tax Lien Financing Corporation Act.").

bonds." Ibid. As such, the plaintiffs argued, the bonds ought to be subject to voter approval under the Debt Limitation Clause. Ibid.

This Court rejected the plaintiffs' arguments. The Court held that because the State's full faith and credit was not pledged to support the bonds at issue, the bonds did not implicate the Debt Limitation Clause. Id. at 14-15. The Court noted the increasingly complex means by which the State implements its essential functions, and wrote that it is now "difficult if not impossible to differentiate among acceptable and unacceptable types of twenty-first century appropriations-backed debt under a nineteenth-century paradigm." Id. at 15. The Court pointed out that the plaintiffs, and the dissenting members of the Court, had been unable to articulate a principled difference between other forms of State obligations backed by annual appropriations, such as structured lease payments and revenue bonds, and the contract debt they were challenging. Id. at 15, 19. In the end, the Court recognized that, given "the realities of the marketplace," treating contract debt as anything other than general obligation debt appears counterintuitive. Id. at 20. "[U]nwilling to disrupt the State's financing mechanisms in the circumstances presented," however, the Court decided to leave any reform of the process to its coordinate branches. Id. at 21.

Three dissenting members of the Court reiterated the objections Justice Stein articulated in his Lonegan I opinion. The dissenters "amplified" that opinion by stating, "The aim of the Debt Limitation Clause is to place a constraint on government. It is one of the few clauses intended to empower the people by giving them a direct voice in managing the State." Id. at 22 (Long, Verniero, and Zazzali, JJ., dissenting). The dissenters argued that the majority opinion as written "construes the Debt Limitation Clause so narrowly that the Clause no longer applies" to virtually any government debt. Id. at 21. They believed that the contract debt schemes at issue were contrary to the intent of the Constitution's framers, as they bound future generations without obtaining voter approval. Id. at 22. The dissenters would have found the contract debt schemes at issue unconstitutional, but would have stayed their holding and applied it prospectively so as not to unnecessarily disturb the operations of government. Id. at 24.

In her opinion below, Judge Feinberg held that Lonegan II established once and for all that all forms of contract debt were free from the constraints of the Debt Limitation Clause. Lance v. McGreevey, Slip. Op. at 25 (Pa120). Plaintiffs respectfully disagree. The Supreme Court undeniably made a broad statement of the law in Lonegan II, but it did not

foreclose the issue entirely.[16] In fact, the Lonegan II Court readily acknowledged that its decision regarded only the statutes at issue in the case, and relied upon only precedents regarding the kinds of contract debt theretofore subject to constitutional challenge. Lonegan II, 176 N.J. at 5. Note that the Court concluded its opinion in Lonegan II with the following: "We are unwilling to disrupt the State's financing mechanisms in the circumstances presented to us[.]" Id. at 21 (emphasis added).

Lonegan I suggested the Court would consider any relevant issue, such as the purpose of a bonding scheme, in its successor opinion. Lonegan I, 174 N.J. at 465. The Lonegan II Court did not reach the issue in this case however, but this Court has the opportunity to do so now.

---

[16] Plaintiffs maintain their position that neither Lonegan decision, nor, indeed, any of the previous precedents interpreting the Debt Limitation Clause, need be disturbed in order to reach their desired conclusion. Plaintiffs are, of course, open to the Court's revisiting the issue *sua sponte*. For example, the dissenters in Lonegan II placed special emphasis on the clause "in any manner" in the Debt Limitation Clause. Lonegan II, 176 N.J. at 23 (Long, Verniero, and Zazzali, JJ. dissenting). Perhaps this new set of facts, in which the State attempts the unprecedented maneuver of "balancing" the budget through deficit financing, will shed new light on their concerns with regard to that clause and lead the Court to a different conclusion.

D. THE CONTRACT BONDS AT ISSUE ARE DIFFERENT THAN ALL PRIOR CONTRACT BONDS THIS COURT HAS CONSIDERED

The bonds to be issued pursuant to the Cigarette Tax Securitization Act of 2004 and the Motor Vehicle Surcharges Securitization Act of 2004 are wholly unique from any this Court has seen before. The bonds do not help build any capital projects, do not refinance prior State obligations or otherwise satisfy any constitutional mandates. The EDA has no independent authority to tax or raise revenue, the bills establish no self-sustaining authority, and no long-term lease arrangements are at stake. They are the kind of insidious debt obligation our Constitution is designed to curtail.

The laws at issue authorize the EDA to issue bonds and the Treasurer to use their proceeds "for any lawful purpose of the State for which moneys on deposit in the General Fund may be used." (Pa48, Pa59). Their sole purpose is to create extraordinary "revenue" for the State. That "revenue" will be expended this year to cover a gaping deficit between the State's expenditures and its actual revenue. The bond proceeds will never be seen again, but the obligations the proposed bonds will create will be with New Jersey taxpayers for generations. The proposed bonds will help fill a budget deficit temporarily, but the structural deficit necessarily built into future budgets threatens to grow ever wider and more permanent if this kind of

unconstitutional deficit financing is not halted. Because of their purpose, and irrespective of whether the State technically is obligated to repay the loans, the proposed bonds must be considered to be debt subject to the Debt Limitation Clause.

As the Lonegan II majority noted, the framers of the Debt Limitation Clause were concerned "about binding obligations imposed on future generations" and "borrow[ing] without restraint," which caused considerable suffering in other states in the nineteenth century. Lonegan II, 176 N.J. at 14. Indeed, one need look no further than the City of New York in the wake of the Wagner and Lindsay administrations to see what deficit financing can do to a government's budget - the pain and instability it can inflict can be great, and can arise quickly. There is already evidence that future New Jersey taxpayers will be saddled with even greater expenses due to the proposed bonds, as the bond market is prepared to downgrade New Jersey's bond rating in anticipation of the consequences of Defendants' radical proposal. (Pa17-Pa22)

If the Debt Limitation Clause is to have any meaning, therefore, it must be enforced in this instance, with respect to these proposed bonds. As much as the Lonegan II dissenters believed that the Court had rendered the Debt Limitation Clause meaningless, id. at 21, this case presents an opportunity for the Court to reinvigorate the provision as the barrier to

deficit financing it was intended to be. A holding in the present case that does not enforce the Debt Limitation Clause as to these proposed bonds will truly, and finally, be the provision's death knell.

Judge Feinberg was reluctant to look to the purpose of the proposed bonds to determine their constitutionality, writing that, "there is no standard today by which anyone can determine if a purpose or use contemplated for the proceeds of debt is constitutionally permissible." Lance v. McGreevey, Slip. Op. at 29 (Pa125). It is true that the Lonegan II Court favored a formalistic reading of the Debt Limitation Clause and declined to engage in an examination of the practicalities and purposes of the contract debt at issue in that case. But the practical reading of the provision primarily confronted by the Lonegan II Court was the argument that the pressures of the bond market erased any realistic distinction between contract debt and general obligation debt. That is not the issue here.

The practicality that must be viewed in this instance is that Defendants' proposed bonding scheme implicates not just the restrictions of the Debt Limitation Clause, but the Balanced Budget provision, Article VIII, Section 2, paragraph 2, as well. The proposed bond issues have been enacted together with, and are absolutely essential to, the fiscal year 2005 appropriations statute. As the Legislative Counsel of the Office of

Legislative Services points out, the Debt Limitation Clause and the Balanced Budget Clause "are flip sides of the same coin." (Pa32). If the proposed borrowing is not restrained in this instance, not only will the Debt Limitation Clause be read wholly out of existence, but the Balanced Budget Clause will be eviscerated as well. If the Governor and the Legislature are permitted to borrow as much as seven percent of the budget, as they attempt to do for FY 2005, there will be no principled bar to their borrowing to cover 17, 70, or even 100 percent of the budget in future years.[17] In that way, permitting Defendants to

---

[17] Defendants' proposed borrow-and-spend scheme also runs counter to the rules our State makes for its political subdivisions. In addition to requiring municipalities to balance their budgets, the State has defined prudent debt limits for municipalities. A municipality may not issue bonds of just any term when borrowing for municipal purposes. The term of the indebtedness approved by a governing body is strictly regulated by statute. See N.J.S.A. 40A:2-22. Indeed, "No local unit shall authorize obligations for any improvement or purpose having a period of usefulness of less than 5 years." Ibid. The clear purpose of the statutes is to provide a check on the innate borrow-and-spend tendencies of local public officials. The law - which binds the governing bodies the same way the Constitution binds the state - provides that the governing body approve indebtedness only in terms that approximate the useful life of the public purpose for which the debt is incurred, and sets forth a schedule of terms for specific public purposes. The wisdom of that policy is clear: it is unsound public policy for one governing body to tie down subsequent governing bodies with debt for items long since depleted.

Plaintiffs do not suggest that municipal finance law binds the State. The State's regulation of municipal borrowing practices is, however, quite instructive on how the Legislature views the dangers of unrestrained public borrowing. Just as

go forward would be worse than removing from the Constitution the time-honored shield of the people against unchecked borrowing. Indeed, if the Debt Limitation Clause and the case law interpreting it are used to sanction the kind of naked deficit financing proposed, the provision will actually become a sword used to slay its complimentary Balanced Budget provision. The as-yet unarticulated standard which Judge Feinberg did not cite can be stated simply: contract debt is unconstitutional when used to balance the budget.

The proper outcome of this matter is clear. Because Defendants seek to issue bonds to cover operating expenses of the State, the Deficit Bond Acts are within the purview of the Debt Limitation Clause. The amount each bill proposes to borrow exceeds one percent of the total amount of the general appropriation law, and the proposed bond issue will not be presented to the voters of the State for their approval. As such, the Deficit Bond Acts violate the Debt Limitation Clause of the New Jersey State Constitution, Article VIII, Section II, paragraph 3. They must be invalidated.

---

elected leaders at the municipal level need checks on their incurring debt, so do our State leaders.

III. This Case Presents a Justiciable Controversy

A. THE TRIAL COURT CORRECTLY DETERMINED THAT THE SEPARATION OF POWERS DOCTRINE AUTHORIZES THE JUDICIARY TO INTERPRET THE CONSTITUTION AND TO DECIDE WHETHER THE GOVERNOR'S REVENUE CERTIFICATION AND THE APPROPRIATIONS ACT IS CONSTITUTIONAL.

The trial court below unequivocally rejected Defendants' contention that the separation of powers doctrine prevents the Judiciary from addressing the merits of Plaintiffs' challenge to the Governor's revenue certification. The drafters of our State Constitution never intended that the separation of powers doctrine be strictly interpreted by rigidly classifying all governmental action as Legislative, Executive, or Judicial. See David v. Vesta Co., 45 N.J. 301, 323-24 (1965); Winberry v. Salisbury, 5 N.J. 240, 252 (1950).

The trial court duly agreed with Plaintiffs that the role of the Judiciary in the tripartite form of government is clear. Opinion at 7. Its principal role is to interpret and apply the New Jersey State Constitution. See Communications Workers of Am. v. Florio, 130 N.J. 439, 463 (1992) (citations omitted); see also White v. North Bergen Twp., 77 N.J. 538, 555 (1978). Given its crucial charge, the New Jersey Supreme Court has not hesitated to exercise its judicial power to protect the integrity of the Constitution, even when that exercise involves overriding the constitutional functions of the Executive and

Legislative branches. See, e.g., Robinson v. Cahill, 69 N.J. 133, 154-55 (quoting Powell v. McCormack, 395 U.S. 486, 98 S. Ct. 1944, 23 L. Ed.2d 491 (1969)), cert. denied sub nom by Klein v. Robinson, 423 U.S. 913, 96 S. Ct. 217, 46 L. Ed.2d 141 (1975); Vreeland v. Byrne, 72 N.J. at 307.

The Court also does not hesitate to interpret the plain language of the New Jersey State Constitution. Just five years ago, the New Jersey Supreme Court undertook the task of defining "revenue" as used in the 1976 Casino Gambling Amendment, Article IV, Section 7, Paragraph 2 (the "Casino Amendment"). Trump, 160 N.J. at 527-28. In its discussion on the characterization of "revenue," the Court stated that "[c]onceptually, we generally understand the term 'State revenue' to mean the money received by the State from taxes, fees and other levies that may thereafter be used by the State for public purposes." Id. at 535-36. In evaluating the proceeds of investments made by casinos, including Casino Reinvestment Development Authority ("CRDA") bonds and other investment projects, the Court noted the character of those proceeds stood "in sharp contrast to that generalized understanding of the concept of State or public revenue." Id. at 536. The Court stated that the bond proceeds "represent borrowed funds subject to an obligation to repay the principal in full and pay interest at a stated rate. As such,

the bond proceeds scarcely resemble 'State revenue' from the perspective of the CRDA." Ibid.

Although the Trump analysis of "revenue" is applicable only in the context of the Casino Amendment, the very fact that the Court defined the term is instructive. According to Defendants' arguments, the Court's endeavor in Trump, as well as any other case in which the judiciary seeks to interpret the New Jersey State Constitution, is a violation of the separation of powers. Clearly, the Court's act of interpreting the New Jersey State Constitution in Trump was appropriate, and, due to Defendants' misuse of the term "revenue," this Court is appropriately given the task to determine whether the proposed bond issuance actually constitutes "revenue" within the context of the Balanced Budget Clause.

When the Court exercises that authority, it will inevitably agree with the trial court's conclusion that it is indeed the judiciary that must ultimately interpret the meaning of the word "revenue" in the Balanced Budget Clause. Plaintiffs do not suggest that the Governor does not have the authority, and the duty, to determine and certify how much revenue the State has available to expend in a fiscal year. The Governor does not have the right, however, to define, without judicial review, the meaning of "revenue" as used in our Constitution. In other words, Plaintiffs challenge the Governor's authority to

determine which categories of income go into the calculation of available State revenues, not the result of the calculation itself. Thus, the interpretation of the term "revenue" in the Constitution is a question for the judiciary. The Court's exercise of authority in this instance, therefore, will not violate the separation of powers doctrine.

B. THE TRIAL COURT CORRECTLY DETERMINED THAT WHAT CONSTITUTES REVENUE FOR PURPOSES OF THE APPROPRIATIONS CLAUSE OF THE CONSTITUTION IS NOT A POLITICAL QUESTION DELEGATED TO THE EXECUTIVE BRANCH THEREBY PRECLUDING JUDICIAL REVIEW.

The trial court flatly rejected "the notion by the State that what constitutes revenue for purposes of the Appropriations Clause of the Constitution is a political question delegated to the Executive Branch" precluding judicial review. Lance v. McGreevey, Slip Op. at 7 (Pa103). Defendants' attempt to shield the Governor's actions from judicial review fails because the power of the Executive or Legislative branches to exercise their prerogatives under the political question doctrine is circumscribed by the Judiciary's protection of fundamental constitutional rights. In this case, the voters' right to approve the State's bonded indebtedness at the ballot box trumps any prerogative the Governor may enjoy with respect to his ability to define "revenue."

"[W]hen legislative action exceeds the boundaries of the authority delegated by the Constitution, and transgresses a

sacred right guaranteed to a citizen, final decision as to the invalidity of such action must rest exclusively with the courts." Asbury Park Press, Inc. v. Woolley, 33 N.J. 1, 12 (1960) (citations omitted). "Not all interference is inappropriate or disrespectful,. . .and application of the [political question] doctrine ultimately turns, as Learned Hand put it, on 'how importunately the occasion demands an answer.'" DeVesa v. Dorsey, 134 N.J. 420, 440 (1993) (quoting Nixon v. United States, 506 U.S. 224, 113 S. Ct. 732, 122 L. Ed. 2d 1 (1993)); see also State v. Rogers, 56 N.J.L. 480 (1894); Gomillion v. Lightfoot, 364 U.S. 339, 347, 81 S. Ct. 125, 130, 5 L. Ed. 2d 110, 116 (1960).

Although the trial court expressed its concern over the ability of the court to resolve the issues raised by the Plaintiffs based on a "lack of judicially discoverable and manageable standards," this Court has undertaken similar analyses in Lonegan I, Lonegan II, and Trump. Lance v. McGreevey, Slip Op. at 20-21 (Pa116-Pa117). The Court is unquestionably capable of determining whether including the proposed bond sale proceeds as "revenue" in the Governor's revenue certification violates the New Jersey State Constitution. See Board of Chosen Freeholders of the County of Morris v. State, 159 N.J. 565 (1999); State v. Apportionment

Commission, 125 N.J. 375 (1991); Hackensack Water Co. v. Ruta, 3 N.J. 139, 144 (1949).

Indeed, the Court has previously interpreted provisions affecting the power of not only the Executive Branch, but the Legislative Branch as well. There is no reason it should not do so here where such a significant constitutional requirement is at stake. See, e.g., State v. Wurts, 63 N.J.L. 289, 293-94 (E. & A. 1899) (holding judiciary has right to consider whether legislative department and its agencies have observed constitutional injunctions in attempting to amend constitution, and to annul their acts in case they have not done so) (citing State v. Rogers, 56 N.J.L. 480 (1894); State v. Pritchard, 36 N.J.L. 101, 113-16 (1873)).

Plaintiffs request this Court to determine which categories of income go into the calculation of available State revenues, not the result of the calculation itself. Contrary to the trial court's concerns and Defendants' assertions, Plaintiffs do not request that the Court enter "the field of revenue forecasting." Lance v. McGreevey, Slip Op. at 21 (Pa117). Plaintiffs respectfully submit that the question of what constitutes "revenue" does not require "an examination and analysis of fiscal data and predictions on economic activity that are ill-suited for judicial resolution." Ibid. Rather, the Court need only consider the plain meaning of "revenue" in its normal and

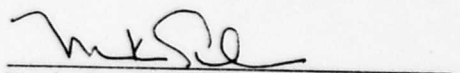
historical context to conclude that the proceeds from the sale of bonds under these circumstances should be treated as debt, not revenue, and are, therefore, unconstitutional.

Here, Defendants' attempt to alter the normal meaning of "revenue" by characterizing the proceeds from the proposed bonds as revenue is unconstitutional because it directly implicates the rights of the voters under the Debt Limitation Clause. Without the Governor's certification that the proceeds from the proposed bonds are "revenue," the FY 2005 appropriations act would succumb to the Balanced Budget provision. As discussed above, however, the Governor's characterization of the proposed bond proceeds is contrary to fact, law, and the standards of accounting. There is only one way the Governor can properly count the proceeds of bonds as "revenue": float the bonds as general obligation debt and submit them to voter approval in November. By certifying the budget as he did, and denying the voters the right to vote on the proposed bond issue, Defendant Governor McGreevey has violated the fundamental rights of the eligible voters in the State, a right guaranteed to them by Article VIII, Sec. 2, paragraph 2 of the Constitution. The protection of that right is uniquely undertaken by the courts.

CONCLUSION

Based upon their initial papers submitted to the trial court, and the foregoing, Petitioners respectfully submit that they are entitled to the relief requested in their Order to Show Cause. Specifically, Plaintiffs are entitled to: (1) A declaration that the term "revenue" as it appears in Article VIII, Section II, Paragraph 2 of the New Jersey State Constitution does not include proceeds from the sale of authority-issued bonds like those at issue here; (2) that the FY2005 Appropriation Act is unconstitutional as it violates the Balanced Budget Clause; (3) That the bonds proposed to be issued pursuant to the Deficit Bond Acts violate the Debt Limitation Clause of the New Jersey State Constitution, Article VIII, Section II, Paragraph 3, as they were not approved by a majority of the legally qualified voters of the State; (4) That New Jersey Economic Development Authority is enjoined from issuing any bonds pursuant to the Deficit Bond Acts; and (5) That Treasurer McCormac is enjoined from appropriating any funds from the General Fund that are or represent proceeds from the sale of the proposed bonds pursuant to the Deficit Bond Acts.

DRINKER BIDDLE & REATH LLP



Mark D. Sheridan, Esq.
Robert M. Leonard, Esq.
Attorneys for the Honorable Leonard Lance, the Honorable Alex DeCroce, the Honorable Joseph M. Kyrillos, Jr. and Robert Lindmark

Dated: July 9, 2004

And

CONTANT ATKINS & FEDE, LLC

/s/Andrew T. Fede
Andrew T. Fede, Esq.
Attorneys for Plaintiff
Honorable Steven M. Lonegan

Dated: July 9, 2004

MACIAG & ASSOCIATES, P.C.

/s/ Thaddeus Maciag
Thaddeus Maciag, Esq.
Attorneys for Plaintiff
Honorable Bret Schundler

Dated: July 9, 2004

HOWES & HOWES

/s/ W. Timothy Howes
W. Timothy Howes, Esq.
Attorneys for Plaintiff
Honorable Bret Schundler

A 103SEP2003

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.**; as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, a citizen and a taxpayer Plaintiffs/Appellants, v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants/Respondents, and **HONORABLE RICHARD J. CODEY**, President of the New Jersey Senate; and **HONORABLE ALBIO SIRES**, Speaker of the Assembly Intervenors/Defendants/ Respondents.	*SUPREME COURT OF NEW JERSEY* *DOCKET NO: 56,643* CIVIL ACTION *DIRECT CERTIFICATION FROM* *SUPERIOR COURT OF NEW JERSEY* *APPELLATE DIVISION* *DOCKET NO: A-103-03* *ON APPEAL FROM* *SUPERIOR COURT OF NEW JERSEY* *LAW DIVISION: COUNTY OF MERCER* *DOCKET NO: MER-L-1633-04* SAT BELOW: HON. LINDA R. FEINBERG, J.S.C.

PLAINTIFF APPELLANTS' APPENDIX –VOL. 1

INDEX TO APPENDIX

* These documents have been included in Plaintiffs' Motion to Supplement the Record which is currently pending before this Court. As the Court has not made a ruling on Plaintiffs' motion, we have been instructed to include these documents in the Appendix. We have included them at the end of the Appendix as they are to be disregarded if Plaintiffs' Motion to Supplement the Record is denied.

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.**, as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, a citizen and a taxpayer Plaintiffs, – As v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants, – As	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, COUNTY OF MERCER DOCKET NUMBER **VERIFIED COMPLAINT FOR EMERGENT DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, Honorable Leonard Lance ("Lance"), Honorable Alex DeCroce ("DeCroce"), Honorable Joseph M. Kyrillos, Jr. ("Kyrillos"), Honorable Steven M. Lonegan ("Lonegan"), Honorable Bret Schundler ("Schundler") and Robert Lindmark ("Lindmark") (Lance, DeCroce, Kyrillos, Lonegan, Schundler and Lindmark are hereinafter collectively referred to as "Plaintiffs") in their capacity as citizens and taxpayers of the State of New Jersey, by way of this Verified Complaint for Emergent Declaratory and Injunctive Relief against Defendants,

Honorable James E. McGreevey (the "Governor"), Honorable John E. McCormac (the "Treasurer") and the New Jersey Economic Development Authority (the "EDA") (the Governor, the Treasurer and the EDA are hereinafter collectively referred to as "Defendants"), say:

PARTIES

1. Plaintiff Hon. Leonard Lance is a resident of Hunterdon County, New Jersey and is a taxpayer.

2. Plaintiff Hon. Alex DeCroce is a resident of Morris County, New Jersey and is a taxpayer.

3. Plaintiff Hon. Joseph M. Kyrillos, Jr. is a resident of Monmouth County, New Jersey and is a taxpayer.

4. Plaintiff Hon. Steven M. Lonegan is a resident of Bergen County, New Jersey and is a taxpayer.

5. Plaintiff Hon. Bret Schundler is a resident of Hudson County, New Jersey and is taxpayer.

6. Plaintiff Robert Lindmark is a resident of Monmouth County, New Jersey and is taxpayer.

7. Defendant Hon. James E. McGreevey is Governor of the State of New Jersey with an office located in Trenton, Mercer County, New Jersey.

8. Defendant Hon. John E. McCormac is Treasurer of the State of New Jersey with an office located in Trenton, Mercer County, New Jersey.

9. Upon information and belief, Defendant the New Jersey Economic Development Authority is a public corporation of the State of New Jersey with an office located in Trenton, Mercer County, New Jersey.

JURISDICTION AND VENUE

10. Jurisdiction is conferred upon this Court by R. 4:3-1(a)(1)as the primary relief sought is equitable in nature.

11. Venue is proper within this County pursuant to R. 4:3-2(a)(2) because the causes of action against the public agencies or officials arose in this County.

BACKGROUND

12. Plaintiffs repeat and reiterate each and every allegation contained in Paragraphs 1-11 of the Plaintiffs' Complaint as though fully set forth at length herein.

14. Hon. James E. McGreevey, as Governor of the State of New Jersey, has certain Constitutional and other legal responsibilities with respect to the annual budget for the State of New Jersey including, but not limited to, proposing an annual budget before the New Jersey Legislature, certifying the revenues of the State, enacting an annual appropriations act that balances the State's appropriations and revenues, and ensuring that the State's finances are utlilized in a manner consistent with that annual appropriations act.

15. In an address to the New Jersey Legislature on February 24, 2004, the Governor proposed a State budget covering the period of July 1, 2004 through June 30, 2005 that recognized as "revenues" more than $1.5 billion to be derived from the issuance of bonds by an unnamed State entity.

16. The budget as proposed by the Governor, absent the recognition of $1.5 billion of bond proceeds as "revenues," contains appropriations which exceed all other anticipated "revenues" by $1.1 billion.

17. On or about March 10, 2004, Moody's Investors Services, a private corporation providing advice to the investor community, placed the State of New Jersey's bond rating on

"watchlist for possible downgrade" and described the Governor's proposed budget's reliance on "borrowed funds" in fiscal 2005 as "deficit borrowing." Moody's further stated that: "[i]f the State's fund balance were adjusted to deduct such bond proceeds...the balance would be negative." Moody's concluded, "New Jersey's credit rating is on Watchlist, under review for possible downgrade. The review will focus on negotiations regarding and possible changes to the proposed fiscal 2005 budget, the pace of the state's economy and tax collections, and the outlook for regaining structural budget balance. Without significant change from the current status in these areas, a G.O. rating downgrade to Aa3 would be likely." A true copy of Moody's Investors Services "Rating Update" of March 10, 2004 is attached as Exhibit A.

18. A downgrade in the State's bond rating would result in negative consequences for the State and its residents, including higher interest rates for pending issuances of State debt.

19. Fitch Ratings, a private corporation that provides professional advice to the investor community, issued an advisory on March 25, 2004, that described the proposed reliance on borrowed funds by the State of New Jersey as "deficit financing" and with respect to the Governor's proposed budget stated, "However, the large structural imbalance continues to be papered over with deficit borrowing and other stop gap measures." A true copy of the Fitch Ratings advisory of March 25, 2004 is attached as Exhibit B.

20. On or about June 17, 2004, at the request of Plaintiff Hon. Leonard Lance, the nonpartisan Office of Legislative Services ("OLS") issued an opinion regarding the Governor's proposed budget and the use of the proceeds of a bond sale by an independent authority to balance that budget. The OLS opinion, written by Legislative Counsel, Albert Porroni, determined that the proposed budget was unconstitutional because it violated Paragraphs 2 and 3 of Article VIII, Section II of the New Jersey State Constitution, namely the Balanced Budget

Amendment and the Debt Limitation Clause. A true copy of the OLS opinion of June 17, 2004 is attached as Exhibit C.

21. On or about June 21, 2004, Assembly Bill 3108 was introduced into the State Assembly. That bill, entitled the "Cigarette Tax Securitization Act of 2004," purports to grant authority to the New Jersey Economic Development Authority to issue bonds for deposit in the newly created "Cigarette Tax Securitization Proceeds Fund" and to withdraw such funds at the request of the State Treasurer in order to pay them into the General Fund of the State Treasury to be used for any lawful purpose of the State permitted of funds in the General Fund. The bill also purports to declare the proceeds of the sale of the bonds as "revenue" of the State upon their transfer to the General Fund at the State Treasurer's request. The bill further purports to authorize the EDA to pledge any contracts entered into with the State Treasurer to secure payment of the bonds. The bill further creates in the Department of the Treasury a non-lapsing fund to be known as the "Cigarette Tax Securitization Fund" which is to be funded beginning July 1, 2006, with an amount equal to the dedicated cigarette tax revenues after payment of other obligations the State has pledged proceeds of the cigarette tax revenues for. The proceeds of the "Cigarette Tax Securitization Fund" may be transferred to the EDA to repay the proposed bond obligations. However, the State is only obligated to make such payments to the extent the State Legislature approves such appropriations from the revenues generated by the cigarette tax. A true copy of the Cigarette Tax Securitization Act of 2004 is attached as Exhibit D.

22. On or about June 21, 2004, Assembly Bill 3109 was introduced into the State Assembly. That bill, entitled the "Motor Vehicle Surcharges Securitization Act of 2004," purports to grant authority to the New Jersey Economic Development Authority to issue bonds for deposit in the newly created "Motor Vehicle Surcharges Securitization Proceeds Fund" and

to withdraw such funds at the request of the State Treasurer and to pay them into the General Fund of the State Treasury to be used for any lawful purpose of the State permitted of funds in the General Fund. The bill also purports to declare the proceeds of the sale of the bonds as "revenue" of the State upon their transfer to the General Fund at the State Treasurer's request. The bill further purports to authorize the EDA to pledge any contracts entered into with the State Treasurer to secure payment of the bonds. The bill further creates in the Department of the Treasury a non-lapsing fund to be known as the "Unsafe Driving Surcharges Fund" which is to be funded beginning July 1, 2006, with all unsafe driving surcharges. The funds contained in the "Unsafe Driving Surcharges Fund" may be transferred to the EDA to repay to the proposed bond obligations. However, the State is only obligated to make such payments to the extent the State Legislature approves such appropriations from the revenues generated by the cigarette tax. A true copy of the Motor Vehicle Surcharges Securitization Act of 2004 is attached as Exhibit E.

23. Assembly Bills 3108 and 3109 have been reported from the Assembly Budget Committee and the Senate Budget and Appropriations Committee to the State Legislature for a vote.

24. The Assembly Budget Committee and the Senate Budget and Appropriations Committee have reported the annual budget (Assembly Bill No. 3100) (the "FY 2005 Appropriations Act") for the State of New Jersey covering the period from July 1, 2004 to June 30, 2005 to the State Legislature for a vote.

25. The FY 2005 Appropriations Act recognizes as revenue, more than $1.9 billion to be derived through the issuance of deficit bonds by the New Jersey Economic Development Authority pursuant to the "Cigarette Tax Securitization Act of 2004" and the "Motor Vehicle Surcharges Securitization Act of 2004."

26. It is anticipated that the New Jersey Legislature will approve, and the Governor will enact, the "Cigarette Tax Securitization Act of 2004," the "Motor Vehicle Surcharges Securitization Act of 2004" and the FY 2005 Appropriations Act before the end of business on Friday, June 25, 2004.

27. Pursuant to the terms of the "Cigarette Tax Securitization Act of 2004," the "Motor Vehicle Surcharges Securitization Act of 2004" and the FY 2005 Appropriations Act, the New Jersey Economic Development Authority intends to sell more than $1.9 billion of bonds in the near future and provide the proceeds of that sale to the State of New Jersey so it may recognize the bond proceeds as revenue in the Fiscal Year 2005 Appropriations Act.

28. The FY 2005 Appropriations Act, absent the recognition as revenue of this $1.9 billion of proceeds from the proposed bonds, contains a deficit of approximately $1.5 billion because appropriations exceed all other anticipated revenues by that amount.

29. Plaintiffs has brought the unconstitutionality of this proposal to the attention of defendant, without effect.

30. Defendants have steadfastly failed and refused to respond in any meaningful or substantive fashion to address the constitutional infirmities.

31. Defendants' proposed conduct is unconstitutional and as a result immediately jeopardizes the State of New Jersey's fiscal health and will subject the state to irreparable harm.

COUNT I

32. Plaintiffs repeat and reiterate each and every allegation contained in Paragraphs 1-31 of the Plaintiffs' Verified Complaint as though fully set forth at length herein.

33. Article VIII, Section II, Paragraph 2 of the New Jersey State Constitution requires a balanced budget in that it requires that the appropriations of the State not exceed the

26. It is anticipated that the New Jersey Legislature will approve, and the Governor will enact, the "Cigarette Tax Securitization Act of 2004," the "Motor Vehicle Surcharges Securitization Act of 2004" and the FY 2005 Appropriations Act before the end of business on Friday, June 25, 2004.

27. Pursuant to the terms of the "Cigarette Tax Securitization Act of 2004," the "Motor Vehicle Surcharges Securitization Act of 2004" and the FY 2005 Appropriations Act, the New Jersey Economic Development Authority intends to sell more than $1.9 billion of bonds in the near future and provide the proceeds of that sale to the State of New Jersey so it may recognize the bond proceeds as revenue in the Fiscal Year 2005 Appropriations Act.

28. The FY 2005 Appropriations Act, absent the recognition as revenue of this $1.9 billion of proceeds from the proposed bonds, contains a deficit of approximately $1.5 billion because appropriations exceed all other anticipated revenues by that amount.

29. Plaintiffs has brought the unconstitutionality of this proposal to the attention of defendant, without effect.

30. Defendants have steadfastly failed and refused to respond in any meaningful or substantive fashion to address the constitutional infirmities.

31. Defendants' proposed conduct is unconstitutional and as a result immediately jeopardizes the State of New Jersey's fiscal health and will subject the state to irreparable harm.

COUNT I

32. Plaintiffs repeat and reiterate each and every allegation contained in Paragraphs 1-31 of the Plaintiffs' Verified Complaint as though fully set forth at length herein.

33. Article VIII, Section II, Paragraph 2 of the New Jersey State Constitution requires a balanced budget in that it requires that the appropriations of the State not exceed the

"revenues" of the State. Article VIII, Section II, Paragraph 2 provides in relevant part: "No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall by provided for in one general appropriation law covering one and the same fiscal year.... No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor."

34. The proceeds of the bonds to be sold pursuant to the "Cigarette Tax Securitization Act of 2004" and the "Motor Vehicle Surcharges Securitization Act of 2004" do not constitute "revenue" under the New Jersey State Constitution.

35. Because the bond proceeds of the "Cigarette Tax Securitization Act of 2004" and the "Motor Vehicle Surcharges Securitization Act of 2004" do not constitute "revenue" under the New Jersey State Constitution, Plaintiffs are entitled to a declaration that the FY 2005 Appropriations Act, as presently drafted, is unconstitutional. Plaintiffs are further entitled to this declaratory relief on an emergent basis as any delay will render the issue moot and allow a constitutionally infirm budget to govern the State's appropriations for fiscal year 2004-2005. Failure to address this issue will result in irreparable harm to the State of New Jersey and to the Plaintiffs.

COUNT II

36. Plaintiffs repeat and reiterate each and every allegation contained in Paragraphs 1-35 of the Plaintiffs' Verified Complaint as though fully set forth at length herein.

37. The FY 2005 Appropriations Act, as presently drafted is unconstitutional because it improperly counts as "revenue" in excess of $1.9 billion in proceeds from the sale of bonds purportedly authorized by the "Cigarette Tax Securitization Act of 2004" and the "Motor Vehicle Surcharges Securitization Act of 2004," and thus contains a revenue shortfall of roughly $1.5 billion when compared to appropriations.

38. Because the FY 2005 Appropriations Act as presently drafted is unconstitutional, irreparable harm will befall New Jersey and its citizens and taxpayers if the FY 2005 Appropriations Act is enacted by the Governor without adequate time to remedy the revenue shortfall prior to the June 30, 2004 deadline for having a Constitutionally proper budget. As such, Plaintiffs are entitled to an injunction enjoining the Governor from certifying the $1.9 billion in proceeds from the proposed bond sale by the EDA as revenue.

COUNT III

39. Plaintiffs repeat and reiterate each and every allegation contained in Paragraphs 1-38 of the Plaintiffs' Verified Complaint as though fully set forth at length herein.

40. Article VIII, Section II, Paragraph 3 of the New Jersey State Constitution, commonly referred to as the Debt Limitation Clause, provides in pertinent part: "The Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any one time on per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctly specified therein....Except as hereinafter provided, no such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon...."

41. The proposed issuance of bonds pursuant to the "Cigarette Tax Securitization Act of 2004" and the "Motor Vehicle Surcharges Securitization Act of 2004" will create debt in fiscal year 2004-2005 that exceeds one percent of the total amount appropriated by the general appropriation.

42. Because the proposed issuance of bonds pursuant to the "Cigarette Tax Securitization Act of 2004" and the "Motor Vehicle Surcharges Securitization Act of 2004" will create debt in fiscal year 2004-2005 that exceeds one percent of the total amount appropriated by the general appropriation, Plaintiffs are entitled to a declaration that the issuance of such bonds without the approval of a majority of the legally qualified voters is unconstitutional. Plaintiffs are further entitled to this declaratory relief on an emergent basis as any delay will render the issue moot and allow a constitutionally infirm budget to govern the State's appropriations for fiscal year 2004-2005. Failure to address this issue will result in irreparable harm to the State of New Jersey and to the Plaintiffs.

COUNT IV

43. Plaintiffs repeat and reiterate each and every allegation contained in Paragraphs 1-42 of the Plaintiffs' Verified Complaint as though fully set forth at length herein.

44. The Cigarette Tax Securitization Act of 2004" and the "Motor Vehicle Surcharges Securitization Act of 2004" are unconstitutional in that they permit the State to create debt in fiscal year 2004-2005 that exceeds one percent of the total amount appropriated by the general appropriations act without first requiring a majority of the legally qualified voters to the State to approve the debt.

45. Because the "Cigarette Tax Securitization Act of 2004" and the "Motor Vehicle Surcharges Securitization Act of 2004" are unconstitutional under the Debt Limitation Clause of

the New Jersey State Constitution irreparable harm will befall New Jersey and its citizens and taxpayers if the EDA issues the proposed bonds as the legal nullity of the bonds will have an extremely adverse affect on New Jersey's credit rating. As such, Plaintiffs are entitled to an injunction enjoining the EDA from issuing any bonds pursuant to either the "Cigarette Tax Securitization Act of 2004" or the "Motor Vehicle Surcharges Securitization Act of 2004" without first obtaining a majority of the legally qualified voters to the State to approve the debt..

COUNT V

46. Plaintiffs repeat and reiterate each and every allegation contained in Paragraphs 1-45 of the Plaintiffs' Verified Complaint as though fully set forth at length herein.

47. The FY 2005 Appropriations Act is unconstitutional because it counts as "revenue" $1.9 billion of bond proceeds that are either not properly characterized as "revenue" and thus violates the Balanced Budget requirement of the New Jersey State Constitution or because it counts as "revenue" $1.9 billion of bond proceeds that are unconstitutional pursuant to the Debt Limitation Clause of the New Jersey Constitution because they failed to obtain the approval of a majority of the legally qualified voters to the State prior to issuance of the debt. Under either analysis, the FY 2005 Appropriations Act contains in excess of the $1.5 billion of appropriations that are not offset by "revenues."

48. Because the FY 2005 Appropriations Act is unconstitutional pursuant to the Balanced Budget requirement of the New Jersey State Constitution or the Debt Limitation Clause of the New Jersey State Constitution, irreparable harm will befall New Jersey and its citizens and taxpayers if the Treasurer expends any funds that are either a result of the proposed bond sale or represent future funds to be received as a result of the proposed bond sale. As such, Plaintiffs are entitled to an injunction enjoining the Treasurer from expending any funds either

actually received from the sale of the proposed bonds or funds which represent future proceeds from the sale of the proposed bonds.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order for the following:

1. Declaring that the proceeds of the sale of bonds by the New Jersey Economic Development Authority is not "revenue" as that term is used in Article VIII, Section II, Paragraph 2 of the New Jersey State Constitution and thus the FY 2005 Appropriations Act is unconstitutional as the appropriations exceed revenues by roughly $1.5 billion;

2. Enjoining Defendant the Honorable James E. McGreevey, Governor, from certifying the proceeds of the sale of bonds by the New Jersey Economic Development Authority as "revenue;"

3. Declaring that the proposed sale of bonds by the New Jersey Economic Development Authority is unconstitutional as the bonds were not approved by a majority of the legally qualified voters of the State as required by Article VIII, Section II, Paragraph 3;

4. Enjoining Defendant the New Jersey Economic Development Authority from issuing bonds authorized by Assembly Bills 3108 and 3109 that were not approved by a majority of the legally qualified voters of the State as required by Article VIII, Section II, Paragraph 3;

5. Enjoining Defendant the Honorable John E. McCormac, Treasurer, from expending any funds from expending any funds either actually received from the sale of the proposed bonds or funds which represent future proceeds from the sale of the proposed bonds;

6. Awarding attorneys fees and costs of suit, and;

7. Such other relief as the Court may deem proper and just.

DRINKER BIDDLE & REATH

By: _____
Mark D. Sheridan, Esq.
Robert M. Leonard, Esq.

Attorneys for the Honorable Leonard Lance, the Honorable Alex DeCroce, the Honorable Joseph M. Kyrillos, Jr. and Robert Lindmark

And

Andrew T. Fede, Esq.
Contant Atkins & Fede, LLC
Court Plaza North
25 Main Street
Hackensack, NJ 07601
(201) 342-1070 Telephone
(201) 342-5013 Facsimile

Attorneys for Honorable Steven M. Lonegan

And

Thaddeus R. Maciag, Esq.
Maciag & Associates
613 Courtyard Drive
P.O. Box 190
Somerville, New Jersey 08876-0190
(908) 704-8800 Telephone
(908) 704-8804 Facsimile

Attorneys for the Honorable Bret Schundler

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to Rule 4:5-1, I certify that the within matter in controversy is subject to no other action pending in any Court or arbitration proceeding and that the names of all parties who should be joined in this action are set forth in the Verified Complaint and joined in the action. I am aware that if any of the foregoing statement are willfully false I may be subject to punishment.

DRINKER BIDDLE & REATH LLP

By _____
Mark D. Sheridan, Esq.

Dated: June 24, 2004

VERIFICATION

Honorable Leonard Lance, hereby certify as follows:

1. I am the Plaintiff in the foregoing Verified Complaint seeking Emergent Declaratory and Injunctive Relief.

2. I have read the foregoing Verified Complaint and I certify that the foregoing statements made by me are true. I am aware that if they are willfully false, I am subject to punishment.

Leonard Lance

Honorable Leonard Lance

Dated June 24, 2004

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.**, as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, a citizen and a taxpayer Plaintiffs, v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, COUNTY OF MERCER DOCKET NUMBER

EXHIBITS TO PLAINTIFFS' VERIFIED COMPLAINT FOR EMERGENT DECLARATORY AND INJUNCTIVE RELIEF

Moody's Investors Service

Global Credit Research
Rating Update
10 MAR 2004

Rating Update: New Jersey (State of)

MOODY'S PLACES NEW JERSEY'S Aa2 RATING ON WATCHLIST FOR POSSIBLE DOWNGRADE

$18 Billion of Total Debt Affected

State
NJ

Opinion

NEW YORK, Mar 10, 2004 -- Moody's Investors Service has placed New Jersey's Aa2/negative General Obligation bond rating on Watchlist, under review for possible downgrade. Approximately $3.3 billion of outstanding G.O. bonds and $15 billion of bonds payable from General Fund appropriations are affected. This action reflects the state's proposed budget plan for fiscal 2005, which will likely result in persistence of a sizable structural budget imbalance into fiscal 2006. The budget proposal contemplates a relatively buoyant level of state spending and a substantial additional installment of long-term bonds to pay operating expenses. In light of this, and likely continued spending pressures next year, the state's budget problems could extend well beyond the commencement of economic recovery, while also lagging the fiscal recovery seen in other states in the rating category.

PROPOSED $26.5BN SPENDING IN 2005 REPRESENTS $3BN INCREASE SINCE 2002

The proposed $26.5 billion spending plan for fiscal 2005 represents a $1.1 billion increase over the revised estimate of fiscal 2004 spending, and an increase of about $3 billion from the fiscal 2002 spending level (based on net appropriations plus "off-budget" spending). The 2005 increase, similar to 2004, is driven largely by employee wages and benefits and court-mandated funding for child welfare and urban school districts (so-called Abbott districts). Increased funding has also been proposed for New Jersey Transit, the state's higher education system, as well as general aid for schools and municipalities.

Due to the decline in state tax revenues that occurred during fiscal 2002, the state's increased spending of recent years has been funded with a mix of new revenue sources, most prominently the restructured corporate business tax, and a significant reliance on non-recurring resources. These include substantial fund transfers from the unemployment insurance trust fund and other funds, one-time federal stimulus aid, and substantial long-term borrowing in the form of securitizing the state's tobacco MSA payments. Although the economy has begun to recover and generate healthy increases in state tax revenues, the fiscal 2005 budget proposal continues to employ a high level of non-recurring resources, including proposed borrowing of $1.5 billion to be paid mainly from new tax and fee revenues. Approximately 7% of state spending in 2005 would be funded from non-recurring resources, down moderately from 10% in 2004. The result would be a persistence of the state's structural budget imbalance into fiscal 2006, and possibly beyond, thus lagging the fiscal recovery seen in other states in the rating category. We note that this appears likely to occur even as New Jersey taxes resume their historic pattern of high sensitivity to economic recovery, with individual income tax collections in 2005 expected to almost regain their 2001 peak level (without tax law changes).

We also note that the state has not moved to replenish its budget reserve, which was largely depleted in fiscal 2002. The 2005 reserve is proposed to be maintained at the 2004 expected ending level of $400 million. This amounts to 1.5% of annual state spending, a very narrow cushion against potential revenue or spending forecast risks.

POSITIVE GAAP BALANCE MASKS USE OF $4.6BN DEFICIT BONDS OVER THREE YEARS

Unlike some recently downgraded states in the Aa category (e.g. Illinois, Oregon, Wisconsin), New Jersey continued to report a positive GAAP fund balance at the end of fiscal 2003, and expects to maintain a positive balance at the end of fiscal 2004. Under government fund accounting conventions, however, the fund balance is not affected by the state's use of long-term bonds to pay operating expenses, as the bond

proceeds are treated as revenue in the year of issue. If the state's fund balance were adjusted to deduct such bond proceeds, however, the balance would be negative.

The proposed additional borrowing of $1.5 billion in fiscal 2005 would bring total borrowing for operations to more than $4.5 billion over three years. This would rank New Jersey second only to California in the use of such long-term "deficit" borrowing. Unlike California, New Jersey has restricted its borrowings to structures that are paid from new or relatively new sources of revenues, and has not contemplated issuing general obligation bonds for deficit purposes. Nonetheless, the resources used cannot be employed to support state budget balance in the future but must instead be dedicated to paying bond principal and interest charges for many years.

MODERATE NEW JERSEY ECONOMIC RECOVERY OUTPACES THE REGION

New Jersey's private sector employment has increased every month since April 2003 (compared to year-earlier months), although the overall pace of growth has remained relatively subdued and has been uneven across sectors. Employment gains have been concentrated in a variety of service sectors, while declines have continued in manufacturing, telecommunications, and transportation. With BLS due to revise its 2003 figures later this month, on a preliminary basis the state's private sector added about 20,000 jobs (+0.6%) on average in the fourth quarter of 2003 vs. the fourth quarter of 2002. The government sector also added about 9,000 jobs (+1.4%) over the same fourth quarter period. Employment growth generally exceeds the average for the Northeast region.

The state's personal income growth in 2003 has also been moderate. For the first three quarters of 2003, state income growth on an annualized basis was 2.9%, compared to 3.3% for the nation, while in Q3 alone, New Jersey annualized income growth was 3.2%, vs. 3.6% for the nation. However, New Jersey income growth in 2003 exceeded that of other similarly mature and wealthy states in the Northeast region, including Connecticut and Massachusetts.

State tax collections have also begun to recover, with sales tax growth for the July-January period up 4.9% vs. the same period a year ago. Individual income tax collections were up 6.7% for the same period. The state recently revised its tax forecasts modestly upward, with the exception of a larger revision for corporate tax collections. This is further evidence that the state's restructuring of its corporate tax, passed as part of the 2003 budget, has been very successful.

Outlook

New Jersey's credit rating is on Watchlist, under review for possible downgrade. The review will focus on negotiations regarding and possible changes to the proposed fiscal 2005 budget, the pace of the state's economy and tax collections, and the outlook for regaining structural budget balance. Without significant change from the current status in these areas, a G.O. rating downgrade to Aa3 would be likely.

Bottom line: w/o change in rating will be downgrade!

Analysts

Timothy Blake
Analyst
Public Finance Group
Moody's Investors Service

Edward Hampton
Backup Analyst
Public Finance Group
Moody's Investors Service

Robert A. Kurtter
Senior Credit Officer
Public Finance Group
Moody's Investors Service

Renee A. Boicourt
Director
Public Finance Group
Moody's Investors Service

Fitch Rates $215MM State of New Jersey GO Bonds 'AA'

Fitch Ratings-New York-March 25, 2004: Fitch Ratings assigns its 'AA' rating to the State of New Jersey general obligation bonds offered for competitive bids on April 1. Two issues of bonds will be sold. The transactions include $171,850,000 State of New Jersey general obligation bonds (tax-exempt) due 4/1/05-24 and will be callable beginning 4/1/14 at par for bonds due 4/1/15 or later. Also being offered are $43,150,000 State of New Jersey general obligation bonds (taxable) due 4/1/05-11 and the bonds are not callable. Also affirmed is the 'AA' rating on the $3.3 billion outstanding general obligation bonds.

General obligation bonds of the state of New Jersey are rated 'AA' reflecting the state's high wealth and diversified economy with only a mild recessionary impact on its employment base. However, debt levels are above average and rising. Furthermore, while revenue growth has resumed, the state has not corrected the imbalance resulting from the steep revenue losses of fiscal 2002. Moreover, the proposed budget for 2005 continues to rely on non structural solutions including deficit financing for the third year in a row. Ultimate budget decisions will be a major factor in future rating decisions.

Employment trends were basically flat in 2001 and 2002 with slow pick up occurring in 2003. December employment was 0.9% above the same month the previous year. New Jersey ranks second in the nation in per capita income. Debt levels are in the upper moderate range and rising as the state addresses a court ordered educational facilities program and transportation needs. With the four bond sales scheduled over the next two weeks, net tax-supported debt amounts to $22.47 billion or $2,670 per capita and 6.6% of personal income; excluding pension bonds, debt equals 5.8% of personal income. Tax revenue growth this fiscal year is exceeding original estimates leading to an upward revision in projections. The gross income tax is now estimated to increase 7.5% this year and 8.3% in fiscal 2005, while the sales tax is estimated to increase 5.0% and 5.5% over the same two years. Ending surpluses of $400 million are projected for both fiscal year 2004 and fiscal 2005.

However, the large structural budget imbalance continues to be papered over with deficit borrowing and other stop-gap measures. The proposed fiscal 2005 budget continues a

policy of deficit financing, even as revenue growth has resumed, suggesting particular vulnerability to any economic disappointment and compounding the state's growing debt burden. The proposed deficit financing and other non-recurring measures amount to nearly $1.8 billion or about 7% of revenues. While reduced from the current year, this level constitutes a large structural overhang unlikely to be corrected in the near term by economic growth.

Contact: Richard J. Raphael +1-212-908-0506, Claire G. Cohen +1-212-908-0552 or Janet H. Martin +1-212-908-0507, New York.

Media Relations: James Jockle +1-212-908-0278, New York.

Fitch Rates $274.3MM State of New Jersey COPs 'AA-'

Fitch Ratings-New York-March 25, 2004: Fitch Ratings assigns an 'AA-' rating to the approximately $274.3 million State of New Jersey certificates of participation series 2004A. The certificates will be sold competitively on March 31 and are due June 15, 2007-19.

The $274.3 million series 2004A certificates are the third issuance of separately secured certificates of participation. The certificates follow a similar structure first used in 1998. Certificate proceeds will be used to purchase new transit equipment, such as articulated buses and diesel locomotives and suburban buses, to be leased by the state acting through the Director of Division of Purchase and Property in the state's Department of Treasury and subleased to NJ Transit.

While rental payments are authorized from legislative appropriations made to NJ Transit through the DOT budget, actual payments will be made directly from the Department of Treasury to the certificate trustee. The lessor, The Apris Group, Ltd., has assigned its rights and interest in the equipment to the trustee. Basic lease payments equal debt service on the certificates and are subject to legislative appropriation. While there is no security interest provided in the equipment, in the event of default or non-appropriation, such events are highly unlikely given the importance of appropriation-backed debt to the state's debt structure.

Since security for the bonds rests on the annual appropriations to be made by the State of New Jersey, the rating reflects the state's credit. General obligation bonds of the state of New Jersey are rated 'AA' reflecting New Jersey's position as one of the wealthiest states, with a broad and diverse economy. The recent downturn's impact on employment has been relatively mild with growth resuming in 2003. Debt levels are in the upper moderate range and rising as the state addresses court ordered educational facilities program and transportation needs. With the four bond sales scheduled over the next two weeks, net tax-supported debt, amounts to $22.47 billion or $2,670 per capita and 6.6% of personal income; excluding pension bonds, debt equals 5.8% of personal income.

Economic and tax revenue growth this fiscal year have exceeded original estimates leading to an upward revision in projections.

A surplus of $400 million is projected. However, a large structural budget imbalance resulting from the steep revenue shortfall experienced in fiscal 2002 continues to be papered over with deficit borrowing and other stop gap measures. The proposed fiscal 2005 budget continues for the third year in a row a policy of deficit financing, even as revenue growth has resumed, suggesting particular vulnerability to any economic disappointment and compounding the state's growing debt burden. The proposed deficit financing and other non-recurring measures amount to nearly $1.8 billion or about 7% of revenues. While reduced from the current year, this level constitutes a large structural overhang unlikely to be corrected in the near term by economic growth. Ultimate budget decisions will be a major factor in future rating decisions.

Contact: Janet H. Martin +1 212-908-0507, Richard J. Raphael +1-212-908-0506, or Claire G. Cohen +1-212-908-0552, New York.

Media Relations: James Jockle +1-212-908-0547, New York.

New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES
STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

ALBERT PORRONI
Executive Director
(609) 292-4625

LEGISLATIVE COUNSEL

ALBERT PORRONI
Legislative Counsel

LEONARD J. LAWSON
First Assistant Legislative Counsel

MARCI LEVIN ROSSMAN
Assistant Legislative Counsel

JAMES G. WILSON
Senior Legislative Counsel

June 17, 2004

Honorable Leonard Lance
Senate Chambers
P.O. Box 099
Trenton, New Jersey 08625-0099

Dear Senator Lance:

You have asked for our advice whether certain proceeds[1] of long term debt may lawfully be considered "revenue"for the purpose of "balancing" the budget under Article VIII, Section II, paragraph 2 of the New Jersey Constitution. Further, you have asked if this use of long term debt as revenue to arrive at a balanced budget is challenged and the Supreme Court ultimately holds this use is violative of the Constitution, what is the exposure of the State in terms of a court remedy.

It is our opinion that the use of a device to securitize revenues from future years to finance appropriations in the current year is violative both of the balanced budget requirement and the debt limitation clause of Article VIII, Section II of the Constitution, paras. 2 and 3. Our advice relies on the need to read both paragraphs together in a manner which is faithful to the revision made in the 1947 Convention and which seems to have been lost in the case law and legislation enacted since. Our attempt to set forth that understanding follows with acknowledgement of contrary case law and legislation as relevant.

---

[1] According to the Governor's Budget Message, dated February 24, 2004, the proposed $26.3 billion budget is balanced in part by revenue enhancements of which $1.52 billion comes "from the securitization of motor vehicle surcharges and new revenue from a 45 cent increase in the cigarette tax . . . ." page B-5. These proceeds are cited again at page C-8 of the Message with some explanation of the motor vehicle surcharges relied on. The $1.52 billion is then included as anticipated in FY2005 as State revenues in the Department of the Treasury, page C-17.

The constitution mandates that withdrawals of monies from the State treasury can be accomplished only by legislative appropriation and that there shall be "one general appropriation law covering one and the same fiscal year." Its exact terms in this respect are:

> No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year; except that when a change in the fiscal year is made, necessary provision may be made to effect the transition. No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor.
> [N.J. Const. (1947), Art. VIII, Sec. II, para. 2.]

> The constitutional requirement of a unitary general appropriations law covering but a single fiscal year is the center beam of the state's fiscal structure. It expresses the basic understanding that fiscal soundness and integrity are the foundations for proper governmental operations. The constitutional plan for the expenditure of public revenues for governmental purposes centralizes and simplifies state financial affairs, serving to improve the operations of government, define fiscal commitments, and clarify official responsibility. [Karcher v. Kean, 97 N.J. 483, 488 (1984), citing City of Camden v. Byrne, 82 N.J. 133, 146 (1980)].

It is this constitutional provision that requires that appropriations be incorporated into a single balanced budget in which current expenditures of those appropriations must be met by current revenues.

The payment of an expenditure of a current fiscal year appropriation matched by the proceeds of State borrowing to be paid from revenue from a future fiscal year would likely be viewed under our Constitution as an effort ". . . to increase state expenditures, which presumably have already been calculated and included in a unitary budget that effectively appropriates revenues sufficient to meet all such expenditures for the fiscal year, [and] would tend to tilt the

budget toward imbalance. This cannot be done without violating the constitutional command that the State's finances be conducted on the basis of a single fiscal year covered by a single balanced budget." City of Camden, at 151.

You should be aware that certain revenue collected after the end of a State fiscal year may be considered "revenue on hand and anticipated which will be available to meet" the appropriations made for the previous fiscal year. N.J.S.A. 52:27B-46 provides that "all accounts receivable and payable, all balances of all funds, and such other information as is required for a proper statement of the financial conditions and operations of the State" are to be maintained through "a complete set of double-entry accounts, which shall reflect directly or through proper controlling accounts, on an accrual basis, all assets, liabilities, revenues, and expenditures of the State, and all of its accounting agencies." This statute provides the legislative recognition that funds constructively in the State's treasury during the fiscal year may be treated as actually in the treasury.[2]

At least since this statute's enactment in its current form under P.L.1944, c.112, the State's revenue and appropriations accounting has been based on the accrual method of accounting. N.J.S.A. 52:27B-46 was enacted as one of the bills proposed by the New Jersey Commission on State Administrative Reorganization, which, in Part 2 of its report of March 1944, recommended streamlining measures involving State fiscal procedures, that were expressed in the Commission's memorandum on the bill, as part of an overall effort ". . . to provide the facilities . . . [to] the Governor to meet . . . his obligation . . . to provide adequate direction and control of both revenues and expenditures . . . without conflict in authority between the executive and legislative branch . . . ." Report of the New Jersey Commission on State Administrative Reorganization, Part 2, March 1944, at 1. This method of accounting is further noted to be applicable to the revenues available to support the State appropriation act in N.J.S.A. 52:27B-46, which in addition to requiring the preparation of the public annual fiscal year comprehensive financial report of the State, provides that the Director of the Division of Budget and Accounting in the Department of the Treasury prepare a ". . . summarized monthly report of the General State Fund no later than 30 days following the end of each month which shall reflect the accrued revenues as compared with anticipated revenues, itemized by revenue source for major taxes, [and] by department for miscellaneous revenues. . . ." These statutorily established revenue accounting rules, although without specific mention in the convention proceedings, were, along with all other statutory and other law in force at the time, declared to remain in full force unless superseded, altered or repealed by the

---

[2]Thus, for example, sales tax revenues which are collected by vendors and accrue to the State during the last part of the current fiscal year, but are not received by the State during the fiscal year because of the statutorily established time lag in the remitting of the collected taxes, are properly allocated to the current fiscal year.

new Constitution of 1947. Article XI, Section I, paragraph 3. Nothing in our review of the Constitutional Convention proceedings of 1947 and of the changes incorporated in the 1947 Constitution indicates any suspension or alteration of these rules. To our knowledge they have been applied to the annual appropriation act to the present.

Of most importance, the State Constitution's Debt Limitation Clause contains the authority for the State Legislature to address a deficiency in State revenues to match appropriations for a fiscal year by way of borrowed funds through the issuance of State debt without a public referendum. To our knowledge, however, this form of State borrowing has not been previously utilized.

The State Constitution's Debt Limitation Clause is found in Article VIII, Section II, paragraph 3 and reads in relevant part as follows:

> The Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctly specified therein. . . . Except as hereinafter provided, no such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. No voter approval shall be required for any such law authorizing the creation of a debt or debts in a specified amount or an amount to be determined in accordance with such law for the refinancing of all or a portion of any outstanding debts or liabilities of the State heretofore or hereafter created, so long as such law shall require that the refinancing provide a debt service savings determined in a manner to be provided in such law and that the proceeds of such debt or debts and any investment income therefrom shall be applied to the payment of the principal of, any redemption premium on, and interest due and to become due on such debts or liabilities being refinanced on or prior to the redemption date or maturity date thereof, together with the costs associated with such refinancing. All money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. This paragraph shall not be construed to refer

> to any money that has been or may be deposited with this State by the government of the United States. Nor shall anything in this paragraph contained apply to the creation of any debts or liabilities for purposes of war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or act of God. (emphasis added)

The underlined text was the subject of an amendment to this paragraph discussed and adopted at the State constitutional convention of 1947. The amendment to increase the $100,000 debt limit in the 1844 Constitution to the one percent of annual appropriations was made by Senator Van Alstyne who was a delegate from Bergen County and Chairman of the Joint Appropriations Committee in 1947. The text of the amendment as it appears at pages 1240-1241 of the Convention Proceedings, Volume II, is attached as Appendix A for your reference. The debate during the course of the movement and adoption of the amendment on the floor of the convention is compelling on the subject. It is set forth in its entirety as it appears in the Convention Proceedings, Record, Volume I at pages 701 to 704 in Appendix B which is attached for your reference.

The debate strongly suggests that the one percent debt limitation was intended to create flexibility in the annual appropriation act by allowing the act to be balanced within a "leeway" of one percent of appropriations. In other words, the State's ability to incur debt of up to one percent of appropriations was intended to help the State meet its operating expenses in those years when revenue anticipated in the beginning of the fiscal year fell short of expectations. In opposing the amendment, Frank J. Murray, Vice-Chairman of the Committee on Finance and Taxation for the Constitutional Convention described the State's ability to incur debt as follows:

> In addition to $100,000 and the debt that could be incurred for these excepted purposes which I have read, all other money spent beyond available appropriations, or available monies and revenues which could be appropriated, must be by referendum approved by the voters of the State. Now, it is just a question of policy as to whether we want to preserve a situation where the State should not incur a debt beyond these emergencies except by the vote of the people, or whether we do want to make it a reasonable sum such as the Senator has suggested. [Vol. I, page 702]

This statement expresses Vice-Chairman Murray's concern that Senator Van Alstyne's proposed amendment would permit the Legislature to incur debt up to one percent of appropriations without

going to the voters for approval.

Another appropriate point of reference for this portion of the Debt Limitation Clause is the monograph on Constitutional Limitation on the creation of State Debt by Amos Tilton. Constitutional Convention of 1947, Convention Proceedings, Volume II, at 1708-1727 (hereinafter cited as "Monograph" and attached as Appendix C for you reference). This and other monographs were prepared at the direction of the Governor and were immediately available to the delegates upon their election. Id., Volume II at 1328. The Monograph provides an excellent overview of the use of debt financing by New Jersey up to the time of the 1947 convention and the historical context which generated the adoption of the debt limitation provision in 1844. Of particular interest is the statement that the "balance of unredeemed[3] state bonds on January 1, 1947 was $72,200,000." Monograph at 1715. Of further interest is the characterization of the then existing $100,000 limit as "permitted for casual deficiencies," in the summary on page 1724.

Given the discussion on the amendment to this clause and the framework placed on the clause by the Monograph, it seems that the provision limiting to one percent of the total amount appropriated in the fiscal year was understood by the framers to authorize the creation of debt in that amount as a means of balancing an unbalanced budget without the requirement of voter referendum. Further a sensible reading leads to the construction that the phrase "together with previous debt or liabilities" in this clause applies only to this type of deficit financing, and not to obligations approved by the voters. Although there is no New Jersey case that resolves the issue of whether the phrase includes all previous voter-authorized debt, the history of the constitutional convention suggests that general obligation debt should not be included in the definition of previous debt.

The only New Jersey case[4] that addresses the issue is Bulman v. McCrane, 64 N.J. 105 (1973), wherein the court declined to resolve the issue. In that case, the Attorney General argued that, even if the State's lease with the builder-developer for a records storage center was considered a debt under the Debt Limitation Clause, such debt did not violate the clause because,

---

[3]The word "redeemed" is used, but in the context of the tables and discussion we presume that its use is a typographical error.

[4] In Clayton v. Kervick, 52 N.J. 138, 143-144 (1968), the court accepted a stipulation that the one percent limit was exceeded by existing general obligation bonds but this was not necessary to its rationale and decision. A passing mention of the lost relevance of the debt limitation clause as a check on aggregate State debt was made by Justice Stein in Lonegan v. State, 174 N.J. 435,498 (2002) (Lonegan I).

1) the value of the lease was not greater than one percent of the fiscal year 1972-73 State appropriations, and, 2) the State had no previous debt to which the amount of the lease needed to be added. The court ultimately found that the State's sole obligation was for future installments of rent and not a present debt in the constitutional sense. Bulman, at 118.

The court recounted the argument:

> The Attorney General points out that the total potential liability of the State under the lease is $3,644,075, which is less than one percent of the fiscal 1972-1973 legislative appropriation of $2,047,934,209. His legal contention is that the approximate $1,200,000,000 in presently outstanding State bonds is not to be included within the text, "any previous debts or liabilities," in the excerpt . . . above, within the true meaning of the Constitution. The implied position is that once the people have voted on specific items of funded debt pursuant to the constitutional mandate the policy underlying the debt limitation provision is met as to such debts and thereafter only new debts aggregating in excess of the one percent limitation are of constitutional concern. [Bulman, at 108.]

Curiously, the court went on to conclude that there was no history of the constitutional framers' intent on this issue.

> We think this issue of constitutional interpretation raised by the Attorney General is a substantial one. Unfortunately, however, it was not adequately researched for us by either side. No case on point is cited. Our own independent search of the 1844 and 1947 constitutional proceedings has revealed no significant light as to the framers' intent in the respect under contention. See Proceedings of the New Jersey State Constitutional Convention of 1844 (1942) at 135, 185, 203, 277, 310–311, 340–343, 519–522, 524–527, 595; V Proceedings, Constitutional Convention of 1947, at 543, 590, 600, 601, 602, 844. In these circumstances, and in view of the fact that the instant litigation will be concluded by our determination that the contract for a lease did not create a debt or liability within

the constitutional proscription, we defer to another day resolution of the issue posed.[2]

* * *

[2]It is to be noted that determination of the issue as to whether this transaction is a debt within Art. VIII, Sec. II, Par. 3 is useful even if the Attorney General's alternative position ultimately prevails. In that event the State's fiscal officers would still need to know whether this transaction is to be charged against the quantum of "free" debts up to 1 percent of the appropriation law. [Bulman, at 109-110.]

It appears from the foregoing passage that no reference to Senator Van Alstyne's presentation of the amendment to one percent on the convention floor is made and that the most crucial piece of evidence in favor of the Attorney General's argument on this point was not considered.

We are of the opinion that there is good authority in the record of the 1947 Constitutional Convention for the proposition that debt approved by voter referendum does not count in the aggregation of State debt or liabilities up to the one percent limit. The case law, notably Bulman v. McCrane, is not dispositive of the issue. In the only other case on point, the California Supreme Court, in a decision of some vintage, addressed the issue under a similar debt limitation clause under the California constitution that had a $300,000 limit on debt created by the Legislature itself. In Bickerdike v. State, 144 Cal. 681 (1904), the court applied the same reasoning later used by the New Jersey Attorney General in Bulman, that the phrase "any previous debts" included only the limited category of debt permitted to be created by the legislature under the limited circumstances of revenue deficiencies, and excluded therefrom the unlimited category of debt that may be created by voter referendum. 144 Cal. at 695-697.

Therefore, we are of the opinion that the Legislature has authority under the State Constitution to create debts up to one percent of the total amount appropriated by the annual appropriation act in the current fiscal year to finance a budget deficit which debt would be subject to repayment in future years if an authorizing act so provided. Further, in a determination of the forms of outstanding debt that would be aggregated in counting up to that limit, outstanding general obligation bonds approved by the voters would not count. While language in paragraph

3 uses "the total amount appropriated," that language was drafted and adopted at the time of the adoption of the unitary general appropriations requirement in paragraph 2 which predates the creation of the current constitutionally dedicated funds contained within the appropriation act. For example, the Governor's Budget Message at page B-1 shows the recommended budgeted appropriations for the 2004-05 State fiscal year for the General Fund at $17,865,378,000 and for the Property Tax Relief Fund at $7,843,000,000 and for the Casino Revenue Fund at $478,880,000. It may be argued that the one percent limit should be calculated on the $17.865 billion figure and that dedicated funds were not in the contemplation of the convention delegates. (The Comprehensive Annual Financial Report of the State of New Jersey for the fiscal year ended June 30, 2003, at page 316, would appear to set forth a calculation of the State's legal debt limit under this one percent provision using the same assumption.) Assuming this is the correct understanding, there may be authorized by law State debt of $178,865,378 in this fiscal year without a referendum on the assumption that no other outstanding debt exists which counts against the limit.

A necessary part of this background is the line of cases placing the Legislature in the ultimate position of responsibility for appropriations recognizing the "significant responsibilities for the State's fiscal affairs" of the Governor. Karcher v. Kean, 97 N.J. 483,489 (1984); City of Camden v. Byrne, 82 N.J. 133,146 (1980). In answering in the negative whether a variety of statutes had the effect of appropriating moneys for the purposes of those statutes, the court relied on 'the constitutional provisions requiring appropriations to be incorporated into a single balanced budget in which current expenditures must be met by current revenues." City of Camden, supra, 82 N.J. at 151.

More particularly focusing on the debt limitation clause is the line of cases culminating in Lonegan v. State, 176 N.J. 2 (2003) (Lonegan II), in which the court ultimately held that "the restrictions of the Debt Limitation Clause do not apply to appropriations-backed debt." Id. at 21. Here also, the court recognizes the preeminent role of the Legislature in addressing the concerns of the three dissenting justices. Ibid. Deference to the Legislature and Executive Branch permeates the approach of the court. 176 N.J. at 5.

In order to complete the backdrop, the handling of the unfunded pension liabilities in 1997 by means of the "Pension Bond Financing Act of 1997," P.L. 1997, c.114 (N.J.S.A. 34:1B-7:45 et al.) in conjunction with Chapter 115 which revalued the assets of the pension systems was fully discussed by Justice Handler's dissenting part in Spadoro v. Whitman, 150 N.J. 2,4 (1997). The immediate effect of these two laws was to take the pressure off the interdepartmental accounts in the State operations portion of the budget for FY1997-98, in the reliance on $144.7 million of pension surplus. Governor's Budget Message, page B-4.

Notable recent examples of innovative means of balancing the State budget occured with the immediate use of tobacco settlement moneys in the appropriations act for FY 2000, P.L. 1999, c.138, with the recognition of $92,808,000 from the tobacco settlement find in the interfund transfer part of the General Fund revenue certification and its charge for various departments and programs in section 53 of Chapter 138. In the FY 2001 appropriations act, P.L. 2000, c.53, $144,219,000 was certified as available from the tobacco settlement fund and charged for general fund uses in subsection a. of section 56 of Chapter 53. Further off-budget appropriations of $245,064,000 were made in subsection b. of section 56. In the FY 2002 appropriations act, P.L. 2001, c.130, $365,204,000 was certified and charged for general fund purposes in section 54 of Chapter 130. In 2002, the "Tobacco Settlement Financing Coproration Act," P.L. 2002, c.32 (N.J.S.A. 52:18B-1 et seq.) established the corporation to manage the proceeds of the tobacco settlement and convert the State's interest into a present value. In section 5 of the act (N.J.S.A. 52:18B-5), subsection d. provides that the net proceeds may be applied . . . "for any bona fide governmental purposes . . . including . . . capital expenditures, debt service . . . or operating deficit needs . . .. The FY 2003 appropriations act, P.L. 2002, c.38 certified $1,351,706,000 in the tobacco settlement fund as revenue and authorized $1,075,000,000 to be appropriated in section 49 of Chapter 38. In the FY 2004 appropriations act, P.L. 2003, c.122, $1,612,022,000 was certified as available in the tobacco settlement fund and $1,487,247,000 was appropriated in section 49 of Chapter 122.

It appears that the tobacco settlement fund received approximately $205,000,000 more in FY 2003 than set out in the paragraph above, but that no amount is anticipated for FY 2005 in that fund as set out at page C-19 of the Governor's Budget Message, dated February 24, 2004.

While the exact details of the Governor's proposed securitization are unknown as of this writing, it is our opinion that the proposal necessarily requires a commitment of what appear to be ordinary revenue in a stream from future years, to anticipate in the coming fiscal year, an amount that is a significant multiple of what would actually be anticipated in the fiscal year if not securitized. We further are unaware of what means or device by which the securitization would be effected. It is our opinion based on what we believe was the purpose of the changes made in the 1947 Constitutional Convention that the balanced unitary budget requirement of paragraph 2 and the one percent debt limitation of paragraph 3 are flip sides of the same coin. With this view in mind and the obvious difficult history of case law (driven in every case by legislation of various devices subject of the challenge) culminating in Lonegan II, it is our opinion that an attempt to "securitize" ordinary revenue to balance the FY 2005 budget violates the requirement of a unitary budget in one fiscal year in paragraph 2 and goes beyond what the case law has heretofore upheld against a debt limitation challenge under paragraph 3.

Your second question asks what is the exposure of the State in terms of a remedy by the

court. Our best assessment is that the court would, if before the fact of securitization, defer to the Legislature and the Governor to restore balance and use those powers already committed by the Constitution and law[5] most notably as discussed in Karcher v. Kean, supra. If the ruling came after the fact of securitization, judicial relief could be "problematic." Spadoro v. Whitman, 150 N.J. at 14. The court could "grandfather all existing transactions that otherwise might be constitutionally infirm, leaving them undisturbed." Lonegan v. State, 176 N.J. at 24 (Justices Long, Verniero and Zazzali, dissenting, citing Justice Stein's dissent in Lonegan I, 174 N.J. at 500-504 for prospective application of potentially disruptive judicial decisions). Based on the fact that the proposed securitization is equal to one dollar out of seventeen or slightly less than six percent of the State budget and the impossibility of knowing where the loss would fall and the olive branches offered in the above cases, it is our belief the court would be considerate of the legislative and executive branches, responsibilities in balancing the budget.

Very truly yours,

Albert Porroni
Legislative Counsel

By: Leonard J. Lawson
Leonard J. Lawson
First Assistant Legislative Counsel

AP:L/fa

[5] For example, the executive power to revise quarterly allotments when revenues have fallen below those anticipated is set forth in N.J.S.A. 52:27B-26.

AMENDMENTS TO COMMITTEE PROPOSAL No. 5-1[1]

AMENDMENT No. 1 to COMMITTEE PROPOSAL No. 5-1

Introduced by Allan R. Cullimore

To amend Article . . ., "Finance," Section 1, as follows:

In line 2, paragraph 1, Section 1, strike out the words "according to its true value" and insert, in place of comma following the word "rules," a period.

AMENDMENT No. 2 to COMMITTEE PROPOSAL No. 5-1

Introduced by David Van Alstyne, Jr.

Resolved, that paragraph 4 of Section 1 of Article. . ., "Finance," contained in the Committee Proposal of the General Standing Committee of the Convention on Taxation and Finance, be amended to read as follows:

"4. The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, of the State, which shall singly or in the aggregate with any previous debts or liabilities at any time exceed [$100,000.00,] an amount equal to one per centum of the total amount of money appropriated, for the support of the State government and all other purposes, by the general appropriation law covering the State fiscal year current with that in which the law authorizing the creation of such new debt or debts, liability or liabilities, is enacted, except for purposes of war, or to repel invasion, or to suppress insurrection, or to meet an emergency caused by act of God or disaster, unless the same shall be authorized by a law for some single object or work, to be distinctly specified therein; which law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrepealable until such debt or liability, and the interest thereon, are fully paid and discharged [. And]; and no such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it at such election; and all money to be raised by the authority of such law shall be applied only to the specific object stated therein [;], and to the payment of the debt thereby created. This section shall not be construed to refer to any money that has been, or may be, deposited with this State by the Government of the United States."

[1] Page and line references in these amendments are to the printed Proposal distributed to the delegates. However, they are, generally, sufficiently specific to be clear.

AMENDMENT No. 3 to COMMITTEE PROPOSAL No. 5-1

Introduced by George H. Walton

Resolved, that paragraph 3 of Section 1 of Article. . ., "Finance," contained in the Committee Proposal of the General Standing Committee of the Convention on Taxation and Finance, be amended to read as follows:

"3. No money shall be drawn from the State treasury but for appropriations made by law. So far as known or can be reasonably foreseen, all needs for the support of the State government and for all other State purposes shall be provided for in one general appropriation law covering one and the same fiscal year, except that, when change in fiscal year is made, necessary provision may be made to effect the transition. No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein together with all prior appropriations made for the same fiscal period shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the (State Auditor) Governor."

AMENDMENT No. 4 to COMMITTEE PROPOSAL No. 5-1

Introduced by Marion Constantine

Resolved, that Committee Proposal No. 5-1 be amended by striking out on page 3, Section II, all of lines 14, 15 and 16.[1]

AMENDMENT No. 5 to COMMITTEE PROPOSAL No. 5-1

Introduced by Frank H. Eggers

Resolved, that paragraph 1, Section 1 of Article. . ., "Finance," of Committee Proposal No. 5-1, be and the same is hereby amended as follows:

Strike out lines 1 and 2 of paragraph 1, Section 1, of said Committee Proposal, through the word "value" and substitute therefor the following:

"Property shall be assessed for taxes under general laws and by

[1] The reference is to Section II, paragraph 1 (c).

AMENDMENTS TO COMMITTEE PROPOSAL No. 5-1[1]

AMENDMENT No. 1 to COMMITTEE PROPOSAL No. 5-1

Introduced by Allan R. Cullimore

To amend Article . . ., "Finance," Section 1, as follows:

In line 2, paragraph 1, Section 1, strike out the words "according to its true value" and insert, in place of comma following the word "rules," a period.

AMENDMENT No. 2 to COMMITTEE PROPOSAL No. 5-1

Introduced by David Van Alstyne, Jr.

Resolved, that paragraph 4 of Section 1 of Article. . ., "Finance," contained in the Committee Proposal of the General Standing Committee of the Convention on Taxation and Finance, be amended to read as follows:

"4. The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, of the State, which shall singly or in the aggregate with any previous debts or liabilities at any time exceed [$100,000.00,] an amount equal to one per centum of the total amount of money appropriated, for the support of the State government and all other purposes, by the general appropriation law covering the State fiscal year current with that in which the law authorizing the creation of such new debt or debts, liability or liabilities, is enacted, except for purposes of war, or to repel invasion, or to suppress insurrection, or to meet an emergency caused by act of God or disaster, unless the same shall be authorized by a law for some single object or work, to be distinctly specified therein; which law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrepealable until such debt or liability, and the interest thereon, are fully paid and discharged [. And]; and no such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it at such election; and all money to be raised by the authority of such law shall be applied only to the specific object

[1] Page and line references in these amendments are to the printed Proposal distributed to the delegates. However, they are, generally, sufficiently specific to be clear.

stated therein [;], and to the payment of the debt thereby created. This section shall not be construed to refer to any money that has been, or may be, deposited with this State by the Government of the United States."

AMENDMENT No. 3 to COMMITTEE PROPOSAL No. 5-1

Introduced by George H. Walton

Resolved, that paragraph 3 of Section 1 of Article. . ., "Finance," contained in the Committee Proposal of the General Standing Committee of the Convention on Taxation and Finance, be amended to read as follows:

"3. No money shall be drawn from the State treasury but for appropriations made by law. So far as known or can be reasonably foreseen, all needs for the support of the State government and for all other State purposes shall be provided for in one general appropriation law covering one and the same fiscal year, except that, when change in fiscal year is made, necessary provision may be made to effect the transition. No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein together with all prior appropriations made for the same fiscal period shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the [State Auditor] Governor."

AMENDMENT No. 4 to COMMITTEE PROPOSAL No. 5-1

Introduced by Marion Constantine

Resolved, that Committee Proposal No. 5-1 be amended by striking out on page 3, Section II, all of lines 14, 15 and 16.[1]

AMENDMENT No. 5 to COMMITTEE PROPOSAL No. 5-1

Introduced by Frank H. Eggers

Resolved, that paragraph 1, Section 1 of Article. . ., "Finance," of Committee Proposal No. 5-1, be and the same is hereby amended as follows:

Strike out lines 1 and 2 of paragraph 1, Section 1, of said Committee Proposal, through the word "value" and substitute therefor the following:

"Property shall be assessed for taxes under general laws and by

[1] The reference is to Section II, paragraph 1 (c).

APPENDIX B

35a

PRESIDENT: Mr. Read, which amendment would you care to discuss at this time?

MR. READ: I might state, Mr. President, that under an agreement, all amendments pertaining to the taxation clause will be considered last and taken up probably at a future time.

PRESIDENT: Can you indicate the numbers?

MR. READ: We can take up Amendment No. 2 by Senator Van Alstyne. We can take up Amendment No. 3 by Delegate Walton, and we can take up Amendment No. 4 by Delegate Constantine.

PRESIDENT: 2, 3, and 4.

MR. READ: 2, 3, and 4 can be taken up. There is another one by Mrs. Barus which pertains to the same thing as No. 4. It will have to be taken up at the same time.

All the rest of the amendments pertain to the tax clause except, I think, 13 and 14. One of those pertains to a matter in which Mrs. Barus is personally interested and she had it before another committee. It happened, however, to pertain to our committee but it was not necessary that the true value clause go. Therefore, that may be considered afterward. The other amendment, the one by Delegate Paul, merely takes out one word in one of these exemption clauses. That also can be taken up.

PRESIDENT: I understand that all delegates have now received copies of the amendments to Proposal No. 5-1. May I report that there should be a bound copy of the proceedings of the Committee on Taxation and Finance on each delegate's desk. If any delegate does not have that bound copy, will he or she please raise his or her hand.

MR. READ: Mr. President, if the Convention will be in order, I think I can dispose of one very, very quickly, and that is Amendment No. 3, by Delegate Walton. He is not in his seat, but I can explain that very quickly. We drew the Committee Proposal, Section I, paragraph 3:

> "No money shall be drawn from the State treasury but for appropriations made by law . . ."

and so forth. And then it says that only certain things may be done by certification. The present Constitution says, "State Comptroller." We put in "State Auditor," because the State Comptroller was to be taken out of the proposed Constitution.

However, when that "State Auditor" phrase in the proposed Constitution was made we recalled that he is an auditing officer and the Governor, because he is the budget officer and will present this matter to the Legislature, should be the one to present it. Delegate Walton's amendment is merely to strike out the words "State Auditor" and put in place thereof the word "Governor," because the Governor is the one to present that to the Legislature. Therefore,

perhaps if Colonel Walton—oh, he is here. Well, I second his motion anyway.

PRESIDENT: Colonel Walton will you comment on Amendment No. 3?

MR. WALTON: Mr. President and fellow delegates:

There is not much more to be said than what Mr. Read has already said. I would like to point out that the State Auditor is a post-auditing officer, whereas in the Governor's department there is generally someone in charge of the budget. It is better, I think, to make the Governor responsible for these certifications, in view of the fact that the State Auditor would not have the necessary information.

PRESIDENT: Any further discussion on Amendment No. 3?

FROM THE FLOOR: Question!

PRESIDENT: The question is called for. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is adopted . . . Mr. Read.

MR. READ: On page 2, the very last two words of Paragraph 3 on line 11, take out "State Auditor" and put in "Governor." The committee doesn't want any adverse criticism because we've put in "State Auditor," because at the time we adopted that we didn't know just what official it ought to be and he was the only one we knew of to take the place of the State Comptroller. But they made the State Auditor, as Delegate Walton said, a post-audit matter.

I congratulate this Convention on adopting this amendment.

PRESIDENT: Mr. Read, what amendment do you wish to take up now?

MR. READ: If Delegate Van Alstyne is ready, I might take up his, Amendment No. 2, which is an amendment to Section I, paragraph 4.[1]

PRESIDENT: Senator Van Alstyne.

MR. VAN ALSTYNE: Mr. President and fellow delegates:

In the present Constitution there is a limitation that the government of the State cannot borrow more than $100,000 without going to the people. In 1844, when this exemption was adopted, the annual budget of the State was approximately $100,000, so that the people who sat there in Convention decided that it was proper to give the government of the State a leeway of approximately 100 percent of the state budget which existed then.

The budget this State is operating under today is approximately

[1] The text of this amendment appears in the Appendix in Vol. 2.

$155,000,000, so a leeway of $100,000 is just about the same as nothing. I am very strongly opposed, however, to making the exemption $155,000,000, but I do think it should be something more than $100,000. I therefore proposed this amendment and put in there that the exemption should be one per cent of the total amount of money appropriated for the State in any given year. Now, that means, at the present time, a leeway of approximately a million and a half dollars.

Those of you who have had much to do with preparing budgets a year to a year and a half in advance, which is what we have to do with the state budget, will realize that if you can hit your budget within one per cent you have done very well indeed. I think this is only a reasonable provision and in keeping with the change of modern times. I move its adoption.

PRESIDENT: Any further discussion on Amendment No. 2? . . . Mr. Read.

MR. READ: Mr. President, I suggest that Vice-Chairman Murray discuss this matter.

PRESIDENT: Mr. Murray.

MR. FRANK J. MURRAY: Mr. President and ladies and gentlemen of the Convention:

The committee discussed this matter and one of the members of the committee proposed increasing the amount from $100,000 to $500,000. I agree with Senator Van Alstyne that $100,000 is practically synonymous with nothing. But we decided, the committee decided by a majority—in fact, I think all but one or two—that it would be better to continue the tradition or the practice in this State of not incurring debt.

Of course, this limitation has exceptions. The State may incur a debt over $100,000 and without limits, for the purposes of war, or to repel invasion, or to suppress insurrection, or to meet an emergency caused by an act of God or disaster. So that we do have a leeway to meet any emergency of that kind.

In addition to $100,000 and the debt that could be incurred for these excepted purposes which I have read, all other money spent beyond available appropriations, or available monies and revenues which could be appropriated, must be by referendum approved by the voters of the State. Now, it is just a question of policy as to whether we want to preserve a situation where the state should not incur a debt beyond these emergencies except by the vote of the people, or whether we do want to make it a reasonable sum such as the Senator has suggested. The sum he suggests is not unreasonable, but it is a question of policy and a question of tradition, and as far as my opinion is concerned, I think the State should not change the past policy.

PRESIDENT: Any further discussion on Amendment No. 2? . . . Mr. Lightner.

MR. MILTON C. LIGHTNER: When this matter was pending before the Committee on Taxation, the state fiscal officers who appeared before the committee were asked whether they wished to have this debt limitation increased. My own impression, as a member of the committee, was that the desire of the state fiscal officers was to preserve the spirit of the existing limitation, but that there was no evidence of a feeling that there was anything sacred about the sum of $100,000. I believe that if the fiscal officers had offered a definite suggestion as to a somewhat larger sum, consistent with the value of money today as compared to the value of money when this clause was written, that the committee might very well have reported it.

Senator Van Alstyne, with his splendid experience in charge of the Appropriations Committee of the Senate, expresses a belief that this amount should be raised to one per cent of the budget. Personally, I believe it is a very sane point of view and I propose to support the amendment.

PRESIDENT: Mr. Peterson.

MR. HENRY W. PETERSON: Mr. President, I just can't conceive that there would be any objection to Senator Van Alstyne's proposed amendment. The only reservation I had in my mind, sir, is that it doesn't go far enough, that it should be increased, instead of one per cent to three per cent. That could possibly be $4,500,000 of debt created by the State, which isn't too great an amount of money.

After all, if an emergency or a necessity arises—it wouldn't have to be an emergency—wherein an amount of three or four or five million dollars was involved, the alternate now would be to get it from general taxes, get it from the general income of the State. When you consider the enormous amount of ratables of the State of New Jersey and you just issue $4,500,000 without a referendum, it seems to me that that would be better, or we'll be having before us, in my opinion, and I anticipate, bond issues of a hundred or two hundred million dollars for approval which may be circumvented by the power given the Legislature to issue a three per cent basis instead of a one per cent basis. I move you, sir, to amend the amendment from one per cent to three per cent.

PRESIDENT: Senator Van Alstyne, will you comment on the amendment to the amendment?

MR. VAN ALSTYNE: Mr. President and fellow delegates:

I appreciate very much the support of Delegate Peterson to my amendment, but I'm inclined to think that I would like to stand

on one per cent. And so, with all due respect to you, sir, I would not like to accept it. You have the privilege of moving it, however.

MR. PETERSON: In the interest of saving time, I withdraw my amendment.

PRESIDENT: Amendment No. 2 then stands in its original form.

FROM THE FLOOR: Question!

PRESIDENT: The question is called for. All in favor, please say "Aye."

(Majority chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Minority chorus of "Noes")

PRESIDENT: All those in favor, please raise their hands.

(Hands raised by majority of delegates)

PRESIDENT: All opposed.

(Few hands raised)

PRESIDENT: The amendment is adopted.

I wish to report, ladies and gentlemen, that we have with us this morning Mrs. Driscoll, the Governor's mother, seated on the floor of the Convention. We are very happy to have you with us, Mrs. Driscoll, and hope you will be with us as often as your convenience permits.

(Applause)

MR. READ: Mr. President, may I, through you, representing the Camden County delegation, say that we are also very proud to have our fellow resident of Camden County, Mrs. Driscoll, with us?

I would now suggest that if the proponents are ready, we take up Amendment No. 4 by Delegate Constantine. Along that line, we must have in mind Amendment No. 8 by Mrs. Barus.[1] Although they both don't have exactly the same idea, they both pertain to the same paragraph in the Committee Proposal. Are you ready, Mrs. Constantine?

PRESIDENT: Will you comment on this, Mrs. Constantine?

MRS. MARION CONSTANTINE: Mr. President and fellow delegates:

I ask for the passage of this amendment on one premise, that the proposal is not constitutional matter but should be handled by the Legislature. That has been the procedure in the past, in this State and in others, and up to the present time I have heard no suggestion that this method was improper or unsatisfactory. In view of this fact, and in particular because this proposal is much

[1] The text of these amendments to Committee Proposal No. 5-1 appears in the Appendix in Vol. 2.

wider in scope than the present statute, I believe the people of this State should have the opportunity to express their views through their elected representatives in the Legislature.

Before this delegation began its deliberations, both the Governor and Dr. Clothier stressed two points: first, that the language of the final draft should be concise and the intent clear; and second, that it contain only constitutional matter as opposed to legislative. Since this difference was not entirely clear to me at that time, I made an extra effort to listen most carefully when the delegates discussed this point, as they have done frequently and ably. I have confidence, therefore, that this amendment is based on sound procedure and I urge its passage.

PRESIDENT: Any further discussion on Amendment No. 4? . . . Mr. McMurray.

MR. WAYNE D. McMURRAY: Mr. President and ladies and gentlemen:

Very frankly, I address myself to this amendment with very genuine reluctance. I had hoped that it would not be necessary for me, or for any other delegate, to speak on this matter, for I had hoped the matter would not appear in the Report of the Committee on Taxation.

I had also hoped that debate would not occur on this matter because the matter contained in this paragraph is, in a sense, of an emotional nature. I think we all know how difficult it is to consider an emotional issue with the same objectivity that we consider the other more pragmatic matters that have been brought before us. It is this type of proposal which splits people into opposing camps, and men who are otherwise single-minded in their devotion to the public welfare and united in their determination to give the people of New Jersey the best possible Constitution, find themselves divided. On issues of faith we have had some of the cruelest contests that have ever beset mankind. But it seems to me that the best part of this country has been that its intelligent leaders have resolved to spare this country that sort of strife. Regardless of race or religion, we are all one. And issues that might divide us on either of those grounds, I think, should be avoided.

Now, I have friends in this Convention who favor this amendment. And I have friends, and I hope that they are still going to be my friends, who with equally honest ardor, oppose it. In my county I have friends who favor constitutional treatment of free transportation for pupils of private schools, and I have others whose friendship I value equally, who oppose with similar fervor any such provision in our basic law. This division among our friends makes an individual decision in this matter at once easy and at once difficult. No matter how we vote, we cannot please every-

CONSTITUTIONAL LIMITATIONS ON THE CREATION OF STATE DEBT

by

AMOS TILTON
Administrative Assistant, Division of Taxation
Department of Taxation and Finance

Colonial and State Debts to 1844

The issuance of circulating notes by the Colonies has been called the origin of American state debts. It has been suggested that these notes were issued equally as much to supply a medium of exchange as to raise funds.[1] While this may have been the case in the beginning, the continued and expanded practice was to create money and raise funds for the Treasury, to create funds to be loaned out on mortgages, to supply funds to cover the costs of wars and to cover deficits in ordinary expenses of the Colonies.[2]

During the period of the Revolution, the new states authorized the emission of paper money or certificates as a means of meeting the expenses incidental to the establishment of new governments and the prosecution of the war. After the war, the debts so incurred by the states were largely assumed by the Federal Government. It is estimated that by 1795 the debt of the states had been reduced to $8,000,000.[3] New Jersey is listed among those states whose debts were nominal or non-existant.

The development of state debts, as they are more commonly recognized today, occurred after 1820 when the states began to borrow for internal improvements. These loans were voluntary; the states "funded" their debts and state bonds made their appearance on the investment market.[4] Although New Jersey remained one of the nine non-borrowing states, by 1843 state indebtedness exceeded $230,000,000. This was a staggering sum when considered in relation to the population and the tax revenues enjoyed by the 21 states which had incurred the liability.

Until 1830 state borrowing was orderly and was indulged in mainly by the older states of the East and South. After 1830 the movement got out of hand. Most of the indebtedness was incurred for projects which were expected to be self-supporting, such as banks, canals and railroads.[5] For a time many of these projects

[1] Davis, A. McF. Currency and Banking in the Province of Massachusetts Bay, (New York, 1900), Part I, "Currency," p. 8.
[2] Rochford, B. V. American State Debts, pp. 9-10.
[3] *Ibid*, pp. 53-55.
[4] *Ibid*, p. 73.
[5] *Ibid*, pp. 79-80.

were highly profitable, as was evidenced by New York's spectacular success with the Erie Canal.

In the very midst of this program of internal improvements the states found themselves confronted by the severe panic of 1837. Following the banking collapse of 1839 all of the borrowing states were in difficulties, and by 1842 nine states had defaulted and several others avoided defalcation by a very narrow margin.[6]

As a result of the sad experiences of the borrowing states for the decade previous to the New Jersey Constitutional Convention of 1844, it is not surprising that New Jersey elected to safeguard its future credit position by adopting limitations in its new Constitution against dangers of similar unwise debt expansion. Previous to 1840 no state constitution limited the debt which the legislature might incur. In 1842 Rhode Island led the way by adopting an amendment forbidding the legislature, without the consent of the people, to pledge the faith of the state, or to incur debts in excess of $50,000 except in times of war, insurrection, or invasion. The New Jersey provision, adopted two years later, was widely copied. Within a period of 15 years the constitutions of 19 states were amended to include debt limitation provisions. Eventually similar provisions on borrowing were written into nearly all the state constitutions.[7]

The New Jersey Constitutional Convention of 1844

The dispatch with which the several committees charged with the responsibility of drafting the proposed Constitution acted has been commented upon by students of the Convention of 1844.[8] On May 28, 1844, the Committee on the Legislative Department submitted its report. Section XIX of the Legislative Article dealt with limitations on the incidence of state debt; the section is duplicated immediately below for purposes of study and comparison:

> "The legislature shall not, in any manner, create any debt or debts, liability or liabilities, of the State, which shall singly, or in the aggregate, at any time exceed $100,000, except for purposes of war, or to repel invasion, or to suppress insurrection, unless the same shall be authorized by a law for some single object or work, to be distinctly specified therein; which law shall impose and provide for a direct annual tax sufficient, with such other appropriations as may be made therein, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof; and no such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for or against it at such election; and all the money to be raised by the authority of such law shall be applied, only, to the specific object stated in such law, and to the payment of the debt thereby created."[9]

While most of the delegates assembled were in substantial agree-

[6] *Ibid*, pp. 98-99.
[7] MacDonald, A. F. American State Government and Administration, (3rd ed., 1945) p. 383.
[8] Proceedings of the New Jersey Constitutional Convention of 1844, (1942), p. LXV (Introduction).
[9] *Ibid*, p. 114.

ment with the provisions set forth in Section XIX, a few did not appear to be unduly impressed by the bitter experience of some of New Jersey's sister states. These delegates agitated for the addition of a proviso which would enable the State to exercise its future option to acquire, without restraint, certain public works, namely, the Camden and Amboy Railroad and the Morris Canal and its feeders. Opposition developed on the grounds that members of the Legislature might be "bought" to vote for the purchase of the facilities under discussion.

It was finally agreed, however, that the 20-year retirement stipulation, as set forth in the report, would make difficult the future purchase of the facilities, and on this consideration, the Convention approved an amendment to substitute, in its stead, a 35-year maximum.[10] Earlier in the deliberations of the Convention a suggestion to amend the same provision by extending the debt retirement period to 30 years had failed on the theory that such an extended time would arouse the speculative appetite of future legislatures.[11]

Other amendments to Section XIX discussed and approved included:

(1) "Monies that are or may be deposited with this State by the Federal Government," shall be exempt from the provisions of Section XIX;[12]

(2) There shall be inserted after the word, "aggregate" the words, "with any previous debts or liabilities";[13] and

(3) In order that some subsequent legislature could not repudiate the state debt by repealing the tax prescribed to liquidate the debt, there be inserted after the words "contracting thereof," the words "and shall be irrepealable until such debt or liability, and the interest thereon are fully paid and satisfied."[14]

(For a later discussion of this same subject, see sections dealing with the public hearings of 1942 and 1944.)

Except for very minor changes in phraseology, the amendments considered above were the only ones which materially changed Section XIX as originally drafted by the Committee on the Legislative Department. The Convention completed its work on June 29, 1844, and the people, by public vote, ratified the new Constitution, August 13, 1844. Section XIX, as amended and approved, became Article IV, section 6, paragraph 4. This section of our present Constitution reads as follows:

> "The legislature shall not, in any manner, create any debt or debts, liability or liabilities, of the State, which shall singly or in the aggregate *with any previous debts or liabilities* at any time exceed one hundred thousand dollars, except for purposes of war, or to repel invasion, or to suppress insurrection, unless the same shall be authorized by a law for some single object or work, to be distinctly specified therein; which law shall *provide the ways and means, exclusive of loans*, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within *thirty-five* years from the time of the contraction thereof, *and shall be irrepealable until such debt or liability and the interest thereon, are fully paid and discharged*; and no such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of the votes cast for and against it at such election; and all money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. *This section shall not be construed to refer to any money that has been, or may be deposited with this state by the government of the United States.*"[15]

[10] *Ibid*, p. 343.
[11] *Ibid*, p. 310.
[12] *Ibid*, p. 310.
[13] *Ibid*, p. 319.
[14] *Ibid*, p. 319.

The History of State Debts from 1841 to 1945 with Emphasis upon Trends in New Jersey

Improved business conditions, the restoration of state credit after 1845, and the demand for better railroad facilities, to be financed largely through the use of state credit, account in large measure for the rapid increase in state debts just previous to the Civil War.[16] Total state debt for all 33 states rose from $189,909,000 in 1841 to $257,328,000 in 1860. *(See Table 1)*

The desperate plight and subsequent debt repudiation of the Confederate states following the war is too well known to require comment here.[17] It should be noted, however, that during the latter part of the 19th Century, state borrowing was generally unpopular. Although the borrowing habit persisted in a few southern states, there was a general reduction in the total of state debt between 1860 and 1902. In the latter year, the total net debt of the states stood at $249,411,000 *(Table 1)* despite the admission of 15 additional states and a population increase of 150 per cent.

The advent of the automobile and the demand for improved highways between 1902 and 1916 were responsible for a doubling of indebtedness. Table 1 shows that the total debt in 1916 jumped to $465,139,000.

State loans which had been held to a minimum during the first World War increased after the war to amounts far above any ever before known. This was attributable to growing demands for highways and to other post-war factors. In 1921 the states borrowed heavily for highway improvement and soldiers' bonuses. The depression of 1930 brought new financial demands for unemployment relief, and borrowing even by 1932 had again broken all previous records. Table I reveals the fact that state indebtedness in 1932 had mounted to $2,369,718,000, and this upward trend continued until 1934 when the Federal Government began its program of generous financial assistance.

When the United States entered the second World War in 1941, the net indebtedness of the states again stood at a new high. Despite unparalleled state revenue increases, the total state debt in 1942 was

[15] Sections *italicized* indicate amendments to Section XIX as originally reported by the Committee on the Legislative Department.
[16] MacDonald, *supra*, pp. 383-4.
[17] For a concise and valuable description of the financial position of the southern states following the Civil War, chapters VI and VII of Ratchford, *American State Debts*, pp. 133-196.

TABLE I

NET DEBTS OF THE STATES
Selected Years, 1841-1942
(In Thousands of Dollars)

STATE	1841	1860	1902	1916	1932	1942
Alabama	$13,400	$3,445	$12,727	$19,564	$82,342	$74,799
Arizona	....	....	9,899	844	3,878	3,194
Arkansas	2,876	3,093	1,101	1,239	164,424	154,558
California	....	3,824	2,956	33,376	146,723	219,458
Colorado	....	.. .	3,797	9,753	6,747	24,099
Connecticut	....	....	1,678	13,064	106	30,218
Delaware	....	....	762	796	2,072	6,174
Dist. of Columbia	....	....	14,540	5,470	....	....
Florida	4,000	369	1,032	602	391	....
Georgia	1,310	2,471	7,876	6,822	12,480	22,907
Idaho	....	....	324	1,712	6,951	2,689
Illinois	13,527	10,277	2,156	2,907	221,404	149,252
Indiana	12,753	10,170	2,814	768	4,780	7,929
Iowa	....	352	50	....	16,495	2,058
Kansas	....	....	632	....	21,810	15,522
Kentucky	3,065	5,479	2,201	2,007	10,224	9,053
Louisiana	25,985	4,561	13,598	13,479	89,749	182,112
Maine	1,138	699	2,785	2,658	27,219	26,529
Maryland	15,215	14,877	4,942	16,575	31,196	57,985
Massachusetts	5,429	7,155	65,964	66,043	62,650	111,187
Michigan	5,611	2,346	6,566	6,915	60,582	41,094
Minnesota	....	519	1,755	1,516	48,156	105,221
Mississippi	7,000	5,258	2,877	5,127	36,920	32,898
Missouri	842	25,952	4,566	7,039	105,502	67,907
Montana	....	....	1,284	1,186	9,316	13,909
Nebraska	....	39	2,085	....	929	947
Nevada	....	....	624	680	1,370	481
New Hampshire	....	50	1,551	1,951	6,506	17,912
New Jersey	....	.. .	....	116	62,198	105,906
New Mexico	....	....	999	2,562	11,470	27,242
New York	21,797	35,570	8,187	148,740	405,068	708,412
North Carolina	....	9,130	6,755	8,884	177,210	135,445
North Dakota	....	....	968	511	5,005	29,971
Ohio	10,924	16,928	4,665	5,541	7,696	12,082
Oklahoma	....	....	510	6,447	11,498	40,159
Oregon	....	....	256	....	33,598	81,225
Pennsylvania	33,301	37,870	389	675	75,858	289,794
Rhode Island	....	....	2,020	6,991	16,807	29,333
South Carolina	5,691	4,947	6,750	5,987	77,984	86,537
South Dakota	....	....	457	....	15,510	32,056
Tennessee	5,398	20,859	17,984	15,864	94,032	94,394
Texas	....	....	5,995	4,549	10,317	13,109
Utah	....	....	974	2,091	5,694	2,019
Vermont	....	120	565	611	2,545	6,850
Virginia	4,952	33,248	29,546	25,772	29,983	25,716
Washington	....	....	1,271	1,299	6,257	16,262
West Virginia	....	....	....	....	80,394	79,698
Wisconsin	200	....	2,278	2,157	1,184	1,184
Wyoming	....	....	901	106	5,868	8,240
Totals	$189,909	$257,328	$249,411	$465,139	$2,509,713	$3,218,864

Source: Bureau of the Census; Ratchford, American State Debts, pp. 127 and 254 and Graves, American State Government, p. 604.

$3,218,064,000. *(Table I.)* During 1943, however, state debt retirement was pronounced and total indebtedness reverted to a figure more in keeping with that of 1932. Continued high tax revenues have enabled the states further to reduce their debt obligations since 1943. Net indebtedness for all 48 states, as reported by the Bureau of the Census for 1945, was considerably under the 1932 figure and amounted to $1,838,971,000.

Table 2 has been prepared as a means of presenting the New Jersey debt trends from 1844 to 1946. Previous to the outbreak of the Civil War, New Jersey, together with five sister states,[18] was debt-free. Between 1861 and 1864 the State approved, without the need of a public referendum, three measures authorizing the issuance of war bonds in a total amount not to exceed $4,000,000. From available records, not too easy of interpretation, it appears that the State's total war debt was about $3,395,000,[19] and that by March of 1905, the Federal Government had repaid to the State $2,226,000.[20] There are indications, however, that by 1902 New Jersey had freed itself from its share of the Civil War debt.

The beginnings of New Jersey's bonded indebtedness may really be said to have originated in 1920 when the people approved, by public referendum, chapter 159 *(P. L. 1920)* which authorized the issuance of bonds in the amount of $12,000,000 to pay a bonus to veterans of the first World War. Previously, in 1916, the people had approved a $7,000,000 bond issue for highway improvement. These bonds were never issued due to this country's participation in the war. From 1920 to 1932, all laws authorizing bond issues approved by the people were for purposes of internal improvement, mainly highways. In 1921 the people rejected chapter 201 *(P. L. 1921)* which called for issuance of bonds in the amount of $14,000,000 for institutions. *(See Note 3, Table 2)*

New Jersey's borrowing from 1932 to 1939 was mainly for the purpose of financing unemployment relief, with one issue in 1933 dedicated to educational aid. From 1939 to 1945 there was no borrowing. In 1946 the people approved chapter 324 *(P. L. 1946)* authorizing the issuance of bonds in the amount of $35,000,000 for veterans' housing. Of this amount only $7,400,000 has been issued to date and it is at present unlikely that the balance will ever be issued.

The peak of New Jersey's bonded indebtedness was reached in 1935, at which time the State's outstanding obligations totaled $197,000,000. The low in the State's debt since 1935 was realized by July 1946 when outstanding obligations totaled $63,000,000.

[18] Connecticut, Delaware, Rhode Island, Texas and Wisconsin.
[19] Compilation of State Treasurer's Reports, (1864) p. 250.
[20] House Report, No. 1163, 74th Congress, 1st Session, pp. 6-7.

TABLE 2

SCHEDULE OF NEW JERSEY STATE BOND ISSUES

Years 1844 to 1946

(In Thousands of Dollars)

P.L., and Chap. Reference	Purpose	Type of Issue	Revenue Source	Amount	Present Status
1861, c. 8	Civil War		Property	$ 2,000	Paid
1863, c. 250	Civil War		Property	1,000	Paid
1864, c. 433	Civil War		Property	1,000	Paid
1916, c. 285	Highway improvement		Motor Vehicle	7,000	Never issued[1]
1920, c. 159	Soldiers' bonus	S.F.	Property	12,000	Paid
1920, c. 382	Highway extension	S.F.	Property & Operating Profit	28,000	Paid[2]
1921, c. 201	Institutions	S.F.	Property	14,000	Defeated referendum[3]
1922, c. 282	Roads & bridges	S.F.	Property	40,000	Paid
1924, c. 282	Highway extension	S.F.	Property & Operating Profit	8,000	Paid
1927, c. 181	Highway improvement	S.F.	Property	30,000	One-third paid
1930, c. 226	Water supply	S.F.	Motor Fuels	7,000	Partly amortized
1930, c. 227	State institutions	S.F.	Motor Fuels	10,000	Partly amortized
1930, c. 228	Highway improvement	S.F.	Motor Fuels	83,000	Partly amortized[4]
1932, c. 250	Reduced above by			-20,000	
1932, c. 251	Unemployment relief	S.F.	Motor Fuels	20,000	Paid
1933, c. 367	Educational aid	S.F.	Motor Fuels	7,000	Paid
1933, c. 368	Repealed P.L. 1930, c. 226			-7,000	
1933, c. 398	Unemployment relief	S.F.	Motor Fuels	5,000	Paid
1934, c. 256	Unemployment relief	S.F.	Property & Inheritance	10,000	Paid
1939, c. 329	Unemployment relief	S.F.	Multiple	21,000	Paid
1946, c. 324	Veterans' housing	S.F.	Multiple	35,000[5]	

Source: State Treasurer's Office and Laws of New Jersey.

[1] Highway improvement payments by World War I.
[2] Commission of Canadian Bridge and Highway Transit.
[3] A similar vote to issue any other bond issue was rejected by the people on a referendum. The vote was 131,726 for, and 212,643 against.
[4] P.L. 1932, c. 329, approved, reduced amount to $45,000,000, of which only $46,400,000 has been issued.
[5] Only $7,000,000 has been issued.

The balance of redeemed state bonds on January 1, 1947 was $72,200,000.[1]

Report of the Commission on Revision of the New Jersey Constitution, May 1942, and the Public Hearings of 1942

No attempt was made to amend the New Jersey constitutional provision limiting the State's indebtedness (Art. IV, sec. VI, par. 4) until 1942. On May 18 of that year the legislative Commission on Revision of the New Jersey Constitution (constituted under Joint Resolution No. 2, approved November 18, 1941, and reconstituted under Joint Resolution No. 1, approved January 24, 1942, as amended April 1, 1942) submitted to the Legislature and the Governor the text of "A Revised Constitution for the State of New Jersey."

The proposed revised Constitution contemplated a separate article for all matters pertinent to state finance (Article VII) and treated the subject of "Debt Limitations" in three distinct paragraphs (pars. 7, 8, 9) which are quoted directly below:

"7. Except for purposes of war, or to repel invasion or to suppress insurrection, no debt or liability shall be contracted by or on behalf of the State in any amount which, singly or in the aggregate with any previous debts or liabilities, shall at any time exceed one hundred thousand dollars, unless authorized by a law which shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it.

8. Any such law shall provide for some single object or work, to be distinctly specified therein, and for the payment of the debt or liability thereby authorized in equal annual installments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than thirty-five years after such debt or liability, or any portion thereof, shall have been contracted. In contracting any debt or liability, however, the privilege of paying all or any part thereof prior to maturity may be reserved to the State in such manner and upon such terms as may be provided by law.

9. All money to be raised by authority of any law authorizing the contracting of a debt or liability by or on behalf of the State shall be applied only to the specific object or work stated therein or to the payment of such debt or liability. Such law shall provide the ways and means, exclusive of loans, to pay and discharge the principal and interest of the debt or liability thereby authorized. If such law should be repealed prior to such payment and discharge, the Legislature shall make adequate provision for payment of the remaining annual installments of principal and interest, and upon failure thereof a sufficient sum shall be set apart by the State Treasurer from the first revenue received and shall be applied to such purpose."[2]

The changes proposed by paragraphs 7, 8, and 9 were summarized and explained by the Commission in this manner:

"The history of State government has proved the wisdom of right restrictions upon the borrowing. For this reason the requirement of a referendum upon all indebtedness exceeding $100,000 is carefully retained.

[1] These figures and facts were obtained through the courtesies of G. E. Fiske, Assistant Cashier, State Treasurer's Office.
[2] Proceedings before Joint Legislative Committee . . . as to Change in the New Jersey Constitution, 1942, p. 511.

TABLE 2

SCHEDULE OF NEW JERSEY STATE BOND ISSUES

Years 1844 to 1946

(In Thousands of Dollars)

P.L. and Chap. Reference	*Purpose*	*Type of Issue*	*Revenue Source*	*Amount*	*Present Status*
1861, c. 8	Civil War		Property	$ 2,000	Paid
1863, c. 250	Civil War		Property	1,000	Paid
1864, c. 433	Civil War		Property	1,000	Paid
1916, c. 285	Highway improvement		Motor Vehicle	7,000	Never issued [1]
1920, c. 159	Soldiers' bonus	S.F.	Property	12,000	Paid
1920, c. 352	Highway extension	S.F.	Property & Operating Profit	28,000	Paid [2]
1921, c. 201	Institutions	S.F.	Property	14,000	Defeated referendum [3]
1922, c. 262	Roads & bridges	S.F.	Property	40,000	Paid
1924, c. 262	Highway extension	S.F.	Property & Operating Profit	8,000	Paid
1927, c. 181	Highway improvement	S.F.	Property	30,000	One-third paid
1930, c. 226	Water supply	S.B.	Motor Fuels	7,000	Partly amortized
1930, c. 227	State institutions	S.B.	Motor Fuels	10,000	Partly amortized
1930, c. 228	Highway improvement	S.B.	Motor Fuels	85,000	Partly amortized [4]
1932, c. 250	Reduced above by			—20,000	
1932, c. 251	Unemployment relief	S.B.	Motor Fuels	20,000	Paid
1933, c. 387	Educational aid	S.B.	Motor Fuels	7,000	Paid
1933, c. 388	Repealed P.L. 1930, c. 226			—7,000	
1933, c. 398	Unemployment relief	S.B.	Motor Fuels	5,000	Paid
1934, c. 255	Unemployment relief	S.B.	Property & Inheritance	10,000	Paid
1939, c. 329	Unemployment relief	S.B.	Multiple	21,000	Paid
1946, c. 324	Veterans' housing	S.B.	Multiple	35,000 [5]	

Source: State Treasurer's Office and Laws of New Jersey.

[1] Highway improvement postponed by World War I.
[2] Construction of Camden Bridge and Holland Tunnel.
[3] A [illegible] much fails to [illegible] any other bond issue ever rejected by the people on a referendum. The vote was 151,726 for, and 212,643 against.
[4] P.L. 1932, c. 250, approved, reduced amount to $65,000,000, of which only $46,400,000 has been issued.
[5] Only $7,400,000 has been issued.

The balance of redeemed state bonds on January 1, 1947 was $72,200,000.[31]

Report of the Commission on Revision of the New Jersey Constitution, May 1942, and the Public Hearings of 1942

No attempt was made to amend the New Jersey constitutional provision limiting the States indebtedness (Art. IV, sec. VI, par. 4) until 1942. On May 18 of that year the legislative Commission on Revision of the New Jersey Constitution (constituted under Joint Resolution No. 2, approved November 18, 1941, and reconstituted under Joint Resolution No. 1, approved January 24, 1942, as amended April 1, 1942) submitted to the Legislature and the Governor the text of "A Revised Constitution for the State of New Jersey."

The proposed revised Constitution contemplated a separate article for all matters pertinent to state finance (Article VII) and treated the subject of "Debt Limitations" in three distinct paragraphs (pars. 7, 8, 9) which are quoted directly below:

"7. Except for purposes of war, or to repel invasion or to suppress insurrection, no debt or liability shall be contracted by or on behalf of the State in any amount which, singly or in the aggregate with any previous debts or liabilities, shall at any time exceed one hundred thousand dollars, unless authorized by a law which shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it.

8. Any such law shall provide for some single object or work, to be distinctly specified therein, and for the payment of the debt or liability thereby authorized in equal annual installments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than thirty-five years after such debt or liability, or any portion thereof, shall have been contracted. In contracting any debt or liability, however, the privilege of paying all or any part thereof prior to maturity may be reserved to the State in such manner and upon such terms as may be provided by law.

9. All money to be raised by authority of any law authorizing the contracting of a debt or liability by or on behalf of the State shall be applied only to the specific object or work stated therein or to the payment of such debt or liability. Such law shall provide the ways and means, exclusive of loans, to pay and discharge the principal and interest of the debt or liability thereby authorized. If such law should be repealed prior to such payment and discharge, the Legislature shall make adequate provisions for payment of the remaining annual installments of principal and interest, and upon failure thereof a sufficient sum shall be set apart by the State Treasurer from the first revenues received and shall be applied to such purpose."[32]

The changes proposed by paragraphs 7, 8, and 9 were summarized and explained by the Commission in this manner:

"The history of State government has proved the wisdom of rigid restrictions upon State borrowing. For this reason the requirement of a referendum upon all indebtedness exceeding $100,000 is carefully retained.

[31] These figures and facts were obtained through the cooperation of G. S. Fisher, Assistant Cashier, State Treasurer's Office.
[32] Proceedings before New Jersey Joint Legislative Committee . . . as to Change in the New Jersey Constitution, 1942, p. 951.

Serial bonds which call for amortization of the debt each year are made mandatory because they eliminate the need for State sinking funds. The former requirement that the law which authorized the bonds must pledge the source of payment is deleted because it imposes an unfair rigidity to the State's fiscal policies for as much as thirty-five years. In order to protect the State's credit position, however, a substitute for the old provision requires the State Treasurer to pay the annual public debt charges out of the first moneys he receives."[83]

(For a discussion of the provision enabling the State to retire a debt obligation at its option, the only other change not discussed immediately below, see "Hearings of 1944" to follow.)

On August 19, 1942 public hearings were conducted on Article VII, paragraphs 7, 8, and 9 of the proposed revised Constitution. Among those speaking in favor of the provisions as contained in the paragraphs were: Spencer Miller, Jr., Chairman of the New Jersey Committee on Constitutional Convention[84]; Russell Watson, Vice-Chairman of the New Jersey State Chamber of Commerce,[85] and Mrs. Alloway, member of the State Board of the New Jersey League of Women Voters.[86]

Mr. Russell Watson, in discussing paragraph 9, placed emphasis upon his approval of the provision enabling the Legislature to repeal the original law authorizing the source of revenue to retire a debt and to substitute therefor alternate methods. He reasoned that within a period of 35 years, or during the life of a bond issue, many factors might conspire to make desirable and imperative additional or new sources of revenue to complete the debt retirement. The revenue source as contained in the original law might diminish or entirely disappear, or other events might dictate its repeal.

Opposition to many of the changes proposed in paragraphs 7, 8, and 9 were registered by Mr. R. Robinson Chance representing the Manufacturers' Association of New Jersey.[87] They will be discussed in the order of their presentation.

While Mr. Chance recognized merit in using serial bonds, he felt that future occasions might well prove that there were equal advantages in the utilization of term bonds and sinking funds. He recommended that rather than place the Legislature in a future "straight-jacket," the matter of selection between term or serial bonds be left to the judgment of the Legislature.

Speaking of the feature contained in paragraph 9 enabling the Legislature to repeal a revenue measure specifically enacted to retire a given state debt, Mr. Chance said: "• • • under the present Constitution when a bond is issued the investor who buys the bond has a definite specified irrepealable contract as to where the money is coming from to redeem the principal and pay the interest. In place of such an irrepealable arrangement, the proposal would require a bond for the payment of which no particular ways and means were actually guaranteed, since the ones originally specified might be wiped out by the repeal of the law." He continued with the reasoning that such uncertain methods of financing the state debt might affect the State's credit and the future salability of its bonds.

[83] *Ibid*, p. 928.
[84] *Ibid*, pp. 398-403.
[85] *Ibid*, pp. 404-409.
[86] *Ibid*, p. 414.
[87] *Ibid*, pp. 446-451.

The position taken by Mr. Chance in regard to the provision contained in paragraph 8 limiting the State to the use of serial bond issues has recently been supported by the Office of the State Treasurer. There is quoted immediately below a statement prepared for this study by G. S. Fisher, Assistant Cashier of that office, with the consent and approval of the present State Treasurer:

"In general a Sinking Fund Issue will command a better figure (*i.e.* lower coupon rate and larger premium) than a serial issue due to the added security and the simplicity of arranging yield and redistribution.

The State of New Jersey has had very good experiences with its sinking funds. Not only have they been able to meet maturities but they have been able to exercise their prior call privileges. They have all enjoyed substantial surpluses from which they have paid other obligations. The surplus of the Soldiers Bonus Sinking Fund retired a deferred payment due by the State to the Teachers' Pension and Annuity Fund; that of the Highway Extension Sinking Fund helped materially to pay the Unemployment Relief Bonds, and that of the Road and Bridge Sinking Fund is pledged to retire an interest bearing promise to the Teachers' Pension and Annuity Fund.

The sinking funds were able to support the credit of New Jersey municipalities, thereby keeping the interest rate (and incidentally the tax rate) down. The full extent of this will never be entirely known, but during the depression it was not necessary to ask for laws extending the interest level beyond the existing limit of six per cent.

This aid to the municipalities reacted favorably in the sinking funds, and is one of the factors in establishing the substantial surpluses.

Supporting the New Jersey municipal bond market also established the State's credit and indirectly helped the banks following the 'Bank Holiday.'

It would be as unwise to eliminate sinking fund issues as to eliminate serial issues. The issuing officials or the Legislature should be unhampered so they can take advantage of the prevailing conditions when a bond issue is contemplated."

Public Hearings of 1944 Before the Joint Legislative Committee on the Proposed Revised Constitution

Under Senate Concurrent Resolution No. 1, adopted January 11, 1944, a Joint Legislative Committee was constituted to conduct a further series of public hearings on a redraft of the proposed revised Constitution. The subcommittee on the Legislative Section was authorized also to consider Article VII, "Finance." In this draft of the proposed revised Constitution, all three paragraphs (7, 8, 9) contained in the draft of 1942, with changes, were combined in one paragraph, identified as paragraph 5, Article VII, the complete text of which follows:

"The Legislature shall not, in any manner, create any debt or debts,

liability or liabilities, of this State, which shall singly or in the aggregate with any previous debts or liabilities at any time exceed one hundred thousand dollars, except for purposes of war or to repel invasion, or to suppress insurrection, *or to meet an emergency caused by act of God or disaster;* unless the same shall be authorized by law for some single object or work to be distinctly specified therein; which law shall provide the ways and means, exclusive of loans, to pay the principal and interest of such debt or liability as it falls due. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it at such election. Any such debt or liability thereby authorized shall be paid in annual installments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than thirty-five years after such debt or liability shall have been contracted. In contracting any such debt or liability, however, the privilege of paying all or any part thereof prior to maturity may be reserved to the State in such manner and upon such terms as may be provided by law. All money to be raised by the authority of any such law shall be applied only to the specific object or work stated therein and to the payment of the debt or liability thereby created. No such law shall be repealable until such debt or liability, and the interest thereon, are fully paid and discharged or until equally secure provision is otherwise made for the payment of the remaining annual installments of the principal and interest of such debt or liability." [50]

Mr. Charles O. Frye, Director of the American Citizenship Foundation, appears to have been the only individual whose presence and testimony at the hearing resulted in changes in paragraph 5, Article VII as cited above. Mr. Frye agreed that it was very desirable to reserve to the Legislature the right to relieve bonds prior to their maturity. He felt, however, that such a reservation should be stated so clearly as to make this fact plain to the investor at the particular moment of purchase of any bond issue. He pointed to litigation in the courts of two states where fixed callable dates had appeared on the face of the bonds and which were subsequently called at an earlier date. To avoid any uncertainty in the matter he proposed instead of the words "upon such terms as may be provided by law," the insertion of the words "upon such terms as may be provided by the law authorizing the debt." [50]

Referring to the last sentence in paragraph 5, Mr. Frye took exception to the reservation enabling the Legislature to substitute "equally secure provisions" for the payment of the remaining debt, as leaving the investor and the State in an "extreme uncertainty." He contended that the uncertain element so introduced would appeal to the more speculative investor who would demand a higher interest rate on the bonds. He suggested, therefore, that the last sentence terminate at the word "discharged," with the remainder of the sentence deleted.[51] Both of Mr. Frye's amendments were incorporated in the following final draft of Article VII, paragraph 5 of the proposed revised Constitution as it was submitted to the people on November 7, 1944. Except for minute changes in terminology, it will be noted that no other differences of account appear:

[50] Words in italics indicate the addition of a new provision not previously appearing in any redraft of the proposed Constitution.
[51] Hearings before Joint Legislative Committee to Formulate a Draft of a Constitution, February 3, 1944, Sub-Committee on the Legislative Section, p. 19.
[52] *Ibid*, pp. 24-25.
[53] *Ibid*, p. 26.

"The Legislature shall not, in any manner, create any debt or debts, liability or liabilities of this State, which shall singly or in the aggregate with any previous debts or liabilities at any time exceed one hundred thousand dollars, except for purposes of war or to repel invasion, or to suppress insurrection, or to meet an emergency caused by act of God or disaster; unless the same shall be authorized by a law for some single object or work to be distinctly specified therein; which law shall provide the ways and means, exclusive of loans to pay the principal and interest of such debt or liability as it falls due. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it at such election. Any such debt or liability thereby authorized shall be paid in annual installments, the first of which shall be payable not more than one year and the last of which shall be payable not more than thirty-five years after such debt or liability shall have been contracted; but the privilege of paying all or any part thereof prior to maturity may be reserved to the State as may be provided in the law authorizing such debt or liability. All money to be raised by the authority of any such law shall be applied only to the specific object or work stated therein and to the payment of the debt or liability thereby created. No such law shall be repealable until such debt or liability, and the interest thereof, are fully paid and discharged."

Constitutional Debt Limitation Provisions in the 48 States and Their Relative Effectiveness

The mere tabulation of a state's indebtedness alone, while of considerable value and interest, is not sufficient to evaluate that state's actual debt load or its relative position in a comparative analysis of each state's debt position. Accordingly, Table 3 has been prepared to indicate the gross per capita debt load of each state and its rank among the other 47 states for selective years between 1940 and 1945.

It will be remembered that in 1935 New Jersey's indebtedness reached the high point in its entire debt history, and that from 1936 to 1946 there was a gradual yet substantial reduction. Table 3 indicates that New Jersey ranked eleventh among the states in its per capita debt load in 1940. In 1944 its position was considerably improved, ranking nineteenth, and in 1945, despite the absence of rich tax revenues enjoyed by a majority of the states, its position was twenty-first.

While Table 3 establishes New Jersey's relative position among the 48 states in per capita debt load for the past five years, it does nothing to establish the effectiveness of New Jersey's constitutional debt limitation provision or of the various types of constitutional debt limitation provisions in effect in the 48 states. For the purpose of a rough appraisal, it is possible, from a study of Summary I [54] below, to divide the 48 states into three groups according to the

[54] The Tax Foundation, Provisions in State Constitutions Controlling Debt, (1945).

TABLE 3

GROSS STATE DEBTS, 1945
Per Capita Debt and Rank 1945, 1944, 1940
(Gross Debt in Thousands)

State	Gross Debt Totals	1945 Per Capita	1945 Rank	1944 Per Capita	1944 Rank	1940 Per Capita	1940 Rank
Alabama	$ 66,810	$24.58	16	$26.19	17	$28.00	23
Arizona	3,220	5.35	35	6.07	36	6.09	40
Arkansas	139,494	80.37	1	68.21	1	79.07	2
California	172,825	21.94	18	20.80	19	18.69	24
Colorado	18,296	17.16	25	18.85	25	28.07	24
Connecticut	23,600	12.60	39	14.49	30	14.17	32
Delaware	4,502	16.45	28	17.38	28	16.64	29
Florida	1,597	.64	46	.80	47	.35	46
Georgia	15,210	5.11	34	6.25	35	9.37	36
Idaho	536	1.13	44	2.97	38	7.02	37
Illinois	115,122	15.22	29	16.54	27	22.10	27
Indiana	6,431	1.90	41	2.04	42	2.80	43
Iowa	1,903	.72	47	.72	46	1.26	44
Kansas	11,446	7.03	33	7.03	33	10.12	35
Kentucky	6,083	2.39	39	2.78	40	5.64	39
Louisiana	164,259	70.95	2	72.80	2	80.38	1
Maine	19,175	24.61	17	27.07	21	23.03	18
Maryland	38,369	19.34	20	22.11	21	23.23	20
Massachusetts	70,160	17.11	24	19.84	24	28.71	22
Michigan	13,808	2.84	38	4.56	37	10.85	34
Minnesota	78,000	29.73	13	32.68	13	42.53	9
Mississippi	70,270	35.20	10	37.26	10	47.17	13
Missouri	73,599	28.85	19	32.95	20	28.82	22
Montana	11,736	24.57	18	26.13	18	25.92	25
Nebraska	979	.81	40	.91	45	4.59	41
Nevada	....	....	....	....	....	1.10	47
New Hampshire	14,350	31.65	12	35.67	12	38.78	17
New Jersey	74,967	13.66	21	24.32	19	40.60	11
New Mexico	22,875	48.67	3	50.88	4	80.40	5
New York	371,983	45.97	5	48.55	5	64.20	10
North Carolina	111,302	33.22	11	35.86	11	42.33	10
North Dakota	20,342	27.32	9	30.82	9	39.84	12
Ohio	18,664	1.55	42	1.69	43	1.74	45
Oklahoma	28,677	13.38	26	15.66	26	16.14	31
Oregon	20,527	17.33	22	21.30	22	18.67	26
Pennsylvania	130,139	14.03	27	20.68	23	23.89	21
Rhode Island	26,189	37.70	6	39.72	6	43.89	7
South Carolina	77,854	43.50	4	46.00	6	52.71	8
South Dakota	25,301	48.44	4	50.07	3	66.45	3
Tennessee	76,095	27.71	14	29.89	15	32.02	15
Texas	11,964	1.91	40	2.35	41	4.41	42
Utah	1,716	2.94	37	3.71	38	8.52	33
Vermont	5,674	11.62	31	13.77	31	23.91	19
Virginia	23,316	8.42	32	9.15	32	10.79	34
Washington	12,961	6.80	36	7.84	34	12.44	33
West Virginia	71,317	41.17	7	43.38	7	42.34	8
Wisconsin	8,943	1.34	43	1.42	44	1.72	46
Wyoming	5,168	15.44	30	14.80	29	15.21	30
Total and average	$2,471,161	$19.54		$22.08		$27.87	

Source: Bureau of the Census, *State Finances*, vol. 2, (1945)

TABLE 4

STATES GROUPED ACCORDING TO CONSTITUTIONAL BORROWING POWER
Gross Debt and Rank for Year 1945
(Gross Debt in Thousands)

By Constitutional Amendment			By Referendum			Legislative Action No Limit		
State	Debt	Per Capita Rank	State	Debt	Per Capita Rank	State	Debt	Per Capita Rank
Alabama	$ 66,810	16	California	$172,825	18	Arizona	$ 3,220	35
Arizona	3,220	35	Idaho	536	44	Arkansas	139,494	1
Colorado	18,296	25	Illinois	115,122	29	Connecticut	23,600	39
Florida	1,597	46	Iowa	1,903	47	Delaware	4,502	28
Georgia	15,210	34	Kansas	11,446	33	Maryland	38,369	20
Indiana	6,431	41	Kentucky	6,083	39	Massachusetts	70,160	24
Louisiana	164,259	2	Missouri	73,599	19	Mississippi	70,270	10
Maine	19,175	24	New Jersey	74,967	21	Nevada	....	....
Michigan	13,808	38	New Mexico	22,875	3	New Hampshire	14,350	12
Minnesota	78,000	13	New York	371,983	5	No. Carolina	111,302	11
Montana	11,736	18	Oklahoma	28,677	26	No. Dakota	20,342	8
Nebraska	979	40	Rhode Island	26,189	6	So. Carolina	77,854	4
Pennsylvania	130,139	27	Virginia	23,316	32	So. Dakota	25,301	4
Texas	11,964	40	Washington	12,961	36	Tennessee	76,095	14
West Virginia	71,317	7	Wyoming	5,168	30	Utah	1,716	37
Wisconsin	8,943	43				Vermont	5,674	31

Source: Bureau of the Census, *State Finances*, vol. 2 (1945); The Tax Foundation, *Provisions in State Constitutions Controlling Debt* (1945); Ratchford, *American State Debts*, p. 443.

TABLE 3

GROSS STATE DEBTS, 1945

Per Capita Debt and Rank 1945, 1944, 1940

(Gross Debt in Thousands)

State	Gross Debt Totals	1945 Per Capita	1945 Rank	1944 Per Capita	1944 Rank	1940 Per Capita	1940 Rank
Alabama	$ 66,810	$24.58	16	$28.43	17	$28.00	23
Arizona	5,828	8.85	35	6.07	36	6.09	40
Arkansas	139,494	80.37	1	85.21	1	79.87	2
California	172,929	21.94	18	30.00	14	48.69	6
Colorado	18,298	17.15	23	18.85	25	26.07	24
Connecticut	23,600	13.60	29	14.40	30	14.17	32
Delaware	4,502	16.45	25	17.30	26	16.61	29
Florida	1,297	.64	46	.66	47	.58	48
Georgia	15,210	5.11	36	6.25	35	9.57	36
Idaho	535	1.13	44	2.97	39	7.02	38
Illinois	115,122	15.22	26	16.54	27	22.10	27
Indiana	6,431	1.90	41	2.04	42	2.00	43
Iowa	1,403	.62	47	.72	46	1.91	44
Kansas	11,548	8.88	33	7.65	33	10.12	35
Kentucky	6,083	2.39	39	2.70	40	6.64	39
Louisiana	164,359	70.95	2	72.80	2	80.52	1
Maine	19,178	24.51	17	27.07	16	33.02	16
Maryland	38,359	19.34	20	22.11	21	32.28	20
Massachusetts	70,160	17.14	24	19.54	24	38.71	15
Michigan	15,808	2.34	38	4.38	37	16.95	28
Minnesota	75,080	29.73	13	32.68	13	42.35	9
Mississippi	70,276	35.20	10	37.26	10	37.17	13
Missouri	73,499	20.85	19	22.95	20	28.82	22
Montana	11,786	24.97	15	26.13	18	25.92	25
Nebraska	970	.82	45	.96	45	3.10	47
Nevada	..	....	..	....	..	4.80	41
New Hampshire	14,350	31.65	12	35.67	12	32.79	17
New Jersey	76,957	18.86	21	24.32	19	40.00	11
New Mexico	22,875	40.87	3	50.58	4	50.40	5
New York	571,993	45.97	5	49.25	5	54.20	4
North Carolina	111,202	33.22	11	35.86	11	42.23	10
North Dakota	20,342	37.82	8	39.82	9	39.64	12
Ohio	10,804	1.55	42	1.69	43	1.74	45
Oklahoma	26,877	13.52	28	15.85	28	15.14	31
Oregon	20,327	17.33	22	21.30	22	35.67	14
Pennsylvania	130,129	14.05	27	20.48	23	30.50	21
Rhode Island	26,189	37.70	9	39.72	8	45.69	7
South Carolina	77,854	43.50	6	46.06	6	32.71	18
South Dakota	25,301	46.44	4	50.87	3	60.45	3
Tennessee	78,095	27.71	14	29.89	15	32.02	19
Texas	11,064	1.91	40	2.39	41	4.41	42
Utah	1,718	2.94	37	3.71	38	8.22	37
Vermont	3,674	11.62	31	13.77	31	23.91	26
Virginia	23,316	8.42	32	9.45	32	10.79	34
Washington	12,951	6.80	34	7.84	34	12.44	33
West Virginia	71,317	41.17	7	43.38	7	42.54	8
Wisconsin	3,943	1.34	43	1.42	44	1.72	46
Wyoming	3,168	13.44	30	14.80	29	15.21	30
Total and averages	$2,471,161	$19.54		$22.88		$27.87	

Source: Bureau of the Census, State Finances, vol. 2, (1945)

TABLE 4

STATES GROUPED ACCORDING TO CONSTITUTIONAL BORROWING POWER

Gross Debt and Rank for Year 1945

(Gross Debt in Thousands)

BY CONSTITUTIONAL AMENDMENT

State	Debt	Per Capita Rank
Alabama	$ 66,810	16
Arizona	5,828	35
Colorado	18,298	23
Florida	1,297	46
Georgia	15,210	36
Indiana	6,431	41
Louisiana	164,359	2
Maine	19,178	17
Michigan	15,808	38
Minnesota	75,080	13
Missouri (Before 1935)	73,499	19
Nebraska	970	45
Ohio	10,804	42
Oregon	20,327	22
Pennsylvania	130,129	27
Texas	11,964	40
West Virginia	71,317	7
Wisconsin	3,943	43

BY REFERENDUM

State	Debt	Per Capita Rank
California	$172,929	18
Idaho	535	44
Illinois	115,122	26
Iowa	1,403	47
Kansas	11,548	33
Kentucky	6,083	39
Montana	11,786	15
New Jersey	76,957	21
New Mexico	22,875	3
New York	571,993	5
Oklahoma	26,877	28
Rhode Island	26,189	9
Virginia	23,316	32
Washington	12,951	34
Wyoming	3,168	30

LEGISLATIVE ACTION NO LIMIT

State	Debt	Per Capita Rank
Arkansas (Before 1934)	$139,494	1
Connecticut	23,600	29
Delaware	4,502	25
Maryland	38,359	20
Massachusetts	70,160	24
Mississippi	70,276	10
New Hampshire	14,350	12
Nevada	....	..
No. Carolina (Before 1936)	111,202	11
No. Dakota	20,342	8
So. Carolina	77,854	6
So. Dakota	25,301	4
Tennessee	78,095	14
Utah	1,718	37
Vermont	3,674	31

Sources: Bureau of the Census, State Finances, vol. 2 (1945); The Tax Foundation, Provisions in State Constitutions Controlling Debt (1945); Ratchford, American State Debts, p. 443.

borrowing powers conferred upon each by its respective constitution. A study of Table 4 will indicate that the states have been divided in accordance with the provisions governing the more important uses of state credit. Fully explained, states in the first group have constitutional provisions which, with minor exceptions, forbid the legislature to incur any debt except those authorized by a constitutional amendment. States in this group may be said, therefore, to have the most stringent debt limitation provisions.

States in the second group are those which, with certain exceptions, have constitutions which require each individual law authorizing borrowing to be submitted to a popular referendum. New Jersey is typical of this group.

States in the third group are those wherein the legislature may be said to exercise all powers over the extension of the state's credit.

The reader, in his appraisal of Table 4, should be conscious of the fact that at least one exceptional state distorts the final results in each of the three groups. Louisiana and to some extent West Virginia are representative of those states in the first group whose constitutions are ambiguous and whose courts have been overgenerous in their interpretations. New York, in Group 2, is representative of the state with the largest single indebtedness. In 1938, for example, its total net debt was 19 per cent of the total for the whole country. Arkansas, in Group 3, is a decided exception to the general rule and Nevada, which has no necessity to create a debt because of its exceptional source of tax revenue, represents an extreme which few states have cared to copy.

In addition to the exceptions outlined above, the reader should also evaluate Table 4 with due consideration to population density, industrial density, per capita income, tax revenue yields per capita, the limitations of the tax base and related factors.[88]

For purposes of comparison, the full text of the provisions relating to debt limitation to be found in three state constitutions—one typical state in each group in Table 4—is detailed at the end of the following Summary:

SUMMARY 1

Summary of State Constitutional Limitations on Debt

(In nearly all states provision is made for borrowing to repel invasion, suppress insurrection, or to aid the United States in time of war.)

Alabama:	Governor may negotiate temporary loans up to $300,000. After 1933 no additional state debt is possible without a constitutional amendment.
Arizona:	The state may contract debts up to a $350,000 total. Additional borrowings require constitutional amendments.
Arkansas:	Except for highway purposes, education, war pensions, and existing debts, the General Assembly is prohibited from appropriating or expending more than 2¼ million dollars in any biennium. Additional state debt must be approved by a majority of the voters at a general or special election.
California:	Legislature may create debt up to $300,000. Additional debt requires authorization by voters at an election and must be accompanied by provisions by which the principal and interest can be met within 75 years. A sinking fund also is required.
Colorado:	If the appropriations of the legislature exceed the total tax provided for by law additional taxes must be levied within the defined limits or the appropriations reduced. Additional debt requires a constitutional amendment. Existing amendments authorize highway bonds and earmark certain revenues.
Connecticut:	No applicable provision.
Delaware:	Debt may be created by concurrence of three-quarters of all members of each house.
Florida:	A constitutional amendment would be needed to create state debt.
Georgia:	Debt shall not exceed taxes lawfully levied each year; however, $500,000 is permitted to meet casual deficiencies. Additional indebtedness requires sanction by constitutional amendment.
Idaho:	Appropriations or expenditures may not exceed the total tax unless provision is made to increase the tax within the overall limitation. At a general election the voters may authorize additional borrowings, but these must be accompanied by measures to raise the necessary amount to pay interest and principal.
Illinois:	Loans up to $250,000 are permitted to meet casual deficits. Additional borrowing must be submitted to the voters at a general election and receive the approval of a majority. Provision must be made for a tax to be levied sufficient to meet the interest payments.
Indiana:	Additional debt must be authorized by a constitutional amendment.
Iowa:	Debts up to $250,000 are permitted to meet casual deficits. Other debts must be authorized by law which shall also provide revenues to meet interest and repay the principal within 20 years.
Kansas:	Debts up to $1,000,000 are permitted for extraordinary expenses. Every other debt shall be authorized by a vote of the electors at a general election; such debts must be accompanied by provision for taxes to pay the principal and interest (*see full text below*).
Kentucky:	No applicable provision.
Louisiana:	Additional borrowings require constitutional amendment.
Maine:	Debt limited to $2,000,000 except for highways and bridges. Otherwise a constitutional amendment is needed.
Maryland:	Borrowing requires provision for meeting interest and paying principal in 15 years.
Massachusetts:	The commonwealth may borrow by a vote of two-thirds of each house present and voting (*see full text below*).
Michigan:	$250,000 is debt limit to meet deficits in revenue. Fifty million may be borrowed for highways, and thirty million for veterans' bonus.
Minnesota:	For meeting extraordinary expenses, up to $250,000 may be borrowed. Additional loans would require a constitutional amendment.
Mississippi:	The only provision is the one which requires all revenue bills to be approved by members of each house.

[88] A study of Table 3 will show that the groupings in Table 4 would remain substantially the same if any other year (1940 or 1941) were employed as a basis of comparison.

Missouri:	From the present time on borrowings in excess of $250,000 must be submitted by the Assembly to the voters who must give the measure approval by a two-thirds majority.
Montana:	No appropriation shall exceed the total tax provided by law applicable to such expenditure. Borrowing for casual deficits must not exceed $100,000. Additional debts must be approved by a majority of the voters and means must be provided to meet principal and interest.
Nebraska:	Debts in excess of $100,000 total requires constitutional amendment (*see full text below*).
Nevada:	Debt must not exceed one per cent of assessed valuation. All debt authorization must be accompanied by provision to pay principal and interest.
New Hampshire:	No applicable provision.
New Jersey:	Debt of $100,000 is permitted for casual deficiencies. Additional debt must be approved by a majority of voters at an election; provision to pay interest and extinguish principal in 35 years must be made.
New Mexico:	Debt of $200,000 is permitted for casual deficits. Additional debt must be approved by a majority of state electors and there must be provision for payment of interest and principal within 50 years.
New York:	State debt requires approval by majority of voters.
North Carolina:	State may borrow in anticipation of taxes, to meet casual deficits or when the existing debt is reduced. Other borrowings must be voted upon by the people of the state.
North Dakota:	State may borrow when authorized by law and provision is made to pay the interest and principal within thirty years.
Ohio:	Debts to meet casual deficits are limited to $750,000. Additional debt must be by means of constitutional amendment and there must be provided means to meet interest payments and to provide a sinking fund to redeem the principal.
Oklahoma:	$400,000 may be borrowed to meet casual deficits. Additional borrowing must be authorized by law and approved by the people voting at a general election. Such law must provide for payment of interest and principal within 25 years.
Oregon:	$50,000 debt is permitted and up to four per cent assessed valuation for highways. Other debts require constitutional amendment.
Pennsylvania:	$1,000,000 is permitted for deficiencies in revenue and $100,000,000 may be borrowed for highways.
Rhode Island:	$50,000 is the limit on borrowing by the General Assembly.
South Carolina:	Additional debt must be approved by two-thirds of the state's voters and the assembly shall levy a tax sufficient to pay interest.
South Dakota:	$100,000 may be borrowed for casual deficits. Other indebtedness up to five per cent of valuation may be made by a vote of two-thirds of the members of each branch of the Legislature.
Tennessee:	No applicable provision.
Texas:	$200,000 may be borrowed for revenue deficiencies. Additional borrowing requires a constitutional amendment.
Utah:	Appropriations must not exceed the total tax. Borrowings to a maximum of 1½ per cent of assessed valuation may be made for revenue deficiencies.
Vermont:	No applicable provision.

Virginia:	Casual deficits may be met by borrowing. Other debts must be approved by the voters and a sinking fund must be provided.
Washington:	$400,000 may be borrowed to meet failures in revenues. Additional debt must be approved by voters and provide means to pay interest and principal within 20 years.
West Virginia:	Debt may be contracted to meet casual deficits.
Wisconsin:	$100,000 debt is permitted for extraordinary expenditures.
Wyoming:	No debt in excess of taxes for current year may be created without approval of the voters.

Group 1—Nebraska Constitution (1920)

Article XIII, section 1

"The state may, to meet casual deficits, or failures in the revenues, contract debts never to exceed in the aggregate $100,000, and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war, and provision shall be made for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt be paid."

(The language of the section quoted above is such, that debt may only be incurred by amending the Constitution.)

Group 2—Kansas Constitution (1936)

Article II, section 6

"For the purpose of defraying extraordinary expenses and making public improvements the state may contract public debts; but such debts shall never, in the aggregate, exceed one million dollars, except as hereinafter provided. Every such debt shall be authorized by law for some purpose specified therein and the vote of a majority of all the members elected to each house shall be necessary to the passage of such law; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt, and the principal thereof, when it shall become due; and shall specifically appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed nor the taxes postponed or diminished, until the interest and principal of such debt shall have been wholly paid."

Article II, section 7

"No debt shall be contracted by the state except as herein provided, unless the proposed law for creating such debt shall first be submitted to a direct vote of the electors of the state at some general election; and if such proposed law shall be ratified by a majority of all votes cast at such general election, then it shall be the duty of the legislature next after such election to enact such law and create such debt, subject to all the provisions and restrictions provided in the preceding section of this article."

Article II, Section 8

"The state may borrow money to repel invasion, suppress insurrection, or defend the state in time of war; but the money thus raised, shall be applied exclusively to the object for which the loan was authorized, or to the repayment of the debt thereby created."

Article II, Section 9

"The state shall never be a party in carrying on any work of internal improvement except that it may adopt, construct, reconstruct and maintain a state system of highways, but no general property tax shall ever be laid nor bonds issued by the state for such highways."

Group 3—Massachusetts Constitution (1917)

Article LXII, section 2

"The commonwealth may borrow money to repel invasion, suppress insurrection, defend the commonwealth, or assist the United States in time of war, and may also borrow money in anticipation of receipts from taxes or other sources, such loan to be paid out of the revenue of the year in which it is created."

Article LXII, section 3

"In addition to the loans which may be contracted as before provided; the commonwealth may borrow money only by a vote, taken by yeas and nays, of two-thirds of each house of the general court present and voting thereon. The governor shall recommend to the general court the term for which any loan shall be contracted."

Model State Constitution

Article VII, section 702

"No debt shall be contracted by or in behalf of this State unless such debt shall be authorized by law for some single project or object distinctly specified therein; and no law shall, except for the purpose of repelling invasion, suppressing insurrection, defending the state in war, meeting natural catastrophes, or redeeming the indebtedness of the state, outstanding at the time this Constitution is approved, take effect until it shall have been submitted to the qualified voters at a general election and have received a favorable majority of the votes cast upon such question at such election; except that the state may, by law, borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues of such year, but all debts so contracted in anticipation of revenue shall be paid within one year."[46]

The Effects of Constitutional Debt Limitations Upon Creatures of the State

Over the years the courts have frequently been called upon to decide whether certain obligations incurred by a state or one of its agencies is a debt within the meaning of the Constitution. With the passage of time the courts gradually developed what has become known as the Special Fund Doctrine.[47]

Although the courts of several states have resisted the Special Fund Doctrine,[48] it has spread to a remarkable degree and in some cases has greatly modified existing constitutional debt provisions.[49]

Generally speaking, cases involving the application of the Special Fund Doctrine have been those wherein the bond issues were to be serviced from some special income or dedicated revenue, such as the revenue accruing from the operation of a special public project, or the revenue from a specific tax such as the motor fuel tax when its entire proceeds are dedicated by constitution or statute to the purpose or purposes for which the bond issue was pledged.

[46] "Model State Constitution," Point Revision, 1946, prepared by the Committee on State Government of the National Municipal League, Article VII, section 702, p. 13.

[47] For a full treatment, see Rottschaefer, American State Debts, chapter 16, pp. 446-466.

[48] Newell v People, 7 N. Y. S. R. 12 (1852); State v Middleton, 12 N. D. 280 (1903); State v Cleveland, 36 Utah 406, 420 (1909); Rowley v Clarke, 162 Iowa 752 (1913); State v State Highway Comm., 138 Kan. 913 (1934); Alabama State Bridge Comm. v Smith, 217 Ala. 311 (1928); In re California Toll Bridge Authority, 212 Cal. 298, 302 (1931); California Toll Bridge Authority v Kelly, 218 Cal. 7 (1933).

In 1912 New Jersey enacted a law[50] authorizing the State Water Supply Commission (now the State Water Policy Commission) to issue bonds of par value of $1,000,000 in payment of land acquired to protect the State's water supply. The bonds were to be secured only by the holdings of the Commission. The court declared the act unconstitutional on the grounds that the commission was merely a state agency, subject to all of the restrictions placed upon the State by the Constitution, and that the sinking fund to retire the bonds was to come from state appropriations. It held that the argument that the indebtedness was not a state debt because it was to be paid from a special fund was "an illogical argument that carries with it its own refutation."[51] New Jersey's position with regard to the Special Fund Doctrine was, therefore, established at a very early date in its history of state indebtedness. Had the law of 1912 specified that the Commission could not pledge the credit of the State, it is possible that the court's decision might have been different.

There has been created in New Jersey and elsewhere, however, certain corporate entities of a governmental nature whose right to create debt obligations without regard to constitutional debt limitations is not questioned. Civic or state corporations of this character are often referred to as "authorities." To all intents and purposes they are agencies of the state, but are not "agents of the state." They may borrow only on their own credit and may not pledge the credit of the state, except as may be expressly permitted by the state. Such "authorities" or "commissions," as they are sometimes called, are usually controlled by a board whose members are appointed by the governor, and to this extent they are representative of the executive level of the state government. Although in several states such "authorities" or "corporate entities" have been created by action of two or more municipalities, in New Jersey the most common types have been those created by compacts between neighboring states for the operation of certain joint facilities or resources, which, in the public interest, are better controlled in this fashion. Typical of such agreements in New Jersey have been the establishment of the Port of New York Authority, The Delaware River Joint Commission, the Palisades Interstate Park and the Interstate Sanitation Commission.

[50] P.L. 1912, c. 318, pp. 537-540.

[51] Wilson v State Water Supply Comm., 84 N. J. Eq. 130-138 (1915).

A-3100
Sres 1/Roberts

AN ACT authorizing the issuance of cigarette tax securitization bonds, notes or other obligations by the New Jersey Economic Development Authority for the purposes of providing funds to pay State expenditures in any State fiscal year commencing on or after July 1, 2004, providing a source of payment and security for such bonds, notes or other obligations, supplementing P.L.1974, c.80 (C.34:1B-1 et seq.) and amending P.L.1997, c.264.

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

1. (New section) This act shall be known and may be cited as the "Cigarette Tax Securitization Act of 2004."

2. (New section) The following words or terms as used in this act shall have the following meanings unless a different meaning clearly appears from the context:

"Authority" means the New Jersey Economic Development Authority created pursuant to P.L.1974, c. 80 (C.34:1B-1 et seq.);

"Bonds" means any bonds, notes or other obligations issued or entered into by the authority pursuant to this act;

"Cigarette Tax" means the tax imposed by the State pursuant to the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), as amended and supplemented, on the sale, use or possession for sale or use within the State of each cigarette;

"Cigarette Tax Securitization Fund" means the fund by that name created and established pursuant to section 7 of this act;

"Cigarette Tax Securitization Proceeds Fund" means the fund by that name created and established pursuant to section 3 of this act;

"Dedicated Cigarette Tax Revenue Fund" means the fund by that name created and established pursuant to section 5 of this act;

"Dedicated Cigarette Tax Revenues" means an amount equal to the revenue collected by the State during each State fiscal year beginning on and after July 1, 2006 from $0.0325 of the cigarette tax; and

"Refunding Bonds" means any bonds, notes or other obligations issued by the authority to refinance bonds, notes or other obligations previously issued or entered into by the authority pursuant to this act.

3. (New section) a. The authority shall establish and maintain a special nonlapsing fund to be known as the "Cigarette Tax Securitization Proceeds Fund" into which shall be deposited the following moneys:

(1) the proceeds from the sale of all bonds (other than refunding bonds) issued by the authority pursuant to this act which are remaining after any required deposit to any reserve or other fund established for such bonds or any refunding bonds in accordance with subsection a. of section 4 of this act and after the payment of all costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of such bonds or any refunding

bonds;

(2) any amounts which shall be appropriated by the Legislature for the purposes of such fund; and

(3) any other amounts or funds which the authority shall determine to deposit into such fund.

Moneys on deposit in the Cigarette Tax Securitization Proceeds Fund shall be invested in such obligations as the authority may determine or as shall otherwise be provided in any contract between the authority and the State Treasurer authorized and entered into pursuant to section 6 of this act, and interest or other earnings on any such investments shall be credited to such fund.

b. Amounts on deposit in the Cigarette Tax Securitization Proceeds Fund shall be withdrawn by the authority from time to time, upon written request of the State Treasurer or as otherwise provided in any contract between the authority and the State Treasurer authorized and entered into pursuant to section 6 of this act, and paid to the State Treasurer for deposit into either the General Fund of the State or the Cigarette Tax Securitization Fund, as determined by the State Treasurer, and used for any lawful purpose of the State for which moneys on deposit in the General Fund may be used. All amounts withdrawn from the Cigarette Tax Securitization Proceeds Fund and deposited into the General Fund of the State as provided in this subsection shall represent financial resources and revenues of the State from that fund as certified by the Governor pursuant to Article VIII, Section II, paragraph 2 of the State Constitution for the State annual appropriation act for such State fiscal year, and as may be applicable for such annual appropriation act as may be amended and supplemented from time to time. Notwithstanding any provision of this subsection to the contrary, the State Treasurer shall not request the authority to pay, and the authority shall not pay, to the State Treasurer during any State fiscal year amounts on deposit in the Cigarette Tax Securitization Proceeds Fund which are in excess of the amounts anticipated as revenues from such fund.

4. (New section) Notwithstanding the provisions of any law, rule, regulation or order to the contrary:

a. The authority shall have the power, pursuant to and in accordance with the provisions of this act and P.L.1974, c.80 (C.34:1B-1 et seq.), to issue bonds and refunding bonds, incur indebtedness and borrow money secured, in whole or in part, by money received pursuant to this act for the purpose of providing funds

(1) for deposit into the Cigarette Tax Securitization Proceeds Fund;

(2) in the case of refunding bonds, to apply to the refunding, purchase or payment of any bonds issued pursuant to this act;

(3) to fund any capitalized interest on such bonds or refunding bonds;

(4) to fund any reserve or other fund as may be established by the authority for such bonds or refunding bonds and to further secure such bonds and refunding bonds as may be determined by the authority; and

(5) to pay all costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of such bonds or refunding bonds.

b. The authority may, in any resolution authorizing the issuance of bonds or refunding bonds issued by the authority pursuant to this act, pledge any contract entered into with the State Treasurer pursuant to section 6 of this act, or any part thereof, to secure the payment, purchase or redemption of bonds or refunding bonds or any obligations of the authority under any contract or agreement entered into by the authority pursuant of subsection c. of section 4 of this act, and covenant as to the use and disposition of money available to the authority for the payment, purchase or redemption of bonds and refunding bonds and the payment of any obligations of the authority under any contract or agreement entered into by the authority pursuant to subsection c. of section 4 of this act. All costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of bonds or refunding bonds by the authority for the purposes set forth in this act may be paid by the authority from amounts it receives from the proceeds of the bonds or refunding bonds and from amounts it receives pursuant to sections 5 and 6 of this act, which costs, fees and other expenses may include, but are not limited to, any initial or annual administrative costs and fees of the authority attributable to any bonds or refunding bonds issued pursuant to this act, all legal, accounting, trustee or other professional fees, costs and expenses, and all other costs, fees, expenses, liabilities or obligations attributable to any agreement, contract or other commitment described in subsection c. of this section and any required rebate or other payment to the United States of America. The bonds or refunding bonds shall be authorized by resolution adopted by the authority, which shall stipulate the manner of execution and form of the bonds, whether the bonds or refunding bonds are to be issued in one or more series, the date or dates of issue, time or times of maturity, which shall not exceed 40 years, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates, and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, conversion or registration privileges, the sources and medium of payment and place or places of payment, terms of redemption, privileges of exchangeability or interchangeability, and entitlement to priorities of payment or security in the amounts to be received by the authority pursuant to sections 5 and 6 of this act. The bonds may be sold at a public or private sale at a price or prices determined by the authority. The authority is authorized to enter into any agreements

necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds or refunding bonds to any person and to comply with the laws of any jurisdiction relating thereto.

c. In connection with any bonds or refunding bonds issued or to be issued pursuant to this act, the authority may also enter into any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure, or similar agreements (and in connection therewith, agreements establishing a line of credit, letter of credit, insurance or relating to the collateralization of the obligations thereunder), float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements and other security agreements as shall be determined and approved by the authority.

d. No resolution adopted by the authority authorizing the issuance of bonds or refunding bonds pursuant to this act shall be adopted or otherwise made effective without the approval in writing of the State Treasurer. Except as provided by subsection i. of section 4 of P.L.1974, c.80 (C.34:1B-4), bonds or refunding bonds may be issued without obtaining the consent of any department, division, commission, board, bureau or agency of the State, other than the approval as required by this subsection, and without any other proceedings or the occurrence of any other conditions or other things other than those proceedings, conditions or things which are specifically required by this act.

e. Bonds and refunding bonds issued by the authority pursuant to this act shall be special and limited obligations of the authority payable from, and secured by, such funds and moneys determined by the authority in accordance with this section. Neither the members of the authority nor any other person executing the bonds or refunding bonds shall be personally liable with respect to payment of interest and principal on these bonds or refunding bonds. Bonds or refunding bonds issued pursuant to the provisions of this act shall not be a debt or liability of the State or any agency or instrumentality thereof, other than a special and limited obligation of the authority, either legal, moral or otherwise, and nothing contained in this act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the State or any political subdivision thereof other than the authority, and all bonds and refunding bonds issued by the authority shall contain a statement to that effect on their face.

f. The authority is authorized to engage, subject to the approval of the State Treasurer and in such manner as the State Treasurer shall determine, the services of bond counsel, financial advisors and experts, placement agents, underwriters, trustees, verification agents,

remarketing agents, auction agents, broker-dealers, appraisers, and such other advisors, consultants and agents as may be necessary to effectuate the purposes of this act.

g. All bonds or refunding bonds issued by the authority pursuant to this act are deemed to be issued by a body corporate and politic of the State for an essential governmental purpose, and the interest thereon and the income derived from all funds, revenues, incomes and other moneys received for or to be received by the authority and pledged and available to pay or secure the payment of bonds or refunding bonds and the interest thereon, shall be exempt from all taxes levied pursuant to the provisions of Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, except for transfer inheritance and estate taxes levied pursuant to Subtitle 5 of Title 54 of the Revised Statutes.

h. The State hereby pledges and covenants with the holders of any bonds or refunding bonds issued pursuant to the provisions of this act, that it will not limit or alter the rights or powers vested in the authority by this act, nor limit or alter the rights or powers of the State Treasurer in any manner which would jeopardize the interest of the holders or any trustee of such holders, or inhibit or prevent performance or fulfillment by the authority or the State Treasurer with respect to the terms of any agreement made with the holders of these bonds or refunding bonds or agreements made pursuant to subsection c. of this section, except that the failure of the Legislature to appropriate moneys for any purpose of this act shall not be deemed a violation of this section.

i. Notwithstanding any restriction contained in any other law, rule, regulation or order to the contrary, the State and all political subdivisions of this State, their officers, boards, commissioners, departments or other agencies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest any sinking funds, moneys or other funds, including capital, belonging to them or within their control, in any bonds or refunding bonds issued by the authority under the provisions of this act; and said bonds and refunding bonds are hereby made securities which may properly and legally be deposited with, and received by any State or municipal officers or agency of the State, for any purpose for which the deposit of bonds or other obligations of the State is now, or may hereafter be, authorized by law.

5. (New section) a. There is hereby created and established in the Department of the Treasury a separate nonlapsing fund to be known as the "Dedicated Cigarette Tax Revenue Fund." During the State fiscal year beginning July 1, 2006 and during each succeeding State fiscal year in which the authority has outstanding bonds or refunding bonds which have been issued pursuant to this act or is obligated to make any payments under any contract or agreement entered into by the authority pursuant of subsection c. of section 4 of this act, the State Treasurer shall credit to such Fund, on a monthly basis, an amount equivalent to the dedicated cigarette tax revenues received by the State during each calendar month of such fiscal year. Provided however, that:

(1) no credits of dedicated cigarette tax revenues shall be made to the Dedicated Cigarette Tax Revenue Fund in any State fiscal year until the deposits of revenue from the cigarette tax required by section 4 of P.L.1997, c.264 (C.26:2H-18.58g) into the Health Care Subsidy Fund have been fully made in such fiscal year, and

(2) in each month of a State fiscal year beginning after the month in which the final deposits of revenue from the cigarette tax required by section 4 of P.L.1997, c.264 (C.26:2H-18.58g) into the Health Care Subsidy Fund have been fully made for such fiscal year, the State Treasurer shall credit to the Dedicated Cigarette Tax Revenue Fund an amount equivalent to all revenue collected by the State from the cigarette tax during such calendar month until the amount credited to the Dedicated Cigarette Tax Revenue Fund from the beginning of such fiscal year equals the amount that would have been credited to such Fund since the beginning of such fiscal year in accordance with the preceding sentence if the deposits of revenue from the cigarette tax required by section 4 of P.L.1997, c.264 (C.26:2H-18.58g) into the Health Care Subsidy Fund were not required to have been made.

b. In each State fiscal year during which the authority has outstanding bonds or refunding bonds which have been issued pursuant to this act or is obligated to make any payments under any contract or agreement entered into by the authority pursuant of subsection c. of section 4 of this act, the State Treasurer shall pay to the authority solely from the Dedicated Cigarette Tax Revenue Fund in accordance with the provisions of any contract between the authority and the State Treasurer authorized and entered into pursuant to section 6 of this act, an amount equal to the debt service payable on the authority's then outstanding bonds or refunding bonds issued pursuant to this act during such fiscal year and any amounts required to be paid by the authority during such fiscal year under any contract or agreement entered into by the authority pursuant of subsection c. of section 4 of this act and such other additional amounts as shall be authorized by this act and required to be paid to the authority pursuant to any contract between the authority and the State Treasurer authorized and entered into pursuant to section 6 of this act; provided,

however, that the payment of all such amounts to the authority shall be subject to and dependent upon appropriations being made from time to time by the Legislature of the amounts thereof for the purposes of this act. Notwithstanding any other provision of any law, rule, regulation or order to the contrary, the authority shall be paid only such amounts as shall be required by the provisions of any contract between the authority and the State Treasurer authorized and entered into pursuant to section 6 of this act and the incurrence of any obligation of the State under any such contract, including any payments to be made thereunder from the Dedicated Cigarette Tax Revenue Fund, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

c. If the authority no longer has outstanding bonds or refunding bonds which have been issued pursuant to this act and is no longer obligated to make any payments under any contract or agreement entered into by the authority pursuant of subsection c. of section 4 of this act or to pay any other costs, fees, expenses, liabilities and other obligations incurred by the authority and the State pursuant to this act, then all monies on deposit in the Dedicated Cigarette Tax Revenue Fund shall be transferred to the General Fund.

6. (New section) The State Treasurer and the authority are authorized to enter into one or more contracts to implement the payment arrangement that is provided for in section 5 of this act. The contract or contracts shall provide for payment by the State Treasurer of the amounts required to be paid from the Dedicated Cigarette Tax Revenue Fund pursuant to section 5 of this act and shall set forth the procedure for the transfer of moneys for the purpose of paying such amounts. The contract or contracts shall contain such terms and conditions as are determined by the authority and the State Treasurer, and shall include, but not be limited to, terms and conditions necessary and desirable to secure any bonds or refunding bonds of the authority issued pursuant to this act or any obligations of the authority under any contract or agreement entered into by the authority pursuant of subsection c. of section 4 of this act; provided however, that notwithstanding any other provision of any law, rule, regulation or order to the contrary, the authority shall be paid only such amounts as shall be required by the provisions of any contract or contracts, and the incurrence of any obligation of the State under any such contract or contracts, including any payments to be made thereunder from the Dedicated Cigarette Tax Revenue Fund, which shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

7. (New section) There is hereby created and established in the Department of the Treasury a separate non-lapsing fund to be known

as the "Cigarette Tax Securitization Fund." Revenue derived from the proceeds of bonds issued by the authority pursuant to this act may be deposited into the Cigarette Tax Securitization Fund and balances therein may be transferred to the General Fund.

8. Section 4 of P.L.1997, c.264 (C.26:2H-18.58g) is amended to read as follows:

4. Notwithstanding the provisions of any other law to the contrary,

a. commencing July 1, 1998: after the deposit required pursuant to section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first $150,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first $5,000,000 of revenue collected annually from the "Tobacco Products Wholesale Sales and Use Tax Act," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be deposited into the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next $390,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be appropriated annually for health programs, and the next $50,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be appropriated annually to the New Jersey Economic Development Authority for payment of debt service incurred by the authority for school facilities projects and in fiscal years commencing July 1, 2002 and July 1, 2003, the next $30,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be directed to the Department of Health and Senior Services to fund anti-smoking initiatives, except that the amount shall be $40,000,000 in the fiscal year commencing July 1, 2004 and $45,000,000 in the fiscal [years] year commencing July 1, 2005 [and thereafter] ; and

b. commencing with fiscal years beginning on and after July 1, 2006, after the deposit required pursuant to section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first $150,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first $5,000,000 of revenue collected annually from the "Tobacco Products Wholesale Sales and Use Tax Act," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be deposited into the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58).

(cf: P.L.2003, c.115, s.3)

9. (New section) The provisions of this act shall be severable, and if any of the provisions hereof shall be held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of any of the remaining provisions of this act.

10. This act shall take effect immediately.

STATEMENT

This bill authorizes the New Jersey Economic Development Authority ("EDA") to issue bonds, notes or other obligations ("bonds") primarily for the purpose of providing revenue to meet State appropriations in any State fiscal year commencing on or after July 1, 2004. This bill also authorizes the EDA to issue refunding bonds, notes or other obligations to refinance any bonds previously issued or entered into by the EDA pursuant to this bill. Proceeds of the bonds or refunding bonds may also be used to fund any capitalized interest on such bonds or refunding bonds or any reserve or other fund established by the EDA to further secure such bonds or refunding bonds, and to pay all costs, fees and other expenses related to, or incurred by the EDA or the State in connection with the issuance thereof.

This bill requires the EDA to establish and maintain a Cigarette Tax Securitization Proceeds Fund into which shall be deposited the proceeds from the sale of all bonds (other than refunding bonds) issued by the EDA which are remaining after any required deposit to any reserve or other fund and after the payment of all costs, fees and other expenses related to, or incurred by the EDA or the State in connection with, the issuance of such bonds or any refunding bonds. Amounts on deposit in the Cigarette Tax Securitization Proceeds Fund are to be withdrawn by the EDA from time to time and paid to the State Treasurer for deposit into either the General Fund of the State or the Cigarette Tax Securitization Fund created by this bill, as determined by the State Treasurer, and used for any lawful purpose of the State for which moneys on deposit in the General Fund may be used. All amounts withdrawn from the Cigarette Tax Securitization Proceeds Fund and deposited into the General Fund of the State shall represent financial resources of the State and revenues of the State upon deposit into the General Fund.

The bonds and refunding bonds issued by the EDA are payable solely from a dedicated portion of the revenue collected by the State during each State fiscal year beginning on and after July 1, 2006 from the cigarette tax imposed by the State pursuant to P.L.1948, c.65, as amended and supplemented, on the sale, use or possession for sale or use within the State of each cigarette. The dedicated portion of the cigarette tax revenues received by the State in each fiscal year commencing on and after July 1, 2006 are credited to a Dedicated Cigarette Tax Revenue Fund created in the Department of the Treasury pursuant to this bill.

In each State fiscal year during which the EDA has outstanding bonds or refunding bonds or is obligated to make any payments under

any contract or agreement entered into pursuant to this bill, the State Treasurer shall pay to the EDA, solely from amounts on deposit in the Dedicated Cigarette Tax Revenue Fund, an amount equal to the debt service payable on the outstanding bonds or refunding bonds during such fiscal year and any amounts required to be paid by the EDA during such fiscal year under any such contract or agreement and such other additional amounts as shall be authorized by this bill; provided, however, that the payment of all such amounts to the EDA is subject to and dependent upon appropriations being made from time to time by the Legislature. Since the State Treasurer is only authorized to pay the EDA from amounts on deposit in the Dedicated Cigarette Tax Revenue Fund, the holder of the bonds or refunding bonds is accepting the risk that the amounts on deposit in such Fund will be sufficient to make all such required payments thereon.

This bill also authorizes the EDA and the State Treasurer to enter into a contract or contracts to implement the payment arrangement provided for in this bill. The contract or contracts shall require the State Treasurer to pay the proper amounts and shall establish the procedures for transferring moneys for payment; provided, however, that the incurrence of any obligation of the State under the contract, including payments from the Dedicated Cigarette Tax Revenue Fund, shall be subject to appropriations made by the Legislature.

The bonds or refunding bonds must be authorized by resolution. The resolution shall stipulate, among other things: the manner of execution and form of the bonds; whether the bonds are in one or more series; the date or dates of issue; the time or times of maturity; the rate or rates of interest payable on the bonds, which may be fixed or variable; the denominations in which the bonds are issued; the conversion or registration privileges; the sources, medium and place of payment; and the terms of redemption.

The bonds may be sold at a public or private sale at a price or prices determined by the EDA. The EDA is authorized to enter into any agreements necessary or desirable to effectuate the purposes of this bill, including agreements to sell bonds or refunding bonds.

In connection with bonds or refunding bonds, the EDA may enter into any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure, or similar agreements (and in connection therewith, agreements establishing a line of credit, letter of credit, insurance or relating to the collateralization of the obligations thereunder), float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements and other security agreements as shall be determined and approved by the EDA.

Any bonds or refunding bonds issued by the EDA pursuant to this

bill would be special and limited obligations of the EDA. The bonds or refunding bonds would not be a debt or liability of the State or any political subdivision thereof other than a special and limited obligation of the EDA, and they must contain a statement on their face to that effect.

Subject to the approval of the State Treasurer, the EDA is authorized to engage bond counsel, financial advisors and experts, placement agents, underwriters, trustees, verification agents, remarketing agents, auction agents, broker-dealers, appraisers, and such other advisors, consultants and agents as may be necessary to effectuate the purposes of this bill.

The bonds issued under this bill are deemed to be for an essential governmental purpose, and the interest thereon and the income derived from funds to pay or secure the payment of the bonds shall be exempt from all State taxes, except transfer inheritance and estate taxes.

The State pledges with the holders of the bonds or refunding bonds under this bill that it will not change the rights or powers of the EDA or the State Treasurer in any way that would jeopardize the interest of the holders or inhibit the EDA or the Treasurer from performing the terms of the bond agreements. Failure of the State to appropriate moneys for this bill shall not be deemed a violation of this section.

The "Cigarette Tax Securitization Act of 2004."

A-3109
cohen

AN ACT authorizing the issuance of motor vehicle surcharges securitization bonds, notes or other obligations by the New Jersey Economic Development Authority for the purposes of providing revenue to meet appropriations in any State fiscal year commencing on or after July 1, 2004, providing a source of payment and security for such bonds, notes or other obligations, supplementing P.L.1974, c.80 (C.34:1B-1 et seq.) and amending P.L.1994, c.57 and P.L.1983, c.65.

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

1. (New section) This act shall be known and may be cited as the "Motor Vehicle Surcharges Securitization Act of 2004."

2. (New section) The following words or terms as used in this act shall have the following meanings unless a different meaning clearly appears from the context:

"Authority" means the New Jersey Economic Development Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

"Bonds" means any bonds, notes or other obligations issued or entered into by the authority pursuant to this act;

"Dedicated Motor Vehicle Surcharge Revenues" means:

a. on and after July 1, 2006, moneys required to be transferred to the Motor Vehicle Surcharges Revenue Fund from the Facility Revenue Fund pursuant to subsection b. of section 7 of P.L.1994, c.57 (C.34:1B-21.7),

b. on and after July 1, 2006, all Unsafe Driving Surcharges required to be transferred to the Motor Vehicle Surcharges Revenue Fund from the Unsafe Driving Surcharges Fund pursuant to section 5 of this act, and

c. after such time as all Market Transition Facility bonds, notes and obligations and all New Jersey Motor Vehicle Commission bonds, notes and obligations issued pursuant to section 4 of P.L.1994, c.57 (C.34:1B-21.4), and the costs thereof are discharged and no longer outstanding, all other plan surcharges collected by the commission pursuant to subsection b. of section 6 of P.L.1983, c. 65 (C.17:29A-35) and required to be transferred to the Motor Vehicle Surcharges Revenue Fund from the DMV Surcharge Fund pursuant to section 12 of P.L.1994, c.57 (C.34:1B-21.12);

"Division of Motor Vehicles Surcharge Fund" or "DMV Surcharge Fund" means the fund created pursuant to section 12 of P.L.1994, c.57 (C.34:1B-21.12);

"Market Transition Facility Revenue Fund" or "Facility Revenue Fund" means the fund created pursuant to section 7 of P.L.1994, c.57 (C.34:1B-21.7);

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

Matter underlined thus is new matter.

"Motor Vehicle Surcharges Revenue Fund" means the fund within the authority created and established pursuant to section 6 of this act;

"Motor Vehicle Surcharges Securitization Proceeds Fund" means the fund created and established pursuant to section 3 of this act;

"Refunding Bonds" means any bonds, notes or other obligations issued by the authority to refinance bonds, notes or other obligations previously issued by the authority pursuant to this act;

"Unsafe Driving Surcharges Fund" means the fund within the Department of the Treasury created and established pursuant to section 5 of this act; and

"Unsafe Driving Surcharges" means the revenues received by the State resulting from the plan surcharges established as such pursuant to subparagraph (a) of paragraph (2) of subsection b. of section 6 of P.L.1983, c.65 (C.17:29A-35) and assessed and collected pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2) for convictions for unsafe driving pursuant to that section.

3. (New section) a. The authority shall establish and maintain a special nonlapsing fund to be known as the "Motor Vehicle Surcharges Securitization Proceeds Fund" into which shall be deposited the following moneys:

(1) the proceeds from the sale of all bonds (other than refunding bonds) issued by the authority pursuant to this act which are remaining after any required deposit to any reserve or other fund established for such bonds or refunding bonds in accordance with subsection a. of section 4 of this act and after the payment of all costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of such bonds or refunding bonds;

(2) any amounts which shall be appropriated by the State Legislature for the purposes of such fund; and

(3) any other amounts or funds which the authority shall determine to deposit into such fund. Moneys on deposit in the Motor Vehicle Surcharges Securitization Proceeds Fund shall be invested in such obligations as the authority may determine or as shall otherwise be provided in any contract between the authority and the State Treasurer authorized and entered into pursuant to section 7 of this act, and interest or other earnings on any such investments shall be credited to such fund.

b. Amounts on deposit in the Motor Vehicle Surcharges Securitization Proceeds Fund shall be withdrawn by the authority from time to time, upon written request of the State Treasurer or as otherwise provided in any contract between the authority and the State Treasurer authorized and entered into pursuant to section 7 of this act, and paid to the State Treasurer for deposit either into the General Fund of the State or into the Motor Vehicle Surcharges Securitization Fund, as determined by the State Treasurer, and used for any lawful purpose of the State for which moneys on deposit in the General Fund

may be used. All amounts withdrawn from the Motor Vehicle Surcharges Securitization Proceeds Fund and deposited into the General Fund of the State as provided in this paragraph shall represent financial resources and revenues of the State upon deposit into the General Fund. Notwithstanding any provision of this subparagraph to the contrary, the State Treasurer shall not request the authority to pay, and the authority shall not pay, to the State Treasurer during any State fiscal year for deposit into the General Fund of the State, amounts on deposit in the Motor Vehicle Surcharges Securitization Proceeds Fund which are in excess of the amounts anticipated as revenues from that fund as certified by the Governor pursuant to Article VIII, Section II, paragraph 2 of the State Constitution for the State annual appropriation act for such State fiscal year, and as may be applicable for such annual appropriation act as may be amended and supplemented from time to time.

4. Notwithstanding the provisions of any law, rule, regulation or order to the contrary:

a. The authority shall have the power, pursuant to and in accordance with the provisions of this act and P.L.1974, c.80 (C.34:1B-1 et seq.), to issue bonds and refunding bonds, incur indebtedness and borrow money secured, in whole or in part, by money received pursuant to this act for the purpose of providing funds:

(1) for deposit into the Motor Vehicle Surcharges Securitization Proceeds Fund;

(2) in the case of refunding bonds, to apply to the refunding, purchase or payment of any bonds issued pursuant to this act;

(3) to fund any capitalized interest on such bonds or refunding bonds;

(4) to fund any reserve or other fund as may be established by the authority for such bonds or refunding bonds and to further secure such bonds and refunding bonds as may be determined by the authority; and

(5) to pay all costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of such bonds or refunding bonds.

b. The authority may, in any resolution authorizing the issuance of bonds or refunding bonds issued by the authority pursuant to this act, or the execution and delivery of any agreement authorized pursuant to subsection c. of this section, pledge the amounts from time to time on deposit in the Motor Vehicle Surcharges Revenue Fund and any contract entered into with the State Treasurer pursuant to section 7 of this act, or any part thereof, to secure the payment, purchase or redemption of the bonds or refunding bonds issued pursuant to this act or any obligations of the authority under any agreement entered into pursuant to subsection c. of this section, and covenant as to the use and disposition of money on deposit in the Motor Vehicle Surcharges

Revenue Fund for payments of bonds and refunding bonds. All costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of bonds or refunding bonds by the authority for the purposes set forth in this act may be paid by the authority from amounts it receives from the proceeds of the bonds or refunding bonds and from amounts it receives pursuant to sections 5 and 7 of this act, section 7 of P.L.1994, c.57 (C.34:1B-21.7) and section 12 of P.L.1994, c.57 (C.34:1B-21.12), which costs, fees and other expenses may include, but are not limited to, any initial or annual administrative costs and fees of the authority attributable to any bonds or refunding bonds issued pursuant to this act, all legal, accounting, trustee or other professional fees, costs and expenses, all other costs, fees and expenses (including, but not limited to, termination payments) attributable to any agreement, contract or other commitment described in subsection c. of this section and any required rebate or other payment to the United States of America. The bonds or refunding bonds shall be authorized by resolution adopted by the authority, which shall stipulate the manner of execution and form of the bonds, whether the bonds or refunding bonds are to be issued in one or more series, the date or dates of issue, time or times of maturity, which shall not exceed 40 years, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates, and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, conversion or registration privileges, the sources and medium of payment and place or places of payment, terms of redemption, privileges of exchangeability or interchangeability, and entitlement to priorities of payment or security in the amounts to be received by the authority pursuant to sections 5 and 6 of this act. The bonds may be sold at a public or private sale at a price or prices determined by the authority. The authority is authorized to enter into any agreements necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds or refunding bonds to any person and to comply with the laws of any jurisdiction relating thereto.

c. In connection with any bonds or refunding bonds issued or to be issued pursuant to this act, the authority may also enter into any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure, or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements and other security agreements approved by the authority.

d. No resolution adopted by the authority authorizing the issuance of bonds or refunding bonds pursuant to this act shall be adopted or

otherwise made effective without the approval in writing of the State Treasurer. Except as provided by subsection i. of section 4 of P.L.1974, c.80 (C.34:1B-4), bonds or refunding bonds may be issued without obtaining the consent of any department, division, commission, board, bureau or agency of the State, other than the approval as required by this subsection, and without any other proceedings or the occurrence of any other conditions or other things other than those proceedings, conditions or things which are specifically required by this act.

e. Bonds and refunding bonds issued by the authority pursuant to this act shall be special and limited obligations of the authority payable from, and secured by, such funds and moneys determined by the authority in accordance with this section. Neither the members of the authority nor any other person executing the bonds or refunding bonds shall be personally liable with respect to payment of interest and principal on these bonds or refunding bonds. Bonds or refunding bonds issued pursuant to the provisions of this act shall not be a debt or liability of the State or any agency or instrumentality thereof, other than a special and limited obligation of the authority, either legal, moral or otherwise, and nothing contained in this act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the State or any political subdivision thereof, other than the authority, and all bonds and refunding bonds issued by the authority shall contain a statement to that effect on their face.

f. The authority is authorized to engage, subject to the approval of the State Treasurer and in such manner as the State Treasurer shall determine, the services of bond counsel, financial advisors and experts, placement agents, underwriters, trustees, verification agents, remarketing agents, auction agents, broker-dealers, appraisers, and such other advisors, consultants and agents as may be necessary to effectuate the purposes of this act.

g. All bonds or refunding bonds issued by the authority pursuant to this act are deemed to be issued by a body corporate and politic of the State for an essential governmental purpose, and the interest thereon and the income derived from all funds, revenues, incomes and other moneys received for or to be received by the authority and pledged and available to pay or secure the payment of bonds or refunding bonds and the interest thereon, shall be exempt from all taxes levied pursuant to the provisions of Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, except for transfer inheritance and estate taxes levied pursuant to Subtitle 5 of Title 54 of the Revised Statutes.

h. The State hereby pledges and covenants with the holders of any bonds or refunding bonds issued pursuant to the provisions of this act, that it will not limit or alter the rights or powers vested in the authority by this act, nor limit or alter the rights or powers of the State

Treasurer in any manner which would jeopardize the interest of the holders or any trustee of such holders, or inhibit or prevent performance or fulfillment by the authority or the State Treasurer with respect to the terms of any agreement made with the holders of these bonds or refunding bonds or agreements made pursuant to subsection c. of this section, except that the failure of the State Legislature to appropriate moneys for any purpose of this act shall not be deemed a violation of this section.

i. Notwithstanding any restriction contained in any other law, rule, regulation or order to the contrary, the State and all political subdivisions of this State, their officers, boards, commissioners, departments or other agencies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest any sinking funds, moneys or other funds, including capital, belonging to them or within their control, in any bonds or refunding bonds issued by the authority under the provisions of this act; and said bonds and refunding bonds are hereby made securities which may properly and legally be deposited with, and received by any State or municipal officers or agency of the State, for any purpose for which the deposit of bonds or other obligations of the State is now, or may hereafter be, authorized by law.

5. There is hereby established in the Department of the Treasury a special nonlapsing fund to be known as the "Unsafe Driving Surcharges Fund" which, beginning July 1, 2006, shall be comprised of all unsafe driving surcharges and any interest or other income earned thereon. Moneys in the Unsafe Driving Surcharges Fund shall be managed and invested by the Division of Investment in the Department of the Treasury. All moneys in the Unsafe Driving Surcharges Fund shall be disbursed not less frequently than monthly by the State Treasurer, upon appropriation, to the Motor Vehicle Surcharges Revenue Fund until all bonds and refunding bonds issued or entered into pursuant to section 4 of this act and the costs thereof have been paid in full.

6. a. There is created within the authority a special nonlapsing fund, to be known as the "Motor Vehicle Surcharges Revenue Fund." The Motor Vehicle Surcharges Revenue Fund shall consist of:

(1) such moneys as may be appropriated to the Motor Vehicle Surcharges Revenue Fund by the Legislature and paid to the authority by the State Treasurer from Dedicated Motor Vehicle Surcharges

Revenues;

(2) interest or other income derived from the investment of moneys in the Motor Vehicle Surcharges Revenue Fund; and

(2) any other moneys as may be deposited from time to time, except that such moneys shall not be appropriated from the General Fund.

b. In each State fiscal year during which the authority has outstanding bonds or refunding bonds which have been issued pursuant to this act, moneys in the Motor Vehicle Surcharges Revenue Fund may be used by the authority, in accordance with the provisions of any bond resolutions authorizing the issuance of bonds or refunding bonds pursuant to this act and any contract between the authority and the State Treasurer authorized and entered into pursuant to section 7 of this act, to pay debt service payable on the authority's then outstanding bonds or refunding bonds issued pursuant to this act and any amounts due in connection with any agreements entered into pursuant to subsection c. of section 4 of this act due in such fiscal year, to replenish any reserve or other fund established for such bonds or refunding bonds issued in accordance with subsection a. of section 4 of this act, and to pay any and all other additional amounts as shall be authorized by this act and required to be paid by the authority during such fiscal year, provided however, that the payment of all such amounts to the authority by the State Treasurer shall be subject to and dependent upon appropriations being made from time to time by the Legislature of the amounts thereof for the purposes of this act. Notwithstanding any other provision of any law, rule, regulation or order to the contrary, the authority shall be paid only such amounts as shall be required by the provisions of any contract between the authority and the State Treasurer authorized and entered into pursuant to section 7 of this act and the incurrence of any obligation of the State under any such contract, including any payments to be made thereunder, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

c. In each fiscal year beginning on or after July 1, 2006, all amounts on deposit in the Motor Vehicle Surcharges Revenue Fund in excess of the amount necessary to pay any amounts required to be paid by the authority pursuant to any bond resolutions authorizing the issuance of bonds or refunding bonds pursuant to this act or pursuant to any contract between the authority and the State Treasurer authorized or entered into pursuant to section 7 of this act and payable during such fiscal year shall be transferred to the General Fund, provided that the first $7,500,000 of such moneys so transferred in each fiscal year shall be remitted to the "Alcohol Treatment Programs Fund" created in section 2 of P.L.2001, c.48 (C.26:2B-9.2).

7. The State Treasurer and the authority are authorized to enter

into one or more contracts to implement the payment arrangement that is provided for in section 5 of this act. The contract or contracts shall provide for payment by the State Treasurer of the dedicated motor vehicle surcharge revenues and shall set forth the procedure for the transfer of moneys for the purpose of paying such amounts. The contract or contracts shall contain such terms and conditions as are determined by the authority and the State Treasurer, and shall include, but not be limited to, terms and conditions necessary and desirable to secure any bonds or refunding bonds of the authority issued under and pursuant to this act and the obligations of the authority under any agreement entered into pursuant to subsection c. of section 4 of this act; provided however, that notwithstanding any other provision of any law, rule, regulation or order to the contrary, the authority shall be paid only such amounts as shall be required by the provisions of any contract or contracts, and the incurrence of any obligation of the State under any such contract or contracts, including any payments to be made thereunder from the dedicated motor vehicle surcharge revenues, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

8. Section 7 of P.L.1994, c.57 (C.34:1B-21.7) is amended to read as follows:

7. There is created within the authority a special nonlapsing fund, to be known as the "Market Transition Facility Revenue Fund." The Facility Revenue Fund shall consist of:

a. Such moneys as may be transferred to the Facility Revenue Fund by the State Treasurer, upon appropriation by the Legislature, pursuant to section 14 of [this act] P.L.1994, c.57 (C.34:1B-21.14);

b. Such moneys as may be appropriated to the Facility Revenue Fund by the Legislature from surcharges levied pursuant to the provisions of subsection b. of section 6 of P.L.1983, c.65 (C.17:29A-35), except that any such moneys in excess of the amounts required to be used by the authority pursuant to any bond resolutions authorizing the issuance of Market Transition Facility bonds and notes, the authority's agreement with the State Treasurer authorized by section 13 of [this act] P.L.1994, c.57 (C.34:1B-21.13) and any bond resolutions authorizing the issuance of Motor Vehicle Commission bonds and notes shall be at least annually remitted

(1) in each fiscal year commencing prior to July 1, 2006, to the General Fund provided that the first $7,500,000 of such moneys so transferred in each such fiscal year shall be remitted to the "Alcohol Treatment Programs Fund" created in section 2 of P.L.2001, c.48 (C.26:2B-9.2); and

(2) in each fiscal year commencing on or after July 1, 2006, to the Motor Vehicle Surcharges Revenue Fund established pursuant to section 6 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c. (C.) (now pending before the Legislature

as this bill), to be applied as set forth therein, until such time as all bonds, notes and other obligations issued or entered into pursuant to section 4 of P.L.2004, c. (C.) (now pending before the Legislature as this bill) and the costs thereof are discharged and no longer outstanding;

c. Interest or other income derived from the investment of moneys in the Facility Revenue Fund; and

d. Any other moneys as may be deposited from time to time, except that such moneys shall not be appropriated from the General Fund.

Moneys in the Facility Revenue Fund shall be managed and invested by the Division of Investment in the Department of the Treasury.
(cf: P.L.2003, c.13, s.114)

9. Section 12 of P.L.1994, c.57 (C.34:1B-21.12) is amended to read as follows:

12. There is created within the Department of the Treasury a special nonlapsing fund to be known as the "Division of Motor Vehicles Surcharge Fund," which, beginning September 1, 1996 or earlier as provided pursuant to this section, shall be comprised of moneys transferred to the DMV Surcharge Fund from the Market Transition Facility which, notwithstanding the provisions of this section to the contrary, may be appropriated, immediately upon receipt from the Market Transition Facility, by the Legislature to the Facility Revenue Fund and all moneys collected pursuant to subsection b. of section 6 of P.L.1983, c.65 (C.17:29A-35) and any interest or other income earned thereon. Moneys in the DMV Surcharge Fund shall be managed and invested by the Division of Investment in the Department of the Treasury. Commencing September 1, 1996, or at such earlier time as may be certified by the commissioner that moneys on deposit in the New Jersey Automobile Insurance Guaranty Fund created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5) are sufficient to satisfy the current and anticipated financial obligations of the New Jersey Automobile Full Insurance Underwriting Association, the moneys in the DMV Surcharge Fund shall be disbursed from time to time by the State Treasurer, upon appropriation by the Legislature, to the Market Transition Facility Revenue Fund, for payment of principal, interest and premium on the Market Transition Facility bonds or notes and New Jersey Motor Vehicle Commission bonds or notes issued by the authority pursuant to section 4 of P.L.1994, c.57 (C.34:1B-21.4). [From the amounts remaining in the fund after these payments are fully defrayed, there shall be remitted to the fund created in section 2 of P.L.2001, c.48 (C.26:2B-9.2), $ 1.5 million in Fiscal Year 2002, $ 3 million in Fiscal Year 2003, $ 4.5 million in Fiscal Year 2004, $ 6 million in Fiscal Year 2005, and $ 7.5 million in Fiscal Year 2006 and each fiscal year thereafter.] From and after such time as all Market Transition Facility bonds, notes and obligations and all New Jersey

Motor Vehicle Commission bonds, notes and obligations issued pursuant to section 4 of P.L.1994, c.57 (C.34:1B-21.4) and the costs thereof are discharged and no longer outstanding, all amounts on deposit in the DMV Surcharge Fund shall be disbursed from time to time by the State Treasurer, upon appropriation by the Legislature, to the Motor Vehicle Surcharges Revenue Fund established pursuant to section 6 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c. (C.) (now pending before the Legislature as this bill) to be applied as set forth in section 6 of P.L.2004, c. (C.) (now pending before the Legislature as this bill) until such time as all bonds (including refunding bonds), notes and other obligations issued or entered into pursuant to section 4 of P.L.2004, c. (C.) (now pending before the Legislature as this bill) and the costs thereof are discharged and no longer outstanding.

(cf: P.L.2003, c.13, s.118)

10. Section 6 of P.L.1983, c.65 (C.17:29A-35) is amended to read as follows:

6. a. (Deleted by amendment, P.L.1997, c.151.)

b. There is created a New Jersey Merit Rating Plan which shall apply to all drivers and shall include, but not be limited to, the following provisions

(1) (a) Plan surcharges shall be levied, beginning on or after January 1, 1984, by the New Jersey Motor Vehicle Commission (hereafter the "commission") established by section 4 of P.L.2003, c.13 (C.39:2A-4) on any driver who, in the preceding 36-month period, has accumulated six or more motor vehicle points, as provided in Title 39 of the Revised Statutes; except that the allowance for a reduction of points in Title 39 of the Revised Statutes shall not apply for the purpose of determining surcharges under this paragraph. The accumulation of points shall be calculated as of the date the point violation is posted to the driver history record and shall be levied pursuant to rules promulgated by the commission. Surcharges assessed pursuant to this paragraph shall be [$100.00] $150.00 for six points, and $25.00 for each additional point. No offense shall be selected for billing which occurred prior to February 10, 1983. No offense shall be considered for billing in more than three annual assessments.

(b) (Deleted by amendment, P.L.1984, c.1.)

(2) (a) Plan surcharges shall be levied pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2) for each offense of unsafe driving under subsection a. of that section.

(b) Plan surcharges shall be levied for convictions [(a)] (i) under R.S.39:4-50 for violations occurring on or after February 10, 1983, and [(b)] (ii) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or for offenses committed in other jurisdictions of a substantially similar nature to those under R.S.39:4-50 or section 2 of P.L.1981, c.512

(C.39:4-50.4a), for violations occurring on or after January 26, 1984. Except as hereinafter provided, surcharges under this [paragraph] subparagraph (b) shall be levied annually for a three-year period, and shall be $1,000.00 per year for each of the first two convictions, for a total surcharge of $3,000 for each conviction, and $1,500.00 per year for the third conviction occurring within a three-year period, for a total surcharge of $4,500 for the third conviction. If a driver is convicted under both R.S.39:4-50 and section 2 of P.L.1981, c.512 (C.39:4-50.4a) for offenses arising out of the same incident, the driver shall be assessed only one surcharge for the two offenses.

If, upon written notification from the commission or its designee, mailed to the last address of record with the commission, a driver fails to pay a surcharge levied under subparagraph (b) of paragraph (2) this subsection b., the driving privilege of the driver shall be suspended forthwith until the minimum payment requirement as set forth by rule by the commission is paid to the commission; except that the commission may authorize payment of the surcharge on an installment basis over a period not to exceed 12 months for assessments under $2,300 or 24 months for assessments of $2,300 or more. If a driver fails to pay the surcharge or any installments on the surcharge, the total surcharge shall become due immediately, except as otherwise prescribed by rule of the commission.

The commission may authorize any person to pay the surcharge levied under this section and collectible by the commission by use of a credit card, debit card or other electronic payment device, and the administrator is authorized to require the person to pay all costs incurred by the commission in connection with the acceptance of the credit card, debit card or other electronic payment device. If a surcharge or related administrative fee is paid by credit or debit cards or any other electronic payment device and the amount is subsequently reversed by the credit card company or bank, the driving privilege of the surcharged driver shall be suspended and the driver shall be subject to the fee imposed for dishonored checks pursuant to section 31 of P.L.1994, c.60 (C.39:5-36.1).

In addition to any other remedy provided by law, the commission is authorized to utilize the provisions of the SOIL (Set off of Individual Liability) program established pursuant to P.L.1981, c.239 (C.54A:9-8.1 et seq.) to collect any surcharge levied under this section that and collectible by the commission is unpaid on or after the effective date of this act. As an additional remedy, the commission may issue a certificate to the Clerk of the Superior Court stating that the person identified in the certificate is indebted under this surcharge law in such amount as shall be stated in the certificate. The certificate shall reference the statute under which the indebtedness arises. Thereupon the clerk to whom such certificate shall have been issued shall immediately enter upon the record of docketed judgments the name of such person as debtor; the State as creditor; the address of

such person, if shown in the certificate; the amount of the debt so certified; a reference to the statute under which the surcharge is assessed, and the date of making such entries. The docketing of the entries shall have the same force and effect as a civil judgment docketed in the Superior Court, and the commission shall have all the remedies and may take all of the proceedings for the collection thereof which may be had or taken upon the recovery of a judgment in an action, but without prejudice to any right of appeal. Upon entry by the clerk of the certificate in the record of docketed judgments in accordance with this provision, interest in the amount specified by the court rules for post-judgment interest shall accrue from the date of the docketing of the certificate, however payment of the interest may be waived by the commission or its designee. In the event that the surcharge remains unpaid following the issuance of the certificate of debt and the commission takes any further collection action including referral of the matter to the Attorney General or his designee, the fee imposed, in lieu of the actual cost of collection, may be 20 percent of surcharges of $1,000 or more. The administrator or his designee may establish a sliding scale, not to exceed a maximum amount of $200, for surcharge principal amounts of less than $1,000 at the time the certificate of debt is forwarded to the Superior Court for filing. The commission shall provide written notification to a driver of the proposed filing of the certificate of debt at least 10 days prior to the proposed filing; such notice shall be mailed to the driver's last address of record with the commission. If a certificate of debt is satisfied following a credit card payment, debit card payment or payment by other electronic payment device and that payment is reversed, a new certificate of debt shall be filed against the surcharged driver unless the original is reinstated.

If the administrator or his designee approves a special payment plan for repayment of the certificate of debt, and the driver is complying with the approved plan, the plan may be continued for any new surcharge not part of the certificate of debt.

All moneys collectible by the commission under subparagraph (b) of paragraph (2) of this subsection b. shall be billed and collected by the commission except as provided in P.L.1997, c.280 (C.2B:19-10 et al.) for the collection of unpaid surcharges. Commencing on September 1, 1996, or such earlier time as the Commissioner of Banking and Insurance shall certify to the State Treasurer that amounts on deposit in the New Jersey Automobile Insurance Guaranty Fund are sufficient to satisfy the current and anticipated financial obligations of the New Jersey Automobile Full Insurance Underwriting Association, all plan surcharges collected by the commission under subparagraph (b) of paragraph (2) of this subsection b. shall be remitted to the Division of Motor Vehicles Surcharge Fund;

(i) for transfer to the Market Transition Facility Revenue Fund, as provided in section 12 of P.L.1994, c.57 (C.34:1B-21.12), for the

purposes of section 4 of P.L.1994, c.57 (C.34:1B-21.4) until such a time as all the Market Transition Facility bonds, notes and obligations and all Motor Vehicle Commission bonds, notes and obligations issued pursuant to that section 4 of P.L.1994, c.57 (C.34:1B-21.4) and the costs thereof are discharged and no longer outstanding[. From]: and

(ii) from and after the date of certification by the Commissioner of Banking and Insurance that the moneys collectible under subparagraph (b) of paragraph (2) of this subsection b. are no longer needed to fund the association or at such [a] time as all Market Transition Facility bonds, notes and obligations and all Motor Vehicle Commission bonds, notes and obligations issued pursuant to section 4 of P.L.1994, c.57 (C.34:1B-21.4) and the costs thereof are discharged and no longer outstanding [moneys collectible under this subsection] , for transfer to the Motor Vehicle Surcharges Revenue Fund established pursuant to section 6 of the "Motor Vehicle Surcharges Securitization Act of 2004." P.L.2004, c. (C.) (now pending before the Legislature as this bill) to be applied as set forth in section 6 that act. From and after such time as all bonds issued under section 4 of the "Motor Vehicle Surcharges Securitization Act of 2004." P.L.2004, c. (C.) (now pending before the Legislature as this bill) and the costs thereof are discharged and no longer outstanding, all plan surcharges collected by the commission under subparagraph (b) of paragraph (2) of this subsection b. shall, subject to appropriation, be remitted to the New Jersey Property-Liability Insurance Guaranty Association created pursuant to section 6 of P.L.1974, c.17 (C.17:30A-6) to be used for payment of any loans made by that association to the New Jersey Automobile Insurance Guaranty Fund pursuant to paragraph (10) of subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8); provided that all such payments shall be subject to and dependent upon appropriation by the State Legislature.

All surcharges collected by the courts as plan surcharges pursuant to subparagraph (a) of paragraph (2) of this subsection b. shall be forwarded not less frequently than monthly to the Division of Revenue. The Division of Revenue shall transfer: all such surcharges received prior to July 1, 2006: to the General Fund, and commencing July 1, 2006, all such surcharges to the Unsafe Driving Surcharge Revenue Fund established pursuant to section 5 of the "Motor Vehicle Surcharges Securitization Act of 2004." P.L.2004, c. (C.) (now pending before the Legislature as this bill) to be applied as set forth in section 5 of that act. From and after such time as all bonds (including refunding bonds), notes and other obligations issued under section 4 of the "Motor Vehicle Surcharges Securitization Act of 2004." P.L.2004, c. (C.) (now pending before the Legislature as this bill), and the costs thereof are discharged and no longer outstanding, all such plan surcharges collected by the courts pursuant to subparagraph (a) of paragraph (2) of this subsection b. and forwarded to the Division of Revenue shall be transferred to the General Fund.

Upon request, the Administrative Office of the Courts shall provide a monthly report to the Division of Revenue containing information on the number of convictions for the offense of unsafe driving pursuant to section 1 of P.L.2000, c.75 (C.39:4-97.2) that were entered during such month, the amount of the surcharges that were assessed by the courts pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2) for such month, and the amount of the surcharges collected by the courts pursuant to subsection f. section 1 of P.L.2000, c.75 (C.39:4-97.2) during such month.

(3) In addition to any other authority provided in P.L.1983, c.65 (C.17:29A-33 et al.), the commissioner, after consultation with the commission, is specifically authorized (a) (Deleted by amendment, P.L.1994, c.64), (b) to impose, in accordance with subparagraph (a) of paragraph (1) [(a)] of this subsection b., surcharges for motor vehicle violations or convictions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes, or (c) to reduce the number of points for which surcharges may be assessed below the level provided in subparagraph (a) of paragraph (1) [(a)] of this subsection b., except that the dollar amount of all surcharges levied under the New Jersey Merit Rating Plan shall be uniform on a Statewide basis for each filer, without regard to classification or territory. Surcharges adopted by the commissioner on or after January 1, 1984 for motor vehicle violations or convictions for which motor vehicle points are not assessable under Title 39 of the Revised Statutes shall not be retroactively applied but shall take effect on the date of the New Jersey Register in which notice of adoption appears or the effective date set forth in that notice, whichever is later.

c. No motor vehicle violation surcharges shall be levied on an automobile insurance policy issued or renewed on or after January 1, 1984, except in accordance with the New Jersey Merit Rating Plan, and all surcharges levied thereunder shall be assessed, collected and distributed in accordance with subsection b. of this section.

d. (Deleted by amendment, P.L.1990, c.8.)

e. The Commissioner of Banking and Insurance and the commission as may be appropriate, shall adopt any rules and regulations necessary or appropriate to effectuate the purposes of this section.

(cf: P.L.2003, c.13, s.31)

11. There is hereby created in the Department of the Treasury a separate nonlapsing fund to be known as the Motor Vehicle Surcharges Securitization Fund. Revenue derived from bonds issued under the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c. (C.) (now pending before the Legislature as this bill) may be deposited into the Motor Vehicle Surcharge Securitization Fund and balances therein may be transferred to the General Fund.

12. The provisions of this act shall be severable, and if any of the provisions hereof shall be held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of any of the remaining provisions of this act.

13. This act shall take effect immediately.

STATEMENT

This bill increases the existing motor vehicle insurance surcharge imposed upon drivers who have accumulated six or more motor vehicle penalty points in the preceding 36 month period from $100 to $150. Each additional point is assessed $25 as under current law.

The bill also authorizes the New Jersey Economic Development Authority to issue bonds, notes, and other obligations payable primarily from collections on or after July 1, 2006 of the new surcharge for unsafe driving, created pursuant to separate legislation amending P.L.2000, c.75 (C.39:4-97.2) to establish a new surcharge of $250.00 for each conviction for unsafe driving. The proceeds of these bonds, notes, and other obligations are to be made available to the State Treasurer for any State fiscal year beginning on or after July 1, 2004, to the extent anticipated as revenues in such fiscal year, to be used for any lawful purpose of the State. Existing plan surcharges are presently pledged, and the increased point surcharges described above will be pledged, to pay debt service on the authority's outstanding Market Transition Facility Bonds and Motor Vehicle Commission Bonds. Any excess existing plan surcharges (including the increased point surcharges described above) collected from and after July 1, 2006 will also be pledged to secure the bonds authorized by this bill.

All surcharges, existing and new, that are collected in each fiscal year in excess of the amounts required to pay the outstanding Market Transition Facility Bonds and Motor Vehicle Commission Bonds of the authority and the bonds authorized by this bill will be returned to the General Fund of the State. All payments on the bonds authorized by this bill are subject to appropriations being made from time to time by the State Legislature, and no such payments may be made from the State's General Fund.

The "Motor Vehicle Surcharges Securitization Act of 2004."

A-3109
cohen

AN ACT authorizing the issuance of motor vehicle surcharges securitization bonds, notes or other obligations by the New Jersey Economic Development Authority for the purposes of providing revenue to meet appropriations in any State fiscal year commencing on or after July 1, 2004, providing a source of payment and security for such bonds, notes or other obligations, supplementing P.L.1974, c.80 (C.34:1B-1 et seq.) and amending P.L.1994, c.57 and P.L.1983, c.65.

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

1. (New section) This act shall be known and may be cited as the "Motor Vehicle Surcharges Securitization Act of 2004."

2. (New section) The following words or terms as used in this act shall have the following meanings unless a different meaning clearly appears from the context:

"Authority" means the New Jersey Economic Development Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

"Bonds" means any bonds, notes or other obligations issued or entered into by the authority pursuant to this act;

"Dedicated Motor Vehicle Surcharge Revenues" means:

a. on and after July 1, 2006, moneys required to be transferred to the Motor Vehicle Surcharges Revenue Fund from the Facility Revenue Fund pursuant to subsection b. of section 7 of P.L.1994, c.57 (C.34:1B-21.7),

b. on and after July 1, 2006, all Unsafe Driving Surcharges required to be transferred to the Motor Vehicle Surcharges Revenue Fund from the Unsafe Driving Surcharges Fund pursuant to section 5 of this act, and

c. after such time as all Market Transition Facility bonds, notes and obligations and all New Jersey Motor Vehicle Commission bonds, notes and obligations issued pursuant to section 4 of P.L.1994, c.57 (C.34:1B-21.4), and the costs thereof are discharged and no longer outstanding, all other plan surcharges collected by the commission pursuant to subsection b. of section 6 of P.L.1983, c. 65 (C.17:29A-35) and required to be transferred to the Motor Vehicle Surcharges Revenue Fund from the DMV Surcharge Fund pursuant to section 12 of P.L.1994, c.57 (C.34:1B-21.12);

"Division of Motor Vehicles Surcharge Fund" or "DMV Surcharge Fund" means the fund created pursuant to section 12 of P.L.1994, c.57 (C.34:1B-21.12);

"Market Transition Facility Revenue Fund" or "Facility Revenue Fund" means the fund created pursuant to section 7 of P.L.1994, c.57 (C.34:1B-21.7);

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

Matter underlined thus is new matter.

"Motor Vehicle Surcharges Revenue Fund" means the fund within the authority created and established pursuant to section 6 of this act.

"Motor Vehicle Surcharges Securitization Proceeds Fund" means the fund created and established pursuant to section 3 of this act;

"Refunding Bonds" means any bonds, notes or other obligations issued by the authority to refinance bonds, notes or other obligations previously issued by the authority pursuant to this act;

"Unsafe Driving Surcharges Fund" means the fund within the Department of the Treasury created and established pursuant to section 5 of this act; and

"Unsafe Driving Surcharges" means the revenues received by the State resulting from the plan surcharges established as such pursuant to subparagraph (a) of paragraph (2) of subsection b. of section 6 of P.L.1983, c.65 (C.17:29A-35) and assessed and collected pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2) for convictions for unsafe driving pursuant to that section.

3. (New section) a. The authority shall establish and maintain a special nonlapsing fund to be known as the "Motor Vehicle Surcharges Securitization Proceeds Fund" into which shall be deposited the following moneys:

(1) the proceeds from the sale of all bonds (other than refunding bonds) issued by the authority pursuant to this act which are remaining after any required deposit to any reserve or other fund established for such bonds or refunding bonds in accordance with subsection a. of section 4 of this act and after the payment of all costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of such bonds or refunding bonds;

(2) any amounts which shall be appropriated by the State Legislature for the purposes of such fund; and

(3) any other amounts or funds which the authority shall determine to deposit into such fund. Moneys on deposit in the Motor Vehicle Surcharges Securitization Proceeds Fund shall be invested in such obligations as the authority may determine or as shall otherwise be provided in any contract between the authority and the State Treasurer authorized and entered into pursuant to section 7 of this act, and interest or other earnings on any such investments shall be credited to such fund.

b. Amounts on deposit in the Motor Vehicle Surcharges Securitization Proceeds Fund shall be withdrawn by the authority from time to time, upon written request of the State Treasurer or as otherwise provided in any contract between the authority and the State Treasurer authorized and entered into pursuant to section 7 of this act, and paid to the State Treasurer for deposit either into the General Fund of the State or into the Motor Vehicle Surcharges Securitization Fund, as determined by the State Treasurer, and used for any lawful purpose of the State for which moneys on deposit in the General Fund

may be used. All amounts withdrawn from the Motor Vehicle Surcharges Securitization Proceeds Fund and deposited into the General Fund of the State as provided in this paragraph shall represent financial resources and revenues of the State upon deposit into the General Fund. Notwithstanding any provision of this subparagraph to the contrary, the State Treasurer shall not request the authority to pay, and the authority shall not pay, to the State Treasurer during any State fiscal year for deposit into the General Fund of the State, amounts on deposit in the Motor Vehicle Surcharges Securitization Proceeds Fund which are in excess of the amounts anticipated as revenues from that fund as certified by the Governor pursuant to Article VIII, Section II, paragraph 2 of the State Constitution for the State annual appropriation act for such State fiscal year, and as may be applicable for such annual appropriation act as may be amended and supplemented from time to time.

4. Notwithstanding the provisions of any law, rule, regulation or order to the contrary:

a. The authority shall have the power, pursuant to and in accordance with the provisions of this act and P.L.1974, c.80 (C.34:1B-1 et seq.), to issue bonds and refunding bonds, incur indebtedness and borrow money secured, in whole or in part, by money received pursuant to this act for the purpose of providing funds:

(1) for deposit into the Motor Vehicle Surcharges Securitization Proceeds Fund;

(2) in the case of refunding bonds, to apply to the refunding, purchase or payment of any bonds issued pursuant to this act;

(3) to fund any capitalized interest on such bonds or refunding bonds;

(4) to fund any reserve or other fund as may be established by the authority for such bonds or refunding bonds and to further secure such bonds and refunding bonds as may be determined by the authority; and

(5) to pay all costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of such bonds or refunding bonds.

b. The authority may, in any resolution authorizing the issuance of bonds or refunding bonds issued by the authority pursuant to this act, or the execution and delivery of any agreement authorized pursuant to subsection c. of this section, pledge the amounts from time to time on deposit in the Motor Vehicle Surcharges Revenue Fund and any contract entered into with the State Treasurer pursuant to section 7 of this act, or any part thereof, to secure the payment, purchase or redemption of the bonds or refunding bonds issued pursuant to this act or any obligations of the authority under any agreement entered into pursuant to subsection c. of this section, and covenant as to the use and disposition of money on deposit in the Motor Vehicle Surcharges

Revenue Fund for payments of bonds and refunding bonds. All costs, fees and other expenses related to, or incurred by the authority or the State in connection with, the issuance of bonds or refunding bonds by the authority for the purposes set forth in this act may be paid by the authority from amounts it receives from the proceeds of the bonds or refunding bonds and from amounts it receives pursuant to sections 5 and 7 of this act, section 7 of P.L.1994, c.57 (C.34:1B-21.7) and section 12 of P.L.1994, c.57 (C.34:1B-21.12), which costs, fees and other expenses may include, but are not limited to, any initial or annual administrative costs and fees of the authority attributable to any bonds or refunding bonds issued pursuant to this act, all legal, accounting, trustee or other professional fees, costs and expenses, all other costs, fees and expenses (including, but not limited to, termination payments) attributable to any agreement, contract or other commitment described in subsection c. of this section and any required rebate or other payment to the United States of America. The bonds or refunding bonds shall be authorized by resolution adopted by the authority, which shall stipulate the manner of execution and form of the bonds, whether the bonds or refunding bonds are to be issued in one or more series, the date or dates of issue, time or times of maturity, which shall not exceed 40 years, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates, and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, conversion or registration privileges, the sources and medium of payment and place or places of payment, terms of redemption, privileges of exchangeability or interchangeability, and entitlement to priorities of payment or security in the amounts to be received by the authority pursuant to sections 5 and 6 of this act. The bonds may be sold at a public or private sale at a price or prices determined by the authority. The authority is authorized to enter into any agreements necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds or refunding bonds to any person and to comply with the laws of any jurisdiction relating thereto.

c. In connection with any bonds or refunding bonds issued or to be issued pursuant to this act, the authority may also enter into any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure, or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements and other security agreements approved by the authority.

d. No resolution adopted by the authority authorizing the issuance of bonds or refunding bonds pursuant to this act shall be adopted or

otherwise made effective without the approval in writing of the State Treasurer. Except as provided by subsection i. of section 4 of P.L.1974, c.80 (C.34:1B-4), bonds or refunding bonds may be issued without obtaining the consent of any department, division, commission, board, bureau or agency of the State, other than the approval as required by this subsection, and without any other proceedings or the occurrence of any other conditions or other things other than those proceedings, conditions or things which are specifically required by this act.

e. Bonds and refunding bonds issued by the authority pursuant to this act shall be special and limited obligations of the authority payable from, and secured by, such funds and moneys determined by the authority in accordance with this section. Neither the members of the authority nor any other person executing the bonds or refunding bonds shall be personally liable with respect to payment of interest and principal on these bonds or refunding bonds. Bonds or refunding bonds issued pursuant to the provisions of this act shall not be a debt or liability of the State or any agency or instrumentality thereof, other than a special and limited obligation of the authority, either legal, moral or otherwise, and nothing contained in this act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the State or any political subdivision thereof, other than the authority, and all bonds and refunding bonds issued by the authority shall contain a statement to that effect on their face.

f. The authority is authorized to engage, subject to the approval of the State Treasurer and in such manner as the State Treasurer shall determine, the services of bond counsel, financial advisors and experts, placement agents, underwriters, trustees, verification agents, remarketing agents, auction agents, broker-dealers, appraisers, and such other advisors, consultants and agents as may be necessary to effectuate the purposes of this act.

g. All bonds or refunding bonds issued by the authority pursuant to this act are deemed to be issued by a body corporate and politic of the State for an essential governmental purpose, and the interest thereon and the income derived from all funds, revenues, incomes and other moneys received for or to be received by the authority and pledged and available to pay or secure the payment of bonds or refunding bonds and the interest thereon, shall be exempt from all taxes levied pursuant to the provisions of Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, except for transfer inheritance and estate taxes levied pursuant to Subtitle 5 of Title 54 of the Revised Statutes.

h. The State hereby pledges and covenants with the holders of any bonds or refunding bonds issued pursuant to the provisions of this act, that it will not limit or alter the rights or powers vested in the authority by this act, nor limit or alter the rights or powers of the State

Treasurer in any manner which would jeopardize the interest of the holders or any trustee of such holders, or inhibit or prevent performance or fulfillment by the authority or the State Treasurer with respect to the terms of any agreement made with the holders of these bonds or refunding bonds or agreements made pursuant to subsection c. of this section, except that the failure of the State Legislature to appropriate moneys for any purpose of this act shall not be deemed a violation of this section.

i. Notwithstanding any restriction contained in any other law, rule, regulation or order to the contrary, the State and all political subdivisions of this State, their officers, boards, commissioners, departments or other agencies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest any sinking funds, moneys or other funds, including capital, belonging to them or within their control, in any bonds or refunding bonds issued by the authority under the provisions of this act; and said bonds and refunding bonds are hereby made securities which may properly and legally be deposited with, and received by any State or municipal officers or agency of the State, for any purpose for which the deposit of bonds or other obligations of the State is now, or may hereafter be, authorized by law.

5. There is hereby established in the Department of the Treasury a special nonlapsing fund to be known as the "Unsafe Driving Surcharges Fund" which, beginning July 1, 2006, shall be comprised of all unsafe driving surcharges and any interest or other income earned thereon. Moneys in the Unsafe Driving Surcharges Fund shall be managed and invested by the Division of Investment in the Department of the Treasury. All moneys in the Unsafe Driving Surcharges Fund shall be disbursed not less frequently than monthly by the State Treasurer, upon appropriation, to the Motor Vehicle Surcharges Revenue Fund until all bonds and refunding bonds issued or entered into pursuant to section 4 of this act and the costs thereof have been paid in full.

6. a. There is created within the authority a special nonlapsing fund, to be known as the "Motor Vehicle Surcharges Revenue Fund." The Motor Vehicle Surcharges Revenue Fund shall consist of:

(1) such moneys as may be appropriated to the Motor Vehicle Surcharges Revenue Fund by the Legislature and paid to the authority by the State Treasurer from Dedicated Motor Vehicle Surcharges

Revenues;

(2) interest or other income derived from the investment of moneys in the Motor Vehicle Surcharges Revenue Fund; and

(2) any other moneys as may be deposited from time to time, except that such moneys shall not be appropriated from the General Fund.

b. In each State fiscal year during which the authority has outstanding bonds or refunding bonds which have been issued pursuant to this act, moneys in the Motor Vehicle Surcharges Revenue Fund may be used by the authority, in accordance with the provisions of any bond resolutions authorizing the issuance of bonds or refunding bonds pursuant to this act and any contract between the authority and the State Treasurer authorized and entered into pursuant to section 7 of this act, to pay debt service payable on the authority's then outstanding bonds or refunding bonds issued pursuant to this act and any amounts due in connection with any agreements entered into pursuant to subsection c. of section 4 of this act due in such fiscal year, to replenish any reserve or other fund established for such bonds or refunding bonds issued in accordance with subsection a. of section 4 of this act, and to pay any and all other additional amounts as shall be authorized by this act and required to be paid by the authority during such fiscal year, provided however, that the payment of all such amounts to the authority by the State Treasurer shall be subject to and dependent upon appropriations being made from time to time by the Legislature of the amounts thereof for the purposes of this act. Notwithstanding any other provision of any law, rule, regulation or order to the contrary, the authority shall be paid only such amounts as shall be required by the provisions of any contract between the authority and the State Treasurer authorized and entered into pursuant to section 7 of this act and the incurrence of any obligation of the State under any such contract, including any payments to be made thereunder, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

c. In each fiscal year beginning on or after July 1, 2006, all amounts on deposit in the Motor Vehicle Surcharges Revenue Fund in excess of the amount necessary to pay any amounts required to be paid by the authority pursuant to any bond resolutions authorizing the issuance of bonds or refunding bonds pursuant to this act or pursuant to any contract between the authority and the State Treasurer authorized or entered into pursuant to section 7 of this act and payable during such fiscal year shall be transferred to the General Fund, provided that the first $7,500,000 of such moneys so transferred in each fiscal year shall be remitted to the "Alcohol Treatment Programs Fund" created in section 2 of P.L.2001, c.48 (C.26:2B-9.2).

7. The State Treasurer and the authority are authorized to enter

into one or more contracts to implement the payment arrangement that is provided for in section 5 of this act. The contract or contracts shall provide for payment by the State Treasurer of the dedicated motor vehicle surcharge revenues and shall set forth the procedure for the transfer of moneys for the purpose of paying such amounts. The contract or contracts shall contain such terms and conditions as are determined by the authority and the State Treasurer, and shall include, but not be limited to, terms and conditions necessary and desirable to secure any bonds or refunding bonds of the authority issued under and pursuant to this act and the obligations of the authority under any agreement entered into pursuant to subsection c. of section 4 of this act; provided however, that notwithstanding any other provision of any law, rule, regulation or order to the contrary, the authority shall be paid only such amounts as shall be required by the provisions of any contract or contracts, and the incurrence of any obligation of the State under any such contract or contracts, including any payments to be made thereunder from the dedicated motor vehicle surcharge revenues, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for the purposes of this act.

8. Section 7 of P.L.1994, c.57 (C.34:1B-21.7) is amended to read as follows:

7. There is created within the authority a special nonlapsing fund, to be known as the "Market Transition Facility Revenue Fund." The Facility Revenue Fund shall consist of:

a. Such moneys as may be transferred to the Facility Revenue Fund by the State Treasurer, upon appropriation by the Legislature, pursuant to section 14 of [this act] P.L.1994, c.57 (C.34:1B-21.14);

b. Such moneys as may be appropriated to the Facility Revenue Fund by the Legislature from surcharges levied pursuant to the provisions of subsection b. of section 6 of P.L.1983, c.65 (C.17:29A-35), except that any such moneys in excess of the amounts required to be used by the authority pursuant to any bond resolutions authorizing the issuance of Market Transition Facility bonds and notes, the authority's agreement with the State Treasurer authorized by section 13 of [this act] P.L.1994, c.57 (C.34:1B-21.13) and any bond resolutions authorizing the issuance of Motor Vehicle Commission bonds and notes shall be at least annually remitted

(1) in each fiscal year commencing prior to July 1, 2006, to the General Fund provided that the first $7,500,000 of such moneys so transferred in each such fiscal year shall be remitted to the "Alcohol Treatment Programs Fund" created in section 2 of P.L.2001, c.48 (C.26:2B-9.2); and

(2) in each fiscal year commencing on or after July 1, 2006, to the Motor Vehicle Surcharges Revenue Fund established pursuant to section 6 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c. (C.) (now pending before the Legislature

as this bill), to be applied as set forth therein, until such time as all bonds, notes and other obligations issued or entered into pursuant to section 4 of P.L.2004, c. (C.) (now pending before the Legislature as this bill) and the costs thereof are discharged and no longer outstanding;

c. Interest or other income derived from the investment of moneys in the Facility Revenue Fund; and

d. Any other moneys as may be deposited from time to time, except that such moneys shall not be appropriated from the General Fund.

Moneys in the Facility Revenue Fund shall be managed and invested by the Division of Investment in the Department of the Treasury.
(cf: P.L.2003, c.13, s.114)

9. Section 12 of P.L.1994, c.57 (C.34:1B-21.12) is amended to read as follows:

12. There is created within the Department of the Treasury a special nonlapsing fund to be known as the "Division of Motor Vehicles Surcharge Fund," which, beginning September 1, 1996 or earlier as provided pursuant to this section, shall be comprised of moneys transferred to the DMV Surcharge Fund from the Market Transition Facility which, notwithstanding the provisions of this section to the contrary, may be appropriated, immediately upon receipt from the Market Transition Facility, by the Legislature to the Facility Revenue Fund and all moneys collected pursuant to subsection b. of section 6 of P.L.1983, c.65 (C.17:29A-35) and any interest or other income earned thereon. Moneys in the DMV Surcharge Fund shall be managed and invested by the Division of Investment in the Department of the Treasury. Commencing September 1, 1996, or at such earlier time as may be certified by the commissioner that moneys on deposit in the New Jersey Automobile Insurance Guaranty Fund created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5) are sufficient to satisfy the current and anticipated financial obligations of the New Jersey Automobile Full Insurance Underwriting Association, the moneys in the DMV Surcharge Fund shall be disbursed from time to time by the State Treasurer, upon appropriation by the Legislature, to the Market Transition Facility Revenue Fund, for payment of principal, interest and premium on the Market Transition Facility bonds or notes and New Jersey Motor Vehicle Commission bonds or notes issued by the authority pursuant to section 4 of P.L.1994, c.57 (C.34:1B-21.4). [From the amounts remaining in the fund after these payments are fully defrayed, there shall be remitted to the fund created in section 2 of P.L.2001, c.48 (C.26:2B-9.2), $ 1.5 million in Fiscal Year 2002, $ 3 million in Fiscal Year 2003, $ 4.5 million in Fiscal Year 2004, $ 6 million in Fiscal Year 2005, and $ 7.5 million in Fiscal Year 2006 and each fiscal year thereafter.] From and after such time as all Market Transition Facility bonds, notes and obligations and all New Jersey

Motor Vehicle Commission bonds, notes and obligations issued pursuant to section 4 of P.L.1994, c.57 (C.34:1B-21.4) and the costs thereof are discharged and no longer outstanding, all amounts on deposit in the DMV Surcharge Fund shall be disbursed from time to time by the State Treasurer, upon appropriation by the Legislature, to the Motor Vehicle Surcharges Revenue Fund established pursuant to section 6 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c. (C.) (now pending before the Legislature as this bill) to be applied as set forth in section 6 of P.L.2004, c. (C.) (now pending before the Legislature as this bill) until such time as all bonds (including refunding bonds), notes and other obligations issued or entered into pursuant to section 4 of P.L.2004, c. (C.) (now pending before the Legislature as this bill) and the costs thereof are discharged and no longer outstanding.
(cf: P.L.2003, c.13, s.118)

10. Section 6 of P.L.1983, c.65 (C.17:29A-35) is amended to read as follows:

6. a. (Deleted by amendment, P.L.1997, c.151.)

b. There is created a New Jersey Merit Rating Plan which shall apply to all drivers and shall include, but not be limited to, the following provisions

(1) (a) Plan surcharges shall be levied, beginning on or after January 1, 1984, by the New Jersey Motor Vehicle Commission (hereafter the "commission") established by section 4 of P.L.2003, c.13 (C.39:2A-4) on any driver who, in the preceding 36-month period, has accumulated six or more motor vehicle points, as provided in Title 39 of the Revised Statutes; except that the allowance for a reduction of points in Title 39 of the Revised Statutes shall not apply for the purpose of determining surcharges under this paragraph. The accumulation of points shall be calculated as of the date the point violation is posted to the driver history record and shall be levied pursuant to rules promulgated by the commission. Surcharges assessed pursuant to this paragraph shall be [$100.00] $150.00 for six points, and $25.00 for each additional point. No offense shall be selected for billing which occurred prior to February 10, 1983. No offense shall be considered for billing in more than three annual assessments.

(b) (Deleted by amendment, P.L.1984, c.1.)

(2) (a) Plan surcharges shall be levied pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2) for each offense of unsafe driving under subsection a. of that section.

(b) Plan surcharges shall be levied for convictions [(a)] (i) under R.S.39:4-50 for violations occurring on or after February 10, 1983, and [(b)] (ii) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or for offenses committed in other jurisdictions of a substantially similar nature to those under R.S.39:4-50 or section 2 of P.L.1981, c.512

such person, if shown in the certificate; the amount of the debt so certified; a reference to the statute under which the surcharge is assessed, and the date of making such entries. The docketing of the entries shall have the same force and effect as a civil judgment docketed in the Superior Court, and the commission shall have all the remedies and may take all of the proceedings for the collection thereof which may be had or taken upon the recovery of a judgment in an action, but without prejudice to any right of appeal. Upon entry by the clerk of the certificate in the record of docketed judgments in accordance with this provision, interest in the amount specified by the court rules for post-judgment interest shall accrue from the date of the docketing of the certificate, however payment of the interest may be waived by the commission or its designee. In the event that the surcharge remains unpaid following the issuance of the certificate of debt and the commission takes any further collection action including referral of the matter to the Attorney General or his designee, the fee imposed, in lieu of the actual cost of collection, may be 20 percent of surcharges of $1,000 or more. The administrator or his designee may establish a sliding scale, not to exceed a maximum amount of $200, for surcharge principal amounts of less than $1,000 at the time the certificate of debt is forwarded to the Superior Court for filing. The commission shall provide written notification to a driver of the proposed filing of the certificate of debt at least 10 days prior to the proposed filing; such notice shall be mailed to the driver's last address of record with the commission. If a certificate of debt is satisfied following a credit card payment, debit card payment or payment by other electronic payment device and that payment is reversed, a new certificate of debt shall be filed against the surcharged driver unless the original is reinstated.

If the administrator or his designee approves a special payment plan for repayment of the certificate of debt, and the driver is complying with the approved plan, the plan may be continued for any new surcharge not part of the certificate of debt.

All moneys collectible by the commission under subparagraph (b) of paragraph (2) of this subsection b. shall be billed and collected by the commission except as provided in P.L.1997, c.280 (C.2B:19-10 et al.) for the collection of unpaid surcharges. Commencing on September 1, 1996, or such earlier time as the Commissioner of Banking and Insurance shall certify to the State Treasurer that amounts on deposit in the New Jersey Automobile Insurance Guaranty Fund are sufficient to satisfy the current and anticipated financial obligations of the New Jersey Automobile Full Insurance Underwriting Association, all plan surcharges collected by the commission under subparagraph (b) of paragraph (2) of this subsection b. shall be remitted to the Division of Motor Vehicles Surcharge Fund;

(i) for transfer to the Market Transition Facility Revenue Fund, as provided in section 12 of P.L.1994, c.57 (C.34:1B-21.12), for the

(C.39:4-50.4a), for violations occurring on or after January 26, 1984. Except as hereinafter provided, surcharges under this [paragraph] subparagraph (b) shall be levied annually for a three-year period, and shall be $1,000.00 per year for each of the first two convictions, for a total surcharge of $3,000 for each conviction, and $1,500.00 per year for the third conviction occurring within a three-year period, for a total surcharge of $4,500 for the third conviction. If a driver is convicted under both R.S.39:4-50 and section 2 of P.L.1981, c.512 (C.39:4-50.4a) for offenses arising out of the same incident, the driver shall be assessed only one surcharge for the two offenses.

If, upon written notification from the commission or its designee, mailed to the last address of record with the commission, a driver fails to pay a surcharge levied under subparagraph (b) of paragraph (2) this subsection b., the driving privilege of the driver shall be suspended forthwith until the minimum payment requirement as set forth by rule by the commission is paid to the commission; except that the commission may authorize payment of the surcharge on an installment basis over a period not to exceed 12 months for assessments under $2,300 or 24 months for assessments of $2,300 or more. If a driver fails to pay the surcharge or any installments on the surcharge, the total surcharge shall become due immediately, except as otherwise prescribed by rule of the commission.

The commission may authorize any person to pay the surcharge levied under this section and collectible by the commission by use of a credit card, debit card or other electronic payment device, and the administrator is authorized to require the person to pay all costs incurred by the commission in connection with the acceptance of the credit card, debit card or other electronic payment device. If a surcharge or related administrative fee is paid by credit or debit cards or any other electronic payment device and the amount is subsequently reversed by the credit card company or bank, the driving privilege of the surcharged driver shall be suspended and the driver shall be subject to the fee imposed for dishonored checks pursuant to section 31 of P.L.1994, c.60 (C.39:5-36.1).

In addition to any other remedy provided by law, the commission is authorized to utilize the provisions of the SOIL (Set off of Individual Liability) program established pursuant to P.L.1981, c.239 (C.54A:9-8.1 et seq.) to collect any surcharge levied under this section that and collectible by the commission is unpaid on or after the effective date of this act. As an additional remedy, the commission may issue a certificate to the Clerk of the Superior Court stating that the person identified in the certificate is indebted under this surcharge law in such amount as shall be stated in the certificate. The certificate shall reference the statute under which the indebtedness arises. Thereupon the clerk to whom such certificate shall have been issued shall immediately enter upon the record of docketed judgments the name of such person as debtor; the State as creditor; the address of

purposes of section 4 of P.L.1994, c.57 (C.34:1B-21.4) until such a time as all the Market Transition Facility bonds, notes and obligations and all Motor Vehicle Commission bonds, notes and obligations issued pursuant to that section 4 of P.L.1994, c.57 (C.34:1B-21.4) and the costs thereof are discharged and no longer outstanding[. From]; and

(ii) from and after the date of certification by the Commissioner of Banking and Insurance that the moneys collectible under subparagraph (b) of paragraph (2) of this subsection b. are no longer needed to fund the association or at such [a] time as all Market Transition Facility bonds, notes and obligations and all Motor Vehicle Commission bonds, notes and obligations issued pursuant to section 4 of P.L.1994, c.57 (C.34:1B-21.4) and the costs thereof are discharged and no longer outstanding [moneys collectible under this subsection] , for transfer to the Motor Vehicle Surcharges Revenue Fund established pursuant to section 6 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c. (C.) (now pending before the Legislature as this bill) to be applied as set forth in section 6 that act. From and after such time as all bonds issued under section 4 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c. (C.) (now pending before the Legislature as this bill) and the costs thereof are discharged and no longer outstanding, all plan surcharges collected by the commission under subparagraph (b) of paragraph (2) of this subsection b. shall, subject to appropriation, be remitted to the New Jersey Property-Liability Insurance Guaranty Association created pursuant to section 6 of P.L.1974, c.17 (C.17:30A-6) to be used for payment of any loans made by that association to the New Jersey Automobile Insurance Guaranty Fund pursuant to paragraph (10) of subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8); provided that all such payments shall be subject to and dependent upon appropriation by the State Legislature.

All surcharges collected by the courts as plan surcharges pursuant to subparagraph (a) of paragraph (2) of this subsection b. shall be forwarded not less frequently than monthly to the Division of Revenue. The Division of Revenue shall transfer: all such surcharges received prior to July 1, 2006 to the General Fund, and commencing July 1, 2006, all such surcharges to the Unsafe Driving Surcharge Revenue Fund established pursuant to section 5 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c. (C.) (now pending before the Legislature as this bill) to be applied as set forth in section 5 of that act. From and after such time as all bonds (including refunding bonds), notes and other obligations issued under section 4 of the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c. (C.) (now pending before the Legislature as this bill), and the costs thereof are discharged and no longer outstanding, all such plan surcharges collected by the courts pursuant to subparagraph (a) of paragraph (2) of this subsection b. and forwarded to the Division of Revenue shall be transferred to the General Fund.

Upon request, the Administrative Office of the Courts shall provide a monthly report to the Division of Revenue containing information on the number of convictions for the offense of unsafe driving pursuant to section 1 of P.L.2000, c.75 (C.39:4-97.2) that were entered during such month, the amount of the surcharges that were assessed by the courts pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2) for such month, and the amount of the surcharges collected by the courts pursuant to subsection f. section 1 of P.L.2000, c.75 (C.39:4-97.2) during such month.

(3) In addition to any other authority provided in P.L.1983, c.65 (C.17:29A-33 et al.), the commissioner, after consultation with the commission, is specifically authorized (a) (Deleted by amendment, P.L.1994, c.64), (b) to impose, in accordance with subparagraph (a) of paragraph (1) [(a)] of this subsection b., surcharges for motor vehicle violations or convictions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes, or (c) to reduce the number of points for which surcharges may be assessed below the level provided in subparagraph (a) of paragraph (1) [(a)] of this subsection b., except that the dollar amount of all surcharges levied under the New Jersey Merit Rating Plan shall be uniform on a Statewide basis for each filer, without regard to classification or territory. Surcharges adopted by the commissioner on or after January 1, 1984 for motor vehicle violations or convictions for which motor vehicle points are not assessable under Title 39 of the Revised Statutes shall not be retroactively applied but shall take effect on the date of the New Jersey Register in which notice of adoption appears or the effective date set forth in that notice, whichever is later.

c. No motor vehicle violation surcharges shall be levied on an automobile insurance policy issued or renewed on or after January 1, 1984, except in accordance with the New Jersey Merit Rating Plan, and all surcharges levied thereunder shall be assessed, collected and distributed in accordance with subsection b. of this section.

d. (Deleted by amendment, P.L.1990, c.8.)

e. The Commissioner of Banking and Insurance and the commission as may be appropriate, shall adopt any rules and regulations necessary or appropriate to effectuate the purposes of this section.

(cf: P.L.2003, c.13, s.31)

11. There is hereby created in the Department of the Treasury a separate nonlapsing fund to be known as the Motor Vehicle Surcharges Securitization Fund. Revenue derived from bonds issued under the "Motor Vehicle Surcharges Securitization Act of 2004," P.L.2004, c. (C.) (now pending before the Legislature as this bill) may be deposited into the Motor Vehicle Surcharge Securitization Fund and balances therein may be transferred to the General Fund.

12. The provisions of this act shall be severable, and if any of the provisions hereof shall be held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of any of the remaining provisions of this act.

13. This act shall take effect immediately.

STATEMENT

This bill increases the existing motor vehicle insurance surcharge imposed upon drivers who have accumulated six or more motor vehicle penalty points in the preceding 36 month period from $100 to $150. Each additional point is assessed $25 as under current law.

The bill also authorizes the New Jersey Economic Development Authority to issue bonds, notes, and other obligations payable primarily from collections on or after July 1, 2006 of the new surcharge for unsafe driving, created pursuant to separate legislation amending P.L.2000, c.75 (C.39:4-97.2) to establish a new surcharge of $250.00 for each conviction for unsafe driving. The proceeds of these bonds, notes, and other obligations are to be made available to the State Treasurer for any State fiscal year beginning on or after July 1, 2004, to the extent anticipated as revenues in such fiscal year, to be used for any lawful purpose of the State. Existing plan surcharges are presently pledged, and the increased point surcharges described above will be pledged, to pay debt service on the authority's outstanding Market Transition Facility Bonds and Motor Vehicle Commission Bonds. Any excess existing plan surcharges (including the increased point surcharges described above) collected from and after July 1, 2006 will also be pledged to secure the bonds authorized by this bill.

All surcharges, existing and new, that are collected in each fiscal year in excess of the amounts required to pay the outstanding Market Transition Facility Bonds and Motor Vehicle Commission Bonds of the authority and the bonds authorized by this bill will be returned to the General Fund of the State. All payments on the bonds authorized by this bill are subject to appropriations being made from time to time by the State Legislature, and no such payments may be made from the State's General Fund.

The "Motor Vehicle Surcharges Securitization Act of 2004."

DRINKER BIDDLE & REATH LLP
A Pennsylvania Limited Liability Partnership
500 Campus Drive
Florham Park, New Jersey 07932-1047
Telephone: (973) 360-1100
Facsimile: (973) 360-9831
Attorneys for Plaintiffs

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.**; as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, a citizen and a taxpayer Plaintiffs, v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, COUNTY OF MERCER DOCKET NUMBER MER-L-1633-04 **ORDER**

THIS MATTER having brought before the Court by attorneys for Plaintiffs, Drinker Biddle & Reath, Andrew T. Fede, Esq., and Thaddeus R. Maciag, Esq. and W. Timothy Howes, Esq., and appearing in opposition to the relief sought, Defendants, by and through their attorneys, Peter C. Harvey, Attorney General of New Jersey, Carella Byrne Bain Gilfillan Cecchi Syewart & Olstein, and Dickstein Shapiro Morin & Oshinksy, LLP, and the Court having considered all papers submitted and the arguments of counsel, and for good cause shown,

IT IS, on this 25th day of June, 2004, ORDERED, that:

1) Plaintiffs' request for preliminary injunctive and declaratory relief is denied on ripeness grounds;

2) A hearing on the merits of Defendants' Verified Complaint is scheduled for noon on July 1, 2004, or at such other time that is convenient to the Court;

3) Defendants are ordered to serve and file their Brief on the merits of Defendants' Verified Complaint on or before noon on June 29, 2004;

4) Plaintiffs are ordered to file and serve their Brief in Reply on the merits of Defendants' Verified Complaint by noon on June 30, 2004;

5) The Attorney General is directed to notify Plaintiffs' counsel forthwith once Defendant James E. McGreevey has signed the Fiscal Year 2005 appropriations act and Assembly Bill 3108 and Assembly Bill 3109. In the event that Defendant James E. McGreevey signs the Fiscal Year 2005 appropriations act and Assembly Bill 3108 and Assembly Bill 3109 prior to the July 1, 2004 hearing in this matter,

Plaintiffs may seek a hearing before this Court on 24 hours notice and pursuant to any briefing schedule established by this Court.

Hon. Linda R. Feinberg, A.J.S.C.

A True Copy
JUDE DEL PRETE
Deputy Clerk of Superior Court

SUPERIOR COURT OF N.J.
MERCER COUNTY
RECEIVED AND FILED
JUL 1 2004

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Defendants Governor James E. McGreevey and State Treasurer John E. McCormac
R.J. Hughes Justice Complex
P.O. Box 112
25 Market Street
Trenton, New Jersey 08625

By: Patrick DeAlmeida
Deputy Attorney General
(609) 292-8576

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.**, as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, a citizen and a taxpayer, Plaintiffs, v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**; **HONORABLE RICHARD J. CODEY**, President of the New Jersey Senate; and **HONORABLE ALBIO SIRES**, Speaker of the New Jersey General Assembly, Defendants.	**SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION, COUNTY OF MERCER** **DOCKET NUMBER MER-L-1633-04** **ORDER**

THIS MATTER having been brought before the Court by Plaintiffs Lance, DeCroce, and Kyrillos, by and through their attorneys Drinker Biddle & Reath, Mark D. Sheridan, Esq., appearing, and plaintiff Lonegan, by and through his attorneys Contant Atkins & Fede, LLC, Andrew T. Fede, Esq., appearing, and plaintiff Schundler, by and through his attorneys Maciag & Associates, Thaddeus R. Maciag, Esq., appearing and Howes & Howes, W. Timothy Howes, Esq., appearing, and opposition to the relief sought having been presented by Defendants Governor James E. McGreevey, and State Treasurer John E. McCormac, by and through their attorneys, Peter C. Harvey, Attorney General of New Jersey, Nancy Kaplen, Assistant Attorney General, appearing, and Defendant New Jersey Economic Development Authority, by and through its attorneys Carella Byrne Bain Gilfillan Cecchi Stewart & Olstein, James E. Cecchi, Esq., appearing, and Dickstein Shapiro Morin & Oshinksy, LLP, Howard Graff, Esq., appearing, and defendants Senate President Richard J. Codey, and Assembly Speaker Albio Sires, by and through their attorneys, Sokol, Behot and Fiorenzo, Leon J. Sokol, Esq., appearing, and the Court having considered all papers submitted and the arguments of counsel in open Court on July 1, 2004, and for good cause shown,

IT IS, on this 1st day of July, 2004, ORDERED, that:

1) All relief requested in the Verified Complaint be and hereby is DENIED;

2) The Verified Complaint be and hereby is DISMISSED in its entirety;

3) Judgment be and hereby is entered in favor of defendants declaring L. 2004, c. 68, L. 2004, c. 70, and L. 2004, c.71 constitutional;

4) Plaintiffs' request for a stay of this Court's decision be and hereby is DENIED;

5) IT IS FURTHER ORDERED that a copy of this Order be served on all parties within immediately upon its receipt by defendants' counsel.

Linda R. Feinberg

Hon. Linda R. Feinberg, A.J.S.C.

In accordance with the required statement of R. 1:6-2(a), this motion was
___xx___ opposed _____ unopposed.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; HONORABLE ALEX DeCROCE, as a citizen of New Jersey and a taxpayer; HONORABLE JOSEPH M. KYRILLOS, JR., as a citizen of New Jersey and a taxpayer; HONORABLE BRET SCHUNDLER, as a citizen of New Jersey and a taxpayer; HONORABLE STEVEN M. LONEGAN, as a citizen of New Jersey and a taxpayer; ROBERT LINDMARK, as a citizen of New Jersey and a taxpayer, Plaintiffs, v. HONORABLE JAMES E. McGREEVEY, Governor of the State of New Jersey; HONORABLE JOHN E. McCORMAC, Treasurer of the State of New Jersey, and THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION-MERCER COUNTY DOCKET No.: MER-L-1633-04 CIVIL ACTION OPINION

DECIDED: July 1, 2004

Mark D. Sheridan and Robert M. Leonard, attorneys for the plaintiffs the Honorable Leonard Lance, the Honorable Alex DeCroce, the Honorable Joseph M. Kyrillos, Jr. and Robert Lindmark (Drinker Biddle & Reath, attorneys; Mr. Sheridan, Mr. Leonard, Mark D. Villanueva, James K. Webber, Andrew White, Lauren D. Godfrey and Peter J. Gallagher, on the joint brief).

Andrew T. Fede, attorney for the plaintiff the Honorable Steven M. Lonegan (Constant Atkins & Fede, attorneys; Mr. Fede, on the joint brief).

Thaddeus R. Maciag, attorney for the plaintiff the Honorable Bret Schundler (Maciag & Associates, attorneys; Mr. Maciag, on the joint brief).

W. Timothy Howes, attorney for the plaintiff the Honorable Bret Schundler (Howes & Howes, attorneys; Mr. Howes, on the joint brief).

Peter C. Harvey, Attorney General, attorney for the defendants Governor James E. McGreevey and State Treasurer John E. McCormac (Nancy Kaplen, of counsel; Patrick DeAlmeida, on the brief).

Howard Graff (Dickstein Shapiro Morin & Oshinsky) of the New York bar, admitted pro hac vice for the defendant New Jersey Economic Development Authority (Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein, and Mr. Graff, attorneys; Charles C. Carella, Mr. Graff, Victoria A. Kummer and James E. Cecchi, on the brief).

FEINBERG, A.J.S.C.

BACKGROUND

Plaintiffs Leonard Lance ("Lance"), Alex DeCroce ("DeCroce"), Joseph M. Kyrillos, Jr. ("Kyrillos"), Steven Lonegan ("Lonegan"), Bret Shundler ("Schundler"), and Robert Lindmark ("Lindmark") are six taxpayers residing in New Jersey. Defendants are James E. McGreevey, the Governor of the State of New Jersey ("Governor McGreevey"), John E. McCormac, Treasurer of the State of New Jersey ("Treasurer McCormac") and the New Jersey Economic Development Authority, ("EDA") a public corporation of the State of New Jersey.

Pursuant to Article VIII, Section II, paragraph 2 of the State Constitution ("the Appropriations Clause"), the Legislature has approved and the Governor has signed an Appropriations Act for fiscal year 2005 ("FY05"), which begins on July 1, 2004 and ends on June 30, 2005. Prior to signing the FY05 Appropriations Act, the Governor signed two other measures into law, the Cigarette Tax Securitization Act of 2004 (the "Cigarette Tax Act"), and

the Motor Vehicle Surcharges Securitization Act of 2004 ("Surcharge Act").

The Cigarette Tax Act: 1) authorizes the EDA to issue bonds for sale and to deposit the proceeds from their sale in the newly created "Cigarette Tax Securitization Proceeds Fund"; 2) grants the EDA the authority to withdraw these funds at the request of the State Treasurer and to pay them into the General Fund of the State Treasury, where they may be used by the State for any lawful purpose; 3) identifies the proceeds of the sale of the bonds as revenue of the State upon their transfer to the General Fund at the State Treasurer's request; 4) authorizes the EDA to pledge any contracts entered into with the State Treasurer to secure payment of the bonds; 5) creates in the Department of the Treasury a non-lapsing fund to be known as the "Cigarette Tax Securitization Fund" which is to be funded beginning July 1, 2006, with an amount equal to the dedicated cigarette tax revenues after the payment of any other obligations for which the State has pledged the proceeds of these revenues; 6) provides that the funds contained in the "Cigarette Tax Securitization Fund" may be transferred to the EDA to repay the proposed bond obligations; and 7) provides that the State is only obligated to make these

payments if the State Legislature appropriates funds for this purpose.

The Surcharge Act: 1) authorizes the EDA to issue bonds and deposit the proceeds from their sale in the newly created "Motor Vehicle Surcharges Securitization Proceeds Fund"; 2) grants the EDA the authority to withdraw these funds at the request of the State Treasurer and pay them into the General Fund of the State Treasury where they may be used by the State for any lawful purpose; 3) identifies the proceeds from the sale of the bonds as "revenue" of the State upon their transfer to the General Fund at the State Treasurer's request; 4) authorizes the EDA to pledge any contracts entered into with the State Treasurer to secure payment of the bonds; 5) creates in the Department of the Treasury a non-lapsing fund to be known as the "Unsafe Driving Surcharges Fund" which is to be funded beginning July 1, 2006, with all unsafe driving surcharges; 6) provides that the funds contained in the "Unsafe Driving Surcharges Fund" may be transferred to the EDA to repay the proposed bond obligations; and 7) provides that the State is only obligated to make these such payments if the State Legislature appropriates funds for this purpose.

Pursuant to the terms of the Cigarette Tax Act, the Surcharge Act and the FY05 Appropriations Act, the EDA is

authorized to sell more than $1.9 billion in bonds in the near future and transfer the proceeds of that sale to the General Fund of the State. The State has identified the bond proceeds as anticipated revenue in the FY05 Appropriations Act. The FY05 Appropriations Act, absent the recognition as revenue of this $1.9 billion, would show a deficit of approximately $1.5 billion.

Plaintiffs assert that the FY05 budget, as enacted, will result in the downgrade of New Jersey's bond rating, which will in turn result in negative consequences for the State; to wit, higher interest rates for future issuances of State debt. Plaintiffs claim that the proposed budget violates paragraphs 2 and 3 of Article VIII, Section II of the New Jersey Constitution; respectively, the Appropriations Clause and the Debt Limitation Clause.

Plaintiffs demand judgment against defendants as follows: 1) a declaration that the proceeds from the sale of bonds by the EDA is not "revenue" as that term is used in Article VIII, Section II, paragraph 2 of the New Jersey Constitution and thus, the FY05 Appropriations Act is unconstitutional as the appropriations exceed revenues by roughly $1.5 billion; 2) an order enjoining Governor McGreevey from certifying the proceeds of the sale of the bonds by the EDA as revenue; 3) a declaration that the

proposed sale of bonds by the EDA is unconstitutional as the bonds were not approved by a majority of the legally qualified voters of the State as required by Article VIII, Section II, paragraph 3; 4) an order enjoining the EDA from issuing the bonds authorized by Assembly Bills 3108 and 3109 that were not approved by a majority of the legally qualified voters of the State as is required by Article VIII, Section II, paragraph 3; 5) an order enjoining State Treasurer McCormac from expending any funds either actually received from the sale of the proposed bonds or funds which represent anticipated proceeds from the sale of the proposed bonds; 6) an award of attorney's fees and costs of suit; and 7) such other relief as the court may deem proper and just.

In response, the State asserts that the separation of powers doctrine, as set forth in Article III, paragraph 1, of the State Constitution, precludes judicial interference in the legislative process. The State further asserts that the certification of revenue for the purpose of enacting an appropriations bill is a political question that is not justiciable in the courts. The State submits that the Governor is designated as the executive power in Article V, Section I, paragraph 1 of the State Constitution and that the power to approve bills, including bills that

appropriate funds, is vested solely in the Executive Branch, by virtue of Article V, Section I, paragraph 14(a). Relying on Article VIII, Section II, paragraph 2, of the Constitution, the State claims that in order to enact an Appropriations Bill, the Governor must certify that there will be sufficient revenue either on hand, or anticipated to meet the appropriations enumerated in the annual appropriations act for the upcoming fiscal year.

The parties appeared for oral argument on June 25, 2004. Inasmuch as the Governor had not yet signed the legislation at issue, the court held that the issue was not ripe for determination, denied injunctive relief and postponed ruling on the merits until July 1, 2004. On June 29, 2004, the New Jersey Senate and New Jersey General Assembly filed a notice of motion on short notice to intervene. The court entertained oral argument, telephonically, on June 30, 2004. While the court denied the application to intervene as of right, as set forth in R. 4:33-1, the court granted permissive intervention in accordance with R. 4:33-2 on July 1, 2004 at 10:45 a.m.

ANALYSIS

I. APPROPRIATIONS CLAUSE

Pursuant to Article VIII, Section II, paragraph 2, of the State Constitution, (the "Appropriations Clause"), the Governor must certify that there will be sufficient revenue available to meet the appropriations enumerated in the Appropriations Act. The Legislature has approved and the Governor has signed the Appropriations Act for fiscal year 2005 ("Act"), which begins on July 1, 2004 and ends on June 30, 2005. Plaintiffs assert that the Act is unconstitutional, because the Governor's certification of certain bond proceeds, as "revenue" for purposes of the Act, is unconstitutional.

This court rejects the notion by the State that what constitutes revenue for purposes of the Appropriations Clause of the Constitution is a political question delegated to the Executive Branch, thereby precluding the entry of relief. Furthermore, the argument that the separation of powers doctrine prevents this court from addressing the merits of the case is equally unconvincing. See David v. Vesta Co., 45 N.J. 301, 323-24 (1965).

Clearly, the role of the judiciary in the tripartite form of government is clear. Its principal role is to

interpret and apply the New Jersey Constitution. Communication Workers of America v. Florio, 130 N.J. 439, 449 (1992). The New Jersey Supreme Court has, in fact, declared that the Constitution "is the business of the Courts," and that the Court's interpretive role "is a matter of judicial obligation." White v. North Bergen Twp., 77 N.J. 538, 555 (1978). Pertinent to the case at bar, the New Jersey courts have repeatedly exercised the judicial power to review the constitutionality of legislation under Article VIII, Section II, paragraphs 2 and 3 of the New Jersey Constitution, most recently in Lonegan v. State, 174 N.J. 435 (2000) ("Lonegan I"), and Lonegan v. State, 176 N.J. 2 (2003) ("Lonegan II").

While the court rejects the State's position that the issue of revenue is a political question and that the separation of powers doctrine precludes this court from granting relief, the court is satisfied that for purposes of the Appropriations Clause, the anticipated receipt of $1.9 billion from the sale of bonds constitutes revenue that may be applied to meet appropriations during the next fiscal year.

Article V, Section I, paragraph 14 delegates the authority to approve bills presented by the Legislature to the Governor. See N.J. Const., art. V, § 1, ¶ 14 (b)

through (f). As a component of the Governor's authority to enact legislation, Article VIII, section II, paragraph 2, delegates to the Governor the authority to determine the manner in which to certify revenue sufficient to meet or exceed expenditures in appropriations bills.

Article VIII, Section 2, paragraph 2, of the New Jersey Constitution provides, in relevant part:

> No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year . . . . No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the governor.
>
> [N.J. Const., art. VIII, § 2, ¶ 2.]

This court is satisfied that the FY05 Appropriations Act satisfies the constitutional requirement that revenue on hand, or anticipated for the fiscal year, meet or exceed the expenditures authorized for that period. As certified by the Governor, for purposes of the Appropriations Clause,

the proceeds from the sale of bonds authorized by the Cigarette Tax Act and the Surcharge Act are properly included as revenue when determining whether resources will be available in FY05 to meet or exceed the expenditures approved in the FY05 Appropriations Act.

Nothing in the Appropriations Clause expressly prohibits the Governor from including the proceeds of bond sales by an independent authority as revenue for purposes of enacting an Appropriations bill. The determination of what constitutes revenue on hand and anticipated for a fiscal year is delegated to the Governor with no limiting language, justifying the maximum deference from a reviewing court. The proceeds, once transferred to the General Fund, will be a resource available to satisfy the expenditures authorized by the FY05 Appropriations Act. Therefore, those proceeds constitute revenue.

The Governor's powers are set forth in Article V of the State Constitution. "The members of the Constitutional Convention of 1947 considered the Governor's 'significant responsibilities over the State's fiscal affairs' to be an important aspect of the centralization of the State's finances and essential to efficient modern government operations." Florio, supra, 130 N.J. at 454 (citing City of Camden v. Byrne, 82 N.J. 133, 150 (1980)); see also George

C. Skillman & Sidney Goldmann, The Single Budget, Single State Fund and Single Fiscal Year, (Monograph) 2, Proceedings of the New Jersey Constitutional Convention of 1947, 1668 at 1683-84.

Importantly, had the framers sought to limit the Governor's prerogatives in this regard, they easily could have done so. However, no limitation on the Governor's revenue certification was placed in the Constitution. Instead, the framers merely required that the Governor certify the "revenue on hand and anticipated" to satisfy the expenditures authorized by the Appropriations bill. "Any inquiry to determine the meaning of a constitutional provision necessarily begins with the specific language of that provision." Cambria v. Soaries, 169 N.J. 1, 9 (2001).

Black's Law Dictionary captures the broad meaning of the term revenue in the context of government financial affairs:

> REVENUE
>
> As applied to the income of government, a broad and general term, including all public moneys which the state collects and receives, from whatever source and whatever manner.
>
> [Black's Law Dictionary 1185 (5th ed. 1979).]

The plain meaning of the term revenue certainly includes proceeds from the sale of bonds. Inclusion of the proceeds from the sale of the bonds authorized by the Cigarette Tax Act and Surcharge Act makes sense, given that the Acts do not create debts of the State, and will result in the inflow of $1.9 billion to the State's coffers in FY05. These funds will increase the resources upon which the State may call to meet its expenses and will be available to be used for any lawful purpose.

The conclusion by this court that the framers intended the term revenue to be construed broadly becomes apparent if one considers the proposed 1944 Constitution that led to the adoption of the 1947 Constitution and contains the current Appropriations Clause. The proposed Constitution presented to the people in 1944 sheds significant light on the intent of the 1947 framers in their use of the term revenue. The proposed 1944 legislation included Article VII, entitled Finance, which contained two adjacent paragraphs. One of those paragraphs, the Single Fund paragraph, provided:

> **All revenues of the State Government from whatever source derived, including revenues of all departments, agencies and officers, shall be paid into a single fund to be known as the General State Fund and shall be subject to**

appropriations for any public purpose;
. . . .

[Proposed Constitution of 1944, art. VII, § 2, printed at L. 1944, c. 92, p. 225 (emphasis added).]

This paragraph reflects the normal meaning of the term revenue in the governmental context. As plainly stated, the intent was to gather together all moneys available for expenditure for public purposes, regardless of its source. Defining revenue this way provides the flexibility necessary for the Governor and Legislature to manage the State's financial affairs, a primary objective of the framers. See Richard N. Baisden, Charter for New Jersey: The New Jersey Constitutional Convention of 1947 (Trenton 1952).

The Convention did not include a Single Fund paragraph in the draft presented to the people for approval. But, that was for very practical, pragmatic reasons and not because of a desire to attach a different significance to the term revenue. As William Read, Chair of the Taxation and Finance Committee explained to the delegates:

> It was the effort of our committee so to guide our efforts that nothing we did would add many adverse votes against the Constitution . . . . [W]e tried to avoid creating other objections to other provisions and thus bring about the casting of enough

> adverse votes to defeat the proposed Constitution.
>
> [Proceedings of the New Jersey Constitutional Convention of 1947 at 151.]

Citing vocal opponents as well as committed proponents of dedicated funds testified before the Committee, the Committee decided to leave the Single Fund issue for another day. The paragraph that immediately followed the Single Fund paragraph in the 1944 proposal became the Appropriations Clause in the 1947 Constitution. One can readily conclude that the broad description of revenue set forth in the Single Fund paragraph was also intended to define revenue, as it appeared in the adjoining paragraph that became the Appropriations Cause, given that both paragraphs comprised the proposed Article on Finance. Nothing in the history of the Constitution suggests that revenue was meant to have a broad meaning for purposes of the proposed Single Fund provision, but a narrow meaning in the adjacent Appropriations Clause.

While none of the parties cited any statutory provisions regarding "anticipated revenue," that term is defined in N.J.S.A. 52:9H-15:

> Anticipated revenue defined
>
> As used in this act, "anticipated revenue" means the amount of revenue

> estimated to be realized in a fiscal year as General Fund resources to support appropriations made, including taxes, license fees, other miscellaneous departmental revenue, **and revenue transfers to the General Fund from other funds in the State Treasury**, and excluding federal funds and any fund balances, whether designated undesignated or reserved.
> [Ibid. (emphasis added).]

This definition further supports the notion that, for the purposes of the Governor's certification, revenue consists of monies that will be available in the General Fund to support appropriations. Furthermore, the language makes it clear that revenue transfers to the General Fund from other funds, are included in the definition. As explained in the certification of Charlene M. Holzbaur, the Comptroller of the Treasury and the Director of the Division of Budget and Accounting, interfund transfers to the General Fund, such as will take place with the proceeds from the sale of bonds pursuant to the Cigarette Tax Act and the Surcharge Act, constitute revenue in the Governor's revenue certification. See Certification of Charlene M. Holzbaur, dated June 28, 2004 ("Holzbaur Certif.") filed simulataneously with the State's brief.

Pursuant to N.J.S.A. 52:27B-46, a Comprehensive Annual Financial Report ("Annual Financial Report") for the State is prepared for each fiscal year. The Annual Financial

Report is prepared in conformity with Generally Accepted Accounting Principles ("GAAP") as prescribed by the Governmental Accounting Standards Board ("GASB"). Ms. Holzbaur is involved in the preparation of the Annual Financial Report for the State, and pursuant to N.J.S.A. 52:27B-22, in the preparation of the Governor's proposed budget for each fiscal year, including fiscal year 2005.

Significantly, the Certification explains that in each of the years she has served as Comptroller of the Treasury and the Director of the Division of Budget and Accounting, both the revenue estimate in the Governor's proposed budget and the Governor's revenue certification delivered in connection with the enactment of the Annual Appropriations Act, have included interfund transfers as General Fund revenue. Holzbaur Certif. ¶ 11.

Sections of the Certification are worthy of review:

> A fund is a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives. Examples of funds are the Property Tax Relief Fund, the General Fund and Special Revenue Funds. Examples of Special Revenue Funds are the Casino Control Fund, the Casino Revenue Fund, the Division of Motor

Vehicles Surcharge Fund and the Tobacco Settlement Fund.

[Holzbaur Certif. ¶ 5.]
Fund financial statements focus on current inflows and outflows of expendable resources and the unexpended balances at the end of a fiscal year available for future spending. Fund financial statements are reported using the modified accrual basis of accounting that measures cash and all other financial assets that can be readily converted to cash. Special Revenue Funds are used to account for resources legally restricted to specific purposes.

[Id. at ¶ 6.]

Under the modified accrual basis of accounting, moneys transferred into the General Fund from Special Revenue Funds constitute interfund transfers to the General Fund and are presented in the Annual Financial Report as "Other Financing Sources-Transfer from (to) other funds." **For presentation in the Annual Financial Report, such interfund transfers are not characterized as "revenue." However, such moneys [sic] increase the balance in the General Fund and are available to pay General Fund expenses.** There exists another line in the Annual Financial Report called "Other Financing Sources-Proceeds from sale of bonds . . ."

[Id. at ¶ 8 (emphasis added).]

In each of the years when I have acted as Comptroller of the Treasury and the Director of the Division of Budget and Accounting, there have been interfund transfers of money from Special Revenue Funds to the General Fund. Such moneys

were presented in the Annual Financial Report as Other Financing Sources. . . [Id. at ¶ 9 (emphasis added).]

In fiscal years 2003 and 2004, bond proceeds were the source of monies deposited into the General Fund by interfund transfer. The Tobacco Settlement Financing Corporation issued bonds, the proceeds of which were paid into the Tobacco Settlement Fund, a Special Revenue Fund. **By interfund transfer, these moneys were deposited into the General Fund to pay General Fund expenses**. For fiscal year 2003, this interfund transfer was presented in the Annual Financial Report as "Other Financing Sources." For fiscal year 2004, upon completion of the Annual Financial Report, this interfund transfer will be presented in the same fashion.

[Id. at ¶ 10 (emphasis added).]

Moneys [sic] on deposit in the Motor Vehicle Fund may be transferred by the State Treasurer from the Motor Vehicle Fund into the General Fund and may be used for any lawful purpose of the State for which moneys [sic] on deposit in the General Fund may be used. Moneys [sic] on deposit in the Cigarette Fund may be transferred by the State Treasurer from the Cigarette Fund into the General Fund and may be used for any lawful purpose of the State for which moneys [sic] on deposit in the General Fund may be used. **Such moneys [sic] constitute revenue to the General Fund**.

[Id. at ¶ 13 (emphasis added).]

Importantly, in each of the years that Holzbaur has acted as Comptroller of the Treasury and the Director of

the Division of Budget and Accounting, "both the revenue estimate in the Governor's proposed budget and the Governor's revenue certification delivered in connection with the enactment of the annual appropriations act **have included interfund transfers to the General fund as revenue**." Id. at ¶ 11 (emphasis added). To support this, Holzbaur notes, "for example, Governor Whitman's revenue certification for the fiscal year 2001 Appropriations Act included $1,079,051,000 of interfund transfer in the total General Fund revenue estimate."

Both the Motor Vehicle Surcharges Securitization Fund (the "Motor Vehicle Fund") created pursuant to Section 11 of P.L. 2004, ("Surcharge Act") and the Cigarette Tax Securitization Fund (the "Cigarette Fund") created pursuant to Section 7 of P.L. 2004 ("Cigarette Tax Act") will each be classified as Special Revenue Funds. Pursuant to the Legislation, the proceeds for bonds issued pursuant to the Surcharge Act and deposited with the EDA may be withdrawn by the EDA, upon the written request of the State Treasurer, and paid to the State Treasurer for deposit into the General Fund or the Motor Vehicle Fund. Similarly, the proceeds from bonds issued pursuant to the Cigarette Tax Act and deposited with the EDA may be withdrawn by the EDA, upon the written request of the State Treasurer for deposit

into the General Fund or the Cigarette Fund. The State represents that it is anticipated that future transfers of money on deposit with the EDA will be made only to the Motor Vehicle Fund or the Cigarette Tax Fund.

Importantly, the Appropriations Clause requires that "the total amount of revenue on hand and anticipated will be available to meet such appropriations during such fiscal period, as certified by the Governor." As written, this Clause is predicated on the notion that each year the State will have sufficient funds to meet the appropriations made for that fiscal year. In the case at bar, the State anticipates the receipt of $1.9 billion from the sale of bonds. No one disputes that these funds will be sufficient to cover the appropriations made for the next fiscal year. While these monies may not be considered revenue for other purposes, they are clearly revenue when considered in the context of and given the intent of, the Appropriations Clause.

Finally, while the court has rejected the notion that the separation of powers doctrine precludes intervention by this court, Governor McGreevey and Treasurer McCormac have raised legitimate questions regarding the lack of judicially discoverable and manageable standards for

resolving the issues raised by the plaintiffs. Defendants wrote:

> The question of what constitutes revenues requires an examination and analysis of fiscal data and predictions on economic activity that are ill-suited for judicial resolution. The State's financial affairs are enormously complicated and the accurate estimation of revenues for a multi-billion dollar budget is a task best left for those officials with the most experience in managing the State's fiscal matters. By entering the field of revenue forecasting the Judiciary would be usurping the role of the Executive Branch and would soon find itself embroiled in the political process of crafting the State's annual budget. Competing demands from various constituencies for services and financial support, and the finite nature of financial resources at any given time drive the budget process and require a careful balancing of interests and subtle financial policy choices. While such pressures and policy making are a staple of the Executive Branch, they represent dangerous shoals for the courts.
>
> [Brief page 20.]

In their reply brief, plaintiffs' cite State v. Trump Hotels & Casino, 160 N.J. 505, 527-28 (1999), for the proposition that bond proceeds should not be characterized as revenue. Reliance on Trump is misplaced. First, the facts in Trump are dramatically disparate from the facts before this court and involved a distinct and separate

constitutional analysis; to wit, the constitutionality of amendments to the Casino Control Act. Second, the analysis of revenue in Trump arose in the context of a specific definition of revenue set forth in the 1984 amendments to the Casino Control Act of 1984, c. 218, § 3, and codified at N.J.S.A. 5:12-144.1.

B. DEBT LIMITATION CLAUSE

Counts Three and Four of the complaint allege that the proposed issuance of bonds pursuant to the Cigarette Tax Act and the Surcharge Act will create debt in fiscal year 2004-2005 that exceeds one percent of the total amount appropriated by the general appropriation law. Thus, plaintiffs allege that the issuance of these bonds without the approval of a majority of the legally qualified voters violates Article VIII, Section II, paragraph 3 of the New Jersey Constitution. Count Five of the complaint alleges that the FY05 Appropriations Act also violates the Debt Limitation Clause, in that the State failed to obtain the approval of a majority of the legally qualified voters prior to authorizing the issuance of the debt.

The Debt Limitation Clause of the New Jersey Constitution provides, in pertinent part:

> [t]he Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctively specified therein. Regardless of any limitation relating to taxation in this Constitution, such law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal thereof within thirty-five years from the time it is contracted; and the law shall not be repealed until such debt or liability and the interest thereon are fully paid and discharged.
>
> Except as hereinafter provided, no such law shall take effect until it has been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon.
>
> [N.J. Const. art. VIII, §2, ¶3.]

The Court has consistently interpreted this provision narrowly and found that it is applicable only where debt is legally enforceable against the State. See Lonegan v. State, 176 N.J. 2, 14 (2003)(Lonegan II); Lonegan v. State, 174 N.J. 435 (2002)(Lonegan I); In re Loans of the N.J.

Prop. Liab. Ins. Guar. Assoc., 124 N.J. 69 (1991); Enourato v. N.J. Bldg. Auth., 90 N.J. 396 (1982); N.J. Sports and Exposition Auth. V. McCrane, 61 N.J. 1 (1972); Holster v. Bd. of Trustees of the Passaic County College, 59 N.J. 60 (1971); City of Passaic v. Consol. Police and Firemen's Pension Fund Comm'n, 18 N.J. 137 (1955). The framers of the New Jersey Constitution adopted the Debt Limitation Clause in 1844 because it was their belief that future generations of taxpayers should not have to pay for their generation's mistakes. Lonegan I, supra, 174 N.J. at 464; Lonegan II, supra, 176 N.J. at 14.

In In re Loans, supra, 124 N.J. at 75-76, the Court held that the cases in which it has construed the Debt Limitation Clause fall into two categories. The line of cases in the first category, are those that hold the Debt Limitation Clause does not apply to the creation of debt by independent public corporate entities. The line of cases in the second category, are those that hold "legislative expressions of intent to provide future funding do not create present debts of the State subject to the Debt Limitation Clause." Ibid.

In Lonegan I and II, the Court distinguished between appropriations-backed debts, which are subject to legislative appropriations, and general obligation debts,

which are backed by the full faith and credit of the State. The Court determined that general obligation debts are subject to the restrictions of the Debt Limitation Clause, while appropriations-backed debts are not. The Court held that judgments about the issuance of debt, when the State's full faith and credit is not implicated, are best left to the legislative and executive branches of government. Therefore, the Court concluded that it was "unwilling to disrupt the State's financing mechanisms" based on the circumstances presented and held that the Debt Limitation Clause does not apply to appropriations-backed debt. Lonegan II, supra, 176 N.J. 20.

As mentioned above, in Lonegan II the Court held that only debt that is legally enforceable against the State is subject to the Debt Limitation Clause. Notably, the Court observed that the variety of financing mechanisms available today were unheard of when the Debt Limitation Clause was made part of the Constitution in 1844. Id. at 14. Thus, the Court observed that the State has responded to changes in financial markets that reflect economic realities, in reliance on the rule that the Clause only requires voter approval when the debt at issue is legally enforceable against the State. Ibid. In the case at bar, it is undisputed that the proposed debt that would arise under

the two statutes at issue in this litigation would not be legally enforceable against the State.

Although the case was ultimately dismissed on grounds of mootness, Justice Handler raised an interesting issue regarding the Debt Limitation Clause in Spadoro v. Whitman, 150 N.J. 2 (1997). Spadoro involved a challenge to the Pension Bond Financing Act of 1997, N.J.S.A. 34:1B-7.45 to -21. The plaintiff alleged that the Act created State debt without voter approval and, therefore, violated the Debt Limitation Clause. Id. at 3. Under the Act, the EDA was authorized to issue State contract bonds to pay the accrued liability of several State pension plans. The payment on the bonds was to come from the State, subject to future appropriations. Id. at 2-3. A majority of the Court determined that the matter was moot and dismissed plaintiff's appeal and petition for certification. Id. at 3.

Justice Handler dissented from the Court's order and wrote to express his view, that the Act does violate the Debt Limitation Clause. Justice Handler distinguished the situation in Spadoro from the situations in the other debt limitation clause cases as follows:

> 1) the other cases involved independent authorities that were separate

> government entities that served special or discrete governmental purposes, Enourato, supra, 90 N.J. 396 and N.J. Sports and Exposition Auth., supra, 61 N.J. 1;
>
> 2) the other cases involved a separate source of income that had been created by these independent authorities, Clayton v. Kervick, 52 N.J. 138 (1968) and N.J. Turnpike Auth. v. Parsons, 3 N.J. 235 (1949); and
>
> 3) the other cases involved major capital improvements, capital construction and/or the provision of special services, whereas the proceeds from the bonds in Spadoro are to defray ordinary expenses entailed in the regular government operations, Enourato, supra, 90 N.J. 396; Holster, supra, 59 N.J. 60; Bulman v. McCrane, 64 N.J. 105 (1973); Clayton, supra, 52 N.J. 138 and N.J. Turnpike Auth., supra, 3 N.J. 235.
>
> [Spadoro, supra, 150 N.J. at 9-10.]

Justice Handler concluded that if the State is permitted to incur debt in order to meet current operating expenses, without creating a separate source of income to repay that debt, no debt issuance by a State agency would violate the Debt Limitation Clause. Id. at 12.

Of course, the facts in the case at bar are very different from those in Spadoro. Furthermore, the plaintiffs in Lonegan II sought to draw a distinction between appropriation-backed debt (debt to be repaid from

annual appropriations) like the debt at issue here and "most other contract debt." Lonegan, supra, 176 N.J. at 11. Plaintiffs in Lonegan II argued that "[d]ebt that finances a toll road or bridge, a college, or a sports and entertainment facility, and that is retired from a 'special fund' comprised of revenues generated by the financed facility or project (e.g., from toll collections, tuition payments, or ticket sales), is exempt from the requirement of the Clause because general tax revenues are not tapped for repayment." The Court rejected this argument, noting that there was no principled distinction between such types of debt. Id. at 15.

This court rejects the notion that the purpose of the bond is determinative of whether it is subject to the Debt Limitations Clause. This distinction is no more appropriate than the "type of debt" distinction rejected in Lonegan II for several reasons. First, nothing in the Debt Limitation Clause itself in any way limits the purpose of constitutionally permissible debt. Second, Lonegan II recognized a multitude of purposes served by appropriations backed debt:

> the State sets forth in detail the number and types of programs financed through appropriations-backed debt, ranging from the authority bonds specifically challenged by plaintiffs

> to lease-purchase agreements for real property, equipment, and services and tax and revenue anticipation notes.
>
> [Id. at 13.]

The Court did not differentiate upon the utility or purpose of these many programs. Instead, the Court held:

> [T]he variety of functions assumed by the government since the 1800s and the sophisticated means now used to finance those functions, make it difficult if not impossible to differentiate among acceptable and unacceptable types of twenty-first century appropriations-backed debt under a nineteenth century paradigm.
>
> [Id. at 15, citing Book v. State Office Bldg. Comm'n, 238 Ind. 120, 149 N.E.2d 273, 281 (1985)(opining that the interpretation of the debt limitation provision "constantly must be adapted to new questions and conditions which arise because of an ever-expanding economy and the process of society).]

Third, since there is no such "purpose" provision in the Debt Limitation Clause, and case law and practice have not required one, there is no standard today by which anyone can determine if a purpose or use contemplated for the proceeds of debt is constitutionally permissible. In contrast to the bright-line rule that was recently reinforced by the Supreme Court, the imposition of a novel or ad hoc standard would create budget anarchy and simply facilitate challenges by any disgruntled legislator or

citizen whose cause was not vindicated through the legislative process. Of course, this result would radically undermine another important public policy enunciated by this State's highest court, the "need to maintain stability in respect of financial instruments authorized by the Legislature." Thus, the Court specifically warned about the litigation that would result if we attempt to establish classes of debt that are governed by the Clause and classes that are not." Id. at 5.

C. INJUNCTIVE AND DECLARATORY RELIEF

A temporary restraining order is an extraordinary measure that should be utilized sparingly and only when the proven equities establish a clear need for the injunction. The test for granting injunctive relief is well established in New Jersey; the Supreme Court set forth the standards for injunctive relief in Crowe v. DeGioia, 90 N.J. 126 (1982). On June 25, 2004, this court denied injunctive relief without prejudice.

In order to justify the granting of injunctive relief, the claimant must establish that:

(1) in the absence of such a stay, the claimant will suffer irreparable injury;

(2) the legal right underlying the plaintiff's claim is settled;

(3) a reasonable probability of ultimate success on the merits; and,

(4) the probability of harm to other persons will not be greater than the harm the claimant will suffer in the absence of such relief.

[See Crowe, supra, 90 N.J. at 132-35.]

The plaintiffs have failed to satisfy the standards set forth in Crowe. Furthermore, for the reasons enumerated herein, the court grants declaratory relief in favor of the defendants.

D. CONCLUSION

The verified complaint for emergent declaratory and injunctive relief is denied. The complaint is dismissed in its entirety.

NOTICE OF APPEAL

PLEASE PRINT OR TYPE

SUPERIOR COURT OF NEW JERSEY – APPELLATE DIVISION

TITLE IN FULL (AS CAPTIONED BELOW):

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.** ; as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, as a citizen of New Jersey and a taxpayer

Plaintiffs,

v.

HONORABLE JAMES E. McGREEVEY, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

Defendants.

ATTORNEY OR PRO SE LITIGANT

NAME Mark Sheridan, Esq.

Drinker Biddle & Reath LLP

ADDRESS 500 Campus Drive

Florham Park, New Jersey 07932

TELEPHONE NO. 973-360-1100

ATTORNEY FOR Plaintiffs Lance, DeCroce, Kyrillos and Lindmark

ON APPEAL FROM:

Superior Court of New Jersey, Law Division, Mercer County
DOCKET NO.: MER-L-1633-04
TRIAL COURT OR STATE AGENCY

TRIAL COURT OR AGENCY NUMBER

Hon. Linda Feinberg, J.S.C.
TRIAL COURT JUDGE

CIVIL [X] CRIMINAL [ ] JUVENILE [ ]

NOTICE IS HEREBY GIVEN THAT Plaintiffs Lance, DeCroce, Kyrillos, Schundler, Lonegan and Lindmark APPEALS TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, FROM THE JUDGMENT [ ] ORDER [X] STATE AGENCY DECISION [ ] ENTERED IN THIS ACTION ON July 1, 2004
DATE

IF NOT APPEALING THE ENTIRE JUDGMENT, ORDER OR AGENCY DECISION, SPECIFY WHAT PARTS OR PARAGRAPHS ARE BEING APPEALED.

HAVE ALL ISSUES AS TO ALL PARTIES DISPOSED OF IN THIS ACTION IN THE TRIAL COURT OR AGENCY? (IN CONSOLIDATED ACTIONS, ALL ISSUES AS TO ALL PARTIES IN ALL ACTIONS MUST HAVE BEEN DISPOSED OF.) YES [X] NO [ ]

IF NOT, HAS THE ORDER BEEN CERTIFIED AS FINAL PURSUANT TO R. 4:42-2? YES [ ] NO [ ]

IN CRIMINAL, QUASI-CRIMINAL AND JUVENILE ACTIONS:

GIVE A CONCISE STATEMENT OF THE OFFENSE AND OF THE JUDGMENT, DATE ENTERED AND ANY SENTENCE OR DISPOSITION IMPOSED.

IS DEFENDANT INCARCERATED? YES [ ] NO [ ]

WAS BAIL GRANTED OR THE SENTENCE OR DISPOSITION STAYED? YES [ ] NO [ ]

IF IN CUSTODY, GIVE THE PLACE OF CONFINEMENT.

ATTACH ADDITIONAL SHEETS IF NECESSARY

NOTICE OF APPEAL AND ANNEXED CASE INFORMATION STATEMENT HAVE BEEN SERVED ON:

	NAME	DATE OF SERVICE
TRIAL COURT JUDGE	Hon. Linda Feinberg, J.S.C.	July 1, 2004
TRIAL COURT CLERK OR STATE AGENCY	Clerk of Mercer County Chancery Division, Superior Court of New Jersey, Mercer County	July 1, 2004
ATTORNEY GENERAL OR ATTORNEY FOR OTHER GOVERNMENTAL BODY PURSUANT TO R. 2:5-1(a), (e) or (h)	See attached service list	July 1, 2004

OTHER PARTIES:

NAME AND DESIGNATION	ATTORNEY NAME, ADDRESS & TELEPHONE NO.	DATE OF SERVICE
SEE ATTACHED SERVICE LIST		

ANNEXED TRANSCRIPT REQUEST FORM HAS BEEN SERVED ON: Transcript is not yet available due to exigent nature of action

	NAME	DATE OF SERVICE	AMOUNT OF DEPOSIT
COURT REPORTER'S SUPERVISOR, CLERK OF COURT OR AGENCY			
COURT REPORTER			

EXEMPT FROM ANNEXING THE TRANSCRIPT REQUEST FORM DUE TO THE FOLLOWING:

[] NO VERBATIM RECORD.

[] TRANSCRIPT IN POSSESSION OF ATTORNEY OR PRO SE LITIGANT. (As to the 11/16/01 Transcript of oral argument and decision of the Court, a copy of which is attached hereto)

[ ] MOTION FOR ABBREVIATION OF TRANSCRIPT FILED WITH THE COURT OR AGENCY BELOW.

[ ] MOTION FOR FREE TRANSCRIPT FILED WITH THE COURT BELOW.

I CERTIFY THAT THE FOREGOING STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF. I ALSO CERTIFY THAT, UNLESS EXEMPT, THE FILING FEE REQUIRED BY N.J.S.A. 22A:2 HAS BEEN PAID.

July 1, 2004
DATE

SIGNATURE OF ATTORNEY OR PRO SE LITIGANT

DRINKER BIDDLE & REATH LLP
A Pennsylvania Limited Liability Partnership
500 Campus Drive
Florham Park, New Jersey 07932-1047
(973) 360-1100
Attorneys for Plaintiffs Lance, DeCroce, Kyrillos, and Lindmark

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.** ; as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, as a citizen of New Jersey and a taxpayer Plaintiffs, v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants.	***SUPERIOR COURT OF NEW JERSEY*** ***APPELLATE DIVISION*** ***DOCKET NO.:*** _____ CIVIL ACTION *ON APPEAL FROM* *SUPERIOR COURT OF NEW JERSEY* *LAW DIVISION:COUNTY OF MERCER* DOCKET NO.: MER-L-1633-04 SAT BELOW: HON. LINDA R. FEINBERG,J.S.C. **MOTION FOR EMERGENT APPEAL**

To: James M. Flynn
Clerk
Appellate Division of New Jersey
Hughes Justice Complex
25 W. Market Street
Trenton, New Jersey 08625

SIR:

PLEASE TAKE NOTICE that the undersigned, attorneys for Petitioners, hereby apply to the Superior Court of New Jersey, Appellate Division respectfully requesting this Court move on an expedited basis from a decision of the Superior Court of New Jersey, Chancery Division, Mercer County, entered by the Honorable Linda R. Feinberg, which sought an Order To Show Cause why an Order preliminarily and permanently restraining Respondents from violating the terms of the New Jersey State Constitution; and a declaration that the proceeds from the sale of bonds by the New Jersey Economic Development Authority ("EDA") pursuant to the "Cigarette Tax Securitization Act of 2004" and the "Motor Vehicle Surcharges Securitization Act of 2004" cannot be recognized as "revenue" for constitutional purposes and thus the fiscal 2005 Appropriations Act (Assembly Bill 3100) is unconstitutional as it violates the balanced budget requirement of Article VIII, Section II; Paragraph 2 of the New Jersey State Constitution; and a declaration that the issuance of deficit bonds by the EDA is unconstitutional in that it violates Article VIII, Section II, Paragraph 3 of the New Jersey State Constitution; to enjoin Governor James E. McGreevey

from certifying the proceeds of the proposed bond sale by the EDA as "revenue"; and enjoining the EDA from issuing the proposed bonds on the grounds that they are unconstitutional in that they violate Article VIII, Section II, Paragraph 3 of the New Jersey State Constitution; and enjoining the Treasurer, John E. McCormac from expending any funds which represent actual proceeds from the proposed bond sale or represent funds based on the anticipated proceeds from the proposed bond sale should not be entered.

PLEASE TAKE FURTHER NOTICE that Petitioners respectfully request that this Court immediately enter a temporary restraining order enjoining the Respondents from violating the terms of the New Jersey State Constitution as described above.

PLEASE TAKE FURTHER NOTICE that Petitioners respectfully request this Court relax the requirements of R. 2:5 and R. 2:6 with respect to the briefing requirements due to the nature of this emergent application and, as such, Petitioners respectfully include copies of all papers submitted to the Superior Court, Law Division, Mercer County.

PLEASE TAKE FURTHER NOTICE that Petitioners respectfully request this Court enter an accelerated briefing schedule with respect to Petitioners' requests for a permanent injunction and declaratory relief as described above.

PLEASE TAKE FURTHER NOTICE that Petitioners shall, following the submission of this Emergent Appeal, immediately move before the Supreme Court of New Jersey pursuant to R. 2:12 for Certification of Appeals Pending Unheard in the Appellate Division.

PLEASE TAKE FURTHER NOTICE that Petitioners respectfully request oral argument if timely opposition is filed.

Respectfully submitted,

DRINKER BIDDLE & REATH

By: _____

Mark D. Sheridan, Esq.
Robert M. Leonard, Esq.
Attorneys for the Honorable
Leonard Lance, the Honorable
Alex DeCroce, the Honorable
Joseph M. Kyrillos, Jr. and
Robert Lindmark

And

Andrew T. Fede, Esq.
Contant Atkins & Fede, LLC
Court Plaza North
25 Main Street
Hackensack, NJ 07601
(201) 342-1070 Telephone
(201) 342-5013 Facsimile
Attorneys for Honorable
Steven M. Lonegan

And

Thaddeus R. Maciag, Esq.
Maciag & Associates
P.O. Box 190
Somerville, New Jersey
08876-0190
(908) 704-8800 Telephone
(908) 704-8808 Facsimile
Attorneys for the Honorable
Bret Schundler

Dated: July 1, 2004

APPENDIX VII

CIVIL CASE INFORMATION STATEMENT

TITLE IN FULL:

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.** ; as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, as a citizen of New Jersey and a taxpayer

Plaintiffs,

v.

HONORABLE JAMES E. McGREEVEY, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.:

RECEIVED
APPELLATE DIVISION
JUL
SUPERIOR COURT
OF NEW JERSEY

APPELLANT'S ATTORNEY:	____ Plaintiff	____ Defendant	____ Other (Specify)
NAME	ADDRESS	TELEPHONE	CLIENT
See Attached Counsel List			
RESPONDENT'S ATTORNEY*			
NAME	ADDRESS	TELEPHONE	CLIENT
See Attached Counsel List			

[*Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.]

GIVE DATE AND SUMMARY OF JUDGMENT OR DECISION BEING APPEALED AND ATTACH A COPY:

Order of the Honorable Linda Feinberg, J.S.C. dated July 1, 2004. Due to the immediate nature of this appeal, a more formal description of the Order cannot be provided at this time.

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?	Yes ____	No X
If so, has the order been certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4, 2:5-6.)	Yes ____	No N/A
Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h)).	Yes X	No

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

See attached statement of facts and legal issues.

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THIS APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R.2:6-2(a)(5).
See attached statement of facts and legal issues.

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or opinion? If so, on what date? July 1, 2004	Yes X	No ____
2. Did the trial judge issue written findings or opinions? If so, on what date? Due to emergent nature of appeal, unsure at this time if any written findings have been issued.	Yes ____	No
Caution: Before you indicate that there was neither an opinion nor findings, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b). Date of your inquiry: _____ Will the trial judge be filing a statement or opinion pursuant to R. 2:5-1(b)?	Yes ____	No ____

Civil appeals are screened under the Civil Appeals Settlement Program to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a conference. Yes ____ No X

Explain your answer:

Due to the constitutional issues raised, a settlement conference will not resolve the parties differences.

1. IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

(A)	Arises from substantially the same case or controversy as this appeal?	Yes ____	No X
(B)	Involves an issue that is substantially the same, similar or related to an issue in this appeal?	Yes ____	No X

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? Yes ____ No X

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:
Case Name Appellate Division Docket Number

Insert our clients names
Name of Appellant or Respondent

07/01/04
Date

Mark Sheridan, Esq.
Drinker Biddle & Reath LLP
A Pennsylvania Limited Liability Partnership
Name of Counsel of Record

Mark Sheridan/aaw
Signature of Counsel of Record

STATEMENT OF FACTS/LEGAL ISSUES FOR CIS

This firm filed a motion on Friday, June 25, 2004 in the Superior Court, Chancery Division, Mercer County on behalf of The Honorable Leonard Lance, The Honorable Alex DeCroce, The Honorable Joseph M. Kyrillos, Jr., The Honorable Bret Schundler and Robert Lindmark seeking to declare the budget unconstitutional on the grounds that it violates Article VIII, Section II, paragraph 2 of the New Jersey State Constitution. In addition, we further sought to declare the proposed sale of deficit bonds unconstitutional pursuant to Article VIII, Section II, paragraph 3 of the New Jersey State Constitution.

In addition, this firm sought to enjoin Governor McGreevey from certifying as "revenue" the proceeds of the sale of any deficit bonds, enjoin the Economic Development Authority from issuing any deficit bonds pursuant to Assembly Bills 3108 and 3109, and enjoin the Treasurer of the State of New Jersey from expending any funds actually received from the sale of the deficit bonds or funds that he treats as representing future proceeds from the sale of the deficit bonds.

The defendants filed opposition briefs on June 29 and plaintiffs filed reply briefs on June 30. The matter was heard before the Honorable Linda Feinberg, J.S.C. on July 1, 2004.

COUNSEL LIST

The Hon. Leonard Lance, et al. v.
The Hon. James E. McGreevey, et al.

Docket No. MER-L-1663-04

Mark D. Sheridan, Esq.
Robert M. Leonard, Esq.
Drinker Biddle & Reath LLP
500 Campus Drive
Florham Park, NJ 07932
Tel: 973-360-1100
Fax: 973-360-9831
Attorneys for Plaintiffs
Honorable Leonard Lance, Honorable Alex DeCroce,
Honorable Joseph M. Kyrillos, Jr.
Robert Lindmark

Andrew T. Fede, Esq.
Contant Atkins & Fede, LLC
Court Plaza North
25 Main Street
Hackensack, NJ 07601
Tel: 201-342-1070
Fax: 201-342-5013
Attorneys for Plaintiff
Honorable Steven M. Lonegan

Thaddeus Maciag, Esq.
Maciag & Associates, P.C.
613 Courtyard Drive
P.O. Box 190
Somerville, NJ 08876
Tel: 908-704-8800
Fax: 908-704-8804
Attorneys for Plaintiff
Honorable Bret Schundler

#1006616

W. Timothy Howes, Esq.
Howes & Howes
26 Anderson Street
Raritan, New Jersey 08869
Tel: 908-704-0037
Fax: 908 842-0245
Attorneys for Plaintiff
Honorable Bret Schundler

Leon J. Sokol, Esq.
Sokol, Behot & Fiorenzo
Continental Plaza
433 Hackensack Avenue
Hackensack, NJ 07601
Tel: 201-488-1300
Fax: 201-488-6541 or
201-488-2460
Attorneys for Applicants for Intervenors New Jersey Senate and New Jersey General Assembly

Charles C. Carella, Esq.
James E. Cecchi, Esq.
Carella, Byrne, Bain, Gilfillan,
Cecchi, Stewarat & Olstein
5 Becker Farm Road
Roseland, NJ 07068-1739
Tel: 973-994-1700
Fax: 973-994-1744
Attorneys for Defendant New Jersey Economic Development Authority

Howard Graff, Esq.
Dickstein Shapiro Morin & Oshinsky
1177 Avenue of the Americas
New York, NY 10036-2714
Tel: 212-835-1400
Fax: 212-997-9880
Attorneys for Defendant New Jersey Economic Development Authority

#1006616

Nancy Kaplen, Esq.
Assistant Attorney General of New Jersey
Peter C. Harvey, Esq.
Attorney General of New Jersey
R.J. Hughes Justice Complex
25 Market Street
P.O. box 112
Trenton, NJ 08625-0112
Tel: (609) 292-8576
Fax: 609-777-3120
Attorneys for Defendants
Governor James E. McGreevey and
State Treasurer John E. McCormac

#1006616

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.** ; as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, a citizen and a taxpayer Plaintiffs, v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants.	*SUPERIOR COURT OF NEW JERSEY* *APPELLATE DIVISION* *DOCKET NO:* CIVIL ACT *ON APPEAL FROM* *SUPERIOR COURT OF NEW JERSEY* *LAW DIVISION: COUNTY OF MERCER* *DOCKET NO: MER-L-1633-04* SAT BELOW: HON. LINDA R. FEINBERG, J.S.C. **CERTIFICATION OF SERVICE OF MOTION FOR EMERGENT APPEAL**

ANDREW C. WHITE, of full age, hereby certifies as follows:

1. I am an attorney-at-law of the State of New Jersey and an associate with the law firm of Drinker Biddle & Reath LLP, attorneys for plaintiffs in the above-captioned action

2. On July 1, 2004 the original and six copies of the following documents were hand delivered for filing to James M. Flynn, Clerk, Superior Court of New Jersey, Appellate Division, Hughes Justice Complex, 175 South Broad Street, Trenton, New Jersey, 08625:

(1) Motion for Emergent Appeal to the New Jersey Appellate Division;
(2) Notice of Appeal;
(3) Case Information Statement; and
(4) Filing letter.

Documents filed in the Law Division, Mercer County:

(1) Plaintiffs' Order to Show Cause with Temporary Restraints;
(2) Verified Complaint for Emergent Declaratory and Injunctive Relief;
(3) Exhibits to Plaintiffs' Verified Complaint;
(4) Plaintiffs' Memorandum of Law in Support of Order to Show Cause;
(5) Defendant McGreevy, McCormac and EDA Initial Brief in Opposition to Plaintiff's Order to Show Cause;
(6) Defendant McGreevy and McCormac Supplemental Brief in Opposition to Plaintiff's Order to Show Cause;
(7) Defendant EDA Supplemental Brief in Opposition to Plaintiffs' Order to Show Cause;
(8) Intervenor Defendant Assembly and Senate Motion to Intervene and Brief in Opposition to Order to Show Cause;
(9) Plaintiffs' Opposition to Intervenor Defendant Motion to Intervene;
(10) Intervenor Defendant Assembly and Senate Reply Brief in Further Support of Motion to Intervene;
(11) Plaintiffs' Reply Brief in Further Support of Order to Show Cause;
(12) Order by the Hon. Linda Feinberg, J.S.C., dated June 25, 2004 setting a hearing for July 1, 2004 and other relief.

3. On July 1, 2004, a copy of the documents listed above were hand delivered to the Honorable Linda R. Feinberg, Civil Courts Bldg., 175 South Broad Street, Trenton, New Jersey 08650.

4. On July 1, 2004, a copy of the documents listed above were hand delivered to the Clerk, Mercer County Superior Court, Mercer County Courthouse, 209 South Broad Street, Trenton, New Jersey 08625.

5. Also, on July 1, 2004, one copy of the documents listed above were hand delivered to the following:

Andrew T. Fede, Esq.
Contant Atkins & Fede, LLC
Court Plaza North
25 Main Street
Hackensack, NJ 07601
Attorneys for Plaintiff
Honorable Steven M. Lonegan

Thaddeus Maciag, Esq.
Maciag & Associates, P.C.
613 Courtyard Drive
P.O. Box 190
Somerville, NJ 08876
Attorneys for Plaintiff
Honorable Bret Schundler

W. Timothy Howes, Esq.
Howes & Howes
26 Anderson Street
Raritan, New Jersey 08869
Attorneys for Plaintiff
Honorable Bret Schundler

Leon J. Sokol, Esq.
Sokol, Behot & Fiorenzo
Continental Plaza
433 Hackensack Avenue
Hackensack, NJ 07601
Attorneys for Applicants for Intervenors New Jersey Senate and New Jersey General Assembly

Charles C. Carella, Esq.
James E. Cecchi, Esq.
Carella, Byrne, Bain, Gilfillan,
Cecchi, Stewarat & Olstein
5 Becker Farm Road
Roseland, NJ 07068-1739
Attorneys for Defendant New Jersey Economic Development Authority

Howard Graff, Esq.
Dickstein Shapiro Morin & Oshinsky
1177 Avenue of the Americas
New York, NY 10036-2714
Attorneys for Defendant New Jersey Economic Development Authority

Nancy Kaplen, Esq.
Assistant Attorney General of New Jersey
Peter C. Harvey, Esq.
Attorney General of New Jersey
R.J. Hughes Justice Complex
25 Market Street
P.O. box 112
Trenton, NJ 08625-0112
Attorneys for Defendants
Governor James E. McGreevey and
State Treasurer John E. McCormac

6. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Andrew C. White

Dated: July 1, 2004

DrinkerBiddle&Reath
A Pennsylvania Limited Liability Partnership LLP

Andrew C. White
andrew.white@dbr.com
(973) 549-7354 Direct Dial

Law Offices
500 Campus Drive
Florham Park, NJ
07932-1047

973-360-1100
973-360-9831 fax
www.drinkerbiddle.com

PHILADELPHIA
NEW YORK
WASHINGTON
LOS ANGELES
SAN FRANCISCO
PRINCETON
BERWYN
WILMINGTON

July 1, 2004

RECEIVED
APPELLATE DIVISION
JUL 01 2004
SUPERIOR COURT
OF NEW JERSEY

VIA HAND DELIVERY

James M. Flynn, Clerk
Appellate Division of New Jersey
Hughes Justice Complex
25 W. Market Street
Trenton, New Jersey 08625-0970

Re: The Hon. Leonard Lance, et al. v. The Hon. James E. McGreevey, et al.
Docket No. MER-L-1644-04

Dear Mr. Flynn:

I am writing to advise the Court that this firm filed a motion on Friday, June 25, 2004 in the Superior Court, Law Division, Mercer County on behalf of The Honorable Leonard Lance, The Honorable Alex DeCroce, The Honorable Joseph M. Kyrillos, Jr., The Honorable Bret Schundler and Robert Lindmark seeking to declare the budget unconstitutional on the grounds that it violates Article VIII, Section II, paragraph 2 of the New Jersey State Constitution. Further, we seek to declare the proposed sale of deficit bonds unconstitutional pursuant to Article VIII, Section II, paragraph 3 of the New Jersey State Constitution.

We also seek to enjoin the Economic Development Authority from issuing any deficit bonds pursuant to Assembly Bills 3108 and 3109, and enjoin the Treasurer of the State of New Jersey from expending any funds actually received from the sale of the deficit bonds or funds that he treats as representing future proceeds from the sale of the deficit bonds.

Daniel F. O'Connell,
Partner responsible for
Florham Park Office

Defendants filed opposition briefs on June 29 and plaintiffs filed reply briefs on June 30. The Honorable Linda Feinberg, J.S.C. entertained oral argument today, July 1, 2004. It is from this ruling that the plaintiffs appeal.

We write to advise the Court of the foregoing and ask that the Court consider this application for Emergent Relief from the ruling of the Superior Court, Law Division, Mercer County on our request for emergent declaratory relief and a preliminary injunction. We further request that this Court relax the filing requirements of R. 2:8-1 due to the exigent nature of this matter and the limited time in which to file a "procedurally accurate" appeal.

In addition, please be advised that we will also seek immediate review in the Supreme Court of New Jersey by way of a Motion for Direct Certification to that Court pursuant to its authority under R. 2:12 for Certification of Appeals Pending Unheard in the Appellate Division.

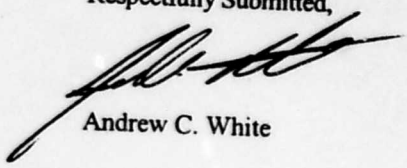
Enclosed for the Court's review are the papers submitted below and considered by the Honorable Linda R. Feinberg, J.S.C. The papers include the following:

(1) Plaintiffs' Order to Show Cause with Temporary Restraints,
(2) Verified Complaint for Emergent Declaratory and Injunctive Relief,
(3) Exhibits to Plaintiffs' Verified Complaint,
(4) Plaintiffs' Memorandum of Law in Support of Order to Show Cause,
(5) Defendant McGreevy, McCormac and EDA Initial Brief in Opposition to Plaintiff's Order to Show Cause,
(5) Defendant McGreevy and McCormac Supplemental Brief in Opposition to Plaintiff's Order to Show Cause,
(6) Defendant EDA Supplemental Brief in Opposition to Plaintiffs' Order to Show Cause,
(7) Intervenor Defendant Assembly and Senate Motion to Intervene and Brief in Opposition to Order to Show Cause,
(8) Plaintiffs' Opposition to Intervenor Defendant Motion to Intervene.
(9) Intervenor Defendant Assembly and Senate Reply Brief in Further Support of Motion to Intervene,
(10) Plaintiffs' Reply Brief in Further Support of Order to Show Cause.
(11) Order by the Hon. Linda Feinberg, J.S.C., dated June 25, 2004 setting a hearing for July 1, 2004 and other relief.

Therefore, enclosed for filing please find the above referenced documents along with a Notice of Appeal and Case Information Statement. Please charge our Superior Court account No. 93800 any required filing fee.

Thank you for attention to this. I appreciate your considerations.

Respectfully Submitted,



Andrew C. White

ACW
Enclosures
cc: See attached service list

COUNSEL LIST

The Hon. Leonard Lance, et al. v.
The Hon. James E. McGreevey, et al.

Docket No. MER-L-1663-04

Mark D. Sheridan, Esq.
Robert M. Leonard, Esq.
Drinker Biddle & Reath LLP
500 Campus Drive
Florham Park, NJ 07932
Tel: 973-360-1100
Fax: 973-360-9831
Attorneys for Plaintiffs
Honorable Leonard Lance, Honorable Alex DeCroce,
Honorable Joseph M. Kyrillos, Jr.
Robert Lindmark

Andrew T. Fede, Esq.
Contant Atkins & Fede, LLC
Court Plaza North
25 Main Street
Hackensack, NJ 07601
Tel: 201-342-1070
Fax: 201-342-5013
Attorneys for Plaintiff
Honorable Steven M. Lonegan

Thaddeus Maciag, Esq.
Maciag & Associates, P.C.
613 Courtyard Drive
P.O. Box 190
Somerville, NJ 08876
Tel: 908-704-8800
Fax: 908-704-8804
Attorneys for Plaintiff
Honorable Bret Schundler

#1006616

W. Timothy Howes, Esq.
Howes & Howes
26 Anderson Street
Raritan, New Jersey 08869
Tel: 908-704-0037
Fax: 908 842-0245
Attorneys for Plaintiff
Honorable Bret Schundler

Leon J. Sokol, Esq.
Sokol, Behot & Fiorenzo
Continental Plaza
433 Hackensack Avenue
Hackensack, NJ 07601
Tel: 201-488-1300
Fax: 201-488-6541 or
201-488-2460
Attorneys for Applicants for Intervenors New Jersey Senate and New Jersey General Assembly

Charles C. Carella, Esq.
James E. Cecchi, Esq.
Carella, Byrne, Bain, Gilfillan,
Cecchi, Stewarat & Olstein
5 Becker Farm Road
Roseland, NJ 07068-1739
Tel: 973-994-1700
Fax: 973-994-1744
Attorneys for Defendant New Jersey Economic Development Authority

Howard Graff, Esq.
Dickstein Shapiro Morin & Oshinsky
1177 Avenue of the Americas
New York, NY 10036-2714
Tel: 212-835-1400
Fax: 212-997-9880
Attorneys for Defendant New Jersey Economic Development Authority

#1006616

Nancy Kaplen, Esq.
Assistant Attorney General of New Jersey
Peter C. Harvey, Esq.
Attorney General of New Jersey
R.J. Hughes Justice Complex
25 Market Street
P.O. box 112
Trenton, NJ 08625-0112
Tel: (609) 292-8576
Fax: 609-777-3120
Attorneys for Defendants
Governor James E. McGreevey and
State Treasurer John E. McCormac

#1006616

DRINKER BIDDLE & REATH LLP
A Pennsylvania Limited Liability Partnership
500 Campus Drive
Florham Park, New Jersey 07932-1047
(973) 360-1100
Attorneys for Plaintiffs Lance, DeCroce, Kyrillos, and Lindmark

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.** ; as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, as a citizen of New Jersey and a taxpayer Plaintiffs, v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants.	***SUPREME COURT OF NEW JERSEY*** ***DOCKET NO.:*** _____ CIVIL ACTION *ON APPEAL FROM* *SUPERIOR COURT OF NEW JERSEY* *LAW DIVISION:COUNTY OF MERCER* DOCKET NO.:MER-L-1644-04 SAT BELOW: HON. LINDA R. FEINBERG,J.S.C. **MOTION FOR DIRECT CERTIFICATION PURSUANT TO R. 2:12-2**

To: Stephen W. Townsend, Esq.
Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

SIR:

PLEASE TAKE NOTICE that the undersigned, attorneys for Petitioners, hereby apply to the Supreme Court of New Jersey pursuant to R. 2:12-2 for leave to file a motion for certification of an appeal pending unheard in the Appellate Division for an Order To Show Cause why an Order preliminarily and permanently restraining Respondents from violating the terms of the New Jersey State Constitution; and a declaration that the proceeds from the sale of bonds by the New Jersey Economic Development Authority ("EDA") pursuant to the "Cigarette Tax Securitization Act of 2004" and the "Motor Vehicle Surcharges Securitization Act of 2004" cannot be recognized as "revenue" for constitutional purposes and thus the fiscal 2005 Appropriations Act (Assembly Bill 3100) is unconstitutional as it violates the balanced budget requirement of Article VIII, Section II; Paragraph 2 of the New Jersey State Constitution; and a declaration that the issuance of deficit bonds by the EDA is unconstitutional in that it violates Article VIII, Section II, Paragraph 3 of the New Jersey State Constitution; to enjoin Governor James E. McGreevey from certifying the proceeds of the proposed bond sale by the EDA as "revenue"; and enjoining the

EDA from issuing the proposed bonds on the grounds that they are unconstitutional in that they violate Article VIII, Section II, Paragraph 3 of the New Jersey State Constitution; and enjoining the Treasurer, John E. McCormac from expending any funds which represent actual proceeds from the proposed bond sale or represent funds based on the anticipated proceeds from the proposed bond sale should not be entered.

PLEASE TAKE FURTHER NOTICE that Petitioners respectfully request that this Court immediately enter a temporary restraining order enjoining the Respondents from violating the terms of the New Jersey State Constitution as described above.

PLEASE TAKE FURTHER NOTICE that Petitioners respectfully request this Court enter an accelerated briefing schedule with respect to Petitioners' requests for a permanent injunction and declaratory relief as described above.

PLEASE TAKE FURTHER NOTICE that Petitioners respectfully request that this Court relax the requirement pursuant to R. 2:12 and certify this matter for immediate hearing.

PLEASE TAKE FURTHER NOTICE that Petitioners respectfully request oral argument.

Respectfully submitted,

DRINKER BIDDLE & REATH

By: _____

Mark D. Sheridan, Esq.
Robert M. Leonard, Esq.
Attorneys for the Honorable Leonard Lance, the Honorable Alex DeCroce, the Honorable Joseph M. Kyrillos, Jr. and Robert Lindmark

And

Andrew T. Fede, Esq.
Contant Atkins & Fede, LLC
Court Plaza North
25 Main Street
Hackensack, NJ 07601
(201) 342-1070 Telephone
(201) 342-5013 Facsimile
Attorneys for Honorable Steven M. Lonegan

And

Thaddeus R. Maciag, Esq.
Maciag & Associates
P.O. Box 190
Somerville, New Jersey
08876-0190
(908) 704-8800 Telephone
(908) 704-8808 Facsimile
Attorneys for the Honorable Bret Schundler

Dated: July 1, 2004

DRINKER BIDDLE & REATH LLP
A Pennsylvania Limited Liability Partnership
500 Campus Drive
Florham Park, New Jersey 07932-1047
(973) 360-1100
Attorneys for Plaintiffs Lance, DeCroce, Kyrillos, and Lindmark

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.** ; as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, as a citizen of New Jersey and a taxpayer Plaintiffs, v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants.	***SUPREME COURT OF NEW JERSEY*** ***DOCKET NO.:*** _____ CIVIL ACTION *ON APPEAL FROM* *SUPERIOR COURT OF NEW JERSEY* *LAW DIVISION:COUNTY OF MERCER* DOCKET NO.:MER-L-1644-04 SAT BELOW: HON. LINDA R. FEINBERG,J.S.C. **CERTIFICATION OF SERVICE**

ANDREW C. WHITE, of full age, hereby certifies as follows:

1. I am an attorney-at-law of the State of New Jersey and an associate with the law firm of Drinker Biddle & Reath LLP, attorneys for plaintiffs in the above-captioned action.

DRINKER BIDDLE & REATH LLP
A Pennsylvania Limited Liability Partnership
500 Campus Drive
Florham Park, New Jersey 07932-1047
(973) 360-1100
Attorneys for Plaintiffs Lance, DeCroce, Kyrillos, and Lindmark

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.** ; as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, as a citizen of New Jersey and a taxpayer Plaintiffs, v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants.	***SUPREME COURT OF NEW JERSEY*** ***DOCKET NO.:_____*** CIVIL ACTION *ON APPEAL FROM* *SUPERIOR COURT OF NEW JERSEY* *LAW DIVISION:COUNTY OF MERCER* DOCKET NO.:MER-L-1644-04 SAT BELOW: HON. LINDA R. FEINBERG,J.S.C. **CERTIFICATION OF SERVICE**

ANDREW C. WHITE, of full age, hereby certifies as follows:

1. I am an attorney-at-law of the State of New Jersey and an associate with the law firm of Drinker Biddle & Reath LLP, attorneys for plaintiffs in the above-captioned action.

2. On July 1, 2004 the original and nine copies of the following documents were hand delivered for filing to Stephen R. Townsend, Esq., Clerk, Supreme Court of New Jersey, Richard J. Hughes Justice Complex, Trenton, New Jersey, 08625:

(1) Motion for Direct Certification to the New Jersey Supreme Court Pursuant to R. 2:12-2;

(2) Filing Letter

Documents filed in the Superior Court of New Jersey, Appellate Division

(1) Motion for Emergent Appeal to the New Jersey Appellate Division;
(2) Notice of Appeal; and
(3) Case Information Statement.

Documents filed in the Chancery Division, Mercer County:

(1) Plaintiffs' Order to Show Cause with Temporary Restraints;
(2) Verified Complaint for Emergent Declaratory and Injunctive Relief;
(3) Exhibits to Plaintiffs' Verified Complaint;
(4) Plaintiffs' Memorandum of Law in Support of Order to Show Cause;
(5) Defendant McGreevy, McCormac and EDA Initial Brief in Opposition to Plaintiff's Order to Show Cause;
(6) Defendant McGreevy and McCormac Supplemental Brief in Opposition to Plaintiff's Order to Show Cause;
(7) Defendant EDA Supplemental Brief in Opposition to Plaintiffs' Order to Show Cause;
(8) Intervenor Defendant Assembly and Senate Motion to Intervene and Brief in Opposition to Order to Show Cause;
(9) Plaintiffs' Opposition to Intervenor Defendant Motion to Intervene;
(10) Intervenor Defendant Assembly and Senate Reply Brief in Further Support of Motion to Intervene;
(11) Plaintiffs' Reply Brief in Further Support of Order to Show Cause;
(12) Order by the Hon. Linda Feinberg, J.S.C., dated June 25, 2004 setting a hearing for July 1, 2004 and other relief;

3. On July 1, 2004, a copy of the documents listed above were hand delivered to the Honorable Linda R. Feinberg, Civil Courts Bldg., 175 South Broad Street, Trenton, New Jersey 08650.

4. Also, on July 1, 2004, one copy of the documents listed above were hand delivered to the following:

Andrew T. Fede, Esq.
Contant Atkins & Fede, LLC
Court Plaza North
25 Main Street
Hackensack, NJ 07601
Attorneys for Plaintiff
Honorable Steven M. Lonegan

Thaddeus Maciag, Esq.
Maciag & Associates, P.C.
613 Courtyard Drive
P.O. Box 190
Somerville, NJ 08876
Attorneys for Plaintiff
Honorable Bret Schundler

W. Timothy Howes, Esq.
Howes & Howes
26 Anderson Street
Raritan, New Jersey 08869
Attorneys for Plaintiff
Honorable Bret Schundler

Leon J. Sokol, Esq.
Sokol, Behot & Fiorenzo
Continental Plaza
433 Hackensack Avenue
Hackensack, NJ 07601
Attorneys for Applicants for Intervenors New Jersey Senate and New Jersey General Assembly

Charles C. Carella, Esq.
James E. Cecchi, Esq.
Carella, Byrne, Bain, Gilfillan,
Cecchi, Stewarat & Olstein
5 Becker Farm Road
Roseland, NJ 07068-1739
Attorneys for Defendant New Jersey Economic Development Authority

Howard Graff, Esq.
Dickstein Shapiro Morin & Oshinsky
1177 Avenue of the Americas
New York, NY 10036-2714
Attorneys for Defendant New Jersey Economic Development Authority

Nancy Kaplen, Esq.
Assistant Attorney General of New Jersey
Peter C. Harvey, Esq.
Attorney General of New Jersey
R.J. Hughes Justice Complex
25 Market Street
P.O. box 112
Trenton, NJ 08625-0112
Attorneys for Defendants
Governor James E. McGreevey and
State Treasurer John E. McCormac

5. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Andrew C. White

Dated: July 1, 2004

DrinkerBiddle&Reath LLP
A Pennsylvania Limited Liability Partnership

Andrew C. White
andrew.white@dbr.com
(973) 549-7354 Direct Dial

Law Offices
500 Campus Drive
Florham Park, NJ
07932-1047

973-360-1100
973-360-9831 fax
www.drinkerbiddle.com

PHILADELPHIA
NEW YORK
WASHINGTON
LOS ANGELES
SAN FRANCISCO
PRINCETON
BERWYN
WILMINGTON

July 1, 2004

VIA HAND DELIVERY

Stephen W. Townsend, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 W. Market Street
P.O. Box 970
Trenton, New Jersey 08625-0970

Re: The Hon. Leonard Lance, et al. v. The Hon. James E. McGreevey, et al.
Docket No. MER-L-1644-04

Dear Mr. Townsend:

I am writing to advise the Court that this firm filed a motion on Friday, June 25, 2004 in the Superior Court, Law Division, Mercer County on behalf of The Honorable Leonard Lance, The Honorable Alex DeCroce, The Honorable Joseph M. Kyrillos, Jr., The Honorable Bret Schundler and Robert Lindmark seeking to declare the budget unconstitutional on the grounds that it violates Article VIII, Section II, paragraph 2 of the New Jersey State Constitution. Further, we seek to declare the proposed sale of deficit bonds unconstitutional pursuant to Article VIII, Section II, paragraph 3 of the New Jersey State Constitution.

We also seek to enjoin the Economic Development Authority from issuing any deficit bonds pursuant to Assembly Bills 3108 and 3109, and enjoin the Treasurer of the State of New Jersey from expending any funds actually received from the sale of the deficit bonds or funds that he treats as representing future proceeds from the sale of the deficit bonds.

Defendants filed opposition briefs on June 29 and plaintiffs filed reply briefs on June 30. The Honorable Linda Feinberg, J.S.C. entertained oral argument today, July 1, 2004. It is from this ruling that the plaintiffs appeal.

We write to advise the Court of the foregoing and ask that the Court consider this matter under its authority pursuant to R. 2:12-1, in the interest of considering and resolving important and urgent questions of constitutional law, and from the ruling of the Superior Court, Law Division, Mercer County on our request for emergent declaratory relief and a preliminary injunction.

In addition, if this matter is accepted by the court for certification, we request that a full seven member panel of the court hear these important constitutional issues.

Daniel F. O'Connell, Partner responsible for Florham Park Office

Established 1849

In that regard, enclosed for the Court's review are the papers submitted below and considered by the Honorable Linda R. Feinberg, J.S.C. The papers include:

(1) Plaintiffs' Order to Show Cause with Temporary Restraints,
(2) Verified Complaint for Emergent Declaratory and Injunctive Relief,
(3) Exhibits to Plaintiffs' Verified Complaint,
(4) Plaintiffs' Memorandum of Law in Support of Order to Show Cause,
(5) Defendant McGreevy, McCormac and EDA Initial Brief in Opposition to Plaintiff's Order to Show Cause,
(5) Defendant McGreevy and McCormac Supplemental Brief in Opposition to Plaintiff's Order to Show Cause,
(6) Defendant EDA Supplemental Brief in Opposition to Plaintiffs' Order to Show Cause,
(7) Intervenor Defendant Assembly and Senate Motion to Intervene and Brief in Opposition to Order to Show Cause,
(8) Plaintiffs' Opposition to Intervenor Defendant Motion to Intervene
(9) Intervenor Defendant Assembly and Senate Reply Brief in Further Support of Motion to Intervene,
(10) Plaintiffs' Reply Brief in Further Support of Order to Show Cause,
(11) Order by the Hon. Linda Feinberg, J.S.C., dated June 25, 2004 setting a hearing for July 1, 2004 and other relief.

Moments ago, we filed a Motion for Emergent Appeal with the New Jersey Appellate Division. However, in light of the important constitutional issues raised, as well as the immediate nature of the relief sought, we respectfully request this Court entertain this application pursuant to R. 2:12.

Enclosed please find two checks in the respective amounts of $30.00 to cover the costs of filing. If there are additional charges, please charge our Superior Court account No. 93800. Thank you for attention to this. I appreciate your considerations.

Respectfully Submitted,

Andrew C. White

ACW
Enclosures
cc: See attached service list

COUNSEL LIST

The Hon. Leonard Lance, et al. v. The Hon. James E. McGreevey, et al.

Docket No. MER-L-1663-04

Mark D. Sheridan, Esq.
Robert M. Leonard, Esq.
Drinker Biddle & Reath LLP
500 Campus Drive
Florham Park, NJ 07932
Tel: 973-360-1100
Fax: 973-360-9831
Attorneys for Plaintiffs
Honorable Leonard Lance, Honorable Alex DeCroce,
Honorable Joseph M. Kyrillos, Jr.
Robert Lindmark

Andrew T. Fede, Esq.
Contant Atkins & Fede, LLC
Court Plaza North
25 Main Street
Hackensack, NJ 07601
Tel: 201-342-1070
Fax: 201-342-5013
Attorneys for Plaintiff
Honorable Steven M. Lonegan

Thaddeus Maciag, Esq.
Maciag & Associates, P.C.
613 Courtyard Drive
P.O. Box 190
Somerville, NJ 08876
Tel: 908-704-8800
Fax: 908-704-8804
Attorneys for Plaintiff
Honorable Bret Schundler

#1006616

W. Timothy Howes, Esq.
Howes & Howes
26 Anderson Street
Raritan, New Jersey 08869
Tel: 908-704-0037
Fax: 908 842-0245
Attorneys for Plaintiff
Honorable Bret Schundler

Leon J. Sokol, Esq.
Sokol, Behot & Fiorenzo
Continental Plaza
433 Hackensack Avenue
Hackensack, NJ 07601
Tel: 201-488-1300
Fax: 201-488-6541 or
201-488-2460
Attorneys for Applicants for Intervenors New Jersey Senate and New Jersey General Assembly

Charles C. Carella, Esq.
James E. Cecchi, Esq.
Carella, Byrne, Bain, Gilfillan,
Cecchi, Stewarat & Olstein
5 Becker Farm Road
Roseland, NJ 07068-1739
Tel: 973-994-1700
Fax: 973-994-1744
Attorneys for Defendant New Jersey Economic Development Authority

Howard Graff, Esq.
Dickstein Shapiro Morin & Oshinsky
1177 Avenue of the Americas
New York, NY 10036-2714
Tel: 212-835-1400
Fax: 212-997-9880
Attorneys for Defendant New Jersey Economic Development Authority

#1006616

Nancy Kaplen, Esq.
Assistant Attorney General of New Jersey
Peter C. Harvey, Esq.
Attorney General of New Jersey
R.J. Hughes Justice Complex
25 Market Street
P.O. box 112
Trenton, NJ 08625-0112
Tel: (609) 292-8576
Fax: 609-777-3120
Attorneys for Defendants
Governor James E. McGreevey and
State Treasurer John E. McCormac

#1006616

DRINKER BIDDLE & REATH LLP
A Pennsylvania Limited Liability Partnership
500 Campus Drive
Florham Park, New Jersey 07932-1047
(973) 360-1100
Attorneys for Plaintiffs Lance, DeCroce, Kyrillos, and Lindmark

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.** ; as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, a citizen and a taxpayer Plaintiffs/Appellants v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants/Respondents and **HONORABLE RICHARD J. CODEY**, President of the New Jersey Senate; and **HONORABLE ALBIO SIRES**, Speaker of the Assembly Intervenors/Defendants/ Respondents.	***SUPREME COURT OF NEW JERSEY*** ***DOCKET NO.:*** _____ CIVIL ACTION *ON APPEAL FROM* *SUPERIOR COURT OF NEW JERSEY* *LAW DIVISION: COUNTY OF MERCER* *DOCKET NO: MER-L-1633-04* <u>SAT BELOW:</u> HON. LINDA R. FEINBERG, J.S.C. **CERTIFICATION OF MARK D. VILLANUEVA**

:

MARK D. VILLANUEVA, of full age, certifies as follows:

1. I am an attorney at law of the State of New Jersey, and am an associate with the law firm of Drinker Biddle & Reath LLP, attorneys for plaintiffs Leonard Lance, Alex DeCroce, Joseph Kyrillos, and Robert Lindmark. I make this Certification based upon my personal knowledge.

2. On July 6, 2004, I requested a copy of a transcript of the July 1, 2004 hearing before Judge Feinberg.

3. Given the time constraints in the instant matter, Plaintiffs have not yet obtained a transcript delivery certification as required by R. 2:5-3 (e).

4. Upon receipt, Plaintiffs' Appendix will be supplemented to include the transcript delivery certification.

Mark D. Villanueva, Esq.

Dated: July 8, 2004

NS

New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES
OFFICE OF THE STATE AUDITOR
125 SOUTH WARREN STREET
PO BOX 067
TRENTON NJ 08625-0067

ALBERT PORRONI
Executive Director
(609) 292-4625

RICHARD L. FAIR
State Auditor
(609) 292-3700
FAX (609) 633-0834

July 6, 2004

Assemblyman Alex DeCroce
101 Gibraltar Dr., Suite 1-A
Morris Plains, NJ 07950

Dear Assemblyman DeCroce:

You have asked me if the accounting transactions required under A3108 and A3109 is similar to the Tobacco Settlement Financing Act from Fiscal Year 2003. The simple answer is no they are not. There are a couple of significant differences between these two transactions. The Tobacco Settlement Act marketed and sold an asset (future MSA payments) to a corporate entity for what was determined to be the present value of the payments as indicated by the financial markets. Bonds were then sold by the corporate entity with no backing of the faith and credit of the state. The proceeds of the sale, on a fund basis, were recorded as *revenue-other* in the special revenue fund which was handling tobacco settlement payments. These funds, over two fiscal periods were budgeted as transfers from the special revenue fund to the general fund. Therefore, the general fund has incurred no bond liability for this transaction. Under the Cigarette Tax Securitization and Motor Vehicle Surcharge Securitization Bills, funds will not be recorded in the primary government anywhere as *revenue*, but rather as other financing sources. Also, an installment obligation will be reflected in the General Fund to represent the liability to the Economic Development Authority for the bond debt. There was no such liability required in the Tobacco Settlement transaction.

In response to your second question, I am not aware of any instance where bonds have been issued by authorities which are then directly used to support the general operating expenses of the State.

I hope this information meets your needs. Please let me know if any further clarification is needed.

Sincerely,

Richard L. Fair
State Auditor

RLF:jjh

New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES
OFFICE OF THE STATE AUDITOR
125 SOUTH WARREN STREET
PO BOX 067
TRENTON NJ 08625-0067

RICHARD L. FAIR
State Auditor
(609) 292-3700
FAX (609) 633-0834

ALBERT PORRONI
Executive Director
(609) 292-4625

July 8, 2004

Senator Leonard Lance
119 Main Street
Flemington, NJ 08822

Dear Senator Lance:

In response to your request, I have reviewed the interfund transfers included in the Appropriation Act for Fiscal Years 2001 and 2002, and have determined that:

- The transfers were comprised primarily of funds from accounts supported by other than bond proceeds. In fact, even where bond funds were involved, many of the transfers involved the payment of investment earnings (per legislation usually) or administrative costs which had initially been budgeted and funded through the General Fund.
- Less than $50 million represents actual bond proceeds because as stated above, even where bond fund monies were involved, the funds were reimbursing their own administrative costs which had been incurred by the General Fund during the fiscal year.
- None of the interfund transfers resulted from authority issued debt and all bond proceeds involved in the above referenced transfers were from general obligation debt proceeds or interest thereon.

Let me know if any further clarification is needed.

Sincerely,

Richard L. Fair
State Auditor

RLF:SE:etr:1

APPROPRIATIONS HANDBOOK

STATE OF NEW JERSEY

FISCAL YEAR

2000 - 2001

DEPARTMENT OF THE TREASURY

OFFICE OF MANAGEMENT AND BUDGET

Roland M. Machold

State Treasurer

Charlene M. Holzbaur

Director, Office of Management and Budget

NEW JERSEY STATE LEGISLATURE
APPROPRIATIONS COMMITTEES

SESSION OF 2000

Senator Robert E. Littell (R), 24th District (Sussex and Parts of Hunterdon and Morris) *Chairman*, Senate Committee

Assemblyman Leonard Lance (R), 23nd District (Warrren and Parts of Hunterdon and Mercer), *Chairman*, Assembly Committee

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

Senator Peter A. Inverso (R), 14th District (Parts of Mercer and Middlesex), *Vice Chairman*
Senator Martha W. Bark (R), 8th District (Parts of Atlantic, Burlington and Camden)
Senator Wayne R. Bryant (D), 5th District (Parts of Camden and Gloucester)
Senator Anthony R. Bucco (R), 25th District (Part of Morris)
Senator Sharpe James (D), 29th District (Parts of Essex and Union)
Senator Walter J. Kavanaugh (R), 16th District (Parts of Morris and Somerset)
Senator Bernard F. Kenny, Jr. (D), 33rd District (Part of Hudson)
Senator Joseph M. Kyrillos, Jr. (R), 13th District (Parts of Middlesex and Monmouth)

GENERAL ASSEMBLY APPROPRIATIONS COMMITTEE

Assemblyman Joseph R. Malone, III (R), 30th District (Parts of Burlington, Monmouth and Ocean) , *Vice Chairman*
Assemblyman Peter J. Biondi (R), 16th District (Parts of Morris and Somerset)
Assemblyman Francis J. Blee (R), 2nd District (Part of Atlantic)
Assemblywoman Barbara Buono (D), 18th District (Part of Middlesex)
Assemblyman Steve Corodemus (R), 11th District (Part of Momouth)
Assemblywoman Marion Crecco (R), 34th District (Parts of Essex and Passaic)
Assemblyman Louis D. Greenwald (D), 6th District (Part of Camden)
Assemblywoman Nellie Pou (D), 35th District (Part of Passaic)
Assemblyman Albio Sires (D), 33rd District (Part of Hudson)
Assemblyman Joel M. Weingarten (R), 21st District (Parts of Essex and Union)

Alan R. Kooney, *Legislative Budget and Finance Officer*, Office of Legislative Services
Allan Parry, *Assistant Legislative Budget and Finance Officer*, Office of Legislative Services

TABLE OF CONTENTS

TABLE OF CONTENTS

TO ALL DEPARTMENTS AND AGENCIES

Attention is directed to section one of the Appropriations Act (P.L. 2000, c.53) with reference to the availability of the appropriations for the period of one month after the close of said period fiscal year. State officers are advised that, by reason of the enactment of this clause, all unexpended balances will lapse, unless otherwise provided, at the close of the one-month period unless they are reserved as provided therein.

Transmittals of funds deposited by each State agency shall be forwarded to the Division of Budget and Accounting in accordance with existing regulations. Each State agencies' deposits will be credited to the appropriate account. Receipts which may be appropriated to any State agency may be expended only in accordance with the provisions of the Act.

State agencies shall forward bills for payment as soon as practicable. Every effort will be made by the Department of the Treasury to facilitate payment, particularly those bills subject to discount.

GOVERNOR'S REVENUE CERTIFICATION

ANTICIPATED RESOURCES FOR THE FISCAL YEAR 2000-2001

GENERAL FUND

	(thousands of dollars)
Undesignated Fund Balance, July 1, 2000	200,143
Major Taxes	
Sales	6,023,000
Corporation Business	1,582,000
Transfer Inheritance	575,000
Motor Fuels	515,000
Motor Vehicle Fees	406,338
Insurance Premium	300,000
Petroleum Products Gross Receipts	217,000
Cigarette	199,000
Realty Transfer	80,000
Alcoholic Beverage Excise	80,000
Corporation Banks and Financial Institutions	40,000
Savings Institutions	14,000
Tobacco Products Wholesale Sales	12,000
Public Utility Excise (Reform)	8,700
Total Major Taxes	*10,052,038*

Miscellaneous Taxes, Fees, Revenues

Executive Branch--	(thousands of dollars)
Department of Agriculture:	
Fertilizer Inspection Fees	165
Miscellaneous Revenue	5
Subtotal, Department of Agriculture	*170*
Department of Banking and Insurance:	
Actuarial Services	60
Bank Assessments	4,387
Banking - Examination Fees	3,194
Banking - Licenses and Other Fees	3,728
FAIR Act Administration	13,400
Insurance - Special Purpose Assessment	13,500
Insurance Examination Billings	1,500
Insurance Fraud Prevention	28,867
Insurance Licenses and Other Fees	9,500
Real Estate Commission	3,554
Subtotal, Department of Banking and Insurance	*81,690*
Department of Community Affairs:	
Affordable Housing and Neighborhood Preservation - Fair Housing	18,560
Boarding Home Fees	368
Construction Fees	6,287
Fire Safety	13,654
Hackensack Meadowlands Development Commission	2,800
Housing Inspection Fees	6,763
Plan Review Additional	1,647
Planned Real Estate Development Fees	828
Workplace Standards - Licenses, Permits and Fines	1,138
Subtotal, Department of Community Affairs	*52,045*
Department of Education:	
Audit Recoveries	1,230
Audit of Enrollments	2,200
Local School District Loan Recoveries-NJEDA	10,800
Miscellaneous Revenue	150
Nonpublic Schools Textbook Recoveries	500
School Construction Inspection Fees	308
State Board of Examiners	1,800
Subtotal, Department of Education	*16,988*
Department of Environmental Protection:	
Air Pollution Fees and Fines	13,960
Clean Water Enforcement Act	1,000
Coastal Area Development Review Act	917
Endangered Species Tax Checkoff	225
Excess Diversion	235
Freshwater Wetlands Fees	2,045
Freshwater Wetlands Fines	45
Hazardous Waste Fees	1,675
Hazardous Waste Fines	430
Hunters' and Anglers' Licenses	11,649
Industrial Site Recovery Act	2,010
Laboratory Certification Fees	1,000
Laboratory Certification Fines	25
Marina Rentals	840
Marine Lands - Preparation and Filing Fees	105
Medical Waste	3,800
Miscellaneous Revenue	8
New Jersey Pollutant Discharge Elimination System/Stormwater Permits	15,000
New Jersey Water Supply Authority Debt Service Repayments	770
Parks Management Fees and Permits	4,200
Parks Management Fines	175
Pesticide Control Fees	4,042
Pesticide Control Fines	35
Radiation Protection Fees	4,037
Radiation Protection Fines	29
Radon Testers Certification	306
Shellfish and Marine Fisheries	7
Solid Waste - Utility Regulation Assessments	2,200
Solid Waste - Utility Regulation Fines	15

Miscellaneous Taxes, Fees, Revenues

	(thousands of dollars)
Solid Waste Fines - DEP	600
Solid Waste Management Fees - DEP	7,335
Solid and Hazardous Waste Disclosure	3,708
Spring Meadow Golf Course	500
Stream Encroachment	1,365
Toxic Catastrophe Prevention Fees	1,200
Toxic Catastrophe Prevention Fines	50
Treatment Works Approval	1,100
Underground Storage Tanks	1,450
Water Allocation	2,000
Water Supply Management Regulations	1,330
Water/Wastewater Operators Licenses	302
Waterfront Development Fees	1,133
Well Permits/Well Drillers/Pump Installers Licenses	1,100
Wetlands	12
Worker Community Right to Know - Fines	990
Subtotal, Department of Environmental Protection	*94,960*
Department of Health and Senior Services:	
Admission Charge Hospital Assessment	6,000
Animal Control Act	385
Health Care Reform	1,200
Licenses, Fines, Permits, Penalties & Fees	790
Rabies Control	460
Subtotal, Department of Health and Senior Services	*8,835*
Department of Human Services:	
Child Care Licensing/Adoption Law	300
Early Periodic Screening and Diagnostic Testing	36,872
HMO Recoveries and Rebates - NJ ACCESS	1,260
Marriage License Fees	1,309
Medicaid Uncompensated Care - Acute	186,664
Medicaid Uncompensated Care - Mental Health	26,368
Medicaid Uncompensated Care - Piscataway	5,826
Medicaid Uncompensated Care - Psychiatric	163,689
Medicaid Uncompensated Care - UMDNJ	65,752
Medical Assistance-Federal Match on PAAD/Medicaid Dual Eligibles	585
Miscellaneous Federal Revenue Initiatives	5,825
Miscellaneous Revenue	12,732
Patients' and Residents' Cost Recovery - Developmental Disability	16,982
Patients' and Residents' Cost Recovery - Psychiatric Hospitals	29,463
Purchased Institutional Care	2,200
School Based Medicaid	31,000
Subtotal, Department of Human Services	*586,827*
Department of Labor:	
Special Compensation Fund	1,600
Workers' Compensation Assessment	11,488
Workplace Standards - Licenses, Permits and Fines	3,471
Subtotal, Department of Labor	*16,559*
Department of Law and Public Safety:	
Beverage Licenses	2,000
Division of Consumer Affairs:	
General Revenues:	
Charities Registration Section	695
Controlled Dangerous Substances	100
Legalized Games of Chance Control	1,390
Private Employment Agencies	258
Weights and Measures - General	2,612
Professional Examining Board Fees:	
New Jersey Cemetery Board	140
State Board of Architects	435
State Board of Audiology and Speech-Language Pathology Advisory	87
State Board of Certified Public Accountants	691
State Board of Chiropractors	481
State Board of Cosmetology and Hairstyling	2,029
State Board of Dentistry	725
State Board of Electrical Contractors	481
State Board of Marriage Counselor Examiners	150
State Board of Master Plumbers	331
State Board of Medical Examiners	3,670

Miscellaneous Taxes, Fees, Revenues

	(thousands of dollars)
State Board of Mortuary Science	244
State Board of Nursing	2,900
State Board of Occupational Therapists and Assistants	57
State Board of Ophthalmic Dispensers and Ophthalmic Technicians	189
State Board of Optometrists	257
State Board of Orthotics and Prosthesis	32
State Board of Pharmacy	1,150
State Board of Physical Therapy	246
State Board of Professional Engineers and Land Surveyors	798
State Board of Professional Planners	120
State Board of Psychological Examiners	431
State Board of Public Movers and Warehousemen	228
State Board of Real Estate Appraisers	312
State Board of Respiratory Care	134
State Board of Shorthand Reporting	76
State Board of Social Workers	490
State Board of Veterinary Medical Examiners	157
Other Boating Fees	1
Pleasure Boat Licenses	2,300
Securities Enforcement	5,398
State Police - Fingerprint Fees	1,014
State Police - Other Licenses	185
State Police - Private Detective Licenses	220
Violent Crime Compensation	3,930
Subtotal, Department of Law and Public Safety	*37,144*
Department of Military and Veterans' Affairs:	
Soldiers' Homes	24,824
Department of Transportation:	
Air Safety Fund	965
Applications and Highway Permits	1,300
Auto Body Repair Shop Licensing	692
Autonomous Transportation Authorities	24,500
Commercial Bus Safety-Fines	50
Drunk Driving Fines	710
Good Driver	67,716
Heavy Duty Diesel Fines	1,002
Interest on Purchase of Right of Way	94
Logo Sign Program Fees	300
Motor Vehicle Database-Automated Access	10,000
Motor Vehicle Inspection Fund	70,245
Motor Vehicle Security - Responsibility Law Administration	10,601
Outdoor Advertising	740
Parking Offenses	361
Photo Licensing	1,000
Salvage Title Program	408
School Bus Failure to Pass Inspection	50
Special Plate Fees	1,000
Uninsured Motorists Program	3,949
Subtotal, Department of Transportation	*195,683*
Department of the Treasury:	
Assessments - Cable TV	3,257
Assessments - Public Utility	23,209
Coin Operated Telephones	5,500
Commercial Recording - Expedited	2,803
Commissions	1,098
Drug Enforcement Demand Reduction	1,900
Equipment Leasing Fund - Debt Service Recovery	4,816
Escrow Interest - Construction Accounts	300
General Revenue - Fees	27,839
Higher Education Bond Interest Recoveries	221
Higher Education Capital Improvement Fund - Debt Service Recovery	4,500
Investment Earnings	26,645
Lease and Leaseback	20,000
Miscellaneous Revenue	100
Nuclear Emergency Response Assessment	4,013
ODS Mediation Fees	158
Public Defender Client Receipts	2,092
Public Utility - Customer Specific Tax	2,300
Public Utility Fines	100

REVENUES

Miscellaneous Taxes, Fees, Revenues

	(thousands of dollars)
Public Utility Gross Receipts and Franchise Taxes (Water/Sewer)	68,400
Public Utility Tax - Administration	3
Railroad Tax - Class II	2,839
Railroad Tax - Franchise	1,175
Rate Payer Advocate	4,997
Surplus Property	2,500
Transitional Energy Facilities Assessment	147,100
Subtotal, Department of the Treasury	*357,865*
Other Sources:	
Miscellaneous Revenue	500
Inter-Departmental Accounts--	
Administration and Investment of Pension & Health Benefit Funds - Recoveries	45,375
Employee Maintenance Deductions	300
Fringe Benefit Recoveries from Colleges and Universities	55,000
Fringe Benefit Recoveries from Federal and Other Funds	96,000
Fringe Benefit Recoveries from School Districts	13,000
Indirect Cost Recoveries - DEP Other Funds	12,000
MTF Revenue Fund	46,000
Rent of State Building Space	1,792
Social Security Recoveries from Federal and Other Funds	43,000
Subtotal, Inter-Departmental Accounts	*312,467*
Judicial Branch--	
The Judiciary:	
Court Fees	57,817
Total Miscellaneous Taxes, Fees, Revenues	*1,844,374*

Interfund Transfers

	(thousands of dollars)
Beaches and Harbor Fund	75
Clean Communities Account Fund	1,725
Clean Waters Fund	115
Correctional Facilities Construction Fund	30
Correctional Facilities Construction Fund - 1987	304
Cultural Center and Historic Preservation Fund - 1987	100
Dam Restoration and Clean Water Fund - 1992	287
Developmental Disabilities Waiting List Reduction Fund	350
Energy Conservation Fund	150
Fund for the Support of Free Public Schools	5,350
Hazardous Discharge Fund	12
Hazardous Discharge Site Cleanup Fund	16,269
Housing Assistance Fund	26
Human Services Facilities Construction Fund	25
Jobs, Education and Competitiveness Fund	250
Jobs, Science and Technology Fund	1
Judiciary Bail Fund	1,600
Judiciary Child Support and Paternity Fund	1,300
Judiciary Probation Fund	300
Judiciary Special Civil Fund	125
Judiciary Superior Court Miscellaneous Fund	200
Legal Services Trust Fund	11,013
Mortgage Assistance Fund	1,100
Motor Vehicle Security Responsibility Fund	8
NJ Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Fund	250
Natural Resources Fund	250
New Jersey Bridge Rehabilitation and Improvement Fund	650
New Jersey Green Acres Fund - 1983	1,050
New Jersey Spill Compensation Fund	13,782
Pollution Prevention Fund	2,163
Public Purpose Buildings Construction Fund	15
Public Purpose and Community Based Facilities Construction Fund	350
Resource Recovery and Solid Waste Disposal Facility Fund	224
Safe Drinking Water Fund	2,043
Sanitary Landfill Facility Contingency Fund	416
School Fund Investment Account	2,634
Shore Protection Fund	623
Solid Waste Services Tax Fund	50
State Disability Benefit Fund General Account	25,492
State Lottery Fund	713,000
State Lottery Fund - Administration	17,984
State Recreation and Conservation Land Acquisition and Development - 1974	80
State Recycling Fund	959
State of New Jersey Cash Management Fund	1,950
Tobacco Settlement Fund	144,219
Transportation Rehabilitation and Improvement Fund of 1979	17
Unclaimed Insurance Payments	100
Unclaimed Personal Property Trust Fund	46,000
Unemployment Compensation Tax Auxiliary Fund	13,800
Unsatisfied Claim and Judgment Fund	2,300
Wage and Hour Trust Fund	75
Wastewater Treatment Fund - 1992	2,808
Water Conservation Fund	105
Water Supply Fund	3,119
Worker and Community Right to Know Fund	2,362
Workforce Development Partnership Fund	39,466
Total Interfund Transfers	*1,079,051*
Total Revenues, General Fund	***12,975,463***
Total Resources, General Fund	***13,175,606***

REVENUES

	(thousands of dollars)
SURPLUS REVENUE FUND	
Undesignated Fund Balance, July 1, 2000	650,333
Total Resources, Surplus Revenue Fund	***650,333***
PROPERTY TAX RELIEF FUND	
Undesignated Fund Balance, July 1, 2000	319,780
Gross Income Tax	7,738,000
Total Resources, Property Tax Relief Fund	***8,057,780***
CASINO CONTROL FUND	
License Fees	58,093
Total Resources, Casino Control Fund	***58,093***
CASINO REVENUE FUND	
Undesignated Fund Balance, July 1, 2000	2,775
Boarding House Rental Assistance Fund	200
Casino Simulcasting Fund	165
Gross Revenue Tax	350,400
Investment Earnings	1,600
Total Resources, Casino Revenue Fund	***355,140***
GUBERNATORIAL ELECTIONS FUND	
Undesignated Fund Balance, July 1, 2000	2,663
Taxpayers' Designations	1,500
Total Resources, Gubernatorial Elections Fund	***4,163***
TOTAL RESOURCES, ALL FUNDS	***22,301,115***

Federal Revenue

Executive Branch--	(thousands of dollars)
Department of Agriculture:	
Child Nutrition - Administration	3,146
Child Nutrition - Child Care	45,720
Child Nutrition - School Lunch	139,803
Child Nutrition - Special Milk	1,461
Child Nutrition - Summer Programs	9,388
Cooperative Gypsy Moth Suppression	48
Farmland Preservation	1,050
Fish Inspection Services	100
Indemnities-Cattle, Swine and Fowl Diseases	40
Jobs Bill	1,247
Nutrition Education and Training	179
School Breakfast	23,108
Team Nutrition Training	249
Various Federal Programs and Accruals	268
Subtotal, Department of Agriculture	*225,807*
Department of Community Affairs:	
Community Services Block Grant	13,606
Domestic Violence Fatality Review Board	75
Emergency Shelter Grants Program	1,480
Moderate Rehabilitation Housing Assistance	14,012
National Affordable Housing-HOME Investment Partnerships	7,581
Section 8 Existing Housing Rental Assistance	53,007
Section 8 Housing Voucher Program	61,902
Shelter Plus Care Program	602
Small Cities Block Grant Program	11,211
Various Federal Programs and Accruals	64
Weatherization Assistance Program	2,978
Subtotal, Department of Community Affairs	*166,518*
Department of Corrections:	
Project In-Side	472
State Criminal Alien Assistance Program	14,000
Subtotal, Department of Corrections	*14,472*
Department of Education:	
AIDS Prevention Education	862
Adult Basic Education - Administration/Discretionary	12,635
Advanced Placement Incentive Program	137
Americorps - America Reads Awards	370
Bilingual and Compensatory Education - Homeless Children and Youth	634
Byrd Scholarship Program	1,125
Christa McAuliffe Fellowship Program	45
Class Size Reduction	31,000
Comprehensive School Reform Title I - Administration	5,375
Deaf/Blind Children Services - Administration/Discretionary	366
Drug-Free Schools and Communities - Administration	8,433
EESA, Title II - Math/Science Training, Exemplary	7,350
Eisenhower Math/Science Grant - Critical Skills	1,365
Emergency Immigrants Education Assistance - Administration	5,853
Even Start Family Literacy Grant - Discretionary	2,998
Goals 2000 - Technology	11,429
IASA Consolidated Administration	3,514
IDEA - Handicapped	173,467
Innovative Education, Title VI - Discretionary	10,143
Learn & Serve - Community Based	282
Learn and Serve - Community Based	163
Migrant Education - Administration/Discretionary	1,710
NCS - Disability Funds	173
NCS - Learn and Serve America (K-12)	644
NCS - Program Development Assistance and Training	165
NCS - State Commission	350
NCS - Urban School Services Corp	6,615
Pre-School Incentive Grant - Administration/Discretionary	12,186
Promise Fellows	70
Public Charter Schools	3,068
Reading Excellence	15,626
Safe & Drug-Free Schools - Governor's Portion, Discretionary	2,196
School to Work Opportunities	6,000
Technology Literacy Challenge Fund	10,455
Title I - Accountability Grants	4,000
Title I Admin Program Improvement	950
Title I - Capital Expenses	550

REVENUES

Federal Revenue

	(thousands of dollars)
Title I - LEA Disadvantaged	183,000
Title I, Part D - Neglected & Delinquent	2,429
Various Federal Programs and Accruals	254
Vocational Education - Basic Grants, Administration	22,954
Vocational Education Technical Preparation	2,300
Subtotal, Department of Education	*553,241*
Department of Environmental Protection:	
Air Deposition	250
Air Pollution Maintenance Program	6,319
Appalachian Trail Improvement (ISTEA)	50
Appalachian Trail Viewshed Acquisition (ISTEA)	500
Archaeological & History/GIS Inventory (ISTEA)	1,700
Artificial Reef Program	325
Boat Access (Fish and Game)	400
Cape May Point State Park Bikeway (ISTEA)	200
Clean Vessels	1,000
Climate Change Action Plan (Recycling of Landfill Gases)	100
Coastal Zone Management Implementation	4,900
Community Assistance Program	200
Conashank Point	215
Consolidated Forest Management	1,536
Construction Grants Program	57,600
D & R East Side Path	565
Delaware & Raritan Canal Route 1 Crossing (ISTEA)	825
Delaware & Raritan Canal State Park Old Rose to Mulberry St. (ISTEA)	250
Delaware & Raritan Canal State Park/Bordentown Outlet (ISTEA)	820
Endangered Species	60
Environmental Justice	100
Estuary Program	1,190
Fish and Wildlife Health	130
Forest Legacy	1,110
Forest Resource Management-Cooperative Forest Fire Control	239
Forest Watershed Clean Water Action	120
Good Luck Point Land Acquisition	480
Hazardous Waste - Resource Conservation Recovery Act	4,281
Historic Preservation Survey & Planning	2,000
Hunters' and Anglers' License Fund	5,670
Land and Water Conservation Fund	5,000
Liberty State Park Archival Facility (ISTEA)	726
Liberty State Park Ferry Slip Restoration (ISTEA)	1,000
Liberty State Park Train Sheds-Structural Report (ISTEA)	350
Marine Fisheries Investigation and Management	1,296
Multi-Media	750
NPDES Implementation Support Program	900
National Coastal Wetlands Conservation	1,000
National Dam Safety Program (FEMA)	90
National Geologic Mapping Program	140
National Recreational Trails	1,250
Non-Point Source Implementation (319H)	4,000
Particulate Monitoring Grant	1,000
Paulinskill Valley Trail Improvements (ISTEA)	550
Pesticide Recording Program	20
Pesticide Technology	660
Pinelands Grant - Acquisition	6,000
Pollution Prevention Incentive	100
Preliminary Assessments/Site Inspections	3,500
Radon Program	500
Safe Drinking Water Act	22,200
Seashore Line	500
Sloop/Maple Creek Acquisition	350
State Wetlands Conservation Plan	400
State/EPA Data Management Grant	1,500
Stewardship Land Type Association	30
Stout's Creek Land Acquisition	750
Strathmere Parcels	565
Superfund Grants	30,500
Sussex Br. Trail Improvements	500
Sussex Branch Trail Connector (ISTEA)	75
Underground Storage Tanks	1,855
Various Federal Programs and Accruals	1,715
Voluntary Cleanup - Site Specific	450
Voluntary Cleanup Program	500
Water Monitoring and Planning	1,000
Water Pollution Control Program	3,350
Subtotal, Department of Environmental Protection	*188,207*

Federal Revenue

(thousands of dollars)

Department of Health and Senior Services:	
AIDS Incarcerated Individuals in Corrections	1,675
Abstinence Education - FHS	843
Asthma Surveillance and Coalition Building	300
Center For Birth Defects Research & Prevention	1,600
Childhood Lead Poisoning	1,039
Clinical Laboratory Improvement Amendments Program	550
Comprehensive AIDS Resources Grant	48,000
Comprehensive Breast and Cervical Cancer	3,200
Comprehensive State Based Tobacco Use Prevention Programs	2,600
Demonstration Program to Conduct Health Assessments	2,098
Development & Validation of Mail Survey of Chemical Exposure	180
Early Intervention for Infants & Toddlers with Disabilities (Part H)	11,065
Epidemiology 2000 - Electronic Surveillance	540
Essex County Healthy Start Initiative	2,000
Evaluating Client-Centered HIV Prevention Counseling	1,000
Family Planning Program-Title X	3,100
Federal Lead Abatement Program	450
Food Inspection	274
HIV/AIDS Prevention and Education Grant	15,275
HIV/AIDS Surveillance Grant	7,142
Housing Opportunities For Persons With AIDS	2,342
Immunization Project	6,400
Lyme Disease Research	200
Maternal and Child Health Block Grant	12,700
Medicare/Medicaid Inspections of Nursing Facilities	9,700
N.J. Project: Providing a MED Home in a Neighborhood of Services	124
NJ Targeted Seabrook Capacity Expansion Program	791
National Program of Cancer Registries	1,800
Older Americans Act - Title III	33,928
Pediatric AIDS Health Care Demonstration Project	2,500
Pfiesteria Rapid Response Grant	65
Preventative Health and Health Services Block Grant	6,065
Public Employees Occupational Safety & Health - State Plan	700
Public Health Preparedness and Response for Bioterrorism	250
Substance Abuse Block Grant	46,382
Supplemental Food Program-W.I.C.	90,000
Surveillance, Epidemiology and End Results (SEER)	1,800
Targeted Capacity Expansion - Adolescents	500
Tuberculosis Control Program	8,000
USDA Older Americans Act - Title III	3,900
Various Federal Programs and Accruals	6,463
Venereal Disease Project	3,100
Vital Statistics Component	850
WIC Farmer's Market Nutrition Program	563
Subtotal, Department of Health and Senior Services	*342,054*
Department of Human Services:	
Block Grant Mental Health Services	10,471
Child Care Block Grant	81,686
Child Support Enforcement Program	115,655
Community Based Residential Program Grant	1,000
Developmental Disabilities Council	1,577
Federal Independent Living	513
Food Stamp Program	83,283
Foster Grandparents Program	1,043
Low Income Energy Assistance Block Grant	44,519
Projects for Assistance in Transition from Homelessness (PATH)	1,015
Refugee Resettlement Program	4,775
Restricted Grant	3,316
Social Service Block Grant	53,090
Temporary Assistance to Needy Families Block Grant	510,736
Title IV-B Child Welfare Services	11,840
Title IV-E Foster Care	81,636
Title IV-E Foster Care Independent Living	2,305
Title XIX - Child Residential	44,457
Title XIX Community Care Waiver	180,447
Title XIX ICF/MR	178,067
Title XIX Medical Assistance	2,749,690
Title XXI Childrens Health Insurance Program	34,530
Various Federal Programs and Accruals	2,706
Vocational Rehabilitation Act Section 120	8,946
Subtotal, Department of Human Services	*4,207,507*

REVENUES

Federal Revenue

Department of Labor:	(thousands of dollars)
Comprehensive Services for Independent Living	700
Current Employment Statistics	2,269
Disabled Veterans' Outreach Program	2,325
Employment Services	23,500
Employment Services Cost Reimbursable Grants - Migrant Housing	50
Employment Services Grants-Alien Labor Certification	2,318
Federal Public Employees Occupational Safety and Health Act	1,800
JTPA Title IIID Discretionary Funding	15,000
Job Training Partnership Act	83,538
Local Veterans' Employment Representatives	1,425
National Council on Aging - Senior Community Services Employment Project	3,000
OASI (DDS) Intelligent Workstation Activities	1,000
OSHA Data Collection Survey	80
Occupational Informational Coordinating Program	149
Occupational Safety Health Act, On-Site Consultation	1,700
Occupational Wage Survey - Labor Market Information	309
Occupational Wage Survey-Alien Certification	204
Old Age and Survivors Insurance-Disability Determination	40,900
One Stop Labor Market Information	862
Redesigned Occupational Safety and Health (ROSH)	404
Rehabilitation of Supplemental Security Income Beneficiaries	2,000
Supported Employment	1,200
Technical Assistance Training	1,700
Technology Related Assistance Project	700
Trade Adjustment Assistance Project	9,200
Unemployment Insurance	92,800
Various Federal Programs and Accruals	190
Vocational Rehabilitation Act of 1973	42,500
Welfare to Work	22,000
Work Opportunity Tax Credit	725
Subtotal, Department of Labor	*354,548*
Department of Law and Public Safety:	
Bulletproof Vest Partnership	200
Challenge Grant	300
Child Passenger Protection Education	200
Combat Underage Drinking - Discretionary	400
Combating Underage Drinking	360
Commercial Vehicle/Bus Inspection	2,300
Community Prosecutors Block Grant	1,000
Comprehensive Environmental Response and Compliance and Liability Act	10
Criminal Justice Information System Master Plan Study	250
Domestic Marijuana Eradication Suppression Program	280
Domestic Preparedness Training	2,300
Drug Enforcement Administration and Grants	14,500
Drunk Driver Prevention	454
EMPG - Non-Terrorism	3,600
EMPG - Terrorism	1,000
Equal Employment Opportunity Commission	625
Fatal Accident Reporting System Control	113
Flood Mitigation Assistance	2,000
Forensic DNA Laboratory	300
Hazardous Materials Transportation	275
High Intensity Drug Trafficking Area (HIDTA)	855
Incident Command	750
Innovative Seat Belt Use	800
Juvenile Accountability Incentive Block Grant	6,000
Juvenile Justice Delinquency Prevention	2,363
Local Law Enforcement Block Grant	1,250
Medicaid Fraud Unit	2,384
Municipal Police Assistance/County Prosecutors	1,250
NHTSA Section 402	5,784
NHTSA Section 405	271
NHTSA Section 411	25
NIEHS Worker Health Safety Training	130
National Criminal History Program-OAG	8,000
Northeast Hazardous Waste Project-RCRA	250
Recreational Boating Safety	1,800
Residential Treatment for Substance Abuse	1,700
Safety Incentive Grants	450
State ID Systems Grant	225

Federal Revenue

	(thousands of dollars)
Title V Funding	2,415
Truth In Sentencing Incentive Grant	15,000
Victim Assistance Grants	14,000
Victim Compensation Award	2,200
Violence Against Women Act	5,000
Subtotal, Department of Law and Public Safety	*103,369*
Department of Military and Veterans' Affairs:	
Armory Renovations and Improvements	1,500
Army Facilities Service Contracts	1,050
Army National Guard Statewide Security Agreement	660
Army Training and Technology Lab	401
Atlantic City Air Base - Service Contracts	2,310
Atlantic City Operations and Maintenance	60
Cemetary New Construction	3,000
Design and Construction of the Vineland Memorial Veterans' Home	23,953
Facilities Support Contract	4,587
Fire Fighter/Crash Rescue Service Cooperative Funding Agreement	1,186
Hazardous Waste Environmental Protection Program	1,235
Maguire Air Force Base - Service Contracts	1,624
McGuire Operations and Maintenance	71
Medicare Part A Receipts for Resident Care and Operational Costs	2,329
National Guard Communications Agreement	1,600
New Jersey National Guard Challenge Youth Program	1,996
New Jersey National Guard Counter Drug Program Interservice State-Federal	12
Reefex Environmental Program	672
Training Site Facilities Maintenance Agreements	63
Training and Equipment - Pool Sites	502
Transitional Housing	980
Veterans' Education Monitoring	651
Veterans' Honor Guard	145
Subtotal, Department of Military and Veterans' Affairs	*50,587*
Department of State:	
Basic Block Grant	111
Leveraging Educational Assistance Partnership	1,100
NJ GEAR UP	1,648
National Endowment for the Arts Partnership	632
National Health Service Corps - Student Loan Repayment Program	158
National Telecommunications Information Agency	1,250
Student Loan Administrative Cost Deduction and Allowance	15,675
Various Federal Programs and Accruals	315
Subtotal, Department of State	*20,889*
Department of Transportation:	
Airport Fund	[illegible]70
Emergency Repairs: replace Route 46 bridge over Peckmans River, Passaic County	7,000
Highway Planning and Research	14,180
Metropolitan Planning Funds	8,125
Motor Carrier Safety Assistance Program	5,700
New Jersey Transportation Planning Assistance	3,000
Rail Freight Capital Projects	2,000
Recreational Trails	1,030
Supportive Services Highway Construction Training Program	500
Subtotal, Department of Transportation	*50,935*
Department of the Treasury:	
Diamond Shamrock Oil Overcharge Settlement	500
Division of Gas Expansion	600
State Energy Conservation Program	1,200
Subtotal, Department of the Treasury	*2,300*

Federal Revenue

	(thousands of dollars)
Judicial Branch--	
The Judiciary:	
Technology Opportunity Program	567
Various Federal Programs and Accruals	526
Subtotal, The Judiciary	*1,093*
Special Transportation Fund -- Federal	
Department of Transportation	
Federal Highway Administration	761,239
Fedetal Transit Administration	423,750
Subtotal, Special Transportation Fund -- Federal	*1,184,989*
Total Federal	***7,466,516***

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

1. The appropriations herein or so much thereof as may be necessary are hereby appropriated out of the General Fund, or such other sources of funds specifically indicated or as may be applicable, for the respective public officers and spending agencies and for the several purposes herein specified for the fiscal year ending on June 30, 2001. Unless otherwise provided, the appropriations herein made shall be available during said fiscal year and for a period of one month thereafter for expenditures applicable to said fiscal year. Unless otherwise provided, at the expiration of said one-month period, all unexpended balances shall lapse into the State Treasury or to the credit of trust, dedicated or non-State funds as applicable, except those balances held by encumbrances on file as of June 30, 2001 with the Director of the Division of Budget and Accounting or held by pre-encumbrances on file as of June 30, 2001 as determined by the Director of the Division of Budget and Accounting. The Director of the Division of Budget and Accounting shall provide the Legislative Budget and Finance Officer with a listing of all pre-encumbrances outstanding as of July 31, 2001 together with an explanation of their status. Nothing contained in this section or in this act shall be construed to prohibit the payment due upon any encumbrance or pre-encumbrance made under any appropriation contained in any appropriation act of the previous year or years. Furthermore, balances held by pre-encumbrances as of June 30, 2000 are available for payments applicable to fiscal year 2000 as determined by the Director of the Division of Budget andAccounting. The Director of the Division of Budget and Accounting shall provide the Legislative Budget and Finance Officer with a listing of all pre-encumbrances outstanding as of July 31, 2000 together with an explanation of their status. On or before December 1, 2000, the State Treasurer, in accordance with the provisions of section 37 of article 3 of P.L.1944, c.112 (C.52:27B-46), shall transmit to the Legislature the Annual Financial Report of the State of New Jersey for the fiscal year ending June 30, 2000, depicting the financial condition of the State and the results of operation for the fiscal year ending June 30, 2000.

A103 SEP 2003
A10- SEP 2003

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; *et al* Plaintiffs, vs. HONORABLE JAMES E. McGREEVEY, Governor of the State of New Jersey; *et al* Defendants.	SUPREME COURT OF NEW JERSEY Docket No. 56,643 Civil Action On Appeal From SUPERIOR COURT OF NEW JERSEY LAW DIVISION:MERCER COUNTY Docket No. MER-L-1663-04 Sat Below: Hon. Linda R. Feinberg, J.S.C.

RECEIVED
FILED

BRIEF OF RESPONDENT NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

0+4

CARELLA, BYRNE, BAIN, GILFILLAN, CECCHI, STEWART & OLSTEIN
5 Becker Farm Road
Roseland, New Jersey 07068-1739
(973) 994-1700

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
1177 Avenue of the Americas
New York, New York 10036-2714
(212) 835-1400

Attorneys for Defendant
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

FILED
JUL 15 2004
CLERK

On the Brief:

CHARLES C. CARELLA
HOWARD GRAFF
VICTORIA A. KUMMER
JAMES E. CECCHI

N/NJ

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

As set forth below, and in the simultaneously-submitted appellate briefs by the Defendants Governor James E. McGreevy and State Treasurer John E. McCormac (the "State's Brief") and by the Intervenor-Defendants Richard J. Codey as President of the New Jersey Senate and Albio Sires as Speaker of the New Jersey General Assembly (the "Legislators' Brief"), with which the Defendant New Jersey Economic Development Authority ("EDA") fully concurs, Plaintiffs' challenge to the EDA's issuance of appropriations-backed bonds under the statutes at issue was properly dismissed. The decision of the court below should be affirmed.

PROCEDURAL HISTORY and STATEMENT OF FACTS

The EDA concurs with and adopts the procedural history and counterstatement of facts embodied in the State's Brief.

LEGAL ARGUMENT

I

THE TRIAL COURT PROPERLY DISMISSED THE CHALLENGES TO THE EDA'S ISSUANCE OF APPROPRIATIONS-BACKED BONDS

A. Under the *Lonegan* cases, the EDA's Issuance of Appropriations-Backed Bonds Does Not Violate the Debt Limitation Clause

The trial court correctly disposed of the Plaintiffs' challenges regarding the EDA's issuance of appropriations-backed bonds (Complaint (Pa1), Counts 3, 4 and 5) by applying the "bright line rule" articulated by this Court in *Lonegan v. State*, 174 N.J. 435, 440 (2002) ("*Lonegan I*") and underscored again a year later in *Lonegan v. State*, 176 N.J. 2 (2003) ("*Lonegan II*"): that the bonds at issue here do not implicate the Debt Limitation Clause because they do not constitute debt that is legally enforceable against the State. Decision at 28-30 (Pa119); *Lonegan I*, 174 N.J. at 440, 462-63; *Lonegan II*, 176 N.J. at 14. Indeed, *Lonegan II* fully controls this case, and under its mandate Plaintiffs' challenge must be rejected and the trial court's dismissal affirmed.

Just as in the *Lonegan* cases, the bonds attacked here are a classic illustration of indebtedness that the State is not legally obligated to repay. Both the Cigarette Tax Securitization Act of 2004 (P.L. 2004, c. 68, the "Cigarette Tax Act") (Pa48) and the Motor Vehicle Surcharges Securitization Act of 2004 (P.L. 2004, c. 70, the "Surchage Act") (Pa59) expressly state that the bonds issued thereunder by the EDA "shall *not* be a debt or liability of the State". Cigarette Tax Act §4(e) (Pa51) (emphasis added);

Surcharge Act §4(e) (Pa63) (emphasis added). Instead, the debt service on these bonds is to be paid, upon appropriation, from dedicated cigarette taxes and motor vehicle surcharges. Cigarette Tax Act §5 (Pa53-54); Surcharge Act §§5, 6 (Pa64-65). As this Court made crystal clear in *Lonegan II*, such appropriations-backed debt is not subject to the Debt Limitation Clause: "[w]hen contract or appropriations-backed debt is issued, however, the State does not pledge its full faith and credit and is not legally bound to make payment on that debt." *Lonegan II*, 176 N.J. at 14-15[1].

B. The "Bright Line Rule" is Immutable; the "Purpose" Distinctions Proffered by Plaintiffs are in Contravention of That Rule.

The proper application of the bright line rule is well illustrated by the Court's discussion and analysis in the *Lonegan* cases. Therein the Court recognized the need for a clear and functional rule that would ensure that the marketplace would have confidence in the financial instruments issued by this State. Thus, this Court was particularly intolerant of artificial or "unprincipled distinctions" that might erode the "bright line rule" or undermine its function.

In *Lonegan II* the plaintiffs sought to draw a distinction between appropriations-backed debt (debt to be repaid from annual appropriations) such as those at issue here and "most other contract debt." 176 N.J. at 11. Based upon that artificial distinction, plaintiffs argued that "[d]ebt that finances a toll road or bridge, a college, or a sports

---

[1] As set forth below (*see infra* Point II), there is no reason to revisit the unequivocal holding of *Lonegan II* – and indeed, there are compelling reasons not to do so.

and entertainment facility, and that is retired from a 'special fund' comprised of revenues generated by the financed facility or project (*e.g.*, from toll collections, tuition payments, or ticket sales), is exempt from the requirement of the Clause because general tax revenues are not tapped for repayment." *Id.* (citations omitted). The Court rejected this argument, because there was no principled distinction between such types of debt. *Id.* at 15; *see also id.* at 19 (noting that there is no "constitutionally significant differences among these types of debt."). In so doing, the Court observed that:

> [T]he variety of functions assumed by the government since the 1800s, and the sophisticated means now used to finance those functions, make it difficult if not impossible to differentiate among acceptable and unacceptable types of twenty-first century appropriations-backed debt under a nineteenth century paradigm.

Id. (*citing Book v. State Office Bldg. Comm'n.*, 238 Ind. 120, 149 N.E.2d 273, 281 (1958) (opining that interpretation of debt limitation provision "constantly [must] be adapted to new questions and conditions which arise because of an ever-expanding economy and the progress of society.")).

Like the court below, this Court should also reject the even finer distinction now proffered by Plaintiffs – that the "purpose" to which the bond proceeds will be applied should govern the constitutionality of the proposed bond issuance. (Pb48-52). Such a distinction is even less "principled" than the "type of debt" distinction rejected in *Lonegan II* – not only because there is no such distinction appearing in the Constitution or recognized by the opinions of this Court, but also because such a "purpose"

distinction would make it even more "impossible to differentiate among acceptable and unacceptable" *purposes* of debt. The trial court addressed this succinctly:

> [S]ince there is no such "purpose" provision in the Debt Limitation Clause, and the case law and practice have not required one, there is no standard today by which anyone can determine if a purpose or use contemplated for the proceeds of debt is constitutionally permissible. (Pa125).

Moreover, adding an amorphous "purpose" standard to the Debt Limitation Clause would undermine the "bright line rule." As the trial court observed:

> In contrast to the bright-line rule that was recently reinforced by the Supreme Court, the imposition of a novel or ad hoc standard would create budget anarchy and simply facilitate challenges by any disgruntled legislator or citizen whose cause was not vindicated through the legislative process. (Pa125-126).

Indeed, if Plaintiffs were to prevail here, judges will be called upon to make decisions regarding the use to which the bond proceeds are put – deciding between an after-school program and a new road – as a matter of "constitutional" law. Lawmakers will have no reliable benchmark to utilize as they endeavor to craft the state budget and permissible twenty-first century appropriations-backed debt relating thereto. "Budget anarchy" (Pa125) would not be the only ineluctable result – inevitably we would also see a "disrupt[ion] of the State's various financing mechanisms," *Lonegan II*, 176 N.J. at 21, and a destabilization of the market for the various State authorities' bonds. Avoidance of such "unintended consequences" was central to this Court's rationale for adopting the "bright line rule" in *Lonegan II*:

> Our decision is based in the unambiguous and clear language of Article VIII, Section II, paragraph 3 of the New Jersey Constitution (the Debt Limitation Clause), and in the State's reliance on the Court's precedents when crafting complex financing mechanisms responsive to changing market conditions. We are well aware of the need to maintain stability in respect of the variety of financial instruments authorized by the Legislature, and of the litigation that would result if we attempt to establish classes of debt that are governed by the Clause and classes that are not. To reject, at this late date, traditional legal rules relating to debt could have unintended consequences not anticipated by the Court.

Id. at 5.

Unquestionably, what Plaintiffs urge here – a purpose-by-purpose review – would erode, if not eviscerate, the bright line rule. Certainly such a regime would undermine the result this Court sought to achieve: market stability and financial instruments unencumbered by litigation. Accordingly, the court below appropriately "reject[ed] the notion that the purpose of the bond is determinative of whether it is subject to the Debt Limitation Clause." (Pa124).

This Court in *Lonegan II* expressly recognized the multitude of purposes served by appropriations-backed debt, "ranging from the authority bonds specifically challenged by plaintiffs to lease-purchase agreements for real property, equipment, and services, and tax and revenue anticipation notes", and also noted the "variety of functions assumed by the Government since the 1800s". *Lonegan II*, 176 N.J. at 13, 19. Significantly, however, the Court did not – as Plaintiffs urge here – differentiate based upon the utility or purpose of these many functions. Instead, this Court "agree[d] with the State" that "[i]n reliance on our past decisions, the State has made repayment

subject to future appropriations and expressly disclaimed any enforceable legal obligation, thereby structuring those programs to comport with the bright-line rule previously enunciated by this Court." *Id.* at 13.

C. Plaintiffs' Selective Recitation of Case Precedent is Not Helpful; Rather this Court's Own Analysis of the Case Law in *Lonegan* was Comprehensive and is Authoritative

It is difficult to understand why Plaintiffs spend so much time in their brief reciting a history of this Court's precedents construing the Debt Limitation Clause – with special emphasis on non-binding concurrences and dissents.[2] (Pb35-40). It is respectfully submitted, however, that *this Court's own* analysis of the relevant case law represents an authoritative interpretation of those cases – and such an analysis was provided just two years ago, in the thorough majority opinion of Chief Justice Poritz in *Lonegan I.*

In reviewing the very same cases cited by Plaintiffs – and many more – the *Lonegan I* Court identified a "clear, bright line" drawn by a "virtually unbroken line of precedent" whereby the Court has "applied the Debt Limitation Clause literally,

---

[2] Especially misplaced is Plaintiffs' extended reference to Justice Handler's dissent in *Spadoro v. Whitman,* 150 N.J. 2 (1997). (Pb39-40). Even if the dissent had any precedential value, the fine distinctions urged therein based on (i) the types of debt, (ii) the types of independent authorities issuing the debt, and (iii) the separate revenue streams supporting the debt, *id.* at 9-10, were *not* adopted in this Court's subsequent holding in *Lonegan II* – as even the Plaintiffs admit. (Pb50. ("It is true that the *Lonegan II* Court favored a formalistic reading of the Debt Limitation Clause and declined to engage in an examination of the practicalities and purposes of the contract debt at issue in that case."))

holding that when the full faith and credit of the State is not pledged the debt is not the debt of the State." *Lonegan I*, 174 N.J. at 440. Thus, the Court concluded that:

> Over five decades of case law in New Jersey have established the constitutionality of contract debt in a variety of forms and settings. Distilled to its essence, our cases have held that when the bonds authorized do not impose a legal obligation on the State they are not a debt of the State.

Id. at 462-43.

Likewise, "distilled to its essence" this case is about bonds that do *not* impose a legal obligation on the State. Accordingly, over five decades of case law dictates that there is no constitutional impediment to the EDA's issuance of the bonds.

D. Plaintiffs' Rhetorical Pleas of "Pain and Instability" are Spurious and Legally Inapposite

There is no merit – legal or factual – to the cautionary bell sounded by Plaintiffs of the "pain and instability" that will be inflicted on the Government if these bonds are issued. (Pb49). (Indeed, as noted above, a negative impact on the State's finances would only flow from an *invalidation* of this legislation.) Just as this Court refused to credit the claim in *Lonegan II* premised on exactly the same ersatz concerns – because such matters have nothing whatsoever to do with application of the Debt Limitation Clause – so too should this Court make short work of the claim here: "judgments about the issuance of debt when the State's full faith and credit is not implicated are best left to other branches of government." *Lonegan II*, 176 N.J. at 15.

The Legislature has seen fit to exercise its prerogative, endorsed by the Governor, in authorizing the issuance of bonds that do not implicate the State's full faith and credit. *Lonegan II* fully controls this case, and under its mandate Plaintiffs' constitutional challenge must be rejected. Accordingly, the Decision and Order of the trial court should be affirmed.

F. The State's Use of Proceeds From The Bonds Provides No Basis to Challenge Their Issuance

In urging reversal here, the Plaintiffs inappropriately conflate arguments relevant to the Debt Limitation Clause with arguments arguably appropriate under the Appropriations Clause. These constitutional provisions are wholly separate and distinct, requiring separate and distinct analyses. Thus, while this Court's prior decisions have put to rest any question that the EDA's issuance of appropriations-backed bonds does not violate the Debt Limitation Clause, the statutes themselves put to rest any question, under the Appropriations Clause or otherwise, about the legitimacy of the use to which the State may put the bond proceeds. Both statutes expressly provide that the proceeds shall be "used for any lawful purpose of the State for which moneys on deposit in the General Fund may be used." Cigarette Tax Act §3(b) (Pa49); Surcharge Act §3(b) (Pa60-61). On their face, therefore, both statutes make clear that whatever their application, the bond proceeds will only be used for a *lawful* purpose.

As such, even if the Court were to question the propriety of depositing these funds into the General Fund to serve as "revenue" – a circumstance of no Constitutional moment, as explained in the accompanying State's Brief – such a finding would be wholly irrelevant to the legitimacy of the EDA's sale of bonds under the Cigarette Tax Act and the Surcharge Act, because the statutes ensure that the proceeds will be put to a lawful purpose. Cash is cash, and if these proceeds cannot be used in the General Fund to satisfy general obligations, they will be used for another lawful purpose for which General Fund monies may be used, such as capital expenditures, or any other lawful expenditure to which the Legislature may decide to apply them.

Accordingly, inasmuch as the raising of the funds through appropriations-backed bonds is incontestably permissible, and the use of such funds for "any lawful purpose" is necessarily legitimate, the statutes authorizing the EDA to sell these bonds are beyond reproach. As such, the Decision and Order of the lower court should be affirmed.

II

THE DISPOSITIVE HOLDING OF *LONEGAN II* SHOULD BE APPLIED HERE AS A MATTER OF *STARE DECISIS*

Plaintiffs are candid in their desire to have this Court revisit *Lonegan II*, subscribe to the opinion of the dissenters therein, and overturn fifty years of precedent in the process. (Pb47, 49-50). Ironically, Plaintiffs' candor highlights two related points: (1) this Court's longstanding adherence to the principles of *stare decisis*; and (2) the wisdom of this Court's creation of a bright line test with regard to the application of the Debt Limitation Clause. As observed by this Court, adherence to clear and certain precedent is necessary to facilitate "the State's reliance on the Court's precedents when crafting complex financing mechanisms responsive to changing market conditions." *Lonegan II*, 176 N.J. at 5 (*see also id.* at 13-14).

The State has historically relied on this Court's precedents in devising financing mechanisms. *See, e.g., Lonegan I*, 174 N.J. at 461-62 ("It is not surprising that the State relied on our approval in *Abbott V* when enacting the EFCFA. Moreover, both the executive and legislative branches had good reason to believe that, under the precedents of this Court, EFCFA would withstand a Debt Limitation Clause challenge."). In this case it is likewise unquestionable that the State relied on the "bright line rule" of the *Lonegan* cases when it fashioned the financial instruments at issue here. And, such reliance is essential, for all the reasons articulated by this Court

only last year: ensuring market stability for the various financial instruments authorized by the Legislature, facilitating the State's crafting of fiscal policy and workable financing mechanisms, and discouraging "unintended consequences," such as yearly court challenges to the State's annual budget enactments. *Lonegan II*, 176 N.J. at 5, 21.

Further buttressing our position is that the doctrine of *stare decisis* ensures a "certainty and stability, to precedents once established," and it "applies primarily to decisions ... which invite reliance and on the basis of which men order their affairs, e.g., in the field of contract or property rights." *Smith v. Brennan*, 31 N.J. 353, 361 (1960). Here, the State has relied upon the certainty and stability of bright line authority from this Court in devising its financing mechanisms. Likewise, the EDA has historically issued bonds – contract debt – and its investors have historically purchased these financial instruments in reliance on clear case precedent. By underscoring as a "bright line rule" the notion that issuance of bonds such as these does not offend the Debt Limitation Clause, the Court itself has effectively invited such reliance, emphasizing the need for the very "stability and certainty" that the principles of *stare decisis* are designed to advance.

Moreover, as noted above (see *supra* Point I.B.), and as acknowledged by this Court in *Lonegan II*, any retreat from this well-settled rule authorizing the issuance of appropriations-backed debt – any blurring of the "bright line" – could entail

"unintended consequences". *Id.* at 5. At a minimum, such consequences would include further and escalating court challenges such as the instant lawsuit at the start of each fiscal year – resulting in a potential destabilization of the New Jersey bond market, and the wholesale disruption of State's entire budgetary process.

As this Court has explained, "if a decision of our own is applicable and dispositive, we are prone to follow it unless some meritorious reason is apparent why we should do otherwise." *Henderson v. Celanese Corp.*, 16 N.J. 209, 212 (1954). Not only is there no meritorious reason to retreat from *Lonegan II* – the consequences that would be engendered by such a retreat provide compelling reasons for the Court *not* to do so. In short, *Lonegan II* is "applicable and dispositive," and should be applied here – in an effort to put an end, once and for all, to baseless challenges directed at the State's appropriations-backed bond legislation, brought by disgruntled legislative opponents who posit increasingly razor-thin and constitutionally insignificant arguments in an effort to distinguish this Court's precedents.

CONCLUSION

For the reasons set forth herein, and in the State's Brief and Legislators' Brief, the Decision below should be affirmed in its entirety.

CARELLA, BYRNE, BAIN, GILFILLAN,
CECCHI, STEWART & OLSTEIN

By: _____
CHARLES C. CARELLA
JAMES E. CECCHI

-and-

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

By: _____
HOWARD GRAFF
VICTORIA A. KUMMER

Attorneys for Defendant/Respondent
NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY

Dated: July 15, 2004

A103 SEP 2000

HONORABLE LEONARD LANCE, et al.,

Plaintiffs-Appellants,

vs.

HONORABLE JAMES E. McGREEVEY, et al.,

Defendants-Respondents,

and

HONORABLE RICHARD J. CODEY as President of the New Jersey Senate and HONORABLE ALBIO SIRES as Speaker of the New Jersey General Assembly,

Intervenors-Defendants-Respondents.

SUPREME COURT OF NEW JERSEY
Docket No. 56,643

Civil Action

On Direct Certification to the Superior Court of New Jersey, Appellate Division

On Appeal from the Superior Court of New Jersey, Law Division, Mercer County

Sat Below:
Hon. Linda R. Feinberg, A.J.S.C.

018

BRIEF AND APPENDIX OF INTERVENORS-DEFENDANTS-RESPONDENTS RICHARD J. CODEY AS PRESIDENT OF THE NEW JERSEY SENATE AND ALBIO SIRES AS SPEAKER OF THE NEW JERSEY GENERAL ASSEMBLY

SOKOL, BEHOT & FIORENZO
433 Hackensack Avenue
Hackensack, New Jersey 07601
(201) 488-1300
Attorneys for Intervenors-Defendants-Respondents

Leon J. Sokol, Esq.
Of Counsel and on the Brief

Steven Siegel, Esq.
On the Brief

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

PRELIMINARY STATEMENT

This matter was commenced by way of Verified Complaint on June 24. Prior to an expedited hearing on this matter before the Law Division, Richard J. Codey as President of New Jersey Senate and Albio Sires as Speaker of the New Jersey General Assembly (hereafter the "Legislative Intervenors") filed a motion to intervene on short notice. By Order dated July 1, 2004, Hon. Linda R. Feinberg, A.J.S.C., granted the motion to intervene. Ia1.

The gravemen of the Verified Complaint is that (1) certain recently enacted statutes purportedly violate the Debt Limitation Clause of the New Jersey Constitution, N.J. Const. Art. VIII, § 2, ¶ 3; and (2) the Governor's certification of certain bond proceeds as "revenue" for purposes of enacting the annual appropriations act purportedly violates the Appropriations Clause of the New Jersey Constitution, N.J. Const. Art. VIII, § 2, ¶ 2. These claims plainly implicate powers constitutionally committed to the Legislature, and powers shared by the Legislature and the Executive.

Defendant Governor James E. McGreevey and Defendant State Treasurer John E. McCormac (hereafter the "State Defendants"), and Defendant New Jersey Economic Development Authority (hereafter "EDA") (collectively the "Named Defendants") are obviously well situated to place before the Court the interests

and concerns of the Executive Branch. The Legislative Intervenors submit this brief to place before the Court the particularized concerns of the Legislative Branch.

Many of the arguments put forth by the Named Defendants address constitutional issues and concerns that apply equally to both of the political branches of State government. For this reason, the Legislative Intervenors rely principally on the submissions of the State Defendants and EDA. The comprehensive arguments of the State Defendants and EDA need not be repeated here.

Although the interests of the political branches of State government substantially overlap, the interests are not identical. Because this appeal raises substantial issues involving the separation of powers among all three branches of government, this Court, in deciding this appeal, should give due consideration to the specific interests and concerns of the Legislative Branch as well as to the interests and concerns of the Executive Branch. This brief is submitted in furtherance of that objective.

LEGAL ARGUMENT

POINT I

ALTHOUGH PLAINTIFFS CHALLENGE DIRECTLY THE GOVERNOR'S CONSTUTUTIONALLY COMMITTED AUTHORITY TO CERTIFY REVENUE FOR PURPOSES OF ENACTING THE ANNUAL APPROPRIATIONS ACT, PLAINTIFFS' CHALLENGE IS PROPERLY UNDERSTOOD ALSO AS AN ATTACK ON THE LEGISLATURE'S EXCLUSIVE AUTHORITY TO APPROPRIATE STATE FUNDS; SO UNDERSTOOD, PLAINTIFFS' CLAIMS MUST BE REJECTED AS A NONJUSTICIABLE POLITICAL QUESTION

Pursuant to Article VIII, Section 2, paragraph 2 of the New Jersey Constitution (the "Appropriations Clause"), the Legislature approved and the Governor signed an Appropriations Act for fiscal year 2005, which began on July 1, 2004 and ends on June 30, 2005. See L. 2004, c. 71 (hereafter "Act"). In their Verified Complaint, Plaintiffs contend that the Act is unconstitutional, by virtue of the Governor's certification of certain bond proceeds as "revenue." Pa8-9.

Article VIII, Section 2, paragraph 2 of the New Jersey Constitution provides, in relevant part:

> No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year . . . . No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor.

[N.J. Const., art. VIII, §2, ¶2.]

By its terms, Article VIII, Section 2, paragraph 2 delegates exclusively to the Governor the certification of revenue for purposes of enacting an appropriations act. As fully set forth in the State Defendants' brief, the plain text of Article VIII, Section 2, paragraph 2 is "a textually demonstrable constitutional commitment" to the Executive Branch of the issue of certifying revenue for the purpose of enacting an Appropriations Act. See State Def. Br., at 27. Hence, under the standards of justiciability laid down by our Supreme Court in Gilbert v. Gladden, 87 N.J. 275, 282 (1981), a challenge to the Governor's determination of what constitutes revenue is not justiciable in the courts *for this reason alone*. See generally State Def. Br., at 20-34.

The bar of nonjusticiability, however, arises *not merely* by operation of a narrow construction of Plaintiffs' Complaint as an impermissible challenge to the Governor's exclusive authority to certify the revenues in the Appropriations Act. As more fully set forth below, although Plaintiffs challenge *directly* the Governor's constitutionally committed authority to certify revenue, Plaintiffs' challenge is properly understood *also* as a broad and unsustainable attack on the political branches generally, including an attempt to abrogate the Legislature's exclusive authority to appropriate state funds under Article

VIII, Section 2, paragraph 2. So understood, Plaintiffs' claims properly should be rejected as a nonjusticiable political question *for this separate and distinct reason.*

A. Plaintiffs' challenge to the Governor's certification authority amounts to a veiled challenge to the Legislature's appropriation authority

The Governor's constitutional authority to certify revenue as part of the annual appropriations act is merely the *final step* in a long and complex appropriations process that is constitutionally committed principally to the Legislature. See N.J. Const., Art. VIII, §2, ¶2; see also City of Camden v. Byrne, 82 N.J. 133, 149-150 (1980). In the period leading up to the enactment of an annual appropriations bill, the Legislature undertakes months of deliberations and hearings on the proposed State budget. Legislative committees carefully consider revenue projections provided by the Office Legislative Services, and weigh these projections against competing demands for State funds. If projected revenues are determined to be insufficient to cover expenses put forth in a proposed budget, the determination, in the first instance,[1] to reduce expenses or increase revenues rests with the Legislature in connection with

[1] If the Legislature were to fail to produce an appropriations bill that accords with the requirements of Art. VIII, §2, ¶2, then it falls to the Governor to exercise his constitutional powers. Those powers include the certification power here at issue, see N.J. Const., Art. VIII, §2, ¶2, and the power to exercise a line-item veto, see N.J. Const., Art. V, §1, ¶15.

the appropriations process or by way of related legislation designed to reduce expenses or raise revenues.

When the constitutional appropriations process is viewed from this perspective, the conclusion is inescapable that Plaintiffs' constitutional challenge nominally directed toward the Governor's certification power is, in reality, an attack on the very foundation of the power and authority of the Legislature. See City of Camden v. Byrne, 82 N.J. 133, 149 (1980)(holding that"[t]he power to appropriate money [under our State Constitution] rests with the Legislature"). The broader implications of this aspect of Plaintiffs' constitutional challenge are discussed at length below.

B. This Court repeatedly has reaffirmed the fundamental separation-of-powers principle that "there can be no redress in the courts to overcome either the Legislature's action or refusal to take action pursuant to its constitutional power over state appropriations"; that principle is fully applicable to Plaintiffs' Appropriations Clause claim and bars the claim as a nonjusticiable political question, notwithstanding that Plaintiffs' claim is nominally focused on the power of the Governor and not the Legislature

Article III, paragraph 1 of the New Jersey Constitution provides an explicit textual basis for the principle of separation of powers among the coordinate branches of our State government:

> The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the

powers properly belonging to either of the others, except as expressly provided in this Constitution.

[N.J. Const., art. III, ¶1]

The constitutional principle of separation of powers "contemplates that each branch of government will exercise fully its own powers without transgressing upon powers rightfully belonging to a cognate branch." Knight v. City of Margate, 86 N.J. 374, 388 (1981). Stated differently, one branch of government must not interfere with the "exclusive functions of another branch . . ." Communications Workers of Am. v. Florio, 130 N.J. 439, 460 (1992)

Consistent with these overarching separation-of-powers principles, this Court repeatedly has reaffirmed the fundamental precept that "there can be no redress in the courts to overcome either the Legislature's action or refusal to take action pursuant to its constitutional power over state appropriations." City of Camden v. Byrne, 82 N.J. 133, 149 (1980); see also Williams v. Dep't of Human Services, 116 N.J. 102, 123(1989); Madden v. Township of Delran, 126 N.J. 591, 612 (1992); New Jersey Division of Youth and Family Services v. D.C., 118 N.J. 388, 399 (1990); City of Jersey City v. Farmer, 329 N.J. Super. 27, 35 (App. Div.), certif. denied, 165 N.J. 135 (2000); Fitzgerald v. Palmer, 47 N.J. 106, 108 (1966). This is so, the Court has explained, because "[t]he power to appropriate money

[under our State Constitution] rests with the Legislature." City of Camden v. Byrne, supra, 82 N.J. at 149. See id. at 150 ("[S]ince the ultimate constitutional responsibility for appropriations rests with the Legislature, the judiciary is without authority to compel ... the Legislature to make a specific appropriation").

The nonjusticiability of claims involving the Legislature's appropriation of public funds plainly precludes the relief sought here, notwithstanding the fact that Plaintiffs' challenge under the Appropriations Clause is nominally focused on the Governor's certification power. If this Court were to recognize a right of judicial review over the Governor's certification power, such a right, once recognized, would necessarily extend to the Legislature's appropriation power. To use Plaintiffs' own phrase (applied in a somewhat different context but equally applicable here), the Governor's certification power and the Legislature's appropriation power "are flip sides of the same coin." Pb51.

Plaintiffs insist that their constitutional challenge is narrowly drawn and that the purported principle they seek to vindicate somehow can be confined to the facts presented and the relief sought. Plaintiffs state: "Plaintiffs challenge the Governor's authority to determine which **categories of income** go

into the calculation of available State revenues, not the ***result of the calculation itself***." Pb55-56 (emphasis added).

We are at a loss to understand the supposedly principled distinction between "categories of revenue" and "revenue." If this Court were to adopt Plaintiffs' reasoning and thereby reserve for itself the power to oversee the Governor's certification of "revenue," the Court inexorably will be drawn into myriad controversies involving not merely "categories of revenue" (in Plaintiffs' words), but "revenue" itself and, indeed, the entire spectrum of the appropriations process involving the Legislature as well as the Executive. The bar of nonjusticiability will have fallen.

The bar should be left standing. The essential purpose of the doctrine of separation of powers is "not to restrict the legitimate operation of representative democracy." Worthington v. Fauver, 88 N.J. 183, 206 (1982). The specter of judicial review and judicially-imposed remedies in connection with each annual appropriations act would threaten to interfere with the very essence of "representative democracy," that is, the authority of elected officials to make decisions concerning public revenue and the appropriation of public funds.

Plaintiffs do have a remedy for their grievance, but they are in the wrong forum. The Constitution jointly commits to the Legislature and the Executive the resolution of any dispute with

respect to the Governor's proper exercise of his power to certify revenues in an appropriations act. As pointed out by the State Defendants, the Legislature has the exclusive authority to initiate an amendment process should it wish to alter the Governor's authority to certify revenue. See State Def. Br., at 33-34. Indeed, a concurrent resolution to amend the State Constitution is presently pending in the Legislature to exclude from revenue in the Governor's certification funds made available to the State through the sale of bonds unless the funds are appropriated for paying the costs of capital projects. See Assembly Concurrent Resolution No. 181.

Plaintiffs are evidently dissatisfied with the present resolution of the issue by the Legislature and the Executive, and by the prospects for altering the resolution through legislative means. But Plaintiffs' dissatisfaction with the legislative process gives them no license to pursue their political objectives through litigation.

Consistent with fundamental separation-of-powers principles and the political question doctrine, this Court is without authority to interfere in the appropriations process, which is constitutionally committed only to the Legislature and the Executive. See City of Camden v. Byrne, supra, 82 N.J. at 149; Gilbert v. Gladden, supra, 87 N.J. 275; DeVesa v. Dorsey, 135

N.J. 420, 429 (1993) (Pollack, J., concurring); Lonegan v. State, 176 N.J. 2, 21 (2003).

C. Plaintiffs' theory of judicial oversight of appropriation authority, if adopted, would impermissibly infringe on the sovereign authority vested in the Legislature by the State Constitution

Unlike the Federal Constitution, "the State Constitution is not a grant but a limitation of powers." Gangemi v. Berry, 25 N.J. 1, 7 (1957). By enacting the State Constitution, "the people vested full sovereign authority in the Legislature, save as otherwise therein provided." Id. at 8 (citing Schmidt v. Board of Adjustment, 9 N.J. 405 (1952)).

Here, the Legislature determined that the Fiscal Year 2005 Appropriations Act, L. 2004, c. 70, presented to the Governor for his signature was properly balanced with adequate revenues, including the revenues derived from the enacted the Cigarette Tax Securitization Act of 2004 (the "Cigarette Tax Act"), L. 2004, c. 68, and the Motor Vehicles Surcharges Securitization Act of 2004 (the "Surcharge Act"), L. 2004, c. 70. Nothing in the Appropriations Clause expressly prohibits the Legislature from including the proceeds of bond sales by an independent authority in revenues for purposes of enacting an appropriations act. There being no express constitutional prohibition or limitation as to this exercise of power by the Legislature, the

power properly must be deemed an implied residual power of the sovereign. Gangemi v. Berry, supra, 25 N.J. at 8.

Plaintiffs' theory of judicial oversight of appropriation powers, if adopted, would impermissibly infringe on the sovereign authority vested in the Legislature by the State Constitution. In this case, the Legislature, by enacting the Appropriations Act, determined that the bond proceeds of the Cigarette Tax Act and the Surcharge Act constitute revenue. The Governor, exercising his independent authority conferred by the Appropriations Clause, concurred, and certified the aforementioned bond proceeds as revenue. The judiciary should not substitute its judgment for the judgment of the coordinate branches *each exercising its own constitutionally conferred authority*. This is especially so, in light of the fact that the aforementioned exercise of appropriations authority by the Legislature properly must be deemed an implied residual power of the sovereign.

The judgment of the court below should affirmed *for this reason alone*.

POINT II

THE CLEAR HOLDING OF THE SUPREME COURT IN LONEGAN II FORECLOSES PLAINTIFFS' PURPORTED CLAIM ARISING UNDER THE DEBT LIMITATION CLAUSE OF THE NEW JERSEY CONSTITUTION; THAT HOLDING SHOULD NOT BE DISTURBED FOR THE VERY REASONS IDENTIFIED BY THE LONEGAN II COURT REAFFIRMING "FIFTY YEARS OF PRECEDENT," INCLUDING "THE NEED TO MAINTAIN STABILITY IN RESPECT OF THE VARIETY OF FINANCIAL INSTRUMENTS AUTHORIZED BY THE LEGISLATURE"

The State Defendants and EDA each have addressed the Plaintiffs' claims purporting to arise under the Debt Limitation Clause of the New Jersey Constitution, and have established beyond question that this Court's decision in Lonegan v. State, 176 N.J. 2 (2003) ("Lonegan II") bars and precludes Plaintiffs' claims. See State Defendants' Brief, at 41-47; EDA Br., at 5-17. To the comprehensive arguments of the State Defendants and EDA, we add only the following.

In Lonegan II, this Court held that "only debt that is legally enforceable against the State is subject to the Debt Limitation Clause." Lonegan II, supra, 176 N.J. at 13. Here, it is undisputed that the proposed debt that would arise under the two statutes at issue in this litigation would not be legally enforceable against the State. Thus, Plaintiffs' claim purporting to arise under the Debt Limitation Clause, quite simply, fails to state a claim.

Although Plaintiffs have no claim under the Debt Limitation Clause, Plaintiffs nevertheless put forth their arguments, which

can be only be understood as a plea for this Court to reconsider and overturn its decision in Lonegan II just one year after this Court handed down the decision.

As more fully discussed in the briefs of the State Defendants and EDA, Plaintiffs have failed to identify any defect in the Court's reasoning in Lonegan II, or any change in circumstances that would warrant the reconsideration, let alone the overturning of the Lonegan II decision. Indeed, Plaintiffs do not even expressly acknowledge that they seek reconsideration of Lonegan II.

In any event, Lonegan II is a well-reasoned decision based on sound constitutional principle as well as compelling considerations of public policy. See generally State Defendants' Br., at 56-64; EDA Br., at 5-16. Moreover, reconsideration is especially inappropriate in this sensitive area affecting the fiscal policy of the State *for the very reasons identified by the Court as an essential basis for its decision in Lonegan II*: i.e., "the need to maintain stability in respect of the variety of financial instruments authorized by the Legislature." Lonegan II, supra, 176 N.J. at 5.

The Legislature's reliance on settled legal rules governing the crafting of State debt was a key consideration underlying this Court's decisions in both Lonegan I and Lonegan II. See Lonegan I 174 N.J. at 461-62 ("It is not surprising that the

State relied on our approval in Abbott V when enacting the EFCFA. Moreover, both the executive and legislative branches had good reason to believe that, under the precedents of this Court, EFCFA would withstand a Debt Limitation Clause challenge."); Lonegan II ("[t]o reject at this late date traditional legal rules relating to debt could have unintended consequences not anticipated by the Court") Ibid.

Following this Court's decision in Lonegan II, the Legislature, relying on the principles reaffirmed in that decision, enacted the Cigarette Tax Act and the Surcharge Act. The Legislature, also in reliance on Lonegan II, enacted the Fiscal Year 2005 Appropriations Act, L. 2004, c. 71, which incorporates into the State's budget the revenue derived from the Cigarette Tax Act and the Surcharge Act.

In short, the Legislature, in balancing the myriad competing and conflicting fiscal demands in the multi-billion dollar appropriations process, relied *precisely* upon the "certainty and stability" of the "bright line" authority of Lonegan II. This Court in Lonegan II effectively invited such reliance, by "reaffirm[ing] over fifty years of precedent" and by underscoring "the need to maintain stability in respect of the variety of financial instruments authorized by the Legislature." Lonegan II, supra, 176 N.J. at 4-5.

As noted in Point I, supra, Plaintiffs do have a remedy for their grievances, but they are in the wrong forum. The Constitution commits to the Legislature the exclusive authority to initiate the process leading to a constitutional amendment. That is where Plaintiffs' exclusive remedy lies, as this Court in Lonegan II itself expressly recognized. Lonegan II, supra, 176 N.J. at 5 ("We leave it to the legislative and executive branches, where it properly resides, the policy decision whether to propose a constitutional amendment redefining or otherwise altering the scope of the Debt Limitation Clause").

For all of these reasons, this Court's decision in Lonegan II -- and the "over fifty years of precedent" reaffirmed therein, id. at 4 -- should not be disturbed.

CONCLUSION

For the reasons set forth above as well as the reasons set forth in the briefs of the State defendants and EDA, Intervenor-Defendants Richard J. Codey as President of the New Jersey Senate and Albio Sires as Speaker of the New Jersey General Assembly respectfully request that that the decision of the Law Division be affirmed.

Respectfully submitted,

Sokol Behot & Fiorenzo
Attorneys for Intervenor-Defendants Richard J. Codey as President of the New Jersey Senate and Albio Sires as Speaker of the New Jersey General Assembly

By: Leon J. Sokol

Dated: July 14, 2004

SOKOL, BEHOT AND FIORENZO
433 Hackensack Avenue
Hackensack, New Jersey 07601
(201) 488-1300
Attorneys for Applicants for Intervention
Richard J. Codey as President of the New Jersey Senate
and Albio Sires as Speaker of the New Jersey General Assembly

HON. LEONARD LANCE, et al.,

Plaintiffs,

v.

HON. JAMES E. McGREEVEY et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY

Docket No. MER-L-1663-04

ORDER GRANTING LEAVE TO INTERVENE ON SHORT NOTICE TO APPLICANTS RICHARD J. CODEY A PRESIDENT OF THE NEW JERSEY SENATE AND ALBIO SIRES AS SPEAKER OF THE NEW JERSEY GENERAL ASSEMBLY

THIS MATTER having been opened to the Court on Motion of Richard J. Codey as President of the New Jersey Senate and Albio Sires as Speaker of the New Jersey General Assembly (hereafter the "Applicants for Intervention" or "Applicants") through their attorneys, Sokol, Behot & Fiorenzo (Leon J. Sokol, Esq., appearing) and on notice to Mark D. Sheridan, Esq., counsel for Plaintiffs Leonard Lance, Alex DeCroce, Joseph M. Kyrillos, Jr., and Robert Lindmark; Andrew T. Fede, Esq., counsel for Plaintiff Stephen M. Lonegan; Thaddeus R. Maciag, Esq., counsel for Plaintiff Bret Schundler; Nancy Kaplen, AAG, counsel for Defendants James E. McGreevey and John E. McCormac; Howard Graff, Esq. and James E.

Cecchi, Esq., co-counsel for Defendant New Jersey Economic Development Authority; for an entry of an order granting the Applicants' motion to intervene on short notice; and this Court having reviewed and considered the papers filed both in support of and in opposition to the within motion, and the oral argument of counsel; and for good cause shown;

IT IS on this 1st day of July, 2004 10:45 a.m.

ORDERED as follows:

1. The motion of the Richard J. Codey as President of the New Jersey Senate and Albio Sires as Speaker of the New Jersey General Assembly for Intervention in the within litigation on short notice is hereby granted; and

2. A copy of this Order shall be served upon all counsel within immediately days of receipt of same by counsel for the Movant.

LINDA R. FEINBERG, A.J.S.C.

A103 SEP 2003

HONORABLE LEONARD LANCE, et al., Plaintiffs, v. HONORABLE JAMES E. McGREEVEY, et al., Defendants.	SUPREME COURT OF NEW JERSEY DOCKET NO. 56,643 Civil Action On Direct Certification to the Superior Court of New Jersey, Law Division Sat Below: Hon. Linda R. Feinberg, A.J.S.C.

BRIEF OF DEFENDANTS GOVERNOR JAMES E. McGREEVEY, AND STATE TREASURER JOHN E. McCORMAC

FILED
JUL 15 2004
CLERK

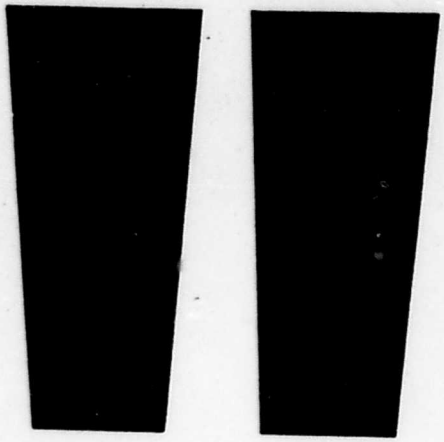
PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, New Jersey 08625-0112
(609) 292-8576

Attorney for Defendants
Governor James E. McGreevey, and
State Treasurer John E. McCormac

Nancy Kaplen
Assistant Attorney General
Of Counsel

Patrick DeAlmeida
Deputy Attorney General
On the Brief

CORRECTION



PRECEDING IMAGE HAS BEEN REPEATED TO ASSURE LEGIBILITY OR TO CORRECT A POSSIBLE ERROR

A103 SEP 2003

HONORABLE LEONARD LANCE, et al., Plaintiffs, v. HONORABLE JAMES E. McGREEVEY, et al., Defendants.	SUPREME COURT OF NEW JERSEY DOCKET NO. 56,643 Civil Action On Direct Certification to the Superior Court of New Jersey, Law Division Sat Below: Hon. Linda R. Feinberg, A.J.S.C.

BRIEF OF DEFENDANTS GOVERNOR JAMES E. McGREEVEY, AND STATE TREASURER JOHN E. McCORMAC

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, New Jersey 08625-0112
(609) 292-8576

Attorney for Defendants
Governor James E. McGreevey, and
State Treasurer John E. McCormac

Nancy Kaplen
Assistant Attorney General
Of Counsel

Patrick DeAlmeida
Deputy Attorney General
On the Brief

TABLE OF CONTENTS

TABLE OF CITATIONS OF CASES AND AUTHORITIES

Cases Cited **Page**

Constitutional Provisions Cited

Statutes Cited

Rules Cited

Other Authorities Cited

PRELIMINARY STATEMENT

Plaintiffs ask this Court to overturn the financial policy choices of the Legislature and Governor for the newly started fiscal year. Having weighed the competing demands on the State for services and financial support, the branches of government entrusted with managing the State's financial affairs have enacted an Appropriations Act to meet the varied needs of the citizens of this State. Those branches of government determined that one of the State's independent authorities will raise funds through the sale of bonds without creating State debt, and that these funds will be transferred to the State to be used for any lawful purpose. Pursuant to his constitutional authority and prerogative, the Governor certified that the funds to be transferred by the independent authority to the State constitute revenue on hand or anticipated to provide for the expenditures authorized in the Appropriations Act.

Plaintiffs challenge these financial decisions and ask this Court to question, for the first time in State history, the validity of the Governor's revenue certification. By seeking this Court's intervention in the fiscal policy making process delegated by the Constitution to the Governor and Legislature, plaintiffs invite a transgression of the separation of powers enshrined in our Constitution and, on that ground alone, their claims should be denied. The State Constitution unequivocally

delegates to the Governor the power to certify revenue for purposes of enacting an Appropriations Act. He therefore has the discretion to decide what constitutes revenue available or anticipated to meet the spending provisions of the Appropriations Act. The framers of the Constitution envisioned no role for the Judiciary in the sensitive and inherently political process of formulating a State budget and crafting fiscal policy.

In addition, it is clear that the Appropriations Act, and accompanying legislation authorizing the issuance of bonds, comport with all relevant constitutional provisions. The meaning of revenue in the Appropriations Clause is broad and was intended to provide the Governor and Legislature with maximum flexibility in fashioning the State's fiscal affairs. Nothing in the Constitution prohibits the Governor from including proceeds from the sale of bonds in his certification of revenue. The bond sale proceeds authorized for this fiscal year will be transferred from the independent authority that issues the bonds to the General Fund for use for any lawful purpose. Those proceeds clearly will be a resource available to meet the State's expenses and were, therefore, properly recognized as revenue by the Governor.

Moreover, to reach the result they seek, plaintiffs call into question this Court's decision in Lonegan v. State, 176 N.J. 2 (2003) ("Lonegan II"), issued just last year, which creates a bright line designed to provide stability and certainty both to

the investing public and the other branches of government with respect to the scope of the Debt Limitation Clause. Without question, the statutes at issue here do not authorize the creation of State debt. To the contrary, those statutes empower an independent authority to issue bonds, without creating a debt of the State, the proceeds of which may be transferred to the General Fund. The payment of the debt service on those bonds by the State is subject to the decisions of future Legislatures to appropriate funds for that purpose. As this Court unequivocally held in Lonegan II, the issuance of bonds in these circumstances does not fall within the Debt Limitation Clause.

Plaintiffs ask this Court to abandon the bright line established in Lonegan II, and relied upon by the Legislature and Governor in crafting this year's Appropriations Act, and impose an artificial and unworkable standard requiring voter approval based on the purpose to which the bond proceeds will be put. This Court wisely rejected that approach in Lonegan II and should not blur the bright line that now guides the State's financial practices.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS*

Pursuant to Article VIII, Section 2, paragraph 2 of the State Constitution (the "Appropriations Clause"), the Legislature has approved and the Governor signed an Appropriations Act for fiscal year 2005 ("FY05"), which began on July 1, 2004 and will end on June 30, 2005. L. 2004, c. 71. Prior to signing the FY05 Appropriations Act, the Governor signed two other measures into law, the Cigarette Tax Securitization Act of 2004 (the "Cigarette Tax Act"), L. 2004, c. 68, and the Motor Vehicles Surcharges Securitization Act of 2004 (the "Surcharge Act"), L. 2004, c. 70.

The Cigarette Tax Act authorizes the New Jersey Economic Development Authority ("EDA" or "the Authority"), an independent State authority established pursuant to the New Jersey Economic Development Authority Act, N.J.S.A. 34:1B-1, et seq., to issue bonds, notes or other obligations, including refunding bonds (the "Cigarette Bonds") payable from, and secured by, a dedicated portion, $0.0325 per cigarette, of the cigarette tax imposed pursuant to N.J.S.A. 54:40A-1, et seq. L. 2004, c. 68, §4. The Authority may adopt a resolution providing for the terms and conditions for the issuance of the Cigarette Bonds, prescribing the method of public or private sale and authorizing a variety of agreements to provide for the payment of the

---

* Because the procedural history and counterstatement of facts are closely related they are combined for the convenience of the Court.

Cigarette Bonds. Ibid. The written consent of the State Treasurer is required before the Authority may authorize the issuance of Cigarette Bonds. Id. at §4(d).

The Cigarette Tax Act provides that the proceeds of the Cigarette Bonds, except refunding bonds, after payment of certain costs incurred in connection therewith, are to be deposited into the Cigarette Tax Securitization Proceeds Fund held by the Authority. Id. at §3a. At the request of the State Treasurer, amounts on deposit in the Cigarette Tax Securitization Proceeds Fund shall be withdrawn by the Authority and paid to the State Treasurer for deposit into either the General Fund of the State or the Cigarette Tax Securitization Fund of the State and used for any lawful purpose of the State for which moneys on deposit in the General Fund may be used. Id. at §3b. The Cigarette Tax Act provides that amounts withdrawn from the Cigarette Tax Securitization Proceeds Fund and deposited into the General Fund represent financial resources and revenues of the State from such fund as certified by the Governor pursuant to Article VIII, Section 2, paragraph 2 of the State Constitution. Ibid.

The Cigarette Tax Act creates the Dedicated Cigarette Tax Revenue Fund to which an amount equivalent to the dedicated portion of the cigarette tax will be credited by the State Treasurer on a monthly basis beginning July 1, 2006, after certain deposits are made to the Health Care Subsidy Fund. Id.

at §5a. The Cigarette Tax Act requires the State Treasurer, subject to appropriation, to pay to the Authority solely from the Dedicated Cigarette Tax Revenue Fund an amount equal to debt service on the Cigarette Bonds in each fiscal year, plus any other amounts necessary to satisfy agreements entered into in connection with the Cigarette Bonds. Id. at §5(b).

The Authority and the State Treasurer are authorized to enter into a contract to provide for the payment of moneys from the Dedicated Cigarette Tax Revenue Fund and to establish the procedures for payment. Id. at §6. The incurrence of any obligation of the State under such contract, including payment of any moneys from the Dedicated Cigarette Tax Revenue Fund, shall be subject to and dependent upon appropriations being made from time to time by the Legislature. Ibid.

The Cigarette Tax Act specifically provides that Cigarette Bonds are special and limited obligations of the EDA payable from, and secured by, such funds and moneys determined by the Authority, i.e. amounts paid by the State Treasurer, subject to appropriation, from the Dedicated Cigarette Tax Revenue Fund as provided in the contract. Id. at §4e. Further, the Cigarette Tax Act provides that the Cigarette Bonds do not constitute a debt or liability of the State or any agency or instrumentality thereof, other than a special and limited obligation of the EDA, either legal, moral or otherwise. Ibid. Nothing contained in

the Cigarette Tax Act shall be construed to authorize the EDA to incur any indebtedness on behalf of or in any way to obligate the State or any political subdivision thereof other than the Authority. Ibid.

The Surcharge Act authorizes the EDA to issue bonds, notes or other obligations, including refunding bonds (the "Surcharge Bonds") payable from, and secured by, dedicated motor vehicle surcharge revenues described below. L. 2004, c. 70 at §4. The Authority may adopt a resolution providing for the terms and conditions for the issuance of the Surcharge Bonds, prescribing the method of public or private sale and authorizing a variety of agreements to provide for the payment of the Surcharge Bonds. Id. at §4a. The written consent of the State Treasurer is required before the Authority may authorize the issuance of Surcharge Bonds. Id. at §4d.

The Surcharge Act provides that the proceeds of Surcharge Bonds, except refunding bonds, after payment of certain costs incurred in connection therewith, are to be deposited into the Motor Vehicle Surcharges Securitization Proceeds Fund held by the Authority. Id. at §3a. At the request of the State Treasurer, amounts on deposit in the Motor Vehicle Surcharges Securitization Proceeds Fund shall be withdrawn by the Authority and paid to the State Treasurer for deposit into either the General Fund of the State or the Motor Vehicle Surcharges

Securitization Fund of the State and used for any lawful purpose of the State for which moneys on deposit in the General Fund may be used. Id. at §3b. The Surcharge Act provides that amounts withdrawn from the Motor Vehicle Surcharges Securitization Proceeds Fund and deposited into the General Fund represent financial resources and revenues of the State from such fund as certified by the Governor pursuant to Article VIII, Section 2, paragraph 2 of the State Constitution. Ibid.

The Surcharge Act defines Dedicated Motor Vehicle Surcharge Revenues to include: (a) on and after July 1, 2006, money required to be deposited therein from the Market Transition Facility Revenue Fund pursuant to subsection b. of section 7 of L. 1994, c. 57, N.J.S.A. 34:1B-21.7; (b) on and after July 1, 2006, all unsafe driving surcharges required to be deposited therein from the Unsafe Driving Surcharges Fund; and (c) after such time as all Market Transition Facility bonds and other obligations and New Jersey Motor Vehicle Commission bonds and obligations are satisfied, all plan surcharges collected by the Motor Vehicle Commission pursuant to subsection b. of section 6 of L. 1983, c. 65, N.J.S.A. 17:29A-35 and required to be deposited in the Division of Motor Vehicles Surcharge Fund pursuant to section 12 of L. 1994, c. 57, N.J.S.A. 34:1B-21.12. §6b. The Act creates the Unsafe Driving Surcharges Fund into

which are deposited the unsafe driving surcharges collected for convictions of unsafe driving. Id. at §5.

The Surcharge Act requires the State Treasurer to pay, subject to appropriation, to the Authority for deposit into the Motor Vehicle Surcharges Revenue Fund the Dedicated Motor Vehicle Surcharges Revenue in order to pay debt service on the Surcharge Bonds in each fiscal year, plus any other amounts necessary to satisfy agreements entered into in connection with the Surcharge Bonds. Id. at §6b. The Authority and the State Treasurer are authorized to enter into a contract to provide for the payment of moneys from the Motor Vehicle Surcharges Revenue Fund and to establish the procedures for payment. Id. at §7. The incurrence of any obligation of the State under such contract, including payment of any moneys from the Motor Vehicle Surcharges Revenue Fund, shall be subject to and dependent upon appropriations being made from time to time by the Legislature. Ibid.

The Surcharge Act specifically provides that Surcharge Bonds are special and limited obligations of the Authority payable from, and secured by, such funds and moneys determined by the Authority, i.e. amounts paid by the State Treasurer to the Motor Vehicle Surcharges Revenue Fund as provided in the contract. Id. at §4e. Further, the Surcharge Act provides that the Surcharge Bonds do not constitute a debt or liability of the State or any agency or instrumentality thereof, other than a

special and limited obligation of the Authority, either legal, moral or otherwise. Nothing contained in the Surcharge Act shall be construed to authorize the Authority to incur any indebtedness on behalf of or in any way to obligate the State or any political subdivision thereof other than the Authority. Ibid.

Pursuant to the Appropriations Clause, at the time that he signed the FY05 Appropriations Act, the Governor certified that the revenue on hand and anticipated was sufficient to support the expenditures approved in the Appropriations Act. Included in the revenue considered by the Governor in executing his certification were the anticipated proceeds from the sale of the bonds authorized by the Surcharge Act and the Cigarette Tax Act. The Governor's determination that the amount of revenue on hand and anticipated for FY05 meets or exceeds the appropriations for that fiscal year is consistent with the FY05 Appropriations Act, which expressly identifies the proceeds from the sale of bonds pursuant to the Cigarette Tax Act and the Surcharge Act as anticipated revenue for the fiscal year. L. 2004, c. 71.

Prior to the approval of these statutes by the Legislature and before those bills were presented to the Governor for his consideration, plaintiffs Leonard Lance, Alex DeCroce, Joseph M. Kyrillos, Jr., Steven M. Lonegan, Bret Schundler, and Robert Lindmark filed suit in the Law Division challenging the validity of the yet-to-be-enacted bills. Plaintiffs, who are

residents and taxpayers of New Jersey, (Pa2, ¶¶1-6), name as defendants James E. McGreevey, the Governor of New Jersey, (Pa2, ¶7), John E. McCormac, the State Treasurer of New Jersey, (Pa2, ¶8), and the EDA. (Pa2, ¶9).

Plaintiffs allege that the Governor is precluded from including as revenue in his certification the proceeds from the sale of bonds. Thus, plaintiffs allege, the FY05 Appropriations Act is unconstitutional because in his certification accompanying that Act, Governor McGreevey included as revenue anticipated proceeds from the sale of bonds pursuant to the Cigarette Tax Act and the Surcharge Act. (Pa7 to Pa8, ¶¶32-35).

In addition, plaintiffs allege that the FY05 Appropriations Act is unconstitutional because the statute expressly recognizes as revenue for FY05 the proceeds from the sale of bonds pursuant to the Cigarette Tax Act and the Surcharge Act. (Pa8 to Pa9, ¶¶36-38). According to plaintiffs, because the proceeds from the sale of the bonds were incorrectly included as revenue, the FY05 Appropriations Act contains insufficient revenue to meet the expenditures included in the Act. Ibid.

Plaintiffs also allege that the Cigarette Tax Act and the Surcharge Act violate Article VIII, Section 2, paragraph 3 of the State Constitution, the Debt Limitation Clause, by authorizing the issuance of debt in excess of one percent of the total amount appropriated in the FY05 Appropriations Act without

voter approval. (Pa9 to Pa11, ¶¶39-45). Plaintiffs allege that because of the invalidity of the Cigarette Tax Act and the Surcharge Act under the Debt Limitation Clause, the inclusion of proceeds from the sale of bonds under those acts as revenue for FY05 renders the FY05 Appropriations Act unconstitutional. (Pa11 to Pa12, ¶¶46-48).

Plaintiffs ask this Court to enjoin the EDA from issuing the bonds described above, (Pa12, ¶4), and to enjoin the State Treasurer from expending any funds either actually received from the sale of the bonds or which represent future proceeds from the sale of the bonds. Ibid. Plaintiffs also request a declaratory judgment that the proceeds from the bonds described above cannot constitute revenue within the meaning of the Appropriations Clause, and that the FY05 Appropriations Act is unconstitutional because expenditures authorized by that statute exceed revenues within the meaning of the Appropriations Clause. (Pa12, ¶1).

In addition, plaintiffs seek a declaratory judgment that the proposed sale of bonds by the EDA, as described above, is unconstitutional because the authorizing statutes have not been approved by the voters as required by the Debt Limitation Clause, (Pa12, ¶3), as well as attorney's fees and costs. (Pa12, ¶6). Finally, plaintiffs request this Court to enjoin Governor McGreevey from certifying the proceeds from the sale of the bonds

as revenue for the purpose of enacting the FY05 Appropriations Act. (Pa12, ¶2).

On June 24, 2004, plaintiffs sought preliminary injunctive relief through the filing of a Verified Complaint and request for an Order to Show Cause in the Law Division. The trial court established a June 25, 2004 hearing on plaintiffs' application. After entertaining oral argument, on June 26, 2004, the Honorable Linda R. Feinberg, A.J.S.C., entered an Order denying plaintiffs' request for preliminary injunctive relief on ripeness grounds, given that the bills plaintiffs challenge had not yet been signed into law. (Pa89 to Pa91). A hearing on the merits of plaintiffs' Verified Complaint was scheduled for July 1, 2004, based on the correct presumption that the relevant legislation would be enacted by that time. Ibid.

After further briefing and oral argument, on July 1, 2004, Judge Feinberg issued a comprehensive written opinion rejecting each of plaintiffs' claims. (Pa95 to Pa127). While acknowledging that the "determination of what constitutes revenue on hand and anticipated for a fiscal year is delegated to the Governor with no limiting language, justifying the maximum deference from a reviewing court," (Pa106), Judge Feinberg declined to adopt defendants' argument that the Verified Complaint presents a political question unsuited for judicial review.

However, after turning to the merits of plaintiffs' claims, the trial court soundly rejected plaintiffs' Appropriations Clause argument, holding that "for purposes of the Appropriations Clause, the anticipated receipt of $1.9 billion from the sale of bonds constitutes revenue that may be applied to meet appropriations during the next fiscal year." (Pa104). The trial court correctly concluded that the Governor's certification comports with the history of the Clause, the intent of the framers of the 1947 Constitution, and the common understanding of government revenue. (Pa104 to Pa117).

With respect to plaintiffs' Debt Limitation Clause argument, Judge Feinberg adhered to the bright line drawn by this Court in Lonegan II, supra. Noting that the statutes at issue in this appeal do not authorize the creation of State debt, the trial court rejected plaintiffs' suggestion to draw an artificial criterion for triggering the Debt Limitation Clause based on the purpose to which the proceeds from contract bonds will be put. As Judge Feinberg astutely explained, "since there is no such 'purpose' provision in the Debt Limitation Clause, and case law and practice have not required one, there is no standard today by which anyone can determine if a purpose or use contemplated for the proceeds of debt is constitutionally permissible." (Pa125).

The trial court recognized the danger of blurring the clear holding in Lonegan II: "In contrast to the bright-line

rule that was recently reinforced by the Supreme Court, the imposition of a novel or ad hoc standard would create budget anarchy and simply facilitate challenges by any disgruntled legislator or citizen whose cause was not vindicated through the legislative process." (Pa125-Pa126). The court continued, "[o]f course, this result would radically undermine another important public policy enunciated by this State's highest court, the 'need to maintain stability in respect of financial instruments authorized by the Legislature.'" Ibid. (quoting Lonegan II, supra, 176 N.J. at 5).

As a result, on July 1, 2004, Judge Feinberg entered an Order denying all of the relief requested by plaintiffs and dismissing the Verified Complaint. (Pa92 to Pa94). In addition, the trial court entered a Judgment declaring the Cigarette Tax Act, the Surcharge Act, and the FY05 Appropriations Act constitutional. (Pa93). Plaintiffs' request for a stay was denied. Ibid.

That same day, plaintiffs filed a Notice of Appeal in the Superior Court, Appellate Division. (Pa128 to Pa129). At the time that they filed their appeal, plaintiffs also moved in the Appellate Division for the imposition of a temporary restraining order, and for expedited consideration of their appeal. (Pa130 to Pas134).

Plaintiffs simultaneously filed a motion for direct certification with this Court pursuant to R. 2:12-2. (Pa151 to Pa154). That motion also requested the preliminary injunctive relief sought from the Appellate Division and relaxation of the requirement in R. 2:12-2 that briefing in the Appellate Division be complete prior to the filing of a motion for direct certification. Ibid.

On July 7, 2004, this Court granted plaintiffs' motion to relax R. 2:12-2 and granted direct certification of this appeal. (Da1-Da2). In addition, this Court granted plaintiffs' request for an accelerated briefing schedule and established a July 22, 2004 date for oral argument. (Da2). Moreover, in light of the representation by this office that no bond purchasing agreements relating to this appeal will be executed prior to July 27, 2004, the motion for preliminary injunctive relief was denied as moot, the Court anticipating the filing of its final judgment on or before July 26, 2004. Ibid.

On July 8, 2004, plaintiffs moved to supplement the record on appeal with various materials. (Pa166 to Pa186). That motion, which defendants oppose, remains pending before this Court.

ARGUMENT

POINT I

THE CERTIFICATION OF REVENUE FOR PURPOSES OF ENACTING AN APPROPRIATIONS ACT IS CONSTITUTIONALLY DELEGATED SOLELY TO THE GOVERNOR AND A CHALLENGE TO HIS DETERMINATION OF WHAT CONSTITUTES REVENUE IS NOT JUSTICIABLE IN THE COURTS.

The primary issue raised in the Verified Complaint -- what is constitutionally required of the Governor in Article VIII, section 2, paragraph 2, when he certifies revenue for the purpose of enacting an Appropriations Act into law -- is a question allocated by the Constitution to the discretion of the Executive branch. In light of this delegation of authority, and the fiscal and policy considerations that come into play when determining what to recognize as revenue, long-established separation of powers principles render plaintiffs' challenge to the Governor's certification a non-justiciable political question. The trial court underestimated these important concerns and should have dismissed plaintiffs' Appropriations Clause claims.

In New Jersey the separation of powers between our three branches of government is expressly established in Article III, paragraph 1 of the State Constitution:

> The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or

> constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.
>
> [N.J. Const. art. III, ¶1.]

The doctrine is "designed to 'maintain the balance between the three branches of government, preserve their respective independence and integrity, and prevent the concentration of unchecked power in the hands of any one branch.'" Communications Workers of Am. v. Florio, 130 N.J. 439, 449 (1992)(quoting David v. Vesta Co., 45 N.J. 301, 326 (1965)). While the separation of powers is designed to provide checks on coordinate branches of government, one branch of government must not encroach upon another in such a way as "to restrict the legitimate operation of representative democracy." Worthington v. Fauver, 88 N.J. 183, 206 (1982).

The constitutional mandate "contemplates that each branch of government will exercise fully its own powers without transgressing upon powers rightfully belonging to a cognate branch." Knight v. City of Margate, 86 N.J. 374, 388 (1981). Thus, the doctrine prohibits interference from one branch of government which affects the "essential integrity" of another branch. Cupano v. Gluck, 133 N.J. 225, 233 (1993)(quoting In re Investigation Regarding Ringwood Fact Finding Comm'n, 65 N.J. 512, 519 (1974)); accord Massett Building Co. v. Bennett, 4 N.J. 54, 57 (1950)(Vanderbilt, C.J.). One branch must not interfere

with the "exclusive functions of the other branch[es] . . . ." Florio, supra, 130 N.J. at 460.

These considerations are effectuated by the Political Question Doctrine, through which the courts recognize that challenges to the exercise of certain functions by officials in the other branches of government are not justiciable in the courts. Determining whether a claim is nonjusticable requires a "'delicate exercise in constitutional interpretation . . . .'" DeVesa v. Dorsey, 134 N.J. 420, 429 (1993)(Pollack, J., concurring)(quoting Baker v. Carr, 369 U.S. 186, 211, 82 S. Ct. 691, 706, 7 L. Ed. 2d 663, 682 (1982)). A determination that a matter is nonjusticiable requires this Court to "dismiss the case immediately so as not to 'spawn[] any legal consequences' by any further discussion" of a matter best left to the discretion of another branch of government. DeVesa, supra, 134 N.J. at 429 (quoting Goldwater v. Carter, 444 U.S. 996, 1005, 100 S. Ct. 533, 538, 62 L. Ed. 2d 428, 438 (1979)(Rehnquist, J., concurring) (internal quotations omitted)).

In Gilbert v. Gladden, 87 N.J. 275 (1981), this Court provided guidance in identifying questions that are outside of the purview of the Judiciary. As the court explained:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable

> standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.
>
> [Id. at 282 (quoting Baker, supra, 369 U.S. at 217, 82 S. Ct. at 710, 7 L. Ed. 2d at 686).]

"To justify a dismissal based on nonjusticiability, only one of these criteria need be inextricable from the facts and circumstances presented before the court." Loigman v. Trombadore, 228 N.J. Super. 437, 442 (App. Div. 1988). Application of the factors to the present case inescapably leads to the conclusion that the Verified Complaint raises a nonjusticable political question with respect to the Governor's certification of revenue for the FY05 Appropriations Act.

The Governor's powers are set forth in Article V of the State Constitution. The enumeration of authority begins with a simple but powerful statement: "The executive power shall be vested in a Governor." N.J. Const. art. V, §1, ¶1. "The framers of the 1947 Constitution intended to create a 'strong executive.'" Bullet Hole, Inc. v. Dunbar, 335 N.J. Super. 562, 573 (App. Div. 2000)(quoting Kenny v. Byrne, 144 N.J. Super. 243,

251 (App. Div. 1976), aff'd o.b., 75 N.J. 458 (1978)). Indeed, a strong Governor was a "prime objective" of the 1947 Constitutional Convention. Florio, supra, 130 N.J. at 455. As Judge Sabatino astutely observed, "[t]he Governor of New Jersey is, at least functionally, the most powerful Chief State Executive in the nation." Jack M. Sabatino, Assertion and Self Restraint: The Exercise of Governmental Powers Distributed Under the 1947 New Jersey Constitution, 29 Rutgers L.J. 799, 825 (1998); see also Reports of the Committee on Executive Militia and Civil Officers, 2 Proceedings of the Constitutional Convention of 1947, 1121, 1122.

"Unmistakably, the executive power reposed in the Governor under the Constitution, expressed in terse comprehensive terms, must be given life and meaning by investing him with the authority to implement his responsibilities." Kenny, supra, 144 N.J. Super. at 251 (citing Russo v. Governor, 22 N.J. 156, 165-166 (1956)). "To conclude otherwise is to negate the intent of the framers of the Constitution of 1947." Ibid. "The members of the Constitutional Convention of 1947 considered the Governor's 'significant responsibilities over the State's fiscal affairs' to be an important aspect of the centralization of State finances essential to efficient modern government operations." Florio, supra, 130 N.J. at 454 (citing City of Camden v. Byrne, 82 N.J. 133, 150 (1980)); see also Gorge C. Skillman & Sidney Goldmann,

The Single Budget, Single State Fund and Single Fiscal Year, (Monograph) 2, Proceedings of the New Jersey Constitutional Convention of 1947, 1668 at 1683-84. The Governor plays a "vital constitutional role in the budget process." Karcher v. Kean, 97 N.J. 483, 489 (1984).

A crucial component of the Governor's financial powers is his response to the Appropriations Act approved by the Legislature. As a general matter, Article V, section 1, paragraph 14 delegates the authority to approve bills presented by the Legislature to the Governor. See N.J. Const. art. V, §1, ¶¶14(b) through (f). The Judiciary is not mentioned in any way in this provision of the Constitution. As a component of the Governor's authority to enact legislation, Article VIII, section 2, paragraph 2, delegates to the Governor the authority to determine the manner in which to certify revenue sufficient to meet or exceed expenditures in appropriations bills. That provision states:

> No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year . . . . No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and

> anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor.
>
> [N.J. Const. art. VIII, §2, ¶2 (emphasis added).]

Without question, there is a textually demonstrable constitutional commitment to the Executive Branch of the issue of certifying revenue for the purpose of enacting an Appropriations Act. The phrase "as certified by the Governor" in the Clause is a clear indication that the framers of the Constitution intended for the Governor, and the Governor alone, to decide the contents of the certification. The intention to preclude judicial involvement in this process is highlighted by the fact that the Appropriations Clause requires the Governor only to certify that revenue on hand and anticipated meets or exceeds authorized expenditures, not to itemize the revenue that is the basis of his certification.

Although in recent years the Governor has listed the various items of revenue in the certification accompanying the Appropriations Act, in the years immediately following the adoption of the 1947 Constitution, the Governor's revenue certification merely provided that revenue on hand and anticipated met or exceeded authorized appropriations. See Revenue Certification of Governor Driscoll dated 06/11/48 with

respect to L. 1948, c. 117 (Da11)*; Revenue Certification of Governor Driscoll dated 04/20/49 with respect to L. 1949, c. 43 (Da12); Revenue Certification of Governor Driscoll dated 06/14/50 with respect to L. 1950, c. 236 (Da13); Revenue Certification of Governor Driscoll dated 04/27/51 with respect to L. 1951, c. 49 (Da14); Revenue Certification of Governor Driscoll dated 04/17/52 with respect to L. 1952, c. 43 (Da15); Revenue Certification of Governor Driscoll dated 04/18/53 with respect to L. 1953, c. 102 (Da16). Such certifications provide nothing for the Judiciary to review, as the basis for the Governor's judgment that sufficient revenue will be available to meet approved appropriations is not provided. Unless the framers envisioned that the Judiciary could subject the Governor to compelled testimony to ascertain the grounds upon which his certification was made, a highly dubious proposition in light of the separation of powers embedded in the Constitution, their intention was to insulate the Governor's certification from judicial review.

---

* This Court may take judicial notice of the Governor's revenue certifications. N.J.R.E. 201. Copies of the certifications have been included in defendants' appendix for the convenience of the Court. (Da11 to Da16). Notably, Governor Driscoll, the first Governor elected under the 1947 Constitution, spoke on State financial matters before the Joint Legislative Committee charged with holding public hearings on the draft Constitution prepared by the 1942 Commission on Revision. Record of Proceedings before the Joint Committee of the New Jersey Legislature Constituted Under Senate Concurrent Resolution No. 19, at 420-422.

In addition, there is a lack of judicially discoverable and manageable standards for review of the Governor's certification. The question of what constitutes revenue requires an examination and analysis of fiscal data and predictions on economic activity that are ill-suited for judicial resolution. The State's financial affairs are enormously complicated and the accurate estimation of revenue for a multi-billion dollar budget is a task best left for those officials with the most experience in managing the State's fiscal matters: the Governor and the State Treasurer. By entering the field of revenue forecasting the Judiciary would be usurping the role of the Executive Branch and would soon find itself embroiled in the political process of crafting the State's annual budget. Competing demands from various constituencies for services and financial support, and the finite nature of financial resources at any given time drive the budget process and require a careful balancing of interests and subtle financial policy choices. While such pressures and policy making are a staple of the Executive Branch, they represent dangerous shoals for the courts. The framers surely did not intend for the Judiciary to be involved in the inherently executive and legislative function of budget making, an area clearly inappropriate for judicial resolution. See Camden v. Byrne, supra, 82 N.J. at 150. Plaintiffs' invitation to this Court to join the fray should be rejected.

Moreover, this Court's interference in this area would result in a lack of the respect due to the Executive Branch and the decisions made by the Governor. It is the Governor who has been invested with the authority to control the State's financial affairs. The State's budget, which reached $28 billion for FY05, addresses a complex array of financial matters necessary to provide funds to finance services for the State's more than 8 million residents. The Governor's ability to implement his policy choices as the elected representative of the people relies on his ability to control the State's finances. The authority to make these financial and policy decisions rests with the Governor. The check on the Governor's power in this regard is the Legislature, the approval of which the Governor must secure to implement his proposed budget, and the voters, who pass judgment on the Governor's fiscal policy in the voting booth. Having the Governor answer to the Judiciary every time he makes a financial decision with regard to the revenue he anticipates in the coming fiscal year would hamper the Executive Branch in the fulfillment of its responsibilities and would offend the carefully crafted tri-partite government established in the Constitution.

As long ago as 1856, our courts recognized the inherently political nature of the duties delegated to the Governor. In State v. Governor, 25 N.J.L. 331 (Sup. Ct. 1856),

the court flatly rejected an application for a writ of mandamus to compel the Governor to issue a commission as Passaic County Surrogate to William Gledhill. Gledhill had been a candidate for that office in an election and claimed that the board of county canvassers had miscounted the vote and declared his opponent the winner. Id. at 344-345. State law provided that the board of canvassers was authorized to determine who won the Surrogate's election and was empowered to issue to the winner a certificate of election. Id. at 346. The Court interpreted the law as requiring the Governor, upon presentation of the certificate, to forthwith commission such person as Surrogate. Id. at 346-347. The court refused to intervene, not only because the Governor was prepared to issue the commission to the individual who had been certified as the winner of the election, but also because of the serious separation of powers concerns raised by the requested relief.

Chief Justice Green forcefully explained the nature of executive power and the separation of powers:

> All the powers conferred by the constitution upon the governor are political powers, all the duties enjoined are political duties. Touching all the powers conferred on the executive by the constitution, he is entirely independent of the control of the judiciary, being responsible to the people alone, and liable to impeachment for misdemeanor in office.
>
> [Id. at 351.]

Like the appointing power, determining what constitutes revenue for purposes of enacting an appropriations act is a discretionary function allocated by the Constitution to the Governor. Only he has the power to decide whether revenues on hand and anticipated are sufficient to provide for the expenditures approved in an appropriations act. This Court has recognized that the revenue certification reflects an exercise of the Governor's judgment. Karcher, supra, 97 N.J. at 495 n.3. The Judiciary has no constitutional authority to impose conditions on the exercise of that discretion or to set standards for the determination of what is revenue for these purposes.

The path suggested by plaintiffs would set a dangerous precedent and inevitably would drag this Court into the annual budgetary process. By second guessing the Governor's judgment as expressed in the revenue certification, this Court would invite a legal challenge to every new revenue raising measure enacted along with an Appropriations Act. Such suits undoubtedly would include a challenge to the Appropriations Acts themselves, triggering an emergent need for judicial action so that the State's financial operations could continue uninterrupted. This level of judicial involvement in the annual budgetary process, and the accompanying uncertainty that would be visited upon those responsible for crafting the State's fiscal policies, was not contemplated by the framers and would represent an unwarranted

and impermissible encroachment on the powers of the other branches.

The concerns plaintiffs raise with respect to the Governor's revenue certification are best left to the legislative arena for resolution. The Legislature has the authority to initiate the constitutional amendment process should it wish to alter the Governor's authority to certify revenue. In fact, a concurrent resolution to present such an amendment to the voters is presently pending in the Legislature to exclude from revenue in the Governor's certification funds made available to the State through the sale of bonds unless the funds are appropriated for paying the costs of capital projects. See Assembly Concurrent Resolution No. 181. This Court should allow the legislative process to play out without interference from the Judiciary. See Lonegan II, supra, 176 N.J. at 21.

POINT II

THE TRIAL COURT CORRECTLY HELD THAT THE TRANSFER TO THE GENERAL FUND OF THE PROCEEDS FROM THE SALE OF BONDS BY AN INDEPENDENT AUTHORITY CONSTITUTES REVENUE FOR PURPOSES OF THE APPROPRIATIONS CLAUSE.

The trial court properly concluded that the FY05 Appropriations Act satisfies the constitutional requirement that revenues on hand or anticipated for the fiscal year meet or exceed expenditures authorized for that period. For purposes of the Appropriations Clause, the proceeds from the sale of bonds pursuant to the Cigarette Tax Act and the Surcharge Act were properly recognized as revenue when determining whether the resources available for FY05 met or exceed expenditures approved in the FY05 Appropriations Act.

As a threshold matter, plaintiffs face the difficult task of overcoming the presumptive validity that attaches to all acts of the Legislature. This Court has cautioned courts to remain "mindful of the strong presumption in favor of constitutionality, and the traditional judicial reluctance to declare a statute void, a power to be delicately exercised ...." Paul Kimball Hosp. v. Brick Township Hosp., 86 N.J. 429, 447 (1981)(citation omitted). "[C]ourts do not act as a super-legislature." Newark Superior Officers Ass'n v. City of Newark, 98 N.J. 212, 222 (1985)(citing Burton v. Sills, 53 N.J. 86, 95 (1968), app. diss., 394 U.S. 812, 89 S. Ct. 1486, 22 L. Ed. 2d

748 (1969)). Out of respect for the democratic process and in recognition of the Legislature's status as a coequal branch, statutes under attack are thus "entitled to great weight in the courts." New Jersey Sports & Exposition Auth. v. McCrane, 119 N.J. Super. 457, 474 (Law Div. 1971), aff'd, 61 N.J. 1 (1972)(quoting Roe v. Kervick, 42 N.J. 191, 229-230 (1964)). This presumption of validity applies to appropriations statutes. Florio, supra, 130 N.J. at 456.

Every possible presumption in favor of the constitutionality of legislative action must be extended by this court. See Holster v. Board of Trustees, 59 N.J. 60, 66 (1971). Hence, any litigant who attacks a statute must demonstrate that "there is no reasonable basis for sustaining it." McCrane, supra, 119 N.J. Super. at 476. Only those legislative acts that are "clearly repugnant to the Constitution" should be invalidated. Newark Superior Officers, supra, 98 N.J. at 222; accord State v. Muhammad, 145 N.J. 23 (1996). Where a statute's constitutionality is "fairly debatable, courts will uphold" the law. Newark Superior Officers, supra, 98 N.J. at 227. If "alternative interpretations of a statute are equally plausible, the view sustaining the statute's constitutionality is favored." City of Jersey City v. Farmer, 329 N.J. Super. 27, 38 (App. Div.)(quotations omitted), certif. denied, 165 N.J. 135 (2000).

It is a "basic principle that, unlike the Federal Constitution, the State Constitution is not a grant but a limitation of powers." Gangemi v. Berry, 25 N.J. 1, 7 (1957) (citing Behnke v. New Jersey Highway Auth. 13 N.J. 14 (1953)). By enacting our Constitution "the people vested full sovereign authority" in the Government "save as otherwise therein provided." Id. at 8. Nothing in the Appropriations Clause expressly prohibits the Governor from including the proceeds of bond sales by an independent authority in revenues for purposes of enacting an Appropriations Act. As the trial court adeptly held, the "determination of what constitutes revenue on hand and anticipated for a fiscal year is delegated to the Governor with no limiting language, justifying the maximum deference from a reviewing court." (Pa106).

In light of the absence of limiting language in the Appropriations Clause, any reasonable interpretation of the term revenue by the Governor must be upheld. Surely, it is reasonable for the Governor to determine that money raised by an independent authority from the sale of bonds and transferred to the State for deposit into the General Fund where it can be used for any lawful government purpose constitutes revenue. The bond sale proceeds, once transferred to the State, will be a resource available to satisfy the expenditures authorized in the FY05 Appropriations Act. Those proceeds, therefore, constitute revenue.

Had the framers sought to limit the Governor's prerogatives in this regard they easily could have done so. However, no limitation on the Governor's revenue certification was placed in the Constitution. Instead, the framers merely required that the Governor certify the "revenue on hand and anticipated" to satisfy expenditures authorized in the Appropriations Act. The meaning of this phrase is easily obtained and clearly applies to proceeds from the sale of bonds by an independent authority.

"Any inquiry to determine the meaning of a constitutional provision necessarily begins with the specific language of that provision." Cambria v. Soaries, 169 N.J. 1, 9 (2001). Black's Law Dictionary captures the broad meaning of the term revenue in the context of government financial affairs:

> Revenue.
>
> * * *
>
> As applied to the income of a government, a broad and general term, including all public moneys which the state collects and receives, from whatever source and in whatever manner.
>
> [Black's Law Dictionary 1185 (5th ed. 1979).]*

---

* While plaintiffs acknowledge that the 1990 edition of Black's Law Dictionary defines government revenue to include "all public moneys which the state collects and receives, from whatever source and in whatever manner," (Pb17), they omit Black's directive that government revenue is "a broad and general term." Black's Law Dictionary 1319 (6th ed. 1990).

The plain meaning of the term "revenue" certainly includes proceeds from the sale of bonds. Inclusion in revenue of the proceeds from the sale of the bonds authorized by the Cigarette Tax Act and Surcharge Act makes sense, given that those Acts do not create debts of the State, but will result in the inflow of $1.9 billion to the State's coffers in FY05. Those funds will increase the resources upon which the State may call to meet its expenses and will be available for use for any lawful purpose. It is difficult to understand how the transfer of these moneys to the General Fund, as contemplated by the Acts, does not constitute revenue for the State.

That this broad meaning of the term "revenue" was intended by the framers becomes apparent when one considers the 1942 report of the Commission on Revision of the New Jersey Constitution and the 1944 Constitution that led to the adoption of the 1947 Constitution and the current Appropriations Clause. A primary objective of the 1942 Commission with respect to the State's financial affairs was to require that all of the State's appropriations be gathered in a single Appropriations Act and that all of the State's resources be placed in a single fund. See Report of the Commission on Revision of the New Jersey Constitution (1942) at 10.

Explaining the reasons for these changes the Commission said in its Statement of Transmittal:

> So long as the State's left hand is not permitted to know what its right hand is doing in a fiscal sense, the State's financial management is obviously under a severe handicap. The provision abolishing so-called dedicated funds will remedy this situation by preventing separate little treasuries for favored projects from being established, regardless of the demands of pressure groups.
>
> [Id. at 24.]

The goal of these reform efforts was not to restrict the type of monies that would be available for expenditure but to ensure that all available funds would be pooled and dealt with in a single act.

> The matter of dedicated funds is related primarily to the revenue side of the State's government, while appropriations, also regulated by a new provision, deal with public expenditures. In order to compel careful planning of this vital matter, the Legislature is required to gather together all appropriations in a single budget appropriation bill so that the real cost of all State's government will be plainly apparent. . . . These provisions should lead to greater economy and efficiency.
>
> [Ibid.]

The 1942 draft constitutional provision on pooling all of the State resources in a single fund is particularly revealing with respect to the intended meaning of the term "revenue" in the Appropriations Clause. That paragraph provided:

> All revenues of the State government from whatever source derived, including revenues of all departments, agencies and offices, except the income of the fund for the

> support of free schools, shall be paid into a single fund, to be known as the General State Fund, subject to appropriation for any public purpose, except that separate funds may be maintained for revenues realized from any tax levied specifically for the purpose of maintaining free public schools, for the proceeds of bond issues, earnings of self-liquidating public improvements, revenues of restricted use under or in compliance with federal law, and revenues held in trust for retirement of the public debt, for the benefit of State or local public officers or employees or for a specific public purpose required by a private donation.
>
> [1942 Report at 46 (emphasis added).]

A plain reading of this provision clearly demonstrates an intent to include the proceeds of bonds within the "revenues . . . from whatever source derived" because there would have been no need to allow the Legislature and Governor to except such proceeds from the single fund requirement if such monies were not considered revenues of the State in the first instance. Moreover, the proposal merely provided that a separate fund for bond proceeds "may" be created. Under the proposal, such a step need not have been taken and the proceeds from the sale of bonds could have been included in the single fund along with other categories of revenue.

The proposed 1944 Constitution, which derived from the recommendations of the 1942 Commission, adopted the broad definition of revenue in the provisions of the Constitution dealing with the State's financial affairs. The proposed

Constitution included Article VII, entitled Finance, which contained two adjacent paragraphs. One of those paragraphs, the Single Fund paragraph, provided:

> All revenues of the State Government from whatever source derived, including revenues of all departments, agencies and offices, shall be paid into a single fund to be known as the General State Fund and shall be subject to appropriations for any public purpose; . . . .
>
> [Proposed Constitution of 1944, art. VII, ¶2 printed at L. 1944, c. 92, p.225 (emphasis added)].

This paragraph reflects the normal meaning of the term "revenue" in the governmental context. As plainly stated, the intent was to gather together all moneys available for expenditure for public purposes, regardless of the source of that money. That meaning is designed to promote the flexibility necessary for the Governor and Legislature to manage the State's financial affairs, a primary objective of the framers. See Richard N. Baisden, Charter for New Jersey: The New Jersey Constitutional Convention of 1947 (Trenton 1952). "This constitutional design was intended to eliminate uncoordinated spending on the state level and to overcome the inefficiency, confusion and abuses which had surrounded the practice of using separate and different budgets, appropriations, and fiscal years within State government." Camden v. Byrne, supra, 82 N.J. at 146-147.

Ultimately, the Convention did not include a Single Fund paragraph in the draft presented to the people for approval. But that was for very practical, pragmatic reasons and not because of a desire to attach a different significance to the term "revenue." As William Read, Chair of the Taxation and Finance Committee, explained to the delegates:

> It was the effort of our committee so to guide our efforts that nothing we did would add many adverse votes against the Constitution . . . . [W]e tried to avoid creating other objections to other provisions and thus bring about the casting of enough adverse votes to defeat the proposed Constitution.
>
> [1 Proceedings of the New Jersey Constitutional Convention of 1947 at 151].

Noting that the Committee had heard vocal opponents as well as committed proponents of dedicated funds testify before the Committee, he explained how the Committee decided to leave the issue for another day:

> [W]e removed another objection - that to paragraph 2 of the Finance Article of the 1944 proposal [the Single Fund provision], which was felt absolutely to prevent the dedication of funds. We had people appear before us in favor of such a provision. We had, on the other side, people who wanted specifically to have a dedicated fund clause in the Constitution. We felt that either one of those in the Constitution would perhaps throw out enough votes to impair the passing of the proposed Constitution. So, we have favored neither side. We have eliminated [the Single Fund provision], and we did not put in the dedication of funds.

[Id. at 151].

The paragraph that immediately followed the Single Fund paragraph in the 1944 proposal became the Appropriations Clause in the 1947 Constitution. One can readily conclude that the broad description of "revenue" in the Single Fund paragraph was also intended to qualify "revenue" as it appeared in adjoining paragraph that became the Appropriations Clause, given that they were both components of the same proposed Article on Finance. As the trial court correctly noted, "[n]othing in the history of the Constitution suggests that revenue was meant to have a broad meaning for purposes of the proposed Single Fund provision, but a narrow meaning in the adjacent Appropriations Clause." (Pa110).

Plaintiffs' attempt to brush aside this enlightening history of the Appropriations Clause as a "failed legislative proposal," (Pb21), is entirely unfounded and contrary to the express holding of this Court in Lloyd v. Vermeulen, 22 N.J. 200 (1956). As this Court explained:

> In construing constitutional and statutory provisions, the court has rightly recognized that . . . resort may freely be had to the pertinent constitutional and legislative history for aid in ascertaining the true sense and meaning of the language used.
>
> [Id. at 206.]

To implement this sound doctrine of statutory construction to determine the meaning of Article XI, section 1, paragraph 1 of

the 1947 Constitution, this Court turned to "the 1942 report submitted by the Commission on Revision of the New Jersey Constitution," which "embodied [the] proposed constitution" that was not adopted by the voters in 1944. Id. at 206-207. The Court interpreted the disputed provision in accordance with the "thoughtful plan which was designed in the 1942 report . . . ." Id. at 208. Reliance on the 1942 Report and 1944 Constitution to interpret the 1947 Constitution has been a consistent practice of this Court. See Karcher, supra, 97 N.J. at 488-89 (citing work of 1942 Commission to interpret Appropriations Clause); Camden v. Byrne, supra, 82 N.J. at 146 (same); Richman v. Ligham, 22 N.J. 40, 48 (1956)(citing work of the 1942 Commission to interpret provisions of 1947 Constitution with respect to legislative appointments); O'Neill v. State Highway Dep't, 77 N.J. Super. 262, 275 (App. Div. 1962)(Judge Goldman in dissent points to the 1942 and 1944 constitutional reform efforts as providing "an effective and enlightening background for all aspects of constitutional revision" when the 1947 Constitution convened), rev'd on dissent, 40 N.J. 326 (1963).

Nor should this Court impose the gloss of the commonly understood meaning of "income" onto the term "revenue" in the Appropriations Clause. As a threshold matter, nothing in the text or history of the Clause suggests that the framers intended to limit State revenue to the narrow understanding of income in

non-governmental contexts. The term "income" appears elsewhere in the Constitution. See N.J. Const. art. VIII, §1, ¶3 (providing for annual tax deduction for senior citizens "having an income not in excess of $5,000 . . ."); N.J. Const. art. VIII, §2, ¶3 (referring to "investment income" in Debt Limitation Clause); N.J. Const. art. VIII, §2, ¶6 (referring to "income derived from the investment of moneys" by Garden State Preservation Trust); N.J. Const. art. VIII, §4, ¶2 (referring to "income" from investment of moneys in the Fund for Free Public Schools). The framers did not use the term "income" in the Appropriations Clause, and wisely so.

Numerous categories of revenue that are regularly recognized by the State would not satisfy the ordinarily understood definition of income and would, under plaintiffs' unnecessarily wooden interpretation of the Appropriations Clause, presumably be excluded as a resource upon which the State could draw to meet appropriations. In fact, the Appropriations Clause itself refers to revenue that is "on hand" at the time of the Governor's certification. Such revenue would include surplus funds set aside in the prior Appropriations Act or unexpended moneys in the State's various funds at the close of the fiscal year. While these resources are properly considered revenues available to meet appropriations for the upcoming fiscal year,

such funds would not constitute income under the generally understood meaning of that term.

Money left in the average citizen's checking account on December 31st of any given year is not considered income to that citizen in the year that begins on the following January 1st. Yet, in the context of governmental budgeting, it makes perfect sense for the State to include all money available at the start of each fiscal year as revenue available to meet appropriations authorized for the next fiscal year. After all, State government does not exist to earn income and does not order its financial accounts to measure gain. Instead, the purpose of government is to meet the needs of the citizens it serves, an objective accomplished each year by identifying available revenues to satisfy those needs.*

Nor can plaintiffs find support for their position in the definition of "revenues" contained in the Governor's Budget Message for FY05. That definition, which is not part of a statute and has no legal effect, provides that "revenues" are "[f]unds received from taxes, fees or other sources that are

---

* If adopted, plaintiffs' request to superimpose the restrictive definition of income on the meaning of revenue in the Appropriations Clause would call into question other categories of revenue that have been historically recognized, including unclaimed property that is in the custody of the State, but which belongs to missing owners, see N.J.S.A. 46:30B-1, et seq., Clymer v. Summit Bancorp., 171 N.J. 57, 63 (2002), or funds transferred into the General Fund from other State Funds.

treated as income to the state and are used to finance expenditures." State Budget Fiscal Year 2004-2005, p. A-12. This definition includes in revenue not only taxes, fees, and "other sources," which certainly envelopes the proceeds from the sale of bonds, but also indicates that such other sources are revenue when "treated as income." If the definition was intended to equate revenue with income there would have been no reason to include the "treated as" language, which presumes that a difference exists between revenue and income. Moreover, the Governor included in his estimation of revenue in his FY05 Budget Message the proceeds from the sale of the bonds at issue here, giving the clearest indication of the intended meaning of the defined term. From the government's perspective the proceeds of the bonds will be treated as income and used to finance expenditures. Thus, the funds will fall within this definition.

Plaintiffs' attempt to find constitutional meaning in the various accounting terms under which the proceeds of bonds have been recognized in the past must be rejected by this Court. In their trial court submissions, plaintiffs primarily relied on the erroneous contention that proceeds from the sale of bonds have never been included as revenue in a Governor's certification, but instead constitute "Other Financing Sources," which, they claim, cannot be considered revenue. Plaintiffs misunderstand the Gubernatorial revenue certification process and

misstate the historical treatment of bond sale proceeds in the State's financial reports.

As explained in more detail in the Certification of Charlene M. Holzbaur, the Comptroller of the Treasury and the Director of the Division of Budget and Accounting, in the Department of the Treasury, (Da3 to Da10), upon which the trial court relied in reaching its decision, (Pa112 to Pa115), interfund transfers to the General Fund, such as will take place with the proceeds from the sale of bonds pursuant to the Cigarette Tax Act and the Surcharge Act, constitute revenue in the Governor's revenue certification. Although such interfund transfers are not recognized as "revenue" for presentation in the Annual Financial Report, those moneys increase the balance in the General Fund and are available to pay General Fund expenses. Accordingly, these interfund transfers which are presented in the Annual Financial Report as "Other Financing Sources" have been included in the Governor's proposed budget and the Governor's revenue certification delivered in connection with the annual Appropriations Act. (Da7-Da8, ¶11).

Simply put, Governors' budget messages and State financial reports do not provide a firm ground upon which to interpret the Appropriations Clause. Over the years, the term used in those documents to recognize bond proceeds as revenue has varied. In some instances such proceeds have been included as

general treasury revenue. See Budget Message of Governor Driscoll for FY53 at 45a with regard to institutional bond proceeds under L. 1949, c. 3; Budget Message of Governor Driscoll for FY49 at xxxiv with regard to Highway Bonds proceeds under L. 1930, c. 228 and Emergency Housing Bonds proceeds under L. 1946, c. 324. In other instances such proceeds have been included under the heading "other increases," see Budget Message of Governor Byrne for FY82 at 18c, or "other financing sources," see Budget Message of Governor Whitman for FY96 at L-1. Of course, the meaning of the Appropriations Clause cannot change each time a Governor uses a different accounting term to recognize bond proceeds as a resource available to meet approved appropriations.

Nor can plaintiffs suggest that the framers never would have considered the use of bond proceeds to meet current expenses. In the years leading up to the adoption of the 1947 Constitution, the framers were well aware that the State had used the proceeds from the sale of bonds as revenue to meet operating expenses. See L. 1938, c. 329 (authorizing issuance of $21,000,000 in bonds for relief efforts during the Great Depression); L. 1934, c. 255 (authorizing issuance of $10,000,000 in bonds for same purpose); L. 1933, c. 398 (authorizing issuance of $5,000,000 in bonds for same purpose); L. 1932, c. 251 (authorizing issuance of $20,000,000 in bonds for same purpose); L. 1920, c. 159 (authorizing issuance of $12,000,000 in bonds to

pay soldiers' bonuses). For fiscal year 1934, the State authorized the sale of $7,000,000 in bonds for the payment of teachers' salaries. L. 1933, c. 387. Those bonds were sold and in that fiscal year more than $6,000,000 in bond proceeds were expended by the State as school relief. Fitzgerald's Legislative Manual 1935, p. 381.

Each of these statutes authorized borrowing for operating expenses for the next fiscal year. Thus, the concept of State borrowing for current operating expenses was familiar to the framers of the 1947 Constitution and was not prohibited in the Appropriations Clause. In addition, almost immediately after adoption of the 1947 Constitution, the Legislature submitted to the voters a proposal to sell $105,000,000 in bonds, payable over twenty years, for the payment of bonuses to members of the armed forces who served during the Second World War. See L. 1949, c. 240. Although that proposal was rejected by the voters, it is plain evidence that at the time of the adoption of the Constitution it was understood that the State could borrow funds to pay current operating expenses.

Plaintiffs are forced into the untenable position of arguing that the framers would permit general obligation bond proceeds used to meet current expenses to be considered revenue but not the proceeds of contract bonds used for the same purpose. They argue that "[t]here is only one way the Governor can

properly count the proceeds of bonds as 'revenue': float the bonds as general obligation debt and submit them to voter approval in November." (Pb59). Yet, plaintiffs insist that the proceeds of contract bonds cannot be considered revenue. The illogic of that position is evident. First, when drafting the Constitution the framers never considered contract bonds, given that those financing arrangements did not exist in 1947. As this Court explained in Lonegan II, supra, the "variety of financing mechanisms employed in both the private and the public sectors today were unheard of" at time of the adoption of the 1947 Constitution. 176 N.J. at 14. "Had the framers been prescient, they might have written" the financial provisions of the Constitution differently, but they did not. Ibid.

Second, it is impossible, for purposes of defining the Appropriations Clause, to draw a principled legal distinction between proceeds from the sale of different types of constitutionally permissible bonds. Both contract bonds and general obligation bonds are authorized by the Constitution and nothing in the Appropriations Clause suggests that various categories of borrowed funds should be treated differently for purposes of the Governor's revenue certification.

This Court should also reject plaintiffs' argument that without a prohibition on the Governor including as revenue the proceeds of the sale of bonds, the Appropriations Clause will

have no meaning. This contention is meritless, as the Governor's certification effectuates the important goal of ensuring that the Governor identify all resources that will be available during the fiscal year to meet or exceed the expenditures approved in the Appropriations Act. This is precisely what transpired with respect to FY05 when Governor McGreevey identified the sources from which the State expected to receive funds to provide for the expenditures in the FY05 Appropriations Act. That a portion of those resources will be transferred to the State from the EDA after the sale of bonds by the Authority does not alter the fact that the Governor has identified sufficient resources to meet FY05 expenses.*

---

* Nor does the holding in State v. Trump Hotels & Casino, 160 N.J. 505 (1999), assist plaintiffs' position. First, as the trial court noted, "the facts in Trump are dramatically disparate from the facts before this court and involved a distinct and separate constitutional analysis; to wit, the constitutionality of amendments to the Casino Control Act." (Pa117 to Pa118). Moreover, the holding in Trump is evidence of this Court's deference to the Legislature's definition of what constitutes revenue under the State Constitution. This Court followed "the Legislature's clearly expressed intention that approved investments pursuant to the 1984 amendments are to be deemed investments and are not to be regarded as State revenue." Id. at 535. The same deference should be given to the Legislature's determination that the proceeds from the sale of the bonds at issue here "shall represent financial resources and revenues of the State" for purposes of the Governor's revenue certification. L. 2004, c. 68 §3b; L. 2004, c. 70 §3b. Moreover, in Trump, supra, this Court held that the phrase "State revenues" as it appears in the Casino Amendment, Article IV, section 7, paragraph 2 (D), was to be given a narrow construction. This Court found that "the literal language of the Amendment supports an understanding of the term 'State revenues' that is significantly broader than its intended meaning." Id. at 529.

POINT III

UNDER THE BRIGHT-LINE RULE SET BY THIS COURT IN LONEGAN II, THE CONTRACT BONDS AUTHORIZED BY THE CIGARETTE TAX SECURITIZATION ACT AND THE MOTOR VEHICLE SURCHARGES SECURITIZATION ACT DO NOT IMPOSE A LEGAL OBLIGATION ON THE STATE AND THEREFORE ARE NOT SUBJECT TO THE DEBT LIMITATION CLAUSE. NO WARRANT EXISTS TO BLUR THAT BRIGHT LINE.

Relying on the "unambiguous and clear language" of the Debt Limitation Clause, this Court, in Lonegan II, supra, "reaffirmed over fifty years of precedent" that the Debt Limitation Clause is implicated only when the full faith and credit of the State is being pledged. 176 N.J. at 4. Without question, the bonds authorized by the Cigarette Tax Act and the Surcharge Act do not pledge the State's full faith and credit and are not the legal obligations of the State. Rather, the bonds will be issued by the EDA and the bondholders can look only to the EDA for repayment. Thus, despite plaintiffs' assertions to the contrary, these bonds fall squarely within the holding in Lonegan II and do not violate the Debt Limitation Clause.

Plaintiffs, therefore, despite their protestations to the contrary, are asking this Court to again reconsider the traditional legal rules related to debt that have guided the State in its financial transactions over the past fifty years. Given that the Court just reconsidered that precedent and decided not to abandon the "clear, bright line [that] has appeared to

serve well the financial needs of the State while, at the same time, remaining true to the meaning of the Clause," Lonegan I, supra, 174 N.J. at 440, it should not accept plaintiffs' invitation to do so again a year later.

In Lonegan I, plaintiff Lonegan claimed that the Educational Facilities Construction and Financing Act ("EFCFA"), N.J.S.A. 18A:7G-1, et seq., as well as other statutes permitting independent authorities to incur debt without voter approval violated the Debt Limitation Clause. This Court upheld the challenge to EFCFA but decided to have rebriefing and reargument on the additional statutes that plaintiff found objectionable. The Court specifically noted that the parties should assume "that the Court intends to reconsider its precedents sustaining contract debt (or debt subject to future appropriations) . . . ." 174 N.J. at 465. The Court also asked the parties to address certain specific questions regarding the various types of contract bonds that have been issued in the State by independent authorities.* Ibid.

---

* With regard to "lease payments structured to cover debt on bonds issued to construct State office buildings", the Court asked whether "[a]lthough these lease payments resemble the 'ordinary expenses of government' that concerned the Spadoro [v. Whitman, 150 N.J. 2 (1997)] dissent, can they/should they be differentiated from pension contributions." Ibid. Plaintiffs suggest that this issue was "never taken up in Lonegan II." (Pb43). However, by retaining the bright line and not differentiating between lease payments and pension contributions, this Court did, in fact, decide that very issue.

After rebriefing and reargument, this Court upheld and reaffirmed a number of State statutes that authorized contract debt "to fund diverse programs serving various short- and long-term objectives." Lonegan II, supra, 176 N.J. at 10. In doing so, the Court noted the importance of maintaining "stability in respect of the variety of financial instruments authorized by the Legislature," and of the litigation that would result if the Court attempted "to establish classes of debt that are governed by the Clause and classes that are not." Id. at 5. Rather, the Court looked to the legislative and executive branches to determine whether to restrain contract debt. Ibid. Nothing has changed that should cause this Court to revisit Lonegan II and "inject uncertainty into State borrowing practices." Id. at 12.

Plaintiffs claim that the bonds at issue in this case are "different than all prior bonds this Court has considered" and therefore Lonegan II is not dispositive. (Pb48). Yet, the clear holding of Lonegan II is that "only debt that is legally enforceable against the State is subject to the Debt Limitation Clause." Id. at 13. Since this debt will not be legally enforceable against the State, it is not subject to the Clause.

Plaintiffs argue that this Court should look to the purpose for which these bonds will be issued -- "to cover operating expenses of the State" -- and find that this is

impermissible under the Debt Limitation Clause.* (Pb52). This Court, however, specifically rejected the idea that the purpose for which the bonds are being issued should be determinative. Id. at 16 (declining to follow the minority of state courts that drew distinctions based on "the source of the debt payments" or the "category of expenses funded by the debt."). Moreover, this Court was not unaware that its bright line test would permit independent State agencies to incur debt to meet current operating expenses. See Lonegan I, supra, 174 N.J. at 463 (quoting Spadoro, supra, Justice Handler expressing his concerns if the State was "permitted to incur debt in order to meet current operating expenses, payable only from the State's general revenue . . . ."). The Court, however, did not adopt the view of Justice Handler in his dissent in Spadoro; rather it maintained the fifty years of precedent and determined that "judgments about the issuance of debt when the State's full faith and credit is

---

* At another point in their brief, plaintiffs characterize the sole purpose of the bonds as creating "extraordinary 'revenue' for the State." (Pb48). Yet, the same purpose could be attributed to the bonds issued by the Tobacco Settlement Financing Corporation that were challenged in Lonegan II. In the supplemental brief filed with this Court in that case by plaintiff Lonegan he argued that the State was, either directly or indirectly through the guise of the Corporation, incurring "future debt obligations to the Corporation to receive cash payments now and in the near future ... rather than allow the tobacco litigation payments to be made into the general fund over time . . . ." Supplemental Brief of Plaintiffs, Lonegan v. State, Docket No. 51,698, dated September 9, 2002 at 16 (Da38).

not implicated are best left to the other branches of government." Lonegan II, supra, 176 N.J. at 20.

Plaintiffs further argue that the Court needs to adopt this "purpose" test so as to "reinvigorate the [Debt Limitation Clause] as the barrier to deficit financing it was intended to be." (Pb49 to Pb50). Yet, nothing in the Debt Limitation Clause itself or its extensively discussed constitutional history suggests it was designed to prevent deficit financing. Moreover, it is difficult to accept the notion that the Debt Limitation Clause and the Appropriations Clause "'are flip sides of the same coin'" when the Debt Limitation Clause preceded the Appropriations Clause by more than 100 years. See (Pb51).*

---

* Additionally, plaintiffs suggest that this Court should serve as a check on our State leaders similar to how the Legislature serves as a check on municipal governing bodies. (Pb51 n.17). The Local Bond Law prohibits local units from authorizing "obligations for any improvement or purpose having a usefulness of less than 5 years." N.J.S.A. 40A:2-21. Plaintiffs claim the statute "binds the governing bodies the same way the constitution binds the State... ." (Pb51 n.17). This analogy, however, is incorrect. Municipalities are creatures of the State and have no rights other than those provided to them by the State. City of Trenton v. State, 262 U.S. 182, 43 S. Ct. 534, 536-37, 67 L. Ed. 937, 941 (1923); Clark v. Degnan, 83 N.J. 393, 400 (1980). On the other hand, the State Constitution is a document of limitation on the full and complete power otherwise vested in the government. Gangemi, supra, 25 N.J. at 8-9. Thus, unless specifically prohibited, the State has the authority to act. Moreover, the fact that the Legislature adopted a policy that limited borrowing by local entities does not mean that the Legislature adopted a similar policy with regard to borrowing by State entities. In fact, the Legislature approved the very borrowing at issue here by enacting the statutes challenged in this appeal.

Plaintiffs are asking this Court to distinguish debt based upon the purpose for which bond proceeds are issued rather than what entity has the legal obligation to repay. This Court previously declined the unworkable suggestion to find "constitutionally significant differences among" types of debt. Lonegan II, supra, 176 N.J. at 19. Instead, it agreed with the State that to do so would mire "'the Court in drawing arbitrary and artificial distinctions among legally indistinguishable funding arrangements in complex commercial transactions.'" Id. at 12. Moreover, such a blurring of the bright line established in Lonegan II would cause a lack of stability in the marketplace with the Court having to determine whether each new financing mechanism was or was not within the classes of debt governed by the Debt Limitation Clause. Ibid.

The same result would occur if this Court now began to draw artificial and arbitrary lines based on the use of the bond proceeds. Nothing in the Clause would support such distinctions and this Court would have no guidance in determining permissible or impermissible purposes for the issuance of contract debt.*

---

* Plaintiffs suggest that a simple standard can be articulated -- "contract debt is unconstitutional when used to balance the budget." (Pb52). Nothing in the Debt Limitation Clause supports such a standard. Moreover, the standard is not as simple as plaintiffs would have this Court believe. It could certainly be argued that the proceeds from the Pension Bonds at issue in Spadoro were used to "balance the budget" because the bond proceeds defrayed expenses that otherwise would have been paid from the General Fund. See Spadoro, supra, 150 N.J. at 10 (Handler, J.

The lack of certainty and manageable constitutional standards would create the very instability that this Court avoided with its decision last year in Lonegan II.

Moreover, the other branches of government relied on this Court's holding in Lonegan II when fashioning the FY05 Appropriations Act and must have a clear indication of the scope of the Debt Limitation Clause when drafting future Appropriations Acts. In Lonegan II, this Court crafted a bright-line rule not only to provide stability for the financial markets, but also to provide the Governor and Legislature with a clearly defined set of parameters in which to act when authorizing the issuance of debt. Ibid. The effective management of the State's financial affairs by the branches entrusted with that responsibility would be frustrated by the frequent judicial intervention that would result from a blurring of that line, as plaintiffs suggest.

Accordingly, this Court should reject the invitation to revisit Lonegan II and affirm Judge Feinberg's determination that the issuance of these bonds does not implicate the Debt Limitation Clause.

---

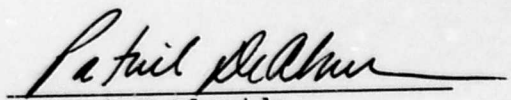
dissenting)("its purpose and its proceeds are directed only to defray the ordinary expenses entailed in the regular operation of government"). It could also be argued that bonds issued for capital expenses relieve the General Fund of the need to appropriate "pay as you go" capital thereby helping to "balance the budget."

CONCLUSION

For the foregoing reasons, Governor James E. McGreevey and State Treasurer John E. McCormac respectfully request that the decision of the Law Division be affirmed.

Respectfully submitted,

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: 
Patrick DeAlmeida
Deputy Attorney General

Dated: Trenton, New Jersey
July 15, 2004

A103 SEP 2003

HONORABLE LEONARD LANCE, et al., Plaintiffs, v. HONORABLE JAMES E. McGREEVEY, et al., Defendants.	SUPREME COURT OF NEW JERSEY DOCKET NO. 56,643 Civil Action On Direct Certification to the Superior Court of New Jersey, Law Division Sat Below: Hon. Linda R. Feinberg, A.J.S.C.

07

APPENDIX OF DEFENDANTS GOVERNOR JAMES E. McGREEVEY, AND STATE TREASURER JOHN E. McCORMAC

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, New Jersey 08625-0112
(609) 292-8576

Attorney for Defendants
Governor James E. McGreevey, and
State Treasurer John E. McCormac

Nancy Kaplen
Assistant Attorney General
Of Counsel

Patrick DeAlmeida
Deputy Attorney General
On the Brief

INDEX TO APPENDIX

SUPREME COURT OF NEW JERSEY
M-1356/1357/1358/1359/1360 September Term 2003
56,643

HONORABLE LEONARD LANCE,
as a citizen of New Jersey and a
taxpayer; et al.,

Plaintiffs-Movants,

v. ORDER

THE STATE OF NEW JERSEY;
HONORABLE JAMES E. McGREEVEY,
Governor of the State of New Jersey;
HONORABLE JOHN E. McCORMAC,
Treasurer of the State of New Jersey; and
THE NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY,

Defendants-Respondents.

This matter having duly presented to the Court, IT IS ORDERED that the motion for relaxation of *Rule* 2:12-2 (M-1356) is granted; and it is further

ORDERED that the motion for direct certification of the appeal now pending in the Appellate Division (M-1357) is granted; and it is further

ORDERED that the motion for an accelerated briefing schedule (M-1359) is granted, as follows:

1. On or before Friday, July 9, 2004, Appellants shall serve and file a copy of their brief and appendix at the chambers of the participating members of the Court, with four copies being filed with the Supreme Court Clerk's Office and two copies served on all participants to the appeal;

2. On or before Thursday, July 15, 2004, Respondents shall serve and file copies of their brief and appendix in the same manner as appellants; and

3. On or before Monday, July 19, 2004, Appellants shall serve and file any reply brief in the same manner; and it is further

ORDERED that the motion for oral argument (M-1360) is granted, the appeal to be heard on Thursday, July 22, 2004, in the Appellate Division courtroom, fifth floor, Hughes Justice Complex, Trenton, at 10:00 a.m.; and it is further

ORDERED that in light of the representation of the Office of the Attorney General that no bond purchasing agreements relating to the appeal before the Court would be executed prior to July 27, 2004, the motion for a stay pending appeal (M-1358) is dismissed as moot, the Court anticipating the filing of its final judgment on or before July 26, 2004.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 7th day of July, 2004.

/s/ Stephen W. Townsend

Clerk of the Supreme Court

CHIEF JUSTICE PORITZ and ASSOCIATE JUSTICES VERNIERO, LaVECCHIA, ZAZZALI and WALLACE join in the Court's Order. JUSTICES LONG and ALBIN did not participate.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 12
Trenton, New Jersey 08625-0112

Attorney for Defendants
Governor James E. McGreevey
State Treasurer John E. McCormac

By: Patrick DeAlmeida
Deputy Attorney General
(609) 292-8576

HONORABLE LEONARD LANCE, et al., Plaintiffs, v. HONORABLE JAMES E. McGREEVEY, et al., Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MERCER COUNTY Docket No. MER-L-1633-04 Civil Action CERTIFICATION OF CHARLENE M. HOLZBAUR

Charlene M. Holzbaur, of full age, upon her oath certifies and says:

1. I am the Comptroller of the Treasury and the Director of the Division of Budget and Accounting, in the Department of the Treasury and I have held this office since September 1999. I submit this Certification in support of the defendants' brief in opposition to plaintiffs' claims raised in the matter of Lance v. McGreevey.

2. In the course of my duties and responsibilities as the Comptroller of the Treasury and the Director of the Division of

Budget and Accounting, I am involved pursuant to N.J.S.A. 52:27B-46 in the preparation of the Comprehensive Annual Financial Report ("Annual Financial Report") for each fiscal year of the State of New Jersey ("State") and pursuant to N.J.S.A. 52:27B-22 in the preparation of the Governor's proposed budget for each fiscal year, including fiscal year 2005.

3. The Annual Financial Report is prepared in conformity with generally accepted accounting principles ("GAAP") as prescribed by the Governmental Accounting Standards Board ("GASB"). Specifically, the State prepares its Annual Financial Report in conformity with GASB Statement No. 34, Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments, GASB Statement No. 35 Basic Financial Statements - and Management's Discussion and Analysis - for Public Colleges and Universities, GASB Statement No. 37, Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments: Omnibus, and GASB Statement No. 38, Certain Financial Statement Note Disclosures. The Annual Financial Report includes government-wide financial statements and fund financial statements.

4. Government-wide financial statements provide a broad view of the State's operations conforming to private sector accounting standards and provide both short-term and long-term information regarding the State's overall financial position through the fiscal year-end. The government-wide financial statements are prepared

using the flow of economic resources measurement focus and the accrual basis of accounting. The government-wide financial statements include the Statement of Net Assets and the Statement of Activities. The Statement of Net Assets presents all of the State's assets and liabilities and calculates net assets. The Statement of Activities presents how the State's net assets have changed during the fiscal year. All changes in net assets are reported when the underlying event occurs giving rise to the change, regardless of the timing of related cash flows. Revenues and expenses are reported for some items that will not result in cash flows until future fiscal periods.

5. Fund financial statements are comprised of funds of the State. A fund is a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives. Examples of funds are the Property Tax Relief Fund, the General Fund and Special Revenue Funds. Examples of Special Revenue Funds are the Casino Control Fund, the Casino Revenue Fund, the Division of Motor Vehicles Surcharge Fund and the Tobacco Settlement Fund.

6. Fund financial statements focus on current inflows and outflows of expendable resources and the unexpended balances at the

end of a fiscal year that are available for future spending. Fund financial statements are reported using the modified accrual basis of accounting, which measures cash and all other financial assets that can be readily converted to cash.

7. Special Revenue Funds are used to account for resources legally restricted to expenditure for specific purposes.

8. Under the modified accrual basis of accounting, moneys transferred into the General Fund from Special Revenue Funds constitute interfund transfers to the General Fund and are presented in the Annual Financial Report as "Other Financing Sources-Transfer from (to) other funds". For presentation in the Annual Financial Report, such interfund transfers are not characterized as "revenue". However, such moneys increase the balance in the General Fund and are available to pay General Fund expenses. There exists another line in the Annual Financial Report called "Other Financing Sources-Proceeds from sale of bonds". This refers only to proceeds from State bonds, e.g. general obligation bonds, not bonds issued by an independent authority. Existing State law authorizing the issuance of State bonds provides that the proceeds thereof be deposited and held in separate funds and applied in accordance with State law. The proceeds of general obligation bonds could only be transferred to the General Fund if permitted by State law.

9. In each of the years when I have acted as Comptroller of the Treasury and the Director of the Division of Budget and Accounting, there have been interfund transfers of money from Special Revenue Funds to the General Fund. Such moneys were presented in the Annual Financial Report as Other Financing Sources as set forth in paragraph 7 above.

10. In fiscal years 2003 and 2004, bond proceeds were the source of moneys deposited into the General Fund by interfund transfer. The Tobacco Settlement Financing Corporation issued bonds, the proceeds of which were paid into the Tobacco Settlement Fund, a Special Revenue Fund. By interfund transfer, these moneys were deposited into the General Fund to pay General Fund expenses. For fiscal year 2003, this interfund transfer was presented in the Annual Financial Report as "Other Financing Sources". For fiscal year 2004, upon completion of the Annual Financial Report, this interfund transfer will be presented in the same fashion.

11. In each of the years when I have acted as Comptroller of the Treasury and the Director of the Division of Budget and Accounting, both the revenue estimate in the Governor's proposed budget and the Governor's revenue certification delivered in connection with the enactment of the annual appropriations act have included interfund transfers to the General Fund as revenue. For example, Governor Whitman's revenue certification for the fiscal year 2001 Appropriations Act included $1,079,051,000 of interfund

transfers in the total General Fund revenue estimate. See attached Exhibit A.

12. The Motor Vehicle Surcharges Securitization Fund (the "Motor Vehicle Fund") created pursuant to Section 11 of P.L. 2004, c. [chapter law #] ("Motor Vehicle Act") and the Cigarette Tax Securitization Fund (the "Cigarette Fund") created pursuant to Section 7 of P.L. 2004, c. [chapter law #]("Cigarette Tax Act") will each be classified as a Special Revenue Fund. Pursuant to the legislation, the proceeds of bonds issued pursuant to the Motor Vehicle Act and deposited with the New Jersey Economic Development Authority ("Authority") are permitted to be withdrawn by the Authority, upon the written request of the State Treasurer, and paid to the State Treasurer for deposit into the General Fund or the Motor Vehicle Fund. Similarly, the proceeds of bonds issued pursuant to the Cigarette Tax Act and deposited with the Authority are permitted to be withdrawn by the Authority, upon the written request of the State Treasurer, and paid to the State Treasurer for deposit into the General Fund or the Cigarette Fund. It is anticipated, however, that transfers of money on deposit with the Authority will be made only to the Motor Vehicle Fund or the Cigarette Tax Fund.

13. Moneys on deposit in the Motor Vehicle Fund may be transferred by the State Treasurer from the Motor Vehicle Fund into the General Fund and may be used for any lawful purpose of the

State for which moneys on deposit in the General Fund may be used. Moneys on deposit in the Cigarette Fund may be transferred by the State Treasurer from the Cigarette Fund into the General Fund and may be used for any lawful purpose of the State for which moneys on deposit in the General Fund may be used. Such moneys constitute revenue to the General Fund.

I certify that the foregoing statements made by me are true to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Charlene M. Holzbaur

Dated: Trenton, New Jersey
June 28, 2004

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

REVENUE CERTIFICATION

In accordance with the provisions of Article VIII, Section II, Paragraph 2 of the State Constitution, I hereby certify that the resources listed below are available to support appropriations for the fiscal year ending June 30, 2001.

GENERAL FUND

Undesignated Fund Balance, July 1, 2000	$ 200,143,000
Major Taxes:	
All Major Taxes—same as S-2000	10,052,038,000
Miscellaneous Taxes, Fees and Revenues:	
All Other Miscellaneous Revenue—same as S-2000	1,844,374,000
Interfund Transfers:	
All Interfund Transfers—same as S-2000	1,079,051,000
Total General Fund Revenues	$ 12,975,463,000
Total Resources, General Fund	$ 13,175,606,000

PROPERTY TAX RELIEF FUND

Undesignated Fund Balance, July 1, 2000	$ 319,780,000
All Revenues—same as S-2000	7,738,000,000
Total Resources, Property Tax Relief Fund	$ 8,057,780,000

GUBERNATORIAL ELECTIONS FUND	
All Resources—same as S-2000	4,163,000
CASINO REVENUE FUND	
All Resources—same as S-2000	355,140,000
CASINO CONTROL FUND	
All Resources—same as S-2000	58,093,000
SURPLUS REVENUE FUND	
All Resources—same as S-2000	650,333,000
GRAND TOTAL, ALL STATE FUNDS	$ 22,301,115,000

FEDERAL FUNDS

Uncertainty over the amount of federal aid which may be available to the State prevents me from making a like certification in the case of federal funds. Federal monies specified in the appropriations bill cannot be regarded as immediately available for expenditure. Pursuant to NJSA 52:27B-26, I direct that expenditures be permitted under these appropriations only upon determination by the Director of the Division of Budget and Accounting that federal funds to support any expenditure are receivable or have been received by the State.

NOTE

THE INFORMATION CONTAINED ON THE FOLLOWING DOCUMENTS IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE TO READ.

THE OPERATOR HAS BEEN INSTRUCTED TO USE THE UTMOST CARE IN PHOTOGRAPHING THE MATERIAL, THUS INSURING THE MAXIMUM LEGIBILITY OBTAINABLE.

1948, chapter 117

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

In accordance with the provisions of Paragraph 2 of Section II of Article VIII of the State Constitution, I, ALFRED E. DRISCOLL, Governor of the State of New Jersey, DO HEREBY CERTIFY that the appropriations contained in the within Senate Bill No. 300, together with all prior appropriations made for the fiscal year ending June thirtieth, one thousand nine hundred and forty-nine, does not exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal year.

IN TESTIMONY WHEREOF, I have hereunto set my hand this eleventh day of June, A.D. one thousand nine hundred and forty-eight.

Alfred E. Driscoll
Governor

ATTEST:
J. Lindsay de Valliere
Secretary to the Governor

Dall

1949, chapter 43.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

In accordance with the provisions of Paragraph 2 of Section II of Article VIII of the State Constitution, I, ALFRED E. DRISCOLL, Governor of the State of New Jersey, DO HEREBY CERTIFY that the appropriations contained in the within Senate, No. 250, together with all prior appropriations made for the fiscal year ending June thirtieth, one thousand nine hundred and fifty, does not exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal year.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 20th day of April, A.D. one thousand nine hundred and forty-nine.

Alfred E. Driscoll
Governor

ATTEST:

Secretary to the Governor.

1950, chapter 236

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
TRENTON

ALFRED E. DRISCOLL
GOVERNOR

In accordance with the provisions of Paragraph 2 of Section II of Article VIII of the State Constitution, I, ALFRED E. DRISCOLL, Governor of the State of New Jersey, DO HEREBY CERTIFY that the appropriations contained in the within Senate Bill No. 300, together with all prior appropriations made for the fiscal year ending June thirtieth, one thousand nine hundred and fifty-one, do not exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal year.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 14th day of June, A.D. one thousand nine hundred and fifty.

Alfred E. Driscoll
Governor

ATTEST:
Secretary to the Governor

1951, chapter 49

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
TRENTON

ALFRED E. DRISCOLL
GOVERNOR

In accordance with the provisions of Paragraph 2 of Section II of Article VIII of the State Constitution, I, ALFRED E. DRISCOLL, Governor of the State of New Jersey, DO HEREBY CERTIFY that the appropriations contained in the within Senate Bill No. 250, together with all prior appropriations made for the fiscal year ending June thirtieth, one thousand nine hundred and fifty-two, do not exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal year.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 27th day of April, A.D. one thousand nine hundred and fifty-one.

Alfred E. Driscoll
Governor

ATTEST: Paul T. Stafford
Secretary to the Governor.

NOTE

THE INFORMATION CONTAINED ON THE FOLLOWING DOCUMENTS IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE TO READ.

THE OPERATOR HAS BEEN INSTRUCTED TO USE THE UTMOST CARE IN PHOTOGRAPHING THE MATERIAL, THUS INSURING THE MAXIMUM LEGIBILITY OBTAINABLE.

1952, Chapter 43

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
TRENTON

ALFRED E. DRISCOLL
GOVERNOR

In accordance with the provisions of Paragraph 2 of Section II of Article VIII of the State Constitution, I, ALFRED E. DRISCOLL, Governor of the State of New Jersey, DO HEREBY CERTIFY that the appropriations contained in the within Senate Bill No. 250, together with all prior appropriations made for the fiscal year ending June thirtieth, one thousand nine hundred and fifty-three, do not exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal year.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 17th day of April, A.D. one thousand nine hundred and fifty-two.

Alfred E. Driscoll
Governor

ATTEST:

Leon S. Milmed
Counsel and Acting Secretary
to the Governor

1953, chapter 102

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
TRENTON

ALFRED E. DRISCOLL
GOVERNOR

In accordance with the provisions of Paragraph 2 of Section II of Article VIII of the State Constitution, I, ALFRED E. DRISCOLL, Governor of the State of New Jersey, DO HEREBY CERTIFY that the appropriations contained in the within Senate Bill No. 250, together with all prior appropriations made for the fiscal year ending June thirtieth, one thousand nine hundred and fifty-four, do not exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal year.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 18th day of April, A.D. one thousand nine hundred and fifty-three.

Alfred E. Driscoll
Governor

ATTEST:

Leon S. Milmed
Counsel and Acting Secretary
to the Governor

CONTANT, ATKINS, ROGERS, FEDE & HILLE, LLC
Court Plaza North
25 Main Street
Hackensack, New Jersey 07601
(201) 342-1070
Attorneys for Plaintiffs-Appellants

STEVEN M. LONEGAN; STOP THE DEBT.COM, LLC, Plaintiffs-Appellants, v. STATE OF NEW JERSEY; RONALD MACHOLD, TREASURER OF THE STATE OF NEW JERSEY; NEW JERSEY SPORTS AND EXPOSITION AUTHORITY; NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY; NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY; NEW JERSEY TRANSPORTATION TRUST FUND AUTHORITY, Defendants-Respondents.	SUPREME COURT OF NEW JERSEY DOCKET NO. 51,698 Civil Action On Appeal from a Final Order of the Superior Court of New Jersey, Appellate Division Sat Below: Hon. James J. Petrella, J.A.D. Hon. Richard Newman, J.A.D. Hon. Harry B. Wells, III, J.A.D.

SUPPLEMENTAL BRIEF OF THE PLAINTIFFS-APPELLANTS

Of Counsel and on the Brief:

Andrew T. Fede, Esq.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

NOTE

THE INFORMATION CONTAINED ON THE FOLLOWING DOCUMENTS IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE TO READ.

THE OPERATOR HAS BEEN INSTRUCTED TO USE THE UTMOST CARE IN PHOTOGRAPHING THE MATERIAL, THUS INSURING THE MAXIMUM LEGIBILITY OBTAINABLE.

STATE STATUTES AND CONSTITUTIONAL PROVISIONS

MISCELLANEOUS

PRELIMINARY STATEMENT

The Plaintiffs Steven Lonegan and Stop the Debt.Com, LLC ("Plaintiffs") submit this supplemental brief pursuant to this Court's directive contained in the majority decision of Chief Justice Poritz, Lonegan v. State, A-23-01, slip op. at 43-45 (2002), and in further support of their appeal from the Appellate Division majority decision that affirms the trial judge's order dismissing the Plaintiffs' complaint. Lonegan v. State, 341 N.J. Super. 465 (App. Div. 2001). The Plaintiffs seek a judgment pursuant to the Declaratory Judgments Act, N.J.S.A. 2A:16-50 et seq., and other equitable relief determining and enforcing the rights of New Jersey's voters under the Debt Limitation Clause of the New Jersey Constitution, N.J. Const., Art. VIII, § 2, ¶ 3 ("Debt Limitation Clause" or "Clause").

The Court should now adopt the standard that Justice Stein sets forth in his opinion, excluding, of course, debt issued pursuant to the Education Facilities Construction and Financing Act, N.J.S.A. 18A:7G-1 to -44 ("EFCFA"). The Court should "hold that the issuance of debt without voter approval by an independent state authority, unsupported by adequate independent revenue source and to be amortized primarily or exclusively by annual legislative appropriations, violates the Debt Limitation Clause notwithstanding that the State has no legal liability for repaymnt of the debt." Lonegan, slip op. at 4 (Stein, J., concurring and dissenting).

This formulation will give renewed life to the voters' State constitutional rights that are preserved by the Debt Limitation Clause. It also is consistent with the text and history of the Clause, its obvious purposes, and the better reasoned and thoughtful out-of-state court opinions and commentary, as well as the opinions of Justice Stein and Judge Wells in this case, Lonegan, slip op. at 1-71; Lonegan, 341 N.J. Super. at 482-488, and Justice Handler's opinion, which was joined by Justice Stein, in Spadoro v. Whitman, 150 N.J. 2 (1997).

This appeal presents the constitutional issue that was raised but not resolved in the Spadoro case. This Court should resolve that issue in favor of a broader application of the rights that the voters retained under the Debt Limitation Clause because "[a] literal interpretation of the Debt Limitation Clause that eviscerates the strictures the Clause expressly contains cannot serve the constitutional mandate." Lonegan, slip op. at 5; see, State v. Muhammad, 145 N.J. 23, 76 (1996) (Handler J., dissenting) quoting, Marbury v. Madison, 5 U.S. (1 Cranch) 137, 174, 2 L. Ed. 60 (1803)("It cannot be presumed that any clause of the Constitution is intended to be without effect."). Indeed, even "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416, 43 S. Ct. 158, 160, 67 L. Ed. 322, 326 (1922), quoted in, Greenway Dev. Co., Inc. v. Paramus, 163 N.J. 546, 553 (2000).

SUPPLEMENTAL STATEMENT OF PROCEDURAL HISTORY AND FACTS

On December 28, 2000, the Plaintiffs filed a Verified Complaint in lieu of Prerogative Writ and for a Declaratory Judgment. Pa 4a to 82a. The Defendants are the State of New Jersey ("State"), Ronald Machold, who was the State Treasurer, the New Jersey Sports and Exposition Authority ("Sports Authority" or "SEA"), the New Jersey Educational Facilities Authority ("E.F.A."), the New Jersey Economic Development Authority ("E.D.A."), and the New Jersey Transportation Trust Fund Authority ("T.T.F.A."). Pa 4a to 13a. The New Jersey Building Authority is not a defendant because the Plaintiffs did not challenge the New Jersey Building Authority Act, N.J.S.A. 52:18A-78.1 to -78.32.

Because this appeal arises out of the Order granting summary judgment dismissing the Plaintiffs' Compliant, the Court must accept as true the Plaintiffs' "version of the facts, giving [them] the benefit of all inferences favorable to [their] claim. [citations omitted]." Bernard v. IMI Systems, Inc., 131 N.J. 91, 93 (1993). In their Verified Complaint the Plaintiffs allege that, at least since 1984, the State has adopted statutes that authorize the issuance of debt without voter approval, instead of voter approved General Obligation Debt, contrary to the Debt Limitation Clause. Pa 4a to 82a. The Plaintiffs cite the following statutory examples in their complaint in addition to the EFCFA:

A. The EDA was authorized by the Pension Bond Financing Act

of 1997, P.L. 1997, c. 114, N.J.S.A. 34:13-7.45 et seq., to issue $2.75 billion in Contract Debt bonds;

B. The TTFA, as authorized by the New Jersey Transportation Trust Fund Authority Act of 1984, N.J.S.A. 27:1B-1 et seq., has issued $7,391,242,166 in State Contract Debt since 1984. See, N.J.S.A. 27:1B-20, Pa 31a;

C. The SEA, as authorized by N.J.S.A. 5:10-1 et seq., has issued $686,706,000 of State Contract Debt. See, Pa 45a. The SEA also issued another $30,000,000 in December of 2000. All of the debt service will be paid out of the State's General Fund, pursuant to N.J.S.A. 5:10-14.3;

D. The EFA has issued $100,000,000 of State Contract Debt under the Higher Education Leasing Fund Act since 1993. N.J.S.A. 18A:72A-40 et seq. The $100,000,000 limitation has been interpreted by the EFA to be an ongoing authorization for a total outstanding amount of $100,000,000, even after the initial debt is paid, see, N.J.S.A. 18A:72A-42;

E. The EFA is authorized to issue State Contract Debt pursuant to the Higher Education Facilities Trust Fund Act, N.J.S.A. 18A:72A-49, et seq., which was adopted in 1993. As in the case of all State Contract Debt, the State General Fund is the source of payment for $220,000,000 of bonds issued pursuant to this law. See, N.J.S.A. 18A:72A-57 (a) and (b). The $220,000,000 limitation will not restrain the State from issuing even more debt, however, because the limitation is stated to apply to "total

outstanding debt," N.J.S.A. 18A:72A-57(a), as in the case of the Higher Education Leasing Fund Act described above;

F. The EFA is authorized to issue State Contract Debt pursuant to the Higher Education Technology Infrastructure Fund Act, N.J.S.A. 18A:72A-59, et seq., which was adopted in 1997. This Act authorizes another $55,000,000 State Contract Debt. See, N.J.S.A. 18A:72A-65;

G. The EFA is authorized to issue State Contract Debt for Public Library Project Fund Bonds, pursuant to N.J.S.A. 18A:74-24, et seq., which was adopted in 1999. This law authorizes $45,000,000 of State Contract Debt to enable the State to make grants for public library projects throughout New Jersey. This law specifically states that the $45,000,000 limit is not a one-time limit on total bonds to be issued. The total amount of bonding over the years is really unlimited, as long as the amount outstanding at any one time does not exceed $45,000,000. The language is found in N.J.S.A. 18A:74-28(a), which allows the State to deduct "bonds, notes or other obligations that have been retired" when determining the limit on permitted bonds; and

H. The EFA is authorized to issue State Contract Debt pursuant to the Higher Education Capital Improvement Fund Act, N.J.S.A. 18A:72A-78 et seq., which was adopted in 1999. Another $550,000,000 State Contract Debt is authorized. This Act also provides that the limitation applies to the total amount of bonds outstanding at any time. N.J.S.A. 18A:72A-78(a). Under this law, institutions of higher education are to pay a portion of the debt

service. The exposure of the General Fund to State Contract Debt is one-half to two-thirds of the debt service burden. N.J.S.A. 18A:72A-78(b). Pa 9a to 11a.

The Appellate Division's majority opinion cites several other statutes that authorize State Contract Debt. These statutes are the Economic Recovery Fund Act, N.J.S.A. 34:1B-7.16; the County College Capital Projects Fund Act, N.J.S.A. 18A:72A-12.4(a); and the Higher Education Capital Improvement Fund Act, N.J.S.A. 18A:72A-78(b). Lonegan, 341 N.J. Super. at 473 n. 6. The Plaintiffs' challenge to the statutes authorizing State Contract Debt is alleged in a general way to include these and all other statutes that offend the Debt Limitation Clause. See, Pa 4a to 16a, see generally, Rule 4:5-7 ("All pleadings shall be liberally construed in the interest of justice.").

Since the Plaintiffs' previous briefs were filed, the Plaintiffs have learned of several other statutes that authorize State Contract Debt. For example, on January 8, 2002, P.L. 2001, c. 401, §6; N.J.S.A. 34:1B-[illegible].1, was adopted authorizing the EDA to issue bonds backed by a contract between the EDA and the State Treasurer. These bonds would allow the refinancing of solid waste facility debt. The contract would require the State Treasurer to pay annually the amount necessary to fund the interest and principal payments due on these bonds, with the usual disclaimer claiming that the State is not creating a State debt or liability. N.J.S.A. 34:1B-4.1(a) to (d). The legislative statement published with the bill states:

> As of April 12, 2001, the total amount of solid waste facility debt among all counties and local authorities amounted to $1.09 billion. If the full amount of that debt were to be refinanced through the issuance of bonds of the Economic Development Authority and the State were to agree to pay the maximum (50%) cost allowed under the bill for debt service on those bonds, the annual cost to the State could amount to roughly $40 to $47 million.

Another statute that authorizes State Contract Debt is the "Municipal Rehabilitation and Economic Recovery Act," N.J.S.A. 52:27BBB-1 to -65, P.L. 2002, c. 43, which was adopted on July 22, 2002. This Act authorizes the EDA to issue bonds not to exceed $175,000,000.00 to be backed by contracts signed by the State Treasurer. N.J.S.A. 52:27BBB-46 to -48. The State Treasurer is to pay the debt service out of revenue deposited in the General Fund, subject to the usual disclaimer that this obligation is not a debt or liability of the State. Id. The Statement of the Senate Budget and Appropriations Committee to Senate Bill No. 428, dated June 17, 2002, states that the City of Camden is the only qualified municipality that falls within the provisions of this statute, and that the statute authorizes the EDA to issue "$175 million in bonds. . . in order to capitalize a series of funds, the. . . principal source of moneys to allow for grants and loans of a sufficient scale and visibility to expand and sustain economic activity in the qualified municipality." Id.[1]

---

[1]This statute also violates the Debt Limitation Clause requirement that all debts and liabilities be paid off in 35 years. See, N.J.S.A. 52:27BBB-46(b) (authorizing bonds for terms not to exceed 40 years).

In addition, the Plaintiffs have objected to the debt provisions of the Tobacco Settlement Financing Corporation Act ("TSFCA"), which was adopted on July 1, 2002. N.J.S.A. 52:18B-1 to -14; P.L. 2002, c. 32. The Plaintiffs contend that this statute also offends the principles that underlie the Debt Limitation Clause, as discussed in Point IA, infra.

These statutes have the following common features:

1. A State law authorizes a State authority, such as the defendant authorities, to issue bonds for a State purpose. See, Pa 8 and 9;

2. The authority is not provided with a source of funds to pay all of the debt service on the bonds. The State law authorizes instead a contract between the State Treasurer and the authority. See, Id. In the contract the State Treasurer agrees to pay to the authority from revenues that are or that should be deposited in the State's General Fund the amount necessary, on an annual basis, for debt service payments due to the holders of the authority's bonds. Pa 96a to 170a; and

3. The State law provides that the payments under State contract are "subject to annual appropriation." Pa 92a. If a future Legislature fails to appropriate in the State's annual appropriation law a future debt service payment, the bondholders allegedly have no legal remedy because they have no legal right to compel payment. Pa 92a to 93a. Because of this "subject to annual appropriation" provision, the State asserts that it is not required to submit the debt to the voters for their approval.

This type of debt, where the only source of payment is the General Treasury, but where there has been no voter approval, is referred to by the Plaintiffs as "State Contract Debt." Justice Stein refers to this debt as "appropriations debt." This distinction may have a difference; the term "appropriations debt" could include a broader scope of constitutional protection.

For example, under Justice Stein's formulation, the New Jersey Building Authority Act could be rendered unconstitutional to the extent that the lease payments exceed the fair market rental that would be otherwise payable by the State under a "true" lease. See, Lonegan, slip op. at 47-49. On the other hand, Justice Stein's focus on appropriations from revenue that should be deposited in the State's General Fund might lead to a decision upholding the TTFA's bonding to the extent that it is supported by constitutionally and/or statutorily dedicated revenue. Id. at 55-57.

It is inconceivable, however, that the State Legislature will fail to make the necessary appropriations causing a default on debt that a State statute creates, whether directly or indirectly. Pa 11a. In reality, the State is compelled to pay State Contract Debt notwithstanding the purported annual appropriation limitation. The State's failure to do so would result in a default of the State and the loss of the State's credit standing in the public finance marketplace. The Legislature has never failed to appropriate the money necessary to pay debt service on the more than $10 billion outstanding State Contract Debt. Pa 9a, 11a, 18a to 76a. In fact,

the State does not dispute the Plaintiffs' allegations that all payments from the General Fund pursuant to every State Contract Debt ever issued have been made. See, Pa 83a to 261a.

State Contract Debt is also disadvantageous, when compared to General Obligation Debt, for two additional reasons. First, the State's voters are denied their constitutional right to participate in the political process. Second, the bonds that are backed only by contracts or appropriations have a lower credit rating in the bond markets than general obligation bonds, to account for the risk of a potential default. Pa 90a, 95a. This results in higher overall interest costs when contract debt is used in place of General Obligation Debt, a fact that the Defendants do not dispute. See, Pa 90a, 95a, 264a, Lonegan, 341 N.J. Super. at 479 n. 8.

Although General Obligation Debt provides obvious advantages of voter participation and lower overall cost, State Contract Debt has eclipsed general obligation debt as the State's borrowing method of choice. See, R. Martin, "Calling in Heavy Artillery to Assault Politics as Usual: Past and Prospective Deployment of Constitutional Conventions in New Jersey," 29 Rutgers L. J. 963, 1011 (1998). As of June 30, 2000, outstanding General Obligation Debt totaled approximately $3,790,570,000 and State Contract Debt totaled $10,958,736,000, and more State Contract Debt is already planned by the State for issuance in the future. See, Pa 9a, 77a to 82a. As of June 30, 2001, Justice Stein's opinion notes that the State's total of appropriations debt, $10.8 billion, was 75% of

the total of $14.3 billion of tax supported debt. Lonegan, slip op. at 54.

The State's published Summary of the Provisions of P.L. 2000, c. 53, the Annual Appropriations Act of the Fiscal Year 2001, states that the State's appropriations for fiscal year 2001 total $21,430,942,000, and that debt service is $530,000,000, or 2.5% of the appropriations. Pa 303a. These figures must be compared, however, with those that are contained in the State's Debt Report dated November 2000. Pa 18a to 76a. That report states that the debt service in the fiscal year 2001 on General Obligation Debt is $534,545,184. See, Pa 28a and 38a.

This figure is misleading, however, because it does not include the State Contract Debt debt service payments. Pa 31a to 48a. The total of this debt service for 2001 is as follows for anticipated debt issuances:

N.J. Transportation Trust Fund Authority	$449,841,076,000
Garden State Preservation Trust	13,280,000,000
N.J. Educational Facilities Authority	33,698,875,000
N.J. Economic Development Authority School Construction Funding Program	43,300,000,000
TOTAL	$540,119,951,000

In addition, the total debt service on the outstanding Contract Debt for fiscal year 2001 is $1,052,857,921. See, Pa 38a to 49a.

Therefore, the grand total for the State's debt service payments for existing or anticipated debt in fiscal year 2001 exceeds $2 billion and is approximately 10% of the total annual appropriation for the year. Moreover, the Legislative Fiscal Estimate that was prepared with regard to the EFCFA states that the annual cost to the State for the proposed $8.6 billion bond authorization will reach $700 to $800 million per year in years 10 to 20. Pa 77a to 78a.

This increase in State created debt that the voters have not been given the right to approve or disapprove indicates why this Court should look again at the Debt Limitation Clause and set a standard that can be used to enforce the Clause in the future.

LEGAL ARGUMENT

I. THIS COURT SHOULD APPLY THE STANDARD THAT JUSTICE STEIN SETS FORTH IN HIS OPINION AND SHOULD FIND THAT CONTRACT DEBT VIOLATES THE DEBT LIMITATION CLAUSE, THUS VINDICATING THE CONSTITUTIONAL RIGHTS OF NEW JERSEY'S VOTERS.

A. PLAINTIFFS' RESPONSE TO THE QUESTIONS THE COURT POSES AS TO THE APPROACHES FOR A WORKABLE DEBT LIMITATION CLAUSE STANDARD

This Court should adopt the standard that Justice Stein outlined in his opinion to ensure that the Debt Limitation Clause is not rendered a nullity. This approach is also employed by the more persuasive decisions from other States, as discussed in Point III of this Brief.

In sum, the Clause should apply to any statute that authorizes contract or appropriations backed debt that has not been approved by the voters, except for debts or liabilities that are for the limited purposes set forth in the Debt Limitation Clause, for which voter approval is not required. Contract or appropriations backed debt is a debt or liability of the State, or any independent authority created by the State, which is unsupported by an adequate independent revenue source, and which is to be amortized exclusively or primarily by funds derived from annual appropriations, or from tax-based revenue that is properly payable into the State's General Fund, absent a proper constitutional dedication of revenue. This analysis is to be made notwithstanding, or without regard to, the fact that the State claims it has no legal liability for the repayment of the debt or liability. See, Lonegan, slip op. at 4 (Stein, J., concurring and dissenting).

In response to the specific questions on pages 44-45, the Plaintiffs agree with Justice Stein's suggestion in his footnote 3 that the analysis of whether a debt is backed by a sufficient revenue stream is to be made when the bonds are issued, provided that the applicable statute has not been revised. The Plaintiffs also agree that the issue is not before the Court, but the Court may wish to include the question in its consideration of the overall approach to the Clause.

The Plaintiffs agree that the revenue supporting a debt or liability may be derived from the actual operations of a self-

liquidating facility or activity such as a toll road or bridge, a college, or a sports or entertainment facility, but not from sales taxes or other taxes that are derived from the taxpayers who use that facility or activity, absent a constitutional amendment dedicating that tax revenue. In this regard, the Plaintiffs urge caution in the application of the "special fund" doctrine, so that doctrine does not swallow the rule. The Plaintiffs refer to the discussion of Witzenburger v. Wyoming, 575 P. 2d 1100 (Wyo. 1978) and the other cases set forth in Point III on this issue.

Lease payments pose a more subtle issue. Clearly a "true lease," in which the rent fairly reflects the fair market rental, would not be a debt or liability under the Clause, provided that the lease terms and conditions are those that are generally found in commercial leases. A true lease, even a long-term lease, is quite simply a different type of legal obligation than a true financing transaction, as will be discussed later.

A "financing lease" provides a different series of concerns, as the Court's questions to the parties acknowledge. In this regard, the Plaintiffs ask the Court to endorse Justice Stein's formulation of the issue in this review of the holding of the Court in Enourato v. N.J. Bldg. Auth., 90 N.J. 396 (1982). When the State or an independent authority enters into a financing lease, in substance, the legal relationship can conceivably be more akin to a debt contract instead of a true lease. As Justice Stein notes, the Enourato holding endorses financing leases even though the State's anticipated appropriations under the lease exceed the fair

market value rental that would otherwise be payable. See, Lonegan, slip op. at 47-48.

The Plaintiffs' complaint and briefs filed to date did not seek to overturn this narrow holding in Enourato, nor did the Plaintiffs list the New Jersey Building Authority Act in their complaint. In short, the Plaintiffs argued that the financing lease issue did not need to be addressed in this case that challenged Contract Debt. Now that the Court has called for a reconsideration of its opinions, however, the Plaintiffs request that the Court limit the Enourato holding to a "true lease," and not a financing lease that is, in substance, a different way of stating a debtor-creditor relationship.

The Plaintiffs also contend that ordinary lease payments that are made pursuant to a true lease are different from the financing the State's current or future ordinary obligations, such as pension payments, lease payments, payroll, or utility bills. It does not matter from the voters' or taxpayers' standpoint whether debt obligations are used to fund these obligations or to build schools or roads. If these obligations are not paid each year out of the single annual appropriations law that is required by the Constitution, or a Constitutional dedication of revenue, they will be paid by future generations as debt that should have been approved by the voters, absent one of the exceptions in the Clause.

Therefore, the Plaintiffs also contend that the TSFCA offends the Debt Limitation Clause in the same way that the statutes authorizing State contract or appropriations debt violate

this Clause. The TSFCA creates the Tobacco Settlement Financing Corporation ("Corporation") to sell bonds in the place of the State. Although, according to the statute, the bonds are not to be considered debts of the State, N.J.S.A. 52:18B-8, the principal and interest payments to become due on the bonds are to be paid from State revenue, in this example, from the tobacco litigation settlement payments that the State has received, or is entitled to receive, as well as other funds that are approved by the State treasurer. N.J.S.A. 52:18B-7(a)(2). Those funds will be diverted from the State's general fund and will be paid to the Corporation to pay for the bonds that the corporation sells, N.J.S.A. 52:18B-5(c), even though the tobacco litigation was ostensibly settled on the premise that the State was entitled to the settlement proceeds to reimburse the general fund for damages and costs incurred by the State in the past due to tobacco usage by the residents of the State. See, N.J.S.A. 52:4D-1(a) to (d) (legislative findings regarding Master Settlement Agreement of November 23, 1998).

Thus, the TSFCA offends the Debt Limitation Clause because the voters have not been consulted on the issue of whether the State, either directly or indirectly through the guise of the Corporation, should incur future debt obligations to the Corporation to receive cash payments now and in the near future, at a substantial discount, rather than allow the tobacco litigation payments to be made into the general fund over time without any discount. There may be good and valid reasons for the State to proceed with the debt alternative, but the voters have the right to make that

choice, since the State Legislature has, in reality, created a State debt to pay these bonds from revenue that would otherwise be deposited in the general fund. No source of revenue other than that derived from the tobacco settlement proceeds is proposed to pay the interest and principal payments due on the Corporation's bonds. And what if the tobacco settlement payments fall short due to a default or bankruptcy? Will the State's taxpayers be asked to make up for any shortfall or risk a default that would be unthinkable, whether the defaulting party is the State or a creature of the State whose sole purpose is to provide another vehicle for an all-too-obvious attempt to evade the salutary provisions of the Debt Limitations Clause?

The TSPCA also is unconstitutional because it is a special appropriations law that is contrary to Article 8, section 2, paragraph 1 of the New Jersey Constitution, which requires that all appropriations be provided for in one general appropriations law that authorizes expenditures from funds that all are to be deposited in the general fund, except where otherwise provided by constitutional amendment. See, N.J. Const., Art. 8, §2, ¶4 (motor fuels tax dedication of revenue); N.J. Const., Art. 8, §2, ¶6 (dedication of corporate taxes for environmental remediation); N.J. Const., Art. 8, §2, ¶7 (dedication of sales tax revenue for open space, farmland, and historic preservation). The only constitutional way to dedicate revenue is by constitutional amendment, as was accomplished in these provisions.

In the following points, the Plaintiffs will elaborate upon the reasons why the Court should adopt this approach.

B. REASONS FOR THE PLAINTIFFS' ANSWERS TO THE COURT'S QUESTIONS

Although the Courts apply a presumption of validity in favor of statutes, no statute can authorize an unconstitutional practice. Township of West Milford v. Van Decker, 120 N.J. 354, 357 (1990). If a statute and the constitution come into conflict, the statute must give way. Id. at 364. The Courts "must always be alert to detect and suppress all evasions of constitutional interdictions." See, East Orange v. Bd. of Water Com'rs., 79 N.J. Super. 363, 371 (App. Div.), aff'd, 41 N.J. 6 (1963), quoting, Jayne, V. C., in Wilentz v. Hendrickson, 133 N.J. Eq. 449, 484 (Ch. 1943), aff'd, 135 N.J. Eq. 244 (E. & A. 1944). Thus, in testing the constitutionality of a statutory scheme, the courts should not rely "so much upon technicalized reasoning as upon a circumspect and enveloping comprehension of the effect of the statutes." Id. [emphasis added].

Courts search for the "intent and purpose" of constitutional provisions by first looking to "the precise language used by the drafters." State v. Trump Hotels & Casino, 160 N.J. 505, 527 (1999). "If the language is clear and unambiguous, the words used must be given their plain meaning." Id., citation omitted. This is so because the language in our State Constitution "is the voice of the people." Id., quoting, Gangemi v. Berry, 25 N.J. 1, 10 (1957).

The courts presume that constitutional language has been "carefully measured and weighed to convey a certain definite meaning with as little as possible left to implication." Atlantic City Racing Ass'n v. Attorney General, 98 N.J. 535, 546 (1985) (citations omitted). Thus, the courts "inquire as to the meaning the symbols of expression would most naturally and plainly convey, the sense most obvious to the common understanding... [for] [t]he Constitution was written to be understood by the voters." Id. (citations omitted).

If, after applying this approach the court finds that the constitutional provision "is unclear or is susceptible to more than one interpretation," the court "may consider sources beyond the instrument itself to ascertain its intent and purpose." State v. Trump Hotels & Casino, 160 N.J. at 528. These sources may include the relevant constitutional and legislative history. Id.

The Debt Limitation Clause has been a part of New Jersey's Constitution since 1844. It states that "[t]he Legislature shall not, *in any manner*, create in any fiscal year ... debts ...or liabilities of the State" if the debts or liabilities, when added to the existing debts or liabilities, exceed 1% of the State's total appropriations for the fiscal year, unless the debts or liabilities are for some single purpose that is approved by a majority of the State's voters. N.J. Const., Art. VIII, § 2, ¶ 3, emphasis added. The Clause allows exceptions only for a refinancing of existing debts at lower interest rates, a provision that was added by a constitutional amendment that the voters

approved in 1983, or for debts required "for purposes of war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or an act of God." The Clause also mandates that the State pay its debts within 35 years, and that it stand behind all debts it creates to prevent even the *possibility* of a default.

The Chief Justice discusses the constitutional history of the Clause, which is essential to an understanding of the text of the Clause and its salutary purposes. Lonegan, slip op. at 10-12. The Chief Justice correctly concludes from these sources that, in its essence, the Clause "prohibits one Legislature from incurring debts [that] subsequent Legislatures would be obliged to pay, without prior approval by public referendum. [quotations omitted]." Id. at 12. The text of the Clause thus embodies a clear intent to advance two beneficial policies--voter participation and financial prudence.

As to the first policy, New Jersey's voters expressly retained the right to approve proposed State liabilities and debts that are created "in any manner" when the one percent threshold is met, except for the "refinancing" of debts that were previously authorized by the voters, and debts or liabilities arising out of wars, invasions, insurrections, or emergencies created by disasters or acts of God. In view of our State's current financial status,

this right extends to all new State debts and liabilities because they exceed by far the one percent limit.[2]

The Clause also advances the second policy of financial prudence. To make our State's debt instruments acceptable in the financial markets and to prevent defaults, the Clause requires that the legislature provide for "ways and means, exclusive of loans," for the payment of both the principal and interest due upon our State's debts and liabilities within 35 years of the issuance of the debts and liabilities. These legislative "ways and means" cannot be repealed until the principal and interest are repaid. This concern for fiscal prudence also must be considered with reference to the Constitutional provision that requires the State to balance its budget annually. N.J. Const., Art. VIII, §2, ¶2.

Contract or Appropriations Debt defeats both of these policies. First, it is "non-debt debt" that is not backed by the full faith and credit of the State, contrary to the debt payment provision of the Clause. Second, it is "stealth debt" that is not put before and approved by the voters, who are denied their voice in the State's fundamental fiscal policy decisions.

---

[2]The fiscal year 2001 (June 30, 2000 - June 30, 2001) general appropriations law, P.L. 2000, c. 53, appropriates $21,430,942,000 total appropriations including $13,072,339,000 from the General Fund. See, "State of New Jersey, The Annual Appropriations Act, Fiscal year 2001, Summary of the Provisions of P.L. 2000, c. 53." Pa 303a to 304a. The total State Debt as of June 30, 2000 of $15,134,366,000 far exceeds the 1% limitation. See, "State of New Jersey Debt Report, submitted to the Commission on Capital Budgeting and Planning, November 2000." Pa 18a to 76a.

Moreover, the State admits that bonds that are backed by Contract or Appropriations Debt have a less favorable credit rating than that of general obligation debt. Db 20 to 21. Therefore, the interest cost for the Contract Debt bonds is higher than that of voter approved general obligation debt. This presents a "double whammy" to New Jersey's voters and taxpayers; they pay a higher interest rate while being deprived of their constitutionally guaranteed right to be heard on the State's fundamental fiscal policy.

The State advances no reason for the use of State Contract and/or Appropriations Debt in place of general obligation debt, other than the perceived need to circumvent the constitutional rights of the voters. Accordingly, this Court should hold that State Contract and/or Appropriations Debt is an unconstitutional evasion of the plain language of the Debt Limitation Clause because the statutes authorize debt contracts that create debts and liabilities of the State to repay funds borrowed by a State-created authority, which stands in the shoes of the State. The State's promise to pay is made contingent only on the Legislature's decision to make the appropriations annually to fund the debt payments.

Under the plain meaning of the terms "debt" and "liability," these "contingent debts" are "debts" as intended by the language and purpose of the Debt Limitation Clause. The term "debt" means "in the popular sense ... a demand founded on contract express or implied, and comprises all actions ex contractus." State v.

Madewell, 63 N.J. 506, 512 (1973), quoting, Perry v. Orr, 35 N.J.L. 295, 298 (Sup. Ct. 1871). A contract to repay a loan, debt, or a promissory note may make the promisor's promise contingent on its future ability to pay. See, Lutz v. Ryno, 1 N.J. 363, 365 (1949); City of Camden v. South Jersey Port Com'n, 2 N.J. Super. 278, 301 (Ch. Div. 1949), aff'd, 4 N.J. 357, 371 (1950); Guerin v. Cassidy, 38 N.J. Super. 454, 461 (Ch. Div. 1955). Thus, an enforceable contract and promise to pay may be made contingent on future events that are controlled by the promisor; the contingent nature of the debt does not make the debt contract an illusory one. See, generally, C. McCauliff, Corbin on Contracts Conditions § 31.3 (J. M. Perillo, ed., 1999).

Similarly here, the State's debts and liabilities in relation to State Contract or Appropriations Debt are embodied in enforceable contracts. Because these contracts are so clearly simple promises to repay debts, the Court should find that State debts and liabilities are in some manner created by these contracts, as those terms are commonly and naturally understood.

In the alternative, if the Court finds that the Debt Limitation Clause is ambiguous on the question of whether contingent debts and liabilities are included, the Court should resolve that ambiguity in favor of a broader application of the "in any manner" language of the Clause, and the right to vote that it establishes, to include contingent debts and liabilities when it is likely that those debts and liabilities will be paid out of the State's general revenues.

Moreover, the Constitutional history of the Debt Limitation Clause makes it clear that neither the members of the convention that drafted the Clause nor the people who voted to adopt it could have anticipated either State authority debt in general, or State Contract Debt in particular. No State authority, State commission, or State Contract Debt existed, without voter approval, in 1947. See, Amos Tilton, Constitutional Limitations on the Creation of State Debt, 2 Proceedings of the Constitutional Convention of 1947 1708, 1708-1714 (1951). The only "authority" debt was that of interstate authorities or commissions, such as the Port Authority of New York and New Jersey, the Delaware River Port Authority, and the Palisade Interstate Park Commission, which relied upon their own credit, and not the State treasury, to pay off the debt. See, Tilton, supra at 1726-1727; see, also, New Jersey Turnpike Auth. v. Parsons, 3 N.J. 235, 241-250 (1949)(analysis of then current law, upholding statute authorizing authority debt that was paid solely out of the Turnpike Authority's own revenues, and not the State's General Fund).

The then prevailing law under the 1844 Constitution's Debt Limitation Clause is illustrated by the Errors and Appeals Court's decision in Wilson v. State Water Sup. Com., 84 N.J. Eq. 150, 157-160 (E. & A. 1914). The Court rejected the abuse of the "special fund doctrine" as an unconstitutional evasion of the Debt Limitation Clause. Id. at 158. The Court also rejected the narrow interpretation of the term "debt" that would have allowed for other evasions of the Clause by the use of commissions and authorities

that relied upon the State's general revenue to pay their debts. See, Id. at 158-160.

The delegates to the 1947 Constitutional Convention did not add any new language to the text of the 1844 Constitution's Debt Limitation Clause to allow any new forms of non-voter approved debt. Indeed, the only issue that was debated regarding the 1844 version of Debt Limitation Clause was the conversion of the debt limit from a fixed dollar amount to a percentage of the State's budget. See, Proceedings of the Constitutional Convention of 1947, supra at 701-704; see, also, Robert F. Williams, The New Jersey Constitution: A Reference Guide 117 (1990).

This is why the history of the 1844 Constitution's Debt Limitation Clause is so relevant. That provision was included in the 1844 Constitution soon after the financial panics of 1837 and 1839, and after nine states defaulted on their debt obligations in 1842. Tilton, supra at 1709. The Debt Limitation Clause thus requires that a law authorizing State debt "should first be submitted to the people, and then the payment of the principal and interest provided for by those who created it, and not be entailed on posterity." Proceedings of the New Jersey State Constitutional Convention of 1844 310 (1942). The 1844 Convention also voted to require that the State's debts be paid in 35 years, and added a provision that prevented the repudiation by the Legislature of the repayment obligation of State debts. Id. at 526-527. One delegate stated that "if there had been a similar provision in the

Constitution of other States, they would now have more honor and more credit." Id. at 527.

The principles that underlie the Debt Limitation Clause remain sound after 158 years. This Court should reject an interpretation that would negate these principles and would render the Clause to be a nullity. See, generally, Cambria v. Soaries, 169 N.J. 1, 19 (2001) ("Ultimately, it is the voters who will decide whether our Constitution should be modified.").

The Defendants' arguments to the contrary are based upon two legal fictions. First, that by merely calling a debt contract a "non-debt" this legal conceit will satisfy the requirements of the Debt Limitation Clause. "You cannot make a lion into a chicken by calling him one. [citation omitted]." Kass v. Brown Boveri Corp., 199 N.J. Super. 42, 50 (App. Div. 1985). Similarly, what the State calls these obligations cannot be dispositive in our enlightened constitutional jurisprudence, which must be "alert to detect and suppress all evasions of constitutional interdictions." Wilentz v. Hendrickson, 133 N.J. Eq. at 484.

The second legal fiction is the State's repeated assertion that a real possibility exists that a future Legislature will fail to appropriate the funds necessary to pay principal or interest due on one or more of the bonds at issue here. This is an impossibility in the real world, a point that was suggested by Justice Handler in Spadoro and by Justice Stein and Judge Wells in this case. Spadoro v. Whitman, 150 N.J. at 12-13; Lonegan, slip op. at 4; Lonegan, 341 N.J. Super. at 483-484. The bondholders may

indeed have no legal redress in the event of a default, but the focus of the Plaintiffs' suit is not on the rights of bondholders; it is instead, on the voters whose rights are, in substance, violated by the subterfuge of State Contract Debt.

The fiscal realities of our world require that the State Legislature appropriate funds to prevent defaults on bonds that are backed by State Contract Debt or by appropriations from revenue that is or that should be deposited in the State's General Fund. It follows, then, that the Court should enforce the voters' and taxpayers' right to approve those debts that will be passed onto future generations. Those generations will have to either keep paying our State's debt or default and ruin the State's credit standing and economy, thus creating the very type of financial crisis that existed in the nineteenth century and that was to be prevented by the Debt Limitation Clause. See, Tilton, supra at 1709.

The fallacy of the Defendants' arguments is thus revealed by this faulty foundation; the Debt Limitation Clause was created to prevent the very possibility of a default on which the State relies to justify State Contract Debt. Id. The Defendants twist the Clause's purposes and history when they refer to the possibility of a default because the Debt Limitation Clause requires the State Legislature to stand behind the debts it creates, "in any manner," and to "provide the ways and means" to pay the debts and interest, which shall not be repealed until the debts are paid. See, N.J. Const., Art. VIII, §2, ¶3.

Consequently, this Court should strike down the statutory provisions that have created billions of dollars of State Contract Debt without voter approval. See, Martin, supra, 29 Rutgers L. J. at 1011; Pa 9a to 11a, paragraph 9. These statutes have in the past and will continue in the future authorize State agencies to create debts and liabilities in violation of the rights of the public, as guaranteed by the Debt Limitation Clause, unless this Court enforces the Clause.

II. NO MAJORITY DECISION OF THIS COURT HAS SPECIFICALLY ADDRESSED THE ISSUE OF THE CONSTITUTIONALITY OF STATE CONTRACT DEBT THAT IS NOT SUPPORTED BY REVENUE OTHER THAN APPROPRIATIONS FROM THE GENERAL FUND.

The Judges and Justices who have published opinions in this case and in Spadoro have obviously differed on the question of whether the State is correct in its repeated assertion that for more than fifty years this Court has time and again held that statutes authorizing the issuance of the State Contract or Appropriations Debt that is at issue here is not unconstitutional. This is not a dispositive issue because this Court is always free to disagree with the holdings of its own decisions, if logic, history, or sound public policy no longer support them. See, J & M Land v. First Union Bank, 166 N.J. 493, 521 (2001). This is also so now that the Court has explicitly stated that we are to assume "that the Court intends to reconsider its precedents sustaining contract debt (or debt subject to future appropriations)[.]" Lonegan, slip op. at 44.

Justice Stein's opinion contains a detailed case-by-case analysis of this Court's Debt Limitation Clause decisions, carefully setting forth the holdings of each case. Lonegan, slip op. at 18-49. He correctly concludes that the State may be guilty of "an overreading of our precedents." Id. at 18. In his majority Appellate Division opinion, Judge Petrella found that the issue of the constitutionality of the Contract Debt that the Plaintiffs challenge "has not been specifically addressed" by this Court. Lonegan, 341 N.J. Super. at 481. Nevertheless, the Appellate Court's majority found that it was "constrained" by the "reasoning" --not the holdings--of this Court's decisions to affirm the trial court's order. Id. Judge Petrella concluded, however, that were the Appellate Division not "barred by that precedent we might join in our colleague's thoughtful dissenting opinion." Id. n. 9; see, also, Commercial Realty v. First Atlantic, 235 N.J. Super. 577, 590 n. 9 (App. Div. 1989) (lower courts should give "weight" to dicta of Supreme Court), modified on other grounds, 122 N.J. 546 (1991). In his dissenting opinion, Judge Wells went further when he wrote that: "It is barely arguable that contract debt is not the debt of the State." Lonegan, 341 N.J. Super. at 483.

The Plaintiffs contend that Justices Handler and Stein correctly wrote that the debt that was at issue in Spadoro and that is at issue here is fundamentally different from the transactions that this Court has held do not, "in any manner," create "debts or liabilities" of the State for the purposes of the Debt Limitation Clause. That difference is that the contract

formats cited by the Defendants, see, Pa 96 to 116, and written pursuant to the statutes that the Plaintiffs challenge, are simply promises to pay a debt out of future appropriations, subject to a condition subsequent. See, Id. at Sections 201-207, 801. This condition does not render the promise to pay the debt created to not be a debt, just as a bona fide lease subject to a similar condition subsequent is still held to be a lease, even if it is subject to appropriation. If this debt is to be paid by future generations out of the State's general fund because no other source of funding exists, then it offends the purposes of the Clause.

Therefore, the Plaintiffs initially argued that the leasing cases such as Enourato v. Building Auth., 90 N.J. 396 (1982); Bulman v. McCrane, 64 N.J. 105 (1973); and Clayton v. Kervick, 52 N.J. 138 (1968) are distinguishable. In each of these cases the Court held that the execution of leases by the State did not, under the Debt Limitation Clause, create a debt or liability of the State. The Plaintiffs initially argued that the leases that were challenged in these cases were distinguishable from the simple debt contracts at issue in this case because there is no lease here to which the Court can afford the "benefit of the doubt" in a constitutional sense. A lease, although setting forth liabilities of the lessee, also is an asset of the lessee because leases contain dependent covenants that create mutual continuing rights and liabilities in both the lessor and the lessee. See, Ivy Hill Park Apts. v. GNB Parking, 237 N.J. Super. 1, 3 (App. Div. 1989).

In contrast, the State Contract Debt agreements that are at issue here are simply promises to pay a debt. These agreements, unlike leases, are created for the sole purpose of memorializing the manner in which the debts will be liquidated from the State's General Fund. No other source of revenue is provided by these contracts or the statutes that authorize them.

Both the Chief Justice and Justice Stein address the later point in their opinions, which suggest that to the extent that a lease is not a "true lease" a constitutional violation may indeed occur. This would be so to the extent that the "lease rent" payments exceed the fair market rental value, and actually represent capital acquisition and debt interest payments that finance that acquisition. Thus, the line of cases ending with Enourato should be limited, upon reconsideration, so as to not create a loophole in the Debt Limitation Clause's protections.

In contrast, the holding of this Court in New Jersey Turnpike Auth. v. Parsons, 3 N.J. 235 (1949) is distinguishable because the Turnpike Authority was to be a self-liquidating authority. Id. at 245-246. There was no contract in which the State Treasurer agreed to annually pay the funds necessary to liquidate the Authority's debt; to the contrary, the Authority was to pay its own debt. Therefore, Chief Justice Vanderbilt found that the Wilson decision was distinguishable. Id. Moreover, this is one of a line of cases based upon the "special fund" doctrine, in which the bondholders look to the special fund for payment. See, N. J. Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 52, app. dism. sub. nom,

409 U.S. 943, 93 S. Ct. 270, 34 L. Ed. 2d 215 (1972) (Weintraub, C.J., concurring in part and dissenting in part). The special fund cases are distinguishable because the statutes at issue provided a fund or revenue source, other than tax or other revenue that is or should be deposited in the State's Treasury, which was dedicated to liquidate the debt. The State's disclaimer of debt therefore has a meaning in the special fund cases that does not exist in the case of State Contract Debt. See, Id. at 24-30 (Sports Authority debt to be paid by Authority's own revenues); see, also, Clayton v. Kervick, 52 N.J. at 149 (bonds to build colleges to be paid to the authority by colleges from their own revenue).

This Court's holding in Holster v. Bd. of Trustees of Passaic County College, 59 N.J. 60 (1971) is also distinguishable. The only debt at issue was memorialized in County bonds that pledged the full faith and credit of the County. Although the State agreed to provide aid to assist the Counties in their liquidation of their debt, the only debt was that of the Counties. This Court therefore held that the County debts were not subject to the Debt Limitation Clause. Id. at 73. In contrast, in this case the only bonds are those of the Defendant authorities, which are backed only by the contracts between the State Treasurer and the authorities. Those contracts provide for the only means to repay the debt, which is to be paid entirely out of the State Treasury, unlike the debt in Holster, which was to be paid back by the Counties.

The holdings of these cases, then, do not support the approval of the contract debt at issue here, a point clearly made by Justice

Handler in Spadoro and by Justice Stein in this case. These opinions accurately note the unconstitutional status of State Contract Debt, as well as the danger that it poses to the continued relevance of the Debt Limitation Clause and the important public policies that clause advances. These opinions, moreover, correctly caution against an interpretation that allows the exceptions to the Debt Limitation Clause to swallow up the salutary rule the Clause establishes.

Justice Handler's Spadoro dissent is also of importance because six years earlier he wrote the Court's opinion in Matter of Loans of N.J. Property Liability, 124 N.J. 69 (1991). In that case, the Court rejected a challenge under the Debt Limitation Clause to the State's obligation to repay loans made by the New Jersey Property Liability Insurance Guaranty Association ("PLIGA") to the New Jersey Automobile Insurance Guaranty Fund. The repayment of the "loans" was based upon contingencies that make it unclear whether the debt was ever to be repaid. Id. at 72-73. Thus, the Court found that these contingencies, when taken as a whole, do not create a debt of the State as defined by the Debt Limitation Clause. See, Id. at 77. In his Spadoro opinion, Justice Handler distinguished the "debt" of PLIGA from the "real" debt that the State was required to repay under the Pension Bond Act. See, Spadoro, 150 N.J. at 11-12.

Justice Handler also distinguished the debt created by the Pension Bond Act from the debts that were found not to be debts in the line of Supreme Court decisions decided since 1947. See, Id

at 9-11. He found that the pension bonds were not created by a "clearly separate government" entity "that served special and discrete governmental purposes. [citation omitted]." See, Id. at 9-10. He also concluded that the EDA was being used only as a "shell" or a "conduit to sell bonds." Id. at 9-10. He opined that the EDA had no source of income to pay the bonds and was being used as a "shield to insulate the State from being a debtor." Id. at 10. Finally, he found that the bonds were not being used to build or acquire major capital projects or provide special governmental functions. Id. at 10-11, citing cases.

This last distinction is not controlling from a constitutional perspective; it does not matter for what purpose a debt is created under the Debt Limitation Clause. For purposes of the Debt Limitation Clause a debt is a debt if the statutes authorize obligations that will be paid out of revenue that is or should be deposited in the State's General Fund. The defendant authorities in that instance serve only as conduits to sell bonds while shielding the State from being labeled as a debtor. See, generally, F.M.C. Stores v. Borough of Morris Plains, 100 N.J. 418, 426 (1985) ("In dealing with the public, government must turn square corners."[quotation and citation omitted]).

Justice Handler's Spadoro opinion, then, is persuasive authority that warns how contract debt threatens to make the Debt Limitation Clause a "dead letter." The New Jersey Constitution sets forth only two methods for the submission of proposed constitutional amendments to the voters for ratification. See,

N.J. Const., Art. IX; Martin, supra, 29 Rutgers L.J. at 993. Absent a constitutional amendment deleting the Debt Limitation Clause, the voters retain all of the rights guaranteed by that Clause.

Therefore, this Court should hold that the constitutional rights of the voters under the Debt Limitation Clause should not be slighted or evaded by any legislation. It is indeed axiomatic that: "It is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803). This power extends to the judicial duty to declare and enforce the rights guaranteed by the New Jersey Constitution. See, e.g., Cooper v. Nutley Sun Printing Co., Inc., 36 N.J. 189, 196 (1961).

III. THE BETTER REASONED AND PERSUASIVE OUT-OF-STATE CASES SUPPORT THE PLAINTIFFS' CONTENTION THAT STATE CONTRACT DEBT VIOLATES THE DEBT LIMITATION CLAUSE.

This Court has a tradition of interpreting the provisions of our State's Constitution to protect the civil and political rights and liberties retained by or guaranteed to the people of New Jersey. This Court is not bound by the United States Supreme Court's interpretation of analogous provisions of the United States Constitution, or the decisions of the courts of other states interpreting their own constitutions. State v. Cooke, 163 N.J. 657, 666-667 (2000); Right to Choose v. Byrne, 91 N.J. 287, 299-301 (1982); see, Planned Parenthood v. Farmer, 165 N.J. 609, 627 (2000)(after citing majority rule in state and federal cases

upholding parental notification statutes, Court followed the minority rule in interpreting our constitution).

It is, however, appropriate for this Court to look to the decisions of other State courts and to the writing of commentators who have considered issues that are similar to those that are before the Court. Indeed, the Chief Justice's opinion correctly notes that the cases from other states follow two lines of reasoning when interpreting their state constitutional debt limitation provisions. Lonegan, slip op. at 24-28, 43-44. Even the cases that limit the scope to their constitutional protections reveal a diversity of opinions among the judges. See, e.g., In re: Application of Oklahoma Capitol Improvement Auth., 958 P. 2d 759, 779-787 (Okla.)(Opala, J., dissenting), cert. denied, 525 U.S. 874, 119 S. Ct. 174, 142 L. Ed 2d 142 (1998); Wilson v. Kentucky Transportation Cabinet, 884 S.W. 2d 641, 646-647 (Ky. 1994)(Stumbo, J., dissenting); Department of Ecology v. State Finance Committee, 304 P. 2d 1241, 1249-1260 (Wash. 1991)(Dore, J., dissenting). Moreover, legal commentators who have studied these cases have demonstrated the ill effects of the various evasions of debt limitation provisions in state constitutional law. See, generally, Stewart E. Sterk and Elizabeth S. Goldman "*Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations,*" 1991 Wis. L. Rev. 1301; Eric B. Schnurer, "*The Sorry Phenomenon of 'Legal Constitutional Evasion:' The Lesson of State Constitutional Debt Limits,*" 4 Emerging Issues in State Const. L.

81 (1991); Comment, *"Judicial Demise of State Constitutional Debt Limitations,"* 56 Iowa L. Rev. 646 (1971); C. Robert Morris, Jr., *"Evading Debt Limits with Public Building Authorities: The Costly Subversion of State Constitutions,"* 68 Yale L. J. 234 (1958).

The better reasoned authority is revealed by the courts that "have taken a more expansive view of the debt limitation clauses like ours." Lonegan, slip op. at 43. These decisions are not willing "to accept at face value declarations that the bonds issued do not constitute state debt," and they do not allow "legislative decisions to [in any manner] circumvent debt limitation restrictions through the use of future discretionary appropriations that in practice are not discretionary at all." Id. at 25-26.

Both Chief Justice Poritz and the Plaintiffs have cited as an example the West Virginia Supreme Court of Appeals decision in Winkler v. West Virginia, 434 S.E.2d 420 (W. Va. 1993). The Court held that a statute that authorized the State's School Building Authority to issue bonds violated the state constitution's debt limitation clause. The bonds were backed by the pledge of general state tax revenues with the "subject to appropriations" language that the Plaintiffs contest in this case. See, Id. at 423-425. The bonding financed school construction to satisfy the earlier Court mandate under the "thorough and efficient" education clause of West Virginia's Constitution. See, Id. at 425.

The court's opinion was written by Justice Thomas B. Miller, a well respected jurist.[3] The Court held that the "thorough and efficient" clause of the West Virginia Constitution does not "trump" the debt limitation provision. See, Id. at 425-426. The court distinguished transactions that were previously approved by the court for leasing and for bonds backed and paid for by an independent source of revenue. Id. at 426-432.

The court also rejected the State's argument that dicta in the prior cases called for the court to uphold the financing scheme simply because the statute claimed to create "no legal obligation to pay the bonds[.]" Id. at 432. Justice Miller wrote:

> While we admire the legal sophistry of this argument it defies our practical judgment. If the bonds are not paid, it is obvious that the State's credit will be impaired. The default on a bond issue of this size hardly can be expected to draw cheers from the bondholders or their brokerage houses or the bond financial rating services. [footnote omitted]. Id.

The court also declined to follow the contrary logic applied by other courts in similar cases:

> We simply cannot agree with the rationale of the Virginia and Indiana courts as we find it too chimerical. Obviously, where the only source of funds for revenue bonds is general appropriations, it defies logic to say that the Legislature has no obligation to fund such bonds. These courts are willing to ignore the practical reality that will be visited upon a state's credit if there is a default on the bonds. What these courts have done is to

---

[3] See, Ancil G. Ramey, "A Tribute to Justice Thomas B. Miller," 97 W. Va. L. Rev. 553 (1995) (discussing Justice Miller's long and distinguished career).

> ignore the plain language and practical effect of the bond legislation. Id. at 433.

The court "could not close our minds to the practical consequences of the revenue arrangement. To accept the premise that the legislature is not bound to fund the bonds and would allow a default, thereby impairing the credit rating of the State, assumes a naivete on our part that we simply do not possess." Id. at 435, footnote omitted. The Court was simply unwilling to "abandon logic and common sense" in its analysis of the true nature of the bonds. Id.; see, also, State v. Walker, 561 N.E. 2d 927 (Ohio 1990) (statute authorizing creation of revenue anticipation notes held in violation of debt limitation clause); Montano v. Gabaldon, 766 P. 2d 1328 (N.M. 1989) (lease subject to appropriation held in violation of debt limitation clause).

The Wyoming Supreme Court's decision in Witzenburger v. Wyoming, 575 P. 2d 1100 (Wyo. 1978) is similarly persuasive. The Court held that a statute authorizing the Wyoming Community Development Authority to issue bonds backed by tax revenue violated the State's debt limitation clause. Id. at 1103-1104. The Court looked to "the substance, not the form" of the bonding transactions that the statute authorized. Id. at 1117. The Court concluded "as a matter of fact and as a matter of legislative fiat, future tax money is offered as security for and payment of revenue bonds, though reached in a round-about way[.]" Id. The Court concluded:

> The legislature cannot do indirectly what it cannot do directly. Our constitutional provisions, . . . , are explicit in their

> checks that the prohibited indebtedness not be created "in any manner."
> Id. [emphasis added].

The Court cited and relied upon the Montana Supreme Court's decisions in State ex. rel. Ward v.Anderson, 491 P. 2d 868 (Mont. 1971) and State ex rel. Diederichs v. State Highway Commission, 296 P. 1033 (Mont. 1931), which are to the same effect.

These decisions note that a State legislatures cannot use the "Special Fund" concept to create evasions of their constitutional debt limitation clauses by creating one or many "specially designated funds into which all of the revenue collected by taxation from the people had been divided. A mere statement of the proposition carries with it. . . .its own reputation." Witzenburger, 575 P. 2d at 1118, quotation and internal citation omitted. This is so because "all of the various kinds of taxes, if placed in a special fund, could be applied to large debts and thus accomplish by indirection what the constitution prohibits to be done directly." Id.

And so here, the State's arguments assume a level of juridical and "real word" naivete. This Court is just as well equipped to ignore "legal sophistry" in favor of the "practical consequences" of State Contract Debt to New Jersey's voters and taxpayers.

This practical approach, which also is epitomized in the opinions of Justices Stein and Handler and Judge Wells, is based upon these realities, "and the basic question that gave rise to constitutional debt limits: Are taxpayers being asked to foot a long-term bill for their officials' short-term desires? The

alternative may be to allow formalistic legal artifices to render a constitutional term superfluous. Ultimately, the courts must look beyond the legal hairsplitting and word games, and view the legalese at issue realistically if such constitutional limits are to be anything but a challenge to clever draftmanship." Schnurer, supra at 98. Indeed, this Court "cannot expect ordinary citizens to respect the constitution and the rule of law if courts and government officials are not required to comply with them." Id. at 102.

VI. THIS COURT SHOULD CONSIDER THE EVIDENCE AND ANALYSIS OF THE WAY THE FINANCIAL MARKETS TREAT STATE CONTRACT DEBT THAT WAS SET FORTH IN JUSTICE STEIN'S OPINION AND IN JUDGE WELLS'S DISSENTING OPINION.

The Plaintiffs respectfully request that this Court give great weight to the data cited by Justice Stein and Judge Wells regarding the way that the financial markets treat State Contract or Appropriations Debt. Judge Wells refers to this real world data in his persuasive dissenting opinion. Lonegan, 341 N.J. Super. at 482-488. His opinion recognizes that the State's arguments are based upon form and not substance, and he states that it is now time for the Court "to speak out to limit the practice of issuing 'contract debt.'" Id. at 482.

Judge Wells uses real word data to lay bare the "legal legerdemain" that underlies State Contract Debt. Id. at 482. He notes that, "[c]ontract debt leverages the State's tax base just as general obligation debt leverages it." Id. at 483. His analysis of

substance over form is ratified by the February 2001 State Debt Medians Report that he quotes. Id. at 483-484. That report states that Moody's "is confronting new and increasingly complex issues regarding how to characterize debt in our debt ratio calculations." Id. at 483. Moody's states that for its purposes debt that is "serviced by tax revenues of a State" is State debt, "whether or not the State itself is the issuer." Moody's deducts only "debt that is self-supporting from enterprise revenues, debt that is serviced by another unit of government as well as appropriate sinking funds and short-term operating debt." Id.

Moody's states that it developed this "net tax-supported debt concept" in response to "the growing reliance on appropriation backed and lease revenue debt." The report notes that state courts have not been as quick to perceive the fact that when a state creates "annual fixed and recurring obligations," in the context of a disclosure to potential investors, "appropriation debt is no different than 'true' debt." Id. at 483-484.

Judge Wells correctly calls for the application of these insights by the Courts when they consider the effect of this debt on rights of the voters and the taxpayers. He concludes: "Wall Street has no hesitancy in calling a duck a duck. For it, the taxpayers are committed, whether or not there is a binding obligation to appropriate the debt service every year." Id. at 484. Our State's enlightened jurisprudence should be at least as perceptive as Wall Street's bond analysis in regard to the realities of Contract or Appropriaton Debt's status.

Although Wall Street's concern is to inform its investors about the substance of debt and not its form, Judge Wells opines that a similar analysis should be used by the courts to protect the rights of New Jersey's voters, in view of "the plain dictates of the Constitution to protect the voters." Id. In sum, Judge Wells correctly notes that when the essence of State Contract Debt is exposed, "the rubicon from constitutional to unconstitutional [is] crossed because the tax base of the entire State is pledged without voter approval." Id. at 488. He states:

> The problem with contract debt financing is that it is too facile. At best, in its exaltation of form over substance it ignores the letter of the first line of the Clause against creating debt "in any manner" in violation of the Clause. At worst, it ignores the spirit of the entire Clause. The purpose to evade both the monetary limit and the need for voter approval, latent from the earliest judicial approval of contract debt, is now writ large in both the current debt balances and the ease with which the State diversifies Wall Street's state debt portfolios. But the Clause remains a fixture of our Constitutional framework. It must mean something. It arose out of a felt need to restrain the power of one Legislature to bind a succeeding one and to limit the exposure of the taxpayers to the economic risks of excessive borrowing. Now there is no practical restraint on borrowing except the Legislature's own sense of self-restraint, a state of affairs that the people surely did not envision when they adopted the Constitution.
> Id.

Justice Stein's opinion in this case reaches a similar conclusion also based upon these realities of the financial markets.

Justice Stein's opinion also quotes publications that confirm that "the capital markets and rating agencies clearly understand

that [appropriations] debt unmistakably constitutes debt that. . . subsequent legislatures would be obliged to pay." Lonegan, slip op. at 49, quotation omitted. He quotes the Standard and Poor's, Revised Lease and Appropriations - Backed Debt Rating Criteria (June 13, 2001), which concludes that, based upon the wide use of appropriation backed debt, Standard and Poor's considers the State's appropriation-backed bonds to be an obligation of the State, "and a failure to appropriate will result in a significant credit deterioration for all types of debt issued by the defaulting government." Id. at 50-51.

Therefore, Justice Stein correctly concludes that "the State's commitment to the amortization of its appropriation debt is indistinguishable from its legal liability for general obligation debt." Id. at 54. He also notes that because appropriations debt made up approximately 75% of the State's total debt as of June 30, 2001, "the State's creditworthiness and continued access to the capital markets requires that it discharge in a consistent and timely manner its full obligation to amortize appropriation debt as well as its general obligation debt." Id.

Justice Stein employs this approach to reveal why the "State's assertion that appropriations debt is not State debt for purposes of the Debt Limitation Clause because the State is not directly liable thereon is a legal fiction that, for purposes of the constitutional objective, exaults form over substance. The State can no more permit default on its appropriations debt that it can allow its utility and telephone bills to go unpaid." Id. at 54-55.

This Court should adopt this persuasive reasoning and approach to the plain dictates of the Debt Limitation Clause that is supported by these data from the financial publications.

V. THIS COURT'S ORDER ENFORCING THE DEBT LIMITATION CLAUSE SHOULD APPLY PROSPECTIVELY TO ANY NEW DEBT THAT IS AUTHORIZED BY ANY CURRENT OR FUTURE STATUTE THAT VIOLATES THE CONSTITUTION, EXCEPT FOR DEBT THAT IS CURRENTLY AUTHORIZED BY THE EFCFA.

The Plaintiffs recognize the general rule that "the overruling of a judicial decision should be given retrospective effect. [citation omitted]." J&M Land v. First Union Bank, 166 N.J. 493, 522 (2001). Where there has been "justifiable reliance on decisional law" that applied the overruled precedent, this Court has applied the new rule prospectively, in view of the reliance interests of third parties. See, Id.; Sasco 1997 NI, LLC v. Zudkewich, 166 N.J. 579, 593-596 (2001); Salorio v. Glaser, 93 N.J. 447, 462-469 (1983).

The Plaintiffs continue to argue that this Court should adopt a prospective ruling enforcing its interpretation of the Debt Limitation Clause. See, Nobrega v. Edison Glen Associates, 167 N.J. 520, 536-550 (2001) (legislative amendments generally applied prospectively). The Court's ruling should extend to any new statutes and to those future debts and liabilities that the State Legislature has authorized in unconstitutional statutes adopted to date, except for debt that is authorized by the EFCFA, which this Court found to be sui generis. Lonegan, slip op. at 35. This will close the door to debts and liabilities in the form of State

Contract Debt, as well as any other subterfuges that the future legislators may devise to deprive the voters of this State of the right to choose whether or not to incur long term debts.

The Plaintiffs seek to restrain the creation of new State Contract Debt without voter approval to prevent irreparable harm to the voters' constitutional rights, harm for which money damages cannot provide any compensation. The Plaintiffs have never advocated an order that would apply retroactively as to any bonds that have been sold or issued as of the date of the Court's ruling. Nor would the judgment the Plaintiffs seek prohibit the "refinancing" of existing debt issues, pursuant to the 1983 amendment to the Clause.

The Plaintiffs part company with Justice Stein's analysis as to when the prospective application of a judgment in the Plaintiffs favor should begin to take effect. Lonegan, slip op. at 61-71. The Plaintiffs contend that, upon a full consideration of the arguments raised on this appeal, this court should adopt the Plaintiffs' interpretation of the Debt Limitation Clause, and apply its holding prospectively as of the date of the decision, to future debts and liabilities that are not issued in compliance with the Debt Limitation Clause. The Court should not limit its decision to statutes adopted after the date of the decision, or some future date, because each new debt issuance that is sold contrary to the Debt Limitation Clause violates the constitutional rights of New Jersey's voters. This Court should swiftly enforce those rights,

with due regard to the existing rights of third parties to bonding transactions.

CONCLUSION

Accordingly, for the aforementioned reasons, and for those expressed in the Plaintiffs' Appellate Division briefs and their supreme Court briefs dated July 2, 2001 and October 31, 2001, the Plaintiffs respectfully request that this Court reverse the Order on appeal and enter a declaratory judgment enforcing the Debt Limitation Clause and restraining the issuance of any State Contract Debt in the future without the voter approval that is required by the Debt Limitation Clause, except for debt that is currently authorized by the EFCFA.

Respectfully submitted,

ANDREW T. FEDE

DATE: SEPTEMBER 9, 2002

\\Nt-server\roberta\DATA\LONEGAN\SUPREME COURTsupplemental.wpd

A 103SEP2003

FILED
JUL 19 2004
CLERK

HONORABLE LEONARD LANCE, as a citizen of New Jersey and a taxpayer; **HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.**; as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, a citizen and a taxpayer Plaintiffs/Appellants, v. **HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** Defendants/Respondents, and **HONORABLE RICHARD J. CODEY**, President of the New Jersey Senate; and **HONORABLE ALBIO SIRES**, Speaker of the Assembly Intervenors/Defendants/ Respondents.	*SUPREME COURT OF NEW JERSEY* *DOCKET NO: 56,643* CIVIL ACTION *DIRECT CERTIFICATION FROM* *SUPERIOR COURT OF NEW JERSEY* *APPELLATE DIVISION* *DOCKET NO: A-103-03* *ON APPEAL FROM* *SUPERIOR COURT OF NEW JERSEY* *LAW DIVISION: COUNTY OF MERCER* *DOCKET NO: MER-L-1633-04* SAT BELOW: HON. LINDA R. FEINBERG, J.S.C.

0+4

PLAINTIFFS'/APPELLANTS' REPLY BRIEF IN FURTHER SUPPORT OF EMERGENT DECLARATORY RELIEF AND PRELIMINARY INJUNCTION

On the Brief:
Mark D. Sheridan
James K. Webber, Jr.
Andrew C. White
Andrew T. Fede
Thaddeus Maciag
W. Timothy Howes

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

PRELIMINARY STATEMENT

This Court's primary role is to be the final arbiter of the meaning of the terms of the New Jersey State Constitution. It is a role the Court has fulfilled with distinction throughout its history. On occasion, the Court has deferred to the Legislature and the Executive as those branches exercised their constitutional prerogatives in managing the State's finances. Given the various and complex factors involved with those tasks, the Court's deference has been understandable.

In this matter, however, Defendants ask the Court not simply to defer to their legitimate exercise of authority, but to abandon altogether the project of reviewing the constitutionality of State borrowing. They do so in support of an unprecedented bonding scheme that flouts two provisions of the State Constitution and, if carried out, will threaten the long-term health of the public fisc. The proper response from the Court to such a request is not deference. In the face of Defendants' proposed plan, the Court is obliged to reassert its authority in this arena and underscore a simple principle that has long been recognized as the law in New Jersey: borrowing to balance the budget is impermissible.

Nothing in Defendants' opposition briefs has undercut or shed new light on Plaintiffs' contentions in this matter. The issues remain as they were explained at length in Plaintiffs'

initial brief to the Court, and in their papers submitted below. Plaintiffs pause to highlight their response to just a few of Defendants' arguments.

LEGAL ARGUMENT

I. THE NEW JERSEY STATE CONSTITUTION REQUIRES A BALANCED BUDGET

The New Jersey State Constitution requires a balanced budget. See City of Camden v. Byrne, 82 N.J. 133, 151 (1980). This truism has been accepted by every Governor and Legislature since the adoption of the New Jersey State Constitution in 1947. If deficit financing was constitutionally permissible, is it possible that fifty-seven (57) budgets would have been proposed and enacted by Governors and Legislatures (many facing fiscal crises and at least one constitutional crisis - see Robinson v. Cahill, 70 N.J. 155 (1976)) without one previous attempt to use borrowed funds to balance the budget? Indeed, even Governor McGreevey, echoing his predecessors, expressed what he had learned from two decades of public service when he stated: "[w]e simply cannot avoid our responsibility by spending money we not have or engaging in flagrantly unconstitutional deficit spending."[1] Defendants' arguments rewrite this history and

[1] June 26, 2003 audio clip of Governor McGreevey, contained on the State's website, which can be found at http://www.state.nj.us/governor/audio_clips/20030626.html (last viewed July 18, 2004).

attempt to create a new paradigm in which the Governor becomes the final lexicographer of terms in the New Jersey State Constitution, including "revenue," so that the requirement of a balanced budget can be obliterated. This new archetype would serve only to allow New Jersey to join the Federal Government as a devotee of deficit financing. In doing so, it would usurp from the citizens and taxpayers of this State the last iota of their right to decide whether or not to go into debt.

A. Debt Is Not Revenue

Defendants' papers turn a blind eye to these facts, choosing instead to rely on the notion that because the Governor is authorized to certify what the "revenue" of the State is, he is free to define "revenue" as he sees fit - even if the Governor's definition defies common understanding, the State's traditional treatment of the term, and renders the Balanced Budget Clause superfluous. Defendants' position in this regard is unavailing.

Without repeating the arguments set forth in their initial papers, Plaintiffs maintain that "revenue" never has been, and never can be, considered to include debt. Rather than address this matter in a straightforward manner, Defendants have attempted to muddy the waters with repeated references to "interfund transfers" and bonds issued prior to the enactment of

the Balanced Budget Clause. Plaintiffs will attempt to shed light on that which Defendants have endeavored to keep hidden.

The Balanced Budget Clause requires that "revenues" meet appropriations in order to balance the budget. Defendants suggest that "interfund transfers," while not listed under "revenue," are used to offset appropriations. Defendants suggest, but can not prove, that those "interfund transfers" include proceeds from the sale of bonds. From those two "facts," Defendants leap to the erroneous conclusion that "revenue" includes debt in the form of bond proceeds. That is not so.

While a close examination of the "interfund transfers" makes clear that a small percentage of the monies transferred to the General Fund come from funds that were created with proceeds from the sale of general obligation bonds, what is not clear is whether those monies are actually the proceeds from the sale of general obligation bonds or interest earned on those proceeds, which would properly be considered "revenue." See Letter from Richard Fair, State Auditor, to Senator Leonard Lance dated July 8, 2004 (Pa167). Even assuming the transferred monies were actually proceeds from the sale of general obligation bonds, a point Plaintiffs do not concede and Defendants have not proven, the State itself, in its budget, does not characterize such "interfund transfers" as "revenue." (Da6). That admission is significant because it demonstrates that bond proceeds are not

"revenue." Moreover, that treatment is consistent with the numerous authorities defining "revenue" as being tantamount to income.[2] Thus, if the Balanced Budget Clause is read as a stand-alone provision, as Defendants maintain it should be, it does not permit the use of bonds, either general obligation or contract, to offset appropriations because such debts are not "revenue."

B. The Proceeds Of Bonds Sold Pursuant To The Deficit Bond Acts Cannot Be Used To Offset Appropriations

Nevertheless, Defendants assert that bonds are used to offset appropriations through "interfund transfers."[3] Assuming *arguendo* Defendants' position is correct (a dubious assumption to make), Defendants ignore one significant fact -- all previous "interfund transfers" have involved transfers from funds supported by general obligation bonds.[4] To the extent proceeds

---

[2] Defendants argue that defining "revenue" as income would foreclose use of monies traditionally treated as "revenue." Defendant cite funds remaining at the end of the previous year as an example. (Def. Br. at 41). To demonstrate their point, they argue that monies remaining in an average citizens checking account are not "income." (Def. Br. at 42). Of course, what Defendants ignore is that those funds, to the extent they were "income" in the prior year, are now "revenue" "on hand" as referenced in the Balanced Budget Clause. Defendants' attempted comparison fails as a matter of simple logic.

[3] Even assuming such transfers have in the past included bond proceeds, that does not make the practice constitutional.

[4] As detailed in Plaintiffs' initial papers, the majority of monies sent to the General Fund through "interfund transfers" are from funds supported with taxes, fees, sales of lottery ticket and other resources commonly understood to be "revenue." (Pa167).

from the sale of general obligation bonds have been used to offset appropriations, it has been constitutionally permissible only if the Debt Limitation Clause is read as an exception to the Balanced Budget Clause.

To reach this conclusion, one must read the Balanced Budget Clause and the Debt Limitation Clause together. As Defendants point out in their opposition papers, immediately preceding the Constitutional Convention of 1947, there were numerous general obligation bond issues aimed at providing relief from the Great Depression. See Def Br. at p.45.[5] It is seemingly with that accumulation of debt in mind and the number of states defaulting on similar debt, that the Framers enacted the Balanced Budget Clause. See Lonegan v. State, 174 N.J. 435 (2002) ("Lonegan I") (citing Proceedings of the Constitutional Convention of 1844, at 519 (1942) (regarding the enactment of the Debt Limitation Clause in 1844)). Indeed, at the same time as they enacted the Balanced Budget Clause, the Framers raised the limit the State could borrow without voter approval under the Debt Limitation Clause to 1% of appropriations. It is likely that the Framers' intended purpose was to provide a means to deal with those years

[5] "Def. Br." shall refer to the brief in opposition submitted on behalf of Defendants Governor McGreevey and Treasurer McCormac.

in which there was a modest fiscal shortfall.[6] Viewed in this light, it is reasonable to conclude that the Debt Limitation Clause should be read as an exception to the Balanced Budget Clause. The Opinion of Albert Porroni, Legislative Counsel, Office of Legislative Services, further supports such a conclusion. (Pa23).

Thus, the State may only use bond proceeds to offset appropriations if these bonds are issued in accordance with the Debt Limitation Clause, i.e., are general obligation debt submitted to the voters for approval. Under this theory, the bonds issued pursuant to the Deficit Bond Acts do not qualify.

Whether the Court should read the Balanced Budget Clause and the Debt Limitation Clause as entirely separate or interrelated, it matters not. Plaintiffs submit that neither reading permits the use of authority-issued bonds to offset appropriations. Plaintiffs further note that if the State's position is correct that "interfund transfers" involving proceeds from the sale of general obligation bonds have been used to offset appropriations, the only reason that could be permissible is that the Debt Limitation Clause is an exception to the Balanced Budget Clause. Notably, it would appear that a

---

[6] Regrettably, there is no direct legislative history on the enactment of the Balanced Budget Clause. Plaintiffs assume this is because its intended purpose is self-evident.

contextual reading of the two clauses is in keeping with this Court's rulings in Lonegan I and II, as it would make the Debt Limitation Clause inapplicable to contract bonding while at the same time prohibiting contract bond proceeds from being used to offset appropriations.

II. DEFENDANTS FAIL TO UNDERMINE PLAINTIFFS' ARGUMENTS ON THE DEBT LIMITATION CLAUSE

Defendants' briefs in opposition do little to refute Plaintiffs' contention that this case is indeed one of first impression with regard to the Debt Limitation Clause. This case is not simply Lonegan I and II all over again, as Defendants would have the Court believe. See Lonegan v. State 176 N.J. 2 (2003)("Lonegan II)"). This case is the result of Defendants' stretching, pulling, distorting, and exploiting the Lonegan decisions and their precursors to create a circumstance that the State has never before seen, and that threatens to obviate not one, but two, constitutional provisions.

The Lonegan Courts did not anticipate the present situation, as they were limited to the facts the Court had before it. In Lonegan I, the Court went out of its way to point out that the debt at issue was sui generis. Lonegan I, supra, 174 N.J. at 461. Because the debt at issue in that opinion was authorized by the Constitution (indeed, it was mandated by it), the Court held that it did not offend the Debt Limitation

Clause. Id. at 461-462. Similarly, in Lonegan II the Court readily acknowledged that its decision regarded only the statutes at issue in the case. Lonegan II, supra, 176 N.J. at 5. It even concluded its opinion in Lonegan II with the following: "We are unwilling to disrupt the State's financing mechanisms in the circumstances presented to us[.]" Id. at 21 (emphasis added).

Defendants cannot refute that the Court has never ruled on the kind of bonding scheme at issue. It is true, as Defendants point out, that the Lonegan II Court chose not to side with sister jurisdictions in looking to the purpose of a proposed bond issuance to determine its constitutionality. Lonegan II, supra, 176 N.J. at 21. But in declining to pass on the constitutionality of the challenged bond issuances at issue in that case, the Lonegan II Court declined to make judgments about the political branches' decisions regarding specific and discrete government priorities, all of which were entirely legal. There is nothing per se unconstitutional or illegal in building schools, for example, or undertaking other legitimate objects of government. In the present matter, however, the very purpose of the bond issuance is impermissible. By creating "revenue" to be deposited in the General Fund without any intended purpose other than to provide the State with money it

could not find elsewhere, the State has created a scheme whose sole purpose is to evade the Balanced Budget Clause.

Plaintiffs are not asking this Court to look at minutia of governmental appropriations or the purpose to which the bonds should be put in terms of deciding the worthiness of any particular projects. Rather, Plaintiffs are asking the Court to look at the purpose of the present financial proposal in broad, constitutional terms, recognizing the simple fact that the State wants to use borrowing that is not authorized by the voters to support current governmental operations generally. This is not asking the Court to become inappropriately involved in the fiscal matters of the State.

Defendant EDA's Opposition Brief helps make Plaintiffs' point. At page 10 of its Brief, the EDA writes, "the statutes themselves put to rest any question, under the Appropriations Clause or otherwise, about the legitimacy of the use to which the State may put the bond proceeds. . . . both statutes make clear that whatever their application, the bond proceeds will only be used for a *lawful* purpose." No reasoning could be more circular. Echoing their erroneous arguments on the justiciability of this matter, discussed below, Defendants' position is that their actions will be lawful because they have said they will be. Defendants' position amounts to an invitation to the Court to leave them alone to do as they wish,

including to interpret the Constitution as it suits them. For all of Defendants' posturing about the importance of maintaining a balance between the branches of government, Defendants' actual goal appears to be the collapse of the functions of the judiciary into the other two. Plaintiffs respectfully urge the Court to reject such an invitation.[7]

Defendants also make much of the supposed uncertainty or instability that Plaintiffs' position would create. Their oft-repeated suggestion is a red herring. As Plaintiffs have argued throughout this matter, the Court need not disturb many years of precedent to find in their favor.[8] Those precedents can remain and continue to provide adequate guidance to the political branches as they fulfill their legitimate constitutional functions. In this instance, however, the political branches have not sought the well-established shelter of the Court's

---

[7] Even if the Court were to accept Defendant EDA's position that the Balanced Budget Clause and the Debt Limitation Clause are separate and distinct, its argument that its proposed bond issuance is permissible simply because it does not run afoul of the Debt Limitation Clause fails. Like any piece of legislation, if the purpose of the Deficit Bond Acts violates <u>any</u> constitutional provision, they are invalid. If the Court holds that proceeds from the proposed bonds may not be deposited into the General Fund in order to "balance" the State's budget, then the Deficit Bond Acts are unconstitutional and the EDA must be enjoined from acting pursuant to them.

[8] Indeed, a ruling in Defendants' favor would undo nearly 60 years of history regarding the New Jersey State Constitution's requirement that the budget be balanced without resort to deficit financing.

previous holdings. To the contrary, they have brazenly attempted to push the envelope and stake out new ground to achieve unconstitutional objectives. Under these circumstances, the Court will not create uncertainty by holding for Plaintiffs. Rather, by holding for Plaintiffs, it will establish a "bright line" which the political branches will learn they may not cross: proceeds from the sale of bonds may not be used to "balance" the budget, unless it is subject to the restrictions of the Debt Limitation Clause.

III. DEFENDANTS HAVE PROVIDED NO BASIS FOR THIS COURT TO AVOID ITS ROLE TO INTERPRET THE CONSTITUTION AND TO ACT AS A CHECK ON THE POWERS OF THE POLITICAL BRANCHES

Plaintiffs respond in passing to Defendants' assertion that this Court has no role in the present dispute.[9] It is without question that this Court is the "ultimate arbiter of the Constitution of this State." Gilbert v. Gladden, 87 N.J. 275, 282 (1981). Despite Defendants' claims to the contrary, the Court cannot ignore the overarching principle that the New Jersey Constitution is "the business of the Courts," and the Court's interpretative role of that historic document "is a matter of judicial obligation." White v. North Bergen Twp., 77 N.J. 538, 555 (1978).

---

[9] In their moving papers, Plaintiffs set forth a plethora of legal authority demonstrating the role of the Courts as the interpretative arm in our system of checks and balances. As such, Plaintiffs will not repeat those arguments here.

> [I]n matters of substantial constitutional dimension the Executive and the Legislature are not the determining or final arbiters of what is and what is not constitutional. Since Marbury v. Madison, 1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60 (1803), this obligation is imposed upon the judiciary, not the executive or legislative branches.
> [Valent v. New Jersey State Bd. of Educ., 114 N.J.Super. 63, 69 (Ch. Div. 1971).]

In its role as arbiter, the Court has not shied from exercising its institutional responsibility to act as a check on the actions of the Executive and Legislative branches. If Defendants' arguments had merit, this Court would have left it to the political branches to decide the meaning of the Education Clause of the New Jersey State Constitution (see Robinson v. Cahill, 70 N.J. 155 (1976); Abbott v. Burke, 153 N.J. 480 (1998)) and should not have voided an appointment to the Supreme Court (see Vreeland v. Byrne, 72 N.J. 292 (1977)). Despite the often difficult nature of its duties, the Court must not disregard its responsibilities now.

> It cannot be forgotten that ours is a government of laws and not of men, and that the judicial department has imposed upon it the solemn duty to interpret the laws in the last resort. *However delicate that duty may be, we are not at liberty to surrender, or to ignore, or to waive it.*

Gilbert v. Gladden, 87 N.J. 275, 289 (N.J. 1981) (quoting Asbury Park Press, Inc. v. Woolley, 33 N.J. 1, 12 (1960)(emphasis added)).

Arguing the Court should abdicate its role as arbiter, Defendants assert that "the very essence of representative democracy" is threatened if this Court were to exercise its role as a "check" on the other branches of government. (Inter. Br. at 9).[10] Plaintiffs respectfully submit that the "very essence of representative democracy" would, in reality, be shattered if this Court were to heed Defendants' call. Renunciation of its responsibility would remove the Courts from our tripartite form of government as a check on the other two branches of government.

This Court has not shirked its responsibilities in that regard in the past, and Plaintiffs respectfully request that the Court not forego its constitutional role now.

---

[10] "Inter. Br." shall refer to the brief in opposition submitted on behalf of Intervenors-Respondents Richard J. Codey as President of the Speaker of the New Jersey Senate and Albio Sires as Speaker of the New Jersey General Assembly.

CONCLUSION

Based upon the foregoing and the arguments submitted in their initial papers, Plaintiffs respectfully submit that this Court should overturn the decision below and grant Plaintiffs the relief requested in their initial papers.

DRINKER BIDDLE & REATH LLP

Mark D. Sheridan, Esq.
Robert M. Leonard, Esq.
Attorneys for the Honorable Leonard Lance, the Honorable Alex DeCroce, the Honorable Joseph M. Kyrillos, Jr. and Robert Lindmark

Dated: July 19, 2004

And

CONTANT ATKINS & FEDE, LLC

/s/Andrew T. Fede
Andrew T. Fede, Esq.
Attorneys for Plaintiff
Honorable Steven M. Lonegan

Dated: July 19, 2004

MACIAG & ASSOCIATES, P.C.

/s/ Thaddeus Maciag
Thaddeus Maciag, Esq.
Attorneys for Plaintiff
Honorable Bret Schundler

Dated: July 19, 2004

HOWES & HOWES

/s/ W. Timothy Howes
W. Timothy Howes, Esq.
Attorneys for Plaintiff
Honorable Bret Schundler

State of New Jersey

DEPARTMENT OF STATE
DIVISION OF
ARCHIVES AND RECORDS MANAGEMENT

TITLE TARGET

TITLE OF RECORDS: 2003 Appeals

FIRST RECORD: A-100-56,189 Marilyn Steneken VS. Gary Steneken

LAST RECORD: A-103-56,643 Leonard Lance VS. Jane McGreevey

FILMED FOR (use name of agency): Judiciary Supreme Court Clerk

REDUCTION RATIO: 27x FILM TYPE: 16mm ✓ 35mm

TYPE CAMERA: Planetary CAMERA NUMBER: 3-C

BATCH # JOB # BOX # OF TIME SF 8-15-06

IMAGES 2307

CONTAINERS USED

ROLL

2175