

Testimony

February 1, 2010

On **S-708**

“Transparency in Government Act”
(Pennacchio / Codey)

before the

Senate State Government, Wagering,
Tourism and Historic Preservation Committee

Submitted by:

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To: Members of the Senate State Government, Wagering, Tourism and
Historic Preservation Committee, and staff:

Date: February 1, 2010

Re: S708, "Transparency in Government Act"

Summary of Testimony

- Morris Patriots is a grassroots activist organization representing more than 350 people in northern New Jersey who advocate defense of the U.S. Constitution, integrity in government and fiscal responsibility
- S708, the "Transparency in Government Act," is a good measure that should be adopted into law and is long overdue.
- These are suggestions to strengthen this measure:
 1. Add a Statement of Intent, to help the Administration, courts and all others interpret the bill to favor public disclosure, access and availability of the State's financial information in any challenge about disclosure
 2. Expand the requirements beyond offering the public "the ability to search and display data," to include the ability to download the information in a widely used and generally acceptable format, such as Microsoft Excel
 3. Include the specific names of the firms serving as bond counsel and the specific investment banks helping sell the respective debt bonds. Given the amount of bonded indebtedness and the potential for abuse, particular attention should be given to transparency in this area.
 4. Add a provision for prompt consideration of requests from the public, or recommendations of the Public Finance Transparency Committee, to expand the information available on the website in the future.
 5. Give the "Public Finance Transparency Committee" more influence regarding what information is made publicly available and how the public accesses it
 6. Make the chairman of the Public Finance Transparency Committee a member of the public, rather than having the State Treasurer so serve
 7. Fill vacancies on the Public Finance Transparency Committee within a fixed time frame
 8. Resolve the conflict in the bill regarding the addition of information which was not available "at the time of the website's initial implementation" - clarify in favor of allowing additional information to be posted, if feasible
 9. Coordinate and integrate S708 with the existing NJ.gov/transparency website posted by Gov. Corzine and with Gov. Christie's Executive Order #8.

Testimony

Dear Members of the Committee and Staff:

My name is William Eames. I am a co-founder of Morris Patriots, which is a grassroots activist organization representing more than 350 people in northern New Jersey who advocate defense of the U.S. Constitution, integrity in government and fiscal responsibility.

Toward those goals, timely public disclosure of the State's fiscal dealings is a significant positive step. Open access to the income and expenses of the state government will help focus the attention of those responsible for development and implementation of the state's budget and fiscal affairs. Full disclosure and public auditing tends to keep people honest, which supports integrity in government and fiscal responsibility.

However, having not had the time to poll all our members, I testify today on my own behalf. I encourage you to forward S708 to the full Senate for consideration and adoption.

Review of the measure, as pre-filed for introduction in the 2010 Session, has led to several recommendations for changes that might strengthen the bill's effectiveness. I offer these recommendations in the spirit of constructive open debate for improvement.

Statement of Intent – A “Statement of Intent” should be added to the bill, to help the Administration, courts and all others interpret the intent of the bill to favor public disclosure, access, and availability of the State's financial information in a timely manner. This is not intended to be redundant, but rather to guide interpretation toward greater disclosure of detail rather than toward summarization of detail.

Ability to Download Data - In Sec. 2, the definition of “Searchable website,” should be expanded beyond “the ability to search and display data” to include the ability by the public to easily download the data.

While making prepared and printed documents available online for download would be helpful, making financial data directly available would greatly expand the public's ability to evaluate the information. The distinction between downloadable reports or documents, and downloadable data that can subsequently be manipulated, studied and analyzed, is quite significant. Making the data available for download in a widely used and generally acceptable format, such as Microsoft Excel, would be a significant improvement. Without the ability to download the data for analysis, the value of a website will be an incremental improvement, rather than a major step forward.

Data To Be Disclosed Initially – I am not qualified to comment on the initial list of items to be disclosed; it appears to be a broad listing of information. As time goes on and the public gains experience using the website, requests will likely be made for additional information. Provision should be made for prompt consideration of requests from the public and recommendations from the Public Finance Transparency Committee to expand the information available on the website in the future.

In the specific area of bond debt [Sec. 3, subsection a.(1)(b) and Sec. 3, subsection a.(3) et. Seq.], given the scale of the payments the State makes annually to various bond counsel and to investment banks which help place the debt, open disclosure should take precedence. In this realm, specific fees and recipients, rather than a more generalized listing simply of “costs,” should be the norm.

Deciding What is Disclosed – Sec. 3 of S708 assigns responsibility for design, development and maintenance of the transparency website to “the State Treasurer, in consultation with the Chief Technology Officer.” To avoid the appearance of conflict of interest, the “Public Finance Transparency Committee” (established in Sec. 4), should be involved.

S708 appears to assign determinations about what information will be made available to the public to the State Treasurer. Sec. 3, subsection a.(4) infers that the State Treasurer should consult on this with the Chief Technology Officer and the Public Finance Transparency Committee, but it appears to leave the decision solely to the State Treasurer. It would be better to empower the “Public Finance Transparency Committee” with greater authority regarding what information should be disclosed, on behalf of the public.

Without trying to detail an exact procedure, the goal should be to promote disclosure. Leaving the decision to the office in charge of managing the income and expense streams could lead to a conflict between public access and a potential desire for certain things not to be disclosed.

Chairmanship of the “Public Finance Transparency Committee” – Sec. 4 establishes this nine-member committee, which does include two administration officials outside the Department of the Treasury and four members of the public. Its responsibilities include studying the “scope, content and format” of the public finance website. Having an outside group representing the public regarding this website is a good thing, but perhaps the “public” members should be the majority of the committee.

Throughout S708, the intent is for this committee to report to, advise, and be chaired by the State Treasurer – the person and agency responsible for managing the income and expense streams. As noted above, this could lead to a conflict. It would be better to have the chair of the Public Finance Transparency Committee be a member of the Public, consistent with the checks and balances intended in the State Constitution.

Vacancies on the Committee - As a minor point, on the issue of vacancies, a provision should be added requiring that any vacancy be filled within a set time frame.

Limitation on Disclosures – Sec. 3, subsection b.(4) seems to place a definitive permanent limitation on disclosure of any information “not available . . . at the time of the website’s initial implementation.” Sec. 3, subsection 4.g.(2), suggests that future information (after “the time of the website’s initial implementation”) may be considered for disclosure. These two provisions appear to be in conflict.

There may be real concerns that without some limitation, demands to expand data tracking and computer systems could grow beyond the State’s ability to pay to expand its systems, in the name of public disclosure. However, there should not be a strict limitation on adding new information. If the need arises to balance adding more information against the cost necessary to develop a system to do so, perhaps the “Public Finance Transparency Committee” can be tasked to bring the issue back to the Legislature for consideration.

Credit to former Governor Jon Corzine – In the last few days of his administration, Governor Corzine’s administration did open the website www.nj.gov/transparency to the public, as a first step toward the goals of S708. This action was an initial step toward public disclosure of the state’s financial affairs.

Integration with Governor Chris Christie’s Executive Order # 8 of January 19, 2010 – Governor Christie has issued Executive Order #8, directing the Department of the Treasury to publish quarterly reports on all State expenditures and monthly reports on revenues. Section 5 of the Order directs that a website be established and sets criteria that closely parallel S708. Hopefully, as Gov. Christie’s Executive Order is implemented, there will be adjustments made to take advantage of any work done by the previous administration toward the goals of financial disclosure and transparency.

Since any action implemented by Executive Order can be undone by a future Executive Order, codifying financial transparency through legislation such as S708 is a good idea, so that it becomes public policy with the full force and effect of a legislative initiative passed by both houses and signed into law by the Governor.

Sec. 5 of Gov. Christie’s Order directs that the transparency website serve as a central location for commonly-sought documents and specifically calls for this information to be available “electronically,” to facilitate rapid access to the information, to avoid bureaucratic delays, and to avoid “the cumbersome and costly Open Public Records Act process.” Similar provisions should be made a part of S708.

Conclusion

I thank the members of the Committee for the opportunity to comment on this measure.

Respectfully submitted,

William H. Eames
Co-founder, Morris Patriots