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CITY COUNCIL

CITY OF NEW YORK

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THE TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HOUSING And BUILDINGS

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November 17, 2003
Start: 12:10 p.m.
Recess: 3:55 p.m.

City Hall
Council Chambers
New York, New York

B E F O R E:

MADLINE PROVENZANO
Chairperson,

COUNCIL MEMBERS: Tony Avella
Gale Brewer
Lewis Fidler
Melinda Katz
Kendall Stewart
James Oddo
Christine Quinn
Bill Perkins
Domenic Recchia
Speaker Miller

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2 A P P E A R A N C E S

3

4 Jerilyn Perine
5 Commissioner
6 NYC Department of Housing Preservation
7 And Development

8 Harold Schultz
9 Special Counsel
10 NYC Department of Housing Preservation
11 And Development

8

9 Thomas R. Frieden, M.D., M.P.H.
10 Commissioner
11 Health and Mental Hygiene

10

11 Stan Michels

11

12 Preston Niblack
13 Deputy Director
14 Independent Budget Office

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14 Molly Wasso Parker
15 Senior Director,
16 Analyst for Housing and Buildings
17 Independent Budget Office

18 Rachael Salibreze
19 Health Analyst
20 Independent Budget Office

21 Maya Bachinsky

22 Innocensia Alvarez

23 Edward Korman
24 Executive Vice President
25 The Small Property Owners of New York, Inc.

26 Michael D. Lappin
27 President
28 The Community Preservation Corporation

29 Matthew Dean
30 Executive Director
31 Physicians for Social Responsibility/NYC

1

2 A P P E A R A N C E S (CONTINUED)

3

4 Elaine Toribio
5 Policy Analyst
6 Citizens Housing and Planning Council of New York

7

8 Frank Ricci
9 Director of Government Affairs
10 Rent Stabilization Association

11

12 Jordi Reyes-Montblanc
13 President and Chairman
14 Board of Directors of The HDFC Council

15

16 Evangelista Romon
17 Washington Heights
18 Grandmother of poisoned child

19

20 Juan Idaquez
21 President
22 Asbestos Lead and Waste Laborers, Local 78

23

24 Michael McGuire
25 Director of Governmental and Legislative Affairs
26 Mason Tenders' District Council of
27 Greater New York and Long Island

28 David Lee McAllister, M.A.
29 Principal Lead- based Paint Instructor
30 Active Training Associates

31 Stephanie Nolasco
32 Twelve year old
33 diagnosed with Lead Poisoning

34 TESTIMONY REQUESTED READ INTO RECORD

35 Michelle Alvarez
36 Attorney
37 Natural Resources Defense Council

38

39

40

1 COMMITTEE ON HOUSING AND BUILDINGS

2 CHAIRPERSON PROVENZANO: Good morning.

3 Good afternoon, whatever it is. It's only ten

4 minutes, good afternoon.

5 My name is Madeline Provenzano and I

6 chair the Committee on Housing and Buildings.

7 Today we are conducting a hearing on

8 a revised version of proposed Intro. No. 101-A, in

9 relation to childhood lead poisoning prevention. I'd

10 like to thank those of you who are here for this

11 hearing, and for your continued interest in this

12 matter.

13 The Committee has conducted a

14 previous hearing on an earlier version of this bill.

15 That hearing was begun on June 23rd, recessed and

16 then continued on September 12th. It is important to

17 state that during the month of July the Court of

18 Appeals struck down Local Law 38 for the Year 1999,

19 thereby making it more urgent that this Council

20 craft appropriate legislation to address the issue

21 of lead-based paint and to prevent childhood lead

22 poisoning.

23 We are once again expecting a goodly

24 amount of potential witnesses and observers. So, I

25 would just like you to be mindful of any time

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2 constraints that I impose, and please be considerate
3 of your fellow colleagues and of one another.

4 In order to move things along
5 smoothly, I'm requesting that all witnesses be
6 concise and that your testimony focus on the bill or
7 any amendments to the bill only.

8 I also wish to reiterate that only
9 one spokesperson may testify from each group or
10 organization.

11 Again, I repeat that this could be a
12 very emotional hearing, but it will be conducted in
13 a dignified manner.

14 You may not agree with all of the
15 comments made, but please allow everyone to testify
16 without boos, heckling, cheers or applause. That
17 will help move the hearing along for all of us, and
18 if you wish to testify, remember you must sign in
19 with the Sergeant-At-Arms.

20 I'd like to introduce my colleagues
21 that are here. To my right we have Council Member
22 James Oddo, Council Member Recchia, Council Member
23 Bill Perkins.

24 To my left Council Member Tony
25 Avella, Councilwoman Christine Quinn, Councilwoman

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2 Melinda Katz, and our Speaker, Council Member
3 Gifford Miller. And I think the Speaker would like
4 to say a few words.

5 SPEAKER MILLER: Well, thank you,
6 Madam Chair. Thank you for chairing these hearings
7 and for your leadership in making sure that we
8 address this issue.

9 Secondly, I thank all of my
10 colleagues that are here, particularly the prime
11 sponsor of this legislation, Council Member Perkins
12 and the other sponsors of this legislation. I'm just
13 pleased to be here to say that this version of
14 101-A, which has been poured over exhaustively for
15 quite some time, is a version that I think is the
16 most -- has the potential to be, once it is enacted,
17 the most powerful legislation in the country to
18 protect children from lead poisoning. And that its
19 primary focus is appropriately on protecting
20 children, preventing lead poisoning in the first
21 place, and making sure that the incentives are such
22 that it never occurs, that we focus on the terrible
23 problem, which continues to affect thousands of
24 children in our City every year, and we believe that

25 this approach, and I believe, and the other sponsors

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2 of this legislation I think believe that this
3 approach is the right approach.

4 It is also a reasonable approach,
5 which sets compliance in reasonable terms, and
6 reduces cost where appropriate in order to make sure
7 we're focusing the expenses and the resources of
8 this City on preventing lead poisoning in the first
9 place, and acting swiftly when it has occurred to
10 protect children. And we will, of course, welcome
11 the support of the Administration for this
12 legislation, so that we can make sure that it is not
13 only enacted, that it is implemented, and
14 implemented in a way that will reduce childhood lead
15 poisoning to a point at which no child ever has to
16 get poisoned again.

17 So, I am very pleased that this
18 legislation is getting this hearing today and I look
19 forward to working with all the other members of the
20 Council, with the members of the public, and with
21 the administration to enacting legislation that will
22 in the end be the most effective piece of
23 legislation in the country to protect children from
24 the scourge of lead poisoning. And I thank everyone

25 for their leadership and bringing it to this point.

8

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2 CHAIRPERSON PROVENZANO: Thank you,
3 Mr. Speaker.

4 We'll now have a few comments from
5 the sponsor of the bill, Council Member Perkins.

6 COUNCIL MEMBER PERKINS: Thank you,
7 Councilwoman, and Chair of this Committee, for
8 allowing me a moment to say a few words and for
9 presiding over this very significant legislation,
10 which as you point out is very emotional and of
11 great concern to all New Yorkers.

12 Let me first start by thanking
13 sincerely the Speaker and the other 36 Council
14 members who support Intro. 101-A, the Childhood Lead
15 Paint Poisoning Prevention Act.

16 This bill is a state-of-the-art
17 measure that will put New York City at the head of
18 the nation for protecting children from lead paint
19 poisoning. It is comprehensive, cost effective, and
20 if enacted, will provide for the control of lead
21 dust. The primary pathway to lead poisoning, as well
22 as lead paint.

23 It requires landlords to eliminate

24 leadpaint hazards, and the underlying conditions
25 that cause them. It defines leadpaint hazards as

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2 peeling lead paint, lead dust and certain surfaces
3 with lead paint, such as friction, impact and
4 chewable surfaces.

5 In addition, Intro. 101-A requires
6 landlords to affirmatively ascertain the presence of
7 children under age seven as in the current window
8 guard law. It mandates that HPD inspectors, when
9 making routine inspections, always inquire for the
10 presence of children and conduct line of sight
11 inspections for peeling lead paint. Intro. 101-A
12 also requires HPD operators when taking a phone
13 complaint to ask about children and peeling paint.

14 It adds protection from lead dust
15 hazards during repairs and renovations. It lowers
16 Health Department action levels to 15 ug/dl from the
17 current two tests within three months at 15 ug/dl or
18 one test at or above 20 ug/dl.

19 As we all know, Intro 101-A is
20 supported by countless medical, environmental,
21 housing, labor and good government groups, as well
22 as religious leaders, the public advocate and the
23 City and State Comptrollers, as well as other City

24 and State elected officials. At today's hearing I
25 hope we'll be able to add the Mayor to that list as

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2 well.

3 Thank you.

4 CHAIRPERSON PROVENZANO: Thank you.

5 We'll start with our Commissioners. We have Jerilyn

6 Perine, Commissioner of HPD, and we have Tom

7 Frieden, Commissioner of Department of Health and

8 Mental Health, whichever one of you wants to start

9 first.

10 COMMISSIONER PERINE: I'll go first.

11 CHAIRPERSON PROVENZANO: Okay.

12 COMMISSIONER PERINE: Good morning,

13 Chairperson Provenzano and Speaker Miller, and

14 members of the Housing and Buildings Committee. I'm

15 Jerilyn Perine --

16 CHAIRPERSON PROVENZANO: Commissioner,

17 can I interrupt a minute? Do you have written

18 testimony?

19 COMMISSIONER PERINE: I do.

20 CHAIRPERSON PROVENZANO: Okay, thank

21 you.

22 COMMISSIONER PERINE: Hot off the

23 presses, sorry.

24 I'm the Commissioner of the
25 Department of Housing Preservation and Development.

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2 We appreciate the opportunity to
3 testify today regarding the issue of lead poison
4 prevention and the revised version of 101-A. As you
5 are aware, we testified on this issue on June 23rd,
6 2003. As we all know, since that time the Court of
7 Appeals has invalidated Local Law 38 on the basis
8 that the conditions of the State Environmental
9 Quality Review Act were not fully satisfied. Now
10 legislation is needed to replace Local Law 38.

11 The proposed bill is a big step
12 forward in the direction of improving the lives of
13 children, and we believe with some technical and
14 procedural changes we have the opportunity to have a
15 better primary prevention program than we have had
16 to date. The proposed bill makes a firm commitment
17 to the use of trained workers to deal with lead
18 paint and lead hazards in New York City.

19 The use of qualified workers helps
20 ensure that work is done properly and safely. All of
21 the work that HPD currently does in regard to lead
22 paint violation removal is done with EPA-trained

23 workers, so we have significant experience regarding
24 how to accomplish this type of work, and what
25 resources of time and staff are required to do it

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2 safely and properly.

3 The proposed bill requires that lead
4 dust clean-up and dust clearance tests are done
5 after any lead hazard remediation work.

6 Again, HPD's work meets this standard
7 now, and extending it to all work undertaken is
8 helpful to ensure that there is an independent check
9 on all lead hazard remediation work and that
10 clean-ups are done properly.

11 In addition, the proposed bill
12 provides that friction surfaces could now be a
13 stand-alone violation which will help to target
14 repairs where lead dust is most likely to be
15 generated. We also note that the definition of lead
16 paint has been changed to the nationally recognized
17 standard of one milligram per square centimeter.

18 This helps to ensure that the
19 violations written by HPD and the Department of
20 Health will be enforceable in court.

21 That being said, let me also say that

22 we are confident that the Council will take this
23 opportunity to address some technical and procedural
24 issues which will strengthen the proposed law's
25 effectiveness.

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2 Such changes will make sure that the
3 maximum resources go to correcting problems that
4 threaten the health of children.

5 When I last testified before the
6 Council on this issue, I provided a detailed
7 overview of concerns that we had regarding the
8 implementation of the proposed legislation, and I
9 will not repeat them all again here today.

10 We hope you will continue to consider
11 those concerns. Today I will briefly summarize some
12 of the key technical and procedural concerns we
13 would like you to consider, as you deliberate this
14 bill.

15 To protect children's health, it is
16 important to have quick and professional action by
17 owners of the City's housing stock, which may now
18 have lead paint violations. Owners are usually in
19 the best position to quickly address problems in the
20 building. The proposed bill, as you well know,
21 includes a more extensive scope of work that must be

22 completed, a higher standard of workers qualified to
23 do the work and more stringent dust testing
24 requirements. To ensure that this higher standard is
25 met and met properly, deadlines should be set that

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2 will ensure that there is sufficient time to
3 complete all of the tasks properly.

4 Deadlines that are too short will
5 reduce compliance by owners. Responsible owners will
6 struggle with time frames that are impossible to
7 meet, pushing them out of compliance and subject to
8 significant penalties that could threaten their
9 ability to keep their buildings in good repair.

10 Unscrupulous or unsophisticated
11 owners will ignore the work all together, relying
12 instead on the City to carry out the tasks they're
13 responsible for, or perhaps worse, seek shortcuts
14 which could in fact place children at greater risk
15 if work is undertaken improperly.

16 Realistic time periods will help to
17 ensure that quality work, undertaken by qualified
18 professionals, can take place. Here we can look to
19 our broader experience in housing, construction and
20 renovation as an example.

21 We know that renovation or new
22 construction typically requires between 18 to 24
23 months to complete, and we have a good idea of what
24 that costs. When we offer sites for such
25 construction competitively, we would not consider as

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2 competent a proposal which promised construction
3 completion in six months, at a cost far below the
4 costs that are commonly incurred.

5 Such a proposal would most assuredly
6 be relying on shoddy construction techniques, and
7 unqualified workers being paid far below the
8 accepted skilled wage rates. Indeed the entire basis
9 of wage rates in construction trades is based on the
10 premise that to ensure standards, qualified workers
11 should not have to compete unfairly with those
12 willing to undercut the market in order to meet the
13 expedient objectives of building poorer quality.

14 The work required under the proposed
15 bill can be viewed in the same light. Clearly, the
16 bill seeks to increase standards for both work and
17 the workers to carry it out. The time frames should
18 support that goal.

19 For example, the time period in which
20 to correct a lead hazard violation is reduced in the

21 proposed bill to one time frame of 14 days. The
22 maximum time period for a postponement is similarly
23 shortened from 45 days to 14 days, with the
24 possibility of one additional 14-day extension, but
25 only if the work had substantially already been

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2 completed.

3 Based on our experience of having
4 carried out over 9,000 lead violation repairs,
5 essentially following these higher standards, we
6 know that these time frames simply cannot be met.

7 In Boston, owners get 30 days just to
8 hire contractors, and another 60 days to do the
9 corrective work. In Baltimore owners have three, six
10 or even nine months more to bring buildings into
11 compliance, and in Chicago average compliance is
12 four months.

13 Moreover, our own experience shows
14 that smaller, less sophisticated owners need more
15 time. Under Local Law 38, during Fiscal Year 2003,
16 owners of buildings of ten units or less, needed
17 more time to correct lead violations than owners of
18 larger buildings, which can often rely on
19 sophisticated property management companies.

20 Smaller owners were far more likely
21 to certify correction of violations later in the
22 36-day process allowed under Local Law 38 than were
23 the owners of larger buildings.

24 Our analysis shows that more than 40
25 percent of owners of these smaller buildings needed

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2 the extra time to complete their correction process,
3 compared to about 33 percent of owners overall.

4 And getting work done requires the
5 cooperation of tenants. The more extensive the work
6 that is required, the more important tenant
7 cooperation is.

8 Tenants who are given little notice
9 to clear out of his or her bedroom or living room or
10 to make accommodation for their children in order to
11 make way for a work crew may well be uncooperative.
12 A reasonable time frame for correction will also
13 allow the work to be scheduled flexibly in order to
14 accommodate the tenants along other requirements.

15 Currently the proposed law will
16 ensure that all units will be made lead safe at
17 turnover when one household leaves before another
18 occupies the apartment. A provision we support.

19 Those apartments without turnover

20 between now and July 1st, 2007, will require
21 completion of a series of standard treatments in
22 child-occupied apartments by July 1, 2007. We
23 estimate that the universe of apartments with a
24 child under seven between now and July 1, 2007, is
25 approximately 350,000. With a low vacancy rate we

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2 can assume that most will remain occupied until that
3 date.

4 This raises the prospect that
5 significant numbers of families will find their
6 apartments the subject of very invasive work and may
7 find themselves dislocated. This provision can be
8 improved by extending the deadline and developing a
9 method that would allow the deadline to be applied
10 to those units most likely to contain lead
11 violations.

12 Moreover, the revised bill does not
13 provide for what happens when tenants do not provide
14 access to our inspectors or to work crews in a
15 timely manner.

16 Whether it's the time period for
17 owners to comply for HPD to step in and do the work
18 that owners failed to do, or HPD's obligation to

19 inspect each unit after work is complete, shortened
20 and unrealistic time frames will not further the
21 goal of carrying our lead hazard reduction work out
22 safely and quickly.

23 In addition, it appears that the City
24 and owners will be made liable for failure to comply
25 with the time frames which were outside of their

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2 control. It's not clear that this would be
3 beneficial to the residents of the City in any
4 meaningful way.

5 I'm sure you will hear today from the
6 affordable housing industry, which has expressed
7 concerns regarding the potential impact of liability
8 risk in the City's housing markets, particularly in
9 our low-income communities.

10 In addition to ensuring that the work
11 is done properly, we are also seeking to ensure that
12 the City derives the maximum productivity out of the
13 code inspectors that are charged with the
14 enforcement of the housing maintenance code for more
15 than 1.6 million multiple dwelling units, as well as
16 for the enforcement of whatever lead paint law the
17 City has.

18 The more efficiently the inspection

19 force can be used, the more apartments would be kept
20 in good repair. With some minor technical changes,
21 the proposed bill can ensure that the productivity
22 of the City's code inspectors are not impeded and
23 their ability to enforce the Housing Maintenance
24 Code and the proposed law will be retained.

25 Let me give you a few examples of

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2 what I mean. I'm going to provide some level of
3 detail that I hope you will consider, since it
4 represents the work of actual City employees, should
5 this bill go into effect without any modification.

6 The revised version of 101-A still
7 requires that when a code inspector inspects a
8 pre-1960 dwelling unit where a child under seven
9 resides, he or she must record the existence of
10 intact paint surfaces.

11 In addition, the inspector must
12 record the existence or absence of an underlying
13 defect. Keeping in mind that the definition of such
14 defect includes a condition that only has the
15 potential to cause paint to peel.

16 So, for instance, the inspector must
17 move all furniture and wallcoverings away from the

18 walls, and catalogue the condition of every wall and
19 surface in every room of every apartment that has a
20 child under seven that they walk into, whether or
21 not there is any peeling paint.

22 Inspectors will be able to reach far
23 more apartments if they need only identify the areas
24 of peeling paint and friction surfaces. By focusing
25 our inspectors on peeling paint and friction

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2 surfaces, rather than surfaces without problems, we
3 can ensure that we're using our staff to actually
4 target the areas most likely to threaten the health
5 of children.

6 Please keep in mind that these
7 protocols must be followed whenever a child under
8 seven resides in an apartment and an inspector comes
9 for any reason. So an inspector responding to a lack
10 of water, for example, would write that violation,
11 and then if a child under seven resides in the
12 apartment, conduct a complete room-by-room
13 surface-by-surface inspection, moving furniture away
14 from walls and cataloguing the entire condition of
15 the apartment's wall surfaces. This will
16 significantly extend the time that an inspector
17 spends in an apartment on critical inspections and

18 shorten the number of inspections that they can get
19 to on their routes.

20 If potential lead violations are
21 found, the proposed bill adds the requirement that
22 the inspector use an XRF machine to test all peeling
23 paint during the same inspection.

24 Indeed, both these requirements seem
25 to exist, even if a complete inspection and XRF test

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2 were done in the very same apartment the prior week.
3 Clearly, redoing the same inspections over and over
4 prevents our inspectors from moving on to new
5 buildings and addressing new problems.

6 Now a reasonable person could ask,
7 well, the inspector is already there, why not just
8 test at the same time, and that's a fair question.
9 And here that argument is over method and not
10 intent.

11 We want to find peeling lead paint
12 quickly and efficiently. In this example, to
13 accomplish this all inspectors would have to have an
14 XRF machine with them at all times. But if every
15 inspector has an XRF machine, then every inspector,
16 even if they never use the machines, must pick it up

17 from the office each day and return it there each
18 night.

19 It is far more efficient to have a
20 specialized team return to the apartment as soon as
21 possible to conduct any needed XRF test.

22 We support the bill's provision that
23 requires code inspectors to EPA certified, but would
24 want XRF testing to be done by specialized teams.
25 This would ensure adequate testing is done where

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2 needed, without diminishing the productivity of the
3 code inspection staff.

4 The proposed bill requires that
5 common areas be XRF tested before the violation can
6 be written by the inspector. An inspector who would
7 have been responding to a tenant in a high-risk area
8 will instead be spending his day testing paint
9 surfaces in neighborhoods with low risk of lead
10 poisoning, and inspectors will have less time to
11 spend inside tenants' apartments where lead
12 poisoning is more likely to occur.

13 We also note that the targeted
14 inspection program set forth in section 2056.9 can
15 be made better. Under this part of the bill, every
16 time a lead violation has been placed, HPD must

17 conduct an investigation of which units have
18 children under seven in the building, and must then
19 conduct inspections in such units whether or not
20 they have peeling paint.

21 The magnitude of such inspections
22 will be substantial, and will overwhelm the
23 Department's capability to do other inspections.
24 While we have not had a long opportunity to review
25 and work with this section of the draft, we are sure

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2 that there are better ways to run a targeted
3 inspection program.

4 HPD already maintains the most
5 complete and easily accessible computerized code
6 enforcement record system. We make it easily
7 available on-line for all to see and use.

8 The revised version of 101-A also
9 proposes a requirement that HPD maintain both a
10 central register for all documents relating to lead
11 hazards, and an individual file for each dwelling
12 unit throughout the City where lead hazard work
13 occurs.

14 This expensive and time-consuming
15 endeavor is an additional cost that does nothing to

16 prevent lead poisoning. That money is better spent
17 in repairs and inspections.

18 These kind of provisions add unneeded
19 bureaucratic overhead to the objective of
20 remediating lead hazards.

21 Under the prior law, HPD estimates
22 that overhead per job carried out is approximately
23 \$4,000 to \$5,000 per job. Under the new version of
24 101-A, HPD estimates that overhead will
25 significantly increase to about \$10,000 to \$13,000

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2 per job. The revised bill also proposed to provide
3 J-51 tax abatement to owners who do lead hazard
4 remediation. Here we believe that tax incentives
5 should be given only for those who have done
6 permanent abatement, and only for those who did it
7 voluntarily, and not under the impetus of a
8 violation placed by HPD or the Department of Health.

9 The proposed bill includes changes
10 which are intended to not preclude lawsuits against
11 the City for failure to timely adopt implementing
12 rules.

13 Currently, it appears to go much
14 further than that, and might be interpreted to allow
15 many other kinds of lawsuits against the City.

16 This language can be modified to
17 achieve the stated goal while protecting the City
18 against unintended lawsuits.

19 Last but not least, this is a very
20 complex bill requiring the writing of complex rules.
21 The hiring and training of many workers, public
22 education of owners and the purchase of
23 sophisticated equipment. Programs at the federal
24 level that required far less stringent time frames
25 and scope of work took many years to implement. We

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2 believe that this bill will require a phase-in
3 process longer than the proposed 90 days in order to
4 be implemented responsibly.

5 New York City has had one of the most
6 aggressive programs of primary prevention in the
7 United States. New York City was among the first
8 cities in the US to ban lead paint in 1960. Our lead
9 hazard reduction law preceded the federal
10 government's Title X rules and we have spent more
11 money than any other municipality on direct work to
12 reduce lead hazards.

13 In addition, as a result of an
14 extended and significant public investment, in the

15 renovation of the City's low-income housing stock,
16 today we have the lowest dilapidation rate since it
17 has measured by the US Census Bureau.

18 Once again, we look forward to slight
19 revisions to this new legislation that will create
20 even stronger safeguards for our City's children,
21 and ensure that the City's housing stock remains in
22 good repair for generations, with some technical and
23 procedural changes, we believe that this bill can
24 reach this goal.

25 Thank you.

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2 CHAIRPERSON PROVENZANO: Thank you,
3 Commissioner.

4 We'll hear from the Health
5 Commissioner and then we'll take questions.

6 COMMISSIONER FRIEDEN: Thank you. Good
7 morning. I'm Dr. Tom Frieden, Commissioner of Health
8 and Mental Hygiene, and I appreciate the opportunity
9 to speak with Council Committee on Housing and
10 Buildings and other members about lead poisoning in
11 New York City and Intro 101-A.

12 I appreciate and welcome the
13 Council's concern and commitment to ending childhood
14 lead poisoning.

15 Since Local Law 38 was ruled invalid
16 by the Courts, it is important that we have an
17 enforceable primary prevention law. We're all here
18 today with the same goal, to ensure that a law is
19 passed in the near future, so we can continue and
20 strengthen our efforts to eliminate childhood lead
21 poisoning in New York City.

22 Lead poison is a serious problem in
23 New York City, throughout the United States,
24 especially the older communities of the northeast,
25 as well as in many developing countries.

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2 The emerging scientific consensus is
3 that no level of lead is safe, particularly for
4 children less than three years of age, although
5 there is still some uncertainty about this effect.

6 The prevention of lead poisoning in
7 our City's children is a top priority for the
8 Department of Health. For more than 40 years we've
9 been addressing the problem with childhood lead
10 poisoning and we've made significant progress.

11 Between 1995 and 2002 alone, there
12 was a 79 percent decline in elevated blood levels in
13 New York City children under six, with the falling

14 from more than 19,000 to just over 4,000. This
15 amounts to a 20 percent average annual reduction in
16 cases. Very few diseases have as rapid or sustained
17 a reduction.

18 The decline is primarily due to
19 regulations that prohibit the use of lead in
20 residential paint and gasoline, reduction of lead
21 paint hazards in homes, discontinued use of other
22 lead-containing products and early identification
23 through screening.

24 In 1960, New York City banned lead
25 paint in residential buildings 18 years before this

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2 was done nationally.

3 In 1982 the City developed a primary
4 prevention law. These laws have made a difference.
5 Our rates are far lower than rates of other cities,
6 even though 67 percent of our housing was built
7 before 1960.

8 In 2001, the percent of children with
9 elevated blood lead levels was five percent in
10 Chicago and Philadelphia, three percent in Boston
11 and 0.7 percent in New York City, using the census
12 population as a denominator.

13 Although we have higher rates of both

14 testing and reporting than most of these
15 jurisdictions, we had five or ten times fewer cases
16 of lead poisoning. We must continue to build on this
17 progress.

18 As the Department stated in its 2001
19 annual report, our goal is to eliminate lead
20 poisoning in New York City. To continue our progress
21 we have to focus our efforts and reduce exposure to
22 multiple sources of lead of which lead paint is by
23 far the most important.

24 Although we've come far in our
25 efforts to end lead poisoning, we have a long way to

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2 go.

3 The continuing rate of lead poisoning
4 in our City is unacceptable. In 2002 there were
5 still nearly 4,000 children less than age six with
6 elevated blood lead levels. To prevent future cases
7 we have to enhance our efforts by ensuring that
8 effective laws are in place, continuing to focus our
9 efforts on children, buildings and areas at highest
10 risk, improving compliance with these laws and
11 improving education to families, providers, owners,
12 maintenance and repair staff and others about lead

13 poisoning prevention.

14 Each year we receive more than
15 400,000 blood lead test results for New York City
16 children. We use these data to characterize problems
17 set goals, design solutions and evaluate our
18 efforts. It's important to understand the
19 characteristics of lead poisoned children in order
20 to target interventions. Young children, children
21 living in poorer neighborhoods, children of color,
22 are more likely to be lead poisoned.

23 It is to these children that we need
24 to focus our resources.

25 Children between ages one and two

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2 years are at highest risk for lead poisoning because
3 of frequent hand-to-mouth activity. These youngest
4 children are also more susceptible to the harmful
5 effects of lead poisoning, due to their rapidly
6 developing nervous systems.

7 In 2002, 55 percent of lead poisoned
8 children in New York City were less than three years
9 of age, and an even greater proportion of the
10 negative health impact from lead poisoning will be
11 in this group.

12 Lead paint continues to be the

13 primary source of lead poisoning in New York City.

14 Lead poisoning is concentrated in
15 poor New York City neighborhoods with older housing.

16 In 2002, for children six months to
17 six years of age, with environmental intervention
18 blood lead levels, five of 42 neighborhoods
19 accounted for more than a third of the cases.

20 Immigrant status is also associated
21 with lead poisoning in New York City children,
22 particularly among children over three. The primary
23 countries of birth associated with elevated blood
24 lead levels were Haiti, Mexico, Pakistan, Dominican
25 Republic and Bangladesh. Lead hazards in these

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2 countries are ubiquitous. Sources include lead from
3 gasoline, battery repair, soldering, mining and
4 smelting, small manufacturing and paint, lead-glazed
5 pottery, traditional medicines, imported foods and
6 cosmetics. Exposure levels can be very high.

7 A significantly lower proportion of
8 immigrant children with blood lead levels receiving
9 environmental intervention have lead-based paint in
10 their homes that was peeling or deteriorated than
11 US born children.

12 This suggests that other sources may
13 be more common among immigrant children.

14 Today, because of reduction in
15 severity of lead poisoning has occurred, the vast
16 majority of lead-poisoned children have no symptoms.
17 Screening is therefore critical for early detection
18 and to prevent more serious lead poisoning.

19 Since 1993, New York State has
20 mandated blood lead testing of young children. By
21 New York State law, all children are to be tested at
22 ages one and two and between six months and six
23 years of age, the medical provider must assess risks
24 for lead poisoning every year and test those
25 children with high risks.

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2 Testing at age one is both most
3 important for early identification of children with
4 elevated levels, and most consistent with national
5 recommendations.

6 In 2002 in New York City about 63
7 percent of one-year-olds were tested, 83 percent of
8 children were tested either at age one or age two.

9 The key indicator to track is the
10 proportion of kids who are tested in high-risk
11 communities, and the key intervention needed is

12 improved follow-up of those with high levels.

13 New York City has among the highest
14 testing rates in the country. More than 11 percent
15 of blood lead tests reported to CDC are from New
16 York City, while we represent less than three
17 percent of the US population.

18 The Department is committed to
19 further improving physician testing for lead
20 poisoning and uses multiple strategies to increase
21 testing rates, with the focus on communities most at
22 risk.

23 However, regulation and practice of
24 medicine is a state issue. As the draft statute
25 correctly notes, preventing lead poisoning, primary

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2 prevention is key. Preventing exposure to sources of
3 lead prevents lead poisoning, and the most important
4 strategies for prevention are, first, to reduce lead
5 paint hazards by safely repairing peeling or damaged
6 paint, as well as friction and impact surfaces,
7 identifying and mitigating non-paint lead sources,
8 and educating parents, physicians and those involved
9 in providing, maintaining and repairing housing
10 about prevention and exposure reduction.

11 The key to making primary prevention
12 work is getting landlords to understand and comply
13 with the law. This requires educating landlords,
14 superintendents, contractors, families, doctors and
15 CBOs. That requires targeted enforcement in
16 buildings and areas that are most likely to cause
17 exposure.

18 It also requires creative programs
19 that addressed lead hazards, including programs such
20 as grant and loan mechanisms similar to the
21 weatherization program to replace windows.

22 I cannot emphasize strongly enough
23 that the way to continue a rapid progress in
24 controlling lead poisoning is to focus our effort
25 and attention on communities, buildings and

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2 populations at highest risk, only by doing this will
3 we continue our rapid progress.

4 Efforts that divert attention away
5 from these high-risk and high-need communities carry
6 this serious risk of slowing progress in the
7 communities where progress is most needed.

8 Turning to Intro. 101-A. We commend
9 your work to improve on previous New York City laws
10 addressing lead paint hazards. We are hoping, as is

11 the Council, that improvement to pass laws will
12 continue or even accelerate progress toward this
13 goal. Ending childhood lead poisoning is our goal,
14 as well.

15 Intro. 101-A has been improved in
16 many ways from its earlier version, and from Local
17 Law 38 and provides us with a sound basis for a new
18 law.

19 Many important elements of primary
20 prevention are incorporated into, or strengthened in
21 this version. Among these are the requirements that
22 landlords annually identify children living in
23 multiple dwellings before 1960 and inspect incorrect
24 peeling paint hazards in these apartments. Similarly
25 prohibiting dry scraping and sanding, which our

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2 analysis shows to be very important causes of lead
3 exposure, is an important step to continue the
4 prevention of lead poisoning.

5 We wholeheartedly support many of the
6 clear improvements in the previous laws that Intro
7 101-A incorporates. These include dust testing after
8 work is performed. Lead and dust is the strongest
9 predictor of a child's blood lead level, inclusion

10 of dust testing to determine if a dwelling unit has
11 been properly cleaned is essential and will result
12 in safer work practices, protecting workers,
13 families and children.

14 Safe work practices and training of
15 workers disturbing lead paint. The new version of
16 Intro 101-A requires that workers doing work after
17 an HPD violation are doing large scale work EPA
18 certified. It also requires smaller jobs use workers
19 who have received some training.

20 Both of these requirements increase
21 our assurance that lead hazards will be addressed
22 when work is performed.

23 The definition of lead paint. We
24 fully agree with the Council's definition of 1.0
25 mg/cm² as the definition of lead paint. This is the

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2 level the federal government uses, and a level which
3 the standards for machines are set.

4 Definition of lead hazards. We also
5 agree with the addition of conditions that cause
6 dust to the definition of lead hazards.

7 There are other aspects of 101-A
8 which we believe can be more effective in protecting
9 children with minor modifications. Some examples of

10 these include, first, the ages of children. I
11 understand the intuitive appeal of raising the age
12 at which the law applies from below six to below
13 seven. On the face of it, this change would seem to
14 protect more children, and further, I'm aware the
15 court mentioned this issue when it invalidated Local
16 Law 38. But how ever appealing this concept is, it
17 is wrong. A look at lead-poisoned children in New
18 York City explains why.

19 The vast majority of children with
20 lead poisoning are below the age of six, and older
21 children with elevated lead levels are much less
22 likely to have been exposed in their own homes. Even
23 among children three to five years of age, the
24 proportion who have peeling or deteriorated lead
25 paint in their homes is lower than among the

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2 youngest children.

3 While it would first appear that
4 increasing the age from six to seven could be more
5 protective of children, in fact, what it would do
6 would be to divert attention, focus and resources
7 away from the children who need it most to children
8 who are at much lower risk from lead poisoning.

9 Young children are more likely to
10 crawl on the floor, have more hand-to-mouth
11 activity, are more susceptible to neurological
12 damage from lead, are more likely to have lead
13 hazards in their home, and are more likely to
14 benefit from environmental and other intervention.

15 Increasing the age from six to seven
16 increases the population to be covered by 15
17 percent, but in doing so, in effect, it takes 15
18 percent of all of the effort, energy, resources and
19 attention away from the children who need it most.

20 Increasing the age from six to seven
21 would inadvertently reduce the effectiveness of all
22 of our lead poisoning prevention efforts by 15
23 percent.

24 In this area, as in so much of public
25 health, prioritization is absolutely essential. This

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2 is why CDC, Center for Disease Control and
3 Prevention recommendations and New York State laws
4 focus on children under six years of age. New York
5 City Housing laws should do the same.

6 Second, proactive enforcement:
7 Enforcement is key to ensuring that any law is
8 effective, and Intro 101-A has provided for the

9 proactive enforcement that's necessary.

10 The proactive enforcement must be
11 driven by the best available data, and these data
12 can change from year-to-year. Hence, the means and
13 definition of this law could benefit from some
14 modification.

15 Tax abatements that have been
16 mentioned, it's an excellent suggestion, should only
17 be provided for permanent abatement and only for
18 those who do it voluntarily.

19 Timeframes: We agree with the need to
20 make timeframes consistent. Timeframes under 38 were
21 confusing. But the timeframes currently proposed are
22 simply not adequate for a landlord to identify and
23 secure a contractor, have the work completed safely
24 and ensure that dust testing is completed and
25 analyzed by a laboratory.

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2 Not providing for adequate time
3 places the burden to perform remediation and
4 provides no incentive for landlords to take
5 responsibility for their property.

6 Confidentiality of data is another
7 significant concern. The current draft requires that

8 HPD examine Health Department records. Our records
9 are confidential, and they must stay that way.
10 Similarly, making HPD records, including all
11 inspection reports on an apartment-by-apartment
12 basis open to the public could invade a tenant's
13 personal privacy and does not seem to have a
14 corresponding benefit.

15 The next area has to do with the
16 promulgation of rules. HPD is most familiar with
17 their own policies and procedures. They should
18 promulgate their own rules. We could revise, review
19 or even approve these, but we should not be
20 promulgating rules that mandate prophesies and
21 procedures for HPD.

22 There are also areas in the draft
23 where DOH is expected to promulgate rules but the
24 bill is much too specific with regard to the content
25 of these rules.

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2 The advantage of rule-making is
3 flexibility to improve processes and procedures in
4 light of new data or knowledge and to use expertise
5 of operating agencies. To most effectively protect
6 children now and in the future, rule making must
7 have latitude.

8 Common areas: As a result of decades
9 of use in paint and gasoline, lead is unfortunately
10 widespread in our environment.

11 Again, key to success is focus. Young
12 children get most exposure in their homes. We do not
13 know whether lead in common areas adds a significant
14 contributor to lead poisoning. We do know that the
15 current draft enforcement requirements would divert
16 attention and resources away from children's homes
17 where we know that the risks are occurring.

18 Common areas can be addressed when
19 indicated. Peeling paint in common areas is a
20 violation of the Housing Code.

21 There are unnecessary administrative
22 requirements in the draft, including the filing of
23 all positive dust tests with the Department. These
24 would not have clear benefits, but would have
25 significant costs. We should be using our resources

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2 to protect children, not to increase bureaucracy.

3 The most important element is
4 apartments pass dust clearance testing and that
5 tenants not be exposed until such clearance is
6 assured.

7 Another similar example is filing of
8 all work 100 square feet or greater with the
9 Department of Health. This requirement would create
10 a large burden without clear benefits. It would be
11 very costly.

12 This clause alone, would, we
13 estimate, cost us more than \$9 million in the next
14 year and more than 7 million in every subsequent
15 year, with no discernible benefit to children.

16 There is another area which appears
17 in the current draft to require the department to
18 clean dust where lead hazards, the source of lead
19 hazards haven't been determined. It should be
20 modified to make it clearer and more effective. It
21 should be limited to lead poisoned children,
22 furthermore, landlords, and not the Health
23 Department, should be responsible for removing lead
24 contaminated dust, if this exists in the home of a
25 lead poisoned child.

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2 Screening case rate targets. This is
3 a complicated area. We recommend that screening and
4 case targets not be specified in the law, but if
5 they are to be included they need to be realistic.
6 Screening targets need to focus on one- and

7 two-year-olds, particularly in high-risk areas. Case
8 targets need to take into account that non-paint
9 sources also exist, and that an increasing portion
10 of our cases will consist of foreign-borne children,
11 many of whom will have been exposed abroad.

12 Recording of inspection of all
13 surfaces has been mentioned by Commissioner Perine.
14 This would be very time consuming, would
15 dramatically reduce productivity and doesn't seem to
16 serve any purpose.

17 We rely on these inspectors for
18 proactive inspections. Diverting them from their
19 work would unintentionally reduce our effectiveness
20 in preventing lead poisoning.

21 There is also a requirement to
22 inspect when a pregnant woman with an elevated
23 level. In fact, pregnant women are mostly exposed
24 through the ingestion of non-food items for an
25 elevated pre-existing blood lead level. They're

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2 rarely exposed through ingestion of lead dust caused
3 by lead-based paint, and requiring inspections in
4 these situations would divert attention from those
5 who need resources the most.

6 There are, finally, aspects of 101-A
7 which should be carefully reviewed and could, we
8 think, be better targeted. I will mention two.

9 I'm sure we all agree expenditures
10 should be targeted to preventing lead poisoning as
11 effectively as possible.

12 First is turnover requirements. Intro
13 101-A recognizes that turnover of apartments provide
14 the good opportunity for landlords to correct
15 hazards. Work can be done more safely, more
16 effectively and with less disruption if it is done
17 at turnover.

18 But we need to be careful that
19 requirements for turnover are focused on where
20 there's a need and a way that will be most
21 effective.

22 Furthermore, the details of the
23 requirement at turnover should be carefully
24 reviewed.

25 The Department's -- the draft's

1 COMMITTEE ON HOUSING AND BUILDINGS
2 statute requirement to abate all windows and doors
3 and surfaces with peeling paint in apartments
4 housing young children throughout New York City by
5 2007 is unnecessary in that it doesn't distinguish

6 between dwellings and conditions that are likely to
7 cause hazards, and those where hazards are unlikely.

8 Unnecessary abatement can expose
9 children to hazards where none previously existed
10 and can inadvertently do more harm than good.

11 There are also possible unintended
12 consequences of Intro. 101-A. I'm neither a housing
13 expert nor a legal expert, but in closing I would
14 like to briefly mention from the standpoint of the
15 Health Department possible implications of these
16 potential unintended consequences.

17 In the case of housing unintended
18 consequences potentially include decreased
19 availability of apartments for children with
20 families.

21 We are all too familiar with negative
22 health consequences of homelessness and unstable
23 housing. These include higher rates of tuberculosis,
24 drug use, alcoholism, AIDS, poor educational
25 performance and more. Homeless children are less

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2 healthy. Neighborhoods with more abandoned property
3 are less healthy. These factors and their impact on
4 health would certainly need to be considered if the

5 turnover and Citywide abatement clauses are not
6 carefully targeted.

7 In the case of legal issues it is
8 possible that an unintended consequence of this
9 legislation, there could be a large increase in
10 taxpayer costs, as a result of the impossibility of
11 compliance with proposed timeframes or of landlord
12 irresponsibility.

13 As Health Commissioner, I hope that
14 costs resulting from this bill will go toward
15 preventing lead poisoning.

16 Again, thank you for the opportunity
17 to address you today. I look forward to working with
18 the Council to continue our progress toward the
19 elimination of childhood lead poisoning, and we're
20 happy to answer your questions.

21 CHAIRPERSON PROVENZANO: Thank you,
22 Commissioner.

23 We've also been joined by Council
24 Member Lou Fidler, and Council Member Martinez.

25 The Speaker has a question.

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2 SPEAKER MILLER: Thanks, Madam Chair.

3 I just wanted to ask Commissioner
4 Perine about the XRF. With regard to the XRF

5 detection, can you just explain to us a little bit
6 more what the concern is with regarding to the
7 dropping off of these items and how it would be more
8 efficient to have people go and visit the same place
9 twice in order to accomplish a test that I guess at
10 least theoretically could be accomplished in the
11 first instance.

12 COMMISSIONER PERINE: Yes. And, again,
13 I think -- go ahead.

14 CHAIRPERSON PROVENZANO: So, the size
15 of the machine?

16 COMMISSIONER PERINE: Yes. There's two
17 different sort of issues raised in your question,
18 Speaker Miller.

19 In terms of why it would be better to
20 bring back a second team, any time we can conserve
21 the housing inspector's time and keep them to their
22 route, you know, they start out the day knowing that
23 they've got to visit these ten or 12 places.

24 SPEAKER MILLER: And do they check in
25 anywhere?

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2 COMMISSIONER PERINE: Yes, they do.

3 SPEAKER MILLER: They do check in.

4 COMMISSIONER PERINE: On the radio.

5 SPEAKER MILLER: On the radio.

6 COMMISSIONER PERINE: Exactly.

7 SPEAKER MILLER: So they never got to
8 a spot and say I'm starting today?

9 COMMISSIONER PERINE: They start in
10 the morning, and they're dispatched and they have to
11 finish up the day. But where they start and where
12 they end can vary. And, so, you know, some
13 inspectors, depending on their route and depending
14 on where they live, may actually either start or end
15 their day directly from home and not come back to
16 the office necessarily twice in one day.

17 SPEAKER MILLER: And how often does
18 that happen?

19 COMMISSIONER PERINE: I think that
20 happens pretty frequently. We actually attempt to do
21 that whenever we can, because, again, it's cutting
22 down on time. We don't need to make -- I mean, just
23 to make an extreme example, we don't have to make a
24 code inspector who lives out in Queens and has a
25 route that day to inspect things in Queens come all

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2 the way downtown at the beginning of the day and the
3 end of the day both times.

4 SPEAKER MILLER: So they come in one
5 time.

6 COMMISSIONER PERINE: They would come
7 in one time normally. And of course there are
8 exceptions when inspectors would come both at the
9 beginning and the end of the day. I don't want to
10 make it seem like that never happens, it does
11 happen, but we like to maintain the flexibility to
12 be able to cut off one of those trips whenever we
13 can, essentially in order to squeeze in more of
14 their time being spent doing inspections rather than
15 traveling to and from their respective offices.

16 So, that's one of the issues, so
17 that's, with an XRF machine, because of the nature
18 of the machine, it can't be taken home with an
19 inspector. So, unlike, you know, their radios and
20 their forms --

21 SPEAKER MILLER: Why is that?

22 COMMISSIONER PERINE: The machines
23 themselves have a slight amount of radioactivity.
24 They actually have to be carried in a case that has
25 that, if we all remember from like the 1950s, you

3 that's on the outside of those cases, and so these
4 cases, these machines are not things that we would
5 have employees bring home to their home. We would
6 keep them in a secure location in the work place and
7 they would have to check them in and check them out
8 in that way.

9 So, you know, that's one of the level
10 of complications. We also think it would be very
11 difficult to send inspectors, send all of our
12 inspectors with such a case, with such a radioactive
13 symbol, on public transportation. Most of our
14 inspectors get to their locations by public
15 transportation. We don't have a fleet of cars for
16 every single inspector. You know, we have a small
17 number that we use critically, but most actually are
18 on public transportation.

19 We think they probably couldn't do
20 that with these cases, even though they don't, you
21 know, from our information we're not saying that
22 these things represent an actual threat to people,
23 but we think that they could seem a little scary to
24 somebody in a crowded subway car.

25 SPEAKER MILLER: And you can't put

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2 something over that?

3 COMMISSIONER PERINE: I don't think
4 you're allowed, no.

5 This is part of the regulation of an
6 XRF machine, it has to be carried in this way with a
7 case that clearly delineates it as having some
8 radioactive material.

9 SPEAKER MILLER: So, you're proposing
10 then that after the violation is written by the
11 regular inspector, that you want to then go back and
12 test every single paint violation in pre-1960
13 buildings?

14 COMMISSIONER PERINE: We're saying
15 wherever XRF testing would be required, we would do
16 it as part of a second inspection. That first
17 inspector would write his violation, move on to his
18 next step on the route, get to that next apartment
19 to be writing new violations, and then meanwhile
20 phoning in that an XRF team has to now come into
21 this apartment and make a subsequent inspection,
22 yes.

23 And we think really --

24 SPEAKER MILLER: Doesn't that seem
25 more inefficient than just having somebody have to

2 check in in the spot perhaps in each borough once,
3 twice a day?

4 COMMISSIONER PERINE: No. Again, every
5 time you're having an inspector make a travel time
6 back and forth, you're losing time on their route
7 for them to get to their next inspection. So, we're
8 trying to use our inspection staff, spending as
9 little -- our goal is always to have them spend as
10 little time traveling as possible, and as most time
11 possible on their shift, actually getting to that
12 next appointment.

13 SPEAKER MILLER: Okay, I'm sure we can
14 explore this further.

15 COMMISSIONER PERINE: Right. You know,
16 again, we're not debating that the inspections
17 should be done with an XRF machine; we're simply
18 saying from a procedural point of view, we think
19 that there is a more efficient operational way to do
20 that.

21 SPEAKER MILLER: And let me ask
22 Commissioner Frieden, do we know how many children
23 we're talking about? In your view that the universe
24 should be reduced from under seven, under six, how
25 many children are we talking about? What is the

2 population and what are the incidences of lead
3 poisoning? Can you give us a little bit more of a
4 detail on why it is that the Council should, you
5 know, reduce the population that we're focusing on
6 by such a significant number, and how significant is
7 that number?

8 COMMISSIONER FRIEDEN: I would first
9 point out that Local Law 38 was under six, and so
10 it's not eliminating, it's not increasing it.

11 SPEAKER MILLER: Local Law 38 isn't in
12 effect, Local Law 1 is in effect. It's under seven.

13 COMMISSIONER FRIEDEN: Well, not
14 really. But just to answer your question, there were
15 --

16 SPEAKER MILLER: Really.

17 COMMISSIONER FRIEDEN: No, not really.
18 Not according to what the magistrate --

19 SPEAKER MILLER: Local Law 1 hasn't
20 been implemented, but it is on the books. I don't
21 think anyone would say that it isn't the law. It's
22 the law. The question is when are the courts going
23 to actually force people to administer it. But it's
24 the law, it's on the books. Local Law 38 is off the
25 books.

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2 COMMISSIONER FRIEDEN: My point was
3 that the significant reductions that we've seen were
4 under Local Law 38 which had under six as their
5 number. There were 33 or 34 children who are aged
6 six in 2002 who had early intervention blood lead
7 level. The vast majority of those children had
8 previously elevated blood lead levels and would have
9 been picked up for some sort of intervention before
10 this.

11 So, I think the concern is that what
12 you end up doing is you end up diverting resources
13 away from the kids who need it most. Remember that
14 it's a zero to five group that was already used as a
15 buffer. You're most concerned about the zero to
16 threes. In order to provide a buffer for the zero to
17 threes, you provide zero to five. That's the
18 national guideline, it's the state guideline. It's
19 the guideline we've been using for many years in New
20 York City.

21 The reality is that most of the lead
22 poisoning occurs at ages one and two. That's the
23 time when kids are crawling on the floor most, it's
24 the time when they have the most hand-to-mouth
25 activity. It's also the time when they're most

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2 susceptible to the damage from lead paint.

3 The older you get, the older kids
4 get, if we look at kids with elevated levels, the
5 older you get, the less likely you are to find
6 violations in the home and the more likely you are
7 to have a foreign-borne child who may have been
8 exposed outside of the US. So, the older you get,
9 the more likely you are not to be dealing with a
10 lead hazard in the home.

11 We already had the buffer of three to
12 five, adding another year just really robs us of
13 those resources for the kids who need it most.

14 SPEAKER MILLER: Okay. Thank you,
15 Madam Chair. Thank you, my colleagues.

16 CHAIRPERSON PROVENZANO: Thank you.

17 Just to follow up on the XRF. What is
18 the size of whatever it is these people have to
19 carry around?

20 COMMISSIONER PERINE: The XRF machine
21 itself is a little bit shaped like a gun, it's
22 something that you actually hold, it's about this
23 big (indicating). I don't know if I'm really
24 describing it. The box is larger, obviously.

25 CHAIRPERSON PROVENZANO: Okay, could

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2 you give us dimensions?

3 COMMISSIONER PERINE: I don't know,

4 maybe like --

5 CHAIRPERSON PROVENZANO: A foot?

6 COMMISSIONER PERINE: Maybe a bit

7 longer.

8 CHAIRPERSON PROVENZANO: Okay.

9 COMMISSIONER PERINE: Again, think of
10 a gun shape.

11 CHAIRPERSON PROVENZANO: Right.

12 COMMISSIONER PERINE: So you're
13 holding the handle, and then it's got a gun-like
14 shape. Twenty-five by 15.

15 CHAIRPERSON PROVENZANO: Twenty-five
16 by 15?

17 COMMISSIONER PERINE: Right.

18 CHAIRPERSON PROVENZANO: But then this
19 goes into a case?

20 COMMISSIONER PERINE: Into a case,
21 exactly, that's obviously larger, and the case is --
22 you know, the case has padding.

23 CHAIRPERSON PROVENZANO: Larger than
24 25 by 15.

25 COMMISSIONER PERINE: It's got

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2 significant padding and stuff inside.

3 CHAIRPERSON PROVENZANO: Okay.

4 And probably, as you said, cannot be

5 carried on public transportation because of the

6 radioactivity.

7 COMMISSIONER PERINE: We think it

8 could from a safety point of view. I just think it

9 would frighten people unnecessarily.

10 CHAIRPERSON PROVENZANO: You mentioned

11 an XRF team, so in your explanation you said an

12 inspector that went out and found that there was,

13 could possibly be an incident of, would call back

14 and say, you know, there's probability that we have

15 lead here, and then there would be -- is there, or

16 there would be an XRF team that would go out? Is

17 there one now, or you're saying there would be?

18 COMMISSIONER PERINE: There is one

19 now. I mean, we obviously do XRF testing for all of

20 the violations that we undertake the repair of when

21 the owner doesn't act, so we've already got a team

22 of people who are specialized just in testing, but

23 it would have to be expanded. But, yes, we would

24 follow that same model, I think we have a model that

25 works pretty well already that we could apply here.

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2 CHAIRPERSON PROVENZANO: I have a
3 question that I think was explained fairly well by
4 the Health Commissioner, but just to kind of verify
5 what I think I heard, the Department of Health would
6 draft the rules and regulations that must be
7 followed by HPD?

8 COMMISSIONER FRIEDEN: The current
9 draft, 101-A, has the Department of Health
10 promulgating those regulations. We think that each
11 agency knows its operations best. If the Council
12 wishes, we can review them, we can even approve
13 them, but they should be promulgated by the relevant
14 department.

15 CHAIRPERSON PROVENZANO: How is it
16 done now?

17 COMMISSIONER FRIEDEN: Each
18 departments their own.

19 CHAIRPERSON PROVENZANO: Does their
20 own.

21 COMMISSIONER FRIEDEN: Yes.

22 CHAIRPERSON PROVENZANO: Okay.

23 Commissioner Perine, you also talked
24 about an inspector goes into a building for a heat
25 complaint or water complaint, whatever, that there's

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2 a child in the apartment under age seven, they then
3 have to proceed to do this inspection which you
4 explained. How long do you think that inspection
5 would take as opposed to going in for a heat
6 complaint or a water complaint or whatever? What
7 would be the extra time spent?

8 COMMISSIONER PERINE: Depending on the
9 size of the apartment --

10 CHAIRPERSON PROVENZANO: Four-room
11 apartment.

12 COMMISSIONER PERINE: The same
13 apartment, a heat complaint is probably going to
14 take no more than 15 or 20 minutes. If they then
15 have to move furniture, wall hangings away from the
16 wall, and be able to inspect every single surface
17 and document it on the spot, it's got to take a
18 couple hours.

19 CHAIRPERSON PROVENZANO: So, the only
20 indication, then, would be there's a child under
21 seven so now I have to look at all these things.

22 COMMISSIONER PERINE: That's right.
23 That's right.

24 And obviously we still, of course,
25 would always maintain our normal line of sight

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2 policy. You know, an inspector who goes in on a heat
3 and hot water complaint and sees peeling paint, is
4 going to look at that and write the violation for
5 that as well. So we're not suggesting that that
6 wouldn't continue to happen. We're simply saying it
7 doesn't really make a lot of sense to make an
8 inspector catalogue the condition of walls that on
9 the face of it don't even necessarily have a problem
10 and need to go to those kinds of extraordinary
11 lengths. It will also, obviously, whatever his next
12 step was on his routing for that day, he's obviously
13 not going to get there --

14 CHAIRPERSON PROVENZANO: If it happens
15 to be the heat season and we have a lot of heat
16 complaints, there are a lot of people that are not
17 going to get an inspector that day.

18 COMMISSIONER PERINE: Correct.

19 CHAIRPERSON PROVENZANO: Let's say
20 that the same inspector goes into this apartment for
21 a heat complaint, and he doesn't see a child under
22 seven, or the tenant does not tell him he or she has
23 a child under seven and he leaves. Is there any
24 responsibility that he must assume under this
25 legislation?

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2 COMMISSIONER PERINE: Well, we're
3 assuming that --

4 CHAIRPERSON PROVENZANO: Is he
5 supposed to ask?

6 COMMISSIONER PERINE: Yes, he's
7 supposed to ask. He or she is supposed to ask and
8 also obtain some kind of verification of the answer.
9 So that may mean, you know, getting the tenant to
10 sign something, an inspector, that says, yes, I have
11 a child under seven or no, I don't.

12 CHAIRPERSON PROVENZANO: Okay.

13 All right, I'm going to turn it over
14 to my colleagues. I have some more questions.

15 Council Member Oddo.

16 COUNCIL MEMBER ODDO: Thank you, Madam
17 Chair. Good afternoon, Commissioners.

18 Commissioner Frieden, you went to
19 great lengths to talk about our need to focus our
20 resources on attention and where the problem was.
21 You talked about five of the 42 neighborhoods,
22 accounting for more than a third of the cases, you
23 talked about those children who are likely to have
24 elevated lead levels. You are in line with Speaker
25 Miller's thinking apparently because in a press

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2 release that the Speaker issued on the 6th, the last
3 sentence in his quote was, "the City's efforts must
4 be concentrated in the lead belt where the problem
5 is pervasive."

6 Does this bill in fact concentrate
7 our resources on the lead belt?

8 COMMISSIONER FRIEDEN: Not quite.

9 I think with some modifications it
10 could do that. In particular, the age issue, the
11 common area issue, the turnover issue and the
12 requirement to abate by 2007, those are four areas,
13 just to give examples, where it could be better
14 targeted and it could do more good for more kids.

15 COUNCIL MEMBER ODDO: Could you, and I
16 think this is a difficult question to answer, but
17 could you -- you used a 15 percent example, could
18 you estimate how much of the resources, a percentage
19 of the resources you would be spending in areas
20 outside the lead belt, which in your opinion I would
21 say is time and money not well spent; how much of
22 our resources would be wrongly diverted away from
23 where the problem is?

24 COMMISSIONER FRIEDEN: It's an
25 interesting question. We tried to see if we could

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2 come up with an estimate. Although I could come up
3 with a back of the envelope estimate, I really would
4 be very hardpressed that absolutely this is correct.
5 I could give you a guess but it's nothing more than
6 a partially educated guess.

7 COUNCIL MEMBER ODDO: Is it two
8 percent, is it ten percent? Can you give me a range?

9 COMMISSIONER FRIEDEN: I would
10 certainly think for the turnover and the abatement
11 by 2007 requirement, most of the work being done
12 would be done outside of the areas of highest need,
13 so a majority.

14 And even in the areas of highest
15 need, because of some of the details of the wording
16 of those sections, a significant proportion even
17 most expenditures, even in the areas of high need
18 would not be of the greatest benefit.

19 COUNCIL MEMBER ODDO: That's a
20 critical issue for me, and I think it should be a
21 critical issue for this Council. Those of us who are
22 proponents, and those of us who were opponents of
23 101-A, we have the same thing in common, we don't
24 want to see kids poisoned by lead. But by the same

25 token, I don't think that we should pass a bill that

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2 is more a chainsaw than a scalpel in addressing the
3 problem.

4 We have heard only some brief
5 references to cost of this bill. I mean, in your
6 testimony you ended with two, which I believe are
7 important paragraphs, but very brief and very
8 general about unintended consequences. Is the
9 Administration at any point in time going to come in
10 before the Council and testify or give to the media
11 and the advocates an estimate of the cost of this
12 bill?

13 COMMISSIONER PERINE: I think cost
14 estimates are being worked on now as we did for the
15 original version of 101-A. We don't have final
16 estimates right now. I think the key thing for us,
17 though, is not so much the cost, but what we would
18 be spending the money on. And, again, I think we are
19 saying that we are supportive of increasing a scope
20 of work that would be required by owners, you know,
21 trying to increase the level of trained workers who
22 are going to be carrying out the work. And, so, yes,
23 of course, those things are going to cost more. I
24 can't tell you exactly how much more. But, you know,

25 we would just like to see those things really done

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2 effectively.

3 COUNCIL MEMBER ODDO: How about a
4 range today?

5 COMMISSIONER PERINE: I don't have a
6 range.

7 COUNCIL MEMBER ODDO: How about a
8 timetable of when we will -- before we vote on the
9 bill?

10 COMMISSIONER PERINE: You know, we
11 will be happy to get back to you quickly on what the
12 timeframe is. This is something, again, this is
13 being worked on but the budget office and others,
14 and so I'm not, you know, I'm not really able to
15 give an assignment to the budget office.

16 COUNCIL MEMBER ODDO: I'll tell you
17 why --

18 COMMISSIONER PERINE: But I'm happy to
19 get back to you.

20 COUNCIL MEMBER ODDO: I'll tell you
21 why I'm concerned about that.

22 There was a series of bills of
23 emergency contraception that the Administration

24 opposed one bill. I was opposed to it, let me just
25 make the record clear, but the Administration was

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2 opposed to it, despite overwhelming support in the
3 Council, and Commissioner Frieden came in and
4 testified and said I'd have to spend a million
5 dollars on this bill, if we pass it, and that's a
6 million dollars in resources I don't have X, Y and
7 Z. So, I think it's important that we know how much
8 money we're spending on the bill so that we then
9 could assess, and how much of it is going outside
10 the lead belt, and then we can ask the question,
11 well, what program will Department of Health and HPD
12 not be able to do because we're spending resources
13 on the well-intended but misguided piece of
14 legislation. I think that's an important question to
15 ask for some of us here, and the sooner we get that
16 information, the sooner some of us can make up our
17 minds about where we are in this legislation.

18 Let me just say one other thing.
19 Commissioner, I agree with you in reference to this
20 notion about HPD writing rules that DOH has to
21 implement or abide by, or vice versa. We need to
22 look no further than the debacle of City Planning
23 and the Building Department. City Planning writes

24 the resolution, and DOB is supposed to interpret it
25 and the two can't agree on it. So, I strong support

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2 your notion that we have to change this bill so that
3 each agency has its own purview and its own general
4 area.

5 I asked a question the last time we
6 were together and you good folks weren't able to
7 answer it and I would hope that somebody from the
8 Administration would answer it; and that's the
9 number of claims against the City over the years.

10 I mean, could either of the
11 Commissioners testify as to the pattern since Local
12 Law 38 was implemented, in terms of claims against
13 the City on lead poisoning?

14 COMMISSIONER PERINE: This is Harold
15 Schultz. He's the Special Counsel at HPD.

16 MR. SCHULTZ: Yes, I'm afraid we still
17 don't have a clear answer for that. They are fairly
18 substantial. I do know that there are numbers of
19 claims against the City. The average settlement of a
20 claim against the City is about \$300,000 in a
21 typical case. I don't have the overall numbers to
22 give you today. We can get back to you with that.

23 I would also say we are somewhat
24 concerned in this draft of Intro 101-A, that there
25 be more clarity that the City is not a target for

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2 lawsuits in its regulatory capacity.

3 COUNCIL MEMBER ODDO: Is it safe to
4 say that the pattern goes downward since Local Law
5 38 is implemented, in terms of suits against the
6 City?

7 MR. SCHULTZ: Yes, I think there has
8 been a reduction of suits. It comes from a lot of
9 factors, though, not just Local Law 38.

10 COUNCIL MEMBER ODDO: Is the pattern
11 significant? Is the reduction significant?

12 COMMISSIONER PERINE: I don't think we
13 can answer that.

14 COUNCIL MEMBER ODDO: Okay. Well,
15 Madam Chair, I would just want to go on the record,
16 this is the second time that we've had a hearing on
17 this bill and the second time that I've asked
18 questions about liability which in my mind is a huge
19 aspect of this bill, it's about dollars and cents,
20 and it's the second time that the Administration
21 hasn't been able to testify. And I don't fault
22 either of these two commissioners, but I would like

23 at some point Corporation Counsel to come in here
24 and testify on this bill.

25 How could we have an intelligent

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2 discussion about this bill and not address the
3 liability. And at some point the Administration has
4 to come in and we have to bring Corp Counsel in and
5 we have to talk about this.

6 So I would suppose then we can't talk
7 about any of the specific legal technicalities of
8 the bill, the fact that the presumption that once
9 applied solely to the Housing Code now theoretically
10 can be applied in terms of civil cases and tort
11 cases against the City; can we have a discussion on
12 that, or do we need Corp Counsel for that?

13 MR. SCHULTZ: No, we can answer that,
14 and I believe in this draft your interpretation of
15 that is correct, and that will have an impact on,
16 certainly will have an impact on private owners.

17 COUNCIL MEMBER ODDO: So, am I correct
18 in saying that previously the presumption was allow
19 -- or the nexus was the presumption to enforcement
20 of the Building Maintenance Code, and now the
21 presumption is being extended so that you can use

22 that presumption in tort cases against private
23 owners, but also the City of New York by extension,
24 because the City is usually brought in; is that
25 correct?

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2 MR. SCHULTZ: I think it's fairly
3 clear, that, yes, that compared to Local Law 38, the
4 presumption with regard to owners would reverse for
5 a variety of factors in the bill, one of them has to
6 do with the way the notices is done, and the other
7 has to do with the extent to which owners are put
8 under an obligation to conduct inspections whenever
9 they have some reason to believe that there might be
10 peeling paint.

11 Now, it's not clear to us, honestly,
12 whether or not the statute is or is not intended to
13 bring the City in as a defendant in this, but we
14 believe if it's not intended, it certainly could be
15 much better drafting.

16 COUNCIL MEMBER ODDO: But normally in
17 past the City has been brought in.

18 MR. SCHULTZ: The City has been
19 brought into a number of such lawsuits, yes.

20 COUNCIL MEMBER ODDO: Are we troubled?
21 I mean, is the Administration troubled by the fact

22 that this in essence makes it much more likely that
23 the City will be in court defending these cases?

24 MR. SCHULTZ: Yes, we are quite
25 concerned.

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2 COUNCIL MEMBER ODDO: All right. Well,
3 I guess concern is a good first step.

4 If I could just ask two more
5 questions, Madam Chair?

6 The presumption that's being extended
7 now to tort liability is a presumption that pre-1960
8 building, paint is peeling, kid less than a certain
9 age, it's presumed to be lead paint. That
10 presumption now potentially opens the door to all
11 kinds of lawsuits against the City. How many times
12 is that presumption correct? How many times does it
13 turn out to be that in fact it is lead paint?

14 COMMISSIONER PERINE: You know, I
15 couldn't answer that in a broad sense. I can only
16 answer it in relation to a subset of the universe of
17 the lead violations that we actually at HPD have to
18 step in and correct ourselves, because those are the
19 ones that we go in and test ourselves.

20 So, you know, I don't know how fairly

21 one can apply it to the broader stock, but of the
22 universe of about 9,000 violations that get removed
23 by our activity where we go out because the owner
24 didn't do what he was supposed to do, in about 75
25 percent of the cases where we test, we don't find

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2 lead paint.

3 COUNCIL MEMBER ODDO: Three out of
4 four times the presumption is wrong?

5 COMMISSIONER PERINE: But, you know,
6 again, I mean it's within the subset of the
7 universe. So, you know, I'm a little reluctant to
8 say that that same 75 percent would hold in every
9 other application of the housing stock, I can just
10 say that in that subset of the ones where owners
11 have not act, and we have gone in to test, that's
12 been our experience.

13 COUNCIL MEMBER ODDO: I think that, in
14 my mind at least, that cause for the Administration
15 to be really concerned that this bill then extends
16 the power, if you will, of that presumption.

17 I will save the questions about the
18 defenses for Corp Counsel. My last question to you,
19 Jerilyn, is the insurance issue. Are you concerned
20 that folks aren't going to be able to get insurance

21 and that -- what happens at that point when people
22 can't get insurance to insure the buildings? They
23 walk away from buildings?

24 COMMISSIONER PERINE: You know, again,
25 I think you'll probably hear from the industry

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2 experts directly. I think, you know, we are always
3 concerned when something can encourage a high-risk
4 environment, particularly for our low-income
5 neighborhoods that could potentially dissuade
6 insurers or lenders from acting.

7 I wouldn't certainly say that, I
8 think that we've laid out some concerns here today
9 that really, for the most part are kind of, you
10 know, procedural, particularly around the time
11 frame.

12 I don't think requiring a higher
13 standard of owners in and of itself is any reason
14 that should give people a great deal of alarm. I
15 think the issue really is can we give them a fair
16 shot at actually complying with the law, you know,
17 which is why we tried to make a point out
18 timeframes. Any time you increase the risk of the
19 business, or attracting investment in the low-income

20 housing stock, that's not good. And I think here we
21 could make really just some small technical changes
22 to the time frames which would allow owners to
23 actually comply with an increased scope, and
24 actually comply with a higher standard of worker
25 training, without it having a deleterious impact.

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2 So, I think there's a big opportunity
3 here to make sure that we keep the pieces that are
4 important, which is the increased scope and work by
5 qualified workers, while minimizing the risk to our
6 ability to attract new investment in the housing
7 stock.

8 COUNCIL MEMBER ODDO: Thank you,
9 Commissioner.

10 Thank you, Madam Chair.

11 I would just say in closing that, you
12 know, I can't fault any of the advocates and the
13 proponents of this bill in terms of what they're
14 trying to do, and all of us staying on the same side
15 and wanting to protect kids, but I have to think
16 that somebody has got to ask the other questions,
17 and I haven't heard many people asking the other
18 questions about the cost.

19 We'll come together for a budget mod

20 in early January, and what you take away and you
21 spend, as well intentioned as it may be, spend in
22 areas outside the lead bill, that has a direct
23 impact on the types of services that we're going to
24 be providing as a City. And if we think the two
25 aren't related we're fooling ourselves.

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2 And I would ask you, Madam Chair,
3 that there has to be some answers from the
4 Administration in terms of the liability issue, and
5 they can't just put the DOH and the HPD Commissioner
6 here and not have Corp Counsel answer those
7 questions, and answer before we're supposed to vote.

8 So, I would ask you for your
9 cooperation in getting those folks. Thank you.

10 CHAIRPERSON PROVENZANO: Thank you,
11 Council Member Oddo.

12 I agree with you. I did question
13 before this hearing if they were going to be here,
14 and I think definitely we should have them if we
15 have another hearing.

16 Again, you know, we all know that we
17 can't put a price tag on a child's life, and that's
18 not what we're doing here.

19 I think if the cost of this
20 legislation appears to be, you know, high, there are
21 adjustments that can be made and still do what it is
22 we want to do for the kids of the City of New York.

23 In response to one of the questions,
24 though, I think that, Commissioner, you pretty much
25 did indicate that the price -- Commissioner Perine

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2 -- would be much higher. When you talked about the
3 remediation of lead hazards, was approximately four
4 to five-thousand per job, and under the new version
5 it's increased to ten to thirteen thousand.

6 COMMISSIONER PERINE: Yes. Again, that
7 was overhead. You know, what I was trying to say
8 there was not so much that -- of course, if you want
9 people to do more, if you want government to do
10 more, it's going to cost more, and I don't think,
11 you know, our intent is not to even to date that
12 part of it. We're just saying that if we're going to
13 do that, let's try to make that more go towards
14 actual repair of the housing stock in the highest
15 risk areas to deal with the problems that we know we
16 can actually affect, rather than seeing more of
17 those dollars go towards, you know, an
18 administrative overhead burden, which I think

19 everyone would agree, is not the wisest use of our
20 funds, if we had. You know, unlimited dollars to
21 spend, I think everybody wants the money to actually
22 go to where it's going to be most effective.

23 CHAIRPERSON PROVENZANO: I agree. And
24 also better use of inspector's time, you know, time
25 is money and I think there were several areas that

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2 could be revisited.

3 I also want to thank Council Member
4 Oddo. I'm not an attorney, so I always hesitate
5 getting into those kinds of questions. And talking
6 about attorneys, Council Member Fidler.

7 COUNCIL MEMBER FIDLER: Thank you,
8 Madam Chairwoman.

9 Notwithstanding the colloquy between
10 Dr. Frieden and the Speaker, I'm a little concerned
11 that we don't have a lead law in the City, and that
12 puts our children at risk and I think that makes it
13 incumbent upon us to come to a conclusion on this
14 matter in an expeditious way, because if we have a
15 law and it's not being enforced because we're
16 waiting for a new law, then we need to get together
17 on the new law.

18 Also, however, I'm somewhat concerned
19 about some of the issues that we share and
20 Councilman Oddo just raised.

21 On page four of your testimony, Dr.
22 Frieden, you said that efforts that divert the focus
23 away from these high-need communities impedes our
24 progress. And then in your testimony, you I think
25 tagged five areas that you feel would be a diversion

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2 of limited resources: Raising the age level; having
3 the law apply to common areas in buildings; filing
4 positive dust tests; following all work 100 square
5 feet or greater, and the reporting inspection of all
6 surfaces, which I think we have been referring to as
7 cataloguing of healthy walls.

8 I'm well aware of the fact that we
9 have a limited amount of resources to apply to
10 anything, no less in critical health issues like
11 lead poisoning. I'd like to know, and I'm sensing
12 from your answers to Councilman Oddo that you don't
13 have those answers today, I'd like to know what cost
14 you apply to each one of those quote/unquote
15 diversions of resources?

16 Because when we have a cost on this
17 bill, and I need to decide whether or not I can vote

18 for 101-A, if it catalogues healthy walls, but
19 that's going to cost \$4 million, and I have a \$4
20 million decision to make, \$4 million that I might
21 apply to cancer patients or to AIDS or to the lead
22 belt directly.

23 So, do you have any indication as to
24 what each of those diversions would cost?

25 COMMISSIONER FRIEDEN: I gave the one

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2 example. I think there are really two different
3 categories of concerns. One is, I think you could
4 summarize as unnecessary administrative or
5 bureaucratic actions, and one that I gave an
6 estimate for there was work practices. The current
7 draft would have every significant repair sent to
8 us, that would result in an affirmative
9 responsibility of us to potentially inspect work as
10 is ongoing and that as well as catalogue, monitor,
11 supervise, that would be very costly and we don't
12 really think that would be very protective of
13 children.

14 So one of the areas is an
15 administrative or bureaucratic area. Second is a
16 more specific diversion concern, such as the six to

17 seven and the common areas, the turnover
18 requirements that would be Citywide, so you'd have
19 to actually replace all lead-containing windows and
20 doors and frames, even in places where you don't
21 have a lead problem, and the 2007 requirement to
22 turn over with young children in place, I don't have
23 specific numbers for those.

24 I think in looking at costs, it's
25 important that we think about, and the Council is

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2 responsible as, as you know, for coming up with
3 those costs as well, for looking at several things:

4 One is, what is the actual cost to
5 the City government? That's one cost.

6 The second is, what is the cost to
7 the City in terms of what work needs to be done, or
8 elsewhere.

9 And the third is, what is the cost
10 that is currently being borne by landlords that
11 would in the future have to be borne by the general
12 taxpayers because the City has to do work that the
13 landlords are currently doing.

14 So, to the extent that we're letting
15 landlords off the hook, and letting the taxpayers
16 pick up that tab. These are all areas that have to

17 be looked at.

18 COUNCIL MEMBER FIDLER: Doctor, I
19 think you articulated the question very well. I hope
20 that the next time we see you, and I'm sure there's
21 going to be another hearing on this bill, that we
22 have actual answers from the Administration, at
23 least as to what your perspective is.

24 I am very comfortable in relying on
25 Council Finance's estimates of things, I find that

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2 sometimes the Administration has a different view,
3 and I'd like to hear it. I really think that we're
4 entitled to it. I know in fact when we concluded the
5 last hearing on this, I asked for the same panel to
6 come back with a series of recommendations for what
7 they would improve upon on Local Law 38, and I never
8 got that answer.

9 The other topic I would just like to
10 briefly touch on, on page three of your testimony
11 you said a significantly lower proportion of
12 immigrant children with blood lead levels receiving
13 environmental intervention had lead-based paint that
14 was peeling or deteriorated in their homes than
15 US-born children. I'd just like to know what the

16 difference in the numbers were?

17 COMMISSIONER FRIEDEN: It's not a
18 simple question, because the next question to ask
19 is, if you go into these same communities, in
20 families that don't have lead poisoned kids, what
21 portion of the households have peeling lead-based
22 paint? And we don't know the answer to that
23 question. It may be as high as 30 percent or more.
24 Among the US-born kids it's about 71 percent, among
25 foreign-born kids it's about 49 percent haphazard.

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2 And, so, that would be probably the upper limit of
3 the number that would be attributable to lead paint.

4 COUNCIL MEMBER FIDLER: So it's then a
5 logical construct, I would think, I mean obviously
6 lead paint in homes is a single, most significant
7 factor in lead poisoning among children, but as
8 we've seen the immigration phenomenon in New York,
9 that a large number of these children are being
10 affected before they get to the United States.

11 COMMISSIONER FRIEDEN: Right. We know
12 that in the US 30 years ago, the average lead level
13 was 15 to 20, and in many developing countries it's
14 that high or higher now. And, so, we are addressing
15 that issue as well.

16 COUNCIL MEMBER FIDLER: I mean, would
17 you say that while lead paint is the most
18 significant, that there are other significant
19 factors that are also at play in lead poisoning
20 children in the City?

21 COMMISSIONER FRIEDEN: It depends in
22 part on the age of the kids. But, yes, there are
23 other ways that kids get lead poisoned, as lead
24 paint is by far the most important source of lead
25 poisoning in New York City.

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2 COUNCIL MEMBER FIDLER: What, if
3 anything, is the Administration doing currently to
4 attack those other significant causes of lead
5 poisoning among children?

6 COMMISSIONER FRIEDEN: They're
7 educational measures. They're measures about
8 specific products. You may have seen in the news, we
9 recently identified a product brought in from the
10 Dominican Republic and we're working to get that off
11 the shelves here. We're looking at ceramics and
12 lead-based, that are used in ceramics and cosmetics,
13 we've had problems from various countries. There's
14 also a global issue of controlling lead paint

15 globally.

16 COUNCIL MEMBER FIDLER: I think the
17 substance you're referring to is litigious. I just
18 filed an intro to make the sale of that illegal, if
19 it's not already, and hopefully you'll be able to
20 join in that.

21 Has there been any discussion, and I
22 realize this is entirely beyond our purview, but on
23 the federal level requiring children adjusting their
24 status under a certain age from having a lead test
25 done at the time of their adjustment so there might

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2 be early intervention on a health basis?

3 I mean, obviously we can't legislate
4 what happens in Mexico or Ecuador or Pakistan or
5 Haiti, or any of the countries that you listed, but
6 when a child comes here to become a permanent
7 resident of the United States, and we find out that
8 they have a condition, we give treatment to them as
9 quickly as possible; has there been any discussion
10 of that with our federal representatives?

11 COMMISSIONER FRIEDEN: The treatment
12 is to remove from the source, and if the child is
13 coming and they're being removed from the source
14 that they're being exposed globally, there are

15 complicated issues with respect to immigration
16 requirements and it's very important that we remain
17 welcoming to the immigrant community that remain
18 really the vitality of this City.

19 COUNCIL MEMBER FIDLER: I'm certainly
20 not suggesting that a child who has lead in their
21 blood, you know, be barred from adjusting. Excuse my
22 ignorance, I thought that there might be something
23 that could be done for a child who has been
24 afflicted in terms of treatment.

25 You're saying that the only treatment

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2 is removing them from the source of the lead?

3 There's nothing that can be done to help them?

4 COMMISSIONER FRIEDEN: The levels that
5 we're seeing are not levels that require any medical
6 treatment or benefit from any medical treatment.

7 If you have a very level, 50, 60,
8 there may be benefit for treatment, but we barely
9 see that.

10 COUNCIL MEMBER FIDLER: Okay. Thank
11 you.

12 CHAIRPERSON PROVENZANO: I was just
13 informed by my staff, I'd like to say it for the

14 record, that Corp Counsel was invited to attend this
15 hearing and we got no response from them.

16 Council Member Martinez.

17 COUNCIL MEMBER MARTINEZ: Thank you,
18 Madam Chair.

19 Commissioner of HPD, I just want to
20 touch base again on the XRF machines; is that the
21 latest in technology available that HPD is using?

22 COMMISSIONER PERINE: Yes. I think
23 it's the only portable technology available to
24 detect lead paint, yes.

25 COUNCIL MEMBER MARTINEZ: Okay, that

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2 wasn't mentioned earlier.

3 Commissioner of Health, would it be
4 fair to say that even though you have that
5 population of immigrant children coming in lead
6 poisoned, the fact still remains that they're living
7 in apartment conditions where there are peeling
8 paints and lead-based paints where they're migrating
9 to; is that fair to say?

10 COMMISSIONER FRIEDEN: I've been very
11 clear about this last time and this time also. We're
12 not saying that every immigrant child had a
13 lead-based paint hazard overseas. We are saying, is

14 that as we think about what's going to happen future
15 years with lead poisoning in New York City, we need
16 to recognize that we have a variety of different
17 populations that we need to address and deal with,
18 and one of them is immigrant children, many of whom
19 who have high levels will have had them from
20 overseas. Some of them will have them from here. I'm
21 not trying to say that all of the problem is
22 overseas.

23 COUNCIL MEMBER MARTINEZ: No, no. I
24 just want to be clear on the fact that it is a
25 problem overseas, but the fact still remains that

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2 the housing stock that we are identifying in the
3 community where kids are more likely to be at risk,
4 is because they're living conditions, either you
5 have lead-based paint, or you have peeling paint, or
6 you have lead dust in those apartments.

7 Now, have the Department of Health
8 conducted a study to the sense of, for example, if
9 you have a child born in the United States, let's
10 say in my district, Washington Heights, you have a
11 child born in the United States, and a child born
12 overseas in the Dominican Republic, how many

13 households does the -- let me try to think this over
14 again.

15 Has the Department had a study that
16 looked at families where you have children who are
17 born in the United States and children who were born
18 overseas who were living in the same apartment? And
19 have you compared statistics to the lead poisoning
20 rate among those children?

21 COMMISSIONER FRIEDEN: No, we haven't
22 done a study like that.

23 What we do know is that the rate
24 among children who immigrate, even in the same
25 communities, is higher than the rate among US born

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2 children, because they're getting exposed to more
3 lead in other countries than they would be here.

4 COUNCIL MEMBER MARTINEZ: Now, what
5 kind of collaboration is the Department of Health
6 conducting with these communities in terms of
7 addressing the early intervention overseas, if any?

8 COMMISSIONER FRIEDEN: Our activities
9 to date have been in New York City, and working with
10 the communities on education, outreach,
11 presentation, working with community organizations,
12 educating people on ways to avoid lead poisoning

13 both here and abroad.

14 COUNCIL MEMBER MARTINEZ: Thank you.

15 CHAIRPERSON PROVENZANO: Council

16 Member, are you finished?

17 COUNCIL MEMBER MARTINEZ: Yes.

18 CHAIRPERSON PROVENZANO: Oh, okay.

19 I'm sorry, I'm derelict in my duty.

20 We've been joined by Councilwoman Gale Brewer, in
21 back of me we have Council Member Kendall Stewart.

22 I have a question for the

23 Commissioner of Health.

24 There was recently an article in the
25 New York Times, I'm sure you read it, "Overhead And

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2 Underfoot," and since there are environmental issues

3 involved, you know, we talk about kids coming into

4 the country, and I was wondering if you have any

5 idea of the incidence, the percentage or the

6 incidence of lead poisoning that we could be seeing

7 from these kinds of things, elevated trains,

8 highways?

9 COMMISSIONER FRIEDEN: Lead,

10 unfortunately, as I mentioned, is ubiquitous in our

11 environment as a result of decades of use of

12 lead-based paints and leaded gasoline. You find lead
13 hazards in about two-thirds of all apartments where
14 there is a lead-poisoned kid.

15 Now that doesn't necessarily mean
16 that those hazards caused that lead poisoning, but
17 certainly those hazards need to be repaired.

18 But in one-third we don't find
19 lead-based hazards, and that proportion increases as
20 children get older, that proportion increases if the
21 child is foreign-born, and over time that proportion
22 will increase as it has increased, as we improve the
23 correction of lead-based hazards in housing stock.

24 CHAIRPERSON PROVENZANO: I mean, I
25 often think those of us that are on this side of 50

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2 in this room, when we were kids we had lead-based,
3 we had lead in gasoline, we had lead in just about
4 everything that was around us. If we had been
5 tested, I'm sure all of us would have had fantastic
6 amounts of lead.

7 Next questioner, Council Member
8 Perkins.

9 COUNCIL MEMBER PERKINS: Thank you
10 very much, Madam Chair.

11 I first need to say unequivocally

12 that I appreciate the step forward that is being
13 reflected in the testimony. It is a step forward
14 that is almost a giant step by comparison to the
15 attitude that I believe was shared in prior
16 hearings, and clearly it suggests great promise for
17 coming together on behalf of the children, as long
18 as we continue to focus on what is most significant
19 about the problem.

20 And I'm sorry to say that it seems
21 somewhat diversionary, the preoccupation, on the
22 immigrant aspect of this, and contrary to some
23 extent to your testimony which wants us to focus on
24 where the real problems are, and especially since
25 you seem to dismiss that immigrant piece is not

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2 really directly related to the lead poisoning that
3 takes place in the house.

4 But be that as it may, I know that,
5 you know, as marathon runner, it's the last laps of
6 the race that are most difficult, and as much as I
7 applaud the fact that we're making progress, I know
8 that there's still some difficulties that we have to
9 overcome, but I'm optimistic that we will and look
10 forward to working with you towards that end.

11 I notice that you made some reference
12 to industry experts and medical experts in
13 fortifying your testimony, particularly, you know,
14 and who you anticipate to come in support of your
15 testimony; did you get a chance to talk to any
16 industry experts and medical experts that might have
17 testified in support of 101-A? In either case,
18 whether it's the housing industry or the medical
19 community?

20 In other words, for instance, as you
21 know there were some folks who testified in support
22 of 101-A that might have said, for instance, that
23 the social costs of lead poisoning are \$1.4 billion,
24 and I know you were here, or you know of that
25 testimony; did you get a chance to speak to folks

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2 from that perspective, to sort of understand where
3 they were coming from? And I know that there were
4 others from the housing community that supported
5 101-A who testified to the value of this from their
6 perspective, and I'm just wondering did either one
7 of you speak to the experts from the other side, as
8 well as those that may have more or less supported
9 your point of view?

10 COMMISSIONER PERINE: We certainly

11 didn't, between June and now, speak to everybody who
12 testified, but we certainly spoke to a number of
13 people, including those who supported 101-A.

14 We had extensive discussions with
15 some of the community's not-for-profit
16 organizations, actually who represented both
17 different points of view, some supported 101-A at
18 the hearing and some did not. We also probably met
19 with a large number of advocates for 101-A. We
20 didn't meet with the people on the medical side, we
21 were focused more with people on the housing and
22 community development side of the equation. Yes, we
23 did.

24 COMMISSIONER FRIEDEN: My staff meets
25 with a variety of folks in environmental health. I

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2 very carefully review any published data that's
3 relevant on this, and I'm always willing to listen
4 to data-driven arguments for how best to protect our
5 kids.

6 COUNCIL MEMBER PERKINS: So, for
7 instance, with regard to the original cost that you
8 estimated that 101-A would cost, there were experts
9 that pointed out that the social costs were at least

10 four to five times greater; did you get a chance to
11 look at that by comparison?

12 COMMISSIONER FRIEDEN: I have seen an
13 article making that claim, yes.

14 COUNCIL MEMBER PERKINS: Did you
15 dismiss the article? Do you accept the article? I
16 just want to get a sense of --

17 COMMISSIONER FRIEDEN: No. I think, as
18 I have said before, the weight of scientific
19 evidence is that even low levels of lead poisoning
20 are damaging and carry a very significant social
21 cost.

22 COUNCIL MEMBER PERKINS: Beyond the
23 costs that you originally estimated, and even more
24 modest costs presented to us by the independent
25 budget office and State Comptroller, and the City

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2 Comptroller, for that matter.

3 COMMISSIONER FRIEDEN: Cost estimates
4 are challenging, and we're not trying to give you a
5 less than straightforward answer --

6 COUNCIL MEMBER PERKINS: What cost
7 estimates? Medical cost estimates or social cost
8 estimates?

9 COMMISSIONER FRIEDEN: Let me finish

10 the sentence.

11 Cost estimates are challenging. Even
12 working out the exact cost of the statute may be
13 changed drastically by changing a few words here or
14 then either up or down.

15 Social cost estimates are much
16 harder. They rely on a large number of estimates.
17 I'm not saying I don't agree with them, I'm just
18 saying they're complicated.

19 COUNCIL MEMBER PERKINS: Thank you.

20 I want to be clear as to -- one of my
21 colleagues made some remarks about the legislation,
22 though well intended, is misguided, and I just want
23 to be clear that that's not the point of view that
24 you're sharing.

25 COMMISSIONER PERINE: No, I don't

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2 think either of us said that it was misguided. I
3 think all that we're saying is let's try to build on
4 what the law's clear objectives really are, which is
5 to ensure that the physical work gets done that will
6 help to eradicate lead paint, especially where we
7 know children are most at risk. And I think, you
8 know, and I think that we're supportive of that, and

9 I think that seems to me to be the overwhelming
10 objective of this bill as well.

11 COUNCIL MEMBER PERKINS: Thank you
12 very much.

13 Commissioner, can I ask you, you
14 indicated, in terms of the targeting, that there
15 were unnecessary costs, or costs, I'll not say
16 unnecessary, that would be incurred in those areas
17 outside of the lead belt or by comparison to the
18 more targeted; what are those costs you've come up
19 with?

20 COMMISSIONER FRIEDEN: Well, they
21 would result from several things.

22 First, at turnover you'd have to
23 remove even impact lead in doors, door frames, and
24 windows, and replace, and in peeling paint, you
25 would have to actually remove or permanently cover

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2 lead-based peeling paint, as two examples. And, so,
3 that would be required in every turnover of every
4 apartment in New York City.

5 COUNCIL MEMBER PERKINS: Do you know
6 what that is, in terms of dollars and cents? That's
7 what I was getting at.

8 COMMISSIONER FRIEDEN: My

9 understanding is that a single apartment to correct
10 is anywhere from four or five or six-thousand
11 dollars. We're talking about in New York City, I
12 don't know how many apartments turn over each year,
13 but we're talking about all apartments which
14 children under seven 2007. So that's a lot of
15 apartments.

16 COMMISSIONER PERINE: And I guess in
17 terms of costs, I mean what I would also just point
18 out was sort of my other basic idea here which is
19 that, let's try to focus the money on the work and
20 not build a big bureaucratic burden, and that to me
21 is less of a question of how much should be spent,
22 but how it should be spent.

23 So, I think, you know, as I said in
24 my testimony, things like, you know, creating a
25 central register of every apartment in New York and

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2 keeping a separate file where every piece of paper
3 goes into the file, that's just a very extensive
4 kind of thing to do that doesn't really advance I
5 think what the overall and overarching objective
6 here is, which is to compel the owners of the
7 private housing stock who have housing that is most

8 threatening to the children's lives to actually
9 invest in it in a substantive way and do work
10 properly. So, I think if we can keep a focus on
11 those objectives and not have costs kind of incur on
12 kind of like building this big bureaucracy, I think
13 we could really make the law extremely effective.

14 COUNCIL MEMBER PERKINS: I agree and
15 we're obviously interested in doing that, but when
16 you mention cost, it's important for us to
17 understand what that means in terms of dollars and
18 cents to determine how much of a significant focus
19 this should be, or how much of an obstacle this
20 really is. One of my colleagues pointed out, it may
21 be such that they won't be able to support the
22 legislation. It doesn't seem like that based on what
23 I'm hearing. Would you say it's relatively modest,
24 the diversionary focuses, whether they be
25 administrative, bureaucratic?

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2 COMMISSIONER PERINE: I don't think
3 we're in the position to say that it's modest. What
4 I can say, and what I did say in my testimony on the
5 administrative overhead is that it can be two or
6 three times the overhead cost that we see now, and
7 that, again, I'm not --

8 COUNCIL MEMBER PERKINS: What do you
9 see now as the overhead cost?

10 COMMISSIONER PERINE: What I said was
11 about I think four to five-thousand dollars in
12 overhead for -- again, I'm going by the work that we
13 do, because that's what I have more, you know,
14 knowledge of. And then in the world of, you know,
15 this proposed law, we think that the overhead on
16 work that would have to be done could increase to
17 about ten to thirteen thousand dollars a unit.

18 Again, it's not a question of should
19 three times more money be spent. I'm not trying to
20 extend that argument that way. I'm just saying if
21 more money is to be spent, let's focus it on the
22 actual work, let's not see it just go towards
23 building a big bureaucratic overhead and increasing
24 the cost in that regard, because I think we would
25 all agree that that's not really what any of us are

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2 seeking to accomplish here.

3 COUNCIL MEMBER PERKINS: Commissioner
4 Perine, you had in your testimony made reference to
5 tenants and their non-compliance, I guess you meant
6 access and the like; could you share with us --

7 COMMISSIONER PERINE: Yes, primarily
8 I'm talking about access. You know, we have done a
9 lot of work in the world of how we deploy our code
10 enforcement staff to try to keep the number of no
11 access visits, you know, to the smallest number
12 possible, right? And we do that in a number of ways.

13 For the most part, our system by
14 definition is right now complaint-driven, so tenants
15 are highly motivated. They have called us, they are
16 seeking an inspector. But in addition to that, we
17 operate our workforce 24 hours a day, seven days a
18 week. So, we do go out, particularly in emergencies,
19 on the weekends and at night and we know that we're
20 more likely to find tenants at home.

21 But access is always an issue for us,
22 I mean people are living their lives, they're going
23 to work, they're picking up their children. I mean,
24 it's not that I think most tenants are seeking to
25 bar us from entering, I'm not suggesting that. I'm

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2 saying that it is always a little complex to be able
3 to get access to people's apartments. And the more
4 that people actually have asked us to come, you
5 know, the easier it's going to be. Most tenants
6 understand that when we come, our inspection, or our

7 visits to their home is fairly, you know, not very
8 intrusive. I mean, we're looking, they're showing us
9 what they want to show us, our inspector is looking
10 at that, writing violations, they're writing line of
11 sight violations, but they're not getting into what
12 would be a much more extensive involvement if they
13 would have to be involved in here.

14 I think I also talked a little bit
15 about it in relation to, you know, the deadline at
16 the end, when tenants would really have to have
17 their apartment subject, if they're living in an
18 apartment that had not gone through this turnover
19 process there would be a significant amount of work
20 that would have to be done in those apartments.

21 We do already see now in the world of
22 work that we do, difficulty for our inspectors
23 getting back in, particularly after the work is
24 finished, because if we're going back in to inspect
25 in a certain number of cases to see if the work was

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2 done, well, for the tenant the problem was fixed,
3 and rightly so, that even diminishes our ability to
4 get back in.

5 So, access is always a problem, it's

6 always something we're concerned about. So we're
7 always trying to look for ways to decrease the times
8 that an inspector essentially has not used his time
9 effectively, which means he ends up knocking on that
10 door that doesn't open.

11 COUNCIL MEMBER PERKINS: Thank you
12 very much. I just want to make sure we're not --
13 sometimes access issues become excuses for shifting
14 blame and responsibility, and, so, I just want to
15 make sure that we're not alluding to that sort of a
16 scape hatch for those who may not be as diligent as
17 they should be in terms of their responsibility to
18 actually arrange for appropriate access.

19 So, it sounds as if you have some
20 sensitivity to the other people's needs and would be
21 interested in making sure that due diligence is done
22 at least on your part.

23 COMMISSIONER PERINE: Yes. And I think
24 if you look at our code system now, I mean we
25 attempt for serious violations, we make three trips,

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2 we follow up with a phone call and ultimately a
3 letter. That's a lot of potential contact that we
4 are trying to make, and I'm not going to say that --
5 I mean, there are instances even after we do all

6 that, we still can't get there. You know, we still
7 can't get through that front door. So, it does
8 happen. It's not a question of blame, it's just a
9 part of the reality when you were trying to cross
10 that threshold of somebody's home.

11 COUNCIL MEMBER PERKINS: Thank you
12 very much. I'll get back. I'll ask more questions
13 later. Thank you.

14 CHAIRPERSON PROVENZANO: Thank you.
15 Council Member Stewart.

16 COUNCIL MEMBER STEWART: Thank you,
17 Madam Chair.

18 Commissioner, earlier you made a
19 statement and I wasn't too clear about it. Did you
20 say 75 percent of the cases that you tested are not
21 having lead?

22 COMMISSIONER PERINE: Yes. And I want
23 to make sure people don't overapply the statistic to
24 a broader range. We look at about -- for every
25 violation, that a lead violation now, that an owner

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2 does not do what he's supposed to do, we go out and
3 we do the work. The City of New York is part of our
4 regular emergency repair program. We have a special

5 lead subset of that.

6 So for that subset of instances, the
7 owner has not done what they're supposed to do, and
8 we've gone out, it doesn't represent a sample of the
9 entire housing stock. I don't want to infer too much
10 statistical omnipotence or something over this, but
11 of the ones that we go out and test, three-quarters
12 of the time it's not lead.

13 COUNCIL MEMBER STEWART: And those,
14 the correction that you have made, who did that
15 correction? You had special people trained to do
16 that, to make that correction?

17 COMMISSIONER PERINE: To do the test,
18 yes. We have somebody --

19 COUNCIL MEMBER STEWART: Not the
20 testing, I'm talking about the correction. You said
21 that 75 percent did not have it, but you had those
22 violations corrected.

23 COMMISSIONER PERINE: Yes, that's
24 right.

25 COUNCIL MEMBER STEWART: Who did that

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2 correction? Is it people that were perfectly trained
3 to deal with lead, or you had workmen, contractors
4 that you may have subcontracted the job to go out

5 and do that?

6 COMMISSIONER PERINE: In about 25
7 percent of the cases where we found lead and had to
8 do the work, we used EPA certified workers.

9 COUNCIL MEMBER STEWART: So, in other
10 words, you did do the XRF tests before you did the
11 correction?

12 COMMISSIONER PERINE: Yes, that's
13 right. And we were doing that to make sure that we
14 weren't expending the scarce resources to make these
15 kinds of emergency repairs on repairs that in fact
16 were not lead paint.

17 COUNCIL MEMBER STEWART: All right.
18 This bill is basically specific for pre-1960
19 buildings. Do you have any stats as to how many,
20 where these buildings are, and how many violations,
21 you know, to compare what you have done, the
22 buildings that are pre-1960 and post 1960?

23 COMMISSIONER PERINE: You know, I'm
24 not sure I'm exactly following your question.

25 When we go out and there is a

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2 violation and we have to go out and do the work, we
3 always start, we start with the presumption that

4 there is lead, and then when we have to do the work
5 we test.

6 I mean, the building might be built
7 after 1960, and it's un -- you know, the paint was
8 banned in 1960; is it possible that you can find a
9 building that's built after 1960 with lead paint?
10 It's possible. So we don't actually do the analysis
11 that way, we actually just go out when we have to do
12 the repair and we test and if there's lead we make
13 the repair, and if there isn't, we don't.

14 We obviously know that the vast
15 majority of lead paint exists today inside the part
16 of the housing stock in the City of New York that
17 was built before 1960 and a significant amount of
18 our housing stock was built before 1960. In fact,
19 the majority of our housing stock was built before
20 World War II, so we know that that represents the
21 majority in the world of multiple dwellings.

22 COUNCIL MEMBER STEWART: My problem
23 is, if the building was built 15 years ago, would
24 you go and do that XRF test on that building also?
25 Or you just don't correct it?

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2 COMMISSIONER PERINE: If there's a
3 violation and there's a child in the apartment and

4 we get a call about peeling paint, you know, yes.

5 Yes, under the prior law if it was
6 requested we would do it, if we got a complaint
7 about it, yes.

8 COUNCIL MEMBER STEWART: Well, then
9 why is it that we are not concentrating our efforts
10 on those buildings that are pre-1960 and also those
11 buildings that we have incidents of lead poisoning.
12 We're not concentrating our resources in these
13 areas, why?

14 COMMISSIONER PERINE: Well, again, I
15 think we are. I think that we have been maintaining,
16 obviously, a tenant-based complaint system, so if a
17 tenant calls and raises these issues, you know, we
18 will send an inspector out to look and see what the
19 situation is.

20 You know, the prior law, Local Law
21 38, basically started out with a presumption that
22 anything built before 1960 was going to have lead,
23 we didn't need to test the place of violation. But I
24 think as I think you're maintaining part of your
25 complaint system, has always had to be maintained as

3 complaint, and we would always want to be in a
4 position to be able to go out and respond.

5 COUNCIL MEMBER STEWART: The buildings
6 that you may have found you have a violation, the
7 violation with just visual inspection of peeling
8 paint, is that the same as if you have done XRF
9 tests also?

10 Because to me, I get the impression
11 that as long as you see peeling paint, you have to
12 go through a whole barrage of corrections without
13 knowing that lead is there. So, I just want to get a
14 clear picture of your definition for the violation?

15 COMMISSIONER PERINE: Well, again, are
16 we talking about a definition under this new
17 proposed law, or are we talking about in the past?

18 COUNCIL MEMBER STEWART: In the past.
19 What we did in the past.

20 COMMISSIONER PERINE: In the past,
21 again, you know, under Local Law 38, if there was a
22 presumption that if there was peeling paint and a
23 child under six, that was enough to write a lead
24 violation.

25 COUNCIL MEMBER STEWART: And the

3 COMMISSIONER PERINE: And the current
4 bill would be on children under seven, and --

5 MR. SCHULTZ: Under the current bill
6 it's a little complicated. Under the revised Intro.
7 101-A there is a presumption that pre-1960 housing,
8 that peeling paint is lead paint in a multiple
9 dwelling where there is a child under seven;
10 however, it also requires the Department to test,
11 before it writes any such a violation. So, in that
12 context the presumption applies really more to
13 private owners, than it does to the code enforcement
14 process, as envisioned under the current draft.

15 COUNCIL MEMBER STEWART: So you're
16 saying that the current bill now, the building must
17 be a pre-1960, and also you must test for that
18 before you can write that violation; is that the
19 case?

20 MR. SCHULTZ: Yes, that's the case.
21 And if I recall correctly, there is also a provision
22 in the current draft about some buildings that were
23 1960 to 1978, and I think where there was a lead
24 poisoned child, but I'm not 100 percent sure on
25 that.

2 COUNCIL MEMBER STEWART: Let me get it
3 straight. You're saying that there are criterias
4 that have to be met before a violation can be
5 written? Not just a visual inspection and you write
6 a violation up, it must have the pre-1960, must have
7 a child in the building, and it must have peeling
8 paint or something of that nature before you can
9 write that he must be tested also.

10 MR. SCHULTZ: Well, what the current
11 draft says is we must test, okay? Literally. And
12 then it says if for any reason the Department is
13 unable to conduct the test, then it may rely on the
14 presumption.

15 COUNCIL MEMBER STEWART: And who pays
16 for that test?

17 MR. SCHULTZ: Well, as currently set
18 up we would have to do it as part of our inspection
19 and we have no prior precedent for having owners pay
20 for that kind of inspection.

21 COMMISSIONER PERINE: And just because
22 I don't want people to get overly confused here,
23 both with our prior law, Local Law 38, and under
24 this proposed law, there are still, you know, two
25 different points of entry. So, if what we're talking

2 about is not when you have a situation where a child
3 is actually lead poisoned, and that there's a
4 different protocol that apply both in our prior law,
5 Local Law 38, and there's a different protocol in
6 the proposed law as well. So, what we just described
7 is when you haven't found a child that's lead
8 poisoned, you have found a physical condition which
9 may qualify as a lead violation.

10 COUNCIL MEMBER STEWART: I notice that
11 we didn't talk much about prevention in your
12 testimony. I get the feeling that we all agree that
13 lead poisoning is bad for our kids. We all agree
14 that we want to prevent our kids from getting lead
15 poisoned, and we know that when a child is poisoned,
16 you can't reverse that poison, as far as lead is
17 concerned.

18 Why is it that we are not talking
19 about the inspection before an apartment is rented?
20 Doing all that before the apartment is rented to
21 have a child under the age of seven in that
22 apartment?

23 COMMISSIONER PERINE: Well, you know,
24 I think you've drafted a bill that basically
25 provides that on turnover work would be done. So,

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2 when one tenant moves out before another tenant
3 could move in, there is a significant protocol that
4 is required in this proposed bill.

5 COUNCIL MEMBER STEWART: Thank you,
6 Madam Chair.

7 CHAIRPERSON PROVENZANO: Thank you.

8 We have another quick question from
9 Council Member Perkins.

10 COUNCIL MEMBER PERKINS: I just want
11 to ask either the Commissioner or, either
12 Commissioner, that is, the Independent Budget
13 Office, the City Comptroller, the State Comptroller,
14 upon review of this bill, came up with estimates
15 that were significantly different than your own
16 estimates, and this bill seems to be even more
17 modest, this revised version, this seems to be even
18 more modest.

19 Have you had a chance to look at the
20 report by the independent budget office and the
21 Comptroller to compare their point of view with
22 yours?

23 MR. SCHULTZ: It's our understanding
24 that the Independent Budget Office is going to
25 testify today with regard to the revised Intro

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2 101-A. We have not seen any report from them.

3 COUNCIL MEMBER PERKINS: I'm talking
4 about their original estimates.

5 MR. SCHULTZ: Their original
6 estimates, or their original revised estimates?

7 COUNCIL MEMBER PERKINS: For what are
8 you familiar with? Whatever one you're familiar
9 with.

10 MR. SCHULTZ: Well, I'm familiar with
11 both of them.

12 COUNCIL MEMBER PERKINS: Okay.

13 MR. SCHULTZ: And both of them,
14 basically they indicate costs which we didn't
15 necessarily agree with. I think also if you look at
16 both of those reports closely, they will say that
17 they did not cost out all of the elements of the
18 bill. So, they had costs that they felt that they
19 couldn't identify.

20 With regard to the State
21 Comptroller's Office and the City Comptroller's
22 Office, I have not seen any such estimate, nor am I
23 aware that they have talked to us about what the
24 operational constraints would be necessary in order
25 to craft a program.

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2 COUNCIL MEMBER PERKINS: Have you had
3 conversations with them at all?

4 MR. SCHULTZ: No, they never contacted
5 us, as far as I know.

6 COUNCIL MEMBER PERKINS: Are you aware
7 of they did announce a point of view about the
8 costs?

9 MR. SCHULTZ: I think I'm aware that
10 they announced a point of view, I did not see any
11 back-up analysis that supported any of it.

12 COUNCIL MEMBER PERKINS: No one else
13 has seen any. And by comparison to your former
14 costs, how do you compare the present costs of the
15 proposed that's before you?

16 COMMISSIONER PERINE: Again, I think
17 we stated before, you know, we haven't really had a
18 chance to complete our cost estimates on the revised
19 bill.

20 COMMISSIONER FRIEDEN: But I think
21 it's important to make clear that the IBO
22 specifically doesn't estimate cost to non-City
23 entities, let alone that there is perhaps a
24 difference of methodology or opinion on the cost of
25 the City. They don't estimate liability costs, they

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2 don't estimate costs to others, and I think that's
3 relevant to keep in mind.

4 COUNCIL MEMBER PERKINS: It is
5 relevant, but in terms of our budgetary
6 responsibility, it may not be something that we can
7 manage per se; what is your thinking with regard to
8 the City's costs?

9 COMMISSIONER PERINE: Again, I just
10 don't think we know that today. But I think, I think
11 the key thing --

12 COUNCIL MEMBER PERKINS: Do you know
13 it in comparison to what you formerly thought?

14 COMMISSIONER PERINE: I don't
15 actually, because, you know, some things kind of got
16 a little less complicated, some things got a little
17 more complicated, a couple of things were really new
18 for us we hadn't looked at before at all, we hadn't
19 cost them out at all. So, we really just haven't had
20 a chance to go through all that process.

21 I think the key thing, though,
22 because I don't actually want to make cost the whole
23 focus of the discussion here, and I think we've
24 tried not to do that, because I think the key thing
25 is, let's just talk about, we would like to just

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2 express to you the things where we think, sure,
3 there are still going to be things that are going to
4 cost more, but let's have it focus on things that
5 are going to really be effective, we can -- you
6 know, there will be time to sort of work through the
7 cost implications of what a new bill is going to
8 mean.

9 COUNCIL MEMBER PERKINS: Well, I only
10 raise this because the strong emphasis before on the
11 prohibitive nature of the former, of the costs that
12 you presented to us before.

13 In other words, it was too costly,
14 and now I just get a better sense that that is not
15 the issue and I just want to make sure for the
16 record that I'm clear about that, that we're not
17 talking like we did before, that the costs were
18 prohibited.

19 COMMISSIONER PERINE: Again, I think
20 we're not interested in having costs that are, you
21 know, going to really spend a lot of City money on
22 something that isn't effective. So, that's what
23 we're trying to focus on here, say, you know, let's
24 not build a big bureaucracy and spend all their
25 money on that. Let's, you know, probably spend less

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2 money than that, but let's spend it actually on
3 fixing, you know, the lead violations that we know
4 are a problem.

5 COUNCIL MEMBER PERKINS: Thank you
6 very much, Commissioner.

7 CHAIRPERSON PROVENZANO: Thank you,
8 Commissioners, once again. We appreciate your being
9 here.

10 COMMISSIONER FRIEDEN: I just would
11 like to make one thing clear, because there's a lot
12 of discussion about lead hazards associated,
13 non-lead hazard associated cases and the issue of a
14 possible target in the future, and I did want to
15 present to the Council an example from another field
16 and why we discussed the issue of immigrants without
17 trying to target or divert any attention, and what
18 that data looks like for TB. So, I was going to show
19 you really two figures briefly.

20 The first, just to give you a sense
21 of how this has played out in another area, which is
22 the field of tuberculosis control. If you look at
23 this, this is US-born, versus non-US-born cases, and
24 if you look at 1992, 82 percent of our cases were in
25 the US born, and as we drastically reduced the

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2 number of US-born cases, the number of foreign-born
3 cases stayed about the same, went up a little, went
4 down a little, and now we're at a situation where
5 two-thirds of our cases of tuberculosis are among
6 the foreign-born, up from 18 percent in '92.

7 So they're two very different
8 populations that need to be addressed differently.
9 If you look at this in terms of lead, not in terms
10 of country of birth, but in terms of whether there's
11 a lead hazard in the home or not, which is
12 identified, you see two very different populations,
13 the upper line, the red line is the reduction in
14 environmental intervention blood lead level cases
15 among children where we find a hazard. And you see a
16 very drastic reduction in that, as we've done a
17 better job protecting children in the home. You see
18 a much lower rate of decline among the children with
19 the same levels of lead poisoning but who don't have
20 lead hazards in their home. That lower level, that
21 lower graph, and this is all children under six,
22 that is made up, that lower line is made up of a
23 combination of kids who are being exposed out of the
24 US and kids who are being exposed out of their home.
25 And as time goes by, what we will see is that that

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2 portion of the group accounts for a larger
3 percentage if you look, I haven't worked it out but
4 if you look back to '96, it was only about a
5 quarter, if you look back to 2002 it was nearly a
6 half. So what you're seeing is that a larger
7 proportion of our cases is a result of non-home
8 exposures, and we hope that as the law gets passed
9 we have a new law, will continue to protect kids
10 from exposures in homes, it's going to become more
11 challenging to deal with that other part of the
12 population that's being exposed either out of the
13 country, or out of their own homes.

14 And I just want to make that point
15 because it's relevant for the statute in general and
16 in specifically for the target, because we won't be
17 able to reduce certain forms in as rapid a fashion
18 as we are able to reduce other causes. And I have
19 copies of these two for the Council.

20 CHAIRPERSON PROVENZANO: Good, if you
21 have copies that you can distribute. I have a
22 question.

23 Kids that come into the United States
24 from, specifically from these countries that were
25 mentioned, are they tested when they come into this

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2 country, or are they tested when they leave their
3 country?

4 COMMISSIONER FRIEDEN: It's not a part
5 of the immigration process. And with regard to
6 testing --

7 CHAIRPERSON PROVENZANO: Shouldn't it
8 be?

9 COMMISSIONER FRIEDEN: I don't think
10 so. Because the treatment would be to remove from
11 exposure and they're coming here, they're getting
12 removed from the high level of exposure there.

13 CHAIRPERSON PROVENZANO: Okay.

14 COMMISSIONER FRIEDEN: But I think
15 that the issue of testing is also very important,
16 because what we need to make sure, that we're
17 focusing our attention, and I wanted to give you an
18 example: The lowest level of testing in New York
19 City is in the upper east side, only one in three
20 kids is being tested at age one for lead poison on
21 the upper east side.

22 The highest level of testing in New
23 York City is in East Harlem, and Washington Heights,
24 East New York and East Flatbush are also higher than
25 the City average. I'm much more concerned about, for

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2 example, Bed Stuy, which has 58 percent a rate of
3 testing than I am about the upper east side, which
4 has a 32 percent level of testing. The risk is
5 enormously higher in Bed Stuy. So, I'm much more
6 worried, even though the number may look better, I'm
7 much more worried about that number than I am about
8 the lower number in the low-risk neighborhoods.

9 So, I think that when you're talking
10 about targets and patterns for the future, you have
11 to make sure that you're focused on where the need
12 is highest, where you're going to do the most good
13 and where you can protect the most kids.

14 CHAIRPERSON PROVENZANO: Thank you.

15 COUNCIL MEMBER PERKINS: I just want
16 to get some clarification, because since you brought
17 these charts up and this immigrant issue again, we
18 know that approximately, from your prior testimony,
19 about 4,000 kids are poisoned; what percentage of
20 those are foreign born?

21 COMMISSIONER FRIEDEN: We don't have
22 that data.

23 What we do have is for the kids with
24 the higher levels, the early intervention blood lead

25 levels, it's about a quarter.

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2 COUNCIL MEMBER PERKINS: A quarter of
3 those, so that's 1,000?

4 COMMISSIONER FRIEDEN: No, we don't
5 know. The portion of the 4,000 we don't know.

6 COUNCIL MEMBER PERKINS: How many are
7 at the higher level, in general?

8 COMMISSIONER FRIEDEN: About 600,
9 about 628.

10 COUNCIL MEMBER PERKINS: So 25 percent
11 of the most seriously poisoned are immigrants?

12 COMMISSIONER FRIEDEN: That's correct.

13 COUNCIL MEMBER PERKINS: And how do we
14 go about finding out of the 4,000, how many are
15 immigrants? We know 25 percent of 600 is what - 125.
16 So, 125 of the 600, would you say it's the same
17 percentage in general?

18 COMMISSIONER FRIEDEN: I don't know.
19 It could be higher, it could be lower.

20 COUNCIL MEMBER PERKINS: May I
21 recommend that you find out? Only because you have
22 this focus on this immigrant issue and these
23 alternative places the immigrants are being
24 poisoned, which I think we're all concerned about,

25 but it would seem to me that we should also be

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2 concerned about, you know, how much of the immigrant
3 population is actually suffering in terms of this
4 4,000 a year. Not just those that are most severely
5 suffering, 25 percent is still a lot, and it just
6 seems sort of, you have such a focus that you would
7 want to find that out? Don't you want to keep track
8 of that as well?

9 COMMISSIONER FRIEDEN: We didn't have
10 the information even for the higher levels until
11 this past year, so we've collecting it and improving
12 the way we look at that.

13 COUNCIL MEMBER PERKINS: So you'll try
14 to get this number as well?

15 COMMISSIONER FRIEDEN: Not so easy.
16 We'll make an attempt to see what we can find out.

17 COUNCIL MEMBER PERKINS: All right,
18 thank you.

19 CHAIRPERSON PROVENZANO: I'd just like
20 to comment on what you said, Bill.

21 I have a focus on the immigrant
22 population, too, and I've been hushed.

23 COUNCIL MEMBER PERKINS: You?

24 CHAIRPERSON PROVENZANO: Well, hushed.
25 And I think it's important, because,

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2 you know, once these kids are here they're our
3 responsibility, and we have to be concerned about
4 them as much as any of the other kids. So, I would
5 also appreciate if you could --

6 COUNCIL MEMBER PERKINS: No, we all
7 share equally the concern about the immigrant
8 children in terms of those that are coming and being
9 poisoned. I just find sometime that when we're
10 focusing on lead-based paint that is poisoning
11 children in apartments, we spend so much time
12 sometimes talking about those that are being
13 poisoned for other reasons, and we need to develop
14 legislation to address it, and --

15 CHAIRPERSON PROVENZANO: Absolutely. I
16 think we should be focusing on lead poisoned kids.

17 COUNCIL MEMBER PERKINS: Yes, we
18 should.

19 CHAIRPERSON PROVENZANO: At that we
20 will excuse you, and thank you again.

21 COUNCIL MEMBER PERKINS: Thank you
22 very much.

23 CHAIRPERSON PROVENZANO: With that we

24 have our next testifier, former Council Member
25 Stanley Michels. Stanley is the father of the lead

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2 paint legislation. Welcome.

3 MR. MICHELS: Thank you, Madam Chair.

4 Madam Chair, members of the City
5 Council, I am very happy to be here today,
6 testifying on behalf of Intro. 101-A, especially
7 when I look down at the list of sponsors and see for
8 the first time since 1982, the Speaker's title
9 appears on the lead legislation, and legislation
10 that I worked on and strongly support.

11 I'm pleased that at long last we have
12 a leader of the New York City Council, namely
13 Gifford Miller, who recognizes the vital importance
14 of this legislation to the health of the children of
15 our City.

16 It is a sad commentary that some
17 people in this City rejoice that only 4,000 children
18 were found with lead poisoning in 2002, despite the
19 fact that we are still dealing with the consequences
20 of a preventable disease more than 40 years after
21 the use of lead-based paint was banned in apartments
22 in New York City.

23 fact that Intro 101-A very soon will become local
24 law. There's at least 38 sponsors voting for it. It
25 would be veto-proofed. I hope the Mayor does the

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2 right thing and signs the bill into law, but whether
3 or not he does this, I urge the Council to make sure
4 that Intro. 101-A finally does become the law of the
5 City.

6 Of course, as we learned with Local
7 Law 1, as I learned with Local Law 1, passing a law
8 is not enough. We must make sure that the relevant
9 City agencies, in this case the Department of
10 Housing Preservation and Development and the
11 Department of Health and Mental Hygiene promulgates
12 strong rules to implement the law. In that regard, I
13 would like to make one point for the record early
14 on. I believe that HPD rules must make crystal clear
15 that although under this new law the inspectors are
16 supposed to use XRF machines when conducting lead
17 inspections, inspections should not be hindered in
18 any way because of the unavailability of these
19 machines.

20 I am pleased that the rebuttable
21 presumption of the presence of lead-based paint in

22 pre-1960 residential buildings, which was the heart
23 of Local Law 1, is being retained, and that the
24 noxious exemption, and I repeat, noxious exemption
25 in Local Law 38 solely for liability purposes has

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2 been jettisoned. The idea of the presumption, by the
3 way, originally came from the Rent Stabilization
4 Association, the landlords of this City, which
5 believed that back then, I'm talking about 1982,
6 they believed it would be too cumbersome to test
7 every apartment, that's why they instituted the
8 presumption, and they're responsible for it.

9 It is, I believe, safe to assume that
10 there is lead-based paint in almost any pre-1960
11 building in the City that has not undergone
12 substantial rehabilitation.

13 In the event that there aren't enough
14 XRF machines on any particular occasion, the
15 inspectors must not be deterred from carrying out
16 one of the most significant new provisions of the
17 bill, proactive inspections of other apartments with
18 young children, when HPD finds a lead violation
19 elsewhere in the building, or when the Department of
20 Health finds a lead poisoned child who lives there.

21 I also want to point out another

22 advance over Local Law 38 - the reformulation of the
23 annual notice provision so that it mirrors the
24 window guard law. The burden for determining the
25 presence of a young child in the apartment is

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2 shifted properly to the landlord, where it belongs.
3 If the tenant allegedly fails to respond, and I
4 would hope that every tenant in this City with
5 children under seven would respond, the landlord now
6 will be obligated to check the apartment for young
7 children at reasonable times and upon reasonable
8 notice.

9 Among the recent changes there is a
10 new provision requiring the Health Department to be
11 notified if the tenant fails to respond. But here
12 again, we must make sure that the Health Department
13 rules spell out how that agency will follow up to
14 make sure the necessary information is secured.

15 Even more important is the fact that
16 the bill acknowledges what all the experts in the
17 field have been saying for years, that the major
18 culprit in childhood lead poisoning is
19 lead-contaminated dust. You have heard in the past
20 that the lead is flying into the apartments through

21 the windows or that it is coming from elsewhere,
22 everywhere but the paint on the walls. Fortunately,
23 this bill is based on reality. For the first time,
24 the City will include lead-contaminated dust as part
25 of the definition for hazards resulting from

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2 lead-based paint.

3 There are many other advances in this
4 bill worth noting, including dust wipe tests must be
5 done by independent third party, not by the
6 landlord, by an independent third party, and the
7 results must be provided to the tenant, as well as
8 the Department of Health.

9 Any large-scale lead hazard removal
10 work or any work done pursuant to a violation must
11 be performed by either EPA, not HUD, EPA-certified
12 workers.

13 And the City will distribute a
14 brochure to doctors on the need to screen for lead
15 poisoning and will distribute a similar brochure,
16 hopefully in multiple languages, to parents with
17 birth certificates.

18 These are among the very positive
19 changes contained in this bill. As I said in your
20 last hearing on this bill on June 24th, "Today the

21 Council has in its hands the fate and future of
22 thousands of New York City children. You must make
23 up for the mistake" the previous Council made when
24 it passed Local Law 38 in 1999.

25 And as I also said back in June,

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2 unlike Local Law 38, Intro 101 has been drafted to
3 protect children, not landlords. There will still be
4 those who will claim the bill would lead to all
5 sorts of doom and gloom for the housing industry. In
6 response, I would also like to repeat something else
7 I said in June, "those owners who are opposing 101-A
8 in order to protect themselves from lawsuits should
9 realize that their best protection would be to keep
10 their property in good repair so there won't be any
11 lead-poisoned children to sue them."

12 Members of the Council, you have an
13 opportunity now to take a strong stand on behalf of
14 the children of this City. This bill is a solid
15 piece of legislation, a wonderful collaboration
16 between advocates and Council, and in fact has been
17 improved by Speaker Miller in many ways. The time to
18 act is long past due. By voting for Intro 101-A, you
19 will be able to do what the last Council should have

20 done, I commend you for the action and I know you
21 will take that action soon. Thank you.

22 Thank you, Madam Chair.

23 CHAIRPERSON PROVENZANO: Thank you,
24 Stanley.

25 MR. MICHELS: Is there any questions?

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2 I'm glad I answered all the
3 questions.

4 CHAIRPERSON PROVENZANO: Council
5 Member Stewart.

6 MR. MICHELS: Yes, Mr. Stewart.

7 COUNCIL MEMBER STEWART: Thank you,
8 Madam Chair.

9 I just want to get some clarity. Are
10 you agreeing that this bill is for violation of
11 101-A, you must have a pre -- it must be a pre-1960
12 building, or it must also have peeling paint or
13 dust, and/or you must have a child in it under the
14 age of seven?

15 MR. MICHELS: Get a C violation,
16 ultra-hazardous violation, it must be a pre-1960
17 building with a child of under seven years of age
18 living in the apartment, or a building subsequent to
19 1960 where they actually found a lead poisoned child

20 and actually found lead paint.

21 COUNCIL MEMBER STEWART: State it
22 again, because I just want to make it clear.

23 MR. MICHELS: For a C violation.

24 COUNCIL MEMBER STEWART: Right.

25 MR. MICHELS: For a C violation, in

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2 which you're talking about, is a lead paint
3 violation.

4 COUNCIL MEMBER STEWART: That means
5 they must have tested it, you're saying?

6 MR. MICHELS: Only buildings -- well,
7 they could test it either way, but if it's a
8 pre-1960 building, and there's a child under seven
9 years of age, six-year-old child --

10 COUNCIL MEMBER STEWART: Right.

11 MR. MICHELS: And there's peeling
12 paint, and they have not tested it, it is a
13 presumption that it is leaded paint and that's a C
14 violation.

15 If they come up with an XRF machine
16 and find lead there's no longer a presumption
17 because we know it's leaded paint, but if they come
18 up and there's no leaded paint, then it's not a C

19 violation. But that pertains to buildings built
20 before 1960. Buildings built subsequent to 1960,
21 they must actually find leaded paint for a C
22 violation.

23 COUNCIL MEMBER STEWART: Right.

24 MR. MICHELS: Otherwise it's a paint
25 violation.

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2 COUNCIL MEMBER STEWART: But at
3 present it's not tested and you can get your C
4 violation without a test?

5 MR. MICHELS: Not subsequent to 1960.
6 In order to get a C violation it has to be built
7 prior to 1960.

8 COUNCIL MEMBER STEWART: If the
9 building was built after --

10 MR. MICHELS: Prior to, before 1960.

11 COUNCIL MEMBER STEWART: If it was
12 built before 1960.

13 MR. MICHELS: Right.

14 COUNCIL MEMBER STEWART: They can make
15 the presumption that it's lead.

16 MR. MICHELS: That's right. And that's
17 Local Law 1 which I wrote.

18 COUNCIL MEMBER STEWART: Right. The

19 other question I ask now is that if there's no
20 children in the building, it's still considered a C
21 violation?

22 MR. MICHELS: No, it's not, unless you
23 can show the children -- they may not be living
24 there, but if they spent a substantial amount of
25 time there, or it's used for a day care and there

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2 are a lot of children around there, then it would
3 be. But otherwise it's not a C violation, if they're
4 not living there, or a child over seven years of age
5 or older lives in that apartment it's not a C
6 violation. It has to be a child under seven years of
7 age.

8 COUNCIL MEMBER STEWART: It has to be
9 a child under seven years of age.

10 MR. MICHELS: Right, and the building
11 built prior to 1960, and there's a presumption that
12 it's leaded paint and you get a C violation.

13 COUNCIL MEMBER STEWART: All right,
14 thank you.

15 MR. MICHELS: Okay, anything else?

16 CHAIRPERSON PROVENZANO: Thank you.

17 MR. MICHELS: Thank you.

18 CHAIRPERSON PROVENZANO: Council
19 Member Oddo.
20 MR. MICHELS: Jimmy, it's good to see
21 you.
22 COUNCIL MEMBER ODDO: Stan, I just
23 want to say it's good to see you.
24 MR. MICHELS: Always good to see you.
25 COUNCIL MEMBER ODDO: You were a great

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2 colleague, and you were a friend to my home Borough
3 of Staten Island.
4 MR. MICHELS: And we still have Fresh
5 Kills closed, right?
6 COUNCIL MEMBER ODDO: Yes, thank you
7 for that.
8 Stan, let me ask you a question on
9 one of the points that I raised earlier, because the
10 Commissioners didn't seem to want to address the
11 issue.
12 Do you think it's a genuine issue the
13 point raised by some of the property owners that
14 there is an inability, if this bill passes that
15 there will be an inability to get insurance on the
16 buildings? And what do you see? Is that a genuine
17 issue, and what do you see happening as a result of

18 that?

19 MR. MICHELS: Well, first of all, I
20 think they should have insurance.

21 COUNCIL MEMBER ODDO: Well, what
22 happens if they can't? What happens if insurers say
23 we're not going to insure?

24 MR. MICHELS: Then maybe we should
25 look for state legislation and provide for

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2 insurance. But there is insurance right now and they
3 are getting insurance by the way.

4 COUNCIL MEMBER ODDO: I think you're
5 going to have some property owners testify that they
6 can't get insurance for lead.

7 MR. MICHELS: Then maybe they should
8 use that money they weren't paying usually for
9 insurance to clean up the apartment so there's no
10 lead paint so they don't get sued. The only time
11 they need the insurance is when they get sued. So if
12 they don't have lead poisoned children, they don't
13 have to worry about these things.

14 COUNCIL MEMBER ODDO: I don't know if
15 it's as simple as that, Stanley, and I know you know
16 it's not as simple as that.

17 MR. MICHELS: Well, it is as simple as
18 that. What we're trying to do is prevent children
19 from being lead poisoned.

20 COUNCIL MEMBER ODDO: And --

21 MR. MICHELS: It's a preventable
22 disease. And if landlords clean up their buildings,
23 do what's right, make sure that the paint is not
24 chipping, is not peeling, then you won't have lead
25 poisoned children.

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2 COUNCIL MEMBER ODDO: Stanley, no one
3 in this room is against that end.

4 MR. MICHELS: I know.

5 COUNCIL MEMBER ODDO: It's the means.
6 And my question to you is the same question I
7 started out with Dr. Frieden, do you believe that
8 this bill addresses as best as possible all of our
9 resources on the lead belt, or do you think it goes
10 beyond?

11 MR. MICHELS: I'm always shocked at
12 the fact, when we heard about the SARS, when there
13 were four or five cases of SARS, everyone went
14 crazy. We have 4,000 kids with lead poisoning
15 continuing. We have to use all means possible to rid
16 this scourge. It's a preventable disease. It is in

17 the apartments, leaded paint in the apartment, and
18 you can rid it, rid yourself of it.

19 COUNCIL MEMBER ODDO: Stanley, no one
20 is saying that, but that's not the point.

21 MR. MICHELS: If I have to choose
22 between insurance and protecting children, I go for
23 the protecting children.

24 COUNCIL MEMBER ODDO: No, I just want
25 someone to recognize that we don't do this in a

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2 vacuum.

3 MR. MICHELS: We're not doing it in a
4 vacuum.

5 COUNCIL MEMBER ODDO: And I want
6 somebody to recognize that for every dollar we spend
7 outside the area needed is a dollar that we lose for
8 resources somewhere else. We're going to come back
9 as a Council, we're going to have a budget gap next
10 year, and all the services that all my colleagues
11 like, and we're going to be told, well you're going
12 to have to come up with 700 or 500 million dollars
13 in cuts, it doesn't happen in a vacuum. And I think
14 that we should all be working to find a bill that is
15 as narrowly tailored to the area that needs the help

16 so that we don't spend millions of dollars in areas
17 outside the lead belt, and those are millions of
18 dollars that we can't provide in services across the
19 Board.

20 MR. MICHELS: Well, first of all, we
21 know the areas where there are problems. Those
22 resources can be concentrated in those areas.

23 COUNCIL MEMBER ODDO: All right.

24 MR. MICHELS: And my colleague, my
25 former colleague, Bill Perkins said, you also got to

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2 figure in the social and medical costs for treating
3 these children, and it's huge. It's huge, because
4 it's much greater than the cost of administrating
5 this law.

6 And most of the money that should be
7 spent should be spent, and it doesn't have to be a
8 lot of money, spent by landlords doing prevention
9 and preventing the peeling of paint and preventing
10 the paint from being developed into lead dust.

11 COUNCIL MEMBER ODDO: We disagree on
12 some parts, Stanley, but it's still wonderful to see
13 you.

14 MR. MICHELS: Wonderful to see you
15 too.

16 COUNCIL MEMBER ODDO: Welcome back
17 home.

18 MR. MICHELS: And I'm sure if you
19 listen carefully to Bill Perkins and myself --

20 COUNCIL MEMBER ODDO: I don't know if
21 that's likely to happen, but we appreciate the
22 sentiment anyway.

23 MR. MICHELS: I know you have a good
24 heart and I know you care for children. Thank you.

25 COUNCIL MEMBER PERKINS: Let me make a

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2 quick --

3 CHAIRPERSON PROVENZANO: Thank you.

4 COUNCIL MEMBER PERKINS: I just wanted
5 to, for the record, once again acknowledge my
6 appreciation, and I would dare say all of us that
7 are in the Council and in the City, appreciation for
8 your valiant, steadfast efforts as a member of the
9 City Council and since then, to make sure that this
10 bill was passed that would enable the City to be on
11 the side of children and their health and to develop
12 a lead policy that was not dictated by landlords,
13 despite their efforts and the efforts of other
14 leadership towards that end, and I'm confident that

15 my colleague Oddo is on the same page we are.

16 MR. MICHELS: I am, too. But I am also
17 confident that when I left the Council and I passed
18 the baton for you to Shepard this legislation, that
19 I did the right thing, and you're doing a wonderful
20 job and I'm very much appreciative of it.

21 COUNCIL MEMBER PERKINS: Can we
22 continue this?

23 CHAIRPERSON PROVENZANO: Should we get
24 on with the hearing?

25 MR. MICHELS: Well, it's so true, no

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2 matter how you cut it, how you say it, the fact is
3 that you've got a good piece of legislation here,
4 Bill has done a wonderful job, and hopefully we'll
5 pass it with everyone's support and we will be able
6 to help people and help children. Thank you.

7 CHAIRPERSON PROVENZANO: Thank you,
8 Stanley.

9 We have Preston Niblack, from IBO.

10 MR. NIBLACK: Good afternoon,
11 Chairwoman Provenzano, members of the Committee. I'm
12 Preston Niblack, Deputy Director of the Independent
13 Budget Office. I have with me Molly Wasso Parker,
14 Senior Director, Analyst for Housing and Buildings,

15 and Rachael Salibreze, Health Analyst. Thank you for
16 inviting us to testify today on this current draft
17 of Intro. 101-A.

18 This most recent version of the bill
19 contains several changes with fiscal impacts for the
20 City. We in our estimate, however, taken together
21 these changes largely cancel each other out. IBO
22 estimates the annual expense budget cost of the
23 current version of Intro 101-A to be \$17.4 million
24 annually, down slightly from our \$18 million
25 estimate the last time around.

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2 Notable changes include, the current
3 version would require HPD to inspect all units with
4 a child under the age of 7 in any building in which
5 a lead violation has been placed. We estimate the
6 cost of this provision at approximately \$2.5
7 million. The Administration has raised some concerns
8 about the interpretation of this provision that, if
9 correct, would lead to a higher cost than that.

10 The definition of lead-based paint
11 has been returned to 1 milligram per square
12 centimeter, which will lower cost by about \$2
13 million because fewer violations will be placed.

14 HPD would be required to send an
15 inspector with an XRF analyzer on every lead
16 inspection. This will result in fewer inspections
17 overall, but they will be more extensive and costly.

18 In addition this will, of course,
19 require the purchase of new analyzers, XRF analyzers
20 by HPD which would most likely be a capital eligible
21 cost.

22 The provisions in the previous
23 version, affecting the Department of Education,
24 Parks and Recreation have been removed from the
25 current draft. The provisions regarding lead

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2 remediation and day care centers remain but we, as
3 previously, don't feel that we have sufficient
4 information to really come up with a confidence
5 estimate on the cost.

6 On the capital budget side, the
7 provisions relating to Education and Parks and
8 Recreation that would have resulted in capital
9 budget costs, about \$14 million in IBO's previous
10 estimate and \$56 million according to the
11 Administration estimate, have also been removed.

12 That's it. And I would be very happy
13 to answer any questions you have.

13 doesn't take into account potential liability cost
14 to the City?

15 MR. NIBLACK: No.

16 COUNCIL MEMBER ODDO: Is there a way
17 of estimating? Does IBO have an opinion on how much
18 it would be?

19 MR. NIBLACK: It's very difficult to
20 estimate?

21 HPD hasn't been able to answer this,
22 Corp Counsel hasn't shown up. You know, when we went
23 through this the last time around, we weren't able
24 to identify any suits against the City previously
25 that held the City liable for failure to detect lead

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2 paint. It doesn't mean there weren't any.

3 COUNCIL MEMBER ODDO: When we have a
4 meeting with Corp Counsel we'll invite IBO. We might
5 have to fake like a surprise party for them and trap
6 them.

7 MR. NIBLACK: And I would happy and
8 come and do that with them.

9 COUNCIL MEMBER ODDO: Thank you.

10 COUNCIL MEMBER PERKINS: I just want
11 to be clear, because the liability kicks when people
12 are found guilty of negligence, right? I mean, you

13 can't play unless you're responsible. Is that the
14 way it works?

15 MS. PARKER: I believe so. Although,
16 since I'm not a lawyer --

17 COUNCIL MEMBER PERKINS: Are there
18 other costs that might be incurred other than those
19 when you're liable?

20 MR. NIBLACK: Such as with respect to?

21 COUNCIL MEMBER PERKINS: This bill or
22 any other kind of liability that this or the other
23 bill implied?

24 MR. NIBLACK: I mean, there is a
25 positive duty of landlords to identify children

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2 under the age of seven which does not exist under
3 Local Law 38. So there is some liability in the
4 private sector for landowners with respect to
5 failure to execute that provision with due
6 diligence.

7 I mean, I say this all the time.
8 We're not lawyers, this is not a legal opinion.

9 COUNCIL MEMBER ODDO: Madam Chair, may
10 I make a comment in reference to Council Member
11 Perkins' question?

12 I'm not a trial attorney, but what
13 will happen, and what has happened traditionally and
14 what may happen more and my fear is more frequently,
15 is that there be a suit against an individual, but
16 the City will also be brought in for quote/unquote
17 lack of enforcement. And you know, when in many
18 suits, as we see with trip and falls, the City is
19 not going to litigate each and every suit, and
20 you're going to have the City negotiating away
21 suits, and my fear is that there's a huge amount of
22 money that's going to be lost.

23 CHAIRPERSON PROVENZANO: I thank you
24 very much.

25 COUNCIL MEMBER STEWART: Madam Chair?

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2 CHAIRPERSON PROVENZANO: I hear
3 something in back of me.

4 You're going to have to move down
5 here.

6 COUNCIL MEMBER STEWART: In your
7 estimate, did you take into consideration the
8 inspection of pre-k schools, day care, kindergarten,
9 all of those?

10 MR. NIBLACK: We did not estimate the
11 cost that might be incurred by the Administration

12 for Children's Services.

13 MS. PARKER: The piece for the
14 Department of Education was eliminated in this
15 version of the bill, so there are no official costs
16 associated with the schools, and then as Preston
17 said, we weren't able to estimate the costs
18 associated with ATF (phonetic) day cares.

19 COUNCIL MEMBER STEWART: So in other
20 words you're saying that you don't have anything to
21 deal with as far as the correction, who does the
22 correction and so forth?

23 MS. PARKER: Right.

24 MR. NIBLACK: The problem with respect
25 to the estimating the correction cost was that there

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2 was no way -- we didn't have anything which allowed
3 us to get a good handle on how many centers might be
4 affected and how many might be, how extensive the
5 problem might be. It would have been sheer
6 speculation on our part.

7 COUNCIL MEMBER STEWART: Well, with
8 the inspection, it's the presumption that these
9 institutions will have a problem and they have to be
10 inspected. So, I know there's a cost associated with

11 that, and I thought that would have been part of
12 your analysis.

13 MR. NIBLACK: The only thing we said
14 last time, which I could say again, is that we
15 thought that the Administration's estimate the last
16 time we were here was too high, because it presumed
17 that all day care centers were going to have lead,
18 and they were all built prior to 1960, and it seems
19 unlikely that that would be true. But there is no
20 way to know between zero and the Administration's
21 estimate, exactly what that might have been.

22 COUNCIL MEMBER STEWART: And if there
23 is no insurance as to that, who is the cost going to
24 be relayed to? Wouldn't the City be part of the
25 costs if there's a suit?

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2 MR. NIBLACK: In privately-owned
3 facilities, of course the owner is first
4 responsible, and then there is a City duty to
5 correct.

6 COUNCIL MEMBER STEWART: Thank you.

7 CHAIRPERSON PROVENZANO: Thank you
8 very much.

9 MR. NIBLACK: Thank you very much.

10 CHAIRPERSON PROVENZANO: Since it's

11 3:00 and we'd like to be out of here by four, I'm
12 putting on a three-minute clock.

13 Maya Bachinsky. And Innocensia
14 Alvarez. Please identify yourself before you speak.
15 You're on. If the light is off, you're on.

16 MS. BACHINSKY: Hi. My name is Maya
17 Bachinsky. My son Cam Bachinsky is a victim of lead
18 poisoning.

19 A couple of summers ago my landlord
20 barged into my apartment and without warning workers
21 began to hack at the walls at the kitchen, dining
22 room and my son's bedroom to repair cracks.

23 There was no protection for my son,
24 myself and our belongings. My apartment, which has
25 been in my family for around 50 years, is in a

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2 building built before 1960. Even with this
3 knowledge, and even with the presence of my
4 two-year-old son, they chose to do the work in an
5 unsafe manner.

6 At the time, I, myself, was
7 uninformed of the hazards of lead paint or its
8 presence in my apartment. If there had been a law in
9 effect to protect children in situations such as

10 this, my son could have been spared the loss of his
11 health and well-being.

12 So I ask you to please pass Intro
13 101-A, it is our responsibility to protect our
14 children from this abuse. Thanks.

15 CHAIRPERSON PROVENZANO: Thank you
16 very much.

17 Now, identify yourself, please, and
18 pull that mic a little closer to her. Okay, say your
19 name.

20 MS. ALVAREZ: (Through the
21 interpreter.) My name is Innocencia Alvarez. I'm the
22 grandmother of Regina Alvarez and Veronica Alvarez,
23 and both are lead poisoned.

24 One has a blood lead level of 15
25 microgram per deciliter, and the other one 29, a

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2 blood level of 29.

3 Before my grand children were lead
4 poisoned, I had taken the landlord to court. I made
5 many calls to the landlord because my apartment was
6 peeling paint all over.

7 When my granddaughter's blood lead
8 level was up 16 micrograms per deciliter, I move
9 into the Manhattan safe house. So the Department of

10 Health and the landlord made the necessary repairs.

11 The Department of Health ordered the
12 landlord to make the repair, and the landlord
13 rejected that, so the Department of Health ended up
14 making the repairs.

15 My grandchildren are hyperactive now,
16 they act hyperactive. I am asking the City to pass
17 Intro 101-A for the sake of our children. And I want
18 to make the correction that the entity that did the
19 correction, the repairs, was not the Department of
20 Health but HPD.

21 Thank you.

22 CHAIRPERSON PROVENZANO: Thank you,
23 both. Michael Lappin, Mary Ann Rothman. Not here?
24 Edward Korman.

25 MR. LAPPIN: Thank you for the

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2 opportunity to testify on Intro 101-A. I am Michael
3 Lappin, President of the Community Preservation
4 Corporation, non-profit lender, which has invested
5 over \$3 billion in the preservation and development
6 of over 90,000 housing units in the City. With me is
7 John McCarthy, Executive Vice President, who has a
8 special focus on the lead issues.

9 We are part of a much larger
10 community of lenders, private non-profit groups and
11 government agencies that have been involved in the
12 restoring low and moderate-income neighborhoods for
13 many years.

14 We are concerned about the unintended
15 consequences of the lead bill on the upgrading and
16 restoration of older, affordable housing.

17 The City has over 1.4 million rental
18 apartments built before 1960, and therefore subject
19 to Intro. 101-A. To remain decent housing, this
20 stock must have continued access to money for
21 rehabilitation.

22 Our approach when we go into
23 buildings, we do a lot of renovations to improve the
24 health and soundness of housing. The typical jobs
25 that we do, we replace old, leaky plumbing; we

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2 replace, we upgrade heating systems; we upgrade
3 electrical systems; replace windows, roofs,
4 brickwork and also do interior repairs of floors and
5 walls.

6 The benefits of such restoration are
7 not only related to lead remediation, but of any
8 other health benefits, as well. For instance, when

9 we do plumbing and heating, of course, it affects
10 any respiratory diseases that are very prominent in
11 many of the older neighborhoods, and there are many
12 other benefits, such as fire prevention benefits,
13 safety benefits and general, social and community
14 benefits.

15 To accomplish these results, which
16 can be seen throughout the City in tens of thousands
17 of renovated apartments, done over three decades,
18 multiple sources of financing are required, private
19 financing, tax credit financing and public
20 financing, and multiple sources of subsidy.

21 From the commercial banks who
22 received construction money, from pension funds and
23 savings banks, and secondary market agencies, such
24 as Fannie Mae and Freddie Mac, the long-term
25 financing and from other organizations we get tax

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2 credit financing.

3 We believe that this bill as
4 currently written will have the unintended
5 consequences of jeopardizing this effort.

6 The legal standards of liability that
7 this bill creates to make it easier for owners to be

8 sued, as the sponsors have stated, will make it
9 extremely difficult, if not impossible, to get
10 liability insurance that all the investment that we
11 do in these buildings rely upon.

12 We have asked our lending
13 institutions, those institutions which finance this
14 renovation, we asked them when we got the bill out
15 to examine the bill, and look at the consequences
16 with respect to their investment and the ongoing
17 investment in this type of housing.

18 Without such insurance we believe
19 there will be a precipitous decline in the public
20 investment in upgrading this housing and tax credit
21 investment and we believe public investment.

22 If we are able to obtain such
23 insurance, we believe it would only be at very high
24 cost levels, which would be unaffordable in most low
25 and moderate income communities, or would require a

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2 level of work that would be uneconomic in most of
3 our lower income communities. And what the
4 unfortunate result might be would be the worst of
5 all worlds: You would neither address the health
6 problems associated with deteriorated housing, nor
7 would you restore the buildings and rebuild the

8 communities.

9 We urge the Council to solicit -- to
10 look at the impact on affordable housing and to
11 solicit those of us, and the broad group of those,
12 who have been involved in restoring our communities,
13 to try to get a bill that will both address the
14 health problems without jeopardizing our ability to
15 restore properties and neighborhoods. Thank you.

16 CHAIRPERSON PROVENZANO: Thank you
17 very much.

18 Council Member Oddo.

19 COUNCIL MEMBER ODDO: Just on that
20 last point, what contact have you had with Council,
21 Council members, and what level of input have you
22 had with the bill?

23 MR. LAPPIN: I think we have had very
24 little contact in the bill. We just received it the
25 other day. We have not -- once with Speaker Miller,

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2 and we did not know exactly what the bill was when
3 we met him, but that now we have looked at it, we
4 think there is a real concern regarding our ability
5 and the ability to get property -- the proper sort
6 of casualty insurance, without which we think will

7 jeopardize restoration efforts.

8 And aside from that we have had very
9 little contact.

10 COUNCIL MEMBER ODDO: Well, I wish the
11 media were here to hear sort of the other aspect of
12 it, and what --

13 CHAIRPERSON PROVENZANO: I wish some
14 Council members were here.

15 COUNCIL MEMBER ODDO: Yes. Because I
16 think it's a very real issue. My colleagues are
17 definitely on the record as being very concerned
18 about the whole issue of affordable housing, and I
19 think one goes, is tied inextricably to the other,
20 and there's reason for a lot of concerns. What I
21 would say, I will ask the Chair and we will reach
22 out to the sponsor of the bill, obviously Bill is
23 here, and leadership in the Council, so that before
24 this bill is finalized, that you gentlemen have an
25 opportunity to let your concerns be known on a

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2 one-on-one basis.

3 Thank you.

4 MR. LAPPIN: I appreciate that.

5 CHAIRPERSON PROVENZANO: Do you have
6 something to say?

7 COUNCIL MEMBER PERKINS: Yes.

8 CHAIRPERSON PROVENZANO: Yes, you do?

9 COUNCIL MEMBER PERKINS: Let me just
10 say that, there was a small property owners group
11 that did testify at the last hearing represented by
12 a Ms. Daniels, Ms. Helen Daniels, I believe it is.

13 CHAIRPERSON PROVENZANO: I actually
14 called him up but we got, something happened over
15 here, so he's next.

16 COUNCIL MEMBER PERKINS: Okay. So, I
17 just want you to know that we are hearing testimony
18 from small property owners, that it just so happens
19 that that group was here and it's not this group,
20 but it's still I think affiliated to some extent.

21 MR. LAPPIN: Let me be very clear what
22 we are. We are not property owners. We have been
23 involved for 30 years now, and we have restored
24 probably close to 90,000 apartments in lower and
25 moderate-income areas. We have a long experience

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2 with dealing with these various issues. We have not
3 really been -- and we are not the property owners.
4 We are something different than that.

5 And I would also, I don't know of

6 anyone in the 30 non-profit groups who have been
7 involved in the development and redevelopment of
8 affordable housing that really have been brought
9 into this debate, but the word I send out here is we
10 certainly support the goals of the builders, no one
11 who doesn't support that. We just don't want it to
12 be done in a way that will make it, albeit extremely
13 difficult or impossible to do the good work which we
14 believe we've been doing for all these years, as
15 evidenced by all the restored housing in all of our
16 low and moderate-income communities.

17 COUNCIL MEMBER PERKINS: Right.

18 I have had the opportunity to work
19 with you for a long time, even before I was a
20 Councilperson, so I know you work, and I should also
21 mention to you that there are other similar type of
22 groups that have come here to testify basically from
23 the same perspective as you two were here, I'm
24 positive at the last hearing, it wasn't CPC, I
25 forget the group, but they were here. So, I just

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2 don't want you to think that your point of view has
3 not been taken into consideration as part of the
4 conversation. And I know that my office has been
5 available. You've never had a problem getting in

6 touch with my office about the various projects, you
7 know, we're always available.

8 MR. LAPPIN: We would be very happy to
9 have some participation in this, and we hope that it
10 can deal with what are very serious and substantial
11 concerns, which I also think there is ways of
12 working these concerns, and so it's a win/win for
13 everybody.

14 COUNCIL MEMBER PERKINS: I'm just
15 trying to recall the groups that were represented at
16 the last hearing. I know the Settlement Housing Fund
17 was one of the groups.

18 MR. LAPPIN: I think that's the only
19 one that I'm aware of that did --

20 COUNCIL MEMBER PERKINS: No, there was
21 another that was sitting with her. Thank you.

22 CHAIRPERSON PROVENZANO: Thank you
23 very much.

24 Can we now get you up here? And I
25 don't know who is who here, so I'm calling a

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2 mish/mosh.

3 Matthew Dean, are you in the house?

4 You've got to identify yourself.

5 and affiliate groups care more about punishing
6 owners than the health and safety of the tenants and
7 their children. Intro. 101-A is harsh, unreasonable,
8 and if passed, will give tenants less protection
9 than they had under Local Law 38. The fact is, under
10 Local Law 38, there had been a dramatically downward
11 trend in the number of lead poisoned cases in the
12 City. The allowable threshold for blood levels, have
13 been reduced over the last 30 years.

14 In 1970, the threshold was 55
15 micrograms per deciliter and the DOH reported 2,649
16 cases. In 2000 the threshold was reduced to only 20
17 micrograms per deciliter and DOH reported only 536
18 cases.

19 This is an amazing and remarkable
20 number. While the allowable blood micrograms have
21 been reduced by more than have, which should have
22 increased the number of imported cases, the number
23 of reported cases has dropped approximately 80
24 percent. While both owners and tenants want an
25 ultimate goal of no lead poisoning, Local Law 38 was

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2 doing it's job without extremely punitive measures

3 against owners.

4 Yet, unreasonably, Intro. 101-A
5 reduces that threshold even further defining lead
6 paint as containing .7 micrograms per centimeter
7 squared.

8 It further states that the micrograms
9 be measured by an XRF, corrected for performance
10 characteristic sheets, released by EPA or HUD.

11 Another problem with this bill is
12 that EPA and HUD use a different standard. In
13 addition, XRF equipment is not reliable that the
14 levels demand in Intro 101-A.

15 Another major problem with this
16 ill-conceived legislation is that it makes owners
17 responsible for lead contamination from outside
18 sources. How can an owner control the lead dirt
19 tenants walk into their apartments, or the lead dust
20 that blows into an open window?

21 The ridiculousness of this
22 requirement upon owners borders on the sublime.

23 Additionally, tenants' own cleaning
24 habits or lack thereof, account for a majority of
25 lead poisoning cases. Is the owner to be held

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2 responsible for the tenant's hygiene, as well as
3 everything else?

4 Intro. 101-A requires the use of
5 certified abatement contractors because small owners
6 simply can't afford or triple pricing for every
7 painting and repair job requiring the use of
8 certified abatement contractors. Many will be forced
9 to do the work illegally just to survive and keep
10 their properties.

11 There was joint cooperation between
12 owners and tenants under Local Law 38 under which
13 owners were required to give an annual notice.
14 Tenants then had to respond, allow access for
15 necessary repairs and notify the owner of conditions
16 changed.

17 All of this will be eliminated under
18 the proposed law harming our children; is that what
19 we really want?

20 It seems clear that --

21 CHAIRPERSON PROVENZANO: Sum up, Mr.
22 Korman.

23 MR. KORMAN: I am.

24 CHAIRPERSON PROVENZANO: Okay.

25 MR. KORMAN: Last paragraph.

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2 It seemed clear that certain interest

3 groups and trial attorneys are more interested in
4 the punishment of owners than in the curing of
5 hazardous conditions. It would seem that the present
6 law is reaching the desired goal of both owners and
7 tenants to reduce and finally eliminate all cases of
8 lead poisoning. Having absolute liability for
9 conditions absolutely not under one's control and
10 absolute knowledge of its existence, example, soil
11 and dust contamination, is absurd, unjust and
12 unAmerican.

13 Owning property is an American dream.
14 Intro 101-A would make most small owners so
15 vulnerable, frivolous and wrongful litigation that
16 they would be robbed of that dream. Let the
17 negligence bar get a share of the apple pie
18 elsewhere. Don't pass this ill-conceived bill,
19 ill-conceived and extraordinarily harmful bill. We
20 need legislation that makes sense, and this bill has
21 to be amended.

22 CHAIRPERSON PROVENZANO: Thank you.

23 Identify yourself. It's on.

24 MR. DEAN: My name is Matthew Dean.

25 I'm the Executive Director with Physicians for

3 PSI New York City is a local chapter
4 with over 1,700 members of a national organization
5 with over 25,000 members in the US. It is an
6 organization not only of physicians, but of all
7 those concerned with the major threats to global
8 survival, be they from weapons of mass destruction,
9 large scale degradation of the environment, or the
10 uncontrolled use of violence to settle
11 disagreements.

12 Today, I will be reading comments
13 prepared by Cathey Falvo, she is a medical doctor,
14 MPH and the President of Physicians for Social
15 Responsibility, New York City. If at the end of this
16 presentation you have any questions, I'll be glad to
17 take them back to Dr. Falvo.

18 I am representing New York City
19 Physicians for Social Responsibility today because
20 lead poisoning of children is an issue that has been
21 of concern to us for many years.

22 As the Executive Director of PSR, I
23 represent hundreds of physicians who have taken a
24 particular interest in the action New York City
25 takes to protect our children against the central

2 nervous system damage caused by lead.

3 All levels of lead in children cause
4 some brain damage in the form of reduced
5 intelligence, altered behavior, such as attention
6 deficit disorders, learning disabilities and other
7 cognitive and behavioral disturbances. Infants and
8 young children are particularly at risk of lead
9 poisoning, both because their normal hand-to-mouth
10 activity cause more frequent ingestion of such
11 particles, and more significantly because their
12 brains and nervous systems are particularly
13 vulnerable in the early developmental stages.

14 These deficits in intellectual
15 performances are considered irreversible and have
16 detrimental affects on the child's ability to
17 function to his or her full potential.

18 Nearly 95 percent of children found
19 to be lead poisoned in New York City are children of
20 color allowing the damage from lead to compound the
21 other factors of social disadvantage to which they
22 are subjected. The loss of cognitive ability and
23 social function harms all of us, because that child
24 who was lead poisoned will not be the best citizen
25 he or she might have been.

2 Lead is not a normal part of our
3 body. Any detectable lead presence for any length of
4 time can cause damage. The higher the body burden of
5 lead and the duration of its presence, the greater
6 the permanent damage to the child. To be sure
7 children who are found to have elevated blood lead
8 levels can be treated to remove the lead from the
9 bodies, if the poisoning is mild then removal of the
10 lead source and time will eliminate the body burden.
11 If the poisoning is more severe, medication must be
12 used. However, removing the lead by whatever means
13 takes time, and in the interim between discovery and
14 removal, damage is occurring, along with short and
15 long-term dollar costs of decreased mental function
16 are considered the short-term costs to the child, to
17 the family and the community in the form of health
18 care visits, time lost from work, school and other
19 usual activities.

20 There are also significant social and
21 mental health costs to having the worry, the blood
22 tests and the displacement from home, et cetera.

23 When we address issues of public
24 health that is community-wide, significance, and
25 lead poisoning certainly is an issue of public

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2 health significance, we first look for interventions
3 that will prevent the problem happening. This is
4 known as primary prevention. If such interventions
5 cannot be found, then we identify ways to identify
6 the problem early, that is screening or secondary
7 prevention, and intervene before serious damage
8 occurs.

9 The New York City Childhood Poisoning
10 Prevention Act of 2003, Intro 101-A, is a fine
11 example of legislation that applies to principals of
12 primary prevention, but also accounts for secondary
13 prevention, since some failure of primary prevention
14 measures usually cannot be avoided.

15 Intro 101-A has a clear,
16 comprehensive and stringent definition of what must
17 be considered a lead document --

18 CHAIRPERSON PROVENZANO: Can you sum
19 up, please?

20 MR. DEAN: Sure. Yes, I just have one
21 paragraph left.

22 -- Who must be responsible for
23 finding hazardous conditions; how and who shall
24 document a suspect hazard; and how and who shall
25 expeditiously remediate the hazard.

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2 Appropriate penalties for
3 non-compliance are clear and enforceable.

4 Importantly, all areas in a housing
5 complex where young children might be reasonably be
6 expected to be exposed, not just inside their
7 families' apartment, are included and a provision
8 for alternative housing if remediation will be
9 prolonged is addressed.

10 The bill addresses critical issues of
11 comprehensive, prospective site remediation, as
12 well. Hopefully, at some not too future date, we can
13 declare lead poisoning a historic entity.

14 That's it. Thank you.

15 CHAIRPERSON PROVENZANO: Thank you.

16 Elaine Toribio and Frank Ricci.

17 Identify yourself and start.

18 MS. TORIBIO: Good afternoon, Chairman
19 Provenzano and members of the Committee. My name is
20 Elaine Toribio, and I am representing Citizens
21 Housing and Planning Council, an organization that
22 since its exception in 1937 has been committed to
23 the preservation of safe, decent and affordable
24 housing in New York City.

25 CHPC strongly believes that any new

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2 lead paint legislation should build upon the success
3 of Local Law 38 of 1999, by enacting a sensible
4 health- based policy that focuses aggressive
5 outreach, inspection and remediation efforts on
6 high- risk lead belt district. Intro. 101- A's
7 extensive requirements on all pre- 1960 housing,
8 regardless of risk, will divert City and private
9 resources away from the communities with the worst
10 lead problems and threaten the financial viability
11 of the affordable housing on which many low- income
12 New Yorkers rely.

13 Since 1999 the number of New York
14 City children with Elevated Blood Lead (EBL) of
15 10mcg/dL or greater has declined by approximately 44
16 percent. Such a dramatic decline shows that Local
17 Law 38 did work. However, as has been shown by the
18 Department of Health and Mental Hygiene (DOHMH), as
19 well as federal and other medical experts, the
20 distribution of new EBL cases in 2002 is uneven
21 throughout the City.

22 A significant number of lead
23 poisoning cases were concentrated in five of the
24 City's 42 health districts. The medical data
25 demonstrates a need to target lead poisoning

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2 prevention and abatement efforts on the
3 neighborhood's where it is most likely to occur.

4 In order to facilitate the
5 elimination of lead hazards and to minimum confusion
6 on the part of City agencies, building owners and
7 tenants, it is of crucial importance that City law
8 regarding lead poisoning prevention be consistent
9 with federal guidelines. Intro. 101- A does this in
10 some regards, but not in others. The Centers for
11 Disease Control recommend that lead prevention and
12 abatement efforts focus on children under six years
13 of age and on neighborhoods with significant numbers
14 of kids with EBL levels. Intro. 101- A deviates
15 from these recommendations by raising the age of
16 children targeted and by rejecting a neighborhood-
17 based approach. The proposed bill diverts attention
18 from the children that are at greatest risk.

19 Intro. 101- A outlines the landlord's
20 responsibility to inquire about the presence of
21 children in the unit and to investigate for lead
22 hazards in these apartments, while describing
23 tenant's responsibility to respond to such
24 inquiries. It is of paramount importance that both
25 owners and tenants be aware of their duties and the

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2 consequences of their noncompliance.

3 As several affordable housing
4 providers and City officials have testified, too
5 often inspections and repairs cannot be carried out
6 because tenants do not provide access to the
7 apartments.

8 The bill also requires the owner to
9 report to the Department of Health and Mental
10 Hygiene, if a tenant does not respond to the
11 landlord's inquiries. This provision is good policy
12 and should be as easy as possible to comply with,
13 perhaps through online submission, in order to
14 expedite the Department of Health investigations.

15 In addition to clarifying the
16 processes of notification, inspection and
17 correction, the City must commit additional
18 resources to high- risk communities in order to
19 eliminate the problem of lead poisoning. According
20 to HPD testimony, 76 percent of lead- hazard
21 violations tested were negative for lead base paint.

22 The City should maximize the advantage provided by
23 XRF technology to target its dwelling units that
24 pose a real threat to children. HPD should be given
25 additional funding to purchase more XRF machines and

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2 to increase the number of inspectors trained to use
3 this specialized technology.

4 Our understanding is that only
5 approximately 10 percent of current HPD inspectors
6 are XRF trained. More comprehensive lead hazard
7 inspections will require additional funding.

8 Similarly the City should expand its
9 funding of lead- based paint hazard control efforts
10 in economically distressed housing. Historically,
11 the worst lead hazards are concentrated in precisely
12 the housing that cannot afford the full cost of
13 hazard control.

14 HPD's primary prevention program
15 currently funded with HUD and City capital funds
16 have helped treat over 1,500 apartments in high-
17 risk neighborhoods. An increased financial
18 commitment to such a program would protect children
19 by facilitating the necessary repairs while
20 improving the quality of the City's low- income
21 housing stock. Requiring hazard control without
22 providing subsidies or taking into account the
23 financial capacity of economically distressed
24 buildings may result in non- compliance,
25 deterioration of properties and the continued

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2 exposure of young children to lead- based paint
3 hazards.

4 In addition to adopting a sensible
5 law, the City must raise public awareness of problem
6 of lead poisoning. The Department of Health and
7 Mental Hygiene should intensify its outreach to
8 physicians, reminding them of state regulations that
9 mandate blood lead testing of all children at ages
10 one and two.

11 Currently only 31 percent of City children are
12 tested. In addition to educating medical
13 practitioners, the Mayor and City Council members,
14 particularly those representing the lead belt
15 districts, should undertake a public outreach
16 campaign to make families with young children aware
17 of the dangers of lead exposure and to advise them
18 to have their children tested.

19 In conclusion, CHPCs concern with
20 Intro. 101- A is not an issue of incremented costs
21 for building owners, but of increased litigation and
22 prohibitively expensive insurance coverage. Our
23 fear is that the wrong approach to the lead problem
24 may jeopardize the insurance coverage of vast
25 amounts of low- income housing and that collective

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2 efforts to improve community development conditions
3 might grind to a halt.

4 We urge the City Council to heed the
5 concerns of reputable affordable housing providers
6 and that any new legislation be consistent with
7 protecting the children and the communities in which
8 they live. Thank you.

9 CHAIRPERSON PROVENZANO: Thank you.

10 MR. RICCI: Thank you Madam Chair.

11 My name is Frank Ricci. I am the Director of
12 Government Affairs for the Rent Stabilization
13 Association and I am joined on my left by Mitchell
14 Posilkin, our General Counsel.

15 Masquerading as a solution to the
16 problem of childhood lead poisoning in New York
17 City, Intro. 101- A succeeds in only one respect.
18 It makes landlords the scapegoat for a problem that
19 is more complex than many will admit. Lead paint
20 will not go away and a child with lead poisoning
21 will not be eradicated simply because of Intro. 101-
22 A. Like most "quick fixes", its shortcomings in the
23 form of enormous liability claims against both
24 owners and the City, the abandonment of uninsurable,
25 marginal properties and the end of affordable

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2 housing rehabilitation and development will soon
3 become apparent. Our children deserve better.

4 Consider the following. If the prior
5 lead law was supposedly such a failure, why did the
6 rate of lead poisoning fall by 79 percent over 5
7 years?

8 If the Department of Health has
9 determined that over one- third of the apartments
10 occupied by lead poisoned children do not contain
11 lead paint, why would Intro. 101- A punish the
12 owners of those buildings?

13 If HPD has itself stated that over
14 15,000 violations, 75 percent of the presumed lead
15 violations for the past two years were issued in
16 error, why does Intro. 101- A still use the
17 presumption?

18 Why has the Council ignored the
19 facts, reported recently by The New York times, with
20 regard to the extraordinarily high levels of lead
21 dust in the areas adjacent to the elevated train
22 lines in the areas of the City with the highest
23 rates of lead poisoning? More than 2,300 pounds of
24 lead paint were removed from just one station, the
25 Chauncey Street station on the J line, and 13,000

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2 pounds were removed system- wide in one year. Yet,
3 the council has not explored the impact of the
4 elevated train lines upon neighboring children.
5 Nor, has the council explored the impact of a
6 highway system used by cars that for decades spewed
7 leaded gasoline throughout the City.

8 Why has the council essentially
9 ignored the issue of immigrant children, who, as
10 also reported by The New York Times, are already
11 lead poisoned when they have come from other
12 countries known for their high rates of lead
13 poisoning or are exposed to leaded products
14 originating in their countries of origin?

15 If Intro. 101- A was fair and
16 balanced, it would contain the legal defenses
17 limitations on the presumption that were in Local
18 Law 38 and that were protected responsible, law-
19 abiding owners. Why should an owner be liable for a
20 child that he does not even know lives in the
21 building?

22 Why has the Council failed to
23 consider what this means for property owners who
24 already cannot either obtain or afford lead paint

25 insurance coverage and what it will mean to

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2 providers of affordable housing throughout the City?

3 There is really another agenda here

4 and it has to do with the issue of tort liability.

5 While there are many differences between Local Law

6 38 and this legislation, the most glaring is the

7 elimination of legal defenses and limitations on the

8 use of the flawed presumption of lead paint.

9 Using our City's children as a

10 shield, Intro. 101- A is nothing less than a thinly-

11 veiled attempt to extort enormous claims from

12 property owners and the City. How else can one

13 explain the total absence of provisions to help

14 responsible owners? Why else hold an owner liable

15 when, as the bill states, he "should have known"

16 that a child was in the apartment? Why not ensure

17 that parents tell owners that they have young

18 children living with them? Why permit a presumption

19 that is wrong far more often than it is right. The

20 only explanation is the most obvious one: If you

21 are going to make property owners the scapegoat,

22 don't give them the ability to defend themselves.

23 The supporters of Intro. 101- A have

24 created a frenzy of fear to push this bill through

25 the Council. They have created a perception that if

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2 you hit landlords hard enough, it will somehow
3 eliminate lead from the environment. They are on a
4 zealous mission to make someone pay for the many
5 years that lead paint manufacturers and gasoline
6 companies exposed us all to lead. They have made
7 many fearful of speaking up and asking the questions
8 that need to be asked.

9 Intro. 101- A is the wrong answer to
10 the problem of childhood lead poisoning in this City
11 because the right questions have either not been
12 asked or it has been too expedient to ignore the
13 answers. The atmosphere has not allowed for that
14 sort of deliberation. It is time to ask the right
15 questions and to deliver the right answer to our
16 City's children. Thank you.

17 CHAIRPERSON PROVENZANO: It looks like
18 we don't have any questions, but I thank both of you
19 for your testimony.

20 Evangelista Romon, Jordi Reyes-
21 Montblanc? Where is Evangelista? Okay. Why don't
22 you start.

23 MR. REYES- MONTBLANC: Thank you Madam

24 Chairwoman. I represent the HDFC Council, the low
25 income cooperatives.

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2 Even though we share some concerns that have been
3 experienced by other organizations, we must
4 concentrate on those issues that are immediate to
5 us.

6 It is very important that the
7 essential relationship between a tenant home- owner,
8 a tenant shareholder and the cooperative corporation
9 be understood.

10 One of the concerns that we have is
11 that the term landlord may be misunderstood.
12 Particularly when you are talking about a
13 cooperative. The responsibility of the maintenance
14 and repair of the inside of an apartment in a
15 cooperative building is the shareholders. It's very
16 important that this relationship be recognized in
17 this bill. There are cooperatives that of course
18 have some apartments that they own, or they have it
19 rented, and of course in that instance those
20 apartments that are rented by the corporation, the
21 landlord is the cooperative corporation. But,
22 mostly, in most of our buildings that's an
23 exception.

24 There are instances where a
25 shareholder may sub- let the apartment, in which

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2 case they are the landlord, the shareholder, the
3 tenant shareholder. In our particular type of
4 buildings, another consideration must be given.
5 That is, our buildings mostly were either bought
6 directly from the City of New York or were financed
7 by loans or guarantees from the City of New York.

8 It is our position that if there is
9 lead in those apartments, in those buildings, which
10 most of them are pre- 1960, I would say probably 90-
11 95 percent of them, then the City of New York should
12 bear some responsibility for the abatement of that
13 lead. Provisions should be made for that.
14 Basically, that's our position. I would be glad to
15 answer any questions.

16

17 CHAIRPERSON PROVENZANO: Having none.
18 We go to Ms. Romon?

19 TRANSLATOR: I am going to translate
20 for her.

21 CHAIRPERSON PROVENZANO: Okay.
22 Identify yourself please. Did you say your name?

23 Okay.

24 TRANSLATOR: (Name not spoken into
25 microphone).

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2 CHAIRPERSON PROVENZANO: All right.

3 TRANSLATOR: My name is Evangelista
4 Romon. (Microphone volume was adjusted). Thank you.

5 I have a granddaughter, a child with
6 lead poisoning.

7 My daughter and I are too worried
8 about this situation, of the child. She is very
9 sick. The doctor told my daughter that we have to
10 watch her toys well. I think this is not a
11 solution. We have called the City several times,
12 but they haven't shown up. The child is vomiting
13 and this is something that worries us. My
14 granddaughter is 10 years. We are very worried
15 about the situation. Please Intro. 101. Please
16 there are a lot of children with lead poisoning in
17 New York City.

18 In my apartment there is a hole in
19 bathroom, on the hallways, they are peeling paint.
20 In the ceiling bathroom there is a lot of peeling
21 paint. In the kitchen there is a lot of peeling
22 paint too. The same way the bathroom start and now

23 there is a big hole. Please pass Intro. 101- A.

24 Thank you.

25 CHAIRPERSON PROVENZANO: Thank you

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2 very much. TRANSLATOR: Yes.

3 Can I ask for her to testify?

4 CHAIRPERSON PROVENZANO: Excuse me?

5 TRANSLATOR: She wants to testify.

6 CHAIRPERSON PROVENZANO: We don't have

7 her down as testifying. It's a whole process you

8 have to go through.

9 TRANSLATOR: Oh. No? Okay.

10 CHAIRPERSON PROVENZANO: Michael

11 McGuire, David McAllister and Juan Idiaquez?

12 Okay, one of you decide whoever is
13 going to start? Start and identify yourself please.

14 MR. IDAQUEZ: Good afternoon.

15 Chairwoman Provenzano, my name is Juan Idaquez. I

16 am the President of Asbestos Lead and Hazardous

17 Waste Laborers, Local 78. I represent more than

18 2,000 men and women who are employed abating lethal

19 substances, such as asbestos, toxic mold and lead,

20 among others.

21 I would like to thank you and all of

22 the members of the Housing and Buildings Committee
23 and City Council and Speaker Gifford Miller for
24 giving me the opportunity to speak today on behalf
25 of the workers. Almost all of the testimony you

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2 hear today will be about lead poisoned children. We
3 also want an end to the plague of lead poisoning, it
4 kills, but not at the expense of the workers. Many
5 reporting (sic) that lead poisoning is only a
6 problem for children, but this is not the case.
7 Lead poisoning in adults results in varying effects:
8 Mild symptoms include loss of appetite, nausea,
9 vomiting, stomach cramps, constipation, difficulty
10 in sleeping, fatigue, bilious headaches, joint or
11 muscle aches, anemia and decreased sexual drive.

12 Severe symptoms include damage to
13 nervous system, including risk of tremors and
14 convulsions or seizures. There have been documented
15 cases of acute lead poisoning from uncontrolled
16 occupational lead exposure resulting in fatalities.

17 Furthermore, chronic lead poisoning
18 may result after lead has accumulated in the body
19 over time, mostly in the bones. Long after the
20 exposure has ended, events such as illness or
21 pregnancy may release the stored lead from the bone.

22 This release of lead can result in impaired
23 immobile synthesis resulting in a variety of anemia,
24 damage to the central and peripheral nervous
25 systems, hypertension, effects on male and female

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2 reproductive systems and damage to developing
3 fetuses.

4 Almost 400 members of Local 78 are
5 women. The knowledge of these dangers are not new.
6 Twenty-five years ago they were standards of
7 regulating of occupational exposure to inorganic
8 lead in general industry. Under this standard the
9 permissible exposure PEL -- or limit or PEL is 50
10 micrograms per cubic meter of air. However, the
11 construction industry was exempted from this
12 regulation and has a 200 micrograms per cubic meter
13 PEL for inorganic lead. Unlike the standard for
14 general industry, the construction standard does not
15 require medical monitoring of workers exposed to
16 lead.

17 The National Institute for
18 Occupational Safety and Health (NIOSH), recommended
19 exposure limits for lead is less than 100 micrograms
20 per cubic meter of air at a time ratio for up to 10

21 hours per day during a 40-hour workweek.

22 Various studies have shown that
23 exposure range during the actual task of lead paint
24 removal ranges from 80 micrograms per cubic meter of
25 air, up to 1,400 micrograms per cubic meter of air,

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2 14 times the NIOSH recommended limit.

3 This dangerous exposure also effects
4 the worker's families. NIOSH study conducted in 1997
5 found that the children of lead exposed construction
6 workers were six times more likely to have blood
7 lead levels of the recommended limit than children
8 whose parents did not work in lead-related
9 industries.

10 Workers should not have to put their
11 children's futures at risk in order to earn a
12 living. Intro. 101-A includes worker protections
13 that will help prevent this dire consequences from
14 occurring in New York's workforce. Local Law 1 of
15 1982, New York City's original lead law, had
16 inadequate worker protection. This law went through
17 two terms of the Koch Administration, the entire
18 Dinkins' Administration and five years of the
19 Giuliani Administration before Local Law 38 of 1999
20 was passed.

21 Unfortunately, Local Law 38 also held
22 inadequate worker protections. That law made it
23 through the rest of the Giuliani Administration and
24 to Mayor Bloomberg's, before being struck down by
25 the courts.

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2 I want to commend the City Council
3 and Speaker Gifford Miller and all of the sponsor of
4 Intro. 101-A for showing their courage and
5 convictions to support the law that will truly
6 protect the working men and women of New York.

7 Without the Speaker Miller's
8 leadership shown we might have had to suffer through
9 another two decades worth of lead-poisoned workers
10 and children.

11 On behalf of the 2,400 members of
12 Asbestos, Lead and Hazardous Waste Laborers, Local
13 78, I urge this Committee to pass Intro. 101-A
14 today. Thank you.

15 CHAIRPERSON PROVENZANO: Thank you.

16 Sir? Whose Next? Don't fight over
17 it.

18 MR. MC GUIRE: Mike McGuire, Mason
19 Tenders' District Council. I am going to do away

20 with my written testimony because you have heard it
21 seven or eight times before. I just want to say
22 this bill that we have in front of us now, 101- A, I
23 want to thank the Committee, the Housing and
24 Buildings Committee and its staff for all the hard
25 work they put into it and the Speaker, and the hard

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2 work his staff put into it. As far as the work
3 practices go, we have made some compromises on both
4 sides here and I think it becomes a very workable
5 thing for everybody involved.

6 With that said, again I want to thank
7 the Speaker and Madam Chair and her staff and urge
8 you to pass Intro. 101- A as soon as possible.
9 Thank you.

10 CHAIRPERSON PROVENZANO: Thank you
11 Mike. That was nice. We'll give your extra minutes
12 to this little girl over here, when we're ready.

13 MR. MC ALLISTER: My name is David
14 McAllister, I am a professional trainer, training
15 gentlemen who are working in the industry and I am
16 also retired from the City of New York's Lead
17 Poisoning Prevention Program, where I co- wrote with
18 Kan Carlilno our Department's response to the last
19 law on lead poisoning by developing a curriculum for

20 training people to be able to take dust- wipes.

21 My testimony is mostly today about
22 supporting Intro. 101- A because of its strength in
23 standing up for adequate training. Training is
24 extremely important. Training is very important to
25 me. I take the responsibility very seriously because

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 I am aware that following the Bible for Remediation,
3 the guidelines, that in the first chapter they
4 mention that training is the first order of quality
5 control, and I quote "to ensure that remediation is
6 carried out efficiently, effectively, adequately and
7 safely. Safely by the way applies to the
8 environment, it applies to the residence itself, it
9 applies to the tenants, including the children of
10 course, and those gentlemen who are performing the
11 remediation, as well as their families, because
12 there is such a thing as working without proper
13 precautions and taking home lead, both prolonging
14 the worker's exposure and carrying the lead home to
15 his family.

16 Taking that to be a personal
17 responsibility as a trainer, that inspires me to be
18 passionate about developing and delivering student-

19 centered experiential hands- on teaching methods and
20 techniques that lead to active learning that sticks
21 after the courses are over. And, that's one of the
22 things I try to do as a professional. I have been
23 in a lot of classes where I have even been read to
24 by so- called trainers and that doesn't -- it is not
25 adequate to the kind of protection that good

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 training actually delivers. I train at HEC in New
3 York City, although they no longer have their EPA
4 certificate, so I will be training at Big Apple
5 Occupational Safety and Health and if you take one
6 of my courses it will be training you can trust.

7 Remember, we retain little of what we
8 read, more of what we see and hear, but mostly what
9 we do. That's why hands- on training services these
10 gentlemen the best. Thanks, to Intro. 101 A
11 training is absolutely required of all the agency
12 personnel and of course for the independent third
13 party who takes the dust- wipe sample for clearance
14 purposes.

15 CHAIRPERSON PROVENZANO: Thank you
16 very much. I thank all of you. Estephanie Nolasco.
17 How's that? No good? You get up there and
18 pronounce it yourself, okay. Can you do this in

19 under three minutes? Okay.

20 MS. NOLASCO: My name is Stephanie
21 Nolasco and I am 12- years old. I have lived in the
22 same building in Bushwick for 12 years.

23 I was diagnosed with lead poisoning
24 at level 18 when I was small. I feel bad for my
25 grandmother because she is in this situation. She

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 has to care for my cousins Justice and Juan Misael
3 too and it is very hard for her. I don't like this
4 situation because the Doctor found in me poisoning
5 on level 18, which is higher than my cousin's
6 poisoning.

7 The Council, the City has let me and
8 my family down. I want the City Council to pass a
9 stronger bill to protect me and my family. Thank
10 you.

11 CHAIRPERSON PROVENZANO: Did you write
12 that yourself? Thank you very much.

13 We have one small adjustment to one
14 of the speakers. COUNSEL TO THE

15 COMMITTEE: Evidently it was brought to our
16 attention. Just for the record, there was a mistake
17 in the translation of Evangelista Romon's testimony.

18 Her grandson is 2 year's old, not 10 years old and
19 we were requested to record that so that it's
20 recorded for the record. Thank you.

21 WRITTEN TESTIMONY OF:
22 MICHELLE ALVAREZ
23 ATTORNEY
24 NATURAL RESOURCES DEFENSE COUNCIL (NRDC)

25

My name is Michelle Alvarez and I am

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1 COMMITTEE ON HOUSING AND BUILDINGS
2 an attorney with the Natural Resources Defense
3 Council (NRDC). Founded in 1970, NRDC is a
4 national, non profit environmental organization that
5 has long been involved with public health issues
6 and, in particular, reducing human exposure to lead.
7 In September 2003, I testified before
8 the Council in favor of a prior version of Intro
9 101A and I am happy, once again, to express NRDC's
10 support for the current version of Intro 101A. As a
11 member of the New York City Coalition to End Lead
12 Poisoning, NRDC is pleased that Council Speaker
13 Gifford Miller and the Coalition, with the support
14 of other Council Members and advocates, were able to
15 work together and agree upon legislation that is
16 sufficiently protective of human health, practical
17 and enforceable. Therefore, NRDC respectfully urges

18 the Council to pass Intro 101A without further undue
19 delay.

20 While NRDCs written testimony
21 submitted at the September 2003 hearing highlighted,
22 in part, the lead poisoning problem in New York
23 City, recent scientific studies that suggest that
24 even low blood lead levels can result in adverse
25 health effects, and studies that indicate that Intro

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2 101A is cost effective, today's testimony will be
3 limited to, and re- emphasize the importance of,
4 several critical components of Intro 101A.

5 Intro 101A imposes an appropriate
6 duty on property owners to ensure that children are
7 safe from lead- based paint hazards. Compared to
8 other areas of the nation, New York City's children
9 are at higher risk, mainly due to the prevalence of
10 poverty and the associated deterioration of older
11 housing. While some buildings are sufficiently
12 maintained, others require more inspection,
13 especially given structural deficiencies that can
14 cause frequent paint failure. New York City has
15 over 2,000,000 dwelling units built before 1960,
16 many in deteriorated condition. There, it is

17 essential to impose a rigorous duty on property
18 owners to investigate for and remediate lead- based
19 paint hazards.

20 Notably, Intro 101A imposes on owners
21 of residential units in a multiple dwelling where a
22 child under seven resides:

23 One. A duty to investigate for
24 peeling paint, chewable surfaces, deteriorated
25 subsurfaces, friction surfaces and impact surfaces,

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1 COMMITTEE ON HOUSING AND BUILDINGS
2 at least once a year and more often if necessary,
3 such as when, in the exercise of reasonable care,
4 the owner knows or should have known of a condition
5 that is reasonably foreseeable to cause a lead-
6 based paint hazard, or when a tenant lodges a
7 complaint concerning a condition that is likely to
8 cause a lead based paint hazard or requests an
9 inspection or when the Department of Housing
10 Preservation and Development (HPD) issues a
11 violation or orders the correction of a violation
12 that is likely to cause a lead- based paint hazard
13 (S 27- 2056.4);

14 Two. An affirmative duty to ascertain
15 whether a child resides in a dwelling (S 27- 2056.4)
16 and

17 Three. A duty to prevent the
18 reasonable foreseeable occurrence of lead- based
19 paint hazards, and expeditiously remediate lead-
20 based paint hazards and any underlying structural
21 defects in order to prevent future hazards,
22 consistent with the work practices established under
23 S 27- 2056.11 (S 27- 2056.3).

24 Intro 101A defines lead dust, the
25 primary source of exposure for children, as a

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 hazard.

3 Leading experts at Cincinnati
4 Children's Hospital Medical Center, have found that
5 house dust contaminated with lead from deteriorated
6 paint constitutes the primary source of exposure for
7 children. Lead dust can spread rapidly, is
8 difficult to remove from household items, and lead
9 levels may remain elevated on surfaces for years.
10 Lead dust is easily picked upon hands and toys, and
11 once ingested can be readily absorbed in the
12 gastrointestinal tract Therefore, any statutory
13 scheme that purports to address lead poisoning must
14 define lead dust as a hazard, and Intro 101A does
15 so.

16 Intro 101A defines "lead- based paint
17 hazard" as any condition in a dwelling that "causes
18 exposure to lead from lead contaminated dust, from
19 lead- based paint that is peeling, or from lead-
20 based paint that is present on chewable surface,
21 deteriorated subsurfaces, friction surfaces, or
22 impact surfaces that would result in adverse human
23 health effects" (S 27- 2056.2(6)). Notably, Intro
24 101A's definition of "lead- based paint hazard" is
25 very much in line with those set forth by both the

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2 U.S. Environmental Protection Agency (EPA) and the
3 U.S. Department of Housing and Urban Development
4 (HUD). 40 C.F.R. S 745.223; 24 C.F.R. S 35.110.

5 Intro 101A requires the use of
6 properly trained workers and compliance with well-
7 established work practice standards.

8 MRDC 's written testimony submitted
9 at the September 2003 hearing discussed in detail
10 the importance of using properly trained and
11 certified individuals, given that the safe execution
12 of lead- based paint activities requires particular
13 training and expertise. In addition, it is critical
14 to adhere to well established work practice
15 standards designed to prevent lead dust dispersal

16 during work and ensure effective clean- up. Failure
17 to comply with such work practices increases the
18 likelihood of young children being exposed to lead
19 dust and lead paint chips.

20 S 27- 2056.11 requires the Department
21 of Health and Mental Hygiene (DHMH) to promulgate
22 rules establishing work practice standards for a
23 number of key situations and sets forth minimum
24 criteria for those work practice standards. For
25 example:

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2 When work is being performed in
3 response to an HPD issued notice of violation or
4 order to correct, the DHMH work practices must be no
5 less stringent than the safety standards set forth
6 in section 173.13 of the health code. In addition,
7 an owner must use EPA- certified firms and occupants
8 must be relocated if the work cannot be performed
9 safely. S 27- 2056.11(a)(1).

10 When working on large projects that
11 will disturb lead- based paint over surfaces larger
12 than one hundred square feet, the DHMH work
13 practices shall be no less protective than those
14 promulgated under section 173.14 of the health code.

15 In addition, an owner must conduct lead dust
16 clearance testing, use EPA certified firms, relocate
17 occupants when work cannot be performed safely, and
18 file notice of commencement of work with the DHMH. S
19 27- 2056.11(a)(2)(ii).

20 Dust clearance tests, which are
21 essential for indicating whether a dwelling is safe
22 for families to re- enter, must be performed by
23 third parties who are independent of the property
24 owner and any individual or firm that performs the
25 work. S 27- 2056.11(c).

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 Intro 101A imposes liability for
3 failure to comply with key requirements. In large
4 part, the effectiveness of Intro 101A will rest on
5 enforcing its provisions and holding violators
6 accountable for failure to comply. Key liability
7 and enforcement provisions in Intro 101A include,
8 for example:

9 Duty to Notify Occupants and to
10 Investigate.

11 S 27- 2056.4(g) imposes civil
12 penalties, fines and/or imprisonment on property
13 owners for failure to comply with the duties set
14 forth in S 27- 2056.4, including the duty to:

15 Investigate for hazardous conditions, determine the
16 presence of children residing in dwellings, inform
17 tenants of the landlords' obligations, and transmit
18 the results of investigations to tenants.

19 Violation in Dwelling Unit Upon
20 turnover.

21 S 27- 2056.8(c) provides that any owner who fails to
22 perform certain actions (set forth in S 27-
23 2056.8(a) upon turnover of certain apartments,
24 including, for example, permanently covering all
25 peeling paint, and repairing deteriorated

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2 subsurfaces and underlying defects, shall be held
3 liable for a Class C immediately hazardous
4 violation.

5 Waiver of Benefit void. S 27-
6 2056.15 provides for fines and/or imprisonment for
7 any property owner that seeks to have occupants
8 waive the benefits and protections afforded them
9 under Intro 101A.

10 Compliance by Department. S 27-
11 2056.16 allows an action or proceeding to be brought
12 against HPD or DHMH to compel the establishment of
13 rules and procedures required under this article, or

14 to compel compliance by such departments with this
15 article and the rules and procedures promulgated
16 hereunder.

17 Failure to Correct and False
18 Certification. S 6 of Intro 101A would amend the
19 New York City administrative code Section 27- 2115
20 by providing for, in part, civil penalties against
21 owners who falsely certify to HPD that violations
22 have been corrected, and who fail to correct
23 violations and certify such correction to HPD.

24 Conclusion. In closing, Intro 101A
25 provides a solid foundation for a lead paint law

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1 COMMITTEE ON HOUSING AND BUILDINGS

2 that will effectively and expeditiously protect
3 children from the devastating, yet preventable,
4 consequences of exposure to lead. Thus, NRDC
5 respectfully urges the Council to pass Intro 101A
6 without further undue delay.

7 Thank you for the opportunity to be
8 here and NRDC looks forward to our continuing work
9 on this issue.

10 CHAIRPERSON PROVENZANO: I want to
11 thank my Council Staff up here who makes sure they
12 don't leave me alone. I thank all of you for coming
13 and with that this meeting is adjourned.

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(Hearing adjourned at 3:55 p.m.)

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CERTIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, LENORE NAGLE, do hereby certify
that the foregoing is a true and accurate transcript
of the within proceeding.

I further certify that I am not

13 related to any of the parties to this action by
14 blood or marriage, and that I am in no way
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 17th day of November 2003.

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LENORE NAGLE

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C E R T I F I C A T I O N

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9 I, LENORE NAGLE, do hereby certify the
10 aforesaid to be a true and accurate copy of the
11 transcription of the audio tapes of this hearing.

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LENORE NAGLE

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