

1 COMMITTEE ON HOUSING AND BUILDINGS

2 CHAIRPERSON SPIGNER: It is afternoon  
3 still.

4 MR. LICHTMAN: When does it become  
5 evening? We will define our terms.

6 CHAIRPERSON SPIGNER: When it gets  
7 dark.

8 MR. LICHTMAN: When it gets dark.  
9 Maybe we will be here then.

10 Mr. Speaker, whoever is left, if I  
11 looked around the room I would think I could pick a  
12 very good jury for a lead case, eliminating that  
13 portion of the room.

14 Everybody seems to be fairly well  
15 educated about the specific provisions of what is in  
16 front of you. From a lawyer who practices in the  
17 courts, and who respects how well the Mayor can use  
18 the court system as well, and what I find so  
19 incredible is that in trying to fashion some  
20 compromise to protect children, you have effectively  
21 proposed to eliminate their right to access to the  
22 system, and that is being able to bring a lawsuit.

23 And I heard from, I guess it was Mr.  
24 Ricci, talked about how the lawyers got involved in  
25 a lot of reprocess with lead paint, and he seems to

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2 be a relatively intelligent person, so to make just  
3 a stupid remark sort of defies what you are  
4 attempting to accomplish here.

5                   The issue is compensating children  
6 who have been brain damaged, and I guess it would be  
7 trite to say that a mind is a terrible thing to  
8 waste or that we should reflect back on what Brown  
9 versus the Board of Education meant to people in  
10 this country, but essentially what you have proposed  
11 here is rather draconian. Basically you are telling  
12 Mrs. Rodriguez and Mr. Baddle that their children  
13 who have been damaged for life, who may not be able  
14 to find a place in the work place, or who need care  
15 for the balance of their life are going to be  
16 relegated to maybe the welfare rolls because the  
17 court system and the insurance companies who write  
18 \$5 million liability policies to protect them aren't  
19 going to be available to them. And without  
20 reiterating or having to sum up to you like a trial  
21 lawyer would, your notice provision concerning who  
22 bears the burden of bringing to the attention of a  
23 landlord the fact that his property is dangerous now  
24 falls on the shoulders of many who are illiterate  
25 and can't read and are packed into apartments more

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2 than you would like to believe, you want them to  
3 sign documents and essentially write to the landlord  
4 and put them on actual notice of a hazard that the  
5 landlord by way of the Court of Appeals has said  
6 that you are on constructive notice already.

7                   So, I think that you have a long way  
8 to go in fashioning a bill that all of these  
9 advocates on both sides of the aisle, because  
10 although I am on one side of the aisle, I look at  
11 this as a person, a citizen of the City, and  
12 recognize that access to our courts and protection  
13 to get reasonable compensation is one of the most  
14 important things that this legislation is attempting  
15 to eliminate.

16                   CHAIRPERSON SPIGNER: Let me see if I  
17 understand it, sir.

18                   As I understand this bill, or what  
19 this bill would try to achieve, is that when a lease  
20 is signed a tenant is informed that if they have a  
21 child under six, this is what the provisions are.

22                   There is an annual, proposed an  
23 annual notice to be sent. The landlord is obligated  
24 to make a visual inspection of the property  
25 annually, and I don't know if that takes a burden

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2 off, and if a tenant sees peeling paint and calls  
3 HPD, how is that putting the burden on the tenant? I  
4 mean, he might have a leaking faucet.

5 MR. LICHTMAN: You have got two  
6 questions there and I will take one at a time. When  
7 you are talking about the lady in the apartment who  
8 complains to the superintendent, because the  
9 landlord, in this legislation they talk about the  
10 landlord, they don't talk about the landlord who is  
11 aging --

12 CHAIRPERSON SPIGNER: Okay, I assume  
13 --

14 MR. LICHTMAN: And it is usually quite  
15 impossible to find a landlord who is in Halendale,  
16 Florida, for the summer, winter and fall. The issue  
17 really is when we are talking about the peeling  
18 paint is that tenants do complain about peeling  
19 paint and they go to the only person that they know,  
20 the person either collects the rent or the super.  
21 And they tell the super, you have got peeling paint,  
22 and maybe, maybe they even say that I saw the child  
23 playing with it.

24 If they have gotten the benefit of  
25 some of the Department of Health Education pamphlets

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2 then they know they might have a problem. But  
3 assuming, for argument's sake, what they are  
4 complaining about, is the ceiling that is about to  
5 cave in and it is dropping.

6 CHAIRPERSON SPIGNER: Right.

7 MR. LICHTMAN: Well, the way this law  
8 is drafted, that notice of peeling paint, without  
9 the benefit of the presumption, does not further the  
10 interests of that child when it comes to fruition  
11 that the landlord didn't do anything about it, and  
12 now the tenant no longer can prove that the landlord  
13 had notice of a defective and dangerous condition,  
14 because the laws have been construed to mean that  
15 the tenant now has to put the landlord of actual  
16 notice of the lead. And the fact that the  
17 individual, the tenant, told the landlord super  
18 there is peeling paint, which is a defective hazard  
19 and condition, is going to lose access to the court,  
20 if you let that presumption just apply to this  
21 legislation.

22 And that is essentially what the  
23 Juarez case deals with when you are talking about  
24 constructive notice. A landlord is to be charged  
25 with knowing or should have known about a dangerous

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2 and defective condition, and what you are  
3 eliminating by taking away that presumption is  
4 access, because the courts have already construed  
5 what notice means from a constructive way.

6 I mean, telling the landlord about  
7 the lead, Mr. Speaker, you tell me how a lady in the  
8 South Bronx or in Bushwick is going to be informing  
9 a landlord who has got the benefit of all of these  
10 high priced lawyers telling them about how to deal  
11 with lead. Why they don't know better, and why they  
12 aren't the ones that are getting the education, and  
13 why they should get any benefit from losing a  
14 presumption, the truth of the matter is, we should  
15 be on par with Boston and if there is lead and there  
16 is proof of causation, you are strictly liable.  
17 Forget about all of this other window dressing, that  
18 is what is going on here, at least in my view as a  
19 trial lawyer who has got to go into court and still  
20 make out a prima facie case of notice. That is what  
21 it is about.

22 CHAIRPERSON SPIGNER: Thank you.

23 Ma'am.

24 MS. SILVERMAN: My name is Maureen  
25 Silverman, I am also a member of New York City

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2 Coalition to End Lead Poisoning and housing resource  
3 coordinator of Sinergia.

4 Sinergia is a non-profit organization  
5 providing comprehensive services to people with  
6 developmental disabilities and their families.

7 Our mission is to reach underserved,  
8 low-income minority communities.

9 Lead poisoning prevention is an  
10 integral aspect of our work, since it causes  
11 developmental disabilities in disproportionately  
12 affected low-income, African-American and Latino  
13 children.

14 Synergia also advocates for children  
15 in the Special Education system and is concerned  
16 about the large number of lead poisoned children who  
17 have severe developmental disabilities and wind up  
18 in special education.

19 The City Council's process for  
20 holding a public hearing and working to pass a new  
21 lead law is a travesty of justice and a fasttrack to  
22 poisoning children.

23 The City Council informed the public  
24 that they were holding a hearing on Friday and did  
25 not provide a final draft of their landlord

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2 protection bill until 4:00 p.m. on Friday. This does  
3 not provide adequate time for public comment,  
4 including informing health experts and mothers of  
5 lead poisoned children of the hearing and affording  
6 them a realistic amount of time to prepare  
7 testimony.

8                   It seems that the only reason the  
9 City is showing such disdain of the public is to  
10 exclude real public input and rush through a lead  
11 bill which appeases landlords and gravely endangers  
12 children.

13                   This process is especially unfair and  
14 ubiquitous considering the prevalence of lead  
15 poisoning in New York City and the irreversible  
16 health consequences of childhood lead poisoning.

17                   I am disappointed that Speaker  
18 Vallone who has such little respect for the public,  
19 and so little concern for children, is running for  
20 the Mayor of this City.

21                   This City is also fabricating a  
22 crisis. I know this has been said before, but it  
23 must be known that most people in the room knows it,  
24 by claiming that they must pass a new bill or  
25 enforce Local Law 1 to comply with the NYCCELP



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2 lawsuit.

3                   NYCCELP Council has offered in  
4 extension to comply with the lawsuit until October  
5 15th, 1999. The Council has refused to allow a  
6 hearing on Intro. 205, which was introduced two  
7 years ago with the support of two thirds of the City  
8 - Council and a wide spectrum of Medical and Health  
9 experts, environmental, housing and children's  
10 organizations, parents groups and religious leaders.

11                   Moreover, Intro. 205 protects  
12 children and prevents childhood lead poisoning.

13                   Paradoxically, the bill proposed  
14 today will proliferate the number of lead poisoning  
15 cases, worsening housing conditions and augment the  
16 cost the City has to pay for special education and  
17 other health costs for lead poisoned children.

18                   Therefore, I ask the Council to vote  
19 against today's bill and ask for a hearing for  
20 Intro. 205.

21                   With approximately 30,000 lead  
22 poisoned children in New York City, I believe that  
23 the City is not adequately preventing childhood lead  
24 poisoning. Lead poisoning is entirely preventable  
25 since we know the causes and ways to eliminate it.

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2 Lead paint in housing is the primary cause, and the  
3 City could drastically reduce lead poisoning if it  
4 establishes a proactive and aggressive lead  
5 poisoning prevention program.

6 Day care centers, public schools, and  
7 playgrounds are also major sources of lead  
8 poisoning. However, the predominant reason children  
9 are lead poisoned, is because landlords are not  
10 maintaining their buildings and properly abating  
11 lead hazards.

12 Approximately 68 percent of New York  
13 City's dwelling units contain lead paint which can  
14 be hazardous to children. With the steady decline of  
15 housing code inspectors, the code enforcement system  
16 fails to correct lead hazards and other harmful  
17 violations.

18 In addition, the Department of Health  
19 only intervened when children are already lead  
20 poisoned with levels of 20 or higher.

21 Moreover, the City only responds to  
22 tenant complaints and lead poisoning cases and does  
23 not have a long range plan to make apartments lead  
24 safe.

25 Consequently, lead poisoned children

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2 experience unnecessary damage at great cost to the  
3 City.

4           The lead bill proposed today will  
5 exacerbate the lead poisoning problem by allowing  
6 indefinite extensions for abatement and clean-up,  
7 weakening of Department of Health safety standards  
8 for abatement and clean-up; not requiring landlords  
9 to adhere to safety standards unless they fail to  
10 correct violations within 21 days; not requiring  
11 landlords to correct any lead hazards or peeling  
12 paint and excluding correction of underlying defects  
13 and dust, shifting the burden to tenants to inform  
14 landlords of children under six years old for  
15 liability purposes, paying correction of lead  
16 hazards.

17           It also does not include a proactive  
18 approach to identify high risk buildings and remove  
19 lead hazards as a means to preventing lead  
20 poisoning.

21           In addition, it does not inquire the  
22 City to increase the number of code inspectors,  
23 although it is apparent that the current number of  
24 inspectors are not adequately protecting the housing  
25 stock and correcting lead hazards.

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2           The bill also does not address lead  
3 hazards in schools, day care centers and  
4 playgrounds, which are significant causes of lead  
5 poisoning.

6           Intro. 205 addresses these issues and  
7 accomplishes a plan to prevent lead poisoning.

8           For over the past five years, I have  
9 worked with parents who have children with  
10 dangerously elevated lead levels or levels high  
11 enough to acquire hospitalization or other medical  
12 intervention.

13           I have also worked with families who  
14 are at risk of lead poisoning because they live on  
15 old pre-1960 buildings with peeling deteriorating  
16 paint and underlying defects, such as plumbing  
17 problems.

18           Most for the parents are low income  
19 Latino and African American single mothers who are  
20 on public assistance and receive SSI for their  
21 children.

22           The prolonged periods of time people  
23 have to wait for landlords or the City to abate lead  
24 hazards indicates the inadequacies of the City's  
25 current policies.

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2                   Moreover, the Vallone lead bill  
3 proposed today allows excessive periods of time for  
4 placement of violation and indefinite extensions for  
5 abatement and clean up.

6                   Landlords commonly ignore lead paint  
7 violations that HPD issues and never follow up in  
8 abating lead hazards. Other times parents have  
9 waited for several months or several years before  
10 landlords have attempted abatement after an HPD  
11 violation.

12                   At that time landlords, often  
13 carelessly paint over some of the walls without  
14 removing the lead or following DOH safety  
15 procedures.

16                   After a DOH inspection parents of  
17 children with lead levels of 20 or more often wait  
18 from five months to several years before the  
19 landlord with HPD's emergency repair unit abate the  
20 hazard.

21                   It frequently takes vigorous  
22 intervention of an advocate or attorney to expedite  
23 the process. The lead bill proposed today  
24 exacerbates these problems, but allowing indefinite  
25 --

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2 CHAIRPERSON SPIGNER: Is it possible  
3 that you can conclude? We have been here since 10:30

4 --

5 MS. SILVERMAN: Yes. I am sorry.

6 Allow indefinite --

7 CHAIRPERSON SPIGNER: No, no.

8 Continue. Stanley wants to hear every last word.

9 MS. SILVERMAN: I will say it as  
10 quickly as possible. I will try to sum up, okay?

11 The current bill -- wait. The bill  
12 proposed today exacerbates these problems by  
13 increasing the -- by allowing indefinite extensions  
14 for abatement and clean up, it encourages landlords  
15 to do quick and dirty abatement, which endangers  
16 children in order to avoid complying with the  
17 Department of Health safety regulations, which they  
18 must comply with if they do not abate lead houses  
19 within 21 days of a date of the violation.

20 Low-income tenants recurrent  
21 experience of living in apartments with lead hazards  
22 reflect the failure of HPD's code enforcement  
23 system, the City's neglect of abating the lead  
24 hazards in high risk buildings and the Department of  
25 Health myopic policies regarding inspections.

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2 Many low-income parents move from  
3 apartment to apartment attempting to find cheaper  
4 rent and avert homelessness. Desperate to find  
5 affordable housing, they often move into poorly  
6 maintained buildings where their children are  
7 poisoned. Even if an apartment appears well  
8 maintained, when someone moves in, the conditions  
9 deteriorate when irresponsible landlords neglect  
10 their buildings and do not tend to underlying  
11 defects which this bill does not account for.

12 Lead hazards ensue when the paint  
13 begins to peel when leaks and underlying defects  
14 damage the walls. Consequently, many families are  
15 exposed to lead hazards in several different  
16 apartments.

17 I know of one parent whose son was  
18 lead poisoned in three different apartments. A  
19 prominent attorney is helping her sue three  
20 different landlords which will probably cost them  
21 millions of dollars.

22 The mother's lead poisoned child is  
23 in special education because he is hyperactive and  
24 severely developmentally disabled.

25 The mother has also had to stop

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2 working to care for her son. The bill proposed today  
3 does not require landlords ~~to~~ correct underlying  
4 defects and dust which caused paint to peel and  
5 deteriorate as Intro. 205 does.

6 Landlords must correct these  
7 underlying defects and address dust from lead-based  
8 paint, if they are to prevent children from becoming  
9 lead poisoned.

10 Okay, I am going to skip through a  
11 whole bunch. I oppose the current lead bill's  
12 provision requiring tenants to provide landlords  
13 written notice of a child under six years of age,  
14 living in the apartment in order for the City to  
15 acquire a landlord to do annual inspections and  
16 correct lead hazards.

17 This provision is based on the old  
18 window guard law, which the City changed because it  
19 did not work.

20 History has shown that one of the  
21 reasons for the decrease in lead poisoning cases is  
22 landlord liability in the Juarez case, which holds  
23 landlords responsible for lead hazards, regardless  
24 if a tenant provided notice of a lead poisoned  
25 child.



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2                   The weakening of current Department  
3 of Health safety standards for abatement and clean  
4 up will seriously endanger children since unsafe  
5 abatement and clean-up spread lead dust which is  
6 lethal to tenants in the work area.

7                   Moreover, the Department of Health  
8 standards are based on federal, HUD and EPA  
9 practices and documented methodology. These safety  
10 standards were developed by health experts who  
11 carefully deliberated on these standards.

12                   The City Council are not health  
13 experts --

14                   CHAIRPERSON SPIGNER: Are you going to  
15 finish today?

16                   MS. SILVERMAN: Yes, I am almost done.

17                   CHAIRPERSON SPIGNER: Are you sure?

18                   MS. SILVERMAN: -- And do not have the  
19 expertise to change health standards which health  
20 experts have.

21                   Okay, this is it. I am over. I ask  
22 the City Council to include the following five  
23 principles when passing a lead bill since these  
24 principles ensure the safety of children and promote  
25 prevention of childhood lead poisoning:

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2 - safe practices when removing lead  
3 paint. " "

4 - quick corrections of lead  
5 violations.

6 - older buildings must be presumed to  
7 have lead paint.

8 - landlords must continue to inspect  
9 as the law now requires.

10 Children who are lead poisoned must  
11 continue to have the right to bring a civil action  
12 against the persons who are responsible for their  
13 injury.

14 I again ask the Council to hold a  
15 hearing on Intro. 205 which incorporates these  
16 principles.

17 CHAIRPERSON SPIGNER: The main reason  
18 why I gave you enough times is because I limited Mr.  
19 Chachere's testimony last time and a consequence I  
20 had to spend two hours with him. How long was it, an  
21 hour and a half or two hours?

22 MR. CHACHERE: I remember that  
23 meeting. And at that meeting you also told me that  
24 you were going to get an analysis of the problems  
25 with 205 from the Real Estate industry, but that

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2 never occurred.

3 CHAIRPERSON SPIGNER: We have done  
4 significant work since we last had that meeting.

5 MR. CHACHERE: Well, I still, Mr.  
6 Speaker, have yet to ever hear the real estate  
7 people come forward and say what their problem was  
8 with Intro. 205. And we had that meeting, I said why  
9 don't you facilitate it, and you said you would.  
10 Several of us heard you say that and it never  
11 occurred, and I want to know why that has never  
12 occurred.

13 CHAIRPERSON SPIGNER: Well, I suggest  
14 you ask them.

15 COUNCIL MEMBER MICHELS: I found out  
16 why. It doesn't protect the landlords enough.

17 CHAIRPERSON SPIGNER: Gentlemen,  
18 ladies, thank you so much for your testimony. Now we  
19 want to hear Marilyn Davenport. Nick LaPorte,  
20 Associated Builders and Owners, Dan Margulies of  
21 CHIP. Please identify yourselves.

22 In any way you choose to begin is all  
23 right with the Chair.

24 MS. DAVENPORT: Good evening. I am  
25 Marilyn Davenport, with the Real Estate Board of New

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2 York.

3 I have testified on several occasions  
4 regarding lead paint legislation before this  
5 Committee and I am going to be very brief. But I  
6 would be happy to answer questions.

7 The proposed lead paint hazard  
8 control legislation is a responsible way to amend  
9 the Administrative Code to make older buildings with  
10 peeling lead-based paint or deteriorated subsurfaces  
11 safe for young children, while preserving affordable  
12 housing.

13 It makes maintenance of all painted  
14 surfaces smooth and intact a top priority. I think  
15 that Dr. Cohen was very articulated on the  
16 importance of prevention and on maintenance and  
17 preservation of painted housing stock.

18 It is accepted and recognized  
19 nationally that this is the most effective way to  
20 manage lead paint, not to remove it or abate it,  
21 thereby generating lead dust, which is the primary  
22 cause of the hazard.

23 We have all spent several years  
24 debating how to amend the Housing Maintenance Code  
25 since the courts interpreted Local Law 1 to mean

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2 that the mere presence of lead paint in a pre-1960  
3 unit is the violation which must be fully abated.  
4 This was certainly never intended by the drafters of  
5 the law and is extremely costly. Worse, it is  
6 potentially hazardous.

7                   The basic tenet of the current  
8 proposal, notification-to the owner of the residence  
9 of a young child, which in turn triggers an  
10 immediate inspection. And I want to repeat that it  
11 triggers an immediate inspection. The point of the  
12 notification is not just about liability, it is  
13 about getting that inspection done, as well as  
14 annual inspections.

15                   Rapid repair of lead hazards and  
16 maintenance of painted surfaces on vacancy ensures  
17 that older units will be maintained safely without  
18 the excessive and unnecessary costs and hazards  
19 abatement entails.

20                   The bill contains, and I am not going  
21 to go through them all, but the bill contains  
22 extensive work procedures to minimize the generation  
23 of lead dust and to contain the spread of lead dust.  
24 It is important to legislate those procedures, since  
25 this is based on a presumption that it is lead paint

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2 and it applies to all paint and on vacancy.

3                   It has been suggested that it is  
4 asking too much to expect a tenant to return the  
5 form inquiring as to the presence of young children.

6                   It has been proposed that the owner  
7 inspect the unit for children and investigate  
8 further if he is denied access.

9                   I don't know what that means, and I  
10 don't know how he does it, but I think it is  
11 absolutely critical that the owner be informed of  
12 the residents of the young child in a pre-1960 unit.  
13 And to suggest that he alone is responsible for  
14 knowing this imposes an unrealistic mandate and is a  
15 gift to the trial bar.

16                   Intro. 205 goes well beyond the  
17 requirements on vacancy and requires HPD to set up a  
18 schedule for occupied units that essentially seems  
19 to duplicate the notice requirement.

20                   The proposal before us provides for  
21 strong incentives for prompt compliance, which is I  
22 think the goal that we all share, and more  
23 importantly, for maintenance for all pre-1960  
24 buildings. This approach offers the safest and most  
25 feasible way to serve a vital public interest.

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2 Thank you.

3 CHAIRPERSON SPIGNER: Thank you.

4 Mr. LaPorte.

5 MR. LaPORTE: My name is Nicholas  
6 LaPorte. I am the Executive Director of the  
7 Associated Buildings and Owners of Greater New York.  
8 I am here to testify in support of this bill,  
9 because we believe this legislation is significant  
10 in that it establishes standards that would make a  
11 child's home lead safe, and that has been the  
12 standard that everybody has been talking about, and  
13 we believe this bill does just that.

14 We have looked at this bill, we have  
15 negotiated this bill, this issue, over several years  
16 now and we are currently where we are because of the  
17 court's decision in interpreting the existing lead  
18 paint law which we know has been problematic for  
19 both landlords and tenants.

20 Rather than requiring extensive and  
21 expensive mandates where the possibility of lead  
22 poisoning is so remote as to be unlikely, as the  
23 court has interpreted this current law, Local Law 1,  
24 this bill speaks to potentially dangerous  
25 situations, namely where paint is peeling in an

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2 older home and a child is present, and establishes a  
3 clear protocol that directs an owner on how to  
4 correct this situation.

5                   We have heard varying arguments and  
6 opinions today stating that this bill does not go  
7 far enough, but we have to recognize that this bill  
8 imposes serious obligations on owners to ameliorate  
9 even the remotest possibility of harm to a child,  
10 while no actual danger needs to be established.

11                   Most importantly, we have to remember  
12 what this bill says, that all peeling paint  
13 conditions in homes built before 1960 are treated as  
14 if they are lead-based paint conditions when  
15 children are present because they are presumed to be  
16 lead-based paint.

17                   All peeling paint conditions must be  
18 repaired in accordance with controls and protocols  
19 established in this bill. Failure to do so will  
20 require intervention by HPD.

21                   Comprehensive procedures have also  
22 been developed to determine whether a child resides  
23 in an apartment, and if so, to address peeling paint  
24 conditions, irrespective of whether the apartment is  
25 determined to contain lead-based paint or not.



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2                   To repair these peeling paint  
3 conditions owners can undertake what have been  
4 designated as interim control. They require owners  
5 to utilize safety measures that control the spread  
6 of paint and its attendant dust.

7                   These controls direct that the work  
8 area is sealed off, tenant's possessions are  
9 protected and drop-cloths are used. The only  
10 designated method of peeling paint removal is wet  
11 scraping.

12                   Before repainting and at the end of  
13 each work day, the affected area must be cleaned to  
14 ensure that no paint dust remains in the area, and  
15 repairs must be completed within 21 days.

16                   Designed to encourage a speedy and  
17 safe repair of peeling paint conditions, the interim  
18 controls are only available to those owners who seek  
19 to maintain their units.

20                   If the repairs are not completed  
21 within a short period of time, then the owner cannot  
22 use the interim controls and they must follow the  
23 more stringent Department of Health protocols.

24                   Please note that this bill contains  
25 far more than a repair mandate. An owner is not

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2 merely charged with the obligation to repair a  
3 peeling paint condition when peeling paint is  
4 discovered; the bill goes much further than that.  
5 Instead, when a child lives within a unit, each year  
6 the owner must inspect the unit to see if a peeling  
7 paint condition exists. The owner is given a  
8 responsibility to establish whether a child lives in  
9 the unit, through the use of an annual notice, and  
10 when notified a child does, he is required to  
11 inspect that unit.

12                   If peeling paint is found, he has to  
13 repair it. Even if a tenant does not respond to the  
14 owner's notice, when the owner knows that a child  
15 lives there, then the owner must inspect that unit.

16                   As the annual inspection will control  
17 peeling paint conditions, this bill creates another  
18 new requirement: establishing controls of vacant  
19 apartments. Between occupancies, apartments must be  
20 treated so as to minimize the likelihood that a  
21 peeling paint problem will occur in the future and  
22 facilitate clean up of dust should any arise.

23                   This new obligation is another  
24 important step in reducing the chance of exposure to  
25 lead.

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2 In addition to the duties placed on  
3 owners, the bill requires that the City act in a  
4 decisive manner by providing information to tenants  
5 and owners during inspections and referrals.  
6 Further, the requirement that the City initiate  
7 repairs when an owner fails to do so, will achieve  
8 an important objective of providing a lead-safe home  
9 environment for children.

10 Keeping in mind our purpose,  
11 preventing lead poisoning in children, the  
12 responsibilities, duties and actions set forth in  
13 this bill will do just that.

14 This legislation provides clear and  
15 affordable mandates to ensure that conditions can be  
16 remedied safely and expediently. In passing this  
17 bill the Council will establish measures that  
18 provide for safe removal, ongoing vigilance, quick  
19 action, and city involvement.

20 Thank you.

21 CHAIRPERSON SPIGNER: Thank you.

22 Sir.

23 MR. MARGULIES: Good late afternoon, I  
24 guess. My name is Dan Margulies. I am Executive  
25 Director of Community Housing Improvement Program, a

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2 trade association of apartment building owners in  
3 New York. Thank you for the opportunity to testify.

4 This is a lengthy and complex  
5 proposal, but CHIP strongly supports several  
6 elements of it.

7 We agree, for example, with the  
8 revolutionary proposal to ban the dry scraping or  
9 sanding of paint in New York City.

10 I don't think we can emphasize enough  
11 what a seismic shift this will mean in ordinary work  
12 practices. I am sure that almost every member of the  
13 City Council, the staff, and every adult in this  
14 room has scraped or sanded a dry wall. It is the  
15 universal practice around the world and we are  
16 prepared to make it illegal in the City of New York.

17 I am astounded that no one has  
18 focused on this at today's hearing after all these  
19 hours. This is probably the most far reaching thing  
20 that has been proposed, when scraping and sanding  
21 should be the rule for several reasons:

22 First, it limits the immediate spread  
23 of paint dust. Second, the use of water creates a  
24 slurry and virtually dictates the use of proper  
25 ground clothes. Nick Farr made reference to that

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2 earlier. No one will make the mistake of failing to  
3 adequately cover a wood floor or a carpet twice to  
4 protect it from the slurry that develops from wet  
5 sanding.

6 That in turn will make clean-ups more  
7 efficient and effective, use better drop clothes,  
8 closer protection, makes it easier to pick up after  
9 yourself.

10 Notice I said wet scraping and  
11 sanding will reduce paint dust, not just lead dust.

12 Reducing paint dust may prevent some  
13 lead poisoning, but it will probably have a greater  
14 more widespread benefit for people with allergies  
15 and asthma, and, again, I think it is important to  
16 note the tremendous health benefits of this proposal  
17 for the citizens of New York.

18 CHIP also supports the tenant notice  
19 provisions in the bill. We wanted to keep our  
20 tenants informed and we want them to keep us  
21 informed. If a tenant reports peeling paint, we  
22 should deal with it.

23 An annual apartment inspection by the  
24 owner or agent is a reasonable maintenance  
25 requirement, especially if there are children known

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2 to be in the apartment.

3                   Turning over intact apartments on  
4 vacancy is not a problem either. Most responsible  
5 owners prep and paint on vacancy anyway. Clearly, we  
6 should be renting apartments without violations.

7                   We do have concerns, however, with  
8 some provisions of the bill and some additional  
9 ideas still being discussed here today.

10                   We have a serious problem with the  
11 City's desire to continue presuming all paint in  
12 older buildings is lead paint, despite all of the  
13 evidence to the contrary.

14                   We know from a variety of surveys  
15 published by HUD in the National Center for Lead  
16 Safe Housing among others, that most walls and  
17 ceilings even in older dilapidated housing do not  
18 contain lead paint.

19                   Nick Farr gave the number earlier  
20 today, 17 percent of the walls and ceilings in the  
21 units that they have examined in New York City have  
22 lead paint on them. That means 83 percent don't.

23                   When 83 percent of the walls don't  
24 have lead paint, presuming it in all walls is a bit  
25 extreme.

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2                   The most recent data from the  
3 National Center, and Mr. Farr mentioned it again  
4 this morning, is that to an extent there is more  
5 lead in baseboard and mouldings. I think he said 49  
6 percent in baseboards.

7                   It is worth noting in that connection  
8 that baseboards are a small surface area, as  
9 mouldings are as well, and don't tend to peel along  
10 their entire length, they seem to be very discreet,  
11 small areas, and don't pose that much of a hazard.

12                   And in this context I would like to  
13 protest the calls from several people here today for  
14 dust clearance testing, and even more substantial  
15 changes in work practices.

16                   On the one hand, we agree that  
17 painters should work clean and clean up after  
18 themselves, but it is hard to accept that every  
19 paint job and every touch-up of peeling paint is an  
20 abatement project. It just isn't so. It is not lead  
21 paint most of the time.

22                   Most surfaces don't have lead paint,  
23 even in pre-1960 buildings. Where there is lead  
24 paint, it is often intact, perhaps buried under  
25 several other layers of paint and neither scraping

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2 nor sanding will reach it.

3            ||            We had a tremendous boom in painting  
4 window replacement and building rehabilitation in  
5 New York in the mid-eighties. Today again we are at  
6 the top of an economic cycle and owners are  
7 investing in repairs and construction at  
8 unprecedented levels for this decade.

9                        But children's lead levels are not  
10 rising from all of this work and disturbance, they  
11 are declining.

12                       The work is helping eliminate lead  
13 poisoning the way we have always done it. Wet  
14 scraping and sanding will be even better. There will  
15 be less collateral damaged. There isn't much now.

16                       Pretending that we need a lead  
17 abatement project every time an apartment is vacant  
18 or a little paint peels won't help. It will just  
19 waste resources that could be spent on other housing  
20 improvements.

21                       Lastly, I would like the Council to  
22 recognize that you are not operating in a vacuum.  
23 OSHA has already promulgated standards for  
24 construction workers dealing with existing painted  
25 surfaces.



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2                   The EPA is working on work practices  
3 for renovators and remodelers. EPA has just  
4 implemented on June 1st extensive notification  
5 requirements for disturbing paint in target housing  
6 which they define as anything built before 1978.

7                   Under these rules the average tenant  
8 in New York will get six or more copies of the  
9 booklet, Protect Your Family From Lead Paint, every  
10 year, perhaps dozens of copies. Every tenant already  
11 gets it under HUD rules on vacancy.

12                   To a much greater extent than in  
13 years past, we will have an educated consumer on  
14 this subject.

15                   Thank you again for the opportunity  
16 to testify.

17                   CHAIRPERSON SPIGNER: Thank you,  
18 gentlemen, and lady.

19                   We have a question from Stanley.

20                   COUNCIL MEMBER MICHELS: Yes.

21                   You seem to have some problems with  
22 the tenant notification of children to the  
23 landlords. You say that is wonderful. But the fact  
24 of the matter is, the window guard law works,  
25 doesn't it? In your buildings? Do you have problems

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2 with the presently existing window guards laws?

3 MS. DAVENPORT: The proposal that is  
4 before us which requires notification we support.

5 COUNCIL MEMBER MICHELS: So does the  
6 window guard law, right?

7 MS. DAVENPORT: We support it though.

8 COUNCIL MEMBER MICHELS: The window  
9 guard law also, right?

10 MS. DAVENPORT: Correct.

11 COUNCIL MEMBER MICHELS: But this  
12 changes the window guard law.

13 MS. DAVENPORT: That's correct.

14 COUNCIL MEMBER MICHELS: It changes it  
15 back to what the old window guard law was before it  
16 was changed because it didn't work. So you favor the  
17 window guard law and it doesn't work.

18 MS. DAVENPORT: We strongly support  
19 the provisions in this bill requiring that the  
20 tenant notify the owner of the presence of the  
21 child.

22 And the point is, the other thing  
23 that I really think is important in this, this isn't  
24 just about liability. This is so the owner gets into  
25 the right unit and inspects immediately and makes

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2 those corrections.

3 COUNCIL MEMBER MICHELS: Right. And  
4 that is what the new window guard, the latest window  
5 guard law does, that is the purpose of it. But you  
6 are supporting a law that goes back to the window  
7 guard law that didn't work. I just want you to know  
8 that. You don't know that.

9 The window guard law that is in this  
10 bill, the notification is based upon the old window  
11 guard law, which had to be changed because it didn't  
12 work. I just want you to know that. So, I think you  
13 are wrong. I think you ought to reconsider the fact  
14 that you are supporting a notification law that has  
15 been found to be not working.

16 MS. DAVENPORT: I wasn't aware of the  
17 fact that the old window guard law had all of these  
18 federal requirements and educational requirements  
19 with it. It didn't. The point is that the tenants  
20 are also better educated tenants, they are getting  
21 these notices, as Dan said, this is not happening in  
22 a vacuum.

23 COUNCIL MEMBER MICHELS: You are  
24 telling the landlord that he doesn't have to do any  
25 investigation, if you have a child of five years or

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2 younger.

3 MR. DAVENPORT<sup>H</sup>: No. This bill  
4 specifically says if you have knowledge of a child  
5 you are equally as responsible.

6 If I have a 200-unit -- the bill says  
7 if you have actual knowledge of the child you are  
8 responsible for making the inspections and making  
9 the corrections.

10 COUNCIL MEMBER MICHELS: The old  
11 window guard law didn't put any burden on the  
12 landlord, and therefore they didn't find out.

13 The new window guard law, which now  
14 works, says the landlord has to exercise reasonable  
15 diligence in finding a child, and that is the law  
16 that is presently existing, and that is what this  
17 law does not reflect.

18 Presently the existing draft reflects  
19 the outdated and the law which is shown to be not  
20 affected.

21 Intro. 205 says to investigate.

22 COUNCIL MEMBER MICHELS: Intro. 205  
23 contains the presently existing window guard law.  
24 What we are doing here is changing the law to go  
25 back to the one that didn't exist.

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2 MR. MARGULIES: Excuse me. The  
3 current window guard doesn't require you to  
4 investigate.

5 MS. DAVENPORT: No, it does not.

6 MR. MARGULIES: The current window  
7 guard requires you to persist in hounding the tenant  
8 to get a response to a notice in writing.

9 COUNCIL MEMBER MICHELS: That is the  
10 present window guard law.

11 MS. DAVENPORT: And then you notify  
12 the Department of Health.

13 COUNCIL MEMBER MICHELS: You are  
14 hounding the tenant, right? You always are very good  
15 at this. Dan, you always exaggerate. The law says  
16 hound the tenant, right?

17 MR. MARGULIES: Yes, that is what it  
18 says. The law says that --

19 COUNCIL MEMBER MICHELS: How do you  
20 spell hound, that is in the law?

21 MR. MARGULIES: The law says --

22 COUNCIL MEMBER MICHELS: H-o-u-n-d?

23 MR. MARGULIES: The law says that  
24 during a certain time period you send the notice. It  
25 says if you don't get a response, you send another

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2 notice. It says if you don't get a response the  
3 second time, that you contact the Department of  
4 Health, which will essentially tell you to send a  
5 third notice.

6 I call that hounding. It says at some  
7 point you knock on the door, okay, and attempt to  
8 obtain an answer in person, if having failed to get  
9 two or three acknowledgments by mail. That is what  
10 the law says. It is a procedure that is laid out  
11 very precisely. And in fact, it doesn't work in 20  
12 or 30 percent of the cases. Tenants do not respond.  
13 Owners have to go knock on the doors.

14 COUNCIL MEMBER MICHELS: Let me read  
15 you what the law says.

16 MR. MARGULIES: And they sometimes  
17 find out if there is a child there and sometimes  
18 they don't.

19 COUNCIL MEMBER MICHELS: Dan,  
20 everybody is entitled to their own opinion, you are  
21 not entitled to your own facts. You are not factual.

22 MR. MARGULIES: Give me a break.

23 COUNCIL MEMBER MICHELS: The law says  
24 that each year the owner shall deliver to each  
25 residential unit a notice requiring as to whether a

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2 child under six years of age resides therein. Or in  
3 that case the window guard as well.

4 If subsequent to the delivery of such  
5 notice the owner does not have written response from  
6 the tenant and does not have otherwise actual  
7 knowledge as to whether a child under the age of 12  
8 years old resides there, and the owner had  
9 reasonable time, he shall inspect the dwelling to  
10 ascertain --

11 MR. MARGULIES: What are you reading  
12 from?

13 COUNCIL MEMBER MICHELS: I am reading  
14 from the old window guard -- the new window guard  
15 law. That is the way the new window guard law works.

16 MR. MARGULIES: There is a repeat mail  
17 requirement. There is regulations from the  
18 Department of Health that don't read like that.

19 MS. DAVENPORT: Right. That's not it.

20 MR. MARGULIES: That's not it.

21 MS. DAVENPORT: That is the beginning  
22 of Intro. 205.

23 MR. MARGULIES: You are reading the  
24 bill, you are not reading the law.

25 COUNCIL MEMBER MICHELS: We are

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2 talking about the reasonable duty upon the landlord,  
3 it is the same language. #

4 MR. MARGULIES: That's not the same  
5 language.

6 MS. DAVENPORT: It's not. And Council  
7 Member, I think the next sentence says that the  
8 owner shall investigate, and we don't understand  
9 that. That sounds like hire a detective agency to  
10 me.

11 MR. MARGULIES: You are not reading  
12 from the law.

13 COUNCIL MEMBER MICHELS: Sam Spade  
14 rides again, okay.

15 But you want to put the burden on the  
16 tenant, and the landlord will deny that he has a kid  
17 under five years of age.

18 Now, the other thing I want to speak  
19 to you about is, Nick, you say here that it is a  
20 short period of time to repair.

21 MR. LaPORTE: Right.

22 COUNCIL MEMBER MICHELS: Are you aware  
23 of all of the deadlines, how long it takes, almost  
24 300 days.

25 MR. LaPORTE: The landlord has 21 days



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2 to repair a violation.

3 COUNCIL MEMBER MICHELS: Twenty-one  
4 days, but that 21 days, first of all, the inspector  
5 comes in, he has 15 to 25 days to respond to the  
6 complaint. Sixty days within the issue of the  
7 violation, 21 days to correct, has an unlimited  
8 30-day periods of time, has five days for mailing  
9 and certification, 70 days for the reinspection, and  
10 30 days for mailing the notice, 90 days HPD  
11 correction -- I mean, this thing --

12 MR. LaPORTE: My testimony went to the  
13 landlord's responsibility to turn around the  
14 apartment -- repair once a violation has been  
15 issued. That is the short turn-around time.

16 Twenty-one days in an extremely short  
17 period of time --

18 COUNCIL MEMBER MICHELS: Thirty days  
19 unlimited extension.

20 MR. LaPORTE: Those extensions are  
21 based on the inability of a landlord to get access  
22 to an apartment. And if a tenant --

23 COUNCIL MEMBER MICHELS: How about  
24 ability to pay, inability -- it is so open-ended  
25 that you could drive a Mack truck through it.

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2 MR. MARGULIÉS: Excuse me, Council  
3 Member Michels. We have to get a balance here  
4 between responsibility between the tenants and the  
5 landlords.

6 A landlord is being placed in a  
7 position of extreme liability and the burden of  
8 getting into an apartment to repair a condition that  
9 has been found.

10 COUNCIL MEMBER MICHELS: If he doesn't  
11 have access --

12 MR. LaPORTE: You are taking a  
13 position here that the tenant should have no  
14 responsibility whatsoever to protect himself and his  
15 child.

16 COUNCIL MEMBER MICHELS: The position  
17 I am taking --

18 MR. LaPORTE: We want to get in, we  
19 want to repair and if you don't let us in, we are  
20 going to be held liable for not making repairs --

21 COUNCIL MEMBER MICHELS: Nick, I will  
22 always give the landlord the perfect defense of  
23 failure to give access, there is no problem there.

24 MR. LaPORTE: That is what the 30-day  
25 extensions are for.

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2 COUNCIL MEMBER MICHELS: No, no, he  
3 has always got the defense.

4 The 30-day extension specifically  
5 reads if he can't get the materials, the men, money,  
6 all of the other things.

7 MR. LaPORTE: But there are  
8 circumstances which requires postponement.

9 COUNCIL MEMBER MICHELS: Unlimited  
10 postponements?

11 MR. MARGULIES: It is not unlimited,  
12 it is three times.

13 COUNCIL MEMBER MICHELS: Under this  
14 law -- No, it is not three times.

15 MR. MARGULIES: I think it is three  
16 times.

17 COUNCIL MEMBER MICHELS: Okay, I  
18 commend you to read the bill.

19 Unfortunately you guys didn't have  
20 any more notice than we did, because you didn't read  
21 it.

22 MR. MARGULIES: I know many owners  
23 have asked for extensions on various violations. I  
24 know of no one who has ever gotten a written  
25 extension from HPD in time before the deadline for

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2 corrections.

3 COUNCIL MEMBER MICHELS: Besides we  
4 are talking about a Class C violation. Hazardous  
5 violation, which usually C violations call for 24  
6 hours, you give them 21 days.

7 MR. MARGULIES: You know, the parallel  
8 might be with heat and hot water.

9 COUNCIL MEMBER MICHELS: Once again,  
10 Dan, you say that the lead paint, the dust from lead  
11 paint has suddenly come from, maybe it comes from  
12 fairy dust or something, it is in the apartment --

13 MR. MARGULIES: I don't recall reading  
14 that.

15 COUNCIL MEMBER MICHELS: No, but that  
16 is what it amounts to in your testimony.

17 MR. MARGULIES: No, I don't recall  
18 saying that.

19 COUNCIL MEMBER MICHELS: You don't  
20 think it comes from the lead paint. Where does it  
21 come from, Dan?

22 MR. MARGULIES: It happens that there  
23 are good studies that show good multiple studies of  
24 lead which has shown track and dust which has been  
25 mentioned earlier today. The fact of the matter is

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2 there has been tests of window wells and brand new

3 --

4 COUNCIL MEMBER MICHELS: We know it

5 comes --

6 MR. MARGULIES: Excuse me. And brand

7 new metal windows with no lead -- complete new

8 construction, and if you test those window wells up

9 on the tenth floor, you will find lead dust and new

10 construction because it blows in.

11 COUNCIL MEMBER MICHELS: Oh, really?

12 Where is it blowing in from? Williamsburg Bridge,

13 maybe, but not every building has a Williamsburg

14 Bridge outside.

15 Let me ask you something, Dan. Are

16 you from the testing, the clearance testing?

17 MR. MARGULIES: No, I am opposed to

18 the clearance testing. I am in favor of testing

19 before you write the violation. I think if it is

20 lead paint you should correct it as an abatement

21 job. If it is not, then I think you should not.

22 COUNCIL MEMBER MICHELS: You have a

23 right to rebut the presumption, Dan. Rebut it.

24 MR. MARGULES: What we are trying to

25 do, and I think Frank Ricci made this point earlier

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2 pretty well, what we are trying to do is create a  
3 system where the owner doesn't want to invest  
4 several hundreds in tests to rebut a presumption  
5 where he can do something that is effective, that  
6 helps the child immediately, and helps the landlord  
7 get past this, at the same time the child is made  
8 safer.

9                   We want to do the work that is  
10 necessary to correct the peeling paint condition,  
11 whether it is lead or not.

12                   What we don't want to do is go out  
13 and invest hundreds of dollars in testing and  
14 thousands of dollars in lawyers every time a  
15 violation is written.

16                   That is the major advantage of this  
17 bill.

18                   COUNCIL MEMBER MICHELS: Keep the  
19 apartments in good repair. Paint every three years.  
20 We are not asking to remove anything like  
21 non-peeling paint, intact paint is not to be  
22 removed. We all agreed with that.

23                   CHAIRPERSON SPIGNER: Let's close this  
24 out. We are not going to get --

25                   COUNCIL MEMBER MICHELS: The fact of

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2 the matter is what you want is to protect landlords  
3 from liability under all circumstances.

4 Thank you.

5 MR. MARGULIES: Not at all.

6 MS. DAVENPORT: Can I just add  
7 something?

8 CHAIRPERSON SPIGNER: Why not stay  
9 here all night? I'm for it.

10 MS. DAVENPORT: I will be very quick.

11 I think your point about rebutting  
12 the presumption really goes to what Carol Lamberg  
13 from the Settlement Housing Fund was saying about  
14 the testing. In her instance where she has done all  
15 gut rehab, she has to spend six to seven-hundred  
16 dollars per unit to rebut the presumption. That is  
17 what she was driving at.

18 COUNCIL MEMBER MICHELS: I have said,  
19 as far as I am concerned, gut rehab should be  
20 exempt.

21 It is stupid when people have  
22 completely gut rehabbed the building to have them be  
23 -- and I don't see it in this new draft. Why isn't  
24 it in here? Why are owner/occupied co-ops or  
25 condominiums in here? Because they haven't thought

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2 it out. This is premature, we should not be deciding  
3 this bill now. So many things are wrong with this  
4 bill, you could write a book about it.

5 CHAIRPERSON SPIGNER: Andrew Goldberg,  
6 Marlen Bodden, Cathleen Breen.

7 Gentlemen, ladies, identify yourself  
8 and you may begin.

9 MS. BODDEN: Good afternoon, Council  
10 members, and remaining others.

11 CHAIRPERSON SPIGNER: Good afternoon.

12 MS. BODDEN: My name is Marlen Bodden,  
13 I am a staff attorney at The Legal Aid Society, and  
14 I am here with Judith Goldiner, also a staff  
15 attorney at the Legal Aid Society. We are proud  
16 members of the Association of Legal Aid attorneys,  
17 and of our parent union, the UAW, which in New York  
18 City has over 10,000 members.

19 CHAIRPERSON SPIGNER: Is that the  
20 United Auto Workers?

21 MS. GOLDINER: Yes, sir. I would like  
22 to also point out that the United Auto Workers have  
23 taken a strong position against the current bill and  
24 is very unhappy with the Speaker's position given  
25 that the United Auto Workers endorsed his race for



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2 Governor when he promised he would take no steps --

3 CHAIRPERSON SPIGNER: Would you  
4 identify yourself, please.

5 MS. GOLDINER: Judith Goldiner.

6 CHAIRPERSON SPIGNER: G-o-l-d-i-n-e-r?

7 MS. GOLDINER: I-n-e-r.

8 CHAIRPERSON SPIGNER: Goldiner, okay.

9 MR. GOLDBERG: Let me introduce  
10 myself. My name is Andrew Goldberg, I am Counsel  
11 with NYPIRG.

12 CHAIRPERSON SPIGNER: Welcome, Mr.  
13 Goldberg.

14 MS. MS. BODDEN: The neighborhood  
15 offices of the Civil Division of the Legal Aid  
16 Society represent poor families, many with small  
17 children and pregnant women who are most likely to  
18 suffer the affects of lead poisoning.

19 For many years now, Housing attorneys  
20 for the Civil Division have worked on hundreds of  
21 cases involving lead paint hazards in apartments  
22 occupied by poor families, including small children,  
23 and we have gained substantial experience with the  
24 practice of workers, landlords, attorneys, health  
25 professionals and judges in cases where young

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2 children are in danger of becoming poisoned by lead  
3 paint hazards in their homes.

4                   Specifically we have contributed to  
5 this large scale effort through Housing Court  
6 litigation by giving several Citywide training  
7 sessions for attorneys, advocates and legislative  
8 staff on lead paint cases and by serving as back-up  
9 advisors for cases handled by our attorneys  
10 throughout the Civil Division.

11                   My interest in fighting lead  
12 poisoning goes far beyond my work as a poverty  
13 lawyer.

14                   I was raised in the Bronx, where I  
15 live, and I had a childhood friend who was lead  
16 poisoned.

17                   The affects of lead poisoning and  
18 exposure to lead paint are well documented and  
19 incontrovertible.

20                   Exposure to even very low levels of  
21 lead before birth slows a child's mental  
22 development.

23                   Lead poisoning in children leads to  
24 attention disorders, learning disabilities and  
25 diminished intelligence.