

**TESTIMONY OF TAXI & LIMOUSINE COMMISSION
Commissioner/Chair, Matthew W. Daus**

**Before the City Council Transportation Committee
October 25, 2007, 10 AM**

***Intro. No. 257- For-Hire Vehicle Driver Manual
Intro. No. 256- Administrative Tribunal of the TLC***

Good morning Chairman Liu and members of the Transportation Committee. My name is Matthew Daus and I am the Commissioner/Chair of the New York City Taxi and Limousine Commission (TLC). Thank you for the opportunity to appear before you today to testify regarding Intros 256 and 257.

Since both bills pertain to the issue of changes to our rulebooks, I would like to share with the committee information concerning a project we are working on at the TLC. As a regulator, the TLC recognizes the importance of clear and concise communication, especially with those licensees directly regulated by the TLC. When I was reappointed as Chairman, at my Council confirmation hearing I promised that we would "explore publishing additional materials for TLC licensed drivers to summarize their rights and responsibilities, as well as to provide useful information so they may enhance service to the public." To deliver on this promise, the TLC is actively engaged in an effort to streamline and reorganize more than 3,000 rules currently in our rulebook. Consultants have been hired to assist TLC staff in restructuring our rules after conferring with all appropriate stakeholders. My goal is to complete our initial review by Spring 2008. Any legislation that focuses on communicating rules to licensees should take this comprehensive undertaking into account.

In a similar vein to the rules project we are already working on, Intro. 257 mandates that a handbook be developed, translated, paid for and distributed by the TLC to for-hire vehicle (FHV) licensees. While I support the goal of facilitating and enhancing licensee understanding of our rules, I do have concerns about the administrative feasibility of providing annually updated documents in an unknown number of languages – for which there are budgetary implications that cannot be fully quantified at this time.

It should first be noted that the FHV industry is vast and the largest group of licensees that the TLC regulates. The FHV driver population consists of close to 50,000 drivers, and there are over 700 bases throughout the city that dispatch these vehicles. There are three different types of vehicles and businesses that comprise the FHV industry, including liveries, black cars, and luxury limousines – all of which have differing requirements and rules governing their operation and behavior.

Over 50,000 copies of the suggested driver's manual would need to be printed in order to ensure that every FHV driver receives a copy annually. The price for printing and administering this program could exceed \$1,000,000 annually for this quantity of manuals, in addition to mailing and distribution costs. These increased costs may engender a commensurate increase in driver and base licensing fees, which would need to be added to this legislation as these fees are set by the Council in the Administrative Code.

At this time, the total number of languages for which these documents must be translated under this bill cannot be determined. The bill requires the

translation into a particular language if five percent of the drivers affiliated with "any base" use that language. While we may not possess that data right now, it is fair to say that many different translations would be required given the vast diversity of our multi-cultural and multi-lingual industry. Our licensees come from over 150 different countries. Chapter 6 of our For-Hire Vehicle Rules and Chapter 8 of our Adjudication Rules would involve the translation of more than 28,638 words. A translation in Spanish may cost at least \$5,441.22, in Chinese it may cost at least \$6,873.12, and a copy in other languages such as Urdu may cost at least \$15,464.52 each time a new version is requested, not to mention printing costs. These estimates were calculated based on an existing contract that the City has with a translation firm. Although individuals speaking a particular language may make up 5% of a base's affiliated population, it may represent an extremely small percentage of the overall driver population.

According to Intro. 257, the manual would need to include not only TLC rules, but "all laws, rules and regulations relevant" to an FHV driver. This is a very broad requirement and would encompass other sources of law beyond TLC rules that are not currently within the scope of our rule revision project, and it will take an additional length of time to prepare beyond what has already been planned.

In sum, following the completion of the rules reorganization project, we can evaluate the need to translate TLC rules into the appropriate number of languages. However, this project seems to be more of an administrative or ministerial matter that requires neither legislation nor rulemaking. Furthermore, it

would be premature to implement Intro. 257 as the rule reorganization project may fundamentally alter the size and order of our rules. As such, expending a significant amount of money on translating existing rulebooks that may soon be outdated is neither fiscally nor administratively prudent in my view.

With regard to Intro. No. 256A, the intent and purpose of this legislation is unclear at this time, and I cannot consider supporting it until its goals and language are clarified. Pursuant to New York City Charter provisions passed in 1971 that created and govern the TLC, our agency has operated an administrative tribunal for many years. The tribunal is governed by City Charter provisions, the City Administrative Procedure Act, Local Laws, the City's Code of Ethics for ALJs, and Chapter 8 of the TLC's regulations – which sets forth a comprehensive code of administrative procedure. We are very proud of our adjudications proceedings, which are administered in a fair and efficient manner, and I would like to invite any interested committee members to visit our adjudications facilities – which are open to the public. We currently have 53 active Administrative Law Judges (ALJs), 21 courtrooms, and adjudicate over 100,000 cases every year.

Many of the provisions of Intro. No. 256A simply replicate language already found in TLC rules. If there are particular rules or areas of concern, I would be happy to obtain further clarification so that we can review those issues and advise the Committee.

There are specific provisions of Intro. No. 256A that I disagree with that lead me to oppose passage of this legislation in its current form. For example.

one provision requires these procedures to be available in languages where the commission has determined that five percent or more of its licensees speak the language. The language is unclear as to whether we must differentiate between first and second languages, or whether a driver simply prefers to speak a specific language. In addition, I cannot support Intro. 256A due to similar concerns cited earlier in my testimony - namely that legislation is not legally necessary and fiscally premature due to the rules revision project.

For the foregoing reasons, I cannot support either of the proposed pieces of legislation. Thank you for the opportunity to share my viewpoint with you. I would now be pleased to answer any questions you might have.

REMARKS BY PETER M. MAZER

Intro. No. 256-A

Good morning, Chairman Liu, and members of the Transportation Committee. My name is Peter Mazer, and I thank you for giving me the opportunity this morning to speak with respect to Intro. No. 256-A, which relates to the Taxi and Limousine Commission adjudications tribunal. I am an attorney who frequently appears on behalf of respondents before the tribunal.

As long as there has been a Taxi and Limousine Commission, there has been an adjudications tribunal. My first exposure to the tribunal was some 20 years ago, when I then served as an Administrative Law Judge. I must say that in many respects the tribunal has never been operated better than it is now. Waiting times for hearings are a fraction of what they were years ago, the facilities are better than they had been in the past, and in general, the procedures are fairer and respondents are given greater protections now than they were given years ago. Nonetheless, I speak in support of this bill and believe that Intro No. 256-A, with certain modifications, would go even further to ensure that respondents are afforded all of the due process considerations that they are entitled to under the constitution.

While this bill is a good one, I would like to suggest some modifications. Recently, the TLC has transferred jurisdiction over certain types of hearings to the Office of Administrative trials and Hearings (OATH). OATH presently hears all cases where the penalty provides for the possible revocation of licenses. These cases include the more serious rule violations, as well as cases where the fitness of a licensee is being challenged because of a drug test failure, an arrest, or a criminal conviction. As a tribunal established by the City Charter to conduct administrative hearings, OATH is particularly suited to provide an independent forum for the adjudication of the most serious offenses, where the penalty may include the loss or denial of a license. Intro No. 256-A does not

appear to authorize the TLC to continue to utilize OATH for these serious offenses. I would urge that the bill be amended to allow these serious cases to continue to be heard at OATH.

Next, Intro No. 256-A sets forth enumerated due process rights which respondents are entitled to at hearings, including the right to cross-examine witnesses. This panel may not know that the TLC routinely prosecutes drivers on the basis of sworn affidavits which are introduced into evidence and read into the record. The respondent is not afforded the opportunity to confront or cross-examine the maker of the affidavit. Some respondents have told me that Judges have refused to even let them see the affidavit. Drivers have been convicted and have had their licenses revoked solely on the basis of statements contained in these affidavits. Hopefully, the protections afforded in this bill will end the practice of hearings by affidavit once and for all. If it is not the intent of this bill to end this practice, language should be inserted to make it clear than convictions solely on the basis of affidavits will not be permitted.

In certain classes of cases, those involving discretionary license revocations, or fitness hearings, the Judge renders findings of fact and makes a recommendation as to penalty. The agency Chair may modify the recommendation. This gives the Chair the authority, one which he frequently asserts, to increase the penalty recommended by the Judge, or to reject the Judge's determination as to the fitness of an applicant for a license, and to substitute his own judgment. It is the Judge and not the Chair who has evaluated the testimony and has considered the demeanor of the parties. Therefore, it is the Judge who should have the final say with respect to penalty. I would recommend that the bill provide that all Administrative Law Judge determinations, including determinations of penalty, be final, subject to the right of appeal that the Respondent has. As an aside, Intro. 256-A is silent with respect to appeal procedures. While existing TLC appeal procedures are generally satisfactory, perhaps they could be codified in the final version of the Bill.

Finally, this bill in many cases provides the protections set forth in the Citywide Administrative Procedure Act, which governs the conduct of hearings by any City agency. Rather than enumerate specific rights, perhaps it would be better for the bill to simply incorporate by reference the CAPA protections, so that it is clear that each of the protections afforded respondents by CAPA is also granted to respondents before the TLC tribunal.

Thank you for giving me the opportunity to speak to you today. I would be happy to answer any questions you may have.