

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON FIRE & CRIMINAL JUSTICE SERVICES

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May 26, 2011  
Start: 10:00 am  
Recess: 10:30 am approx

HELD AT: Hearing Room - 16<sup>th</sup> Floor  
250 Broadway

B E F O R E:

ELIZABETH CROWLEY  
Chairperson

COUNCIL MEMBERS:

Mathieu Eugene  
Vincent J. Gentile  
Daniel J. Halloran III  
Rosie Mendez  
Ydanis A. Rodriguez

## A P P E A R A N C E S

John Shacknai  
First Deputy Commissioner of Legal Affairs  
New York City Fire Department

Mitch Paluszek  
Deputy General Counsel for Personnel Legal Matters  
Department of Citywide Administrative Services

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2 CHAIRPERSON CROWLEY: Today we are  
3 hearing and voting on a bill, proposed Intro 450A,  
4 which was introduced by Council Members Vallone,  
5 Williams, Oddo and myself, and has been co-  
6 sponsored by many of our colleagues. Council  
7 Member Vallone cannot be here today, but I want to  
8 thank him and my colleagues Williams, Oddo for  
9 their leadership in introducing this important  
10 legislation. Today we ... yesterday we heard from  
11 the public, that included personal accounts of  
12 firefighter candidates who, through no fault of  
13 their own, would lose the opportunity to become  
14 firefighters unless we pass this important  
15 legislation. The bill will temporarily increase  
16 the maximum age for filing an application to take  
17 the exam to become a firefighter for certain  
18 groups, and is necessary as a result of litigation  
19 that has impacted the current exam and those that  
20 took it, as well as some from previous eligible  
21 exam lists. Again, if we do not pass this  
22 legislation, many people who prepared and  
23 dedicated themselves for the opportunity to become  
24 firefighters would not have the opportunity  
25 because the exam they took could not be used

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2 because of the pending litigation. If we don't  
3 act now, they will be too old to apply by the time  
4 the next exam application period is open.

5 Currently, people who have passed their 29<sup>th</sup>  
6 birthday at the time of filing their application  
7 are ineligible to take the firefighter exam. This  
8 bill will temporarily increase the maximum filing  
9 age to include those that have not passed their  
10 36<sup>th</sup> birthday at the time of filing their new  
11 application. This extension granted by the bill  
12 will only be available for certain individuals who  
13 have been affected by pending legislation ... sorry,  
14 pending litigation, and only for the next open  
15 competitive exam, or promotional exam, for those  
16 eligible to take such a promotion exam. Covered  
17 individuals are those who either took a New York  
18 City firefighter exam in the five years preceding  
19 the effective date of this local law, or who could  
20 not be appointed from an eligible list for the  
21 position of firefighter, including, but not  
22 limited to, a special military eligible list  
23 established before the effective date of this  
24 local law, because such list could not be used in  
25 whole or in part by the Fire Department due to the

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2 litigation. I want to thank all the individual  
3 applicants who have worked so hard to become  
4 firefighters, and who have so eloquently the  
5 importance to them of having an opportunity to  
6 become firefighters. We have been joined by First  
7 Deputy Commissioner John Shacknai, who I  
8 understand has a statement. And I would like to  
9 recognize my colleagues who are here today. We  
10 have Council Member Vincent Gentile from Brooklyn,  
11 Council Member Dan Halloran from Queens, and  
12 Council Member Rosie Mendez from Manhattan.  
13 Commissioner, good morning, and when you have an  
14 opportunity, please begin your statement.

15 MR. SHACKNAI: Good morning,  
16 Chairperson Crowley and Council Members, thank you  
17 for holding this hearing today regarding Intro  
18 450A, a bill to raise the age limit from 28 to 35  
19 for a specified category of persons wishing to  
20 become firefighters with the New York City Fire  
21 Department. We strongly support this bill. For  
22 some time the FDNY has been pursuing legislation  
23 to raise the age limit for becoming a firefighter,  
24 since a good number of candidates who prepared  
25 for, took, and in many cases successfully passed

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2 the last exam, were closed out of the opportunity  
3 to serve as New York City firefighters. As you  
4 all know, the judge's decision finding the last  
5 New York City firefighter test invalid meant that  
6 some of the candidates who took that examination  
7 would be older than 28 by the time we could  
8 administer the next test. We see this bill as  
9 addressing the obvious unfairness to those  
10 candidates who would be older than 28 by the time  
11 the upcoming filing period begins. Without going  
12 into the details of the lawsuit that led to the  
13 judge's decision, we do know that the law  
14 department plans to appeal the final ruling in  
15 that litigation. However, we cannot predict with  
16 any certainty what the ultimate outcome of that  
17 litigation will be or when a final decision will  
18 be made. In the meantime we have been working  
19 with experts from all the parties under the  
20 supervision of the court to create a new  
21 firefighter exam. If the city is able to  
22 administer the exam in 2011, we expect our first  
23 firefighter class from that new list to enter the  
24 Fire Academy in 2012. That is why this bill and  
25 the timely scheduling of this hearing is so

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2 important. We thank the City Council for all its  
3 efforts to insure that Intro 450A is enacted as  
4 soon as possible, so that necessary steps can then  
5 be taken to open the filing period by July 1<sup>st</sup>. We  
6 also want to thank our colleagues at the Law  
7 Department and DCAS for being our partners in  
8 pursuing this important piece of legislation,  
9 we'll be happy to take your questions at this  
10 time.

11 CHAIRPERSON CROWLEY: Thank you,  
12 Commissioner. My question is, so as planned by  
13 the Fire Department, the application period is to  
14 begin July 1<sup>st</sup>?

15 MR. SHACKNAI: We are informed that  
16 the filing period is likely to begin July 1<sup>st</sup> and  
17 run through August 31<sup>st</sup>.

18 CHAIRPERSON CROWLEY: And then the  
19 exam, when is that planned for?

20 MR. SHACKNAI: The current schedule  
21 projects that it could be given in early December  
22 of 2011.

23 CHAIRPERSON CROWLEY: And is that a  
24 new test?

25 MR. SHACKNAI: Yes. That test is-

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CHAIRPERSON CROWLEY: [Interposing]  
It's going to be litigation-proof?

MR. SHACKNAI: Well, we certainly hope so. And I have urged the Law Department to do everything possible to insure that before the exam is given, it has received as many approvals as it could possibly receive from the court. Obviously we're not in control of that, and there may be people depending on the results who want to challenge the exam after the fact, but we're trying to make it as bullet-proof as possible.

CHAIRPERSON CROWLEY: And when would applicants take the physical part of the exam?

MR. SHACKNAI: After the exam is scored, then a list would be created and then we would process those people for physicals, as each new class prepares to enter the academy.

CHAIRPERSON CROWLEY: So they'd have to pass and score high on the list to be eligible to take the physical.

MR. SHACKNAI: Correct.

CHAIRPERSON CROWLEY: And when do



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you believe that the next class will start?

MR. SHACKNAI: We sincerely hope that we have a class starting sometime in 2012. And we'd like to see it as early in 2012 as possible.

CHAIRPERSON CROWLEY: Do you know how many people will be impacted by this legislation that we hope to pass today?

MR. SHACKNAI: I don't know the exact number, but it would have to number in the thousands.

CHAIRPERSON CROWLEY: How many people ... you don't know how many people?

MR. SHACKNAI: I don't know the exact number, it would certainly number in the thousands, because it's all those people who took 6019, and who were between the ages of 25 and 28. Some of those people may not want to take this next exam, but we believe many will. We know a number of them personally, so thousands of people will have the opportunity to take the next exam.

CHAIRPERSON CROWLEY: Right.

MR. PALUSZEK: Mitch Paluszek from the Department of Citywide Administrative

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2 Services, we don't, during an application period,  
3 gather information on a candidate's age. So we  
4 really have no way of knowing how many people on  
5 the lists which were rendered ineligible or  
6 invalid, we have no idea how old they were. But  
7 anecdotally we've been told that ... anecdotally  
8 we've been told that there are hundreds of people,  
9 perhaps thousands, that would be affected.

10 CHAIRPERSON CROWLEY: But you don't  
11 know how many. How about with the military list?

12 MR. SHACKNAI: Do you know the  
13 numbers?

14 MR. PALUSZEK: We did a calculation  
15 and it's a very small number of people who are  
16 affected by the invalidity of these tests. We  
17 have the number at approximately 33 who were on  
18 lists that were rendered invalid and therefore  
19 lost their opportunity to be considered.

20 CHAIRPERSON CROWLEY: Sorry, did  
21 you say 33?

22 MR. PALUSZEK: Yes.

23 CHAIRPERSON CROWLEY: And now would  
24 those include people, are there other people from  
25 before 2007, from eligible lists?

2 MR. PALUSZEK: Other than those  
3 special military list candidates?

4 CHAIRPERSON CROWLEY: Right.

5 MR. PALUSZEK: No.

6 CHAIRPERSON CROWLEY: What ... in  
7 your estimate, who would be ... what would be the  
8 age of the oldest applicant? Could it be ... of the  
9 military, just in that case?

10 MR. PALUSZEK: It would be older  
11 than 35, I'd have to get back to you on like on  
12 how that number would work.

13 CHAIRPERSON CROWLEY: Okay, do any  
14 of my colleagues here have questions today? Okay,  
15 Council Member Dan Halloran.

16 COUNCIL MEMBER HALLORAN III: Good  
17 morning, thank you for being here. Just with  
18 regards to the application of this exam, given the  
19 pending lawsuit, what provisions to prevent this  
20 list from becoming stale is the Fire Department  
21 taking, or preparing to take, given the litigation  
22 issue that we're involved in? And is there any  
23 other future issues with regards to this  
24 particular piece of legislation that you think we  
25 should be mindful of as we're moving forward?

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2 MR. SHACKNAI: Well, I assume  
3 you're referring to the current, this next test  
4 possibly becoming stale at some point. I don't  
5 know that anything needs to be done right now. I  
6 think it's an issue we need to keep our eye on.  
7 We want to stay ... make sure that the schedule is  
8 adhered to, that we have this filing period  
9 opening and closing, that we have whatever  
10 hearings are necessary before the exam is given,  
11 that we then give the exam, score it quickly, and  
12 get a new class in. Then once the list is  
13 created, we'll have to see what issues emerge from  
14 the rest of the litigation pertaining to that list  
15 and potentially the hiring of applicants from  
16 prior lists and what order all of that goes in.  
17 So there's a lot of matters yet to be decided.  
18 Thank you.

19 CHAIRPERSON CROWLEY: All right,  
20 Council Member Gentile.

21 COUNCIL MEMBER GENTILE: Just to be  
22 sure, these applicants that will benefit from this  
23 legislation, are they getting any type of extra  
24 points, or any advantage of any type in taking  
25 this new exam?

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2 MR. SHACKNAI: No, all they're  
3 getting is, you know, what they desperately  
4 wanted, the opportunity to compete again. And  
5 it's going to be a straight-up competition, and  
6 that's all they were ever seeking.

7 COUNCIL MEMBER GENTILE: Right.  
8 Okay.

9 CHAIRPERSON CROWLEY: Thank you,  
10 Council Member, we've also been joined by Council  
11 Member Mathieu Eugene from Brooklyn. I would  
12 recommend my colleagues to vote yes on this bill,  
13 and ask the clerk to take the vote.

14 COMMITTEE CLERK MARTIN: William  
15 Martin, Committee Clerk, roll call vote on the  
16 Committee of Fire and Criminal Justice Services,  
17 Introduction 450-A. Council Member Crowley?

18 CHAIRPERSON CROWLEY: I vote aye.

19 COMMITTEE CLERK MARTIN: Gentile.

20 COUNCIL MEMBER GENTILE: I vote  
21 aye.

22 COMMITTEE CLERK MARTIN: Mendez.

23 COUNCIL MEMBER MENDEZ: I vote aye.

24 COMMITTEE CLERK MARTIN: Eugene.

25 COUNCIL MEMBER EUGENE: I vote aye.

2 COMMITTEE CLERK MARTIN: Halloran.

3 COUNCIL MEMBER HALLORAN III: I'm  
4 glad to vote aye.

5 COMMITTEE CLERK MARTIN: By a vote  
6 of five in the affirmative, zero in the negative  
7 and no abstentions, the item is adopted. Members,  
8 please sign the Committee report. Thank you.

9 CHAIRPERSON CROWLEY: I'd ask the  
10 clerk to keep the vote open, I think Council  
11 Member Rodriguez will be here soon. Thank you for  
12 all voting yes.

13 MR. SHACKNAI: Thank you very much.

14 CHAIRPERSON CROWLEY: The roll will  
15 remain open for the next 20 minutes, 15 actually,  
16 15 minutes.

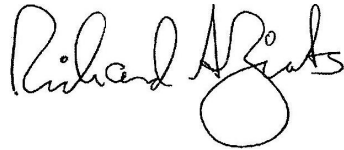
17 COMMITTEE CLERK MARTIN: Council  
18 Member Rodriguez.

19 COUNCIL MEMBER RODRIGUEZ: Aye.

20 COMMITTEE CLERK MARTIN: The final  
21 vote on the Committee on Fire and Criminal Justice  
22 Services is now six in the affirmative, zero in  
23 the negative and no abstentions.

C E R T I F I C A T E

I, Richard A. Ziats, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Signature \_\_\_\_\_

Date June 2, 2011