

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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April 16, 2012  
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HELD AT: Council Chambers  
City Hall

B E F O R E:  
GALE A. BREWER  
Chairperson

COUNCIL MEMBERS:  
Inez E. Dickens  
Erik Martin Dilan  
Domenic M. Recchia, Jr.  
Peter F. Vallone, Jr.

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

Marjorie Landa

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Managing Partner

Getnick and Getnick

CHAIRPERSON BREWER: Good morning.

I'm Gale Brewer, City Council Member and chair of Governmental Operations. We're thankfully with Council Member Inez Dickens, who is the member from the village of Harlem, and we have Seth Grossman who is the attorney and Tym Matusov, who is the policy analyst. This is the Committee on Governmental Operations, and we're also joined by the very great Peter Vallone, Council Member from Queens. So today the Committee on Governmental Operations will consider three pieces of legislation - - at strengthening the city's ability to prevent and uncover the misuse of taxpayer dollars, a pre-considered intro would extend and improve the New York City False Claims Act, which was originally passed by former Council Member - - . We will also consider Intro No. 479-A, which would require civil contractors to post information concerning their employees' recent bill of protection rights under the New York City, New York State and Federal False Claims Acts, and finally number 816, which would extend the broader [phonetic] protections afforded by the city's whistleblower law to employees of city

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2 contractors. A couple of these bills are  
3 sponsored by Council Member Garodnick, who is not  
4 able to be here today, but he will have a  
5 statement. May 20<sup>th</sup>, 2005 the Council passed Local  
6 Law Amendment 53, which created the New York City  
7 False Claims Act as I mentioned previously. This  
8 Act like the Federal False Claims Act that it was  
9 modeled after is intending to protect and enhance  
10 the public coffers and save taxpayers' money, but  
11 uncovering fraud against the city by rewarding  
12 whistleblowers who bring forth information about  
13 fraudulent claims. The current False Claims Act  
14 will expire on June 1<sup>st</sup> of this year unless we, the  
15 Council, act to renew it. On January 20<sup>th</sup> of this  
16 year 2012, the Committee held an oversight hearing  
17 regarding the usage and efficacy of the city's  
18 False Claims Act in order to evaluate whether the  
19 law should be extended. The Committee heard from  
20 several witnesses including the representative of  
21 the city's Department of Investigation as well as  
22 prominent practitioners with experience litigating  
23 False Claims Act cases at the Federal, state and  
24 local levels. We thank all of them for joining  
25 us. These witnesses testified in support of

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2 extending the city's False Claims Act beyond the  
3 sunset date of this June. In particular, the  
4 Department of Investigations testified that the  
5 False Claims Act has played a vital role in  
6 helping to prevent the city from being defrauded  
7 by unscrupulous individuals. - - the witnesses  
8 provided suggestions on ways that the city's False  
9 Claims Act could be brought into closer conformity  
10 with the New York State and Federal False Claims  
11 Acts. As I know you know, whistleblowers are  
12 people with inside information who expose  
13 wrongdoing within the organization, such as fraud  
14 or corruption. In the government context  
15 whistleblowers are often crucial to uncovering  
16 misuse of taxpayer dollars. Many potential  
17 whistleblowers however are reluctant and we can  
18 understand that. They come forward with  
19 information out of fear of reprisal. So called  
20 whistleblower laws seek to protect whistleblowers  
21 by protecting--by prohibiting retaliation against  
22 people or persons who report official misconduct  
23 by making it safe for whistleblowers to come  
24 forward such protections serve the public good by  
25 enabling fraud and corruption to be uncovered

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2 earlier and more frequently. In 1984, the  
3 Council—it was a long time ago, but I was around—  
4 in 1984, the Council enacted the city's  
5 whistleblower law - - must have been - - Michaels  
6 or somebody like that. This law protects city  
7 employees from retaliation - - Mr. Peter Vallone -  
8 - . This law protects city employees from  
9 retaliation for reporting information concerning  
10 five specific types of official misconduct:  
11 corruption, criminal activity, conflicts of  
12 interest, gross mismanagement, abuse of authority.  
13 No adverse personnel action may be taken against a  
14 city employee who reports to DOI or to a Council  
15 Member, the public advocate or the comptroller.  
16 Any information has to be reported regarding these  
17 types of misconduct by another city officer or  
18 employee, and then we need to as electeds  
19 [phonetic] report to DOI. The protections  
20 afforded by the city's whistleblower law do not  
21 apply to employees of city contractors under the  
22 current law. Work performed by contractors;  
23 however, as we all know makes up a very  
24 significant portion of the city's expenditures.  
25 Many of these contracts are for the types of

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2 projects historically susceptible to fraud and  
3 abuse such as construction, technology and social  
4 services contracts. In many, many instances,  
5 employees and contractors are the persons who are  
6 in the best position to recognize and rule out  
7 fraud at the earliest juncture. Yet as we  
8 indicated under the city's current law in most of  
9 the consensus [phonetic], these people are not  
10 protected from retaliation by the employers if  
11 they report information to DOI, so today we will  
12 hear from representatives of the administration  
13 regarding their view on how the legislation being  
14 considered today could help them better achieve  
15 their mission of protecting the public coffers.  
16 We will also hear from practitioners, good  
17 government groups and other organizations all of  
18 whom are dedicated to protecting the  
19 whistleblowers. As I indicated earlier, I have a  
20 statement from Council Member Garodnick, who is  
21 the sponsor of two bills today, so without further  
22 ado, we'd like to hear from the administration--  
23 just I guess before I do that, I should read  
24 Council Member Garodnick's statement.

25 Thank you, he says to me, for

1 holding today's hearings on these two intros 479-A  
2 and 816 and for indicated - - strengthen the - -  
3 bill of protections. He is sorry he can't join  
4 us. He indicates that safe guarding taxpayer  
5 money from misuse is one of the reasons the city  
6 provides its public employees with the  
7 whistleblower protections. These protections are  
8 meant to empower workers to report suspected or  
9 known corruption without fear of retaliation;  
10 however, employees of businesses that contract  
11 with the city as you know are currently not  
12 afforded any such protection under the law, even  
13 though New York City's FY 2012 contract - -  
14 represents more than 1/7 of the city's entire \$67  
15 billion budget. And he indicates we need to  
16 prohibit employees of companies with large city  
17 contracts from punishing employees for reporting  
18 suspected or known corruption, criminal activity,  
19 gross mismanagement, conflicts of interest or  
20 abuse of authority, and we firmly need to require  
21 contractors to post notice of employee  
22 whistleblower protection rights as they are  
23 established [phonetic] by any level of government.  
24 That's what his bills - - he said these important  
25

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2 goals do [phonetic]. It's time to empower  
3 employees and companies doing business with our  
4 city with the protections they need to speak out.  
5 These employees are among those in the best  
6 position to report corruption and to safeguard  
7 taxpayer dollars, and we look forward to working  
8 with us on these bills. So without further ado,  
9 I'm sorry, we have Marjorie Landa, who is deputy  
10 commissioner of legal at DOI and Adam Buchanan who  
11 is from the administration. Go right ahead.

12 DEPUTY COMMISSIONER LANDA: Good  
13 morning, Council Chair Brewer, Council Member  
14 Dickens and Council Member Vallone and staff. I  
15 as just said, I'm Marjorie Landa. I'm the Deputy  
16 Commissioner for Legal Affairs of the New York  
17 City Department of Investigation. I'm here today  
18 to express DOI's strong opposition to the proposed  
19 amendments to Section 12-113 of the New York City  
20 Administrative Code—the city's whistleblower law.  
21 As the investigative arm of the city government  
22 and specifically the agency charged with  
23 investigating claims of retaliation under the  
24 whistleblower law, DOI sees day to day how  
25 important the protections are to DOI's efforts to

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2 combat corruption, fraud and conflicts of interest  
3 in city government. Last year alone, DOI received  
4 approximately 13,670 complaints, a significant  
5 number of these complaints come from city  
6 employees. Since 2002, DOI has given 4,654  
7 corruption prevention and whistleblower protection  
8 lectures to a total of 133,393 city employees to  
9 explain to them their rights and protections under  
10 this whistleblower law. Our website is replete  
11 [phonetic] with information about our mission, and  
12 since 2002, permits complaints to be filed online.  
13 Since 2005, we do fiscal year end and calendar  
14 year end press releases conveying the broad range  
15 of subjects we cover. In some the profile of DOI  
16 is very high, so much so that since 2002, we have  
17 received and investigated numerous complaints of  
18 retaliation by city employees. Based on our  
19 firsthand experience DOI strongly opposed Intro  
20 816 and we urge the Council not to pass it. While  
21 DOI believes that private sector workers who  
22 report corruption related to city contracts to DOI  
23 should be free from retaliation for making such  
24 complaints, our experience investigating and  
25 enforcing the whistleblower law has shown that the

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2 proposed inclusion of private sector employees  
3 within the law's scope would be misguided.

4 Instead, the proposed amendment will result in  
5 city government involving itself in private sector  
6 personnel matters and disputes on mandating that  
7 DOI investigate any complaint by a covered private  
8 sector worker who - - alleges retaliation.

9 Moreover, DOI does not have the resources to  
10 devote to what could potentially be an avalanche  
11 of mandatory investigations of matters within  
12 thousands of private companies throughout the  
13 city. With this proposed amendment to the  
14 whistleblower law DOI's already limited resources  
15 will be diverted away from the true business of  
16 the agency—protecting the public risk [phonetic]  
17 and the city's programs and people from fraud,  
18 corruption and conflicts of interest. By its  
19 terms, the proposed amendment to the whistleblower  
20 law requires DOI to conduct an investigation to  
21 determine whether any employee of a private vendor  
22 doing business with the city and there are  
23 thousands, who alleges retaliation has actually  
24 suffered [phonetic] an adverse personnel action by  
25 his or her private employer, and if so, whether

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2 that action was taken as a result of a good faith  
3 complaint to one of the entities identified in the  
4 statute. Such investigations are labor intensive  
5 and most often involve witness interviews and the  
6 review of a significant body of documents. DOI's  
7 experience shows that - - investigation often not  
8 only involves investigating the allegations by the  
9 complainant of retaliation, but also an  
10 investigation of the employer's - - of prior  
11 misconduct by the employee. DOI does conduct such  
12 investigations as they relate to claims against  
13 city agencies as is appropriate given DOI is the  
14 inspector general for those agencies. It's also  
15 important to note that protections do exist for  
16 the employees of private vendors doing business  
17 with the city. DOI treats all complaints it  
18 receives as confidential whether they come from  
19 city employees, a member of the public or an  
20 employee of a city vendor. This practice  
21 minimizes the risk that an employer with - - the  
22 employee was the source of the DOI complaint.  
23 Moreover, anyone who interferes with our  
24 investigation including by pressuring or taking  
25 action against an employee can find themselves

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2 under investigation for obstruction or  
3 interference with an investigation. DOI would  
4 certainly investigate and scrutinize any such  
5 conduct and does so. In addition, private sector  
6 employees are afforded protections from  
7 retaliation. Principal among these is the city's  
8 False Claims Act, which contains specific remedies  
9 for complainants and to compensate them in the  
10 event that they are retaliated against for making  
11 a complaint. In addition, New York's state labor  
12 law prohibits retaliation against employees who  
13 make complaints about public health and safety  
14 issues to various entities including DOI. In  
15 order to make these - - retaliation provisions  
16 more effective, DOI supports the concept behind  
17 Intro 479-A, which mandates notice to the  
18 employees of city vendors of the various  
19 protections from retaliation that are afforded  
20 them under the law. As mentioned, DOI already  
21 widely and proactively educates the public about  
22 its rules. Indeed some of those corruption  
23 prevention measures we did, are given to private  
24 sector employees, and we have an apparent success  
25 given the number of people who report matters to

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2 us. Most are people who provide us with their  
3 contact information, and so we communicate with  
4 them. However, DOI does not support the proposed  
5 mandatory notice provision contained in the Intro  
6 479-A because as written that proposed law fails  
7 to require notice be given to employees of how a  
8 complaint can be made to DOI. We believe that  
9 such notice is a key component of any successful  
10 program to combat corruption and fraud in city  
11 government and to protect the expenditure of city  
12 funds. We appreciate your providing us with the  
13 opportunity to share what we have learned from our  
14 experience and for your consideration of our  
15 comments.

16 ADAM BUCHANAN: Good morning. Good  
17 morning, Chairperson Brewer, Council Members and  
18 staff, I'm Adam Buchanan, counsel at the Mayor's  
19 Office of Contract Services. On behalf of the  
20 administration, I appreciate the opportunity to  
21 testify today about proposed Intro 479-A, which  
22 requires city contractors to post information  
23 concerning their employees' whistleblower  
24 protection rights. Overall, the administration  
25 supports the goals behind proposed Intro 479-A of

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2 2011. In Fiscal 2011, New York City procured  
3 almost 15 billion dollars' worth of supplies,  
4 services and construction—a few more than 55,000  
5 transactions. New York City employees'  
6 procurement is one of its essential tools to serve  
7 the public and accomplish critical government  
8 functions. Agencies procure the goods and  
9 services they need to fulfill their missions from  
10 trucks to sweep and salt the streets to  
11 architectural designs for new firehouses from  
12 biodiesel fuel for city vehicles to non-profit  
13 service providers working in communities  
14 throughout the city. With significant - - and  
15 major client service programs as well as new  
16 investments in core services, infrastructure,  
17 waste management and economic development, New  
18 York City remains one of the largest contracting  
19 jurisdictions in the nation. Accordingly it is  
20 imperative that the city only do business with  
21 responsible partners—vendors whose record of  
22 integrity, financial capacity and successful  
23 performance justify the use of public tax dollars.

24 One of our office's core missions  
25 is to assist agencies in making such

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2 responsibility determinations for each vendor that  
3 is awarded a contract. We do so primarily through  
4 the administration with the Vendex [phonetic]  
5 database, which contains detailed information on  
6 city vendors and related entities, including  
7 principal owners and officers, subsidiaries,  
8 parent companies and affiliates. Every city  
9 agency consults the Vendex database in order to  
10 make responsibility determinations for each  
11 contract transaction it enters into with a private  
12 vendor. - - the city works hard to do business  
13 with responsible vendors only; there may be times  
14 when a vendor acts in an effort to defraud the  
15 city in the performance of its contract.

16 Discovering such occurrences is a challenge as  
17 those perpetuating the fraud or false claims for  
18 payment make it difficult to discover. One of the  
19 ways the city can learn of such acts is through  
20 the reports of the whistleblower. Proposed Intro  
21 479-A requires contractors to post information  
22 communicating whistleblower protection rights on  
23 any site where work pursuant to a city contract is  
24 performed. The administration supports the  
25 posting requirement that would help in discovery

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2 of fraudulent acts by its contractors.

3           While the administration supports  
4 the goals behind proposed Intro 479-A, there are a  
5 number of changes we would like to see made to the  
6 legislation in order to make it more useful to  
7 contractors' employees and less administratively  
8 burdensome for those who must comply. For  
9 example, we suggest increasing contracts value  
10 threshold that would trigger the posting  
11 requirement from \$50,000 to \$100,000 in order to  
12 bring it in line with the Vendex filing  
13 requirement. Additionally, we would include  
14 language that would instruct employees on how to  
15 make reports of fraud, criminality or corruption  
16 in connection with city contracts to the  
17 Department of Investigation as DOI has authority  
18 to investigate and take action regarding various  
19 forms of fraud and criminality that rest outside  
20 of the various false claims acts. We would be  
21 more than happy to work with the Council to make  
22 such changes to the bill.

23           Regarding Intro 816 of 2012, MOCS  
24 supports the comments submitted by DOI and shares  
25 that agency's reservations concerning the bill.

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2 During these challenging economic times, we must  
3 achieve the best value for the taxpayers' dollar,  
4 meaning we must obtain high quality goods and  
5 services from responsible business partners.  
6 Proposed Intro 479-A will ensure that the  
7 employees of city contractors are aware of their  
8 rights should they assist the city in helping weed  
9 out [phonetic] fraud. I am available to answer  
10 any questions the Committee may have at this time.

11 CHAIRPERSON BREWER: I have a  
12 couple of questions and I know my colleagues have  
13 questions. For Ms. Landa, I think I understand  
14 your concern 'cause - - limited resources. I  
15 think - - we all want to catch people who are  
16 corrupt. My question is always the retaliation  
17 issue 'cause I mean I think none of us are - -  
18 make a claim even though we feel strongly and we  
19 have lots of assets in terms of what we are - - ,  
20 but we're afraid of losing our job. So my  
21 question is, how can you, you know, if you're  
22 talking about that 13,670 complaints, which I know  
23 DOI has done an incredibly good job vetting, how  
24 many of those do you think were on misconduct or  
25 some were on retaliation or is it a mixture and

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harder to separate out?

DEPUTY COMMISSIONER LANDA: In the name, those complaints were about misconduct. We actually get a very small percentage of the complaints come in about retaliation.

CHAIRPERSON BREWER: Okay, so is it the issue that you're concerned about in the private companies or the non-profit companies that the city does business with the time involved with trying to figure out the retaliation issue? In other words, if you were relieved from investigating the retaliation portion, would you be interested in supporting this bill?

DEPUTY COMMISSIONER LANDA: The concern is the resources that we would have to devote to private sector retaliation claims—that is they may drive complaints of simply retaliation more than drive underlying complaints of misconduct and that is really our concern. It's the resources. We're also of course interested in protecting people who bring complaints to us, and that's why—I mean, it's obviously essential to our being able to do our job and that's why I noted that most of these complainants do in fact let us

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2 know who they are, so—and we do not publicize that  
3 fact—

4 [crosstalk]

5 DEPUTY COMMISSIONER LANDA: That's  
6 anybody. That would be a private sector employee  
7 who does come to us when they get the same  
8 protections in terms of our confidentiality that  
9 we would give to a city employee. They are aware  
10 of that at least to some extent because we do get  
11 private sector employees who are complaining, but  
12 the real concern is being drawn into these  
13 employer/employee relationships where it is just  
14 a... the history - - the incredible use of our  
15 resources, very draining because we really do  
16 investigate these carefully. Every single one of  
17 these complaints gets added scrutiny because there  
18 is nothing more detrimental to the ability to root  
19 out fraud and corruption than the retaliation, and  
20 that's really why I've made note of the possible  
21 criminal sanctions that could happen should anyone  
22 try and retaliate and otherwise obstruct a  
23 complainant from providing truthful information to  
24 us. I mean, the sanctions can be quite high for a  
25 private sector employer both through the False

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2 Claims Act trebling [phonetic] of damages and  
3 through those criminal avenues.

4 CHAIRPERSON BREWER: It does seem  
5 to me that if you indicate the very few of the  
6 city complaints in - - for retaliation mostly  
7 about corruption, you know, something specific. -  
8 - large number in the private sector and in other  
9 words, do you think there would be more there? I  
10 mean, it would take a lot more time—if it wasn't  
11 on the city level, do you think there would be in  
12 the private world [phonetic]?

13 DEPUTY COMMISSIONER LANDA: I think  
14 our experience is that once you afford and  
15 publicize additional avenues for people, they'll  
16 take them. There are, as I said, thousands of  
17 contractors, vendors that do business with the  
18 city, and they are, you know, the size of IBM,  
19 they do business with the city and on that scale  
20 down to very modest sized social services  
21 providers and I think my colleague from the  
22 Mayor's Office of Contract Services - - give us  
23 everything in between, and that's adding to the  
24 300,000 - - city employees we have already, the  
25 150,000 additional Department of Education

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2 employees already, and - - I couldn't even begin  
3 to guess the number of potential claimants now  
4 including the public.

5 CHAIRPERSON BREWER: How often if  
6 you know, do you receive reports from city  
7 employees alleging misconduct by city contractors?  
8 In other words, how often do the city employees  
9 complain not about city, but something that they  
10 have a contract with an entity? Do you have any  
11 sense of that?

12 DEPUTY COMMISSIONER LANDA: I  
13 don't. I don't know-

14 CHAIRPERSON BREWER: [Interposing]  
15 Does that number include - - that 14,670 or would  
16 that be a separate number?

17 DEPUTY COMMISSIONER LANDA: No,  
18 that is every complaint that we receive from any  
19 city employee, city and private sector. Any  
20 complaint we have.

21 [crosstalk]

22 CHAIRPERSON BREWER: - -

23 DEPUTY COMMISSIONER LANDA: Oh, I'm  
24 sorry.

25 CHAIRPERSON BREWER: That's okay.

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So it's everybody.

DEPUTY COMMISSIONER LANDA: Yeah.

CHAIRPERSON BREWER: Okay. Why do you think—and we can talk about false claims and I know that you've testified in support of that in the past or your agency has—why do you think—'cause you say that private sector employees are afforded protections from retaliation under the city's False Claims Act, and obviously we're all supportive of that—

DEPUTY COMMISSIONER LANDA:

[Interposing] Right.

CHAIRPERSON BREWER: --but do you think that is enough to cover all of the complainants that you would like to come forward? - - This is just my own - - , but I do think a lot of the corruption is unfortunately in some of these contracts and - - not so much with our own city employees per se, so we are trying to get recent experiences on the indicator.

DEPUTY COMMISSIONER LANDA: The city's False Claims Act actually would cover a substantial portion—

[crosstalk]

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DEPUTY COMMISSIONER LANDA: --

because--and from the private sector, it is likely to cover an even higher percentage because the complainant is now motivated not only by being a good citizen, which we would hope every city employee--

[crosstalk]

DEPUTY COMMISSIONER LANDA: --every

city employee is obligated under the mayor's executive order to report corruption to DOI and we protect them. City contractors' employees are not so obligated, so that when you add the extra motivation of a few dollars in their pocket and you know, it can be a lot more than a few dollars in their pocket, I think that's a very big motivation, and there are no city contracts that don't ultimately touch on a claim because the city has to pay for those on those contracts, so by definition any time they're putting in the bill for their services, there's a potential for it be a false claim if there is some corruption in that contract. So I do think the False Claims Act actually really covers potentially a very broad range. - - perfectly identical, perhaps not, but

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really it is a very broad - - .

CHAIRPERSON BREWER: And then in terms of posting, and I appreciate both of you talking about that, can you—I know you had some caveats, which I understand that you want to put them forward, but do you feel that what you talked about in terms of the caveats would cover those who are being entrusted in the need for some of those issues? 'Cause you mentioned a lot of caveats and maybe that would not include some of the concerns that you just made now—in other words, it's encompassing is what you just described verbally.

DEPUTY COMMISSIONER LANDA: For the posting, the concern is that, first of all and foremost from our perspective is that notice is given in this posting of how to make a complaint to DOI—

[crosstalk]

CHAIRPERSON BREWER: --'cause I can tell you from - - many posting posts, and - - , but anyway, go ahead.

DEPUTY COMMISSIONER LANDA:  
Assuming it does that really the primary item for

1  
2 us is that it explains how to make a complaint to  
3 DOI. The protections that the complainant is  
4 afforded kick in when they make the complaint to  
5 DOI, but we don't even know there's a problem  
6 without those complaints coming in, so we are all  
7 about publicizing who we are, raising our profile,  
8 making sure both city employees and the public  
9 know about who we are and where those complaints  
10 should go. It's why we also as part of those  
11 thousands of corruption prevention lectures we've  
12 done make them to private sector employees as  
13 well. That is the part of what we do that's very  
14 important, so that to us is the key element, and  
15 then you know, explaining the laws accurately of  
16 course - - .

17 CHAIRPERSON BREWER: [Interposing]  
18 Okay, lots of concern about that--do you want to  
19 elaborate in terms of the posting? Do you think  
20 you could just suggest a new line of suggestions  
21 [phonetic]?

22 DEPUTY COMMISSIONER LANDA: Yeah, I  
23 don't actually as I'm sitting here now have more  
24 specific suggestions partly because I don't have  
25 the final version of the bill. I hope that the

1  
2 one that's being proposed is not really the one  
3 that's going to pass as we so strongly oppose it  
4 in its present form.

5 CHAIRPERSON BREWER: Do you want to  
6 comment on anything like that? Okay.

7 ADAM BUCHANAN: Just - - that we  
8 support what DOI has said here today.

9 CHAIRPERSON BREWER: Okay. Just  
10 quickly, I know you talked about the False Claims  
11 Act--can you just talk about the--again, I know you  
12 testified in the past why you support it without  
13 going to the same depth in the past.

14 ADAM BUCHANAN: Sure. We find the  
15 False Claims Act to be a great vehicle for  
16 bringing a broader array of possible complaints  
17 that we've seen when I testified here before, our  
18 experience was the knowledge about the existence  
19 of the False Claims Act was a little slow to get  
20 out there and in the first few years there were  
21 not that many complaints coming in. In the last  
22 several, there's been a real spike in complaints,  
23 and we've opened a number [phonetic] for  
24 investigation. I don't know what the Law  
25 Department as I sit here now what has happened

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2 with the ones we've passed over to them, but I  
3 think that the potential for recovery for the city  
4 is significant and the Agency strongly supports  
5 continuing that legislation.

6 CHAIRPERSON BREWER: We've been  
7 joined by Council Member Dilan. I just also-back  
8 to whistleblower. What are some examples of how  
9 agencies have responded in the past when the  
10 Department of Investigation determined that  
11 adverse retaliation had occurred? And I know you  
12 mentioned that most of them are not retaliation,  
13 but that's obviously something that's of concern.

14 DEPUTY COMMISSIONER LANDA: The  
15 bill-the - - provides that DOI work with the  
16 commissioners in the first instance to remediate  
17 the problem. We've done that, and in every  
18 instance the commissioners have followed our  
19 instructions.

20 CHAIRPERSON BREWER: Okay, so in  
21 other words, you don't feel that anybody has felt  
22 that the adverse retaliation was something that  
23 wasn't dealt with. It has been dealt with-the  
24 retaliation issues?

25 DEPUTY COMMISSIONER LANDA: Yes.

1  
2 CHAIRPERSON BREWER: Okay. Has DOI  
3 received complaints of retaliation from employees  
4 of contractors and if so, what has been the  
5 response to those complaints, and I guess a follow  
6 up would be does that also go from DOI back to the  
7 agency? Or do you deal with it directly when it's  
8 an outside entity?

9 DEPUTY COMMISSIONER LANDA: I can't  
10 speak to specifics. I actually didn't come here  
11 prepared to do that, so if you've got some  
12 questions, we might be able to follow up on them  
13 with you, but I really can't speak to any specific  
14 investigations. As I've said in general it is a  
15 question of obstruction or interfering with an  
16 investigation - - criminal matter. We work very  
17 closely with the Mayor's Office of Contracts. As  
18 you know, we do responsibility determinations for  
19 contractors, city vendors, and we work very, very  
20 closely and share that information with the  
21 Mayor's Office of Contracts and with the vending  
22 agency, so any number of vendors have not received  
23 contracts with the city because they have  
24 responsibility problems. This is certainly one,  
25 if we found that an employee had been retaliated

1  
2 against, that would absolutely go towards  
3 responsibility.

4 CHAIRPERSON BREWER: Again, back to  
5 that, but do you have any sense of how often if  
6 there was—you mentioned in your testimony—anyone  
7 who interferes with our investigation as you  
8 suggested including by pressuring or taking action  
9 against an employee could find themselves under  
10 investigation for obstruction. I guess the  
11 question is—maybe you don't know the answer today—  
12 how often that has happened? - - the most fearful  
13 from employees' perspective situation.

14 DEPUTY COMMISSIONER LANDA: Right.  
15 That's absolutely right. The vast majority of the  
16 investigations we do have not had those issues  
17 arise. We do have obstruction issues now and  
18 again in our investigations. We deal with those  
19 swiftly with the prosecutors, and as with the  
20 existence of the protections in the law knowing  
21 that those sanctions exist helps to curb that  
22 behavior, but I cannot, again, speak to specifics.

23 CHAIRPERSON BREWER: Okay. I guess  
24 overall my question is you really do feel - -  
25 asking this particularly because of recent events

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2 although they may not fit nicely into what this  
3 particular whistleblower law is proposing, but  
4 again, it's related to more complicated future  
5 contracts I think, not just social services, but  
6 in general, more complicated contracts - - more  
7 complicated. Do you feel that under the current  
8 whistleblower legislation and false claims there  
9 is enough support for those who come forward from  
10 the outside contractors? I know you kind of  
11 indicated that is hard for us to imagine, if there  
12 really is. I have to be honest with you. I  
13 understand your not wanting to do the  
14 investigation. That I can understand. I know  
15 when employees have the - - has a much better  
16 track record - - officers and - - officer in the  
17 past in city government, I do truly have more  
18 training. We have more enlightened managers - - .  
19 I do not think that is also always true in the  
20 private sector, and so my question is - - , if  
21 they get a city contractor, they should - - up to  
22 our standards, and you believe the same, and  
23 they're using public money, so were they concerned  
24 about this group of people. I guess my question  
25 is do you really feel that under the current law

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we have enough protection for them to come forward?

DEPUTY COMMISSIONER LANDA: I can really only speak to the experience we have and the resources we have. The False Claims Act in particular is really a very powerful tool and that all of the efforts that the Council has made around that and that we are making to publicize that, I think are hugely important. I think the retaliation provisions in there are very strong, not unlike retaliation provisions you find in the - - as well, and I think they really do have a powerful impact. I think that's an area that as it is publicized, it will be very helpful. So I do think targeting our resources given how limited they are—I mean, if we double the size of DOI, which of course I would love to be here getting this Committee to help advocate to have happen, you know, we could look to more and different kinds of conduct, but for us to do those complicated investigations, a CityTime investigation for example, was not a light undertaking. Very, very complex, intricate financial tracking needed to be done. These are

1  
2 hugely important investigations for the city and  
3 being drawn into the private sector in this way I  
4 think is unprecedented, and certainly we believe  
5 could be a potential misdirection of our efforts,  
6 and not achieve what we think all citizens would  
7 like DOI to achieve, which is to help eradicate  
8 corruption in the government.

9 CHAIRPERSON BREWER: Maybe this is  
10 in your testimony, but how often compared - - a  
11 number for the significant number of cases that  
12 come from city employees where they are talking  
13 about other city entities or outside contractors,  
14 do you have some sense of what the breakdown is---  
15 maybe you gave us--as to how much are from the  
16 contractor world and how much are from city  
17 employees of that number?

18 DEPUTY COMMISSIONER LANDA: I don't  
19 have that number. I can get that for you.

20 CHAIRPERSON BREWER: [Interposing]  
21 Okay. I really appreciate that. That would be  
22 helpful to give us some sense of--'cause I guess  
23 the question is, is there some way of mimicking  
24 more of the city's False Claims Act for the  
25 outside world, for the contracting world? Would

1  
2 that be another way to try to get to that 100% who  
3 might fear retaliation? - - I don't know, I'm  
4 asking about the answer to the question. Most  
5 questions I know the answer to. I don't know the  
6 answer to that one.

7 DEPUTY COMMISSIONER LANDA: Well, I  
8 think publicizing the False Claims Act to the  
9 contractors, the vendors' employees is probably  
10 one of the best ways we could achieve what we're  
11 looking for. I think if the vendors' employees  
12 were aware that if they identified any kind of  
13 misconduct that resulted in a false claim against  
14 the city then there's a potential financial  
15 recovery to them. That actually puts DOI in an  
16 easier position as well because the way that law  
17 works the claims come to us first. When we see  
18 criminality, we're able to run with that. When we  
19 see that this is actually a financial sort of a  
20 more than civil issue that might be something that  
21 the Law Department would be interested in, it  
22 simply goes right over there. Either way, that  
23 employee, where it's a legitimate complaint, they  
24 stand a potential to recover money, and if they're  
25 retaliated against to be protected.

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2 CHAIRPERSON BREWER: I should know  
3 this. I completely understand the financial  
4 issues, and the making it more in line with some  
5 of the - - . I understand all of that. How does  
6 that actually work day to day on retaliation if  
7 you--hopefully not, any of, which - - private  
8 sector situation because I certainly understand -  
9 - if you are a city employee, but how does that  
10 work day to day? Because it's not so easy. You  
11 don't have that cover that you do as a city  
12 employee, a union and a whole other different--  
13 there's no union out there either.

14 DEPUTY COMMISSIONER LANDA: That's  
15 right. It is a very different situation for  
16 public sector employees. In the - - , the way we  
17 handle these is the complaint will come in  
18 generally with somebody identifying who they are,  
19 and we work with that person, take the  
20 information, do our investigation. We take great  
21 pains to ensure that our complainants are not  
22 identified, and that includes the way in which we  
23 ask questions, who we go and approach. Sometimes  
24 you can just tell, "Oh, gee. There's only one  
25 person who knows about that." There has to be a

1  
2 masked way to go and get the information, and we  
3 work very hard to do that to ensure that we don't  
4 let those complainants' identities be known;  
5 however, sometimes they are. The complainants  
6 themselves let their colleagues know. Sometimes  
7 this is the only person with the information, and  
8 for us to make an inquiry makes people guess that  
9 that might be where this is coming from, and in  
10 those situations where a complainant would come to  
11 us and tell us they believe now so and so knows.  
12 They are harassing them, trying to drive them out  
13 of their job. They have been terminated. We then  
14 take action to the extent we can, and that's a  
15 limitation with the employer and also as I said  
16 with the Mayor's Office of Contracts and with the  
17 vending agency. If you're doing business with a  
18 vendor, a city vendor, and you know, an agency has  
19 a contract, they're overseeing that contract day  
20 to day. Those contracts are coming up from - -  
21 those vendors have to be run through the vendor  
22 name check process again, and the responsibility  
23 determinations all come through DOI, so it's  
24 multifaceted. We do our best. I think we're  
25 really quite successful given the number of

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2 successful cases we are able to - - to protect the  
3 private sector workers that don't have the  
4 information city workers do because we're not out  
5 there in every company the way we are in every  
6 agency, and having the ability to publicize the  
7 laws and the protections in those laws to those  
8 private vendors' employees may be a really good  
9 way to address some of this.

10 CHAIRPERSON BREWER: Okay, I mean I  
11 hear you. I know how strong you feel about this  
12 not including further opportunities for DOI to  
13 investigate as you have indicated, but it does  
14 sound to me they are doing almost what Council  
15 Member Garodnick's bill calls for by supporting  
16 and making sure that there is no retaliation, so  
17 almost doing it without supporting doing it.

18 DEPUTY COMMISSIONER LANDA: The  
19 difference is this bill makes mandatory us having  
20 to investigate any complaint where somebody comes  
21 in and alleges a retaliation, so when we do this,  
22 it's because we're doing an investigation. We see  
23 a basis for that investigation. Our experience  
24 with the city's whistleblower law is that there  
25 are some number of employees who come through to

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2 DOI on the theory of the best defense is a good  
3 offense. I think my job is in jeopardy. I have  
4 been engaged in misconduct and they keep writing  
5 me up, and I think they are about to put me—

6 [crosstalk]

7 CHAIRPERSON BREWER: They all live  
8 in my district.

9 DEPUTY COMMISSIONER LANDA: Yeah,  
10 but we take those complaints very seriously. We  
11 not only investigate the underlying complaints of  
12 misconduct assuming they've made them. They  
13 haven't always when they come on alleged  
14 retaliation, but even with the retaliation claims  
15 and there are some questions, we really  
16 investigate those carefully because our  
17 complainants come in all shapes and sizes, and  
18 some of them are better employers than others, and  
19 sometimes, you have employees with disciplinary  
20 histories who do make legitimate complaints, so we  
21 don't dismiss any of this ever, and it's very  
22 labor intensive. It's the mandatory nature that's  
23 a problem with this bill.

24 CHAIRPERSON BREWER: Okay, so what  
25 do you suggest—I mean, I know you are not

1  
2 supportive of that aspect of this proposed  
3 legislation for those employees who do have  
4 perhaps legitimate retaliation issues with the  
5 city contract as part of their salary so to speak?  
6 How do you suggest they need to go through  
7 whatever the - - aspect of their company provides?

8 DEPUTY COMMISSIONER LANDA: They  
9 need to tell us. If we are in the midst of an  
10 investigation, if there is a legitimate basis for  
11 one of our witnesses, one of our complainants  
12 being harassed, we'll take every action we can,  
13 and they are multifaceted and even in the private  
14 sector, they know who we are at this point or if  
15 they didn't before the complaint, they do  
16 afterwards.

17 CHAIRPERSON BREWER: - - I do think  
18 that it's still a really frightening aspect to go  
19 forward with any kind of whistleblower, and  
20 particularly in a private sector company, and I do  
21 think that we need to think of other ways other  
22 than what we're suggesting to make sure these  
23 people come forward. I understand publicity will  
24 help. Unfortunately, as I said, we've done a lot  
25 of put up the sign kinds of legislation, and it

1  
2 doesn't always happen. It's just—I don't know—  
3 sometimes, it's just lack of effort, and  
4 sometimes, it's very hard to oversee. We're not  
5 going to have somebody going to every single  
6 company to make sure that sign is up. It's just  
7 not going to happen.

8 [pause]

9 CHAIRPERSON BREWER: Thank you both  
10 very much. I really appreciate your testifying.  
11 Thank you.

12 DEPUTY COMMISSIONER LANDA: Thank  
13 you very much.

14 ADAM BUCHANAN: Thank you.

15 CHAIRPERSON BREWER: Lindsey  
16 Williams, National Whistleblowers Center; Alex  
17 Camarda from Citizens' Union and Neil Getnick, who  
18 - - was here previously, an attorney, Getnick and  
19 Getnick.

20 [long pause]

21 CHAIRPERSON BREWER: Whoever would  
22 like to begin, go ahead.

23 [pause]

24 CHAIRPERSON BREWER: While we are  
25 waiting, we did get from the Law Department

1  
2 regarding Intro No. 816 a non-city employee - -  
3 whistleblower protection, - - opposed - - , and  
4 regarding the New York City False Claims Act, they  
5 support it. That's from the Law Department for  
6 the record.

7 [pause]

8 CHAIRPERSON BREWER: I can also  
9 tell you that the little cameras that you see up  
10 there, they're not on yet, but really soon, we're  
11 going to have webcasting of all hearings. I am  
12 very excited.

13 [pause]

14 CHAIRPERSON BREWER: They're on,  
15 but they're not actually webcasts, and we're so  
16 excited that they soon will be. - - 11 years for  
17 these little cameras. You can go ahead. Whoever  
18 would like to start, - - now. Go ahead. You've  
19 got to push the button, you know.

20 NEIL GETNICK: Thank you. Good  
21 morning, Chairperson Brewer, members of the  
22 Committee on Governmental Operations, Counsel  
23 Grossman and staff. Thank you for your invitation  
24 to appear here today following up on my appearance  
25 at the January hearing. I'm Neil Getnick,

1  
2 managing partner of Getnick and Getnick, LLP, and  
3 I'm also the chairperson of Taxpayers Against  
4 Fraud, which is the leading national advocacy  
5 organization for the False Claims Act and other  
6 whistleblower laws with citizen provisions. - -  
7 testify today in my individual capacity. I'm  
8 pleased that after your last hearing, Council  
9 Member Brewer sponsored an amendment to the city  
10 False Claims Act preserving and extending it. I  
11 also find it encouraging that so many improvements  
12 that were discussed at the January hearing are  
13 incorporate in this latest proposed - - of the  
14 city's False Claims Act and the other legislative  
15 proposals under consideration today, including  
16 adopting a more flexible application of the public  
17 disclosure bar [phonetic], and allowing the city  
18 the option to - - its application when it makes  
19 sense to do so, conforming the relators [phonetic]  
20 short percentages - - the state and federal False  
21 Claims Acts increasing outreach to whistleblowers  
22 and strengthening - - retaliation protection for  
23 whistleblowers.

24 I believe the statute would be  
25 further improved by conforming the public

1 disclosure bar to that of the amended New York  
2 State False Claims Act, which has the most  
3 applications public disclosure provisions in the  
4 nation. You have already improved the public  
5 disclosure bar by changing the language to bar - -  
6 when based on "substantially the same allegations  
7 or transactions" rather than the New York general  
8 [phonetic] restriction that the complaint not be  
9 derived from publically disclosed information.  
10 New York State, however, has made several other  
11 key changes, which I also recommend. In order for  
12 government reports to be considered publically  
13 disclosed, the state requires that they be broadly  
14 disseminated to the general public or on the  
15 public record. Information obtained through  
16 feeding of information requests is not considered  
17 publically disclosed, and additionally,  
18 information posted on the Internet does not  
19 necessarily constitute news media. As in January,  
20 I encourage you as well to join the state in  
21 specifically permitting - - to recover taxes under  
22 the city False Claims Act. As the largest city in  
23 the nation, New York City derives substantial  
24 revenues from taxes, and while there is no tax bar  
25

1 specifically preventing such actions, some courts  
2 and other jurisdictions have barred such actions -  
3 - specific enabling legislation. - - tracking the  
4 language of the amended New York State False  
5 Claims Act would solve that potential problem  
6 ensuring New York City's ability to recover tax  
7 dollars lost to tax evasion, and in my testimony,  
8 I provide the reference to that particular  
9 section. As was discussed at the previous  
10 hearing, underutilization of the city's False  
11 Claims Act may be due to the fact that simply  
12 people do not know about the law, and importantly,  
13 that they would be protected against retaliation  
14 by their employer, and 479-A sponsored by Council  
15 Member Garodnick and others takes an important  
16 step forward toward informing would be  
17 whistleblowers of the protections provided to them  
18 under the city, state and federal False Claims  
19 Act, should they wish to report fraudulent  
20 behavior and providing the encouragement that  
21 there is no risk of retaliation to employees who  
22 perform such lawful acts. 816 also sponsored by  
23 Council Member Garodnick and others extends  
24 whistleblower protections to employees of city  
25

1  
2 contractors also takes an impressive step toward  
3 protecting those who report fraud by the  
4 employers. The city's expansive definition of - -  
5 personnel - - one of the practical consequences  
6 affecting whistleblowers in these cases. It goes  
7 beyond dismissal of the motion suspension  
8 disciplinary act - - negative performance  
9 evaluations, but it also prevents what all too  
10 commonly happens to those who report fraud, namely  
11 lost - - office space equipment or other benefit.  
12 Additionally, I applaud the city's innovative  
13 efforts at creating an additional hammer  
14 [phonetic] against whistleblower retaliation  
15 permitting the city to withhold payment on the  
16 contract, finding the contractor in default,  
17 allowing the cancelling of the contract or to  
18 otherwise pursue remedies or sanctions under the  
19 contract that the company retaliates against a  
20 whistleblower and fails to correct the wrong.  
21 Currently the law requires that the whistleblower  
22 specifically request that their anonymity and  
23 confidentiality be protected in order to avoid an  
24 inadvertent misunderstanding. A better approach  
25 in my view would be to require that protection

1 unless the whistleblower specifically requests  
2 otherwise. In keeping with the strength and anti-  
3 retaliation protections called for in 816, I also  
4 strongly recommend that you add provisions  
5 emulating those contained in New York State False  
6 Claims Act regarding anti-retaliation protection.  
7 The state law expands the scope of the law's  
8 provisions so that also applies to contractors or  
9 agents rather than just employees and it clarifies  
10 that whistleblowers are protected for undertaking  
11 any lawful act to prevent a violation of the False  
12 Claims Act. Additionally, it now covers harm by a  
13 prospective employer or contractor to protect the  
14 whistleblower from being blacklisted and it also  
15 protects an employee from civil suits by employers  
16 for transmitting evidence of fraud to the  
17 government or to private council, so long as the  
18 transmissions were solely an effort to prepare or  
19 file a - - . I listened carefully this morning to  
20 the testimony that preceded me, specifically that  
21 of Marjorie Landa, the DOI deputy commissioner for  
22 legal affairs and Adam Buchanan, the counsel for  
23 the Mayor's Office of Contract Services. If I  
24 understand Ms. Landa's principal point, creating  
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1  
2 this additional burden on DOI would be a drain on  
3 resources, but I think there is a way to address  
4 that, which is to separate out the protections on  
5 the one hand from the administrative burden on the  
6 other, and actually, going back to my testimony, I  
7 think if you were to amend the bill to track the  
8 New York State False Claims Act language, you  
9 would have the best of both worlds. You would  
10 have strong anti-retaliation protections and at  
11 the same time, that could be litigated in the  
12 courts without putting an administrative burden on  
13 DOI. I've also likewise listened to Mr. Buchanan,  
14 and here again, it seems that the concern is not  
15 with the requirement to have these postings, but  
16 rather to do that in the most - - manner, and I  
17 think it would be wise to listen to that advice  
18 from the Mayor's Office of Contract Services, but  
19 to retain the core concept of providing such  
20 notices to the employees.

21 So that having been said, I do want  
22 to thank this Committee again for its - - . I  
23 believe that the city False Claims Act and the  
24 Council's action to extend and improve it are a  
25 point of pride. This law that was first passed in

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2 2005 is valuable. It should be expanded. The  
3 legislative improvements that have developed over  
4 time have pointed the way for positive change in  
5 addition to simply extending the law. The  
6 legislative proposals under consideration today  
7 make significant improvements to the act and to  
8 whistleblower protections generally. I believe  
9 the act would benefit further from making the  
10 additional changes I have proposed as well, and  
11 again, I want to thank the Committee for the  
12 opportunity to appear, for the work that you have  
13 done to further improve the law, and most of all,  
14 thank you for continuing to support and advance  
15 the public/private partnership that makes the city  
16 False Claims Act so effective.

17 CHAIRPERSON BREWER: Thank you very  
18 much as always. Next?

19 ALEX CAMARDA: Good morning, Chair  
20 Brewer and members of the Governmental Operations  
21 Committee. My name is Alex Camarda. I'm the  
22 director of public policy and advocacy at  
23 Citizens' Union. Thank you for the opportunity to  
24 testify today on the renewal of the False Claims  
25 Act and extension to and notification of the

1  
2 whistleblower protection laws. Citizens' Union is  
3 an independent nonpartisan civic organization of  
4 New Yorkers who promote good government and  
5 advanced political forum [phonetic] in New York  
6 city and state. Integral to our mission are  
7 efforts to achieve effective, efficient,  
8 accountable and open government. It is within  
9 this context that we evaluated the bills being  
10 considered by the Governmental Operations  
11 Committee today.

12                   Renewal of the False Claims Act.  
13 The False Claims Act aims to uncover fraud and  
14 corruption in city government--goals Citizens'  
15 Union wholeheartedly supports--by rewarding  
16 whistleblowers who bring claims of fraud to the  
17 attention of the city's Department of  
18 Investigations and Law Department. Enacted in  
19 2005, the False Claims Act has been infrequently  
20 utilized. In ten actions, the city's Corporation  
21 Counsel has put [phonetic] a claim under the act;  
22 six of which resulted in monies recovered through  
23 settlement for wrongdoing, like fraudulent billing  
24 and royalty claims. However, despite the receipt  
25 of 23 civil complaints under the act, the

1  
2 Corporation Counsel would not take action on 17 of  
3 these. Six are still pending; largely because the  
4 majority of complaints were Medicaid claims which  
5 come under the jurisdiction of the state's False  
6 Claims Act. In effect, no complaints have ever  
7 resulted in a civil enforcement proceeding  
8 occurring under the act. Citizens' Union supports  
9 the renewal of the False Claims Act as we fully  
10 support the intent of the legislation. A review  
11 of legal actions since its passage shows that it  
12 has not led to a significant increase in number of  
13 lawsuits or administrative costs to the city.  
14 Indeed, the very existence of the act may - - the  
15 fraudulent activity it seeks to prevent or punish.  
16 Given the relative infrequency with which claims  
17 have been filed under the act, we recommend the  
18 following enhancements as part of the  
19 legislation's renewal: first, plaintiffs should be  
20 permitted to commence a civil enforcement  
21 proceeding without permission from Corporation  
22 Counsel as is allowed in the state's False Claims  
23 Act. The city's False Claims Act prevents the  
24 plaintiffs from doing so without the permission of  
25 Corporation Counsel. While plaintiffs have the

1  
2 ability to bring an action on their own behalf and  
3 the local government through the state's False  
4 Claims Act, it requires they shift jurisdictions  
5 after initiating a civil complaint through the  
6 city proceeding. If plaintiffs continue to be  
7 barred from the right to bring cases without the  
8 permission of Corporation Counsel, the city's  
9 Corporation Counsel should at minimum be required  
10 in law to make complainants aware of their ability  
11 to bring the same complaint to the state with the  
12 potential for doing so unilaterally. Exceptions  
13 to civil enforcement actions pursuant to Sections  
14 2b-3 and 2-c [phonetic] should remain in place  
15 even if the plaintiffs are permitted to commence  
16 at civil enforcement proceeding.

17 Our second recommendation is the  
18 False Claims Act should be extended to cover  
19 complaints related to local tax law consistent  
20 with the state claims act that allows for  
21 complaints to be brought in relation to this area  
22 of law [phonetic]. During these challenging  
23 fiscal times, Citizens' Union believes that laws  
24 related to the taxes should be fully enforced and  
25 opportunities should be provided to ensure

1 instances in which taxes are not paid to the city  
2 can be reported. Certain actions barred under  
3 Section d of the bill should apply to civil  
4 complaints regarding local tax laws so that in  
5 particular claims are not made for values of less  
6 than \$25,000. Citizens' Union does not have a  
7 position on increasing the percentage of pay outs  
8 to those persons bringing civil complaints to 15  
9 to 25% rather than 10 to 25% in instances in which  
10 the Corporation Counsel has - - a claim, and to 25  
11 to 30% from 15 to 30% in instances in which a  
12 person commenced a civil enforcement proceeding  
13 with the permission of Corporation Counsel. This  
14 may make sense to better incentivize individuals  
15 to bring complaints given that no complaints since  
16 2005 eventually led to civil proceedings. For  
17 that same reason, it would seem to cost the city  
18 next to nothing in funds.

20 On Intro No. 816, similar in spirit  
21 to the False Claims Act is the non-city employee  
22 whistleblower protection act. The whistleblower  
23 protection law currently provides protections for  
24 whistleblowers from retaliation by city officers  
25 or employees if they make a "report of information

1  
2 concerning conduct which he or she knows or  
3 reasonably believes to involve corruption,  
4 criminal activity, conflict of interest, gross  
5 mismanagement or abuse of authority by another  
6 city officer or employee, which concerns his or  
7 her office of employment or by persons dealing  
8 with the city, which concerns their dealings with  
9 the city" et cetera. Citizens' Union believes  
10 whistleblower protections are integral to ethical  
11 and accountable government and strongly supports  
12 the bill which will extend the current law to  
13 employees of contractors with the city rather than  
14 simply employees of the city. The necessity of  
15 this bill can hardly be overstated. The city has  
16 experienced a dramatic rise in private sector  
17 contracting totaling 17,000 different contracts  
18 valued together at 10.5 billion or 1/7 of the  
19 city's budget. Meanwhile, 90% of the 27,538  
20 complaints to the city's Department of  
21 Investigation over the last two years have come  
22 from anonymous sources, many of whom are public  
23 employees, demonstrating the importance of  
24 protections for whistleblowers. I would just say  
25 in reference to the DOI's concerns about costs, I

1  
2 would be interested to know of the 27,000  
3 complaints that were made, what subset of those  
4 are made by people in the private sector, and how  
5 much an individual investigation would be  
6 estimated to cost.

7 CHAIRPERSON BREWER: [Interposing]  
8 - - that. We tried. She didn't have those  
9 numbers with her, but we're trying.

10 ALEX CAMARDA: And it may very  
11 well be if those numbers are small, that the cost  
12 would be outweighed by the benefits from any  
13 savings that came from fraudulent activity or  
14 gross mismanagement. Citizens Union recommends  
15 this bill go further and provide whistleblower  
16 protections for any employees of a subcontractor  
17 indirectly doing business with the city.  
18 Subcontractors less visible and known by city  
19 agencies and entities than primary contractors are  
20 more likely to escape scrutiny that ensures  
21 government is accountable. On the scandal in the  
22 CityTime project, it was subcontractor TechnoDyne  
23 that ultimately received \$450 million of the more  
24 than 700 million spent on the treble [phonetic]  
25 payroll system. TechnoDyne is alleged to have

1  
2 engaged in conspiracy in a kickback scheme with  
3 the primary contractor, Scientific Applications  
4 International Corporation. TechnoDyne's five  
5 founders have fled the country and remain at  
6 large. Had whistleblower protections been in  
7 place, they may not have been able to rip off the  
8 city of the hundreds of millions of dollars that  
9 they did. That was only recently repaid in part  
10 by Scientific Applications International  
11 Corporation.

12                   Regarding the final bill, Intro  
13 479-A, it requires that city contractors post  
14 information about whistleblower's rights at work  
15 sites or risk sanctions for non-compliance. We  
16 support this bill as well in order to ensure  
17 workers are aware of this right, and we suggest  
18 that such notification also be provided with  
19 employment papers, like W-2s when employees are  
20 first hired. Employees should also be required to  
21 sign such notification, which should be collected  
22 and retained by the employers for the length of  
23 the worker's employment at the contractor. Thank  
24 you.

25                   CHAIRPERSON BREWER: Thank you very

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much. Next.

LINDSEY WILLIAMS: Good morning,  
and thank you for having me here today. It's an  
honor to be invited to testify. My name is  
Lindsey Williams, and I'm the director of advocacy  
and development for the National Whistleblowers  
Center. The National Whistleblowers Center is a  
non-profit advocacy organization based in  
Washington D.C. Since 1988, the Whistleblowers  
Center has protected employees who come forward to  
report - - fraud and abuse from retaliation. We  
know from our experience and from corporate  
commissions studies that whistleblowers are the  
number one source of fraud detection. Over 40% of  
financial fraud is discovered and reported by  
whistleblowers. Unfortunately, most fraud is  
still not reported. About 40% of employees still  
report misconduct they see to no one, not even  
their immediate supervisor. Out of the percentage  
of people who report, 40% stop at the supervisory  
level. Only 3% go to the government. That's the  
number that you should be focused on is making  
that 3% larger. That is what the False Claims Act  
was designed to do. Federal False Claims Act has

1  
2 had massive success since the amendments in 1987.  
3 From 1987 to 2011, whistleblowers have accounted  
4 for \$21 billion in recoveries for the federal  
5 government, and the state False Claims Act has  
6 been similarly successful. California recovered  
7 \$30 million for defective computers, for instance.  
8 So the New York City False Claims Act not being  
9 utilized is a detriment to the taxpayers in New  
10 York City and while we support the legislation  
11 that's proposed, we have some recommendations for  
12 improvements that would make it more utilized.

13 First, better standing  
14 requirements; who is eligible must be broad. You  
15 want to include as many people as possible. Real  
16 - - procedures; - - means in the name of the king.  
17 Whistleblowers should be able to take their case  
18 further without approval from the Corporation  
19 Counsel, including tax fraud. For instance, one  
20 case against the UBS Bank in Switzerland federal  
21 government recovered \$780 million fine and \$5  
22 billion in individual taxpayers. New York city  
23 should have a piece of that. Include provisions  
24 to coordinate with federal investigations to make  
25 sure that all of these cases that are being filed

1  
2 with the federal government makes sure New York  
3 City doesn't have an interest in those cases.  
4 Stronger damage provisions; its treble [phonetic]  
5 damages are included, but it would be nice to have  
6 a provision where if the contractor was very - - ,  
7 you would have the ability have additional damages  
8 levied. Procedures to ensure that fraud cases are  
9 not dismissed on technicalities for the  
10 contractors. In regards to the other two  
11 provisions we split them and most of the comments  
12 that were made here today and one that I realized  
13 that wasn't said was for 479-A suggest adding a  
14 provision to toll the statute of limitations for  
15 contractors who don't post notice, so that  
16 employees are not penalized. We support this  
17 legislation and would be happy to provide any  
18 specific language if you'd like and thank you  
19 again for having me.

20 CHAIRPERSON BREWER: Thank you very  
21 much. One question that I have is one the tax  
22 fraud issue 'cause I know you both—two of you  
23 brought that up, but I'm sure Neil has a comment  
24 on it. What would be an example and I know you  
25 gave one from another state, but what would be an

1  
2 example of - - fraud could perhaps be found? How  
3 has that been successful on the tax fraud issue?

4 NEIL GETNICK: The last time I was  
5 here we spoke about a - - of laws. The principle  
6 law that we've worked with over the last five  
7 years or so is the IRS Whistleblower law. The IRS  
8 Whistleblower law from a practical standpoint is  
9 demonstrative of the indications of an approach  
10 that doesn't fully empower whistleblowers in the  
11 way that my colleague here just testified about,  
12 which she mentioned a true - - law. As a result  
13 of that, there has been only one case that has  
14 come to fruition that has resulted in a  
15 whistleblower award, and while it may be that  
16 there are more to come, that is certainly is a  
17 disappointment in terms of what was expected to  
18 flow from that statute. So what's lacking in that  
19 statute? Well, what's lacking in that statute is  
20 that violators of whistleblower law, it doesn't  
21 provide for the public/private partnership that we  
22 have been speaking about today. It doesn't  
23 provide for the public/private partnership either  
24 in the New York City False Claims Act or the New  
25 York State False Claims Act. So in 2010, when the

1  
2 - - amendments, the fraud and enforcement act  
3 amendments were made to the New York State False  
4 Claims Act, there was a very important change that  
5 was made, and that was so to lift the tax bar that  
6 had previously prevented False Claims Act cases  
7 from extending into the tax area. I think if you  
8 continue to follow that situation, you will see  
9 some very significant results being generated in  
10 New York State in the days, weeks, months ahead by  
11 virtue of the fact that the very first thing that  
12 Attorney General Schneiderman did when he assumed  
13 office was to create a taxpayer protection unit  
14 specifically to focus on non-Medicaid - - cases,  
15 and one of those areas was in the tax area. So  
16 now you have a situation where individuals who  
17 have knowledge of tax fraud basically have to  
18 report that and run the risk that because of other  
19 priorities or limited resources the government  
20 can't process that information fully, and can't  
21 run with it. They have the ability to be fully  
22 engaged to move their cases forward to government  
23 private counsel in partnership with the  
24 government, and no way has that been better  
25 demonstrated than as I said with the New York

1  
2 State example because - - the law that empowers  
3 citizens to have this - - capability, an attorney  
4 general that has created a unit to work those  
5 cases and very importantly, the state Department  
6 of Taxation and Finance committed to working  
7 alongside the - - and the private citizens in  
8 those cases. So New York City would benefit from  
9 the same, and it's an interesting situation  
10 because there is no tax bar in this city's False  
11 Claims Act, so one might argue that well, there's  
12 nothing that prevents that from happening already,  
13 but what we've seen in other situations in other  
14 states - - one private citizens intend to use  
15 False Claims Acts to bring tax - - to courts - -  
16 typically will say absent specific enabling  
17 legislation, that goes further than it should and  
18 is a potential infringement on the tax enforcement  
19 of the municipality or the state. So what would  
20 be required here is to simply follow the lead of  
21 the New York State False Claims Act and to  
22 specifically do that. I mentioned in my testimony  
23 the provision that speaks to that, and it's very  
24 elegant. It's Section 189.4.a [phonetic] in the  
25 state False Claims Act, and it simply says, "this

1  
2 section shall apply to claims, records or  
3 statements made under the tax law" and then it  
4 goes on to give more of a definition. It is very  
5 easy to draft that because when the statute was  
6 passed in 2005, it had a tax law, so what it said  
7 then was "this section shall not apply," and so  
8 the word not was lifted and now it becomes  
9 specific enabling language. I would recommend  
10 that you do the same.

11 CHAIRPERSON BREWER: Thank you very  
12 much. Anybody else—Lindsey—want to comment on  
13 that?

14 LINDSEY WILLIAMS: Just - - good  
15 job.

16 CHAIRPERSON BREWER: My other  
17 question—we're still wrestling with this  
18 whistleblower issue and you all commented on it to  
19 a certain extend and I thought Neil Getnick's  
20 suggestion of separating the two, which has come  
21 up previously, was a good one. Do you want to  
22 expand on that? Does anyone else want to commend  
23 on that? I don't know whether it exists around  
24 the country - - federal, state and city, so I'm  
25 just wondering if other municipalities have dealt

1  
2 with this issue of local contractors or is it  
3 usually done in the state and federal level?

4 Lindsey, you might know, right?

5 LINDSEY WILLIAMS: I don't have  
6 anything on me, but we'd be happy to provide you  
7 with that.

8 ADAM CAMARDA: I'd only just say  
9 that I think there could be a good compromise, but  
10 I think it's hard to make a judgment without  
11 knowing the actual costs. I feel like the  
12 conversation—the back and forth with the  
13 Department of Investigation was very abstract, and  
14 until you see the numbers, I think it's too soon  
15 to compromise.

16 NEIL GETNICK: Again, I think it's  
17 necessary to bifurcate the issues. One is as was  
18 pointed out by both of the governmental  
19 representatives today, to what extent would  
20 imposing the guardianship function on the city  
21 create a drain on resources. That's issue one.  
22 Issue two, which I think we need to look at  
23 differently, is would we benefit from extending  
24 the law in this way and there I think the answer  
25 is yes, and I didn't hear anyone disagree with

1  
2 that otherwise. I simply point out again that I  
3 think the thing to do is to examine the state law.  
4 In the supplemental testimony that I provided  
5 today, I directed you to Section 191 of the New  
6 York State Finance Law, and that is the portion of  
7 the New York State False Claims Act that deals  
8 with this specific issue. And it's right on point  
9 because - - 2010 - - amendments went into place,  
10 the state law was expanded so that the scope of  
11 the anti-retaliation provisions would apply to  
12 contractors and agents and not just employees.  
13 It's expanded in other ways as well, and in fact,  
14 the language is quite elegant by which it - -  
15 taking on all of it because it works very well  
16 together as a whole, but right then and there at  
17 the outset that expansion is there, which I think  
18 was the principle concern of the Garodnick bill as  
19 opposed to how that is handled from an  
20 administrative standpoint.

21 CHAIRPERSON BREWER: Thank you very  
22 much. And then just again, just going back to  
23 this issue of retaliation, I guess in a federal  
24 sense, how does your work on the federal level  
25 with contractors—in other words, the issue of

1  
2 retaliation? Obviously, it's a big topic, but is  
3 that something that you're aware of or not? I was  
4 asking Lindsey Williams—

5 LINDSEY WILLIAMS: I'm sorry. Can  
6 you repeat that?

7 CHAIRPERSON BREWER: Sure. That's  
8 okay. I'm just saying that obviously we're  
9 looking at local municipal issues, but the fact of  
10 the matter is we're all dealing with outside  
11 contractors, so my question is - - the issue of  
12 outside contractors and retaliation, how is it  
13 handled on a general sense on the national/federal  
14 level?

15 LINDSEY WILLIAMS: There is a  
16 patchwork of laws. There is provisions within the  
17 False Claims Act that cover contractors and there  
18 are also specific laws that have been patched to  
19 cover contractors - - in the stimulus bill. I'd  
20 be happy to provide you with some information of  
21 how contractors are handled specifically.

22 CHAIRPERSON BREWER: I'm just  
23 trying to get a general sense for us to understand  
24 that. I'm sure Neil would know. Go ahead.

25 NEIL GETNICK: The only thing I

1  
2 would say is this: here is the distinction of what  
3 happened on the federal side versus the state  
4 side, and I don't want to be too critical of the  
5 federal process because in some ways, we should  
6 see more of this type of activity, which is that--

7 CHAIRPERSON BREWER: [Interposing]  
8 - - 'cause we have such large contracts, outside  
9 contracts.

10 NEIL GETNICK: Right. My point is  
11 that the federal bill and therefore the federal  
12 law has gone a ways, but not as far as the state  
13 law in New York State, and here is why: there was  
14 a political process that accompanied the amendment  
15 on the federal side, and there's a fair amount of  
16 compromise along the way and as a result the  
17 provisions that were initially proposed were  
18 watered down to some extent, and the reason I was  
19 saying we shouldn't be too critical of that, at  
20 least the democrats and the republicans were  
21 talking to each other and trying to craft a  
22 reasonable piece of legislation and it's a  
23 balance, an example of government working  
24 relatively well. Not everyone getting exactly  
25 what they wanted, but certainly, improving the law

1  
2 along the way. Just to make a larger point, I  
3 wish we saw more of that in the Congress. To some  
4 extent, we were spared in New York State - - very  
5 interesting process. When the bill was introduced  
6 initially in 2005, the original New York State  
7 False Claims Act bill, there was a fairly  
8 contentious fight about it, but it passed. - - I  
9 said 2005—that's the city law. In 2007 on the  
10 state side, but three years later when the  
11 amendments went into place and it had begun to  
12 prove itself, these new amendments, the fraud  
13 enforcement recovery act amendments, they passed  
14 unanimously both the Senate and the Assembly and  
15 was signed into law. That's also something worth  
16 taking note of because in our state legislature  
17 that doesn't happen too often, and in the process,  
18 we really have a bill that was well thought out,  
19 well designed and didn't get chopped up during the  
20 sausage making process of creating legislation. I  
21 would really strongly recommend that there's no  
22 better place to look than the New York State False  
23 Claims Act, which was attuned to this issue and  
24 got it - - right.

25 CHAIRPERSON BREWER: I once again

1  
2 want to thank all three of you. You have  
3 testified before, at least, two of the three, and  
4 you've certainly contributed a great deal. We are  
5 taking, thanks to this wonderful staff, every  
6 aspect of what you said and hoping to incorporate  
7 it. So thank you very much. I really appreciate  
8 it.

9 NEIL GETNICK: Thank you.

10 ALEX CAMARDA: Thank you.

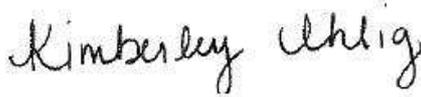
11 CHAIRPERSON BREWER: Alright, with  
12 that, this hearing is concluded and I can promise  
13 you we will make sure that every aspect of what  
14 was discussed today will be considered. Thank you  
15 very much.

16 [gavel]

C E R T I F I C A T E

I, Kimberley Uhlig 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

Handwritten signature of Kimberley Uhlig in cursive script, written over a horizontal line.Date 5/5/12