

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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May 31, 2012
Start: 10:02 a.m.
Recess: 11:50 a.m.

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.

CHAIRPERSON BREWER: Good morning.
I'm Gale Brewer, chair of the Committee on Governmental Operations, and we're here to talk about three bills that we're going to be voting on it today. They are focused on strengthening the city's ability to prevent and uncover fraud and misuse of taxpayer dollars.

First, proposed Intro No. 816-A sponsored by Council Member Dan Garodnick--and I'm sure he'll make a statement in a few minutes--would extend the protection afforded by the city's whistleblower law to employees of city contractors and subcontractors with contracts valued in excess of \$100,000. Currently the city's whistleblower law only affords protection to city employees. The law does not apply to employees of city contractors or subcontractors, yet as we all know work performed by contractors and subcontractors makes up a very significant portion of our city's expenditures. Many of these contracts are for the types of projects historically susceptible to fraud and abuse, such as construction, technology and social service contracts. Expanding the coverage of our city's whistleblower law would

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2 help encourage the people who are in the best
3 position to recognize and root out contract fraud
4 and abuse to come forward. When the Committee
5 heard this bill at a previous hearing on April
6 16th, it was opposed by the Administration. The
7 Administration expressed concern about entangling
8 the Department of Investigation in complicated
9 private labor disputes and the potential strain on
10 its resources that it might cause. Since that
11 time, thanks to the staff here today, the
12 Committee has worked with the Administration and
13 resolved their concerns without diluting the
14 whistleblower protection rights afforded to
15 employees of city contractors. The amended bill
16 enables these employees to enforce these rights
17 through a private right of action, which will
18 ensure an employee who is retaliated against can
19 be made whole. In addition, the amended bill
20 extends these protections to employees of sub-
21 contractors as well as contractors.

22 The second bill is proposed Intro
23 479-A, also sponsored by Council Member Garodnick.
24 It would require all city contractors and
25 subcontractors with contracts valued in excess of

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2 \$100,000 to post a notice containing information
3 about 1) how its employees can report to the
4 Department of Investigations allegations of fraud,
5 false claims, criminality or corruption and 2) the
6 whistleblower protection rights afforded under
7 city law for reporting to the Department of
8 Investigation information about contract abuse,
9 including allegations of fraud, false claims,
10 criminality and corruption. Such notice would be
11 required to be placed in a prominent and
12 accessible place on any site where work pursuant
13 to a contract is performed. This notice
14 requirement would help ensure that employees of
15 city contractors and subcontractors know how they
16 can report information about contract fraud and
17 abuse to DOI and that under city law they are
18 protected from retaliation by their employer for
19 doing so.

20 Finally, 828-A, sponsored by
21 myself, extends the New York City False Claims Act
22 that was originally passed and sponsored by
23 Council Member then David Yassky. The New York
24 City False Claims Act, which was modeled after the
25 Federal False Claims Act, was enacted by the

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2 Council in 2005 as Local Law No. 53. Pursuant to
3 Local Law No. 53, the city's False Claims Act
4 will expire on June 1st this year unless the
5 Council acts to renew it as I hope we will today.
6 This act is another tool that helps the city
7 uncover fraud by rewarding whistleblowers who
8 bring forth information about fraudulent claims.
9 Since its enactment, the law has proven to be a
10 useful tool for getting information about fraud
11 against the city. I want to thank the
12 Administration for indicating that. It is
13 important that we don't let it expire. In
14 addition to lifting the sunset provision, Intro
15 828-A also makes amendments that bring it into
16 closer conformance with the state False Claims
17 Act. We will now vote on each legislation. I
18 would like to thank Seth Grossman, attorney for
19 the Committee, and Tym Matusov [phonetic], the
20 policy analyst. Yes, I'm going to ask certainly
21 Council member Garodnick to talk about his bills,
22 but I'd also like to make clear that we've been
23 joined by Council Member Vallone, Council Member
24 Dilan, and we have an interloper, Council Member
25 James, who is waiting for Housing to start. Go

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right ahead, Council Member.

COUNCIL MEMBER GARODNICK: Thank you, Chair Brewer, and I want to thank you for holding the hearing on these bills and also congratulate you on the bill that you sponsored on the subject of False Claims. We all know that we need to keep a closer eye on how our money is being spent and in so doing empower those people who are in the best position to spot problems early. We're relying very heavily on outside contractors today, so we need to have strong checks in place to protect against fraud and waste of taxpayer money. One example that I would cite for the Committee is to imagine a \$40 million five year contract that is awarded to a company to manufacture and deliver computers. During the first year of that contract, the company delivers all ordered items on time and on budget. Employees are happy. Management is thrilled. The customer is pleased, and life is generally good. By the second year, however, some employees begin to notice changes at the company. Co-workers call in sick with greater frequency. Others just don't show up. Deliveries are often late. There are a

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2 few products shipped with defects. And several
3 supervisors seem to have developed an affinity for
4 expensive designer clothing. Declining company
5 performance does not escape the customer's notice
6 and it begins to grumble about poor workmanship,
7 all those late and sometimes defective deliveries
8 and considerable cost overruns. The company's
9 subcontractors also begin to complain due to late
10 payments for parts and supplies. Company
11 employees suspect foul play in the accounting
12 department, as do the subcontractors, but fear of
13 losing their jobs keeps everyone from acting on
14 their suspicions by reporting the fraud and the
15 fraud continues. Now imagine if that customer is
16 New York City and that the contract is one of the
17 17,000 that the city has secured. Unfortunately
18 that is the situation today. Fear of retaliation
19 makes the employees of contractors and
20 subcontractors hesitant to report bad acts. We
21 need to address that and that is what these bills
22 do. Today we will change the law so that
23 employees of contractors and subcontractors will
24 not fear retaliatory action when they see bad acts
25 and report them, and companies doing business with

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2 the city will be required to inform employees of
3 their rights. We need to protect against adverse
4 personnel action for reporting corruption,
5 criminal activity and the like. Employees will
6 have the right to pursue legal action to seek job
7 reinstatement or to recoup lost wages, and
8 companies with city contracts would need to post
9 those rights and let employees know how they can
10 report allegations of false claims to the city's
11 Department of Investigation. These are important
12 bills that will protect those in the very best
13 position to report foul play and thus, would by
14 extension better protect taxpayer dollars. Again,
15 I thank you, Chair Brewer, for your willingness to
16 hear and move these bills and I would ask my
17 colleagues who are on the Committee to vote in
18 support of them. Thank you.

19 CHAIRPERSON BREWER: Thank you.

20 Does anybody else have a comment? Alright, will
21 the clerk please call the roll? I want to thank
22 Council Member Garodnick for these very innovative
23 ideas.

24 COMMITTEE CLERK: Kevin Pin,
25 Committee Clerk. Roll call in the Committee on

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2 Governmental Operations, Intros 479-A, 916-A and
3 828-A. Council Member Brewer?

4 CHAIRPERSON BREWER: I vote aye.

5 COMMITTEE CLERK: Dilan?

6 COUNCIL MEMBER DILAN: I vote aye.

7 COMMITTEE CLERK: Vallone?

8 COUNCIL MEMBER VALLONE: Aye.

9 COMMITTEE CLERK: By vote of three
10 in the affirmative, zero in the negative and no
11 abstentions, the items have been adopted.
12 Members, please sign the Committee reports.

13 CHAIRPERSON BREWER: And we will
14 keep the roll open 'cause I know there are others
15 at committees. Thank you very much.

16 [long pause]

17 COMMITTEE CLERK: Dickens?

18 COUNCIL MEMBER DICKENS: Aye.

19 COMMITTEE CLERK: Recchia?

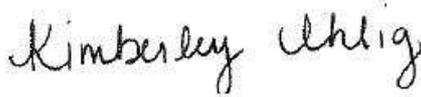
20 COUNCIL MEMBER RECCHIA: Aye.

21 COMMITTEE CLERK: Final vote in the
22 Committee on Gov Ops, five in the affirmative,
23 zero in the negative and no abstentions.

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 6/21/12