

TESTIMONY

BY

KIM HARDY

**DEPUTY COMMISSIONER FOR ECONOMIC AND FINANCIAL
OPPORTUNITY**

NEW YORK CITY

DEPARTMENT OF SMALL BUSINESS SERVICES

BEFORE

THE COMMITTEES ON SMALL BUSINESS

AND CIVIL SERVICE & LABOR

OF THE

NEW YORK CITY COUNCIL

MONDAY, JANUARY 9, 2016

Good afternoon Chair Cornegy, Chair Miller and members of the Committees on Small Business and Civil Service & Labor. My name is Kim Hardy and I am the Deputy Commissioner of Economic and Financial Opportunity at the Department of Small Businesses Services ("SBS"), the division at SBS which supports minority and women-owned businesses. I am joined by SBS General Counsel Andrew Schwartz and Economic Development Advisor for the Mayor's Office of Workforce Development, Ashley Putnam. At SBS, we are connecting New Yorkers to good jobs, creating stronger businesses, and fostering thriving neighborhoods. Today, I am pleased to testify on Intro 1382, which would require SBS to report information on the workforce of contractors performing construction work for the City.

At SBS, we believe in the power of inclusion and diversity, and under the leadership of Mayor Bill de Blasio and Commissioner Gregg Bishop, we have committed to ensuring all New Yorkers have access to financial opportunities. The SBS Division of Labor Services, which I oversee, monitors contractor's compliance with equal employment opportunity laws and supports them in their efforts to increase the representation of minorities and women in their workforce.

To achieve this goal, certain City construction contractors and subcontractors are required to submit Employment Reports to the Division of Labor Services. The Employment Report contains information on the contractors' employment practices, policies and procedures, and collective bargaining agreements. However, not all contracts with the City are subject to these requirements. Construction prime contracts in excess of \$1 million and subcontracts in excess of \$750,000 are subject to review. For supply and services, prime and subcontracts over \$100,000 are subject to review when the vendor has more than 50 employees. SBS meets with contractors and works with them to ensure they understand the equal employment requirements of City contracts and to ensure their compliance. Reviews sometimes result in contractors having to make changes to their EEO policy or to determine whether they will proceed with the contract. If determined to be in compliance, SBS provides the company with a certification letter

which advises the contracting agency that the vendor can move forward on the project. If the Employment Report does not meet our standards, an incomplete letter is issued to the vendor and the contracting agency advising of issues with the Employment Report. SBS will make every effort to work with companies to resolve noted compliance issues. If approved, companies are certified by SBS for a three-year period. It should be noted that companies can also be certified upon submission of a certificate of Equal Employment Opportunity compliance issued by an appropriate state or federal agency in the prior twelve months.

Ensuring contractors are EEO compliant is an important part of our work. We are also focused on ensuring workforce diversity. SBS, working with partner agencies and the City Council, has made great strides through a comprehensive approach to the issue. First, SBS leverages its network of 20 Workforce 1 Career Centers by advising City contractors of the various ways job candidates can be found through our workforce system. Last year, SBS' network of providers connected nearly 30,000 New Yorkers to employment. Second, through the HireNYC Portal, City contractors who receive City subsidies are now required to consider New Yorkers for employment opportunities created through eligible City contracts. HireNYC, one of the largest targeted hiring programs in the nation, will also leverage SBS' network of Workforce1 Career Centers to connect New Yorkers to open positions created through the City's purchases and investments. Through HireNYC and the Workforce1 Career Center system, we are making sure that more New Yorkers have a first shot at jobs related to City projects, and that employers have access to an expanded pool of talent from the local community.

To tackle the issue of workforce diversity in the field of construction, SBS recently launched the Construction Industry Partnership called "The Mayor's Committee on Construction Workforce and Contracting Opportunities." Industry Partnerships work with industry, organized labor, non-profits, training providers, private philanthropy, and workforce organizations to build a pipeline of local talent to fill New York City's jobs. The Mayor's Committee on Construction

Workforce and Contracting Opportunities met last November and outlined three goals: Workforce, MWBE capacity building, and Safety. On the issue of workforce, the Committee will focus on diversity, access, and advancement opportunities for women and minorities in the trades. Through this holistic approach, we feel that we are taking substantial steps to ensure diversity throughout the workforce on City projects and to increase opportunities for minorities, women and veterans to access construction apprenticeships programs that can provide a career path.

Along with this work, SBS has made great progress in supporting our minority and women-owned businesses to grow and thrive. For so many individuals, owning a business can provide a path to the middle class and we are working hard to ensure minority and women-owned businesses have access to those opportunities. Recently, Mayor de Blasio set an ambitious goal of awarding at least 30 percent of the dollar amount of City contracts to M/WBEs by 2021 and doubling the number of certified firms by 2019. SBS will support this work through increased capacity building resources for M/WBEs as well as increased outreach to businesses to certify as M/WBE. These efforts will also help ensure that minority and women-owned construction firms have an opportunity to participate in these projects. Along with this, our pre-award construction meetings with contractors provide a critical opportunity to review contractor's plans for subcontracting work and identifying certified M/WBEs that are available.

We feel that through our ongoing work with HireNYC, The Mayor's Committee on Construction Workforce and Contracting Opportunities and the M/WBE program, SBS has a holistic approach to increasing opportunities through City contracts. We are also committed to strong workforce practices for all city-funded projects. This bill would require aggregated reporting from the employment reports that we collect. We do think there could be usefulness in this reporting and support the intent of this legislation. We would like to discuss further with the Council which information would be most useful in these reports for the Council's purposes, and

how the information gathering could be practically implemented. We are happy to answer any questions you may have. Thank you.

Intro 1382 Testimony of NYS Senator James Sanders Jr.

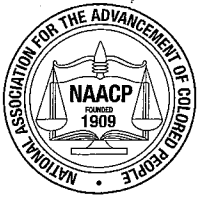
First, I want to acknowledge the worthy first steps of Council Member Robert Cornegy in sponsoring this bill as well as acknowledge his colleagues and cosponsors of this bill- Council Members Cumbo, Miller, Menchaca and others.

The New York Times article *The Crisis of Minority Unemployment* (Feb. 20th 2016) reported that minority communities are suffering from unemployment rates that can be compared to unemployment rates of the great depression. Intro 1382 is a worthy effort that addresses if minority and women laborers are being afforded their fair share of employment opportunities. It accomplishes this by having Small Business Services make public, quarterly reports on the workforce size of city funded construction projects and its demographics. The public report would highlight if construction sites have an underrepresentation of women and minority laborers.

This type of transparency is necessary to increase public confidence that the appropriate action is being taken to ensure equal employment opportunities. The public quarterly reports will ultimately result in transparency and accountability, a major step forward in the MWBE initiative. It will also level the playing field by allowing companies to project with better acuity, business and hiring decisions as it relates to city contracts. I support this effort and the city's commitment to encourage a competitive and diverse workforce. However, we must go even further. For too long corruption in MWBE programs have misrepresented the participation of women and minorities, resulting in stolen opportunities for those of which the program was designed to help.

As a former City Councilmember I was unanimously voted chairman of the Economic Development Committee, becoming the first African-American in New York City history to hold this position. I also oversaw the Economic Development Corporation and the Department of Small Business Services. During this time I authored Local Law 129 (2005), and Local Law 1 (2013), a type of affirmative action, designed to enhance the competition of Minority and Women-Owned Business Enterprises for city contracts and spur the creation of sustainable small businesses and jobs. I will continue to encourage legislation that seeks to even the playing field.

Now, as a State Senator and member of the Commerce Committee, Economic Development and Small Business, I have introduced several bills that would create a climate in which MWBEs can prosper. In December 2015, I testified at a City Council MWBE oversight hearing urging the panel to create an accountable transparent tallying system for those who buy the goods and services on behalf of the city. This legislation includes granting city-certified MWBE's the same advantages as those certified by the state, such as increasing the amount agencies may offer contracts to MWBE's without a formal competitive process from \$100,000 to \$200,000. My bill passed in the Assembly on March 30th, 2016 by a vote of 140 to 3. I encourage us all to continue to work together in taking the necessary steps to ensure that the facts are accessible and that women and minorities are being afforded equal access.



NAACP New York State Conference
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Testimony of Hazel N. Dukes
President
NAACP New York State Conference
Regarding Int. No. 1382-2016
NYC Council Committee on Small Business Hearing
1/9/17

Good afternoon members of the Committee on Small Business, Progressive Caucus, and Black, Latino, and Asian Caucus and the Committee on Civil Service and Labor. My name is Dr. Hazel N. Dukes, and I am the President of the NAACP New York State Conference and as some of you may know, the NAACP is one of the oldest, boldest, most effective, and most respected civil rights organizations in the Nation. The NAACP has played a pivotal role in moving the agenda of freedom and equality forward under the leadership of dynamic State Conference Presidents, each of whom addressed many critical issues during their tenure.

Like my fellow civil rights activist, Ms. Bertha Lewis of the Black Institute, I am testifying in opposition to Introduction Number 1382 of 2016 (“Int. No. 1382”) in relation to the reporting of information on the workforce of contractors performing construction work for the City. Diversity and Equal Employment Opportunity are of paramount importance; particularly within New York City’s construction industry, which has historically served as a pathway to economic advancement for minorities workers.

However, the proposed bill is wholly inadequate to further these aims. Not only because the Department of Small Business Services (“Department”) has not collected the referenced and requisite employment reports described in Section 1305 of the New York City Charter, but also because Int. No. 1382 lacks the majority of the provisions included in the City-Assisted Construction Workforce Disclosure Act of 2016 (“Disclosure Act”).

Over a period of months, I have personally discussed the need for and provisions of the Disclosure Act with the so called progressive leaders of the Black, Latino, and Asian Caucus and their staff. Expressing in no uncertain terms that Int. No. 1382 would not accomplish the much-needed goals that have been reflected by the NAACP and could not take the place of the Disclosure Act. It is an insult to me, the NAACP, our peers, and to the century we've spent fighting for civil rights, to be so wholly ignored by those that claim to champion our issues.

I have included the complete text of the Disclosure Act as part of my testimony so that the record will reflect an appropriate proposal to increase the transparency surrounding construction projects that receive financial assistance of any kind from the City. In the spirit of improved transparency, I will now summarize some provisions of the Disclosure Act to ensure the public is fully aware of just how unacceptable the 100 words included in Int. No. 1382 truly are.

The Disclosure Act would:

- Amend Administrative Code Title 6 Chapter 1, which contains the City's requirements for public contracts and purchases, to add a new section, § 6-142;
- Add additional definitions to Administrative Code Title 6 Chapter 1, which presently provides **none**, to aid in interpreting the new requirements included;
- Create workforce disclosure records to be submitted to the Department each quarter identifying City-assisted construction projects by address and BBL numbers;
- Provide for the **first time ever** ACTUAL data, as opposed to the average information that the Department is meant to collect, detailing for each worker on site: demographics, gender, trade classification, MWBE affiliation, home ZIP code, union affiliation, and the length of placement during the reporting period, using unique employee numbers to avoid privacy concerns;
- Require that City-assisted construction project also aggregate the aforementioned actual data across trade classification as the Department is supposed to;
- Allow City-assisted construction project employers to direct their contractors and subcontractors to create and submit the workforce disclosure records to increase compliance and accuracy;

- Define the coverage period for each workforce disclosure record submission as the quarter preceding the quarter in which the records are to be submitted;
- Require the Department to prepare the methods necessary to receive workforce disclosure records electronically to enable faster submissions and increased transparency;
- Require the Department to publically release through their website anonymized workforce disclosure records within sixty days of each quarterly submission deadline;
- Direct all civil penalties paid by violators to the general fund of New York City;
- Include a severability clause to enable portions of the enacted Disclosure Act to remain valid should a challenge of law find any elements invalid; and finally
- Make the proposed requirements take effect immediately after being signed into law.

Now, given that you all have moved forward with Int. No. 1382 instead of the Disclosure Act, I believe the public deserves to know: why is it acceptable to maintain the City's inability to assess who receives the benefits of City-assisted construction projects? Why can't the public be made aware of the actual demographics of these projects? Why can't the public be shown whether or not City residents are receiving the benefits of good paying construction jobs receiving City funds? Why can't the Disclosure Act move forward?

NAACP strongly opposes Int. No. 1382 in its current form. We believe New York City deserves better. The City Council should address the Department's failure to fulfill requirements of the City Charter by replacing the broken system with a modern, more transparent alternative—the Disclosure Act.

Thank you.

Bertha Lewis, The Black Institute and the Black Leadership Action Coalition

January 9, 2017

**Testimony before the joint New York City Council Committees of Small
Business/ Civil Service and Labor**

**Regarding Intro. 1382 A local law to amend the New York City Charter, in
relation to the reporting information on the workforce of contractors
performing construction work for the city.**

Thank you all for having this hearing today, it is vital, important and needed. However, we disagree with the current form of this legislation which we feel is incomplete, inaccurate, and wholly inadequate.

TBI and BLAC has as their foundation data collection and research. We are an action tank, that is a think tank that takes action. You cannot address or attack any problem or issue without real data and facts. As you all may know we have been waging a campaign for the last few years to address the shameful discrimination in city contracting against Minority and Women Business Entrepreneurs, which I might add includes many Veterans across this city and state. We have joined together with the NAACP and other groups, organizations and individuals on this matter because it affects and encompasses some of the very same issues that MWBE's face on a daily basis. As it pertains to the construction industry.

The construction industry has provided workers with a historical pathway to economic advancement. However, it is far from clear Who is being provided such opportunities for economic advancement. Publicly available geographic and demographic data as to who is performing construction work in New York City is simply not available. The City should assess whether City residents are receiving the benefits of good paying construction jobs.

We are proposing amendments to the City's administrative code to require workforce disclosure on ALL projects that receive financial assistance from the

City with a present financial value of 1 million dollars or more. Analysis of the workforce disclosure records that would result could facilitate the use of City assistance to broaden economic opportunities for City residents.

The changes we propose would aggregate information that is SUPPOSED to be currently submitted in disparate processes; require the submission of additional information to provide greater context and transparency for the impact of City financial assistance; create reports that would inform future policies surrounding workforce goals and MWBE participation; and make more information more useful through electronic filings and release.

Why is this so important to us? Because the demographics of this city are 65% minority and soon the country will be a new majority that is composed of minorities. The workers in this city will be majority minority, but now they only make up some of the lowest rung, unskilled and nonunion workers in the booming construction industry. We talk about infrastructure and the city of tomorrow, well who do you think is going to build it? The data that was supposed to be collected to comply with City, State and Federal equal employment opportunity law was first codified into the City Charter on April 25, 1980 under and Executive Order by Mayor Koch. It has been amended 3 times with just minor adjustments. We believe that this Administration is in violation of the City Charter. We believe that SBS is in violation. We believe that the leadership of SBS should be terminated and replaced and that this Administration and the Mayor's office is not up to the task of enforcing the Charter or adhering to it. Therefore, amend 1382 so that it can:

Affect a broader population of projects

Provide real transparency

Penalize those that do not comply

Have the force of Law and not just an executive order.

Women need to be counted, MWBE's need to be contracted. We cannot continue to have minorities be the flag wavers, and apprentices forever on construction projects. Enough!! We know that this Progressive Council will do the right thing and make 1382 have real teeth and force, and that you all will do the right thing even though the Mayor and SBS cannot seem to or care to do so.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1382 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: HAZEL N. DUKES

Address: 119 West 40th STREET 7th Flr

I represent: NAACP

Address: 119 West 40th STREET

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1382 Res. No. _____

in favor in opposition

Date: 1/9/16

(PLEASE PRINT)

Name: NYS Senator James Sanders Jr.

Address: 142-01 Rockaway Blvd

I represent: 10th Senatorial District

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1-9-17

(PLEASE PRINT)

Name: Ashley Putnam

Address: _____

I represent: NYC Mayor's Office of Workforce Development

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1-9-17

Name: Andrew Schwartz (PLEASE PRINT)

Address: Dept of Small Business

I represent: Service

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1382 Res. No. _____

in favor in opposition

Date: _____

Name: Kimberly Hardy, SBS (PLEASE PRINT)

Address: 110 William St, ny, ny

I represent: SBS

Address: 110 William Street, NYC

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1382 Res. No. _____

in favor in opposition

Date: 1/9/17

Name: Bertha Lewis (PLEASE PRINT)

Address: 39 B'way

I represent: Black Leadership Action Coalition

Address: 39 B'WAY

Please complete this card and return to the Sergeant-at-Arms