



RECEIVED - MANHATTAN
OFFICE OF THE CITY CLERK

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

2007 MAY 11 P 12: 14

EDDIE BAUTISTA
DIRECTOR
CITY LEGISLATIVE AFFAIRS

May 10, 2007

Honorable Victor L. Robles
City Clerk and Clerk of the Council
Municipal Building, 2nd Floor
New York, NY 10007

Dear Mr. Robles:

Transmitted herewith is the bill disapproved by the Mayor. The bill is as follows:

Introductory Number 83-A

A local law to amend the administrative code of the city New York, in relation to the protection of public employee whistleblowers.

Sincerely,

Patrick A. Wehle
Deputy Director

cc: Honorable Christine C. Quinn



RECEIVED - MANHATTAN
OFFICE OF THE CITY CLERK

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

2007 MAY 11 P 12: 14

May 11, 2007

Honorable Victor L. Robles
City Clerk and Clerk of the Council
Municipal Building, 2nd Floor
New York, NY 10007

Dear Mr. Robles:

Pursuant to Section 37 of the New York City Charter, I hereby disapprove Introductory Number 83-A ("Intro. 83-A"), which would extend whistleblower protection to public employees who report any conduct that allegedly constitutes a substantial and specific risk to "the health, safety or educational welfare" of a child. Under this bill, whistleblower protection would extend to public employees who make such reports to, among others, "superior officers", who are defined as agency heads, deputy agency heads or other persons designated by the agency to receive such reports. The bill defines "educational welfare" as "any aspect of a child's education or educational environment that significantly impacts upon such child's ability to receive appropriate instruction."

My administration places the greatest of import on protecting the children of New York City from all forms of harm and danger. In accordance with existing City and State laws, the City already protects whistleblowers who report violations of law, gross mismanagement or abuse of authority that may result in harm or danger to children. However, the numerous and serious flaws in this bill seeking to expand such protection in fact undermine its central purpose, and the City's children would not be safer were it passed into law. Indeed, the bill might actually have the opposite effect by increasing the risk that employment-related disputes would impede the agencies from carrying out all actions necessary to assure the safety and security of the City's children. Moreover, the bill presents issues of Taylor Law preemption and unlawful curtailment of mayoral powers.

The bill, which obviously targets the Department of Education (DOE), is both ineffective and unnecessary. The Council has no legal authority to regulate DOE by local law in areas that are educational or pedagogic. For example, under this bill, if an employee who disagrees with the Chancellor's policies reports that a curriculum is harmful to children and the employee is later demoted for legitimate reasons, the Department of Investigation (DOI) could be called-upon to investigate.

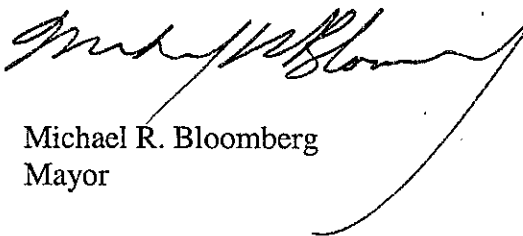
The bill also amounts to a severe intrusion upon the myriad agencies who handle child-related issues. The Administration for Children's Services (ACS), the Human Resources Administration (HRA), the Department for Homeless Services (DHS), and the Department of Juvenile Justice (DJJ), among many others, all have legal obligations to take appropriate action when those agencies believe that a child is at risk, and have procedures in place to require that employees make necessary reports to the appropriate persons when red flags are raised. Under this bill, however, confused employees may feel compelled to make such reports to "superior officers," rather than to agency staff who have the responsibility and authority immediately to address the relevant issue. In addition, due to the breadth of the term "educational welfare", the bill undoubtedly will increase the number of reports. Thus, agencies will be weighed down by the administrative burden of processing internal whistleblower reports, which will divert valuable resources from the agencies' efforts in safeguarding children.

Additionally, the bill significantly hinders DOI in its role as the City's watchdog over misconduct by City employees. When investigating reports of misconduct or retaliation, it is crucial for DOI to receive unaltered reports promptly. Under the bill, however, when whistleblowers make reports internally, DOI's investigations could be compromised by the internal discussions and actions that may take place before DOI is notified. Superior officers, who may lack the requisite impartiality, might initiate their own investigations without bringing DOI on board, delay notifying DOI or fail altogether to refer the report for fear of disclosing embarrassing or negative factual details. Additionally, because "educational welfare" is defined so broadly, DOI will be forced to field and investigate reports of retaliation that essentially derive from internal employment-related disputes or policy disagreements. DOI should not be called upon to wade into internal agency disputes between employees and supervisors on matters that are more appropriately handled by the agencies themselves.

Another serious consequence of the bill is that it will allow certain employees, who may legitimately deserve discipline or personnel actions, to take cover in the bill's broad protections. After employees make reports under this bill, agencies may feel compelled to refrain from taking certain actions, even if those actions are warranted by the employee's behavior and in the best interest of children. In this regard, certain employees could easily take advantage of the bill in an effort to ward off disciplinary action. Thus, this bill has the perverse effect of *impeding* agencies from doing exactly what the bill seeks to achieve: protecting children.

Accordingly, I hereby disapprove Introductory Number 83-A.

Sincerely,



Michael R. Bloomberg
Mayor

report of information concerning conduct which he or she knows or reasonably believes to present a substantial and specific risk of harm to the health, safety or educational welfare of a child by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city, (i) to the commissioner, (ii) to a council member, the public advocate, the comptroller or the mayor, or (iii) to any superior officer.

§ 3. Subdivision f of section 12-113 of the administrative code of the city of New York is amended to read as follows:

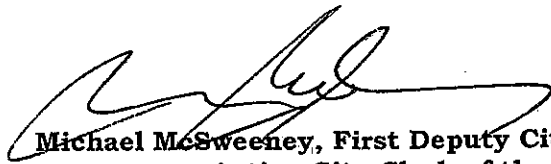
f. Nothing in this section shall be construed to limit the rights of any officer or employee with regard to any administrative procedure or judicial review, nor shall anything in this section be construed to diminish or impair the rights of a public employee or employer under any law, rule, regulation or collective bargaining agreement or to prohibit any personnel action which otherwise would have been taken regardless of any report of information made pursuant to this section.

§ 4. This local law shall take effect immediately.

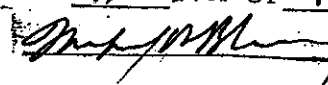
Handwritten initials

I hereby certify that the above bill was passed by the Council of the City of New York on April 12, 2007 receiving the following votes:

Affirmative.....43.....
Negative.....1.....
Not Voting.....0.....


Michael McSweeney, First Deputy City Clerk
Acting City Clerk of the Council

DISAPPROVED

ON THE 11 DAY OF May 2007
 MAYOR.