



TESTIMONY BEFORE THE COMMITTEE ON ENVIRONMENTAL PROTECTION 16 FEBRUARY 2021

Thank you, Chair Constantinides and members of the Committee on Environmental Protection. My name is Kate Gouin, and I am excited to join you for the first time in my new role as Acting Director of the Mayor's Office of Sustainability. I will offer testimony in support of Introduction 2170, which would expand the previously authorized Property Assessed Clean Energy, or PACE, financing program to include newly constructed buildings.

Local Law 96 of 2019, part of the Climate Mobilization Act, authorized what is called C-PACE, or “commercial PACE,” lending here in New York City. For those who may need a refresher, C-PACE financing is private financing that can be secured to pay for energy efficiency upgrades to a multifamily or commercial building that is tied to the property, not to the person securing the financing, and that is paid back through the property tax bill. This financing provides an essential tool to help building owners acquire the capital they will need to upgrade their buildings to comply with Local Law 97. These upgrades will also help buildings function more efficiently and will make them more comfortable and healthy for residential and commercial tenants. Since Local Law 96 was passed, we have been working closely with the NYC Department of Finance and the Law Department to establish the rules and structure for our program, and we anticipate that building owners will be able to seek PACE financing for their projects in the coming months.

In 2020, the New York State Legislature expanded the statewide authorization for PACE to make new construction eligible for PACE financing. Introduction 2170 would provide the necessary local authorization for us to be able to expand the City’s PACE program to include new buildings. As our city faces compounding crises - the COVID-19 pandemic and its accompanying economic crisis, the climate crisis, and systemic crises of housing quality and affordability, especially for our most vulnerable populations - we must address them using all of the tools at our disposal. Expanding the PACE program to include new construction allows private lenders to offer capital that would enable building developers, designers, and owners to incorporate measures that exceed the NYC energy code, which means that everything from new healthcare facilities to newly constructed affordable and supportive housing could be built in a way that acknowledges and confronts the climate crisis. This will also support jobs in our green and just recovery.

To conclude, we strongly support Introduction 2170, and we look forward to working with the Council to determine a cost-neutral way to implement the bill. We know that we will need to engage as many New Yorkers as possible to fight the climate crisis. We are united in our work with the Council to reach carbon neutrality by 2050.



Testimony of

**Michael DeLoach
Deputy Commissioner**

**New York City Department of Environmental Protection
before the
New York City Council**

Committee on Environmental Protection

February 16, 2021

Good Morning. My name is Michael DeLoach. I am the Deputy Commissioner of Public Affairs and Communication at the Department of Environmental Protection (DEP). Thank you for the opportunity to testify today about Intro. 1576, which reinforces the importance of water backflow prevention devices.

Backflow prevention devices, also known as cross connection controls, prevent potential contamination within premises from entering the public water supply. The possibility of contamination is caused by various kinds of plumbing configurations and/or equipment that use water under pressure. If the water pressure in the internal system in a medical facility like a hospital, for example, is greater than the pressure in the public water supply system, dangerous chemicals can be inadvertently forced back into the public supply unless a properly functioning backflow prevention device is in place to keep that from happening.

Protection of our drinking water through the mandated Cross Connection Control Program, which is required by Subpart 5-1.31 of the New York State Sanitary Code (Code). The Code, contained in the Public Health Law, mandates that public water suppliers such as DEP require certain users to install cross connection controls, for which they must submit plans for the installation of the devices, as well as annual testing and reporting once the devices have been installed. This program is approved and reviewed annually by the State and City Departments of Health, and is reportable to the United States Environmental Protection Agency and the New York State Health Department (DOH) as one of the Filtration Avoidance Determination deliverables.

The bill strengthens this program by raising the fines for failing to comply with the law, so that the fine is comparable to the cost of installation. DEP supports this bill.

Thank you again for the opportunity to testify today, and for focusing on this important issue. I am happy to answer any questions that you have.



RENT STABILIZATION ASSOCIATION ◆ 123 William Street ◆ New York, NY 10038

Intro. 1576

MEMORANDUM IN OPPOSITION

The Rent Stabilization Association of New York City represents 25,000 diverse owners and managers who collectively manage more than one million apartments in every neighborhood and community throughout the City. We thank the Committee for giving us the opportunity to submit this memorandum in opposition to Int 1576-2019, which would create new penalties for failure to install backflow prevention devices, or to submit annual test reports.

This proposed significant increase in penalties to \$10,000 comes at a particularly inopportune time as owners are struggling to meet operational costs with rent collections at a historic low due to the pandemic. The reality is most owners already comply with the law, and for those who do not, cost of installation is usually the prohibitive factor causing the delay. Installation costs are significant. According to the Department of Environment Protection, the cost of installing a backflow prevention device can range from \$7,000 in a small building, to \$13,000 in a mid-sized building and up to \$34,000 in large buildings, and a device has to be installed for each water service line to the building.¹. Imposing larger penalties will serve to further thwart the challenge of compliance. Moreover, the additional penalties for failure to submit annual test report submissions is just another onerous obligation imposed on owners who are already overly burdened by the myriad of annual inspection and testing requirements.

Legislation that provides additional hurdles, costs and penalties to property ownership at this time is not appropriate. Instead, the City Council should be considering measures to ease the economic burden imposed by owners, who have had to bear the brunt of Covid-19 financial hardship, with no end in sight.

Accordingly, RSA opposes Int 1576-2019.

¹ [https://www1.nyc.gov/site/dep/about/backflow-prevention-frequently-asked-questions.page#:~:text=For%20very%20small%20buildings%20\(1, cost%20between%20%245%2C000%20and%20%247%2C000.](https://www1.nyc.gov/site/dep/about/backflow-prevention-frequently-asked-questions.page#:~:text=For%20very%20small%20buildings%20(1, cost%20between%20%245%2C000%20and%20%247%2C000.)



To: Committee on Environmental Protection, NYC Council

From: Terence O'Brien, The Plumbing Foundation

Date: February 16, 2020

Re: Testimony on Intro. No. 1576

Introduction

My name is Terence O'Brien, and I am the Senior Director of the Plumbing Foundation City of New York, Inc. The Plumbing Foundation was founded in 1986 and is a non-profit organization of small and large, union and non-union plumbing contractors, engineering associations, supply houses, and manufacturers whose mission is to protect the public health and safety of New York City through the enactment and enforcement of safe plumbing and related codes.

We strongly support passage of Intro. No. 1576, which proposes to increase the penalties imposed on owners failing to comply with the mandatory installation of and reporting requirements for backflow prevent devices.

Background of Problem

Backflow occurs when drinking water is contaminated by hazardous substances. It happens when street pressure pushes water into buildings where dangerous materials and chemicals may exist, and no device prevents that now contaminated water from re-entering the drinking water supply. Sometimes water flow can be reversed due to a water main break or a mistaken or accidental cross connection between the building's water distribution and drainage systems. Therefore, it is vital that buildings install and maintain backflow devices to prevent the harmful results of contaminated water, which can contain bacteria like E. coli and Salmonella.

There have been countless cases of contamination caused by car washes, drycleaners, and—the biggest culprit—mother nature—all of which affect many homes and businesses throughout the City. For example, severe flooding causes backflow conditions in Jamaica Bay and low-lying areas of Staten Island and Brooklyn many times a year. SuperStorm Sandy caused backflow incidents citywide, including at the Staten Island University Hospital. With the increase in major weather events due to climate change, this may become a more frequent occurrence.

The issue of backflow dates back decades, and as you may be aware, the Plumbing Foundation has been an advocate on enforcement and transparency for years. In 2007, the *NY Times* reported 85,000 large residential and commercial buildings lacked backflow prevention devices, and that 26,000 buildings in New York City were considered high risk.¹ In that article, the City admitted to

¹ Anthony DePalma, *Thousands of Buildings Lack Required Water Valve, New York Records Show*, NY TIMES (May 19, 2007), available at <https://www.nytimes.com/2007/05/19/nyregion/19water.html>



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not meeting goals set by a task force in 2000, even though State law had required the devices be installed in certain buildings since 1981.² My predecessor at the Foundation, Stewart O'Brien, was quoted then and I reiterate today: lax enforcement on backflow prevention devices is putting New Yorkers at risk.

Ten years following the *NY Times* article, in 2017, *City Limits* reported residents in Queens and Brooklyn experiencing flooding in their basements of raw sewage; one resident said this occurs once a year and is a common problem in her Queens neighborhood.³ The article cites to an August 2016 administrative compliance order from the U.S. Environmental Protection Agency requiring NYC to address its longstanding issues with backflow prevention, including requiring NYC to comply with the Clean Water Act and to provide increased transparency.⁴ The article stated there were no relevant DEP reports available on its website after 2013.

New York State Department of Health regulations require suppliers of water (in NYC that is the Department of Environmental Protection [DEP]) to classify all buildings in terms of the degree of hazard they pose, and assure appropriate devices are installed and tested annually.⁵ However, thousands of NYC buildings still lack the required devices, including tens of thousands that are considered “high risk” buildings.⁶

Local Laws Adopted

The NYC Council adopted Local Law 76 of 2009 to address this issue, but it only required DEP to report the number of buildings with devices installed, updated semiannually. For purposes of transparency and compliance, it was not of much use to know the number of buildings with devices

² *Id.*

³ *EPA Presses New York City to Address Sewage Backups*, CITY LIMITS (Mar. 15, 2017), available at <https://citylimits.org/2017/03/15/epa-presses-new-york-city-to-address-sewage-backups/>.

⁴ Letter to Mr. Vincent Sapienza, P.E., Acting Commissioner, NYC Department of Environmental Protection from Dore LaPosta, Director, Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency (Aug. 31, 2016), available at https://www.epa.gov/sites/production/files/2016-08/documents/nyc_ao_cwa-02-2016-3012.pdf

⁵ 10 NYCRR 5-1.31.

⁶ Letter to Joel A. Miele Sr., P.E., Commissioner of the New York City Department of Environmental Protection from Anthony S. Cosentino, P.E., Chief Engineer (May 1, 2000). “It was obvious that after 12 years, compliance is at a low level. Compliance is only 30% if viewing the higher risk buildings (6541 out of approximately 22,765). It should be noted that there may be an additional 82,235 buildings which may also require devices and which may not be in compliance.” *Id.* at 2.



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installed when there was no set universe of buildings that are required to have such devices. Therefore, no *real* compliance rate could be determined.

As we testified regarding Intro. No. 268 in 2018 (subsequently became Local Law 58 of 2019), the public deserves to know which buildings require these devices and which are violating the law. In an October 30, 2017 hearing held by the NYC Council Committee on Environmental Protection, Chairman Costa Constantinides asked DEP what the compliance rate was in 2016. DEP said they issued 2,266 violations. When asked of the 2,266 buildings whether all have installed required backflow devices, DEP could not respond with a clear answer, stating “not all of them... in 2016 we also issued a little over 1,300 summonses for failure to install a backflow device... just to be clear I am not sure if that’s a subset of the [2,266] or could be previous years.”⁷

Following, the Council passed Local Law 58 of 2019, which requires DEP to report annually to the Council the number of facilities, including the number of “hazardous” facilities, estimated to require the installation of backflow prevention devices, the number of such facilities in which backflow prevention devices have already been installed, the number of test reports filed with DEP in the preceding year, and the number of violations issued for failure to install a backflow prevention device and for failure to file a required test report with DEP.

Next Steps: Intro. No. 1576

As stated in our previous testimony, we strongly supported passage of Local Law 58, but we recommended that the Council consider revising the bill regarding penalties imposed. The Code currently allows first-time fines to be imposed anywhere from \$50–\$1,000⁸ for violation of the requirement to install a backflow device. The industry strongly believes that such fines do not provide enough of an incentive for owners to comply with the law. In the Hearing Transcript from October 30, 2017, the Chairman asked DEP about fines imposed on building owners for not

⁷ Hearing on Intro. No. 821, Committee on Environmental Protection, The New York City Council (Oct. 30, 2017), available at legistar.council.nyc.gov/MeetingDetail.aspx?ID=570525&GUID=5D8F873C-F56D-44EF-93C8-42AFCE992A8F&Options=ID|Text|&Search=821.

⁸ NYC ADMIN. CODE § 24-346 (“Any person who violates or fails to comply with any of the provisions of this chapter and chapter four of this title or any order, rule or regulation issued by the board or commissioner or with the conditions of any permit issued by the commissioner within the city of New York shall be liable for a civil penalty of not less than fifty nor more than one thousand dollars for each violation”). As stated, in the October 30, 2017 hearing on Intro. No. 821, DEP clarified that they fine building owners \$500-\$5,000 (this likely depends on whether there are misdemeanor charges as in subdivision (b) of § 24-346 or if charged for continuing violations under (c) of § 24-346). In contrast, a backflow device itself can cost up to \$20,000. Hearing on Intro. No. 821, *supra* note 7.



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installing the required backflow prevention devices. On pages 50–51 of the Hearing Transcript, DEP says fines are between \$500–\$5,000, yet devices can cost anywhere from \$3,000–\$20,000.⁹ This is why the industry believes fines should be increased, so that owners do not continue merely paying the lower fine but rather comply with the law and actually install the required devices.

Intro. No. 1576 addresses the problem as outlined above. It would increase the monetary penalties to be imposed on a building owner or operator who fails to comply with installation and reporting requirements for backflow prevention devices. For failure to install the device, the civil penalty would be \$1,000-10,000 and the criminal fine would be \$2,000-10,000. For failure to file an annual report, the civil penalty would be \$700-10,000 and the criminal fine would be \$1,400-10,000.

Conclusion

The installation of backflow devices is a public health priority. Steep fines must be imposed on owners who fail to comply with the law. We thank the Chairman and the Committee for their time today.

⁹ Hearing Transcript, Hearing on Intro. No. 821, Committee on Environmental Protection, The New York City Council, 50–51 (Oct. 30, 2017), available at <http://legistar.council.nyc.gov/View.ashx?M=F&ID=5560542&GUID=2535EDDB-1132-40DD-8C61-217611B3CE9E>. In the 2007 *NY Times* article mentioned, it was reported that businesses were objecting to the high cost of backflow prevention devices, prices ranging at that time from \$8,000-\$16,000. DePalma, *supra* note 1.



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February 1, 2021

The Honorable Costa Constantinides
Councilman, 22nd District
New York City Council
250 Broadway, Suite 1778
New York, NY 10007

RE: INT 2170 / via email

Dear Councilman:

I am writing on behalf of Petros PACE Finance, one of the largest commercial PACE capital providers in the country. We thank you for your leadership with the Climate Mobilization Act, the largest carbon emissions reduction ever mandated by any city in the world. Commercial PACE will be a key tool to help property owners in New York achieve these mandates, and we are already working with many property owners to submit applications when the program is ready to launch.

We wanted to express our strong support for your legislation to strengthen the City's program for commercial PACE by adding new construction and language that would enable PACE to be financed on ground leases. This is vitally important for the manner in which the city continues to develop, and will unlock even more capital and more opportunities to assist property owners in meeting the mandates of your legislation.

As the New York City program nears launch, having the ability to take advantage of the full spectrum of commercial opportunities will be important. If there is anything we can do to help you move the legislation forward, let us know.

Thank you again for your leadership and support and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Yaki".

MICHAEL YAKI
SVP & Sr. Counsel
Petros PACE Finance



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February 1, 2021

Councilman Costa Constantinides

By Email: Costa Constantinides - costa@council.nyc.gov

Dear Councilman Constantinides:

We are providing this letter in support of bill 2170 which will allow for the use of Commercial Property Assessed Clean Energy (C-PACE) financing for new construction projects in New York. As you may know, Commercial Property Assessed Clean Energy or “C-PACE” is a financing tool that allows commercial property owners to pay for energy efficiency and renewable energy upgrades over the useful life of the improvements without using any public dollars. Nationally, 36 states and the District of Columbia have enacted C-PACE programs. More than 2,100 buildings have benefitted from C-PACE investments exceeding \$1.5 billion.

As the leader of the effort to pass the Climate Mobilization Act, C-PACE is a great way to allow for projects to qualify for additional financing for energy efficient building components. We are writing this letter to encourage you to move 2170 out of committee and onto the floor for a vote.

As an example of PACE financing in action, Twain provided \$6,255,000 of PACE financing in connection with the rehabilitation of the historic Kemper Arena in Kansas City, Missouri. The PACE financing closed simultaneously with construction financing and State and Federal Historic Tax Credit equity. The arena was converted into a multi-level office and sports performance complex under the name Hy-Vee Arena. In addition to 100,000 sf of office and retail space, the Hy-Vee Arena has twelve multi-purpose courts and a five-lane indoor track. The PACE financing proceeds were used to fund energy efficient improvements throughout the arena, including LED lighting systems, mechanical systems and upgraded HVAC systems. These improvements will allow for the arena to bring a new sector of travel and economic growth to the Kansas City area.

We thank you for your consideration on this matter.

A handwritten signature in black ink, appearing to read "MB".

Matt Badler
Managing Director
Twain Financial Partners