

COUNCIL OF THE CITY OF PHILADELPHIA
COMMITTEE ON LICENSES AND INSPECTIONS

Room 400, City Hall
Philadelphia, Pennsylvania
Friday, April 5, 2013
2:11 p.m.

PRESENT:

COUNCILWOMAN MARIA D. QUINONES-SANCHEZ, CHAIR
COUNCILWOMAN CINDY BASS, VICE-CHAIR
COUNCILMAN MARK SQUILLA
COUNCILMAN DAVID OH
COUNCILMAN BOBBY HENON
COUNCILMAN WILLIAM K. GREENLEE
COUNCILMAN KENYATTA JOHNSON

ALSO PRESENT:

COUNCILMAN JAMES KENNEY

BILLS: 120775, 120776, 130135

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2 COUNCILWOMAN QUINONES-SANCHEZ: Good
3 afternoon. The Committee on Licenses and
4 Inspections will now begin its hearing. The Clerk
5 will read all of the bills. Initially, we will
6 begin with Bill 12 --

7 THE CLERK: 13.

8 COUNCILWOMAN QUINONES-SANCHEZ: 13?

9 THE CLERK: Bill No. 120775, an Ordinance
10 amending Title 19 of the Philadelphia Code
11 entitled "Finance, Taxes and Collections," to
12 provide for a private right of action to enforce
13 certain tax laws, including penalties for
14 nonpayment, all under certain terms and
15 conditions.

16 Bill No. 120776, an Ordinance amending
17 Title 9 of the Philadelphia Code, entitled
18 "Regulation of Businesses, Trades and
19 Professions," by amending Section 9-1004, entitled
20 "Contractors," to add additional requirements for
21 obtaining and displaying contractor licenses, and
22 to further provide for regulation, penalties and
23 enforcement, all under certain terms and
24 conditions.

1 And Bill 130135, an Ordinance amending
2 Chapter 9-600 of the Philadelphia Code, entitled
3 "Service and Other Businesses," by amending
4 Section 9-605, entitled "Towing," to provide for
5 certain exceptions to licensing requirements for
6 towing companies located outside of the City; and
7 by making further adjustments to the requirements
8 for conducting the business of towing; all under
9 certain terms and conditions.

10 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
11 The Committee having established quorum, to my far
12 right Councilman Squilla, than Councilman David
13 Oh. To my left Councilman Bill Greenlee,
14 Councilman Bob Henon and Councilwoman Cindy Bass.

15 Does the bill sponsor want to make a
16 comment before we begin?

17 COUNCILMAN KENNEY: Yes.

18 (Microphone issues occur.)

19 COUNCILWOMAN QUINONES-SANCHEZ: We're going
20 to be back to problems again.

21 Councilman Kenney. Chair recognizes
22 Councilman Kenney for an opening remark on Bill
23 130135.

24 COUNCILMAN KENNEY: There we go.

1 Thank you, Madam Chairperson. I'd like to
2 read a statement relative to the forementioned
3 bill. This bill will amend the City's towing
4 ordinance to make certain changes in types of
5 businesses that are required to obtain a towing
6 company license from the City and a certificate
7 for each of its vehicles.

8 Currently, the City requires that anyone
9 engaged in the business of towing must engage in a
10 license and certificate from L&I. The last time
11 we amended this section in 2010, among many other
12 changes, we increased the license fee to \$500 plus
13 \$100 per truck for the certificate. It's not my
14 intention then that towing companies based outside
15 the City which engage in only occasional tows at
16 the request of the vehicle owner and are required
17 under then to pick up a disabled vehicle in the
18 City or tow into the City for repair be subject to
19 our license requirement.

20 However, my amendment did not exclude these
21 tows. And I understand that some outside towing
22 companies have been stopped and ticketed for not
23 having our license when they were simply towing a
24 vehicle through some part of the City on the way

1 to another location outside the City limits.

2 Last year I requested an opinion from the
3 City Solicitor on whether we are legally able to
4 require license from non-City towing companies
5 that engage only in consensual towing and do not
6 participate in the rotational towing program. The
7 Solicitor responded that while the City can
8 legally require license for such activity, there
9 could be legal challenges based on Federal,
10 Constitutional and statutory law. She further
11 advised that if we wanted to narrow the
12 applicational license requirement, the ordinance
13 should be amended.

14 Late last year we were made aware by AAA
15 MidAtlantic of problems their drivers were having
16 in certain situations. For example, a AAA member
17 called for assistance at a location outside the
18 City and needed to be towed into the City for
19 repair work. The nearest tow truck company did
20 not take the call because they had a previous
21 experience with receiving an expensive ticket for
22 not having a Philadelphia license.

23 So we decided that we should amend the
24 ordinance so three reasons. So that the licensing

1 requirement would not be unfair to towers
2 operating occasionally and consensually in the
3 City. So that we would not cause inconvenience to
4 residents who need a tow from outside the City.
5 And so we would not subject the City to the risk
6 of litigation.

7 So with that being said, I appreciate the
8 Committee's consideration of this Bill and
9 appreciate you're allowing me to make a statement.

10 Thank you, Madam Chair.

11 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
12 We have scheduled Frank Healy, Special Advisor to
13 the Police Commissioner. We will start with him.
14 And then, I believe, we have Jim Lardear, Director
15 of Public and Government Affairs from AAA.
16 Chester Hicks, Regional Manager. If you guys --
17 gentleman could come down together. Ken Lowe,
18 Owner of Ken's Towing and Richard Feldman in that
19 order.

20 The Lieutenant here? Oh.

21 We're going to start with Mr. Healy.

22 (Witnesses approach witness table.)

23 COUNCILWOMAN QUINONES-SANCHEZ: Oh, he
24 didn't hear me. Sorry. We're going to start with

1 Mr. Healy. You can sit on the chairs in the
2 inside of the bars. I'm sorry.

3 MR. HEALY: You ready?

4 COUNCILWOMAN QUINONES-SANCHEZ: Yes.
5 Begin. I'm sorry.

6 MR. HEALY: Good afternoon, Madam
7 Chairwoman Sanchez, Councilman Kenney and other
8 Members of the Committee of License and
9 Inspection. My name is Francis Healy, Special
10 Advisor to Police Commissioner Ramsey. On behalf
11 of the Commissioner, thank you for allowing the
12 Philadelphia Police Department the opportunity to
13 provide testimony on Bill No. 130135.

14 Upon the legal analysis and recommendation
15 of the Philadelphia Law Department, the
16 Philadelphia Police Department supports the
17 amendments to the Philadelphia Code, Chapter
18 9-600. Basically, the proposed amendments creates
19 a licensing exemption for non-City towing
20 companies that provide consensual tows that
21 include towing a vehicle through the City from a
22 location outside the City to another location
23 outside the City, basically driving through the
24 City, towing a vehicle from a location outside of

1 the City to a location within and vice versa.
2 Based upon the Law Department's analysis of both
3 federal law and existing case law, this exemption
4 is in the best interest of the City. And for that
5 reason, the Philadelphia Police Department
6 supports the amendments but not without some
7 reservations.

8 The ability of the Philadelphia Police
9 Officers to discern City-based towers required to
10 be licensed and exempt non-City towers is
11 impossible for the officers on the street. That
12 said, any non-City tower that does not display the
13 Philadelphia Police or, I'm sorry, the
14 Philadelphia towing license sticker will
15 inevitably be stopped by Philadelphia Police
16 Officer.

17 The basis for that is that many car thefts
18 are committed using tow trucks. And as such, the
19 Philadelphia Police Department aggressively
20 enforces the Philadelphia towing ordinance to
21 combat this crime. This reality while not
22 expressly stated in the proposed ordinance is
23 inferred and must be recognized by the non-City
24 towers operating in Philadelphia.

1 Specifically, the ordinance states that in
2 Section 3B, and I quote, "a tow truck driver may
3 be required to produce upon request of an agent of
4 the enforcement agency or the Police Department
5 proof that a tow truck is owned by non-City towing
6 company."

7 Implicit in this language is the reality
8 that a non-tower without a Philadelphia tow
9 license displayed will, despite this amendment, be
10 investigated most likely by the Philadelphia
11 Police Department. Additionally, based upon the
12 language of this section, the oweness is clearly
13 on the tow driver to present credible
14 documentation that he is, in fact, exempt from the
15 licensing requirement.

16 What exactly that documentation is or what
17 it should be is not necessarily so clear. So
18 while I support the amendment based on the Law
19 Department's recommendations, it will be
20 problematic for officers on the street. As
21 referenced above, it is entirely incumbent upon
22 the towers to prove that they are an exempt City
23 tower while on the street. Failure to produce
24 such credible documentation will ultimately result

1 in citations being issued and possibly tow trucks
2 impounded.

3 Consequently, the City of Philadelphia will
4 most likely be subject to litigation as a result
5 of some of these amendments. While the Police
6 Department will provide any necessary training to
7 ensure compliance with these new provisions,
8 without uniform identification or documentation of
9 the license exemption, problems are bound to
10 occur. While I fully understand the legal
11 reasoning or need for these amendments, it will
12 create problems for officers on the street. But
13 the Police Department will be do its best to
14 mitigate these problems as best as possible.

15 This would conclude the Police Department's
16 testimony. And I will be happy to answer any
17 questions.

18 COUNCILWOMAN QUINONES-SANCHEZ: Councilman,
19 did you want to -- I had a couple of questions
20 around the enforcement issue.

21 What is currently issued to City-legalized
22 towers? What's the identification?

23 MR. HEALY: Currently, now every licensed
24 tower has two stickers that go on the truck on

1 either side of the truck. Without those stickers,
2 our officers are stopping them routinely to make
3 sure -- it's a reasonable suspicion stop and they
4 are doing the investigations.

5 COUNCILWOMAN QUINONES-SANCHEZ: Does the
6 Department have any recommendations of what -- the
7 ones who would be exempt should have?

8 MR. HEALY: It's -- actually, no. If you
9 are not required to be licensed, how do you prove
10 you don't have to be licensed. It's kind of like
11 a double negative almost.

12 The best I can do is the best training. I
13 will try to get the information out to my cops.
14 The issue is that the tow truck drivers that do,
15 in fact, come in and have requested this, quite
16 frankly, understand that they are in a little bit
17 of a Catch 22. As they are most likely to be
18 stopped and we have every right to stop and
19 investigate to determine whether or not you're
20 exempt or not exempt. The fact that this
21 ordinance passes does not basically give them a
22 free pass to drive around without a sticker.

23 So, we will do our best to do it with as
24 much courtesy and respect as possible. But towers

1 will be stopped that are going to be exempt.
2 Hopefully, they will be passed along and
3 everything will be fine. It will take a little
4 bit of training on my part to make sure my
5 officers are aware that there is now a
6 distinction. Because in the past, we have
7 aggressively gone after people saying no sticker,
8 it's a good stop. Now it's no sticker, it may be
9 a good stop -- or not a good -- it's still a good
10 stop, but it may be a violator or not a violator.

11 It's going to be hard on the street for tow
12 truck drivers to basically prove that they are not
13 exempt. That's the only issues. But from the Law
14 Department's perspective, this is a necessary
15 amendment. For that reason from a legal
16 perspective, we would support it.

17 COUNCILWOMAN QUINONES-SANCHEZ: Do we have
18 any -- you guys haven't thought out any
19 recommendations for that? Maybe someone comes in
20 and gets something from us that says they are
21 not --

22 MR. HEALY: It's feasible. I mean, the
23 question is if they are only coming in once or
24 twice a year, are they going to come in for

1 something specific. So, that's a great idea in
2 theory. It would be perfect because then I could
3 basically put whatever that sticker or decal would
4 be. I could put it in my directive and all my
5 officers would be aware of it. But the fact is,
6 some of these people may come in once or year or
7 even less. They are not going to be likely to
8 come in and get stickers or identification parts.

9 But it's -- we will do the best we can with
10 it.

11 COUNCILWOMAN QUINONES-SANCHEZ: Okay. Any
12 questions from the Committee?

13 Thank you. We will hear now -- thank you.

14 Is it Lieutenant? I always get it wrong.
15 Sergeant? Lieutenant? I promote you. Captain?

16 MR. HEALY: One time you promoted me to a
17 Chief, but that was all right.

18 COUNCILWOMAN QUINONES-SANCHEZ: Okay. Not
19 with this new title Special Advisor.

20 MR. HEALY: I am just a Captain. I've had
21 this position since I was a cop. It's much easier
22 to just use that title. And I'm fine with that.

23 COUNCILWOMAN QUINONES-SANCHEZ: Okay.

24 Thank you. Sorry about that.

1 MR. HEALY: May I be excused?

2 COUNCILWOMAN QUINONES-SANCHEZ: Yes.

3 Absolutely.

4 MR. HEALY: Thank you.

5 COUNCILWOMAN QUINONES-SANCHEZ: Mr. Jim
6 Lardear, Chester Hicks, both from AAA. You were
7 kind enough to provide your testimony in writing,
8 and it will be part of the record. If you want to
9 summarize that, that would be fine.

10 MR. LARDEAR: Okay.

11 COUNCILWOMAN QUINONES-SANCHEZ: Speak into
12 the microphone.

13 MR. LARDEAR: Sorry. Good afternoon.

14 My name is Jim Lardear. I am the Director
15 of Public and Government Affairs from AAA
16 MidAtlantic. And thank you for inviting us here
17 to speak on behalf of the residents of
18 Philadelphia and our voters. Basically, we
19 represent about 800,000 members of Philadelphia
20 and the surrounding counties who have prepared for
21 roadside breakdowns by joining our club that
22 provides consensual roadside assistance to
23 stranded motorists among several other services.

24 AAA believes these amendments would solve

1 the unintended consequences caused by recent
2 licensing and other amendments that are an
3 obstacle to our ability to provide prompt, safe
4 and efficient roadside assistance to our members
5 who require consensual, again, towing into or
6 through the Philadelphia City limits.

7 You have got the testimony, so I will pass
8 it now over to Chester Hicks. So thank you.

9 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
10 Mr. Hicks.

11 MR. HICKS: Good afternoon. My name is
12 Chester Hicks. And I am the Regional Manager for
13 AAA MidAtlantic in the five county area and the
14 Pocono region. I very much appreciate this
15 opportunity to highlight for you some of the
16 reasons why AAA MidAtlantic has asked for these
17 amendments to the towing ordinance.

18 AAA MidAtlantic provides roadside assistant
19 services from Pennsylvania and New Jersey all the
20 way down to Northern Virginia. Many of our
21 out-of-state towing contractors as well as many
22 instate suburban contractors enter Philadelphia
23 only on infrequent occasions. However, as
24 presently written, the towing ordinance makes it

1 unlawful for them to do that without a towing
2 license and subjects them to substantial potential
3 fines and even seizure of their trucks.

4 The problem would not be so burdensome if
5 obtaining a Philadelphia towing license was a
6 simple and inexpensive matter, but it is not. It
7 requires a major expenditure of time, effort and
8 money that is greatly out of proportion to the
9 benefit of being able to tow vehicles occasionally
10 into the City.

11 Expense-wise, under the towing ordinance, a
12 towing company license costs \$500 the first year
13 and \$300 a year after that. In addition, towing
14 companies pay an additional license fee of \$150 a
15 year for each tow truck that might tow a vehicle
16 into the City. A business franchise fee of \$300
17 is also necessary.

18 In addition to fees, the application
19 process for a license is time consuming. An
20 applicant must submit information on each driver,
21 his complete fee schedule, proof of minimal
22 insurance coverages and proof that no taxes are
23 owed to the City. Each vehicle must be inspected
24 in Philadelphia, must display a City decal as well

1 as lettering of a certain size on both sides of
2 the truck and must carry a fee schedule at all
3 times. These regulations make sense for towing
4 companies located in Philadelphia that do most of
5 their business here, but they are unfair and
6 unduly burdensome to out of City contractors that
7 make up the bulk of MidAtlantic's contracting
8 network in the Tristate area.

9 The current ordinance has caused major
10 problems for AAA MidAtlantic and the members it
11 serves. Frequently, suburban and out-of-state
12 contractors who are aware of the towing ordinance
13 are refusing calls from members who wish to have
14 their cars towed into Philadelphia or picked up in
15 Philadelphia. In New Jersey, for example, where
16 the towing association has publicized
17 Philadelphia's policy, it often happens that the
18 tow truck will accept the service call but refuse
19 to cross the river into Philadelphia to drop the
20 AAA member off in the City. Instead, these towing
21 contractors terminate the tow in one of the roads
22 leading to Philadelphia and rely upon AAA
23 MidAtlantic dispatchers to find another contractor
24 to finish the tow. This is inconvenient and

1 disruptive to the member and can result in delays
2 of up to several hours.

3 The proposed amendments to the towing
4 ordinance will exempt suburban and out-of-state
5 towing companies from these regulations so long as
6 they are towing into the City, out of the City and
7 through the City and have the consent of the
8 vehicle's owners or driver. The amendments will
9 not authorize out-of-City tow trucks to complete a
10 tow from start to finish in Philadelphia.

11 Passage of the amendments would be a great
12 boon to AAA MidAtlantic members both in and out of
13 Philadelphia to its network of towing contractors
14 and to AAA MidAtlantic's own mission of providing
15 first rate roadside assistance services to its
16 members in southeastern Pennsylvania including
17 many thousands of Philadelphia taxpayers.

18 Thank you.

19 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
20 Any questions for the witnesses?

21 Councilman Kenney.

22 COUNCILMAN KENNEY: Thank you, Madam Chair.
23 Simply stated, consensual tows are not able to be
24 regulated by municipalities and states under

1 federal law. All of these situations are
2 consensual tows. The license and requirements
3 that we put in place through a lot of discussion
4 and amendments are dealing with basically street
5 wreck chasing, you know, accident scenes, those
6 kind of things where people don't necessarily call
7 the tow truck.

8 When someone, for example, a dealer has a
9 tow truck and one of their cars break down, they
10 send it to pick it up and take it back to the
11 dealer. Also, from a the safety perspective, all
12 tow trucks are state inspected. Everybody goes
13 through the same basic inspection so there is not
14 a safety issue, especially with AAA who prides
15 themselves on their safety record.

16 It really is fair to try to do this for
17 them. Thank you.

18 COUNCILWOMAN QUINONES-SANCHEZ: Thank you,
19 Councilman Kenney. With that, we will proceed to
20 our last two witnesses. We have Ken Lowe, owner
21 of Ken's Towing and Richard Feldman, Esquire.
22 Again, we have your testimonies in writing and
23 they will be added to the record. So if you want
24 to summarize your testimony, you can proceed.

1 Mr. Lowe.

2 MR. LOWE: Hi. Thanks for hearing me
3 today. My name is Ken Lowe. I am the President
4 and sole owner of Ken's Towing, LLC in
5 Coatesville, Pennsylvania.

6 My company does a lot of work with AAA
7 MidAtlantic. And we are currently operating 12
8 tow trucks. We have never picked up a car in
9 Philadelphia, but at the request of AAA we do tow
10 cars into the City of Philadelphia from
11 Coatesville and on several occasions per week.

12 A while ago, one of my drivers was stopped
13 by the police in Philadelphia during one of these
14 tows for a AAA MidAtlantic. He was in the process
15 of towing a disabled vehicle from the suburbs of
16 the City. He was given a ticket for \$500 for not
17 having a Philadelphia towing license. I decided
18 to fight this ticket in the Philadelphia Traffic
19 Court.

20 I personally went to court from
21 Coatesville, which is about 50 miles from Center
22 City. Despite my efforts to persuade the judge to
23 see that the fine was wrong, the ticket was
24 upheld. I traveled to Philadelphia a second time

1 to appeal this. Lost again. At this point, I
2 just paid the fine.

3 Several months ago, I tried to obtain a
4 Philadelphia Towing Permit License for several of
5 my tow trucks. It has been very complicated and
6 frustrating process. I submitted all the
7 paperwork that I was told and was requested to
8 turn in, but the application was rejected and sent
9 back to me. I did my best to fix all the things
10 that L&I said needed to be fixed, sent it back in.
11 It was rejected again. I tried a third time. And
12 sure enough, that was the third strike.

13 When I learned of the amendments coming up
14 for vote, I was glad to see it. The towing law
15 is -- the towing law as it now stands is a problem
16 for suburban towing companies like mine. I have
17 talked with other towers in my area and have
18 been -- that have been refusing calls to run tows
19 into Philadelphia because they are afraid to be
20 fined. The amendment proposal by this bill would
21 be a major advance for us.

22 Amending the towing law would be a good
23 thing for the Philadelphia people. The towing
24 ordinance is making life miserable for

1 Philadelphia residents who break down outside of
2 the City limits. I frequently get calls from
3 members and people who are broken down that have
4 been turned down by three, four, sometimes seven
5 other towing companies that refuse to tow them
6 into Philadelphia because they are afraid of being
7 fined. If the people only knew that drivers were
8 getting \$500 fines for towing cars into
9 Philadelphia, they would be very unhappy.

10 Thank you very much for letting me speak
11 today. I really appreciate it.

12 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
13 Mr. Feldman.

14 MR. FELDMAN: Yes. I have a -- Madam
15 Chairwoman, City Council Members, I am Richard
16 Feldman of the firm of Bazelon Less and Feldman.
17 And I am here representing AAA MidAtlantic in
18 connection with Bill 130135.

19 I want to thank the Committee for allowing
20 me and my colleagues of AAA to appear. And in
21 addition, I would like to thank Councilman Kenney,
22 the sponsor and his staff, especially Stephanie
23 Rosa who has been a great help in making this
24 happen.

1 I won't go through the whole statement. I
2 just want to make clear that under this federal
3 statute which bans laws and regulations that
4 impact either the rates, the services or the
5 routes of motor carriers like a tow truck and the
6 issue of whether a tow truck counts under that
7 statute has been up to the Supreme Court several
8 times, and it does. That law forbids the current
9 application of this towing ordinance statute to
10 towers from out of state.

11 You can't -- to demonstrate that, a couple
12 years back there was a landmark decision by the
13 United States Court of Appeals for the Second
14 Circuit in New York City where New York, the City
15 had a towing statute ordinance very much like this
16 one. Required anybody towing into the City or
17 even driving -- it was even worse. If you drove
18 your tow truck through the City, you had to have a
19 license even if you didn't have a car on it.

20 It discriminated against out-of-city towers
21 and out-of-state towers. The Second Circuit
22 upheld an injunction issued by the Trial Court and
23 ruled that the exceptions in the statute, which we
24 don't need to go into, didn't apply. And, you

1 know, upheld the decision below. As a result,
2 because that litigation went on for five or six
3 years, New York City had to pay over \$600,000 in
4 legal fees to the AAA club in New York that
5 brought the lawsuit.

6 We don't want that to happen here. That is
7 one reason why we approached Councilman Kenney and
8 the City and have tried to work through these
9 amendments in the hope that we can solve this
10 problem in the City of Brotherly Love like
11 brothers do.

12 I'd like to just speak briefly to the issue
13 that was raised by the Police Captain or Chief.
14 I'm not sure of his title. And that is the
15 problems thought to apply in enforcing this rule
16 that if you are from another jurisdiction, you
17 have to have a license, a towing license from that
18 jurisdiction if they require one. We looked into
19 this. In the five-county area surrounding
20 Philadelphia, there aren't any towing licenses
21 required by the counties or the cities. I suspect
22 that the further you go out from Philadelphia in
23 every direction, it's even more likely that there
24 are not those requirements.

1 In light of the Police Department's
2 testimony today, I will discuss with AAA whether
3 we can do a more thorough poll of the surrounding
4 area both in New Jersey and Pennsylvania and
5 Delaware and Maryland to see whether there are any
6 jurisdiction so that the police officers on the
7 beat out there stopping trucks won't have to go
8 through the aggravation of trying to figure out
9 which jurisdictions do have it and which
10 jurisdictions don't.

11 Unless there are any questions, I thank the
12 Committee again.

13 COUNCILWOMAN QUINONES-SANCHEZ: Any
14 questions?

15 Councilman Hen -- Kenney.

16 COUNCILMAN KENNEY: Just one clarification.
17 There may not be licenses in individual areas
18 around the City -- outside the City, but there are
19 closed rotational tow programs which, if you are
20 not eligible to be in it as a Philadelphia tower,
21 then you will be stopped, you will be ticketed and
22 you will have your truck confiscated. I'm not
23 suggesting that we reciprocate. We're trying to
24 make it easier for everybody.

1 The fact that there is not a license
2 requirement doesn't mean it's not restrictive. I
3 know a number of Philadelphia towers, legitimate
4 towers, who have tried to tow competitively in
5 surrounding counties. Because they have a closed
6 rotational system, they are not permitted to.

7 Just for the record.

8 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
9 Councilwoman Bass.

10 COUNCILWOMAN BASS: I just had a quick
11 question for Mr. Lowe. Just in the interest of
12 trying to figure out how to make it easier to do
13 business here in Philadelphia. I know you said
14 that you had applied three times for the
15 appropriate license, and that you were denied or
16 declined or were sent back all three times.

17 Do you remember what the reasons were that
18 they sent it back to you? I'm just curious.

19 MR. LOWE: Yeah. We were never declined
20 just --

21 COUNCILWOMAN BASS: It was incomplete.

22 MR. LOWE: Incomplete.

23 COUNCILWOMAN BASS: Right.

24 MR. LOWE: And then they would send it back

1 to us and say, well, you need to fix this, this
2 and this. And then one of the things had to be
3 notarized, so it had that all done. Then they
4 sent it back and said that the third time the
5 papers had to be on triple duplicate papers that
6 we had to get specially printed out so there was
7 three copies and they would be printed through
8 from each different thing.

9 Every time we send it in, they send it back
10 with a whole different -- we fix everything that
11 they say, then they kick it right back with
12 something else.

13 COUNCILWOMAN BASS: Did they give you the
14 special paper -- you know, the triplicate copy.

15 MR. LOWE: No. They suggested that we can.
16 Go to Staples.

17 COUNCILWOMAN BASS: Oh, okay.

18 MR. LOWE: And we can get these papers
19 printed out. But that was on the third time. If
20 they would have just told me that the first time,
21 I could have did it then.

22 COUNCILWOMAN BASS: Right.

23 MR. LOWE: But it's like they only picked a
24 certain couple things that was wrong the first

1 time, then a couple things the second time. Just
2 give them to me all at once to make it easier.

3 COUNCILWOMAN BASS: Exactly. Okay. That's
4 all. Thank you.

5 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
6 Just thank you, the folks from the witness.

7 Just for the record, the Pennsylvania
8 Towing Association also submitted a letter that
9 will be attached to the record from a Ronald
10 Bressler in support of this amendment.

11 With that, we will conclude with Bill No.
12 130135.

13 Now we will move to Bill 120775 and 120776.
14 We're going to approach this as both of them being
15 companion bills so the testimony is relevant to
16 the two. There were a significant amount of
17 amendments that were circulated and submitted.
18 And at the request of the Bill Sponsor, who will
19 make an opening statement, once L&I testifies, any
20 clarifying questions could be asked at that time
21 related to that.

22 So with that, I will recognize Councilman
23 Henon, one of the prime sponsors of the Bill.

24 COUNCILMAN HENON: Good afternoon and thank

1 you, Madam Chairwoman and thank you colleagues.

2 I want to thank you all for being here this
3 evening or this afternoon for this hearing. As
4 the controller -- our City Controller will testify
5 in just a few minutes.

6 Our City is being overrun by fly-by-night,
7 illegitimate contractors who violate our City's
8 rules, exploit our workers and their workers and
9 put legitimate law abiding, responsible taxpaying
10 contractors at a competitive disadvantage.

11 Bill No. 120776 and 75 aims to provide some
12 additional clarity to the contracting license
13 requirement and give the City officials additional
14 tools and information to help crack down on
15 irresponsible contractors who cheat the system and
16 hurt the law abiding businesses and workers.

17 Irresponsible contractors are a serious
18 problem and it's not unique to the City of
19 Philadelphia. Unfortunately, too many contractors
20 in our City routinely evade our City laws and
21 undercut their contractors who responsibly follow
22 the rules. This Bill aims to tackle two of the
23 most serious problems in the industry; third party
24 permits and a misclassification of workers. These

1 practices cheat our City out of tax dollars, make
2 enforcement of our existing laws difficult and
3 exploit workers.

4 Many of these contractors who pay cash or
5 improperly treat them as independent contractors
6 when, in fact, they should be considered
7 employees. This practice of worker
8 misclassification eliminates the administrative
9 overhead for these contractors but denies the City
10 of its tax revenue and denies the workers of their
11 workman's compensation, unemployment and employer
12 sponsored health benefits.

13 Many of these workers do not have adequate
14 safety protections on the job. So when these
15 workers get hurt on the job or they get laid off,
16 they have no safety net to protect them and the
17 responsibility for their care ultimately falls on
18 the taxpayers. We are trying to find out a way to
19 make it easier to identify these misclassification
20 schemes by requiring contractors to list all of
21 their subcontractors and their license and their
22 tax information.

23 We do not -- we need to do a better job in
24 tightening up the enforcement process and holding

1 contractors accountable for what happens on their
2 job sites. This Bill is a way to do that.

3 I want to thank you for considering this
4 legislation. I want to thank Councilman Kenney
5 who is a co-introducer of this Bill and my partner
6 in this. I want to thank also Council President
7 Clarke for cosponsoring this Bill. And I
8 appreciate all the time and effort for everybody
9 who is willing to testify here today and voice
10 their concern in a public forum.

11 I also want to thank the Department of L&I
12 for their partnership here in collaboration with
13 the Law Department in some of these technical
14 amendments -- actually, not technical -- but some
15 of these amendments that will be prioritized for
16 the enforcement where we can go after and retrieve
17 some of these uncollected underground markets.

18 I appreciate all your time. And Committee,
19 I appreciate all your help and devotion to this
20 matter. Thank you.

21 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
22 Councilman Kenney.

23 COUNCILMAN KENNEY: Thank you very much.
24 And I appreciate all the hard work that Councilman

1 Henon has put in and his staff has put into this.
2 One of the things that's frustrating about the
3 reputation of the City is that somehow we get this
4 reputation to build anything in Philadelphia, you
5 have to pay a premium. And I don't agree with
6 that. I think to build in Philadelphia, you have
7 to follow the rules.

8 One of the reasons why there is a disparity
9 between legitimate contractors who generally
10 employ union labor is a result of the fact that
11 they have to follow the rules. They have
12 payrolls. They pay their taxes. They pull their
13 permits. They pay for those. They follow the
14 letter of the law and they go by the book.

15 When these legitimate contractors who
16 employ union labor are compared with people who
17 come in from the outside, who fly by night, who
18 don't pull permits, who don't pay their workers on
19 the payroll, who pay their workers in cash, you
20 can easily determine what the difference in cost
21 is relative to that type of contractor as opposed
22 to a legitimate contractor that pays prevailing
23 wage and that treats their workers with dignity
24 and respect.

1 I guess what is frustrating is that the
2 media often portrays these fly-by-night
3 contractors as some kind of heroes or paradigm
4 changers when they're really just stealing money
5 out of the pockets of the workers and beating
6 citizens out of their rightfully paid taxes.

7 I am hoping happens as a result of this is
8 that the word goes out to the people who want to
9 put a roof on at three o'clock in the morning with
10 a blow torch or people that sneak in cranes at bad
11 work sites without knowing the capability, safety
12 record and operational skills of these workers
13 will get a new message from this town. And they
14 should follow the rules as everyone is expected
15 to.

16 I appreciate your scheduling this hearing,
17 Madam Chair, as quickly as you did. And I
18 appreciate Councilman Henon's hard work and his
19 staff's work on this issue. So, thank you.

20 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
21 I think everyone on this Committee is committed to
22 the role of L&I, which is public safety. And
23 ensuring that the work that is being conducted is
24 safe, and that everyone pays, as we call, their

1 part in contributing to this economy. As the
2 Chair of L&I, I look forward to the implementation
3 and the process by which we change that paradigm
4 and that mentally that folks will get away with
5 it.

6 If we can start with our Commissioner of
7 L&I Carlton Williams. I also want to acknowledge
8 that our City Controller is here, Alan Butkovitz,
9 and he will proceed the Commissioner. Is he still
10 here?

11 COUNCILMAN GREENLEE: He's in the back.

12 COMMISSIONER WILLIAMS: Good afternoon,
13 Councilwoman Sanchez and all of the Members of the
14 Committee on Licenses and Inspection. My name is
15 Carlton Williams. I'm the Commissioner of the
16 Department of Licenses and Inspection. Today I'm
17 here to provide testimony on Bill No. 120776. And
18 with me today is my Deputy Commissioner of
19 Development Michael Fink who oversees the license
20 and permit issuance.

21 The Department is pleased to support the
22 bills and amendments to address some of the most
23 pressing concerns regarding contractor licensing
24 issues. As amended, L&I is confident that we can

1 work within the perimeters of the bill. We
2 believe this is mostly in part due to the efforts
3 that we have recently put towards the Construction
4 Site Task Force. This initial Task Force was
5 comprised of the Department's building inspectors
6 who perform random audits as part of the weekly
7 responsibilities to address construction site
8 issues and construction licensing issues. The
9 Task Force was created to look for valid permits,
10 unsafe conditions, working without permits,
11 noncompliance in the right of way, as well as
12 unlicensed contractors.

13 The Department is limited to performing
14 contractor licensing on a part-time basis under
15 the current budget. However, we are pleased to
16 announce that the FY14 Budget will allow the
17 Department to hire six permanent inspectors to
18 staff the Task Force on a full-time basis. These
19 inspectors will represent each of the L&I District
20 offices and will address the concerns raised in
21 the amended bill. The Task Force will conduct
22 investigations, audits and take appropriate action
23 to address unlicensed contractors and noncompliant
24 work sites.

1 The Department would also like to continue
2 to work with Council to update the Administrative
3 Code to better address the concerns of the
4 construction community. We believe that updating
5 the Code will complement the bill's efforts,
6 intent of ensuring that contractors are licensed
7 and construction sites are properly permitted.
8 This process includes increasing L&I's authority
9 to issue Stop Work orders and escalating the
10 penalties and fees for code violation notices. We
11 hope that we can continue to work with Council in
12 adding to the Administrative Code.

13 In summary, we look forward to working with
14 the continued partnership with Council to reduce
15 the incidents where we find unlicensed contractors
16 on job sites and hope that these suggestive
17 measures are the step in the right direction.

18 This concludes my testimony on Bill No.
19 120776. Thank you for this opportunity to testify
20 on this matter. And I will be happy to answer any
21 questions at this time.

22 COUNCILWOMAN QUINONES-SANCHEZ: Did you
23 want to start?

24 Councilman Kenney.

1 COUNCILMAN KENNEY: Thank you very much.
2 Just for the record, and I have said it before at
3 other hearings and in other -- on the record at
4 other times, Commissioner Williams is an amazing
5 breath of fresh air in this department.

6 Responsive, returns your call, gets on the site.

7 We had a situation up at Temple University
8 in September where a lawyer for one of the
9 developers doing residential housing for students
10 without a Certificate of Occupancy was telling his
11 client to move in the students and the City would
12 never move them out once they got it. The reason
13 that they couldn't get the CO is because their
14 fire alarm system and compression system was not
15 inspected or certified.

16 There are developers out there who don't
17 really care about the health and safety of even
18 college students let alone care about paying their
19 bills and taxes. Commissioner Williams is on it.
20 He gets it. And he responds and his people
21 respond.

22 I just want to publicly thank him for his
23 tenacity in this regard.

24 COMMISSIONER WILLIAMS: Thank you,

1 Councilman.

2 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.

3 I agree. Commissioner Williams is as proactive as
4 you possibly can given the limitations of his
5 budget. And I am happy that the Administration is
6 finally going to provide you with additional
7 resources so that you can get some of this work
8 done.

9 Can you very quickly -- one, two, threes --
10 operationalize what this bill does for you now
11 that you didn't have before in terms of
12 enforcement of this so people get an idea. If I'm
13 on a site, as Councilman Kenney explained, what
14 will these new six inspectors be able to do
15 quickly?

16 COMMISSIONER WILLIAMS: Well, one of the
17 first things is that we will have access to
18 information and have the resources to be able to
19 go out and do real investigations on job sites. I
20 think one of the issues that we had prior to this
21 bill and prior to us being able to dedicate a team
22 is that we didn't have the resources dedicated to
23 do in deep depth inspections of work sites.

24 So, to be able to take a look at what a

1 contractor's license and issue. The Councilman
2 mentioned third party permits. The procedure for
3 us aggressively going after those type of
4 contractors are now in place and will allow us to
5 definitely enforce the law at a much greater rate
6 than we are at in previous past prior to issuance
7 of the bill in the initiation of this Task Force.
8 I think that is one of the initial steps that we
9 take for that.

10 Secondly, I think also the bill gives us
11 the opportunity to look at different options for
12 us to continue to enforce the code. Again, in the
13 past I think we were limited by information and
14 data that would help us, you know, go after
15 contractors. But to have it visibly displayed on
16 the site, to be able to go up and look at their
17 number and ID, it makes it easier for us to
18 identify people who are not compliant. We are
19 certainly open and welcome to that type of change.

20 It will give us -- allow us to pinpoint
21 contractors who are not in compliance. Again, I
22 think the overall goal, as was stated by
23 Councilman Kenney and Councilman Henon and shared
24 by all, is the fact that we want to support

1 licensed contractors. It's the ones that don't
2 play by the rules, who don't follow the
3 directions, who try to beat the system of not
4 paying taxes is the ones that we're going after.

5 I think that this bill gives us the
6 opportunity to go after them much more
7 aggressively than we had in years past.

8 COUNCILWOMAN QUINONES-SANCHEZ: One of the
9 issues that has been brought up extensively in the
10 Press is most of this work is done on the
11 weekends. Will these new hires work when we know
12 some of this work happens which may be Saturdays
13 and Sundays, you know, when not your
14 non-traditional working hours?

15 COMMISSIONER WILLIAMS: Yes.

16 One of the things, again, that we saw the
17 benefit of having a designated Task Force as
18 opposed to using our traditional building
19 inspectors who do a great job. I want to
20 acknowledge the fact. Their purpose is to try to
21 get jobs to completion in a safe manner. When you
22 take away from their responsibilities to do that
23 to do audits, it makes it difficult to do both.

24 But having a dedicated team who will be

1 working different hours and have a different
2 function will give us greater opportunities to
3 work during the evening, work during the weekends
4 without interruption of development of those
5 contractors who play by the rules. So, yes,
6 absolutely.

7 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
8 Councilman Henon.

9 COUNCILMAN HENON: Thank you, Madam Chair.
10 Commissioner, you know, I just want to echo
11 what Councilman Kenney and Madam Chair had stated
12 on, you know, what a breath of fresh air, you
13 know, it has been working with the Department over
14 the last, I guess, the tenure of your appointment
15 over there. Your team has done a stellar job
16 under your leadership and direction.

17 And I think, you know, you explained the
18 new squad of employees that you are going to have
19 inspectors to go out and not disrupt your regular
20 day core mission of, well -- in addition to your,
21 you know, regular inspections and inspectors out
22 on the street. But dealing with things on a -- in
23 a collaborative effort as a squad. I mean, you
24 have the success rate. As Councilman Kenney and I

1 believe the Controller said, in a certain area of
2 the City where there was, I mean, hundreds of
3 thousands of dollars that were not being reported
4 to the City which, you know, is breaking the law.

5 We're moving to the future and you're
6 taking the Department with your team into the
7 future and giving the tools. And I hope in
8 working with you and your department that this
9 gives you further tools to more clarify and codify
10 the third party permits, you know, which wasn't in
11 law before, so we can stop that behavior and send
12 a message, you know, that systemic or throughout
13 the City.

14 But also, you've kind of brought the
15 department up to, you know, 2013 on its
16 technology. So having the new website and the new
17 technology, I believe, that you are working on is
18 certainly going to be an additional tool for every
19 citizen of this City.

20 Can you explain real quick about the
21 website and the new technology and how this works
22 hand in hand with your new appropriations or asks
23 for the budget? I think my colleagues who have
24 been here prior to me would say that having

1 additional funding in a priority -- in such a
2 priority is -- it's been a long time.

3 So, how can we, you know, with those
4 technology, you know, have the health and safety
5 of our citizens get both the better use.

6 COMMISSIONER WILLIAMS: Sure.

7 First, I also want to thank you and
8 Councilwoman Sanchez and the entire Council for
9 being open to many of the recommendations that we
10 made.

11 Last year, we introduced a brand new
12 website that is the first of its kind. It's an
13 opportunity to look at neighborhoods in real time,
14 which means that every time someone issues a
15 permit or gets a license or if you're looking for
16 a licensed contractor, you have the opportunity
17 now, any person in public has the opportunity now
18 to look up that site or a contractor to ensure
19 that they have a license. This is done, again, in
20 real time.

21 So if they don't, they can report it
22 directly to our department and we can take action
23 on it. Before you had to contact our department,
24 and we would have to do research. And depending

1 on the length of the job, the contractor could
2 have been in and out by the time that we
3 responded. But now we're able to respond
4 immediately based on complaints that we get to the
5 public because we are going to expand our vision a
6 little bit, not just rely on us to find unlicensed
7 contractor but hope -- with hope that the public
8 and the community where there is job sites that
9 exist, they would check up on their area to ensure
10 that they have the proper permits. And when there
11 is not, they can contact our department and get an
12 immediate response with us.

13 This is the first time that's ever happened
14 because the information is now available through
15 technology. In addition, you can look up to see
16 if the contractor has a license. We are still
17 honoring Councilman Kenney's request last year to
18 ensure that all subcontractors are being placed on
19 there, as well. We are working closely with OIT
20 now to update the site to ensure both licensed
21 prime contractors and subcontractors are now
22 listed. And if they are not listed, then we can
23 then follow up with the Construction Task Force to
24 take appropriate action.

1 The next major piece of technology that
2 we're working on right now is to upgrade our
3 entire database system with Project ECLIPSE.
4 Project ECLIPSE stands for Electronic Commercial
5 License and Inspection Permit and Services
6 Enterprise.

7 Did I get that right, Michael?

8 MR. FINK: You did.

9 COMMISSIONER WILLIAMS: We have a long
10 acronym for that every time. I have to get him to
11 remind me.

12 Project ECLIPSE is a revolutionary design
13 to not only be a tool for us to do mobile
14 inspections. When I say mobile inspections, that
15 inspectors will have tools right on their hand to
16 check up on systems to check permits right on site
17 instead of having to relay information back to the
18 office because the geographic solutions that we
19 are looking at, the geotechnical solutions that we
20 are looking at, will allow us to have that
21 information with us on a 24/7 basis as we're
22 inspecting sites.

23 In addition, it does a whole lot. It
24 allows us to do electronic permitting online.

1 We're looking at electronic land reviews to be
2 submitted online to make it easier for contractors
3 and developers. It revolutionizes the way we do
4 business here in the City of Philadelphia.

5 We are very excited that these tools will
6 only help support our mission of providing a safe
7 City and support developers who want to come in
8 and build the correct way.

9 COUNCILWOMAN QUINONES-SANCHEZ: Any
10 additional questions?

11 COUNCILMAN HENON: No.

12 COUNCILWOMAN QUINONES-SANCHEZ: Councilman
13 Oh.

14 COUNCILMAN OH: Thank you very much, Madam
15 Chairwoman.

16 Good afternoon, Commissioner.

17 COMMISSIONER WILLIAMS: Good afternoon,
18 Councilman.

19 COUNCILMAN OH: When it comes to the
20 penalties section, Section 10: Penalties. Looking
21 at Subsection B.

22 COUNCILWOMAN QUINONES-SANCHEZ: You're
23 looking at the amendment?

24 COUNCILMAN OH: Yes. B, Subsection 3.

1 Or -- I am sorry, Subsection B: "Failure of any
2 person working at a job site to comply with the
3 provisions of subsection 3 of this section shall
4 result in the issuance by the Department of a Stop
5 Work Order to the contractor not in compliance or
6 to the prime contractor or any subcontractors
7 working at the job site as the Department may
8 determine until there is complete compliance with
9 all applicable provisions."

10 I don't want to assume, so would you tell
11 me in particular how do you envision the
12 Department determining whether to issue a Stop
13 Work Order to a contractor not in compliance or in
14 addition to any other contractor or subcontractors
15 involved in the project.

16 COMMISSIONER WILLIAMS: I will certainly
17 convey to my Deputy for a response to this. But
18 initially, whatever part of the job that is not in
19 compliance, we will -- whoever is not licensed, we
20 will immediately stop that until they are
21 licensed. That does not necessarily mean the
22 entire job, but it could mean that part of the job
23 in which the subcontractor does not have a license
24 for.

1 If there is continued work after that we
2 issue a Stop Order for that part of the job, then
3 we will go after all those who are responsible for
4 that and stop the entire job until we get
5 compliance. We will continue to escalate those
6 levels until we get people to comply with what the
7 law is.

8 Mike, you want to add to it?

9 MR. FINK: Good afternoon. This is Michael
10 Fink, Deputy Commissioner of License and
11 Inspections.

12 Councilman Oh, that the fees would be
13 collected through failed permit fees, violation
14 fees, additional license fees, additional permit
15 feels. All of those things would have to be paid
16 before the project could continue are come to
17 completion. A lot of times we will hold up a
18 Certificate of Occupancy if there is outstanding
19 fees paid.

20 This puts the responsibility on the
21 contractor who would be considered the prime
22 contractor on that particular construction site to
23 make sure that all of those things, so there is no
24 deferral of that's not my job. That was my

1 subcontractor who was not licensed in the first
2 place. So it gives us an additional tool to
3 collect that money before the project goes to
4 completion.

5 COUNCILMAN OH: So, I'm not an expert in
6 this topic. It is what I could imagine --
7 certainly, the escalation to ensure that there is
8 compliance. But I would like to know at some
9 other point in time if you clarify for me.

10 I mean, I want to just assure that in the
11 process of aggressively going after nonlicensed
12 contractors, that persons who are in compliance do
13 not fall into a situation where they have
14 committed to doing work and they have brought
15 their workers into a situation where nobody is
16 getting paid. In an effort, I understand to
17 rightfully stop work from continuing, but I just
18 want to ensure that in this process we are
19 focusing all our attention on the people who are
20 the offenders as much as possible.

21 I think you are fine, but if you could just
22 give me that additional level of information, that
23 would be very helpful for me.

24 COMMISSIONER WILLIAMS: Absolutely.

1 COUNCILMAN OH: Okay. Thank you.

2 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.

3 COUNCILMAN OH: Thank you very much.

4 COUNCILWOMAN QUINONES-SANCHEZ: Councilman
5 Squilla.

6 COUNCILMAN SQUILLA: Good afternoon,
7 gentleman. Thank you for being here. Again, I
8 re-echo Councilman Henon's words about how great
9 L&I has been working with you since I been here
10 and really starting to get things done and being
11 very reactive and proactive with my office in
12 helping us out, so thank you very much.

13 To just piggy back off of Councilman Oh's
14 question, it's also important to realize that when
15 you have a contractor who hires subcontractors,
16 it's easier to say, well, that's not me to, you
17 know, just stop those guys. A lot of times these
18 other contractors know that the subcontractors
19 they hire either do not have licenses or whether
20 they pay them in 1099s or they don't get City tax
21 dollars and all these other things that cause
22 other problems. They know what is going on. So
23 therefore, they still have to hold some
24 responsibility for what's happening below them.

1 And we -- our issue a lot of times is with
2 tax collections. We hear about it throughout the
3 City and especially with AVI moving forward and
4 you hear that, you know, people aren't paying
5 their fair share. If we can get everybody out
6 there who's actually working on the job to pay
7 their taxes, we wouldn't be in the position we are
8 in as a City. With your enforcement and added
9 enforcement would help tremendously and eventually
10 maybe make responsible for the, you know, general
11 contractor to know if they are 1099 everybody and
12 these people do not pay taxes, maybe they will
13 eventually have to be responsible for their taxes.

14 This would help eliminate a lot of the
15 problems knowing that eventually it's going to
16 come back to them instead of always brushing it
17 off, that's not my problem, that's those guys.
18 And never having a responsibility for it. I
19 believe that you need to share some responsibility
20 in that aspect.

21 And I do need to know -- believe that in
22 the future we also have to look at, you know, how
23 a lot of these people are being paid and what we
24 can do to make sure that the City is collecting

1 the tax revenue that it should be collecting
2 during the process.

3 COMMISSIONER WILLIAMS: We agree
4 definitely, Councilman. Today I met with the
5 Inspector General Amy Kurland to talk about the
6 roll that the Task Force will play with my
7 Department. And they've committed to working
8 closely with us to investigate those type of
9 issues.

10 As you know, our department is not
11 responsible for the tax collection part of it.
12 But we certainly are committed to working with the
13 Department of Revenue and working with the
14 Inspector General's Office to do in-depth
15 investigations. So when those matters come up, we
16 have a team that is going to be working very
17 closely with us to ensure that part of the
18 business is being addressed appropriately. If not
19 directly through our departments, through other
20 departments and resources through the City.

21 COUNCILMAN SQUILLA: I think that's great
22 to hear. Because in the past, even in the City of
23 Philadelphia, we sort of have disconnects between
24 departments. It's great to see that the

1 collaboration between Revenue and especially in
2 enforcement arm. It's nice to have an enforcement
3 arm out there somebody is going to be afraid of to
4 know to make sure they do the right thing.

5 It's great to know you're working with the
6 other departments and looking forward to the day
7 when we see this happening. And people know when
8 they do come here, that they are going to have to
9 pay their fair share. Thank you.

10 COMMISSIONER WILLIAMS: Absolutely.

11 COUNCILWOMAN QUINONES-SANCHEZ: Councilman
12 Henon.

13 COUNCILMAN HENON: Thank you, Madam Chair.
14 Just to circle back on unlicensed contractors
15 working without a permit and into penalties.

16 In the beginning, you know -- in the
17 beginning of the project or a job whenever you
18 have a prime contractor or general contractor or
19 whoever is at lead, you know, the proof of
20 licenses and permits would be at that point of
21 time. If somebody -- if later down the line, you
22 know, under first inspection or when an inspector
23 is coming out and take a look at the job and make
24 sure that the health and safety of the public is

1 being upheld to the law and you discover that
2 somebody is working without a license or does not
3 have a permit, I guess that's chicken/egg kind of
4 thing there, right, you need to have a license to
5 get a permit -- but somebody doesn't have a
6 license, so they can't obtain a permit. And they
7 are working, that's, you know, not changing
8 behavior.

9 The change in behavior, the oweness goes
10 back to the lead prime; is that correct?

11 COMMISSIONER WILLIAMS: That's correct.

12 COUNCILMAN HENON: Okay. Thank you.

13 COUNCILWOMAN QUINONES-SANCHEZ: How is data
14 sharing with the Revenue Department going to be
15 enhanced or to ensure compliance?

16 COMMISSIONER WILLIAMS: With Project
17 ECLIPSE, one of the biggest concerns, I think
18 there was a report issued just the other day,
19 about bounced checks and allowing people to
20 continuously issue bounced checks and get permits
21 from our department.

22 Right now there is a manual system in place
23 that does not allow us to have information timely.
24 I think with Project ECLIPSE, we are working to do

1 API that will allow us to have instant information
2 from various departments including Revenue that
3 will red flag people who owe City money. And we
4 will not issue a permit until we see that they
5 have complied and paid all of their bills. But
6 right now, it's done on a manual basis where we
7 have to get a report. With the number of permits
8 that we issue on a daily basis, it's very
9 difficult for a customer service representative on
10 the front to go back and do a manual search for a
11 permit for someone who has been red flagged for
12 not paying a check or bounced a check with the
13 City.

14 But I think what we're putting in place
15 right now is that that information will be
16 available instantaneously with new technology
17 expected to occur within the next year. That
18 anyone who comes in for a permit and any
19 information that they have done or they have an
20 existing violation, that they have to satisfy
21 their business with the City first before we issue
22 any future permits.

23 I think that is one example that's going to
24 give us the tools needed to curb this type of

1 behavior from occurring in the first place. We
2 also meet -- are going to continue to meet with
3 them, with the Task Force, on a monthly basis to
4 share data and information and to follow up on
5 investigations to find out if those issues are
6 affected with Revenue. If they're tax issues,
7 we'll follow up with Revenue. If they're right of
8 way issues, we'll follow up with the Streets
9 Department. And then that information will be
10 compiled into a report to take appropriate action
11 and such.

12 So, I think we are putting systems in place
13 both through a technological point of view and
14 also the continuous relationships that we have
15 with the various departments.

16 COUNCILWOMAN QUINONES-SANCHEZ: How far are
17 we from having real time data?

18 COMMISSIONER WILLIAMS: Project ECLIPSE is
19 being built right now. We are happy to say that
20 we awarded to a contractor, Computronix who
21 specialize in doing this across the country.

22 We expect first phase of development to go
23 in place, which is actually building a system,
24 this summer. And then, hopefully, by this time

1 next year, that we will have this phase of
2 development into that system. Because it's a
3 two-year, phased-in process in which we have to
4 build an entire new system for the City of
5 Philadelphia. But we hope that this part is in
6 place by this time next year.

7 COUNCILWOMAN QUINONES-SANCHEZ: It will
8 also -- you mentioned the Streets Department --
9 interface with the Streets Department to make
10 sure, for instance, when people do the street
11 closures, that is them versus --

12 COMMISSIONER WILLIAMS: Yes. The system is
13 going to be built where it interacts not only with
14 Revenue but all systems through an API. And it
15 will allow us to gather data and talk to other
16 systems in real time so that information is
17 accessible.

18 One of the things that's going to happen
19 towards the back end is benefit to licensed
20 contractors and developers is that we will have
21 electronic plan review that will allow them to
22 submit their plans online instead of coming
23 downtown towards the Concourse. Therefore, we're
24 providing not only on an enforcement side

1 enhancing things but on a development side as well
2 so we can deliver greater services, much faster
3 and more efficiently.

4 COUNCILWOMAN QUINONES-SANCHEZ: Okay.

5 Any other questions?

6 COUNCILMAN OH: I do.

7 COUNCILWOMAN QUINONES-SANCHEZ: Councilman
8 Oh.

9 COUNCILMAN OH: Thank you very much. I
10 have a question about Subsection or Section 12,
11 Civil Sections.

12 Under this section, "the City Solicitor or
13 any private person with the approval of the City
14 Solicitor may institute a civil action alleging
15 violations of this section in a court of competent
16 jurisdiction."

17 I understand you are not the City
18 Solicitor. But have you, in your prior experience
19 up till today, dealt with this type of subsection
20 which allows a private citizen to bring an action
21 upon permission of the City Solicitor?

22 COMMISSIONER WILLIAMS: No, I have not.

23 COUNCILMAN OH: Well, could you tell me how
24 you imagine this is going to work?

1 COMMISSIONER WILLIAMS: Well, I think that
2 needs to be a further discussion, Councilman, in
3 regards to that because we really haven't had the
4 opportunity to discuss that with our Law
5 Department.

6 I will say that it is my hope and intent
7 that we always remain the lead agency to address
8 issues of matter of public discontent, whether it
9 be contractor licensing issues or whatever it is.
10 Our department is authorized under the City's code
11 and charter to take appropriate action. And we
12 should continue to do so and be the lead agency
13 for that.

14 COUNCILMAN OH: I am not clear that this
15 section is legal. And I know they have reviewed
16 it. But, you know, I think it is important to
17 review that again. I mean, I think it's
18 interesting but I question its legality. I would
19 like to get a legal opinion from the City Solicitor's
20 office on that section.

21 COMMISSIONER WILLIAMS: I will certainly
22 convey that to the Law Department and follow up
23 with you.

24 COUNCILMAN OH: Okay. Thank you very much.

1 COMMISSIONER WILLIAMS: Yes, sir.

2 COUNCILMAN OH: Thank you very much,
3 Chairwoman.

4 COUNCILWOMAN QUINONES-SANCHEZ: Thank you,
5 Councilman Oh. I think -- and I know we got these
6 papers late. There was a legal memo drafted by
7 the Law Department. I know it's so much
8 paperwork.

9 Yeah. This one. There is -- I believe
10 there is a section on this one that deals with the
11 Right of Action. But we will keep reviewing and
12 let's Proceed and we will find you this section.
13 Because I believe the amendment was drafted by the
14 Law Department, right, Councilman Henon, to try to
15 address all of that.

16 No further questions for our Commissioner,
17 then we will move forward with our City
18 Controller. Alan Butkovitz.

19 Thank you, Commissioners.

20 COMMISSIONER WILLIAMS: Thank you,
21 Chairwoman.

22 (Witness approaches table.)

23 COUNCILWOMAN QUINONES-SANCHEZ: Controller
24 Butkovitz, we have your statement that is on the

1 record. You can proceed.

2 CONTROLLER BUTKOVITZ: All right. Good
3 afternoon. I take it from that, that that is a
4 hint not to read it.

5 COUNCILWOMAN QUINONES-SANCHEZ: Greenlee
6 keeps nudging me. You see this guy?

7 CONTROLLER BUTKOVITZ: Let me first of all
8 commend Councilman Henon and Councilman Kenney for
9 all the hard work and creativity that went into
10 drafting this very necessary legislation. I would
11 like to echo their remarks and praise of the
12 Commissioner of L&I. I think he has been a breath
13 of fresh air in that department.

14 I would just make a couple observations
15 based on the several investigations that we have
16 done in this area of things that I think would be
17 helpful. One of them would be -- we have for the
18 last six or seven years gone out to work sites and
19 tried to determine whether there are people who
20 are not licensed working at the sites. And we
21 frequently get stiff armed on that.

22 It would be very, very helpful if while
23 you're reviewing the regulations, that there was
24 some requirement that workers at the sites have

1 some identifying insignia or information
2 indicating whether they are operating under the
3 general contract or under some subcontract, so
4 that it's not a matter going back to the office
5 and pulling the files and going down to the
6 Concourse or going online. But that you can
7 eyeball it and identify whether people do not
8 appear to have licenses at the work site.

9 The second comment, I guess, would address
10 what Councilman Oh was just talking about. I
11 believe that this design of the private Right of
12 Action is in a sense modeled on enforcement of the
13 Federal Civil Rights laws. We have -- I think I
14 participated in this discussion. Where you don't
15 have an infinite amount of resources to enforce
16 this. You do want to have your capacity extended
17 by allowing interested citizens who have standing
18 to bring a right of action, but you don't want it
19 to be unending.

20 So in the civil rights context, that is
21 satisfied by having the Equal Employment
22 Opportunity Commission, taking first crack at it,
23 providing an initial investigation and at least
24 creating a threshold that has to be satisfied

1 before people can go off to court on their own.
2 But that has been a highly effective means of
3 enforcement. One of the limitations we've been
4 dealing with in the City has been the starving of
5 Licenses and Inspections for adequate resources to
6 do their job. I mean, in my opinion, after police
7 and fire services, L&I is just about the most
8 important function that the City performs.

9 It keeps neighborhoods -- it can keep
10 neighborhoods from turning into slums and save
11 lives. But they are terribly overextended. It's
12 gone back at least several administrations. So,
13 there are interested observers, in fact, many of
14 them in the room who, in fact, performed the kind
15 of investigative work that L&I is unable to
16 perform on their own.

17 I think this private right of action opens
18 a legal portal for the City to be able to benefit
19 from additional enforcement resources without
20 paying for them.

21 COUNCILWOMAN QUINONES-SANCHEZ: This was
22 one of the areas of concern that I had also shared
23 with the bill sponsor and with L&I. And while I
24 agree with you, having been on the receiving side

1 of frivolous lawsuits, what we didn't want was for
2 the City not to lose its ability to decide what
3 was an appropriate pursuit of legal action because
4 we do have stakeholders, contractors, BIA
5 associations, obviously the unions who have the
6 resources to do that. But that that decision be
7 the Law Department's to determine when those would
8 be pursued.

9 The way I envisioned it -- and the bill
10 sponsor can correct me if I am wrong for purposes
11 of clarity for Councilman Oh, is that someone
12 would have to submit that to the Law Department
13 for review of, in fact, if it was a legitimate
14 pursuit of a private right of action.

15 CONTROLLER BUTKOVITZ: And a similar
16 process is followed with the submission of private
17 criminal complaints with the District Attorney
18 performing the review, but with citizens taking
19 the bulk of the work on themselves to pursue
20 matters that are below a certain threshold.

21 COUNCILWOMAN QUINONES-SANCHEZ: Councilman
22 Oh.

23 COUNCILMAN OH: Thank you very much, Madam
24 Chairwoman. And thank you very much Controller.

1 I do understand what you are saying and
2 certainly I would like to clarify that it may be a
3 very good and useful and legal tool. I'm not
4 saying that it isn't. But I would distinguish,
5 number one, on private criminal complaints those
6 are only for misdemeanors not committed in the
7 presence of a police officer where a private
8 citizen then goes, files and swears out a
9 complaint. But that is either accepted or
10 rejected by the District Attorney's office who
11 still brings the prosecution. It's not done by a
12 private citizen.

13 In terms of the U.S. Supreme Court and the
14 14th Amendment and Equal Protection and all those
15 things, what happens is nobody may bring this
16 action. They must go through the Equal Protection
17 Agency. They have to do it within a limited
18 period of time. And only after that has been
19 completed, investigation and decision, they apply
20 for a Right to Sue Letter and then they are
21 granted the right to sue. But they do not step in
22 the shoes of the Federal Government.

23 So, being that the Constitution is the law
24 of the land and will override both state and

1 municipal law, what happens in this case we have a
2 City ordinance that is granting to citizens a
3 right to sue when I don't know that they have a
4 right to sue. It may be a very effective tool and
5 every point that you raised is legitimate. We
6 certainly could have more enforcement. And we
7 have all those things.

8 I am simply asking the Commissioner to have
9 the City Solicitor specifically provide a opinion
10 on the legality of that process. Because
11 otherwise I do think that while citizens may, as
12 this bill provides, see the evidence, see the lack
13 of a license, but they would report it to the --
14 to L&I Commissioner and the commission that would
15 then begin that process.

16 If we can get around that and that is
17 useful, I am certainly open for that. But, you
18 know, I am not trying to engage in a legal
19 argument. But just clarify that the legal
20 processes are something I would like to
21 understand.

22 CONTROLLER BUTKOVITZ: They have a right to
23 sue if you give them a right to sue. The power of
24 this Council to decide how the regulations of City

1 government are enforced. It's kind of a circular
2 argument. I understand what the Chairwoman says
3 in terms of the policies and the concerns of not
4 letting it get out of hand, and that makes sense.

5 But I think the power is in your hands.

6 COUNCILMAN OH: Okay. I will say that I
7 don't think that is the case. But certainly the
8 City Solicitor will provide us with a definitive
9 opinion or at least a opinion we can abide by.

10 COUNCILWOMAN QUINONES-SANCHEZ: Any
11 questions for the Controller?

12 Seeing none -- we have several different
13 panels here. And I know folks have been patient
14 and waiting, so we are going to do our best to get
15 through all of them. If folks are not here, then
16 I will proceed to call the other members if that
17 is okay with the bill sponsors.

18 In my next panel I have Wayne Miller of
19 Sprinkler Fitters Local 692 and Gerard Waites,
20 General Counsel. Thereafter, so that folks begin
21 to prepare themselves, I have Mr. Ryan Boyer. And
22 then thereafter I have Jihad Ali, Luis Torrado and
23 John Macklin. Folks just can get ready.

24 (Panels approaches table.)

1 COUNCILWOMAN QUINONES-SANCHEZ: We have
2 your testimony in writing, so you can proceed.

3 MR. MILLER: I'd like to take the
4 opportunity to thank the Chairman and the Council
5 for giving me the opportunity to speak today. My
6 name is Wayne Miller. I am the business manager
7 for the Sprinkler Fitters Local 692.

8 My main job is to police the City of
9 Philadelphia to make sure that my contractors and
10 members have a level playing field to work on in
11 the bidding process and for the men to get work on
12 the project.

13 For the last 12 years this has been very
14 frustrating for myself and also other members of
15 the Philadelphia building trades. We've been
16 working on this for a number of administrations.
17 In the Mayor Street's Administration, he put an
18 executive order in to help work on some of these
19 issues. As you can see, any time you have an
20 executive order that goes away, we do need some
21 type of legislation for an ordinance.

22 To give you an example, in 2002 we put a
23 proposal together similar to what is being
24 proposed today. Maybe not as extent as Bobby

1 and -- Councilman Henon and Councilman Kenney put
2 together, but basically on the same things. The
3 revenue loss to the City, the ineffective laws and
4 some of the things were, at that time, licensing,
5 permits and wage taxes. And it's just continued
6 over these amount of years that this has been
7 happening.

8 We worked together with Mike Fink and
9 Michael Maenner and also Commissioner Subibbli and
10 we got a few things done and it really worked.
11 And we have to continue that.

12 I have some issues that can go to three
13 problems that I see. And the three problems that
14 I see are number one -- or actually four.

15 Number one, no permits; number two, no
16 license; number three, no City wage taxes; and
17 number four, the 1099 scam.

18 To give you an example of some of the
19 issues that I have, I can put companies to some of
20 the problems that go on. I had a company that
21 came into the City of Philadelphia, had some in an
22 area between 22 and 23 jobs in one year. I happen
23 to wind up taking this company to the National
24 Labor Relation Board. And he had to produce all

1 the jobs that he did in the City of Philadelphia
2 in that one year.

3 And I had my lawyer ask him a few
4 questions. The questions were, do you have -- are
5 you a licensed contractor. The answer was no.

6 Do you have a business privilege license?
7 The answer was no.

8 Do you pay City wage taxes? The answer was
9 no.

10 Do you pay state taxes? The answer was no.

11 I don't know what ever came of that because
12 we worked together, and I turned it over to some
13 people and also had it given to people in Revenue.
14 When you put things to Revenue, you never hear
15 anything back. I guess it's a privacy law,
16 whatever. I don't know if anything was taken care
17 of that. The company still is around today.

18 But these things are frustrating. Then
19 with permits, when we first started, the only
20 thing was is that if you didn't get a permit, they
21 told you to go and get another permit. Then they
22 raised it to double the permit fee was your fine.
23 You can rest assured, when people don't pull
24 permits, they are not pulling in -- paying

1 anything else. That's also been a problem.

2 When people don't pay the City wage tax, it
3 puts my contractors at a disadvantage. They can't
4 compete with that. I am not talking about union
5 or nonunion. Any good contractor that has to
6 compete with someone who don't pay the proper
7 taxes, he's put at a disadvantage. This is
8 something that we need to take a look at it.

9 Again, whatever can be done in these new
10 proposals, it would certainly help the City. In
11 our discussions when we went over this with L&I
12 years ago, I asked one of the people working
13 there, said, what do you think the City is losing.
14 This is 12 years ago. He said conservatively
15 maybe 5 million a year. On the other hand, it
16 could be probably be up to 20 million a year.
17 That is from 2002. That is a lot of money the
18 City lost and a lot of revenue that things could
19 have been helped to provide in the City.

20 If we put something into effect and have
21 stricter penalties, people won't be apt to do
22 certain things and continue to do certain things.

23 Give an example. There is a job in Center
24 City Philadelphia where I don't know how many

1 other unions have licensing law, but I have a
2 licensing law for installers. You need to go
3 through an apprenticeship program. You need to
4 have so many hours in the work field in order to
5 qualify for these licenses. And there are people
6 on this job that don't have licenses. I know they
7 are there because I know the people on the job.
8 And I call L&I.

9 In my opinion, L&I does a great job with
10 the people that they have. I mean, I can't do a
11 high rise building by myself and neither can L&I
12 do a job when they are undermanned. They need the
13 people to be there.

14 These people are on the job. L&I goes on
15 the job. They run out the back door. I mean, we
16 have to have some other type of a system to not
17 have to go through this. Maybe signing in or
18 doing certain things when you get on a job.

19 As far as these 1099s, contractor gets a
20 job, puts the men on the job, they do the job,
21 they don't pay taxes. We don't know they pay
22 taxes. They don't have to turn taxes in for a
23 year later. I mean, there has to be some
24 mechanism to stop this. I believe in these

1 ordinance, there are things that will take that
2 place and work to the advantage of the City. If
3 we keep on that, we will -- I think that things
4 should work out pretty good.

5 I appreciate your time. If anybody wants
6 any questions of me, I will be glad to answer
7 anything you need.

8 COUNCILWOMAN QUINONES-SANCHEZ: Is your
9 general counsel also going to testify? I know we
10 have a written testimony.

11 MR. WAITES: If I may, I would like to add
12 a few points.

13 COUNCILWOMAN QUINONES-SANCHEZ: Absolutely.

14 MR. WAITES: Thank you, Madam Chair and
15 Committee Members. My name is Gerard Waites,
16 counsel here on behalf of Sprinkler Fitters Local
17 692 who strongly support the bill. I also work
18 with the Philadelphia Building Trades counsel and
19 many of the affiliates. And I can tell you, that
20 they all strongly support these bills, as well.

21 I do specialize in the area of legislation
22 and public policy in the construction industry, so
23 I would like to share some global points that I
24 think will help as well as some technical insights

1 on this on why we think this will work.

2 One thing I think could help to underscore
3 here is that the nature and scope of this problem,
4 Wayne did a good job, I think, of giving you a
5 macro couple of examples. And -- but it is very
6 far reaching. And the Controller's report show
7 that to a degree. I can tell you it is
8 widespread. It is systematic. These are serious
9 violations.

10 This is the kind of thing where when it's
11 wrong, there is not compliance with it. Everybody
12 loses and everybody gets hurt. When it's right,
13 everybody wins. Right now the City is losing
14 millions of dollars a year. Millions upon
15 millions of dollars a year. Residents are put at
16 risk for safety and being exposed to unqualified
17 contractors. All the honest contractors, all the
18 contractors play by the book that go through all
19 the trouble and pay all the fees and licenses.
20 There is no way in the world they can compete when
21 somebody comes in because the bid prices are
22 directly affected.

23 All the workers on both sides, the workers
24 for contractors who play by the rules, union or

1 nonunion, and the workers who are employed by
2 these they suffer. Workers for the good guys lose
3 the jobs, lose out to the bids. The workers for
4 the bad guys tend to get exploited themselves and
5 are subject to unsafe conditions, subject to
6 unlawful wage practices and on and on.

7 These forms are designed carefully -- and I
8 give the Council credit and Council sponsors did
9 an excellent job of crafting remedies to make the
10 existing law work, to clarify, to strengthen, to
11 improve and to give L&I the tools it needs to do
12 it augmented by potential private enforcement
13 which really may just serve as a deterrent. By
14 the way, the City does now have a similar scheme
15 like that for contract fraud where it authorizes
16 the same thing. Called a false claims, Qui Tam.
17 The City authorizes private suits in the same way,
18 with the approval of the Solicitor they can do
19 that.

20 But the point is, these are good remedies
21 to address these serious problems. The scope of
22 the problems are wide and deep. I had
23 conversations with L&I prior to the hearing. They
24 would agree that the unlicensed contractor issue

1 alone is -- there could be upwards of 20 percent
2 of the contractors operating in the City are not
3 licensed. Wayne gave one example. That
4 contractor, he had a list of over 20 jobs they did
5 in one year. That is one small contractor. We
6 can have -- 20 percent can mean hundreds of
7 contractors out there.

8 What happens when you are not licensed? If
9 you are not licensed, you are not pulling permits
10 because you got to have a license to pull permits.
11 And chances are about 95 to 100 percent that if
12 you are neither doing those two things, you are
13 not paying City wage tax. So, all those fees and
14 those wages have huge economic impact. In a city
15 like every city that struggles mightily as you are
16 trying to balance the resources you have with all
17 you are trying to do. This is seriously
18 uncaptured income that is hurting everyone. And
19 the only people who profit are the bad guys who
20 are skirting the system.

21 You know, we have this in every city. I
22 think you have some very good tools here designed
23 to go after it better than a number of
24 jurisdictions I have seen, especially with these

1 new tools.

2 Everything I said really doesn't get into
3 the 1099 scam. That is when contractors come
4 along and they -- it will be a painting or an iron
5 work or contract, whatever it is, they will take
6 their whole work crew and they call them
7 "independent contractors" and they pay them on
8 1099. It's a federal tax form. That way they
9 don't have to pay workers comp. They don't have
10 to pay Social Security. They have no workers comp
11 covered if they are hurt. No Social Security. No
12 unemployment taxes.

13 It's big scam. They are really employees,
14 they just slap this label onto it. This is all
15 over the country. Cost the country billions of
16 dollars. Cost the City, the Controller Report
17 found estimated that the City loses \$7 million
18 alone just on this scam. And I will tell you,
19 with what you have in place plus these new
20 amendments -- and I have studied this carefully,
21 you may have one of the most effective remedies
22 out there.

23 The reason why is most jurisdictions that
24 have wrestled with this have taken not the best

1 approach. They get into a complicated analysis
2 and equation of what is a contractor versus an
3 employee. It becomes this complicated 15-part
4 test that the IRS uses. Nobody knows what to do
5 with it. Well, your system is very simple and
6 will be effective once it's clarified and
7 strengthened. It says anybody doing more than
8 \$500 a year has to get a license. You have to get
9 a license. Guess what, you are either a
10 contractor or you're an employee. There is no in
11 between.

12 If somebody is on that job and they're
13 calling it an independent contractor, well, then
14 they are required to have a license. Under your
15 law with it -- what this does, the amendments here
16 strengthen and clarify that and say, look,
17 everybody -- every contractor and subcontractor at
18 every tier have to have -- go through this
19 qualification process and they have to have that.

20 If you want to call them an independent
21 contractor, fine. You send them to get a license
22 like every other legitimate contractor, and they
23 are going to have to show workers comp insurance
24 and unemployment and general liability. They are

1 going to have to be legit. If they are truly a
2 contractor, fine. Let them play by the rules like
3 everybody else. If they are really an employee,
4 that contractor needs to classify the employee,
5 pay the taxes, pay the City wage tax and the whole
6 nine yards.

7 And with what's been changed here, this
8 will fix those issues because it builds in clarity
9 into the law. It also builds in certain tracking
10 and transparency and accountability procedures. I
11 won't go over all the details. But the signs on
12 the trucks to notify, to put it there, notices to
13 and through L&I of all subcontractors working on
14 the site with their names and their license
15 numbers. It provides a kind of concerted approach
16 to the whole problem, common sense procedures so
17 people in the industry are known and can be
18 tracked and can be accountable. And then it sures
19 up some other things, it beefs up the
20 qualifications standards somewhat by making
21 contractors approve, certify they're current in
22 all their taxes, they have no serious violations
23 with state law or other contracting laws. And a
24 few other things to beef up, no debarments or not

1 debar contractors. Debarment is a serious thing.
2 If they have that, they are in big trouble. You
3 don't want them working in the city.

4 It tightens up some of those standards. It
5 builds a lot of good accountability, tracking and
6 transparency into the system. And then at -- the
7 additional part is to put this self-enforcement
8 private attorney general.

9 I respect your opinions and your concerns.
10 I think the Law Department/Solicitor's Office will
11 be able to answer those. I feel fairly confident
12 these are desperate times with limited resources
13 that we face all over the nation, federal, state,
14 local everywhere. And, you know, the job has to
15 get done. The public is exposed if it is not.
16 All the fair contracting players and all the
17 workers that are losing out are exposed.

18 This -- if there is never a lawsuit here,
19 but it serves as a deterrent because the
20 contractor knows that if L&I is too strapped, that
21 one of his competitors who is losing because of
22 his highly illegal, highly unfair practices, his
23 competitor can go to court and get that judge to
24 go after him and enjoin him because he's working

1 without a license and permit. That is an
2 effective tool against this.

3 As I mentioned, the City already has a
4 statutory scheme for this for contract fraud.
5 They can do the same thing. I do think it would
6 be upheld for the same reasons. That is really
7 the highlights we wanted to share with you.

8 Appreciate your time. And glad to answer
9 any questions.

10 COUNCILWOMAN QUINONES-SANCHEZ: I am going
11 to recognize Councilman Henon and also Councilman
12 Johnson.

13 COUNCILMAN HENON: Councilman, you want
14 to --

15 COUNCILWOMAN QUINONES-SANCHEZ: Councilman
16 Johnson.

17 COUNCILMAN JOHNSON: Thank you for your
18 testimony.

19 First and foremost, I want to thank my
20 colleague Councilman Henon and Kenney and Council
21 President Clarke for introducing this legislation.
22 I also want to acknowledge the work thus far that
23 has been done by Commissioner Carlton Williams in
24 working with Councilman Henon on this legislation.

1 When you start talking about dollars and
2 cents, you know, I was really sitting here. And
3 one, thinking about the fairness of the process in
4 terms of friends that I got, friends that I have
5 who are contractors, who are developers who are
6 doing the right things. And because they are not
7 big time contractors, you know, it's important for
8 them when they go out and do their bids because
9 they are following the law, they get a fair shot
10 so they can actually build wealth.

11 You know, I am in full support of this
12 legislation. I know there are some kinks and some
13 opinions on different parts of the language that
14 we need to review. I know overall, you know, when
15 you start talking about dollars and cents and
16 leaving more money on the table that could
17 possibly be used in my current situation, my
18 colleague Councilman Squilla talks about AVI.
19 Also, we have a cash strapped School District. As
20 we move forward, this is something that I will be
21 in support of looking at as serious as possible.

22 Because one of the key things that we're
23 dealing with and that I am looking at is how do we
24 find ways to put as much revenue on the table as

1 possible. We don't have to raise taxes again
2 another year. We don't have to cut services, but
3 we have to go after those who aren't paying their
4 fair share. That is pretty much where I am at. I
5 just want to make sure that was put out there for
6 the record.

7 But I also had another question. In any
8 other states that is out there, is this
9 legislation modeled or been in place in other
10 states where this type of fraud has been rampant?

11 MR. WAITES: There -- you know, we did do a
12 little bit of -- in offering suggestions to
13 Councilman Henon and Councilman Kenney -- did to a
14 little bit of best practices surveys to look
15 around in Chicago and New York and things like
16 that.

17 New York does have the signs on the trucks.
18 That helps give you the ability to track and know
19 who is in the city and working. There was some
20 best practice surveys to help. I think that is
21 one of the reasons -- they did some of that on
22 their own in terms of what they looked at in
23 different provisions. That was billed into it.

24 I think it's one of the reasons it's two

1 good bills.

2 COUNCILMAN JOHNSON: All right. Just for
3 Commissioner Carlton, I know you were up here.
4 But this Task Force that was put together, when is
5 the roll out for the Construction Site Task Force,
6 if you don't mind me asking?

7 COMMISSIONER WILLIAMS: Good afternoon,
8 Councilman. July 1 is when we're --

9 COUNCILMAN JOHNSON: July 1?

10 COMMISSIONER WILLIAMS: We have a Task
11 Force in place right now, but they are on a
12 temporary basis. They can only do random audits
13 because again, their share of responsibilities
14 between getting developers who are licensed
15 contractors getting their projects to fruition
16 versus someone who is actually inspecting sites.

17 It's on a very limited basis under my
18 current structure. But on July 1, we will have a
19 dedicated team of people who will specifically
20 handle these type of complaints and do in-depth
21 investigations that go well beyond just show me
22 your permit on the site. But they will actually
23 take the complaint from either, you know, the
24 citizen or group to actually look into detail and

1 work with the various departments to get a
2 resolution to the issue.

3 If it's an enforcement issue that we have
4 to take, we will follow up on it.

5 COUNCILMAN JOHNSON: How many staff
6 members?

7 COMMISSIONER WILLIAMS: There will be six
8 dedicated inspectors.

9 COUNCILMAN JOHNSON: Six totally dedicated?

10 COMMISSIONER WILLIAMS: Yes. Totally
11 dedicated. Six dedicated inspectors for that.

12 COUNCILMAN JOHNSON: Good. That's all I
13 had. Thank you very much. Thank you for your
14 testimony.

15 COMMISSIONER WILLIAMS: You're welcome.

16 COUNCILWOMAN QUINONES-SANCHEZ: Councilman
17 Henon.

18 COUNCILMAN HENON: Thank you, Madam Chair.
19 And before I get to my question for Mr. Waites,
20 just point of information.

21 As the bill has been amended in
22 collaboration with, you know, the cosponsor, my
23 office, the Law Department and L&I's full support,
24 we made a decision to take out certain things as

1 it was originally introduced such as the seizure
2 of vehicles, tools and equipment and escalating
3 fees, you know, on a per gross basis for, you
4 know -- and saved contractors the expense and the
5 City the expense of the auditing procedure. So, I
6 think it's been a very good compromise to get to
7 this point in working with the Law Department.

8 My question is more towards the
9 misclassifications. Because I think this is a
10 misperception of a 1099. So, you know, you can
11 correct me if I'm wrong. And if L&I chooses to
12 jump in, I just want to get clarity on it.

13 We believe or I was always under the
14 impression that a 1099 was working for somebody.
15 But by its true definition, a 1099 is an
16 independent, you know, worker by itself. If
17 somebody shows up on a job site and they say they
18 are a 1099, they would need direction from or
19 supervision from an entity, a contractor, prime
20 contractor, a subcontractor or general contractor
21 or construction manager. Subcontractors just
22 don't show up -- or 1099 just doesn't show up out
23 of the blue.

24 I think the misperception, what I have

1 learned over the years and through this process
2 is, there is only two types of people on the job.
3 You have an employee of a licensed contractor or
4 you are a licensed contractor.

5 MR. WAITES: Exactly right.

6 COUNCILMAN HENON: So, there is no real
7 classification for 1099 on a job.

8 Is that -- in the construction industry,
9 I'm going to specify.

10 MR. WAITES: Every legitimate subcontractor
11 is paid under 1099, you know, but they are
12 legitimate. However --

13 COUNCILMAN HENON: They have licenses.

14 MR. WAITES: If they're a contractor,
15 they're going to have licenses. If it's just a
16 label they are slapping on to pay them less money
17 and not pay them overtime and not have workers
18 comp, they are not going to have a license because
19 they are not going to have their own workers comp
20 policy. They're not going to have their own
21 general liability policy.

22 These workers are being exploited as much
23 as anybody. And what -- I will tell you, the
24 City -- the way the law is originally designed to

1 say anybody over 500 is a great answer to the 1099
2 problem. Every city should have what you have.
3 The problem is for different reasons, it's not
4 being enforced. So, L&I figures 20 percent. We
5 think it might even be higher and that's not even
6 getting into the 1099. That's legitimate --
7 that's contracting businesses that are not
8 licensed. 1099 takes that even much further.

9 That's just because there is not the
10 tracking or the transparency. The challenge of
11 resources. This will address and fix a lot of
12 that. You may have -- end up with the most
13 effective tool to combat this really serious
14 scam that not only hurts you, but hurts the state
15 government and Federal Government because they are
16 all losing out as well.

17 COUNCILMAN HENON: If people aren't paying
18 their taxes to the City, if they are not paying
19 their taxes and not having the level playing
20 field, getting a license and paying their
21 employees, then who foots the bill?

22 The citizens of Philadelphia who are
23 beneficiaries of libraries, extended hours on
24 libraries, water in their pools, our police and

1 first responders and proper enforcement from L&I,
2 you know, to make sure we are living in a healthy
3 and safe environment; is that correct?

4 MR. WAITES: That's right, Councilman. You
5 also know the construction industry. So if a
6 contractor is not paying licensing, not paying
7 permit, not paying City wage tax or workers comp
8 or unemployment, what kind of edge does that give
9 them over somebody playing by all those rules.

10 I mean, the edge is just -- it can't be
11 understated. It's huge. And it's completely
12 unfair and completely legal.

13 COUNCILWOMAN QUINONES-SANCHEZ: I think one
14 of the encouraging things around the Mayor's
15 recent announcement, I know the bill sponsor and I
16 have talked about this and his frustration with
17 revenue, it's something that many of us in Council
18 have been extremely frustrated around the revenue
19 collection.

20 In the same way that the sector has been
21 instrumental, I know in L&I in building safety
22 standards. Because ultimately, L&I is about
23 safety standards. One of the things that I think
24 would be very important from the industry for this

1 new, in this case Mr. Knudsen to get, is a real
2 briefing from all of you around how -- what are
3 the schemes. Because I think one of the areas
4 that the City has gotten better but we need to do
5 more work is the discovery work.

6 This issue of -- and Councilman Kenney uses
7 it a lot -- we know who the bad guys are. We know
8 who they are. We know -- you know, Mr. Miller
9 mentioned the company that is still operating and
10 the ability to now link that together and figure
11 out what this new revenue person, how do you --
12 the same way that L&I is putting this Task Force
13 together and has used industry Task Force to come
14 up with legislation around public safety in the
15 industry, we really need this sector to work with
16 this new revenue person around how we do that
17 discovery work and audit those businesses.

18 Because I think that we want to give these
19 tools to L&I because we want them to do their job,
20 which is public safety. But ultimately, we want
21 this new revenue person to create the same type of
22 mechanism and Task Force industry by industry that
23 we've known. Councilman Kenney has talked about
24 different types of industry that he knows people

1 don't pay taxes.

2 I want to strongly encourage the industry
3 to not wait and very quickly have Mr. Knudsen and
4 our new Commissioner Clarina Tolson to work with
5 them to do those things on the revenue side. It
6 is very frustrating. L&I is only going to be able
7 to do so much. Ultimately, I think the industry
8 can tell us from a revenue perspective what we
9 need to do to go after this.

10 MR. WAITES: If I may, I think it's
11 extremely interesting and insightful. I think you
12 can count on the industry to work on this. You
13 can see the support. I think it's interesting
14 because Wayne and I have been in the trenches with
15 all the building trades on this issue for 10, 12
16 years now.

17 And one of the recommendations we offered
18 earlier, and it just was beyond the scope of this
19 bill, it might be a good subject of future
20 legislation. We actually recommended a system
21 where the agencies would be directed to coordinate
22 and report to one another. The theory being that
23 if somebody is cheating on licensing, they are
24 probably cheating on revenue. And it's a pretty

1 good bet.

2 A lot of times agencies don't talk to one
3 another. Actually, the Street Administration did,
4 as Wayne said, took that. But they said, we like
5 it, but we want to do it as executive policy. And
6 they did it for a while. And through one cross
7 check I know of checking different credentials,
8 one department to another, they found \$2 million
9 just in one cross check.

10 So, that is a -- it's an excellent area to
11 look at. And could be a lot of improvement.
12 Could be done -- Task Force is a great start.
13 That's mostly L&I. You have Revenue over here.
14 You have Waste Enforcement. And we see this. We
15 learned in the industry, somebody who cheats their
16 customer or their government cheats their workers
17 and vice versa. So, you have to have a way to go
18 after it all.

19 COUNCILWOMAN QUINONES-SANCHEZ: We have 17
20 taxes and several hundred permits and fees in the
21 City. Again, the promising piece about this new
22 position is they need to make those connectors,
23 you know, so department by department, our
24 collection rate in many of the departments -- I

1 will use the Fire Department, their ambulance fee
2 collection is horrible. Part of it is because you
3 want the Fire Department putting out fires. But
4 they also have this responsibility of collecting
5 this fee that we do a horrible job.

6 Again, I think that these are what some of
7 us would consider low hanging fruit for this new
8 person. And I strongly encourage and I'm sure
9 that Councilman Henon would quickly put you with
10 Knudsen. We have been successful in some of the
11 discovery work that we've done at the Revenue
12 Department. When the industry folks come in and
13 said this is a loop hole.

14 We had several folks come from the courts
15 talking about, you know, people who -- the lawyers
16 who come in the courts and practice from outside
17 the City and then don't pay the wage taxes.
18 Lawyers came and said -- because they are mad.
19 They're like, I come in and I pay my taxes. You
20 got a lawyer comes in from out of town from this
21 national firm, and the Revenue Department did
22 respond to that and conducted discovery. There
23 was some stuff that was found.

24 It wasn't as broad scale as we thought,

1 which was good, because you know for a while
2 there. But I think the ability for this new
3 person to pick two or three areas where we're
4 going to audit and put some focus research because
5 we have never done it before. And this particular
6 case, there is a high level of frustration from
7 everyone. We want to put this as one of those
8 first tasks that he begins to look at. I am sure
9 the Councilman will facilitate that kind of
10 discussion.

11 Thank you, gentleman. If no other
12 questions, we have -- is Ryan here? Ryan Boyer?

13 COUNCILMAN GREENLEE: I didn't see him.

14 COUNCILWOMAN QUINONES-SANCHEZ: Next person
15 was Ryan Boyer. We don't see him in the room.
16 But Jihad Ali, Luis Torrado and John Macklin.

17 No? Everybody is at the Phillies game.
18 Let's get out of here. Let's go join them. Then
19 if I can we have -- we have some representatives
20 from the Glaziers, Guy Pigliacellellii --
21 Pigliacelli. I so apologize. And Steve Jackson
22 are next. I so apologize.

23 If they can get ready to approach the
24 witness stand. You may proceed.

1 MR. ALI: Members of this distinguished
2 body in the people's house, my name is Jihad Ali.
3 I'm here representing the National Association
4 Minority Contractors, Philadelphia Chapter. I
5 wanted to apologize on behalf of Mr. Macklin. He
6 couldn't make it today. And also, Mr. Torrado, he
7 couldn't make it because he had promised to take
8 his nephew to the Phillies game. He didn't want
9 to let him down.

10 COUNCILWOMAN QUINONES-SANCHEZ: Smart man.

11 MR. ALI: And that's the point where I'd
12 like to talk about letting people down. And, you
13 know, reading this bill, I do want to say that
14 when you talk -- when you say industry,
15 Councilwoman, you look at this room. When people
16 from my community say industry, we look at Pat
17 Gillespie, Bob Brady and John Dougherty because
18 those are the three individuals through the last
19 30 years that I've known them, if we had a problem
20 as Blacks or Latinos trying to work it out with
21 the Building Trade, we had to go to one of them.

22 Lately, as the Congressman got more busy,
23 it really falls on Pat Gillespie and John
24 Dougherty. And they have done a great deal in our

1 community, in African American community to help
2 Blacks break that veil.

3 Because when we talked about that earlier
4 bill that we enacted about contractors and that
5 website that the L&I Commissioner talked about, I
6 was here in this Council and I testified in
7 support of that bill. One thing that I said to
8 this Council was that as we help the Building
9 Trades, they have to help us, too. The "us" that
10 I'm referring to is African American men -- look
11 around this room -- African American women,
12 Latinos because we are struggling to survive.

13 In regards to this bill, I am here to
14 support this bill. The problem that I have with
15 this bill, is what our distinguished Council --
16 Mr. Oh said is the legality of it, like, certain
17 parts of this. That thing about public private
18 citizens access, I have had experience as a union
19 contractor. And I'm familiar with other guys who
20 are nonunion.

21 When the unions guys, they have to look out
22 for their members. They have to look out for
23 the -- you hear a lot about fringe benefits.
24 That's the number one thing. Those are benefits

1 due to workers. When unions come after you, they
2 are like the terminator. They are relentless.
3 They don't care about anything. And so you have
4 to be careful to give a terminator that kind of
5 power.

6 So, I think if we are going to look at --
7 all you have ever heard me ask about as I have
8 testified on this floor is a level playing field.
9 I have asked -- I have come down here by myself
10 numerous times because it's hard. It's hard to
11 put the truth on the table and not be retaliated
12 against. Some of our contractors they want to
13 come and say, yeah, we support this bill, but you
14 got to take this part out. You got to take this
15 no private action out. You got to take this thing
16 about arrests, about, you know, going to a Class 3
17 and all that stuff. That needs to come out of
18 this.

19 We do favor some type of penalty whether
20 it's a warning the first time, fines, seizure of
21 the equipment at auction, that's fair game.
22 That's okay. But we will say that everybody
23 supports everybody playing by the same rules. If
24 you got to have a license, we support that. You

1 got to pay your taxes, we support that.

2 Now, I do want to address the 1099 thing.

3 Let me tell you from my experience, when I was a
4 contractor working Freedom Theater -- and to get
5 into the Carpenter's Union, you got to have your
6 stuff together. They are really strong on making
7 sure that you comply with the law.

8 So, as a young contractor, I had all my
9 stuff in place. I was working for one of the
10 prominent. And we had a man that was on the
11 scaffold. And sometimes guys, if they are a
12 little short, they will stand on a bucket and
13 reach up. In this case, the guy was on the
14 scaffold. He fell. He broke both his ankles.
15 All I could do was call the ambulance and they
16 took him to the hospital. But I was covered
17 because I was a contractor and I had workers comp
18 insurance.

19 The thing about 1099, see, we're talking
20 about different levels of participation across the
21 board. That is what you, our elected officials,
22 have to fine tune. Because these guys are talking
23 about big guys. These guys are talking about
24 prominent guys. One of the other representatives,

1 he talked about little guys. We are talking about
2 little guys and all that other mix in there.
3 Because the 1099 is really an Internal Revenue
4 designation. If we look at 1099, it's like
5 Councilman Henon said, either you're a licensed
6 contractor or you're an employee of a licensed
7 contractor.

8 Now, let's play back the story I just told
9 you about me and my worker. If I was 1099 guy,
10 when he fell, not only was my business done, he
11 had no nobody to cover his -- if the state didn't
12 pick it up, he had nobody to help him get back.
13 He had no benefits while he recuperated. That's a
14 real dangerous thing. We need to really think
15 about that part.

16 I support Councilman Henon and all that he
17 does. I support Local 98 because they are true
18 friend of the African American community. I
19 support my distinguished leader over here Pat
20 Gillespie because he gave me my start in this
21 Council 20 years ago. It was something. He
22 brought me in and introduced me to DBCA and that
23 opened the door for me.

24 I do support this bill. It's just that we

1 need to be careful about the right of private
2 action. You know the lawyers, they are being
3 lawyers. But that's some serious action. That is
4 some serious stuff. These guys don't play. If
5 you give them the serious action, they are going
6 to crush people. And we have to make sure --
7 because as Councilman Blackwell has often told
8 you, people are knocking on your doors. They are
9 saying, hey, I can't get in. And you're getting
10 reports all day long telling you, hey, yeah we are
11 doing this and that percentage of participation.
12 But people can't be lying.

13 Somebody is not telling the truth. We are
14 not getting access. This might be become another
15 obstacle that we can't get in. The point that you
16 have in this legislation about being current on
17 your taxes, some people are just starting out. So
18 they may either be current on their taxes or have
19 an agreement in place. If we can take those kind
20 of safeguards, we can protect people. Because the
21 citizens of Philadelphia, even though I told you
22 how much power Pat Gillespie has, he has a
23 considerable amount of power. But you have the
24 ultimate power because you are the elected

1 representatives of the people.

2 We need you to look at this bill not just
3 for industry but all those people out there
4 knocking on these doors trying to get in, can't
5 get in. We need you to use your leverage to be
6 able to have -- one of you being the referee,
7 maybe Councilman Henon. When somebody in these
8 disadvantaged communities have a problem with
9 these unions, they need to be able to come to
10 somebody and say, listen man, I need somebody to
11 referee this fight with the union. I need you to
12 get me on two a table so we can sit down and work
13 this out.

14 Through the actions of this Council, you
15 are making opportunities for the people to really
16 participate and get a share of the wealth. If you
17 are just getting in, you are going to have some
18 liabilities. You have to be able to come to
19 somebody and say like Councilman Henon say, hey
20 listen, I am on the right path now. I need a
21 little bit of breathing room. Can you work it out
22 for me.

23 With those comments that I made, I support
24 the bill. I support Councilman Henon. I support

1 all of you. Like I said a number of times, I
2 respect you all. I think you are all doing the
3 people's business in the people's house. Thank
4 you.

5 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
6 I just wanted to clarify as Councilman Henon
7 mentioned earlier. There are quite extensive
8 amendments. He listed some of them around the
9 confiscation issues. Those are no longer there.
10 Those were clarified.

11 As Councilman Oh mentioned, we wanted to
12 get that section, that right of action, clarified.
13 Both Councilman Oh and I, and as I talk with
14 Councilman Henon, we were concerned about that.
15 And the Law Department still holds the authority
16 of making the decision if someone is going to
17 pursue a right of action as written, right?

18 COUNCILMAN HENON: Yes.

19 MR. ALI: You know one other, Councilwoman,
20 this issue about -- like, when we listened to the
21 budget hearings last week. We had OACD testify
22 about 200 million. We had RDA, they have another
23 200 million. We talked about something else with
24 OEO, another 200 million.

1 At the end of the day, one thing that we
2 found as a result of the legislation that
3 Councilman Blackwell enacted, we had to report
4 come from OACD, over 50 percent of that money, a
5 hundred million dollars, was going outside the
6 City. If there is nothing in place to check if
7 they are paying taxes, if there is no mechanism in
8 place, that hundred million is really 300 million
9 every year in just three agencies walking right
10 out the door and nobody is checking them.

11 So, this legislation is needed. We just
12 have to be mindful of all the things that, you
13 know, that we care about that may affect people
14 that don't have the opportunity to come down here
15 and tell you. Thank you.

16 COUNCILWOMAN QUINONES-SANCHEZ: We
17 appreciate it. We appreciate all your work. All
18 of us do. All of the work and all of the advocacy
19 that you do and your willingness to stay in our
20 face and remind us what we say and making sure
21 that what we do is what we say. So, thank you. I
22 appreciate it.

23 We have a representative from the Glaziers.
24 Do we have a name of who that is? Guy -- and I am

1 not going to tear up your last name again. And
2 Mr. Steve Jackson. Then after that, I have an
3 Emily Bittenbender. I don't see Emily -- oh,
4 there show goes. And then Greg Stewart, Steve
5 Lakin, Ira Stahl, Jim Dollard and then Tom
6 Massaro.

7 You may proceed.

8 MR. PIGLIACELLI: Madam Chair, Councilman
9 Henon, Councilman Kenney, thank you for the
10 opportunity to voice my support to Amendment of
11 Section 9-1004 of the Philadelphia Code. My name
12 is Guy Pigliacelli. I'm a life long Philadelphia
13 resident and have been working carpenter for over
14 45 years.

15 For the past 26 years, I have served as a
16 business representative with the Metropolitan
17 Regional Council of Carpenters. This experience
18 has provided me a unique perspective through which
19 to view the building permit application process
20 and the lack of accountability for many to obtain
21 such a permit.

22 I deliberately use the word accountability
23 because that is precisely what this bill is about.
24 My decade of real life experience out in the

1 street on construction sites have shown me that
2 unfortunately accountability is severely lacking
3 in the process as it currently exists. Change is
4 needed.

5 Throughout the years I have personally
6 encountered countless situations in the hundreds
7 where the information on the building permit bore
8 absolutely no relation to the ultimate work being
9 performed. The information provided to L&I at the
10 time the permit is obtained often bears no
11 relation to the ultimate work being performed.
12 And thus, not accountability for the owner of the
13 property of those performing the work.

14 The contractors or subcontractors who may
15 ultimately perform the work are entirely
16 invisible, unknown to L&I or any other City
17 agency. They are essentially ghosts who leave no
18 trace of having ever worked on the construction
19 site. The result is obvious as it is inevitable.

20 First, those performing the work do not
21 obtain the required City license. This is
22 problematic on two fronts. Not only does the City
23 lose the potential revenue, but also worrisome
24 from my point of view as properly trained

1 tradesmen as the fact that any fly-by-night
2 operation using unskilled labors can perform
3 shoddy work with no accountability creating
4 hazardous conditions not only on the work site
5 itself but creating dangerous and unsettled
6 structures throughout the City. Allowing such
7 work to be performed defeats one of the primary
8 purposes behind the requirement of contractors be
9 licensed in the first place.

10 Putting safety aside for a moment, the
11 second inevitable consequence of failing to
12 require that every contractor or subcontractor be
13 officially recognized as working on this site is
14 the one that has brought about the most discussion
15 here this afternoon, the City's loss of valuable
16 revenue. It simply cannot be disputed that the
17 City is losing a significant amount of revenue
18 both by way of licensure fees, and more
19 substantially, tax proceeds through the current
20 unregulated system.

21 Cheaters, and I use that word in its most
22 literal sense, are costing the City potentially
23 hundreds of thousands of dollars in revenue loss
24 and will continue to do so unless -- until a

1 deterrent is in place. The licensing system as
2 currently exists and more specifically the
3 reporting requirement for building permits
4 practically invites cheaters to continue to do --
5 continue their dishonest ways with basically no
6 repercussions. 50 to 75 dollar penalties in place
7 for various violations of the code are laughable
8 and antiquated.

9 The legislation currently before the
10 Council would serve to close the enormous loophole
11 that currently exists with the current system that
12 allows virtually any Joe off the street to pay a
13 fee and obtain a permit while providing incorrect,
14 incomplete or outdated information regarding the
15 contractor or subcontractor who would be working
16 and with absolutely no obligation to either update
17 the information or guarantee its inaccuracy in the
18 first place.

19 Instantly, accountability will result the
20 day this legislation was enacted. Enforcement
21 would be easy, cheap and effective and the results
22 would literally be windfall for the City. The
23 legislation does not ask anything or anyone to do
24 that which they already required to do. Hire

1 license contractors, perform safe work, pay the
2 required licensing fees, pay taxes. Nobody should
3 fear accountability when they are doing the right
4 thing.

5 I offer this testimony not as theoretical
6 exercise but as somebody who has worked on
7 construction sites in the City for over half my
8 life. I have seen firsthand the corners that are
9 cut when property owners, contractors and
10 subcontractors are left unchecked. By ensuring
11 the accountability, the proposed legislation will
12 make Philadelphia safer, more prosperous place to
13 live and work.

14 Thank you for your time.

15 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
16 Any questions for this witness?

17 Seeing none, thank you very much. I so
18 apologize for mispronouncing your name.

19 Mr. Steve Jackson and then Emily --

20 COUNCILMAN GREENLEE: Bittenbender.

21 MR. JACKSON: Good afternoon, Chairman --
22 Chairwoman.

23 COUNCILWOMAN QUINONES-SANCHEZ: Good
24 afternoon. You may proceed.

1 MR. JACKSON: President Clarke, Councilman
2 Henon, Councilman Kenney and fellow Committee
3 Members and Councilmembers, I thank you for the
4 opportunity to voice my support for the Amendment
5 of Section 9-1004 and Section 19-1509 of the
6 Philadelphia Code.

7 My name is Steve Jackson. I am life long
8 Philadelphia resident. I have been a working
9 steamfitter for over 32 years. I can't top Guy's
10 45, but he must have started at a very young age.

11 For the past 15 years I served as a
12 business representative of Local 420 for the
13 Steamfitters, a labor organization that represents
14 thousands of tradesmen living in the City. I'm
15 not only here as a business representative,
16 however, I am here as a Philadelphia resident
17 giving voice to thousands of other Philadelphia
18 residents I represent urging passage of these two
19 bills.

20 I and my brothers of Local 420 have lived
21 in the City for most if not all our lives. This
22 is a great city providing a variety of services.
23 The quality of life in Philadelphia is second to
24 none. Providing these services that enables us to

1 enjoy safe streets and quality roads and good
2 schools comes with a cost. The City must find
3 ways to pay the ever increasing cost of these
4 services.

5 Like in any city, tax revenue is a primary
6 source of income enabling the provision of these
7 services. In the construction industry, however,
8 an industry in which I am intimate in familiarity
9 in many years as a tradesman and business
10 representative, there is an epidemic of cheating
11 the City out of tax revenue by the practice of
12 misclassification. Stated simply, unscrupulous
13 contractors taking advantage of low wage workers
14 by calling them independent contractor. This
15 allows the employer to not deduct taxes from
16 employees and instead issue a 1099 to the workers
17 at the end of year.

18 In theory, these workers then file tax
19 returns. In reality, however, is that these
20 workers never file tax returns and indeed are
21 usually never heard from again. As a result, the
22 City is losing millions in wage and net profit
23 taxes.

24 There is also a vicious cycle as a result

1 of this practice. Often it is out-of-town
2 contractors coming in and engaging in these
3 practices, employing out-of-town employees willing
4 to participate in the sham. As a result, it is
5 local contractors losing out on work opportunities
6 because of the uneven playing field causes by the
7 misclassification scam. And this in return means
8 there is local tradesmen who are not working. The
9 City loses more than just tax revenue when local
10 workers aren't employed. Without wages earned
11 from workers on these jobs, these tradesmen cannot
12 then spend money in other city businesses,
13 depriving the City of sales taxes and hurting
14 local economy as a whole.

15 The two bills before the Committee will
16 give the City the weapons it needs to cease the
17 practice of misclassification. Bill 120776 will
18 close the enormous loophole that currently exist
19 in licensing system that allows anyone to pay a
20 fee and obtain a permit while providing incorrect,
21 incomplete or outdated information regarding a
22 contractor or subcontractor who will be working
23 with an absolute and no obligation to either
24 update the information or guarantees its accuracy

1 in the first place.

2 No longer are fly-by-night operations using
3 unskilled workers be able to work in our City.
4 Performing shoddy work with no accountability and
5 creating hazardous conditions on work sites
6 throughout the City.

7 Bill 120775 in addition will work to allow
8 the City to recoup the millions of dollars being
9 lost as a result of the unscrupulous practice of
10 misclassification. But not only increasing the
11 penalties on employers who cheat, but by having a
12 practical effect of expanding the City's
13 enforcement mechanism by giving private citizens
14 skin in the game, modeling the Qui Tam process
15 used by the Federal Government since the close of
16 the Civil War.

17 Private citizens would be more vigilant in
18 monitoring tax cheating because they will receive
19 a bounty in return for their efforts. This
20 provides the ultimate win-win for the City. Not
21 only will the City increase tax revenues, but
22 citizens will receive rewards which in turn will
23 be spent in the City at local businesses.

24 This is not a union issue. This is an

1 issue of fairness and fair play. In a world
2 where municipalities are finding it harder and
3 harder to find money to pay for services they are
4 required to provide, this is an issue of common
5 sense. Everyone will benefit from the passage of
6 these bills.

7 And I thank you for your time. If I could,
8 I just have an example of a letter. One of your
9 members went to work for a contractor. They
10 just -- an out-of-state contractor. That was
11 located in Powder Springs, Georgia.

12 If I could, Madam Chairman, if I can read
13 this?

14 COUNCILWOMAN QUINONES-SANCHEZ: Absolutely.

15 MR. JACKSON: Either provide it as evidence
16 if you wish.

17 COUNCILWOMAN QUINONES-SANCHEZ: We can put
18 it in the record. You don't have to read it into
19 the record if you provide it.

20 MR. JACKSON: This is from an industrial
21 contractor that did some work up in the Bensalem
22 area. And it clearly shows the 1099 process.
23 They were a contractor that came into the area,
24 signed our agreement and then -- I will just --

1 the letter pretty much speaks for itself.

2 "This letter is to inform you that based on
3 the IRS guidelines, we are not able to provide a
4 W-2 for your subcontractor work you did for
5 Industrial Processing Systems at Bake Rights Roles
6 [phonetic] in Bensalem, PA, since we do not have a
7 Pennsylvania Employer State ID number. Therefore,
8 we have enclosed a check in the amount of
9 \$5,449.63 for reimbursement of money withheld for
10 federal withholding, Social Security, Medicare
11 State Withholding, Pennsylvania State Unemployment
12 Insurance, Tax and EMST. Enclosed is your copy of
13 the 1099 we filed with the IRS. If you have any
14 questions, please feel free to call."

15 It has the girl, I guess, in the payroll
16 office said this out-of-town contractor. This
17 clearly is evidence of how 1099. As I was coming
18 down here to testify, the member that was being
19 affected by this was in meeting with our in-house
20 accountant to figure out he was supposed to fill
21 out his return for tax return and, you know, how
22 he was supposed to now figure out how to make sure
23 that all the proper entities got what they were
24 due.

1 COUNCILWOMAN QUINONES-SANCHEZ: We will ask
2 the Sergeant At Arms to give it to our
3 stenographer so it's added to the record as part
4 of our record if you don't mind.

5 MR. JACKSON: Thank you, Madam Chair. I
6 did white out the gentleman's name. If you do
7 need that for the record, I can --

8 COUNCILWOMAN QUINONES-SANCHEZ: No. No.
9 That is fine. I am glad that you whited out the
10 name, thank you, for confidentiality purposes.
11 Thank you.

12 Any questions? None.

13 Thank you for being patient. Emily
14 Bittenbender. Everybody knows Emily. She is one
15 of the few women in this industry everywhere.

16 MS. BITTENBENDER: Good afternoon,
17 Councilwoman.

18 COUNCILWOMAN QUINONES-SANCHEZ: How are
19 you?

20 MS. BITTENBENDER: Good afternoon,
21 everyone. How are you?

22 COUNCILWOMAN QUINONES-SANCHEZ: Good
23 afternoon. Thank you for being patient.

24 MS. BITTENBENDER: Thank you. We

1 appreciate it. We are actually here collectively
2 as the General Building Contractors Association.

3 COUNCILWOMAN QUINONES-SANCHEZ: Oh,
4 wonderful. Okay.

5 MS. BITTENBENDER: And with me is Steve
6 Lakin, the Executive Director and Greg Stewart,
7 who is the President of the Gilbane Construction.

8 MR. LAKIN: Good afternoon, Madam Chairman.

9 COUNCILWOMAN QUINONES-SANCHEZ: Speak into
10 the microphone. How are you?

11 MR. LAKIN: Good afternoon, Madam Chairman,
12 Members of the Committee. My name is Steve Lakin.
13 I'm the Executive Managing Director of the General
14 Building Contractors Association.

15 GBCA members include 350 commercial
16 industrial and institutional service firms
17 throughout the Greater Philadelphia region all of
18 whom pay fair wages in excellent benefits by
19 virtue of our collective bargaining agreements
20 established with our union partners in the
21 construction trades. I want to thank Councilwoman
22 Sanchez for the opportunity to testify today on
23 Bills 120775 and 120776.

24 GBCA understands the impetus for these

1 bills and Councilman Henon and Kenney's concerns
2 about unlicensed contractors who don't play by the
3 rules have little or no regard for workplace
4 safety and are not paying taxes to the City of
5 Philadelphia. And while we don't disagree to the
6 spirit of the legislation, we oppose these two
7 initiatives for the following reasons.

8 As currently worded, the legislation
9 creates an even greater burden on our members who
10 are indeed already licensed and paying their fair
11 of taxes. Philadelphia ranks among the countries
12 top five most expensive cities in which to build.
13 These bills will have a chilling effect on the
14 contractors ability to both gain and conduct work.

15 In the current economic climate with record
16 unemployment, we would prefer that the City focus
17 on measures to help put people back to work rather
18 than implementing legislation that will have the
19 opposite effect. Many aspects of these bills are
20 not just in the best interest of the -- are not in
21 the best interest of the commercial building
22 construction industry and by extension, the
23 citizens of Philadelphia.

24 If enacted, they will add additional costs

1 to the projects that will be passed along to the
2 owners and developers, which may make the
3 difference between deciding whether or not to
4 start a new project. It will add administrative
5 burdens for both the contractors in the City of
6 Philadelphia, neither of whom are equipped to
7 oversee and enforce the proposed requirements.

8 We also believe the legislation creates an
9 environment that encourages frivolous lawsuits.
10 For these reasons, we ask the Council to consider
11 the following amendment circulated to you and is
12 summarized on the attachment. It's widely
13 acknowledged that the good contractors who have
14 about 85 percent or more market share in the City,
15 and no one disputes that these companies are
16 either unlicensed or not paying taxes. So it
17 doesn't make sense to harm the vast majority of
18 the industry who plays by the rules to expose a
19 few bad actors.

20 And what percentage of the very small
21 minority of violators are noncommercial and home
22 improvement contractor as opposed to commercial
23 contractors? There is a difference. We applaud
24 City Council's desire to ensure that the

1 construction industry follows City's laws and
2 regulations. GBCA strives to make certain our
3 members do the same. And we hope that one day all
4 construction companies will aspire to these same
5 high standards. In the meantime, we ask that you
6 not throw the baby out with the bath water.

7 Before I conclude my testimony, I'd just
8 like to comment on some of the testimony that was
9 previously --

10 COUNCILWOMAN QUINONES-SANCHEZ: Steve, just
11 for the record, I don't have your amendments.

12 MR. LAKIN: They were attached to the
13 testimony.

14 COUNCILWOMAN QUINONES-SANCHEZ: Do you have
15 them there? If you can just give us a minute.

16 MR. LAKIN: Sure.

17 COUNCILWOMAN QUINONES-SANCHEZ: I just want
18 to make sure, did you have an opportunity to see
19 the revised bill of amendments?

20 MR. LAKIN: We did. We did.

21 COUNCILWOMAN QUINONES-SANCHEZ: There are
22 still some outstanding issues --

23 MR. LAKIN: That is what I am going to
24 comment on right now, Madam Chair.

1 COUNCILWOMAN QUINONES-SANCHEZ: Okay. All
2 right. Thank you. We didn't have those.

3 You may proceed, Steve.

4 MR. LAKIN: Thank you.

5 First I want to -- again, I said I wanted
6 to comment on a few points that were made in
7 previous testimony that was given or entered into
8 the public record.

9 The sponsors' arguments in favor of several
10 things and several points I want to highlight.
11 They talk about, number two, I think in Councilman
12 Kenney's documents says increase the licensing
13 fee. And he uses Chicago as an example. Well, we
14 think that Chicago is a very bad example.

15 At one time, the City of Chicago had a
16 union construction market share of over
17 90 percent. Today that number is approximating
18 50 percent. And in fact, our sister organization
19 in Chicago, which has been in operation for well
20 over a hundred years, is now contemplating
21 including open shop members along with their union
22 contractors as a result of the declining market
23 share. So, I wouldn't hold out Chicago as a
24 shining example of increasing licensing fees.

1 Effective qualification requirements, point
2 number three, it says that it's consistent with
3 requirements imposed by other large urban cities.
4 I have asked for this information before, which
5 cities and what percentage of all cities. I
6 haven't gotten this information. It seems to be
7 more anecdotal than anything else. So, I think it
8 would be helpful just for the sake of, you know,
9 the facts that we note which cities we're talking
10 about.

11 And then the contractor identification
12 procedures, namely the billboards and signs. We
13 know that in New York has been held out as an
14 example repeatedly of signs that are being posted
15 on the work sites that demonstrate the
16 subcontractors working on those jobs. But in
17 fact, New York -- we have looked into this. And
18 New York does not do that. The only signs that
19 are posted on the job sites are the name of the
20 general contractor and the scaffolding contractor.

21 You would be very hard pressed to go
22 through the City of New York and throughout
23 Manhattan to find any job site that has all the
24 signs posted for the name of the subcontractor.

1 So, I think that that's not a fair example.

2 In Controller Butkovitz' testimony, he
3 talked about the underground economy. Namely, the
4 review of construction activity in North, Central
5 Philadelphia. And I think all of you know that
6 that was highlighted in a Philadelphia Inquirer
7 article. And I think maybe in other publications.
8 And that, I believe, most of his data pertained to
9 residential building and not commercial building.

10 So, I would ask that, again, you reexamine
11 that and try to differentiate which sectors we're
12 talking about. Because, you know, we're lumping
13 all construction together here. And there is
14 commercial construction. There is residential
15 construction. There is home remodelers and they
16 are not all the same. We contend, again, that the
17 people who are GBCA affiliated companies who
18 represent 85 percent or more of the market in City
19 of Philadelphia are playing by the rules.

20 Then two other points, the workers
21 misclassification that Mr. Waites -- I'm sorry,
22 that he is not here. He is probably on his Amtrak
23 train back to his office in Washington --

24 MR. WAITES: No, I'm here.

1 MR. LAKIN: Oh, good to see you Jerry.

2 He talked about worker misclassification
3 and, you know, that cuts across all industries.
4 It's not just the commercial construction industry
5 or the construction industry in general. I don't
6 think that we should single out construction.
7 There have been other jurisdictions around
8 Philadelphia that have recently enacted worker
9 classification laws. It cuts across all
10 industries.

11 There are companies that are operating here
12 in the City of Philadelphia like FedEx and
13 Wal-Mart that are notorious for worker
14 misclassification, yet I don't see any legislation
15 before this body that addresses those two major
16 employers. So, I would ask for you to consider
17 that, as well.

18 And then working without a license.
19 There's been many comments made about working
20 without a license or having a permit. Again, I
21 think that those are largely anecdotal. And then
22 the ones the Controller Butkovitz had his office
23 conduct a survey, it was, as I know, primarily
24 residential and not commercial. So, I want to

1 stress that because I think it's a very important
2 point to make.

3 So, for these reasons and those that are
4 contained in my testimony, we would ask that you
5 consider the amendments that we will get to you,
6 Chairwoman Sanchez. And we hope that you will
7 consider those and oppose the bill in its current
8 form.

9 COUNCILWOMAN QUINONES-SANCHEZ: We just got
10 your amendments. But I'll let Councilman Greenlee
11 ask questions, and then I'll ask a few.

12 COUNCILMAN GREENLEE: Thank you, Madam
13 Chair. Good afternoon. It's almost good evening.

14 I guess -- I guess I'm a little puzzled by
15 your statements, a couple of them here. You
16 basically say many of these aspects of these bills
17 are not in the best interest of the building
18 industry and by extension the citizens of
19 Philadelphia. I think you heard from many people,
20 including the Administration, how much money is
21 being lost to the City of Philadelphia
22 through that. That doesn't appear losing all that
23 money to be in the interest of the citizens of
24 Philadelphia.

1 MR. LAKIN: Well -- first of all, all that
2 money I heard it was \$5 million. I don't know in
3 the scheme of things, if that's a significant
4 number based on the total budget for the City of
5 Philadelphia.

6 COUNCILMAN GREENLEE: Well, tell those
7 people that are getting their taxes raised through
8 AVI it's not a significant amount of money. I
9 think it could help.

10 MR. LAKIN: Councilman Greenlee, what I
11 would say in response to that is simply that you
12 will probably lose even more money if this has a
13 chilling effect on the construction industry and
14 we are not able to start or continue projects as a
15 result of this legislation. Because I contend
16 that you will put more people out of work and pay
17 taxes to the City of Philadelphia who spend money
18 in the City of Philadelphia and contribute in
19 other ways to the financial well being to the City
20 of Philadelphia.

21 I think you will far more -- you will lose
22 far more than \$5 million as a result of that.

23 COUNCILMAN GREENLEE: So, we just let
24 people keep violating the law?

1 MR. LAKIN: No. I am saying that there's
2 better way to get at this issue. And the way that
3 it's being proposed is the not the appropriate way
4 to do it.

5 COUNCILMAN GREENLEE: Okay. Well, I would
6 disagree. But I think you're -- and I think it
7 also sounds like you're making the problem sound a
8 lot less than what it is. I think it's a lot more
9 serious than that. I think the problems that were
10 outlined in the media and also by the
11 Controller -- I mean, I will agree they cross
12 over, but there are a lot of commercial
13 properties, too. Commercial building.

14 Again, I we are talking safety here. We
15 all talking money. Now, to me \$5 million is
16 significant amount of money to me, but I guess we
17 can debate that.

18 MR. LAKIN: Frankly, I agree with you.
19 Safety should be paramount.

20 COUNCILMAN GREENLEE: Right.

21 MR. LAKIN: And I have heard more
22 conversation about the lost revenues than I have
23 heard about the safety.

24 COUNCILMAN GREENLEE: Well, I heard both.

1 And I think they are both important. But I heard
2 many people talk -- I think the word safety was
3 used by the Chair many times talking about what
4 L&I is trying to do. It's not an accurate
5 statement, I would argue.

6 But again, I guess we're not going to
7 convince each other here. I think this is a good
8 bill. The amendments, I think, it's made it
9 better, the Councilman amendments. You know, I am
10 certainly prepared to support it.

11 I would just say I still think the biggest
12 problem is as long as you don't violate the law,
13 you don't have a problem. I would keep it that
14 simple. Thank you.

15 COUNCILWOMAN QUINONES-SANCHEZ: Councilman
16 Henon and then Councilman Oh.

17 COUNCILMAN HENON: Thank you, Madam Chair.
18 And Mr. Lankin?

19 MR. LAKIN: Lakin.

20 COUNCILMAN HENON: Lanakin?

21 MR. LAKIN: Lakin, L-a-k-i-n.

22 COUNCILMAN HENON: Lakin. I'm sorry.

23 Just to clarify or just, if you could,
24 restate some of your comments that you mentioned

1 earlier that it's an unfair burden for contractors
2 to abide by the law. Is that what you said?

3 MS. BITTENBENDER: You know what, let me
4 take this, Steve.

5 COUNCILMAN HENON: Excuse me, I asked --

6 MS. BITTENBENDER: Okay.

7 COUNCILMAN HENON: With all due respect, we
8 can have a conversation in a second. Mr. Lakin --

9 MS. BITTENBENDER: I just thought you might
10 want to hear from a real contractor.

11 COUNCILMAN GREENLEE: He made the
12 statement.

13 COUNCILMAN HENON: I am referring to a
14 couple statements, comments that Mr. Lakin made.

15 MR. LAKIN: Sure.

16 COUNCILMAN HENON: It's an unfair burden
17 for people to abide by the law?

18 MR. LAKIN: That's not what I said,
19 Councilman.

20 COUNCILMAN HENON: What about licensed
21 contractors?

22 MR. LAKIN: No. I said it's an unfair
23 burden in terms of the cost of doing business.

24 COUNCILMAN HENON: To pay taxes in the City

1 of Philadelphia?

2 MR. LAKIN: No. Some of the regulatory
3 issues like posting of signs --

4 COUNCILMAN HENON: You don't believe in
5 having a license?

6 MR. LAKIN: What does that have to do with
7 posting of signs?

8 COUNCILMAN HENON: Because I think you had
9 mentioned that licensing in the City of
10 Philadelphia was putting a unfair burden --

11 MR. LAKIN: I did not --

12 COUNCILMAN HENON: -- to do business in the
13 City of Philadelphia.

14 MR. LAKIN: That's not in my testimony.

15 COUNCILMAN HENON: You do know since you
16 comply by the law, I assume, that a law was passed
17 last year that you're supposed to report to the
18 license -- to the Department of License and
19 Inspection contractors who pull permits on a job
20 and all its subcontractors; is that correct?

21 MR. LAKIN: I am aware of that. We have
22 had that con -- you and I have had that
23 conversation privately.

24 COUNCILMAN HENON: Okay. Well, I'm asking

1 you publicly, do you abide by the law?

2 MR. LAKIN: Well, I'm not a contractor. My
3 contractors abide by the law.

4 COUNCILMAN HENON: The contractors you
5 represent, do you encourage them to have a
6 license, pull permits and abide by the law that
7 this legislative body, you know, for the sake of
8 policy and public safety?

9 MR. LAKIN: Of course. And that's what
10 they are doing at the present time.

11 COUNCILMAN HENON: Okay.

12 MR. LAKIN: But this legislation would add
13 additional burdens that would require them to
14 incur additional costs through the hiring of
15 staff, through the purchasing of signs and other
16 things that will add to the cost of construction.

17 COUNCILMAN HENON: Okay. Does your
18 membership post permits publicly on the job sites?

19 MS. BITTENBENDER: Yes.

20 COUNCILMAN HENON: Excuse -- thank you.

21 MR. LAKIN: Yes.

22 COUNCILMAN HENON: Can I ask Steve another
23 question?

24 On prevailing wage jobs, you know, where,

1 you know, public subsidies may be offered
2 abatements, you know, publicly and competitively
3 bid, do you post wages, prevailing wages?

4 MR. LAKIN: Yes.

5 COUNCILMAN HENON: On the website or the
6 job sites?

7 MR. LAKIN: Do we post prevailing wage on
8 the job site?

9 COUNCILMAN HENON: Yeah.

10 MR. LAKIN: No.

11 COUNCILMAN HENON: The prevailing wage
12 jobs. That's the law. So, I guess, abiding by
13 the law to only some but not all of them?

14 MR. LAKIN: I will amend my comments
15 because I took a cue from Ms. Bittenbender over
16 here. I don't know -- again, I'm not a
17 contractor. So, I can't speak to what all of our
18 contractor members do on each other and every job
19 site?

20 COUNCILMAN HENON: But when you speak, you
21 should know the law.

22 MR. LAKIN: But I will speak in general
23 terms that they all abide by the law.

24 COUNCILMAN HENON: Sir -- and that's fine.

1 And I respect you coming in here, voicing your
2 first amendment rights because, you know, this
3 country is founded on them. You know, I just -- I
4 wish that the genuine comments of your testimony
5 and statements were -- if you're speaking about
6 the law, you should know the law, for one.

7 And do you live in the City of
8 Philadelphia?

9 MR. LAKIN: I do.

10 COUNCILMAN HENON: Good for you. Good for
11 you.

12 MR. LAKIN: I was born in the City of
13 Philadelphia.

14 COUNCILMAN HENON: So -- and that's great.
15 So you know the importance of our first responders
16 and public safety and, you know, the concern that
17 a lot of folks have on, you know, budget cuts and
18 closing fire houses.

19 So the 5 to 7 million dollars that you talk
20 about is nothing could probably go towards some of
21 our first responders and keeping some of our
22 libraries open and the services that you receive
23 as a citizen, as a taxpaying law abiding citizen
24 in the City of Philadelphia; is that correct?

1 MR. LAKIN: Right. But I go back to my
2 other point about these other businesses and
3 industries, namely FedEx and Wal-Mart, who employ
4 a very sizable workforce here in the City of
5 Philadelphia. And I don't see the Council going
6 after --

7 COUNCILMAN HENON: Do you represent
8 Wal-Mart.

9 MR. LAKIN: No.

10 COUNCILMAN HENON: Okay. When you
11 represent Wal-Mart, we will have that
12 conversation.

13 Five, seven million dollars is important to
14 the citizens of Philadelphia. So, you know, kind
15 of insulted on some of those comments. And I
16 think the City could use its uncollected taxes and
17 it could use proper enforcement, which I believe
18 we are having -- we have a great vision with the
19 Department of L&I in this City.

20 MR. LAKIN: What percentage of the City
21 budget is 5 to 7 million dollars?

22 COUNCILMAN HENON: I thank you for coming.

23 COUNCILWOMAN QUINONES-SANCHEZ: Was
24 there -- Councilman Oh.

1 Emily, did you want to make -- were both of
2 you going to testify or not?

3 MS. BITTENBENDER: Actually, go ahead,
4 Greg.

5 COUNCILWOMAN QUINONES-SANCHEZ: Did you
6 want to wait until they --

7 COUNCILMAN OH: No. I might as well make
8 the comment now.

9 COUNCILWOMAN QUINONES-SANCHEZ: Okay. Let
10 me acknowledge Councilman Oh.

11 COUNCILMAN OH: First, I'd like to thank
12 Councilman Henon for the hard work that he's done,
13 you know, in preparing these two ordinances that
14 we are hearing today.

15 As you have heard, there have been some
16 issues of possible clarification. But I will say
17 that Councilman Henon has been very good about the
18 fact that he has dealt with both amendments that
19 have been suggested to him as well as legal
20 constraints that have -- he has had to accept
21 because those are legal constraints.

22 My point is that I believe that Councilman
23 Henon in his desire to ensure that there is fair
24 and safe building is in alignment with what your

1 desire is, as well. That we as a city are
2 competitive in having good jobs, more
3 construction, more building.

4 To the extent that you are identifying what
5 appears to be a particular segment of the
6 construction industry and are offering amendments,
7 the amendments that you are offering we are going
8 to look at. And if you are able to constructively
9 speak to Councilman Henon, I think you will find
10 him to be a very reasonable and very publicly
11 minded person. At the end of the day, our City
12 wants construction, building, growth. And we want
13 to see all our workers working.

14 So, you know, if you would take a little
15 time to kind of write out what distinguishes your
16 particular segment of the construction industry
17 that you think is identifiably different and how
18 some of the things that you are looking for could
19 be introduced into this bill, that could be a good
20 point of discussion.

21 But this process will continue after today
22 as we ultimately go onto the floor. But I would
23 like to emphasize that at the end of the day we
24 want to see buildings going up in the City.

1 Thank you.

2 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.

3 I have a couple questions. But I will let
4 you guys, Emily, comment. And maybe you will
5 respond to some of -- more what my questions are.

6 MS. BITTENBENDER: No. I am -- I just
7 wanted to make a couple comments as a general
8 contractor aside from what Steve had said. There
9 are some administrative burdens that actually come
10 with the bill that we have, in fact, been talking
11 to Councilman Henon and Kenney about.

12 One of the issues is actually pushing the
13 enforcement process onto the general contractor
14 with verification that the subs and, you know, the
15 second tier and third tier guys have paid their
16 taxes. In fact, as general contractor, it's
17 virtually impossible for us to be able to do that
18 and to verify it. I think, you know, everybody
19 wants people on our job sites to be licensed, to
20 pay their taxes. But we need a mechanism to be
21 able to actually do that.

22 It's the enforcement part. We are sitting
23 hear to the Commissioner of L&I basically saying
24 we're going to be able to go online and look at

1 people's licenses. Well, that certainly will be
2 beneficial to us. But it's the administrative
3 burden piece that we'll as general contractors,
4 you know, would like help with because it's a task
5 that basically, you know -- on one of Greg's jobs,
6 if he's doing a \$200 million project and he's got
7 50 subs and God only knows how many suppliers,
8 that's a huge task to undertake. And then when
9 there are the penalties that are associated with
10 that, if you for any reason have missed a tier or
11 missed a person that hasn't paid their taxes, it
12 causes challenges for us.

13 And then Councilman Oh you were talking
14 about earlier, but the frivolousness of the
15 potential lawsuits by the Right To Action clauses
16 from private citizens, I didn't realize that there
17 was actually a new process where they would submit
18 it to the City Solicitor. That certainly
19 absolutely takes a lot of burden off. Prior to
20 that amendment, we thought we as general
21 contractors would be completely open to any
22 person's whim to basically bring, you know, a
23 cause of action against us.

24 So, it really from the practical business

1 standpoint as representative of general
2 contractors that do play by the rules, we applaud
3 many of the pieces within this bill. And
4 certainly, is a benefit for the City and a benefit
5 for the contractors that do follow the rules.
6 It's just some of these administrative tasks, you
7 know, loom large on those of us that have to
8 actually operate within them.

9 COUNCILWOMAN QUINONES-SANCHEZ: Did you
10 want to add before I continue?

11 MR. STEWART: First off, I want to thank
12 Emily for giving me a promotion.

13 COUNCILWOMAN QUINONES-SANCHEZ: Can you
14 give your name for the record.

15 MR. STEWART: Yeah. I want to thank Emily
16 for promoting me. Buy my name is Greg Stewart.
17 I'm a Vice President with Gilbane. I'm not the
18 President. I think Bill Gilbane would have an
19 issue with that.

20 Similar to what Emily is saying is that I
21 truly myself personally believe 5 million is a lot
22 of money. Those monies going back into the
23 coffer, whether it's supporting other elements
24 within the City or potentially maybe even reducing

1 the tax burden overall for everybody within the
2 City I think is extremely beneficial.

3 I think from my standpoint it's -- the
4 premise of what we are trying to do here I think
5 makes a lot of sense. And I can understand it and
6 I certainly appreciate it. Similar to what Emily
7 was saying, some of the elements in here --
8 Councilman Henon as you said, we do post permits.
9 We do post prevailing wages. We do post the
10 federal acts that we have to.

11 If I am posting these licenses on the board
12 in my trailer that I post, I don't consider that a
13 burden. But if I have got to try to post it on a
14 sign that's outside on the front and it's on a
15 fence I got to make sure can support that sign and
16 I have to constantly maintain that sign as I go
17 through the purchasing process of a project and I
18 add contractors, if I have to try to replace that
19 sign two, three, four times during construction
20 because it will be graffiti filled during the
21 course of a contract or construction project,
22 because we deal with that every day with the signs
23 that we do have. And that's why most of the time
24 we don't even put signs on projects anymore. But

1 having that information available so if L&I or
2 anybody is popping into our site and having it on
3 our bulletin board that we cover within our
4 trailer, that I don't consider a burden. It's
5 some of the other elements in there.

6 Trying to be able to legitimately determine
7 who has a license and who has paid taxes and, as
8 you know, we did hear from L&I Commissioner, he's
9 got a system that is coming online. Hopefully
10 within, it sounds like, the next 12 to 18 months.
11 If that is a system that I can easily go into,
12 pull a contractor's name up and find very quickly
13 that, yes, he has a license and here is his
14 numbers and, yes, he is current with taxes, that
15 is not a burden.

16 As it sits today, I could have 25, 30 first
17 tier contractors on a site. And Emily and I were
18 talking early. I have one contractor who is doing
19 site work that is using five or six different
20 firms to pull in stone or to haul out dirt. And
21 he uses different ones every day depending on who
22 is available or not. I could have an individual
23 pop on site one day with a truck. I don't know at
24 that point in time if he's got a license in the

1 City or has paid his taxes. I may not even know
2 he's showing up to the site until the minute he
3 shows up.

4 MS. BITTENBENDER: Or even know the name of
5 his company because he's so far down in the tier.

6 MR. STEWART: So, there's a lot of elements
7 in that respect that do place a lot of burden on
8 us from a tracking standpoint, policing
9 standpoint, however you want to do it.

10 I think on behalf of -- as contractors and
11 as we said, we are not the 15 to 20 percent that's
12 not doing this. We pay our taxes. We pay our --
13 we do file for permits on all of our jobs. We are
14 very diligent about that. We want to be
15 cooperative. We want to work with you. We just
16 want to find a way that this bill doesn't make me
17 have to have an administrative assistant on the
18 job trying to track it all.

19 COUNCILWOMAN QUINONES-SANCHEZ: I just
20 wanted to ask a couple of things.

21 Your concern is -- because I think what
22 Councilman Oh and Henon said, I think we all agree
23 where we want to go. We want to catch these bad
24 guys.

1 MR. STEWART: Yes.

2 COUNCILWOMAN QUINONES-SANCHEZ: I don't
3 want you feeling like we are targeting you. You
4 are the good guys. As legislators, we often sit
5 at this table doing legislation for the bad guys.
6 A thief is a thief is a thief. We create one
7 thing and they create another crack in the wall
8 and they figure it out.

9 It is about changing the paradigm about
10 people thinking it's okay, that we're not going to
11 enforce and use the full authority that we have.
12 I've continuously said and one of the things I
13 appreciate about Commissioner Williams is that
14 this is about public safety. A lot of this
15 that -- and I think that working with Councilman
16 Henon and L&I as I offered in the beginning of the
17 session around how we operationalize that I think
18 will alleviate some of your concerns. Everything
19 that you have given us and what has been spoken
20 to, I don't think those are issues that we can't
21 work through.

22 Through an interim system until we go live
23 until the Commissioner has live, this is going to
24 be complaint driven. In some cases because we

1 have these new staffing, they are going to be
2 going in areas that we know historically have had
3 problems. That will be mostly some of this
4 residential stuff that is coming up. You know, I
5 just want to say that this is not the end of the
6 conversation.

7 I think so far and even in looking at some
8 of the stuff that you have, I don't think there's
9 anything here that we're not going to be able to
10 work through. We are not going to agree on the
11 fee stuff. We always go back and forth on these
12 fee structures. At least as it relates to the
13 requirement of posting, you know, I don't think
14 Councilman's Henon intent was you are going to get
15 a fancy board and every time you got to keep
16 hooking it up, but it needs to be available. It
17 needs to be available on the site. An inspector
18 that goes in, needs to have it accessible.

19 I don't want to overburden all of that. It
20 really is about creating some uniformity and
21 common sense around when you go on a site,
22 particularly from L&I's perspective. As they use
23 this technology, that everybody knows we are going
24 to look at those things and we are actually going

1 to check those things and that they need to be
2 readily available. I encourage us to kind of
3 continue that as L&I rolls this out in its
4 implementation. Because I think a lot of this
5 stuff is not as complicated as it appears.

6 I did want to clarify, and maybe Councilman
7 Henon is going to speak to this as he speaks
8 around the cars, the labeling of the cars. All of
9 that stuff was quantified, right, some clarified.

10 COUNCILMAN HENON: Yes.

11 COUNCILWOMAN QUINONES-SANCHEZ: Let me have
12 Councilman Henon speak to that.

13 COUNCILMAN HENON: As far as the posting on
14 the vehicles, it would be obviously company
15 vehicles during working hours and on marked
16 company cars or trucks and vehicles. I mean,
17 obviously, if it's a marked vehicle, it has the
18 company's name or brand and it will have the
19 license number on there. I mean, so it would be
20 limited information that you see most of the
21 commercial vehicles you see riding around town
22 have on them any way.

23 But so, to answer that question -- and I
24 want to thank you, Emily, for coming in and Greg

1 and Steve. You know, to echo what the Councilman
2 has said, we don't want to have an extra burden on
3 anybody. I think this is something that we can
4 work out administratively. Not necessarily
5 changing the law as it's being submitted here, but
6 I believe that it's not -- gonna have as great a
7 impact as you may see. I would be more than
8 welcome, I'm sure as my cosponsor and Chairwoman
9 certainly, you know, would be able to facilitate a
10 meeting with L&I and see how we can
11 administratively make it, you know -- ease your
12 tension on the unexpected.

13 We are trying to change behavior. We want
14 to continue to, for your organization to grow in
15 its market share from 85 percent to 95 percent.

16 MS. BITTENBENDER: Please note,
17 Councilperson, we represent organization of
18 business owners that are committed to doing union
19 construction. We are union contractors. And we
20 fully understand the intent of your bill is to
21 basically ensure that good companies such as both
22 that are in our organization are actually, you
23 know, working.

24 COUNCILMAN HENON: Emily, just for the

1 record, this is a fair bill for any contractor.

2 MS. BITTENBENDER: I understand, but --

3 COUNCILMAN HENON: -- in the City of
4 Philadelphia who is performing construction work.

5 MS. BITTENBENDER: I understand. But our
6 organization is comprised of union contractors.

7 COUNCILMAN HENON: I am glad your
8 organization abides by the laws.

9 MS. BITTENBENDER: We do.

10 COUNCILMAN HENON: And pays fair wages.
11 You know, we want you to continue to work here in
12 the City.

13 MS. BITTENBENDER: We would appreciate
14 continuing to work with you. Thank you very much.
15 Appreciate it.

16 COUNCILWOMAN QUINONES-SANCHEZ: We will
17 ensure that that happens. Again, this is not
18 meant to be a burden. I think it's -- as we
19 change this behavior and as we implement this, you
20 will see. I think one of the things that we have
21 seen from L&I is that it is a department that you
22 can interface with. So, we definitely want to
23 make sure as the Commissioner rolls this out and
24 these inspectors roll out this process that it's

1 not about got yah. But it's about how do you
2 inform people and that this expectation is created
3 through behavior that all of those things will be
4 inspected on site.

5 And as I asked earlier, the ability to
6 check on weekends and evenings where we see some
7 of this behavior where clearly that is not the
8 times that most of you are doing this work. We
9 continue to -- and welcome the continued
10 discussion on this. Thank you.

11 MS. BITTENBENDER: Thank you very much.

12 MR. LAKIN: Thank you.

13 MR. STEWART: Thank you.

14 COUNCILWOMAN QUINONES-SANCHEZ: For the
15 very patient folks left, Ira Stahl, Jim Dollard
16 and Tom Massaro. And unless we want to have
17 dinner together --

18 MR. STAHL: I was falling asleep -- no.

19 COUNCILMAN GREENLEE: An honest man.

20 MR. STAHL: Hi. My name is Ira Stahl. I'm
21 a licensed electrician for 38 years, and I'm an
22 independent contractor. I was going to read all
23 these things, but while sitting here I made a lot
24 of notes. I changed my mind. Just going to shoot

1 from the hip.

2 I want to thank you for letting me speak
3 here. I do support this bill. And I do say
4 that's pretty close to the Jersey regulations.
5 Contractors do need to be licensed and play by the
6 same rules because I see a lot of bad work out
7 there, and it's not fair to people like me.

8 I have no problem with licensing our trucks
9 and our paperwork and our contracts and anything
10 that goes out. Even we give away, like,
11 recyclable bags and we put the state licenses on
12 that. We have been following state law for many,
13 many years. That requires to have anything you
14 give out have the state license on it. I think
15 that's a good thing as long as nobody steals the
16 license number and tries to get through to us.
17 That has happened before, but that's another
18 issue.

19 I definitely think paying subcontractors
20 1099 is definitely a joke and causes problems in
21 this industry. Bear with me here. I have notes
22 all over the place.

23 What I don't understand for contractors --
24 I got people calling me all the time asking me to

1 use my license and I don't even know who they are.
2 And I laugh at them. Basically, I say, what
3 contractor would give their license away. It's
4 like giving your driver's license away to an
5 alcoholic. You have no idea what they are going
6 to end up doing. Anybody that does that should
7 really be prosecuted because you just don't know
8 what they are going to do. Obviously, there is a
9 reason they are not licensed.

10 I do have a few issues with the bill.
11 About that if I make over \$300,000 a year, it's
12 going to pay \$900 every three years for my
13 license. Well, remember, I work a lot of places
14 not just in Philadelphia. That would definitely
15 double my cost of permits. So, I think that's a
16 little unfair for someone who has been paying
17 license, I'm sorry, for many, many years. I think
18 I've been licensed for 35 or 38 years when I first
19 started. I worked with a person who had a
20 license.

21 I also don't think that it's fair that in
22 your bill it says that if a person loses in court,
23 that you can take possessions of their trucks and
24 tools. I don't think the courts would accept that

1 because I understand that you cannot take the
2 livelihood.

3 COUNCILWOMAN QUINONES-SANCHEZ: Those were
4 removed. There were some amendments and actually
5 all of the issues that you are addressing were
6 removed from the bill. The fee schedule stuff was
7 taken off. All the fees stay as is. There is
8 going to be no confiscation of materials and
9 equipment.

10 MR. STAHL: I tried to read the bill as
11 much as I can.

12 COUNCILWOMAN QUINONES-SANCHEZ: No. No.
13 No. I appreciate that.

14 MR. STAHL: That's the two major issues I
15 have. I do have an issue for L&I, which I have
16 several issues which we should talk later if we
17 ever get the opportunity.

18 COUNCILWOMAN QUINONES-SANCHEZ: You have
19 the Commissioner sitting here for two hours. You
20 should have grabbed him.

21 MR. STAHL: If they want to listen to it
22 now, I can tell them.

23 One of the issues I do want to talk about
24 and we've talked about how do you control

1 nonlicensed contractors? Many, many times I will
2 go into a job -- and I do mostly residential.
3 Like I said, I am not union. I will go in and
4 there will be the Home Depot guy or Mr. Smith
5 doing the plumbing, the electrical, the tile, the
6 carpentry. You can just see it's butchery.
7 People come up to me and ask me, what does this
8 look like? I go, oh, my God. You got to be
9 kidding me.

10 Then I say to them, look, this is what you
11 need to do. You need to call L&I and get them out
12 here to deal with it. This is what I get from my
13 customers. They call me back, say L&I says that
14 if we do come out and they do say their manpower
15 is short, which is what I hear from here. If we
16 do come out, we are putting the violation on you
17 the homeowner. And then it's your responsible to
18 get it fixed by hiring a licensed electrician or
19 contractor and then you go after the contractor or
20 electrician, whoever it is.

21 Most of my homeowners go, I don't want to
22 get involved with that. There is no way. I'll
23 just pay you to fix it. They are getting ripped
24 off -- I mean, I'm making money because I know I'm

1 going to do it right. But they're getting ripped
2 off and L&I is not standing up. That
3 particular -- if it's a law or just a statement
4 from L&I has to change. If you want this bill to
5 mean anything, that has to change in my opinion.

6 I also think I heard earlier, not sure
7 which Councilperson said it, that you have to make
8 these permits easier. Like I said, I do 99
9 percent residential. I sometimes do small
10 commercial. I don't know if this the appropriate
11 time to say it, but you said. That they'll say to
12 me, well you need a blueprint. Well, I'm adding
13 two outlets and two lights. You need a blueprint
14 and an engineer seal. I go back to the client,
15 forget it. I will get a nonlicensed electrician
16 or somebody who is not going to pull a permit.

17 Then if I do get a blueprint or I do that,
18 I can't mail it in. I have to go down. If I
19 don't pay \$575 -- it's almost like extortionist to
20 me. I will never get the permit. I will get it
21 three, four, five months later. As my best friend
22 who is a lawyer who says, you can actually sue the
23 City for that because they are not letting you
24 practice your business.

1 I think if you are going to make this bill
2 work, you have to take care of that part, too. I
3 mean, I worked at the Dorchester. Pulled a
4 permit. They said I needed a blueprint. I said,
5 what you are talking about, I'm working in a
6 residential. You're working in a highrise. I'm
7 working residential. I got a blueprint together.
8 They didn't like it. They didn't like it.

9 Finally went through the right connections
10 and I get the permit without a blueprint because
11 L&I says you're working for the residential, not
12 doing the building. Six months later, I'm coming
13 home from skiing, I get a phone call. Your
14 blueprint and permits are ready to be picked up.
15 Said the job has been done.

16 Under those conditions, if you are going to
17 make this work, you got to make L&I work in those
18 right ways of doing. Make it easier. The easier
19 you make it, the more people like me and other
20 people who are licensed and pay taxes and
21 everything are going to pull more permits.
22 Residential permits are easy now. I still have to
23 drive up to Northeast, but I don't have to go
24 downtown, I don't have to park, pay \$25 parking,

1 drive an hour out of my way, sit there for an hour
2 and then find out I am being rejected because of a
3 red line and line is not thick enough. This has
4 happened to me.

5 You know, I think the bill itself that we
6 have to show that when you're driving down the
7 road, that the state license makes me put my
8 license on my truck. I think there is no problem
9 with that -- with Philadelphia doing that.

10 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.
11 You took a lot of notes.

12 MR. STAHL: What's that?

13 COUNCILWOMAN QUINONES-SANCHEZ: You took a
14 lot of notes.

15 MR. STAHL: And I am learning disabled. If
16 you read this, you would laugh at me. You'd go
17 what?

18 COUNCILWOMAN QUINONES-SANCHEZ: We thank
19 you. I encourage you. And I am sure Commissioner
20 Williams as he makes his budget presentation in
21 the next couple of weeks, a lot of what you're
22 talking about is exactly what he was talking about
23 earlier around technology and being able to get
24 permits online. He's sitting over there nodding

1 his head, saying, yeah we're getting there. We're
2 getting there. They are working on it.

3 I encourage you to watch his testimony
4 during the budget hearings. I think you are going
5 to hear some of that and you're going to be
6 presently pleased about that.

7 Mr. Dollard.

8 MR. DOLLARD: Thank you, Madam Chair. My
9 name is James T. Dollard, Junior. I will be
10 testifying today on behalf of John Dougherty, of
11 IBEW Local 98 in Philadelphia. I would like to
12 take this opportunity to thank Chairwoman Sanchez
13 for convening this hearing. And I applaud the
14 Councilmembers Henon, Kenney and President Clarke
15 for taking action on this important issue. And
16 that is speaking in support of Bill No. 120776.

17 Local 98 strongly supports this legislation
18 and it's tightening of licensure requirements on
19 contractors who perform it, work in the City of
20 the Philadelphia. That said, this isn't a burden
21 for contractors that are following the rules. If
22 you are following the rules, if you're abiding by
23 the law, it's not a burden. Our members and
24 signatory contractors pride themselves on obeying

1 the rules, paying our fair share of taxes and
2 abiding by the City's building code and licensing
3 requirements.

4 Contrary to previous testimony, this is not
5 limited or even a majority of residential work. I
6 see this all the time in the commercial field. I
7 am not a business agent. I am the safety
8 coordinator for IBEW Local 98.

9 I get called in on jobs in many cases, and
10 they are putting down a floor coding or they are
11 grinding the floor. I will say, wait a minute,
12 let's stop these guys. I can't stop them. They
13 are working directly for the owner. If you are
14 coordinating that job, then you have multiple
15 responsibilities and safety is first and foremost.

16 Being a responsible contractor whether you
17 are union, open shop, independent whatever you
18 want to call it carry significant cost when you
19 comply with all the rules and regulations. That
20 is the cost of doing business anywhere in the
21 country today not just in the City of
22 Philadelphia. Unfortunately, these costs often
23 put our legitimate contractors and City-wage
24 paying residents of the City and those that work

1 and live outside the City and work in the City, it
2 puts them at a competitive disadvantage because we
3 have unscrupulous contractors who cut costs by
4 misclassifying workers, disregarding City laws and
5 exploiting their work force.

6 As many of you know, Alan Butkovitz City
7 Controller released a detail report last year
8 investigating the underground construction economy
9 in Philadelphia. We were fortunate enough to hear
10 from him earlier. They went to numerous sites
11 throughout the City, found dozens of violations of
12 tax laws, public safety ordinances. But the most
13 common findings were that subcontractors
14 performing the work on the sites were not
15 identified on the permits issued for the work. We
16 got a permit to do the work, we don't know who
17 this guy is or where he came from that is actually
18 doing it.

19 It was difficult to determine at the site
20 whether contractors or subcontractors had business
21 privilege license or were appropriately licensed
22 to do what they were doing at all. You just don't
23 know. In many cases, it's a zoo-like atmosphere.
24 I have been there. Workers are getting paid by

1 cash or check without withholding any payroll
2 taxes. Workers were suspected of being improperly
3 classified as independent contractors instead of
4 employees. And violations of OSHA safety
5 standards, this was pointed out by the
6 investigation that was done by the Controller,
7 they noted and they are probably not subject
8 matter experts in construction safety. They noted
9 serious safety violations. They noted hardhats,
10 eye protection, work boots. But I could tell you
11 that I see personal protective equipment, fall
12 hazards. And it's something that just has to
13 stop.

14 These violations cost the City millions of
15 dollars every year in lost tax revenue and
16 unfairly punish legitimate law abiding contractors
17 who are at a competitive disadvantage to the
18 unscrupulous individuals who regularly cheat the
19 system. This bill does aim to close existing
20 loopholes that are frequently exploiting by
21 irresponsible contractors who are trying to skirt
22 the rules. And we thank members of City Council
23 for trying to find ways to solve these problems,
24 particularly the problems that are created by

1 third party permits.

2 I would like to elaborate on that now.

3 It's a major issue that -- it's a persistent
4 problem in the City of Philadelphia.

5 For example, an irresponsible licensed
6 contractor gets paid by a third party to pull
7 permits for a job. As Ira pointed out, people
8 call him and actually ask him that and he won't do
9 it. Even though the third party is being -- the
10 work is being performed at the job site, the
11 licensed contractor never visits the site. In
12 many cases, the licensed contractor that pulled
13 the permit has no employees whatsoever.

14 Through the work of our business agents in
15 the field, we have encountered and document this
16 activity on many instances. When we're there, we
17 discover that the third party contractor actually
18 performing the work usually has no Philadelphia ID
19 tax number or contractor license on file. They
20 are typically from outside of the area.

21 All you need to do is go to one of these
22 sites, go to any box store, as Target, a Lowes, a
23 Home Depot towards the end of the job. Don't go
24 in and ask people who they are working for. Just

1 look at the license plates in the parking lot.
2 You will see that this is a major, major problem.
3 This bill will help crack down on this practice by
4 clarifying that selling, transferring or otherwise
5 allowing another person or business entity to use
6 a permit is a violation of the law. And by
7 including meaningful enforcement actions against
8 violators. That is extremely important. It has
9 to be meaningful so that violators will think
10 twice before they do it again.

11 We've also compiled a list of numerous
12 examples of individuals who routinely violate this
13 law. One individual, he's elderly, with no
14 listings in the Yellow Pages or the internet. If
15 you try to find him as an electrical contractor,
16 you are looking into a void. He's not there. He
17 pulled 172, at least that we know of, 172
18 electrical permits using various contractor
19 license numbers. That's a problem over an
20 18-month period. They ranged from small
21 residential to major renovation work in highrise
22 buildings.

23 Since there is virtually no evidence that
24 he's operating a legitimate contracting business

1 or has any employees, it's highly suspected that
2 he's pulling those permits not to do work himself,
3 he literally sells the permits that he is pulling.
4 And somebody else, it's an entity we don't know.
5 We don't know if they are qualified. We don't
6 know if they are trained. We don't know what they
7 are doing. To the best of our knowledge, this
8 individual still holds a Philadelphia electrical
9 contractor's license. He just one example of the
10 problem.

11 There is numerous examples of individuals
12 that exploit the City licensing rules in a similar
13 manner. What they do, the pull the third party
14 permits on the smallest residential jobs. Some of
15 them are large cell phone towers. It's rare to
16 see a cell phone tower that is done by anybody
17 that's even in the Northeast Corridor. You drive
18 by, there is Florida trucks. There is Texas
19 trucks. They are from Arkansas. They are not
20 even nearby. When you ask them about a license,
21 there is nothing. No City wage tax. Absolutely
22 nothing.

23 They chase jobs all across the country.
24 They get a quick hit. They leave the job. They

1 leave the City after a couple of weeks. They have
2 no intention by abiding by our rules and
3 regulations. That is L&I rules, the UCC codes,
4 that's the workman's compensation. You know, you
5 name it. City wage tax. Legitimate license
6 contractors must carry liability and workers
7 compensation insurance. They also pay business
8 taxes, withhold wage taxes from their employers.
9 They attend continuing education classes. They
10 shoulder many of the other financial and
11 administrative costs associated with being a
12 responsible business enterprise.

13 Unfortunately, when these less scrupulous
14 competing businesses skirt the rules and cut
15 costs, it forces our legitimate contractors to do
16 one of two things. Cheat and survive or just go
17 out of business.

18 Worker misclassification, and this is the
19 1099 piece, this bill will help solve this
20 problem. It's a significant problem in the
21 construction industry. It's been a common
22 practice by many unscrupulous contractors to pay
23 workers either under the table or pay them in cash
24 issuing them a 1099.

1 Misclassifying these employees in this
2 manner cheats the state out of workman's
3 compensation, unemployment taxes, cheats the City
4 and other levels of government by not requiring
5 mandatory withholding wage and income taxes.
6 Additionally, it misclassifies and cheats those
7 workers. They are not covered by OSHA. OSHA does
8 not cover the self-employed, family farms and
9 government bodies that have their own rules
10 similar to OSHA such as the Post Office. These
11 misclassified employees are not eligible for
12 workman's compensation or employee benefits nor
13 are they eligible for employer-sponsored
14 healthcare benefits, all of which place a further
15 burden on the taxpayers when they get hurt or laid
16 off.

17 This is a huge, huge problem. Not only are
18 they coming onto the job with no workman's
19 compensation, no City wage. In many cases, they
20 are coming with no training and no background.
21 They create problems within the City that impact
22 others, in many cases, others that are following
23 the rules.

24 State officials have recognized this sever

1 problem. And they passed a law in 2010 to crack
2 down on the misclassification of workers. Act 72
3 clearly defines a legitimate independent
4 contractor in the construction industry as someone
5 who, one, has written contract to perform
6 services; two, is free from control or direction
7 over performance of such services both under
8 contract of service; and in fact, three, the
9 individual is customarily engaged in an
10 independently established trade occupation,
11 profession or business.

12 And the Act further specifies that this
13 individual is not customarily engaged in an
14 independently established trade, occupation,
15 profession or other business unless the individual
16 meets all of the following criteria.

17 One, the individual independent of the
18 person or employer for whom the services in
19 question are performed possesses the essential
20 tools, equipment and other assets that are
21 necessary for the performance of such services.
22 These individuals show up. They are given the
23 tools. They are given the materials. They are
24 given a 1099.

1 The individuals arranging with the person
2 or employer for whom the services in question are
3 performed is such that the individual will realize
4 a profit or suffer a loss as a result of
5 performing the services.

6 That's not true. These individuals, that's
7 their pay check. They are just getting 1099.

8 Three, the individual performs a service in
9 question through a business in which the
10 individual has a proprietary interest.

11 Four, the individual maintains a business
12 location that is separate from the location of the
13 person or employer for whom the services are being
14 performed.

15 Five, the individual either previously
16 performed the same or similar services as a
17 contractor or holds himself out to other persons
18 as available and able to perform the same or
19 similar services while free from direction or
20 control over performance of the services.

21 And six, the individual maintains liability
22 insurance during the term of the contract in
23 question of at least \$50,000.

24 COUNCILMAN HENON: Excuse me, Mr. Dollard.

1 MR. DOLLARD: Yes.

2 COUNCILMAN HENON: Did you submit
3 testimony?

4 MR. DOLLARD: Yes.

5 COUNCILMAN HENON: Just wanted to point a
6 personal privilege, since we're fellow Local 98
7 members.

8 MR. DOLLARD: Yes.

9 COUNCILMAN HENON: We want to try to --

10 MR. DOLLARD: To wrap this thing up.

11 COUNCILMAN HENON: To wrap this thing up.

12 MR. DOLLARD: I was just about to close.
13 I'd probably be done if you hadn't interrupted me.

14 (Council and witnesses laugh.)

15 MR. DOLLARD: I am just kidding, Bobby. I
16 am kidding.

17 There are just two more comments that I
18 would like to make and I am going to wrap up. We
19 did here some previous testimony that, you know,
20 85 percent of the general contractors out there
21 are good. I am just going to suggest to you,
22 Bobby, that you try to get ahold of that. If it
23 has names and addresses on it, it will make our
24 job a whole lot easier.

1 On behalf of John Dougherty and IBEW Local
2 98, I would like to thank you again for the
3 opportunity to testify to this bill. This is
4 significant. It will recapture lost finances to
5 the City. It will make jobs safer. It will
6 actually increase livelihood in the City of
7 Philadelphia because it's going to stop people
8 from coming out of state in here for the quick two
9 week, three-week job. And believe me, they are
10 all over the place. Take note of those license
11 plates.

12 Thank you very much.

13 COUNCILMAN HENON: Thank you.

14 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.

15 COUNCILMAN HENON: Thank you, Mr. Dollard.
16 Just say, it's very good policy. For the sake of
17 health and public safety in the City of
18 Philadelphia. Thank you for your testimony.

19 Mr. Massaro.

20 MR. STAHL: Before he speaks, can I just
21 ask is there anything else? Because I do have a
22 previous engagement I have to go to.

23 COUNCILWOMAN QUINONES-SANCHEZ: No. No.

24 You are free to go. I'm sorry. I should not have

1 kept you there.

2 MR. STAHL: Thank you.

3 COUNCILWOMAN QUINONES-SANCHEZ: And unless
4 Tommy is going to buy dinner, he is going to
5 try --

6 COUNCILMAN GREENLEE: Be short.

7 COUNCILWOMAN QUINONES-SANCHEZ: -- what has
8 never been done in the time that I know you which
9 is summarize.

10 MR. MASSARO: I've fed 9 of the 17 members
11 of City Council for about three and a half years.

12 COUNCILWOMAN QUINONES-SANCHEZ: You can
13 feed me tonight, you can talk longer.

14 MR. MASSARO: Not only did I feed you, you
15 brought doggy bags to take home as soon as you
16 arrived.

17 COUNCILWOMAN QUINONES-SANCHEZ: Yes, I did.
18 Go ahead. I'm sorry.

19 MR. MASSARO: Thank you. I am testifying
20 on behalf of President Henry Nicholas, the
21 National President of the Hospital and Healthcare
22 Workers Union.

23 COUNCILWOMAN QUINONES-SANCHEZ: Say your
24 name for the record.

1 MR. MASSARO: My name is Thomas Henry
2 Massaro, M-a-s-s-a-r-o.

3 First, I'd like to say on both behalf of
4 President Nicholas and myself, I am really happy
5 to be here today. I was here three weeks and
6 three days ago. I was very disappointed when I
7 left because we had a display of City workers
8 feeling disrespected and the Mayor feeling
9 disrespected and not being able to speak. I don't
10 think it was a good day for our City.

11 Today I am excited because a freshman
12 member of City Council Bobby Henon has showed a
13 lot of leadership to solve a problem that's
14 existed for a very long time with very pernicious
15 and adverse impacts all over the city for our City
16 governments, for our City workforce, for our
17 citizens and for our communities.

18 We can have faith today for another reason.
19 I heard the Councilmembers talking about their
20 collaboration with the Mayor, with his
21 Administration and with the new L&i commissioner
22 and that there has been good communication,
23 there's been honest and constructive dialogue.
24 And there's been progress that is going to solve a

1 problem.

2 If you do this bill Councilman Henon and
3 Councilman Kenney has done a lot of work on this
4 for a while, President Nicholas would like to
5 commend him as well as Maria and Controller
6 Butkovitz. You can be heartened today because we
7 have an example of successful collaboration.

8 What's going to happen if this bill passes?
9 The City will have increased revenue to deal with
10 a lot of things. It will have decreased operating
11 cost without having to clean up after
12 irresponsible contractors that environmentally
13 contaminate our communities, particularly in North
14 Philadelphia where they have been getting away
15 with it. There are also costs incurred to the
16 private sector of the City by noncompliant
17 irresponsible, tax cheating, noncode compliant
18 contractors.

19 President Nicholas and I have surveyed the
20 hospitals of the City. For those who thought that
21 there was no burden on the private sector or the
22 public sector by cheating contractors,
23 approximately \$18 million a year in the City of
24 Philadelphia is expended by hospitals who can't

1 get reimbursed because people who get injured on
2 nonunion, uninsured construction sites go to the
3 hospital and get coverage and can't pay for it.
4 President Nicholas, Reverend Moore, myself and Jim
5 White, Ken Scott that have worked North
6 Philadelphia have seen on at least three occasions
7 undocumented workers from New Jersey that fall off
8 unsafe scaffolds being jammed into cars. As they
9 are being jammed into the car, the foreman says,
10 just tell them you fell down the stairs at home.
11 Just keep telling them you fell down the stairs at
12 home. We're paying for that. The business model
13 where you cost shift to the public sector is not
14 responsible.

15 We have contractors who do jobs with no
16 dumpsters because they dump in the lot. They mix
17 their cement in the street. This morning before
18 we came here President Nicholas and I went out,
19 Commissioner, and 21 out of 24 jobs between
20 Susquehanna and Girard from Broad Street west over
21 to Strawberry Mansion, 21 out of 24 don't have a
22 silt fence. 21 out of 24 don't have a dust
23 mitigation barrier and they're mixing the cement
24 in the street.

1 That is totally irresponsible. There is
2 cost to do that. Once you have the perimeter
3 safety fence on the construction site, it takes
4 exactly ten minutes to hang a blue tarp on the
5 site so it doesn't blow all over the place. It
6 takes exactly an hour on a half acre job to put up
7 a black silt fence so it doesn't erode into our
8 sewers and go into the river.

9 The cost of compliance is it not some
10 incredibly expensive cost. It's relatively minor
11 and we should keep that in mind.

12 COUNCILWOMAN QUINONES-SANCHEZ: You took
13 notes, too?

14 MR. MASSARO: Yeah. The last thing we
15 wanted to mention is that there is still something
16 outstanding which is to have equal access to
17 employment opportunity in the City. While there
18 have been struggles, and people have to be honest.
19 There have been differences about the extent to
20 which Philadelphia residents are employed in the
21 building trades. We have honest conversations
22 about how much or how well we do that. At least
23 we are doing it and we are having dialogue about
24 it and we're making progress.

1 As Reverend Moore testified in this room a
2 year ago the hearings on the proposed Mid
3 District, he had gone to 21 out of 23 construction
4 sites in the heart of North Central Philadelphia
5 between Reverend Sullivan's iconic plaza and Cecil
6 B. Moore's Office at 17th and Cecil B. Moore. and
7 on 21 out of 23 tax abated construction sites,
8 there was not one African American worker nor was
9 there one woman. And that does not move this City
10 ahead.

11 So while we may have differences with the
12 building trades about the extent to which we
13 accommodate community employment, we have
14 substantial community employment in the trades. I
15 think we need to do more to get the unemployment
16 rate down in the City. At least we have it. On
17 these nonunion sites, we have undocumented workers
18 from New Jersey. We have skilled workers from the
19 Penn/Del area and we don't have people from
20 Philadelphia.

21 So, I would hope that we can fix that, too.
22 But this is an important step. We had support.
23 Really should have come to see at 15th and
24 Jefferson in the heart of North Philadelphia where

1 these contractors are just contaminating and
2 raping the neighborhood. And we didn't have any
3 help for a long time. And we had African American
4 women picketing on these jobs. And you know who
5 came and supported us, the Philadelphia Building
6 Trades at 15th and Jefferson. We moved towards
7 getting some community residents hired. To get
8 some codes enforced and to get some people from
9 Philadelphia working there.

10 President Nicholas does not believe that
11 there is a very substantial cost differential
12 between union and nonunion. We think it's a
13 mirage. We don't think that this City, we don't
14 think that this City Council, we don't think that
15 this Department of License and Inspection or the
16 civil service structure of the City should be
17 prounion or antiunion. They should make it fair.

18 We should have a level playing field.
19 Union contractors have to pay because there are 17
20 building trades. Each one of them has a highly
21 skilled, well trained dedicated man, hopefully a
22 woman too, who enforces safety codes, who knows
23 what safety codes are. And that exists on every
24 union job in the City. Seventeen people who know

1 what the regulations are to protect workers and to
2 protect the interest of this City.

3 On nonunion jobs, you don't have that
4 assurance. You do not have that assurance. The
5 cost for not having assurance, the cost is being
6 dumped on, it's being cost shifted from
7 illegitimate private contractors into the public
8 sector. That is true in terms of the cement they
9 are knocking down our sewers, the damage being
10 done to our streets, the cement and the lime
11 that's going to the Wissahickon water shed. It's
12 almost unlimited.

13 On the 24 sites, Commissioner, not one has
14 a collar around the sewer on the corner to catch
15 the cement as it's going into the sewer. It's a
16 \$5 item. Looks like a sock filled with sand. You
17 wrap it around the sewer so the water goes in but
18 the lime and the cement doesn't. Commissioner, I
19 tell you if they guys went, they don't have to get
20 out of the car. You can tell from a block away
21 there is no black silt fence 12 inches high.
22 There is no 8 foot dust barrier wrapped on the
23 fence. They don't have to get out of the car.

24 So, I want to again on behalf of President

1 Nicholas thank Freshman Bobby Henon for his
2 leadership here. I want to thank you guys for
3 working with the Mayor with the Administration in
4 a constructive way to solve a problem that's been
5 here a long time. Maybe this will be a model for
6 50 other things we can do in the City.

7 COUNCILWOMAN QUINONES-SANCHEZ: Thank you,
8 Mr. Massaro for being brief. I don't know if the
9 bill sponsor wants to make any closing comments.
10 I am going to get out of our public hearing and go
11 into our public meeting.

12 (Public Meeting begins)

13 COUNCILWOMAN QUINONES-SANCHEZ: As stated
14 earlier, we have a quorum in Councilman Squilla,
15 Councilman Oh, Councilman Greenlee, Councilman
16 Henon and Councilwoman Bass.

17 I will let -- if you want to make a closing
18 comment and then we will take the vote.

19 COUNCILMAN HENON: Thank you, Madam Chair.
20 Very, very brief comments.

21 First, I would want to thank everybody for
22 hanging in there. Especially to you, Chairwoman
23 and your -- and how you want an expedient time
24 table set this hearing at the Phillies home opener

1 I might add, but thank you very much. And to all
2 my colleagues for hanging here today, I can't tell
3 you how much I appreciate that.

4 Just to dispute -- and thank you for all
5 the testimony. But just to dispute, you know this
6 is not a Councilman Henon bill. This is a joint
7 effort, you know, I had a cosponsor on the bill.
8 And everybody in this Committee was a part of this
9 process from other colleagues who are not here.
10 This is a City-wide policy issue that's worked --
11 working together with a multiple stakeholders,
12 union, nonunion.

13 You know, to get the experience it's on
14 what's going on out in the street. For the sake
15 of health and public safety, you know, employer
16 groups and all fashions. So, including the Law
17 Department who has helped with some of the
18 amendments here. You know, as listening because
19 we are good listeners here. As listening to the
20 multiple stakeholders, we were able to come up
21 with a -- some amendments and piece of legislation
22 that is going to work. And it's going to be in
23 the best interest of the City and its residents.

24 I thank everybody for their time and their

1 patience and their contribution to, you know, for
2 this and, you know. Look forward to having it
3 voting out with a favorable recommendation. So,
4 than you very much.

5 COUNCILWOMAN QUINONES-SANCHEZ: Thank you.

6 I am going to ask Councilman Greenlee, can
7 you give me a motion on Bill 130135, which had no
8 amendment.

9 COUNCILMAN GREENLEE: Thank you, Madam
10 Chair. I move that Bill 130135 be reported out of
11 this Committee with a favorable recommendation.
12 And that the Rules of Council be suspended to
13 allow for first reading at our next session of
14 Council.

15 COUNCILMAN OH: Second.

16 COUNCILWOMAN QUINONES-SANCHEZ: All in
17 favor?

18 (Chorus of Ayes)

19 COUNCILWOMAN QUINONES-SANCHEZ: All
20 opposed? Hearing none, the bill passes. Bill
21 130135 will be reported out of Committee with the
22 Rule suspension to allow first reading at our next
23 public session.

24 We will now do the Amendments for Bill

1 120775. Can I get a motion, Councilman Greenlee?

2 COUNCILMAN GREENLEE: Thank you, Madam
3 Chair. I move the adoption of the Amendments to
4 Bill No. 120775.

5 COUNCILMAN HENON: Second.

6 COUNCILWOMAN QUINONES-SANCHEZ: All in
7 favor?

8 (Chorus of Ayes)

9 COUNCILWOMAN QUINONES-SANCHEZ: Any
10 opposed? The Amendments to Bill 120775 is
11 adopted.

12 Can I get a motion on the Amended Bill
13 120775?

14 COUNCILMAN GREENLEE: Thank you, Madam
15 Chair. I move that Bill No. 120775 as amended be
16 reported out of this Committee with a favorable
17 recommendation with a Rules Suspension to allow
18 for first reading at our next session of Council.

19 COUNCILMAN OH: Second.

20 COUNCILWOMAN QUINONES-SANCHEZ: All in
21 favor?

22 (Chorus of Ayes)

23 COUNCILWOMAN QUINONES-SANCHEZ: Anyone
24 opposed? Hearing none, Bill 120775 as amended

1 will be reported out of Committee with a favorable
2 recommendation and Rules suspended to allow first
3 reading at our next session.

4 Councilman Greenlee, can I get a motion on
5 the Amendment to Bill 120776.

6 COUNCILMAN GREENLEE: Thank you, Madam
7 Chair. I move the adoption of the Amendment to
8 Bill No. 120776.

9 COUNCILMAN HENON: Second.

10 COUNCILWOMAN QUINONES-SANCHEZ: All in
11 favor?

12 (Chorus of Ayes)

13 COUNCILWOMAN QUINONES-SANCHEZ: Any
14 opposed? Hearing none, Bill 120776 is amended.

15 Can I get a motion on the amended bill?

16 COUNCILMAN GREENLEE: Thank you, Madam
17 Chair. I move that Bill No. 120776 as amended be
18 reported out of this Committee with a favorable
19 recommendation and with a Rules Suspension to
20 allow for first reading at our next session of
21 Council.

22 COUNCILMAN HENON: Second.

23 COUNCILWOMAN QUINONES-SANCHEZ: All in
24 favor?

1 (Chorus of Ayes)

2 COUNCILWOMAN QUINONES-SANCHEZ: Any
3 opposed? Hearing none, Bill 120776 as amended
4 will be reported out of Committee with a favorable
5 recommendation and the Rules Suspended to allow
6 first hearing at our next public session.

7 Thank you all very much for your patience.
8 And this concludes the meeting.

9 (Committee on License and Inspections
10 adjourned at 5:27 p.m.)

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C E R T I F I C A T I O N

I, hereby certify that the
proceedings and evidence noted are
contained fully and accurately in the
stenographic notes taken by me in the
foregoing matter, and that this is a
correct transcript of the same.

Court Reporter - Notary Public

(The foregoing certification of
this transcript does not apply to any
reproduction of the same by any means,
unless under the direct control and/or
supervision of the certifying reporter.)

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