



THE CITY OF NEW YORK  
INDEPENDENT BUDGET OFFICE

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**Ronnie Lowenstein**  
Director

September 10, 2003

The Honorable Robert Jackson  
Council of the City of New York  
250 Broadway, Room 1846  
New York, NY 10007

Dear Council Member Jackson:

At the June 23<sup>rd</sup> hearing of the Housing and Buildings Committee on Intro 101A, you asked the Independent Budget Office to meet with the administration to ascertain the reasons for the very large differences in our respective estimates of the Intro's fiscal impact. This letter summarizes the results of our review.

In light of further information received during the review, we have revised our estimate, originally \$8.2 million, to \$18.0 million in recurring costs and \$14.9 million in non-recurring (primarily capital-eligible) expenses. The administration has also revised its estimate, from \$265 million at the time of the hearing, to \$231 million, of which \$149.9 million are recurring costs. There remains about \$39 million in primarily non-recurring, capital-eligible costs projected by the administration that we were unable to independently estimate.

Clearly, we remain far apart. However, we can now explain the bulk of the difference. The rest of this letter summarizes some of the major points, and the attachment provides further detail.

In some instances the differences can be explained by reliance on different assumptions. For example, while HPD and IBO both agreed that the accelerated timeline for correction of a lead paint violation in Intro 101A would result in a drop in the amount of emergency repair costs recovered from building owners, HPD assumed no costs would be recovered, while IBO assumed a recoupment rate of 40 percent (compared to the current 56 percent). This amounts to a \$3.2 million difference in annual net costs.

Other differences arise from different interpretations of what the proposed legislation would require. For example, section 17-186 requires building owners to register certain renovation work that could disturb lead-based paint with the Department of Health and Mental Hygiene (DOHMH). The administration has interpreted this provision to require reporting—and pro-active inspection of—routine repainting of apartments as required under local law. We found nothing in the bill's language to support this interpretation.

Some of the differences in interpretation arise from ambiguous, unclear, or inconsistent legislative language. For example, HPD assumes that a more expansive—and hence more costly—scope of work would be required when its Emergency Repair Bureau performs lead abatement work because the definition of the term “abatement” in the legislation is inconsistent. It could be interpreted, as we did, to mean “reduction” of a lead-based paint condition “through wet-scraping and painting,” or it could require “removal, encapsulation, enclosure, or replacement.” Although we used the interpretation that we believed was intended by the sponsors, there is room for more than one plausible interpretation, and hence for a wide disparity in estimates of the fiscal impact.

This points to a more fundamental difference between the approach we took in preparing our estimate of the fiscal impact and that taken by the administration. Our assumption was that, if Intro 101A were passed as written, the administration would make a good faith effort to meet the legislation’s provisions, including a reasonable increase in resources and level of effort. In contrast, the administration has assumed that, in order to protect itself against future liability, it must interpret literally the intro’s statement of findings and purpose, which calls upon the city to “diligently perform its duties so that the hazardous conditions identified in this article shall be eradicated from all applicable housing *to the maximum extent possible*” (emphasis added)—in effect, requiring it to assume that every other provision of the intro must be given the most stringent interpretation. Although we believe that this leads to interpretations that were not intended by the intro’s authors, we cannot ignore the fact that in the future a department counsel or a court could interpret Intro 101A as requiring more than we have assumed. If so, then the annual costs of the bill could be much higher than we currently anticipate.

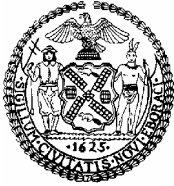
Some provisions of the legislation will require legislative clarification if the uncertainty embodied in our widely varying estimates is to be reduced. Members of the Council and the administration will have to exercise their best judgment as to how to resolve these issues to produce a bill that balances effective protection of the health of children with affordability, while minimizing the need for judicial interpretation.

Finally, we appreciate the time and effort of the Mayor’s Office of Management and Budget and of the concerned departments in meeting with us to review our respective estimates in detail.

If you would like further details of this analysis, we would be pleased to provide it. The estimates were prepared under the supervision of Preston Niblack, IBO deputy director.

Sincerely,

Ronnie Lowenstein



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**Results of Review of IBO and Administration Analyses  
Of the Fiscal Impact of Intro 101A**

**I. Introduction**

On June 23<sup>rd</sup>, 2003, at the City Council Housing and Buildings Committee hearing on Intro 101A, the Independent Budget Office presented its estimate of the fiscal impact of Intro 101A. At the same hearing, the Commissioner of Housing Preservation and Development reported that the administration estimate was significantly higher. Pursuant to a request by Council Member Robert Jackson, IBO met with the administration to review the estimates and determine the reasons for the discrepancy. In this report on the results of that review, we begin in Section II by comparing the current IBO and administration estimates. We then review in Section III our revisions to our previous estimate. In Section IV we provide a detailed review by agency of the remaining differences.

**II. IBO and Administration Estimates of the Cost of Intro 101A**

IBO's original estimate of the cost of Intro 101A was \$8.2 million, which included costs to the Department of Housing Preservation and Development (HPD) and the Department of Health and Mental Hygiene (DOHMH) and of expanded J-51 tax abatements, net of partial recoupments of HPD emergency repair work costs. Using additional information received from HPD, DOHMH and other agencies during the course of our review, IBO has revised its estimate of the cost of the bill to \$18.0 million. In addition, we have recognized \$14.9 million in capital costs, for a total of \$32.9 million.

The administration has also revised its original estimate, from \$265 million to \$231 million. The administration estimate continues to include costs for which IBO felt it lacked sufficient information on which to base an estimate. As before, IBO has not estimated certain costs for the Administration for Children's Services (ACS) or the Department of Parks and Recreation (DPR). Although there will certainly be costs for these agencies, we continue to lack the data necessary to develop reliable estimates of these costs. We do, however, comment on some of the assumptions used by those agencies in the calculations of their estimates. In addition, we did accept certain of the administration's estimates for spending in the Department of Education (DOE).

**Comparability.** IBO and the administration presented their estimates in not entirely comparable ways. The administration's \$231 million figure includes non-recurring and capital costs, such as one-time equipment purchases, and lead-based paint abatement in schools, day care centers, and playgrounds. We estimate that \$81.1 million of the administration's revised estimate consists of

<b>Comparison of IBO and Administration Estimates of Cost of Intro 101A</b>			
<i>Dollars in thousands</i>			
	IBO Revised	Administration (revised )	Difference
<b>Annual Expense Costs</b>			
HPD	\$14,364	\$84,399	\$70,036
DOHMH	1,448	60,528	59,080
DOE	1,084	1,084	0
ACS	Not estimated	1,390	1,390
DPR	Not estimated	0	0
J-51	1,001	2,500	1,489
<u>311 Call Center</u>	<u>92</u>	<u>NE</u>	<u>(\$92)</u>
<b>Subtotal</b>	<b>\$17,989</b>	<b>\$149,902</b>	<b>\$131,913</b>
<b>Non-Recurring Costs<sup>a</sup></b>			
HPD <sup>b</sup>	\$639	\$7,228	\$6,589
DOHMH	0	0	0
DOE	14,319	36,293	21,974
ACS	Not estimated	17,550	17,550
<u>DPR</u>	<u>Not estimated</u>	<u>20,000</u>	<u>20,000</u>
<b>Subtotal</b>	<b>\$14,958</b>	<b>\$81,071</b>	<b>\$66,113</b>
<b>TOTAL</b>	<b>\$32,947</b>	<b>\$230,973</b>	<b>\$198,026</b>
SOURCES: IBO; Office of Management and Budget.			
NOTES: <sup>a</sup> Most non-recurring costs are capital-eligible, and will span multiple years. <sup>b</sup> The administration's estimate of HPD's non-recurring costs includes \$2.6 million in database and other software upgrades. IBO had no basis for estimating these costs, and therefore has not included them.			

non-recurring, one-time costs, much of which would be capital-eligible. Annual operating costs of the bill are therefore \$149.9 million, according to the administration's calculations, which is more directly comparable with IBO's estimate of \$18.0 million.

In addition, at least with respect to HPD, and possibly to a lesser degree with other agencies, certain existing program costs were counted in the total, which therefore should be considered as a "total program" cost. When IBO performs a fiscal impact analysis, in contrast, it includes only *incremental* costs—that is, new costs associated with the bill, and not existing costs. We estimate that the administration's cost estimate for HPD includes \$15.1 million in existing spending.

### III. Revised IBO Estimate

IBO's revisions to its earlier estimate reflect information received from HPD and other departments during the course of our review.

The revised IBO estimate reflects:

- inclusion of fringe benefit costs for the new inspectors and other personnel that would be required;
- an increase in the number of units that are inspected in a given year;

- an increase in the proportion of units with children;
- an increase in the proportion of violations that test positive for lead;
- refinements in our overall process model to more accurately reflect the possible outcomes once a lead violation is placed;
- reduction in HPD inspector productivity to reflect the surface-by-surface inspection requirement;
- training and administrative costs for HPD and DOHMH;
- costs of monitoring the contracts to correct lead hazards when landlords fail to do so;
- acceptance of administration cost estimates for certain provisions we had previously been unable to calculate.

We also revised our high-cost estimate to reflect certain of HPD’s assumptions, including a lower rate of landlord certification of correction, lower inspector productivity, a higher percentage of violations confirmed to be lead, and the higher cost of work. However, our high-cost estimate remains substantially lower than the administration’s, for several reasons. We continue to assume that some emergency repair costs will be recovered from landlords (25 percent), and that 42 percent of violations uncovered during pro-active inspections will be closed for lack of access. We also adopted different assumptions regarding the §27.2056.9(a) inspections: a 50 percent reduction in productivity (vs. 80 percent assumed by HPD and 25 percent assumed in our baseline) and 10 percent new violations (vs. 50 percent assumed by HPD and 5 percent in our baseline).

<b>Revised IBO Baseline and High-Cost Estimates of Intro 101A</b>		
<i>Dollars in thousands</i>		
	Revised Baseline	Revised High-Cost
Inspections w/o Complaint	\$9,709	\$16,170
Productivity Impact	2,337	7,956
Elevated BLL	1,163	1,443
Administration	1,160	1,204
DOE Surveys and Staff	1,084	1,084
J-51 Expansion	1,001	1,001
New Standards	939	1,991
Training	934	1,969
DOHMH Monitoring	790	790
Work Practices	618	899
Child Age	598	955
Turnover	471	735
Common Space Inspections	209	329
Relocation	96	711
311	92	112
ERP Collections	(3,213)	(4,052)
<b>TOTAL</b>	<b>\$17,989</b>	<b>\$33,296</b>
SOURCE: IBO. NOTE: Excludes costs for DPR and ACS, and non-recurring costs. In IBO's original estimate, the expected cost of Intro 101A's accelerated timeline for addressing lead hazards was estimated separately. In the revised estimate, it is incorporated into the analysis of individual provisions.		

## IV. Comparison of IBO and Administration Estimates

The two estimates remain far apart. In what follows, we discuss the sources of these differences. In some instances the differences can be explained by reliance on different assumptions, regarding, for example, the frequency with which landlords would certify correction of lead violations. Other differences arise from different interpretations of what the proposed legislation would require. Some of the differences in interpretation arise from ambiguous, unclear, or inconsistent legislative language. We discuss several of these provisions in the attachment to this report. One phrase in particular, however, had particularly far-reaching implications for the wide gap in our estimates: the phrase “to the maximum extent possible.”

***The Interpretation of “Maximum Extent Possible.”*** One key clause in the Intro 101A statement of findings and purpose (§27-2056.1) is at the root of much of the difference between IBO’s estimate and the administration’s. The Intro 101A statement of findings and purpose calls upon the city to “diligently perform its duties so that the hazardous conditions identified in this article shall be eradicated from all applicable housing *to the maximum extent possible*” (emphasis added). According to the administration, this provision requires it to interpret Intro 101A very broadly, as the courts did with Local Law 1. The administration’s approach was to estimate the legislation’s maximum potential liability to the city. Where other provisions of the bill were subject to interpretation, due to unclear or ambiguous language, the administration’s premise was that its interpretation of this clause governed.

IBO’s analysis was and remains based on a different interpretation of this clause. Our assumption was that, if Intro 101A were passed as written, the administration would make a good faith effort to meet the legislation’s provisions, including a reasonable increase in resources and level of effort, but that in practice, it would not adopt the most stringent possible interpretation if it did not believe that it had to legally or as a matter of sound public policy.

Nonetheless, it should be emphasized that the administration’s interpretation is not implausible and is not inconsistent with the city’s experience with previous lead legislation—specifically, Local Law 1. Ironically, it was in part the courts’ consistent interpretation of Local Law 1 as requiring a scope of abatement that the city believed it could not afford to enforce or perform that led eventually to the passage of Local Law 38—the legislation that Intro 101A seeks to replace. The administration is not wrong to emphasize the potential consequences of legislative language that is vague, ambiguous, inconsistent, or unclear.

### Major Differences by Agency

#### ***Department of Housing Preservation and Development***

The administration’s estimate for the cost of Intro 101A for HPD is \$91.6 million, while IBO’s estimate for HPD is \$15.0 million, including one-time costs in both cases. There are six major factors that together account for more than 80 percent of the \$76.6 million difference.

***Inclusion of Current Program Spending and One-Time Costs.*** As noted previously, the administration’s estimate for HPD includes the agency’s existing costs for its current lead programs. In contrast, IBO estimated the *incremental*, or new costs, counting only those costs

arising from the changes to current law that Intro 101A would make. The administration figure also includes certain one-time, or non-recurring, costs associated with Intro 101A. Mixing non-recurring costs with annual operating costs may lead to the impression that the on-going annual costs of implementing 101A are higher than they would be.

<b>Six Key Cost Differences Between IBO and HPD</b>	
<i>Dollars in millions</i>	
Inclusion of Current Program Spending	\$15.1
Inclusion of One Time Costs	6.6
Surface-by-Surface Inspections	26.9
Treatment of Violations Identified in Proactive Inspections	7.1
Cost of Work	5.3
ERP Recoupments	3.2
SOURCES: IBO; Department of Housing Preservation and Development.	
NOTE: These figures represent the difference between IBO's estimate and IBO's recreation of the administration's analysis.	

*Current Spending.* Using the administration's assumptions about inspector productivity, the cost of work, and other provisions, IBO estimates that \$15.1 million of the total HPD cost of \$91.6 million is current spending. The incremental cost in HPD's estimate is therefore \$76.5 million, which is more directly comparable with IBO's \$15.0 million estimate.

HPD's calculation of its costs associated with Intro 101A begins by assuming a 12 percent increase in the number of lead complaints and line of sight inspections done, to reflect the increase in the number of children covered by the bill (children under 7, as opposed to children under 6). Rather than counting only the *increase* in the number of inspections, however, the administration bases its cost estimates on the new *total* number of inspections. In effect, this methodology includes the costs for 8,606 complaint-driven problems and 4,083 line of sight problems that are already being identified and dealt with under current practice (based on 2003 experience).

*One-Time Costs.* HPD included \$7.2 million in either one-time or periodic costs in its estimate. These included items like computers, which will need to be updated periodically, and changes to the agency's existing databases, which will presumably occur only once. Because these costs would not be recurring, IBO did not include them in our estimate of the annual operating costs of the bill.

In addition, our estimate of these one-time costs was lower than HPD's. Because IBO estimates that the bill would require many fewer people to implement than estimated by the administration, the new equipment costs should be much less than \$7.2 million. IBO estimates that HPD would need 59 new inspectors and XRF machine operators and another 74 non-inspector personnel. Basic equipment—computers, phones, workstations, chairs, etc.—for these 133 people would cost about \$639,000.

The administration's estimate includes \$2.6 million for database and other software upgrades. IBO has no basis for estimating these costs, and therefore has not included them, although there will likely be some expenses associated with software changes.

***Surface-by-Surface Inspections.*** Intro 101A (§27-2056.9(a)) would require that every time an HPD inspector entered an apartment occupied a child under 7, he/she would have to “immediately inspect all painted surfaces in the dwelling unit” and “record in a report of such inspection whether the paint or other similar surface-coating material on each surface inspected is peeling or intact.” At the same time, the inspectors must “inspect the entire dwelling unit for evidence of any underlying defect and record in a report the existence or absence of such condition.” IBO's interpretation of this clause's requirements had substantially lower cost implications than HPD's.

HPD interpreted this provision to require a highly detailed inspection—possibly including moving all furniture, emptying and inspecting the insides of closets, and inspecting areas outside of the unit such as roofs and fire escapes—and documenting their findings with detailed drawings. They estimated that this would reduce inspector productivity for all code inspections in apartments occupied by a child under 7 by 80 percent. In addition, HPD estimated that the surface-by-surface inspections would lead to the detection of new violations—that is, violations that would not have been detected under the current line-of-sight approach—in 50 percent of cases. The administration estimated the cost of this provision at \$26.8 million.

IBO assumed that this provision could be satisfied with a less extensive documentation process. In a letter from Council Member Bill Perkins to IBO, he stated that the intent of this provision “is that HPD would perform ordinary and customary ‘line-of-sight’ inspections of all rooms in dwellings where children under the age of seven reside, and would check off on a pre-printed form—the type of form that HPD has previously had—the condition of each wall.”

IBO assumes that inspector productivity would fall by 20 percent, rather than 80 percent. In addition, because HPD already does line-of-sight inspections, IBO felt it was unlikely that surface-by-surface inspections would lead to the detection of violations that would not otherwise have been identified in 50 percent of apartments. IBO assumed that new violations would be found in 5 percent of units.

***Treatment of Violations Identified through Proactive Inspections.*** HPD reports that it currently closes fully 42 percent of confirmed lead violations because the Emergency Repair Program is unable to gain access to the apartment either to verify correction or to make repairs. The department interprets §27-2115(l)(4) of Intro 101A as denying it the possibility of closing violations for lack of access when the violation is identified during a pro-active inspection under §27-2056.9(a).

When HPD identifies a lead hazard, it issues a violation, and the landlord is given an opportunity to correct the condition. If the landlord fails to accurately certify correction, HPD attempts to inspect the unit again. At that point four outcomes are possible: the agency cannot get access to the unit and the case is closed; the landlord is found to have done the required work and HPD



only needs to conduct dust-wipe tests; HPD confirms that no lead is present and no further action is necessary; or HPD must perform the correction work.

In its own analysis of most provisions of Intro 101A, HPD excluded these first three outcomes from the universe of units requiring HPD correction work. In estimating the cost of the proactive inspection requirement (§17-188), HPD continued to exclude dust wipe jobs and apartments in which the paint was not lead-based, but made no allowance for units to which the Emergency Repair Program could not gain access. According to HPD, Intro 101A would not allow the agency to close cases for lack of access, because the bill prohibits the removal of a violation from its records without written evidence that the violation has been cleared (§27-2115(l)(4)).

IBO's interpretation was that, while this provision clearly states that a violation must remain on the record until there is clear proof that it has been cleared, that would not actually mean that HPD would be required to persist until it could gain access. If HPD cannot gain access to the apartment to clear the violation, it is unlikely that it will gain access to repair the violation. The violation instead will simply remain on the record, as frequently already occurs. Indeed, HPD assumes that "no access" cases would be closed for violations identified through complaints or line of sight inspections under Intro 101A, and it was not clear why violations identified through proactive inspections would be treated differently.

IBO assumed that 42 percent of cases identified through proactive inspections would also be closed for lack of access. To illustrate: IBO estimated that 4,001 violations—with lead and not corrected by the building owner—would be identified annually through the proactive inspection process. However, because the majority would not require HPD correction, HPD would be responsible for remediation work in only 1,415 apartments. In contrast, while HPD estimated that a similar number of apartments with lead violations would be identified through proactive inspections (3,424 versus IBO's 4,001) they concluded that HPD would have to do correction work in 2,089 cases. In short, our estimate of the number of HPD correction jobs, and hence the cost of this provision, is substantially less than the administration's. The difference is attributable to the cases closed—or not closed—for lack of access.

**Cost of Work.** Intro 101A defines the existence of a lead-based paint hazard in a dwelling unit as a Class C emergency violation, requiring HPD to correct the condition when the landlord fails to certify correction (§27-2056.6; §27-2115(3)). The cost of the work is dependent on the scope of the correction job. IBO's estimate use an average cost of \$3,728 per job, based on the average cost reported to the City Council by HPD, adjusted upwards by 25 percent to account for the faster timeline required under Intro 101A.

HPD's estimate is based on an average cost of \$6,285 per abatement job, based on the current average cost for a DOHMH-ordered repair. When HPD does work in response to a DOHMH order, it replaces sections of wall, removes molding, and otherwise permanently eliminates lead hazards—a much more extensive scope of work than in non-DOHMH jobs.

HPD interprets Intro 101A as routinely requiring this more extensive scope of work based on the bill's use of the term "abatement." The Intro 101A definition of abatement (§27-2065.2(1)) is

*the reduction or elimination of a lead-based paint condition or lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead based paint, or other method approved by the commissioner of health and mental hygiene...*

The U.S. Environmental Protection Agency (EPA) and Department of Housing and Urban Development (HUD) definitions of abatement specifically require permanent elimination of lead-based paint hazards through removal or encapsulation/enclosure. Intro 101A requires both the abatement of a lead hazard—presumably according to Intro 101A definition—and compliance with EPA and HUD regulations. Given that these are inconsistent, it is not clear which definition of abatement applies.

In addition, under Intro 101A, a building owner would have an affirmative duty to correct underlying conditions—leaks and other problems that can cause lead-based paint to peel (§27-2056.3). When a landlord does not correct a lead violation, Intro 101A requires HPD to do so. HPD is specifically charged with correcting violations of §27-2056.6, which reads “the existence of lead-based paint in any dwelling unit in a multiple dwelling where a child under seven years of age resides shall constitute a class C immediately hazardous violation if such paint is peeling or is on a deteriorated subsurface.” There is no mention of underlying conditions, but HPD asserts that because it is acting as a building owner when it does an Emergency Repair Program job, it is also bound by the duty to correct underlying conditions.

Based on the sponsor’s explanation of Intro 101A, IBO did not interpret the bill as requiring HPD to perform permanent abatements, nor to correct underlying conditions. IBO therefore continued to use the lower cost of work in its revised estimate. If the administration’s more stringent abatement standards were used in one-half the emergency repair jobs, the IBO estimate would rise by roughly \$1.3 million annually.

***ERP Revenue.*** When HPD makes an emergency repair, the cost of the repair is billed to the landlord, and a lien is placed on the property. HPD currently collects about 56 percent of ERP costs—including both lead and non-lead repairs—within 3 years. The original IBO estimate assumed that this collection rate holds constant, offsetting 56 percent of new ERP costs arising from the bill.

In its discussion of its assumptions, HPD noted that it “expects to collect less in ERP recoupment for Intro 101 [sic] work due to the higher cost of this work, the greater percentage of ERP that will be for lead work, and especially in pro-actively targeted buildings.” In its cost calculations, however, the administration assumes no ERP recoupment. While it appears reasonable to assume a reduction in the ERP collection rate, we saw no reason to expect that ERP collections would fall to zero. The revised IBO estimate assumes that HPD will collect 40 percent of ERP costs.

### ***Department of Health and Mental Hygiene***

The administration estimates that the cost to DOHMH of implementing Intro 101A would be \$60.5 million, while IBO’s estimate of DOHMH’s costs is \$1.4 million. The difference between

these two figures can be almost entirely attributed to differing estimates of one provision: monitoring safe work practices.

***Monitoring Safe Work Practices.*** Under Intro 101A, DOHMH is required to create rules for the safe removal of lead and to collect and record building alteration notifications (§17-186). The bill also calls for DOHMH to develop rules requiring the department to respond to complaints about unsafe lead-based paint work practices (§17-187).

In estimating the cost of these provisions, the administration assumed DOHMH would receive 145,000 notifications a year for building alterations. In addition, the department assumed it would receive nearly one million notifications each year for the routine repainting of dwelling units required every three years under current local law. DOHMH assumed that each year it would inspect all 145,000 units for which building alteration notifications had been received and half of all the units being repainted annually. Furthermore, DOHMH estimated that violations would be found in 10 percent of the inspected units, and that these violations would be re-inspected to ensure compliance.

Currently, DOHMH receives notification whenever lead-based paint abatement work is undertaken in response to the Commissioner's order to abate or whenever HPD performs lead-based paint abatement work after the landlord has failed to do so. In both of these scenarios, a lead-based paint hazard has been positively identified in the unit. DOHMH subsequently inspects each of these units to ensure that the abatement work is conducted according to federal regulations.

In its cost estimate of Intro 101A, DOHMH treated the 145,000 new general building alteration notifications as the functional equivalent of the notifications the department currently receives for units where a lead poisoned child has already been identified. As a result, DOHMH assumed that the department would have to inspect 100 percent of the 145,000 units for which building alteration notifications were filed.

IBO's estimate differed in two primary ways from that of DOHMH. First, we did not include the almost one million units with paint jobs in the universe of notifications and inspections. The bill requires notification only "if at least two existing windows containing lead-based paint are to be replaced, or if at least 50 percent of the surface area wall, ceiling, floor, or other structure containing lead-based paint is to be demolished or removed, provided that such surface is at least 200 square feet (§17-186(b))." IBO felt that this requirement would not apply to routine repainting jobs, and in fact would generally require a building alteration permit. Second, Intro 101A requires that DOHMH respond to complaints about work practices, but does not mandate any proactive work site inspections.

Like DOHMH, IBO assumed 145,000 rehabilitation notifications would be received by the department annually. However, IBO felt that Intro 101A did not require DOHMH to inspect each of these units, as general building alteration notifications are substantively different from notifications of actual lead-based paint abatement work. IBO's estimate assumed that inspections of these 145,000 units would be complaint-driven. IBO assumed a 1 percent complaint rate in its estimate, or 1,450 complaints annually. This is vastly more than the 107

complaints about work practices that DOHMH received in fiscal year 2002, according to the 2002 Mayor's Management Report. Responding only to complaints significantly reduces the number of work site inspections that DOHMH would conduct under Intro 101A.

### ***Other Agencies***

There are three other agencies that would have new responsibilities under Intro 101A: the Administration for Children's Services (ACS), the Department of Parks and Recreation (DPR), and the Department of Education (DOE).

IBO did not estimate the fiscal impact of Intro 101A for these agencies because we did not have the data necessary to do so. The administration did estimate costs for these agencies. We discuss below the assumptions and methods used by the administration and our evaluation of them.

***Department of Education.*** Intro 101A would place a number of new requirements on DOE. It would mandate that the agency create a worksite plan for any lead-based paint project with a cost greater than \$2,500 (§17-812). The bill would also require semi-annual inspections of schools (§17-815), remediation of interior and exterior window surfaces (§17-813), and testing and remediation of soil hazards (§17-816).

*Second-grade classrooms.* The administration estimated that \$22.0 million would be needed to abate lead hazards in second-grade classrooms, which they believe would be required because Intro 101A raises the age of at-risk children to under seven (from under 6). However, the language of the bill appears to specifically exclude second-grade classrooms: "There shall be no peeling lead-based paint in any portion of any school facility where children in special education, pre-kindergarten, kindergarten, and first grade regularly spend time" (§17-813(a)). Second grade classrooms are not included in this list; moreover, most children are 7 years old—not under 7—when they reach second grade. We therefore concluded that remediation of second-grade classrooms was not required.

*Window surfaces.* Another major DOE cost is the abatement of all interior and exterior window surfaces in education, pre-kindergarten, kindergarten, and first grade classrooms. According to the administration, this will cost \$10.6 million. This includes approximately \$940,000 to test 890 schools with classrooms covered by this provision at an average of \$1,055 per school. The administration expects that 40 percent of 10,115 special education, pre-kindergarten, kindergarten, and first grade classrooms will need remediation, at an estimated \$2,390 per room, for a total correction cost of \$9.7 million. Intro 101A would give DOE until September 1, 2006 to complete this work.

DOE has already stripped all paint from the interior of windows in 4,488 of the 10,115 total classrooms through its existing lead abatement program. The administration assumes that in order to comply with Intro 101A, it would have to remove all the windows—including those in rooms that have already been treated—and strip the paint from all window surfaces. It is not clear that this broad scope of work would be necessary in rooms that have already been abated.

*Work site plans.* The administration's estimate for the cost of the work site plan assumes that all jobs will require such a plan, because the existing average cost for DOE lead work is well above

\$2,500. The cost assumes that 5,627 classrooms (10,115 less the 4,488 already abated) will require a plan, at an average cost of \$465, for a total cost of \$2.6 million. Again, this cost would be a one-time cost incurred over a period of 3 years (assuming enactment of the bill this fall).

*Soil abatement.* Finally, the administration's estimate for DOE assumes that 10 percent of schools will require soil abatement, and that the average cost of such work will be \$2,640 per school. With survey costs of \$630 per school, the total cost for this provision, according to the administration, is \$795,660.

IBO has accepted DOE's analysis of its non-recurring costs, with the exception of the estimate for the second grade classrooms. Excluding the \$22 million for second grade classrooms, the three-year cost for the DOE remediation work required under Intro 101A would be \$14.3 million. IBO also accepted DOE's estimate of \$1.1 million for its annual costs.

DOE currently has a budget for lead paint work of \$2.5 million annually. While this includes testing of water, which would presumably need to continue if Intro 101A was passed, some of the new work required by Intro 101A would likely be included in the current budget.

*Administration for Children's Services.* Intro 101A would require semi-annual surveys of daycare centers (§17-824) and remediation of soil-lead hazards (§17-825). Intro 101A would give ACS two years to complete the soil remediation.

According to ACS, there are 585 city-owned day care centers. The administration assumed that all 585 would require soil abatement, at an average cost of \$25,000 per abatement job. It seems unlikely that 100 percent of day care centers actually have lead-contaminated soil or lead paint. We did not, however, possess the information necessary to estimate how many centers might have lead, but DOHMH estimates that 15 percent of day care centers were built after 1978 and may therefore be presumed not to have lead-based paint. Furthermore, it is difficult to estimate the cost of soil abatement, as it depends on a variety of site-specific factors such as the type of soil and the concentration of lead. The ACS estimate of \$25,000 per site is roughly 10 times that of DOE. Similarly, a Brown University Center for Environmental Studies report found that soil abatement costs in Providence, RI and Boston ranged from \$3,700 to \$10,000 per job.<sup>1</sup>

If 85 percent of the 585 daycare centers required correction work, and the average remediation cost was \$10,000, the total cost for remediation work in day care centers would be \$4.9 million.

The remaining \$4.3 million in ACS costs in the administration's estimate reflect the cost of completing required surveys of day care centers. Again, the administration assumed that all centers would have to be surveyed, but it is not clear that post-1978 centers need to be included in the survey requirement. Like the remediation costs, the bulk of the survey costs are one-time, although Intro 101A would require some ongoing monitoring of daycare sites.

*Department of Parks and Recreation.* Intro 101A would require replacement of all pre-1978 playground equipment by September 1, 2008 (§17-189(c)). In addition, the bill mandates that there shall be no lead hazards on any playground equipment or fencing (§17-189(d)).

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<sup>1</sup> Livable Providence 2000, "Soil and Lead." [http://www.brown.edu/Research/EnvStudies\\_Theses/summit/](http://www.brown.edu/Research/EnvStudies_Theses/summit/)

According to DPR, there are 950 playgrounds in New York City. The administration assumed that 20 percent would require remediation at a cost of \$100,000 per job, for a total correction cost of \$19 million.

However, DPR is just beginning to compile a comprehensive database of the city's playgrounds. At this time, they cannot report when playgrounds were built or last upgraded. As a result, it is impossible to accurately estimate how many playgrounds will need lead remediation work, or how extensive that work will have to be.

Nor is it clear that \$100,000 per playground is the correct figure. The Consumer Product Safety Commission released a report in 1996 reviewing playground lead hazards. While this report was based on an extremely limited survey of cities' playgrounds, and costs may well be higher in New York City, the range of remediation costs was significantly less than \$100,000.

<b>Cost of Remediation for a Playground Containing Lead Paint</b>	
Encapsulation	\$3,502
Replacement	13,500
Stripping and Repainting	15,283
Sources: IBO; Consumer Product Safety Commission: "Questions and Answers: Lead Paint on Public Playground Equipment." NOTE: Adjusted from 1996 dollars. Assumes 10 pieces of equipment per playground.	

The remaining \$1 million in DPR costs is for a survey of playgrounds and was estimated based on assumption of \$200,000 per borough.

### **Other Differences**

There are a number of other minor differences between the IBO and administration estimates, primarily concerning HPD, that contribute to the remaining difference between the estimates.

**Legal Definition of Lead.** Intro 101A changes the definition of lead from 1.0 milligram per square centimeter to 0.7 mg/cm<sup>2</sup>. IBO had no basis for estimating the impact of this technical change, and therefore relied on HPD verbal reports that it would increase the number of positive lead cases by 10 percent, or from 24 percent to 26.4 percent.

The administration analysis, used HPD data that showed that 10 percent of cases that currently test negative for lead fall between 0.6 and 1.0 mg/cm<sup>2</sup>. In addition, the HPD analysis reported a higher percentage of positive lead tests—28 percent rather than 24 percent. The result is a 25 percent increase in positive lead tests, or 35 percent of violations testing positive for lead.

If the currently negative XRF readings are evenly distributed between 0.6 and 1.0 mg/cm<sup>2</sup>, then only three-quarters of these readings would actually be positive under Intro 101A. This would translate to 33 percent of violations testing positive. The revised IBO estimate assumes that 33 percent of cases test positive for lead, while the administration uses 35 percent.

**Turnover Violations.** Intro 101A would require landlords to ensure that units meet certain maintenance standards upon turnover. Failure to do so is a Class C violation, but Intro 101A does not explicitly require HPD to correct these violations if the landlord does not. As a result, IBO did not include any repair costs for this provision.

HPD, however, asserted that because these violations are Class C, the agency must do correction work. This adds \$3.2 million to the total repair cost estimated by the administration.

Intro 101A handles common space violations similarly to turnover violations—they are Class C, but HPD has no correction responsibility. Although HPD assumes correction costs for turnover violations, the administration adds nothing for correction of common space violations.

**Training Costs.** The administration estimate included funding for training costs for both HPD and DOHMH inspectors, totaling \$7.4 million. This total includes both initial EPA certification and ongoing training.

The HPD portion includes more than \$2 million to hire 40 full time trainers to provide ongoing training to field staff who have already undergone EPA certification, as well as training for private building owners, contractors, and superintendents.

The DOHMH training figure included EPA certification for all the inspectors necessary to do work site inspections at half of all units painted annually. As noted above, IBO assumes that the universe of units for work site inspection is substantially smaller, and as a result, DOHMH will need many fewer new inspectors. All current DOHMH inspectors are EPA certified, so training would be necessary only for the limited number of new hires. Unlike HPD, DOHMH did not plan to hire full-time trainers to supplement the certification classes.

The IBO revised estimate projects that HPD and DOHMH would collectively need to hire 75 new field personnel, and that these individuals, plus the existing 300 HPD code inspectors would need to receive EPA training. According to the July 2002 Code of Federal Regulations, EPA inspector training courses are \$2,500 per person, for a total training cost of just over \$900,000. These initial training costs are one-time, but because Intro 101A and the EPA require recertification, IBO has included training costs in the list of annual expenses. IBO assumed that the city was not responsible for training the private sector, and therefore did not include full-time trainers in its estimate.

**Landlord Certification.** According to HPD, 23 percent of landlords who are currently issued violations accurately certify that they have corrected the violation within the required timeframe. Because Intro 101A tightens work standards and shortens timeframes, HPD assumed that only 10 percent of landlords would certify correction on time.

In its revised estimate, IBO also assumed that owner compliance would fall, but to 17 percent (the midpoint between the 23 percent that currently certify and the 10 percent which HPD assumed would certify under Intro 101A). Greater owner compliance means fewer jobs for HPD, and thus a lower cost.

***Number of Units with Children.*** The administration's analysis assumes that 19 percent of apartments covered under the law have a child under the age of 7 present. IBO, based on an analysis of the 1999 Housing Vacancy Survey (HVS), found that 17.6 percent of pre-1960, privately-owned apartments in multi-family buildings were occupied by a child under 7. This is a slight increase from the percentage used in IBO's original analysis. The 2002 HVS, which was recalibrated to reflect results of the 2000 census, actually yields a smaller universe of units with children.

***Other Administrative Costs.*** The administration's estimate of HPD's costs under Intro 101A includes several administrative provisions that IBO did not accept or did not have enough data to assess. In particular, HPD states it would need 9 full-time people to complete the annual report to the City Council required in Intro 101A. The salaries for these new personnel, plus equipment costs and database modifications, total almost \$800,000.

HPD also feels it would need to add 12 people to its Housing Education Services program, to teach building owners and maintenance workers about changes to the law. Their estimated cost for these personnel is more than \$600,000.

***J-51 Tax Benefits.*** The administration's estimate of the cost of the expanded J-51 tax benefits was \$2.5 million, while IBO's revised estimate was about \$1 million.

The administration assumed that all the building owners receiving J-51 tax benefits for lead work would do both an inspection and a risk assessment. IBO, on the other hand, assumed that building owners would do an inspection *or* a risk assessment, which accounts for about \$300,000 of the difference.

Second, the administration assumed that 25 percent of building owners that did inspection/risk assessment work would then do abatement work. IBO estimated that 12.1 percent of apartments inspected would have both peeling paint and lead, and that all of these building owners would do abatement, which accounted for close to \$600,000 of the difference. The remainder of the difference was attributable to rounding.

***Miscellaneous Spreadsheet Errors.*** IBO identified spreadsheet errors in the administration's analysis of HPD's costs under Intro 101A, which we estimate raise the administration's figure by about \$9.5 million. The actual difference between IBO and the administration's estimate of HPD's recurring costs is therefore \$60.6 million.



## Interpretation Issues

Many of the differences between the IBO and administration estimates of the cost of Intro 101A reflect conflicting interpretations of the bill's language. There are several provisions of the bill that are subject to a range of plausible interpretations. These ambiguities make it difficult to estimate the cost of the bill, but more importantly, will make it difficult to implement the bill if it passes.

IBO identified seven provisions where our interpretation differed markedly from the administration's and that most contributed to the wide disparity in cost estimates between IBO and the administration.

***“Maximum Extent Possible.”*** The Intro 101A statements of findings and purpose (§2056.1; §17-810) calls upon the city to eradicate lead hazards “to the maximum extent possible.” HPD has argued that this language would require the city to interpret the legislation very broadly. It may well open the door for future litigation about the implications of this clause for the required scope of agency action. HPD has based its own cost estimates on a literal interpretation of this clause. For example, at one point the department assumed it would have to inspect 100 percent of units identified by DOHMH as “at-risk” annually (although it subsequently adopted IBO's assumptions on the number of at-risk units to inspect each year). In contrast, IBO assumed that city departments would retain substantial discretion in the implementation of the law, and that affordability was one factor the city could take into account. Given the city's previous experience with Local Law 1, however, there is a risk that subsequent judicial rulings could impose a broader and more costly interpretation.

***Definition of “Abatement.”*** Most legal and colloquial definitions of abatement limit the term to permanent removal or encapsulation of lead-based paint. Intro 101A, on the other hand, includes “reduction... of a lead-based paint condition” in its definition of abatement (§27-2056.2(1)). Because it is not clear how the term abatement is being used, there is significant uncertainty as to the scope of work required by Intro 101A. HPD has assumed that all emergency repair jobs must meet the more stringent definition of abatement.

In cases where definitions conflict with one another, Intro 101A calls for use of “the term that is most protective of public health.” It is not clear in this instance which definition is most protective of public health, however, since removing intact lead-based paint can create dust and other health hazards.

***Responsibility for Underlying Defects.*** Intro 101A requires owners to correct underlying defects, such as leaks, as part of lead abatements (§27-2056.3). HPD asserts that, when it is performing an emergency repair, it is acting in the landlord's stead, and therefore is obliged to perform the same scope of work required of the private owner. IBO's assumption was that HPD was not required to correct underlying defects, but HPD's is a plausible interpretation that in conjunction with the abatement definition could add \$2.7 million per year to IBO's estimate.

***Surface-by-Surface Inspections.*** Intro 101A mandates that when an inspector enters an apartment in which a child under the age of seven lives, he/she shall “immediately inspect all

painted surfaces in the dwelling unit and record in a report of such inspection whether the paint or other similar surface-coating material on each surface is peeling or intact... (§27-2056.9(a)). According to HPD, this provision would require a complex, geographically coded map of each room, with precise measurements and locations of any peeling paint. HPD believes that to do less would risk significant liability for the city.

Alternatively, we assumed that HPD could meet the requirements of this section by using a form where inspectors checked off “peeling” or “intact” for each surface, or even by noting at the end of an inspection report that all surfaces not otherwise mentioned were intact.

The result is that HPD believes that inspector productivity will be vastly reduced (by 80 percent) for all inspections performed where a child under the age of 7 lives in the dwelling unit, at a cost of \$26 million annually. IBO assumed a 20 percent reduction in inspector productivity from having to perform a more detailed and thorough inspection, but without the same detailed reporting requirements HPD assumed.

***HPD Responsibility for Correction of Turnover and Common Space Violations.*** Under Intro 101A, lead hazards in common spaces and failure to meet specific clean-up standards upon turnover are both Class C immediately hazardous violations (§27-2056.7; §27-2056.8).

The legislation specifies the department’s responsibilities for correction only with respect to dwelling units (§27-2115(l)(3)). It is not clear, however, if other sections of the Housing Maintenance Code would require the agency to make emergency repairs of turnover and common space violations as well. HPD believes that the department would be required to do so; IBO assumed it would not.

***Proactive Inspections.*** Sec. 17-188 would require DOHMH to develop a plan for HPD inspectors to inspect units where children are at risk of lead poisoning, and for HPD to provide the inspectors that DOHMH determines to be necessary, without receipt of a complaint. The bill provides some guidance but leaves the determination of the universe of at-risk units to the discretion of DOHMH. Similarly, the bill does not specify any targets or timeframe for inspection, which IBO presumed was also left to the discretion of DOHMH.

Although in its current estimate, HPD adopted IBO’s assumption that the department would visit approximately 45,000 units annually, HPD has argued in its testimony and in discussions with IBO that it would have to inspect 100 percent of units identified by DOHMH as at-risk each year, on the basis of the “maximum extent possible” clause.<sup>2</sup> While number of “at-risk” units to

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<sup>2</sup> In their testimony at the June 23<sup>rd</sup>, 2003 hearing on Intro 101A, the administration criticized IBO’s assumptions regarding the percentage of units inspected pro-actively on the grounds that it would result in inspection of each at-risk unit in effect only once every 20 years. IBO assumed that HPD would visit more than 44,000 units each year through the proactive inspection process, of which about 7,000 would have a child. Forty-four thousand is 5 percent of the number of dwelling units—including one and two family homes—in zip codes where the rate of children with elevated blood-lead-levels was greater than 25 per 1,000 children tested in 2000.

In its annual report on lead poisoning for 2001, DOHMH noted that six neighborhoods—Bedford Stuyvesant/Crown Heights, East New York, Williamsburg/Bushwick, East Flatbush/Flatbush, Jamaica, and Southwest Queens—have had the highest poisoning rates since 1995. Forty-four thousand units represents about 9

be inspected annually is not driving the difference between the IBO and administration estimates, HPD continues to point to this clause as an area for concern.

***Inclusion of Second Grade Classrooms.*** Sec. 17-813 of Intro 101A addresses abatement of lead-based paint in “any portion of any school facility where children in special education, pre-kindergarten, kindergarten, or first grade regularly spend time.” With the exception of special education classrooms, these are generally the rooms occupied by children under the age of 7. The Mayor’s Office of Management and Budget included costs of abating lead-based paint in second-grade classrooms as well, on the grounds that Intro 101A raises the age of at-risk children to under the age of 7, which could include some second-graders. The Department of Education estimated the cost of remediating second-grade classrooms at \$22 million. IBO took the language of the section to be determinative.

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percent of the units in these six neighborhoods, and 17 percent of the units in the highest-risk sub-areas within the neighborhoods.

In short, the frequency of inspection will depend on the size of the universe of units defined as “at risk” by DOHMH. Moreover, all residents of multi-family buildings are now required to return a form annually to their landlords indicating whether or not a child under age 6 resides in the unit. Although incorporating these forms into city databases represents a logistical hurdle, these records could potentially be used to exclude a certain percentage of units in at-risk neighborhoods—whose occupants have reported no child present—from the search, allowing HPD inspectors to concentrate on only those with children.