



THE CITY OF NEW YORK
INDEPENDENT BUDGET OFFICE

110 WILLIAM STREET, 14TH FLOOR
NEW YORK, NEW YORK 10038
(212) 442-0632 • FAX (212) 442-0350 • EMAIL: iboenews@ibo.nyc.ny.us
<http://www.ibo.nyc.ny.us>

Testimony of George Sweeting
Deputy Director, New York City Independent Budget Office
To the New York City Council Committee on Contracts
On Intro 251-A, Fair Wages for New Yorkers Act

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Good afternoon Chair Mealy and members of the Contracts Committee. My name is George Sweeting and I am Deputy Director of the New York City Independent Budget Office. Thank you for the opportunity to offer testimony regarding Intro 251-A, the “Fair Wages for New Yorkers Act.”

IBO has estimated the number of projects under various city economic development programs which would likely be subject to the living wage provision. Our analysis suggests that 410 new 421-a projects would potentially qualify each year. There would be another 20 new Economic Development Corporation (EDC) discretionary benefit projects each year that would likely qualify, as well as perhaps 20 projects per year qualifying for an employment relocation credit.

One program that we did not consider as a source for projects that might be subject to the living wage provision is the city’s Industrial and Commercial Abatement Program (ICAP) because it is our understanding that existing state law would not allow the city to change the eligibility rules for this program. For this reason, we were somewhat surprised to see that the study commissioned by EDC used ICAP as the basis for their analysis of the impact of the living wage proposal on real estate development.

The city’s property tax is set in state law and therefore property tax exemptions must also be established by state law. Unless specifically stated, the city is not authorized to add additional requirements, such as a living wage provision, beyond those spelled out in the state law establishing the specific exemption program. As a result, based on our reading of the law, recipients of the Industrial and Commercial Abatement Program, the successor of the Industrial and Commercial Incentive Program and largest single property tax expenditure for economic development, would not be covered by the law.

This legislation would require beneficiaries of certain types of financial assistance to pay a so-called living wage to employees. Financial assistance is defined as assistance provided by the city or a city economic development entity to support property development, economic development, job retention or similar purposes. Only projects where the financial assistance

exceeds \$100,000 over the period when the benefits are being received would be subject to the legislation. Beneficiaries of financial assistance would include companies receiving the assistance, tenants or leaseholders of property improved by financial assistance, individuals or companies who purchase real property developed with financial assistance, and contractors and subcontractors working for a financial assistance recipient for 30 days or more. The legislation provides exemptions for small businesses (revenues under \$1 million a year), not-for-profits, affordable housing projects where at least 75 percent of units are affordable to those making 125 percent of the Area Median Income, and construction and building services contractors. The legislation also includes reporting requirements and compliance procedures, although I will not be discussing them in my testimony today.

Beneficiaries Under 421-a. In the case of the city’s major property tax exemption for residential development—the 421-a exemption—we have assumed that existing the statute may allow legislation such as Intro 251-A to add eligibility criteria for the exemption. If projects developed under 421-a were covered by the living wage provision, IBO expects about 410 new projects to qualify annually, about 58 percent of all new 421-a exemptions in recent years. Of the 421-a projects that would likely be covered, IBO expects 50 percent to be in Brooklyn, 30 percent in Queens, 10 percent each in the Bronx and Manhattan, and less than 1 percent in Staten Island.

IBO based these estimates on 421-a exemptions granted between 2002 and 2011 and used the first year tax expenditure times the length of the benefit, adjusting for the phase out, as a proxy for lifetime benefit. This estimate likely understates the lifetime tax expenditure, and therefore the number of projects that would be covered by the legislation, as the tax expenditure generally increases over time with changes in assessments and tax rates. Furthermore, our estimate is also likely to understate the impact because the current property tax records understate the number of exemptions granted in recent years due to the time necessary to process 421-a applications. On the other hand, our estimate may overstate the number of projects that would be covered because some 421-a projects we included are likely to turn out to be exempt from coverage if the sponsor is a nonprofit developer, or if the project meets the criteria for the 75 percent affordability exclusion. Even within buildings that would be subject to Intro 251-A, there will likely be few direct building employees affected under this legislation because many are already covered by prevailing wage requirements.

Residential developments with ground floor retail space would be the most likely to see a direct impact from the proposed legislation, as employees of the stores would qualify for the living wage, providing they were not exempt due to the small business provision.

The city has additional housing development programs that involve benefits that would be subject to this legislation, but many of the beneficiaries would likely be exempt either because of the affordable housing threshold or because the developer is a not-for-profit. IBO also expects that many beneficiaries receiving financing for affordable housing through programs administered by the Department of Housing Preservation and Development or the Housing Development Corporation would also be exempt because of the affordable housing and nonprofit exclusions.

Economic Development Corporation Beneficiaries. A second major group of beneficiaries to be covered under Intro 251-A are companies receiving discretionary economic development assistance through the New York City Economic Development Corporation, the Industrial Development Agency, and the Capital Resource Corporation, as well as some smaller business incentive programs operated by the city.

Using the Local Law 48 Annual Investment Projects Report for fiscal year 2009, IBO looked at new beneficiaries from 2002 to 2009 that would have been subject to the living wage provision because the present value of total assistance exceeded \$100,000, and excluded projects where the beneficiary was receiving financing for non-profit organizations. We are using the present value of the benefits because it is readily available, but it may not be the best estimate of eligibility for a couple of reasons. First, the legislation does not specify if the total assistance over the life of the project is to be the sum of the projected annual benefit amounts measured in nominal dollars or the present value of the sum of the benefits. IBO used the latter because of its availability; the former would increase the number of covered beneficiaries. Secondly, the legislation does not specify how the benefit from bonds is to be measured: is it the face value of the bonds, or is it based on the projected savings to the beneficiary, or is it based on the combined cost to the city, state, and federal governments? The EDC report that IBO based its analysis on used the projected savings to the beneficiary.

IBO estimates that about 20 new beneficiaries each year would be subject to the provisions of Intro 251-A as a result of receiving financial assistance through EDC. The total cumulative present value of the benefits for each year's set of new projects would be about \$64 million a year, with each project receiving an average of \$3.1 million in benefits.

Of the 20 new beneficiaries, IBO expects 39 percent would be in Queens, 27 percent in Brooklyn, 18 percent in Manhattan, 13 percent in the Bronx, and about 3 percent in Staten Island. On average, the present value of the assistance would be roughly \$6.1 million in Manhattan, \$3.8 million in the Bronx, \$3.0 million in Queens, \$1.2 million in Brooklyn, and around \$1.0 million in Staten Island.

The total and average new benefits would vary from year to year, based on the mix of projects being supported. For example, in 2003, the city supported 13 projects that would be covered under Intro 251-A for a cumulative present value of \$121.4 million, or about \$9.3 million per project. In 2007, the city supported 32 projects likely to be covered, with a cumulative present value of \$130.3 million, or about \$4.1 million per project.

Most EDC projects in programs targeted at the manufacturing, industrial and trade sectors would be covered by the legislation. A significant share, about 80 percent, of the projects that would likely be covered would be manufacturing and small industry projects in Brooklyn, Queens, and the Bronx. These projects tend to receive smaller benefit packages than those in the Commercial Incentive Program projects that are concentrated in Manhattan, but still exceed the \$100,000 threshold of cumulative benefit. The average cumulative benefit (present value) was \$1.4 million for the Industrial Incentive program, \$1.1 million for the Manufacturing Facilities Bond program, and about \$400,000 for the Small Industry Incentives program, compared with \$16.8 million for the Commercial Incentive program. The most common industry reported is

manufacturing, with an average of eight beneficiaries a year that would be covered by the legislation, followed by about an average of four beneficiaries a year in wholesale trade.

Other Business Tax Assistance. The city has a variety of smaller programs that provide benefits, often against income taxes, commercial rent tax, or utility payments, for companies relocating to or staying within the city. One such program, the Relocation and Employment Assistance Program (REAP) offers a \$3,000 refundable credit per year (for up to five years) against business income taxes per employee relocated. IBO estimated that the city grants REAP benefits to about 20 new companies each year and we assume that all of them would be subject to the new legislation. It is unknown how many of the employees of such firms already earn more than the living wage, although it seems reasonable to assume that at least some do.

Thank you again for the opportunity to testify. I would be happy to try to answer any questions you may have.