

**TESTIMONY OPPOSING NYC CITY COUNCIL INTRO. 650-A,
A LOCAL LAW TO AMEND THE ADMINISTRATIVE CODE OF
THE CITY OF NEW YORK, IN RELATION TO BIOLOGICAL,
CHEMICAL AND RADIOLOGICAL DETECTORS (3/28/08 Draft)**

**by David Kotelchuck,
PROFESSIONAL STAFF CONGRESS OF THE CITY UNIVERSITY
OF NEW YORK, AFT, AFL-CIO**

**Presented on April 29, 2008 at a Hearing of the New York City Council
Committee on Public Safety**

Chairman Peter Vallone, Jr. and Committee members:

My name is David Kotelchuck. I am the Co-Chairperson of the Health and Safety Committee of the Professional Staff Congress (PSC) of the City University of New York (CUNY), and Prof. Emeritus at Hunter College, where I taught occupational and environmental public health for over two decades. PSC-CUNY represents 20,000 faculty and staff members who teach, counsel, and assist students and administer operations on the 19 campuses of CUNY. Our union is member of the New York State United Teachers (NYSUT) and is a local (# 2334) of the American Federation of Teachers (AFT).

I speak to you today on behalf of the members of our Union to tell you that we strongly oppose New York City Council Intro 650-A (Draft Version dated 3/28/08) and urge members of the Public Safety Committee to reject this bill.

Since the first public hearing on this bill before the Public Safety Committee on January 9, members of this Committee, City Council staff members and representatives of the New York City Police Department have met those of us who testified against the original version of this bill and have amended the bill substantially to seek to meet our objections. These revisions have improved the bill, and our Union thanks the Councilmembers, their staff and the Police Department for their efforts.

However despite these efforts the proposed changes present an extensive patchwork on a suit made of poor quality cloth – that is, a patchwork approach to change in a bill whose fundamental approach is ill-conceived. The basic premise of the bill is stated clearly in the Legislative Purposes (Section 1): “While the proliferation of these defensive capabilities may represent a positive development in furthering public safety, such instruments should be deployed only with the knowledge of the Police Department and other appropriate City Agencies.” [Our emphasis –DK] Then in the first sentence after the legislative purpose and definitions, the bill states unequivocally “It shall be unlawful for any person to possess or deploy a biological, chemical or radiological detector in the city of New York unless such person holds a valid permit therefor.” (§10-802(a))

Then the newly revised version of Intro 650 goes on to relax these requirements for registration and licensure for many groups of complainants. But at heart this bill would represent a massive increase in police power in this City, a major attempt to put all environmental and occupational measurements under government control through the City's police powers, whether or not these have anything to do with the detection of terrorism.

Public health is inextricably involved both with surveillance and communication – surveillance of diseases and chemical, biological and radiological exposures in our air, waters and soils, and communication of these findings to the public so that informed public policy can be made to prevent or control threats to the public's health and safety. Thus exposure measurements and their communication are essential elements of practice and speech in our field, and these are precisely the elements which Intro 650 seeks to restrict.

No matter how many circumstances of such speech are now exempted from the provisions of this bill, at its heart Intro 650 makes both the "possession and deployment" of detection devices a crime in New York City. Violations would then be made a misdemeanor, with violators subject to "a fine of not more than one thousand dollars or imprisonment of not more than 20 days or both". (§10-808(a)) [Please note that while much is made of the change in this draft that an alleged violator may not be arrested summarily, but rather will be issued an appearance ticket, this does not vitiate the serious penalties of fine and/or jail if the alleged violators are later found guilty.] Furthermore the last sentence of Intro 650 (§3) requires disposal of non-approved equipment. Indeed the proposed Police Rules established to implement Intro 650 explicitly authorize the Police Commissioner to confiscate any biological, chemical or radiological detector, whether permitted or not, if continued possession and/or deployment "may constitute a threat to public safety or exacerbate a condition of public alarm". (Proposed NYPD Rules §20-11 "Surrender of Possession or Discontinuance of Deployment") Together these provisions will have a chilling effect on those who routinely monitor environmental and occupational exposures in New York City, especially if confronted by a local police officer, who is concerned about possible terrorism and may only have a rudimentary knowledge of environmental measurement devices.

This bill with its sweeping assertion of police powers is presented without one single report of false alarm related to possible terrorism presented by the Police Department or other City representatives at the January 9 public hearings or in a host of private meetings thereafter.

Intro 650 simply takes the wrong approach, registering and regulating all measuring equipment and then exempting particular equipment and particular persons who have raised objections and demonstrated legitimate purposes. If Police Department representatives have identified a potential problem of "excessive false alarms and unwarranted anxiety" (§1 "Legislative purposes"), it is incumbent upon Department and/or the City Council representatives carefully to delineate what measuring equipment might lead to false alarms, and affirmatively consider registration and possible licensure

of these. The City Council may wish to do this by establishing a panel composed of city and state authorities with experience and competence in using such equipment, professionals and academics in the field, representatives of relevant City Council committees and some community organization representatives.

In a larger context, the New York City Police Department has been mired for many years now in major public controversies over its members' use of deadly force, police arrests at political demonstrations, police harassment of city bicyclists, and the role and countervailing powers of the City's Civilian Complaint Review Board. With such issues still open wounds on the body politic, legislation by the City Council greatly to expand Police Department powers, even in the name of the fight against terrorism, is unwarranted. Passage of such legislation will meet widespread approbation, as it already has among local representatives of many national professional, labor and civil liberties groups.

Please vote to reject Intro 650-A, and then let's approach the problems identified in this bill in a responsible way by carefully-considered, narrowly-targeted legislation.

Thank you.