12

Third Extraordinary Session

I N S E N A T E

December 3, 2010

Introduced by C0MMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the energy law and the executive law, in relation to updating the state energy conservation construction code to address the requirements of the American Recovery and Reinvestment Act of 2009

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 11-102 of the energy law, as added by chapter 397 of the laws of 1978, subdivision 3 as amended, subdivisions 4, 5, 6 and 7 as renumbered and subdivisions 8 and 9 as added by chapter 516 of the laws of 1984, is amended to read as follows:

S 11-102. Definitions. For the purposes of this article, the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

1. "ADDITION." AN EXTENSION OR INCREASE IN THE CONDITIONED SPACE FLOOR AREA OR HEIGHT OF ANY BUILDING.

2. "ALTERATION." ANY RENOVATION, RECONSTRUCTION OR RENEWAL OF OR TO AN EXISTING BUILDING, OR PORTION THEREOF, OTHER THAN AN ADDITION. THE WORD "ALTERATION" SHALL INCLUDE ANY CHANGE IN EQUIPMENT THAT INVOLVES AN EXTENSION, ADDITION OR CHANGE TO THE ARRANGEMENT, TYPE OR PURPOSE OF THE ORIGINAL INSTALLATION.

3. "ASHRAE 90.1-2007." ANSI/ASHRAE/IESNA STANDARD 90.1-2007, ENTITLED "ENERGY STANDARDS FOR BUILDINGS EXCEPT LOW-RISE RESIDENTIAL BUILDINGS," PUBLISHED BY AMERICAN SOCIETY OF HEATING, REFRIGERATING AND AIR-CONDITIONING ENGINEERS, INC.

4. "Building." Any [combination of materials, whether portable or fixed, having a roof to form a structure which is heated or cooled in the normal course affording shelter for persons, animals or property, including any equipment therein, provided however that the term "building" shall not include any structure which is heated and cooled without

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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the use of electricity or fossil fuel. The word "building" shall include "factory manufactured homes" as defined in section four hundred-c of article eighteen-B of the executive law] STRUCTURE USED OR INTENDED FOR SUPPORTING OR SHELTERING ANY USE OR OCCUPANCY OR FOR AFFORDING SHELTER TO PERSONS, ANIMALS OR PROPERTY, INCLUDING ANY EQUIPMENT THEREIN.

[2.] 5. "Code." The state energy conservation construction code provided for in this article, or any portion thereof, any modification of or amendments thereto.

[3. "Construction." The construction of a new building, or any addition to, or substantial renovation of, an existing building.

4.] 6. "COMMERCIAL BUILDING." ANY BUILDING THAT IS NOT A RESIDENTIAL BUILDING.

7. "CONDITIONED SPACE." AN AREA OR ROOM WHICH IS WITHIN A BUILDING AND WHICH IS (A) BEING HEATED OR COOLED, (B) CONTAINS UNINSULATED DUCTS, OR (C) HAS A FIXED OPENING DIRECTLY INTO AN ADJACENT CONDITIONED SPACE.

8. "Equipment." Plumbing, heating, electrical, LIGHTING, insulating, ventilating, air conditioning, and refrigerating equipment, elevators, escalators, and other mechanical additions or installations but does not include any items constituting an industrial or commercial process.

[5.] 9. "HISTORIC BUILDING." ANY BUILDING THAT IS (A) LISTED ON THE NATIONAL REGISTER OF HISTORIC PLACES OR ON THE STATE REGISTER OF HISTORIC PLACES, (B) DETERMINED BY THE COMMISSIONER OF PARKS, RECREATION AND HISTORIC PRESERVATION TO BE ELIGIBLE FOR LISTING ON THE STATE REGISTER OF HISTORIC PLACES, (C) DETERMINED BY THE COMMISSIONER OF PARKS, RECREATION AND HISTORIC PRESERVATION TO BE A CONTRIBUTING BUILDING TO AN HISTORIC DISTRICT THAT IS LISTED OR ELIGIBLE FOR LISTING ON THE STATE OR NATIONAL REGISTERS OF HISTORIC PLACES, OR (D) OTHERWISE DEFINED AS AN HISTORIC BUILDING IN REGULATIONS ADOPTED BY THE STATE FIRE PREVENTION AND BUILDING CODE COUNCIL.

10. "IECC" OR "INTERNATIONAL ENERGY CONSERVATION CODE." THE INTERNATIONAL ENERGY CONSERVATION CODE, PUBLISHED BY INTERNATIONAL CODE COUNCIL, INC.

11. "LOCAL GOVERNMENT." ANY VILLAGE, TOWN (OUTSIDE THE AREA OF ANY INCORPORATED VILLAGE) OR CITY.

12. "Municipality." Any county, city, town, village, school district or district corporation.

[6.] 13. "Owner." The owner or owners of the freehold of a premises or any lesser estate therein, a mortgagee or vendee in possession, a contract vendee, assignee of rents, receiver, executor, trustee, lessee, or any other person, firm or corporation in control of a building.

[7.] 14. "Residential BUILDING." Any building which is designed or is to be used primarily as a dwelling or household AS DEFINED BY THE STATE FIRE PREVENTION AND BUILDING CODE COUNCIL, INCLUDING ANY FACTORY MANUFACTURED HOME AS DEFINED IN SUBDIVISION EIGHT OF SECTION THREE HUNDRED SEVENTY-TWO OF THE EXECUTIVE LAW AND ANY MOBILE HOME AS DEFINED IN SUBDIVISION THIRTEEN OF SECTION THREE HUNDRED SEVENTY-TWO OF THE EXECUTIVE LAW.

[8. "Substantial renovation." The alteration of any existing building in which more than fifty percent of any building subsystem is replaced.

9. "Subsystem." A building assembly made up of various components which serve a specific function, including but not limited to exterior walls, roof and ceiling, floors, lighting, piping, ductwork, and equipment as defined in subdivision four of this section.]

15. "UNIFORM CODE." THE NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE ADOPTED, AND AS MAY BE AMENDED, PURSUANT TO ARTICLE EIGHTEEN OF THE EXECUTIVE LAW.

S 2. Subdivision 1 of section 11-103 of the energy law, as amended by chapter 292 of the laws of 1998, is amended to read as follows:

1. (a) [The code relating to the construction of all buildings, or classes of buildings in the state, for purposes of minimizing the consumption of energy and providing for the efficient utilization of the energy expended in the use and occupancy of buildings is continued. Such code shall be at least equal to the standards specified in standard 90-75 of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., entitled "Energy Conservation in New Building Design", known hereafter as ASHRAE Standard 90-75; and to the reference standards upon which the ASHRAE Standard 90-75 is based; provided however, that in addition any portion of the code which applies to residential construction shall be at least equivalent to the requirements set forth in the public service commission opinions, PSC 76-16 (C) dated May fifteenth and sixteenth, nineteen hundred seventy-seven, and appendices thereto. The code shall apply to all buildings for which application for a building permit is made and plans are filed in this state on or after January first, nineteen hundred seventy-nine, which date shall be the effective date of the code.

(b) The rules and regulations relating specifically to the substantial renovation of all buildings, or classes of buildings in the state, for purposes of minimizing the consumption of energy and providing for the efficient utilization of the energy expended in the use and occupancy of such buildings are continued. Such rules and regulations shall apply only to that portion of a building subsystem or subsystems which is replaced; provided that fifty percent or more of such building subsystem or subsystems is replaced.] THE STATE ENERGY CONSERVATION CONSTRUCTION CODE ADOPTED BY THE STATE FIRE PREVENTION AND BUILDING CODE COUNCIL AND CONSISTING OF A BUILDING ENERGY CODE FOR RESIDENTIAL BUILDINGS THROUGHOUT THE STATE AND A BUILDING ENERGY CODE FOR COMMERCIAL BUILDINGS THROUGHOUT THE STATE IS CONTINUED UNTIL AMENDED OR A NEW CODE IS ADOPTED AND EFFECTIVE.

(B) THE CODE SHALL APPLY TO THE CONSTRUCTION OF ANY NEW BUILDING. THE CODE SHALL ALSO APPLY TO AN ADDITION TO, AND ALTERATION OF, ANY EXISTING BUILDING OR BUILDING SYSTEM; PROVIDED, HOWEVER, THAT THE CODE SHALL NOT BE INTERPRETED TO REQUIRE ANY UNALTERED PORTION OF THE EXISTING BUILDING OR BUILDING SYSTEM TO COMPLY WITH THE CODE. THE CODE SHALL NOT APPLY TO THE FOLLOWING PROVIDED THAT THE ENERGY USE OF THE BUILDING IS NOT INCREASED:

(1) STORM WINDOWS INSTALLED OVER EXISTING FENESTRATION;

(2) GLASS ONLY REPLACEMENTS IN AN EXISTING SASH AND FRAME;

(3) EXISTING CEILING, WALL OR FLOOR CAVITIES EXPOSED DURING CONSTRUCTION PROVIDED THAT THESE CAVITIES ARE FILLED WITH INSULATION;

(4) CONSTRUCTION WHERE THE EXISTING ROOF, WALL OR FLOOR CAVITY IS NOT EXPOSED;

(5) REROOFING FOR ROOFS WHERE NEITHER THE SHEATHING NOR THE INSULATION IS EXPOSED; ROOFS WITHOUT INSULATION IN THE CAVITY AND WHERE THE SHEATHING OR INSULATION IS EXPOSED DURING REROOFING SHALL BE INSULATED EITHER ABOVE OR BELOW THE SHEATHING;

(6) REPLACEMENT OF EXISTING DOORS THAT SEPARATE CONDITIONED SPACE FROM THE EXTERIOR SHALL NOT REQUIRE THE INSTALLATION OF A VESTIBULE OR REVOLVING DOOR, PROVIDED, HOWEVER, THAT AN EXISTING VESTIBULE THAT SEPARATES SUCH CONDITIONED SPACE FROM THE EXTERIOR SHALL NOT BE REMOVED;

(7) ALTERATIONS THAT REPLACE LESS THAN FIFTY PERCENT OF THE LUMINAIRES IN A SPACE, PROVIDED THAT SUCH ALTERATIONS DO NOT INCREASE THE INSTALLED INTERIOR LIGHTING POWER;

(8) ALTERATIONS THAT REPLACE ONLY THE BULB AND BALLAST WITHIN THE EXISTING LUMINAIRES IN A SPACE PROVIDED THAT THE ALTERATION DOES NOT INCREASE THE INSTALLED INTERIOR LIGHTING POWER; AND

(9) ANY OTHER EXCEPTION ADOPTED BY THE STATE FIRE PREVENTION AND BUILDING CODE COUNCIL PROVIDED THAT SUCH EXCEPTION WILL NOT PREVENT THE ATTAINMENT OF THE COMPLIANCE GOALS SET FORTH IN SECTION 410(2)(C) OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

S 3. Subdivision 2 of section 11-103 of the energy law, as amended by chapter 292 of the laws of 1998, is amended to read as follows:

2. The state fire prevention and building code council is authorized, from time to time as it deems appropriate and consistent with the purposes of this article, to review and amend the code, OR ADOPT A NEW CODE, through rules and regulations provided that the code remains cost effective with respect to building construction in the state. [The] IN DETERMINING WHETHER THE CODE REMAINS COST EFFECTIVE, THE code COUNCIL shall [be deemed cost effective if] CONSIDER WHETHER the cost of materials and their installation to meet its standards would be equal to or less than the present value of energy savings that could be expected over a ten year period in the building in which such materials are installed. FOR RESIDENTIAL BUILDINGS, THE CODE SHALL MEET OR EXCEED THE THEN MOST RECENTLY PUBLISHED INTERNATIONAL ENERGY CONSERVATION CODE, OR ACHIEVE EQUIVALENT OR GREATER ENERGY SAVINGS; AND FOR COMMERCIAL BUILDINGS, THE CODE SHALL MEET OR EXCEED ASHRAE 90.1-2007, OR ACHIEVE EQUIVALENT OR GREATER ENERGY SAVINGS.

S 4. Subdivision 5 of section 11-104 of the energy law, as added by chapter 516 of the laws of 1984, is amended to read as follows:

5. The code shall exempt from such uniform standards and requirements [property that is listed on the national register of historic places, property that is listed on the state register of historic places or property that is determined to be eligible for listing on the state register by the commissioner of parks, recreation and historic preservation] ANY HISTORIC BUILDING AS DEFINED IN SECTION 11-102 OF THIS ARTICLE.

S 5. Section 11-105 of the energy law, as amended by chapter 292 of the laws of 1998, is amended to read as follows:

S 11-105. Limitation of application. Notwithstanding the provisions of subdivision one of section 11-103 of this article, the state fire prevention and building code council, by regulation, may limit the application of any portion of the code so as to include or exclude classes or types of buildings, according to the use thereof or the cost effectiveness of the code with respect to any such class or type of building, or according to any other distinction as may make differentiation or separate classification or regulation necessary, proper or desirable, [so long as any] PROVIDED HOWEVER, THAT such limitation: (1) is consistent with the purposes of this article and the criteria set forth in section 11-104 of this article, (2) DOES NOT RENDER THE CODE INCONSISTENT WITH THE ENERGY SAVINGS REQUIREMENTS OF SUBDIVISION TWO OF SECTION 11-103 OF THIS ARTICLE, AND (3) WHETHER CONSIDERED INDIVIDUALLY OR COLLECTIVELY WITH OTHER LIMITATIONS, WILL NOT PREVENT THE ATTAINMENT OF THE COMPLIANCE GOALS SET FORTH IN SECTION 410(2)(C) OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

S 6. Section 11-107 of the energy law, as amended by chapter 517 of the laws of 1984, is amended to read as follows:

S 11-107. Administration and enforcement. Except as otherwise [expressly provided herein] PROVIDED IN REGULATIONS ADOPTED PURSUANT TO SECTION THREE HUNDRED EIGHTY-ONE OF THE EXECUTIVE LAW, the adminis-

tration and enforcement of the provisions of the code [within any municipality] WITH RESPECT TO ANY BUILDING shall be the responsibility of that governmental entity which is responsible for the administration and enforcement of the provisions of the [building construction code or the] UNIFORM CODE OR OTHER APPLICABLE fire prevention and building construction code [applicable within such municipality] WITH RESPECT TO SUCH BUILDING. The code shall be administered and enforced in the manner prescribed by applicable local law or ordinance [or the] CONSISTENT WITH THE STANDARDS AND procedures adopted pursuant to section three hundred eighty-one of the executive law [for the administration and enforcement of the state uniform fire prevention and building construction code].

S 7. Subdivision 1 of section 11-108 of the energy law, as amended by chapter 516 of the laws of 1984, is amended to read as follows:

1. Any person having been served with an order TO REMEDY A VIOLATION OF THE CODE pursuant to the provisions of any local law or ordinance, or the procedures adopted pursuant to section three hundred eighty-one of the executive law [for the administration and enforcement of the state uniform fire prevention and building construction code], who shall fail to comply with such order within thirty days after such service or within the time fixed by such order for compliance, whichever is greater, and any owner, builder, architect, engineer, contractor or subcontractor taking part or assisting in the construction or use of any building who shall knowingly violate any applicable provisions of the code or any lawful order of the governmental entity responsible for the administration and enforcement thereof shall be punishable by a fine of not more than [five hundred] ONE THOUSAND dollars or by imprisonment of not more than thirty days in jail, or both.

S 8. Section 11-109 of the energy law, as added by chapter 397 of the laws of 1978, subdivision 1 as amended by chapter 516 of the laws of 1984 and subdivision 2 as amended by chapter 292 of the laws of 1998, is amended to read as follows:

S 11-109. Municipal regulations. 1. Nothing in this article shall be construed as abrogating or impairing the power of any municipality or the secretary of state to enforce the provisions of any local building regulations or the state uniform fire prevention and building [construction] code, provided that such local building regulations are not inconsistent with the code. Nor shall anything in this article be construed as abrogating or impairing the power of any municipality to promulgate a local energy conservation construction code more stringent than the code, INCLUDING BUT NOT LIMITED TO REQUIREMENTS FOR MANDATORY ENERGY EFFICIENCY TESTING AND RATINGS.

2. Any municipality which adopts a local energy conservation construction code in accordance with this section shall file a copy of such code and any amendments or revisions thereof with the state fire prevention and building code council within thirty days after promulgation or adoption of such LOCAL code[,] OR ANY amendments or revisions THEREOF. [The failure to comply with the provisions of this subdivision shall not impair or otherwise affect the validity of such local code or amendment or revision] IF THE MUNICIPALITY FILES SUCH COPY WITHIN SUCH THIRTY DAY TIME PERIOD, THE MUNICIPALITY MAY ENFORCE SUCH LOCAL CODE, AMENDMENT OR REVISION UNTIL AND UNLESS THE STATE FIRE PREVENTION AND BUILDING CODE COUNCIL SHALL DETERMINE THAT SUCH LOCAL CODE, AMENDMENT OR REVISION IS NOT MORE RESTRICTIVE THAN THE CODE. IF THE MUNICIPALITY FAILS TO FILE SUCH COPY WITHIN SUCH THIRTY DAY TIME PERIOD, THE MUNICIPALITY MAY NOT ENFORCE SUCH LOCAL CODE, AMENDMENT OR REVISION UNTIL AND

UNLESS THE STATE FIRE PREVENTION AND BUILDING CODE COUNCIL SHALL DETERMINE THAT SUCH LOCAL CODE, AMENDMENT OR REVISION IS MORE RESTRICTIVE THAN THE CODE.

S 9 Subdivision 2 of section 11-110 of the energy law, as amended by chapter 292 of the laws of 1998, is amended to read as follows:

2. Agencies and municipalities of the state shall provide the secretary of state with such cooperation and assistance as he OR SHE may deem necessary to carry out the purposes of this article.

S 10. The section heading and subdivisions 1 and 2 of section 381 of the executive law, as added by chapter 707 of the laws of 1981 and the closing paragraph of subdivision 1 as amended by chapter 159 of the laws of 2007, are amended to read as follows:

Administration and enforcement of the New York state uniform fire prevention and building code AND THE NEW YORK STATE ENERGY CONSERVATION CONSTRUCTION CODE. 1. The secretary shall promulgate rules and regulations prescribing minimum standards for administration and enforcement of the uniform fire prevention and building code promulgated in accordance with sections three hundred seventy-seven and three hundred seventy-eight of this article AND THE STATE ENERGY CONSERVATION CONSTRUCTION CODE ADOPTED IN ACCORDANCE WITH ARTICLE ELEVEN OF THE ENERGY LAW. Such rules and regulations shall become effective not later than the first day of January, nineteen hundred eighty-five. The secretary shall promulgate such regulations after public hearing and after considering reaction to initial administration and enforcement of the uniform building and fire prevention code, including how local governments have organized to provide for such initial administration and enforcement. Such rules and regulations shall address the nature and quality of enforcement and shall include, but not be limited to the following:

a. frequency of MANDATORY inspections FOR COMPLIANCE WITH THE UNIFORM CODE AND THE STATE ENERGY CONSERVATION CONSTRUCTION CODE,

b. number and qualifications of staff, including requirements that inspectors be certified pursuant to this chapter,

c. required minimum fees for administration and enforcement,

d. adequacy of inspections,

e. adequacy of means for insuring compliance with the uniform code AND THE STATE ENERGY CONSERVATION CONSTRUCTION CODE, INCLUDING PROVISIONS INTENDED TO ACHIEVE COMPLIANCE WITH THE STATE ENERGY CONSERVATION CONSTRUCTION CODE CONSISTENT WITH THE COMPLIANCE GOALS SET FORTH IN SECTION 410(2)(C) OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009,

f. establishment of a procedure whereby any provision or requirement of the uniform code may be varied or modified in cases where strict compliance with such provision or requirement would entail practical difficulties or unnecessary hardship or would otherwise be unwarranted. Such procedure shall be designed to insure that any such variance or modification shall not substantially affect adversely provisions for health, safety and security, and that equally safe and proper alternatives may be prescribed. Requests for a variance shall be resolved within sixty days of the date of application unless a longer period is required for good cause shown, [and]

g. procedures for inspection of certain classes of buildings based upon design, construction, ownership, occupancy or use, including, but not limited to, mobile homes, factory manufactured homes and state-owned buildings[.],

H. MINIMUM BASIC TRAINING AND IN-SERVICE TRAINING REQUIREMENTS FOR PERSONNEL CHARGED WITH ADMINISTRATION AND ENFORCEMENT OF THE STATE ENERGY CONSERVATION CONSTRUCTION CODE; AND

I. STANDARDS AND PROCEDURES FOR MEASURING THE RATE OF COMPLIANCE WITH THE STATE ENERGY CONSERVATION CONSTRUCTION CODE, AND PROVISIONS REQUIRING THAT SUCH RATE OF COMPLIANCE BE MEASURED ON AN ANNUAL BASIS.

Nothing in the rules shall require or be construed to require regular, periodic inspections of (A) owner-occupied one and two-family dwellings, or (B) agricultural buildings used directly and solely for agricultural purposes, provided, however that this shall not be a limitation on inspections conducted at the invitation of the owner or where conditions on the premises threaten or present a hazard to public health, safety, or welfare.

2. Except as may be provided in regulations of the secretary pursuant to subdivision one of this section, every local government shall administer and enforce the uniform fire prevention and building code AND THE STATE ENERGY CONSERVATION CONSTRUCTION CODE on and after the first day of January, nineteen hundred eighty-four, provided, however, that a local government may enact a local law prior to the first day of July in any year providing that it will not enforce [the uniform code] SUCH CODES on and after the first day of January next succeeding. In such event the county in which said local government is situated shall administer and enforce [the uniform code] SUCH CODES within such local government from and after the first day of January next succeeding the effective date of such local law, in accordance with the provisions of paragraph b of subdivision five of this section unless the county shall have enacted a local law providing that it will not enforce [the uniform code] SUCH CODES within that county. In such event the secretary in the place and stead of the local government shall, directly or by contract, administer and enforce the uniform code AND THE STATE ENERGY CONSERVATION CONSTRUCTION CODE. A local government or a county may repeal a local law which provides that it will not enforce [the uniform code] SUCH CODES and shall thereafter administer and enforce [the uniform code] SUCH CODES as provided above. [Local] TWO OR MORE LOCAL governments may provide for joint administration and enforcement OF THE UNIFORM CODE, THE STATE ENERGY CONSERVATION CONSTRUCTION CODE, OR BOTH, by agreement pursuant to article five-G of the general municipal law. Any local government may enter into agreement with the county in which such local government is situated to administer and enforce the uniform code, THE STATE ENERGY CONSERVATION CONSTRUCTION CODE, OR BOTH, within such local government. Local governments or counties may charge fees to defray the costs of administration and enforcement.

S 11. This act shall take effect January 1, 2011; provided, however, that the state fire prevention and building code council and the secretary of state are authorized and directed to adopt such regulations as deemed necessary and proper to implement this act, prior to such effective date.