S T A T E O F N E W Y O R K

3495

2011-2012 Regular Sessions

I N A S S E M B L Y

January 25, 2011

Introduced by M. of A. CLARK -- read once and referred to the Committee on Cities

AN ACT to amend the administrative code of the city of New York, in relation to imposing administrative sanctions on registered architects, licensed professional engineers and other persons for misconduct with respect to applications and other accompanying documents submitted to the department of buildings of the city of New York

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

Section 1. Subchapter 1 of chapter 1 of title 27 of the administrative code of the city of New York is amended by adding a new article 28 to read as follows:

ARTICLE 28

ADMINISTRATIVE SANCTIONS FOR MISCONDUCT WITH RESPECT TO THE SUBMISSION OF APPLICATIONS AND OTHER ACCOMPANYING DOCUMENTS TO THE DEPARTMENT

S 27-228.17 ADMINISTRATIVE SANCTIONS FOR MISCONDUCT WITH RESPECT TO APPLICATIONS AND OTHER ACCOMPANYING DOCUMENTS SUBMITTED TO THE DEPARTMENT. IN ADDITION TO ANY OTHER PENALTIES PROVIDED UNDER ANY OTHER PROVISION OF LAW, THE COMMISSIONER MAY, DURING THE PERIOD WHEN SANCTIONS IMPOSED UNDER THIS ARTICLE ARE IN EFFECT, REFUSE TO ACCEPT OR APPROVE ANY APPLICATION, OR OTHER ACCOMPANYING DOCUMENTS SUBMITTED PURSUANT TO ANY PROVISION OF THIS CODE, OR IN SATISFACTION OF ANY OF THE REQUIREMENTS OF ANY PROVISION OF THIS CODE FOR THE APPROVAL OF PLANS OR THE ISSUANCE OF A PERMIT OR A CERTIFICATE OF OCCUPANCY BEARING THE SIGNATURE OF A REGISTERED ARCHITECT, LICENSED PROFESSIONAL ENGINEER OR OTHER PERSON WHO HAS BEEN FOUND GUILTY UNDER THE PROCEDURES SET FORTH IN SECTION 27-228.18 OF THIS ARTICLE OF ANY OF THE FOLLOWING ACTS:

A. MAKING A FALSE OR MISLEADING STATEMENT AS TO A MATERIAL FACT IN A REPORT OR WRITTEN STATEMENT WHICH WAS SUBMITTED PURSUANT TO FORMER SECTION 27-132 OR FORMER SECTION 27-136 OF THIS SUBCHAPTER;

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

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B. MAKING A FALSE OR MISLEADING STATEMENT AS TO A MATERIAL FACT IN AN APPLICATION FOR THE APPROVAL OF PLANS OR ANY ACCOMPANYING DOCUMENT WHICH WAS SUBMITTED PURSUANT TO FORMER SECTION 27-139 OF THIS SUBCHAPTER, WHICH FACT HE OR SHE KNEW WOULD BE RELIED UPON BY THE DEPARTMENT IN DETERMINING WHETHER TO APPROVE SUCH PLANS;

C. SUBMITTING AN APPLICATION FOR THE APPROVAL OF PLANS PURSUANT TO FORMER SECTION 27-140 OF THIS SUBCHAPTER WHICH WERE NOT PREPARED BY HIM OR HER OR UNDER HIS OR HER SUPERVISION;

D. MAKING A WRITTEN STATEMENT WHICH WAS SUBMITTED PURSUANT TO FORMER SECTION 27-142 OF THIS SUBCHAPTER THAT, TO THE BEST OF HIS OR HER KNOWLEDGE AND BELIEF, THE PLANS AND THE WORK SHOWN THEREON COMPLY WITH THE PROVISIONS OF THIS CODE AND ALL OTHER APPLICABLE LAWS, RULES AND REGULATIONS WHEN HE OR SHE KNEW THAT THE PLANS WERE SUBSTANTIALLY NOT IN COMPLIANCE WITH THE PROVISIONS OF THIS CODE AND ALL OTHER APPLICABLE LAWS, RULES AND REGULATIONS;

E. MAKING A FALSE OR MISLEADING STATEMENT AS TO A MATERIAL FACT IN AN APPLICATION FOR A PERMIT OR ANY ACCOMPANYING DOCUMENT WHICH WAS SUBMITTED PURSUANT TO FORMER SECTION 27-150 OF THIS SUBCHAPTER, WHICH FACT HE OR SHE KNEW WOULD BE RELIED UPON BY THE DEPARTMENT IN DETERMINING WHETHER TO ISSUE SUCH PERMIT;

F. MAKING A FALSE OR MISLEADING STATEMENT AS TO A MATERIAL FACT IN AN APPLICATION FOR A CERTIFICATE OF OCCUPANCY OR ANY ACCOMPANYING DOCUMENT WHICH WAS SUBMITTED PURSUANT TO FORMER SECTION 27-219 OF THIS SUBCHAPTER, WHICH FACT HE OR SHE KNEW WOULD BE RELIED UPON BY THE DEPARTMENT IN DETERMINING WHETHER TO ISSUE SUCH CERTIFICATE OF OCCUPANCY;

G. MAKING A WRITTEN STATEMENT WHICH WAS SUBMITTED PURSUANT TO FORMER SECTION 27-221 OF THIS SUBCHAPTER THAT, TO THE BEST OF HIS OR HER KNOWLEDGE AND BELIEF, A BUILDING WAS ERECTED OR ALTERED IN ACCORDANCE WITH THE APPROVED PLANS AND SPECIFICATIONS AND, AS ERECTED OR ALTERED, COMPLIED WITH THE PROVISIONS OF THIS CODE AND ALL OTHER APPLICABLE LAWS, RULES AND REGULATIONS WHEN HE OR SHE KNEW THAT THE BUILDING HAD SUBSTANTIALLY NOT BEEN ERECTED OR ALTERED IN ACCORDANCE WITH THE APPROVED PLANS AND SPECIFICATIONS, OR THE BUILDING AS ERECTED WAS SUBSTANTIALLY NOT IN COMPLIANCE WITH THE PROVISIONS OF THIS CODE AND ALL OTHER APPLICABLE LAWS, RULES AND REGULATIONS.

S 27-228.18 PROCEDURE. A. IF THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE THAT A REGISTERED ARCHITECT, LICENSED PROFESSIONAL ENGINEER OR OTHER PERSON HAS COMMITTED ANY OF THE ACTS DESCRIBED IN SECTION 27-228.17 OF THIS ARTICLE, HE OR SHE SHALL PREPARE CHARGES STATING THE ALLEGED MISCONDUCT AND THE MATERIAL FACTS BY WHICH THE CHARGES ARE TO BE PROVED.

B. AT LEAST THIRTY DAYS PRIOR TO THE HEARING, THE DEPARTMENT SHALL SERVE A COPY OF THE CHARGES AND A NOTICE OF THE TIME AND PLACE OF THE HEARING UPON THE RESPONDENT PERSONALLY OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE RESPONDENT'S LAST KNOWN ADDRESS.

C. THE HEARING SHALL BE HELD BEFORE A HEARING PANEL APPOINTED PURSUANT TO SECTION 27-228.19 OF THIS ARTICLE. THE RESPONDENT SHALL HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL, PRODUCE WITNESSES AND PRESENT EVIDENCE ON HIS OR HER BEHALF. THE RESPONDENT SHALL ALSO HAVE THE RIGHT TO EXAMINE EVIDENCE PRODUCED AGAINST HIM OR HER, CROSS-EXAMINE WITNESSES AND REQUEST THE HEARING OFFICER TO ISSUE SUBPOENAS. A RECORD SHALL BE KEPT OF THE PROCEEDING.

D. THE DETERMINATION OF THE PANEL SHALL BE BASED UPON SUBSTANTIAL EVIDENCE.

E. THE PANEL SHALL FIND THE RESPONDENT GUILTY OR NOT GUILTY OF THE CHARGE OR CHARGES AND SHALL ISSUE A WRITTEN REPORT INCLUDING FINDINGS OF

FACT AND A DETERMINATION OF THE TIME PERIOD OVER WHICH THE SANCTIONS, IF ANY, IMPOSED PURSUANT TO SECTION 27-228.17 OF THIS ARTICLE SHALL BE EFFECTIVE, PROVIDED, HOWEVER, THAT NO SANCTION IMPOSED BY A PANEL FOR ANY SINGLE CHARGE AGAINST ANY ONE RESPONDENT SHALL BE EFFECTIVE FOR A PERIOD OF TIME IN EXCESS OF TWO YEARS. THE REPORT OF THE PANEL SHALL BE FILED WITH THE COMMISSIONER AND SERVED UPON THE RESPONDENT. THE SANCTIONS SHALL COMMENCE UPON THE FILING OF THE REPORT.

F. THE DETERMINATION OF THE PANEL MAY BE APPEALED TO THE COMMISSIONER PROVIDED THAT NOTICE OF SUCH APPEAL IS FILED WITH THE COMMISSIONER WITHIN THIRTY DAYS AFTER THE FILING OF THE REPORT ISSUED BY THE PANEL PURSUANT TO SUBDIVISION E OF THIS SECTION. UPON APPLICATION, THE COMMISSIONER IN HIS OR HER DISCRETION MAY SUSPEND THE IMPOSITION OF SANCTIONS DURING THE PENDENCY OF SUCH APPEAL. THE PERIOD OF TIME DURING WHICH THE SANCTIONS ARE EFFECTIVE SHALL BE CALCULATED WITHOUT REGARD TO ANY PERIOD OF SUSPENSION OF SUCH SANCTIONS. THE COMMISSIONER SHALL REVIEW THE REPORT OF THE PANEL AND MAY ACCEPT OR MODIFY THE FINDINGS OF FACT OF THE PANEL AND ACCEPT, REDUCE OR DISMISS ITS RECOMMENDED PENALTY. IF THE COMMISSIONER DETERMINES THAT THE IMPOSITION OF SANCTIONS SHALL NOT BE SUSPENDED DURING THE PENDENCY OF THE APPEAL, THE COMMISSIONER SHALL HAVE FIFTEEN DAYS FROM THE TIME OF THE FILING OF SUCH APPEAL TO MAKE HIS OR HER DETERMINATION. IF THE COMMISSIONER FAILS TO MAKE HIS OR HER DETERMINATION WITHIN THIS ALLOTTED TIME PERIOD, HE OR SHE SHALL SUSPEND THE IMPOSITION OF SUCH SANCTIONS. THE COMMISSIONER SHALL SERVE UPON THE RESPONDENT NOTICE OF HIS OR HER DECISION. THE DECISION OF THE COMMISSIONER REGARDING SUCH APPEAL SHALL CONSTITUTE THE FINAL AGENCY DETERMINATION.

S 27-228.19 HEARING PANELS. A. THERE SHALL BE WITHIN THE DEPARTMENT A HEARING PANEL OR PANELS. EACH PANEL SHALL CONSIST OF NINE MEMBERS WHO SHALL BE APPOINTED BY THE COMMISSIONER TO SERVE ON SUCH PANEL AT HIS OR HER PLEASURE. THE COMMISSIONER SHALL DESIGNATE A MEMBER OF EACH PANEL TO SERVE AS CHAIRPERSON AND SUCH PERSON SHALL PRESIDE OVER THE PANEL. THE MEMBERS OF THE PANEL SHALL SERVE WITHOUT COMPENSATION. THE PANEL SHALL CONSIST OF:

(1) TWO EMPLOYEES OF THE DEPARTMENT, ONE OF WHOM SHALL BE EITHER A REGISTERED ARCHITECT OR LICENSED PROFESSIONAL ENGINEER;

(2) TWO LICENSED PROFESSIONAL ENGINEERS SELECTED FROM CANDIDATES WHO ARE RECOMMENDED BY ASSOCIATIONS AND ORGANIZATIONS REPRESENTING LICENSED PROFESSIONAL ENGINEERS IN THE STATE OF NEW YORK;

(3) TWO REGISTERED ARCHITECTS SELECTED FROM CANDIDATES WHO ARE RECOMMENDED BY ASSOCIATIONS AND ORGANIZATIONS REPRESENTING REGISTERED ARCHITECTS IN THE STATE OF NEW YORK;

(4) TWO PERSONS REPRESENTING ASSOCIATIONS WHOSE MEMBERS PERFORM OR SUPERVISE CONSTRUCTION ACTIVITIES;

(5) ONE PERSON REPRESENTING AN ASSOCIATION WHOSE MEMBERS OWN AND MANAGE PROPERTY IN THE CITY OF NEW YORK.

B. EACH PANEL SHALL HEAR AND DETERMINE CHARGES OF MISCONDUCT FOR THOSE ACTS SET FORTH IN SECTION 27-228.17 OF THIS ARTICLE, IN ACCORDANCE WITH PROCEDURES SET FORTH IN SECTION 27-228.18 OF THIS ARTICLE AND, UPON A DETERMINATION OF GUILT, MAY IMPOSE THE ADMINISTRATIVE SANCTIONS SET FORTH IN SECTION 27-228.17 OF THIS ARTICLE. A MAJORITY OF THE APPOINTED MEMBERS OF THE PANEL SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF THE PANEL'S BUSINESS. THE PANEL SHALL HAVE THE POWER TO ACT BY A MAJORITY VOTE OF ITS MEMBERS.

S 27-228.20 ADMINISTRATIVE SANCTIONS FOR BRIBERY OF EMPLOYEES OF THE DEPARTMENT. A REGISTERED ARCHITECT, LICENSED PROFESSIONAL ENGINEER OR OTHER PERSON WHO IS CONVICTED OF ANY OFFENSE DEFINED IN ARTICLE TWO

HUNDRED OF THE PENAL LAW, WITH RESPECT TO CONDUCT TOWARD AN EMPLOYEE OF THE DEPARTMENT OF BUILDINGS, MAY BE SUBJECT TO THE SANCTIONS SET FORTH IN SECTION 27-228.17 OF THIS ARTICLE. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF SECTION 27-228.18 OF THIS ARTICLE, UPON CONVICTION OF ANY OFFENSE DEFINED IN ARTICLE TWO HUNDRED OF THE PENAL LAW, WITH RESPECT TO CONDUCT TOWARD AN EMPLOYEE OF THE DEPARTMENT, THE COMMISSIONER SHALL SELECT A HEARING PANEL PURSUANT TO SECTION 27-228.19 OF THIS ARTICLE TO DETERMINE WHETHER TO IMPOSE ADMINISTRATIVE SANCTIONS PURSUANT TO SECTION 27-228.17 OF THIS ARTICLE ON REGISTERED ARCHITECTS, LICENSED PROFESSIONAL ENGINEERS OR OTHER PERSONS CONVICTED OF ANY SUCH OFFENSE. THE RESPONDENT MAY APPEAL THE DETERMINATION OF SUCH PANEL TO THE COMMISSIONER, IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN SUBDIVISION F OF SECTION 27-228.18 OF THIS ARTICLE. IF THE CONVICTION IS VACATED OR REVERSED, SUCH REGISTERED ARCHITECT, LICENSED PROFESSIONAL ENGINEER OR OTHER PERSON WHO HAD BEEN CONVICTED OF SUCH OFFENSE AND SUBJECT TO ADMINISTRATIVE SANCTIONS SET FORTH IN SECTION 27-228.17 OF THIS ARTICLE MAY GIVE THE COMMISSIONER NOTICE OF THE VACATUR OR REVERSAL TOGETHER WITH SUCH DOCUMENTATION THEREOF AS THE COMMISSIONER MAY REASONABLY REQUIRE AND, UPON RECEIPT OF SUCH NOTICE AND DOCUMENTATION, THE COMMISSIONER SHALL REVOKE THE SANCTIONS IMPOSED PURSUANT TO SECTION 27-228.17 OF THIS ARTICLE AND THIS SECTION. IF THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE THAT THE IMPOSITION OF SUCH SANCTIONS SHOULD BE CONTINUED, HE OR SHE SHALL PREPARE CHARGES AND APPOINT A HEARING PANEL IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN SUBDIVISIONS B THROUGH F OF SECTION 27-228.18 OF THIS ARTICLE.

S 27-228.21 REGISTERED ARCHITECTS AND LICENSED PROFESSIONAL ENGINEERS; APPLICATION. REGISTERED ARCHITECTS AND LICENSED PROFESSIONAL ENGINEERS SHALL BE SUBJECT TO THE PROCEDURES AND THE ADMINISTRATIVE SANCTIONS SET FORTH IN THIS ARTICLE, IN ADDITION TO THE PROCEDURES AND PENALTIES FOR PROFESSIONAL MISCONDUCT PRESCRIBED IN TITLE EIGHT OF THE EDUCATION LAW.

S 2. This act shall take effect immediately.