

# STATE OF NEW YORK

7287--A

## IN SENATE

January 16, 2020

Introduced by Sens. BAILEY, SKOUFIS, BIAGGI, KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to increasing the state code enforcement powers of the secretary of state

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph b of subdivision 1 of section 381 of the execu-  
2 tive law, as amended by chapter 560 of the laws of 2010, is amended to  
3 read as follows:

4 b. the adequate number [~~and~~] of staff required to meet the needs of  
5 the locality to be determined by looking at factors, including, but not  
6 limited to, population and geographic area,

7 b-1. the qualifications of staff, including requirements that inspec-  
8 tors be certified pursuant to this chapter,

9 § 2. Paragraph c of subdivision 4 of section 381 of the executive law,  
10 as added by chapter 707 of the laws of 1981, is amended and a new para-  
11 graph e is added to read as follows:

12 c. [~~the~~] The secretary may designate the county in which such local  
13 government is located to administer and enforce the uniform code in such  
14 local government. In the case of such designation, the provisions of  
15 subdivision five of this section shall apply.

16 e. The secretary may place an oversight official within a local  
17 government to monitor and ensure compliance with the minimum standards  
18 for administration and enforcement of the uniform code. The oversight  
19 official shall be a state officer with expertise and experience in code  
20 enforcement and other qualifications determined by the secretary to be  
21 appropriate for the position. The placement of an oversight official  
22 shall be for a period of up to one year and extended as necessary as  
23 determined by the secretary. Local government staff shall comply with  
24 all directives issued by the oversight official. Oversight shall  
25 include, but not be limited to, research and data collection to deter-

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

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1 mine the needs of the local government in order to achieve minimum stan-  
2 dards of code enforcement, providing assistance with capacity building,  
3 and providing assistance with resolving complaints.

4 § 3. The executive law is amended by adding a new section 381-a to  
5 read as follows:

6 § 381-a. State code enforcement ombudsperson. 1. Definitions. For the  
7 purposes of this section:

8 a. "Secretary" means the secretary of state;

9 b. "Code enforcement" means the administration and enforcement of the  
10 uniform fire prevention code and building code promulgated in accordance  
11 with sections three hundred seventy-seven and three hundred seventy-  
12 eight of this article and the state energy conservation code adopted in  
13 accordance with article eleven of the energy law, and any local building  
14 and fire regulations enacted or adopted by any local government that are  
15 in effect pursuant to section three hundred seventy-nine of this arti-  
16 cle; and

17 c. "Ombudsperson" shall mean the state code enforcement ombudsperson.

18 2. Office of the state code enforcement ombudsperson. a. There is  
19 hereby established the office of state code enforcement ombudsperson in  
20 the department of state division of building standards and codes, which  
21 shall be headed by the state code enforcement ombudsperson, who shall  
22 carry out the duties established in this section.

23 b. The office of the state code enforcement ombudsperson is a distinct  
24 entity, separately identifiable and located within the department of  
25 state division of building standards and codes.

26 c. The secretary shall not establish personnel policies or practices  
27 which prohibit the ombudsperson from performing the functions and  
28 responsibilities of the ombudsperson, pursuant to this section.

29 d. Nothing in this section shall prohibit the secretary of state from  
30 requiring that the ombudsperson, or other employees of the office of  
31 state code enforcement ombudsperson, adhere to the personnel policies  
32 and procedures of the department of state.

33 3. State code enforcement ombudsperson. a. The secretary shall appoint  
34 a full-time ombudsperson to administer and supervise the office of the  
35 state code enforcement ombudsperson.

36 b. The ombudsperson shall be selected from individuals with expertise  
37 and experience in code enforcement and other qualifications determined  
38 by the secretary to be appropriate for the position.

39 c. Any actual and potential conflicts of interest shall be identified  
40 and addressed in accordance with subdivision seven of this section.

41 d. The ombudsperson, personally or through authorized representatives,  
42 shall:

43 (1) identify, investigate and resolve complaints that relate to  
44 actions or inactions of a local code enforcement program. The ombudsper-  
45 son may, in pursuing its investigation, visit any locality conducting  
46 code enforcement at any time without prior notice. Local government  
47 staff shall cooperate with the investigation. The ombudsperson shall  
48 have the right to inspect all aspects of a local government's code  
49 enforcement program, visit all areas and observe all parts and aspects  
50 of the program. Nothing in this section shall be construed as authoriz-  
51 ing the state ombudsperson to assume powers delegated to the secretary;

52 (2) present significant complaints to the secretary regarding a local-  
53 ity's failure to meet minimum standards of code enforcement, the locali-  
54 ty's failure to adopt recommendations for resolution by the ombudsperson  
55 and any recommendations for intervention by the secretary;

1 (3) recommend to the secretary policies and procedures for the ombud-  
2 sperson program;

3 (4) recommend policies, regulations and legislation designed to  
4 enhance code enforcement;

5 (5) monitor the implementation of policies and regulations of the  
6 office and of the rules and regulations of other state and local agen-  
7 cies, as such may be applicable to code enforcement;

8 (6) advise and assist localities with adhering to minimum standards  
9 for administration and code enforcement; and

10 (7) report to the secretary the status of complaints on a periodic  
11 basis, but not less than once per quarter. Such report shall indicate a  
12 complaint has been resolved and the manner in which it was resolved, the  
13 status of implementation of any recommendations made by the ombudsperson,  
14 and whether the ombudsperson recommends intervention by the secre-  
15 tary.

16 Notwithstanding any other provision of law, the office of the state  
17 code enforcement ombudsperson shall have access to, including the right  
18 to inspect and copy, any records necessary to carry out its powers and  
19 duties under this section, excluding those protected by statutory privi-  
20 lege. Consistent with applicable laws and regulations, the confidential-  
21 ity of all records and documents obtained must be maintained by the  
22 office of the ombudsperson;

23 4. Assistant ombudspersons. The ombudsperson, with the approval of the  
24 secretary, may appoint one or more assistant state code enforcement  
25 ombudspersons to assist the ombudsperson in the performance of their  
26 duties under this section. Each such assistant ombudsperson must be an  
27 attorney duly authorized to practice law in the state of New York or  
28 must be verified as having certification as a code enforcement official.

29 5. Complaint submission. The ombudsperson, in consultation with the  
30 secretary, shall develop a complaint process that permits complaints to  
31 be submitted electronically through the internet, over the phone, via  
32 facsimile or through regular mail.

33 6. The secretary shall promulgate rules and regulations with respect  
34 to a complaint investigation and review process by the ombudsperson that  
35 shall include, but is not limited to, the following features:

36 a. Upon receipt of a complaint, the ombudsperson shall determine  
37 whether there are reasonable grounds for an investigation.

38 b. Upon completion of an investigation, the ombudsperson shall issue a  
39 report detailing their findings, recommendations for resolutions, and  
40 recommendations for intervention by the secretary, if any.

41 c. Should the local code enforcement program decline to adopt any of  
42 the ombudsperson's recommendations, the ombudsperson shall notify the  
43 secretary and include the report with any additional recommendations for  
44 intervention by the secretary.

45 7. Conflict of interest. The secretary and the ombudsperson shall  
46 consider both the organizational and individual conflicts of interest  
47 that may impact the effectiveness and credibility of the work of the  
48 office of the state code enforcement ombudsperson. Accordingly, both the  
49 secretary and the ombudsperson shall be responsible to identify actual  
50 and potential conflicts and, where a conflict has been identified,  
51 remove or remedy such conflict.

52 8. Regulations. The secretary, in consultation with the ombudsperson,  
53 is authorized to promulgate rules and regulations to implement the  
54 provisions of this section.

55 9. Annual report. On or before December thirty-first, two thousand  
56 twenty-one, and annually thereafter, the ombudsperson shall submit to

1 the governor, the secretary of state, the temporary president of the  
2 senate and the speaker of the assembly a report and make such report  
3 available to the public:

4 a. describing the activities carried out by the office of the state  
5 code enforcement ombudsperson during the prior calendar year;

6 b. containing and analyzing data relating to complaints;

7 c. evaluating the problems experienced by tenants and owners;

8 d. containing recommendations for appropriate state legislation;

9 e. describing barriers that prevent the optimal operation of the  
10 ombudsperson program;

11 f. describing any organizational conflicts of interest in the ombud-  
12 sperson program that have been identified and the steps taken to remove  
13 or remedy such conflicts; and

14 g. any other matters as the ombudsperson, in consultation with the  
15 secretary, determines to be appropriate.

16 § 4. This act shall take effect on the one hundred eightieth day after  
17 it shall have become a law; provided, however, that section two of this  
18 act shall take effect on the sixtieth day after it shall have become a  
19 law. Effective immediately, the addition, amendment and/or repeal of  
20 any rule or regulation necessary for the implementation of this act on  
21 its effective date are authorized to be made and completed on or before  
22 such effective date.