

STATE OF NEW YORK

7287

IN SENATE

January 16, 2020

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

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.

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

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

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

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

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

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

13 2. Office of the state code enforcement ombudsperson. a. There is
14 hereby established the office of state code enforcement ombudsperson in
15 the department of state division of building standards and codes, which
16 shall be headed by the state code enforcement ombudsperson, who shall
17 carry out the duties established in this section.

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

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

24 d. Nothing in this section shall prohibit the secretary of state from
25 requiring that the ombudsperson, or other employees of the office of
26 state code enforcement ombudsperson, adhere to the personnel policies
27 and procedures of the department of state.

28 3. State code enforcement ombudsperson. a. The secretary shall appoint
29 a full-time ombudsperson to administer and supervise the office of the
30 state code enforcement ombudsperson.

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

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

36 d. The ombudsperson, personally or through authorized representatives,
37 shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

37 c. Should the local code enforcement program decline to adopt any of
38 the ombudsperson's recommendations, the ombudsperson shall notify the
39 secretary and include the report with any additional recommendations for
40 intervention by the secretary.

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

48 8. Regulations. The secretary, in consultation with the ombudsperson,
49 is authorized to promulgate rules and regulations to implement the
50 provisions of this section.

51 9. Annual report. On or before December thirty-first, two thousand
52 twenty-one, and annually thereafter, the ombudsperson shall submit to
53 the governor, the secretary of state, the temporary president of the
54 senate and the speaker of the assembly a report and make such report
55 available to the public;

- 1 a. describing the activities carried out by the office of the state
2 code enforcement ombudsperson during the prior calendar year;
3 b. containing and analyzing data relating to complaints;
4 c. evaluating the problems experienced by tenants and owners;
5 d. containing recommendations for appropriate state legislation;
6 e. describing barriers that prevent the optimal operation of the
7 ombudsperson program;
8 f. describing any organizational conflicts of interest in the ombud-
9 sperson program that have been identified and the steps taken to remove
10 or remedy such conflicts; and
11 g. any other matters as the ombudsperson, in consultation with the
12 secretary, determines to be appropriate.

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