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:

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

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

b-1. the qualifications of staff, including requirements that inspectors be certified pursuant to this chapter,

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

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

e. The secretary may place an oversight official within a local government to monitor and ensure compliance with the minimum standards for administration and enforcement of the uniform code. The oversight official shall be a state officer with expertise and experience in code enforcement and other qualifications determined by the secretary to be appropriate for the position. The placement of an oversight official shall be for a period of up to one year and extended as necessary as determined by the secretary. Local government staff shall comply with all directives issued by the oversight official.

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

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

LBD13975-04-0

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

a. "Secretary" means the secretary of state;

b. "Code enforcement" means the administration and enforcement of the uniform fire prevention code 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 code adopted in accordance with article eleven of the energy law, and any local building and fire regulations enacted or adopted by any local government that are in effect pursuant to section three hundred seventy-nine of this article; and

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

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

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

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

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

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

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

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

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

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

(2) present significant complaints to the secretary regarding a locality's failure to meet minimum standards of code enforcement, the locality's failure to adopt recommendations for resolution by the ombudsperson and any recommendations for intervention by the secretary;

(3) recommend to the secretary policies and procedures for the ombudsperson program;

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

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

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

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

Notwithstanding any other provision of law, the office of the state code enforcement ombudsperson shall have access to, including the right to inspect and copy, any records necessary to carry out its powers and duties under this section, excluding those protected by statutory privilege. Consistent with applicable laws and regulations, the confidentiality of all records and documents obtained must be maintained by the office of the ombudsperson;

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

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

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

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

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

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

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

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

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

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

b. containing and analyzing data relating to complaints;

c. evaluating the problems experienced by tenants and owners;

d. containing recommendations for appropriate state legislation;

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

f. describing any organizational conflicts of interest in the ombudsperson program that have been identified and the steps taken to remove or remedy such conflicts; and

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

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