

# 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.