STATE OF NEW YORK

10437

IN ASSEMBLY

May 20, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Zebrowski) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to ensuring proper administration and enforcement of the uniform fire prevention and building code and the state energy conservation construction code; and to amend the energy law, in relation to making conforming technical changes

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

Section 1. Section 372 of the executive law, as amended by chapter 309 of the laws of 1996, subdivision 3 as amended by chapter 159 of the laws of 2007 and subdivision 19 as added by chapter 119 of the laws of 2001, is amended to read as follows:

§ 372. Definitions. As used in this article, the following terms shall have the meaning ascribed to them, unless the context otherwise requires:

1. "Administrator" means the state fire administrator established pursuant to article six-C of this chapter.

2. **"Applicable code enforcement program" means the program established by a local government or county pursuant to the regulations promulgated pursuant to subdivision one of section three hundred eighty-one of this article, or, where so provided in subdivision two of section three hundred eighty-one of this article, the secretary's code enforcement program, or, where so provided in subdivision seven of section three hundred eighty-one of this article the default code enforcement program.**

3. "Areas of public assembly" means all buildings or portions of buildings used for gathering together fifty or more persons for amusement, athletic, civic, dining, educational, entertainment, patriotic, political, recreational, religious, social, or similar purposes, the entire fire area of which they are a part, and the means of egress therefrom.

[~~3.~~] **4.** "Building" means a combination of any materials, whether portable or fixed, having a roof, to form a structure affording shelter for persons, animals or property. The word "building" shall be construed when used herein as though followed by the words "or part or parts ther-

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

LBD14997-02-2

eof" unless the context clearly requires a different meaning. The term "building" shall also mean "factory manufactured home" and "mobile home". The term "building" shall not include a "temporary greenhouse".

[~~4.~~] **5.** "Construction" means the construction, reconstruction, alteration, conversion, repair, installation of equipment or use of buildings, and requirements or standards relating to or affecting materials used in connection therewith, including provisions for safety and sanitary conditions.

[~~5.~~] **6.** "Council" means the state fire prevention and building code council created by this article.

[~~6.~~] **7. "Default code enforcement program" means the code enforcement program established by the rules and regulations promulgated pursuant to subdivision seven of section three hundred eighty-one of this article.**

8. "Department" means the department of state.

[~~7.~~] **9.** "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, refrigerating equipment, elevators, dumb waiters, escalators and other mechanical additions or installations.

[~~8.~~] **10.** "Factory manufactured home" means a structure designed primarily for residential occupancy constructed by a method or system of construction whereby the structure or its components are wholly or in substantial part manufactured in manufacturing facilities, intended or designed for permanent installation, or assembly and permanent installation, on a building site.

[~~9.~~] **11.** "Fire area" means the floor area of a story of a building within exterior walls, party walls, fire walls, or any combination thereof.

[~~10.~~] **12.** "Fire protection equipment and systems" means apparatus, assemblies, or systems, either portable or fixed, for use to detect, prevent, control, or extinguish fire.

[~~11.~~] **13.** "Local government" means a village, town (outside the area of any incorporated village) or city.

[~~12.~~] **14.** "Means of egress" means a continuous unobstructed way of exit from any point in a building or structure to a public way. A means of egress comprises the vertical and horizontal ways of travel and includes intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, escalators, horizontal exits, courts, and yards.

[~~13.~~] **15.** "Mobile home" means a moveable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed and constructed without a permanent foundation for year-round living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. "Mobile home" shall mean units designed to be used exclusively for residential purposes, excluding travel trailers.

[~~14.~~] **16.** "Office" means the office of fire prevention and control created pursuant to article six-C of this chapter.

[~~15.~~] **17. "Permit or certificate of occupancy provision" shall mean any provision in the applicable code enforcement program that: (a) prohibits performance of any work that must conform with the uniform code and/or state energy code unless a building permit, construction permit, demolition permit, or similar permit has been issued, has not been suspended or revoked, and has not expired; (b) prohibits the continuation of work after a stop work order has been issued; (c)**

prohibits the conduct of any activity or the use of any category of building specified in the rules and regulations promulgated pursuant to subdivision one of section three hundred eighty-one of this article unless an operating permit has been issued, has not been suspended or revoked, and has not expired; or (d) prohibits the use or occupancy of a building or the change of any use or occupancy of a building unless a certificate of occupancy, certificate or completion, or similar certificate has been issued, has not been suspended or revoked, and has not expired.

18. "Required features" means the features required by the rules and regulations promulgated pursuant to subdivision one of section three hundred eighty-one to be included in a code enforcement program.

19. "Secretary" means the secretary of state.

[~~16.~~] **20. "Secretary's code enforcement program" means those rules and regulations promulgated pursuant to subdivision one of section three hundred eighty-one of this article that are applicable in situations in which the secretary administers and enforces the uniform code in the place and stead of the local government or county.**

21. "State agency" means any department, bureau, commission, board, public authority or other agency of the state, including any public benefit corporation any member of whose board is appointed by the governor.

[~~17.~~] **22.** "Temporary greenhouse" means specialized agricultural equipment having a framework covered with demountable polyurethane materials or materials of polyurethane nature and lacking a permanent and continuous foundation, which is specifically designed, constructed and used for the culture and propagation of horticultural commodities. A "temporary greenhouse" may include, but is not limited to, the use of heating devices, water and electrical utilities, and supporting poles embedded in non-continuous concrete. In no instance will a temporary greenhouse be used for the retail sale of any farm or non-farm products.

[~~18. "Uniform code" or "code" means the New York state uniform fire prevention and building code promulgated pursuant to section three hundred seventy-seven of this article.~~

~~19.~~] **23.** "Truss type construction" means a fabricated structure of wood or steel, made up of a series of members connected at their ends to form a series of triangles to span a distance greater than would be possible with any of the individual members on their own.

24. "Uniform code" or "code" means the New York state uniform fire prevention and building code promulgated pursuant to section three hundred seventy-seven of this article.

§ 2. Subdivisions 2, 3, 4 and 5 of section 381 of the executive law, subdivision 2 as amended by chapter 560 of the laws of 2010 and subdivisions 3, 4 and 5 as added by chapter 707 of the laws of 1981, are amended, subdivision 6 is renumbered subdivision 8 and two new subdivisions 6 and 7 are added to read as follows:

2. Except as may be provided in regulations of the secretary pursuant to subdivision one of this section, **and subject to the provisions relating to cities with a population of over one million as set forth in paragraph c of subdivision one of section three hundred eighty-three of this article,** every local government shall administer and enforce the uniform fire prevention and building code and the state energy conservation construction code on and after the first day of January, nineteen hundred eighty-four, provided, however, that a local government may enact a local law prior to the first day of July in any year providing that it will not enforce such codes on and after the first day of [~~Janu-~~

~~ary~~] April next succeeding. In such event the county in which said local government is situated shall administer and enforce such codes within such local government from and after the first day of [~~January~~] April next succeeding the effective date of such local law, in accordance with the provisions of paragraph b of subdivision five of this section unless the county shall have previously enacted a local law providing that it will not enforce such codes within that county. In such event the secretary in the place and stead of the local government shall, directly or by [~~contract~~] using the services of any contractors or other third-party providers as the secretary may deem to be qualified, administer and enforce the uniform code and the state energy conservation construction code within such local government on and after the first day of April next succeeding. A county that is responsible for administering and enforcing such codes within a local government pursuant to the foregoing provisions of this subdivision may enact a local law prior to the first day of October in any year providing that it will not enforce such codes within such local government on and after the first day of April next succeeding. In such event, the secretary, in the place and stead of such local government, shall, directly or by using the services of any contractors or other third-party providers as the secretary may deem to be qualified, administer and enforce such codes in such local government from and after the first day of April next succeeding. A local government that adopts a local law providing that it will not enforce such codes on and after the first day of April next succeeding shall promptly notify the county in which such local government is located and the secretary of the adoption of such local law. A county that adopts a local law providing that it will not enforce such codes on and after the first day of April next succeeding shall promptly notify each local government in which such county is administering and enforcing such codes and the secretary of the adoption of such local law. A local government or a county may repeal a local law which provides that it will not enforce such codes and shall thereafter administer and enforce such codes as provided above. Two or more local governments may provide for joint administration and enforcement of the uniform code, the state energy conservation construction code, or both, by agreement pursuant to article five-G of the general municipal law. Any local government may enter into agreement with the county in which such local government is situated to administer and enforce the uniform code, the state energy conservation construction code, or both, within such local government. Local governments or counties that administer and enforce the uniform code, the state energy conservation construction code, or both, may charge and collect fees to defray the costs of administration and enforcement. Where the secretary is responsible for administration and enforcement of the uniform code and state energy conservation construction code within a local government pursuant to this subdivision or pursuant to paragraph e of subdivision four of this section, (a) the secretary shall administer and enforce the codes in accordance with the provisions of the secretary's code enforcement program; (b) such rules and regulations shall be deemed to be the applicable code enforcement program for the purposes of section three hundred eighty-two of this article; and (c) the secretary may charge and collect fees to defray the costs of administration and enforcement.

3. On and after the first day of July, nineteen hundred eighty-five, the secretary shall have power to investigate [~~and conduct hearings relative to~~] whether administration and enforcement of the uniform fire prevention and building code and the state energy conservation

construction code complies with the minimum standards promulgated pursuant to subdivision one of this section. In connection with any such investigation, the secretary shall have the power to issue subpoenas compelling the testimony of witnesses, the production of documents, or both, and the power, at the secretary's discretion, to conduct one or more hearings. At least ten days written notice of any such hearing shall be provided to the elective or appointive chief executive officer or, if there be none, the chairman of the legislative body of the local government or county whose administration and enforcement of the uniform code and state energy conservation construction code is at issue.

4. If the secretary determines that a local government has failed to administer and enforce the uniform fire prevention and building code and/or the state energy conservation construction code in accordance with the minimum standards promulgated pursuant to subdivision one of this section, the secretary shall take any of the following actions, either individually or in combination in any sequence:

a. The secretary may issue an order compelling compliance by such local government with the minimum standards [~~for administration and enforcement of the uniform code~~] promulgated pursuant to subdivision one of this section.

b. The secretary may appoint and remove any person deemed qualified by the secretary as an oversight officer, who shall have the power and authority to do any of the following, at the discretion of the oversight officer:

(i) observe, review records and report on compliance by such local government with the minimum standards promulgated pursuant to subdivision one of this section;

(ii) direct all or any part of the code enforcement activities of the local government's code enforcement personnel; and

(iii) take any other steps deemed by the oversight officer to be necessary or appropriate to ensure that the uniform code and state energy conservation construction code are administered and enforced within such local government in a due and proper manner and in compliance with the minimum standards promulgated pursuant to subdivision one of this section. Any person who is appointed as an oversight officer pursuant to this paragraph shall be deemed to be a state officer under section two of the public officers law.

c. The secretary may ask the attorney general to institute in the name of the secretary an action or proceeding seeking appropriate legal or equitable relief to require such local government to administer and enforce the uniform code and state energy conservation construction code in a due and proper manner and in compliance with the minimum standards promulgated pursuant to subdivision one of this section, including but not limited to requiring such local government to take specific remedial actions, such as establishing and enforcing an effective code enforcement program, conducting fire safety and property maintenance inspections, increasing the frequency of fire safety and property maintenance inspections, and taking enforcement actions that are timely and responsive to circumstances associated with the property in question when violations are identified.

[~~c. the~~] d. The secretary may designate the county in which such local government is located, or any other local government that adjoins or is reasonably proximate to such local government, to administer and enforce the uniform code and state energy conservation construction code in such local government. Designation of an adjoining or reasonably proximate local government shall be subject to the consent of the supervisor or

mayor, as applicable, of such local government. In the case of such designation, the provisions of subdivision five of this section shall apply.

[~~d.~~] e. The secretary may, in the place and stead of the local government, directly or by using the services of any contractors or other third-party providers as the secretary may deem to be qualified, administer and enforce the uniform code and state energy conservation construction code in such local government in accordance with the [~~minimum standards promulgated pursuant to subdivision one of this section~~] secretary's code enforcement program. In such event, the provisions of subdivision five of this section shall apply.

f. The secretary may designate the county in which such local government is located, any other local government that adjoins or is reasonably proximate to such local government, or the department of state to perform within such local government such types and classes of code enforcement activities, such as permit application review and approval, construction inspections, and fire safety and property maintenance inspections, as the secretary may specify. Designation of an adjoining or reasonably proximate local government shall be subject to the consent of the supervisor or mayor, as applicable, of such local government. In the case of such designation, the provisions of subdivision six of this section shall apply.

g. The secretary may order a local government to cease prosecution of violations of the uniform code and order that such violations be prosecuted pursuant to section seven hundred of the county law.

5. Where the secretary has designated a county or adjoining or reasonably proximate local government to administer and enforce the uniform fire prevention and building code and state energy conservation construction code within a local government pursuant to paragraph d of subdivision four of this section, or has assumed authority for administration and enforcement of the uniform fire prevention and building code and state energy conservation construction code within a local government pursuant to [~~subdivision two or~~] paragraph [~~d~~] e of subdivision four of this section:

a. [~~Such~~] The local government [~~or county government~~] that is not administering or enforcing the uniform code and state energy conservation construction code in accordance with minimum standards shall not administer and enforce the uniform code or state energy conservation construction code, and shall not charge or collect fees for such administration and enforcement.

b. [~~Such~~] The designated county or local government or the secretary shall administer and enforce the uniform code within [~~such~~] the local government whose administration and enforcement of the uniform code and state energy conservation construction code has not met the minimum standards from and after the date of such designation or assumption. Such administration and enforcement shall apply the minimum standards promulgated by the secretary pursuant to subdivision one of this section. Notwithstanding any other provisions of law, such designated county or local government or the secretary shall have full power to administer and enforce the uniform code [~~in accordance with such~~] and state energy conservation construction code in the local government whose administration and enforcement of the uniform code and state energy conservation construction code has not met the minimum standards, including the power to charge and collect fees for such administration and enforcement.

c. The secretary shall designate the local government [~~or county government~~] whose administration and enforcement of the uniform code and state energy conservation construction code did not meet the minimum standards to resume administration and enforcement of the uniform code when the secretary is satisfied that such local government [~~or county~~] will provide such administration and enforcement in compliance with the minimum standards promulgated pursuant to subdivision one of this section.

d. The provisions of subdivisions three and four of this section shall apply to counties [~~which have been designated to administer and enforce the uniform code in such local government~~] that are responsible for administration and enforcement of the uniform code and state energy conservation construction code within a local government pursuant to subdivision two of this section, to counties that have been designated to administer and enforce the uniform code and state energy conservation construction code within a local government pursuant to paragraph d of subdivision four of this section, and to local governments that have been designated to administer and enforce the uniform code and state energy conservation construction code within another local government pursuant to paragraph d of subdivision four of this section. Where the provisions of subdivisions three and four of this section are applicable to a county, references in those subdivisions to a local government whose administration and enforcement of the uniform code and state energy conservation construction code have been determined by the secretary to have not met the minimum standards shall be construed as references to such county.

6. Where the secretary has designated a county, another local government, or the department to perform specified types and classes of code enforcement activities within a local government pursuant to paragraph f of subdivision four of this section:

a. The local government whose administration and enforcement of the uniform code and state energy conservation construction code has not met the minimum standards shall not perform the types and classes of code enforcement activities specified in such designation and shall accept performance of such types and classes of code enforcement activities by the designee;

b. The local government whose administration and enforcement of the uniform code and state energy conservation construction code has not met the minimum standards shall reimburse the designee for any reasonable costs and expenses incurred by the designee in performing the designated types and classes of code enforcement activities; and

c. The secretary shall designate the local government whose administration and enforcement of the uniform code and state energy conservation construction code has not met the minimum standards to resume performance of the designated types and classes of code enforcement activities when the secretary is satisfied that such local government will perform such activities in a due and proper manner and will otherwise provide administration and enforcement of the uniform code and state energy conservation construction code in compliance with the minimum standards promulgated pursuant to subdivision one of this section.

7. a. The secretary is authorized to promulgate, and to amend from time to time, rules and regulations establishing a default code enforcement program. Such default code enforcement program shall include provisions establishing the required features and such other provisions as the secretary may deem to be appropriate for inclusion in a code enforcement program. Such default code enforcement program shall also

establish fees to be charged by any local government or county that administers and enforces the uniform code and/or energy code in accordance with the provisions of the default code enforcement program.

b. Any local government or county responsible for administration and enforcement of the uniform code and/or state energy code within a local government that has not established its own code enforcement program shall administer and enforce the uniform code and/or energy code in accordance with the provisions of the default code enforcement program.

c. Any local government or county that administers and enforces the uniform code and/or energy code in accordance with the provisions of the default code enforcement program pursuant to paragraph b of this subdivision shall, through its chief executive officer, have full power and authority to designate the public officer or agency authorized to issue an appearance ticket, and a public officer who, by virtue of office, title or position, is authorized or required to enforce the provisions of the uniform code and the state energy conservation construction code and the provisions of the default code enforcement program as fully and with the same force and effect as such local government or county would have to enforce provisions established by a local law, ordinance, or regulation enacted or adopted by such local government or county. The designation authorized by this paragraph shall not take effect until it has been filed with the department of state, and must be maintained on the website of such local government or county unless and until such local government or county passes a local law delegating the enforcement authority referenced in this paragraph.

d. Where a local government or county is administering and enforcing the uniform code and/or energy code in accordance with the provisions of the default code enforcement program pursuant to paragraph b of this subdivision, the default code enforcement program shall be deemed the applicable code enforcement program for the purposes of section three hundred eighty-two of this article.

§ 3. Section 382 of the executive law, as added by chapter 707 of the laws of 1981, subdivision 2 as amended by chapter 571 of the laws of 2021, subdivision 3 as amended by chapter 507 of the laws of 2021 and subdivision 4 as amended by chapter 47 of the laws of 2021, is amended to read as follows:

§ 382. Remedies. 1. In addition to and not in limitation of any power otherwise granted by law, every local government and its authorized agents shall have the power to order in writing the remedying of any condition found to exist in, on or about any building in violation of the uniform fire prevention and building code and to issue appearance tickets for violations of the uniform code.

2. Failure to comply with the uniform fire prevention and building code, permit or certificate of occupancy provision of the code enforcement program, or order. Any person or entity, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the uniform fire prevention and building code, who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to subdivision one of section three hundred eighty-one of this article, such time period to be stated in the order, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in the construction of any building who shall knowingly violate (i) any of the applicable provisions of the uniform code, (ii) any permit or certificate of occupancy provision of the

applicable code enforcement program, or (iii) any lawful order of a local government, a county or the secretary made [~~thereunder~~] under the uniform code or under the applicable code enforcement program regarding standards for construction, maintenance, or fire protection equipment and systems, shall be guilty of an unclassified misdemeanor. Such offense shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both for the first one hundred eighty days, and for the following one hundred eighty days shall be punishable by a fine of no less than twenty-five dollars and not more than one thousand dollars per day of violation or imprisonment not exceeding one year, or both and thereafter shall be punishable by a fine of no less than fifty dollars and not more than one thousand dollars per day of violation or imprisonment not exceeding one year, or both.

3. Where the construction or use of a building is in violation of (i) any provision of the uniform code [~~or any lawful order obtained thereunder~~], (ii) any permit or certificate of occupancy provision of the applicable code enforcement program, or (iii) any provision of any lawful order made under this article, under the uniform code, or under the applicable code enforcement program, a justice of the supreme court, New York city civil court, a city court, district court or county court may order the removal of the building or an abatement of the condition in violation of such provisions. Where a person or entity, having been served with any lawful order made under this article, under the uniform code, or under the applicable code enforcement program, shall fail to comply with such order, a justice of the supreme court, New York city civil court, a city court, district court or county court may order compliance with such order. An application for such relief may be made by the secretary, an appropriate municipal officer, or any other person aggrieved by the violation.

4. In addition to any other applicable remedy or penalty, where a building has been altered in violation of any provision of the uniform code or any lawful order obtained [~~thereunder~~] under this article, under the uniform code, or under the applicable code enforcement program, and such alteration impedes a person's egress from such building during a fire or other emergency evacuation, the owner of such building, and any builder, architect, contractor, subcontractor or construction superintendent, or agent thereof who has knowledge of such alteration, or owner who reasonably should have had knowledge of such alteration based on either an inspection or repair of a leased premises with consent from the tenant, shall be subject to a civil penalty of up to seven thousand five hundred dollars.

5. (a) Notwithstanding any other provision of law, all fines imposed and collected for any violation of this section shall be paid at least monthly into the treasury of the local government in which such violation occurred, unless: (i) the county is administering and enforcing the uniform fire prevention and building code and state energy conservation construction code in such local government as provided by subdivision two or four of section three hundred eighty-one of this article, in which case such fines and penalties collected in cases arising out of the violation of this section shall be paid at least monthly into the treasury of the county, (ii) an adjoining or reasonably proximate local government is administering and enforcing the uniform fire prevention and building code and state energy conservation construction code in such local government as provided by subdivision four of section three hundred eighty-one of this article, in which case such fines and

penalties collected in cases arising out of the violation of this section shall be paid at least monthly into the treasury of such adjoining or reasonably proximate local government, or (iii) the secretary is administering and enforcing the uniform fire prevention and building code and state energy conservation construction code in such local government as provided by subdivision two or four of section three hundred eighty-one of this article, in which case such fines and penalties collected in cases arising out of the violation of this section shall be paid at least monthly into the general fund established by section seventy-two of the state finance law. Where two or more local governments have provided for joint administration and enforcement of the uniform code, the state energy conservation construction code, or both, by agreement pursuant to article five-G of the general municipal law, such local governments may provide in such agreement for a different distribution of such fines.

(b) The civil penalties provided in subdivision four of this section may be recovered in an appropriate action or proceeding commenced by the local government, county, or state agency responsible for administration and enforcement of the uniform code with respect to the building that was altered in violation of any provision of the uniform code or any lawful order obtained under this article, under the uniform code, or under the applicable code enforcement program, and shall be payable to the treasury of such local government, the treasury of such county, or the general fund of the state of New York, as applicable.

§ 4. Subdivision 14 of section 11-102 of the energy law, as amended by chapter 560 of the laws of 2010, is amended to read as follows:

14. "Residential building." Any building which is designed or is to be used primarily as a dwelling or household as defined by the state fire prevention and building code council, including any factory manufactured home as defined in subdivision [~~eight~~] ten of section three hundred seventy-two of the executive law and any mobile home as defined in subdivision [~~thirteen~~] fifteen of section three hundred seventy-two of the executive law.

§ 5. This act shall take effect immediately.