

STATE OF NEW YORK

3606

2021-2022 Regular Sessions

IN SENATE

January 30, 2021

Introduced by Sens. BAILEY, SKOUFIS, BIAGGI, KAVANAGH, RIVERA -- 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. Oversight shall

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

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1 include, but not be limited to, research and data collection to deter-
2 mine the needs of the local government in order to achieve minimum stan-
3 dards of code enforcement, providing assistance with capacity building,
4 and providing assistance with resolving complaints.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (2) present significant complaints to the secretary regarding a local-
54 ity's failure to meet minimum standards of code enforcement, the locali-
55 ty's failure to adopt recommendations for resolution by the ombudsperson
56 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 ombudspeople. The ombudsperson, with the approval of the
24 secretary, may appoint one or more assistant state code enforcement
25 ombudspeople 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-two, 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.