



American Council of Engineering Companies of New York

**Position Statement on
Intro. 977, Intro. 1241, Intro. 1280 and Intro. 1107
Submitted to the City Council Committee on Housing and Buildings
December 13, 2018**

ACEC New York represents close to 300 consulting engineering and affiliate firms throughout New York State, with a concentrated presence in New York City. Our members plan and design the structural, mechanical, electrical, plumbing, civil, environmental, fire protection and technology systems for the City's buildings and infrastructure. We thank you for the opportunity to provide the following comments on the above-mentioned bills.

Intro 977, in relation to mandatory sanctions for submitting incorrect professionally certified applications for construction document approval.

This bill would impose *mandatory* sanctions on a design professional who submits two professionally certified applications for construction document approval within any 12-month period containing errors that result in a stop work order, which could be caused by a non-error on the part of the design professional whose interpretation may actually be correct while that of the examiner may ultimately be determined to be incorrect. This subjects the design professional to an onerous administrative proceeding to clear a purported offense based upon a DOB Order which shouldn't have been issued in the first place, or errors where the professional's interpretation was thoughtful and reasonable but where the Department reached a contrary conclusion.

The very complicated Construction Codes and Zoning Resolution are often subject to interpretation. The fact that a field examiner finds objections to an engineer's plans does not necessarily mean an error has occurred; there may not be an error. DOB staff, internally, has two levels of appeals from examiners which demonstrates that even within the Department there is acknowledgement that interpretations differ.

For almost all projects, when initially reviewed, an objections sheet is issued. Some of the objections are cleared by DOB's Borough Offices or central Technical Affairs bureau, because not everything objected too is an error but by that time a stop work order may have been issued.

If a design professional did submit something that is sufficient to warrant a stop work order after final review, if plan related, it would likely also be sufficient for DOB to revoke the permit. Therefore, the existing language which provides for the assessment of sanctions when a permit is revoked provides the appropriate mechanism for determining at what point the same should be considered.

The bill also requires that DOB must maintain a publicly available database of registered design professionals who have been sanctioned and annually report this information to the City Council. The database and report should clearly state whether such sanctions are under review or appeal.

The database should also remove such reports from its listing after the expiration of the rolling twelve month period in which two infractions occur.

Intro 1241, in relation to expanding sanctions for submission of professionally-certified false or noncompliant building permit applications or plans.

This bill would penalize the larger engineering firms disproportionately and would have little to no impact on sole practitioners. It would likely not deter those individuals who are not using the professional certification program responsibly.

The bill fails to take into account that the larger engineering firms already have their own quality control practices and will discourage responsible firms from agreeing to professionally certify projects at all. This seems counterproductive, by driving responsible firms from using the program, therefore limiting responsible developers from access to it, while incentivizing solo practitioners to stamp plans which they may be competent to approve in order not to hold things up by a DOB pre-audit, all without impacting those who may be using the program irresponsibly. With fewer firms willing to use the program this could also slow projects down, make them more expensive and potentially lead to corners being cut by developers and contractors.

Additionally, DOB is in the midst of significant efforts to modernize itself. DOB has made great strides toward this end, though there remains much improvement yet to achieve. ACEC New York strongly supports DOB in this initiative. Intro. 1241, by discouraging engineering firms to professionally certify projects, will create additional workload for DOB. This will further burden DOB and require that either additional resources be allocated to the Department or an end result could be that DOB diverts resources away from these important reform efforts.

ACEC New York is opposed to this bill for the reasons stated above. However, if the bill is to be passed in some form ACEC New York recommends adding a requirement that a warning notification be sent to any affected firm providing them an opportunity to address the issue internally before the firm is sanctioned.

Intro 1280, in relation to the tenant protection plan and penalties for false statements.

To the extent this bill could burden engineering firms with the requirement to physically survey the number of units in buildings and determine the number of occupants in each apartment by going door to door and demanding access, the bill is a concern. The owner is in a better position to access this information.

For example, in the case of an ALT 2 Mechanical/Plumbing filing, it should be the sole responsibility of the building owner to provide and verify the number of units in the building, similar to the PW-3 costing final verification.

Regarding penalties for submitting false information to obtain a PW-1, these should only be imposed on an engineering firm if the information submitted is clearly, factually false as to material matters known to the engineer.

Intro 1107, in relation to requiring contractors to prepare and submit tenant protection plans, and to repeal section 28-104.8.4 of the administrative code of the city of New York, relating to requiring architects or engineers to prepare such plans.

ACEC New York supports this legislation. The bill would require contractors to prepare and submit for approval tenant protection plans when seeking a permit to perform construction and would repeal law that requires architects or engineers to prepare and submit such plans.

Thank you for this opportunity to provide testimony. If you have questions or would like to discuss these comments with representatives of our Codes Committees, please let us know.

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