



Statement of
The American Council of Engineering Companies of New York
Regarding Int. No. 1392-A – Committee on Governmental Operations
May 22, 2017

The American Council of Engineering Companies of New York (ACEC New York) is the voice of the professional engineering community, representing 280 member firms throughout New York State that collectively employ close to 24,000 people statewide, with a concentrated presence of firms located within the five boroughs of New York City. Of those 280 firms, 50 are MWBE firms certified by the Department of Small Business Services. Our members are involved in all aspects of engineering, including professional services in connection with applications before the Board of Standards and Appeals, including structural design, geotechnical reports on soil conditions and environmental review.

ACEC New York is strongly opposed to Int. No. 1392-A in its present form. The bill inappropriately seeks to require the submission of vaguely described sworn and notarized statements and imposes steep penalties for any violations. The language of the bill includes, along with the applicant or property owner, “the preparer of any document accompanying an application”. ACEC New York takes issue with this inclusion of a body of professionals that are required to act with integrity by virtue of their licenses. Additionally, we are concerned with the definition of “material false statement” which is not limited to matters known to and believed by the professional, as well as the provision for ad hoc determinations of the neighborhood study radius and components.

We also strongly object to the fact that sweeping language purporting to regulate our industry was proposed only last week and without any discussion or opportunity for discussion with the affected professionals.

Of particular concern, requiring a “sworn certification” that an application statement is “correct” is not an enforceable standard. It is also nothing short of outrageous that if the engineer is the applicant – which occurs occasionally – the testimony of that person, and that person alone, must be sworn.

Additionally, requiring referral to the Department of Investigation because the Board determines that an application contains “false statements” is likewise objectionable, absent any suggestions that a false statement or information was knowingly submitted, rather only that it was known to be part of the BSA record.

We note the following specific provisions:

1. Section 668; paragraphs a., c.2, and c.3 – With respect to “true and correct,” there is no provision for “to the best of one’s knowledge.” It is virtually impossible to certify absolute truth and correctness and a penalty of perjury is inappropriate. In paragraph a., this would apply to engineers, planners, architects, and others who prepare documents (such as engineering drawings, environmental assessment statements, architectural drawings, zoning analyses, etc.). In paragraphs c.2 and c.3, this extends to presentation materials at public hearings/meetings. It is unclear if, or how, evolution of plans during development of a project would be addressed by this proposed provision as is frequently the case after presentation to public officials. The original submitted application materials should not be retroactively considered “untrue and incorrect?”
2. Paragraph b. – For the financial analysis, this is a finding in the Zoning Resolution that is not required of non-profits. As written, it would now impose a finding of financial hardship, which is not the appropriate standard.
3. Paragraph b. – The requirement for a professional to sign and seal cost estimates would appear to be superseded by State Education Law governing such professionals, which directs how and when seals are to be deployed.
4. Section 670 – The proposed “False Statement” penalty of \$15,000 “for each such false statement” is excessive.

As noted above, a per se violation for a false statement is inappropriate. Please note the knowledge and belief section of the CEQR EAS form of certification:

“I swear or affirm under oath and subject to the penalties for perjury that the information provided in the Environmental Assessment Statement (EAS) is ***true and accurate to the best of my knowledge and belief***, based upon my personal knowledge and familiarity with the information described herein and after examination of the pertinent books and records and/or after inquiry of persons who have personal knowledge of such information or who have examined pertinent books and records.” [Emphasis added]

We respectfully request that Int. 1392-A be laid over and its language reexamined to more accurately reflect its intended goal without placing an undue and inappropriate burden on engineering professionals.