

FOR THE RECORD

**Testimony of Hannah O'Grady, Deputy Executive Director
ACEC New York/Metropolitan Region
Before the New York City Council
Governmental Operations Committee
August 14, 2008**

Good morning. I am Hannah O'Grady, Deputy Executive Director of the American Council of Engineering Companies of New York. The council represents over 240 engineering firms throughout New York State with the largest concentration of firms being located in New York City. While I am not a licensed professional engineer, I have been with the Council since 1999 and I have tremendous respect for a profession that has at its very core public safety.

I am here to say that not everyone can be the Commissioner of the Department of Buildings. The Commissioner is charged with interpreting as well as enforcing the city's building codes and zoning regulations, and numerous state and local laws concerning the construction and alteration of buildings in New York City. As such the Commissioner is required to exercise judgment on highly technical matters that require specific training and experience.

Engineers and architects are licensed by the State of New York and sit through an exam of great complexity. They are held to the highest ethical standards and are required by the state to complete on-going professional education to maintain their licensure. It is only appropriate for an agency that is responsible for overseeing the work of thousands of professional engineers and architects in New York to have at its helm a leader who is also a licensed professional.

We ask that you preserve the existing credential requirement for the Buildings Commissioner that has been in place for over 30 years and vote against Intro. 755A.

Thank you.

SEAoNY



FOR THE RECORD

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August 14, 2008

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New York City Council
Committee on Governmental Operations

RE: **INTRO 755A – SEAoNY Statement**

Dear Committee,

On behalf of the Board of Directors and over 400 members of the Structural Engineers Association of New York (SEAoNY), we strongly oppose Intro 755A, the proposed local law to eliminate the requirement that the Buildings Commissioner be a licensed Professional Engineer or Registered Architect.

The role of the Buildings Commissioner is a highly technical role having to make high level technical decisions on complex issues ranging from plan approvals, permitting, and construction site safety. The latest New York City Building Code has over 900 mentions of “Commissioner” on matters requiring specific training and experiences to not only understand but to make final rulings on building safety issues. Licensed engineers and architects have particular insights into the design, construction, and maintenance of buildings which is paramount to the position of Commissioner. It is not in the interests of the people of the City of New York to have a Building Commissioner who has the power to issue building permits but is not even qualified to obtain one.

Further, we feel that maintaining the Building Commissioner requirement to be a Licensed Professional Engineer or Registered Architect will help to ensure the highest level of ethics and integrity as mandated by a licensed professional’s requirement to abide by a rigorous Code of Ethics such as to “use their knowledge and skill in the performance of their professional duties to make decisions in the interest of the safety, health, and welfare of the public.”

Building safety and institutional integrity should be a mandate for the City of New York. It is time to fortify the skills and moral character of the Building Commissioner not to diminish them.

Sincerely,

Robert K. Otani, PE
President, SEAoNY

08/14/2008

FOR THE RECORD

**Testimony submitted to the Government Operation Committee
of The New York City Council
regarding Intro. 0755A-2008**

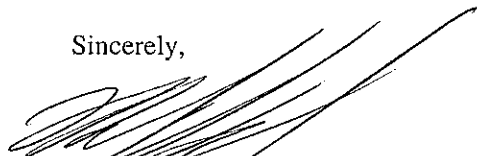
Ladies and Gentleman of the City Council Government Operations Committee:

You have been presented with Intro number 755A-2008, which amends the previous proposal #755-2008 to eliminate the requirement for the NYC Commissioner of Buildings to be a New York State (NYS) licensed engineer or registered architect. Both of these proposals are based on the premise that "it is just too difficult" to find a person with both the managerial skills and the qualifications currently required by the NYC Charter. I suggest that this is not a sufficient argument to warrant this critical change to the public protections provided under the current charter provisions. We would not want the argument that "the standard is too difficult to meet" to be accepted by Commissioners of the Dept. of Buildings, in exercising their duties to consider proposed alternatives to the Building Code, under City Charter section 645. It therefore seems foolish that it would be accepted as the basis to reduce the qualifications for a person to be the Commissioner of the NYC Dept. of Buildings.

There has already been much written on the reasons why it is important for the Commissioner of the Dept. of Buildings to be a licensed professional engineer or registered architect. I will not repeat those reasons here, but for reference, I have attached a copy of my written testimony previously submitted to this Committee, at its' last hearing on this matter on 5/7/08. What is important to reiterate, is that the duties of the Commissioner, as described in the NYC Charter, require the practice of Architecture and/or Engineering as defined under NYS Education Law. Further, in New York State, only an individual who has been granted a license or registration as an engineer or architect respectively, is permitted to practice Architecture and/or Engineering. The proposed Charter does not transfer all duties requiring the practice of Architecture and/or Engineering to a Deputy Commissioner, it merely allows the Commissioner to delegate such duties, if they so choose. I suggest that the practice of Architecture and/or Engineering is so integral to executing the duties of the Commissioner, that it would be practically impossible for an unlicensed and/or unregistered Commissioner to avoid the illegal practice of these professions.

I therefore strongly encourage all members of the City government to maintain the safeguard of requiring the Commissioner of the Dept of Buildings to be a New York State licensed engineer or registered architect. In regard to obtaining the managerial expertise desired, it seems far more appropriate to seek as many Deputy Commissioners as necessary, who possess the appropriate managerial knowledge and skills, rather than to reduce the important protections of public health and safety provided under the current NYC Charter.

Sincerely,



Mark Kaplan, R.A.

05/07/2008

**Testimony submitted to the Government Operation Committee
of The New York City Council
regarding Intro. 0755-2008**

Ladies and Gentleman of the City Council Government Operations Committee:

You have been presented with Intro number 755-2008 to eliminate the requirement for the NYC Commissioner of Buildings to be a New York State (NYS) licensed engineer or registered architect. As a registered Architect and a person working in the construction industry for over 25 years from both the private and public sectors, as well as from the contractor and professional perspective, I wish to add my voice to those who have advised that the proposed reduction of the qualification requirements, would be detrimental to the health and safety of the citizens and visitors of our City

The NYC Charter, rightly recognizes that New York City is a densely built environment with many properties that contain unique conditions, which can not be specifically identified and codified. The NYC Charter therefore, thoughtfully entrusts to the NYC Department of Buildings' Commissioner, exclusive powers and duties that no other non-elected governmental individual has. These include the authority and responsibility to analyze proposed alternatives to specific requirements of the New York City Building Code, for individual projects where, due to specific circumstances of that project, it is not possible to adhere to the strict letter of the Building Code. Further, the Commissioner may permit the implementation of a proposed alternative, provided they find that the spirit of the Building Code "shall be observed, safety secured and substantial justice done."

Due to this enormous responsibility, the complex nature of building design, and the ever evolving new construction materials, techniques and environmental issues, it is imperative that the Commissioner personally possess the specialized knowledge to review and decide these issues of public health and safety. Only an individual who has been granted a license or registration as an engineer or architect respectively, has demonstrated such specialized knowledge and in New York State, is charged by that license or registration to protect the public health, safety and welfare. NYS rules of both professions require the individual making those decisions to have complete final authority in such matters and NOT act through an individual that NYS has not determined to be qualified in these areas by way of registration and/or license.

The City of NY and the Dept. of Buildings recently confirmed their understanding of how important this professional expertise and perspective is, in making public safety decisions, by retaining outside engineering consultants to undertake an "intensive in-depth review of high-risk construction activities." While this action is laudable, it is critical that the Dept. of Buildings maintain the in-house knowledge necessary to fully understand these issues and make educated decisions on these matters.

In addition to technical knowledge, an intimate familiarity with the Dept. of Buildings, where it has been and where it is going, is an important asset for the next Commissioner of that Department. It is particularly so, due to the relatively short duration of this appointment and the great quantity of new initiatives currently underway, such as the implementation of the new construction codes, new filing /review procedures and new inspection/enforcement procedures. The learning curve for an individual from outside the Department of Building would be enormous and could severely hamper any new Commissioner from being effective.

I therefore strongly encourage all members of the City government to maintain the safeguard of requiring the Commissioner of the Dept of Buildings to be a New York State licensed engineer or registered architect and to seek such qualified individual from within the current ranks of the Dept. of Buildings.

Sincerely,



Mark Kaplan, R.A.

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American Institute of Architects, New York Chapter
Testimony on Int. 755-A
Government Operations Committee, New York City Council
August 14, 2008

On behalf of the American Institute of Architects New York Chapter and its 4,400 members, we are here in opposition to Intro 755-A. The Commissioner of the Department of Buildings must be a registered architect or professional engineer. The current law is logical and necessary, and this compromise bill is not acceptable to us. The Commissioner, as the final authority in a Department that governs the quality and safety of our built environment, must be trained and tested in how buildings rise, and how they stand. A permanent change to the City Charter on this issue is not in the best interest of the City of New York.

By letters, e-mails and petitions, you have heard from many of your constituents about the importance of this issue for those of us who work within the building industry and for all of us who live in neighborhoods where construction is an everyday reality. The process by which an architect or engineer becomes licensed by the State of New York is arduous. It tests comprehensive knowledge of codes, zoning, building practices and environmental standards, to name but four of the many constituent issues that are important in New York City neighborhoods. Once licensed, a registered architect or professional engineer must take 12 to 18 credits of continuing education each year to maintain his or her license.

In addition to technical training, architects, by law, are personally responsible for our work and have a fiduciary responsibility to maintain the health, safety, and welfare of the public. As licensed professionals, we bring to the task a special degree of commitment that we believe is crucial to the position of Buildings Commissioner.

There are some who have insisted that any department can be run with good management skills, and that those skills are more important than mere credentials. However, this is not about tradition. This is all about professionalism, and the fact that the person heading the Buildings Department must be able to make the tough decisions as the **final authority** on matters of zoning, site safety, and building construction. Having a deputy who is a licensed professional is simply not the same thing.

I urge you to support maintaining the requirement that the Commissioner be a registered professional. Thank you.

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ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

PUBLIC HEARING ON INTRO. 755
BEFORE THE GOVERNMENTAL OPERATIONS COMMITTEE
August 14, 2008

Good Day.

My name is John Hennessy. I am the national Chairman of the American Council of Engineering Companies (ACEC). In the past I have been the President of American Council of Engineering Companies of New York, the Chairman of the New York Building Congress, and the Chairman and CEO of Syska Hennessy Group an engineering firm my grandfather founded here in New York City in 1928.

I am here to speak against Intro. 755 ll, as I did in May of this year. The reasons for my opposition and that of my organizations and profession have not changed. We believe that this bill runs counter to the goals of a building code and the job of a buildings commissioner and that is to protect the public's safety.

Why would you require less technical qualifications of the person who has to protect the public's safety through enforcement of the building codes than those who design the city's buildings?

The job of Buildings Commissioner requires a particular expertise that goes beyond just management skills. It requires the technical expertise of an architect or engineer who understands the technical issues of buildings and how they operate.

Would you allow the position of Corporation Council to be filled by a non lawyer, or a Health Commissioner who is a non-medical professional?

Buildings are complicated. Without expertise and hands on experience the commissioner is at a severe disadvantage.

I understand that the recent spate of deadly accidents have brought special attention to the building department. And one is tempted to see the solution to these tragedies to be a management solution, however the job of buildings commissioner is to assure that we have safe building throughout the life of that building, not just during its construction. I also understand that the majority of issues that come to Members of the Council's attention are zoning related and not specific technical code issues and as such one would be tempted to believe that that portion of the enforcement effort is well in hand.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

Architects and engineers are licensed to protect the public safety. They go through years of education and training in order to assure that they know what they are doing when they design buildings. While the analogy is not perfect, by contrast a lawyer can pass the bar exam immediately upon graduation from law school and practice law, a designer needs 4 years of experience under the direct supervision of a licensed professional after receiving his or her degree before they can obtain their license.

Designers clearly better understand the interaction of various parts and systems of the building and how they can pose a public safety risk.

While it is always painful to remember the events of September 11th it is also a good case in point to look at to see the value of a professional as the buildings commissioner.

The twin towers structural system was ground breaking at the time. It was a system that was not strictly in accordance with the building code at the time. The structural engineer proposed a new and elegant way to erect the buildings. And it worked well for many, many years, in fact it withstood an attack in February of 1993. And when it was attacked on September 11th it stood up long enough for the vast majority of the buildings occupants to safely escape.

My question to you is would you want the ultimate authority on whether to accept the new structural system to lie in the hands of a good manager who has no experience in the business of buildings?

We have licensure laws and continuing education requirements to assure that those that design buildings are competent. Why would we remove a requirement that the person charged with the responsibility of regulating those who design and construct buildings is technically competent in the art?

Thank you for your time and attention.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

About ACEC - National

The American Council of Engineering Companies (ACEC) is the voice of America's engineering industry. Council members – numbering more than 5,700 firms and nearly 500,000 employees throughout the country – are engaged in a wide range of engineering works that propel the nation's economy, and enhance and safeguard America's quality of life. These works allow Americans to drink clean water, enjoy a healthy life, take advantage of new technologies, and travel safely and efficiently. The Council's mission is to contribute to America's prosperity and welfare by advancing the business interests of member firms.

ACEC's roots date back to 1909 when a loosely organized group of engineers in private practice established the American Institute of Consulting Engineers (AICE), the forerunner of ACEC. Today ACEC is a large federation of 51 state and regional councils representing the great breadth of America's engineering industry. ACEC member firms employ more than hundreds of thousands of engineers, architects, land surveyors, scientists, and other specialists, responsible for more than \$200 billion of private and public works annually. Member firms range in size from a single registered professional engineer to corporations employing thousands of professionals.

About ACEC New York

ACEC New York was formed in New York City in 1921, when a dozen principals of consulting electrical engineering firms loosely united to fight for the issues important to them. Today, ACEC New York, a statewide organization -- the oldest continuing organization of consulting engineers in the U.S. -- is still fighting to further the profession, taking on issues as they develop and evolve, and enhancing the business environment and professional lives of its members.

Representing 280 firms that collectively employ more than 15,000 people in New York State and over 100,000 worldwide, ACEC New York actively promotes the interests of engineering companies to legislators, clients, colleagues and communities. ACEC New York benefits the profession as a whole, as well as individual member.



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August 13, 2008

Testimony of Michael J. Macaluso, President
Architects Council of New York City
Before the New York City Council
Committee on Governmental Operations on Intro. No. 755A.2008

Honored Ladies and Gentlemen of the Council:

The members of the Architects Council of New York City wish to express their gratitude to the City Council for this occasion to present our views and opinions regarding Intro number 755A.2008.

The Architects Council which represents the city-wide architectural community strongly urges that the requirements set forth in Section 641 of the New York City Charter remain unchanged.

On May 7, 2008 I appeared before the Committee on Governmental Operations chaired by the Honorable Simcha Felder and, in addition to many other concerned professionals, testified in opposition to Intro 755 which would have eliminated the requirement for a licensed professional to head the Department of Buildings.

The Architects Council, which is the umbrella organization representing the interests of New York City Chapter AIA, Bronx Chapter AIA, Queens Chapter AIA, Brooklyn Chapter AIA, Staten Island AIA, Society of American Registered Architects, and the New York Society of Architects representing over 4300 registered architects within the City of New York, once again registers their strong disapproval of the amended version now being presented to the Council.

While this version adds the requirement that the Commissioner must now appoint two deputies, one of which can be a licensed professional, it continues to avoid demanding that the head of the agency be a licensed professional. The briefing paper prepared by Liset Camilo, Esq. and Matt Gewolb, Esq. clearly outlines that the duties of the Commissioner involve those responsibilities specifically requiring a license to perform under New York State Department of Education rules and regulations. It would therefore appear to be contrary to State law to allow this modification and leadership to possibly reside in the hands of an unlicensed professional. Secondly, the briefing paper attempts to make the case that eliminating the need for licensure enlarges the pool of candidates that can be considered for

this position. The record will show that during our testimony on May 7, 2008, 23 names were presented to the Council for consideration as well as dozens of other names submitted to the Mayor's office for consideration for this position, and an informal pole of many of those who were nominated indicate that they have never been contacted for further consideration. Seemingly, this would appear to contradict the position of the Mayor's office that there is a lesser pool from which to draw qualified professionals to this position.

Lastly, the amended version in it's next to last sentence, paragraph 3, under Section 648, indicates that "nothing in this local law shall be construed to affect the power of the Commissioner of Buildings under Section 1101 of this Chapter." You will note that Section 1101 allows the head of any City department to "...at pleasure, remove so many deputies as may be provided by law..."

This leads to the problem that if the deputy so removed is the First Deputy, the "... powers granted to the commissioner by subdivision (b) or (d) of section six hundred and forty-five of this chapter..." end up reverting to the unlicensed commissioner, the very situation we now find ourselves in, which is problematic because those subdivisions include the practice of architecture and engineering as defined in section 7201 of New York State Education Law," ... wherein the safeguarding of life, health and property is concerned, when such service or work requires the application of engineering principles and data."

In closing, the amended version amounts to a bit more than a subterfuge of the original Intro 755 as the licensing requirement for any deputy can be vanquished at the whim of the Commissioner. The record is simply clear that the expertise necessary to head this very complex Department must reside within the education, experience, moral and ethical standards mandated by state license leaving the very difficult managerial aspects of running this agency to professional managers who do not require licenses, but business management expertise. It would appear therefore unnecessary to modify Section 641 of the City Charter and focus attention on creating deputy commissioners with business expertise while never diminishing the highest standards to head an agency of such complexity and importance.

Thank you for this opportunity to share the view of thousands of architects across all the boroughs of the great city of New York.

Respectfully submitted,



Michael J. Macaluso, RA, FARA, AIA, NCARB

MJM/dh

Cc: Board of Directors – Architects Council of New York
Members of City Council