

---

# Wisconsin Legislative Council

## STAFF BRIEF

---



### STUDY COMMITTEE ON THE COMMERCIAL BUILDING PERMITTING PROCESS

Anna Henning and Ethan Lauer, Senior Staff Attorneys

July 12, 2022

SB-2022-02

---

The Wisconsin Legislative Council is a nonpartisan legislative service agency. Among other services provided to the Wisconsin Legislature, staff of the Wisconsin Legislative Council conduct study committees under the direction of the Joint Legislative Council.

Established in 1947, the Joint Legislative Council directs study committees to study and recommend legislation regarding major policy questions facing the state. Study committee members are selected by the Joint Legislative Council and include both legislators and citizen members who are knowledgeable about a study committee's topic.

This staff brief was prepared by the Wisconsin Legislative Council staff as an introduction for study committee members to the study committee's topic.

# INTRODUCTION

---

The Study Committee on the Commercial Building Permitting Process is directed to review the current commercial building permitting process, including the commercial plan review process at the state and local levels, permitting timelines, and the role of the Commercial Building Code Council. As part of its review, the study committee is tasked with evaluating approaches in other states and identifying innovative and exemplary policies that could serve as a model for Wisconsin.

After a downturn during the first year of the COVID-19 pandemic, commercial construction spending is [trending upward](#), but development is affected by broader economic trends, including shortages of building materials and workers. When setting regulatory policy amid those economic pressures, one goal may be to increase efficiency without undermining safety.

State-level law and policy changes have increased efficiency in Wisconsin's commercial building permitting process over the last 10 years. [Legislation enacted in 2014](#) facilitated predictability in the process by providing for state plan review, establishing the Commercial Building Code Council, and generally requiring local building code ordinances to conform to state law. More recently, the Department of Safety and Professional Services (DSPS) introduced new software and internal procedures to decrease the timeline for state plan review.

Legislators and industry stakeholders have proposed additional steps to streamline the commercial building permitting process. For example, [legislation](#) that was introduced but not enacted in the 2021 session proposed new exemptions from state plan review requirements.

This staff brief provides background information to assist the study committee as it carries out its charge. More specifically, the staff brief includes the following parts:

- **Part I** provides an overview of the state Commercial Building Code and the Commercial Building Code Council.
- **Part II** summarizes the process for state and local review of commercial building plans.
- **Part III** describes other state and local requirements affecting commercial development.
- **Part IV** summarizes previous legislative proposals and regulatory changes.
- **Part V** provides an overview of other states' approaches to approving commercial building permits.
- **Part VI** provides a one-page overview of the primary regulatory requirements applicable to commercial development in Wisconsin.

## PART I | THE STATE COMMERCIAL BUILDING CODE

---

The Wisconsin statutes direct DSPS to “ascertain, fix and order such reasonable standards or rules for constructing, altering, adding to, repairing, and maintaining public buildings and places of employment in order to render them safe.” [s. 101.02 (15) (j), Stats.] DSPS has done so by creating the state [Commercial Building Code](#) (hereinafter, generally referred to as “the code”), which is codified in chs. 361 through 366 of DSPS’s administrative rules. [2013 Wisconsin Act 270](#) established the code as the uniform commercial building code throughout the state.

### CONTENTS AND ADOPTION OF UNIFORM CODES

The code establishes substantive requirements relating to all of the following aspects of commercial building projects:

- Building structure, including, for example, fire barriers, stairway width, load-bearing structures, and roof drains.
- Energy conservation.
- Plumbing and electrical.
- Heating, ventilating, and air conditioning.
- Fire safety.
- Fuel gas appliances.

The code also sets forth a process and requirements for code administration, including the plan review procedures discussed in Part II. In addition, the code establishes a fee schedule for state plan review, creates a process for petitioning for a variance from certain code requirements, and provides mechanisms for enforcement.

With some Wisconsin-specific modifications, the code incorporates by reference various international uniform codes. For example, with certain changes, additions, and omissions, it incorporates the 2015 versions of the International Building Code, International Energy Conservation Code, International Mechanical Code, International Fuel Gas Code, and International Existing Building Code, all of which are developed by the [International Code Council](#). [s. SPS 361.05, Wis. Adm. Code.]

Whereas some other states automatically incorporate the most recent version of each uniform code, the code instead incorporates specific—past or current—versions of uniform codes, together with certain modifications applicable in Wisconsin. Thus, for example, to adopt a version of an international code newer than the 2015 version, DSPS would have to modify its administrative code to incorporate that version.<sup>1</sup>

---

<sup>1</sup> Under Wisconsin law, an agency may incorporate by reference certain material produced by a third party into the administrative code, without reproducing the full text of that material, only under certain circumstances. Specifically, an agency may, with the consent of the Attorney General, adopt standards established by technical societies and organizations of recognized national standing. Attorney General consent may be granted if the rule will have limited public interest and if the incorporated standards are readily available in published or electronic form. [s. 227.21 (2), Stats.] For these purposes, the Attorney General defines a “standard” as “something that is set up and established by authority as a rule for the measure of quantity, weight, value or quality. It is synonymous to criterion, which is any objective measure by which one judges a thing by comparison as authentic, good or adequate.” [59 Op. Att’y Gen. 31 (1970). See also Legislative Council, [Administrative Rules Procedures Manual](#), s. 1.14 (Nov. 2020).]

## APPLICATION TO “PUBLIC BUILDINGS AND PLACES OF EMPLOYMENT”

The code applies to public buildings and places of employment, broadly defined. With certain exceptions, in this context, “public building” means certain structures and buildings used in whole or in part as places of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by three or more tenants. “Place of employment” generally includes every place where any industry, trade, or business is carried on and where any person is employed, directly or indirectly, by another for direct or indirect gain or profit.<sup>2</sup> [s. 101.01 (11) and (12), Stats.]

### Exemptions for Certain Types of Buildings

Certain types of public buildings and places of employment are not considered commercial buildings and so are exempt from the code.<sup>3</sup>

Exempt public buildings include the following:

- Certain livestock and agricultural buildings.
- Bed and breakfast establishments.
- The State Capitol building.
- Certain one-classroom rural school buildings operated by members of a bona fide religious denomination.
- Temporary buildings or structures used exclusively for construction purposes, not exceeding two stories and not used as living quarters.
- Certain one-family or two-family dwellings used as residential homes, day cares, or businesses.

[s. 101.05, Stats.; s. SPS 361.02 (2) and (3), Wis. Adm. Code.]

A place of employment does not include any place where persons are employed in farming or in private domestic service which does not involve the use of mechanical power. In addition, the following are not places of employment:

- Adult family homes.
- With some exceptions, community-based residential facilities which serve 20 or fewer residents.
- Home-based businesses, as defined by DSPS by rule.<sup>4</sup>
- Not-for-profit facilities that house or rehabilitate abandoned, injured, or sick wildlife.

[s. 101.01 (11), Stats.]

---

<sup>2</sup> The code also applies to “public structures.” This term is not defined.

<sup>3</sup> Although not exempt from the code, certain recreational and educational camps are subject to separate standards that take into account the uses unique to such camps. [s. 101.053 (2), Stats.]

<sup>4</sup> DSPS defines “home-based business” as any business, profession, trade, or employment conducted in a person’s dwelling unit which may involve the person’s immediate family or household and a maximum of one other unrelated person, but does not involve either: (a) explosives, fireworks, or repair of motor vehicles; or (b) more than 25 percent of the habitable floor area of the dwelling unit. [s. SPS 361.14 (3m), Wis. Adm. Code.]

The code also allows local building code officials to permit the temporary public use of a building that does not comply with the code for that use, if certain safety-related conditions are satisfied. [s. SPS 361.03 (12), Wis. Adm. Code.]

## **Application When a Use or Structure Changes**

The code's provisions apply to new construction, and to existing buildings that undergo certain changes. More specifically, the code's provisions apply in all of the following circumstances:

- To a building or structure first approved for construction after a code provision takes effect.
- To a building or structure for which the category of use or occupancy changes after a provision takes effect.
- To all portions, elements, systems, and components of an existing building or structure that is altered, modified, replaced, or repaired (or, if applicable, approved for alteration, modification, replacement, or repair) after a provision takes effect.

[s. 361.03 (7) to (11), Wis. Adm. Code.]

One [chapter](#) of the code specifically governs alterations, additions, modifications, repairs, relocations, and changes in use of and to existing commercial buildings. This chapter is intended to provide flexibility in the use of alternative approaches to achieve code compliance in existing buildings. [s. SPS 366.0001 (1), Wis. Adm. Code.]

## **REVISIONS TO THE CODE AND ROLE OF THE COMMERCIAL BUILDING CODE COUNCIL**

DSPS must follow the [administrative rulemaking process](#) to make changes to the code. Among other requirements, that process involves legislative oversight, through review of proposed rule changes by relevant standing committees of the Legislature and by the Joint Committee for Review of Administrative Rules.

The 10-member Commercial Building Code Council advises DSPS regarding potential revisions to the code. All members of the council are appointed by the Governor for three-year terms. Under the statutes, the council members must include all of the following:

- Two members representing the skilled building trades, each of whom is actively engaged in his or her trade.
- Two members representing local building inspectors employed by a city, village, or county.
- Two members representing the fire services, each of whom is actively engaged in fire service work and at least one of whom is a fire chief.
- Two members representing building contractors, each of whom is actively engaged in on-site construction of commercial buildings.
- Two members representing architects, engineers, and designers, each of whom is actively engaged in the design or evaluation of commercial buildings.

In addition, a DSPS employee serves as a nonvoting secretary for the council. [s. 15.407 (18) (a) and (b), Stats.]

The council must meet at least twice each year to review the code and to consider and make recommendations to DSPS pertaining to the code and any other matters related to constructing, altering, adding to, repairing, and maintaining commercial buildings. At [past meetings](#), the

council has considered specific code revisions that typically have been suggested by staff within DSPS's Division of Industry Services, but it has also reviewed revisions suggested by staff in other state agencies and by members of the public.<sup>5</sup>

DSPS, in turn, must consult with the council before making changes to the code. [s. 101.023, Stats.]

## LIMITATION ON LOCAL AUTHORITY

As mentioned, the code provides uniform state standards for commercial building plans throughout the state. Thus, municipalities generally may not impose local requirements that differ from the state standards set forth in the code. Instead, local standards for constructing, altering, or adding to commercial buildings generally must “strictly conform” to the state code. DSPS rules interpret “strictly conform” to mean that a local government may not enforce an “additional or more restrictive” ordinance. [s. 101.02 (7r) (a), Stats.; s. SPS 361.03 (5) (a) 1., Wis. Adm. Code.] In addition, an order issued by DSPS trumps any conflicting local order with respect to a given commercial building. [s. 101.02 (7), Stats.]

However, some exceptions apply to the general preemption of local standards. Specifically, 2013 Wisconsin Act 270 allows certain “legacy” local ordinances relating to fire detection, prevention, or suppression in buildings other than multi-family dwellings, if the ordinances were enacted before May 1, 2013. [s. 101.02 (7r) (b), Stats.]

As [recognized in DSPS rules](#), local units of government also may rely on other sources of legal authority to enforce requirements that may affect commercial building projects. For example, depending on the project site, local zoning, storm water, or other environmental or land use approvals, discussed below, may be required. In addition, as noted, even when **more restrictive** local requirements are preempted by state law, local units of government may enact and independently enforce ordinances that **mirror** state requirements. Thus, in many municipalities, a commercial building project must obtain both the state plan review approval and a separate local building permit before the project may proceed.

---

<sup>5</sup> A member of the public may [suggest an agenda item](#) for the council.

## PART II | STATE AND LOCAL REVIEW OF COMMERCIAL BUILDING PLANS

---

For many commercial buildings, Wisconsin law requires government approval of proposed building plans before the project may commence. Thus, plan review is an important, early regulatory step for many commercial projects. Plan review is distinct both from the more general requirement to comply with the code and from local building and occupancy permit requirements. Responsibility for reviewing commercial building plans is shared by the state and local governments through delegation of plan review authority from the state to some local governments.

### PLAN REVIEW REQUIREMENT

State law requires the submission of certain building plans—namely, essential drawings, calculations, and specifications—to DSPS or to a local government exercising plan review authority.<sup>6</sup> Construction on those buildings may not begin until DSPS or the local authority has examined the plans for compliance with applicable requirements and has returned a statement of examination to the party who submitted the plans.

The types of plans that must be submitted for review include the following: heating, ventilating, and air conditioning systems; fire detection, prevention, or suppression systems; industrial exhaust systems; elevators, escalators, lifts, and power dumbwaiters; stadiums, grandstands, and bleachers; and amusement and thrill rides equipment. [s. 101.12 (1) and (2), Stats.]

### Exemptions

Certain types of buildings and certain types of projects, though they are subject to the code, are exempt from the plan review requirement. For these buildings and projects, construction may begin without examination of the plans. The designer of such a building or project is nevertheless responsible for designing a safe building, structure, or component. [s. 101.12 (2), Stats.]

Plans need not be submitted for any of the following:

- Buildings in any of the following groups, if having a total volume of less than 25,000 cubic feet: Assembly Groups A-2 and A-3; Business Group B; Factory Group F; Mercantile Group M; Storage Group S; and Utility and Miscellaneous Group U.
- A minor alteration where the nature of the work is such that review and approval of construction documents is not necessary to achieve compliance with the code.
- Single-story buildings or structures of less than 1,000 square feet located at the State Fair Park.
- Fire service drill towers used exclusively for hands-on training reflecting emergency conditions.

Construction of a building of more than 25,000 cubic feet is a typical trigger for plan review.

[s. SPS 361.30 (1) (b), Table 1, and (4), Wis. Adm. Code.]

---

<sup>6</sup> Plans for certain types of health care-related buildings are reviewed instead by the Department of Health Services. [s. 101.12 (1), Stats.]



## Requirement for Preparation by an Architect, Engineer, or Designer of Engineering Systems

State law generally requires an architect or an engineer to prepare plans and specifications for, and supervise the erection, enlargement, or alteration of, commercial buildings. A component or a system (such as an electrical system, a fire protection system, or a plumbing system) for a commercial building generally must be designed by an architect, an engineer, or a designer of engineering systems.<sup>7</sup> [ch. 443, Stats.; s. SPS 361.20 (2), Wis. Adm. Code.]

There are several exceptions to these requirements, including the following:

- New buildings containing less than 50,000 cubic feet total volume.
- The addition to an existing building, if the addition results in the building containing less than 50,000 cubic feet total volume.
- The structural alteration of an existing building containing less than 50,000 cubic feet total volume.
- Repairs or interior alterations to buildings that do not affect health or safety.
- Single-family dwellings and their outbuildings.
- Apartment buildings for not more than two families.
- Buildings used exclusively for agricultural purposes.
- Temporary buildings used exclusively for construction purposes, not exceeding two stories, and not used as living quarters.

Construction of a building of more than 50,000 cubic feet is a typical trigger for oversight by architect or engineer.

[s. 443.15 (1) and (2), Stats.]

## DSPS'S PLAN REVIEW PROCEDURES

DSPS's plan review procedures are primarily set forth in the code. Local governments exercising delegated authority generally must follow the same procedures, but with some internal operating processes that might differ.<sup>8</sup>

### Form of Application

Construction documents, except for certain sprinkler plans, must be prepared, signed, and sealed in accordance with statute and with rules of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, Professional Land Surveyors, and Registered Interior Designers. [ch. 443, Stats.; ss. A-E 2.02 and SPS 361.31 (1), Wis. Adm. Code.]

Construction documents must be dimensioned and drawn to a scale that is indicated on the documents. A party must submit either at least four sets of construction documents or at least one set of construction specifications plus one complete set of plans accompanied by three

---

<sup>7</sup> DSPS may credential a designer of engineering systems in any of the following fields: electrical; fire protection; private sewage systems; HVAC; or plumbing. [s. 443.07, Stats.; ch. A-E 5, Wis. Adm. Code.] For more information on this credential, see: <https://dsps.wi.gov/Pages/Professions/DOESystems/Default.aspx>.

<sup>8</sup> For example, the [City of Oshkosh](#) typically completes its plan review within five to 10 business days, a shorter timeline than DSPS normally operates under.

copies of the cover sheet for the complete set, provided that all four cover sheets are signed and sealed as required. The submitted documents must be permanent copies of the original documents, and must be bound in a manner that enables review without removal of the binding.<sup>9</sup> The documents must be accompanied by sufficient calculations or information to substantiate the documents, and DSPS may request additional data pertaining to the design, construction, materials, and equipment. [s. SPS 361.31 (2), Wis. Adm. Code.]

## Action on Application

Although DSPS does not always adhere to this schedule in practice, DSPS rules require DSPS staff to review and make a determination on an application within 15 business days. The timeline for review begins on the day after DSPS has received a complete application.<sup>10</sup> [ss. SPS 302.07 (3) and 361.31 (3) (a), Wis. Adm. Code.]

After review, DSPS will deny the application in writing if it determines that the application does not substantially conform to the code. If DSPS determines that the application does substantially conform to the code, it will grant conditional approval in writing. In the latter case, DSPS will stamp the plans as conditionally approved, but the applicant must comply with any listed conditions before or during construction. [s. SPS 361.31 (3), Wis. Adm. Code.]

DSPS rules establish a timeline of 15 business days to review a complete application.

As a third option, DSPS may also withhold an application if plans “significantly conflict” with building codes.<sup>11</sup> According to discussions with DSPS, a significant conflict can exist, for example, where there are issues with accessibility or life safety. If there are no significant conflicts, the agency’s practice is to conditionally approve an application and list the conditions that must be met.

After approval, one set of plans bearing the stamp of approval and a copy of the specifications must be kept at the building site. [s. SPS 361.33, Wis. Adm. Code.] Local governments may not issue permits or licenses for construction or use of a commercial building until DSPS has approved required drawings and calculations. [s. 101.12 (3) (h), Stats.; s. SPS 361.295, Wis. Adm. Code.]

Any revisions or modifications to an approved plan must be signed, sealed, and submitted. DSPS must approve a revision or modification before work involved in the revision or modification is carried out. [s. SPS 361.31 (4), Wis. Adm. Code.]

## Footings and Foundation Approval Option

An applicant may request, and DSPS may grant, permission to start construction of footings and foundations in advance of approval of the entire application. If an applicant makes such a request, DSPS must review and make a determination on the application within three business days of receipt of all forms, construction documents, fees, and information required to complete the review. An applicant receiving permission to start construction of footings and foundations proceeds without assurance that full approval for the building will be granted. [s. SPS 361.32, Wis. Adm. Code.]

---

<sup>9</sup> Note, however, that DSPS has switched to an electronic submission format (described below) that may dispense with some of these formalities.

<sup>10</sup> However, if “an appointment process exists” for plan review, the timeline for review begins on the appointment date. [s. SPS 302.07 (3) (a), Wis. Adm. Code.]

<sup>11</sup> See DSPS brochure [Building Plan Review & Inspection](#), SBD-10115-P (R. 5/10/2022), at page 4.

There is not a separate footings and foundation application. Rather, an applicant pays an additional \$75 fee for this permission at the time the regular application is submitted. [s. 302.31 (1) (e), Wis. Adm. Code.] According to DSPS, if approved, the applicant receives a letter granting permission to start construction of footings and foundations while DSPS continues to review the entire application.

## Fees

DSPS may fix and collect fees for examination of commercial building plans. Fees must be received by DSPS before plan examination, approval, or inspection may occur. [s. SPS 361.06, Wis. Adm. Code.]

Fees must, as closely as possible, equal the cost of providing the service of plan review. Fee amounts are promulgated by DSPS by rule. [s. 101.19 (1g), Stats.] Building plan review fees are based on the area of a building.<sup>12</sup>

If a building will be located in an area where the local government has not assumed building inspection responsibilities, the minimum fee is \$300 for a building with less than 2,500 square feet. The fee then increases to a maximum of \$20,000 for a building over 500,000 square feet.

Plan review fees vary based on the size of the building.

Fees are lower for buildings that will be located in a municipality that performs building inspections, with a minimum fee of \$250 and a maximum fee of \$18,000.

A local government that performs plan review on behalf of DSPS must forward to DSPS a minimum fee of \$30 and a maximum fee of \$2,000. [s. SPS 302.31 (1) (b) and Tables 1, 2, and 3, Wis. Adm. Code.]

All fees received for plan review are appropriated to DSPS for its safety and building operations. [s. 20.165 (2) (j), Stats.]

## Recent Statistics

For the first six months of calendar year 2022, an average of around 719 commercial building plans per month were submitted to DSPS for review. The largest number for a month was 834, and the lowest was 605. These plans were in addition to 1,567 plumbing plans, 1,833 septic system plans, and 387 elevator plans. As of early July 2022, the estimated review response time for a commercial building plan was 29 business days, or a little under six weeks.<sup>13</sup>

March was the busiest month of 2022 to date, with 834 commercial building plans submitted to DSPS.

## INTERNAL DSPS REFORMS

Based on discussions with DSPS staff, the department recently has taken steps to address actual or perceived inefficiencies in the process of plan review. Among other examples, DSPS no longer allows an applicant to request a particular plan reviewer. This prior practice had led to unevenly distributed workloads within the department.

---

<sup>12</sup> Additional fees apply for review of HVAC, fire alarm system, and fire suppression system plans.

<sup>13</sup> See <https://dps.wi.gov/Pages/Programs/PlanReview/Default.aspx> (last visited July 12, 2022).

DSPS also now requires an applicant to submit the fee before an application is considered complete, a practice that helps to eliminate what DSPS terms “ghost” plans, or plans that are not fully formed and which the applicant might not fully intend to pursue. DSPS also no longer allows an application to place a “hold” on a number of different potential review dates on DSPS’s calendar. This prior practice made it appear to other applicants that DSPS did not have sufficient “open” dates on which to review new applications.

Finally, DSPS staff cited improvements achieved as a result of requiring plans to be submitted electronically through an application system known as the Electronic Safety and Licensing Application, or “eSLA.”<sup>14</sup> The eSLA system ensures that an applicant submits all of the required information, and makes it easier for DSPS to marry any supplementary submissions to the original application. The eSLA system also allows a registered user to review the status of a pending application. This has apparently proven helpful in improving a building owner’s understanding of the timing of an application. In many cases, a party other than the owner, such as the architect, submits an application on the owner’s behalf. Miscommunication or misunderstanding between that party and the owner apparently caused some owners to believe that DSPS review was not proceeding in the manner that the owner had expected or was taking longer than anticipated.<sup>15</sup>

## DELEGATION OF AUTHORITY TO LOCAL GOVERNMENTS

As mentioned, municipalities play a key role in approving commercial building plans, with some municipalities exercising [delegated authority](#) from the state. Local governments exercising plan review authority generally utilize the procedures described above.

More specifically, DSPS is required to accept plan review performed by first-class cities, provided review is conducted in a manner approved by DSPS, and by second-class cities that are certified to do so by DSPS.<sup>16</sup> [s. 101.12 (3) (a) and (am) and (3m), Stats.]

Around 326 cities, villages, towns, and counties exercise some degree of delegated plan review authority.

DSPS is also required to accept plan review performed by any city, village, town, or county for a building containing less than 50,000 cubic feet, or any alteration of spaces involving less than 100,000 cubic feet, provided review is conducted in a manner approved by DSPS and DSPS has certified the competency of the examiners. For buildings or alterations exceeding those thresholds, a local government may apply to become an appointed agent of DSPS. Among other requirements, an appointed agent must adopt the code in its entirety by ordinance and provide monthly reports to DSPS of all completed projects. [s. 101.12 (3) (b) and (bg) and (3g), Stats.]

---

<sup>14</sup> According to DSPS’s [Checklist for Commercial Building Plan Review](#), paper plan submittals are no longer accepted.

<sup>15</sup> For instance, previously it could be the case that an owner mistakenly believed that the applicant had submitted plans when in fact the applicant had not. Under eSLA, that owner is able to view the status of an application and set expectations accordingly.

<sup>16</sup> An applicant in a second-class city may choose to obtain plan review from DSPS or from the city. [s. 101.12 (3m) (c), Stats.]

## PART III | OTHER STATE AND LOCAL REQUIREMENTS AFFECTING COMMERCIAL DEVELOPMENT

---

In addition to state code and plan review requirements, local building permit requirements, as well as various state and local environmental and land use requirements, may apply to a given development project, depending on the location and characteristics of the site.

### STATE ENVIRONMENTAL REGULATIONS

At the state level, various environmental regulations, including wetland and storm water requirements, may apply. In addition to the specific state approvals that may apply if surface waters or wetlands will be impacted by a project, Department of Natural Resources (DNR) oversight is automatically required when a proposed commercial development project will disturb at least one acre of land as part of a “common plan of development.”<sup>17</sup>

#### State Storm Water Discharge Permits

The statutes generally require a person to obtain a state storm water discharge permit before discharging water from a discernible, confined, and discrete conveyance of storm water associated with a construction site—including a construction site for a building—that meets criteria in DNR’s administrative rules. [s. 283.33 (1) (am), Stats.]

When a proposed development will disturb at least one acre of land as part of a “common plan of development,” a landowner must submit a notice of intent (NOI), at least 14 working days prior to commencing any land-disturbing construction activity, to determine whether a proposed project is authorized under a [general permit](#) for construction site storm water runoff. For such projects, the rules require an applicant to submit any data that DNR has identified as necessary to evaluate the NOI within 14 working days. Once it receives any such information, DNR must either make a determination regarding the NOI within 45 business days or refund the fee paid by the applicant. [s. NR 216.45, Wis. Adm. Code.]

DNR’s rules also require a developer or landowner to adopt both an erosion control plan and a storm water management plan to address runoff both during and after construction of a commercial building. [ss. NR 216.46 and 216.47, Wis. Adm. Code.]

#### Wetland Permits

In addition to storm water runoff regulations, development proposals located on sites with wetlands may be subject to wetland regulations. Very generally, state law requires a person to obtain an individual wetland permit or to be authorized under a wetland general permit before conducting an activity that will result in a discharge of dredged material or fill material into a wetland, unless the activity is exempt from that requirement. [s. 281.36 (3b), Stats.] If the wetland is a “federal wetland,”<sup>18</sup> the permit applicant must also obtain a permit from the U.S. Army Corps of Engineers, or qualify for an exemption. [33 U.S.C. s. 1344.]

---

<sup>17</sup> For purposes of the one-acre threshold, multiple separate and distinct land disturbing construction activities taking place at different times, and on different schedules, may be added together if they are part of a common development plan.

<sup>18</sup> In Wisconsin, both state and federal law govern impacts to wetlands. Wetlands that fall within federal jurisdiction (“federal wetlands”) are subject to both state and federal requirements, whereas all other wetlands (called “state wetlands” or “nonfederal wetlands”) are subject to only state requirements.

## **Exemption for Disturbing Less Than One Acre**

However, Wisconsin's wetlands statute, [as amended by legislation enacted in the 2017 session](#), exempts development that disturbs less than one acre of wetlands in urban areas, if the wetlands are "state wetlands" and certain other requirements are satisfied. [s. 281.36 (4n) (b), Stats.]

## **General Permits Relating to Commercial Construction**

In addition, general permits in effect through October 2022 authorize wetland impacts for certain [commercial development projects](#) and for impacts to certain [wetlands incidentally resulting from construction](#). Under state law, a person proposing to discharge material into a wetland under a general permit must notify DNR at least 30 days before starting the activity (unless DNR waives this requirement), pay a fee, and pay a surcharge fee, if applicable. The applicant is required to provide information to DNR describing the discharge, provide consent for DNR inspection, and provide an explanation of why the impact to the wetland cannot be avoided and how it will be minimized to the greatest extent practicable. [s. 281.36 (3g) (h), Stats.]

DNR may request additional information from the applicant one time during this 30-day period. If DNR does not request additional information during this time, inform the applicant that a wetland individual permit will be required, or extend the deadline because of weather, the discharge is authorized and must be carried out in compliance with the general permit. If DNR does request additional information, the 30-day period is tolled until DNR receives all of the additional information. An authorization to proceed with a discharge into a wetland under a general permit is valid for five years or the time when the discharge is completed, whichever occurs first. [s. 281.36 (3g) (h), Stats.]

DNR may require a person seeking authorization for an activity under a general permit to apply for a wetland individual permit if DNR has inspected the site and determined that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur. [s. 281.36 (3g) (i), Stats.]

## **Individual Permits**

If an individual state wetland permit is required, the permit process begins with a meeting between DNR and a prospective applicant to discuss the details of the proposed discharge, the application requirements, and the requirements for delineating the wetland. An application must be accompanied by the applicable fee and must include an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences. [s. 281.36 (3m) (a) and (b), Stats.]

Under the statutes, DNR must determine whether an application for an individual state wetland permit is complete within 30 days. If DNR determines that the application is incomplete, DNR may make one request for additional information. Within 30 days after the date of application, if the application is initially complete, or 10 days after DNR receives all additional requested information, whichever is earlier, DNR must notify an applicant that the application is complete. This is referred to as the "date of closure." [s. 281.36 (3m) (c) and (d), Stats.]

Within 15 days of the date of closure, DNR must provide a public notice, begin a 30-day public comment period, and provide an opportunity for a public informational hearing, if requested.<sup>19</sup> [s. 281.36 (3m) (g) and (j), Stats.]

DNR must issue its decision on the individual permit application within 20 days after the period for public comment ends, if a hearing is held, or within 30 days after the public comment period ends, if a hearing is not held. [s. 281.36 (i) Stats.]

As part of its review of such an application, DNR is required to review the practicable alternatives submitted by the permit applicant. DNR must limit its review to those practicable alternatives that are located at the site or adjacent to the site when the applicant can show that: (1) the proposed project will result in a demonstrable economic public benefit; (2) the proposed project is necessary for the expansion of an existing industrial, commercial, or agricultural facility; or (3) the proposed project will occur in an existing industrial park. [s. 281.36 (3m) (b) and (3n) (a), Stats.]

When evaluating an application for a wetland individual permit, DNR is required to consider all of the following with respect to the impacts of the proposed project on wetland functional values:<sup>20</sup>

- The direct impacts of the proposed project on wetland functional values.
- The cumulative impacts attributable to the proposed project that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar projects in the area affected by the project.
- Potential secondary impacts of the proposed project to wetland functional values.
- The impact on functional values resulting from any wetland mitigation that is required.
- The net positive or negative environmental impact of the proposed project.

[s. 281.36 (3n) (b), Stats.]

## **LOCAL REGULATIONS**

At the local level, building and occupancy permits, zoning ordinances, development impact fees, and other requirements may apply as a prerequisite to commercial construction.

### **Building and Occupancy Permits**

Local building permits are a separate approval from plan review. A local building permit authorizes construction to begin, based on whether a project complies with local zoning and other local requirements. The specific requirements and application process for building permits vary by local jurisdiction.

The statutes require a municipality or county to give an applicant for a building permit a written notice containing certain statutory language<sup>21</sup> at the time the permit is issued, unless the permit is on a standard form created by DSPS. [ss. 59.691, 60.625, 61.352 (2), and 62.232 (2), Stats.]

---

<sup>19</sup> If a hearing is held, the public comment period ends on the 10th day after the hearing.

<sup>20</sup> DNR's administrative rules define "wetland functional values" to mean the physical, chemical, and biological processes or attributes that occur in a wetland and how society finds certain functions beneficial, as specified in DNR's rules. [s. NR 353.03 (6), Wis. Adm. Code.]

<sup>21</sup> The statutory language states: "YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND STREAMS. WETLANDS

After construction is completed, a local occupancy permit is typically required before a commercial building may be used as intended. An occupancy permit is typically issued based on an inspection and finding of building code compliance.

## **Zoning**

### **General Zoning Authority**

General zoning ordinances establish districts, such as residential, commercial, manufacturing, and agricultural districts, within a municipality (or in certain unincorporated areas of a county). For each district, a general zoning ordinance establishes permitted uses, conditional uses, and prohibited uses. Thus, a general zoning ordinance specifies the areas in which commercial development is allowed, either automatically or subject to approval as a conditional use.

In a district where commercial development is allowed, a general zoning ordinance may nevertheless impose certain restrictions on that development, such height restrictions or a requirement that structures must not be constructed within a certain number of feet from a property line. However, the statutes allow local units of government to grant variances from zoning requirements in situations where a requirement poses an “unnecessary hardship” because of unique conditions of the property.

### **Special Zoning Authority**

In addition to general zoning authority, local units of government are required or authorized to enact a number of special types of zoning ordinances. For example, shoreland zoning, which must conform to state shoreland zoning standards, regulates development in shoreland areas. Floodplain zoning ordinances regulate development in flood-prone areas, as authorized under state and federal law.

Of particular relevance to commercial development, cities, villages, towns, and counties may enact local construction site erosion control and storm water management zoning ordinances. Generally, those local ordinances must strictly conform to state standards, and may be based on a model ordinance developed by the state. [ss. 59.693 (2), 60.627 (2), 61.354 (2), 62.234 (2), and 281.33 (3m), Stats.]

The requirement for strict conformity with state law is subject to some key exceptions. Specifically, the strict conformity requirement does not apply to a local construction site erosion control and storm water management zoning ordinance that regulates storm water management relating to certain types of existing development or redevelopment. In addition, local construction erosion control and storm water management zoning ordinances may be stricter than state standards if a stricter requirement is necessary to do either of the following: (1) control storm water quantity or control flooding; or (2) comply with federally approved total maximum daily load requirements. [s. 281.33 (6), Stats.]

### **“Building Permit Rule”**

Wisconsin court decisions protect building permit applicants from having to cancel or adjust building plans in response to local zoning changes that occur during the development process. The Wisconsin Supreme Court has adopted a “bright line” rule, commonly referred to as the “building permit rule” to determine when a landowner has a vested right to develop property as

---

THAT ARE NOT ASSOCIATED WITH OPEN WATER CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT THE DNR WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DNR SERVICE CENTER.”



intended despite zoning changes made after an initial development proposal.<sup>22</sup> Under the building permit rule, an owner has such a vested right if the owner has submitted a building permit application that satisfies state and local building code and zoning requirements in effect at the time the application was submitted. [*McKee Family I, LLC. v. City of Fitchburg, 2017 WI 34.*]

## **Impact Fees**

State law generally authorizes municipalities to enact ordinances that impose impact fees on developers, subject to certain procedural requirements and limitations. More specifically, impact fees may be imposed “to pay for the capital costs that are necessary to accommodate land development.” Before imposing a new impact fee, a municipality must conduct a “needs assessment” that includes certain information and estimates, and impact fees must meet certain standards established under the statute. One of the standards is that an impact fee must bear a “rational relationship” to the need for new or expanded public facilities required to serve a development. [s. 66.0617, Stats.]

---

<sup>22</sup> In contrast, some other states follow a more complicated vested rights analysis, involving factors such as the amount of investment and reasonableness of expectations.

## PART IV | PREVIOUS LEGISLATIVE PROPOSALS AND REGULATORY CHANGES

---

In addition to any streamlining achieved by the adoption of a statewide uniform code, discussed above, both the Legislature and DSPS have proposed approaches to generate efficiency in the plan review process by exempting certain buildings designed by a design professional. Legislation creating such an exemption was proposed but did not become law during the current legislative session. A related, but different, exemption existed in the administrative code for a time, but was repealed in 2012.

### WISCONSIN LEGISLATIVE PROPOSALS

The Legislature recently considered legislation that would have, among other things, created a plan review exemption for certain building plans.<sup>23</sup> The legislation was passed by both houses of the Legislature in the 2021-22 session, but was vetoed by the Governor. [See [2021 Assembly Bill 152](#) (vetoed) and 2021 Senate Bill 167 (companion bill).]<sup>24</sup>

The legislation, as introduced in each house of the Legislature, prohibited DSPS from requiring the submission or examination of building plans for a commercial building meeting all of the following requirements:

- The building consisted of a single story containing less than 200,000 cubic feet of volume.
- The building was not classified by DSPS as intended for certain occupancies and uses.
- A registered architect, a registered professional engineer, or a designer of engineering systems<sup>25</sup> had prepared and signed, dated, and sealed or stamped the building plans.

During the amendment process, the Legislature removed a designer of engineering systems from the list of individuals that may prepare and sign, date, and seal or stamp building plans that are exempt from DSPS review under the legislation.

The Assembly author, Representative Jessie Rodriguez, testified before the Assembly Committee on Regulatory Licensing Reform that the aim of the legislation was to keep projects on schedule. Her written testimony included the following statement: “Contractors have come to expect a six to eight week approval process, but unfortunately ten to twelve weeks has become standard more recently.”

DSPS provided written testimony on the bill. This testimony focused on two perceived flaws in the prior plan review system, both mentioned in Part II, above: an applicant placing a “hold” on multiple review dates; and an applicant requesting a specific plan reviewer. DSPS asserted that these issues had been resolved and that the agency could meet the industry’s expectation that plans be reviewed within four to six weeks.

---

<sup>23</sup> The legislation also would have created a similar exemption for certain plumbing plan examination requirements based on the number of plumbing fixtures and based on the credentials of the plumbing designer. Separately, the legislation would have required that 50 percent of building plan examination fees be submitted as a nonrefundable deposit upon the scheduling of an appointment for the examination of plans.

<sup>24</sup> Similar legislation was introduced in the previous legislative session. See [2019 Senate Bill 820](#) and [2019 Assembly Bill 962](#). In the 2019-20 session, the Senate bill received a committee hearing, but the Assembly bill did not.

<sup>25</sup> See footnote 7 for information on a designer of engineering systems.

In the veto message, the Governor objected to the legislation on the grounds that it could compromise public health and safety. The Governor also expressed his belief that unacceptable delays in DSPS plan review had been addressed by the agency. Specifically, the Governor stated that plan review time had been reduced from a high three years ago of between 10 and 12 weeks down to a range of between four to six weeks, and that in 2020, most plan reviews were completed in three to five weeks. [[Governor's veto message](#), April 8, 2022.]

## PREVIOUS WAIVER FOR PLANS PREPARED BY A PROFESSIONAL

The administrative code previously exempted from plan review certain smaller commercial building plans if they were prepared by a registered professional.

Effective October 1, 2000, plan review was waived for certain buildings if the plans and specifications were designed by a Wisconsin registered architect, registered engineer, or, in some cases, registered designer of engineering systems, and if the construction of the building was supervised by such a registered individual.<sup>26</sup>

The waiver applied to certain buildings containing less than 25,000 cubic feet total volume, such as theaters and assembly halls, schools, places of abode exceeding 60 feet in height or six stories, health care facilities, and hazardous occupancies. The size limitation was increased to between 25,000 and 50,000 cubic feet total volume for certain garage, greenhouse, and other storage buildings. [See s. Comm 50.12 (1t), Wis. Adm. Code, as of Oct. 1, 2000, created by [Clearinghouse Rule 99-143](#)].<sup>27</sup>

Effective July 1, 2002, the waiver provision was modified, but only to adjust the building types or occupancies subject to the waiver. Generally, certain industrial and business buildings<sup>28</sup> were added to the larger volume waiver group, with assembly, educational, hazardous, and residential buildings<sup>29</sup> in the lower volume waiver group. [See s. Comm 61.30 (1) (b) 2. and Table 2, Wis. Adm. Code, as of July 1, 2002, inserted by [Clearinghouse Rule 00-179, part 2](#).]

Effective January 1, 2012, the waiver provision was removed from the administrative code. [See [Clearinghouse Rule 10-103](#); Register August 2011 No. 668.]

Testimony submitted to the Commercial Building Code Council by a former DSPS manager asserted that the waiver provision, when it was in effect, resulted in buildings having violations that were difficult and costly to correct and that the waiver was removed on that basis. [See [testimony](#) of Randy Baldwin, Integrated Services Bureau Director, 1995-2010, dated Feb. 14, 2020.]

---

<sup>26</sup> The waiver in some instances also could apply if the architect or engineer was registered outside of Wisconsin.

<sup>27</sup> The former Department of Commerce had responsibility for commercial building plan review at that time. DSPS now has that responsibility.

<sup>28</sup> Specifically, Assembly Group A-2; Business Group B; Factory Group F; Mercantile Group M; Storage Group S, and Utility and Miscellaneous Group U.

<sup>29</sup> Specifically, Assembly Groups A-1, A-3, A-4, and A-5; Educational Group E, High Hazard Group H; and Residential Group R.

## PART V | MODELS FROM OTHER STATES

---

Every state regulates commercial building approvals differently. This Part highlights examples of those varying approaches. Points of differentiation that might be especially of interest to the study committee include:

- Average or required time needed to complete plan review.
- Plan review arrangements that are alternatives to traditional plan review.
- Plan review fee structures.
- Division of plan review responsibility between the state and localities.
- Whether an architect or engineer must prepare plans.
- Building types that require plan review.

### PLAN REVIEW COMPLETION TIME

Some states require plan review to be completed within a certain amount of time, but others do not. In states with a deadline, some specify that a plan is deemed approved upon expiration of the allotted review time.

Among states that impose a deadline on review, **Indiana** and **New Jersey** require that full plan review take no more than 20 business days (or no more than 10 days for a life safety and health review). If no decision is rendered in Indiana within that timeframe, construction may proceed without approval. In New Jersey, however, an application is deemed denied for purposes of appeal if there is no decision timely rendered. **Wyoming** requires plans to be accepted or rejected for review within five business days, with complete review occurring within 21 business days (with 10 additional business days if more information must be submitted). If no decision is rendered after the time for complete review expires, the application is deemed approved. **Massachusetts** and **New Hampshire** each require that an application be approved or denied within 30 days, but it is unclear if there is a consequence for failing to meet that timeline. Finally, **Virginia** requires that plans must be reviewed within a “reasonable time” after filing.

Other states do not impose a mandate. In these states, average plan review times vary. At the lower end, review in **Idaho** reportedly typically takes 10 working days, and **Montana** averages two to three weeks, depending on workload. At the upper end, the goal in **North Carolina** is to complete review within six weeks, and in **California**, initial review typically takes eight week.

### ALTERNATIVE PLAN REVIEW ARRANGEMENTS

Several states offer special accommodations that appear designed to abbreviate the time needed for plan review. These accommodations take several forms, such as expedited review for an additional fee, in-person meetings in lieu of or in addition to traditional application submittal, and review by a third party prior to review by the state. A sampling of these alternative plan review arrangements follows:

- **California** offers over-the-counter review every Tuesday. These one-hour appointments are available until 12:30 p.m. An applicant must bring a paper plan to one of these appointments.

- **Iowa** requires a preliminary meeting (in person or remote) prior to the formal submission of construction documents for plan review. In **North Carolina**, such a meeting is available but not required.
- **Pennsylvania** offers expedited plan review, to be completed within seven days of receipt, for an additional fee.
- **Nebraska** offers expedited review within 10 business days, utilizing the following process:
  - The applicant must have the plans pre-reviewed by an acceptable third party, which can be any of the following: a National Fire Protection Association (NFPA) certified Fire Plans Examiner (CFPE); a registered Fire Protection Engineer; or a person having equivalent qualifications or certifications that are acceptable to the State Fire Marshal.<sup>30</sup>
  - Plans must bear the seal of a state-registered engineer or architect (unless otherwise permitted by the state engineer and architect credentialing board).
  - The applicant must submit plans electronically.
  - The plans must include certain information, such as a listing of all state code deficiencies found during the pre-review.
- Similarly, **Virginia** offers expedited review if the applicant submits a report from an “approved person or agency” showing that the construction documents were examined and found to conform to the requirements of the commonwealth’s building code. An approved person or agency is an established and recognized agency that is regularly engaged in conducting tests, furnishing inspection services, or furnishing product certification where such agency has been approved by the building official.

## FEE STRUCTURES

Fees charged for building plan review vary among the states, with some charging no fee or a flat fee, some charging a fee based on the value of the building, and some charging a fee based on the size of the building. Also, some states charge a minimum fee or establish a maximum fee, but others do not. The following are examples of fee structures in other states:

- **North Carolina** has no fee.
- **Mississippi** charges a flat \$400 fee, but charges no fee for a state building or a religious building.
- Among states charging a fee based on building value or construction costs:
  - **Delaware** charges \$0.007 for the first million dollars in construction costs, and \$0.003 over the first million dollars (with a minimum fee of \$150 per project).
  - **Idaho** charges based on building construction value, with a minimum fee of \$23.50 for a value of not more than \$500, and increasing fees thereafter. For example, the fee at the upper end is \$33,958.75 for the first \$10 million in value plus \$2 for each additional \$1,000 in value.
  - **Iowa** charges \$0.58 per thousand dollars for costs up to \$1 million (with a minimum fee of \$200) and \$0.32 for each additional thousand dollars over \$1 million.
  - **Minnesota** charges based on value. For example, the fee is \$3,886.65 for the first \$500,000 in value plus \$5.50 for each additional \$1,000 up to \$1 million in value, and \$4.50 for each additional \$1,000 over \$1 million in value.

---

<sup>30</sup> Local authorities and in-house personnel are not acceptable third parties.

- **Michigan** charges based on building valuation (which is calculated based on a square foot construction cost table). The fee is 0.0013 of building valuation up to \$500,000 in value (with a minimum fee of \$125) and 0.0003 of building valuation over \$500,000 in value.
- **Montana** generally charges between one percent and two percent of building valuation (which is based on all construction work).
- **Nebraska** generally charges \$2.50 per each \$10,000 in value, not to exceed a maximum fee of \$500.
- Among states charging a fee based on the size of the proposed building:
  - **Indiana's** fee varies based on square footage (or in some cases, cubic footage). For example, for many buildings with normal occupancy, the fee is \$0.50 per gross square foot of floor area.
  - **New Hampshire** charges a new commercial construction fee of \$0.30 per gross square foot, with a minimum fee of \$50.
- **Louisiana** and **Pennsylvania** charge a flat fee plus a fee based on based on square footage, as follows:
  - **Louisiana** charges, for example, a flat fee of \$1,220 for a 10,000 square foot building in Assembly Groups 1 through 5, and \$2,515 for such a building over 100,000 square feet, plus \$0.01 per additional square foot.
  - **Pennsylvania** charges a flat fee of \$352.14 plus \$0.71 per square foot of floor area for standard review. For expedited review, the flat fee is increased to \$1,449.12.

## STATE VERSUS LOCAL REVIEW

The states vary on whether plan review is conducted by a state agency or by a local government. In most, it is common for the state to have responsibility for reviewing plans for state owned, funded, or occupied buildings, or for buildings designed to be occupied for certain educational or health care uses. However, in some states, all review is conducted locally. In others, localities are given the option to conduct all review. One state divides plan review responsibility between the state and local level based on the size of the project. Illustrative examples follow:

- Among states in which all review is, or could be, conducted locally:
  - In **Texas** and **West Virginia**, all review is local.
  - In **Virginia**, all review is local. If a locality does not have a building department, it must contract with another locality or a commonwealth agency. Or, if it is a town with a population less than 3,500 that does not choose to administer the code, the relevant county must administer it.
  - In **New Jersey**, localities are delegated the bulk of review, but the state reviews in localities lacking a code official who possesses the appropriate license. Similarly, in **Pennsylvania**, the commonwealth conducts review only if a locality has not assumed review responsibility (but most have).
  - In **Illinois**, all review is conducted locally. There is no statewide commercial building code applicable to privately funded commercial construction. Rather, each locality has latitude in the code it adopts, but must adopt a code or else is subject to a default code provided by the state.

- In **North Dakota**, all review is local. If a locality chooses to enforce a building code, it must choose the state building code, with flexibility to adjust it for local needs and with exceptions for certain types of home rule cities.
- Among the states in which review is split between the state and localities:
  - In **Arizona**, review is conducted locally except for certain health care facilities and except for review of compliance with fire codes.
  - In **California, Colorado, Connecticut, Idaho, Iowa, New York** and **Rhode Island**, review is conducted locally except for certain state construction projects. In addition, **Idaho** reviews for certain public school facilities, and **Iowa** reviews for certain health care or assisted living facilities. Iowa also reviews for educational buildings or facilities, certain child care facilities, correctional facilities, and gaming facilities if a locality does not.
  - In **Delaware**, review is conducted locally except for fire protection.
  - In **Kansas**, the state reviews plans for certain schools, health care facilities, and residential care facilities (which Kansas describes as “vulnerable populations”).
  - In **Minnesota**, review is conducted locally except for “public buildings” and “state-licensed facilities.”
    - A public building is either a school district building costing more than \$100,000 or a building and grounds where the cost is paid by the state (such as state colleges, the Capitol, and state agency buildings).
    - A state-licensed facility includes a hospital or other health care facility, a nursing home, and a correctional facility.
  - In **New Hampshire**, the state reviews plans for the following: state-owned property; university system and community college system property; municipal projects for which the office receives a written request for assistance; and projects in localities without a code enforcement mechanism, from whom the office receives a written request for assistance.
- Finally, in **Kentucky**, plan review is split between the commonwealth and localities based on the size of the project; essentially, localities review smaller projects, and the commonwealth reviews larger ones (and also reviews plans for any locality that has no building code enforcement program).<sup>31</sup>

## ARCHITECT OR ENGINEER REQUIRED

The states vary on the circumstances in which a commercial building plan must be prepared by an architect, an engineer, or in the case of one state, both. Many base that requirement on the type of building and its size, but some include building value or construction cost as a factor. Others give the state some discretion in deciding whether an architect or engineer is required. Illustrative examples follow:

- **Louisiana** requires an architect or engineer when certain size thresholds are crossed for a given type of building; for example, an assembly type building exceeding 2,650 square feet or a mercantile or business type building exceeding 4,000 square feet. In addition, an

---

<sup>31</sup> Kentucky asserts the following about its arrangement: “Kentucky is unique in that code enforcement responsibilities are divided between state and local jurisdictions with virtually no duplication of code enforcement activities.” [See [Plan Submission Application Guide for Building Construction](#), Kentucky Public Protection Cabinet, HBC 50-06, p. 3, Orig. 09/05; Rev. 01/20.]

architect or engineer is required for any renovation project exceeding \$125,000 and affecting life safety.

- **Michigan** generally requires that construction documents be sealed and signed by an architect or engineer, except for a residential building not exceeding 3,500 square feet in floor area or a public work estimated to cost less than \$15,000.
- **Missouri** requires that an architect prepare blueprints for any building of more than 20,000 cubic feet or having more than nine occupants.
- **New Mexico** requires *either* an architect or an engineer if the building value does not exceed \$400,000 and the occupancy load does not exceed 50; and requires *both* an architect and an engineer if a building exceeds those limits.
- **Oklahoma** requires an architect for the following building categories: A-1 (e.g., theaters, concert halls); A-4 (e.g., arenas, pools, sports courts); A-5 (e.g., amusement parks, bleachers, stadiums); I (e.g., health care, child care, correctional facilities); and R-2 (e.g., dorms, fraternities, sororities, monasteries, convents). An architect may also be required for other building categories if occupancy, size, or cost thresholds are crossed. For example, an M group building having more than 200,000 square feet or a B group having more than 100,000 square feet requires an architect, as does a state or local government building having a construction value over \$158, 000.
- **Oregon** requires an architect or engineer stamp for a building over 4,000 square feet in area or over 20 feet in height.
- **South Dakota** generally requires an architect or engineer, except for most buildings and structures of less than 4,000 square feet in area, but with some exceptions.
- In **Montana**, an architect or engineer is required for publicly owned buildings and a few other types of buildings based on type of construction, such as certain types of footing and foundation systems and buildings subject to certain snow or seismic loads.
  - In addition, the relevant state agency may request architectural or engineering design or analysis based on complications arising during state plan review.
- In **Nebraska**, the state architect and engineer licensing board determines whether a building project must involve an architect or engineer.

## BUILDINGS REQUIRING PLAN REVIEW

The states vary in which commercial buildings require plan review prior to construction or alteration. In many states, plan review is conducted by the state fire marshal. As such, state review can be more limited than the full building review taking place in other states. For example:

- In **Alabama**, state plan review is required for state-owned property, property utilizing state funds, schools, hotels of 15 or more bedrooms, and movie theaters.
- In **Alaska**, the state reviews construction, alteration, or change of occupancy of all buildings and structures except housing that is threeplex or smaller. However, the review is for mechanical and electrical issues only. It does not address structural considerations or accessibility.
- In **Indiana**, plan review is required for a building or structure intended for occupancy or use by the public, by three or more tenants, or by one or more persons acting as employees of another. A building used only for agricultural purposes and not used for retail trade does not require plan review.



- In **Maine**, plan review is required for any building or structure constructed, operated, or maintained for use by the general public, including a place of public assembly, a building with mercantile occupancy over 3,000 square feet (such as shopping centers, supermarkets, department stores, auction rooms), or business occupancy of two or more stories (such as city halls, courthouses, dentist offices, general offices, laboratories).
- In **Michigan**, plan review is required for all buildings with limited exceptions, including certain business, mercantile, and storage buildings having not more than 3,500 square feet and certain assembly, business, mercantile, and storage buildings with a required plumbing fixture count less than 12.
- In **Nebraska**, plan review is required for all state-owned property and all commercial construction, except apartment buildings with less than three units and certain agricultural buildings.
- In **Pennsylvania**, plan review is required for all commercial construction (which is buildings or structures other than one- or two-family dwellings three stories or less in height) and all state-owned buildings and structures.
- In **Wyoming**, plan review is required for the new construction of any of the following buildings intended for public access: a state-owned or state-leased building; a building over 5,000 square feet; a building for child care for 11 or more children; a multi-story building; or a place of assembly of any size. Also, review is required for an addition to a commercial building, or the alteration of a commercial building with a work area of 400 or more square feet.

### **Overview of Regulatory Requirements for Commercial Development in Wisconsin**

#### **1. State Commercial Building Code**

- a. The code provides uniform requirements throughout the state
- b. Most commercial buildings are required to comply
- c. State plan review (or plan review by a local government with delegated authority) is required for commercial building projects, except relatively small projects
  - i. Architect or engineer design required for large projects
  - ii. DSPS rules specify a review period of 15 business days

#### **2. Zoning**

- a. General zoning
  - i. No special approval required if a site is zoned for commercial use and the project conforms to zoning limitations such as setbacks and density requirements
  - ii. Special approval required if the site needs to be rezoned, the proposed development is a conditional use within the zoning district, or the project will require a variance from a zoning requirement
- b. Storm water and erosion control management zoning, shoreland zoning, and floodplain zoning, subject to state and federal requirements

#### **3. Local Building and Occupancy Permits**

- a. Local building permit is distinct from plan review
- b. Occupancy permit issued when project is complete and has been inspected

#### **4. State and Federal Environmental Regulations**

- a. State storm water discharge permits
  - i. Notice of intent required for projects that will disturb one acre or more as part of a “common plan of development”
  - ii. State determination within 45 working days of complete notice of intent
- b. State and federal wetland permits
  - i. Federal permit required if site will disturb wetlands subject to federal jurisdiction
  - ii. State individual or general permit required for disturbing state wetlands
  - iii. Certain exemptions and general permits apply to wetlands impacts created by construction activity