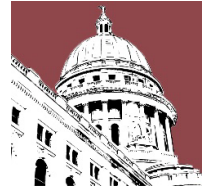


---

# Wisconsin Legislative Council

## STUDY COMMITTEE MEMO

---



**Memo No. 1**

**TO:** MEMBERS OF THE STUDY COMMITTEE ON THE COMMERCIAL BUILDING PERMITTING PROCESS

**FROM:** Anna Henning and Ethan Lauer, Senior Staff Attorneys

**RE:** Topics for Committee Discussion

**DATE:** August 17, 2022

This memo provides a preliminary list of potential topics of discussion for the August 24, 2022 meeting of the Study Committee on the Commercial Building Permitting Process. Reflecting the focus at the committee's July 19, 2022 meeting, many of the topics below relate to requirements for review of commercial building plans.

### **TOPICS RELATING TO PLAN REVIEW**

The primary area of interest at the study committee's first meeting was the requirement for government review of proposed commercial building plans prior to the start of construction. Current law generally requires an owner, developer, or contractor to submit proposed commercial building plans to the Department of Safety and Professional Services (DSPS), or to a local unit of government with delegated authority from the state, for review. Plans for certain types of health care-related buildings are instead reviewed by the Department of Health Services (DHS).<sup>1</sup> Relevant topics of interest may include both substantive requirements and procedures for plan review.

#### **Exemptions**

Current law exempts certain categories of commercial buildings from the plan review requirement.<sup>2</sup> One of the more commonly utilized exemptions, established in the [Commercial Building Code](#), relates to size. This exemption applies to a building that has a total volume of less than 25,000 cubic feet, provided that the building falls into one of several use categories, such as a certain factory, business, or assembly category. [s. SPS 361.30 (1) (b), Table 1, Wis. Adm. Code.]

---

<sup>1</sup> Specifically, DHS must conduct plan reviews for capital construction and remodeling of all hospitals, nursing homes, community-based residential facilities, and structures used for hospice care. [See ss. 50.02 (2) (b), 50.025, 50.36 (2), 50.92 (3m), and 101.12 (1), Stats.]

<sup>2</sup> For a more detailed list of the exempted categories, see pages 8-9 of [Wisconsin Legislative Council, Staff Brief, Study Committee on the Commercial Building Permitting Process \(Jul. 12, 2022\)](#) ("the Staff Brief").

At the July 19, 2022 meeting, presenters and study committee members offered several suggestions for revising or expanding the scope of plan review exemptions. The study committee could further discuss the following suggestions made at the study committee's meeting:

- Replacing the cubic foot-based building volume threshold, described above, with a threshold based on square feet of floor surface area.
  - As mentioned at the first meeting, a single-story warehouse-type building may have a larger volume but a smaller floor area than a multiple-story building.
- Increasing the size threshold for the cubic foot-based building volume exemption, described above.
  - Related to that suggestion, the committee could consider borrowing or modifying the exemption proposed by [2021 Assembly Bill 152](#), a bill that was passed but vetoed during the 2021 legislative session. That bill would have exempted from plan review a single-story building containing less than 200,000 cubic feet of volume, provided that the building did **not** fall into one of several use categories, such as certain educational, institutional, or high hazard categories.
- Creating an exemption from DHS plan review for small-scale additions and alterations to health-care facilities.
  - No size exemptions currently exist for plans reviewed by DHS.
- Creating a new exemption for a plan that replicates a previously approved plan.
  - The committee could consider whether such an exemption should have limits, such as a size threshold or a contingency based on the absence of changes to any applicable building standard from the time when the first plan was approved.

## Appointment Process

DSPS recently changed its internal plan review process from an appointment system to a queue system. Previously, a potential applicant could schedule a future plan review appointment—with the applicant's reviewer of choice, if desired—prior to finalizing and submitting plans and paying the review fee. Currently, an applicant first interacts with DSPS when the applicant submits finalized plans and pays the review fee. After DSPS conducts an administrative “triage” to see if all requisite documents and fees have been properly submitted, the agency enters the application into a queue and assigns it the next available plan review date with the next available plan reviewer.

At the July 19, 2022 meeting, committee members commented favorably on various aspects of the prior appointment system. They also questioned whether the current queue system appropriately responds to the design and development process. The committee could consider modifications to the DSPS plan review process, such as the following:

- A complete return to the appointment system.
- A return to the appointment system, but with the modification that the fee be paid upon scheduling an appointment.
  - Further, the committee could consider whether some or all of the fee should be forfeited if the applicant fails to submit finalized plans before the appointment date.
- The creation of a hybrid system that blends the appointment and queue systems.
  - In such a hybrid system, an applicant could choose between entering the queue for the next available slot (with the goal of receiving the most expeditious result), or selecting a future appointment date (with the goal of obtaining review date certainty).

- The creation of separate queues for large and small projects.
- An added ability for an applicant to request a preliminary meeting with DSPS personnel who will be conducting plan review on that project.<sup>3</sup>

## Electronic Portal

A plan review applicant must submit all documents and pay all fees electronically through an application system known as the Electronic Safety and Licensing Application, or “eSLA.” At the July 19, 2022 meeting, study committee members offered several critiques of eSLA. The study committee could discuss the following suggestions made at the study committee’s meeting:

- Require eSLA to send automated messages to an applicant regarding the status of a pending application.
- Direct DSPS to hire a systems consultant to evaluate eSLA and maximize its capabilities.
- Create an alternative mode of fee payment, such as invoicing, so that an applicant could avoid credit card fees when paying through eSLA.

## Delegated Authority for Local Units of Government

As discussed on page 12 of the Staff Brief, more than 300 cities, villages, towns, and counties currently perform plan review in lieu of DSPS, to varying degrees.<sup>4</sup> At its first meeting, several presenters and study committee members discussed various benefits of local review, including, especially, faster turnaround times in many instances, and the ability to interact in a local office and form a professional connection. However, several people mentioned that some local units of government lack the resources to hire an architect or other expert needed for certain types of plan review.<sup>5</sup> Some committee members also noted drawbacks of an approach in which local units of government rely on contractors to perform plan review.

Study committee members asked for information regarding the amount of the plan review fee collected by a local unit of government that must be forwarded to DSPS. That fee schedule is set forth in [ch. SPS 302](#), and varies by building size. The amount of a local government’s fee that must be forwarded to DSPS ranges from \$30 for a building with less than 2,500 square feet of area to \$2,000 for a building with over 500,000 square feet of area. [See s. SPS Table 302.31-3, Wis. Adm. Code, attached.]

The study committee could discuss possible modifications to state law that would facilitate increased capacity for local plan review, but with safeguards for some of the drawbacks that can occur. For example, the committee could discuss:

- Reducing or eliminating the portion of the plan review fee that must be forwarded to DSPS by the local government.
  - The prospect of retaining additional funds might incentivize more local participation.

---

<sup>3</sup> DSPS’s administrative rules currently allow an applicant to request and make an appointment to facilitate plan review on a priority basis. However, scheduling on a priority basis is contingent on DSPS having sufficient time and staff to accommodate such requests. [s. SPS 302.09, Wis. Adm. Code.]

<sup>4</sup> Those local units of government are enumerated in [this document](#), which DSPS last updated on July 15, 2022.

<sup>5</sup> Under current law, municipalities may contract with one another for the receipt or furnishing of services or for the joint exercise of any power or duty authorized by law. [s. 66.0301 (2), Stats.] Presumably, this would include conducting plan reviews or engaging the services of experts.

- Expanding the types of plans that may be reviewed by a local government.
  - Currently, except for first- and second-class cities, a local government with delegated authority may review plans for projects only within the following parameters:
    - A new building containing less than 50,000 cubic feet total volume.
    - An addition to a building or structure where the area of the addition results in the entire building or structure containing less than 50,000 cubic feet of total volume.
    - An addition containing no more than 2,500 square feet of total floor area and no more than one floor level, provided the largest roof span does not exceed 18 feet and the exterior wall height does not exceed 12 feet.
    - An alteration of a space in a building containing less than 100,000 cubic feet of total building volume.<sup>6</sup>
- Directing DSPTS to prepare a model contract that could be used by a local government to engage the services of a third party plan reviewer.
  - The model contract could include provisions guarding against improper fee charging practices or otherwise ensuring the integrity of the contractual relationship.
- Directing DSPTS to conduct periodic outreach to local governments encouraging them to apply to become delegated plan reviewers.
- Requiring each county to establish a plan review department and vesting it with jurisdiction over plan review for the entire county.
  - This option would enable local plan review in instances where a city, village, or town lacks the resources to conduct its own plan review. However, this option would also divest autonomy from cities, villages, and towns that currently have delegated authority. As a compromise, the committee could discuss whether to allow current non-county delegations to continue but prohibit new non-county delegations.<sup>7</sup>

## Resources for Applicants for Plan Review

DSPTS currently provides a [checklist](#) that a party submitting commercial building plans for plan review may consult.

The study committee could discuss whether to recommend or require DSPTS to provide any additional materials to aid plan review applicants in the preparation of their commercial building plans. For example, at the July 19, 2022 meeting, presenters and committee members discussed the possibility of directing DSPTS to publish periodic interpretations of Commercial Building Code requirements, as the department or its predecessors had done in past years. Note that under state law, as affected by case law and statutory revisions over the past decade, any such interpretation would lack the force and effect of law, and, if it establishes policy, it may need to be promulgated as an administrative rule.

## Permission to Start Letters

An applicant may request permission to start construction of footings and foundations in advance of full plan approval. The plan reviewer must make a determination on that request within three business

---

<sup>6</sup> s. SPS 361.60 (5) (c), Wis. Adm. Code.

<sup>7</sup> This compromise approach might resemble state law regarding local health departments. Generally, every county must establish a countywide health department, but a city, village, or town may continue a health department only if it existed prior to January 1, 1994. [s. 251.02, Stats.]

days of receipt of all required documents, plan review fees, and an additional fee of \$75. [s. SPS 302.31 (1) (e), Wis. Adm. Code.] An applicant receiving a “permission to start” construction letter proceeds without assurance that approval for the entire project will be granted. [s. SPS 361.32, Wis. Adm. Code.]

The committee could consider expanding the types of construction that may begin before plans have been conditionally approved. This permission could be extended to other construction items, such as the following:

- Building shell, such as roofing, exterior walls, windows, and doors.
- Underground plumbing components.

If the committee recommends additional types of construction that may be given permission to start, it could discuss whether to continue the existing requirement that applicants proceed at their own risk.

## **OTHER TOPICS FOR DISCUSSION**

In addition to plan review, the study committee may choose to discuss topics relating to other aspects of commercial development.

### **Commercial Building Code Flexibility for Minor Variations**

The state [Commercial Building Code](#), codified in chs. 361 through 366 of DSPS’s administrative rules, establishes uniform rules for constructing, altering, adding to, repairing, and maintaining public buildings and places of employment throughout the state.<sup>8</sup> Under current law, the Commercial Building Code provides a process for requesting a variance from a code requirement. That process begins with the submission of a petition by a person affected by the code requirement. In the petition, the person must establish an “equivalency” – an alternative approach that meets the intent of the relevant code requirement. The petition for a variance must state the procedures and materials proposed to be used if the variance is granted, include a fee, and, if applicable, include position statements from the relevant local fire department, local unit of government, and DHS. [ss. SPS 303.03 (1) and (2) and 361.22, Wis. Adm. Code.]

DSPS generally must make decisions regarding variance petitions within 30 business days, or within 10 business days if an applicant pays a double fee. [s. SPS 303.03 (5) (a) and (b), Wis. Adm. Code.]

Under the current approach, there are no “standard” variances. [DSPS’s website](#) emphasizes that each petition for a variance is “considered on its own basis because each circumstance is in some way unique.”

At the study committee’s July 19, 2022 meeting, some presenters and committee members suggested that “common sense” exceptions could allow deviations from a strict application of code requirements in certain circumstances. For example, it was noted that a rigid application of code requirements might require reinstalling counters or cabinets to fix a deviation of less than an inch.

The committee could discuss whether additional flexibility could be provided for instances involving relatively minor deviations from code requirements. For example, the committee could discuss whether, in specified instances, variances could be granted at the local level or could be granted without requiring petition statements or a 30-day review process.

---

<sup>8</sup> See Part I of the Staff Brief for a more detailed description of the Commercial Building Code.

## Inspection Requirements

In addition to plan review and other safeguards, inspections aid DSPS and local units of government in enforcing the Commercial Building Code.<sup>9</sup> At the July 19, 2022 meeting, Chair Stroebel requested information regarding the frequency of inspections required for commercial buildings.

Current Wisconsin law establishes timeframes, discussed below, for particular types of inspections that are separate from any international standards. Although the Commercial Building Code has generally incorporated the 2015 versions of the International Building Code (IBC) and other uniform codes developed by the International Code Council, the provisions of those codes relating to inspections generally do not apply to commercial buildings in Wisconsin. [See ss. SPS 361.03 (15) and 362.1700, Wis. Adm. Code.]

DSPS handles some commercial building inspections. Municipalities and counties may also exercise inspection responsibility, whether or not they also exercise plan review authority. [s. SPS 361.60, Wis. Adm. Code.]

The statutes and DSPS's administrative rules provide specific timelines relating to inspections of certain types of equipment and systems, as follows:

- Generally, local fire departments must inspect commercial buildings at least every six months to ensure compliance with requirements relating to **fire hazards and fire prevention**, including requirements relating to sprinkler systems.<sup>10</sup> [s. 101.14 (2) (c), Stats.]
- **Smoke control systems** must be inspected: (1) during the erection of ductwork and prior to concealment; and (2) prior to occupancy and after sufficient completion for the purposes of pressure-difference testing, flow measurements, and detection and control verification. [s. SPS 362.0909 (3), Wis. Adm. Code.]
- If a commercial building includes residential dwellings and fuel-burning appliances, the building owner must arrange for inspections of any **sealed combustion appliances, vents, and chimneys** at least once per year. [s. SPS 362.0915 (3) (c), Wis. Adm. Code.]
- For **elevators**, Wisconsin-specific modifications to a uniform code require periodic inspections of elevators and lifts at least at one-, three-, or five-year intervals, depending on the type of elevator or lift. [s. SPS 318.1810, Wis. Adm. Code.]
- Manufacturers of **modular multifamily dwellings** must establish a compliance assurance program that sets forth the frequency for inspections, among other requirements. [s. SPS 361.46 (2) (a), Wis. Adm. Code.]
- If DSPS allows a commercial builder to use an **experimental material, equipment, or product**, on-site inspections of that experimental material, equipment, or product must be conducted by DSPS or a person approved by DSPS at least once per year. [s. SPS 361.50 (3) (e), Wis. Adm. Code.]

In addition, the Commercial Building Code requires an on-site inspection to be conducted within five business days following a request for an on-site inspection of a commercial building. If an inspection is

---

<sup>9</sup> Local units of government may be authorized to conduct inspections in a manner similar to authorization for conducting plan review on behalf of the state. [See s. SPS 361.60, Wis. Adm. Code.] Those local units of government, numbering over 400, are enumerated in [this document](#), which DSPS last updated on July 15, 2022.

<sup>10</sup> The City of Milwaukee may establish an alternative schedule for fire inspections. [s. 101.14 (2) (c) 2., Stats.]

not completed within five business days of such a request, commercial building construction may proceed without the inspection. [s. SPS 361.41 (1), Wis. Adm. Code.] For other types of commercial building inspections, current Wisconsin law generally requires inspections to be conducted by inspectors who have been certified by DSPS but does not prescribe specific timelines for ongoing inspections.

The study committee could discuss whether any modifications should be made to current law regarding timelines for commercial building inspections. For example, the committee could discuss one or both of the following:

- Whether the frequency for any of the types of inspections listed above should be modified.
- Whether any other modifications should be made regarding the frequency or timing of inspections.

## **Wetlands Permitting**

As described in greater detail in Part III of the Staff Brief, state law requires a person to obtain an individual 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>11</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.]

During the past several legislative sessions, the Legislature has created new exemptions and general permits to ease the regulatory burden on construction sites. Specifically, 2017 Wisconsin Act 183 created new exemptions from wetlands regulations for disturbances of less than one acre in developed areas (cities, villages, and parts of towns served by sewers) and less than three acres in other areas, if no high quality wetlands are impacted and if storm water permitting requirements are satisfied.<sup>12</sup> In addition, general permits authorize an expedited regulatory process for certain [commercial development projects](#) and for impacts to certain [wetlands incidentally resulting from construction](#).

At the study committee’s July 19, 2022 meeting, presenters suggested some reforms to state wetland regulations, including extending the coverage of the general permit for wetlands incidental to construction from five to 10 years and modifying the standards for delineating wetlands. Under current law, the Department of Natural Resources has largely incorporated federal guidance developed by the U.S. Army Corps of Engineers as the approach for wetland delineation in Wisconsin. [See s. 281.36 (2m), Stats.; ch. NR 352, Wis. Adm. Code.]

The study committee could discuss whether to consider those or other modifications to state wetlands law. Note that any modifications to wetlands regulations would need to conform to federal law, including federal regulations regarding the timeline for wetland delineation.

AH:EL:jal  
Attachment

---

<sup>11</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.

<sup>12</sup> For a more detailed description of the legislation, see [Legislative Council, 2017 Wisconsin Act 183, Act Memo](#).

**Table 302.31-3**  
**Fees to be Forwarded to the Department**  
**for Reviews Performed by Second Class Cities and Appointed Agents**

Area (Square Feet)	Fees			
	Building Plans	HVAC Plans	Fire Alarm System Plans	Fire Suppression System Plans
1. Less than 2,500	\$30	\$18	\$5	\$5
2. 2,500–5,000	35	25	10	10
3. 5,001–10,000	60	30	15	15
4. 10,001–20,000	80	45	20	20
5. 20,001–30,000	120	60	25	25
6. 30,001–40,000	160	90	40	40
7. 40,001–50,000	210	120	55	55
8. 50,001–75,000	290	160	80	80
9. 75,001–100,000	360	220	110	110
10. 100,001–200,000	600	290	140	140
11. 200,001–300,000	1,050	670	330	330
12. 300,001–400,000	1,550	980	480	480
13. 400,001–500,000	1,850	1,200	630	630
14. Over 500,000	2,000	1,350	710	710