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# Wisconsin Legislative Council

## STUDY COMMITTEE MEMO

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**Memo No. 2**

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

**FROM:** Anna Henning, Principal Attorney, and Ethan Lauer, Senior Staff Attorney

**RE:** Options for Committee Discussion

**DATE:** September 21, 2022

This memo presents options for legislative proposals that the study committee may choose to recommend to the Joint Legislative Council for introduction in 2023 legislative session. The memo describes four bill drafts, which address topics discussed at the study committee's August 24, 2022 meeting, and enumerates questions the study committee may wish to consider during its September 28, 2022 meeting.

## **PLAN REVIEW APPOINTMENTS (LRB-6532/P2)**

### **Background**

The committee heard a presentation by the Department of Safety and Professional Services (DSPS) about recent changes in how that agency routes applications for review of commercial building plans.

Before January 1, 2020, DSPS allowed an applicant, prior to finalizing plans, to reserve one or more future dates for DSPS to review those plans. In addition, an applicant could request a specific DSPS plan reviewer for a given project. DSPS stated that flaws with that "appointment" system included an uneven distribution of workload among DSPS reviewers and systemic delays caused by applicants cancelling or simply foregoing one or more of their appointments without paying a plan review fee.

Starting on January 1, 2020, DSPS reformed its plan review application routing process into a "queue" system. Under the queue system, an applicant must first finalize a set of plans and submit them, along with the full plan review fee, using an electronic submission program. Once DSPS determines through a triage process that all required components of an application have been submitted, DSPS schedules the application for the next available plan review date with the next available plan reviewer.

At the study committee's August 24, 2022 meeting, members specifically discussed reviving the prior appointment system, but with the following modifications: (1) requiring an applicant to pay the review fee up front and to forfeit that fee if later canceling the appointment; and (2) allowing an applicant to request a preliminary meeting with a plan reviewer for an additional fee.

As part of that conversation, members also suggested several internal improvements that DSPS could pursue, including: (1) publishing on its website a list of common errors to be avoided when submitting an application; (2) including a tracking number or other identification device with every plan-related

communication to aid an applicant in following the progress of an application; and (3) consolidating billing practices so that a credit card fee is not assessed separately from the underlying plan review fee.

## LRB-6532/P2

LRB-6532/P2 is a bill draft that has been prepared to aid the study committee's discussion of options relating to the plan review appointment process. The bill draft does all of the following:

- Allows an applicant to choose to **either**: (1) submit finalized plans in order to get into the **queue** for the next available review slot (i.e., the status quo); or (2) schedule a future plan review **appointment**, provided that finalized plans are submitted not less than three business days prior to the appointment.
- Requires an applicant to submit the full plan review **fee** at the time of making an appointment.<sup>1</sup>
- Requires an applicant to **forfeit** the plan review fee in the event the applicant cancels an appointment or fails to submit finalized plans<sup>2</sup> no later than three business days before the appointment, unless the applicant cancels the appointment no later than six weeks before the appointment (i.e., during a "grace period").
- Allows an applicant to request a **preliminary meeting** with a DSPS plan reviewer prior to submitting an application, and allows DSPS to charge an extra fee for this meeting.

## Questions for Discussion

The study committee could discuss the following questions relating to this bill draft and topic:

1. The bill draft gives an applicant the option of either scheduling an appointment or entering the queue. Is that consistent with the committee's intent?
2. If an applicant chooses to schedule an appointment, should the applicant be able to reserve multiple, alternate appointment dates for the single submission? Or, rather, should the applicant be limited to one appointment date per submission as reflected in the bill draft?
3. If an applicant chooses to schedule an appointment, the bill draft requires finalized plans to be submitted to DSPS not less than three business days before the appointment. Is that an appropriate deadline for submission?
4. If an applicant chooses to schedule an appointment, the bill draft allows the applicant to cancel the appointment up until six weeks before the appointment without forfeiting the fee. Does the committee favor having a "grace period"? If so, is six weeks an appropriate amount of time?
5. The bill draft authorizes DSPS to promulgate the fee for a preliminary meeting. Would the committee prefer to establish a specific fee in statute?
6. Would the committee like a bill draft to address any of the DSPS internal improvements mentioned at the previous meeting (common errors, tracking numbers, and credit card fees)? In lieu of a bill draft, would the committee like to author a letter to the department requesting action on these items?

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<sup>1</sup> DSPS administrative rules require that the fee be paid when plans are submitted or when an application is submitted. [ss. SPS 302.31 (7) and 361.06, Wis. Adm. Code.] Under the current queue system, those two actions occur simultaneously.

<sup>2</sup> Currently, DSPS may charge a fee of \$60 for missing a plan review appointment that was processed and scheduled by the agency. [s. SPS 302.31 (3), Wis. Adm. Code.]

# STREAMLINED PROCESS FOR SPECIAL CATEGORIES OF COMMERCIAL BUILDING PLANS (LRB-6533/P1)

## Background

As described above, DSPS currently uses a first-in first-out system in which submitted plans are placed in a queue for review based on the date on which the plans are received. Apparently, plans are placed in the queue without regard to type or complexity of the project.

At the August 24, 2022 meeting, the study committee noted that certain “easier” plans can get unnecessarily delayed if those plans enter the queue after more “difficult” plans. Therefore, committee members expressed support for a streamlined approval process—in the form of either an exemption or a separate queue—for the following “easier” plans: (1) plans that are identical<sup>3</sup> to previously approved plans (e.g., for a chain store); (2) plans for interior build outs; and (3) plumbing plans involving between 16 and 25 plumbing fixtures.

## LRB-6533/P1

LRB-6533/P1 is a bill draft that has been prepared to aid the study committee’s discussion of options relating to streamlining plan review of special categories of plans. The bill draft does all of the following:

- Requires DSPS to establish procedures to expedite plan review of plans that are **identical to previously approved plans**. Allows DSPS to refuse expedited treatment in the event any relevant building code standard has changed since approval of the most recent identical project or if DSPS finds that any extraordinary circumstance exists.
- Requires DSPS and each local government to assign plans that are **identical to previously approved plans** to the same reviewer who approved the previous plans, if possible.
- Requires DSPS to establish procedures to expedite plan review of plans for an **interior build out**.
- Exempts from state and local plan review **plumbing plans** involving between 16 and 25 plumbing fixtures.

## Questions for Discussion

The study committee could discuss the following questions relating to this bill draft and topic:

1. Does the committee wish to establish a different fee schedule for plans receiving expedited treatment? If so, how should the fee deviate from the regular fee?
2. Does the bill draft accurately describe the type of plan that committee members refer to as an “interior build out”? Is it correct that the occupancy classification or use designation does not change with regard to an interior build out?
3. In the first and second bullets above, the bill draft allows a plan to qualify as “identical” despite deviations of an aesthetic nature that have no effect on safety. Are there any other deviations that should be allowed without jeopardizing “identical” status?
4. In the first bullet above, DSPS is allowed to refuse expedited treatment for two reasons. Is the committee satisfied with these two reasons? Does the committee wish to supply additional reasons why DSPS may insist that a project receive regular treatment?

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<sup>3</sup> Note that current DSPS administrative rules refer to projects having “multiple identical buildings.” [s. SPS 302.31 (1) (c), Wis. Adm. Code.] Presumably, DSPS has some experience evaluating plans for identity.

5. In the first and third bullets above, DSPS is given discretion to formulate procedures to be used in expedited review (both for identical plans and for interior build outs). Is the committee comfortable with that approach? Or are there specific procedures the committee would like DSPS to utilize?
6. Does the exemption for plans having between 16 and 25 plumbing fixtures match the committee's intent? This is similar to the exemption in 2021 Assembly Bill 152 before that bill was vetoed, except that the exemption here applies also to local review.

## INCENTIVES FOR LOCAL PLAN REVIEW (LRB-6534/P1)

### Background

More than 300 cities, villages, towns, and counties currently perform plan review in lieu of DSPS, but to varying degrees.<sup>4</sup> Emphasizing faster turnaround times, personal relationships, and opportunities for involving a range of local officials in site development, committee members have generally agreed that state policy should encourage more commercial building plan review at the local level.

At the study committee's August 24, 2022 meeting, members specifically discussed the following ideas to achieve that goal: (1) increasing building size thresholds for local authority; (2) reducing the amount of fees that must be forwarded to DSPS; and (3) ensuring that the revenue from those fees is used to fund outreach and training for local plan review. As part of that conversation, members also suggested a regional approach to DSPS review and engaging county or regional economic development representatives in the planning process.

Currently, the statutes require DSPS to accept commercial plan review performed by any of the following:

- The City of Milwaukee, if review is conducted in a manner approved by DSPS.
- A second class city, if DSPS has certified the city to conduct plan review.
- The city, village, town, or county has become an **appointed agent** of DSPS.<sup>5</sup>
- Any other city, village, town, or county, if the plan review is for a building or addition containing fewer than **50,000** cubic feet total volume, an addition containing no more than 2,500 square feet of total floor area and no more than one floor level (provided that the largest roof span does not exceed 18 feet and the exterior wall height does not exceed 12 feet), or an alteration affecting fewer than **100,000** cubic feet.

[s. 101.12 (3), (3g), and (3m), Stats.; s. SPS 361.60 (5) (c), Wis. Adm. Code.]

Current law requires second class cities and local units of government that act as appointed agents of DSPS (the second and third categories listed above) to forward a portion of the fees they collect for commercial plan review to DSPS, according to a fee schedule established in the Commercial Building Code. [s. 101.12 (3g) (d), 1. and (3m) (e), Stats.] The amount that must be forwarded to DSPS ranges from \$30 for a building with less than 2,500 square feet to \$2,000 for a building with over 500,000 square feet. Those amounts equal 10 percent of the fees that DSPS charges for plan review conducted by the state for property located in municipalities that do not conduct their own commercial building inspections. [See SPS Tables [302.31-1](#) and [302.31-3](#), Wis. Adm. Code.]

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<sup>4</sup> Those local units of government are enumerated in [this document](#), which DSPS last updated on September 1, 2022.

<sup>5</sup> Among other responsibilities, an appointed agent must provide a monthly report to DSPS of all projects completed as an agent. [s. 101.12 (3g) (d) 1. and 2., Stats.]

## LRB-6534/P1

LRB-6534/P1 is a bill draft that has been prepared to aid the study committee's discussion of options relating to encouraging more local plan review. The bill draft does all of the following:

- Increases the **size thresholds** for which a city, village, town, or county, other than the City of Milwaukee or a second class city, may conduct plan review at the local level, without applying to become an agent of DSPS. Specifically, the bill draft requires DSPS to accept a commercial building plan review conducted by a city, village, town, or county, if the plan review is for a building containing fewer than 100,000 cubic feet, rather than 50,000 cubic feet under current law, or for an alteration affecting fewer than 150,000 cubic feet, rather than 100,000 cubic feet under current law. The bill draft also makes a corresponding threshold increase for municipal review and determinations regarding requests for variances from the Commercial Building Code.
- Imposes a cap on the amount of commercial plan review **fees** that second class cities and local units of government acting as agents of DSPS must forward to DSPS. Specifically, the bill draft limits the ratio of such fees that are required to be forwarded to no more than eight percent (versus 10 percent under DSPS rules) of the amount of the fees collected by DSPS for reviewing commercial building plans for buildings located in municipalities that do not conduct inspections.
- Requires some or all of the revenue received from fees forwarded by local units of government for commercial building plan review to be transferred to a new appropriation that is limited to certain purposes. Specifically, the bill draft creates a new, annual, continuing appropriation (with no funds allocated in the current schedule), for revenue received from fees forwarded to DSPS from local units of government for commercial building plan review. The bill draft requires funds in that appropriation to be used only for the purpose of conducting **outreach and training** relating to local commercial plan review and inspections.

## Questions for Discussion

The study committee could discuss the following questions relating to this bill draft and topic:

1. Are the cubic feet threshold increases in the bill draft (from 50,000 to 100,000 cubic feet for building size and from 100,000 to 150,000 cubic feet for alterations) the right amounts?
2. The bill draft does not affect the option under current law to become an agent of DSPS and thus render the thresholds inapplicable. Are any changes needed to current law relating to the option to become an agent of DSPS?
3. Does the approach under the bill draft to capping the amount of fees that must be forwarded to DSPS by second class cities and local units of government with appointed agent status reflect the study committee's intent? Is an eight percent ratio the right amount?
4. Currently, the statutes only require a portion of fees to be forwarded by second class cities and local units of government acting as appointed agents of DSPS. Does the increase in the threshold levels affect which units of local government should be required to forward a portion of fees to DSPS?
5. Is the approach of creating a new appropriation an effective method of ensuring that fees forwarded to DSPS are utilized for outreach to and training for local units of government? If so, do the purposes for those revenues need to be any further refined? For example, the bill draft could be revised to require DSPS to conduct certain types of training on a periodic basis.
6. The bill draft does not currently address committee members' suggestions regarding a regional or coordinated approach to plan review. Are there changes to state law that should be added to the bill draft to facilitate those goals?

## **EXPANDED SCOPE FOR “PERMISSION TO START” WHILE PLAN REVIEW IS PENDING (LRB-6535/P1)**

### **Background**

Current law allows an applicant for commercial plan review to 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 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 statutes also specify that nothing in the section of the statutes relating to commercial building plan review relieves a building designer of the responsibility for designing a safe building, structure, or component. [s. 101.12 (2), Stats.]

At its August 24, 2022 meeting, the study committee discussed an option to expand “permission to start” authority to allow construction of both underground plumbing and building shell while plan review is pending. Committee members noted that architects’ responsibility could be clarified with respect to such authority.

### **LRB-6535/P1**

LRB-6535/P1, a bill draft prepared to aid the study committee’s discussion, does all of the following relating to “permission to start” authority:

- Codifies the authority for “permission to start” letters in the statutes.
- Expands the scope of construction activities that DSPS (or a local unit of government) may allow to proceed while plan review is pending to include underground plumbing and building shell, in addition to the footings and foundation currently allowed to proceed under the Commercial Building Code.
- Specifies that an owner proceeds at the owner’s own risk when beginning construction under a “permission to start” letter, and specifies that the letter does not relieve the designer who prepared the building plans of responsibility regarding the building plans.

### **Questions for Discussion**

The study committee could discuss the following questions relating to this bill draft and topic:

1. Is the expansion to “underground plumbing” and “building shell” correct? Do those terms require further definition?
2. Does the provision regarding a designer’s continuing responsibility (on Page 2, Lines 3-6) reflect the committee’s intent to specify architect and engineer responsibility when construction proceeds under permission to start authority? Note that the term “designer” is not specifically defined in ch. 101, Stats., but appears throughout the chapter.
3. DSPS’s rules currently require DSPS to make determinations regarding requests for permission to start letters within three business days. Should that timeline requirement be codified?

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