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# Wisconsin Legislative Council

## STUDY COMMITTEE MEMO

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**Memo No. 4**

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

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

**RE:** Survey of Authority in Other States for “Permission to Start” Building Shell

**DATE:** October 13, 2022

At its September 28, 2022 meeting, the study committee discussed a bill draft that expands the scope of construction activities that the Department of Safety and Professional Services or a local unit of government may allow to proceed while plan review is pending. In relevant part, the bill draft authorizes “permission to start” a commercial building shell. During its discussion, committee members inquired whether other states allow building owners to begin construction of a building shell while plan review is pending. The chart below provides selected examples of other states’ laws, regulations, and practices regarding this topic.

One question of particular interest to committee members was other states’ approaches regarding the fire safety implications of “permission to start” building shell construction. Based on our non-exhaustive survey, it appears that at least a few states address fire danger when determining whether to grant permission to start construction of a building shell. For example, as indicated below, Kentucky requires applicants for permission to start a building shell to include fire ratings together with other details on proposed construction methods and materials. New Jersey requires an owner to submit information regarding measures to be taken to safeguard adjoining properties and public rights of way. And North Carolina requires an applicant to submit a “life-safety plan,” including certain information relating to fire suppression, for a building shell approval.

Jurisdiction <sup>1</sup>	Permission to Start Shell?	Notes
Iowa <sup>2</sup>	Evaluated on a case-by-case basis	<ul style="list-style-type: none"><li>• Must follow approval of permission to start foundation, which can be granted only after a preliminary meeting.</li></ul>
Indiana <sup>3</sup>	Yes	<ul style="list-style-type: none"><li>• A “partial release” allows work to proceed on part of a project, including foundation and structure.</li><li>• Requires the submission of a separate set of plans and specifications for each partial release.</li></ul>
Kentucky <sup>4</sup>	Yes	<ul style="list-style-type: none"><li>• For exterior walls, applicant must include details on the methods and materials of construction, including fire ratings.</li></ul>

Jurisdiction <sup>1</sup>	Permission to Start Shell?	Notes
Louisiana <sup>5</sup>	Yes	<ul style="list-style-type: none"> <li>Applicant may check a “shell only” box on the plan review application.</li> </ul>
Minnesota <sup>6</sup>	No	<ul style="list-style-type: none"> <li>Phased approval permit may be granted for foundations or “any other part of a building or structure.” In practice, however, the only above-grade components eligible for phased approval are pre-cast concrete panels sitting on footings (along with any steel structure supporting those panels, such as roof trusses).</li> <li>Plan review supervisor may authorize a phased approval after a meeting to clarify the limitations that will be placed on the partial building permit.</li> </ul>
New Jersey <sup>7</sup>	Yes	<ul style="list-style-type: none"> <li>When circumstances require, permission to start before submission of complete and final plans may be granted for, among other items, the following: footings and foundations; underslab plumbing; structural framework; or exterior building.</li> <li>Owner must submit measures to be taken to safeguard adjoining properties and public rights of way.</li> </ul>
New York <sup>8</sup>	Yes, for a hospice facility	<ul style="list-style-type: none"> <li>Upon approval of design development plans and upon the applicant’s request and adequate justification, the state “may consider” giving permission to start early construction of specifically identified phases, such as demolition, excavation, foundations and/or the structural shell.</li> </ul>
North Carolina <sup>9</sup>	Yes	<ul style="list-style-type: none"> <li>Approval in stages may be granted, depending on the state of completion of plans, for the following: (1) footings and foundations (including slab and under-slab utilities); and (2) shell (based on approval of the life-safety interface with the plumbing, mechanical, electrical, and sprinkler systems).</li> </ul>
Pennsylvania <sup>10</sup>	Evaluated on a case-by-case basis	<ul style="list-style-type: none"> <li>Permission may be granted for construction of a foundation “or other parts of a building or structure.” In practice, however, this is rarely used to start construction of a building shell.</li> <li>In addition, a construction permit may be granted for construction of a “shell building,” which is a building constructed speculatively, with the tenants unknown at the time the permit is issued.</li> </ul>

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- <sup>1</sup> Note that, compared with Wisconsin, jurisdictions such as Minnesota and New York have significantly narrower plan review authority relative to their units of local government. In those jurisdictions, the state agency may have authority only over certain types of buildings, such as state buildings, public educational facilities, or state-licensed health care facilities. In addition, Pennsylvania has a narrower plan review authority because over 90 percent of its units of local government conduct delegated plan review.
- <sup>2</sup> Iowa Administrative Code, s. [661.300.4 \(4\)](#).
- <sup>3</sup> Indiana Administrative Code, [675 IAC 12-6-15](#).
- <sup>4</sup> Kentucky Public Protection Cabinet, Department of Housing, Buildings and Construction, [Plan Submission Application Guide for Building Construction](#), (Orig. Sept. 2005; Rev. Jan. 2020), p. 10.
- <sup>5</sup> Louisiana Department of Public Safety, Office of State Fire Marshal Code Enforcement and Building Safety, [Plan Review Application](#), (Aug. 26, 2022).
- <sup>6</sup> Minnesota Administrative Rule, s. [1300.0130 \(8\)](#); Minnesota Department of Labor and Industry, [FAQs: Building Plan Review](#). Information also based on discussion with staff of the Minnesota Department of Labor and Industry.
- <sup>7</sup> New Jersey Administrative Code, ss. [5:23-2.15 \(f\) 4. i. \(3\)](#) and [5:23-2.34](#); New Jersey Department of Community Affairs, Division of Codes and Standards, Bureau of Construction Project Review, [Plan Review Instructions](#) (May 10, 2021), pp. 6-8.
- <sup>8</sup> 10 NYCRR s. [791.5](#).
- <sup>9</sup> North Carolina Department of Insurance, Office of State Fire Marshal, [Commercial Plan Review Frequently Asked Questions](#).
- <sup>10</sup> 34 Pa. Code s. [403.43 \(e\)](#); Pennsylvania Department of Labor and Industry, [Plan Review and Inspection Requirements](#) and [Special Requirements for Shell Buildings](#). Information also based on discussion with staff of the Pennsylvania Department of Labor and Industry.