
Wisconsin Legislative Council

MINUTES



STUDY COMMITTEE ON THE COMMERCIAL BUILDING PERMITTING PROCESS

Room 300 Northeast, State Capitol
Madison, WI
October 20, 2022
10:30 a.m. – 2:45 p.m.

CALL TO ORDER AND ROLL CALL

Chair Stroebel called the meeting to order and determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Duey Stroebel, Chair; Rep. Rob Summerfield, Vice Chair; Reps. Samba Baldeh and Sue Conley; and Public Members Robert Brandherm, Melissa Destree, Frank Gorham, Doug Hoerth, Steve Klessig, Mark Piotrowicz, Robert Procter, and Cory Scheidler.

COMMITTEE MEMBERS EXCUSED: Public Member Peter Tomasi.

COUNCIL STAFF PRESENT: Anna Henning, Principal Attorney; and Ethan Lauer, Senior Staff Attorney.

ATTENTION: This was the final meeting of the Study Committee on the Commercial Building Permitting Process. Committee members are requested to send any corrections regarding minutes to the Legislative Council staff. After the incorporation of any corrections, these minutes will be considered approved by the committee.

APPROVAL OF THE MINUTES OF THE SEPTEMBER 28, 2022 MEETING

Representative Baldeh moved to approve the minutes of the study committee's September 28, 2022 meeting. The motion was seconded by Mr. Piotrowicz and passed by unanimous consent.

DESCRIPTION OF DISTRIBUTED MATERIALS

Legislative Council staff described the materials that were posted for today's meeting. Specifically, Mr. Lauer drew committee members' attention to: (1) three revised bill drafts; (2) Memo No. 4, *Survey of Authority in Other States for "Permission to Start" Building Shell*; (3) a draft letter to Secretary-Designee Dan Hereth, Department of Safety and Professional Services (DSPS); and (4) a memorandum from Mike Tierney, Legislative Liaison, DSPS. Regarding the last item, he noted that Legislative Council staff would later share additional information that DSPS staff had conveyed over the phone.

DISCUSSION OF COMMITTEE ASSIGNMENT

Chair Stroebel made introductory comments regarding the committee's assignment. He said that he thinks the three bill drafts reflect the committee's goal to streamline the process for commercial building permits and are close to ready. He noted that any bill the committee recommends for introduction will go through the regular legislative process. He said the study committee's recommendations will carry weight in that process, because of committee members' expertise.

Before discussing the bill drafts, committee members discussed information received from DSPS and DSPS's engagement throughout the committee process. Responding to information provided by DSPS regarding the availability of the "buildingtech" email boxes and preliminary consultations, Ms. Destree reported that responses from the "buildingtech" email addresses sometimes take more than a week. Other members reported receiving responses in a shorter time frame, although members noted that the responses sometimes merely restate Commercial Building Code language rather than providing an interpretation of that language. Ms. Destree also noted that submitting a request for a plan review consultation required relatively detailed documentation.

Representative Baldeh noted that the draft bills do not address DSPS's staffing and technology needs and expressed a hope that those challenges would be addressed during the legislative process. Chair Stroebel agreed that those issues would need to be addressed in the next legislative session. He said that he plans to gather information regarding DSPS's historical staffing levels in preparation for addressing those questions.

Chair Stroebel then invited Legislative Council staff to provide an overview regarding the first bill draft.

LRB-6532/P5, Relating to Procedures for Reviewing Commercial Building Plans

Legislative Council staff summarized LRB-6532/P5, including changes to the bill draft that were made in response to the committee discussion at the September 28, 2022 meeting. After providing that summary, Mr. Lauer also noted feedback received from DSPS regarding the bill draft.

Mr. Klessig said he would like to see the same person assigned to conduct both a preliminary meeting and final plan review. Other committee members opined that requiring DSPS to do so by statute could be too restrictive. Following further discussion regarding that topic, committee members agreed to revise the bill draft to remove its provisions regarding preliminary meetings and to instead use the letter to the DSPS Secretary-Designee to encourage DSPS to allow an applicant for plan review to request that the person who conducted a preliminary consultation also conduct the plan review.

The committee then discussed the treatment of plumbing plans. Multiple committee members noted the need for a solution to construction delays created by plumbing plan review, but committee members expressed some reservations regarding possible unintended consequences and procedural complications that could result from the expedited plumbing review process set forth in the bill draft. Legislative Council staff informed the committee that, according to DSPS staff, plumbing plans with no more than 25 fixtures comprise between 40 and 50 percent of all plumbing plans received for state plan review and conveyed feedback from DSPS staff regarding the increase in plan review staff that would be needed to facilitate a 10-business-day turnaround time for those commercial plumbing plans.

Mr. Klessig, Chair Stroebel, and Representative Summerfield expressed support for revisiting the idea of exempting plumbing plans involving no more than 25 fixtures from state plan review. Mr. Procter noted that the current 16-fixture threshold for plumbing plan review in the Commercial Building Code is somewhat arbitrary and inquired about potential safety concerns with raising the threshold. Chair Stroebel and other committee members asked Mr. Piotrowicz and Mr. Hoerth about problems

encountered with plumbing plans, and whether plans with fewer fixtures cause fewer problems. Mr. Hoerth explained that plans for smaller projects are often prepared by master plumbers, who may have less familiarity with preparing plans. He also noted that the Commercial Building Code currently requires review of certain plumbing plans, such as grease interceptors, regardless of the number of fixtures. Mr. Piotrowicz noted that the City of West Bend sets a threshold of 10 fixtures for plumbing plan review.

After further discussion regarding a possible exemption, Chair Stroebel took straw polls to gauge the committee's support for that idea. Committee members were evenly divided regarding whether to expand the exemption to include plumbing plans with no more than 25 plumbing fixtures, but a majority of committee members supported an exemption for plumbing plans with no more than 20 fixtures, with Representative Baldeh switching his position on the question. Committee members generally agreed that local units of government should be able to continue to make their own decisions regarding whether to review plumbing plans with a relatively small number of fixtures. Committee members also generally agreed that grease interceptors and other plumbing fixtures that pose special safety concerns should continue to be reviewed regardless of number, as under current law.

Following a lunch break, committee members discussed whether the expedited plumbing plan review timeline created by the bill draft is needed if an exemption is created. Committee members generally agreed that the expedited process was not needed, in part because of the option under the bill draft to schedule an appointment for plan review.

Representative Summerfield moved, seconded by Mr. Procter, to recommend introduction of LRB-6532/P5, with the following changes: (1) remove the provisions relating to preliminary meetings; (2) remove the provisions relating to an expedited process for review of plumbing plans; and (3) increase the threshold for state plumbing plan review to projects with more than 20 fixtures, but retain DSPS's authority to require the review of plans involving certain categories of plumbing fixtures specified in the current Commercial Building Code. The motion was approved on a vote of Ayes, 12; Noes, 0.

LRB-6534/P3, Relating to Local Government Review of Commercial Building Plans

Next, Legislative Council staff provided an overview of LRB-6534/P3. Ms. Henning summarized the revisions that had been made to the bill draft based on the discussion at the committee's September 28, 2022 meeting and requested feedback regarding whether those changes reflected the committee's intent. She also provided information received from DSPS staff regarding fees required to be forwarded to DSPS from second class cities and local units of government that act as agents of DSPS in conducting commercial plan review. She noted that, at the September 28, 2022 meeting, Legislative Council staff had relayed information estimating that a reduction in such fees may result in a significant loss in revenue for the department. However, DSPS staff subsequently indicated that the revenue from such fees is relatively small, partly because fee forwarding is done on an "honor system," without routine audits, and not all local units of government subject to the fees actually forward them.

In light of the information shared by DSPS staff, committee members suggested that the requirement to forward fees to DSPS could be removed entirely, rather than revised downward.

Committee members also asked questions relating to specific language in the bill draft. Mr. Scheidler suggested that "alteration" may need to be defined. Representative Conley asked whether "support," as

it is used in the nonstatutory provision in the bill draft, is too vague. After further discussion, there was general agreement to leave the language regarding those two provisions as it is.

Representative Baldeh said that he would support the bill to move it forward, but that he opposed removing the requirement that local governments forward fees to DSPS.

Representative Summerfield moved, seconded by Mr. Gorham, to recommend introduction of LRB-6534/P3, as modified to repeal, rather than reduce, the fees that are currently required to be submitted to DSPS by second-class cities and counties and municipalities acting as appointed agents of DSPS. The motion was approved on a vote of Ayes, 12; Noes, 0.

LRB-6535/P4, Relating to Permission to Start Construction of a Commercial Building Before Plan Approval

Next, the committee discussed LRB-6535/P4. Chair Stroebel introduced the discussion by noting that striking the language prohibiting the issuance of a “permission to start” letter for the placement of a concrete slab fits with the committee’s charge to streamline the commercial building permitting process.

Legislative Council staff summarized current law relevant to the bill draft. Ms. Henning explained that the statutes do not directly address the authority of DSPS and local governments to allow construction of commercial buildings to begin before the approval of plans. The Commercial Building Code, however, authorizes permission to start footings and foundations. In addition, DSPS practice is to allow permission to start construction of certain components located below grade and less than 18 inches above the floor.

Committee members discussed whether the authority for permission to start construction needs to be addressed through legislation, given that it is already allowed under DSPS’s rules and practice. Following the discussion, there was general agreement that the authority should be codified, but committee members expressed that the committee should be careful not to curtail permission to start authority that DSPS currently exercises as a matter of practice. Partially for that reason, committee members generally agreed that the bill should be revised to “stay silent” regarding the placement of a concrete slab over underground plumbing.

Mr. Brandherm moved, seconded by Mr. Hoerth, to recommend introduction of LRB-6535/P4, as modified to remove the language prohibiting granting permission for covering plumbing with a concrete slab. The motion was approved on a vote of Ayes, 12; Noes, 0.

Draft Letter to Secretary-Designee Hereth, Department of Safety and Professional Services

Finally, the committee discussed the draft letter addressed to Secretary-Designee Hereth from the committee’s chair and vice chair. Chair Stroebel and committee members emphasized that the goal of the letter is to recommend internal improvements to DSPS’s plan review procedures that are not appropriate for legislation but that would help to streamline the state plan review process. Legislative Council staff summarized new additions to the letter that had been mentioned during the earlier discussion, including: (1) encouraging DSPS to offer consultations on interpretational questions without requiring the inquiring party to supply the level of documentation that is currently required; and (2) a suggestion that DSPS could allow an applicant for commercial plan review to request that the plan reviewer who conducted a plan review consultation also conduct the final plan review, when

appropriate. There was general consensus that the letter should be sent after those revisions are incorporated.

ADJOURNMENT

Following the discussion of the committee's assignment, Chair Stroebel and Legislative Council staff reminded the committee of the next steps in the process. Legislative Council staff noted that committee members will receive a mail ballot to confirm the final versions of the bill drafts that the committee voted on today. Following the mail ballot, a report of the committee's activities and recommendations will be prepared and submitted to the Joint Legislative Council.

Chair Stroebel thanked the committee members for their service and the time they devoted to the committee process.

Chair Stroebel then adjourned the meeting at approximately 2:45 p.m.

AH:jal