

Amendment to SB 188-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the state building code.

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5 Amend the bill by replacing all after the enacting clause with the following:

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7 1 Short Title. This act shall be cited as the "Speeding Development Act".

8 2 Purpose. The purpose of this act is to facilitate speedier and more efficient development while
9 ensuring public safety by authorizing licensed or certified third parties to certify documents and
10 inspect buildings in compliance with applicable building and other codes.

11 3 Definitions.

12 I. In this act:

13 (a) "Applicable codes" means the New Hampshire state building code and any local
14 technical amendments, excluding fire prevention and fire safety codes except as referenced by the
15 state building code.

16 (b) "Approved agency" means an individual or entity that is authorized as permitted by
17 this section to perform building code inspection services and construction document reviews as an
18 alternative to those conducted by local government agencies. Private providers may include
19 professionals such as engineers, architects, or ICC-certified building officials.

20 (c) "Audit" means the process to assess that construction document review and
21 inspection services have generally been performed properly by the private provider.

22 (d) "Approved agency services" means the review of construction documents and
23 inspection services to determine compliance with applicable codes, each as required by the state
24 building code.

25 (e) "Construction documents" means written, graphic, and pictorial documents prepared
26 or assembled for describing the design, location, and physical characteristics of the elements of a
27 project necessary for obtaining a building permit. Construction documents do not include
28 applications or documents generated for zoning or planning approvals.

29 (f) "Building inspection" means the inspection of an improvement to land as required by
30 the state building code as part of a project to develop or improve an improvement to the land,
31 building, or structure.

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1 (g) "Building permit or permit" means an official document or certificate issued by the
2 building official that authorizes performance of a specified activity.

3 (h) "Building official" means the officer or other designated authority charged with the
4 administration and enforcement of this act, or a duly authorized representative.

5 (i) "ICC" means the International Code Council.

6 4 Approved Agencies.

7 I. An approved agency shall provide all information as necessary for the building official to
8 determine that the agency meets the applicable requirements specified in this section. If the
9 building official does not approve a proposed agency, the reasons shall be stated in writing.

10 II. An approved agency shall be objective, competent, and independent from the contractor
11 responsible for the work being inspected. The agency shall disclose to the building official possible
12 conflicts of interest so that objectivity can be confirmed. Individuals shall perform services only
13 within the scope of their competence and, where applicable, license or certification.

14 III. An approved agency shall have adequate equipment to perform required tests. The
15 equipment shall be periodically calibrated.

16 IV. An approved agency shall employ or contract with experienced personnel educated in
17 conducting, supervising, and evaluating construction document reviews and inspections of the work.

18 V. An approved agency may review construction documents or provide inspections only if the
19 approved agency maintains insurance for professional liability covering all services performed as an
20 independent provider, unless such regulatory authority waives such requirement. Such insurance
21 shall have minimum policy limits of \$2 million per occurrence and \$4 million in the aggregate for
22 any project with a construction cost of \$5 million or less and \$4 million per occurrence and \$8 million
23 in the aggregate for any project with a construction cost of over \$5 million. A certificate of insurance
24 indicating the above shall be provided to the building official before services under this section are
25 started, and such certificate shall require notification to the building official 14 days prior to any
26 cancellation or changes to the policy.

27 VI. The approved agency shall provide complete contact information for each individual
28 performing services under this section.

29 5 Approved Agency Services.

30 I. The owner or owner's authorized agent may use approved agencies for building code
31 inspections and construction document reviews as permitted by this section.

32 II. Approved agencies shall be licensed professionals, including engineers, architects, or
33 ICC-certified building officials.

34 III. Approved agencies shall adhere to all applicable codes and standards set forth by the
35 state building code pursuant to RSA 155-A:2 and any local bylaws or ordinances established
36 pursuant to RSA 155-A:3.

1 IV. Approved agencies may use electronic signatures and transmission for submitting
2 construction documents where permitted by the municipality and for all reports and other
3 documents required for compliance with this section.

4 V. Local enforcement agencies appointed pursuant to RSA 674:51 or RSA 47:22 shall audit a
5 percentage of inspections performed by approved agencies within their jurisdiction to ensure
6 compliance with applicable codes. Audits shall be conducted randomly and without prior notice to
7 the approved agency. The local enforcement agency shall have the authority to take corrective
8 action if any violations are found during the audit.

9 6 Scope of Approved Agency Services.

10 I. The approved agency shall examine the construction documents, including deferred or
11 amended documents described in this act. Upon determining compliance, the approved agency shall
12 prepare an affidavit or affidavits certifying that the documents were reviewed pursuant to this
13 section and that to the best of the knowledge, information, and belief of the reviewer, the documents
14 comply with the New Hampshire state building code and any applicable municipal amendments.

15 II. The approved agency shall perform inspections as set forth in this act. Upon completion
16 of all inspections, the approved agency shall submit to the regulatory authority an affidavit
17 summarizing the inspections performed in accordance with the approved construction documents,
18 the New Hampshire state building code, and any applicable municipal amendments. The approved
19 agency and affidavit shall be subject to RSA 676:13.

20 7 Use of Approved Agencies for Document Review and Inspections.

21 I. Notwithstanding any law, rule, or regulation, at the discretion of the permit applicant,
22 approved agencies shall be permitted to perform reviews of construction documents and/or
23 inspections of the work, each as required by this section.

24 II. The provisions of this section shall address permits where the owner or owner's
25 authorized agent chooses to utilize the services of an approved agency for the services identified in
26 this section but shall not be interpreted to restrict any other authorization for the building official to
27 obtain or require the services of an approved agency.

28 III. Prior to the approved agency proceeding with the services under this section, the owner
29 or the owner's authorized agent shall provide the following signed statement to the building official
30 with the permit application:

31 I agree to indemnify the regulatory authority from and against losses, damages, and judgments
32 arising from claims by third parties arising from my use of these licensed or certified personnel to
33 provide development document reviews and building inspections with respect to the building or
34 structure that is the subject of the enclosed application. The indemnification shall include
35 reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they
36 are found to be caused by a negligent act, error, or omission of an approved agency or approved
37 agency officers, directors, members, partners, agents, employees, or subconsultants.

1 IV. The owner or the owner’s authorized agent shall contract with and make payment
2 directly to the approved agency.

3 8 State Building Code Changes.

4 I. The state building code review board shall amend the International Building Code 2021 as
5 set forth in this act. The International Existing Building Code 2021, the International Plumbing
6 Code 2021, the International Mechanical Code 2021, the International Energy Conservation Code
7 2018, the International Swimming Pool and Spa Code 2021, the International Residential Code
8 2021, and the National Electrical Code 2020 shall be amended in a manner to authorize the use of
9 the provisions in this act.

10 9 Municipal Responsibilities.

11 I. Where an approved agency is used for the review of all construction documents in lieu of
12 building official review, permit fees shall be reduced by 40 percent. Where an approved agency is
13 used for all inspections required by this act, permit fees shall be reduced by 40 percent. Where both
14 functions are performed, permit fees shall be reduced by 80 percent.

15 II.(a) If an owner or an owner’s contractor contracts with an approved agency to review
16 construction documents and/or to provide inspections required by this act, the building official shall
17 provide equal access to all related documents to the approved agency, owner, or owner’s authorized
18 agent that would be provided to the building official in completing review of construction documents
19 or inspections.

20 (b) If such access is normally provided by software that protects exempt records from
21 disclosure, the regulatory authority shall provide requested permitting or inspection documents and
22 reports to the independent provider, owner, or contractor within 2 business days of a request in
23 electronic format.

24 III. No more than 14 calendar days after receipt of a construction document affidavit, an
25 application for a building permit, and the payment of applicable fees, the building official shall issue
26 the building permit or shall provide a written notice to the applicant identifying the specific features
27 that do not comply with the applicable codes and regulations or the lack of sign-offs from other
28 federal, state, or municipal agencies, as well as the specific code or regulation reference. If no
29 written notice of deficiencies is provided within the prescribed period, the document or permit shall
30 be deemed approved as a matter of law, and any necessary permit or permits shall be issued by the
31 building official on the next business day. If the permit applicant submits revisions, the building
32 official has the remainder of the tolled business days plus one business day from the date of
33 resubmittal to issue the building permit or provide a second written notice to the permit applicant
34 stating which of the previously identified documents or permit features remain in noncompliance
35 with the applicable codes, with specific reference to the relevant code or regulation reference. If the
36 building official does not provide the second written notice within the prescribed period, the

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1 construction document or building permit shall be deemed approved as a matter of law, and any
2 necessary permits shall be issued by the building official on the next business day.

3 IV. No more than 10 calendar days after the receipt of the inspection affidavit indicating the
4 completion of all necessary inspections, and after the payment of all outstanding required fees, a
5 certificate of occupancy or completion shall be issued by the building official, or the building official
6 shall provide a notice to the approved agency of any specific deficiencies in the affidavit, with
7 reference to specific code chapters and if the regulatory authority does not issue the certificate of
8 occupancy or completion or provide notice within the required number of days, the certificate of
9 occupancy or completion is considered granted as a matter of law and shall be issued the next
10 business day.

11 V.(a) Each building official may audit the performance of approved agencies operating
12 within their jurisdiction and demand of the owner or owner's authorized agent to know the times of
13 requested building inspections by the approved agency, although the fact of the audit shall not be
14 given to the approved agency.

15 (b) Audits may be conducted only after the building official has created a formal audit
16 evaluation.

17 (c) The same approved agency may be audited no more than 4 times in a month, unless
18 the building official determines that the condition of a building constitutes an immediate threat to
19 public safety and welfare.

20 (d) The building official may, upon clear and convincing evidence, decide that an
21 independent provider has been negligent in providing construction document reviews or building
22 inspections, suspend the approved agency from further work on that project and in that municipality
23 for not more than one year. Notwithstanding any provision of this section, the building official may
24 file a complaint per RSA 310-A:22 for engineers, per RSA 310-A:47 for architects, or with the
25 building code review board for ICC-certified building officials.

26 VI.(a) A municipality may not adopt or enforce any ordinances, laws, rules, procedures,
27 policies, qualifications, or standards regarding independent providers more restrictive than those
28 prescribed by this subdivision.

29 (b) This section shall not be construed to limit or deny the authority of the building
30 official to issue a stop-work order for a project or any portion of the project, as provided by law, if the
31 building official determines that a condition on the building site constitutes an immediate threat to
32 public safety and welfare.

33 VII.(a) Notwithstanding any provision of this section, any decisions other than negligence
34 regarding the issues addressed by this section may be appealed to the building code review board,
35 which shall adjudicate the dispute per statute.

36 (b) If an applicant believes that the building code review board has interpreted the
37 requirements of this section in error, the approved agency or owner or owner's authorized agent may

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1 file a proceeding per RSA 155-A:12 seeking a determination that the issues addressed by this section
2 comply with all relevant requirements and seek an order requiring the building official to issue any
3 necessary building permits or certificate of occupancy or completion.

4 10 Severability. The provisions of this act are hereby declared to be severable. If any provision
5 of this act or the application of such provision to any person or circumstance is declared or held to be
6 invalid for any reason, such declaration or holding shall not affect the validity of the remaining
7 portions of this act and the application of its provisions to any other persons or circumstances.

8 11 Effective Date. This act shall take effect upon its passage.

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AMENDED ANALYSIS

This bill authorizes licensed or certified third parties to certify documents and inspect buildings in compliance with applicable building and other codes.