



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Carla Napolitano

H.B. 128

132nd General Assembly
(As Introduced)

Reps. Roegner, Antani, Becker, Brenner, Brinkman, DeVitis, Goodman, Hood, Keller, Koehler, Perales, Riedel, Romanchuk, Seitz, Slaby, Thompson, Vitale, Young

BILL SUMMARY

- Requires inspections of residential and nonresidential building construction projects to be conducted by the building department having jurisdiction within 24 hours of the inspection request.
- Permits a general contractor, the owner, or a building department with jurisdiction, to contract with a third-party private inspector or an out-of-jurisdiction certified building department to conduct inspections.
- Requires the Board of Building Standards to maintain a list of third-party private inspectors and certified building departments that it authorizes to conduct inspections under the bill's provisions.
- Permits the Superintendent of Industrial Compliance to contract with specified local governments and health districts for specified enforcement, plan approval, and inspection functions.
- Requires the Board of Building Standards to adopt rules to implement the bill's provisions.
- Requires the Department of Commerce to establish an expedited arbitration process for disputes relating to building inspection results.

CONTENT AND OPERATION

Overview

The bill makes several changes aimed at speeding the building inspection process.

First, the bill requires that building inspections be conducted by the building department having jurisdiction within 24 hours of the inspection request. In addition, the bill permits general contractors, construction project owners, and local building departments to contract with third-party private inspectors or out-of-jurisdiction certified building departments to conduct the building inspection in certain circumstances. To facilitate these contracts, the Board of Building Standards (the Board) is required to maintain a list of third-party private inspectors and certified building departments it authorizes to conduct inspections.

The bill also permits the Superintendent of Industrial Compliance to contract with local jurisdiction or health departments to exercise specified areas of its enforcement authority.

Lastly, the bill establishes guidelines for the implementation of an expedited arbitration process for disputes related to building inspection results.

General background on building code enforcement

Ohio has two building codes: one for nonresidential buildings (a building that is not a residential building or a manufactured or mobile home), and one for residential buildings (a one-family, two-family, or three-family dwelling house, and any accessory structure incidental to that dwelling house, but not an industrialized unit (a type of prefabricated, self-contained building unit) or a manufactured or mobile home).¹ The codes are adopted by the Board.² Ohio law requires the Board to certify local building departments, building department personnel, and certain other persons to enforce the Ohio Nonresidential Building Code, Ohio Residential Building Code, or both codes. Such a building department, personnel, or person may enforce only the type of building code for which it is certified.³

¹ R.C. 3781.06.

² R.C. Chapters 3781. and 3791.

³ R.C. 3781.03 and 3781.10(E). See also R.C. 307.37(F) and 505.75(C).



Building inspections

Under the bill, a building department having jurisdiction over a residential or nonresidential building construction project must conduct the inspection of the building within 24 hours of being requested to do so.⁴ Existing Board rule requires inspections to be conducted by the building department within four days (excluding Saturdays, Sundays, and legal holidays) after the request is made.⁵

In addition, the bill permits a general contractor or owner of the building construction project, or the building department with jurisdiction over the building, to contract with a third-party private inspector or a certified building department (of another jurisdiction) to conduct the building inspection. A "third-party private inspector" is an inspector that is certified by the Board to conduct inspections of residential or nonresidential building construction projects but who is not directly employed by a governmental entity.⁶

Under the bill, the Board is required to maintain a list of third-party private inspectors and certified building departments it authorizes to conduct inspections for residential and nonresidential buildings construction projects and must provide this list to an owner, general contractor, or building department upon request.⁷ The Board is required to adopt the rules necessary to implement these provisions.⁸

General contractor and owner – inspection contract

If a general contractor or owner contracts with a third-party private inspector from the list, then the contractor or owner is responsible for the payment of any fee pursuant to the contract. The building department having jurisdiction (who is not conducting the inspection) may still charge any standard fee that is customary for the approval, including an administrative or filing fee, but it cannot charge any fee related to the inspection.⁹ If the general contractor or owner chooses a certified building department from the list to conduct the inspection, then the general contractor or owner must pay any fee established by the certified building department fee schedule for

⁴ R.C. 3781.181(B).

⁵ R.C. 3781.181(B) and O.A.C. 4101:1-1 Section 108.1.

⁶ R.C. 3781.10(E)(7)(e) and 3781.181(A)(3), (D), and (F)(1).

⁷ R.C. 3781.181(C), (D)(1), and (F)(1).

⁸ R.C. 3781.10(E)(11)(c).

⁹ R.C. 3781.181(D)(2) and (3) and (F)(2).



inspection.¹⁰ Once the inspection is completed, the third-party private inspector or the inspector employed by the certified building department must send a copy of the inspections results to the building department having jurisdiction within 24 hours of the inspection.¹¹ The general contractor or owner may request a certificate of occupancy from either the building department having jurisdiction or the Board.¹² The bill requires the Board to adopt rules relating to the procedures for the review and processing of the inspection reports by the building official of the building department having jurisdiction.¹³

Local building department – inspection contract

If the building department having jurisdiction of a residential or nonresidential building inspection contracts with a third-party private inspector or certified building department from the list, then the building department having jurisdiction must pay the third-party private inspector or certified building department the fee collected for the inspection in accordance with the fee schedule established by the building department having jurisdiction for similar inspections.¹⁴

Investigation and evaluation by Board

After receiving a request by a general contractor or owner or a building department for a list of third-party private inspectors or certified building departments to conduct the inspection, the bill authorizes the Board to investigate or evaluate a building department having jurisdiction or any of its employees.¹⁵

Expedited arbitration

The bill requires the Department of Commerce to establish an expedited arbitration process in which a general contractor or owner of a residential or nonresidential building construction project can appeal inspection results. The Department may allow for the arbitration process to be held via a conference call. The bill establishes guidelines for the arbitration process, including that (1) the hearing be conducted within 24 hours of the request, (2) the party making the request has the

¹⁰ R.C. 3781.181(D)(3)(a) and (F)(2).

¹¹ R.C. 3781.181(D)(4).

¹² R.C. 3781.181(G).

¹³ R.C. 3781.181(D)(5).

¹⁴ R.C. 3781.181(F)(2).

¹⁵ R.C. 3781.181(E).



burden of showing that the inspector had malicious purpose behind the inspection results, and (3) the construction delay will cause irreparable harm. In addition, the process must include a requirement that the arbitrator narrowly review each case as a preliminary matter to determine whether the inspector's decision should be overruled so that harm can be prevented. If the inspector's decision is overruled, the general contractor or owner may proceed with the construction project. If the arbitrator does not overrule the inspector's decision, then the matter can proceed to the existing appellate system. The inspector's professional judgment, however, must receive deference and cannot be a matter of discussion during the arbitration hearings. The process must also include liability for a general contractor or owner that makes a false or misleading statement during the arbitration process.¹⁶

Superintendent of Industrial Compliance contracts

The bill permits the Superintendent of Industrial Compliance to contract with a municipal corporation, township, county, or other political subdivision certified by the Board, or municipal or county health districts, to exercise enforcement authority, to accept and approve plans and specifications, and to make inspections, related to construction, heating, ventilation, plumbing, building services piping, or for the enforcement authority the Superintendent exercises when a local government does not have a building department certified for nonresidential buildings.¹⁷

Conforming changes

The bill makes conforming changes to the law; making an inspector that contracts with an owner or general contractor pursuant to the bill's provisions also subject to the law relating to disqualification for specified conflict of interests.¹⁸

HISTORY

| ACTION | DATE |
|---------------|-------------|
| Introduced | 03-14-17 |

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¹⁶ R.C. 3781.182.

¹⁷ R.C. 121.083(B) and 3781.10(E)(7)(d).

¹⁸ R.C. 3781.10(E)(11)(a).





Representative Kristina Roegner
Ohio's 37th House District

HB128 Third Party Inspector
April 25th 2017

Chairman Young, Vice Chair DeVitis, Ranking Member Lepore-Hagan and members of the Economic Development, Commerce and Labor Committee, thank you for the opportunity to provide sponsor testimony this afternoon for HB128.

In construction there is one process critical to the schedule and flow of a project that is out of the builder's control: building inspections. No matter how efficient and organized a construction company may be, if the inspections are delayed, this holds up progress on the project. The delays are costly not only for the construction company and their subcontractors, but also for the customer of the project who, in turn, might have customers of their own; all put on hold as the critical path to building is hamstrung by inspection delays. HB128 provides a common sense solution to expanding the base of inspection so as to avoid these costly delays.

A quick background: currently in the state of Ohio, the Board of Building Standards formulates and adopts the rules governing the erection, construction, repair, alteration and maintenance of buildings. These rules are incorporated into residential and non-residential building codes. These codes (standards) relate to the conservation of energy and the safety and sanitation of buildings. The Board then certifies local building departments and the personnel of these departments as well as individuals, corporations

and firms to approve plans and perform inspections. Currently, the building inspections must be performed by the local building department and, in most cases, this works well. However, in the instances where there are backlogs or personality conflicts, this lack of choice can lead to unnecessary and expensive delays.

HB128 proposes several common sense solutions:

- To ensure a timely process, it specifies that inspections, performed by the building department having jurisdiction, must be performed within 24 hours of a request.
- To enhance flexibility, the general contractor or owner of a building may request an independent inspection. Upon request, the Board of Building Standards shall provide a list, which they maintain, of board certified, third party, private inspectors AND certified building departments, from which the contractor may choose. If a contractor utilizes the inspection services of a third party contractor, it should be noted that:
 - The general contractor/owner is responsible for any inspection fees to the third party.
 - The local building department may still charge the general contractor/owner any standard fee customary for approval including administrative and filing fees.
 - The third party inspector shall send a copy of the inspection results within 24 hours post inspection to the local building department.
 - The Board of Building Standards may investigate and evaluate the local building department and department's employees.
- To provide a benefit to the local building departments, HB128 specifies that the local building departments:
 - May enter into a contract with the division of industrial compliance to exercise enforcement authority, accept and approve plans/specifications, and perform inspections for non-residential buildings
 - May also elect proactively to request from the Board of Building Standards the list of independent third party private inspectors to support their work as needed.

- To ensure successful completion, the general contractor/owner may request a certificate of occupancy from either the building department having jurisdiction or the Board of Building Standards.
- To resolve conflicts, the bill provides for an expedited arbitration process in which a general contractor/owner may appeal inspection results.

I would like to take a moment to thank the many interested parties, who came to the table to provide input, as well as my legislative aide, James Shambin, and Carla Napolitano from LSC for her patient tenacity as we worked through four draft versions of the bill. I would also like to thank this committee for your attention and look forward to working with you as thought partners as we strive to create an environment in our Buckeye state that enhances our economy and encourages job growth as this bill does. I would be happy to entertain questions the Committee might have at this time.