



# A Model Bill to Allow Independent Permitting and Inspections

Judge Glock

**Director of Research and Senior Fellow**  
Manhattan Institute

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## Introduction

In perhaps no business is the phrase “time is money” truer than in development. The sector is heavily reliant on high-interest financing as well as materials and labor contracts that remain in place even if work stops. Delays by state or local governments in permitting or inspecting—which can happen at any time, from the review of initial building plans to the inspection of electrical installations—thus add extensive costs and uncertainty. These burdens can prevent projects from being built in the first place or add to the costs of the finished project, and thus the price, to homebuyers, renters, or businesses.

Delays could be substantially reduced if developers or builders were allowed to hire independent third parties to perform the permitting and inspecting. Allowing third parties to carry out these functions would not take away any essential function of government because such third parties would be required to use existing laws and regulations when evaluating projects. Third parties would also be responsible for any errors or mistakes—unlike governments, which often give themselves immunity for errors by building or other officials.

There is already extensive experience with third-party permitters and inspectors in many states and local governments. Since 2002, Florida has allowed developers to hire third parties to review building plans and perform inspections;<sup>1</sup> and in recent years, the state has liberalized the law to require reductions of local code fees if third-party providers are used. In 2023, Texas allowed developers to hire independent inspectors or permitters if local governments did not meet designated times for inspections or permits.<sup>2</sup> Tennessee passed a law this year that allows independent providers to perform inspections and plan reviews.<sup>3</sup> These bills have passed with overwhelming or unanimous bipartisan votes.<sup>4</sup> Beyond state-level laws, many local jurisdictions already rely on independent third-party permitters and inspectors themselves.<sup>5</sup>

The Manhattan Institute proposes a state model bill, based on and extending existing state laws and practices, that would allow developers and builders to hire third-party reviewers, permitters, and inspectors, also known as independent providers, at their discretion. It can be adapted to meet particular state or local needs. This reform would not detract from any essential government function but would allow salutary competition in the provision of an essential service.

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The Manhattan Institute is a community of scholars, journalists, activists, and civic leaders committed to advancing economic opportunity, individual liberty, and the rule of law in America and its great cities.



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# Model Bill

## Section 1. Short title

This act shall be cited as the “Speeding Development Act.”

## Section 2. Purpose

To facilitate speedier and more efficient development while ensuring public safety, this act seeks to authorize licensed or certified third parties to certify documents and inspect buildings in compliance with applicable building and other codes.

## Section 3. Definitions

For the purposes of this section:

- (a) “Development Document” means a document, such as a building plan, site plan, or an application for a Building Permit, relating to improvements to land, which is required by state or local law or regulation or by a Regulatory Authority to initiate, engage in, or complete an improvement, but which does not include applications or documents for zoning or planning approvals.
- (b) “Building Inspection” means the inspection of an improvement to land required by a Regulatory Authority as part of a project to develop or improve an improvement to the land.
- (c) “Building Permit” means a permit required by a Regulatory Authority to construct or improve or complete an improvement to land.
- (d) “Independent Provider” means a person licensed or certified as a building code administrator, engineer, or architect.
- (e) “Regulatory Authority” means a department, board, commission, or other entity of the state of [STATE] or of the political subdivision responsible for processing or approving Development Documents and Building Permits or conducting Building Inspections.

## Section 4. Allowance for Use of Independent Providers

- (a) Notwithstanding any law, rule, or regulation, the fee owner of land or a building or structure, or the fee owner’s contractor upon written authorization from the fee owner, may contract with an Independent Provider to review Development Documents or provide Building Inspections with regard to such land, building, or structure, and may make payment directly to the Independent Provider for the provision of such services.
- (b) The fee owner or fee owner’s contractor may not have an ownership stake in the Independent Provider, and the Independent Provider may not provide legal counsel to the fee owner or fee owner’s contractor.
- (c) If a fee owner or contractor retains an Independent Provider for the purposes of reviewing Development Documents or providing Building Inspections, the Regulatory Authority shall reduce the fee charged for such services by the amount of cost savings realized by the Regulatory Authority.



- (d) An Independent Provider may review Development Documents or provide Building Inspections only if the Independent Provider maintains insurance for professional liability covering all services performed as an Independent Provider, unless such Regulatory Authority waives such coverage. Such insurance shall have minimum policy limits of [\$X million] per occurrence and [\$X million] in the aggregate<sup>6</sup> for any project with a construction cost of \$5 million or less and [\$X million] per occurrence and [\$X million] in the aggregate for any project with a construction cost of over \$5 million.
- (e) Before any Development Document reviews or Building Inspections are performed, the fee owner or the fee owner's contractor shall provide to the Regulatory Authority:
  - i. The name, firm, address, telephone number, and e-mail address of each Independent Provider who is performing, or will perform, such services, his or her professional license or certification number, qualification statements or résumés, and, unless the regulatory authority waives such coverage, a certificate of insurance demonstrating that professional liability-insurance coverage is in place for the Independent Provider's firm in the amounts required by this section and the list of any lots or structures that the Independent Provider will assist on, along with the likely dates of such assistance.
  - ii. The following acknowledgment:

By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified Independent Provider and the level of his/her insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless any regulatory authority from any and all claims arising from my use of these licensed or certified personnel to provide Development Documents reviews and Building Inspections with respect to the building or structure that is the subject of the enclosed application.
- (f) If an owner or an owner's contractor contracts with an Independent Provider to review Development Documents or provide Building Inspections, the Regulatory Authority shall provide equal access to all permitting and inspection documents and reports to the Independent Provider, owner, or contractor that would be provided to Regulatory Authority personnel in completing Development Documents or Building Inspections.
  - i. If such access is normally provided by software that protects exempt records from disclosure, the Regulatory Authority shall provide requested permitting or inspection documents and reports to the Independent Provider, owner, or contractor within two business days of a request in electronic format.

**Section 5. Qualifications and Requirements for Independent Providers for Building Inspections**

- (a) An Independent Provider may only provide Building Inspections that are within the disciplines covered by that person's licensure or certification.
- (b) Each Regulatory Authority may audit the performance of Independent Providers operating within their jurisdiction and demand of the fee owner or fee owner's contractor to know the times of requested Building Inspections by the Independent Provider, although the fact of the audit shall not be given to the Independent Provider. Furthermore,



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- i. Audits may be conducted only after the Regulatory Authority has created a formal audit evaluation process. The Regulatory Authority may, upon clear and convincing evidence, decide that an Independent Provider has been negligent in providing Building Inspections and suspend the Independent Provider for not more than one year.
  - ii. The same Independent Provider may be audited no more than four times in a month, unless the Regulatory Authority determines that the condition of a building constitutes an immediate threat to public safety and welfare.
  - iii. Work may not be delayed for the completion of an audit by the Regulatory Authority.
- (c) If an Independent Provider is providing Building Inspections, upon completion of all required inspections, the Independent Provider shall submit to the Regulatory Authority a certificate of compliance summarizing the inspections performed in accordance with the approved plans and applicable codes.
- (d) No more than [X]<sup>7</sup> business days, or, if the Independent Provider is inspecting single-family or two-family dwellings, no more than [X] business days, after the receipt of the certificate of compliance with all necessary inspections, and after the payment of all outstanding required fees, a certificate of occupancy or completion shall be issued by the Regulatory Authority, or the Regulatory Authority shall provide a notice to the Independent Provider of any specific deficiencies in the certificate of compliance, with reference to specific code chapters and sections. If the Regulatory Authority does not issue the certificate of occupancy or completion or provide notice within the required number of days, the certificate of occupancy or completion is considered granted as a matter of law and shall be issued the next business day.
- (e) Notwithstanding any provision of this section, any decisions regarding a Building Inspection or certificate of occupancy or completion, or the suspension of an Independent Provider by a Regulatory Authority after an audit, may be appealed to the [STATE] Department of Building, which shall adjudicate the dispute in a timely fashion and according to a fee determined by the Department.

### **Section 6. Requirements for Reviews of Development Documents and Permits**

- (a) An Independent Provider performing reviews of Development Documents under this act shall review them to determine compliance with the applicable codes. Upon determining compliance, the Independent Provider shall prepare an affidavit or affidavits certifying that the documents were reviewed pursuant to this section, that the documents meet all applicable codes, and that he or she holds the appropriate license or certificate. The affidavit should be submitted to the Regulatory Authority.
- (b) No more than [X] business days<sup>8</sup> after receipt of a Development Document or application for a Building Permit, the Regulatory Authority shall approve such document or provide a written notice to the applicant identifying the specific features that do not comply with the applicable codes, as well as the specific code chapters and sections. If no written notice of the document or permit deficiencies is provided within the prescribed period, the document or permit shall be deemed approved as a matter of law, and any necessary permit or permits shall be issued by the Regulatory Authority on the next business day.
- (c) If the applicant submits revisions, the Regulatory Authority has the remainder of the tolled [X] business days plus one business day from the date of resubmittal to approve the Development Documents, issue the requested Building Permit, or provide a second written notice to the permit applicant stating which of the previously identified documents or permit features



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remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. If the Regulatory Authority does not provide the second written notice within the prescribed period, the Development Document or Building Permit shall be deemed approved as a matter of law, and any necessary permits shall be issued by the Regulatory Authority on the next business day.

- (d) Notwithstanding any provision of this section, any decisions regarding the issuance of a Development Document or Building Permit by a Regulatory Authority may be appealed to the [STATE] Department of Building, which shall adjudicate the dispute in a timely fashion according to a fee determined by the Department.

### **Section 7. Limits on Regulatory Authorities**

- (a) A Regulatory Authority may not adopt or enforce any laws, rules, procedures, policies, qualifications, or standards regarding Independent Providers more restrictive than those prescribed by this act.
- (b) This section shall not be construed to limit or deny the authority of the Regulatory Authority to issue a stop-work order for a building project or any portion of the project, as provided by law, if the Regulatory Authority determines that a condition on the building site constitutes an immediate threat to public safety and welfare.
- (c) If an applicant believes that the Regulatory Authority or the [STATE] Department of Building has interpreted existing ordinances, codes, and laws in error, or rejected a certificate of compliance or a Development Document in error, or not provided a sufficient reduction in fees due to cost-savings resulting from the use of an Independent Provider, or refused to issue any valid Building Permit, or suspended an Independent Provider from performing Building Inspections in their jurisdiction in error, the Independent Provider or fee owner or fee owner's contractor may file a proceeding in a court of competent jurisdiction seeking a determination that the inspection or document or permit complies with all relevant requirements and seek an order requiring the Regulatory Authority to accept the document or inspection and issue any necessary Building Permits or certificate of occupancy or completion.

### **Section 8: Effective Date**

This act shall take effect 60 days after passage.

### **Section 9: Severability**

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



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## Endnotes

- <sup>1</sup> See Florida Dept. of Business and Professional Regulation, “Private Providers.”
- <sup>2</sup> Tex. Loc. Gov’t Code Chapter 247 (2024).
- <sup>3</sup> Tenn. H.B. 1892, 113th Gen. Assemb., Reg. Sess. (2024).
- <sup>4</sup> Ibid.
- <sup>5</sup> Patrick G. Granson and Paul E. Davis, “Third Party Inspections Are ‘Everywhere,’” American Bar Association, Mar. 12, 2019.
- <sup>6</sup> Each jurisdiction may select an appropriate amount for liability coverage. In most jurisdictions, the following would be reasonable baselines: for projects with construction costs of up to \$5 million, \$1 million per occurrence and \$2 million in the aggregate; for projects of over \$5 million, \$2 million per occurrence and \$4 million in the aggregate.
- <sup>7</sup> Each jurisdiction will set a time frame in light of the resources available to the Regulatory Authorities. As a reasonable baseline, this should be 5–10 business days for most structures and 1–3 business days for single-family or two-family dwellings.
- <sup>8</sup> Each jurisdiction will set a time frame in light of the resources available to the Regulatory Authorities. As a reasonable baseline, this should be 2–10 business days.