



New Jersey Adopts Private Construction Inspection Bill

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On January 5, 2023, New Jersey Governor Phil Murphy signed into law [Assembly Bill 573](#), which authorizes private inspections under the State Uniform Construction Code (UCC) Act, upon the satisfaction of certain conditions (the “Act”). The New Jersey Department of Community Affairs (DCA) now has six months to propose rules to effectuate the provisions of the Act and three months thereafter to adopt those rules. The Act is a result of efforts throughout the commercial real estate industry to address the growing shortage of available municipal code inspectors and recent increased demand for inspections due to the high frequency of construction activity throughout the state, as well as an ongoing backlog due to COVID-19 staffing shortages. There is consensus within the industry that the processes codified within the Act will minimize project disruptions and delays and create a more streamlined construction inspection process, in order to expedite the timely construction and occupancy of inclusionary housing and non-residential development alike.

The Act creates a new process by which private inspectors can perform required construction inspections under the UCC. Once work undertaken pursuant to a construction permit is ready for any required inspection under the UCC, the owner, agent, or other person in charge of the work (collectively, the “Owner”) shall notify the enforcing agency (presumably the local municipality’s construction department) of the need for inspection; this notification shall be given in writing at least 24 hours prior to the date and time requested for the inspection. The enforcing agency is required to perform the inspection within three business days of the date for which the inspection is requested. The Owner must be present and prepared at the time of the inspection.

If the enforcing agency is unable to perform the inspection within this three-business-day period, it shall inform the Owner in writing within 24 hours of receiving the request, and the Owner and the enforcing agency may agree to a different date and time for the

inspection, which shall be committed to writing by the enforcing agency. If the parties cannot agree to another date, the Owner may then choose to contract with a private on-site inspection agency authorized by DCA to perform the requested inspection or inspections. The Owner is required to notify the enforcing agency in writing of the choice to utilize the private on-site inspection agency, and the Owner may elect to utilize this same inspection agency to conduct all subsequent associated inspections. Further, if the Owner believes an enforcing agency has demonstrated a repeated inability to conduct inspections for a construction project within the time frames described above, the Owner may request from DCA authorization to utilize a private on-site inspection agency. DCA shall make this determination within 15 business days of receiving this request; if it agrees with the Owner, it can permit the Owner to utilize this private on-site inspection agency for all or a portion of the necessary inspections for the remainder of the project.

The Act includes some qualifications as to the private on-site inspection agency that may be used. The private on-site inspection agency is subject to conflict-of-interest provisions in the UCC, and no private on-site inspection agency shall perform an inspection for any owner if said owner is currently employed by or affiliated with any individual affiliated with the private on-site inspection agency, or was employed or associated with any individual affiliated with the private on-site inspection agency within a time frame to be established by the DCA regulations. It also imposes certain other requirements on the enforcing agency: (i) the enforcing agency shall, if warranted, provide a fee reconciliation to the Owner for a private inspection as a result of a missed inspection; (ii) the enforcing agency is required to establish a process for ensuring the inspections are performed within the three-business-day period; and (iii) the enforcing agency is required to submit to DCA an annual report detailing compliance with the UCC.

Lastly, the Act requires that the rules and regulations to be promulgated by DCA allow an enforcing agency to undertake certain actions that should speed up the inspection process on the whole: (i) enter into supplemental shared service agreements or contracts with a supplemental private on-site inspection agency to conduct on-site inspections for the purpose of meeting all required

time frames; (ii) enter into agreements with private on-site inspection agencies to conduct on-site inspections on a project-specific basis; and (iii) authorize the Owner to directly contract with an authorized private on-site inspection agency to perform all inspections on a project-specific basis.

We will continue to monitor the status of the DCA regulations. Once released, we will publish a follow-up post.

Please contact any of the authors if you have questions about the Act. If you are seeking representation on a land use and development matter where you will need to navigate the permitting process, contact any of the Gibbons [Real Property Group](#) attorneys. If you require counsel before a state agency on a regulatory matter, the attorneys in the Gibbons [Government & Regulatory Affairs Group](#) may be able to assist.

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