

House Bill 493 (AS PASSED HOUSE AND SENATE)

By: Representatives Tanner of the 9th, Harrell of the 106th, Stephens of the 164th, Powell of the 32nd, and Lumsden of the 12th

A BILL TO BE ENTITLED
AN ACT

1 To provide for professional engineers or other professionals to review certain plans related
2 to building and development if certain conditions are met so as to provide for a determination
3 in a timely manner; to amend Chapter 2 of Title 8 of the Official Code of Georgia Annotated,
4 relating to standards and requirements for construction, alteration, etc., of buildings and other
5 structures, so as to provide procedures for alternative plan review, permitting, and inspection
6 by private providers so as to simplify regulations on businesses at the local level; to provide
7 for definitions; to amend Chapter 7 of Title 12 of the Official Code of Georgia Annotated,
8 relating to control of soil erosion and sedimentation, so as to provide that counties and
9 municipalities can contract with qualified personnel to implement land disturbance activity
10 ordinances; to provide for a short title; to provide for related matters; to repeal conflicting
11 laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 SECTION 1.

14 This Act shall be known and may be cited as the "Private Permitting Review and Inspection
15 Act."

16 SECTION 2.

17 Chapter 2 of Title 8 of the Official Code of Georgia Annotated, relating to standards and
18 requirements for construction, alteration, etc., of buildings and other structures, is amended
19 by revising subsection (g) of Code Section 8-2-26, relating to enforcement of codes
20 generally, employment and training of inspectors, and contracts for administration and
21 enforcement of codes, as follows:

22 ”(g)(1) As used in this subsection, the term:

23 (A) 'Complete application' means a submitted plan, application, or request for
 24 inspection that contains all of the information and supporting documentation required
 25 by the county or municipality for it to make the determination as to whether the plan,
 26 application, or request is in compliance with regulatory requirements.

27 (B) 'Private professional provider' means a professional engineer who holds a
 28 certificate of registration issued under Chapter 15 of Title 43 or a professional architect
 29 who holds a certificate of registration issued under Chapter 4 of Title 43, who is not an
 30 employee of or otherwise affiliated with or financially interested in the person, firm, or
 31 corporation engaged in the construction project to be reviewed or inspected.

32 (C) 'Regulatory fee' means payments, whether designated as permit fees, application
 33 fees, or by another name, that are required by a local government as an exercise of its
 34 police power, its regulation of business, and as a part of or as an aid to regulation of
 35 construction related activities under this chapter.

36 (D) 'Regulatory requirements' means the requirements determined by a county or
 37 municipality to be necessary for approval of plans, permits, or applications under this
 38 chapter; provided, however, that with respect to any application, such requirements
 39 shall include the Georgia State Minimum Standard Codes most recently adopted by the
 40 Department of Community Affairs and any locally adopted ordinances and amendments
 41 to such codes; applicable zoning ordinances and conditions; design standards; and other
 42 state and local laws, regulations, and ordinances applicable to the application in
 43 question.

44 (2) Each county or municipality which imposes regulatory fees or regulatory
 45 requirements within its jurisdiction shall establish and make available a schedule of such
 46 regulatory fees and regulatory requirements which shall include a list of all
 47 documentation related to compliance with such regulatory requirements, including the
 48 requirements necessary for submittal of a complete application. The amount of any
 49 regulatory fee shall approximate the reasonable cost of the actual regulatory activity
 50 performed by the local government and shall be subject to the provisions of paragraph (6)
 51 of Code Section 48-13-5.

52 (3) No later than five business days after receipt of any application related to regulatory
 53 requirements, a local building official of a county or municipality shall notify each
 54 applicant as to whether the submitted documents meet the requirements of a complete
 55 application. Except as otherwise provided in this paragraph, time spent by a county or
 56 municipality determining whether an application is complete shall count toward the
 57 total 30 days for plan review or inspection. If a local building official determines that the
 58 application is not complete, the applicant shall be provided written notice identifying the

59 items that are not complete. The 30 day time period is tolled when the application is
60 rejected as incomplete. If within 30 days after the county or municipality has provided
61 notice that the application is incomplete the permit applicant submits revisions to address
62 the identified deficiencies, the local building official shall have an additional five
63 business days to review the application for completeness.

64 (4) Upon notification to the applicant that a complete application has been accepted, a
65 county or municipality shall also notify each applicant as to whether the personnel
66 employed or contracted by such county or municipality will be able to provide regulatory
67 action within 30 days for plan review or provide inspection services within two business
68 days of receiving a valid written request for inspection.

69 (5) If the county or municipality determines that the personnel employed or contracted
70 by such county or municipality cannot provide regulatory action or inspection services
71 within the time frames required under paragraph (4) of this subsection, the applicant shall
72 have the option of retaining, at its own expense, a private professional provider to provide
73 the required plan review or inspection in accordance with the provisions of this Code
74 section. If the applicant elects to utilize the services of a private professional provider,
75 the regulatory fees associated with such regulatory action shall be reduced by 50 percent
76 and such reduced amount shall be paid to the county or municipality in accordance with
77 such jurisdiction's policies.

78 (6) If the county or municipality determines that the personnel employed or contracted
79 by such county or municipality can provide regulatory action or inspection services
80 within the time frames required under paragraph (4) of this subsection, a convenience fee
81 not to exceed the full amount of the regulatory fees associated with such regulatory action
82 shall be paid to the county or municipality in accordance with such jurisdiction's policies.
83 Upon payment in full of the convenience fees associated with the complete application,
84 the applicant may nevertheless choose to retain, at its own expense, a private professional
85 provider to provide the required plan review or inspection, subject to the requirements set
86 forth in this Code section.

87 ~~(7) If a governing authority of a county or municipality cannot provide review of the~~
88 ~~documents intended to demonstrate that the structure to be built is in compliance with the~~
89 ~~Georgia State Minimum Standard Codes most recently adopted by the Department of~~
90 ~~Community Affairs and any locally adopted ordinances and amendments to such codes~~
91 ~~within 30 business days of receiving a written application for permitting in accordance~~
92 ~~with the code official's plan submittal process or inspection services within two business~~
93 ~~days of receiving a valid written request for inspection, then, in lieu of plan review or~~
94 ~~inspection by personnel employed by such governing authority, any person, firm, or~~
95 ~~corporation engaged in a construction project which requires plan review or inspection~~

96 shall have the option of retaining, at its own expense, a private professional provider to
97 provide the required plan review or inspection. As used in this subsection, the term
98 'private professional provider' means a professional engineer who holds a certificate of
99 registration issued under Chapter 15 of Title 43 or a professional architect who holds a
100 certificate of registration issued under Chapter 4 of Title 43, who is not an employee of
101 or otherwise affiliated with or financially interested in the person, firm, or corporation
102 engaged in the construction project to be reviewed or inspected. The local governing
103 authority shall advise the permit applicant in writing if requested by the applicant at the
104 time the complete submittal application for a permit in accordance with the code official's
105 plan submittal process is received that the local governing authority intends to complete
106 the required plan review within the time prescribed by this paragraph or that the applicant
107 may immediately secure the services of a private professional provider to complete the
108 required plan review pursuant to this subsection. The plan submittal process shall include
109 those procedures and approvals required by the local jurisdiction before plan review can
110 take place. If the local governing authority states its intent to complete the required plan
111 review within the time prescribed by this paragraph, the applicant shall not be authorized
112 to use the services of a private professional provider as provided in this subsection. The
113 permit applicant and the local governing authority may agree by mutual consent to extend
114 the time period prescribed by this paragraph for plan review if the characteristics of the
115 project warrant such an extension. However, ~~if~~ If the local governing authority states its
116 intent to complete the required plan review within the time prescribed by this paragraph
117 (4) of this subsection, or any extension thereof mutually agreed to by the applicant and
118 the governing authority, and does not permit the applicant to use the services of a private
119 professional provider and the local governing authority fails to complete such plan review
120 in the time prescribed by this paragraph (4) of this subsection, or any extension thereof
121 mutually agreed to by the applicant and the governing authority, the local governing
122 authority shall issue the applicant a project initiation permit. The local governing
123 authority shall be allowed to limit the scope of a project initiation permit and limit the
124 areas of the site to which the project initiation permit may apply but shall permit the
125 applicant to begin work on the project, provided that portion of the initial phase of work
126 is compliant with applicable codes, laws, and rules. ~~If a full permit is not issued for the~~
127 ~~portion requested for permitting, then the governing authority shall have an additional 20~~
128 ~~business days to complete the review and issue the full permit.~~ If the plans submitted for
129 permitting are denied for any deficiency, the time frames and process for resubmittal shall
130 be governed by subparagraphs (C) through (E) of paragraph ~~(7)~~ (13) of this subsection.
131 ~~On or before July 1, 2007, the Board of Natural Resources shall adopt rules and~~
132 ~~regulations governing the review of erosion and sedimentation control plans under Part~~

133 ~~9 of Chapter 7 of Title 12 to establish appropriate time frames for the submission and~~
 134 ~~review of revised plan submittals where a deficiency or deficiencies in the submitted~~
 135 ~~plans have been identified by the governing authority. Any delay in the processing of an~~
 136 ~~application that is attributable to a cause outside the control of the county or municipality~~
 137 ~~that is processing the application or through fault of the applicant shall not count toward~~
 138 ~~days for the purposes of this subsection.~~

139 ~~(2)(8)~~ Any plan review or inspection conducted by a private professional provider shall
 140 be no less extensive than plan reviews or inspections conducted by county or municipal
 141 personnel.

142 ~~(3)(9)~~ The person, firm, or corporation retaining a private professional provider to
 143 conduct a plan review or an inspection shall be required to pay to the county or
 144 municipality which requires the plan review or inspection the ~~same~~ regulatory fees and
 145 charges ~~which would have been required had the plan review or inspection been~~
 146 ~~conducted by a county or municipal inspector~~ which are required by either paragraph (5)
 147 or (6) of this subsection, as applicable.

148 ~~(4)(10)~~ A private professional provider performing plan reviews under this subsection
 149 shall review ~~construction~~ plans to determine compliance with ~~the Georgia State Minimum~~
 150 ~~Standard Codes most recently adopted by the Department of Community Affairs and any~~
 151 ~~locally adopted ordinances and amendments to such codes~~ all applicable regulatory
 152 requirements. Upon determining that the plans reviewed comply with the applicable
 153 ~~codes~~ regulatory requirements, such private professional provider shall prepare an
 154 affidavit or affidavits on a form adopted by the Department of Community Affairs
 155 certifying under oath that the following is true and correct to the best of such private
 156 professional provider's knowledge and belief and in accordance with the applicable
 157 professional standard of care:

158 (A) The plans were reviewed by the affiant who is duly authorized to perform plan
 159 review pursuant to this subsection and who holds the appropriate license or
 160 certifications and insurance coverage stipulated in this subsection;

161 (B) The plans comply with ~~the Georgia State Minimum Standard Codes most recently~~
 162 ~~adopted by the Department of Community Affairs and any locally adopted ordinances~~
 163 ~~and amendments to such codes~~ all applicable regulatory requirements; and

164 (C) The plans submitted for plan review are in conformity with plans previously
 165 submitted to obtain governmental approvals required in the plan submittal process and
 166 do not make a change to the project reviewed for such approvals.

167 ~~(5)(11)~~ All private professional providers providing plan review or inspection services
 168 pursuant to this subsection shall secure and maintain insurance coverage for professional
 169 liability (errors and omissions) insurance. The limits of such insurance shall be not less

170 than \$1 million per claim and \$1 million in aggregate coverage for any project with a
 171 construction cost of \$5 million or less and \$2 million per claim and \$2 million in
 172 aggregate coverage for any project with a construction cost of more than \$5 million.
 173 Such insurance may be a practice policy or project-specific coverage. If the insurance
 174 is a practice policy, it shall contain prior acts coverage for the private professional
 175 provider. If the insurance is project-specific, it shall continue in effect for two years
 176 following the issuance of the certificate of final completion for the project. A local
 177 enforcement agency, local building official, or local government may establish, for
 178 private professional providers working within that jurisdiction, a system of registration
 179 listing the private professional providers within their stated areas of competency ~~and~~
 180 verifying. The permit applicant shall verify compliance with the insurance requirements
 181 of this subsection paragraph.

182 ~~(6)~~(12) The private professional provider shall be empowered to perform any plan
 183 review or inspection required by the governing authority of any county or municipality,
 184 including, but not limited to, inspections for footings, foundations, concrete slabs,
 185 framing, electrical, plumbing, heating ventilation and air conditioning (HVAC), or any
 186 and all other inspections necessary or required to determine compliance with all
 187 regulatory requirements and for the issuance of a building permit or certificate of
 188 occupancy by the governing authority of any county or municipality, provided that the
 189 plan review or inspection is within the scope of such private professional provider's area
 190 of competency. Nothing in this Code section shall authorize any private professional
 191 provider to issue a certificate of occupancy. Only a local governing authority shall be
 192 authorized to issue a certificate of occupancy.

193 ~~(7)(A)~~(13)(A) The permit applicant shall submit a copy of the private professional
 194 provider's plan review report to the county or municipality within five days of its
 195 completion. Such plan review report shall include at a minimum all of the following:

- 196 (i) The affidavit of the private professional provider required pursuant to this
 197 subsection;
- 198 (ii) The applicable fees; and
- 199 (iii) Any documents required by the local official and any other documents necessary
 200 to determine that the permit applicant has secured all other governmental approvals
 201 required by law.

202 (B) No more than 30 ~~business~~ days after receipt of both a permit application and the
 203 affidavit from the private professional provider required pursuant to this subsection, the
 204 local building official shall issue the requested permit or provide written notice to the
 205 permit applicant identifying the specific plan features that do not comply with the
 206 applicable ~~codes~~ regulatory requirements, as well as the specific code chapters and

207 sections of such regulatory requirements. If the local building official does not
 208 provide a written notice of the plan deficiencies within the prescribed 30 day period,
 209 the permit application shall be deemed approved as a matter of law and the permit shall
 210 be issued by the local building official on the next business day.

211 (C) If the local building official provides a written notice of plan deficiencies to the
 212 permit applicant within the prescribed 30 day period, the 30 day period shall be tolled
 213 pending resolution of the matter. To resolve the plan deficiencies, the permit applicant
 214 may elect to dispute the deficiencies pursuant to this subsection or to submit revisions
 215 to correct the deficiencies.

216 (D) If the permit applicant submits revisions to address the plan deficiencies previously
 217 identified, the local building official shall have the remainder of the tolled 30 day
 218 period plus an additional five business days to issue the requested permit or to provide
 219 a second written notice to the permit applicant stating which of the previously identified
 220 plan features remain in noncompliance with the applicable ~~codes~~ regulatory
 221 requirements, with specific reference to the relevant code chapters and sections of such
 222 regulatory requirements. If the local building official does not provide the second
 223 written notice within the prescribed time period, the permit shall be issued by the local
 224 building official on the next business day. In the event that the revisions required to
 225 address the plan deficiencies or any additional revisions submitted by the applicant
 226 require that new governmental approvals be obtained, the applicant shall be required
 227 to obtain such approvals before a new plan report can be submitted.

228 (E) If the local building official provides a second written notice of plan deficiencies
 229 to the permit applicant within the prescribed time period, the permit applicant may elect
 230 to dispute the deficiencies pursuant to this subsection or to submit additional revisions
 231 to correct the deficiencies. For all revisions submitted after the first revision, the local
 232 building official shall have an additional five business days to issue the requested
 233 permit or to provide a written notice to the permit applicant stating which of the
 234 previously identified plan features remain in noncompliance with the applicable ~~codes~~
 235 regulatory requirements, with specific reference to the relevant code chapters and
 236 sections.

237 ~~(8)~~(14) Upon submission by the private professional provider of a copy of his or her
 238 inspection report to the local governing authority, said local governing authority shall be
 239 required to accept the inspection of the private professional provider without the necessity
 240 of further inspection or approval by the inspectors or other personnel employed by the
 241 local governing authority unless said governing authority has notified the private
 242 professional provider, within two business days after the submission of the inspection
 243 report, that it finds the report incomplete or the inspection inadequate and has provided

244 the private professional provider with a written description of the deficiencies and
 245 specific ~~code~~ regulatory requirements that have not been adequately addressed.

246 ~~(9)~~(15) A local governing authority may provide for the prequalification of private
 247 professional providers who may perform plan reviews or inspections pursuant to this
 248 subsection. No ordinance implementing prequalification shall become effective until
 249 notice of the governing authority's intent to require prequalification and the specific
 250 requirements for prequalification have been advertised in the newspaper in which the
 251 sheriff's advertisements for that locality are published, and by any other methods such
 252 local authority ordinarily utilizes for notification of engineering, architecture, or
 253 construction related solicitations. The ordinance implementing prequalification shall
 254 provide for evaluation of the qualifications of a private professional provider only on the
 255 basis of the private professional provider's expertise with respect to the objectives of this
 256 subsection, as demonstrated by the private professional provider's experience, education,
 257 and training. Such ordinance may require a private professional provider to hold
 258 additional certifications, provided that such certifications are required by ordinance for
 259 plan review personnel currently directly employed by such local governing authority.

260 ~~(10)~~(16) Nothing in this subsection shall be construed to limit any public or private right
 261 of action designed to provide protection, rights, or remedies for consumers.

262 ~~(11)~~(17) This subsection shall not apply to hospitals, ambulatory health care centers,
 263 nursing homes, jails, penal institutions, airports, buildings or structures that impact
 264 national or state homeland security, or any building defined as a high-rise building in the
 265 State Minimum Standards Code; provided, however, that interior tenant build-out projects
 266 within high-rise buildings are not exempt from this subsection.

267 ~~(12)~~(18) If the local building official determines that the building construction or plans
 268 do not comply with the applicable ~~codes~~ regulatory requirements, the official may deny
 269 the permit or request for a certificate of occupancy or certificate of completion, as
 270 appropriate, or may issue a stop-work order for the project or any portion thereof as
 271 provided by law, after giving notice to the owner, the architect of record, the engineer of
 272 record, or the contractor of record and by posting a copy of the order on the site of the
 273 project and opportunity to remedy the violation within the time limits set forth in the
 274 notice, if the official determines noncompliance with ~~state or local laws, codes, or~~
 275 ordinances regulatory requirements, provided that:

276 (A) ~~The~~ A local building official shall be available to meet with the private
 277 professional provider within two business days to resolve any dispute after issuing a
 278 stop-work order or providing notice to the applicant denying a permit or request for a
 279 certificate of occupancy or certificate of completion; and

280 (B) If the local building official and the private professional provider are unable to
 281 resolve the dispute or meet within the time required by this Code section, the matter
 282 shall be referred to the local enforcement agency's board of appeals, if one exists, which
 283 shall consider the matter not later than its next scheduled meeting. Any decisions by
 284 the local official, if there is no board of appeals, may be appealed to the Department of
 285 Community Affairs as provided in this chapter. The Department of Community Affairs
 286 shall develop rules and regulations which shall establish reasonable time frames and
 287 fees to carry out the provisions of this paragraph.

288 ~~(13)~~(19) The local government, ~~the~~ a local building official, and local building code
 289 enforcement personnel and agents of the local government shall be immune from liability
 290 to any person or party for any action or inaction by an owner of a building or by a private
 291 professional provider or its duly authorized representative in connection with ~~building~~
 292 ~~code~~ plan review and inspection services by private professional providers as provided
 293 in this subsection.

294 ~~(14)~~(20) No local enforcement agency, local code official, or local government shall
 295 adopt or enforce any rules, procedures, policies, qualifications, or standards more
 296 stringent than those prescribed in this subsection. This subsection shall not preempt any
 297 local laws, rules, or procedures relating to the plan submittal process of local governing
 298 authorities.

299 ~~(15)~~(21) Nothing in this subsection shall limit the authority of ~~the~~ a local code official
 300 to issue a stop-work order for a building project or any portion of such project, which
 301 may go into effect immediately as provided by law, after giving notice and opportunity
 302 to remedy the violation, if the official determines that a condition on the building site
 303 constitutes an immediate threat to public safety and welfare. A ~~stop-work~~ stop-work
 304 order issued for reasons of immediate threat to public safety and welfare shall be
 305 appealable to the local enforcement agency's board of appeals, if one exists, in the manner
 306 provided by applicable law. Any decisions by the local official, if there is no board of
 307 appeals, may be appealed to the Department of Community Affairs as provided in this
 308 chapter.

309 ~~(16)~~(22) When performing ~~building code~~ plan reviews or inspection services, a private
 310 professional provider is subject to the disciplinary guidelines of the applicable
 311 professional licensing board with jurisdiction over such private professional provider's
 312 license or certification under Chapters 4 and 15 of Title 43, as applicable. Any complaint
 313 processing, investigation, and discipline that arise out of a private professional provider's
 314 performance of ~~building code~~ plan reviews or inspection services shall be conducted by
 315 the applicable professional licensing board. Notwithstanding any disciplinary rules of the
 316 applicable professional licensing board with jurisdiction over such private professional

317 provider's license or certification under Chapters 4 and 15 of Title 43, any local building
 318 official may decline to accept ~~building code~~ plan reviews or inspection services submitted
 319 by any private professional provider who has submitted multiple reports which required
 320 revisions due to negligence, noncompliance, or deficiencies.

321 ~~(17)(23)~~ Nothing in this subsection shall apply to inspections exempted in Code Section
 322 8-2-26.1.

323 (24) To the extent that a provision of this Code section conflicts with requirements of
 324 federal laws or regulations or impairs a county's or municipality's receipt of federal funds,
 325 such provision shall not apply."

326 SECTION 3.

327 Chapter 7 of Title 12 of the Official Code of Georgia Annotated, relating to control of soil
 328 erosion and sedimentation, is amended by revising paragraph (1) of subsection (a) and
 329 subsection (c) of Code Section 12-7-8, relating to certification of locality as local issuing
 330 authority, periodic review, procedure for revoking certification, and enforcement actions, as
 331 follows:

332 "(a)(1) If a county or municipality has enacted ordinances which meet or exceed the
 333 standards, requirements, and provisions of this chapter and the state general permit,
 334 except that the standards, requirements, and provisions of the ordinances for monitoring,
 335 reporting, inspections, design standards, turbidity standards, education and training, and
 336 project size thresholds with regard to education and training requirements shall not
 337 exceed the state general permit requirements, and which are enforceable by such county
 338 or municipality, and if a county or municipality documents that it employs or contracts
 339 with qualified personnel to implement enacted ordinances, the director ~~may~~ shall certify
 340 such county or municipality as a local issuing authority for the purposes of this chapter."

341 "(c) The board, on or before December 31, 2003, shall promulgate rules and regulations
 342 setting forth the requirements and standards for certification and the procedures for
 343 decertification of a local issuing authority. The division may periodically review the
 344 actions of counties and municipalities which have been certified as local issuing authorities
 345 pursuant to subsection (a) of this Code section. Such review may include, but shall not be
 346 limited to, review of the administration and enforcement of and compliance with a
 347 governing authority's ordinances and review of conformance with an agreement, if any,
 348 between the district and the governing authority. If such review indicates that the
 349 governing authority of any county or municipality certified pursuant to subsection (a) of
 350 this Code section has not administered, enforced, or complied with its ordinances or has
 351 not conducted the program in accordance with ~~any agreement entered into pursuant to~~
 352 subsection (e) of Code Section 12-7-7, the division shall notify the governing authority of

353 the county or municipality in writing. The governing authority of any county or
354 municipality so notified shall have 90 days within which to take the necessary corrective
355 action to retain certification as a local issuing authority. If the county or municipality does
356 not take necessary corrective action within 90 days after notification by the division, the
357 division shall revoke the certification of the county or municipality as a local issuing
358 authority."

359 **SECTION 4.**

360 All laws and parts of laws in conflict with this Act are repealed.