
offers the following
substitute to HB 493:

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 authorize in certain
9 circumstances county and municipal governing authorities, or engineers hired by permit
10 applicants to approve erosion and sediment control plans in lieu of approval by soil and water
11 conservation commission districts; to provide that counties and municipalities can contract
12 with qualified personnel to implement land disturbance activity ordinances; to provide for
13 a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

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

18 **SECTION 2.**

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

24 "(g)(1) As used in this subsection, the term:

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

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

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

38 (D) 'Regulatory requirements' means the requirements determined by a county or
39 municipality to be necessary for approval of plans, permits, or applications under this
40 chapter.

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

49 (3) No later than five business days after receipt of any application related to regulatory
50 requirements, a local building official of a county or municipality shall notify each
51 applicant as to whether the submitted documents meet the requirements of a complete
52 application. Except as otherwise provided in this paragraph, time spent by a county or
53 municipality determining whether an application is complete shall count toward the
54 total 30 days for plan review or inspection. If a local building official determines that the
55 application is not complete, the applicant shall be provided written notice identifying the
56 items that are not complete. The 30 day time period is tolled when the application is
57 rejected as incomplete. If within 30 days after the county or municipality has provided
58 notice that the application is incomplete the permit applicant submits revisions to address
59 the identified deficiencies, the local building official shall have an additional five
60 business days to review the application for completeness.

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

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

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

84 (7) If a governing authority of a county or municipality cannot provide review of the
85 documents intended to demonstrate that the structure to be built is in compliance with the
86 Georgia State Minimum Standard Codes most recently adopted by the Department of
87 Community Affairs and any locally adopted ordinances and amendments to such codes
88 within 30 business days of receiving a written application for permitting in accordance
89 with the code official's plan submittal process or inspection services within two business
90 days of receiving a valid written request for inspection, then, in lieu of plan review or
91 inspection by personnel employed by such governing authority, any person, firm, or
92 corporation engaged in a construction project which requires plan review or inspection
93 shall have the option of retaining, at its own expense, a private professional provider to
94 provide the required plan review or inspection. As used in this subsection, the term
95 'private professional provider' means a professional engineer who holds a certificate of
96 registration issued under Chapter 15 of Title 43 or a professional architect who holds a
97 certificate of registration issued under Chapter 4 of Title 43, who is not an employee of

98 or otherwise affiliated with or financially interested in the person, firm, or corporation
99 engaged in the construction project to be reviewed or inspected. The local governing
100 authority shall advise the permit applicant in writing if requested by the applicant at the
101 time the complete submittal application for a permit in accordance with the code official's
102 plan submittal process is received that the local governing authority intends to complete
103 the required plan review within the time prescribed by this paragraph or that the applicant
104 may immediately secure the services of a private professional provider to complete the
105 required plan review pursuant to this subsection. The plan submittal process shall include
106 those procedures and approvals required by the local jurisdiction before plan review can
107 take place. If the local governing authority states its intent to complete the required plan
108 review within the time prescribed by this paragraph, the applicant shall not be authorized
109 to use the services of a private professional provider as provided in this subsection. The
110 permit applicant and the local governing authority may agree by mutual consent to extend
111 the time period prescribed by this paragraph for plan review if the characteristics of the
112 project warrant such an extension. However, if If the local governing authority states its
113 intent to complete the required plan review within the time prescribed by this paragraph
114 (4) of this subsection, or any extension thereof mutually agreed to by the applicant and
115 the governing authority, and does not permit the applicant to use the services of a private
116 professional provider and the local governing authority fails to complete such plan review
117 in the time prescribed by this paragraph (4) of this subsection, or any extension thereof
118 mutually agreed to by the applicant and the governing authority, the local governing
119 authority shall issue the applicant a project initiation permit. The local governing
120 authority shall be allowed to limit the scope of a project initiation permit and limit the
121 areas of the site to which the project initiation permit may apply but shall permit the
122 applicant to begin work on the project, provided that portion of the initial phase of work
123 is compliant with applicable codes, laws, and rules. If a full permit is not issued for the
124 portion requested for permitting, then the governing authority shall have an additional 20
125 business days to complete the review and issue the full permit. If the plans submitted for
126 permitting are denied for any deficiency, the time frames and process for resubmittal shall
127 be governed by subparagraphs (C) through (E) of paragraph (7) (13) of this subsection.
128 On or before July 1, 2007, the Board of Natural Resources shall adopt rules and
129 regulations governing the review of erosion and sedimentation control plans under Part
130 9 of Chapter 7 of Title 12 to establish appropriate time frames for the submission and
131 review of revised plan submittals where a deficiency or deficiencies in the submitted
132 plans have been identified by the governing authority. Any delay in the processing of an
133 application that is attributable to a cause outside the control of the county or municipality

134 that is processing the application or through fault of the applicant shall not count toward
135 days for the purposes of this subsection.

136 (2)(8) Any plan review or inspection conducted by a private professional provider shall
137 be no less extensive than plan reviews or inspections conducted by county or municipal
138 personnel.

139 (3)(9) The person, firm, or corporation retaining a private professional provider to
140 conduct a plan review or an inspection shall be required to pay to the county or
141 municipality which requires the plan review or inspection the same regulatory fees and
142 charges which would have been required had the plan review or inspection been
143 conducted by a county or municipal inspector which are required by either paragraph (5)
144 or (6) of this subsection, as applicable.

145 (4)(10) A private professional provider performing plan reviews under this subsection
146 shall review construction plans to determine compliance with the Georgia State Minimum
147 Standard Codes most recently adopted by the Department of Community Affairs and any
148 locally adopted ordinances and amendments to such codes. Upon determining that the
149 plans reviewed comply with the applicable codes, such private professional provider shall
150 prepare an affidavit or affidavits on a form adopted by the Department of Community
151 Affairs certifying under oath that the following is true and correct to the best of such
152 private professional provider's knowledge and belief and in accordance with the
153 applicable professional standard of care:

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

157 (B) The plans comply with the Georgia State Minimum Standard Codes most recently
158 adopted by the Department of Community Affairs and any locally adopted ordinances
159 and amendments to such codes; and

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

163 (5)(11) All private professional providers providing plan review or inspection services
164 pursuant to this subsection shall secure and maintain insurance coverage for professional
165 liability (errors and omissions) insurance. The limits of such insurance shall be not less
166 than \$1 million per claim and \$1 million in aggregate coverage for any project with a
167 construction cost of \$5 million or less and \$2 million per claim and \$2 million in
168 aggregate coverage for any project with a construction cost of more than \$5 million.

169 Such insurance may be a practice policy or project-specific coverage. If the insurance
170 is a practice policy, it shall contain prior acts coverage for the private professional

171 provider. If the insurance is project-specific, it shall continue in effect for two years
172 following the issuance of the certificate of final completion for the project. A local
173 enforcement agency, local building official, or local government may establish, for
174 private professional providers working within that jurisdiction, a system of registration
175 listing the private professional providers within their stated areas of competency ~~and~~
176 ~~verifying. The permit applicant shall verify~~ compliance with the insurance requirements
177 of this subsection paragraph.

178 (6)(12) The private professional provider shall be empowered to perform any plan
179 review or inspection required by the governing authority of any county or municipality,
180 including, but not limited to, inspections for footings, foundations, concrete slabs,
181 framing, electrical, plumbing, heating ventilation and air conditioning (HVAC), or any
182 and all other inspections necessary or required for the issuance of a building permit or
183 certificate of occupancy by the governing authority of any county or municipality,
184 provided that the plan review or inspection is within the scope of such private
185 professional provider's area of competency. Nothing in this Code section shall authorize
186 any private professional provider to issue a certificate of occupancy. Only a local
187 governing authority shall be authorized to issue a certificate of occupancy.

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

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

197 (B) No more than 30 ~~business~~ days after receipt of both a permit application and the
198 affidavit from the private professional provider required pursuant to this subsection, the
199 local building official shall issue the requested permit or provide written notice to the
200 permit applicant identifying the specific plan features that do not comply with the
201 applicable codes, as well as the specific code chapters and sections. If the local
202 building official does not provide a written notice of the plan deficiencies within the
203 prescribed 30 day period, the permit application shall be deemed approved as a matter
204 of law and the permit shall be issued by the local building official on the next business
205 day.

206 (C) If the local building official provides a written notice of plan deficiencies to the
207 permit applicant within the prescribed 30 day period, the 30 day period shall be tolled

208 pending resolution of the matter. To resolve the plan deficiencies, the permit applicant
209 may elect to dispute the deficiencies pursuant to this subsection or to submit revisions
210 to correct the deficiencies.

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

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

230 ~~(8)~~(14) Upon submission by the private professional provider of a copy of his or her
231 inspection report to the local governing authority, said local governing authority shall be
232 required to accept the inspection of the private professional provider without the necessity
233 of further inspection or approval by the inspectors or other personnel employed by the
234 local governing authority unless said governing authority has notified the private
235 professional provider, within two business days after the submission of the inspection
236 report, that it finds the report incomplete or the inspection inadequate and has provided
237 the private professional provider with a written description of the deficiencies and
238 specific code requirements that have not been adequately addressed.

239 ~~(9)~~(15) A local governing authority may provide for the prequalification of private
240 professional providers who may perform plan reviews or inspections pursuant to this
241 subsection. No ordinance implementing prequalification shall become effective until
242 notice of the governing authority's intent to require prequalification and the specific
243 requirements for prequalification have been advertised in the newspaper in which the
244 sheriff's advertisements for that locality are published, and by any other methods such

245 local authority ordinarily utilizes for notification of engineering, architecture, or
246 construction related solicitations. The ordinance implementing prequalification shall
247 provide for evaluation of the qualifications of a private professional provider only on the
248 basis of the private professional provider's expertise with respect to the objectives of this
249 subsection, as demonstrated by the private professional provider's experience, education,
250 and training. Such ordinance may require a private professional provider to hold
251 additional certifications, provided that such certifications are required by ordinance for
252 plan review personnel currently directly employed by such local governing authority.

253 ~~(10)~~(16) Nothing in this subsection shall be construed to limit any public or private right
254 of action designed to provide protection, rights, or remedies for consumers.

255 ~~(11)~~(17) This subsection shall not apply to hospitals, ambulatory health care centers,
256 nursing homes, jails, penal institutions, airports, buildings or structures that impact
257 national or state homeland security, or any building defined as a high-rise building in the
258 State Minimum Standards Code; provided, however, that interior tenant build-out projects
259 within high-rise buildings are not exempt from this subsection.

260 ~~(12)~~(18) If the local building official determines that the building construction or plans
261 do not comply with the applicable codes, the official may deny the permit or request for
262 a certificate of occupancy or certificate of completion, as appropriate, or may issue a
263 stop-work order for the project or any portion thereof as provided by law, after giving
264 notice to the owner, the architect of record, the engineer of record, or the contractor of
265 record and by posting a copy of the order on the site of the project and opportunity to
266 remedy the violation within the time limits set forth in the notice, if the official
267 determines noncompliance with state or local laws, codes, or ordinances, provided that:

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

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

280 ~~(13)~~(19) The local government, ~~the~~ a local building official, and local building code
281 enforcement personnel and agents of the local government shall be immune from liability

282 to any person or party for any action or inaction by an owner of a building or by a private
283 professional provider or its duly authorized representative in connection with building
284 code plan review and inspection services by private professional providers as provided
285 in this subsection.

286 ~~(14)~~(20) No local enforcement agency, local code official, or local government shall
287 adopt or enforce any rules, procedures, policies, qualifications, or standards more
288 stringent than those prescribed in this subsection. This subsection shall not preempt any
289 local laws, rules, or procedures relating to the plan submittal process of local governing
290 authorities.

291 ~~(15)~~(21) Nothing in this subsection shall limit the authority of ~~the~~ a local code official
292 to issue a stop-work order for a building project or any portion of such project, which
293 may go into effect immediately as provided by law, after giving notice and opportunity
294 to remedy the violation, if the official determines that a condition on the building site
295 constitutes an immediate threat to public safety and welfare. A ~~stop work~~ stop-work
296 order issued for reasons of immediate threat to public safety and welfare shall be
297 appealable to the local enforcement agency's board of appeals, if one exists, in the manner
298 provided by applicable law. Any decisions by the local official, if there is no board of
299 appeals, may be appealed to the Department of Community Affairs as provided in this
300 chapter.

301 ~~(16)~~(22) When performing building code plan reviews or inspection services, a private
302 professional provider is subject to the disciplinary guidelines of the applicable
303 professional licensing board with jurisdiction over such private professional provider's
304 license or certification under Chapters 4 and 15 of Title 43, as applicable. Any complaint
305 processing, investigation, and discipline that arise out of a private professional provider's
306 performance of building code plan reviews or inspection services shall be conducted by
307 the applicable professional licensing board. Notwithstanding any disciplinary rules of the
308 applicable professional licensing board with jurisdiction over such private professional
309 provider's license or certification under Chapters 4 and 15 of Title 43, any local building
310 official may decline to accept building code plan reviews or inspection services submitted
311 by any private professional provider who has submitted multiple reports which required
312 revisions due to negligence, noncompliance, or deficiencies.

313 ~~(17)~~(23) Nothing in this subsection shall apply to inspections exempted in Code Section
314 8-2-26.1.

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

318

SECTION 3.

319

Chapter 7 of Title 12 of the Official Code of Georgia Annotated, relating to control of soil erosion and sedimentation, is amended by revising subsection (e) of Code Section 12-7-7, relating to permit or notice of intent for land-disturbing activities, approval of application and issuance of permit, denial of permit, and bond requirement, as follows:

320

"(e) ~~No Except as provided in this subsection, no~~ permit shall be issued pursuant to subsection (b) of this Code section unless the erosion and sediment control plan has been approved by ~~the~~:

321

(1) The appropriate district as is required provided by Code Section 12-7-10. When the

322

(2) The governing authority of a county or municipality lying within the boundaries of the district demonstrates capabilities that:

323

(A) Demonstrates the capability to review and approve an erosion and sediment control plan and requests;

324

(B) Requests an agreement with the district to conduct such review and approval, the.

325

The district, with the concurrence of the commission, shall, upon such request, enter into an agreement which allows the governing authority to conduct review and approval without referring the application and plan to the district, if such governing authority meets the conditions specified by the district as set forth in the agreement. A district may not enter into an agreement authorized in this Code section paragraph with the governing authority of any county or municipality which that is not certified pursuant to subsection (a) of Code Section 12-7-8; or

326

(3) The governing authority of a county or municipality lying within the boundaries of the district that:

327

(A) Enters into an intergovernmental agreement with a local issuing authority which has an agreement with the district pursuant to subparagraph (2) of this subsection and lies within the boundaries of the same district; or

328

(B) Uses, either as an employee or as an independent contractor, any qualified personnel licensed in the State of Georgia who maintains a Level 2 certification pursuant to Code Section 12-7-19 to review and approve erosion and sediment control plans on behalf of such county or municipality; provided, however, that any such qualified personnel who contracts with the governing authority of such county or municipality and the company with whom such qualified personnel is employed, if any, shall not be an operator or prepare erosion and sediment control plans that are submitted to such county or municipality during the period of the contracted services with such county or municipality; provided, further, that notice of intent shall be submitted to the division prior to commencement of any land-disturbing activities."

354

SECTION 4.

355 Said chapter is further amended by revising paragraph (1) of subsection (a) and subsection
356 (c) of Code Section 12-7-8, relating to certification of locality as local issuing authority,
357 periodic review, procedure for revoking certification, and enforcement actions, as follows:

358 "(a)(1) If a county or municipality has enacted ordinances which meet or exceed the
359 standards, requirements, and provisions of this chapter and the state general permit,
360 except that the standards, requirements, and provisions of the ordinances for monitoring,
361 reporting, inspections, design standards, turbidity standards, education and training, and
362 project size thresholds with regard to education and training requirements shall not
363 exceed the state general permit requirements, and which are enforceable by such county
364 or municipality, and if a county or municipality documents that it employs or contracts
365 with qualified personnel to implement enacted ordinances, the director ~~may~~ shall certify
366 such county or municipality as a local issuing authority for the purposes of this chapter."

367 "(c) The board, on or before December 31, 2003, shall promulgate rules and regulations
368 setting forth the requirements and standards for certification and the procedures for
369 decertification of a local issuing authority. The division may periodically review the
370 actions of counties and municipalities which have been certified as local issuing authorities
371 pursuant to subsection (a) of this Code section. Such review may include, but shall not be
372 limited to, review of the administration and enforcement of and compliance with a
373 governing authority's ordinances and review of conformance with an agreement, if any,
374 between the district and the governing authority. If such review indicates that the
375 governing authority of any county or municipality certified pursuant to subsection (a) of
376 this Code section has not administered, enforced, or complied with its ordinances or has
377 not conducted the program in accordance with ~~any agreement entered into pursuant to~~
378 subsection (e) of Code Section 12-7-7, the division shall notify the governing authority of
379 the county or municipality in writing. The governing authority of any county or
380 municipality so notified shall have 90 days within which to take the necessary corrective
381 action to retain certification as a local issuing authority. If the county or municipality does
382 not take necessary corrective action within 90 days after notification by the division, the
383 division shall revoke the certification of the county or municipality as a local issuing
384 authority."

385

SECTION 5.

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