

_____ offers the following
substitute to HB 493:

A BILL TO BE ENTITLED
AN ACT

To provide for professional engineers or other professionals to review certain plans related to building and development if certain conditions are met so as to provide for a determination in a timely manner; to amend Chapter 2 of Title 8 of the Official Code of Georgia Annotated, relating to standards and requirements for construction, alteration, etc., of buildings and other structures, so as to provide procedures for alternative plan review, permitting, and inspection by private providers so as to simplify regulations on businesses at the local level; to provide for definitions; to amend Chapter 7 of Title 12 of the Official Code of Georgia Annotated, relating to control of soil erosion and sedimentation, so as to authorize in certain circumstances county and municipal governing authorities, or engineers hired by permit applicants to approve erosion and sediment control plans in lieu of approval by soil and water conservation commission districts; to provide that counties and municipalities can contract with qualified personnel to implement land disturbance activity ordinances; to provide for a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

SECTION 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3.

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:

"(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~~:

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

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

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

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

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

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

(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

(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."

SECTION 4.

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

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

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

SECTION 5.

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