

House Bill 493 (AS PASSED HOUSE AND SENATE)

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

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.