House Bill 493 (AS PASSED HOUSE AND SENATE)
By: Representatives Tanner of the 9th, Harrell of the 106th, Stephens of the 164th, Powell of
the 32nd, and Lumsden of the 12th

A BILL TO BE ENTITLED
AN ACT

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

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

(B) '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.

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

(D) 'Regulatory requirements' means the requirements determined by a county or municipality to be necessary for approval of plans, permits, or applications under this chapter; provided, however, that with respect to any application, such requirements shall include 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; applicable zoning ordinances and conditions; design standards; and other state and local laws, regulations, and ordinances applicable to the application in question.

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

(3) No later than five business days after receipt of any application related to regulatory requirements, a local building official of a county or municipality shall notify each applicant as to whether the submitted documents meet the requirements of a complete application. Except as otherwise provided in this paragraph, time spent by a county or municipality determining whether an application is complete shall count toward the total 30 days for plan review or inspection. If a local building official determines that the application is not complete, the applicant shall be provided written notice identifying the
items that are not complete. The 30 day time period is tolled when the application is rejected as incomplete. If within 30 days after the county or municipality has provided notice that the application is incomplete the permit applicant submits revisions to address the identified deficiencies, the local building official shall have an additional five 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 20 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...

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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 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 all applicable regulatory
requirements. Upon determining that the plans reviewed comply with the applicable
codes regulatory requirements, 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 all applicable regulatory requirements; 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 to determine compliance with all
regulatory requirements and 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 regulatory requirements, as well as the specific code chapters and
sections of such regulatory requirements. 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 regulatory requirements, with specific reference to the relevant code chapters and sections of such regulatory requirements. 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 regulatory requirements, with specific reference to the relevant code chapters and sections.

(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

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the private professional provider with a written description of the deficiencies and
specific code regulatory 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 regulatory requirements, 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 regulatory requirements, 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) The local government, the 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) 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) Nothing in this subsection shall limit the authority of the 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 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) 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.

(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 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 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 4.

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