

House Bill 493

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

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 8 of the Official Code of Georgia Annotated, relating to
2 standards and requirements for construction, alteration, etc., of buildings and other structures,
3 so as to provide procedures for alternative plan review, permitting, and inspection by private
4 providers so as to simplify regulations on businesses at the local level; to provide for
5 definitions; to provide for a short title; to provide for related matters; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

11 **SECTION 2.**

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

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

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

22 (B) 'Private professional provider' means a professional engineer who holds a
23 certificate of registration issued under Chapter 15 of Title 43 or a professional architect
24 who holds a certificate of registration issued under Chapter 4 of Title 43, who is not an

25 employee of or otherwise affiliated with or financially interested in the person, firm, or
26 corporation engaged in the construction project to be reviewed or inspected.

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

31 (D) 'Regulatory requirements' means the requirements determined by a county or
32 municipality to be necessary for approval of plans, permits, or applications.

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

41 (3) Upon receipt of any application related to regulatory requirements, the governing
42 authority of a county or municipality shall notify each applicant as to whether the
43 submitted documents meet the requirements of a complete application.

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

49 (5) If the county or municipality determines that the personnel employed by such
50 governing authority cannot provide regulatory action or inspection services within the
51 time frames required under paragraph (4) of this subsection, the applicant shall have the
52 option of retaining, at its own expense, a private professional provider to provide the
53 required plan review or inspection in accordance with the provisions of paragraph (7) of
54 this subsection. If the applicant elects to utilize the services of a private professional
55 provider, the regulatory fees associated with such regulatory action shall be reduced by
56 50 percent and such reduced amount shall be paid immediately to the county or
57 municipality at the time the complete application is submitted.

58 (6) If the county or municipality determines that the personnel employed by such
59 governing authority can provide regulatory action or inspection services within the time
60 frames required under paragraph (4) of this subsection, the full amount of the regulatory
61 fees associated with such regulatory action shall be paid immediately to the county or

62 municipality at the time the complete application is submitted. Upon payment in full of
 63 the regulatory fees associated with the complete application, the applicant may
 64 nevertheless choose to retain, at its own expense, a private professional provider to
 65 provide the required plan review or inspection, subject to the requirements set forth in
 66 paragraph (7) of this subsection.

67 ~~(7) If a governing authority of a county or municipality cannot provide review of the~~
 68 ~~documents intended to demonstrate that the structure to be built is in compliance with the~~
 69 ~~Georgia State Minimum Standard Codes most recently adopted by the Department of~~
 70 ~~Community Affairs and any locally adopted ordinances and amendments to such codes~~
 71 ~~within 30 business days of receiving a written application for permitting in accordance~~
 72 ~~with the code official's plan submittal process or inspection services within two business~~
 73 ~~days of receiving a valid written request for inspection, then, in lieu of plan review or~~
 74 ~~inspection by personnel employed by such governing authority, any person, firm, or~~
 75 ~~corporation engaged in a construction project which requires plan review or inspection~~
 76 ~~shall have the option of retaining, at its own expense, a private professional provider to~~
 77 ~~provide the required plan review or inspection. As used in this subsection, the term~~
 78 ~~'private professional provider' means a professional engineer who holds a certificate of~~
 79 ~~registration issued under Chapter 15 of Title 43 or a professional architect who holds a~~
 80 ~~certificate of registration issued under Chapter 4 of Title 43, who is not an employee of~~
 81 ~~or otherwise affiliated with or financially interested in the person, firm, or corporation~~
 82 ~~engaged in the construction project to be reviewed or inspected. The local governing~~
 83 ~~authority shall advise the permit applicant in writing if requested by the applicant at the~~
 84 ~~time the complete submittal application for a permit in accordance with the code official's~~
 85 ~~plan submittal process is received that the local governing authority intends to complete~~
 86 ~~the required plan review within the time prescribed by this paragraph or that the applicant~~
 87 ~~may immediately secure the services of a private professional provider to complete the~~
 88 ~~required plan review pursuant to this subsection. The plan submittal process shall include~~
 89 ~~those procedures and approvals required by the local jurisdiction before plan review can~~
 90 ~~take place. If the local governing authority states its intent to complete the required plan~~
 91 ~~review within the time prescribed by this paragraph, the applicant shall not be authorized~~
 92 ~~to use the services of a private professional provider as provided in this subsection. The~~
 93 ~~permit applicant and the local governing authority may agree by mutual consent to extend~~
 94 ~~the time period prescribed by this paragraph for plan review if the characteristics of the~~
 95 ~~project warrant such an extension. However, if If the local governing authority states its~~
 96 ~~intent to complete the required plan review within the time prescribed by this paragraph~~
 97 ~~(4) of this subsection, or any extension thereof mutually agreed to by the applicant and~~
 98 ~~the governing authority, and does not permit the applicant to use the services of a private~~

99 ~~professional provider~~ and the local governing authority fails to complete such plan review
 100 in the time prescribed by ~~this paragraph (4) of this subsection~~, or any extension thereof
 101 mutually agreed to by the applicant and the governing authority, the local governing
 102 authority shall issue the applicant a project initiation permit. The local governing
 103 authority shall be allowed to limit the scope of a project initiation permit and limit the
 104 areas of the site to which the project initiation permit may apply but shall permit the
 105 applicant to begin work on the project, provided that portion of the initial phase of work
 106 is compliant with applicable codes, laws, and rules. ~~If a full permit is not issued for the~~
 107 ~~portion requested for permitting, then the governing authority shall have an additional 20~~
 108 ~~business days to complete the review and issue the full permit.~~ If the plans submitted for
 109 permitting are denied for any deficiency, the time frames and process for resubmittal shall
 110 be governed by subparagraphs (C) through (E) of paragraph ~~(7)~~ (13) of this subsection.
 111 ~~On or before July 1, 2007, the Board of Natural Resources shall adopt rules and~~
 112 ~~regulations governing the review of erosion and sedimentation control plans under Part~~
 113 ~~9 of Chapter 7 of Title 12 to establish appropriate time frames for the submission and~~
 114 ~~review of revised plan submittals where a deficiency or deficiencies in the submitted~~
 115 ~~plans have been identified by the governing authority.~~ Any delay in the processing of an
 116 application that is attributable to a cause outside the control of the county or municipality
 117 that is processing the application or through fault of the applicant shall not count toward
 118 days for the purposes of this subsection.

119 ~~(2)~~(8) Any plan review or inspection conducted by a private professional provider shall
 120 be no less extensive than plan reviews or inspections conducted by county or municipal
 121 personnel.

122 ~~(3)~~(9) The person, firm, or corporation retaining a private professional provider to
 123 conduct a plan review or an inspection shall be required to pay to the county or
 124 municipality which requires the plan review or inspection the ~~same~~ regulatory fees and
 125 charges ~~which would have been required had the plan review or inspection been~~
 126 ~~conducted by a county or municipal inspector~~ which are required by either paragraph (5)
 127 or (6) of this subsection, as applicable.

128 ~~(4)~~(10) A private professional provider performing plan reviews under this subsection
 129 shall review construction plans to determine compliance with the Georgia State Minimum
 130 Standard Codes most recently adopted by the Department of Community Affairs and any
 131 locally adopted ordinances and amendments to such codes. Upon determining that the
 132 plans reviewed comply with the applicable codes, such private professional provider shall
 133 prepare an affidavit or affidavits on a form adopted by the Department of Community
 134 Affairs certifying under oath that the following is true and correct to the best of such

135 private professional provider's knowledge and belief and in accordance with the
 136 applicable professional standard of care:

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

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

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

146 ~~(5)~~(11) All private professional providers providing plan review or inspection services
 147 pursuant to this subsection shall secure and maintain insurance coverage for professional
 148 liability (errors and omissions) insurance. The limits of such insurance shall be not less
 149 than \$1 million per claim and \$1 million in aggregate coverage for any project with a
 150 construction cost of \$5 million or less and \$2 million per claim and \$2 million in
 151 aggregate coverage for any project with a construction cost of more than \$5 million.
 152 Such insurance may be a practice policy or project-specific coverage. If the insurance
 153 is a practice policy, it shall contain prior acts coverage for the private professional
 154 provider. If the insurance is project-specific, it shall continue in effect for two years
 155 following the issuance of the certificate of final completion for the project. A local
 156 enforcement agency, local building official, or local government may establish, for
 157 private professional providers working within that jurisdiction, a system of registration
 158 listing the private professional providers within their stated areas of competency ~~and~~
 159 ~~verifying.~~ The permit applicant shall verify compliance with the insurance requirements
 160 of this ~~subsection~~ paragraph.

161 ~~(6)~~(12) The private professional provider shall be empowered to perform any plan review
 162 or inspection required by the governing authority of any county or municipality,
 163 including, but not limited to, inspections for footings, foundations, concrete slabs,
 164 framing, electrical, plumbing, heating ventilation and air conditioning (HVAC), or any
 165 and all other inspections necessary or required for the issuance of a building permit or
 166 certificate of occupancy by the governing authority of any county or municipality,
 167 provided that the plan review or inspection is within the scope of such private
 168 professional provider's area of competency. Nothing in this Code section shall authorize
 169 any private professional provider to issue a certificate of occupancy. Only a local
 170 governing authority shall be authorized to issue a certificate of occupancy.

171 ~~(7)(A)(13)(A)~~ The permit applicant shall submit a copy of the private professional
172 provider's plan review report to the county or municipality within five days of its
173 completion. Such plan review report shall include at a minimum all of the following:
174 (i) The affidavit of the private professional provider required pursuant to this
175 subsection;
176 (ii) The applicable fees; and
177 (iii) Any documents required by the local official and any other documents necessary
178 to determine that the permit applicant has secured all other governmental approvals
179 required by law.

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

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

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

205 (E) If the local building official provides a second written notice of plan deficiencies
206 to the permit applicant within the prescribed time period, the permit applicant may elect
207 to dispute the deficiencies pursuant to this subsection or to submit additional revisions

208 to correct the deficiencies. For all revisions submitted after the first revision, the local
 209 building official shall have an additional five business days to issue the requested
 210 permit or to provide a written notice to the permit applicant stating which of the
 211 previously identified plan features remain in noncompliance with the applicable codes,
 212 with specific reference to the relevant code chapters and sections.

213 ~~(8)~~(14) Upon submission by the private professional provider of a copy of his or her
 214 inspection report to the local governing authority, said local governing authority shall be
 215 required to accept the inspection of the private professional provider without the necessity
 216 of further inspection or approval by the inspectors or other personnel employed by the
 217 local governing authority unless said governing authority has notified the private
 218 professional provider, within two business days after the submission of the inspection
 219 report, that it finds the report incomplete or the inspection inadequate and has provided
 220 the private professional provider with a written description of the deficiencies and
 221 specific code requirements that have not been adequately addressed.

222 ~~(9)~~(15) A local governing authority may provide for the prequalification of private
 223 professional providers who may perform plan reviews or inspections pursuant to this
 224 subsection. No ordinance implementing prequalification shall become effective until
 225 notice of the governing authority's intent to require prequalification and the specific
 226 requirements for prequalification have been advertised in the newspaper in which the
 227 sheriff's advertisements for that locality are published, and by any other methods such
 228 local authority ordinarily utilizes for notification of engineering, architecture, or
 229 construction related solicitations. The ordinance implementing prequalification shall
 230 provide for evaluation of the qualifications of a private professional provider only on the
 231 basis of the private professional provider's expertise with respect to the objectives of this
 232 subsection, as demonstrated by the private professional provider's experience, education,
 233 and training. Such ordinance may require a private professional provider to hold
 234 additional certifications, provided that such certifications are required by ordinance for
 235 plan review personnel currently directly employed by such local governing authority.

236 ~~(10)~~(16) Nothing in this subsection shall be construed to limit any public or private right
 237 of action designed to provide protection, rights, or remedies for consumers.

238 ~~(11)~~(17) This subsection shall not apply to hospitals, ambulatory health care centers,
 239 nursing homes, jails, penal institutions, airports, buildings or structures that impact
 240 national or state homeland security, or any building defined as a high-rise building in the
 241 State Minimum Standards Code; provided, however, that interior tenant build-out projects
 242 within high-rise buildings are not exempt from this subsection.

243 ~~(12)~~(18) If the local building official determines that the building construction or plans
 244 do not comply with the applicable codes, the official may deny the permit or request for

245 a certificate of occupancy or certificate of completion, as appropriate, or may issue a
 246 stop-work order for the project or any portion thereof as provided by law, after giving
 247 notice to the owner, the architect of record, the engineer of record, or the contractor of
 248 record and by posting a copy of the order on the site of the project and opportunity to
 249 remedy the violation within the time limits set forth in the notice, if the official
 250 determines noncompliance with state or local laws, codes, or ordinances, provided that:

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

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

263 ~~(13)~~(19) The local government, ~~the~~ a local building official, and local building code
 264 enforcement personnel and agents of the local government shall be immune from liability
 265 to any person or party for any action or inaction by an owner of a building or by a private
 266 professional provider or its duly authorized representative in connection with building
 267 code plan review and inspection services by private professional providers as provided
 268 in this subsection.

269 ~~(14)~~(20) No local enforcement agency, local code official, or local government shall
 270 adopt or enforce any rules, procedures, policies, qualifications, or standards more
 271 stringent than those prescribed in this subsection. This subsection shall not preempt any
 272 local laws, rules, or procedures relating to the plan submittal process of local governing
 273 authorities.

274 ~~(15)~~(21) Nothing in this subsection shall limit the authority of the local code official to
 275 issue a stop-work order for a building project or any portion of such project, which may
 276 go into effect immediately as provided by law, after giving notice and opportunity to
 277 remedy the violation, if the official determines that a condition on the building site
 278 constitutes an immediate threat to public safety and welfare. A ~~stop-work~~ stop-work
 279 order issued for reasons of immediate threat to public safety and welfare shall be
 280 appealable to the local enforcement agency's board of appeals, if one exists, in the manner
 281 provided by applicable law. Any decisions by the local official, if there is no board of

282 appeals, may be appealed to the Department of Community Affairs as provided in this
283 chapter.

284 ~~(16)~~(22) When performing building code plan reviews or inspection services, a private
285 professional provider is subject to the disciplinary guidelines of the applicable
286 professional licensing board with jurisdiction over such private professional provider's
287 license or certification under Chapters 4 and 15 of Title 43, as applicable. Any complaint
288 processing, investigation, and discipline that arise out of a private professional provider's
289 performance of building code plan reviews or inspection services shall be conducted by
290 the applicable professional licensing board. Notwithstanding any disciplinary rules of the
291 applicable professional licensing board with jurisdiction over such private professional
292 provider's license or certification under Chapters 4 and 15 of Title 43, any local building
293 official may decline to accept building code plan reviews or inspection services submitted
294 by any private professional provider who has submitted multiple reports which required
295 revisions due to negligence, noncompliance, or deficiencies.

296 ~~(17)~~(23) Nothing in this subsection shall apply to inspections exempted in Code Section
297 8-2-26.1.

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

301 **SECTION 3.**

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