The Senate Committee on State and Local Governmental Operations offered the following substitute to SB 49:

A BILL TO BE ENTITLED
AN ACT

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 professional providers so as to allow applicants to elect whether to retain, at their own expense, a private professional provider to provide required plan reviews or inspections of certain buildings; to provide for fees; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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~~:

(i) Professional engineer who holds a certificate of registration issued under Chapter 15 of Title 43 ~~or a professional~~;

(ii) Professional architect who holds a certificate of registration issued under Chapter 4 of Title 43~~.~~; or

(iii) Qualified inspector as such term is defined in Code Section 8-2-26.1

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) At the time a county or municipality notifies ~~Upon notification to~~ the applicant that a complete application has been accepted, ~~a county or municipality~~ it shall also notify ~~each~~ such 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~~ 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 irrespective of whether 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. 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 the local governing authority states its intent to complete the required plan review within the time prescribed by paragraph (4) of this subsection, or any extension thereof mutually agreed to by the applicant and the governing authority, and the local governing authority fails to complete such plan review in the time prescribed by 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 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 (13) of this subsection. 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. This paragraph shall not be applicable if the applicant elects to retain a private professional provider to provide the required plan review.

(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.

(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 regulatory fees and charges which are required by ~~either~~ paragraph (5) or (6) of this subsection or both, as applicable.

(10) A private professional provider performing plan reviews under this subsection shall review plans to determine compliance with all applicable regulatory requirements. Upon determining that the plans reviewed comply with the applicable 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 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.

(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. The permit applicant shall verify compliance with the insurance requirements of this paragraph.

(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; and provided, further, that a qualified inspector acting as a private

professional provider shall only be empowered to perform a plan review or inspection within an area for which such qualified inspector has been issued a certification, license, or completion of training provided for in paragraph (2) of subsection (a) of Code Section 8-2-26.1. 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.

(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 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 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 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 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 the private professional provider with a written description of the deficiencies and specific regulatory requirements that have not been adequately addressed.

(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.

(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.

(17) Reserved.

(18) If the local building official determines that the building construction or plans do not comply with the applicable 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 regulatory requirements, provided that:

(A) 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.

(19) The local government, 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 plan review and inspection services by private professional providers as provided in this subsection.

(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.

(21) Nothing in this subsection shall limit the authority of 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 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.

(22) When performing 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 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 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 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 3.

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