

Governor Kemp Issues NEW Executive Order on Plan Review & Inspections

Amends original order to eliminate exceptions in OCGA 8-2-26 (17)

By Mark Woodall, Director of Governmental Affairs | woodall@agcga.org

A couple weeks ago, AGC Georgia reached out to Governor Kemp's senior staff regarding local governments shutting down their respective building departments, thus not providing important project plan reviews and inspections. AGC Georgia reminded the Governor's staff that current Georgia law allows for private engineer and architect plan review and inspection services when local government either can't or won't provide timely service. This legislation, [House Bill 493](#), was initiated by AGC Georgia and passed the General Assembly during the 2019 Session.

We are grateful to Governor Kemp and his staff for recognizing the services our contractor members provide to their communities and our state and his commitment to keeping these businesses working through this unprecedented crisis.

On Friday, March 20, the Office of Governor Brian Kemp issued an executive order speaking to our specific concerns. The title of the executive order is [Reducing Regulations to Assist the State's Response to the Spread of COVID-19](#).

Language speaking specifically to the **original** Executive Order includes:

Whereas: *Counties and municipalities responsible for regulating inspections of buildings or similar structures to ensure compliance with the state minimum standard codes have smaller workforces and cannot meet the demand for inspections in this State...*

It is ordered: *That because of limited staffing and increasing wait times, I have determined that all counties and municipalities in this state that regulate inspections of buildings or similar structures to ensure compliance with the state minimum standard codes in accordance with Code Section 8-2-26 may not be able to provide regulatory action or inspection within the time frames required by Code Section 8-2-26(g)(4).*

Therefore, *it is hereby ordered that all applicants seeking plan review or inspections in these cities and counties pursuant to Code Section 8-2-26 are not required to wait out the time frames required by Code Section 8-2-26(g)(4) and have the option of retaining "private professional provider[s]" immediately to provide the required plan review or inspection in accordance with the provisions of Code Section 8-2-26(g)(5). The Order does not otherwise amend or abate the requirements of Code Section 8-2-26, nor does it suspend the enforcement of its provisions.*

On Monday, March 30, 2020, Governor Kemp issued another Executive Order that amended his March 20 order. Now, private professional providers are allowed to conduct ALL required plan reviews and inspections.

Language speaking to the second Executive Order includes:

Whereas: *Executive Order 03.20.20.02 suspended certain regulatory requirements, including permitting the use of private inspectors for the purpose of plan review and site inspections in accordance with Code Section 8-2-26 (g) (4) - (5)*

It is further ordered: *That Executive Order No. 03.20.20.02 is hereby amended to allow for the immediate use of "private providers" in accordance with Code section 8-2-26(g) (4)-(5) to provide the required plan review or inspections for projects identified by Code Section 8-2-26 (g) (17). All other aspects of the Executive Order NO. 03.20.20.02 that address inspections of building or similar structures remain in effect.*

Additional Executive Orders recently signed by Governor Kemp impacting business

March 31, 2020: Authorizing the use of real-time audio-visual communication technology to assist in notarizing real estate documents . . . [Download](#)

March 23, 2020: Limiting large gatherings statewide, ordering "shelter in place" for specific populations. . . [Download](#)

The newly released Executive Order allows private plan review and inspections **on previously exempt projects in OCGA 8- 2-26-(17)** which include **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.**

We appreciate Governor Brian Kemp and his staff for recognizing the services our contractor members provide to their communities and thank him for his commitment to keeping these businesses working through this unprecedented crisis.

NOTE ON QUALIFIED PRIVATE PROVIDERS

- AGC Georgia asked our friends at [ACEC](#) and [AIA](#) to share names of their members who are eligible to provide private services. Consider these lists a starting point should you need services. Feel free to also ask about services from A/E firms in your local area.
- [Affidavit for Professional Private Providers](#) – Private Professional Providers are required to submit the linked Georgia Department of Community Affairs Affidavit for local government to accept their Plan Reviews.

Refresher Information

- **Private Provider Insurance Requirements**
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 subsection.
- **Local Government May Require Prequalification of Private Plan Reviewers and Inspectors**
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.
- **Summary of the original [House Bill 493](#)**
Signed into law May 6, 2019; Effective July 1, 2019; Act 215

AGC Georgia and ACEC Georgia worked with Georgia Municipal Association and Association County Commissioners of Georgia, organizations representing local government, on this legislation for several years prior to its passage. Once introduced as a bill, the efforts by Rep. Kevin Tanner and Senator Mike Dugan to carry this legislation were critical to its passage.

For years, the construction industry needed a viable option for plan review and inspection services when local governments can't or won't provide timely service. This bill changed the statutory time frame for local government private plan review from **30 business days to 30 calendar days**. HB 493 also changed the statutory fee structure collected when a governmental entity does not provide the plan review or inspection services.

Prior to this bill's passage, the governmental entity collected 100% of the fee, even though they were not providing the plan review or inspection services. HB 493 amended the fee structure, **allowing the governmental entity to only collect 50% of the normal fee if they cannot provide plan review within 30 days, or inspections within 2 business days, since they will only be doing a cursory review of the design professional's work**. HB 493 also contains language that allows owners/contractors of a project to immediately contract with licensed professional engineers or architects to conduct a plan review or inspections without having to wait on the governing authority, even if the government entity can provide the plan review within the 30-day time frame or inspections within 2 business days. Under this provision the owner/contractor is obligated to pay a convenience fee equaling 100% of the fee normally required to the governmental entity.

Furthermore, the private professional provider shall be empowered to perform any plan review or inspection required by the governing authority of any county or municipality (**except for those listed in OCGA 8-2-26 (17) below**), 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. Only a local governing authority shall be authorized to issue a certificate of occupancy.

HB 493 (as passed in 2019) does not apply to some types of projects. Those project exceptions are outlined in OCGA 8-2-26 (17) and include:

- Hospitals
- Ambulatory health care centers
- Nursing homes
- Jails
- Penal institutions
- Airports
- Buildings or structures that impact national or state homeland security
- Any building defined as a high-rise building in the State Minimum Standards Code (7 stories or higher) provided, however, that interior tenant build-out projects within high-rise buildings are not exempt from this subsection