

March 2012

## CONSERVATION AND NATURAL RESOURCES Water Resources: Provide for Mandatory Sewer Privatization; Provide that Owners of Large Public Waste-Water Treatment Facilities Privatize the Operation and Maintenance of Their Systems of Violations of Permits Occur; Set Schedules, Milestones, and Standards for Privatization; Establish an Oversight Committee; Set Forth Penalties for Failure to Comply

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### Recommended Citation

Georgia State University Law Review, *CONSERVATION AND NATURAL RESOURCES Water Resources: Provide for Mandatory Sewer Privatization; Provide that Owners of Large Public Waste-Water Treatment Facilities Privatize the Operation and Maintenance of Their Systems of Violations of Permits Occur; Set Schedules, Milestones, and Standards for Privatization; Establish an Oversight Committee; Set Forth Penalties for Failure to Comply*, 15 GA. ST. U. L. REV. (2012).  
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## CONSERVATION AND NATURAL RESOURCES

***Water Resources: Provide for Mandatory Sewer Privatization; Provide that Owners of Large Public Waste-Water Treatment Facilities Privatize the Operation and Maintenance of Their Systems if Violations of Permits Occur; Set Schedules, Milestones, and Standards for Privatization; Establish an Oversight Committee; Set Forth Penalties for Failure to Comply***

CODE SECTION:	O.C.G.A. § 12-5-23.3 (new)
BILL NUMBER:	HB 1163
ACT NUMBER:	903
GEORGIA LAWS:	1998 Ga. Laws 1115
SUMMARY:	The Act requires owners of large public waste-water treatment facilities to privatize the operation and maintenance of their systems if certain violations of their permits occur. The Act sets forth schedules, milestones, and standards for the privatization process. The Act creates a privatization oversight committee and authorizes this committee to monitor the privatization process. Additionally, the Act sets forth certain penalties if the owners fail to comply with the Act.
EFFECTIVE DATE:	July 1, 1998

### *History*

The inability of municipalities to adequately operate waste-water treatment facilities, also known as publicly owned treatment works (POTWs), is a recurring problem in the State of Georgia.<sup>1</sup> Atlanta has been the primary target of these concerns, and while many pundits believe that privatization is the solution to this problem, they disagree over the method of privatization.<sup>2</sup>

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1. See Telephone Interview with Sen. Mike Egan, Senate District No. 40 (Apr. 30, 1998) [hereinafter Egan Interview]; Telephone Interview with Rep. Bob Holmes, House District No. 53 (Apr. 30, 1998) [hereinafter Holmes Interview]; Telephone Interview with David Word, Assistant Director of the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources (DNR) (Apr. 30, 1998) [hereinafter Word Interview].

2. The *Atlanta Journal & Constitution* has closely followed and supported Atlanta's

Because the public perceives the waste-water treatment situation in Atlanta as the biggest example of problems with municipal waste-water treatment systems in general, it is only natural that Atlanta's downstream neighbors took the primary role in advocating change to

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voluntary privatization efforts. *See, e.g.*, Charles Seabrook & Charmagne Helton, *Bills Could Usurp City Water Control*, ATLANTA J. & CONST., Jan. 14, 1998, at C4. HB 1163 was one of Governor Miller's proposed bills. *See id.* In advocating this legislation, Governor Miller was quoted as saying:

The whole experience [with Atlanta] points out the need for a new approach to ensure that in the future local governments throughout Georgia are more responsible in operating their wastewater and sewer systems, so that never again will we have such a long and ongoing problem as we have had in Atlanta.

*Id.* Atlanta Mayor Bill Campbell and the Atlanta City Council have opposed each other in a long struggle over the decision to privatize Atlanta's waste-water system. *See* Mayor Bill Campbell, Editorial, *Should Atlanta Privatize Water, Sewer? Yes: Strategy Make (sic) Sense in Terms of Economics, Efficiency*, ATLANTA J. & CONST., Feb. 15, 1998, at F7; Rep. Claire Muller, Atlanta City Council, Editorial, *Should Atlanta Privatize Water, Sewer? Maybe: Before We Sign on the Dotted Line, Let's Consider All Options*, ATLANTA J. & CONST., Feb. 15, 1998, at F7; Editorial, *Privatization, Cooperation*, ATLANTA J. & CONST., Mar. 6, 1998, at A14; Larry Wallace, Editorial, *Atlanta Water Privatization Faces Real Deadlines*, ATLANTA J. & CONST., Feb. 27, 1998, at A16; *see also* Editorial, *City Leaders Must Resolve Impasse on Privatization*, ATLANTA J. & CONST., Feb. 18, 1998, at A10; Editorial, *Support Campbell's Privatization Efforts*, ATLANTA J. & CONST., Feb. 26, 1998, at A14.

Senator Mike Egan of Atlanta supported HB 1163 because he believed that privatization would enable the waste-water treatment process to work better. *See* Egan Interview, *supra* note 1. Senator Egan had the impression that legislators introduced HB 1163 because people now believe that privatization is a new model of making government-run operations more efficiently. *See id.* Representative Sam Roberts of Douglasville mirrors Egan's views. *See* Herb Denmark, *Environment Expected to be at Forefront of General Assembly*, TIMES GEORGIAN-CARROLLTON, Jan. 2, 1998, at A1. Representative Roberts stated: "In most cases, private companies can do it in a way that is better, more efficient, and at less cost." *Id.* at A3. Conversely, Rep. Bob Holmes believes that HB 1163 is a negative incentive to municipalities. *See* Holmes Interview, *supra* note 1. Governments now realize that if they do not improve their management, they will lose their system. *See id.* Similarly, private companies will also have the same incentive—if they cannot effectively manage their system, they will lose their contract and the correlative profit. *See id.* Also questioning the efficiency of private companies, environmentalist Mark Woodall of the Georgia Sierra Club stated: "If a city or county is forced to privatize its water or sewer system, how do we know if the private company can run it any better than the local government?" Seabrook & Helton, *supra*. Additionally, there was the concern regarding poor waste-water treatment management operations in urban areas, such as Atlanta, Augusta, and Columbus. *See* Word Interview, *supra* note 1. "With population density, there follows a high exposure to pollution." *Id.* "People wanted to create some incentive and disincentive beyond EPD enforcement." *Id.* According to state environmental personnel, citizens "wanted [the municipal] governments to get it right themselves or get someone else . . . who could." *Id.*

address this situation.<sup>3</sup> Many people have lost faith in the ability of the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources (DNR) to force Atlanta and other local governments to clean up the Chattahoochee.<sup>4</sup> Many legislators asserted that public opinion often supported the belief that HB 1163 was introduced to target only Atlanta, but the supporters of the bill disagree.<sup>5</sup> The supporters assert that they introduced HB 1163 to protect human health and the environment, and the fact that the Act addresses Atlanta's water problems is a coincidental effect of the legislation, not the cause.<sup>6</sup> However, while many legislators and the

3. Most of HB 1163's sponsors represent districts downstream on the Chattahoochee River from Atlanta. Bill Torpy, *Feeling Upbeat Downstream*, ATLANTA J. & CONST., Apr. 15, 1998, at E4. One Newnan attorney, who also owned property along the Chattahoochee in Hancock County, said, "I started dreaming about emptying my septic tanks into a truck, driving up to Atlanta and spraying untreated sewage on Atlanta City Council members' front lawns—for 20 years, like they did to us." *Id.* Ken Manning, owner of Highland Marina on West Point Lake near LaGrange, said that "[t]he city of Atlanta has thumbed its nose at this problem for years . . . . Most people here are really worn out in this issue." *Id.*

4. See Seabrook & Helton, *supra* note 2. The *Atlanta Journal & Constitution* quoted Sen. Steve Langford as saying, "The EPD [ ] can fine. But there needs to be something else." *Bill Forces Privatization Issue*, ATLANTA J. & CONST., Mar. 14, 1998, at D3. Even with the new bill, however, some municipalities already recognize that the trigger for privatization will still rest on how EPD enforces the law. See *Legislature Scrutinizes Clayton Sewer System*, CLAYTON NEWS DAILY, Feb. 10, 1998, at A1. Neal Wellons, department manager for waste-water at the Clayton County Water Authority, admitted that Clayton County has allowed illegal discharges of treated waste water. See *id.* Wellons stated that "[w]hether the county would be cited depends on how the new law is enforced." *Id.* Thus, the Act's effectiveness appears to rest on how EPD enforces the law. Atlanta is not the only government that discharges into the Middle Chattahoochee. See *id.* Additionally, several local governments contract with Atlanta to send their sewage to Atlanta's R.M. Clayton waste-water treatment plant: Fulton County, the City of Forest Park, the City of College Park, the City of East Point, the City of Hapeville, and DeKalb County. See Ben Smith, III, *DeKalb Suing Atlanta Over Bill for Payment*, ATLANTA J. & CONST., Feb. 7, 1998, at D2. Of the six municipalities that send waste-water to the R.M. Clayton facility, DeKalb County's contract with Atlanta entitles it to nearly one-half the R.M. Clayton facility's capacity. See *id.*

5. See Telephone Interview with Rep. Bob Hanner, House District No. 159 (May 1, 1998) [hereinafter Hanner Interview]; Telephone Interview with Rep. Bob Snelling, House District No. 99 (May 1, 1998) [hereinafter Snelling Interview]; Holmes Interview, *supra* note 1. Representative Chuck Sims, of the 167th District, said that "this is Atlanta's problem and Atlanta should be the one to pay to clean it up." *Legislature Moves Environment to Front Burner*, MOULTRIE OBSERVER, Dec. 31, 1997, at A1 [hereinafter *Legislature Moves*].

6. According to Rep. Bob Hanner, Chairman of the House Natural Resources Committee and co-sponsor of HB 1163, this issue was brought to the attention of the General Assembly due to Atlanta's pollution problems. See Hanner Interview, *supra* note 5. Some people believe that HB 1163 was introduced to attack Atlanta, but this is

Governor emphasize that the Act will address problems throughout the State, they acknowledge that Atlanta's pollution of the Chattahoochee is the driving force behind the legislation.<sup>7</sup>

Legislators had many reasons to support HB 1163, but the common denominator was their desire to protect a valuable natural resource to Georgia—surface water.<sup>8</sup> Senator Steve Langford articulated the view of many legislators when he said, “Our goal is to make the Chattahoochee one of the cleanest rivers in the country, instead of one of the most polluted.”<sup>9</sup> Water is an important resource, and in Georgia the water pollution problems result from problems with waste-water treatment facility management.<sup>10</sup> EPD and the United States Environmental Protection Agency (EPA) investigated Atlanta's R.M.

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not true. *See id.*; Charmagne Helton, *Bill to Force Polluters to Privatize Advances*, ATLANTA J. & CONST., Feb. 10, 1998, at C3 [hereinafter Helton, *Bill*]; Charmagne Helton, *Sewer Privatization Bill Passes*, ATLANTA J. & CONST., Mar. 20, 1998, at F4 [hereinafter Helton, *Bill Passes*]. Representative Kathy Ashe, of the 46th District, echoed Rep. Hanner on this point by stating that she did not think that HB 1163 is anti-Atlanta. *See id.* Representative Ashe added that “[i]t is an attempt by the state to say we’re serious about getting our water and sewer system under control.” *Id.* Conversely, Rep. Bob Holmes of House District No. 53 believed that HB 1163 was introduced as a result of Atlanta's news coverage concerning poor management of its waste-water treatment system. *See Holmes Interview, supra* note 1. Representative Holmes acknowledged that legislators did not want to solely target Atlanta, so they drafted the legislation to include several other municipalities. *See id.* Other Representatives, however, indicated that HB 1163 was introduced because the people were tired of Atlanta polluting the Chattahoochee River. *See Snelling Interview, supra* note 5.

7. *See Seabrook & Helton, supra* note 2.

8. *See Word Interview, supra* note 1.

9. Seabrook & Helton, *supra* note 2. The Chattahoochee River is seventh on the list of America's most endangered rivers. *See Clint Williams, Group Finds Hooch to be Endangered*, ATLANTA J. & CONST., Apr. 7, 1998, at C4.

10. *See Holmes Interview, supra* note 1. Two opposing views exist concerning an operator's ability to manage an aging sewer system. *See Brenda Rios, Bill to Privatize Sewers Passes Committee*, LEDGER-ENQUIRER, Feb. 5, 1998, at B1. Some legislators believe that if the current management (*i.e.*, the municipal government) is not managing the operations properly, the State must do something about it. *See id.* The other thought, articulated by Neil Herring of the Georgia chapter of the Sierra Club, is that if a system is obsolete, even perfect management cannot solve the problems. *See id.* Environmentalists, such as Herring, advocate a bill that addresses the infrastructure problems of the old systems in addition to the management problems. *See id.* Some local government officials mirror the environmentalist view on the continuing problems of a bad system with new management. *See id.* Bob Tant, the executive vice-president of the Columbus Water Works, disagrees with the belief that privatization will lead to greater efficiency and cleaner water because he thinks that it is “shortsighted and at odd[s] with the facts.” *Id.*

Clayton Plant and discovered that routine management procedures were causing the water pollution problems.<sup>11</sup>

The current trend for solving problems with traditional government operations is to privatize them.<sup>12</sup> Some legislators perceive that a private company will be able to operate the same system more effectively than the government can, even with the same infrastructure.<sup>13</sup> Conversely, local governments and environmentalists often disagree with this perception and assert that management is only half the problem—legislation must also address aging infrastructure.<sup>14</sup>

Another purpose of the Act, according to one of its sponsors, Tom Shanahan, was to address the concern over the rapid growth in the State that is taxing the limited quantity of natural resources.<sup>15</sup> Additionally, the Act only applies to large POTWs because these facilities have a much greater adverse impact than smaller facilities.<sup>16</sup>

The Act affects more than just Atlanta: for example, under current discharge volumes, HB 1163 will also affect the cities of Albany, Augusta, Columbus, Dalton, Macon, and Savannah, and the counties of Cobb, Clayton, DeKalb, Fulton, and Gwinnett.<sup>17</sup>

11. See Holmes Interview, *supra* note 1.

12. See Egan Interview, *supra* note 1.

13. See Holmes Interview, *supra* note 1.

14. See Charmagne Helton, *Local Governments Oppose, EPD Likes Sewer Privatization*, ATLANTA J. & CONST., Feb. 4, 1998, at B4. Representative Bob Hanner stated: "If [local sewer systems] cannot follow the right criteria, [they] need[ ] to be privatized . . . [The General Assembly's] main responsibility is to make sure the water is clean." *Id.* In opposition, Jerry Griffin, the executive director of the Association of County Commissioners of Georgia, said, "A private company is not going to be any better than the county government." *Id.* Professor Victor Flatt, an environmental law professor at Georgia State University College of Law, distinguished between the management problems and the infrastructure problems and opined that this legislation would not be a "cure-all." *Id.* "Because the legislation addresses only management, not infrastructure . . . private managers will be using the same antiquated facilities the governments did. And they likely will face similar problems." *Id.* at B4 (citing Professor Flatt). Professor Flatt also went as far to state: "I wouldn't say that [the plan is] definitely legal." *Id.* About 21 square miles of downtown and midtown Atlanta are still served by pipes that may be 100 years old. See Charles Seabrook, *Antiquated System, and Efforts to Fix It, Were Found Wanting*, ATLANTA J. & CONST., Apr. 14, 1998, at A6.

15. See Record of Proceedings in the House of Representatives (Feb. 9, 1998) [hereinafter House Proceedings] (remarks by Rep. Tom Shanahan) (available in Georgia State University College of Law Library).

16. See *id.*

17. See Russ Bynum, *Senate Votes to Force Sewer Privatization*, THE TIMES-HERALD, Mar. 14, 1998, at A10; Charmagne Helton, *Sewer Privatization Bill Passes*, ATLANTA J. & CONST., Mar. 20, 1998, at F4; Helton, *Bill*, *supra* note 6.

Atlanta has been embroiled in waste-water treatment problems for the past several years.<sup>18</sup> Recently, Atlanta agreed to pay a record-high \$2.5 million fine and to spend several million dollars over the course of the next several years to clean up some of the problems that its sewerage system caused.<sup>19</sup> The settlement resulted from state and federal lawsuits under the Clean Water Act.<sup>20</sup> As part of this settlement, Atlanta agreed to upgrade its treatment system and sewer lines.<sup>21</sup> Officials estimated that this may cost as much as \$2 billion.<sup>22</sup>

Atlanta is currently in the process of privatizing its water systems, including one of its most beleaguered waste-water treatment plants, the R.M. Clayton Facility.<sup>23</sup> There are several tensions that have developed during the privatization process.<sup>24</sup> Supporters see privatization as the solution to the problem of the impending fines that could result if Atlanta does not move ahead with the next phase of improvements to the R.M. Clayton facility.<sup>25</sup> Additionally, these parties advocate privatization as the solution to the capital financing needs of these systems.<sup>26</sup> Atlanta has also threatened taxpayers with rate hikes if privatization is not implemented.<sup>27</sup> Conversely, skeptics question the integrity of the privatization process.<sup>28</sup> Opponents criticize the haste into which privatization agreements are entered and the terms and conditions of these agreements.<sup>29</sup> Additional criticisms

18. See Hanner Interview, *supra* note 5; Holmes Interview, *supra* note 1; Snelling Interview, *supra* note 5.

19. See Charles Seabrook, *Atlanta Agrees to Sewer Deal*, ATLANTA J. & CONST., Apr. 14, 1998, at A1.

20. See *id.*

21. See *id.*

22. See *id.*

23. See Carlos Campos, *Mayor, Allies Seek Vote on Privatization*, ATLANTA J. & CONST., Jan. 31, 1998, at B2 [hereinafter Campos, *Mayor*].

24. See *id.*

25. See *id.*

26. See Carlos Campos & David Pendered, *Privatization Proposal Gets Rejuvenation*, ATLANTA J. & CONST., Feb. 18, 1998, at B1.

27. See *id.*

28. City Council member Clair Muller voiced concerns over the potential conflict of interest between former City Chief of Staff Steven J. Labovitz, now an attorney with the City's legal consultant on privatization (Long, Aldrige & Norman, L.L.P.) participating in the contractor selection, and his wife, Sherri Labovitz, an attorney with Minkin & Snyder who represents bidder Operations Management International, Inc. See Carlos Campos, *Vote on Atlanta Privatization Plans Delayed*, ATLANTA J. & CONST., Feb 3, 1998, at B8 [hereinafter Campos, *Vote Delayed*].

29. See Campos, *Mayor*, *supra* note 23; Campos, *Vote Delayed*, *supra* note 28. Some members of the City Council view a contract term of 15 to 20 years as too long. See Carlos Campos, *Water Proposal Reaches Council*, ATLANTA J. & CONST., Feb. 16, 1998,

include the lack of specific details in the oversight provisions for both the bidding and operation of the system and the plans for over \$100 million in capital improvements.<sup>30</sup>

In addition to the diverse views of the value of the privatization process, other related problems arise during the conversion from public maintenance to privatization.<sup>31</sup> For example, when current government employees learn that the system will no longer be run by the government, but instead will be operated by a private company, an exodus of employees and a consequent reduction of the work force may result, even though the demand for water and sewer remains.<sup>32</sup> Thus, a municipality is faced with the problem of operating a sub-standard system with only a skeletal staff.<sup>33</sup>

Offsetting the problems involved in privatizing a government program are the resulting efficiencies and cost savings.<sup>34</sup> The main reason for the trend in privatization of sewer systems is that the clean water standards for rivers have increased while infrastructures have continued to age.<sup>35</sup> Originally, private contractors focused on smaller systems, but now the trend has extended to larger cities.<sup>36</sup> Private companies reduce costs of water and sewer services by using approximately twenty to thirty percent fewer staff members, investing in better technology, and managing resources and personnel more efficiently.<sup>37</sup>

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at C1 [hereinafter Campos, *Water Proposal*]; Campos & Pendered, *supra* note 26. Most view five years as a more acceptable term. *See* Campos, *Water Proposal, supra*.

30. *See* Carlos Campos & Julie B. Hairston, *Atlanta's Plan for Utility Still Murky*, ATLANTA J. & CONST., Mar. 27, 1998, at A1, A18; Campos & Pendered, *supra* note 26.

31. *See* Julie Hairston, *City Water Department Under Fire*, ATLANTA J. & CONST., May 2, 1998, at D2.

32. *See id.*

33. *See id.* Rockdale County recently entered an agreement to privatize its sewer system. *See* Duane D. Stanford, *Rockdale Hires Contractor to Run Sewer Treatment*, ATLANTA J. & CONST., May 2, 1998, at D2. Under this agreement, the private contractor agreed to hire the County's 25 sewerage treatment employees. *See id.*

34. *See* Carlos Campos, *Competition Brings Efficiency, Says Advocate of Privatization*, ATLANTA J. & CONST., Mar. 27, 1998, at A18 [hereinafter Campos, *Competition*] (interview of Adrian T. Moore); Stanford, *supra* note 33. Rockdale County hired Operations Management International, Inc. to maintain and operate the County's sewer treatment system for five years. *See id.* The County estimates that it will save \$2,400,000 over five years by privatizing its sewer system. *See id.*

35. *See* Campos, *Competition, supra* note 34.

36. *See id.* As of the end of 1996, approximately 1000 systems were privatized, but the vast majority of these were very small systems, serving between 30,000 and 40,000 people. *See id.*

37. *See id.*

The privatization relationship can take two different structures.<sup>38</sup> Under one, the local government retains ownership over the system's assets and capital improvements.<sup>39</sup> In this situation, the private contractor operates and maintains the system.<sup>40</sup> Under the other form, the owner either sells or leases the system to the contractor.<sup>41</sup> In this instance, the rates typically are regulated by a state commission.<sup>42</sup> The length of the contract term also affects the performance of the contract.<sup>43</sup> A short-term contract is more competitive, whereas a long-term contract is necessary when the owner wants the contractor to invest capital in the system; this gives the contractor time to recover the investment.<sup>44</sup> Depending on the contractual relationship, the contractor may assume responsibility for paying any fines.<sup>45</sup>

### *HB 1163*

#### *Introduction*

As a result of continuing problems with waste-water treatment plants violating their National Pollutant Discharge Elimination System (NPDES) permits, some of the most influential Democratic leaders in Georgia introduced HB 1163 to the 1998 General Assembly.<sup>46</sup> HB 1163 was one of Governor Zell Miller's bills, and Governor Miller solicited the assistance of the Democratic leadership of the House to move the bill through the legislative process.<sup>47</sup>

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38. *See id.*

39. *See id.*

40. *See id.*

41. *See id.*

42. *See id.*

43. *See id.*

44. *See id.*

45. *See* Stanford, *supra* note 33. Under HB 1163, the system owners, *i.e.*, the local governments, remain liable for any fines imposed by EPD or EPA. *See* Rios, *supra* note 10.

46. *See* HB 1163, as introduced, 1998 Ga. Gen. Assem.

47. *See* Hanner Interview, *supra* note 5; Holmes Interview, *supra* note 1. HB 1163 was such a strong piece of legislation that it was the target of other ancillary legislation. *See* Hanner Interview, *supra* note 5; Holmes Interview, *supra* note 1. Thus, other legislators were seeking to attach weaker provisions to HB 1163. *See* Hanner Interview, *supra* note 5; Holmes Interview, *supra* note 1. For example, Rep. Bobby Franklin, of House District 39, sought to attach an anti-affirmative action provision to HB 1163. *See* Hanner Interview, *supra* note 5; Holmes Interview, *supra* note 1. However, the House Natural Resources Committee voted to reconsider HB 1163 and Rep. Franklin withdrew his proposed anti-affirmative action amendment. *See* Hanner Interview, *supra* note 5; Holmes Interview, *supra* note 1.

Representatives Larry Walker, Bob Hanner, Tom Murphy, Bill Lee, and Jack Connell introduced and sponsored HB 1163.<sup>48</sup> HB 1163 was an extremely popular piece of legislation,<sup>49</sup> and “[b]ig election years[, such as 1998,] tend to be good for the environment in Georgia.”<sup>50</sup> The 1998 General Assembly was the first session that legislators introduced a waste-water treatment bill, and the popularity of HB 1163 is what enabled it to pass.<sup>51</sup>

The House Natural Resources Committee initially considered HB 1163.<sup>52</sup> The Committee passed HB 1163 by a committee substitute.<sup>53</sup> Upon reaching the floor of the House, Representatives Jeff Brown of the 130th District, Carl Von Epps of the 131st District, Ratigan Smith of the 103rd District, Vance Smith, Jr. of the 102nd District, and Bob Snelling of the 99th District, proposed a floor amendment, which the House adopted.<sup>54</sup> Additionally, Representative Bob Holmes of the 53rd District proposed another floor amendment, which the House rejected.<sup>55</sup> The Senate Natural Resources Committee did not make any changes to HB 1163.<sup>56</sup> On March 13, 1998, the Senate proposed and adopted a floor amendment to the bill.<sup>57</sup> The House subsequently concurred with the Senate amendment and passed the bill on March 26, 1998.<sup>58</sup> The Governor signed the bill into law on April 20, 1998.<sup>59</sup>

The House Natural Resources Committee’s substitute bill made four changes to the original version.<sup>60</sup> First, the substitute added

48. See HB 1163, as introduced, 1998 Ga. Gen. Assem.

49. See Georgia House of Representatives Voting Record, HB 1163 (Mar. 19, 1998) (172-0); Georgia Senate Voting Record, HB 1163 (Mar. 13, 1998) (46-2). Two Atlanta Senators voted against HB 1163, Vincent Fort of Senate District No. 39 and Donzella James of Senate District No. 35. See *id.* Senator Fort voted against the bill because Atlanta was already in the process of privatizing its systems and because he believed that this was an “anti-Atlanta bill . . . designed to punish Atlanta.” Bynum, *supra* note 17. Initially, only municipalities were lobbying against HB 1163. See Word Interview, *supra* note 1. By the end of the General Assembly’s session, however, no one was lobbying against the bill. See *id.*

50. See *Legislature Moves*, *supra* note 5.

51. See Word Interview, *supra* note 1.

52. See HB 1163 (HCS), 1998 Ga. Gen. Assem.

53. See *id.*

54. See HB 1163 (HFA), 1998 Ga. Gen. Assem.

55. See HB 1163 (HCSFA), 1998 Ga. Gen. Assem.

56. See O.C.G.A. § 12-5-23.3 (Supp. 1998).

57. See HB 1163 (SFA), 1998 Ga. Gen. Assem.

58. See O.C.G.A. § 12-5-23.3 (Supp. 1998).

59. See 1998 Ga. Laws 1115, at 1119.

60. Compare HB 1163, as introduced, 1998 Ga. Gen. Assem., with HB 1163 (HCS), 1998 Ga. Gen. Assem.

thresholds established by a court order to the other thresholds that trigger operation of the bill.<sup>61</sup> The House Committee changed this provision to address the unique situation in Augusta, Georgia, where the city is subject to limits imposed by a federal court order instead of limits imposed by a NPDES or Land Application System (LAS) permit.<sup>62</sup> Second, the substitute defined “major facility bypass” and limited this definition to include only bypasses that were authorized or necessary.<sup>63</sup> The House Committee limited this definition because these bypasses were not the ones that had been causing the problem; it was the ongoing problems of poor management that were the reason for the bill.<sup>64</sup> Third, the House Committee changed the provisions of the bill that established the term length of privatization contracts from a minimum contract period of ten years to a term length of at least ten years with an upper limit of fifty years.<sup>65</sup> The House Committee made this change to make the bill more consistent with other laws addressing the ability of governments to contract with private entities.<sup>66</sup> Fourth, the House Committee added a provision to address the situation when a municipality and a private contractor reach an impasse.<sup>67</sup> The House Committee included this provision to prevent a private contractor from obtaining an advantageous position during negotiations in the event that the municipality was facing an impending deadline.<sup>68</sup>

Representatives Jeff Brown, Carl Von Epps, Bob Snelling, Ratigan Smith, and Vance Smith, Jr. proposed a floor amendment that made two substantive changes to the bill.<sup>69</sup> First, the floor amendment established an oversight committee.<sup>70</sup> The legislators intended that this committee would oversee, and thus increase the credibility of, the privatization process.<sup>71</sup> Second, the floor amendment provided that copies of all correspondence between the municipality and the

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61. See HB 1163 (HCS), 1998 Ga. Gen. Assem.

62. See Word Interview, *supra* note 1.

63. See HB 1163 (HCS), 1998 Ga. Gen. Assem.

64. See Word Interview, *supra* note 1. For explanation of “major facility bypass,” see text accompanying *infra* notes 85-88.

65. See HB 1163 (HCS), 1998 Ga. Gen. Assem.

66. See Word Interview, *supra* note 1.

67. See HB 1163 (HCS), 1998 Ga. Gen. Assem.

68. See Word Interview, *supra* note 1.

69. See HB 1163 (HFA), 1998 Ga. Gen. Assem.

70. See *id.*

71. See Holmes Interview, *supra* note 1.

contractor shall be given to the oversight committee.<sup>72</sup> The legislators made this change to increase the credibility of the oversight process.<sup>73</sup> The floor amendment passed the House on March 13, 1998.<sup>74</sup>

Representative Bob Holmes proposed an amendment to change the lower limit of processed waste-water from twenty million gallons per day (MGD) to five MGD.<sup>75</sup> While some legislators stated that this amendment was merely a move to make more of the owners comply with a law that would protect human health and the environment, others stated that this was a purely political tactic to impose requirements on the small city constituencies of many Representatives who would, then, theoretically vote against the bill because more of their constituents would be regulated.<sup>76</sup> This floor amendment did not pass.<sup>77</sup>

### *Definitions*

The General Assembly limited the facilities to which the Act applies by basing compliance requirements on facility-specific, daily waste water flow volumes.<sup>78</sup> The Act defines “waste-water treatment facilit[y]” as any “publicly owned facilit[y] with average monthly flow limits of 20 million gallons per day or more that ha[s] been issued NPDES permits or LAS permits.”<sup>79</sup> The definition of “waste-water treatment” facility applies to the entire Act.<sup>80</sup>

Representative Bob Holmes introduced an amendment to change the definition of waste-water treatment facility by lowering the limit from twenty MGD to five MGD.<sup>81</sup> Representative Holmes believed that the twenty MGD limit was arbitrary.<sup>82</sup> When introducing the proposed

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72. See HB 1163 (HFA), 1998 Ga. Gen. Assem.

73. See Holmes Interview, *supra* note 1.

74. See State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

75. See HB 1163 (Holmes-HFA), 1998 Ga. Gen. Assem.

76. See Holmes Interview *supra* note 1; Word Interview, *supra* note 1.

77. See State of Georgia Final Composite Status Sheet, Mar. 19, 1998. The floor amendment failed by a vote of 142-25. See Georgia House of Representatives Voting Record, HB 1163 (Mar. 19, 1998).

78. See O.C.G.A. § 12-5-23.3(a)(3) (Supp. 1998).

79. *Id.*

80. See *id.*

81. See HB 1163 (Holmes-HFA), 1998 Ga. Gen. Assem.; Holmes Interview, *supra* note 1.

82. See Holmes Interview, *supra* note 1. According to EPD Director Harold Reheis' testimony on the House floor on February 9, 1998, a limit of five MGD would cause HB 1163 to capture an additional 20 cities. See Helton, *Bill*, *supra* note 6. The *Atlanta*

amendment, Representative Holmes reasoned that if this legislation was such a great idea it should regulate even more waste-water treatment systems.<sup>83</sup> Representative Holmes' proposed amendment did not pass.<sup>84</sup>

Under the Act, a major facility bypass is any diversion of waste-water from, or bypassing of waste water around, the treatment facility.<sup>85</sup> The definition of major facility bypass does not include sewer system overflows.<sup>86</sup> Additionally, the definition of major facility bypass does not include any bypass that is authorized by any NPDES or LAS permit or any bypass that is necessary to prevent loss of life, bodily injury, or severe property damage.<sup>87</sup> The definition of major facility bypass applies only to subsection (b)(3) of Code section 15-5-23.3.<sup>88</sup>

### *Events that Trigger the Privatization Process*

The first step in the privatization process is the owner's receipt of notification from the Director of EDP (Director).<sup>89</sup> The Director shall notify the owner of a waste-water treatment facility that is regulated by the Act if that facility violates its NPDES permit, its LAS permit,

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*Journal & Constitution* quoted Rep. Holmes asking rhetorically, "Don't you want the maximum number of people to be protected?" *Id.* Representative Holmes wanted to lower the limit to protect even more citizens, whereas Rep. Hanner wanted to keep the limit at 20 MGD, because the scope of this limit was well defined. *See* House Proceedings, *supra* note 15. Many Representatives thought that Holmes' proposed amendment was a defensive maneuver and an attempt to thwart HB 1163. *See* Hanner Interview, *supra* note 5; Word Interview, *supra* note 1. Several legislators had the impression that Holmes was trying to lower the limit that defined a waste-water treatment facility so far that Representatives of smaller towns would band together and vote against the bill. *See* Hanner Interview, *supra* note 5; Word Interview, *supra* note 1. Other House members said that the large sewer systems are the biggest polluters, and these are the ones that the Act targets. *See* Helton, *Bill*, *supra* note 17. Representative Hanner said "the bill targets only the largest sewer systems because 'they use the most water and ha[ve] the potential for causing the biggest problems for human health.'" Joan Kirchner, *House OKs Forced Privatization for Some Sewer Systems*, MACON TELEGRAPH, Feb. 10, 1998, at B1. Harold Reheis, Director of EPD, said that "larger systems were targeted as a way of 'setting the example for everybody else.'" *Id.*

83. *See* Holmes Interview, *supra* note 1; Word Interview, *supra* note 1.

84. *Compare* HB 1163 (Holmes-HFA), 1998 Ga. Gen. Assem., with O.C.G.A. § 12-5-23.3 (Supp. 1998).

85. *See* O.C.G.A. § 12-5-23.3(b)(3) (Supp. 1998)

86. *See id.*

87. *See id.*

88. *See id.*

89. *See id.* § 12-5-23.3(b).

or any interim condition established by a federal court order.<sup>90</sup> Three different patterns of operation can trigger this first step of the privatization process.<sup>91</sup> The first pattern is one of continuing violation.<sup>92</sup> Specifically, a continued violation of the facility's monthly effluent limitation as specified in the facility's NPDES permit or in the conditions of a federal court order can trigger the privatization process.<sup>93</sup> The Act considers effluent limits of biological oxygen demand, total suspended solids, ammonia, and phosphorus that have been established by permit or court order.<sup>94</sup> A continuing violation pattern of operation triggers the privatization process if the facility exceeds the effluent limitation for any eight months during any continuous twelve month period, starting on or after January 1, 1999.<sup>95</sup>

The second pattern is that of a less frequent, but more egregious, violation of the monthly effluent limitation as specified in the facility's NPDES permit or in the conditions of a federal court order.<sup>96</sup> Here too, the Act considers effluent limits of biological oxygen demand, total suspended solids, ammonia, and phosphorus that have been established by permit or court order.<sup>97</sup> However, under this second pattern, privatization is triggered if the monthly effluent level exceeds the effluent limitations by a factor of 1.4 or greater for any four months during any continuous twelve-month period, starting on or after January 1, 1999.<sup>98</sup>

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90. *See id.* § 12-5-23.3(b)(1). The House Natural Resources Committee introduced language to address violations of federal court orders in situations, such as Augusta's, in which a municipality is operating under a federal court order instead of a NPDES permit. *See id.*

91. *See id.* § 12-5-23.3(b).

92. *See id.* § 12-5-23.3(b)(1).

93. *See id.* The House Natural Resources Committee added language to include conditions of a federal court order. *See* Word Interview, *supra* note 1. The Committee added this provision because Augusta had been operating under a federal court order instead of a NPDES permit. *See id.* Thus, Augusta was complying with a federal court order, but it was not complying with a NPDES permit requirement. *See id.* This provision was modified to prevent compliance with a federal court order from triggering the privatization process. *See id.*

94. *See* O.C.G.A. § 12-5-23.3(b)(1) (Supp. 1998).

95. *See id.* For example, Code section 12-5-23.3(b)(1) would force an owner whose effluent average exceeds permit limits in January, February, March, April, September, October, November, and December to privatize. *See* Hanner Interview, *supra* note 5; Holmes Interview, *supra* note 1; Word Interview, *supra* note 1.

96. *See* O.C.G.A. § 12-5-23.3(b)(2) (Supp. 1998).

97. *See id.*

98. *See id.* For example, Code section 12-5-23.3(b)(2) would force an owner who violates the limits of the Act in January, March, October, and December to privatize. *See*

The third pattern occurs even less frequently and is even more egregious than the second pattern.<sup>99</sup> This third event occurs when a facility experiences three major treatment facility bypasses during any continuous twelve-month period, starting on or after January 1, 1999.<sup>100</sup> A major facility bypass is any diversion of waste-water from or bypassing of waste-water around the treatment facility.<sup>101</sup> A major facility bypass does not include sewer system overflows.<sup>102</sup> Additionally, the definition of major facility bypass does not include any bypass that is authorized by any NPDES or LAS permit or any bypass that is necessary to prevent loss of life, bodily injury, or severe property damage.<sup>103</sup>

*The Privatization Process: Schedule, Milestones, Contract Standards, and the Oversight Committee*

As previously discussed, the first step of the privatization process occurs when the Director sends written notice to the owner of a waste-water treatment facility notifying it of a violation as prescribed by the Act.<sup>104</sup> Ultimately, the owner must enter into a binding contract with a private contractor for the operation and maintenance of the waste-water facility within twelve months of receiving written notification from the Director.<sup>105</sup> Within those twelve months, the owner shall meet a schedule and achieve certain milestones.<sup>106</sup>

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Hanner Interview, *supra* note 5; Holmes Interview, *supra* note 1; Word Interview, *supra* note 1.

99. Compare O.C.G.A. §12-5-23.3(b)(3) (Supp. 1998), with *id.* § 12.5.23.3(b)(2); see Word Interview, *supra* note 1.

100. See O.C.G.A. § 12-5-23.3(b)(3) (Supp. 1998); see also Word Interview, *supra* note 1.

101. See O.C.G.A. § 12-5-23.3(b)(3) (Supp. 1998); see also Word Interview, *supra* note 1.

102. See O.C.G.A. § 12-5-23.3(b)(3) (Supp. 1998); see also Word Interview, *supra* note 1.

103. See O.C.G.A. § 12-5-23.3(b)(3) (Supp. 1998); see also Word Interview, *supra* note 1. The House Natural Resources Committee added this language to define "major treatment facility bypass" and to except bypasses that are authorized by a NPDES permit or a LAS permit, or that are necessary to prevent loss of life, bodily injury, or severe property damage. Word Interview, *supra* note 1. The reason for this amendment is that waste-water treatment plants are protected by dikes. See *id.* "If the plant discharges through its system [when the river is at a flood stage], the river will back up [into] the discharge pipe and damage the system." *Id.* "A flood of this proportion happens approximately" once every two to three years. *Id.* "This is different from the problems that occur [when heavy rains flood] the combined sanitary and storm sewers, [delivering] too much water to the plant in a short [time] period." *Id.*

104. See O.C.G.A. § 12-5-23.3(b) (Supp. 1998).

105. See *id.* § 12-5-23.3(c).

106. See *id.*

Under the Act, the owner must select a contractor through a competitive bidding process.<sup>107</sup> The Act sets forth two requirements concerning the bidding process.<sup>108</sup> The first requirement has two alternatives:<sup>109</sup> (1) the owner conducts the bidding process in accordance with the public procurement processes and the procedures in effect for a public owner;<sup>110</sup> or (2) at the owner's option, the owner may select the contractor through competitive bidding by the Department of Administrative Services (DOAS) in accordance with Code sections 50-5-100 to -103.<sup>111</sup> The second requirement of the bidding process is that the owner must adhere to any specifications set forth by the State Waste-Water Privatization Oversight Committee upon its review of the privatization plan and other submittals from the owner.<sup>112</sup>

Overall, the scope of the privatization contract shall include the operation and maintenance of the entire facility and sewer collection system.<sup>113</sup> The House Natural Resources Committee amended this provision by expanding its scope to include combined sewer overflow treatment facilities.<sup>114</sup>

The Act provides that the contract must last for at least ten years and no more than fifty years.<sup>115</sup> Initially, HB 1163 set a minimum term of ten years.<sup>116</sup> However, the House Natural Resources Committee amended the length-of-term provision, limiting it to fifty years.<sup>117</sup> The reason for this limitation was the discovery of other statutory provisions that limited contracts to fifty years; thus, consistency dictated that this Act also should limit the duration of a privatization contract to fifty years.<sup>118</sup>

The Act also creates the State Waste-Water Privatization Oversight Committee (the Oversight Committee).<sup>119</sup> The Act expressly provides

107. *See id.* § 12-5-23.3(c)(1).

108. *See id.*

109. *See id.*

110. *See id.*

111. *See id.*

112. *See id.* § 12-5-23.3(c)(1)(B).

113. *See id.* § 12-5-23.3(c)(1)(B)(2).

114. *See id.* Representative Kathy Ashe introduced this provision to ensure that if Atlanta was forced to privatize, the scope of the contract would include the combined sewer system. *See Word Interview, supra* note 1.

115. *See O.C.G.A.* § 12-5-23.3(c)(1)(B)(3) (Supp. 1998).

116. *See* HB 1163, as introduced, 1998 Ga. Gen. Assem.

117. *See* HB 1163 (HCS), 1998 Ga. Gen. Assem.

118. *See Word Interview, supra* note 1.

119. *See O.C.G.A.* § 12-5-23.3(d) (Supp. 1998).

that the following personnel comprise the Oversight Committee: the Commissioner of the DNR; the Commissioner of the DOAS; and one appointee each by the Governor, Lieutenant Governor, and Speaker of the House.<sup>120</sup> The Act also provides that the Oversight Committee shall adopt procedures to accomplish the objectives of the Act.<sup>121</sup> Additionally, the Act provides that the Oversight Committee may use the personnel of the DNR and the DOAS to conduct the procedures and to accomplish the goals of the Act.<sup>122</sup>

The Act also outlines four milestones that the municipality must achieve during the privatization process.<sup>123</sup> First, the owner shall submit a privatization plan to the Oversight Committee within three months of the owner's receipt of the Director's written notification.<sup>124</sup> Upon receipt of the owner's privatization plan, the Oversight Committee shall review the plan and take one of two courses of action:<sup>125</sup> (1) the Oversight Committee may concur with the plan; or (2) it may provide comments to the owner.<sup>126</sup> If the Oversight Committee provides comments to the owner, the owner must modify the plan accordingly and meet the milestone time frame established by the Oversight Committee to achieve an acceptable plan.<sup>127</sup>

Second, the owner shall submit a proposed contract with related bid documents to the Oversight Committee within six months of the owner's receipt of the Director's written notification.<sup>128</sup> Once again, the Oversight Committee may either concur with the plan or provide comments to the owner.<sup>129</sup> Here too, the owner must modify the proposed contract and related bid documents in accordance with the Oversight Committee's comments.<sup>130</sup> When this milestone is achieved, the owner may begin the competitive bid process.<sup>131</sup> The owner must receive the Oversight Committee's approval before beginning the competitive bid process.<sup>132</sup>

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120. *See id.*

121. *See id.*

122. *See id.*

123. *See id.*

124. *See id.* § 12-5-23.3(d)(1).

125. *See id.*

126. *See id.*

127. *See id.*

128. *See id.* § 12-5-23.3(d)(2).

129. *See id.*

130. *See id.*

131. *See id.* § 12-5-23.3(d)(2)-(3).

132. *See id.* § 12-5-23.3(d)(2).

Third, the owner shall begin the competitive bid process within nine months of the owner's receipt of the Director's written notification.<sup>133</sup> To reach this milestone, the owner shall provide to the Oversight Committee written notification of the issuance of bid documents to prospective contractors and of the commencement of the competitive bidding process.<sup>134</sup> As a separate requirement of the bidding process, and between the third and fourth milestones, the Act requires the owner to submit copies of all proposals it has received in response to the bid documents, copies of draft contracts and other related correspondence between the owner and any prospective contractor, and copies of any other documents that the Oversight Committee deems necessary or advisable to review.<sup>135</sup>

Finally, the owner shall submit a copy of the fully executed contract to the Oversight Committee within twelve months of the owner's receipt of the Director's written notification.<sup>136</sup>

The Act provides that in the event of an impasse in negotiations between the owner and the contractor concerning one or more terms of the proposed contract, the Oversight Committee is authorized to mediate that impasse if the parties so agree.<sup>137</sup> Additionally, in the event of an impasse, the Oversight Committee shall extend the deadline for submitting a fully executed contract for a reasonable period provided that the owner meets two conditions.<sup>138</sup> First, the owner must continue negotiating with the contractor in good faith.<sup>139</sup> Second, the owner must apply for a time extension at least thirty days

133. *See id.* § 12-5-23.3(d)(3).

134. *See id.*

135. *See id.* § 12-5-23.3(d)(4). Representatives Jeff Brown of House District No. 130, Carl Von Epps of House District No. 131, Ratigan Smith of House District No. 103, Vance Smith, Jr. of House District No. 102, and Bob Snelling of House District No. 99, all of whom represent districts that are on the Chattahoochee River downstream from Atlanta, added this provision as a floor amendment. *See* HB 1163 (HFA), 1998 Ga. Gen. Assem. This amendment was just another way to keep the bidding process in the public view and require full disclosure. *See* Holmes Interview, *supra* note 1. Before this amendment, correspondence between the owner and the contractor could be done outside of the Oversight Committee's scrutiny. *See* Snelling Interview, *supra* note 5. This amendment was introduced to bring this step within the purview of the Oversight Committee. *See id.*

136. *See* O.C.G.A. § 12-5-23.3(d)(5) (Supp. 1998).

137. *See id.* The City of Atlanta requested this provision because an owner progressing through negotiations with the deadline nearing should not be placed at a disadvantage. *See* Word Interview, *supra* note 1. This would amount to coercion against an owner. *See id.*

138. *See* O.C.G.A. § 12-5-23.3(d)(5) (Supp. 1998).

139. *See id.*

before the expiration of the time period in which he or she must submit a fully executed contract to the Oversight Committee.<sup>140</sup>

In addition to the impasse provisions, the Act contains another paragraph that authorizes the Oversight Committee to grant a time extension.<sup>141</sup> If the Oversight Committee determines that the owner's failure to meet a particular milestone was beyond the control of the owner, it has the discretion to extend the time for meeting that milestone by 180 days.<sup>142</sup> Additionally, the Oversight Committee may waive any penalty that accrues as a result of the owner's failure to meet that milestone.<sup>143</sup> The Act provides that if the milestone is not met within the extended time period, penalties will be imposed in the amounts designated for each milestone (*i.e.*, \$50,000 per day for failure to meet milestones one, two, or three, and \$100,000 per day for failure to meet milestone four).<sup>144</sup>

In maintaining the role of the Oversight Committee, the Act mandates that the Oversight Committee shall establish criteria for evaluating the eligibility of contractors bidding on the privatization contract.<sup>145</sup> The Act specifically enumerates three criteria: a review of the contractors' previous performance on comparable projects; the "environmental compliance record of such contractors[;] and any civil or criminal penalties incurred by such contractors during the five years immediately preceding the execution of the contract."<sup>146</sup> While under oath, each contractor has an obligation to submit this information to the Oversight Committee.<sup>147</sup>

140. *See id.*

141. *See id.* § 12-5-23.3(f). There appears to be no clear distinction between this provision and the impasse provision in Code section 12-5-23.3(d)(5), both of which authorize an extension. *See* Holmes Interview, *supra* note 1; Word Interview, *supra* note 1.

142. *See* O.C.G.A. § 12-5-23.3(f) (Supp. 1998).

143. *See id.*

144. *See id.*; *see also* text accompanying *infra* notes 148-55.

145. *See* O.C.G.A. § 12-5-23.3(g) (Supp. 1998). According to Sen. Mike Egan of Senate District No. 40, the bidding process is a perceived problem with the privatization process, and the Oversight Committee is a way to address this issue. *See* Egan Interview, *supra* note 1. The Oversight Committee would provide some guidance and "prevent a single person from making this decision." *Id.*; *see* Tom Baxter, *Water Issues Now a Flood for Legislators*, ATLANTA J. & CONST., Feb. 24, 1998, at C4. Senator Nadine Thomas of Senate District No. 10 also voiced concern over the oversight of the privatized system. *See id.*; *Key Legislators Foresee No Changes to Service Delivery, Annexation Laws*, GA. MUN. ASS'N NEWSLETTER, Jan. 12, 1998, at 1.

146. O.C.G.A. § 12-5-23.3(g) (Supp. 1998).

147. *See id.*

*Penalties*

The Act contains two different penalty provisions, both of which penalize an owner for failing to meet the requisite milestones.<sup>148</sup> The first penalty provision penalizes an owner \$50,000 per day for failing to meet the first, second, and third milestones.<sup>149</sup> Thus, if the owner does not submit a privatization plan within three months, does not submit proposed contract and bid documents within six months, or does not submit written notification of issuance of bid documents to prospective contractors and fails to commence the competitive bidding process within nine months, then the owner must pay EPD \$50,000 per day until that milestone is met.<sup>150</sup> The Act also provides for a separate penalty to be assessed for each milestone that is not met.<sup>151</sup> Thus, if the owner missed, and continues to miss, the first, second, and third milestones, it must pay a civil penalty of \$150,000 per day until it meets those milestones.<sup>152</sup>

The second penalty provision imposes a \$100,000 fine for each day that the owner fails to meet the final milestone (*i.e.*, submitting a fully executed contract to the Oversight Committee within twelve months

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148. *See id.* § 12-5-23.3(e). The House amended Code section 12-5-23.3(e) in what appeared to be a minor housekeeping amendment. *See* HB 1163 (HFA), 1998 Ga. Gen. Assem. Initially, HB 1163 was introduced containing only four milestones. *See* HB 1163, as introduced, 1998 Ga. Gen. Assem. In its initial form, Code section 12-5-23.3(e)(1) contained the penalty provisions for Code section 12-5-23.3(d)(1)-(3), and Code section 12-5-23.3(e)(2) contained the penalty provisions for Code section 12-5-23.3(d)(4). *See id.* After HB 1163 left committee, Reps. Brown, Snelling, Epps, Ratigan Smith, and Vance Smith, Jr., introduced a floor amendment adding another requirement to the milestone provisions. *See* HB 1163 (HFA), 1998 Ga. Gen. Assem. This floor amendment added new Code section 12-5-23.3(d)(4) and relocated the original Code section 12-5-23.3(d)(4) language to Code section 12-5-23.3(d)(5). *See id.* Subsequently, the Senate amended Code section 12-5-23.3(e)(2), with the House concurring, to apply the \$100,000 penalty provision to Code section 12-5-23.3(d)(5). *See* HB 1163 (SFA1), 1998 Ga. Gen. Assem. However, the Senate did not amend Code section 12-5-23.3(e)(2) to include Code section 12-5-23.3(d)(4). *See* HB 1163, as passed, 1998 Ga. Gen. Assem. No one interviewed could confirm whether this was intentional or accidental. Regardless, the Act does not contain a penalty for failing to comply with Code section § 12-5-23.3(d)(4), which requires “[c]opies of all proposals received in response to the bid documents, and copies of draft contracts and correspondence related thereto exchanged between the owner and any prospective contractor” to be submitted to the Oversight Committee. O.C.G.A. § 12-5-23.3(d)(4) (Supp. 1998); *see* Hanner Interview, *supra* note 5; Snelling Interview, *supra* note 5.

149. *See* O.C.G.A. § 12-5-23.3(e)(1) (Supp. 1998).

150. *See id.*

151. *See id.*

152. *See id.*

of receipt of written notification from the Director).<sup>153</sup> The House Natural Resources Committee amended this provision to include an exception to the penalty if the Oversight Committee grants a time extension in the event of an impasse.<sup>154</sup> By combining the first and second penalty provisions, it is possible for an owner to accrue \$250,000 in civil penalties per day in the event that it has missed, and continues to miss, all the milestones.<sup>155</sup>

*A. Josef DeLisle*

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153. *See id.* § 12-5-23.3(e)(2).

154. *See id.*

155. *See id.* § 12-5-23.3(e).