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## CONSERVATION AND NATURAL RESOURCES Hazardous Waste Management: Provide for Direct State Government Operation and Management of Hazardous Waste Facilities

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## CONSERVATION AND NATURAL RESOURCES

### *Hazardous Waste Management: Provide for Direct State Government Operation and Management of Hazardous Waste Facilities*

**CODE SECTIONS:** O.C.G.A. §§ 12-8-101(3) (amended), 12-8-103.1 (new), 12-8-103.2 (new), 12-8-112.1 (new), 12-8-112.2 (new)

**BILL NUMBER:** SB 597

**ACT NUMBER:** 1463

**SUMMARY:** The Act amends the Georgia Hazardous Waste Management Authority Act by including within the definition of "project" the renovation of an existing waste treatment or disposal facility that provides for the treatment, storage, or disposal of any solid waste requiring special handling. The Act also adds a new provision which would permit the Department of Industry and Trade to plan, own, and operate a hazardous waste facility and to charge a fee for the use of such state facility. Additionally, the Act provides partial immunity from liability to members, officers, and employees of the Georgia Hazardous Waste Management Authority.

**EFFECTIVE DATE:** July 1, 1988

#### *History*

The Georgia Hazardous Waste Management Act<sup>1</sup> was enacted in 1979 in an effort "to institute and maintain a comprehensive state-wide program for the management of hazardous wastes through the regulation of the generation, storage, treatment, and disposal of hazardous wastes."<sup>2</sup> The 1979 Act named the Environmental Protection Division (EPD) of the Department of Natural Resources (DNR) to administer the Act.<sup>3</sup> The 1979 Act, as amended in 1985, also delegated power to the Board of Natu-

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1. O.C.G.A. §§ 12-8-60 to -82 (1988).
  2. O.C.G.A. § 12-8-61 (1988).
  3. O.C.G.A. §§ 12-8-62(2), (4), 12-8-63 (1988).

ral Resources to adopt and promulgate rules and regulations.<sup>4</sup> Further, the construction, installation, operation, or alteration of hazardous waste facilities without the permission of the director of the EPD was prohibited.<sup>5</sup>

In 1981, the Georgia Legislature enacted the Georgia Hazardous Waste Management Authority Act<sup>6</sup> which created the Georgia Hazardous Waste Management Authority (HWMA). The HWMA was to be "an instrumentality of the State of Georgia and a public corporation."<sup>7</sup> The Legislature granted HWMA broad and comprehensive authority.<sup>8</sup>

### SB 597

The original Georgia Hazardous Waste Management Authority Act defined "project" as the "design, construction, operation, or management" of a hazardous waste facility.<sup>9</sup> SB 597 broadened that definition by amending it to include "creating the capacity or increasing the capacity of an existing facility so as to provide for the treatment, storage, or disposal of any solid waste which requires or is appropriate for special handling."<sup>10</sup> This revised definition expands the scope of a "project" under the auspices of the HWMA to include, not only the planning and design of an

4. O.C.G.A. § 12-8-64(1) (1988), amended by 1985 Ga. Laws 266.

5. O.C.G.A. § 12-8-66 (1988).

6. O.C.G.A. §§ 12-8-100 to -113 (1988).

7. O.C.G.A. § 12-8-102 (1988).

8. The HWMA has authority to (1) "plan, construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage" a hazardous waste facility, O.C.G.A. § 12-8-103(6) (1988); (2) contract or lease with any person or any agency for the "operation, management, and maintenance of" a hazardous waste facility, O.C.G.A. § 12-8-103(5) (1988); and (3) "serve as the sole and exclusive agent [for any state agency which is authorized] in its own right to plan, construct, erect, acquire, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage" a hazardous waste facility, O.C.G.A. § 12-8-103(11) (1988). The HWMA may also purchase property, O.C.G.A. § 12-8-103(3) (1988); acquire property by condemnation, *id.*; accept federal loans or grants, O.C.G.A. § 12-8-103(7) (1988); borrow money, O.C.G.A. § 12-8-103(8) (1988); apply for necessary permits, O.C.G.A. § 12-8-103(12) (1988); and do "all things necessary or convenient to carry out" its powers, O.C.G.A. § 12-8-103(14) (1988). The HWMA also has the power to "prescribe rules and regulations for the operation" of a hazardous waste facility constructed under the Act, O.C.G.A. § 12-8-109 (1988).

"Hazardous waste facility" is defined as "any property or facility that is intended or used for storage, treatment, or disposal of hazardous waste." O.C.G.A. § 12-8-62(8) (1988).

9. 1981 Ga. Laws 462.

10. O.C.G.A. § 12-8-101(3) (1988). According to the bill's sponsor, Senator Roy Barnes, the bill was an "administration bill," meaning it was presented at the request of the Governor's office. Re-defining "project" in the manner described in the bill gives the HWMA more flexibility in issuing revenue bonds to finance a new or renovated "project." Telephone interview with Senator Roy Barnes, Senate District No. 33 (Apr. 24, 1988) [hereinafter Barnes Interview].

altogether new facility, but also the renovation or conversion of an existing disposal facility.<sup>11</sup> Although the Code already gave the HWMA the authority to “remodel, . . . add to, extend, [and] improve”<sup>12</sup> a hazardous waste facility, the definition of “project” did not include those provisions.<sup>13</sup>

The new definition of “project” also expands the scope of the HWMA Act to include waste that might not meet the technical definition of “hazardous waste.”<sup>14</sup> These changes give the HWMA the ability to deal with any solid waste which “requires or is appropriate for special handling,” not just “hazardous waste.”<sup>15</sup> SB 597, as introduced, added a section which gave the DNR the authority to “plan, construct, acquire, repair, remodel, maintain, add to, extend, improve, equip, operate, manage, and own a project.”<sup>16</sup> Some environmental groups viewed this provision as presenting a potential conflict of interest inasmuch as DNR is charged with oversight of the Georgia Hazardous Waste Management Act.<sup>17</sup> A substitute bill was introduced which granted the authority to plan, construct, and manage a project to the Department of Industry and Trade rather than to DNR.<sup>18</sup> The substitute version assigned the regulatory authority to the Office of Planning and Budget for administrative purposes<sup>19</sup> rather than to the DNR as originally proposed.<sup>20</sup> The Georgia Conservancy lauded these revisions, which remained in the final version of the bill.<sup>21</sup>

Another provision of SB 597 granted complete immunity to the members, officers, and employees of the HWMA from any liability resulting from the “design, construction, ownership, maintenance, operation, or management of a project” or resulting from “[c]arrying out any of the powers or duties expressly provided for in this article.”<sup>22</sup> This broad grant

11. O.C.G.A. § 12-8-101(3) (1988).

12. O.C.G.A. § 12-8-103(6) (1988).

13. O.C.G.A. § 12-8-101(3) (1988).

14. O.C.G.A. § 12-8-62(7) (1988). The definition of hazardous waste was modified by HB 1563 to include “designated hazardous waste.” See O.C.G.A. § 12-8-62(1.1) (1988).

15. According to the Georgia Conservancy, “Georgia industries generate more than 37 million tons of [hazardous waste] annually . . . [and] more than 100,000 tons must be specially handled.” Kerr, *Hazardous Waste Facility Site Selection Mismanaged*, 17 GEORGIA CONSERVANCY PANORAMA 1, (Mar.—Apr. 1988) (copy on file at Georgia State University Law Review office).

16. SB 597, as introduced, 1988 Ga. Gen. Assem. This provision would give the HWMA the authority to act as the agent of a state agency to “plan, construct, erect, acquire, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage” a hazardous waste facility. O.C.G.A. § 12-8-103(11) (1988).

17. Kerr, *supra* note 15, at 4.

18. SB 597 (HFS), 1988 Ga. Gen. Assem. The bill was introduced by Representative Terry L. Coleman, House District No. 118.

19. *Id.*

20. SB 597, as introduced, 1988 Ga. Gen. Assem.

21. Kerr, *supra* note 15, at 4.

22. SB 597, as introduced, 1988 Ga. Gen. Assem.

of immunity was weakened by an amendment to the House substitute.<sup>23</sup> The amendment provided for immunity "[e]xcept for gross negligence or willful or wanton misconduct."<sup>24</sup> The amendment also changed the provision granting immunity from "any of the powers or duties" to include only the "discretionary" powers or duties provided for in the article.<sup>25</sup>

The final provision of SB 597 is a broad policy statement encouraging "generators of hazardous waste to minimize to the greatest extent possible the amount of hazardous waste which requires treatment, storage, or disposal through reuse, recycling, source substitution, treatment, and other methods."<sup>26</sup> The Act authorizes the HWMA to charge a fee for the use of its facilities and services to further this policy.<sup>27</sup>

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23. SB 597 (HFSFA), 1988 Ga. Gen. Assem. Legislation granting immunity to certain officials is generally meant to be restrictive. Barnes Interview, *supra* note 10.

24. SB 597 (HFSFA), 1988 Ga. Gen. Assem.

25. *Id.* Under current law, to the extent that such officers and employees are covered by liability insurance, their immunity will be waived if the court considers this immunity to be merely the equivalent of the common law concept of "official immunity." See *Martin v. Dept. of Pub. Safety*, 257 Ga. 300, 357 S.E.2d 569 (1987).

26. SB 597 (AP), 1988 Ga. Gen. Assem.

27. *Id.* According to the Georgia Conservancy, Alabama, South Carolina, and other recipients of Georgia wastes are now regulating price and volume in an effort to reduce the influx of out-of-state wastes. Kerr, *supra* note 15, at 1.