



*The State Senate*

*Senate Research Office*

*204 Paul D. Coverdell Legislative Office Building  
18 Capitol Square  
Atlanta, Georgia 30334*

*Telephone  
404/656-0015*

*Fax  
404/657-0929*

**FINAL REPORT OF THE  
SENATE ENVIRONMENTAL PRIVATIZATION  
STUDY COMMITTEE**

**COMMITTEE MEMBERS**

Honorable Casey Cagle, Chairman  
Senator, 49<sup>th</sup> District

Honorable Ronnie Chance  
Senator, 16<sup>th</sup> District

Honorable Jack Hill  
Senator, 4<sup>th</sup> District

Honorable David Shafer  
Senator, 48<sup>th</sup> District

Honorable Jim Whitehead, Sr.  
Senator, 24<sup>th</sup> District

**Prepared by the Senate Research Office  
2005**

**TABLE OF CONTENTS**

**EXECUTIVE SUMMARY** ..... 3

**INTRODUCTION**..... 4

**BACKGROUND** ..... 4

**TESTIMONY** ..... 5

    Hazardous Site Response Program..... 5

    Brownfields Program..... 6

    Florida’s Brownfields Program ..... 6

**COMMITTEE FINDINGS** ..... 7

    Conclusions ..... 7

    Committee Recommendations..... 7

## EXECUTIVE SUMMARY

The Senate Environmental Privatization Study Committee (Committee) was created by Senate Resolution 469 during the 2005 Legislative Session of the Georgia General Assembly. In summary, the Committee was charged with determining if involvement of the private sector in the management and delivery of some environmental protection programs, services, and activities might increase the efficiency and cost effectiveness of such programs; and, if such involvement would be beneficial and cost effective, to determine what amendments to state law may be needed to encourage/require privatization of some of the functions of the State Department of Natural Resources (DNR) and its Environmental Protection Division (EPD).

The Committee heard testimony from EPD Director, Dr. Carol Couch, and the Branch Chiefs for EPD's Hazardous Waste and Brownfields Programs.

EPD is required, under the Georgia Hazardous Sites Response Act, to (i) identify sites where there has been a release of a hazardous substance or substances; (ii) assess the nature and extent of such contamination and the requirements in the corrective action plan ("CAP") to protect human health and safety; (iii) compile a listing of such sites into a Hazardous Sites Inventory ("HSI"); (iv) compel and oversee private party cleanups at sites where potentially responsible parties ("PRPs") can be found; and, where no PRP's can be found, to (v) use money from the State's Hazardous Waste Trust Fund (Trust Fund) to hire private contractors to clean up such "Orphan Sites."

To address issues with sites that are not as contaminated as to require listing on the HSI, but that are still "environmentally suspect," both the state and federal governments have adopted "Brownfields Programs." Brownfields are generally defined as real property, the expansion, development, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant and the strict liability for cleanup that attaches to owners of contaminated property. Brownfields Programs are administered under the Georgia Hazardous Sites Reuse and Redevelopment Act and the Federal Small Business Liability Relief and Brownfields Revitalization Act (respectively titled, the State and Federal Brownfields Laws).

The Committee heard testimony regarding the two types of incentives – limitation of clean-up liability and reduction of property taxes - that Georgia offers to those who would undertake redevelopment and reuse of brownfields.

The Committee also heard testimony regarding privatization initiatives in neighboring states; specifically, the State of Florida. Florida already has efficiently functioning programs to "augment" the resources of the State's Department of Environmental Quality ("DEQ") by incorporating the experience, assets, and expertise of pre-qualified private contractors into DEQ's line operations. Another "working model" of privatization offered in the State of Florida is the promotion of Brownfields reuse and redevelopment through the State's Office of Tourism, Trade, and Economic Development; and Enterprise Florida, Inc., a public/private venture to educate and encourage redevelopment and job creation within designated Brownfields areas.

After careful consideration of the information presented by all parties, the Committee recommends that the General Assembly introduce legislation permitting EPD to contract with the private sector for management and delivery of its environmental programs.

## INTRODUCTION

The Senate Environmental Privatization Study Committee (Committee) was created by Senate Resolution 469 during the 2005 Legislative Session of the Georgia General Assembly. The Committee was charged with studying the possible benefits and efficiencies of involvement of the private sector in DNR/EPD's management and delivery of environmental protection programs, services, and activities; the transfer of DNR/EPD's functions or assets, or shifting of government management and delivery to the private sector; the enhancement of DNR/EPD's access to special skills or technical expertise which are not available in-house; the authorization of DNR/EPD's access to private sector providers in instances where it would not be cost effective to hire directly in-house; and the involvement of private sector providers in circumstances where they would provide more rapid or timely start up for new or reorganized environmental programs, services, or activities.

The Committee was composed of five members of the Senate: Senator Casey Cagle, serving as Chairman, Senator Ronnie Chance, Senator Jack Hill, Senator David Shafer, and Senator Jim Whitehead, Sr. The Legislative Staff member assigned to the Committee was Mrs. Angie Fiese, Senate Research Office.

The Committee held one public meeting at the Capitol in Atlanta on November 4, 2005. During this meeting, the Committee heard testimony from Dr. Carol Couch, Director of EPD, and, Mr. Tim Cash, Hazardous Site Response Program Manager; Mr. Mark Smith, Hazardous Waste Management Branch Chief; Mr. Todd Edwards appeared and testified on behalf of the Association County Commissioners of Georgia ("ACCG"). Additionally, brief private sector comments were made by Mr. Bill Harris of Environmental Planning, Inc. and a representative of the TBE Group, Inc., an engineering and planning consulting firm.

## BACKGROUND

The United States General Accounting Office (GAO) has published the results of a study of privatization concepts/practices in a report entitled "Privatization: Lessons Learned by State and Local Governments." Privatization is defined in the GAO Report as the shifting of functions/responsibilities, in whole or in part, from the government to the private sector, generally by means of concepts/practices as follows:

- Contracting- This is the most common form of privatization and involves a government designed Request for Proposal (RFP) and responsive bidding on the part of competing private contractors. This bidding process results in a contract between the government and a private concern for the needed work, services, or products.
- Outsourcing-The Committee intends the term "outsourcing" to mean providing government agencies with a mandate and the commensurate authority to "shop around" among competitive private sector providers/vendors for acquisition, as/when needed, of expertise, skills, and/or equipment at costs which are less than the government agency would have to pay to maintain such assets "in-house" on a continuing basis.
- Managed Competition- This is the newest form of privatization and allows a line agency of government to design and issue an RFP and, simultaneously, submit a bid in competition with private contractors responding to its own RFP.<sup>1</sup>

Surveys and studies by organizations such as the Council of State Governments reveal that state agencies responsible for social services, transportation, mental health care, corrections, health, and education are progressively moving toward greater reliance on privatization in one form or another.

## TESTIMONY/FINDINGS/CONCLUSIONS

### **Hazardous Site Response Program (Program)**

EPD is required under the Hazardous Sites Response Act (“HSRA”), codified in the Official Code of Georgia Annotated (O.C.G.A.) § 12- 8-90 to § 12-8-97, to:

- Identify hazardous sites and compile a Hazardous Site Inventory (“HSI”). Currently, there are approximately 529 hazardous sites in Georgia and two-thirds of all counties have at least one such site;
- Annually collect \$15.9 million in fees and fines to be remitted to the General Fund for appropriation to the Hazardous Waste Trust Fund (Trust Fund);
- Review and approve Corrective Action Plans (“CAPs”) and compel private party clean-ups at sites where there are identifiable PRPs; and,
- Contract and pay for (from the Trust Fund) the design and implementation of CAPs at “Orphan Sites” where there are no identifiable PRPs.

HSRA, in most aspects, mirrors the federal Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA” and/or “Superfund”); and, most significantly, incorporates most of the technical standards, clean-up criteria, and enforcement regimes found in the federal law and supporting rules and regulations.

This “one-size-fits-all” CERCLA/HSRA approach to clean-up of contaminated sites has produced a frustrating and expensive process in the State of Georgia.

The EPD data confirms that hazardous site cleanups take between two months and 10 years depending upon the complexity of site conditions; which entity or individual is cleaning up the site (private party vs. state); the amount of moneys appropriated to the Trust Fund; and, the degree of cooperation among PRPs.

It is generally agreed that some sites may never be cleaned up because the process is, essentially, cost-prohibitive. The majority of Trust Fund money (56 percent) has been spent on Orphan Site cleanups. Between 1994 and 2005, EPD spent \$71,239,169 for clean-ups at 104 Orphan Sites in 50 counties. Twenty percent of that total, \$14.2 million, was EPD overhead. Another 70 Orphan Sites are currently awaiting cleanup; 60 percent of these are outside the Atlanta metro area. EPD has granted \$18.2 million to local governments to hire contractors to cleanup 101 landfills in 87 counties; 84 percent are outside the Atlanta metro area.

The Committee heard testimony on EPD’s efforts to improve the cost effectiveness and efficiency of HSRA cleanups . The Committee also studied reports of predecessor Committees. In 2001, the Joint House and Senate Hazardous Site Response Act Reauthorization Study Committee (the 2001 Study Committee) was charged with determining whether funding to the hazardous site cleanup program should be extended beyond its July 1, 2003 sunset date and what steps could be taken to improve the cost effectiveness and efficiency of the program. In 2002, the General Assembly increased and extended funding until July 1, 2013 based on the 2001 Study Committee’s recommendations. In that same Legislative Session, with a view toward shortening the process and reducing the costs of hazardous site remediation, the General Assembly also amended the State Brownfields Law to offer additional liability protections as incentives to private parties willing to buy and redevelop contaminated properties. In 2003, the State Constitution was amended to create tax incentives to encourage brownfields redevelopment.

The 2001 Study Committee also directed EPD to continue its dialogue with stakeholders to discover ways to improve efficiency and reduce cleanup costs. EPD and the Georgia Industry Coalition hired a facilitator to convene the stakeholder group with representatives from the industry, local governments, health officials, community interests, and environmental groups. The stakeholder group had seven meetings and reported to the 2003 General Assembly with recommendations for significant changes to EPD’s cleanup rules and administrative changes to streamline the cleanup process.

The EPD reports that it has implemented all of the 2001 Study Committee's recommendations and most of the recommendations of the stakeholder group. However, clean-up costs continue to increase, and, the pace of clean-ups continues to lag.

In its presentation to the Committee, EPD maintained that inconsistent funding levels were the major reason behind its inability to provide timely service delivery to private parties cleaning up sites or redeveloping contaminated brownfields properties. Mr. Tim Cash, Manager of EPD's Hazardous Waste Branch, testified that a significant increase in the number of technical staff is essential to increasing the pace and cost-effectiveness of the program. Technical staff, Mr. Cash testified, is the individuals who "sign-off" on cleanups to ensure that all elements of a CAP have been implemented and that the resulting situation is sufficiently protective of human health, safety, and the environment.

### **Brownfields Program**

The Committee also heard testimony regarding EPD's Brownfields program. Brownfields are defined by the United States Environmental Protection Agency (EPA) as real property, the remediation, redevelopment and reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Brownfields are regulated in the Georgia Hazardous Site Reuse and Redevelopment Act, codified in O.C.G.A. § 12-8-200 to § 12-8-207. The State currently offers two types of incentives to private parties willing to undertake the redevelopment of brownfields - tax incentives and a limitation of HSRA liability. Most significantly, however, the State cannot: [i] offer a clean-up criterion that diverges from federal standards; and, [ii] grant limitations of liability from the provisions of CERCLA. EPA has announced its willingness to engage with states in negotiations leading to a Memorandum of Understanding ("MOU") regarding Brownfields clean-up standards; but, to date, Georgia does not have such an MOU.

Most of the brownfields projects in Georgia are in metro Atlanta or other urban areas. EPD assigns the lag in brownfields redevelopment in rural areas to "simple economics": the cost of cleanup exceeds the redevelopment value of the property. Another factor contributing to this problem is the lack of knowledge and technical expertise about brownfields development.

EPD testified that it has implemented many public outreach programs for potential brownfields developers, public and private, wherein it explains the brownfields process, offers technical assistance, and help with submitting applications for federal grants. In 2005, four federal grants totaling \$800,000 were awarded to Georgia communities. These communities were: Atlanta, Brunswick, LaGrange, and Hinesville.

EPD testified that there are currently 54 applications for brownfields development approvals; however, 70 percent of such applications are for sites within the Atlanta metro area. EPD testified that it has received a significant increase in the number of brownfields applications since July of 2005; due primarily to the addition of petroleum sites as potentially qualified brownfields property and the addition of the grandfather provision for sites purchased after July 1, 2002.

### **Florida's Brownfields Program**

Florida's Brownfields Program is a common approach used by other states in structuring their brownfields programs. The Committee heard testimony from a representative of the TBE Group, Inc., formerly with Florida Department of Environmental Protection. The program offers generous financial incentives, regulatory benefits, technical assistance, and liability protection. It also incorporates the Brownfields program into its major economic development initiatives.

Florida has a Brownfields Redevelopment Bonus available through their State Office of Tourism, Trade, and Economic Development; and, has created a public/private entity, Enterprise Florida, Inc., to encourage redevelopment and job creation within designated brownfield areas. A pre-approved applicant may receive a tax refund equal to 20 percent of the average annual wage of the new jobs created in a designated brownfield area up to a maximum of \$2,500 per new jobs created.

Refunds are based upon taxes paid by the business, including corporate, income, sales, ad valorem, intangible personal property, insurance premium, and certain other taxes. No more than 25 percent of the total refund approved may be paid in any single fiscal year.<sup>2</sup>

Additionally, the Florida Department of Revenue offers sales and use tax credits on building materials purchased on or after July 1, 2000 used for the construction of a redevelopment project (i.e., a housing or mixed-use project) located in an urban, high crime area, enterprise and empowerment zone, front porch community, or a designated brownfield or urban landfill area.<sup>3</sup>

## **COMMITTEE FINDINGS**

### **Conclusions**

The Committee finds that EPD has expended considerable time and attention on the problem of run away costs and lagging schedules in state corrective action programs. The Committee believes that more can, and should be done.

### **Committee Recommendations**

The Committee recommends that the General Assembly consider legislation:

(a) Permitting and encouraging EPD to contract with the private sector in its management and delivery of environmental programs. Specifically, it recommends passage of legislation requiring EPD to examine, pre-qualify, and license environmental engineers and environmental contractors doing business in Georgia. Professionals and business contractors so qualified and licensed could be incorporated to augment the EPD's in-house capabilities, when, if, and as needed, on specific projects thereby eliminating the need for EPD to carry a full component of technical staff in its organizational structure;

(b) Charging EPD, the Department of Industry, Trade, and Tourism and the Department of Community Affairs to study and propose a program to encourage county and city governments to identify potential Brownfields sites, and, to the extent practicable, incorporate such sites into their economic development plans and community improvement projects;

(c) Requiring EPD to work with EPA and other involved state and federal agencies to develop a Memorandum of Understanding regarding state/federal clean-up standards and liability issues applicable to Brownfields programs; and,

(d) empowering and requiring EPD to incorporate the expertise and experience of licensed environmental engineers and environmental contractors into their staff component to achieve a more efficient and cost effective management and implementation of HSRA and Brownfields clean-up programs.

---

<sup>2</sup> "Brownfield Redevelopment Bonus Information Sheet," eflorida.com

<sup>3</sup> [www.dep.state.fl.us/waste/categories/brownfields/pages/economic\\_incentives.htm](http://www.dep.state.fl.us/waste/categories/brownfields/pages/economic_incentives.htm)

Respectfully submitted,

**THE SENATE ENVIRONMENTAL PRIVATIZATION STUDY COMMITTEE**

---

Honorable Casey Cagle  
Senator, District 49  
Chair

---

Honorable Ronnie Chance  
Senator, District 16

---

Honorable Jack Hill  
Senator, District 4

---

Honorable David Shafer  
Senator, District 48

---

Honorable Jim Whitehead, Jr.  
Senator, District 24