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CONSERVATION AND NATURAL RESOURCES

Waste Management: Amend Part 1 of Article 2 of Chapter 8 of Title 12 of the Official Code of Georgia Annotated, Relating to General Provisions Relative to Solid Waste Management, so as to Change Certain Provisions Relating to Declaration of Policy and Legislative Intent Relative to Solid Waste Management; Change Certain Provisions Relating to Certain Cost Reimbursement Fees and Surcharges Relative to Solid Waste Management; Change Certain Provisions Relating to Tire Disposal Restrictions; Change Certain Provisions Relating to Yard Trimmings Disposal Restrictions; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS:	O.C.G.A. §§ 12-8-21, -39, -40.1, -40.2 (amended)
BILL NUMBER:	HB 274
ACT NUMBER:	70
GEORGIA LAWS:	2011 Ga. Laws 283
SUMMARY:	The Act removes the ban on the disposal of yard trimmings into municipal solid waste landfills that are equipped with landfill gas collection systems in furtherance of the promotion of bioenergy and renewable energy goals. The Act also extends until June 30, 2014, the authorization to collect tire fees that fund the Solid Waste Trust Fund.
EFFECTIVE DATE:	July 1, 2011

History

In 1996, the Georgia General Assembly banned yard trimmings[1] from certain types of landfills.[2] The ban required each city, county, or

1. Yard trimmings are defined as "leaves, brush, grass clippings, shrub and tree prunings, discarded

solid waste management authority to impose restrictions on the handling of yard trimmings generated or disposed of in their respective jurisdictions.[3] Specifically, yard trimmings were required to be separated from all municipal solid waste and were banned from municipal solid waste landfills that have liners or leachate collection systems.[4] However, yard trimmings were allowed into other types of landfills, such as inert waste landfills and landfills designated specifically for the disposal of construction or demolition waste.[5]

Christmas trees, nursery and greenhouse vegetative residuals, and vegetative matter resulting from landscaping development and maintenance other than mining, agricultural and silvicultural operations." O.C.G.A. § 12-8-22(42) (2011). In a Georgia Environmental Protection Division (EPD) guidance document for the management of yard trimmings, the EPD points out that land-clearing debris (trees, stumps, limbs, etc.) are not legally considered yard trimmings and, thus, are not banned from certain types of landfills. GA. DEP'T OF NATURAL RES., EPD, GUIDANCE DOCUMENT, MANAGEMENT OF YARD TRIMMINGS, *available at* http://www.gaepd.org/Documents/swyrdtrim2.html.

2. The 1996 ban, which resulted from legislation passed in 1992, was an amendment to the 1990 Comprehensive Solid Waste Management Act, which implemented sweeping reforms to solid waste management in Georgia. Some of the requirements in the original act included certification of landfill operators, a ban on lead batteries and tires from all Georgia landfills, a reporting requirement for all local governments for solid waste activities and costs, and the creation of a solid waste trust fund. O.C.G.A. § 12-8-21–59.2 (2011); Telephone Interview with Mark Smith, Land Protection Branch Chief, EPD (May 16, 2011) [hereinafter Smith Interview] (on file with the Georgia State University Law Review); *See also* GA. DEP'T OF CMTY. AFFAIRS, SOLID WASTE MANAGEMENT PROGRAM DESCRIPTION, http://www.dca.state.ga.us/development/EnvironmentalManagement/programs/wastemanage.asp (last visited Aug. 17, 2011).

3. The state law did not provide specifics on the enforcement of the ban, but rather left it to the local governments to implement. For example, Troup County has a local ordinance that specifically makes it "unlawful for anyone to deposit yard trimmings into any container designated for the collection of any other solid waste." TROUP COUNTY, GA., CODE § 70-43 (2011). Another Troup County ordinance makes it "unlawful to place or mix yard trimmings with any other type solid waste within the unincorporated county." TROUP COUNTY, GA., CODE § 70-42 (2011).

4. A lined landfill has a layer at the bottom that prevents chemicals and contaminants from leaking into the environment. The liner typically is made of a synthetic plastic and is supported by other materials such as clay. *See generally* Craig Freudenrich, *How Landfills Work,* HOW STUFF WORKS, http://science.howstuffworks.com/environmental/green-science/landfill6.htm (last visited May 17, 2011).

5. GA. DEP'T OF NATURAL RES., EPD, *supra* note 1; Smith Interview, *supra* note 2; Telephone Interview with Rep. Randy Nix (R-69th) (Apr. 21, 2011) [hereinafter Nix Interview] (on file with the Georgia State University Law Review). Inert waste landfills accept waste consisting of "earth and earth-like products, concrete, cured asphalt, rock, bricks, yard trimmings, and land clearing debris such as stumps, limbs and leaves." GA. DEP'T OF NATURAL RES., EPD, GUIDANCE DOCUMENT: INERT WASTE LANDFILL OPERATIONS, *available at* http://www.gaepd.org/Files_PDF/techguide/lpb/swinertlfg.pdf.

Purposes for the Yard Trimming Ban

The 1992 amendment, effective as of 1996 (hereinafter "1996 ban"), on yard trimmings, which amended the 1990 Comprehensive Solid Waste Management Act (CSWMA), sought to "prevent and abate litter, so as to assure that solid waste does not adversely affect the health, safety, and well-being of the public and that solid waste facilities, whether publicly or privately owned, do not degrade the quality of the environment."[6] In the legislative intent section of the 1996 ban the legislature declared that the productivity of Georgia's soil was important.[7] The act stated, "The productivity of the soils of Georgia requires that nature's way of recycling vegetative matter be respected and followed and that such essential building materials are no longer wasted by being buried in landfills but are returned to the soil."[8]

In the 1992 amendment, the General Assembly also adopted and recommended a prioritized list—referred to as a "hierarchy"—for the handling of yard trimmings. Although not a requirement, the hierarchy provides a prioritized list of preferred methods for how Georgians should dispose of or reduce yard trimmings:

(1) Naturalized, low maintenance landscaping requiring little or no cutting;
(2) Grass cycling by mowing it high and letting it lie;
(3) Stacking branches into brush piles for use as wildlife habitats and for gradual decomposition into the soil;
(4) Composting on the site where the material was grown, followed by incorporation of the finished compost into the soil at that site;
(5) Chipping woody material on the site where such material was generated;
(6) Collecting yard trimmings and transporting them to another site to be chipped or composted for later use; and
(7) Chipping woody material for later use as fiber fuel.[9]

6. O.C.G.A. § 12-8-21(a) (2006).
7. O.C.G.A. § 12-8-21(g) (2006).
8. *Id.*
9. *Id.*

The ban also was instituted at least partly in an effort to help meet the CSWMA's goal of reducing waste entering landfills by twenty-five percent.[10] The Georgia Environmental Protection Division (EPD) stated on its website that yard trimmings may have accounted for up to fifteen percent of waste entering Georgia landfills.[11] There was a fear that the space in the existing landfills was rapidly diminishing, thereby forcing the construction of new landfills in the near future.[12]

The State of Georgia Waste Management Prior to Implementation of the Act

In 2009, the average remaining lifespan for municipal solid waste landfills in Georgia was thirty-one and one-half years.[13] On the high end, the Central Savannah River area had 120 years of capacity left; on the low end, the Northeast Georgia region only had five years remaining.[14] In 2009, 304 cities and 45 counties collected yard trimmings for diversion from municipal solid waste landfills.[15] The majority of the local governments that collected yard trimmings shredded the collected material for use as mulch, while seventy-five disposed of the material in inert landfills and twenty-five burned the material.[16] Composting and chipping the yard trimmings were also common processing methods.[17] The Georgia Department of Community Affairs, which is charged with compiling solid waste

10. The CSWMA expressed a goal of reducing by twenty-five percent the amount of waste entering landfills by July 1, 1996. As of 1996, this goal had not been met. The 1996 date was subsequently amended out of the Act, but the Georgia Attorney General stated in a 1997 official opinion that the 25% goal remained despite the missed deadline. 1997 Ga. Op. Att'y Gen. 23.

11. GA. DEP'T OF NATURAL RES., EPD, *supra* note 1.

12. Telephone Interview with Rep. Debbie Buckner (D-130th) (May 6, 2011) [hereinafter Buckner Interview] (on file with the Georgia State University Law Review); Telephone Interview with Jennifer L. Owens, Advocacy Director, Georgia Organics (Apr. 4, 2011) [hereinafter Owens Interview] (on file with the Georgia State University Law Review).

13. GA. DEP'T OF CMTY. AFFAIRS, 2009 SOLID WASTE ANNUAL REPORT: DISPOSAL AND CAPACITY at A-7 (2010), *available at* http://www.dca.state.ga.us/development/Research/programs/downloads/2009CapacityDisposal.pdf.

14. *Id.*

15. GA. DEP'T OF CMTY. AFFAIRS, 2009 SOLID WASTE ANNUAL REPORT: SOLID WASTE AND RECYCLING COLLECTION at A-7 (revised Aug. 6, 2010), *available at* http://www.dca.state.ga.us/development/Research/programs/downloads/SWAR2009Collection.pdf.

16. *Id.*

17. *Id.*

data reported by local governments, stated in its 2009 report that properly processed yard trimmings have numerous beneficial uses in communities.[18] Many local governments reported using processed yard trimmings as mulch for their landscaping and civil engineering applications.[19] Others reported that the processed yard trimmings were offered to residents for use in residential landscaping.[20]

Solid Waste Trust Fund

In 1990, the General Assembly established the Solid Waste Trust Fund (SWTF) and designated the EPD Director as the trustee.[21] The SWTF is intended to be used by the EPD Director for solid waste management purposes such as cleaning up abandoned landfill sites, establishing a scrap tire management program related to the cleanup of scrap tire disposal piles and facilities, or taking emergency action to respond to environmental contamination from a failed landfill.[22] To fund the SWTF, the General Assembly in 1992 instituted a one-dollar fee on the sale of every new tire sold in the state. The funds from the tire fee are deposited into the general fund and then made available for appropriation to the SWTF by the General Assembly the following year.[23] The fund also receives monies from fines collected for violations of the CSWMA.[24] The interest from the fund is to be used by the EPD to administer the state solid waste management program.[25]

The inclusion of the tire fee funds in Georgia's general budget has been a source of controversy. The Georgia Constitution requires that funds collected from taxes and fees first be deposited into the State's general fund, and then be allocated to the SWTF by the General

18. *Id.*
19. *Id.*
20. GA. DEP'T OF CMTY. AFFAIRS, *supra* note 15. Advocates of HB 274 have argued that yard trimmings would be more beneficial if placed in landfills rather than their various uses outside of landfills. *See* Nix Interview, *supra* note 5.
21. O.C.G.A. § 12-8-27.1 (2006).
22. *Id.*
23. *See* Smith Interview, *supra* note 2.
24. GA. DEP'T OF NATURAL RES., EPD, WHY GEORGIA NEEDS THE SOLID WASTE TRUST FUND (2008), *available at* http://www.gaepd.org/Files_PDF/techguide/lpb/SWTF_2008.pdf.
25. *Id.*

Assembly.[26] Since its establishment, the tire fee has generated more revenues than have been appropriated to the SWTF.[27] In the fiscal year 2004–2005, the General Assembly allocated none of the tire fee revenues to the SWTF.[28] Although the tire fee funds are intended solely for solid waste disposal and handling related activities, the General Assembly has routinely used the funds to balance the state budget by appropriating the money to areas of the budget other than the SWTF.[29] In order for the tire fee funds to be placed directly into the SWTF, the state must amend its constitution to allow these funds to be dedicated to that use.[30]

Bill Tracking of HB 274

Consideration and Passage by the House

Representatives Randy Nix (R-69th), Lee Anderson (R-117th), Ron Stephens (R-164th), Billy Maddox (R-127th), Howard Mosby (D-90th), and Delvis Dutton (R-166th) sponsored HB 274.[31] The House read the bill for the first time on February 17, 2011.[32] The House read the bill a second time on February 22, 2011.[33] Speaker of the House David Ralston (R-7th) then assigned the bill to the House Committee on Natural Resources and Environment.[34]

The bill, as originally introduced, changed certain provisions relating to declarations of policy and intent by specifically allowing yard trimmings into municipal solid waste landfills.[35] The bill also defined "inert waste landfill" and redefined "construction or demolition waste."[36] Additionally, the bill changed certain provisions

26. GA. CONST. art. VII, § 3, para. 2.
27. GA. DEP'T OF NATURAL RES., EPD, *supra* note 24.
28. *Id.*
29. *See* Video Recording of House Proceedings, Mar. 3, 2011 at 20 min., 28 sec. (remarks by Rep. Randy Nix. (R-69th)) [hereinafter March 3rd House Video]; James Salzer, *Tire Fees Diverted from Cleanups*, ATLANTA J.-CONST., Mar. 7, 2011, at A1, *available at* 2011 WL 4417769.
30. *See* GA. CONST. art. VII, § 3, para. 2; *see also* Nix Interview, *supra* note 5.
31. HB 274, as introduced, 2011 Ga. Gen. Assem.
32. State of Georgia Final Composite Status Sheet, HB 274, May 24, 2011.
33. *Id.*
34. *Id.*
35. HB 274, as introduced, preamble, p. 1, ln. 1–4, 2011 Ga. Gen. Assem.
36. *Id.* at p.1, ln. 4. The bill would define "construction or demolition waste" as "waste building materials and rubble resulting from construction, remodeling, repair, or demolition operations of

relating to the number of solid waste facilities in a given area by removing the "permit by rule" inert waste landfills exception to the landfill count in a certain area.[37] The bill also changed provisions relating to the SWTF by eliminating the requirement for interest earned on the fund to be deposited into the state treasury if the fund interest is not used to fund the administration of a solid waste management program.[38] The bill further eliminated language no longer needed regarding previous increases in the waste disposal surcharge to seventy-five cents per ton of solid waste, as assessed by owners and operators of solid waste disposal facilities on behalf of the EPD.[39] Under the bill as originally introduced, facilities permitted exclusively for construction or demolition waste disposal that conduct recycling activities would receive a credit of seventy-five cents per ton of recycled materials that would be applied towards the aforementioned surcharge.[40] Finally, the bill also extended until June 30, 2014, the one-dollar tire fee on all new tire purchases, and included a provision allowing for the elimination of the tire fee if a court were to find such fee unconstitutional or otherwise illegal.[41]

The House Committee on Natural Resources and Environment offered a substitute to HB 274.[42] As introduced, the bill would have altered Code section 12-8-21 by changing the word "hierarchy" to "methods" for handling yard trimmings.[43] The bill substitute

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pavements, houses, commercial buildings, and other structures[,] . . . includ[ing] . . . waste containing asbestos, wood, bricks, metal, concrete, wallboard, paper, cardboard, and other nonputrescible wastes . . . which have a low potential for ground-water contamination." *Id.* at p. 2, ln 52–56. "Inert waste landfill' means "a disposal facility accepting only wastes that will not or are not likely to cause production of leachate of environmental concern. Such wastes are limited to earth and earth-like products, concrete, cured asphalt, rock, bricks, yard trimmings, and land clearing debris such as stumps, limbs, and leaves." *Id.* at p. 2–3, ln. 61–64.

37. *Id.* at p.1, ln. 6–7; p. 4, ln. 3. "Permit by rule" inert solid waste landfills are facilities that are deemed to have solid waste handling permits if certain conditions in the rules are met. GA. COMP. R. & REGS. 391-3-4.06 (2005). This proposed change to the law would include all inert solid waste landfills in the exception to the limitation instead of just permit by rule landfills. O.C.G.A. § 12-8-25.4 (2006); HB 274, as introduced, p. 4, ln.3, 2011 Ga. Gen. Assem.

38. HB 274, as introduced, preamble, p. 1, ln. 8, 2011 Ga. Gen. Assem.

39. *Id.* at p.1, ln. 8–10. The fee increase to seventy-five cents per ton was enacted in 2002. That amendment scheduled increases in the fee from fifty cents to sixty-five cents in 2003, and to seventy-five cents in 2008. HB 274 eliminated the language that phased in the fee increase. *See* Smith Interview, *supra* note 2.

40. HB 274, as introduced, preamble, p. 1, ln. 10–11, 2011 Ga. Gen. Assem..

41. *Id.* at p.1, ln. 10.

42. HB 274 (HCS), 2011 Ga. Gen. Assem.

43. HB 274, as introduced, preamble, p. 2, ln. 29, 2011 Ga. Gen. Assem.

eliminated this proposed change.[44] The substitute also removed the proposed change to the SWTF regarding the allocation of the interest derived from the SWTF.[45] The substitute further removed provisions relating to the non-lapsing of fees for the tire fund and the dedication of those fees to the singular purpose of solid waste management, leaving the fund extension provision intact.[46]

The House Committee on Natural Resources and Environment favorably reported the substitute bill on March 3, 2011.[47] The bill was read for a third time on March 16, 2011.[48] That same day, Representative Nix introduced an amendment during floor debate on the bill.[49] The amendment, which removed sections 2–4 of the House Committee substitute pertaining to inert waste landfills, was adopted and passed by the House.[50] The removed sections would have changed the definition of "construction or demolition waste" landfills,[51] imposed requirements for special solid waste handling,[52] and removed the mandatory "permit by rule" requirement for inert waste landfills.[53] The bill passed with 104 votes in favor and 68 in opposition.[54]

Consideration and Passage by the Senate

The bill was first read in the Senate on March 16, 2011, whereby Lieutenant Governor Casey Cagle (R) assigned it to the Senate Committee on Natural Resources and Environment.[55] The Senate Committee on Natural Resources and Environment did not offer any amendments or substitutions. On March 23, 2011, the Senate Committee favorably reported the bill.[56] The bill was read for a second time in the Senate on March 28, 2011, and for a third time on

44. HB 274 (HCS), § 1, p. 2, ln. 27, 2011 Ga. Gen. Assem.
45. *Id.*
46. *Id.* § 6, p. 6, ln. 146–51, 2011 Ga. Gen Assem.
47. State of Georgia Final Composite Status Sheet, HB 274, May 24, 2011.
48. *Id.*
49. HB 274 (HFA), 2011 Ga. Gen. Assem.
50. *Id.*
51. HB 274 (HCS), § 2, p. 2, ln. 47–62, 2011 Ga. Gen. Assem.
52. *Id.* § 3, p. 3–4, ln. 62–107.
53. *Id.* § 4, p. 4, ln. 109–25.
54. Georgia House of Representatives Voting Record, HB 274 (Mar. 16, 2011).
55. State of Georgia Final Composite Status Sheet, HB 274, May 24, 2011.
56. *Id.*

April 11, 2011.[57] Senators Doug Stoner (D-6th), Ronnie Chance (R-16th), Butch Miller (R-49th), Steve Henson (D-41st), and Rick Jeffares (R-17th) offered an amendment to the bill (Senate Floor Amendment 1), which eliminated section 4 in its entirety—the section that would repeal the current ban on yard trimming disposal in municipal solid waste landfills.[58] Senate Floor Amendment 1 was adopted by the Senate.[59] Senators Robert Brown (D-26th) and Chance introduced a second amendment (Senate Floor Amendment 2), which sought to modify Code section 12-8-25.2 by placing a moratorium on the permitting of new or expanded municipal solid waste landfills located within two miles of a significant ground-water recharge area.[60] Senate Floor Amendment 2 failed.[61] HB 274 was passed and adopted by the Senate with 44 votes in favor and 9 votes in opposition.[62]

Conference Committee Report

On April 12, 2011, the House disagreed with the Senate's amended version of the bill.[63] The Senate insisted on its position on April 14, 2011.[64] A Conference Committee was appointed on April 14, 2011, to review the bill and reach an acceptable compromise.[65] The Conference Committee consisted of Representatives Nix, Lynn Smith (R-70th), and Doug Collins (R-27th) and Senators John Bulloch (R-11th), Ross Tolleson (R-20th), and Johnny Grant (R-25th).[66] The Conference Committee Report, which restored section 4's provision removing the ban on yard trimming disposal in certain landfills, was adopted by both the House and the Senate that same day and sent to Governor Nathan Deal on April 21, 2011, for

57. *Id.*
58. HB 274 (SFA), 2011 Ga. Gen. Assem.
59. State of Georgia Final Composite Status Sheet, HB 274, May 24, 2011.
60. Failed Senate Floor Amendment to HB 274, introduced by Sen. Robert Brown (D-26th) and Sen. Ronnie Chance (R-16th), Apr. 11, 2011.
61. State of Georgia Final Composite Status Sheet, HB 274, May 24, 2011.
62. *Id.*
63. *Id.*
64. *Id.*
65. *See id.*
66. *Id.*

approval.[67] Governor Deal signed HB 274 into law on May 11, 2011.[68]

The Act

The Act amends Title 12 of the Official Code of Georgia Annotated with the purpose of clarifying the legislative intent for the use and disposal of yard trimmings,[69] extending the tire fee by three years,[70] and repealing the ban on yard trimming disposal in landfills equipped with landfill gas capturing systems.[71]

Section 1 of the Act strikes the language of Code section 12-8-21(g) that expressed the importance of returning vegetative matter to the soil, rather than in landfills.[72] Section 1 adds new language regarding the General Assembly's intent to promote the "beneficial reuse" of vegetative matter and yard trimmings not only through recycling and composting, but also in a manner "to promote bioenergy and renewable energy goals."[73] Section 1 adds language to Code section 12-8-21(g)(3) that provides a hierarchy of methods to "return yard trimmings to the soil or other beneficial reuse on the site where the material was grown."[74] Section 1 also removes the method of "chipping woody material for later use as fiber fuel" from the hierarchy[75] and provides three new recommended uses for yard trimmings that are taken off-site.[76] These uses include disposal in a lined landfill equipped with a landfill gas collection system for "beneficial reuse."[77] The Act recommends that Georgians follow this hierarchy when disposing yard trimmings.[78]

Section 2 of the Act eliminates language that previously phased in the increase for the surcharge in Code section 12-8-39(e) from fifty

67. HB 274 (CCR), 2011 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 274, May 24, 2011.
68. State of Georgia Final Composite Status Sheet, HB 274, May 24, 2011.
69. O.C.G.A. § 12-8-21 (Supp. 2011).
70. O.C.G.A. § 12-8-40.1(h)(3) (Supp. 2011).
71. O.C.G.A. § 12-8-40.2(a)–(b) (Supp. 2011).
72. *Compare* O.C.G.A. § 12-8-21(g) (2010), *with* O.C.G.A. § 12-8-21(g) (Supp. 2011).
73. O.C.G.A. § 12-8-21(g) (Supp. 2011).
74. O.C.G.A. § 12-8-21(g)(3) (Supp. 2011).
75. O.C.G.A. § 12-8-21(g) (Supp. 2011).
76. *Id.*
77. *Id.*
78. *Id.*

cents per ton to seventy-five cents per ton of solid waste disposed.[79] Section 2 also adds language to Code section 12-8-39(e) that allows facilities that exclusively accept construction or demolition waste to receive a credit towards the surcharge of seventy-five cents per ton for each ton of waste recycled at such a facility.[80]

Section 3 of the Act changes the language of Code section 12-8-40.1(h)(3) to extend the authorization to collect tire fees until June 30, 2014.[81] The intent of the tire fee is to fund the SWTF for use in cleanups and other environmental programs.[82]

Section 4 of the Act permits each city, county, or solid waste management authority to impose restrictions on the disposal of yard trimmings. Section 4 adds language to Code section 12-8-40.2(a) and (b) that prohibits comingling yard trimmings with solid waste, with exceptions for landfills containing only construction or demolition materials, inert waste landfills, and landfills that are equipped with landfill gas collection systems designed to promote renewable energy goals.[83] In accordance with this permissive language, section 4 removes the requirements that yard trimmings be sorted for collection and that such trimmings be stockpiled, shipped, composted, mulched, or otherwise beneficially reused or recycled.[84]

Analysis

Public Policy Concerns

This Act may face opposition on several public policy grounds. Despite the intended promotion of "bioenergy and renewable resource goals,"[85] allowing previously banned yard trimmings into

79. O.C.G.A. § 12-8-39(e) (Supp. 2011).
80. *Id.*
81. O.C.G.A. § 12-8-40.1(h)(3) (Supp. 2011).
82. GA. DEP'T OF NATURAL RES., EPD, GEORGIA SOLID WASTE TRUST FUND: REPORT FOR FISCAL YEAR 2010 at 2 (2010), *available at* http://www.gaepd.org/Files_PDF/techguide/lpb/SWTF_Report_FY10.pdf (listing the authorized uses of the SWTF as "emergency response and corrective action; scrap tire management and abatement; abandoned landfill care and closure; solid waste reduction and recycling; litter prevention and abatement; market development; [and] fund administration").
83. O.C.G.A. § 12-8-40.2(a)–(b) (Supp. 2011).
84. *Id.*
85. O.C.G.A. § 12-8-21(g) (Supp. 2011).

landfills has been scrutinized for potential negative effects on the composting and mulching industries, inefficient capture of landfill gasses, and the potential to fill Georgia landfills at an undesirable rate. Opponents of the Act believe that the primary purpose of the legislation is not to promote green energy, but rather to increase profits of privately owned solid waste landfills by increasing tipping fees.[86]

Impact on Composting and Mulching Industries

The Act faces opposition from the composting and mulching industries on the basis that the Act will eliminate jobs in an already shaky economy.[87] Although the General Assembly included the "beneficial reuse of yard trimmings and other vegetative matter by composting and other methods of recycling" in its stated intent for Code section 12-8-21(g),[88] the recent authorization to dispose of yard trimmings in landfills in certain situations[89] has created opposition from those in the composting and mulching communities.[90] The potential impact on the fifty to sixty companies performing these services in Georgia[91] may be minimized, however, by the fact that

86. Video Recording of House Proceedings, Mar. 16, 2011 at 1 hr., 5 min., 0 sec. (remarks by Rep. Brian Thomas (D-100th)), http://mediam1.gpb.org/ga/leg/2011/ga-leg house_031611_PM3.wmv [hereinafter March 16th House Video]; *see* Buckner Interview, *supra* note 12; Owens Interview, *supra* note 12.

87. *See* Owens Interview, *supra* note 12 (indicating that the bill, if passed, would essentially "wipe out mulching and composting companies").

88. O.C.G.A. § 12-8-21(g) (Supp. 2011).

89. O.C.G.A. § 12-8-21(g)(1)–(4) (Supp. 2011) (identifying a hierarchy for handling yard trimmings that first provides for "(1) [n]aturalized, low-maintenance landscaping requiring little or no cutting," followed by "(2) [g]rass cycling by mowing it high and letting it lie," "(3) [r]eturn[ing] to the soil or other beneficial reuse where the material was grown"—enumerating composting and chipping woody material as two examples of such an option—followed by "(4) [c]ollecting yard trimmings and transporting them to another site," in which the trimmings may be "(A) [p]rocessed for mulch or feedstock for composting," "(B) [p]rocessed for . . . bioenergy feedstock," or, finally, "(C) [d]isposed in a lined landfill having a permitted gas collection system in operation by which landfill gas is directed to equipment or facilities for beneficial reuse such as electrical power generation, industrial end use, or other beneficial use promoting renewable energy goals"); O.C.G.A. § 12-8-40.2(a) (Supp. 2011) (permitting "[e]ach city, county or solid waste management authority" to make its own decision regarding the disposal of yard trimmings, so long as yard trimmings are restricted from comingling with municipal solid waste except at "[l]andfills restricted to construction or demolition waste," "[i]nert waste landfills," or "[l]ined municipal solid waste landfills" with methane gas collection systems for beneficial reuse).

90. *See* Owens Interview, *supra* note 12.

91. *Id*.

only a limited number of landfills meet the qualifications in place to accept yard trimmings.[92] Additionally, Code section 12-8-21(g) indicates that composting and recycling are preferable methods of handling yard trimmings over landfill placement.[93] Furthermore, prior to passage of the Act, the City of Atlanta—with more than twice the population of any other city in the state[94]—had shipped its collected yard trimmings to Alabama for incineration.[95] Because this high volume of yard trimmings is not factored into the equation, the overall effect on the composting and mulching industries may be somewhat mitigated.

Methane Capturing Efficiency

The Act faces the additional criticism that the benefits provided by allowing yard trimmings to be placed in landfills do not outweigh the negative effects, namely the inefficiency of methane capturing systems.[96] Outfitting landfills with methane collection systems requires a multi-million dollar investment by municipalities.[97] Furthermore, it has been argued that much of the gas released, particularly by retrofitted systems, escapes into the atmosphere before it can be captured.[98]

Despite these arguments, however, landfill gas is undoubtedly a renewable source of energy and currently powers over 50,000 homes

92. There are seven landfills in the state of Georgia that currently operate permitted gas collection systems "by which landfill gas is directed to equipment for beneficial reuse" as identified in Code section 12-8-21(g). O.C.G.A. § 12-8-21(g) (Supp. 2011); March 3rd House Video, *supra* note 29, at 13 min., 8 sec. (remarks by Rep. Randy Nix (R-69th)). Section 12-8-21(g) of the Code could potentially apply to two additional landfills, however, since one of those landfills is closing and the other is currently using another system. *See* March 3rd House Video, *supra* note 29, at 13 min., 8 sec. (remarks by Rep. Randy Nix (R-69th)).

93. O.C.G.A. § 12-8-21(g) (Supp. 2011).

94. U.S. Census Bureau, American Fact Finder, http://factfinder2.census.gov (last visited May 14, 2011) (identifying the highest population in Georgia as the city of Atlanta in the 2010 Census with 420,003 people and the next-highest population as Augusta with 195,844 people).

95. *See* Nix Interview, *supra* note 5 (indicating that because such a large portion of the state's yard trimmings were not managed by the composting or mulching industries prior to the Act, the allowance of landfill placement under certain circumstances will not greatly impact such industries in Georgia).

96. *See generally* Owens Interview, *supra* note 12; Buckner Interview, *supra* note 12.

97. *See* Nix Interview, *supra* note 5 (responding to concerns that the Act would have a negative impact on the composting industry in Georgia with information that counties and municipalities may not elect to make the multi-million dollar investment to outfit their landfills with methane collection systems).

98. *See* Owens Interview, *supra* note 12; Buckner Interview, *supra* note 12.

in the state.[99] Any increase in landfill gas production would likely "promote bioenergy and renewable energy goals" as intended by the General Assembly.[100] Representative Randy Nix (R-69th), HB 274's sponsor, maintains that the Act permits local governments to weigh these potential beneficial and negative effects, and that local governments are best suited to make such informed decisions.[101]

Impact on Landfill Expansion

Opponents of the Act have voiced their concern that allowing yard trimmings in landfills will fill existing landfills too quickly.[102] In fact, the ban on yard trimmings from landfills was enacted in the 1990s in response to similar concerns.[103] Opponents have argued that the removal of the ban, in addition to low tipping fees relative to other states, will entice neighboring states to transport their garbage into Georgia as a cheap dumping ground.[104]

Georgia is not the first state to encounter these types of problems. In early 2011, Alabama's state legislature placed a two-year moratorium on landfill permitting.[105] The moratorium followed an

99. March 3rd House Video, *supra* note 29, at 15 min., 47 sec. (remarks by Rep. Randy Nix (R-69th)).

100. O.C.G.A. § 12-8-21(g) (Supp. 2011); *see also* O.C.G.A. § 12-8-40.2(a)(3) (Supp. 2011) (identifying "electrical power generation" as a beneficial use of landfill gas).

101. *See* Nix Interview, *supra* note 5 (expressing that the Act does not require local governments to permit yard trimming placement in landfills, but rather removes the comprehensive ban and allows each local government to decide whether or not to make the investment). The Florida Legislature passed a similar bill in 2010 that allowed gas-capturing landfills to accept yard waste, so long as the captured gas was put to beneficial use. *See* Dan Sullivan, *Florida Trashes Yard Trimmings Ban*, BIOCYCLE, Dec. 1, 2010, at 20. In a special session, the Florida Legislature overrode Governor Charlie Crist's veto of the bill. *How the Florida Legislature Voted*, PALM BEACH POST, Nov. 17, 2010, at A13.

102. *See* Buckner Interview, *supra* note 12; Nix Interview, *supra* note 5.

103. *See* Nix Interview, *supra* note 5.

104. *See* Smith Interview, *supra* note 2 (stating that Georgia does not discriminate on who may transport waste into the state, which is somewhat countered by the fact that several municipalities in Georgia ship their waste into other states); Buckner Interview, *supra* note 12 (expressing her concern that neighboring states—particularly Alabama because of its moratorium on new landfill sites—will take advantage of Georgia's low tipping fees and allowance of comingled waste provisions stemming from the Act); Owens Interview, *supra* note 12.

105. Press Release, Adam Snyder, Conservation Ala. Found., Landfill Moratorium Passes Alabama State Legislature (Mar. 5, 2011), http://www.conservationalabama.org (follow "News Center"; then follow "Press Room"; then scroll down to article). The two-year moratorium prohibited granting applications for landfills that were "(1) 1,500 tons per day or more, (2) a proposed capacity of 2,000 cubic yards per day, (3) 500 acres or more, or (4) when combined with landfills in the same county or within 20 miles of the proposed landfill sites, will exceed any of the first three restrictions." *Id.*; *see also*

executive order issued by Governor Robert Bentley in response to concerns that Alabama had become "the nation's dumping ground."[106] Landfills in Alabama were growing at a much faster rate than the state's counties preferred.[107] In short, counties and municipalities will need to consider many factors, including the potential for landfill expansion, prior to commingling regular waste with yard trimmings when there is a methane-capturing system installed.

Constitutional Considerations

In addition to public policy concerns, both opponents and advocates of the Act have articulated the potential constitutional problems associated with revenue generated by tire fees pursuant to section 12-8-40.1 of the Code.[108] The Code directs such revenue be allocated to the SWTF, which funds several activities pertaining to solid waste reduction and recycling in Georgia.[109] In the past nine years, however, approximately two-thirds of the $57 million raised from the tire fee has been diverted to various programs including schools, public health care, and prisons, rather than approved cleanup uses.[110] Despite the budgetary strain on the state economy, members of the General Assembly contend that it is dishonest to divert the fees intended for tire and environmental cleanup to other uses.[111] Looking

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Owens Interview, *supra* note 12.

106. Press Release, Adam Snyder, Conservation Ala. Found., Governor Bentley Issues Landfill Moratorium (Feb. 23, 2011), http://www.conservationalabama.org (follow "News Center"; then follow "Press Room"; then scroll down to article); *see* Owens Interview, *supra* note 12.

107. *See* Owens Interview, *supra* note 12.

108. O.C.G.A. § 12-8-40.1 (Supp. 2011); *see* March 3rd House Video, *supra* note 29, at 20 min., 28 sec. (remarks by Rep. Randy Nix (R-69th)); March 3rd House Video, *supra* note 29, at 30 min., 36 sec. (remarks by Rep. Tom McCall (R-30th)); March 3rd House Video, *supra* note 29, at 33 min., 0 sec. (remarks by Rep. Brian Thomas (D-100th)); Buckner Interview, *supra* note 12; Nix Interview, *supra* note 5; Owens Interview, *supra* note 12. The Act extended the tire fee an additional three years to June 30, 2014. O.C.G.A. § 12-8-40.1 (Supp. 2011); O.C.G.A. § 12-8-40.1 (2010).

109. GA. DEP'T OF NATURAL RES, EPD, *supra* note 82 (listing the authorized uses of the SWTF as "emergency response and corrective action; scrap tire management and abatement; abandoned landfill care and closure; solid waste reduction and recycling; litter prevention and abatement; market development; [and] fund administration").

110. James Seltzer, *Tire Fees Diverted from Cleanups*, ATLANTA J.-CONST., Mar. 7, 2011, at A1, *available at* 2011 WLNR 4417769.

111. *Id.* The Constitution of the State of Georgia provides, "Except as otherwise provided in this Constitution, all revenue collected from taxes, fees, and assessments for state purposes, as authorized by revenue measures enacted by the General Assembly, shall be paid into the general fund of the state

forward, the state legislature should determine whether it is in the state's best interest to amend the Georgia constitution to dedicate revenue to the SWTF.

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treasury." GA. CONST. art. VII, § 3, para. 2. Although the tire fee is intended to fund the SWTF, the state constitution requires that any fees collected be placed directly into the general fund of the state treasury. *Id.* In order for the tire fee revenue to be placed directly into the SWTF, a constitutional amendment would be required. *See id.* The controversy lies in that there is no requirement for the General Assembly to appropriate all of the tire fee revenue into the STWF, despite the public's perception of allocation. *See* Seltzer, *supra* note 110.