

## Environmental & Land Development ADVISORY

June 27, 2012

### Georgia Brownfields Law Amendment Encourages Redevelopment of Hazardous Sites

Last month, Governor Deal signed HB 1102, amending Georgia's brownfields law to encourage more reuse and redevelopment of hazardous sites.<sup>1</sup> These amendments include (1) a 30-day grace period for buyers of qualifying property to seek a limitation of liability; (2) automatic liability limitations to future recipients of qualified properties; and (3) preferential treatment of brownfield property for tax purposes.

First, HB 1102 expands the definition of a "prospective purchaser" under the brownfields law to include "a person who has applied for a limitation of liability pursuant to this article within 30 days of acquiring title to a property where there is a preexisting release."<sup>2</sup> Before this amendment, a prospective purchaser was required to apply to the Georgia Environmental Protection Division for a limitation of liability prior to purchasing the property.<sup>3</sup> This amendment relieves sellers of the obligation to permit soil and groundwater testing prior to a sale, plus gives purchasers a 30-day grace period to conduct testing after obtaining title to the land.

Second, the new legislation makes clear that the benefit of the limitation on liability runs with the land to future owners (so long as they are neither a previous owner, nor a contributor to release at the property). In other words, the limitation of liability for brownfield properties will now "automatically inure to the benefit" of these future owners, rather than just being fully transferable by the person to whom the limitation is granted.<sup>4</sup>

Third, HB 1102 grants existing brownfield purchasers potentially up to 15 years to recover the related tax benefits. The brownfields law previously allowed property owners to apply for "preferential assessment" of brownfield property to reduce property taxes for up to 10 years, but HB 1102 extends the preferential assessment period when "construction or improvements on the property commenced but thereafter ceased" for more than 180 days, construction or improvements resumed after the delay

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<sup>1</sup> A copy of HB 1102 can be accessed at: <http://www.legis.ga.gov/Legislation/en-US/display/20112012/HB/1102>.

<sup>2</sup> O.C.G.A. § 12-8-202(b)(6).

<sup>3</sup> See O.C.G.A. § 12-8-202(b)(6) (2011).

<sup>4</sup> *Id.* at § 12-8-208(c).

and the owner submits a sworn certificate stating the relevant dates.<sup>5</sup>

Representative Lynn Smith heralded the legislation as a way to “encourage more people to participate in the [brownfields] program.”<sup>6</sup> Specifically, the expansion of the definition of a “prospective purchaser” is intended to promote transactions that did not occur previously because sellers feared that a potential buyer would disclose data to the state and then not finalize the transaction.

To date, Georgia’s brownfields program has had only limited success. Proponents of this new legislation hope it will “encourage people to once more want to take the risk” of purchasing a site that requires remediation.<sup>7</sup> Only time will tell whether the HB1102 amendments will result in increased sales of brownfield properties in Georgia.

*This advisory was authored by Jonathan Wells and Meaghan Boyd, both of whom are members of Alston & Bird’s Environmental & Land Development Group. For more information on the topics addressed in this advisory, please contact [Mr. Wells](#) or [Ms. Boyd](#).*

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<sup>5</sup> *Id.* at § 48-5-7.6(e)(1)(D)(o)(1).

<sup>6</sup> Sarah Fay Campbell, *State Rep. Lynn Smith’s brownfield legislation passes House*, THE NEWNAN TIMES-HERALD (March 15, 2012).

<sup>7</sup> *Id.*

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