

**REPORT OF THE 1992 HOUSE JOINT
RESOLUTION NO. 85 STUDY COMMITTEE**

**Interim Report on the Feasibility
of Utilizing the Private Sector
to Meet the Solid Waste Management
and Recycling Needs of Local
Governments and Public Service
Authorities in the Commonwealth**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 76

**COMMONWEALTH OF VIRGINIA
RICHMOND
1993**

February, 1993

TO: The Honorable Lawrence Douglas Wilder
Governor of the Commonwealth

The Members of the General Assembly of Virginia

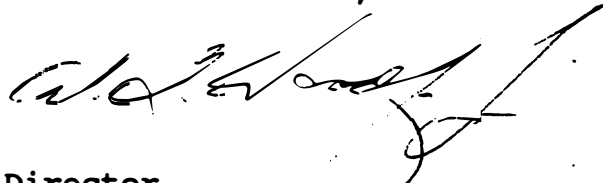
Solid waste management and recycling are among the most prominent issues faced by local governments in the Commonwealth. Recognizing this, the 1992 General Assembly enacted House Joint Resolution 85, asking the Department of Waste Management to appoint a committee, aided by the Center for Public Service at the University of Virginia, to study means of encouraging local governments and public service authorities to consider utilization of the private sector in these service areas.

The committee consisted of nine members and met four times during the summer and fall of 1992. These meetings involved a high level of public participation, and the opinions of those representing citizen groups, business associations, and local government were presented at length. Substantial research was performed, and many representatives from local governments, solid waste public service authorities, and recycling and solid waste management companies were interviewed in the course of this study. After discussion, debate, and compromise concerning the issues, this interim report was prepared to present the views of the committee.

The committee believes that its activities have contributed to improved understanding and cooperation between the public and private sectors in the areas of solid waste management and recycling, and hopes that it will have the opportunity to continue its work in 1993.

Sincerely,

William L. Woodfin, Jr.



Director
Department of Waste Management

Carl W. Stenberg, III



Director
Center for Public Service

GENERAL ASSEMBLY OF VIRGINIA -- 1992 SESSION

HOUSE JOINT RESOLUTION NO. 85

Requesting the Department of Waste Management to appoint a committee to study the use of the private sector to meet solid waste management and recycling needs of local governments.

Agreed to by the House of Delegates, March 5, 1992

Agreed to by the Senate, March 4, 1992

WHEREAS, solid waste management is one of the most serious challenges facing local governments; and

WHEREAS, protecting the environment and ensuring adequate capacity for the proper management of solid waste are important priorities for the Commonwealth; and

WHEREAS, the Commonwealth has adopted the Virginia Waste Management Act to provide for protection of the environment; and

WHEREAS, the Department of Waste Management has estimated that compliance with the solid waste management regulations could cost localities \$2.4 billion over the next twenty years; and

WHEREAS, on October 9, 1991, the U.S. Environmental Protection Agency promulgated regulations regarding disposal of solid waste, which regulations will increase the cost and difficulty of managing solid waste; and

WHEREAS, local governments have expressed concern about their ability to pay the costs of complying with certain solid waste management and recycling requirements, including the costs of installing double liners and leachate collection systems, closing older facilities, meeting financial assurance requirements, and paying permit fees; and

WHEREAS, state and federal budget constraints leave few monetary resources available to assist local governments in meeting the costs of state and federal solid waste management regulations; and

WHEREAS, solid waste collection, disposal, and recycling services and facilities may be purchased by localities from private companies for less money than it would cost the localities to provide the services and facilities; and

WHEREAS, House Joint Resolution 323 of the 1989 Session of the General Assembly recites that many government functions can be administered capably and with greater efficiency by the private sector, and that there is a growing tendency by local governments to attempt to deliver certain services on their own and often to compete with the private sector; and

WHEREAS, House Joint Resolution 323 of the 1989 Session of the General Assembly expressed the sense of the General Assembly that the governments of the Commonwealth and other public authorities should utilize the resources of the private sector to provide solid waste collection, disposal, and facility management; and

WHEREAS, the increasing cost and complexity of solid waste management and recycling, together with increasing demands on available public resources, require that localities carefully consider all options before committing to major capital expenditures, and be provided adequate information upon which to base their decisions; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Waste Management be requested to appoint a committee to study means of encouraging local governments and public service authorities to explore the feasibility of utilizing the private sector to meet their solid waste management and recycling needs before making final procurement and capital outlay decisions. The committee shall consist of nine members appointed by the Director of the Department of Waste Management in the following manner: the Director of the Department of Waste Management or his designee; one representative of county government; one representative of city government; one representative of a public authority managing solid waste; one representative of a company providing solid waste transportation services in the Commonwealth; one representative of a company that owns a solid waste disposal facility in the Commonwealth; one representative of a company providing recycling services in the Commonwealth; and two members from the public at large.

The Center for Public Service at the University of Virginia is requested to provide staff assistance to the committee. The costs of such study shall be paid through donations, gifts or grants received by such institution of higher education from public or private sources for the purpose of conducting such study.

The Center for Public Service at the University of Virginia and the Department of Waste Management are requested to submit the committee's findings and recommendations to the Governor and the 1993 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Services for the processing of legislative documents.

REPORT TO THE GOVERNOR AND GENERAL ASSEMBLY

House Joint Resolution No. 85 provided for the establishment of a nine-member committee to examine "means of encouraging local governments and public service authorities to explore the feasibility of utilizing the private sector to meet their solid waste management and recycling needs before making final procurement and capital outlay decisions." In order to fulfill this charge, the committee proceeded on the basis that its work should identify impediments to arrangements between the public and private sectors and address specific areas of concern to both governmental and private entities in the field of municipal waste management and recycling. The committee explored resources that describe the issues associated with privatizing public services but chose not to use the limited amount of time deliberating these matters or attempting to add to the considerable literature that already exists.

FINDINGS

Historically, many solid waste management services have been provided by local governments to fulfill their responsibility to protect their citizens' health, safety, and welfare. In recent years, growing quantities of waste¹ and rising expectations for environmental protection have added to, if not surpassed, the traditional health reasons for proper waste management. These concerns have resulted in the application of alternatives to disposal, such as recycling, waste-to-energy, composting, and source reduction², all of which add considerable costs. In response, many local governments are increasingly reliant on multi-jurisdictional arrangements and the private sector to address the accelerating complexity and costs of solid waste management, and to provide new types of services to Virginians.

For example, one relatively new service is the collection and processing of recyclable materials. Recently enacted legislative mandates require localities to capture discarded material for recycling at the rate of ten percent by 1991, fifteen percent by 1993, and twenty-five percent by 1995 (*Virginia Code Section 10.1-1411*). In order to accomplish the mandate and control significant start-up costs, some localities in Virginia have enlisted the services available in the private sector.

¹ The U. S. Environmental Protection Agency reports that despite a tenfold increase in recycling and combustion during the last 30 years, net discards of municipal solid waste have continued to rapidly increase.

² Innovative research is being performed in such areas as co-incineration of municipal solid waste and sewage sludge, mining, and reclamation of existing landfills and system-wide, weight based municipal solid waste collection.

Efforts undertaken by localities to offer the public recycling opportunities and to achieve the state mandate are notably expensive and will not pay for themselves in the foreseeable future. Separation and collection of recyclables in the municipal waste stream may reduce reliance on landfills; however, costs are seldom reduced because most of the operating and development costs (including debt service) are fixed and must be met regardless of the volume disposed. Also, depressed and regionally unavailable markets add to the cost and burden for managing the recyclable materials.

Moreover, initial recycling goals have been met, in part, by including materials, such as industrial scrap and auto hulks, which were not previously disposed in landfills. These traditional scrap processing services, provided outside of local government recycling initiatives, will not necessarily expand in quantities to help satisfy the incremental increase in mandated recycling rates through 1996. Consequently, additional recycling must occur for most localities to comply with the mandated recycling rates.

Compounding this problem for localities in Virginia is the fact that the state has provided essentially no funding to achieve the state-defined waste management and recycling goals. This is not to say that recycling does not help to meet important societal goals, but rather that the benefits of recycling, at least at present, are in areas other than costs savings.

In an effort to control the ever-increasing costs of complying with state and federal recycling and waste requirements, local governments in Virginia have, in some cases, united to establish multi-jurisdictional arrangements, such as solid waste authorities, to take advantage of the technical expertise, procurement flexibility, and economies of scale that such regional entities can provide. These authorities may choose to deliver services themselves or to contract with private providers, either on their own or on behalf of a group of participating jurisdictions.

While controlling burgeoning costs is a significant factor, assuring the quality and availability of services at a competitive price, furthering public policy directives from the legislature, and maintaining accountability to the public are also of great importance to localities and should be viewed concurrently with financial issues when exploring the privatization of waste management services.

State law governing procurement for public contracts has long recognized this reality by providing for selection of the "lowest responsible" bidder. Assuring quality service and public accountability in the short term will help assure costs savings over the twenty-plus year planning and management cycle for solid waste. Moreover, the state laws for solid waste management planning and recycling place the responsibility with local governments, whether the services and facilities are publicly or privately owned and/or operated.

CONCLUSIONS

To focus its work and to avoid duplicating the work of other recent legislative study committees³, the HJR 85 committee limited its discussions to four topic areas which it believed to be presently most pertinent. These areas are:

full cost reporting;
legal issues;
information resources; and
fiduciary issues.

The study committee examined the issue of full cost reporting in depth and believes that such a mechanism could be a useful tool for both local governments and the private sector in analyzing the options that exist for addressing solid waste management needs. The committee believes that additional study of this issue is necessary before providing specific recommendations on how full cost reporting might be implemented at the local level.

Regarding legal issues examined by the committee, consideration was given to legal impediments to long-term contracts, as well as public hearings required of public service authorities when contracting with the private sector. The committee does not believe that legislation is needed at this time to address the contract term issue but will study this further in 1993.

To assist local governments in identifying opportunities for privatization, the committee supports the establishment of a public-private partnership or industry trade-local government association alliance, rather than rely on a governmental regulatory body. Such a collaborative effort could be utilized to establish a Recycling and Solid Waste Information Service to publicize and promote existing public and private programs.

The committee agrees that any program addressing the use of the private sector for recycling and solid waste management services must acknowledge and give primary emphasis to the responsibilities of government for the well-being of the public as a whole. In particular, capacity assurance, environmental protection, Superfund and other environmental liability, financial assurance, and equitable and long-term competitive pricing of services must be considered.

The committee contemplated recommendations on these topics and prepared an interim report to reflect the group's understanding. As the committee's interim report was circulated beyond the

³ Such studies include joint subcommittees on enhancing recycling markets (HJR 244, 1992), providing safe, economical, and efficient disposal of recycling residues and examining tax incentives to encourage recycling (HJR 384, 1989) and alternatives for improving waste volume reduction and recycling (HJR 80, 1998 and SJR 132, 1987).

immediate membership, associated issues and questions were raised confirming the committee's belief that the study should be continued with a broader membership.

At a meeting in January, 1993, committee members agreed to recommend the continuation of the study committee and request broader membership, including legislators, that could help to more thoroughly examine the roles of the public and private sector in accomplishing the state's directives in waste management. Because the Commonwealth will be the primary beneficiary of the study, the committee recommends that the resources necessary to complete the work be provided by the state and that the Division of Legislative Services be responsible for staffing the work of the group.⁴

The interim report, encompassing staff research and the members' experience, is likely to serve as a useful tool to a continued review of private sector services in public responsibilities for waste. The committee is poised to immediately pursue means of accomplishing points of consensus, such as full cost reporting for waste services and clarifying local authority for long-term contractual arrangements, during the coming year if the study is continued.

⁴ In 1992, funding for the study was provided by private sector interests. The committee recommends state resources be allocated for 1993 to reflect the broad composition of the study committee.

MEMBERS OF THE HJR 85* COMMITTEE

Edmund A. Brummer, citizen

John Cartwright, Manassas City Manager

Steve Coe, Department of Waste Management

Durwood Curling, Director, Southeast Public Service Authority

Danny Holly, III, Holly's Disposal, Suffolk

Richard Lerner, Cycle Systems, Lynchburg

Hiawatha Nicely, citizen

Jeffrey C. Southard, Browning-Ferris Industries

Greg Wolfrey, Administrator, Goochland County

- * House Joint Resolution No. 85 was patroned by Delegate Shirley F. Cooper, who participated in committee meetings and offered valuable assistance. Paul C. Jacobson, Research Associate at the Center for Public Service at the University of Virginia, provided staff support.**