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DEVELOPMENT AUTHORITIES
THE BASICS

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February 2021

GLOSSARY- DEFINITIONS

- Authority includes a DA, a DDA and a JDA.
- CID = Community Improvement District
- Constitutional = created by an LCA
- DA = development authority
- DAL = the Development Authorities Law
- DDA = downtown development authority
- IGA = intergovernmental agreement
- JDA = joint development authority
- LCA = local constitutional amendment
- Local Government = city or county
- P3 = public/private partnership
- PILOTs = payments in lieu of taxes
- SSD = special service district; i.e., a special district that can levy special taxes or assessments
- Statutory = created under the Development Authorities Law or the Downtown Development Authorities Law
- TAD = tax allocation district
- TEBs = tax-exempt bonds

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WHY WE HAVE AUTHORITIES

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PROTECT LOCAL GOVERNMENT

THE CITY OR COUNTY IS NOT LIABLE FOR THE AUTHORITY'S DEBTS OR CONTRACTS.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the State of Georgia or of any county, municipal corporation, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of n indebtedness of this state or of ny such county, municipal corporation, or political subdivision.

O.C.G.A. Sec. 36-62-10

Note: A few LCAs require the local government to impose millage to repay bonds issued by its Constitutional development authority. Always check the LCA.

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PROTECT LOCAL GOVERNMENT

MEMBERS OF AUTHORITIES ARE APPOINTED, NOT ELECTED. THEY BUFFER THE ELECTED OFFICIALS FROM TEMPORARY POLITICAL PRESSURE.

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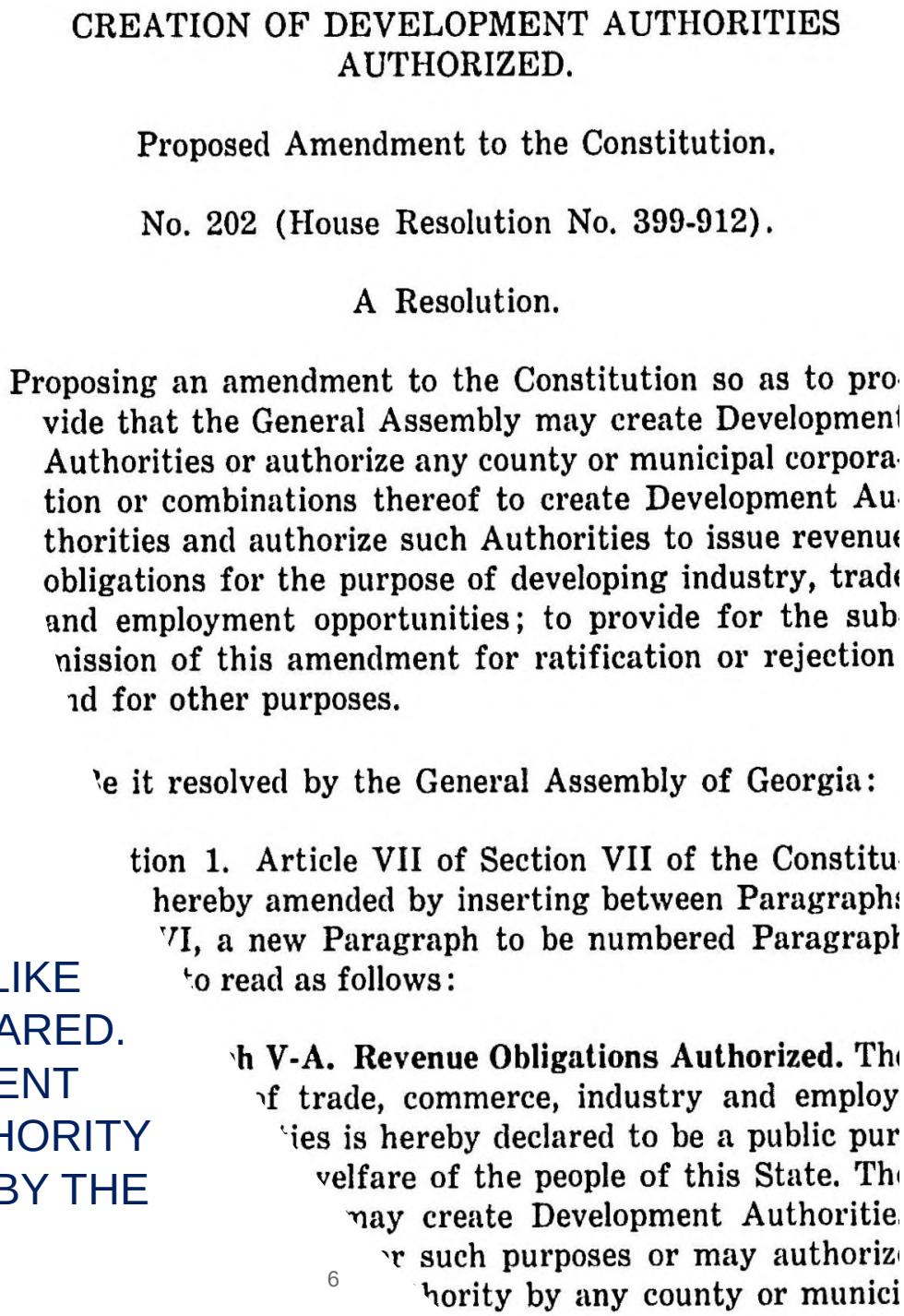
ADD POWERS

THE GEORGIA CONSTITUTION AUTHORIZES ECONOMIC DEVELOPMENT POWERS FOR AUTHORITIES THAT LOCAL GOVERNMENTS DON'T HAVE.

SOME OTHER POWERS (LIKE REDEVELOPMENT) ARE SHARED. IF THE LOCAL GOVERNMENT WORKS THROUGH THE AUTHORITY INSTEAD, IT IS PROTECTED BY THE AUTHORITY.



CREATION OF DEVELOPMENT AUTHORITIES AUTHORIZED.

Proposed Amendment to the Constitution.

No. 202 (House Resolution No. 399-912).

A Resolution.

Proposing an amendment to the Constitution so as to pro vide that the General Assembly may create Development Authorities or authorize any county or municipal corpora tion or combinations thereof to create Development Au thorities and authorize such Authorities to issue revenue obligations for the purpose of developing industry, trade and employment opportunities; to provide for the sub mission of this amendment for ratification or rejection id for other purposes.

e it resolved by the General Assembly of Georgia:

tion 1. Article VII of Section VII of the Constitu hereby amended by inserting between Paragraphs VI, a new Paragraph to be numbered Paragraph to read as follows:

h V-A. **Revenue Obligations Authorized.** The f trade, commerce, industry and employ ies is hereby declared to be a public pur velfare of the people of this State. The may create Development Authorities r such purposes or may authorize hority by any county or munici

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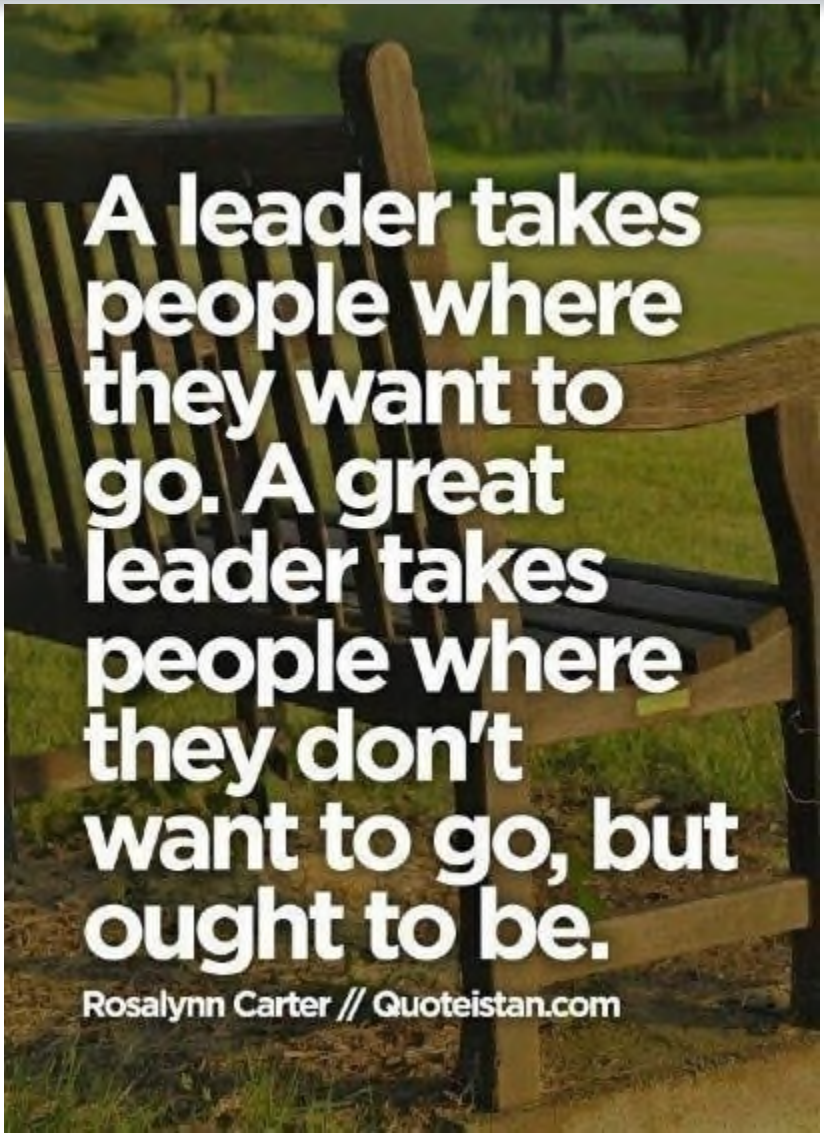
BECOME EXPERTS

- THE AUTHORITY BOARD IS LIKE A "SUBJECT MATTER EXPERT"
- THE SUBJECT IS ECONOMIC DEVELOPMENT.



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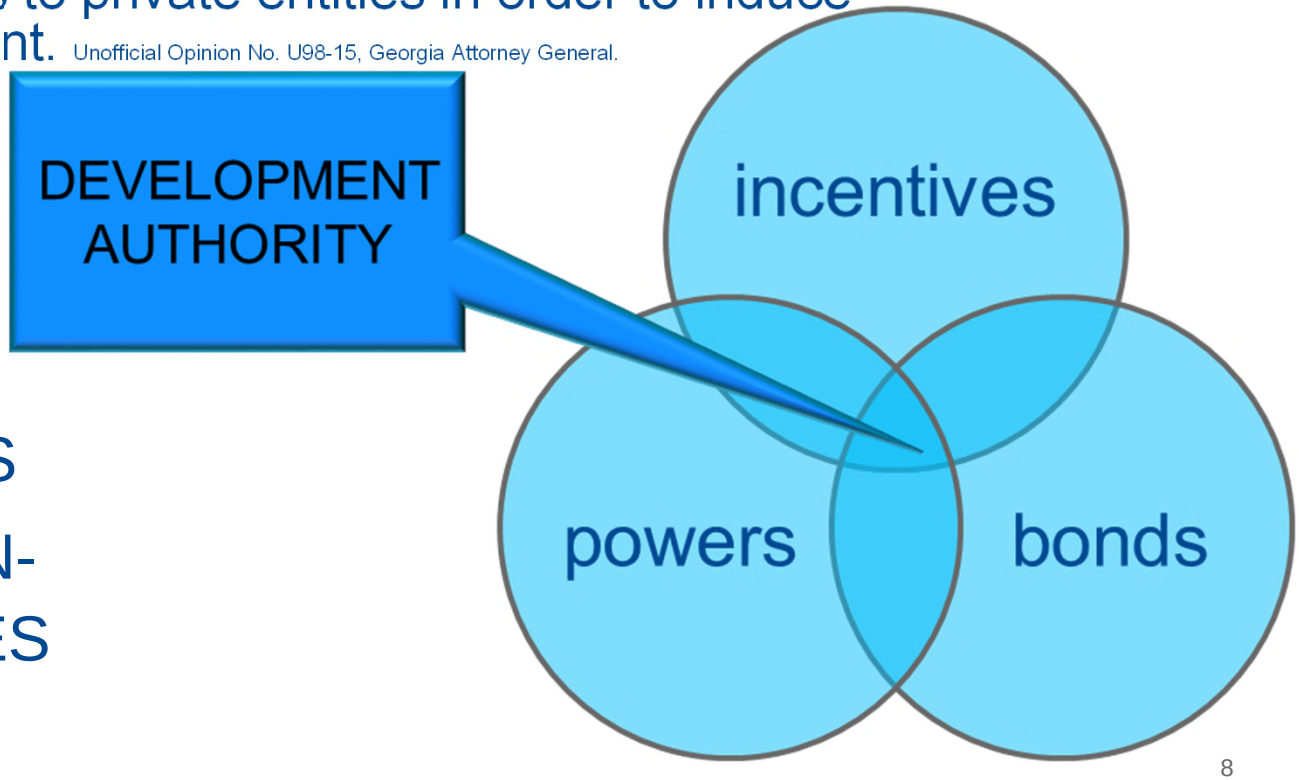
IF GEORGIA DID NOT HAVE DEVELOPMENT AUTHORITIES….

You requested my opinion whether the Georgia Constitution permits "the use of public funds for incentives to directly benefit private corporations to spur economic development"....As you surmised, the prohibition against governmental gratuities has been interpreted to preclude direct grant payments *to private entities in order to induce* economic development. Unofficial Opinion No. U98-15, Georgia Attorney General.

NO DEVELOPMENT AUTHORITY…

NO PROPERTY TAX INCENTIVES

NO CASH OR IN-KIND INCENTIVES



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CAN'T- CONFER A "GIFT OR GRATUITY"

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EVERYDAY DEVELOPMENT AUTHORITY ISSUE

Can't- Confer "gifts or gratuities"

GA CONSTITUTION

Issue: incentives

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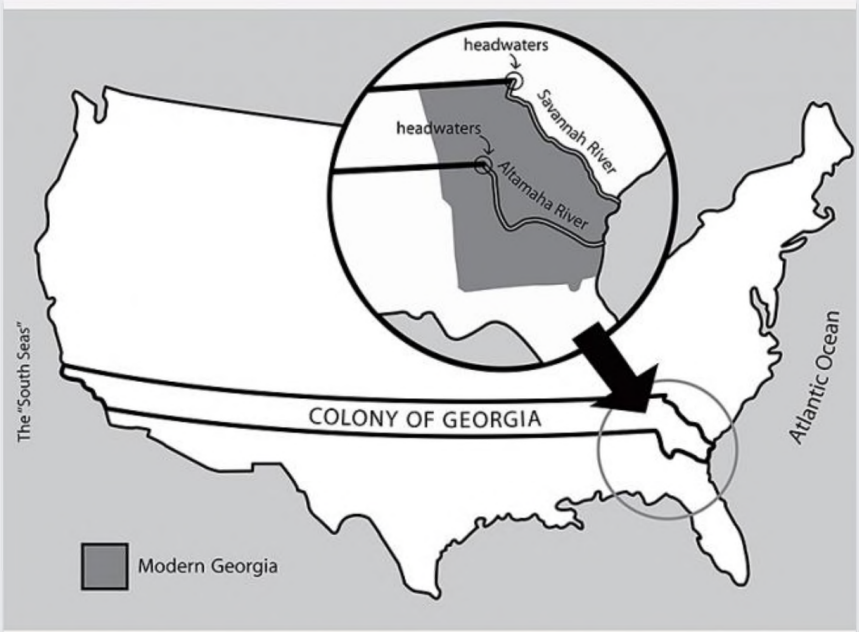
GEORGIA WAS ONCE THE LARGEST STATE



Georgia's original English land grant went westward across the country from the headwaters of the Savannah and Altamaha Rivers.

A later English map of the State of Georgia in the 18th century showing Georgia's borders extending westward to the Mississippi River including the states of Alabama and Mississippi.

map credit: "Vanishing West Georgia" Facebook Group

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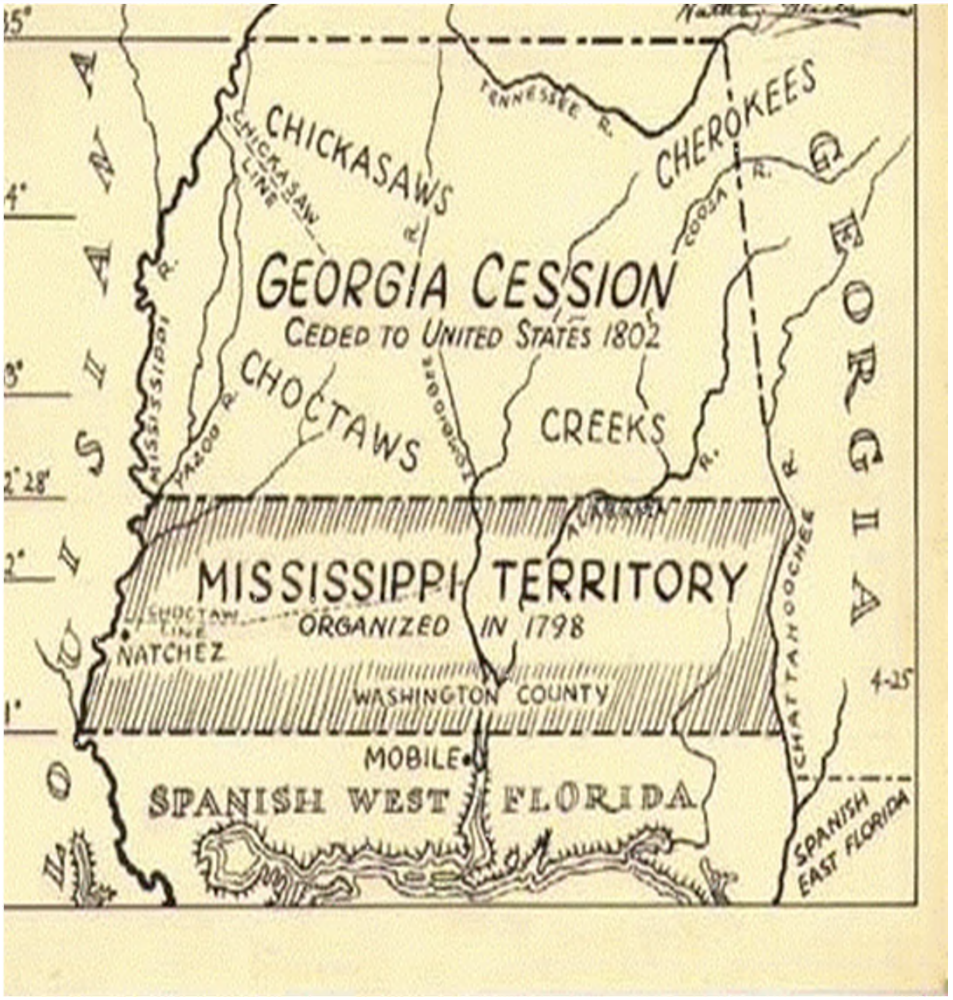
BUT NOT AFTER SOME "GIFTS OR GRATUITIES" WERE MADE

"The Yazoo land controversy was a massive, real estate fraud perpetrated, in the mid-1790s, by Georgia governor George Mathews and the Georgia General Assembly. Georgia politicians sold large tracts of territory in the Yazoo lands, in what are now portions of the present-day states of Alabama and Mississippi, to political insiders at very low prices in 1794….In the landmark decision in Fletcher v. Peck (1810), the [U.S. Supreme] Court ruled that the contracts were binding and the state could not retroactively invalidate the earlier land sales." Source: Wikipedia



Source: alabamapioneers.com

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FROM “FORGIVABLE LOANS” TO REBA & ONEGEORGIA

Forgivable Loans

1995: ATTORNEY GENERAL RULED THE STATE’S “FORGIVABLE LOAN” PROGRAM UNCONSTITUTIONAL

“The forgiveness of loans made under the incentive loan program is clearly outside the scope of the legal powers of GHFA. Under the Constitution, the granting of any donation or gratuity or the forgiveness of any debt or obligation owing to the public is prohibited. Ga. Const. 1983, Art. III, Sec. VI, Para. VI (a)” 1995 Ga. Op. Atty. Gen. 55 (April 28, 1995).

State Grants

ONEGEORGIA AND REBA PROGRAMS WERE RESPONSE MADE TO “KEEP GEORGIA IN THE GAME” AND PERMIT GRANTS FOR PROSPECTS

concepts taken from bond financing: inducement, finding of equivalent public benefit and no “gratuity”

Communities

BUT- PROHIBITION OF “GIFTS AND GRATUITIES” APPLIES TO ALL INCENTIVES AND ALL AUTHORITIES

“This provision of the Constitution applies to the operations of public authorities…It has been held that the forgiveness of a loan operates as a gift to the debtor/donee.” 1995 Ga. Op. Atty. Gen. 55 (April 28, 1995).

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YOU CAN'T- "GIVE STUFF AWAY" BUT YOU CAN- MAKE A BARGAIN

"The Georgia Constitution prohibits the General Assembly from granting any donation or gratuity. Ga. Const. 1983, Art. III, Sec. VI, Para. VI....This office has opined repeatedly that agencies may not dispose of publicly owned property without obtaining fair market value, **or** its equivalent in an exchange, for the transaction. See, e.g., 1971 Op. Att'y Gen. U71-17; 1995 Op. Att'y Gen. 95-25; 1997 Op. Att'y Gen. 97-6.Therefore, based upon these legal authorities, it is my official opinion that the Department [of Transportation] must receive in return for the disposal of access rights under O.C.G.A. § 32-6-l33(b), the fair market value of such rights **or** other substantial benefit in aid of the performance of the Department's governmental mission." Op. Ga. Atty. Gen. No. 97-14

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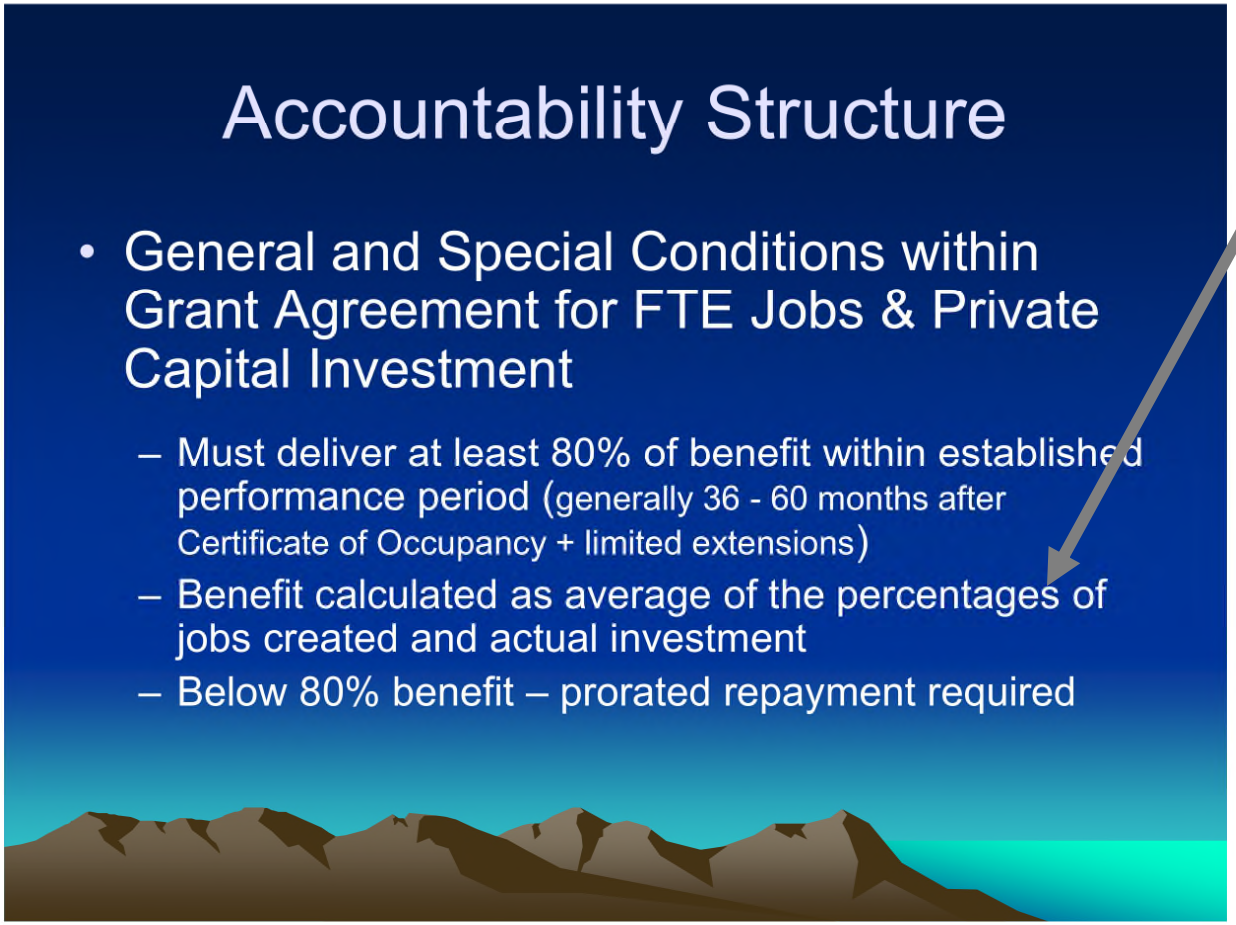
EVERY PROJECT NEEDS AN MOU BETWEEN THE DA/DDA AND THE PROSPECT/DEVELOPER AND/OR OPERATOR

- AN MOU IS A “MEMORANDUM OF UNDERSTANDING”
- A/K/A Development Agreement, Project Agreement, etc.
- It is the “Deal Document”
- IT IS TYPICALLY A BINDING CONTRACT.
  - SOMETIMES PRECEDED BY A NON-BINDING LETTER OF INTENT (LOI)
    - or maybe just an “offer letter”
- MOU IS A PRELIMINARY DOCUMENT THAT WILL BE FOLLOWED BY DEFINITIVE DOCUMENTS; e.g., BOND DOCUMENTS

THE MOU CONTAINS THE BARGAIN



Source: DCA

- When there is a state grant, these are the public benefits that the State is bargaining for.
- What is the community bargaining for?
- It can be whatever is important to it that the Company will agree to.
  - Example- In light of some recent long term, 100% abatements, some communities are considering removing investment from the clawback formula- making it 100% jobs. Rationale- What significance is the investment if no taxes are being paid on it?

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“BONDS FOR TITLE”-

THAT’S HOW YOU DELIVER ON PROPERTY TAX SAVINGS AND CASH AND IN-KIND INCENTIVES

It's not just about property tax "abatement." Cash and in-kind incentives also flow through the development authority.

The lease is the conduit for the incentives- abatement, cash, in-kind.

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PROPERTY TAX SAVINGS

THERE ARE TWO BASIC STRUCTURES

LEASEHOLD VALUATION

USUFRUCT

FIGURING OUT HOW "ABATEMENT" WORKS

THE TOTALITY OF THE INTEREST IN PROPERTY HAS BEEN CALLED THE "BUNDLE OF STICKS"

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LEASEHOLD VALUATION

A LEASE SEPARATES THE BUNDLE INTO TWO SEPARATE, AND DIFFERENT, INTERESTS IN THE PROPERTY

THE "FEE"
(LEGAL TITLE; LESSOR'S INTEREST)

ESTATE FOR YEARS
(LESSEE'S INTEREST)

Not taxed when the lessor is a development authority.

Make the value in each year match the year's taxability percentage.

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USUFRUCT

THE "FEE"
(LEGAL TITLE; LESSOR'S INTEREST)

THE LEASE DOES NOT SEPARATE THE BUNDLE

a simple contractual right to possess and enjoy the use of the project

USUFRUCT
(LESSEE'S INTEREST)

Not taxed when the lessor is a development authority.

No tax because no property interest to tax. But contract payments can be required (PILOTs).

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EXAMPLE OF USE OF PROPERTY TAX INCENTIVES
MIXED-USE PROJECT WITH WHOLE FOODS STORE
CHAMBLEE

4.7. Substantial Failure. The Company further acknowledges and agrees that the failure of the Company to achieve any one of the milestones on the Development Schedule, on or before the related deadline for same provided on the Development Schedule, or the failure of the Company to cause a Whole Foods Grocery to be operated at the Project at any time while the Bond Lease is in effect, will constitute sufficient basis for the DDA, in its sole discretion, to suspend future utilization, in whole or in part, of the Savings Schedule, and to increase the amounts payable by the Company to the DDA as administrative payments under the Savings Schedule from time to time, in any increment that the DDA sees fit in its sole discretion, up to 100% of normal taxes on the Project for the remaining term of the Bond Lease, provided that the DDA likewise may, in its sole discretion, from time to time, in any increment that the DDA sees fit, rescind any such increase. For the avoidance of doubt, the DDA may exercise its rights hereunder after the Closing with respect to a failure that occurred prior to the Closing, and the preceding provisions shall not be subject to *force majeure*.

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Image credit: What Now Atlanta

EFFECTIVE USE OF INCENTIVES PROMOTES CREDIBILITY WITH DEVELOPERS

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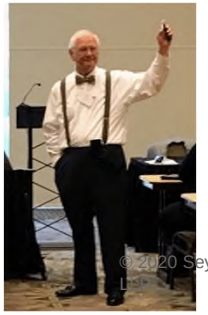
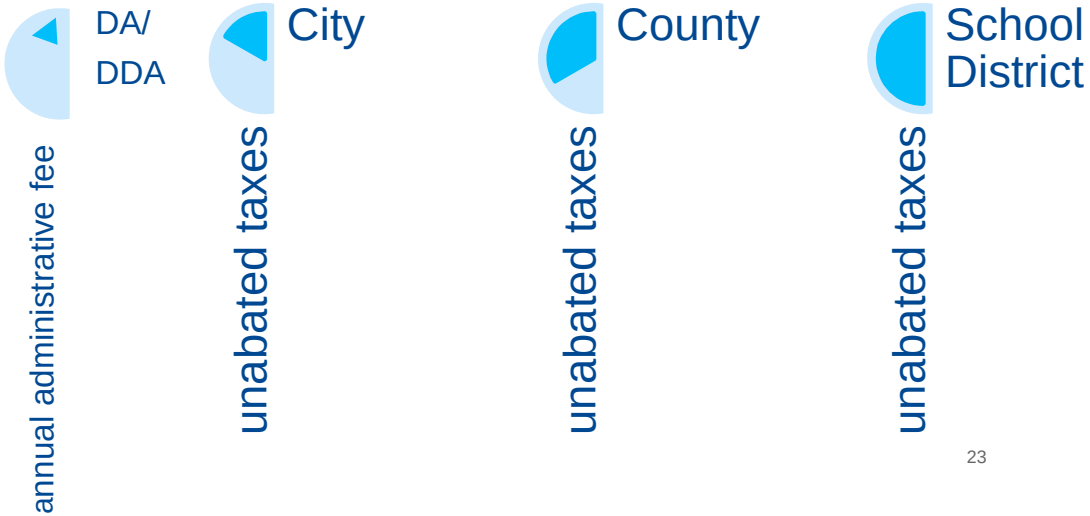
TRENDING- profit sharing

- DEVELOPMENT AUTHORITIES CAN EARN FEES FROM TRANSACTIONS SUCH AS BOND ISSUES
  - WHEN BOND ISSUES INVOLVE PROPERTY TAX SAVINGS
    - TREND AMONG CITYWIDE DEVELOPMENT AUTHORITIES AND DDAs: “profit sharing”

“Most often found with key projects given long-term, deep-discount tax savings.”





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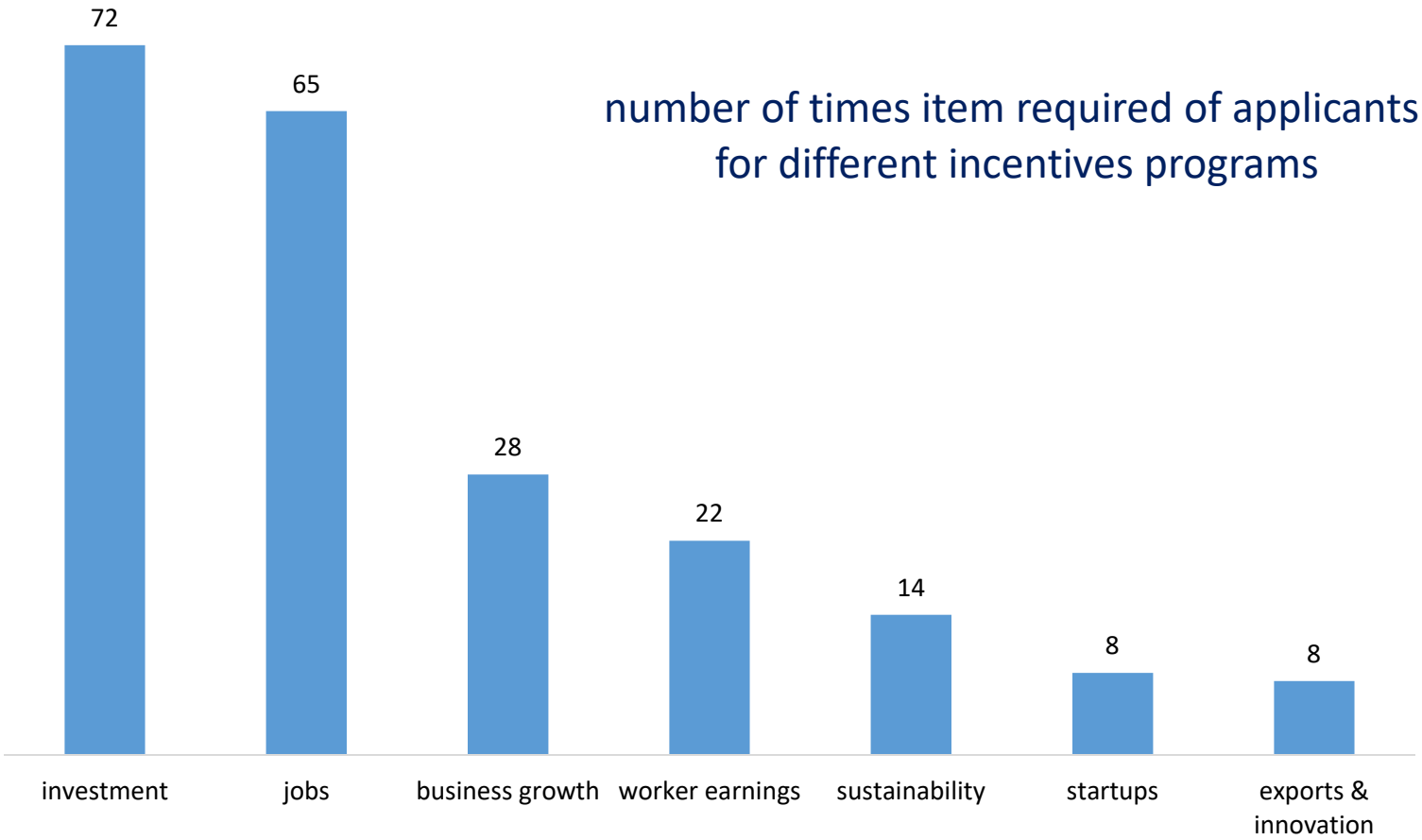
WHAT SOME OTHER COMMUNITIES ARE REQUIRING AS GOALS



Data Source: CREC; goal chart based on interpolation- data estimated
Data Visualization: Dan McRae

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WHERE AUTHORITIES CAME FROM

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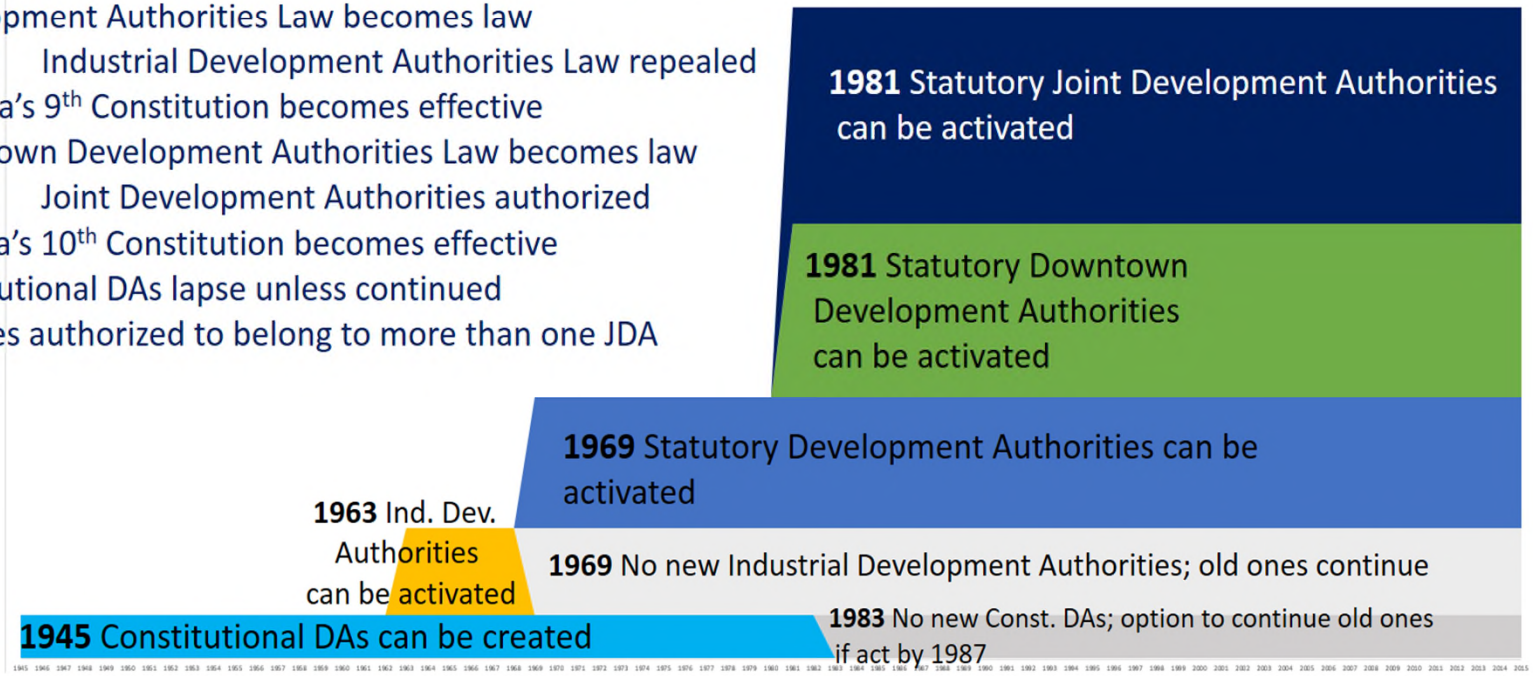
THE DEVELOPMENT OF DEVELOPMENT AUTHORITIES IN GEORGIA

TIMELINE

1945 Georgia's 8th Constitution becomes effective
1963 Industrial Development Authorities Law becomes law
1968 Georgia Constitution amended to authorize development authorities
1969 Development Authorities Law becomes law
Industrial Development Authorities Law repealed
1976 Georgia's 9th Constitution becomes effective
1981 Downtown Development Authorities Law becomes law
Joint Development Authorities authorized
1983 Georgia's 10th Constitution becomes effective
1987 Constitutional DAs lapse unless continued
2004 Counties authorized to belong to more than one JDA



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THE GOVERNANCE OF DEVELOPMENT AUTHORITIES

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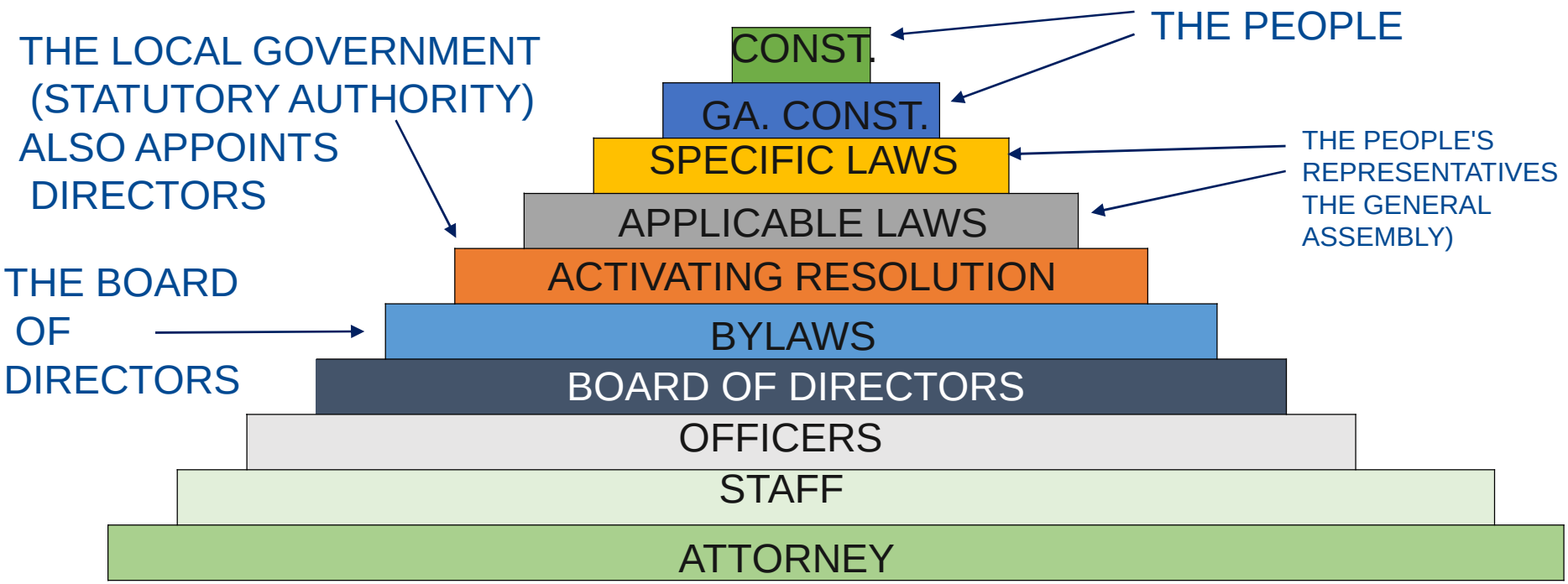
We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.



THE HIERARCHY OF A DEVELOPMENT AUTHORITY

MOST "IN CHARGE" AT THE TOP

LEAST "IN CHARGE" AT THE BOTTOM

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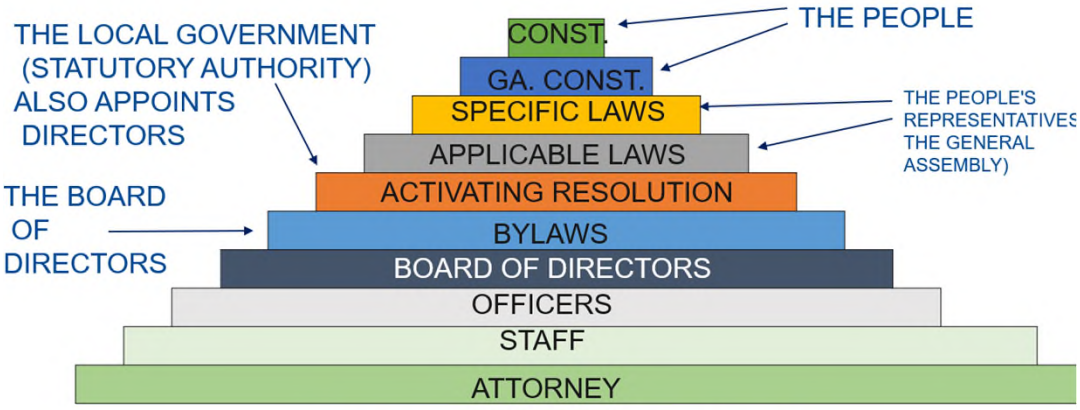
DON'T FORGET THE COURT SYSTEM

ESPECIALLY THE SUPREME COURT AND THE COURT OF APPEALS



THE HIERARCHY OF A DEVELOPMENT AUTHORITY

MOST "IN CHARGE" AT THE TOP

LEAST "IN CHARGE" AT THE BOTTOM

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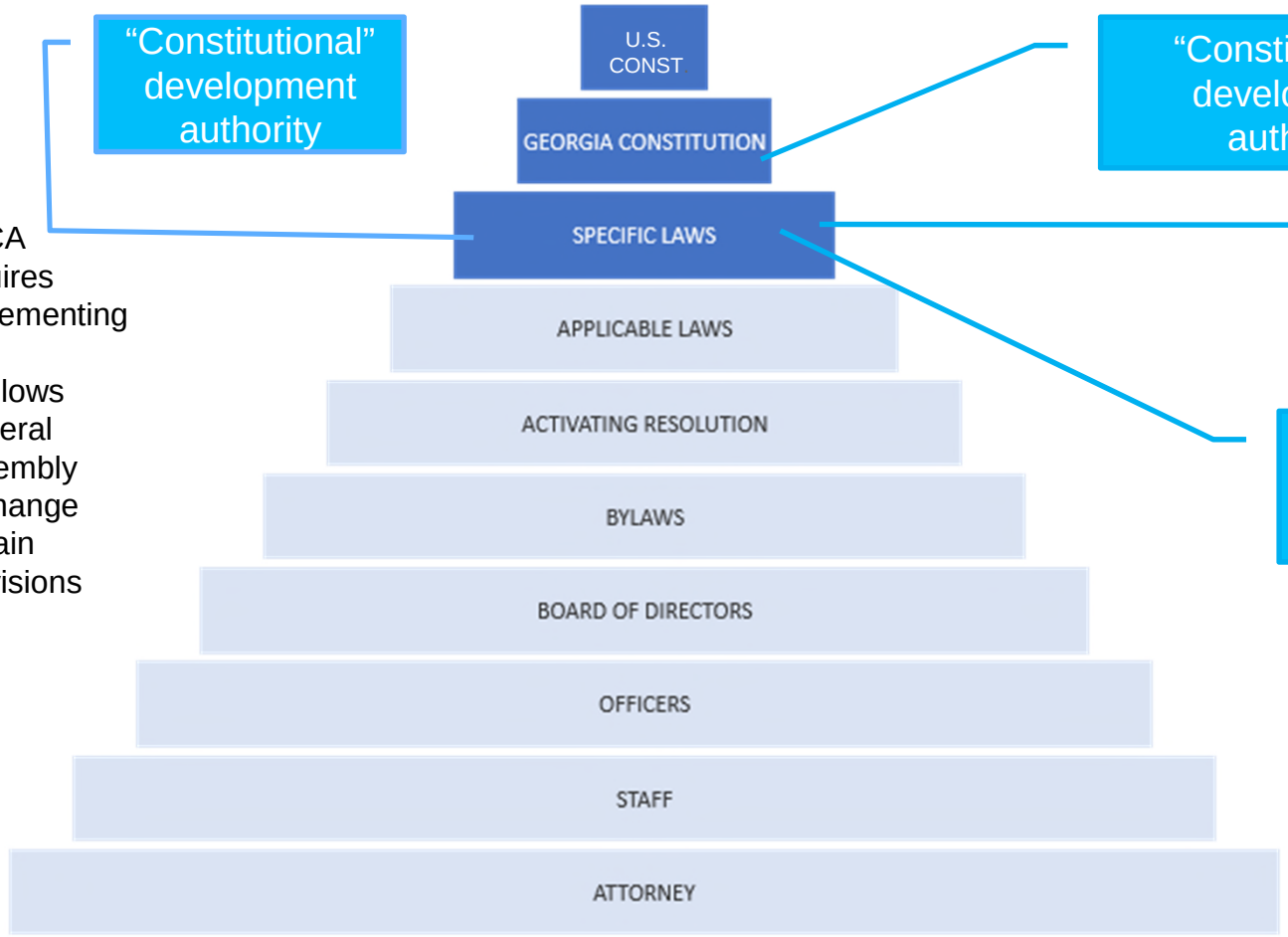
WHERE TO FIND THE LAW FOR YOUR AUTHORITY



"Constitutional" development authority

if LCA requires implementing act or allows General Assembly to change certain provisions

"Constitutional" development authority

"statutory" development authority

"local act" authority

no local or special law in any case for which provision has been made by an existing general law

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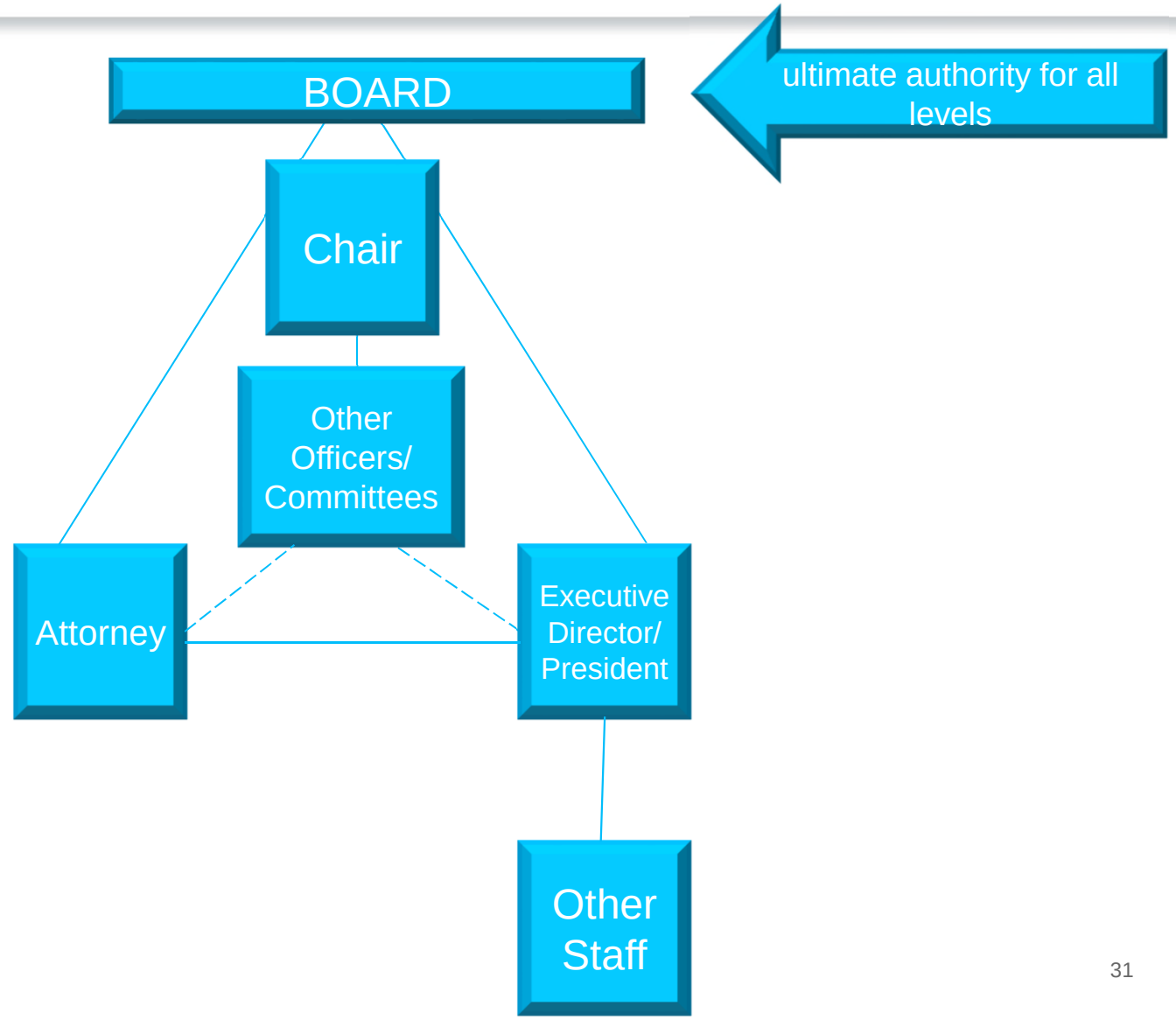
SPECIMEN OPERATIONAL FLOWCHART



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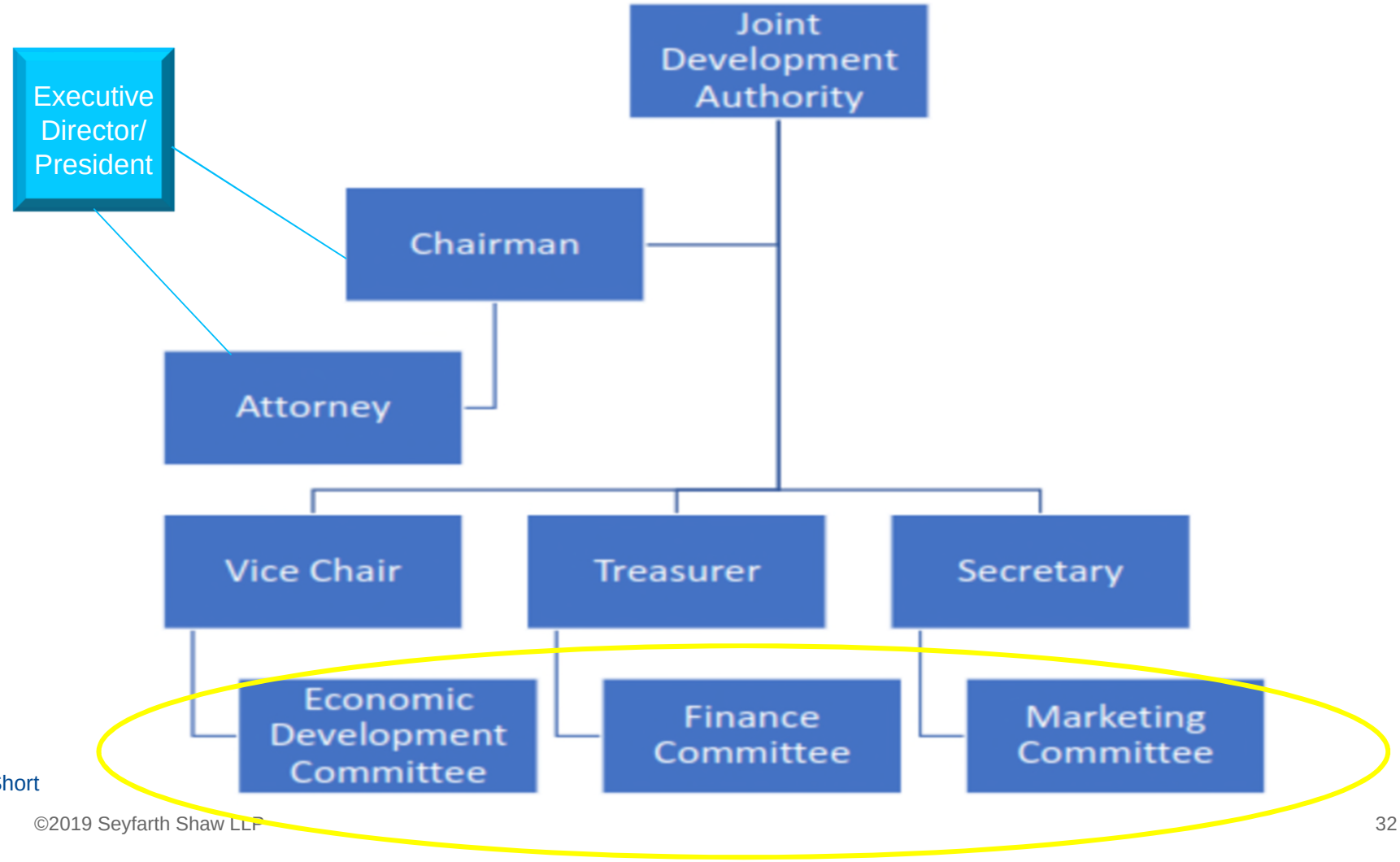
ANOTHER EXAMPLE- JDA



Credit:
Shane Short

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THE LEVELS OF AUTHORITY

BOARD	BYLAWS	OFFICERS
• Statutory DA: 7-9 members; set by local government (can include 1 local government member); term (after first appointments) 4 years; majority of whole board to pass resolution • Statutory DDA: 7 members (can include 1 local government member); term (after first appointments) 4 years; majority of quorum to pass resolution except issuing debt or making project determination • Statutory JDA: all set by concurrent activating resolutions of local governments • Constitutional authority- all set by LCA	• Adopted by board • Best practice: include only matters not dictated by governing law, such as officer terms, calling special meetings, meeting schedule • Directors must comply with procedures in bylaws such as notice required before amending bylaws	• Statutory DA, JDA and DDA: Chair and Vice Chair (both members), Secretary and Treasurer or Secretary-Treasurer (membership optional) • Constitutional authority- all per LCA

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THE LEVELS OF AUTHORITY

BOARD

- **Statutory majority of whole board to pass resolution**

Presiding officers and Authority
Counsel of city/county authorities must be alert for this issue.
Note- DDA's have different rules.

The authority's rules say that even when fewer than all seven members of the board are present at a meeting, an item must get the majority of the full seven- member board — at least four votes — to pass.

Floor & Decor will get another shot before the authority at a special called meeting Nov. 5.

Source: Marietta Daily Journal

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THE LEVELS OF AUTHORITY

BOARD

- **Statutory DA: can include 1 local government member**

Elected person on the board- Good idea? Bad idea?
Regardless, the situation of an elected person's
holding two positions is not unethical or a conflict.
Why? Because the law permits it.
A transaction, on the other hand, can be either, or both.

Councilwoman Farmer told the MDJ she voted against the change because having a council member on the development authority as a voting director is an "ethical violation."

"We don't need a member from the council on the board of directors for DAPS (Development Authority of Powder Springs)," Farmer said. "I feel like they would be influenced too much by the council and by what we want and I feel like (development authority directors) need to make their own decisions."

Farmer said she didn't have an issue with increasing the number of development authority directors to nine, only opposing the part of the code change allowing one of the directors to be a council member.

Source: Marietta Daily Journal

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THE LEVELS OF AUTHORITY

BOARD

- **"(a) The directors shall be taxpayers residing in the county or municipal corporation for which the authority is created, …."**
- **O.C.G.A Sec. 36-62-5**
- **(statutory city/county development authorities)**
-

In another community, the County Board of Commissioners voted to remove the "newly-appointed Development Authority Chair … because he does not own a home

[The Chair] told the .. News he lives in [the County] and that he does pay county taxes through his business."

This is not an uncommon issue. The DAL does not contain a definition of "residing" or of "taxpayer."

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STATUTORY DDA DIRECTOR QUALIFICATIONS

A DIRECTOR OF A STATUTORY DDA HAS TO HAVE (AND MAINTAIN AT ALL TIMES) ONE OF THESE QUALIFICATIONS-

1. City resident
2. Resident of City's County and own or operate a business in the downtown development area
3. Qualified under both 1 and 2
4. Member of City's governing body

(at least 4 of the Directors in the above categories, "shall be persons who, in the judgment of the governing body of the municipal corporation", have or represent a party who has an economic interest in the redevelopment and revitalization of the downtown development area)

5. Resident of Georgia and own a business in the downtown development area (only 1 member)

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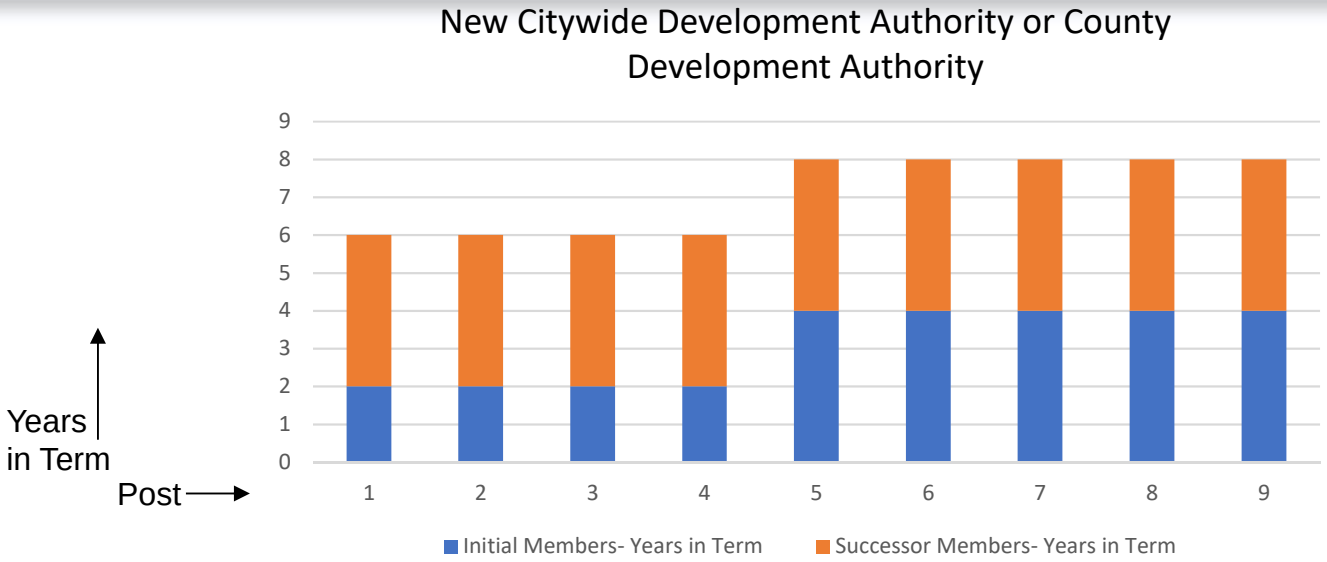
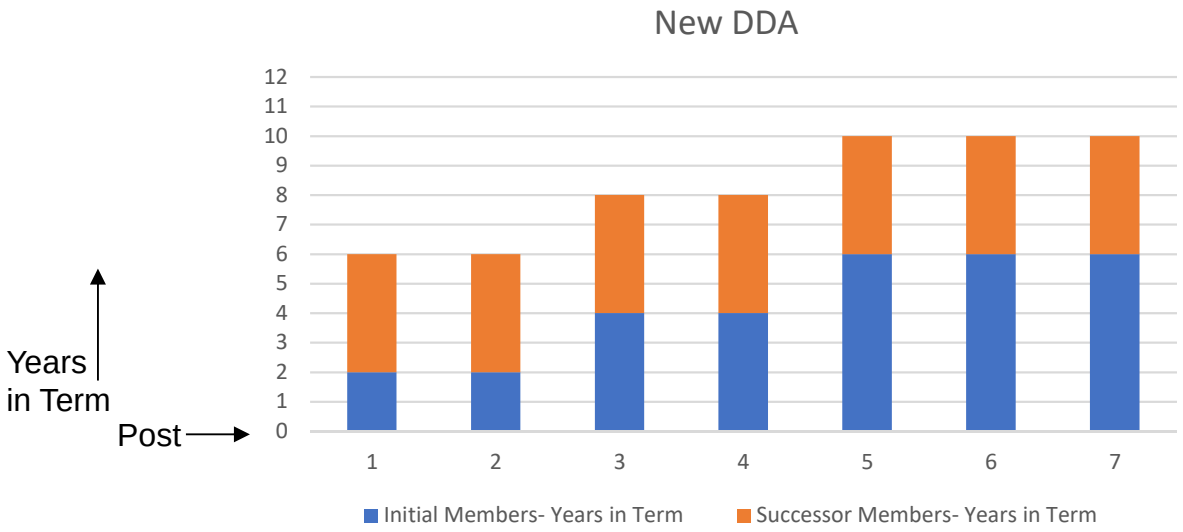
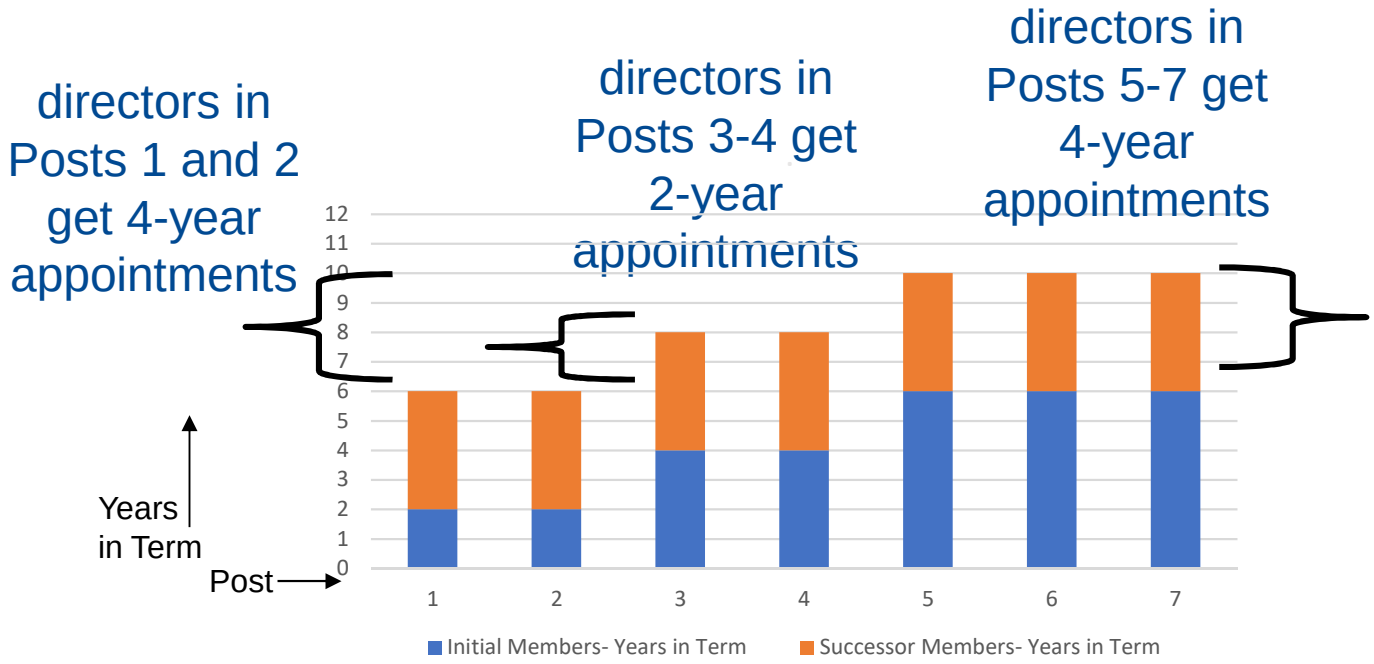
HOW A LOCAL GOVERNMENT MAKES BOARD APPOINTMENTS FOR NEW AUTHORITIES





HOW THE CITY "REINSTATES" A DORMANT AUTHORITY

DDA example assuming:
DDA goes dormant as of Year 6
All director positions are vacant (resigned, lost their qualifications, etc.)
No elected official has been a director or will be appointed now



REMINDER- THE "D" IN JDA SOMETIMES STANDS FOR "DIFFERENT"

THE CONCURRENT RESOLUTIONS ADOPTED BY THE LOCAL GOVERNMENTS SET-

- The Total Number of Directors
- How Many Directors Each Local Government Gets to Appoint
- The Residency Requirements for the Directors
- The Terms of Office of the Directors

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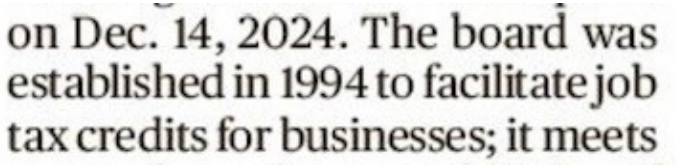
REMINDER- THE "D" IN JDA SOMETIMES STANDS FOR "DIFFERENT"

1995 AMENDMENT TO DAL IMPOSES THESE REQUIREMENTS ON A JDA AMONG CONTIGUOUS COUNTIES :

- It must be an "active, bona fide" joint authority.
- It must have a board of directors.
- It must meet at least quarterly.
- It must develop an operational business plan (there is no requirement for a paid staff).

THE REQUIREMENTS LISTED ABOVE DO NOT APPLY TO OTHER TYPES OF AUTHORITIES, OR EVEN OTHER TYPES OF JOINT AUTHORITIES.


on Dec. 14, 2024. The board was established in 1994 to facilitate job tax credits for businesses; it meets

Source: AJC

From a newspaper article about board appointments for a JDA. Please avoid characterizing your JDA as just a vehicle for obtaining tax credits.

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WHERE AUTHORITIES CAN ACT

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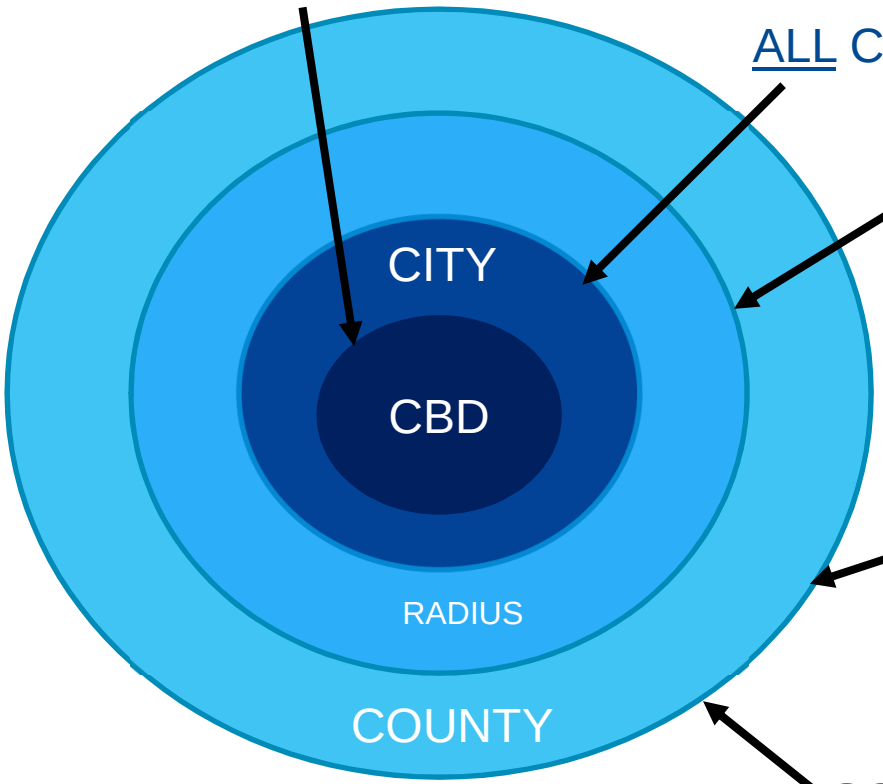
THE LIMITS OF JURISDICTION

jurisdiction begins at center and extends to where arrow points



ALL DDAs

ALL CITY DEVELOPMENT AUTHORITIES

SOME CONSTITUTIONAL CITY DEVELOPMENT AUTHORITIES AND DDAs

ALL COUNTY DEVELOPMENT AUTHORITIES

SOME CONSTITUTIONAL CITY DEVELOPMENT AUTHORITIES

Statutory DDAs have citywide jurisdiction for certain PACE-type projects. JDAs- see next slide

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CAN’T- EXEED YOUR JURISDICTION

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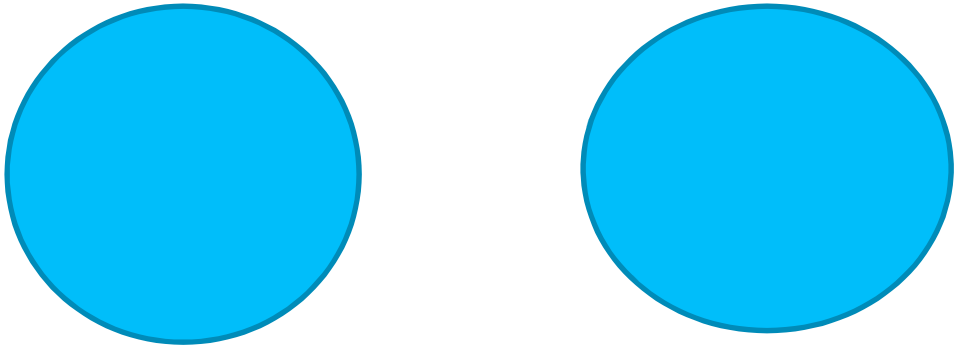
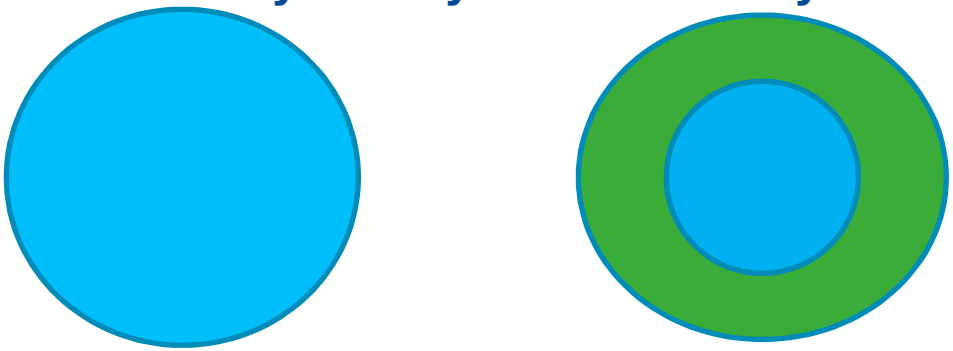
JOINT DEVELOPMENT AUTHORITIES

Joint development authority for East County and West County



JDA has jurisdiction over all blue areas (both counties and all cities)
Note- sometimes jurisdiction is limited in concurrent activating resolutions

Joint development authority for city in East County and for West County



JDA has jurisdiction over all blue areas (West County and all cities in West County, plus city in East County)

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LIGHTING STRIKES THRICE

3 EXAMPLES OF PROJECTS WHERE THE FACILITY LOCATION INVOLVED TWO COUNTIES

3 DIFFERENT SOLUTIONS

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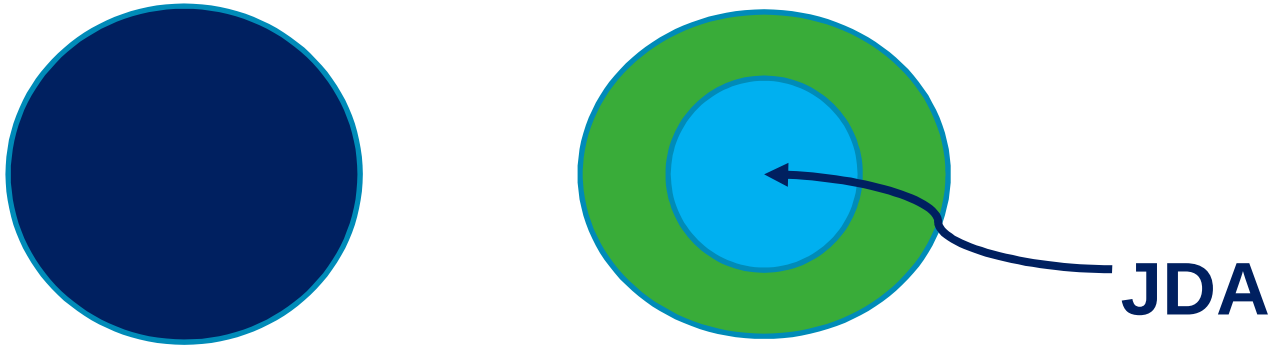
MANDO AUTOMOTIVE SUPPLIER
MERIWETHER COUNTY: OWNED PARK
TROUP COUNTY: SITE OF PARK



- SOLUTION: CREATE JOINT DEVELOPMENT AUTHORITY OF MERIWETHER COUNTY AND THE CITY OF HOGANSVILLE (SITE OF PROJECT IN TROUP COUNTY)
- JDA ISSUES BONDS FOR TITLE AND HOLDS TITLE TO THE PROJECT
- TROUP COUNTY BOARD OF TAX ASSESSORS APPROVED MOU BETWEEN MANDO AND THE JDA
- JDA'S JURISDICTION LIMITED BY CONCURRENT ACTIVATING RESOLUTIONS TO THE INDUSTRIAL PARK

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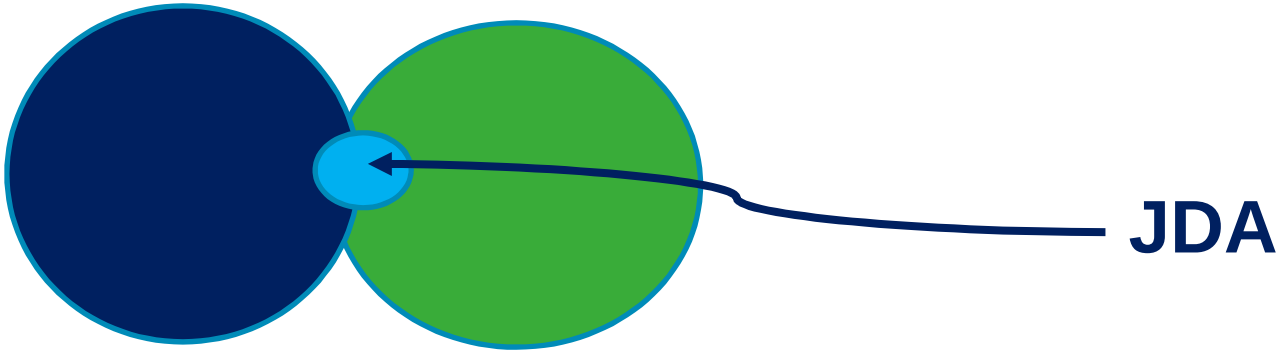
DOLLAR GENERAL DISTRIBUTION CENTER
FACILITY LOCATED IN BOTH BUTTS COUNTY AND SPALDING COUNTY



- SOLUTION: CREATE JOINT DEVELOPMENT AUTHORITY OF BUTTS COUNTY AND SPALDING COUNTY
- JDA ISSUES BONDS FOR TITLE AND HOLDS TITLE TO THE PROJECT
- INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTIES REGULATES WHO ASSESSES TAXES, WHO ISSUES BUILDING PERMIT, SPLIT OF REVENUES, WHO PROVIDES UTILITIES, ETC.
- JDA'S JURISDICTION LIMITED BY CONCURRENT ACTIVATING RESOLUTIONS TO THE SITE OF THE FACILITY

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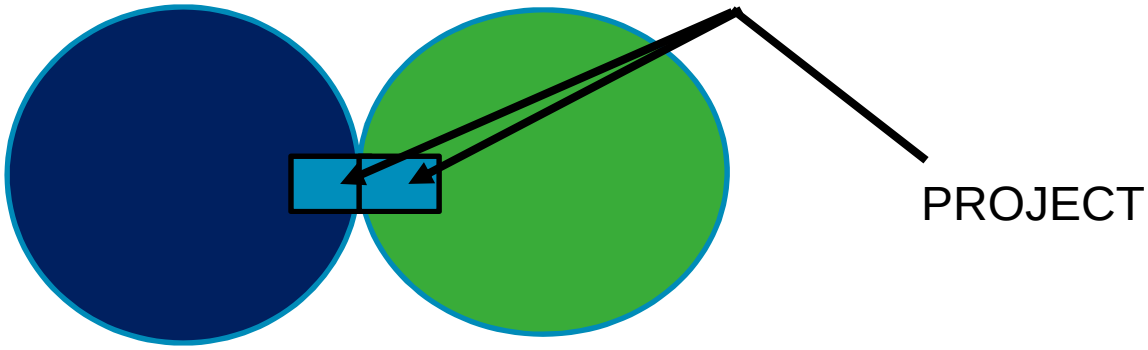
CATERPILLAR CONSTRUCTION EQUIPMENT MANUFACTURING PLANT

LOCATED IN BOTH ATHENS-CLARKE AND OCONEE COUNTY



- SOLUTION: EACH LOCAL GOVERNMENT'S DEVELOPMENT AUTHORITY ISSUED ITS OWN BONDS FOR TITLE FOR ITS PORTION OF THE PROJECT
- IN ADDITION TO CATERPILLAR, THE LOCAL GOVERNMENTS, THEIR ASSESSORS, AND THEIR DEVELOPMENT AUTHORITIES ENTERED INTO AN MOU WHICH, AMONG OTHER THINGS, PROVIDED FOR ASSESSMENT OF BOTH PORTIONS OF THE PROJECT TO FOLLOW A JOINT LEASEHOLD VALUATION SCHEDULE

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WHERE AUTHORITY FUNDING COMES FROM

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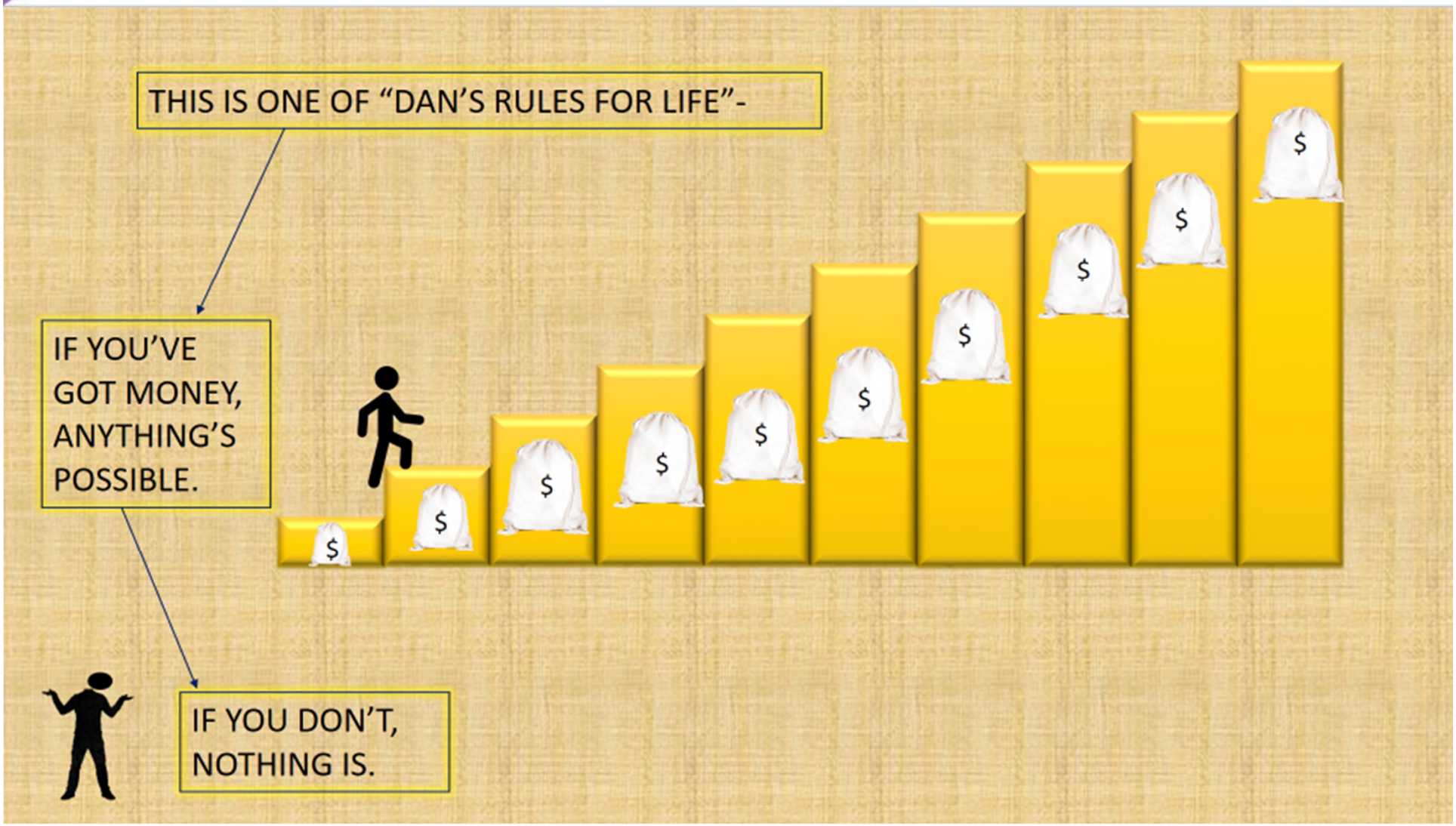
“ONE OF “DAN’S RULES FOR LIFE ”



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THE "POWER OF THE PURSE"

- DEVELOPMENT AUTHORITIES HAVE NO TAXING POWER
  - A FEW LCAs AUTHORIZE OR MANDATE LOCAL GOVERNMENT FINANCIAL SUPPORT OF ITS DEVEVOPMENT AUTHORITY
  - SOME CONSTITUTIONAL DDAs CAN LEVY TAXES OR ASSESSMENTS WITHIN THEIR AREA OF OPERATIONS
- MOST DEVELOPMENT AUTHORITIES DEPEND ON THEIR LOCAL GOVERNMENTS FOR VOLUNTARY FINANCIAL SUPPORT
  - INITIAL "SEED MONEY" GRANT
  - ANNUAL APPROPRIATION
  - MULTIYEAR CONTRACT (IGA)
    - CITY AUTHORITIES- 3 MILL LIMITATION. O.C.G.A. Sec. 48-5-350
    - COUNTY AUTHORITIES- 1 MILL LIMITATION. O.C.G.A. Sec. 48-5-220(20)

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THE "POWER OF THE PURSE"

- AUTHORITIES CAN ALSO EARN FEES FROM TRANSACTIONS SUCH AS BOND ISSUES
  - CITY DA AND DDA TREND- "PROFIT SHARING" FROM SPECIAL PAYMENTS THROUGHOUT "ABATEMENT" PERIOD
- STATE GRANTS AND LOANS ARE SOMETIMES AVAILABLE FOR PROGRAMS AND SPECIFIC PROJECTS
- PRIVATE SECTOR GRANTS ARE SOMETIMES AVAILABLE
  - CORPORATION FOUNDATIONS
  - IN-KIND CONTRIBUTIONS
    - BUILDINGS
      - SPLIT SALE/DONATION
      - NEED ENVIRONMENTAL DUE DILIGENCE

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CONCLUSION

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MORE INFORMATION

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QUESTIONS?

If you have any questions or comments on this presentation, please do not hesitate to let me know.

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