SEYFARTH SHAW

Seyfarth Shaw LLP

FINANCING PROJECTS… WITH ACRONYMS! IDBs, NMTC, EB-5, and More!

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Sept. 2015

GETTING STARTED

ACRONYMS

- IDBs = Industrial Development Revenue Bonds
  - AKA: IRBs, TEBs (tax-exempt bonds), PABs (private activity bonds), revenue bonds
- NMTC = New Markets Tax Credits
  - AKA: tax credit equity, subordinated debt, sub debt, mezzanine finance, mezz debt, “forgivable loan”
- QCT = qualified census tract
- EB-5 = immigrant investor funding
  - AKA: permanent resident visa, 5th employment-based preference
- TEA = Targeted Employment Area

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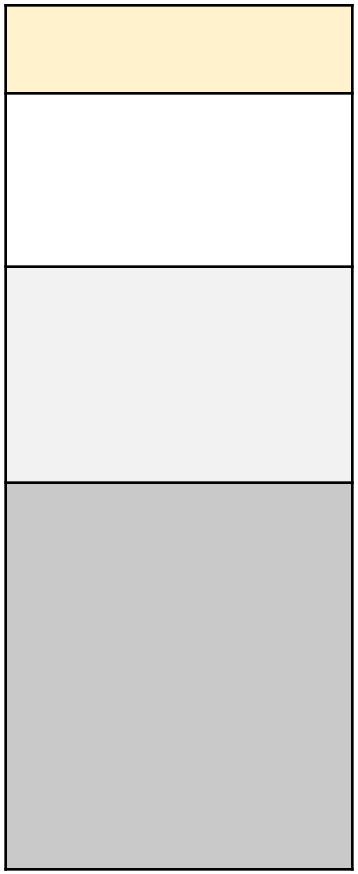
WATCH FOR WALDO

- WHEN YOU SEE WALDO IN THIS PRESENTATION, IT MEANS YOU ARE LOOKING AT A CAPITAL STACK
- THE PRESENTATION IS ALL ABOUT HOW TO FILL UP YOUR PROJECT WITH CAPITAL



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PART 1
BONDS AND CAPITAL STACKS

CAPITAL STACKS

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YOU NEED TO KNOW

- A PROJECT CAN'T HAPPEN UNLESS IT CAN BE FINANCED
- DEVELOPMENT AUTHORITIES NEED TO KNOW-
  - WHY THERE ARE FEWER TAX-EXEMPT BOND DEALS
  - WHAT OPPORTUNITIES TO ISSUE BONDS STILL EXIST
  - WHY A COMMUNITY HAS AN ADVANTAGE IF IT HAS A QCT OR A TEA AND ITS COMPETITOR DOES NOT
  - HOW TO HELP THE PROSPECT

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BANKS- BEFORE AND AFTER

- BEFORE THE FINANCIAL CRISIS- BANKS WOULD PROVIDE A DIRECT PAY LETTER OF CREDIT AT VERY LOW COST
  - WHEN DEVELOPMENT AUTHORITY BONDS WERE FUNDED, MOST OF THEM WERE SUPPORTED BY A LETTER OF CREDIT
- JUST AFTER THE FINANCIAL CRISIS- FEW BANKS WERE RATED TO PROVIDE LOCs, AND THOSE THAT COULD, MOSTLY WOULDN'T
  - AND BANKS GENERALLY WOULDN'T BUY DEVELOPMENT AUTHORITY BONDS FOR THEIR PORTFOLIO

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BANKS- NOW

- NOW- GROWING MARKET FOR SOME BANKS TO INVEST IN BONDS DIRECTLY
- ALTERNATIVE- SOME COMMUNITY BANKS WILL PROVIDE A LETTER OF CREDIT THAT THE FEDERAL HOME LOAN BANK WILL CONFIRM
  - TURNS THE COMMUNITY BANK LOC INTO INVESTMENT GRADE PAPER
  - TURNS TAX-EXEMPT "SMALL ISSUE" MANUFACTURING BONDS INTO TAXABLE BONDS
- BUT STILL- THE RULES HAVE CHANGED…

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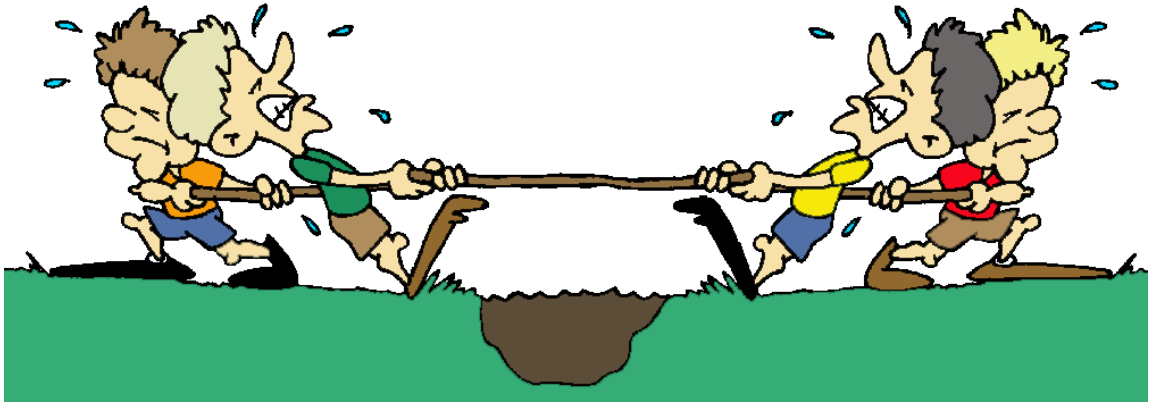
GAPS OPEN

CHANGES IN THE FINANCIAL MARKETS HAVE PULLED OPEN FINANCING GAPS (LAYERS) THAT HAVE TO BE FILLED



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HERE ARE SOME LAYERS THAT WORK WITH BONDS

THE DEVELOPMENT AUTHORITY ONLY ISSUES THE BONDS. THE COMPANY IS THE ISSUER OF THE OTHER DEBT AND THE EQUITY INTERESTS.

First Loss Capital	SPONSOR EQUITY
Investor Capital	PRIVATE EQUITY
Lien on Ownership Interests	NMTC
Secured Lien Behind First Mortgage	JUNIOR IDBs
Junior Tranch of Senior Lien	EB-5
Secured 1st Lien Position	TRADITIONAL IDBs

Credit: Tremont

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BONDS

1. Why Bonds?
2. What's the Process?
3. Who Pays?
4. Tax-Exempt?
5. Hot Topics

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WHY BONDS? "OLD SCHOOL", BUT STILL THE BEST WAY TO BORROW MONEY

- The interest on bonds issued by a local authority or local government is either federally taxable or federally tax-exempt.
- Federally tax-exempt bonds are more desirable.
  - Advantages of tax-exempt financing
    - Lower interest rate
    - Longer term
    - Greater marketability
    - More availability of interest-only/capitalized interest
    - Smaller bond issues more do-able

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THE BOND PROCESS

1. What bonds do we issue?
2. How long does it take?
3. Who does it take?
4. What are the steps?

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WHAT BONDS

- Most Development Authority bonds are taxable.
  - Most of them are cashless bonds for title for "abatement" purposes.
- Some Development Authority bonds are tax-exempt.
  - Virtually all of them are privately placed with banks.
- Almost no tax-exempt Development Authority bonds are publicly sold.

WHAT ARE THE RULES FOR A DEVELOPMENT AUTHORITY CHARGING A FINANCING FEE FOR ISSUING BONDS?

- If the bonds are tax-exempt, generally speaking they can't have a yield that's more than 1/8 of 1% above the interest rate.
- "Yield" includes any profit to the development authority, and in this context we are talking about the development authority's financing fee.
- So, generally speaking, with tax-exempt bonds, the development authority's financing fee could not be more than 1/8 of 1% of the principal amount.
- A one-time payment at closing in that amount is common as a financing fee. But yield is calculated on a present value basis, so the actual percentages could be different when an annual fee is charged. As bond counsel, we see that the yield is calculated correctly before closing, and that it doesn't exceed what is allowed.
- This rule doesn't apply with taxable bonds, like bonds for title that are used for property tax abatement. Then the development authority can charge whatever fee the borrower/company will agree to.

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HOW LONG AND WHO

- Bonds for title
  - 4-6 weeks
  - Company, Development Authority, and their counsel
- Bonds funded in a private placement
  - 6-8 weeks
  - Company, Development Authority, Bank and their counsel
- Bonds funded in a public offering
  - 60-90 days
  - Participants…..

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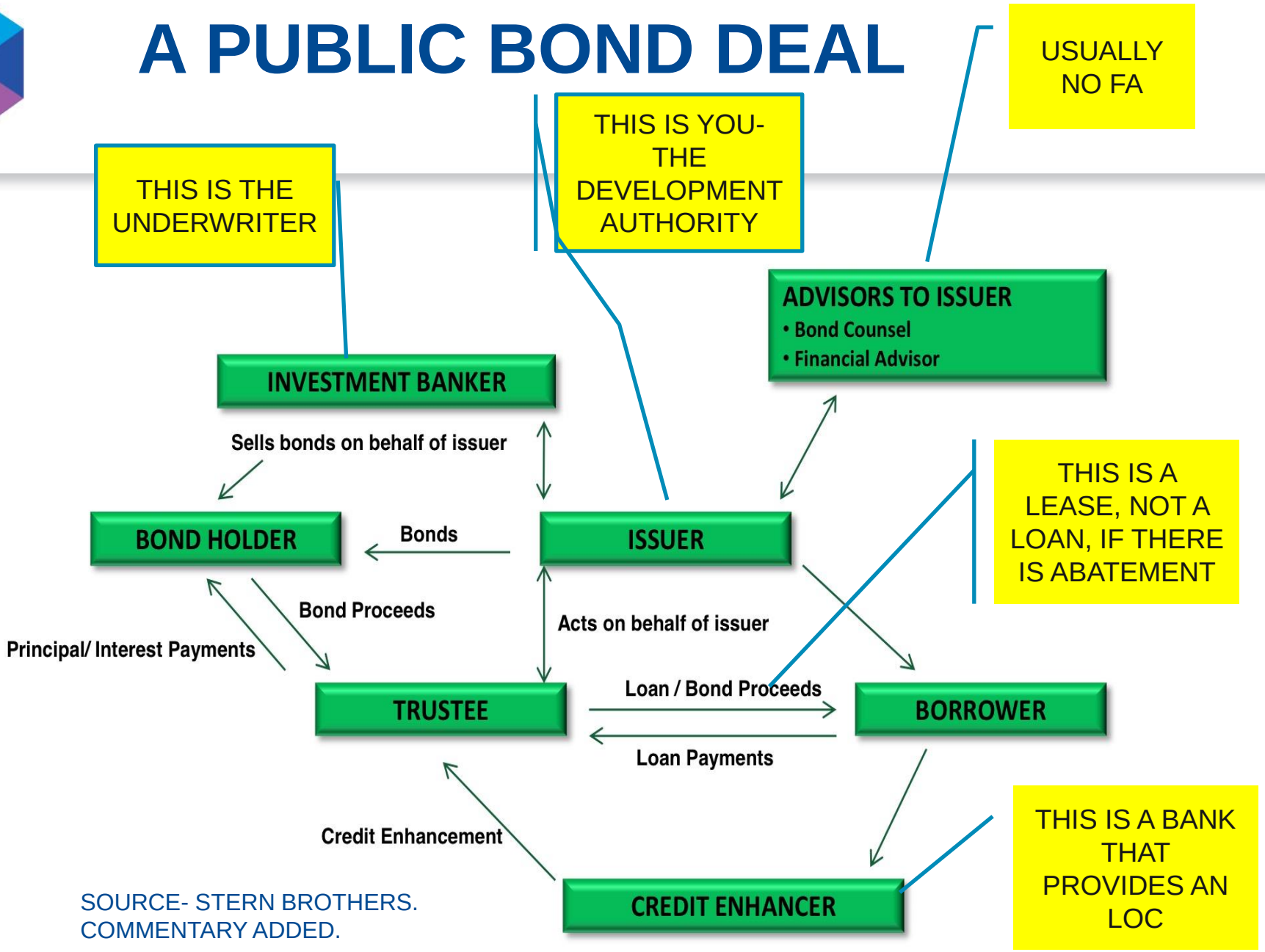
A PUBLIC BOND DEAL



SOURCE- STERN BROTHERS.
COMMENTARY ADDED.

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STEPS- Typical Schedule for an Issue of Bonds for Title

PROPOSED SCHEDULE

Development Authority of _____ County
Taxable Revenue Bonds
(_____ Project), Series 2015

June 2015						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July 2015						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	20	31	

August 2015						
S	M	T	W	T	F	S
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Date	Event	Responsible Parties
Week of 6/7	Application for Bond Financing Submitted to Issuer	Company
Week of 6/21	**ON 6/23** – Issuer approves Inducement resolution	Issuer
Week of 7/5	**ON 7/10 – DRAFTS OF BOND RESOLUTION, ATTACHMENTS AND VALIDATION DOCUMENTS DISTRIBUTED**	Bond Counsel
Week of 7/12	**BY 7/16 – COMMENTS PROVIDED TO BOND COUNSEL ON DRAFTS OF BOND RESOLUTION, ATTACHMENTS AND VALIDATION DOCUMENTS**	All
Week of 7/19	**ON 7/20 – Second Drafts of Bond Resolution, attachments and Validation Documents distributed** **BY 7/23 – FINAL COMMENTS PROVIDED TO BOND COUNSEL ON DRAFTS OF BOND RESOLUTION, ATTACHMENTS AND VALIDATION DOCUMENTS**	Bond Counsel All

Typical Schedule for an Issue of Bonds for Title

Week of 7/26	**BY 7/29** – Final drafts of Bond Resolution, attachments and Validation Documents distributed **ON 7/28** – Issuer adopts Bond Resolution; Validation commenced; Judge signs order; Validation notice delivered to newspaper	Bond Counsel Issuer
Week of 8/2	First validation notice published **VERIFICATION OF COMPANY'S ANSWER SENT TO COMPANY FOR EXECUTION**	Newspaper Bond Counsel
Week of 8/9	Second validation notice published Company's Answer provided to Issuer's Counsel First drafts of Closing Documents distributed	Newspaper Company's Counsel Bond Counsel
Week of 8/16	**ON 8/ @ __:00 _.m.** – Validation Hearing [Date and Time to be set once Validation Petition is filed] Parties and counsel provide comments to Bond Counsel on Closing Documents	Issuer's Counsel All
Week of 8/23	**Basic documents and closing documents sent out for execution (Bond)**	Bond Counsel
Week of 8/30	**Preclosing and closing**	All

BONDS- WHO PAYS?

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BONDS- WHO PAYS?

- BONDS ARE JUST A WAY TO BORROW MONEY
- THRESHOLD QUESTION- WHO IS ON THE HOOK TO REPAY THEM?
- LOCAL GOVERNMENT BONDS ARE OFTEN BACKED BY TAXING POWER
  - "GENERAL OBLIGATION"
  - REFERENDUM REQUIRED
- LOCAL AUTHORITY BONDS ARE USUALLY TRADITIONAL REVENUE BONDS
    - REPAID ONLY OUT OF PROJECT REVENUES
    - WITH AN ECONOMIC DEVELOPMENT PROJECT, THE PROSPECT PAYS
      - NO REFERENDUM

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HYBRIDS- CONTRACT REVENUE BONDS

- SOME LOCAL AUTHORITY BONDS ARE BACKED BY MILLAGE PLEDGE THROUGH INTERGOVERNMENTAL AGREEMENT ("IGA") WITH LOCAL GOVERNMENT
  - CALLED "CONTRACT REVENUE BONDS" (FORMERLY CALLED "BACK-DOOR G.O. BONDS")

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LIMITING OBLIGATIONS

CONTRACT REVENUE BONDS

- MILLAGE PLEDGE MAY BE LEGALLY LIMITED
  - EXAMPLE: ECONOMIC DEVELOPMENT MILLAGE
    - 1 MILL FOR COUNTY
    - 3 MILLS FOR CITY
  - NO REFERENDUM
    - Example of Exception: If O.C.G.A. Sec. 36-75-11(c) applies (in practice, this applies only to DeKalb County).

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BONDS-
TAX-EXEMPT?

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BASIC RULE

- A PUBLIC BODY'S BONDS WILL BE TAX-EXEMPT, GOVERNMENTAL PURPOSE BONDS UNLESS THERE IS-
- TOO MUCH PRIVATE USE, AND
- TOO MUCH PRIVATE PAYMENT OR PRIVATE SECURITY

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PRIVATE ACTIVITY BONDS

- THE OPPOSITE OF "GOVERNMENTAL PURPOSE" IS "PRIVATE ACTIVITY"
  - MEANS THERE IS
    - TOO MUCH PRIVATE USE, AND
    - TOO MUCH PRIVATE PAYMENT/PRIVATE SECURITY
  - "PRIVATE LOAN" TEST MIGHT APPLY

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PRIVATE ACTIVITY BONDS

- INTEREST ON PRIVATE ACTIVITY BONDS NOT FEDERALLY TAX-EXEMPT UNLESS THERE IS AN "EXEMPTION"
- EXEMPTIONS ARE HARD TO FIND
  - COMPLIANCE WITH OTHER TAX RULES REQUIRED
- HERE ARE A FEW

DEVELOPMENT AUTHORITY BONDS: "SMALL ISSUE" MANUFACTURING BONDS

Capital expenditure limit ($10 million tax-exempt bond proceeds + $10 million other) /$40 million national limit on tax-exempt bonds for the "Company"

PREMIUM WATERS, DOUGLAS, GEORGIA: EXAMPLE OF PRIVATE ACTIVITY BONDS- "SMALL ISSUE" MANUFACTURING BONDS

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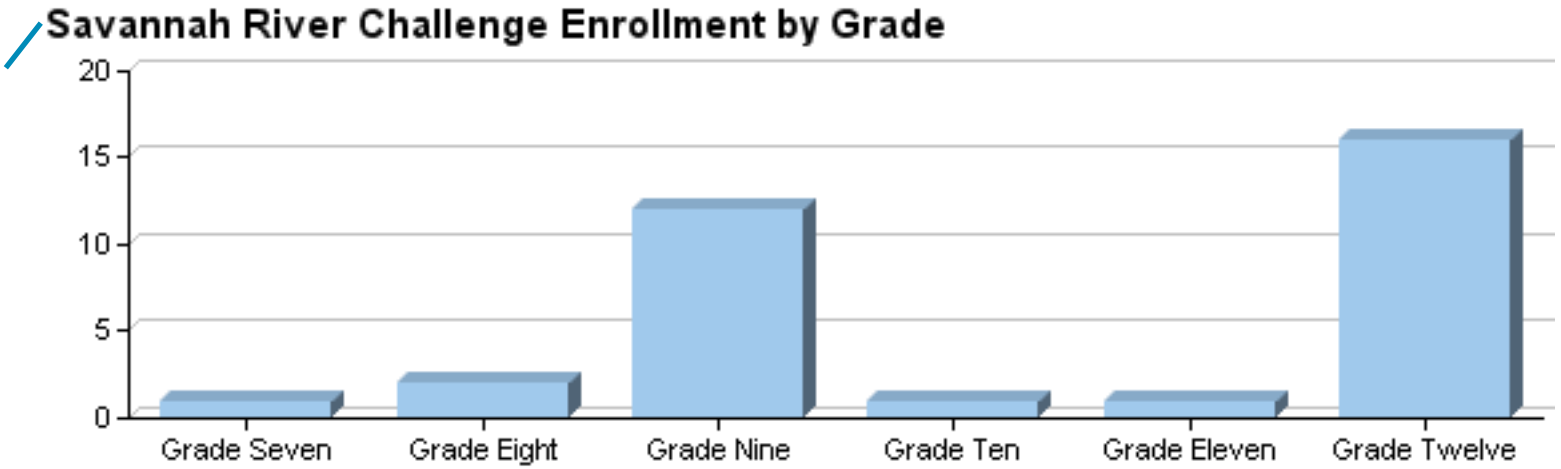
DEVELOPMENT AUTHORITY BONDS: "QUALIFIED 501(C)(3) BONDS"

- BONDS FOR ORGANIZATIONS THAT ARE TAX-EXEMPT 501(C)(3) ORGANIZATIONS UNDER THE INTERNAL REVENUE CODE WHICH ARE ISSUED FOR FACILITIES SUCH AS PRIVATE HIGH SCHOOLS AND COLLEGES AND MEDICAL FACILITIES.
- THESE ORGANIZATIONS ARE GENERALLY FAMILIAR WITH TAX-EXEMPT FINANCING (BECAUSE THEY TEND TO USE BOND FINANCING REPETITIVELY).

TAX-EXEMPT "QUALIFIED 501(C)(3) BONDS" FOR SAVANNAH RIVER CHALLENGE, SCREVEN COUNTY, GEORGIA



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DEVELOPMENT AUTHORITY BONDS: "QUALIFIED 501(C)(3) BONDS"

- NO "VOLUME CAP" FROM DCA NEEDED.
- CAN "SELF-INDUCE" (BUT AUTHORITY HAS TO ISSUE THE BONDS).
- TEFRA APPROVAL FROM LOCAL GOVERNMENT REQUIRED.
- ISSUED BY DEVELOPMENT AUTHORITIES AND SOME OTHER TYPES OF LOCAL AUTHORITIES; E.G., HOUSING AUTHORITIES.

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BONDS
Hot Topics
1. Public/Private Partnerships- P3
2. PILOT Bonds

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P3's

P3's and Tax-Exempt Bonds

- MANY P3 PROJECTS ARE ABLE TO USE TAX-EXEMPT FINANCING BECAUSE THE BONDS ARE "GOVERNMENTAL PURPOSE"
- SOME TAX-EXEMPT GOVERNMENTAL PURPOSE BONDS ARE ALSO "BANK QUALIFIED" (BQ)
  - Bank "double dips"
  - Interest it gets is tax-exempt
  - It also gets to deduct 80% of its carrying cost of buying the bond

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P3's and Tax-Exempt Bonds

BQ BONDS MUST BE-

(a) either governmental purpose or qualified 501(c)(3) bonds

(b) issued by a “qualified small issuer” (an issuer that issues no more than $10 million of tax-exempt bonds during any given calendar year; certain private activity bonds and refunding bonds do not count toward the $10 million limit)

(c) issued for a public purpose, and

(d) designated as qualified tax-exempt obligations

P3's and Tax-Exempt Bonds

- IF A P3 PROJECT HAS TOO MUCH PRIVATE USE FOR GOVERNMENTAL PURPOSE BONDS, THEN-
  - SOMETIMES TAX-EXEMPT "EXEMPT FACILITY" BONDS CAN BE USED
    - EXAMPLE- HOME DEPOT DISTRIBUTION CENTER PROJECT IN SAVANNAH
    - USED "DOCKS AND WHARVES" BONDS
  - SOMETIMES TAX-EXEMPT QUALIFIED 501(c)(3) BONDS CAN BE USED
    - EXAMPLE- MERCER UNIVERSITY ACADEMIC BUILDING IN HENRY COUNTY

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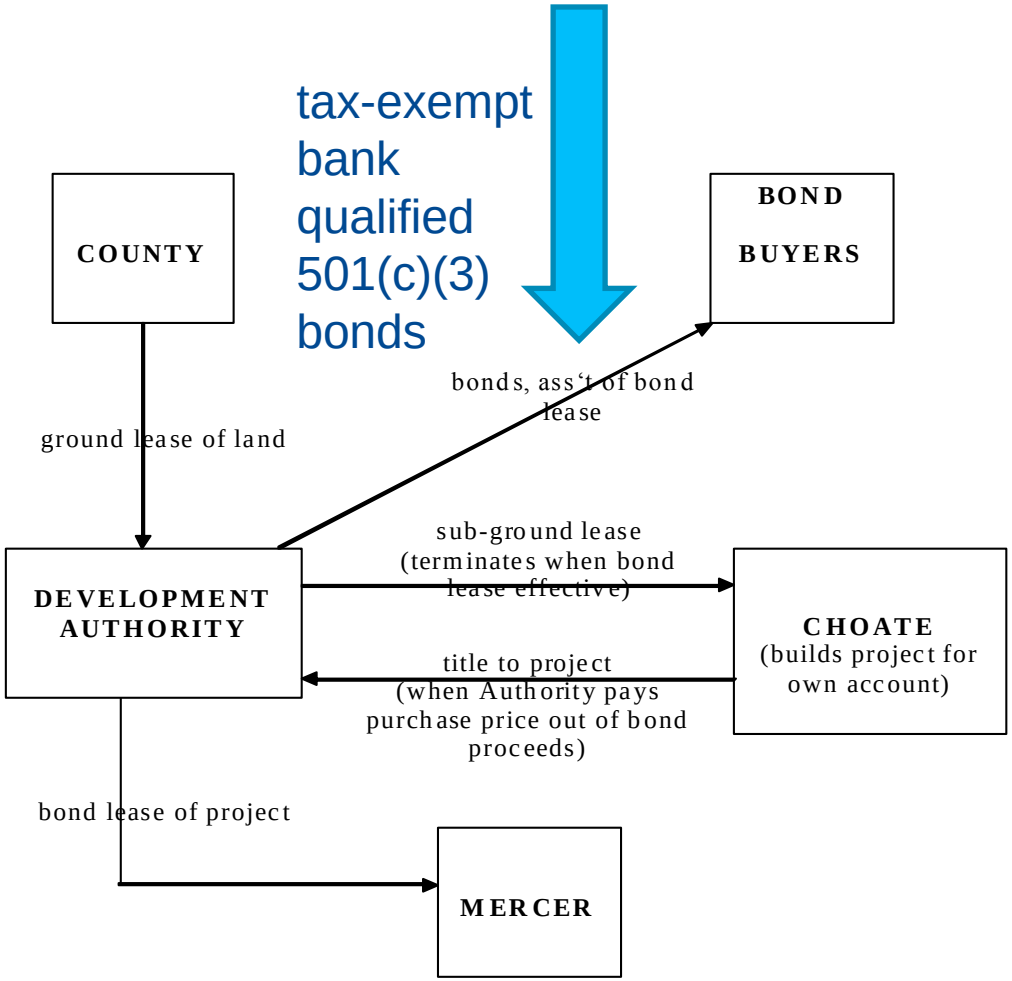
MERCER UNIVERSITY ACADEMIC BUILDING IN HENRY COUNTY



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PILOT BONDS

PILOT BONDS- HOW THEY WORK

- PILOT = Payments in Lieu of Taxes
- Means Property Taxes Have Been Eliminated or Reduced
- Involves "Bonds for Title" Transaction in which Lease is Non-Taxable (usufruct)
- Transaction Can Still Be "Cashless"
  - Just for "abatement"
- Or, Instead, PILOT Payments Can Actually Be Made
  - With Economic Development Project, Payments Are Made by Prospect (Company)

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PILOT BONDS- HOW THEY WORK

- When PILOT Payments Are Made, They Can Be "Monetized"
  - In order to use PILOT payments, either the financing must not be subject to the PILOT Restriction Act, or compliance with the Act is required. See O.C.G.A. Sec. 36- 80-16.1
- Don't Confuse Monetized PILOT Bonds with Bonds for Title
  - Property taxes aren't monetized when a typical bond-financed sale-leaseback structure is used for property tax savings ("abatement") purposes; i.e., "bonds for title"
  - PILOT Restriction Act doesn't apply

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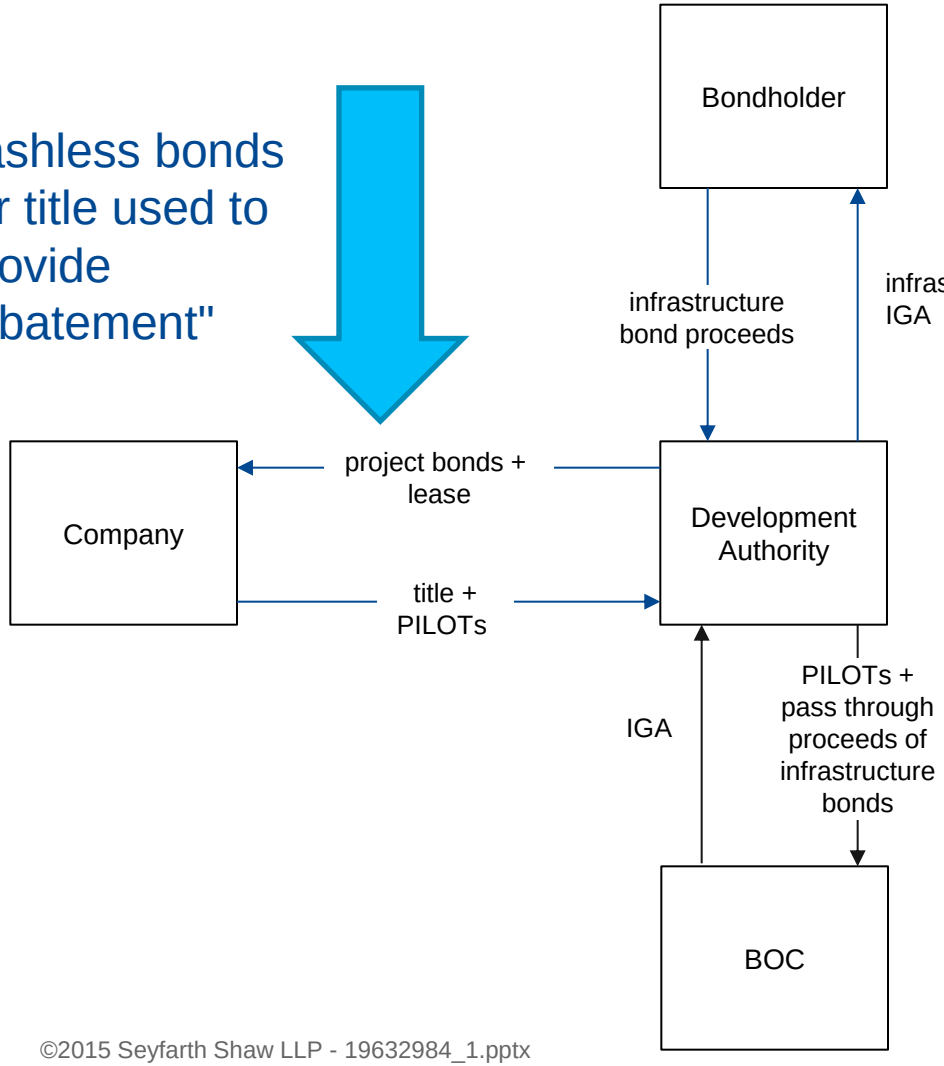
HOW TO USE MONETIZED PILOT BONDS- Infrastructure Bonds for GEDA "Deal of the Year"

cashless bonds for title used to provide "abatement"

tax-exempt governmental purpose, bank qualified bonds to finance infrastructure



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CONCLUSION

YOU FOUND WALDO!
NOW YOU ARE READY TO LOOK FOR MORE LAYERS IN THE CAPITAL STACK.

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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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