SEYFARTH SHAW LLP
ATTORNEYS

DEVELOPMENT AUTHORITIES AND FINANCING ECONOMIC DEVELOPMENT

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GLOSSARY

- DA = development authority
- DDA = downtown development authority
- JDA = joint development authority
- Statutory = created under the Development Authorities Law or the Downtown Development Authorities Law
- DAL = the Development Authorities Law
- Constitutional = created by an LCA
- LCA = local constitutional amendment
- Local Government = city or county
- Authority includes a DA, a DDA and a JDA.

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MODULE 1

WHY WE HAVE DEVELOPMENT AUTHORITIES

WHERE THEY CAME FROM

WHAT THEY CAN DO

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WHY

PROTECT LOCAL GOVERNMENT

The city or county is not liable for the authority's debts or contracts.

Members of authorities are appointed, not elected. They buffer the elected officials from temporary political pressure.

ADD POWERS

The Georgia Constitution authorizes economic development powers for authorities that local governments don't have.

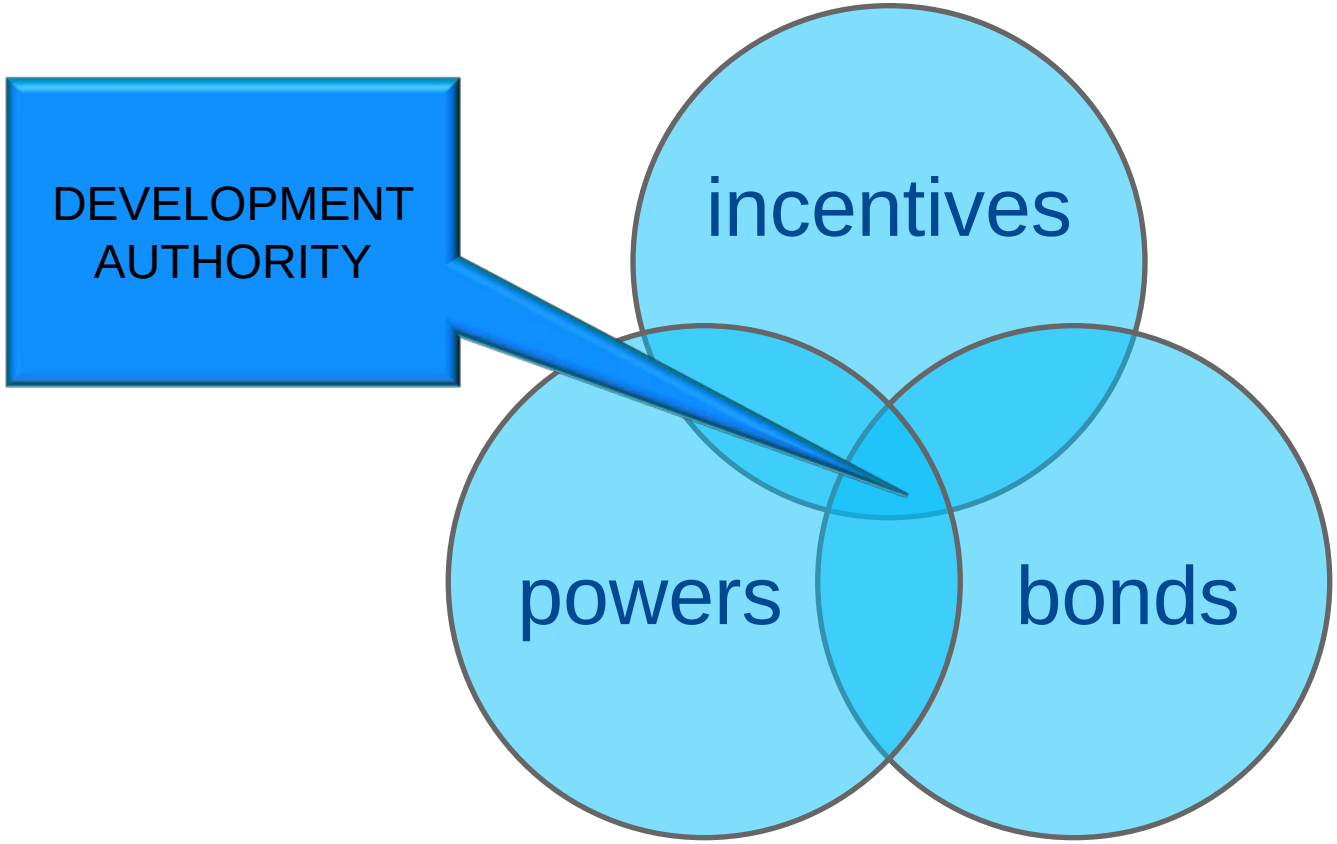
Some other powers (like redevelopment) are shared. If the local government works through the authority instead, it is protected by the authority.

BECOME EXPERTS

Authority board members are concerned only with the "governmental mission" of their authority, not the burdens of a local government.

By specializing in economic development, authority board members are better able to solve problems and realize economic development.

GEORGIA IS DEVELOPMENT AUTHORITY-CENTRIC



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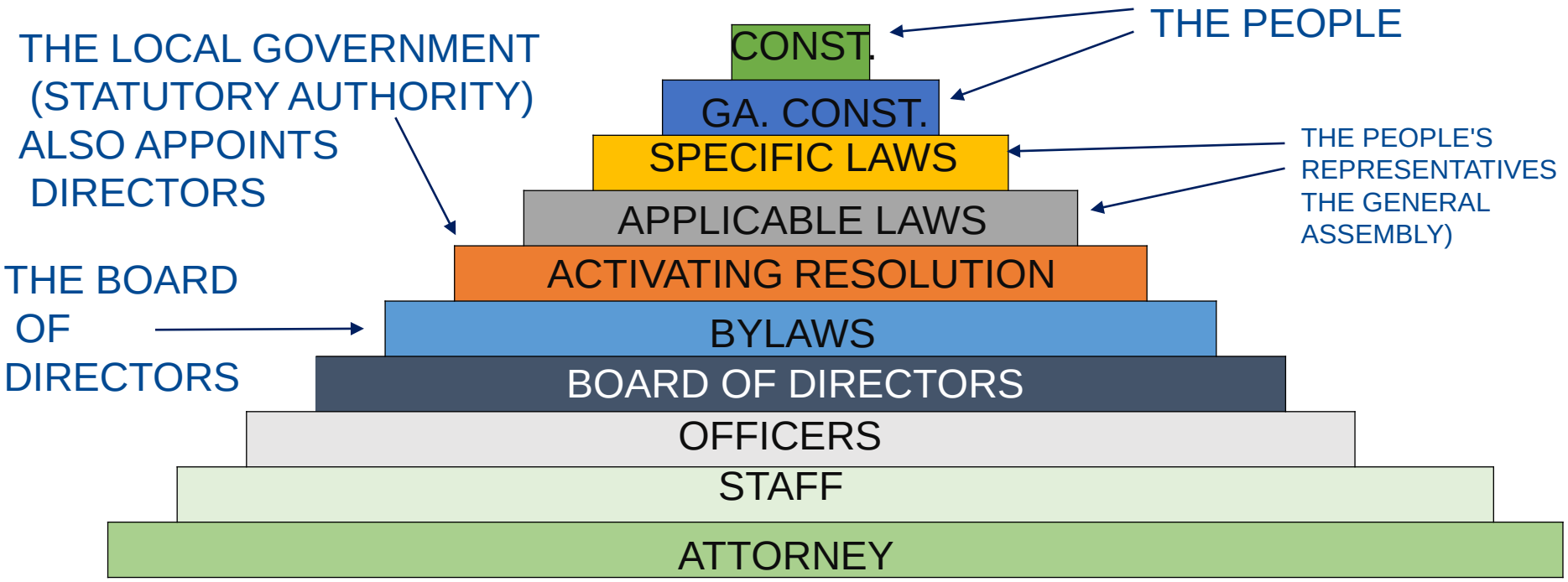
WHERE

IN ORDER TO USE AN AUTHORITY	• Action by legislature or local government needed • Bylaws adopted • Resolutions passed
HIERARCHY	• The law determines whether or not these actions are appropriate or even legal according to a hierarchy.
SOURCE	• The ultimate source of the hierarchy is the citizens of Georgia. • But the hierarchy has several levels.

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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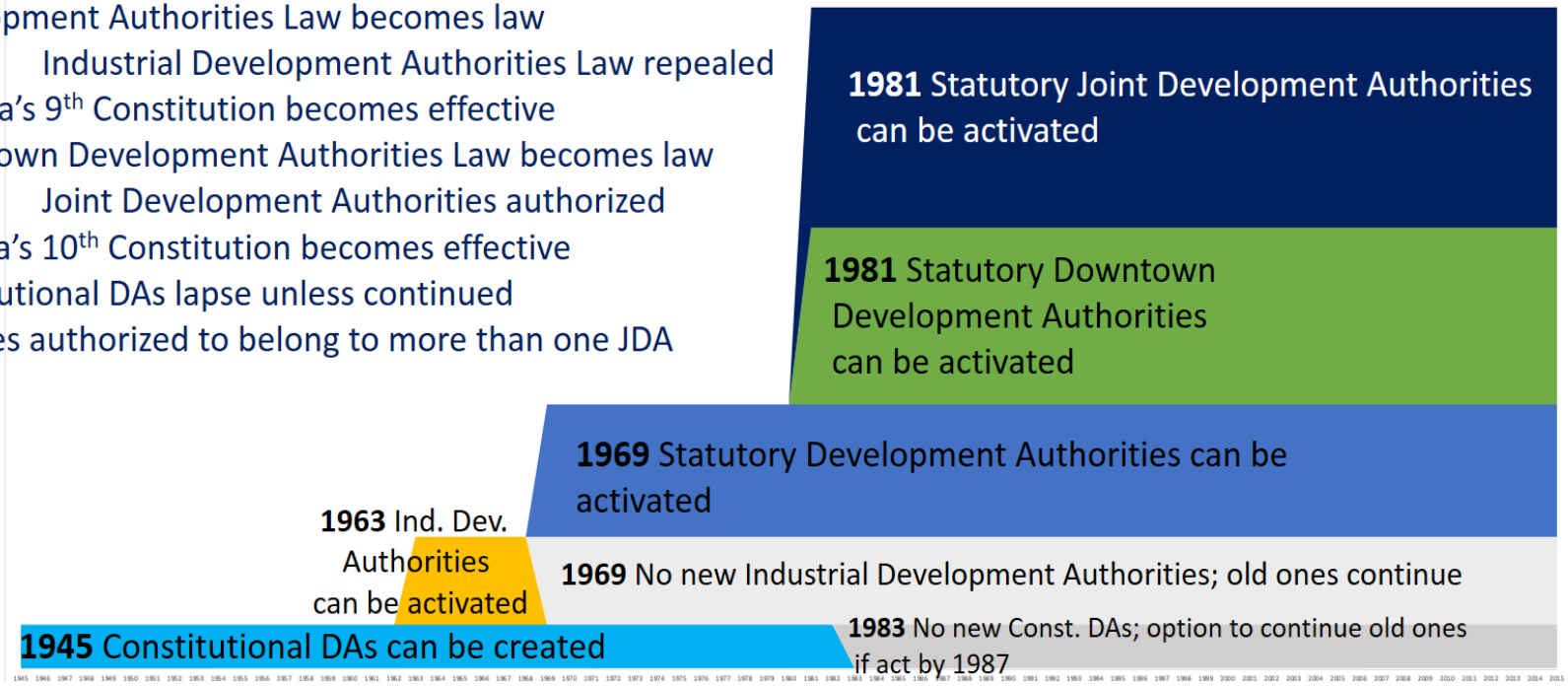
THE DEVELOPMENT OF DEVELOPMENT AUTHORITIES IN GEORGIA

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



WHAT

ACTING INTERNALLY

BOARD

- 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
- Statutory JDA: all set by concurrent activating resolutions of local governments
- Constitutional authority- all set by LCA

BYLAWS

- 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

OFFICERS

- 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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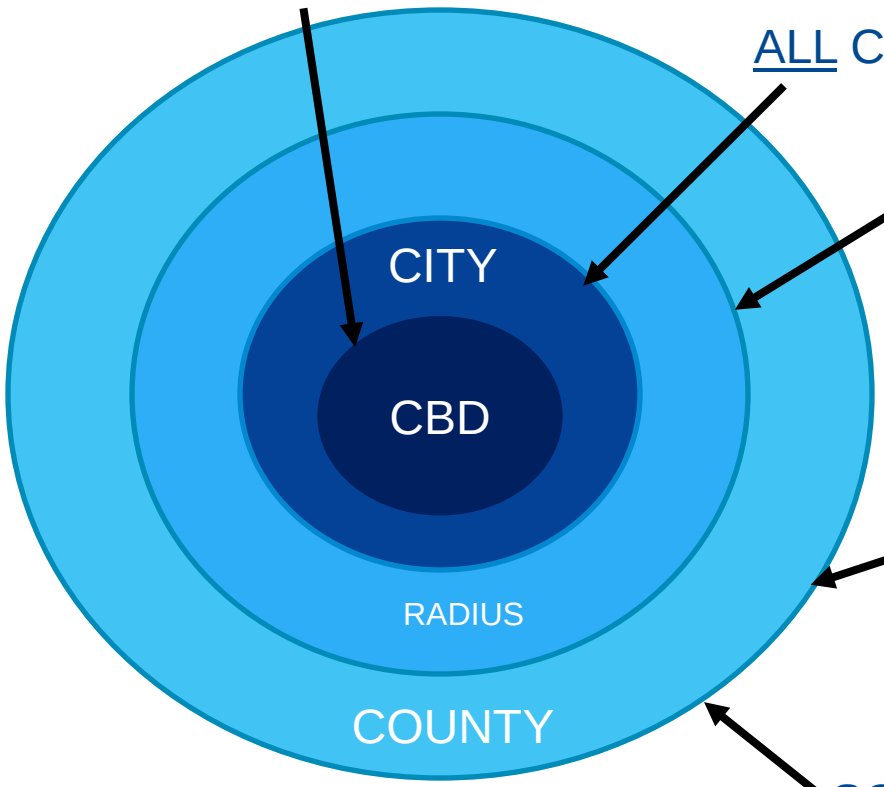
WHAT

ACTING EXTERNALLY

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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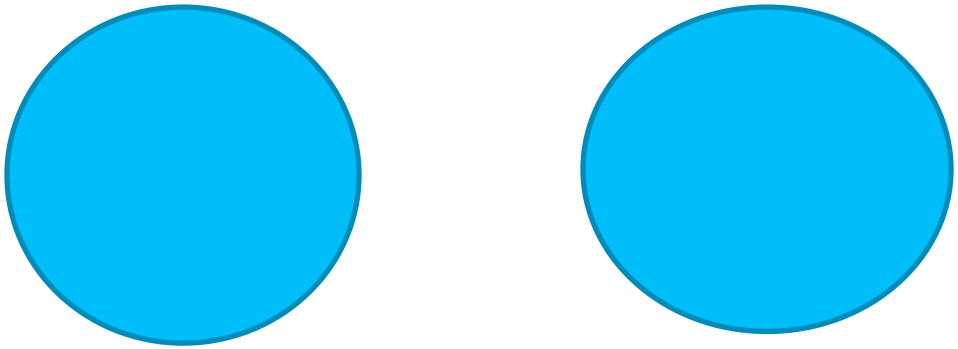
WHAT

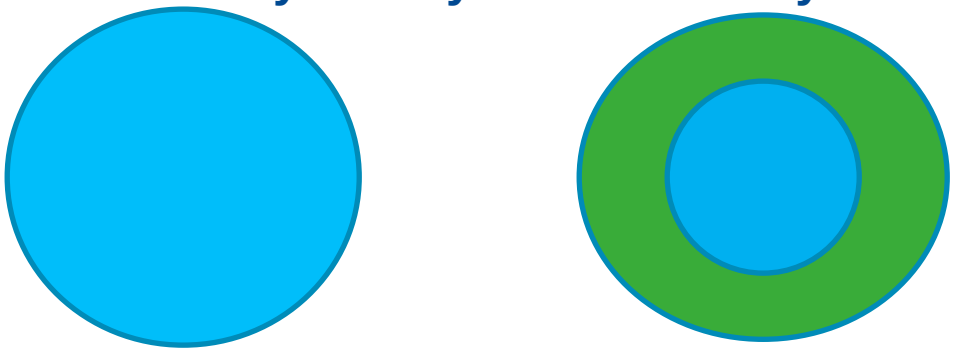
ACTING EXTERNALLY

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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MODULE 2

SOME THINGS DEVELOPMENT AUTHORITIES CAN'T DO

and some workarounds to do them anyway

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EVERYDAY DEVELOPMENT AUTHORITY ISSUES

Can't- Confer "gifts or gratuities"

GA CONSTITUTION

Issue: incentives

Can't- Go beyond your powers

DEVELOPMENT AUTHORITIES LAW

Issue: economic development, multiyear contracts

Can't- Carry out public projects

GA CONSTITUTION

Issue: P3

Can't- Carry out road projects with local government

GA CONSTITUTION

Issue: large projects

Can't- exceed jurisdiction

DEVELOPMENT AUTHORITIES LAW

Issue: extra-territorial projects

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CAN'T CONFER A "GIFT OR GRATUITY"

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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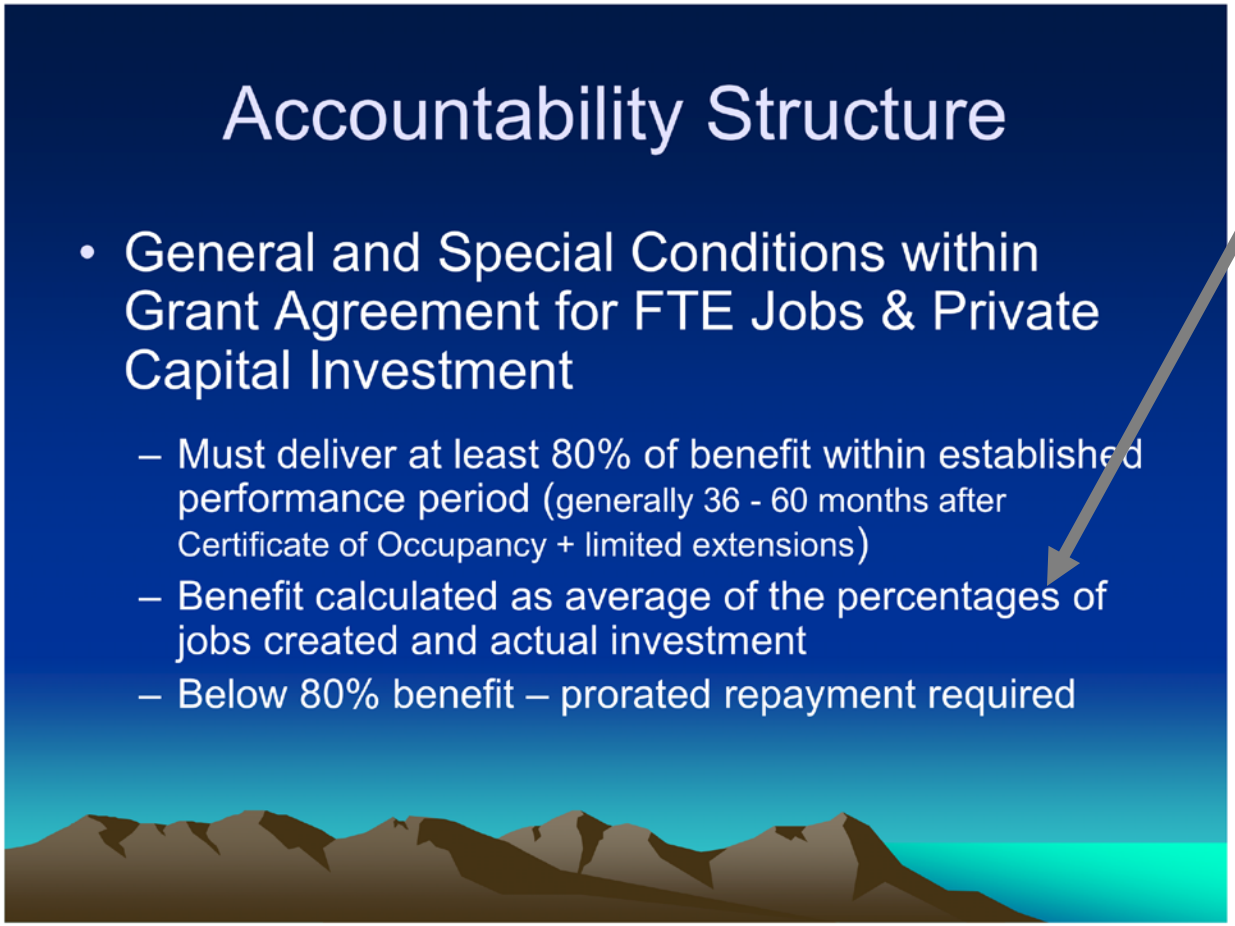
YOU CAN'T- "GIVE THINGS AWAY" BUT YOU CAN- MAKE A BARGAIN
the MOU contains the bargain



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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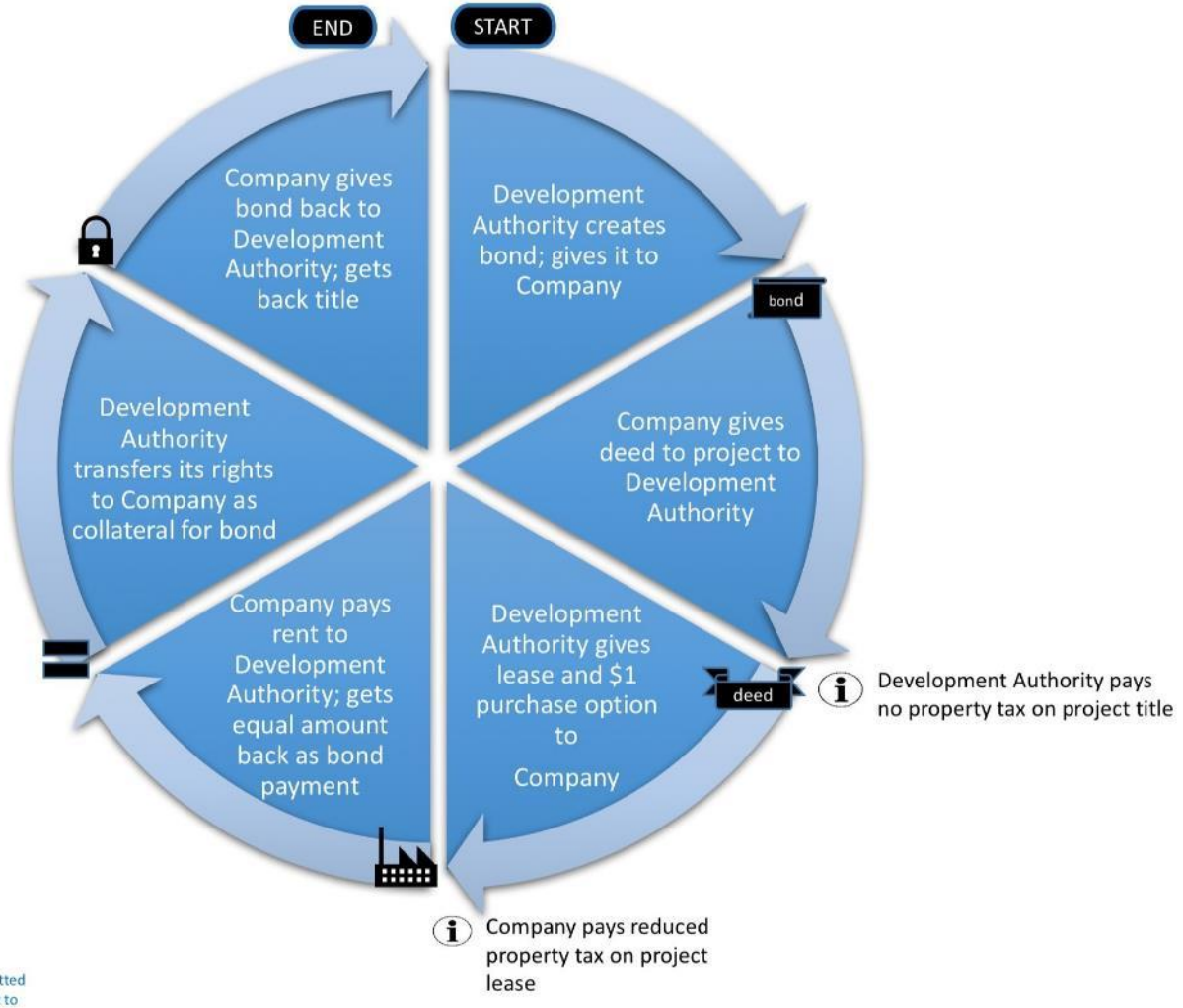
THE DEAL STRUCTURE- "BONDS FOR TITLE"

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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CAN YOU CARRY OUT A PROJECT?

IN ORDER TO CARRY OUT A PROJECT

THE PROJECT MUST BE AUTHORIZED FOR THE DEVELOPMENT AUTHORITY

AND THE DEVELOPMENT AUTHORITY MUST HAVE THE POWERS TO DO WHAT'S NECESSARY

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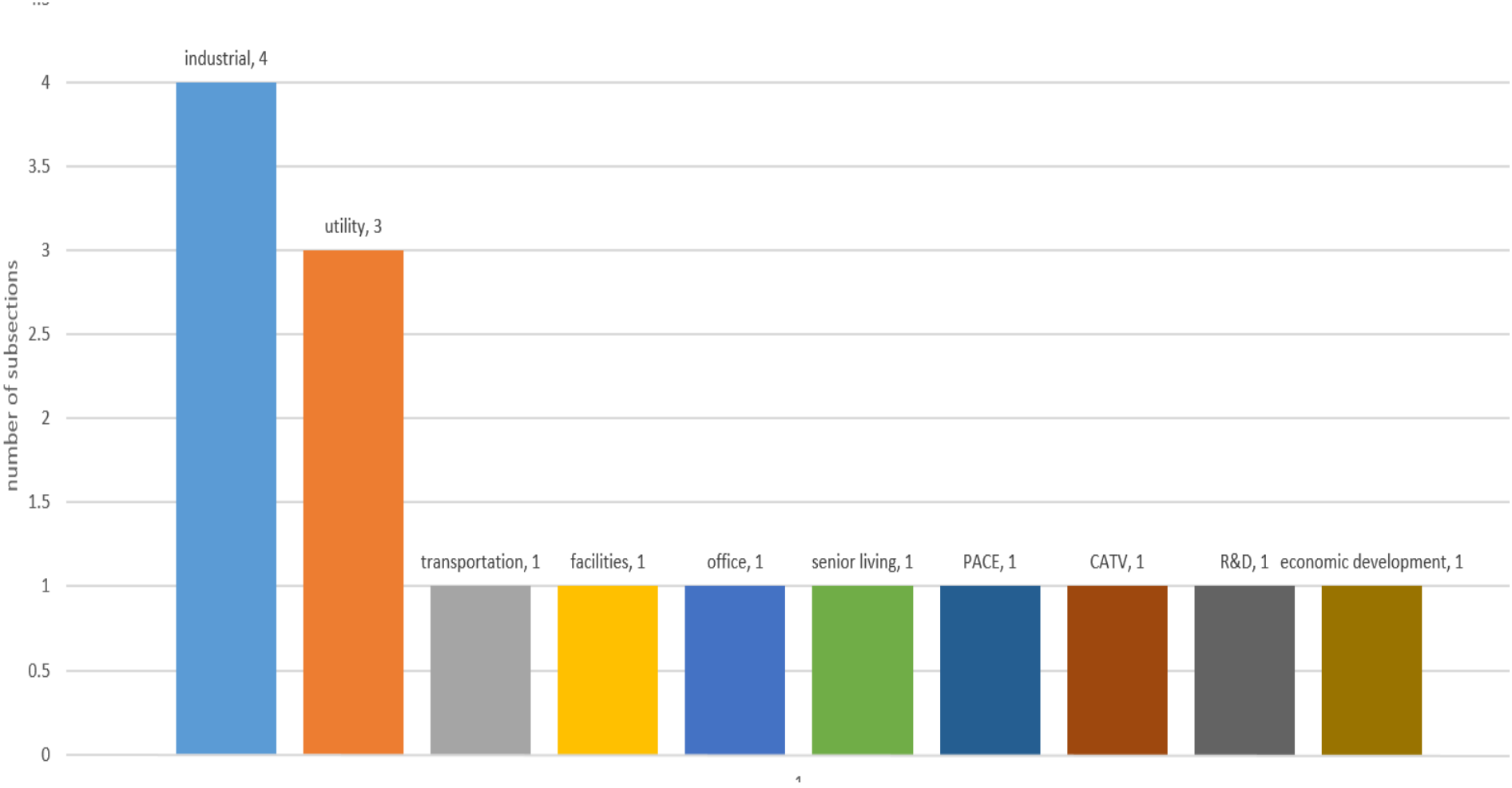
Menu

- A “MENU” OF POWERS IS PROVIDED IN THE DEVELOPMENT
- AUTHORITIES LAW AND IN THE DOWNTOWN DEVELOPMENT AUTHORITIES LAW
- THESE POWERS HAVE TO MEET CONSTITUTIONAL STANDARDS
  - YES, JUST BECAUSE IT’S IN THE CODE DOESN’T MEAN IT’S VALID
  - A LAW HAS TO BE CONSTITUTIONAL, TOO

MORE SUBSECTIONS OF THE DEVELOPMENT AUTHORITIES LAW AUTHORIZE "INDUSTRIAL" THAN ANY OTHER TYPE OF PROJECT



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CAN'T- GO BEYOND YOUR POWERS the "Columbus case"

"A Muscogee County Superior Court judge has sided with a Columbus-based hotel owner, issuing an injunction that will halt the sale of a prime piece of downtown property to a competing hotel company….[The plaintiff's attorneys] argued that under state law the Development Authority, an arm of the Columbus Consolidated Government charged with economic development, could not sell land for less than fair-market value."

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http://www.ledger-enquirer.com/news/local/article71817147.html#storylink=cpy

THE MAIN ARGUMENTS

- DOES THIS SECTION OF THE DEVELOPMENT AUTHORITIES LAW LIMIT BELOW FMV SALES TO SALES OF UNUSABLE PROPERTY TO THE STATE?
- O.C.G.A. Sec. 36-6-6-(7.1) Notwithstanding any other provision of this chapter to the contrary, to dispose of any real property for fair market value or any amount below fair market value as determined by the board of directors of the authority, regardless of prior development of such property as a project, whenever the board of directors of the authority may deem such disposition to be in the best interests of the authority if the board of directors of the authority prior to such disposition shall determine that such real property no longer can be used advantageously as a project for the development of trade, commerce, industry, and employment opportunities and if title to such real property is to be transferred to the state;

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THE MAIN ARGUMENTS

- DOES THIS SECTION OF THE DEVELOPMENT AUTHORITIES LAW GENERALLY AUTHORIZE BELOW FMV SALES?
- O.C.G.A. Sec. 36-6-6(6) To sell, lease, exchange, transfer, assign, pledge, mortgage, dispose of, or grant options for any real or personal property or interest therein for any such purposes;

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CAN- BARGAIN FOR BOTH CASH AND NONCASH CONSIDERATION

"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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CASE STUDY
FOXHALL PROJECT IN DOUGLAS COUNTY

- Urban sporting club with multiple hotels, executive housing, outdoor sports, retail and office
- Issue: public projects
- Issue: multiyear contracts
- Issue: road projects with local government

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IT'S A **BIG** PROJECT

Conceptual Rendering of Project

DOUGLAS COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
Your Partner in Business

WHAT DOES THE DEVELOPMENT AUTHORITY HAVE TO DO?

PRIVATELY FINANCED AND OWNED

FINANCED BY DEVELOPMENT AUTHORITY AND PUBLICLY OWNED

Project Components	ORIGINAL PROJECT	UPDATED PROJECT
Hotel	350 rooms 6-story	200 rooms 5-story
Lodge & Villas	100 rooms (50 villas)	250 rooms (125 villas)
Golf Course	18-hole	"golf experience"
Conference Center	80,000 sf	50,000 sf

Source: PFM

ALSO- ROADS, STREET IMPROVEMENTS, WATER, SEWER

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Issue: public projects

CONFERENCE CENTER- DO WE HAVE THE POWERS AND THE AUTHORITY?

- THE DEVELOPMENT AUTHORITIES LAW SPECIFICALLY AUTHORIZES “CONVENTION OR TRADE SHOW FACILITIES”. O.C.G.A. SEC. 36-62-2(6)(H)(ii).
- IT ALSO HAS A GENERAL AUTHORIZATION FOR PROJECTS FOR THE “DEVELOPMENT OF TRADE, COMMERCE, INDUSTRY, AND EMPLOYMENT OPPORTUNITIES.” O.C.G.A. SEC. 36-62-2(6)(N).
- IT ALSO AUTHORIZES A DEVELOPMENT AUTHORITY TO OWN A PROJECT (LIKE THE CONFERENCE CENTER) AND PLACE IT UNDER A MANAGEMENT CONTRACT. O.C.G.A. SEC. 36-62-7.

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Issue: public projects

UTILITIES- DO WE HAVE THE POWERS AND THE AUTHORITY?

- THE DEVELOPMENT AUTHORITIES LAW SPECIFICALLY AUTHORIZES WATER AND SEWER FACILITIES UNDER SPECIFIED CIRCUMSTANCES. O.C.G.A. SEC.S 36-62-2(6)(E), 36-62-2(6)(E),(H)(v).
- AND ITS GENERAL AUTHORIZATION FOR PROJECTS FOR THE “DEVELOPMENT OF TRADE, COMMERCE, INDUSTRY, AND EMPLOYMENT OPPORTUNITIES” ALSO APPLIES. O.C.G.A. SEC. 36-62-2(6)(N).
- ADDITIONAL AUTHORIZATION UNDER REVENUE BOND LAW.
- FINALLY, THE COUNTY OR THE WATER & SEWER AUTHORITY WILL OWN AND OPERATE THE UTILITIES PER AN INTERGOVERNMENTAL AGREEMENT WITH THE DEVELOPMENT AUTHORITY.

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Issue: road projects with local government

STREETS AND ROADS- DO WE HAVE THE POWERS AND THE AUTHORITY?

- THE DEVELOPMENT AUTHORITIES LAW SPECIFICALLY AUTHORIZES STREETS AND ROADS THAT ARE ANCILLARY TO AN INDUSTRIAL PROJECT. O.C.G.A. SEC.S 36-62-2(6)(A).
- IT ALSO AUTHORIZES “TRANSPORTATION FACILITIES” THAT ARE ANCILLARY TO AN INDUSTRIAL PARK. O.C.G.A. SEC. 36-62-2(6)(I).
- FOXHALL IS NEITHER. BUT THE DAL’S GENERAL AUTHORIZATION FOR PROJECTS FOR THE “DEVELOPMENT OF TRADE, COMMERCE, INDUSTRY, AND EMPLOYMENT OPPORTUNITIES” APPLIES. O.C.G.A. SEC. 36-62-2(6)(N).
- ADDITIONAL AUTHORIZATION UNDER REVENUE BOND LAW.

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Issue: road projects with local government

STREETS AND ROADS- DO WE HAVE THE POWERS AND THE AUTHORITY?

- HOWEVER, THE GEORGIA CONSTITUTION DOES NOT ALLOW A STATUTORY AUTHORITY TO "CONSTRUCT, IMPROVE OR MAINTAIN" ROADS OR STREETS IN CONCERT WITH A LOCAL GOVERNMENT.
- SO, THE DEVELOPER WILL CONSTRUCT THE STREETS AND ROADS, AND THE DEVELOPMENT AUTHORITY WILL PURCHASE THEM UPON COMPLETION AND DEDICATE THEM TO THE STATE OR THE COUNTY.
  - ANOTHER ALTERNATIVE WOULD HAVE BEEN TO USE A CID.

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Issue: public projects

AN OVERARCHING ISSUE-

IN ORDER FOR A DEVELOPMENT AUTHORITY TO CARRY OUT A PROJECT, IT HAS TO BE EITHER A PRIVATE PROJECT, OR A PUBLIC/PRIVATE PARTNERSHIP (P3)

- PROHIBITED PUBLIC PROJECT

  "This Project is designed to fulfill the governmental functions of improving streets and of providing facilities for municipal administration and police and jail services. Accordingly, it does not appear to fit within the definitions of commerce, trade, or industry." *Odom* case, 1983.
- PERMITTED PUBLIC/PRIVATE PROJECT

  "This court held that the scope of [the *Odom*] project did not fall within the constitutionally designated purposes of Downtown Development Authorities which are the promotion and development of "trade, commerce, industry, and employment opportunities." …. In the case before us [Underground Atlanta] **the project is comprised of both public and private components which are integrated so as to produce the desired purposes**. *Nations I*, 1985.
  - In approving their intergovernmental agreement, the Development Authority and the County found and determined that Foxhall was a P3.

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Issue: multiyear contracts

- A COMMON QUESTION IS WHETHER OR NOT A COUNTY OR COUNTY GOVERNING BODY CAN “BIND ITS SUCCESSORS” BY ENTERING INTO CONTRACTS.
- A MULTIYEAR CONTRACT BETWEEN THE COUNTY AND THE DEVELOPMENT AUTHORITY IS CRITICAL FOR THE FOXHALL PROJECT.
- GEORGIA’S CONSTITUTION ALLOWS THEM TO AGREE FOR UP TO 50 YEARS PROVIDED THAT THE CONTRACT DEALS WITH “ACTIVITIES, SERVICES OR FACILITIES WHICH THE CONTRACTING PARTIES ARE AUTHORIZED BY LAW TO UNDERTAKE OR PROVIDE.” GA. CONST. ART. IX, SEC. III, PARA. I(a).

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Issue: multiyear contracts

- IN APPROVING THEIR INTERGOVERNMENTAL AGREEMENT, THE DEVELOPMENT AUTHORITY AND THE COUNTY FOUND AND DETERMINED THAT THEY WERE AUTHORIZED TO ENTER INTO IT.
- THIS IS REALLY A “PUBLIC/PUBLIC PARTNERSHIP”, AS WELL AS A “PUBLIC/PRIVATE PARTNERSHIP.”

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Issue: can't exceed jurisdiction

3 EXAMPLES OF PROJECTS WHERE THE FACILITY LOCATION INVOLVED TWO COUNTIES

3 DIFFERENT SOLUTIONS

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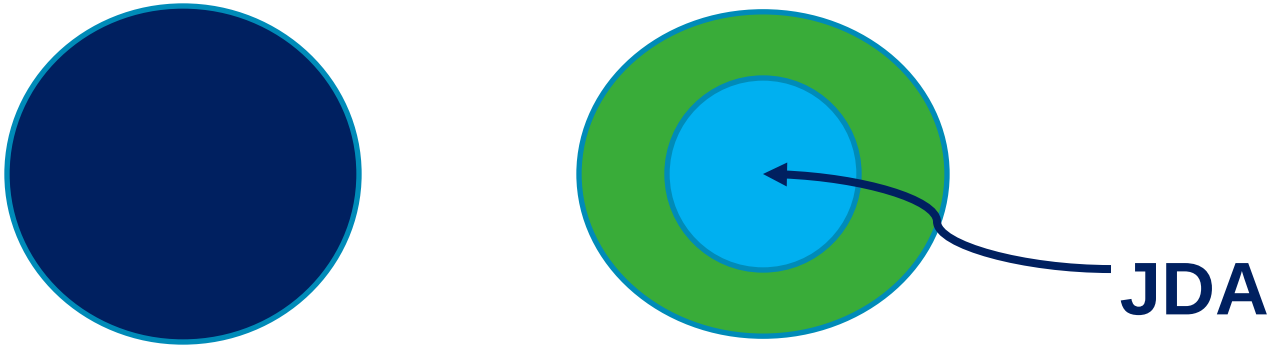
MANDO AUTOMOTIVE SUPPLIER
MERIWETHER COUNTY: OWNED PARK
TROUP COUNTY: SITE OF PARK



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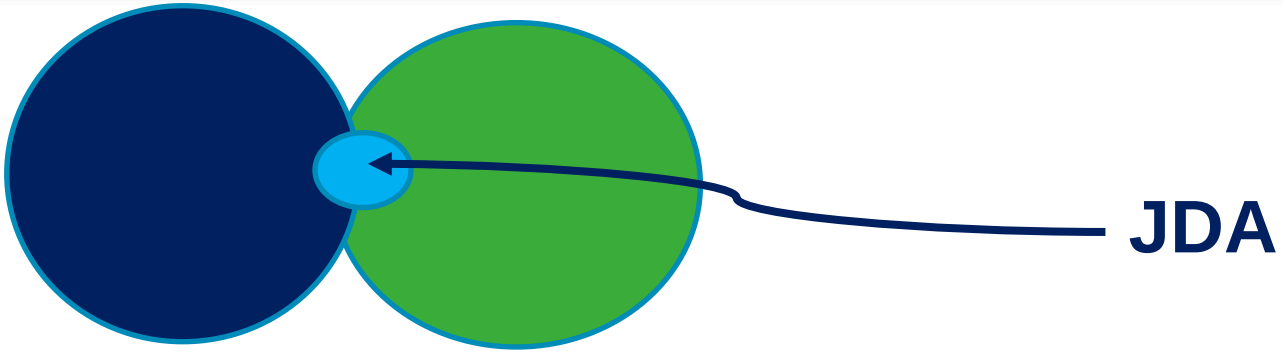
DOLLAR GENERAL DISTRIBUTION CENTER
FACILITY LOCATED IN BOTH BUTTS COUNTY AND SPALDING COUNTY



- 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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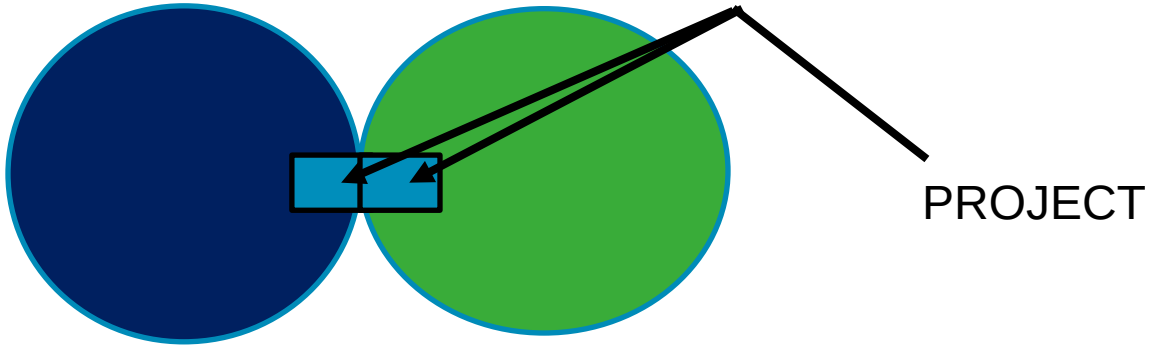
CATERPILLAR CONSTRUCTION EQUIPMENT MANUFACTURING PLANT

LOCATED IN BOTH ATHENS-CLARKE AND OCONEE COUNTY



- SOLUTION: EACH LOCAL GOVERNMENT'S DEVELOPMENT AUTHORITY ISSUED ITS OWN BONDS FOR TITLE AND HOLDS TITLE TO ITS OWN 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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MODULE 3

WHAT BONDS DEVELOPMENT AUTHORITIES CAN AND CAN'T ISSUE

and why

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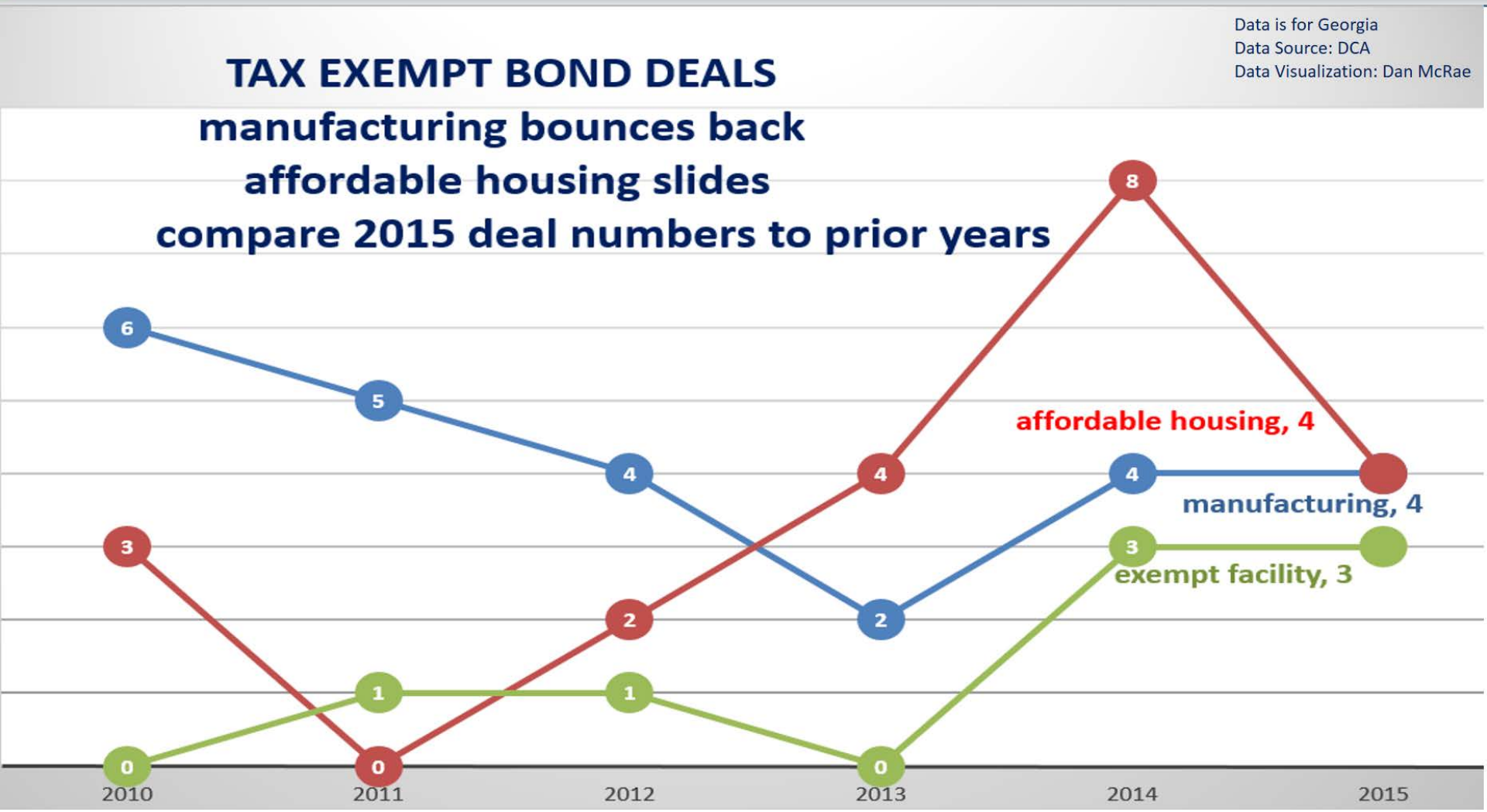
BONDS- HERE'S WHAT DEVELOPMENT AUTHORITIES ARE REALLY DOING



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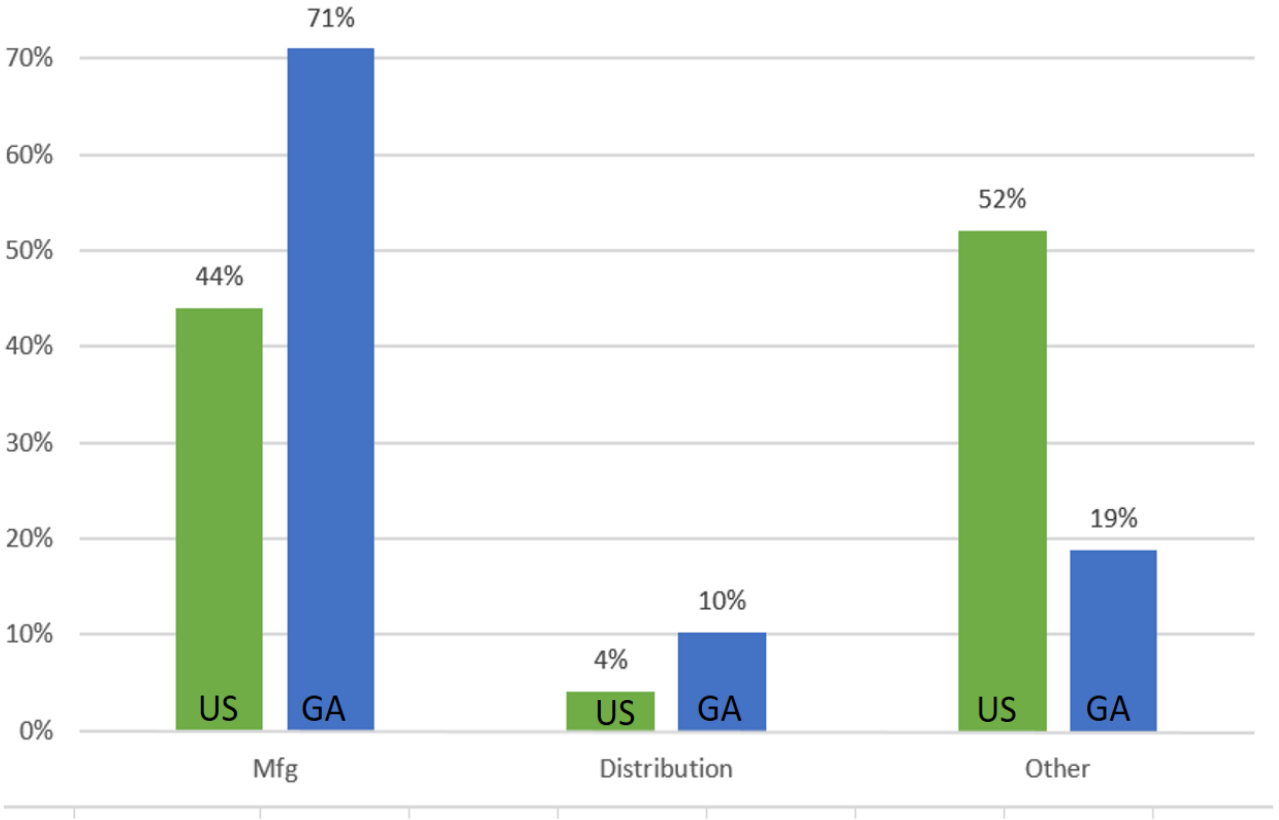
MANUFACTURING IS PRETTY ACTIVE

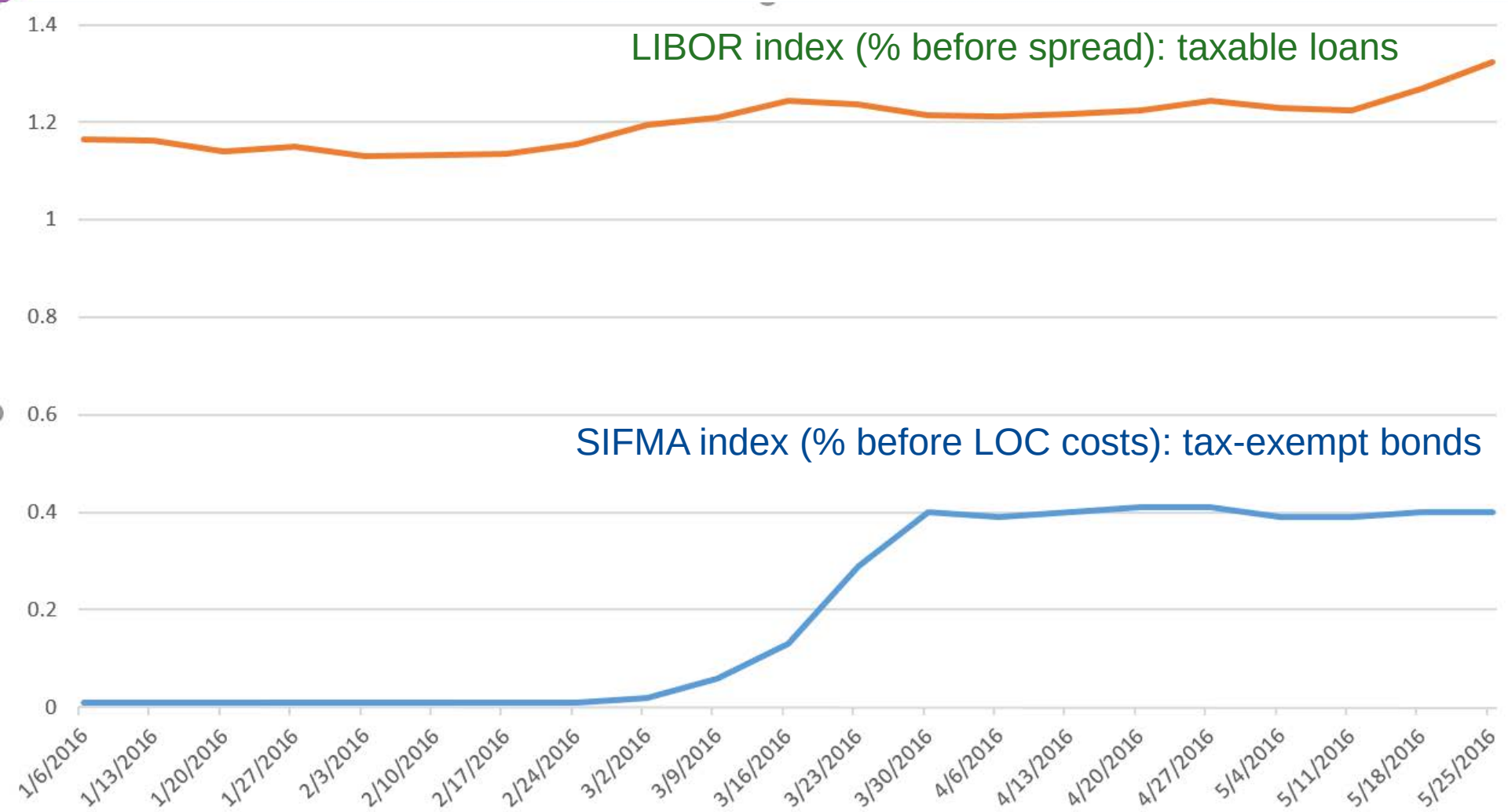
SO WHY AREN'T WE SEEING MORE TAX-EXEMPT MANUFACTURING BONDS?

MANUFACTURING IS BY FAR THE LARGEST SOURCE OF PROJECTS IN GEORGIA.
AND MANUFACTURING HAS THE LARGEST INDIVIDUAL SHARE OF THE LARGEST US PROJECTS
(when "other" is broken down into its components).



Data Sources: GA: GDEcD announcements 2010-2015; US: Site Selection Group Q12016 25 largest projects

THIS IS ONE REASON
TAX-EXEMPT AND TAXABLE RATES ARE BOTH LOW AND CLOSE



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Data Source: FRB St. Louis; SIFMA
Data Visualization: Dan McRae

“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”
- THIS LOW CAPEX LIMIT IS ANOTHER REASON NOT MANY MANUFACTURING PROJECTS ARE BEING FINANCED TODAY WITH TAX-EXEMPT BONDS.

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BONDS HIDDEN FROM THE DATA

- THE BONDS CHARTED ABOVE ARE THOSE FOR WHICH AN ALLOCATION OF STATE “VOLUME CAP” IS NEEDED FROM DCA
- THERE IS A LOT OF ACTIVITY WITH BOND TYPES THAT DON’T REQUIRE ALLOCATION, INCLUDING-
  - TAX-EXEMPT 501(C)(3) BONDS FOR NONPROFITS
  - TAX-EXEMPT GOVERNMENTAL PURPOSE BONDS
  - TAXABLE BONDS

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WHO DECIDES WHAT BONDS A DEVELOPMENT AUTHORITY CAN ISSUE?

FUNDAMENTAL RULE- A DEVELOPMENT AUTHORITY CAN ONLY ISSUE BONDS THAT STATE LAW *ALLOWS* IT TO ISSUE. THESE LAWS APPLY AS FOLLOWS-

- CONSTITUTION- TO ALL AUTHORITIES
- IN ADDITION, EACH TYPE OF AUTHORITY HAS ITS OWN GOVERNING LAW
  - SEE “THE DEVELOPMENT OF DEVELOPMENT AUTHORITIES IN GEORGIA”, ABOVE

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WHAT BONDS- WHO DECIDES?

- REVENUE BOND LAW- TO ALL AUTHORITIES
- PILOT RESTRICTION ACT- TO ALL AUTHORITIES
- O.C.G.A. Sec. 36-75-11 RESTRICTIONS ON CONTRACT REVENUE BONDS- IN PRACTICE, JUST TO DEVELOPMENT AUTHORITY OF DEKALB COUNTY

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WHAT BONDS- TAX-EXEMPT?

- THERE IS NO GEORGIA INCOME TAX ON INTEREST PAID BY A GEORGIA DEVELOPMENT AUTHORITY TO A GEORGIA TAXPAYER
- BUT “TAX-EXEMPT” USUALLY IS TAKEN TO MEAN FREE OF FEDERAL INCOME TAX
- JUST BECAUSE A GEORGIA DEVELOPMENT AUTHORITY ISSUES A BOND, DOES NOT AUTOMATICALLY MEAN IT IS TAX-EXEMPT UNDER FEDERAL LAW

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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

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“SMALL ISSUE” MANUFACTURING BONDS CASE STUDY: 1888 MILLS

GRIFFIN-SPALDING DEVELOPMENT AUTHORITY

FOR IMMEDIATE RELEASE FEBRUARY 6, 2014

1888 MILLS PURCHASES NACOM FACILITY FOR EXPANSION

GRIFFIN, GEORGIA…1888 Mills announced today that it has purchased the 500,000 square foot former NACOM facility on Airport Road in Griffin, Georgia. This is part of an expansion that will produce a sizeable investment in land, buildings and equipment and also create approximately 100 new jobs.

Douglas R. Tingle, Board of Managers for 1888 Mills, stated, “This is part of an expansion and modernization initiative we have for our USA platform. We continue to believe that USA manufacturing is important in supporting our local community. Each manufacturing job we create has a trickledown effect to the local economy. That is what we mean by our Brand Purpose – Weaving a Better World.”

PROJECT WAS FINANCED WITH A $10 MILLION TAX-EXEMPT MANUFACTURING BOND PRIVATELY PLACED WITH A BANK

THERE WAS ALSO A $5.75 MILLION ISSUE OF TAXABLE BONDS FOR TITLE SO THAT ALL OF THE ASSETS WOULD RECEIVE PROPERTY TAX SAVINGS

1888 Mills growing in Griffin

Wednesday May 18 | Read more: Griffin Daily News

RAY LIGHTNER/DAILY NEWS1888 Mills Vice President Doug Tingle gave a tour of the new facility on Airport Road as of the Griffin-Spalding Chamber of Commerce Governmental Affairs Committee breakfast, which 1888 Mills hosted Thursday morning.

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"AFFORDABLE HOUSING" BONDS CASE STUDY: SENIOR LIVING FACILITY FOR PROVIDENT VILLAGE AT CREEKSIDE

majonline.com

Senior living facility to open in Smyrna

Meris Lutz Apr 4, 2016 (0)

A 108-unit assisted senior living facility in Smyrna financed with tax-exempt bonds is slated to open April 9, a spokesperson for the developer told the MDJ.

The three-story Provident Village at Creekside is located at 4838 South Cobb Drive between the East-West Connector and Interstate 285. It includes 85 assisted living units and 23 memory care units dedicated to residents struggling with dementia, according to a spokesperson for the Baton Rouge-based Provident Group, the parent company of developer Creekside Properties LLC. Eventually, the facility will also offer independent living options.

THE BONDS WERE TAX-EXEMPT QUALIFIED IRC SEC. 142(d) BONDS

The proposed "refunding revenue bonds" amount to a refinancing of $14.5 million in bonds the authority issued in 2014, as well as an additional $4.5 million in new funding, according to Nelson Geter, the authority's executive director. He said the developer ran into construction obstacles that required extra funding.

He emphasized that the developer, not the authority or the county, is responsible for repaying the bonds plus interest.

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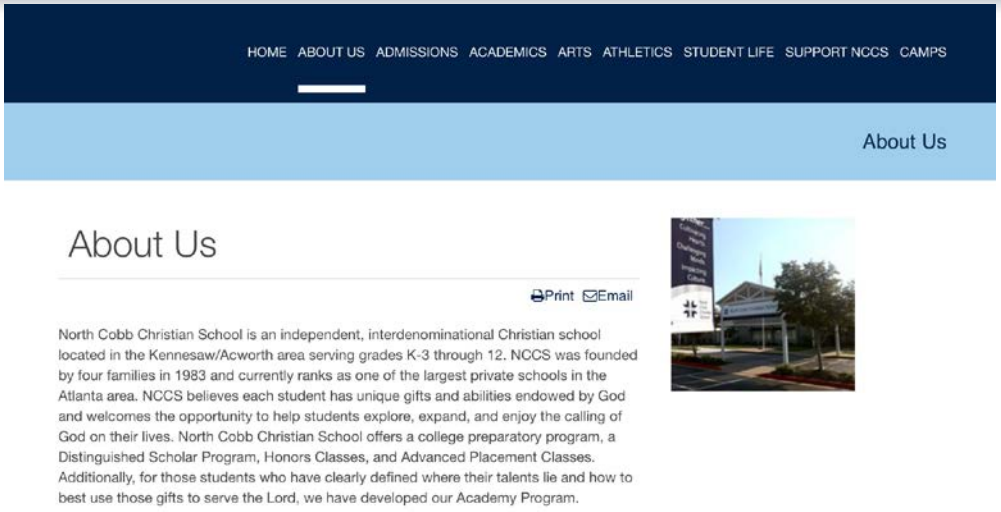
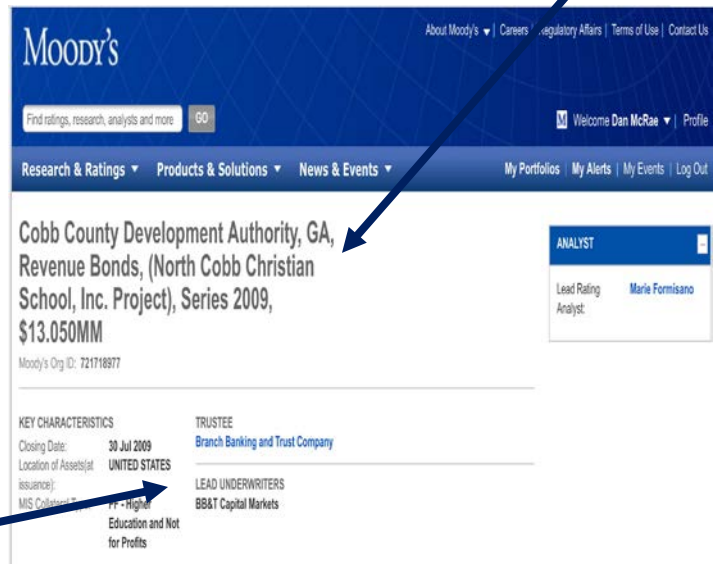
“QUALIFIED 501(C)(3)” BONDS CASE STUDY: SCHOOL FOR NORTH COBB CHRISTIAN SCHOOL



$12.75 MILLION IN TAX-EXEMPT BONDS WERE ISSUED TO SAVE THE SCHOOL MONEY BY REFINANCING THESE OLD BONDS



THE NEW BONDS DID NOT REQUIRE A LETTER OF CREDIT AND WERE PRIVATELY PLACED INSTEAD OF BEING SOLD THROUGH AN UNDERWRITER.

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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 7-10 entities, including the development authority, an underwriter, its counsel, a trustee, its counsel, etc.

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HOW MUCH DOES IT COST?

- THE COST OF ISSUANCE IS NEGOTIABLE
  - EXCEPTION- SOME FEDERAL TAX RULES. SEE BELOW.
- THE PROSPECT SHOULD ASK FOR A COST OF ISSUANCE BUDGET IN ADVANCE.
- THE PROSPECT SHOULD EVALUATE COSTS RELATIVE TO AMOUNT RAISED OR PROPERTY TAXES SAVED- OR BOTH, IF BONDS ARE FUNDED AND PROPERTY TAX INCENTIVES PROVIDED

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DEVELOPMENT AUTHORITY FINANCING FEE

- TODAY, A ONE-TIME PAYMENT AT CLOSING EQUAL TO 1/8 OF 1% OF THE MAXIMUM BOND AMOUNT IS NORMAL AS A DEVELOPMENT AUTHORITY FINANCING FEE.
  - WITH TAX-EXEMPT BONDS, "YIELD" INCLUDES ANY PROFIT TO THE DEVELOPMENT AUTHORITY, WHICH IS RESTRICTED.
  - SO, GENERALLY SPEAKING, WITH TAX-EXEMPT BONDS, ITS FINANCING FEE COULD NOT BE MORE THAN 1/8 OF 1% OF THE PRINCIPAL AMOUNT.

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DEVELOPMENT AUTHORITY FINANCING FEE

- THE “1/8 OF 1%” RULE DOESN'T APPLY WITH TAXABLE BONDS, LIKE BONDS FOR TITLE THAT ARE USED FOR PROPERTY TAX SAVINGS.
  - THEN THE DEVELOPMENT AUTHORITY CAN CHARGE WHATEVER FEE THE COMPANY WILL AGREE TO.
  - SOME DEVELOPMENT AUTHORITIES HAVE, OR ARE CONSIDERING CHARGING, AN ANNUAL FEE.
    - WAS COMMON MANY YEARS AGO.
    - NOT COMMON NOW, BUT TRENDING.

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MODULE 4

CA$H FOR PROJECTS

NMTC “forgivable loans” and EB-5 loans

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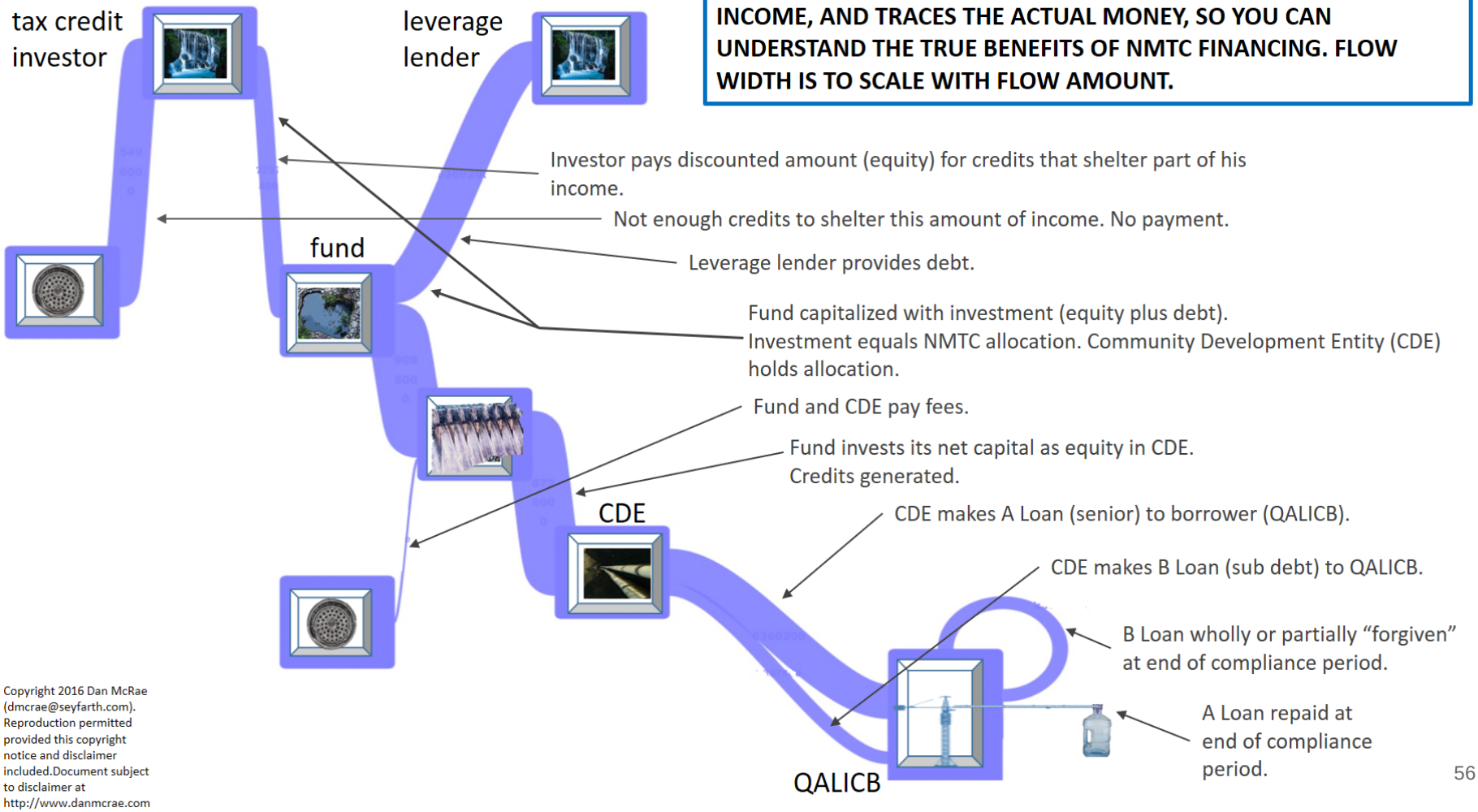
NEW MARKETS TAX CREDITS (NMTC)
HOW IT CREATES TAX CREDIT EQUITY

THE "FLOW" OF FUNDS- THIS INFOGRAPHIC SORTS OUT ALLOCATION, CREDITS, SHELTERED INCOME, AND UNSHELTERED INCOME, AND TRACES THE ACTUAL MONEY, SO YOU CAN UNDERSTAND THE TRUE BENEFITS OF NMTC FINANCING. FLOW WIDTH IS TO SCALE WITH FLOW AMOUNT.



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NEW MARKETS TAX CREDITS CASE STUDY: EXPANSION OF PREMIUM PEANUT SHELLING FACILITY

"Premium Peanut received $20 million in critical
New Markets Tax Credit financing from CEI Capital
Management and another $3 million in
allocation from SunTrust Bank to help expand its
operations.
Premium Peanut used the capital to build a shelling
facility to benefit a collection of 225 member farms
in cooperative-like arrangement."

Source: NMTC Tax Credit Coalition

This facility in Douglas, Coffee County, Georgia is now the largest peanut shelling plant in the United States.

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EB-5 IMMIGRANT INVESTOR CAPITAL
HOW IT IS RAISED

FOR A $500,000 INVESTMENT IN A TARGETED EMPLOYMENT AREA THAT CREATES AT LEAST 10 DIRECT, INDIRECT OR INDUCED JOBS, A FOREIGN INVESTOR WILL GET A "GREEN CARD"

- Something called a "Regional Center" raises the capital and is the conduit .
- Capital is raised on a per project basis via a Private Placement Memorandum.
- Per investor requirement is $1 million, unless project is located in a Targeted Employment Area.

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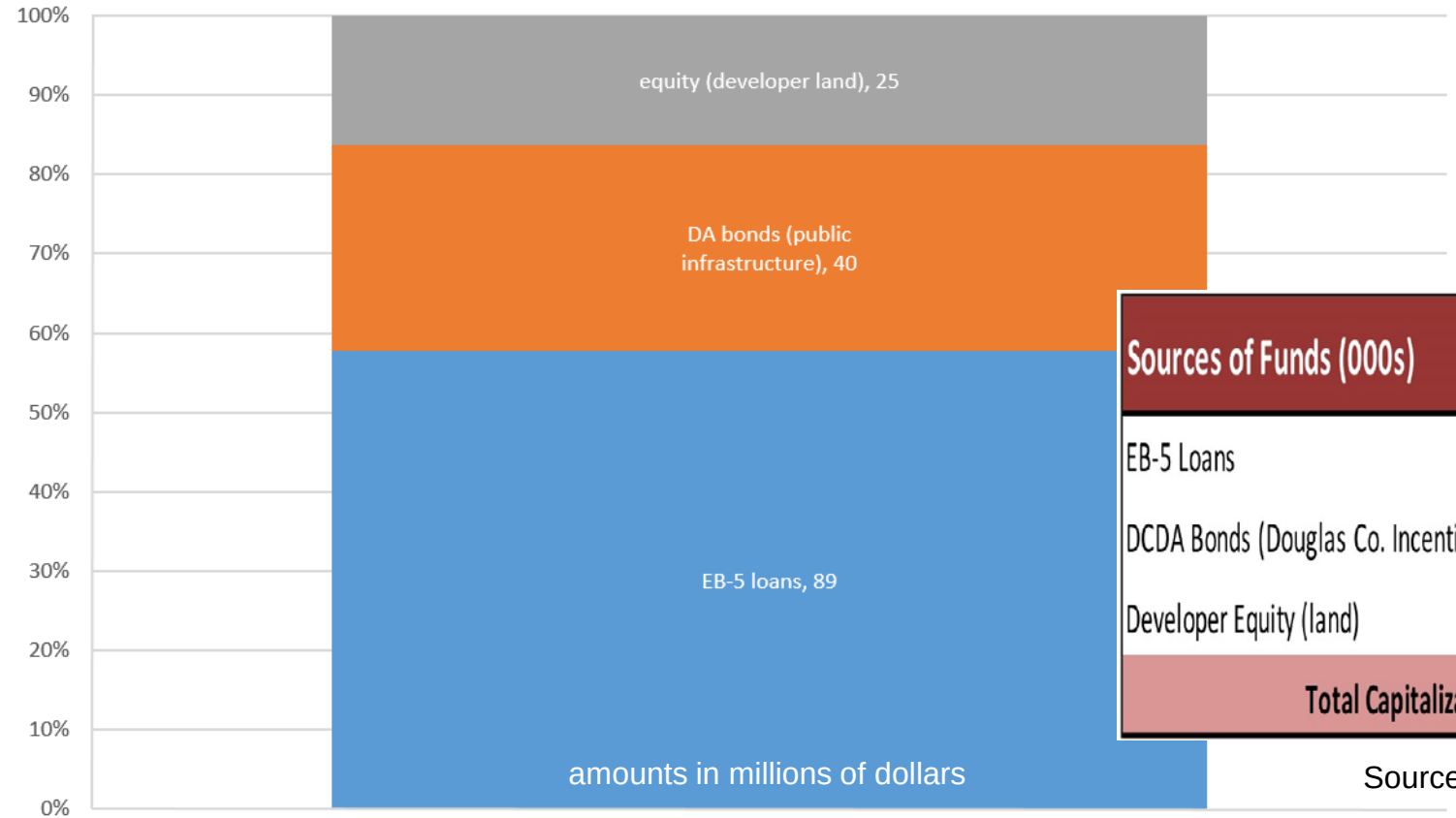
EB-5 IMMIGRANT INVESTOR CAPITAL CASE STUDY: FOXHALL

EB-5 LOANS AMOUNT TO 58% OF THE TOTAL CAPITAL STACK FOR BOTH THE PRIVATE AND PUBLIC COMPONENTS OF THE PROJECT.
BUT EB-5 LOANS AMOUNT TO 100% OF THE DEBT
FOR THE PRIVATE COMPONENT.



Sources of Funds (000s)	ORIGINAL PROJECT	UPDATED PROJECT
EB-5 Loans	$110.000	$89.000
DCDA Bonds (Douglas Co. Incentives)	35.000	40.000
Developer Equity (land)	20.000	25.000
Total Capitalization	**$165.000**	**$154.000**

Source: PFM

CONCLUSION

NOW YOU KNOW THE “BASIC BUILDING BLOCKS” OF DEVELOPMENT AUTHORITIES.

A DEVELOPMENT AUTHORITY IS AN ESSENTIAL TOOL FOR ECONOMIC DEVELOPMENT IN YOUR COMMUNITY.

USE YOUR NEW SKILLS TO “GET THE JOB DONE!”

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QUESTIONS?

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FOR MORE INFORMATION

- THIS PRESENTATION AND MY WHITE PAPERS ON ECONOMIC DEVELOPMENT AND OTHER TOPICS CAN BE DOWNLOADED

at http://danmcrae.com/whitepapers

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SCOPE

This presentation is a quick-reference guide for company executives and managers, elected and appointed officials and their staffs, economic developers, participants in the real estate and financial industries, and their advisors. The information in this presentation is general in nature. Various points which could be important in a particular case have been condensed or omitted in the interest of readability. Specific professional advice should be obtained before this information is applied to any particular case. Any tax information or written tax advice contained herein is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.) 15899134

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