



DE-CONSTRUCTING DEVELOPMENT AUTHORITIES

LEARN THEIR RULES FROM HOW THEY FUNCTION

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DEVELOPMENT AUTHORITY- CENTRIC

- ▶ DEVELOPMENT AUTHORITIES HAVE LONG BEEN THE PREMIER TOOL USED FOR ECONOMIC DEVELOPMENT IN GEORGIA
- ▶ TODAY, IT'S COMPLICATED



FOCUS ON DEVELOPMENT AUTHORITIES

- TODAY, MORE THAN EVER, WE HAVE NEW DEVELOPMENT AUTHORITIES, NEWLY RE-ORGANIZED DEVELOPMENT AUTHORITIES, AND TURNOVER (NEW MEMBERS) ON DEVELOPMENT AUTHORITY BOARDS
- IF YOU ARE NEW
- OR IF YOU JUST WANT TO LEARN WHAT'S NEW...
- THEN LET'S GET ORIENTED!



DE-CONSTRUCTING DEVELOPMENT AUTHORITIES
LEARN THEIR RULES



DRAW ON WHAT YOU ALREADY KNOW

- A HIERARCHY OF RULES GOVERNS A BUSINESS CORPORATION
- THAT'S YOUR POINT OF REFERENCE FOR UNDERSTANDING DEVELOPMENT AUTHORITIES
- AND- THEIR COUSINS (THE OTHER TYPES OF PUBLIC BODIES THAT ARE IMPORTANT IN ECONOMIC DEVELOPMENT)

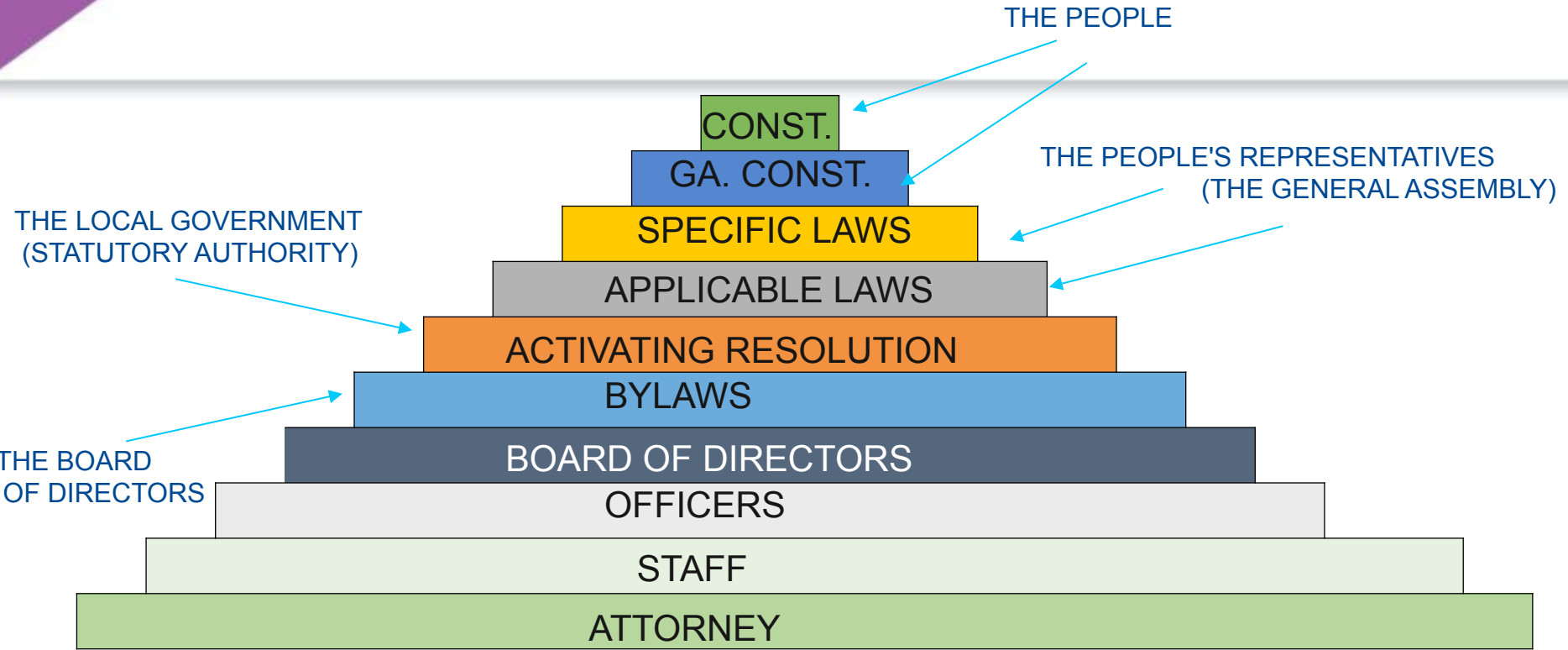


NOT JUST ANY CORPORATION

- A DEVELOPMENT AUTHORITY IS A TYPE OF “PUBLIC CORPORATION.” See O.C.G.A. Sec. 36-62-2(1).
- BUT IT’S NOT JUST ANY CORPORATION.
- IT FUNCTIONS DIFFERENTLY THAN A PRIVATE CORPORATION.
- IT ALSO FUNCTIONS DIFFERENTLY THAN ITS COUSINS.

SOME COUSINS ARE NOT LEGAL ENTITIES

LEGAL ENTITY	NOT A LEGAL ENTITY
Redevelopment Agency (Redevelopment Powers Law)	Tax Allocation District
Urban Redevelopment Agency (Urban Redevelopment Law)	Special Tax District
Community Improvement District	Business Improvement District
Land Bank	Targeted Employment Area
Public Facilities Authority/ Building Authority	Opportunity Zone
Water & Sewer Authority	Enterprise Zone



THE HIERARCHY OF A DEVELOPMENT AUTHORITY

MOST "IN CHARGE" AT THE TOP
LEAST "IN CHARGE" AT THE BOTTOM



GEORGIA CONSTITUTION

- DEFINES "GOVERNMENTAL MISSION" OF DEVELOPMENT AUTHORITY
- Statutory development authority- "trade, commerce, industry and employment opportunities"
- Constitutional development authority- usually similar
- STATUTORY (AND MOST CONSTITUTIONAL) DEVELOPMENT AUTHORITIES CAN ONLY CARRY OUT PROJECTS FOR PRIVATE SECTOR
 - EXCEPTION- PROPER PUBLIC/PRIVATE PARTNERSHIPS




GEORGIA CONSTITUTION- COUSINS

PUBLIC BODY	PUBLIC PROJECTS?	PRIVATE PROJECTS?
Redevelopment Agency (Redevelopment Powers Law)	Yes	Yes (if redevelopment)
Urban Redevelopment Agency (Urban Redevelopment Law)	Yes	Yes (if redevelopment)
Community Improvement District	Yes	No
Public Facilities Authority	Yes	Depends on statute




GEORGIA CONSTITUTION

- PROHIBITS PUBLIC SECTOR FROM CONFERRING A "GIFT OR GRATUITY" ON THE PRIVATE SECTOR
- PROHIBITS STATUTORY LOCAL AUTHORITIES FROM ROAD CONSTRUCTION PROJECTS INVOLVING LOCAL GOVERNMENTS
- AUTHORIZES STATE, LOCAL GOVERNMENTS, AND LOCAL AUTHORITIES TO ENTER INTO CONTRACTS AMONG THEMSELVES FOR UP TO 50 YEARS



Local government can "bind its successors" to intergovernmental agreement.



Each party must have right to do what's being undertaken



GENERAL ASSEMBLY- SPECIFIC LAWS

TYPES OF DEVELOPMENT AUTHORITIES

- “Statutory”
 - ▶ Created by General Assembly under Development Authorities Law
 - After Attorney General Opinion ruled against Industrial Development Authorities
 - 1963 [Industrial Development Authorities Law](#)
 - ▶ Constitution was amended to authorize development authorities
 - ▶ Statewide pattern
 - 1969 and later
 - ▶ Activation by City or County required
- “Constitutional”
 - ▶ Pursuant to Local Constitutional Amendment (“LCA”)
 - ▶ 1987 and earlier
 - ▶ Each LCA is different
 - ▶ Initiated by local act - referendum was required
- [Local Act \(of General Assembly, not under home rule powers\)](#)
 - ▶ Prior to 1969
 - ▶ No referendum required
 - ▶ Each Local Act is different

THIS PRESENTATION REFERS ONLY TO STATUTORY CITYWIDE AND COUNTYWIDE DEVELOPMENT AUTHORITIES UNLESS OTHERWISE NOTED



GENERAL ASSEMBLY- APPLICABLE LAWS

Applicable Laws

- ▶ Example: Open Meetings Act, O.C.G.A. Sec. 50-14-1 *et seq.*,
- ▶ Example: Open Records Act, O.C.G.A. Sec. 50-18-70, *et seq.*
- ▶ Example: State Code of Ethics, O.C.G.A. Sec. 45-10-3

CID is not created by general statute so is not subject to Code of Ethics



GENERAL ASSEMBLY- APPLICABLE LAWS

Applicable Laws

- ▶ Example- Reporting of “public “benefits” it provides (applies to certain incentives). *See* O.C.G.A. Sec. 50-36-1
- ▶ Example: Georgia Local Government Public Works Construction Law. O.C.G.A. Sec. 36-91-1 *et seq.*
 - for development authority projects
 - doesn't cover properly structured projects for prospects
- ▶ Federal and State environmental laws



LOCAL GOVERNMENT

- ADOPTS AN ACTIVATING RESOLUTION
 - IF A STATUTORY AUTHORITY
- APPOINTS THE DIRECTORS
 - ALL DIRECTORS- STATUTORY AUTHORITY
 - SOME OR ALL DIRECTORS- CONSTITUTIONAL AUTHORITY
 - **DEPENDS ON LOCAL CONSTITUTIONAL AMENDMENT (LCA)**

LOCAL GOVERNMENT

- Appoints the Directors
- Statutory development authority: Directors 7-9, as appointed by local government; terms (after first directors), 4 years; must reside within borders of local government; directors not compensated except per diem if county of 550,000 or more.
- Constitutional development authority: Directors- Local constitutional Amendment (LCA) and enabling legislation (local acts) determine number and qualifications of directors and their term of office. Provisions usually can't be changed.

Size of CID administrative body is per its local act. Most are 7-10 members (city CIDs trend to high side).

A statutory DDA has a fixed board size of 7 members

BYLAWS

Development Authority Bylaws

- Adopted by Board of Directors

COMMON
MISCONCEPTION-
CITY APPROVES
DDA BYLAWS (IT
DOESN'T)

- Best to cover only what law doesn't cover for you

- Example- meeting schedule, who can call unscheduled (special) meetings, terms of officers and when elected
- Example- don't cover director qualifications (that's in the law and can change)

- Directors can amend bylaws but must comply with bylaws meanwhile, including amendment procedures

BOARD OF DIRECTORS

SETS POLICY AND ADOPTS RESOLUTIONS

- Statutory development authority- resolutions must be adopted by majority of whole board, not just majority of a quorum. O.C.G.A. Sec. 36-62-4(b)

DDA acts by majority of quorum except issuing debt requires approval by majority of whole board

Exception: vote to go into Executive Session (requires majority of a quorum)



BOARD OF DIRECTORS

SETS POLICY AND ADOPTS RESOLUTIONS

- Statutory development authority: Directors- one elected official may be director; directors can't be removed by local government. Local government can't dissolve development authority if bonds outstanding.
- Constitutional development authority: Directors -most provide for some elected official representation on board; some have removal provisions. Dissolution requires referendum and unlikely to be effective if bonds outstanding.

Land Bank- A land bank member may remove any board member appointed by that land bank member.

OFFICERS

- ELECTED BY BOARD OF DIRECTORS
- Statutory development authority
 - Chairman and Vice-Chairman
 - Have to be directors
 - Secretary and Treasurer or Secretary-Treasurer
 - OK if not directors
- Constitutional development authority- per Local Constitutional Amendment (LCA) and bylaws
- CARRY OUT POLICY AND IMPLEMENT RESOLUTIONS

URA- local government appoints Chairman and Vice-Chairman (have to be Commissioners/members)



STAFF

- Provides Support to Officers and Board
- Can be compensated
- Avoid self-supervision, conflicts of interest



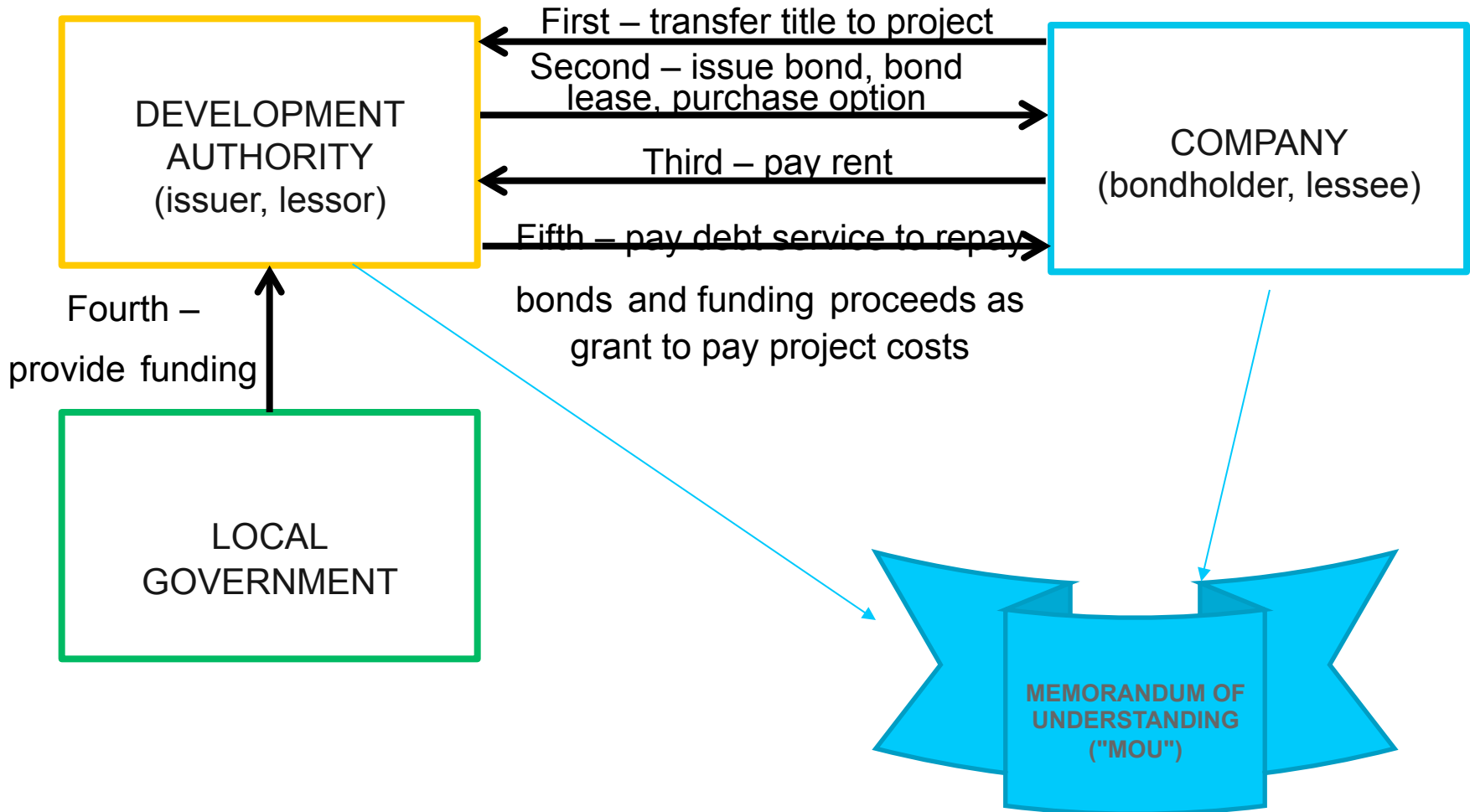
ATTORNEY

- Development authority engages its own attorney
 - Local government attorney not automatically attorney for development authority
 - If engaged by development authority, conflicts of interest can arise
 - Example- intergovernmental agreement
- Advises board, officers and staff
- Represents interests of development authority
 - For example, acts as its “Issuer’s Counsel” when it issues revenue bonds

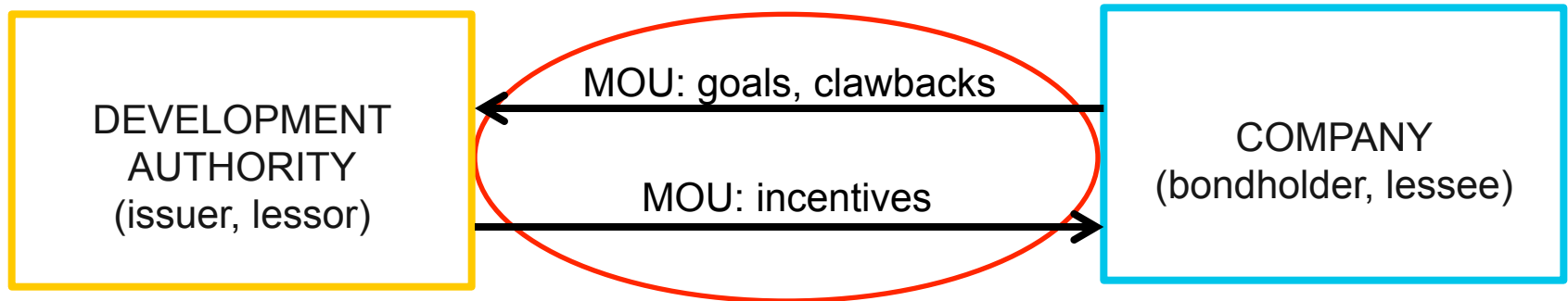


DE-CONSTRUCTING DEVELOPMENT AUTHORITIES
HOW THEY FUNCTION

FUNCTION- BONDS FOR TITLE provide prospect with property tax savings and grant



FUNCTION - MOU



1. Georgia Constitution prohibits a public body from conferring a “gift or gratuity” on a private body. This prohibition applies to development authorities (a few Local Constitutional Amendments provide limited exceptions).
2. The opposite of a “gift” is a “bargain.” The MOU evidences the bargain. The goals and clawbacks are the consideration flowing to the public sector to offset the incentives.
3. The “bargain” is judicially validated when the development authority’s bonds are validated.

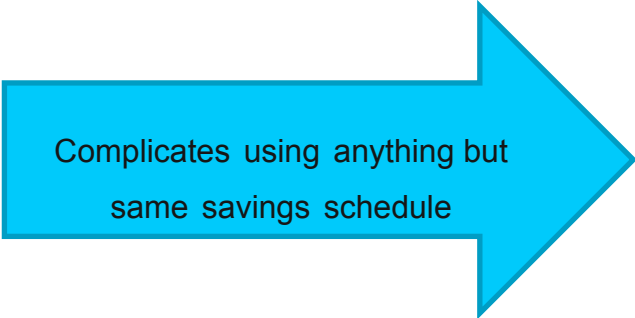
FUNCTION - MOU

4. No development authority has “abatement” powers.
Rather, basis for property tax savings is

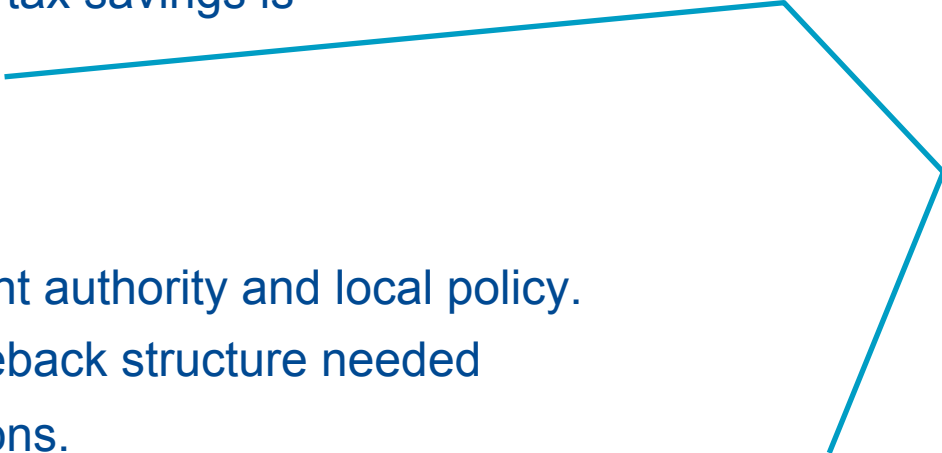
- leasehold valuation,
- usufruct,
- or exempt property,

depending on development authority and local policy.

Bond-financed sale-leaseback structure needed
regardless for legal reasons.



Complicates using anything but
same savings schedule



Leasehold valuation was "cutting edge" in 1981 (*Harris* case). Now per recent cases, Fulton County uses an appraiser to apply "a reasonable discount rate associated with bond financing" to calculate the "value of the Lease for each year of the ten-year term" to justify its savings schedule and validate its bonds.




FUNCTION - MOU

4. No development authority has “abatement” powers.
Rather, basis for property tax savings is

- leasehold valuation,
- usufruct,
- or exempt property,

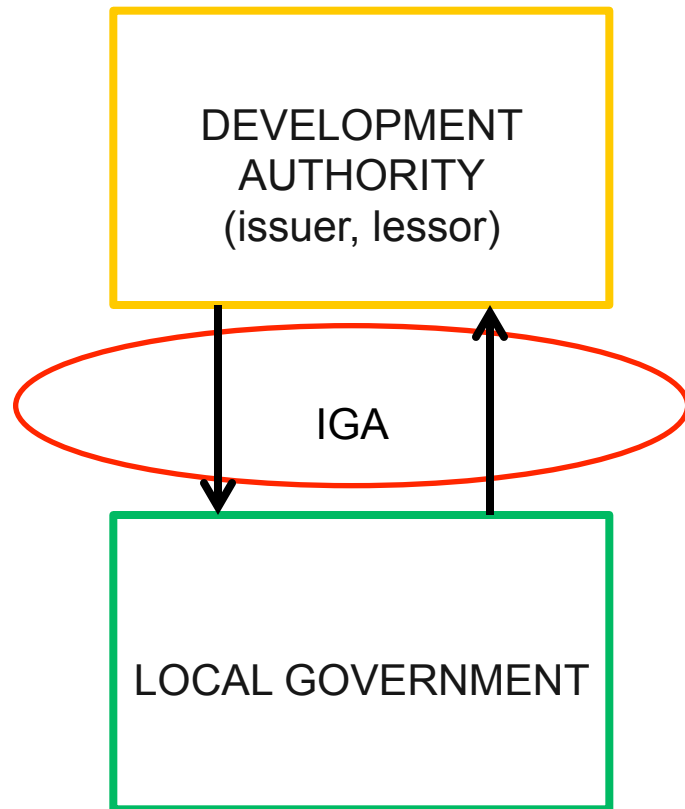
depending on development authority and local policy.

Bond-financed sale-leaseback structure needed
regardless for legal reasons.



Usufruct was "cutting edge" in 2004 (*Diversified Golf* case). Now per PILOT Restriction Act (2009), taxing authority consents are required if payments in lieu of taxes ("PILOTs") are pledged to secure bonds in many situations BUT NOT REQUIRED in typical bonds for title transaction.

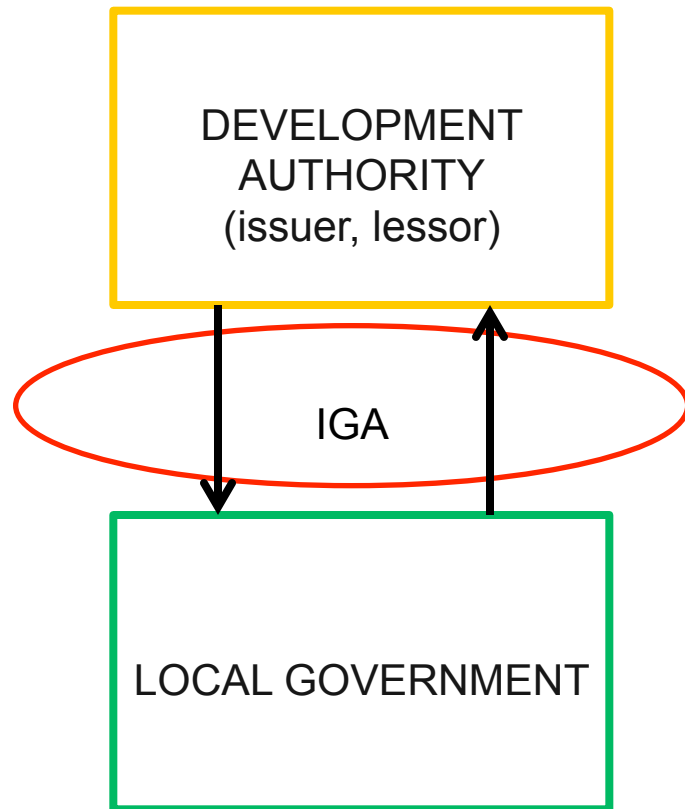
FUNCTION - IGA



1. Proper property tax savings structure does not strictly require local government approval but is good policy. Local government is a “stakeholder” with the development authority. There are other stakeholders.

2. County can commit 1 mill of economic development millage to county or joint city/county development authority. City can commit 3 mills of economic development millage to city or joint city/county development authority. Pledge of non-economic development millage might be possible depending on project.

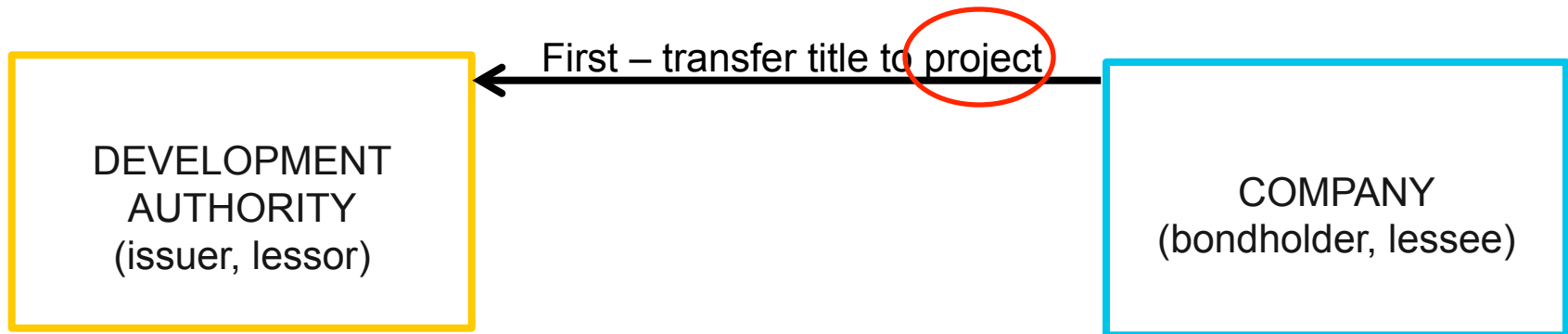
FUNCTION - IGA



3. Development authorities do not have taxing power. Some Local Constitutional Amendments (LCAs) permit or require the local government to assess millage to support its Constitutional development authority. A few LCAs require this if bonds issued by those Constitutional development authorities go into default.

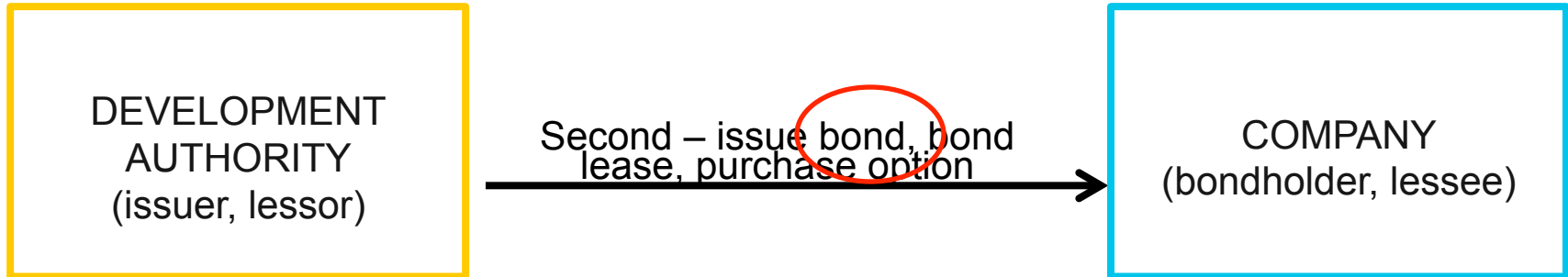
4. Unlike local government, development authority can enter into multiyear contract (here, MOU) with private body; here, the Company.

FUNCTION – PROJECT



1. Development authority project must be authorized.
2. Statutory authority: Constitution authorizes projects that develop “trade, commerce, industry and employment opportunities.” Courts say this means only a private project or sometimes a properly integrated public/private partnership (P3). Development Authorities Law lists projects (A)-(N) in O.C.G.A. Sec. 36-62-2(6). Most are industrial.
3. Constitutional authority: Its Local Constitutional Amendment (LCA) is part of Constitution. Some LCAs authorize public projects; e.g., public golf projects or public road projects. Some LCAs are more restrictive than the Development Authorities Law; e.g., some IBAs can only carry out industrial projects.

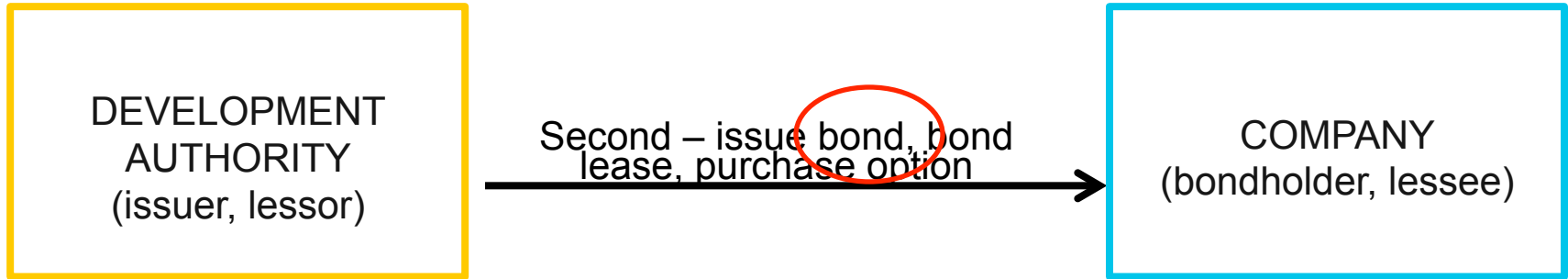
FUNCTION – BONDS



1. Development authorities can issue bonds, and have them validated, because authorized by the Development Authorities Law (statutory development authority) or Local Constitutional Amendment (Constitutional development authority).
2. Statutory development authorities are not authorized to issue promissory notes, but most Constitutional development authorities are.
3. Bonds can only be issued for projects that are authorized under state law. Federal income tax law determines whether or not the bonds are tax-exempt.

No provision to
validate URA
bonds

FUNCTION – BONDS



4. Statutory development authority bonds are revenue bonds, not general obligation bonds of development authority or local government. Exception: obligation possible through intergovernmental agreement (IGA) with local government and contractual commitment of millage. Obligation might be limited by statute or IGA.

5. Constitutional development authorities can usually issue bonds or notes that are their own general obligation, but not general obligation of local government, in addition to revenue bonds or revenue notes. Same exception regarding limited obligation and IGA.

6. Statutory development authority can only issue bonds if project will increase or maintain employment in its area of operations. Exceptions: certain infrastructure projects; refunding bonds. Some Constitutional development authorities cannot issue bonds if project would reduce employment elsewhere in Georgia.

Statutory
DDA- no jobs
requirement

FUNCTION- VALIDATION

- Validation- It's not just the law, it's a good idea!
- Bonds are validated in Court
 - ▶ development authority promissory notes are not validated
- Judge's final validation order is "forever incontestable and conclusive." Ga. Const. Art. IX, Sec. VI, Para. IV
- Traditional- Use validation orders to cover-
 - ▶ Incentives don't violate Constitutional prohibition of "Gifts and Gratuities"
 - ▶ Validity of "abatement" structure
 - leasehold valuation
 - usufruct
 - nontaxable lease
 - PILOT (payment in lieu of taxes) bonds

Statutory
DDA can
validate its
notes

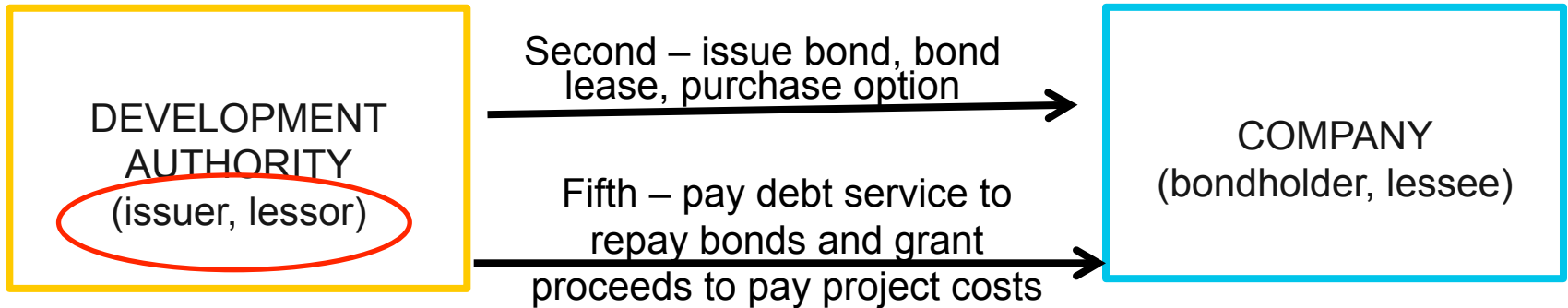


FUNCTION- VALIDATION

Now- Also use validation orders to cover-

- if the project is a public/private project (P3), it is Constitutional because properly integrated
- the project is not subject to the Georgia Local Government Public Works Construction Law (O.C.G.A. Sec. 36-91-1 *et seq.*)
- the bonds are not subject to the PILOT Restriction Act (O.C.G.A. Sec. 36- 80-16.1)
- the bond issue and the expenditure of the proceeds thereof are exempt from the performance audit and performance review provisions of O.C.G.A. Sec. 36-82-100

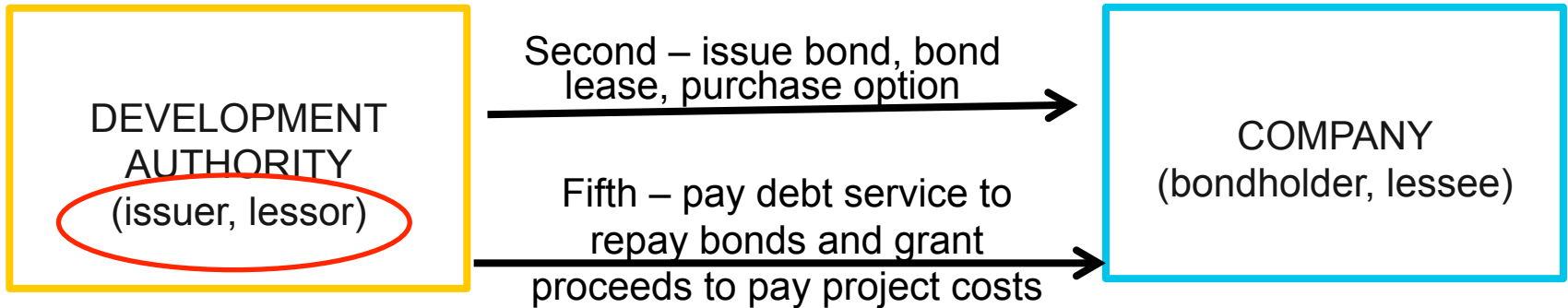
FUNCTION – JURISDICTION



1. Development authority's jurisdiction is its "area of operations." Not defined for statutory development authorities, but considered to be its county or city.

2. Local Constitutional amendment (LCA) determines jurisdiction of Constitutional development authority. Some have "extraterritorial" jurisdiction outside borders of parent local government.

FUNCTION – JURISDICTION

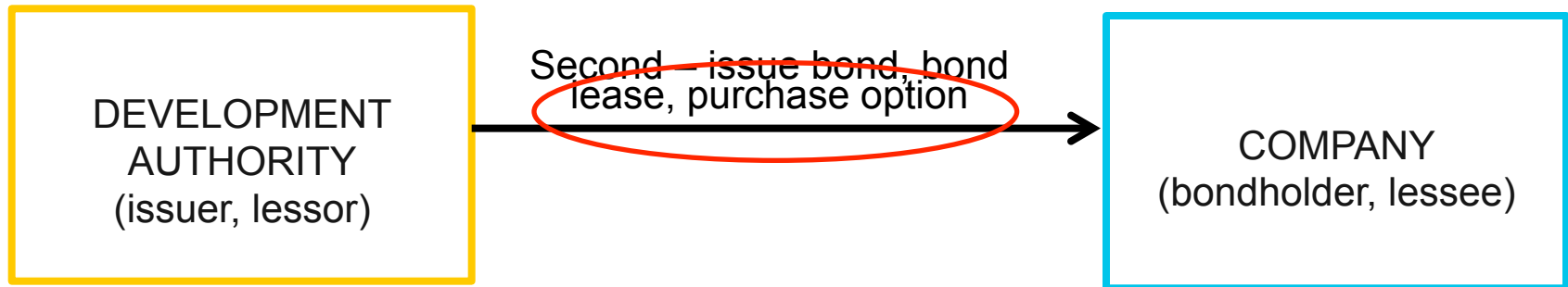


3. JDA has jurisdiction throughout member local governments. Members do not have to be contiguous, but contiguous statutory county development authorities have \$500/job increase in job tax credit.

4. For statutory JDAs, concurrent resolutions of local governments determine: number of directors, number of director appointments per local government, terms of office of directors, and residency requirements.

5. Statutory county JDAs must be active and bona fide, have a board of directors, meet at least quarterly, and have an operational business plan. A county may belong to more than one statutory county JDA.

FUNCTION – LEASE AND PURCHASE OPTION



1. Statutory development authority cannot operate a project. Has to place it under a lease, sales contract or management contract with private body. Exceptions: land for industrial park; sports facility or amphitheater. Lease has to be triple net (NNN). Most Constitutional development authorities are allowed to operate or manage projects without leasing them.
2. If statutory development authority issues bonds to finance project, lease must “amortize” bonds. Exception: there are precedents for pledging revenues other than rents to pay bonds; e.g., economic development millage. Projects for some Constitutional development authorities are required to be “self-liquidating.”
3. Purchase option usually nominal amount once bonds paid off. Any outstanding clawbacks should be payable at or before closing

Competitive bidding applies to disposition by URA of real property to private sector.



DE-CONSTRUCTING DEVELOPMENT AUTHORITIES
CONCLUSION



CONCLUSION

- THE RULES GOVERNING DEVELOPMENT AUTHORITIES GET MORE COMPLICATED EVERY YEAR
- DEVELOPMENT AUTHORITIES ARE AN INDISPENSABLE TOOL FOR ECONOMIC DEVELOPMENT
- STAKEHOLDERS MUST UNDERSTAND
 - ▶ CORPORATE GOVERNANCE
 - ▶ THE ROLE OF THE BOARD, THE OFFICERS, AND THE STAFF
 - ▶ RELATIONSHIPS WITH OTHER PUBLIC BODIES
 - ▶ DO'S AND DON'TS
 - ▶ CAN'S AND CAN'TS
- I HOPE THIS PRESENTATION WILL HELP!



REFERENCES

THIS PRESENTATION AND OTHER REFERENCES CAN BE DOWNLOADED AS FOLLOWS:

- January 2013 - “Development Authorities 101”
- June 2012 - “Bonds 101”
- June 2011 - "TIFs and TADs in Tough Times“; TIFs and TADs Questions and Answers
- January 2011 - “Introduction to Tax-Exempt Bonds”
- January 2011 - “Introduction to 'Taxable Floaters' ”
- January 2011 – "Everything You Need To Know About Joint Development Authorities"
- August 2010 – "Bonds For Title"

at <http://danmcrae.info/whitepapers>



QUESTIONS?

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MORE INFORMATION

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