



# DEVELOPMENT AUTHORITIES THEIR PECKING ORDER, THEIR "COUSINS", AND THEIR PROJECTS

Daniel M. McRae, Partner

**Seyfarth Shaw LLP**  
1075 Peachtree St., N.E., Ste. 2500  
Atlanta, GA 30309  
404.888.1883  
404.892.7056 fax  
dmcrae@seyfarth.com  
dan@danmcrac.info

**July 2015**



# **PART 1**

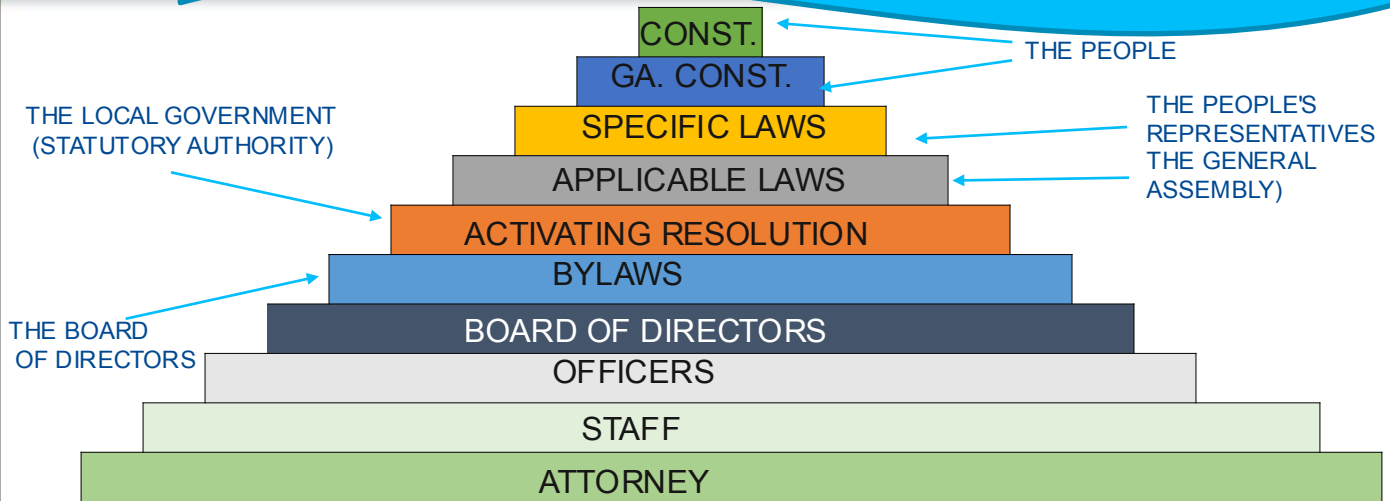
## **THE "PECKING ORDER"**

### **THE "COUSINS"**



DEVELOPMENT AUTHORITIES  
**THE PECKING ORDER**

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.

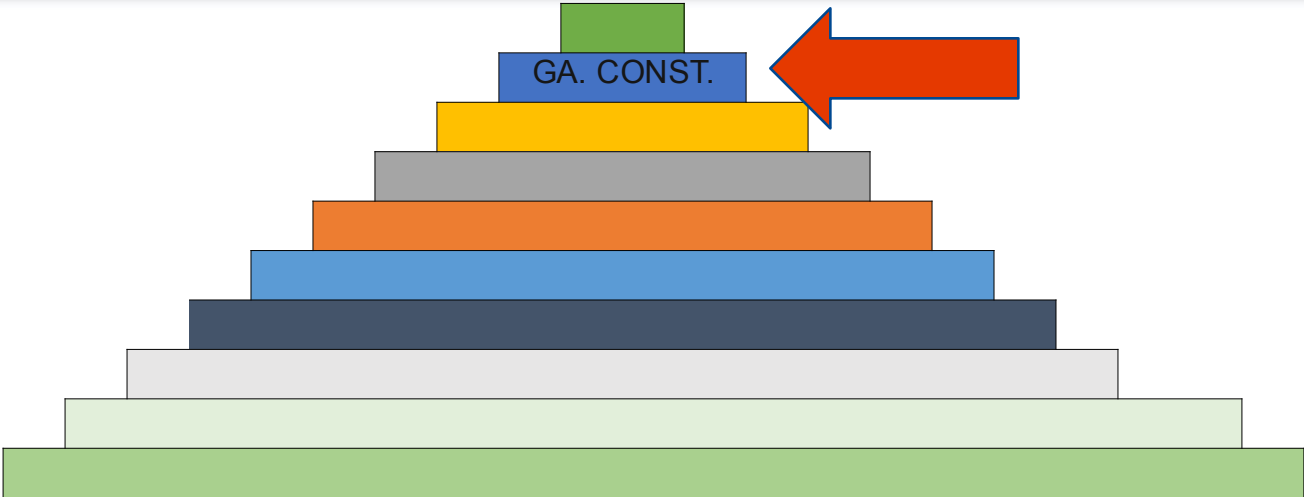


## THE HIERARCHY OF A DEVELOPMENT AUTHORITY

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



# THE GEORGIA CONSTITUTION



## 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 citywide/countywide development authority- "trade, commerce, industry and employment opportunities"
  - DDA is a subset of this
  - Carries out above mission by revitalization of the city's central business district
- Constitutional development authority- usually similar
- STATUTORY (AND MOST CONSTITUTIONAL) DEVELOPMENT AUTHORITIES CAN ONLY CARRY OUT PROJECTS FOR PRIVATE SECTOR
  - EXCEPTION- PROPER PUBLIC/PRIVATE PARTNERSHIPS

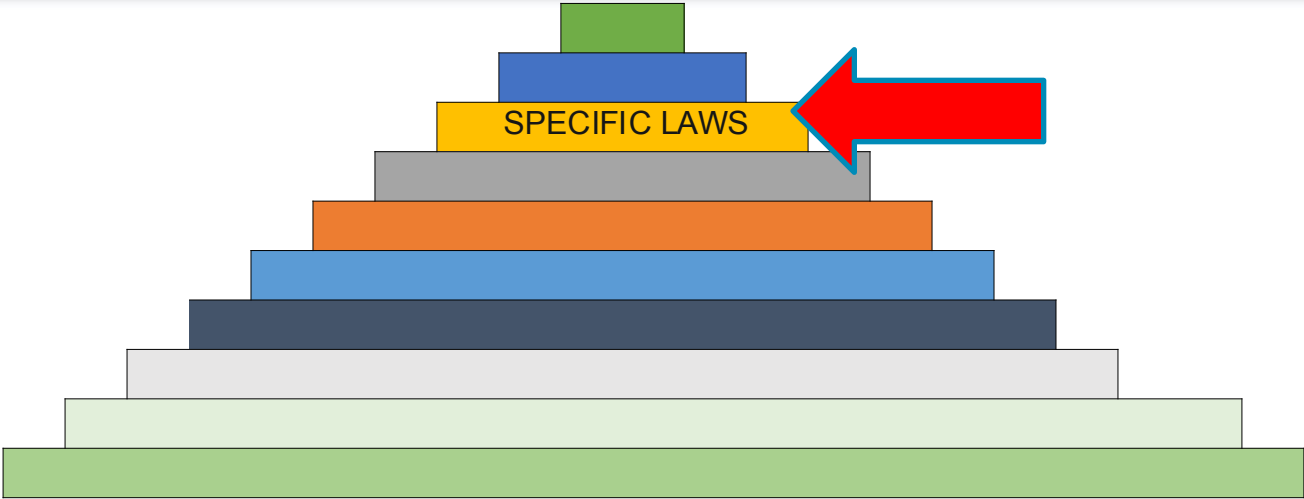


## GEORGIA CONSTITUTION

- PROHIBITS PUBLIC SECTOR FROM CONFERRING A "GIFT OR GRATUITY" ON THE PRIVATE SECTOR
  - Everyday Issue with Incentives
- AUTHORIZES STATE, LOCAL GOVERNMENTS, AND LOCAL AUTHORITIES TO ENTER INTO CONTRACTS AMONG THEMSELVES FOR UP TO 50 YEARS
  - Georgia Supreme Court Upheld "Right to Bind Successors" in 2015
  - Confirmed Bonds for Braves and Falcons
- PROHIBITS STATUTORY LOCAL AUTHORITIES FROM ROAD CONSTRUCTION PROJECTS INVOLVING LOCAL GOVERNMENTS
  - CID Can Be Useful Partner in Road Projects



# SPECIFIC LAWS



## THE HIERARCHY OF A DEVELOPMENT AUTHORITY

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





## 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



## SPECIFIC LAWS TYPES OF DEVELOPMENT AUTHORITIES

### “Constitutional”

- ▶ Pursuant to Local Constitutional Amendment (“LCA”)
- ▶ 1987 and earlier
- ▶ each LCA is different
- ▶ referendum was required

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



## **SPECIFIC LAWS**

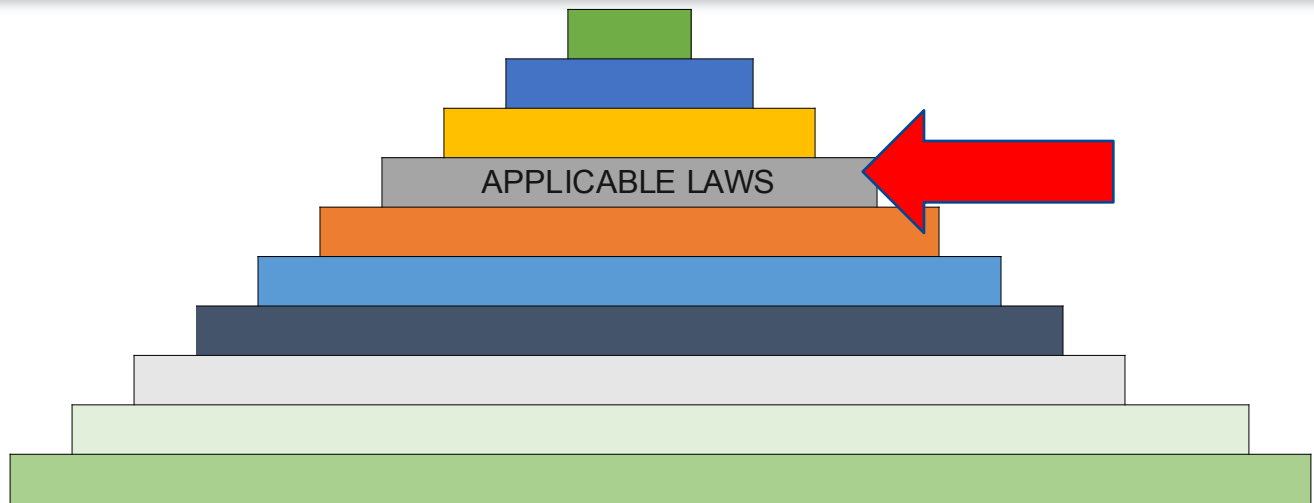
# **TYPES OF DEVELOPMENT AUTHORITIES**

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

# APPLICABLE LAWS



## THE HIERARCHY OF A DEVELOPMENT AUTHORITY

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



## 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



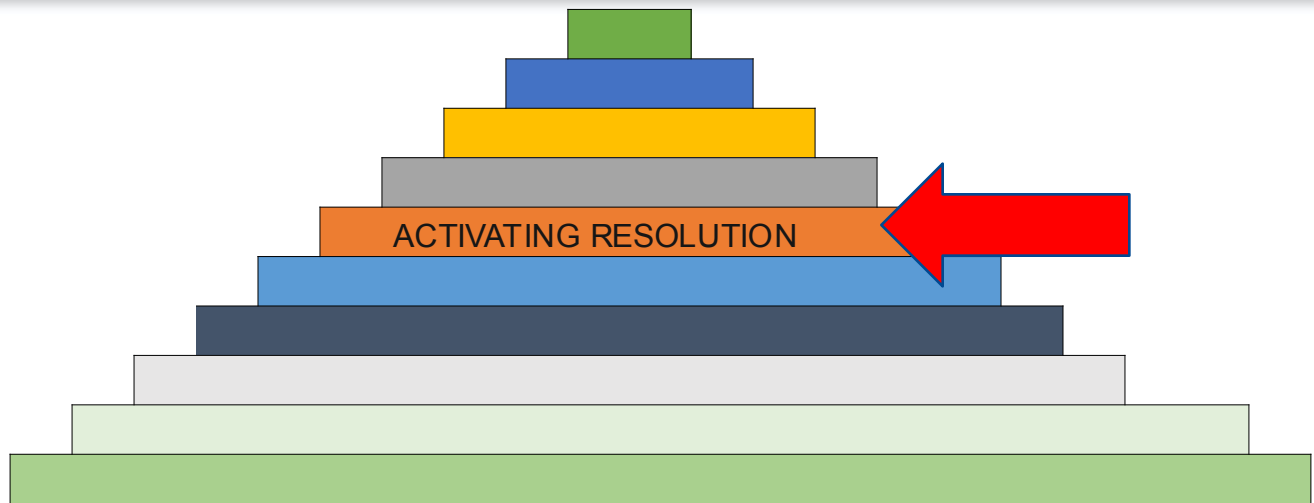
## APPLICABLE LAWS

### 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



# ACTIVATING RESOLUTION



## THE HIERARCHY OF A DEVELOPMENT AUTHORITY

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



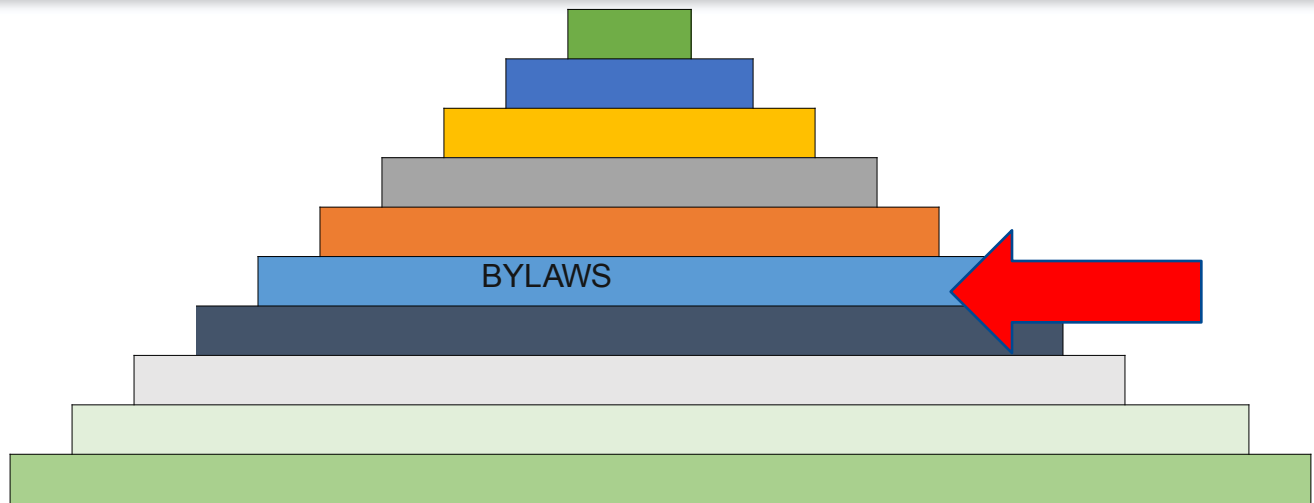
## LOCAL GOVERNMENT

- Adopts an Activating Resolution
  - If a Statutory Development Authority
- 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.





# BYLAWS



## THE HIERARCHY OF A DEVELOPMENT AUTHORITY

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

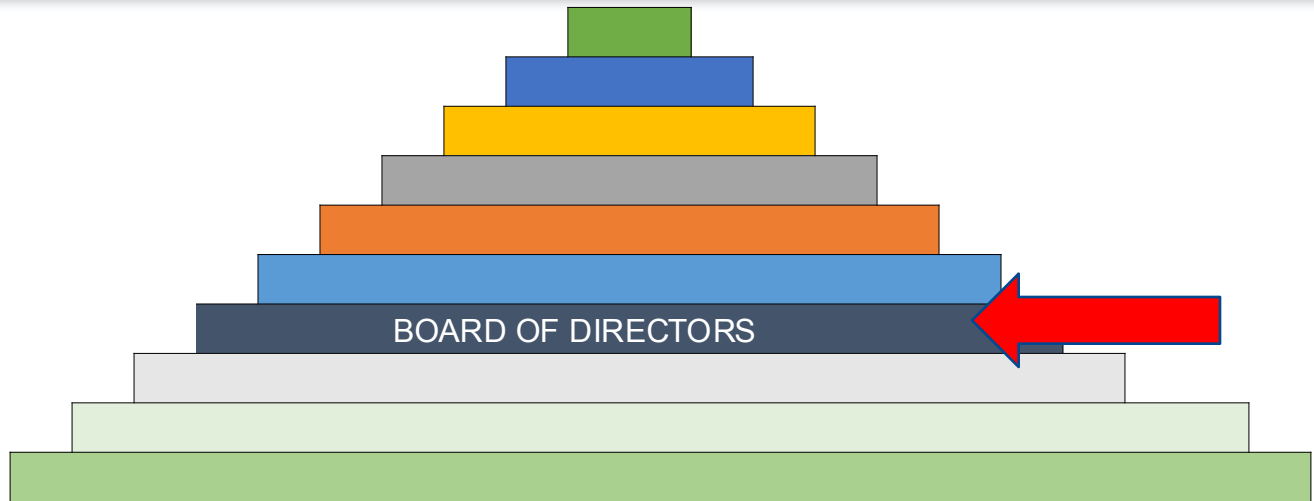


# BYLAWS

## Development Authority Bylaws

- Adopted by Board of Directors
- Directors are subject to procedures in bylaws; e.g., notice required to amend bylaws
- 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)

# BOARD OF DIRECTORS



## THE HIERARCHY OF A DEVELOPMENT AUTHORITY

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



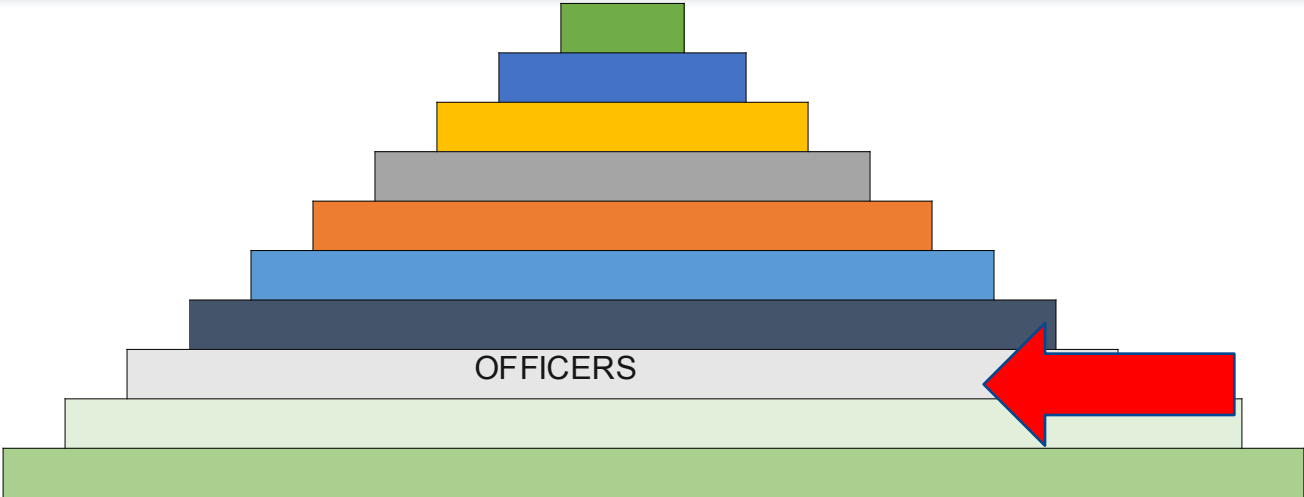
## BOARD OF DIRECTORS

### 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)(exception- executive session vote)
- 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.



# OFFICERS



## THE HIERARCHY OF A DEVELOPMENT AUTHORITY

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

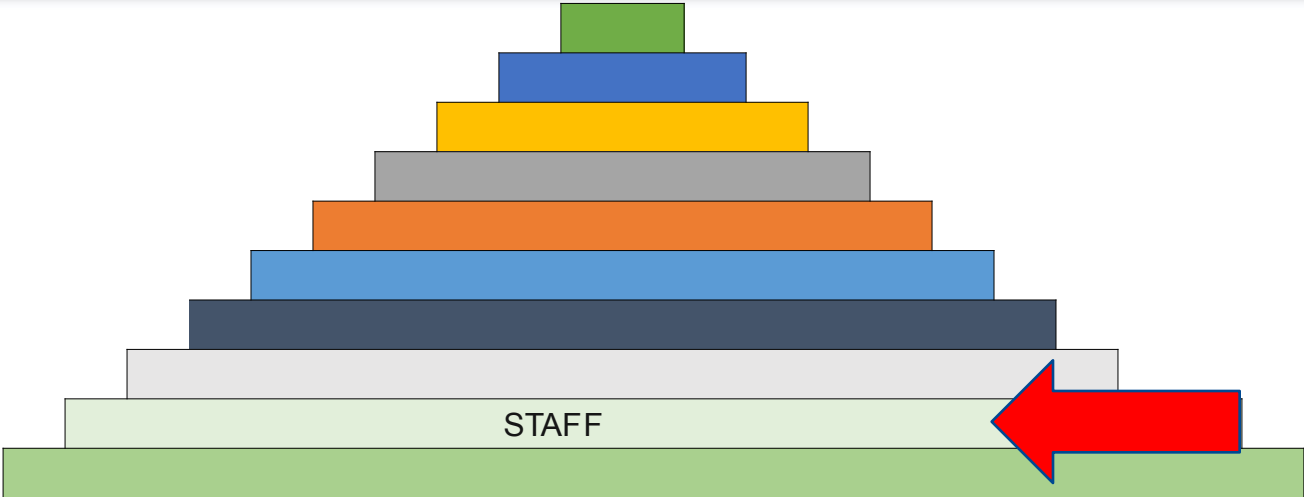


## OFFICERS

- 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



# STAFF



## THE HIERARCHY OF A DEVELOPMENT AUTHORITY

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



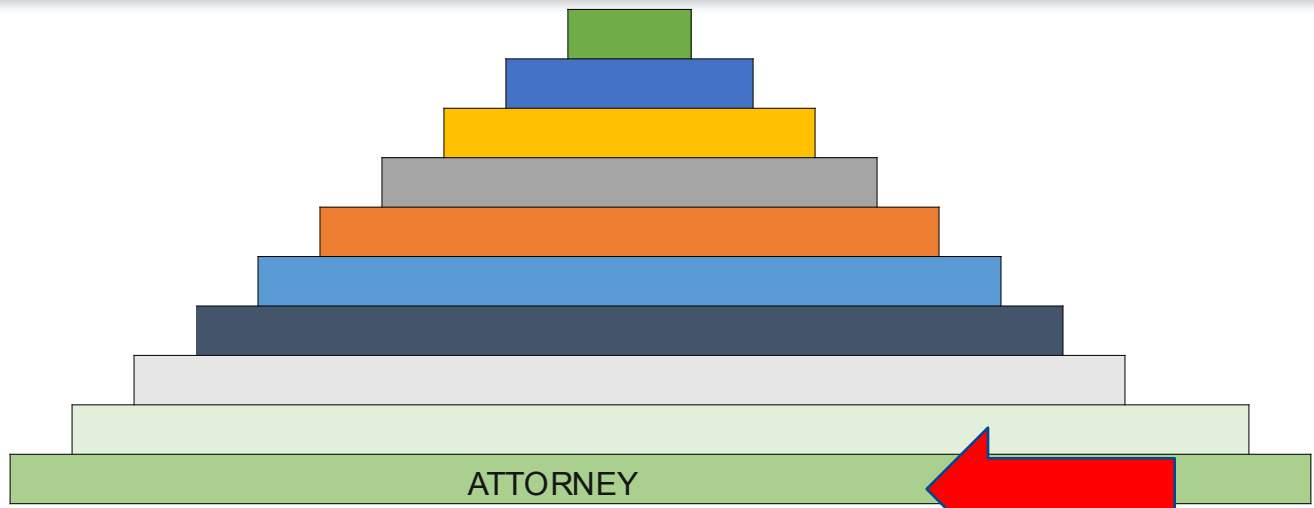
## STAFF

- Provides Support to Officers and Board
- Can be hired and compensated
- Can be loaned, assigned or "seconded" by local government to development authority
  - Regular salary wouldn't be paid by development authority, so are really appointed instead of hired
  - Sometimes development authority pays additional compensation
  - Careful with bonuses- could be prohibited "gift or gratuity"
  - Understand issues about who is the employer and who has what liabilities
- Conflict of interest situations can arise





# ATTORNEY



ATTORNEY

## THE HIERARCHY OF A DEVELOPMENT AUTHORITY

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



## ATTORNEY

- Development authority engages its own attorney
  - Local government attorney not automatically attorney for development authority
  - If local government attorney also 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



DEVELOPMENT AUTHORITIES  
**THEIR "COUSINS"**



## AUTHORITIES AND OTHERS

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 3 "Biggies"

Local governments usually find these 3 local authorities to be the most useful-

### Citywide or Countywide Development Authority (DA)

- Under Development Authorities Law, and/or
- Under Local Constitutional Amendment

### Downtown Development Authority (DDA)

- Under Downtown Development Authorities Law, and/or
- Under Local Constitutional Amendment
- City only

### Urban Redevelopment Agency (URA)

- Under the Urban Redevelopment Law
- City or County



## COMPARE AND CONTRAST

FEATURE	DA	DDA	URA
Jurisdiction?	<ul style="list-style-type: none"> <li>• Statutory city DA- citywide</li> <li>• Constitutional city DA- usually just citywide; sometimes includes radius from city limits, market area, etc.</li> <li>• Statutory county DA- countywide, including cities</li> <li>• Constitutional county DA- countywide</li> </ul>	<ul style="list-style-type: none"> <li>• Statutory DDA- CBD               <ul style="list-style-type: none"> <li>• green energy/</li> <li>• conservation - citywide</li> </ul> </li> <li>• Constitutional DDA- usually CBD; sometimes includes radius from CBD</li> </ul>	<ul style="list-style-type: none"> <li>• Statutory city URA- within its borders, plus 5 mile radius (but not within another city or county without its consent)</li> <li>• Statutory county URA- within its borders, plus 5 mile radius (but not within another city or county without its consent)</li> <li>• Constitutional city or county "URA"- per LCA</li> </ul>



# COMPARE AND CONTRAST

FEATURE	DA	DDA	URA
Purpose?	Economic development	Community development/ economic development	Redevelopment
Private projects?	Yes	Yes	Yes (if redevelopment)
Public projects?	Prohibited (case law, statute) P3 OK	Prohibited (case law) P3 OK	Yes (maximize private sector opportunities)



## COMPARE AND CONTRAST

FEATURE	DA	DDA	URA
Board size?	7-9	7	Determined by local government
Board appointments?	Parent local government	Parent local government	Parent local government
Parent elected officials?	One	One	"any person may be appointed" DDA rules apply if DDA is URA
Officer appointments?	Elected by board	Elected by board	Parent local government appoints Chair and Vice-Chair





## COMPARE AND CONTRAST

FEATURE	DA	DDA	URA
Bonds?	Revenue bonds	Revenue bonds	Revenue bonds
Notes?	No	Revenue notes	Revenue notes
Conditions?	Employment increased or maintained	Revitalization of CBD	For redevelopment project
Plan?	No	No	Yes
Lease/sell project?	Yes (lease must be "triple net"; must amortize bonds)	Yes	Yes (competitive bidding)



## LESSONS LEARNED

- NOW YOU HAVE THE BASIC TOOLS
- YOU HAVE SEEN SOME OF THE EVERYDAY ISSUES THAT DEVELOPMENT AUTHORITIES FACE
- ARE YOU READY TO PUT YOUR NEW SKILLS TO WORK?
- STAY TUNED FOR....
- THE "JUST SIGN A LEASE" PROJECT



## 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?

---

Daniel M. McRae, Partner  
Seyfarth Shaw LLP  
1075 Peachtree Street, N.E., Suite 2500  
Atlanta, Georgia 30309  
Telephone: 404.888.1883  
[dmcrae@seyfarth.com](mailto:dmcrae@seyfarth.com)  
<http://danmcrae.info>



## MORE INFORMATION

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