

# EVERYTHING YOU NEED TO KNOW ABOUT JOINT DEVELOPMENT AUTHORITIES

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## INTRODUCTION

Joint development authorities are not new, but their importance has been drastically increased by the Business Expansion Support Act of 1994 (collectively, the "**BEST Program**"). In 1995, the BEST program was enhanced by increasing the otherwise available job tax credit level by \$500 per employee, if the project is located within the jurisdiction of a qualified joint county development authority.

Joint development authorities have a particular importance in today's economic development climate, when funding is limited and prospects are demanding. Development authorities that cover a region, instead of just a city or county, have the potential to draw on the resources of the region to respond to these demands. To assist communities in that effort, this paper will present the substantive rules applicable to activating and creating a joint development authority. The paper also address selective rules for operating a joint development authority once it is activated, with a view towards deal-making for the demanding project.

## WHAT IS A JOINT DEVELOPMENT AUTHORITY?

Georgia's law governing development authorities in general is the Development Authorities Law. The Development Authorities Law dates from 1963, although it has been amended a number of times since then. The Development Authorities Law "creates" a development authority in each city and county in Georgia, although such a development authority cannot transact any business until it is "activated" by proper resolution of the governing body of the city or county.

The Development Authorities Law also governs joint development authorities. The Development Authorities Law has authorized joint development authorities since 1981. A joint development authority is just a development authority, created and activated pursuant to the provisions of the Development Authorities Law by joint and concurrent resolutions adopted by each of its participating local governments. The joint authority has jurisdiction to act throughout the territories of those participating local governments.

A list of the joint development authorities in Georgia is attached at the end of this White Paper. The list reflects joint development authorities that were registered with the Georgia Department of Community Affairs ("**DCA**") under the Authorities Registration Act as of June 30, 2010. Joint development authorities, equally with other local authorities, are required to file an annual registration statement with DCA. Unregistered authorities may not issue bonds. Thus, prior to issuing bonds, a development authority should obtain confirmation from the DCA that it is registered for the then-current year.

The process by which the participating local governments may create and activate a joint development authority is spelled out in the Development Authorities Law, and is quite simple. In general, a resolution form is prepared, and the governing bodies of each participating local

government adopt the same form. The same form of resolution is used; it is just adopted by different governing bodies at different meetings.

On request, we can provide a specimen resolution for the creation and activation of a joint development authority.

When the creating and activating resolution has been adopted by each of the participating local governments, a copy showing its adoption by each must be filed with the Secretary of State. Bylaws for the joint development authority should be adopted by the joint authority. The bylaws should conform to the requirements of the Development Authorities Law.

In fact, the operating procedures, powers, and restrictions applicable to a joint development authority are generally the same as those applicable to any other statutory development authority governed by the Development Authorities Law. There are only a small number of variations that are possible in connection with creating a joint development authority, and they are itemized in the Development Authorities Law. In addition, some special rules apply to joint county development authorities.

### **CREATING A JOINT DEVELOPMENT AUTHORITY**

The following are the variations that are possible in the creating and activating resolution:

- The number of members (directors) of the joint development authority (this can range from one to any number of directors);
- The number of members to be appointed by the governing bodies of each city or county, respectively;
- The terms of office of the members of the joint development authority; and
- The residency requirements for the members of the joint development authority.

The participating cities or counties also inherently have somewhat wider latitude in naming the joint development authority in the resolution than is the case with a general statutory development authority. Also, the joint development authority's activating resolution can be amended (see below). By 2001, at least three joint development authorities had changed their names since they were created.

The Development Authorities Law does not specifically address the question of later adding or dropping participating cities or counties from a joint development authority, and specific professional advice should be obtained on this point. However, joint development authorities have in certain cases relied on the Development Authorities Law's provision allowing

the amendment of a joint development authority's activating resolution. By 2001, at least eleven joint development authorities had changed their membership since they were created.

Particularly in the case of dropping participating cities or counties, related questions, such as dealing with liabilities and obligations that may already have been incurred by the joint development authority, should be anticipated and dealt with, in advance, perhaps through intergovernmental contracts. In connection with dissolving a development authority, the Development Authorities Law requires the issue of the development authority's assets to be addressed, as discussed below.

Dealing proactively with the joint development authority's assets can also have a positive effect on grant funding for it. For example, the OneGeorgia Authority's scoring matrix for Equity Fund applications scores regional projects, among other things, based on whether or not joint ownership/cost sharing arrangements are in place.

### **DISSOLVING OR AMENDING A JOINT DEVELOPMENT AUTHORITY**

Once the joint development authority has been created and activated, the Development Authorities Law does not provide for the governing bodies to rescind the concurrent resolutions that created it. However, a joint development authority, like any "statutory development authority" may be dissolved as provided in O.C.G.A. § 36-62-14, if it does not have any outstanding unpaid bonds or bond anticipation notes. In the case of a joint development authority, this means that the authority may be dissolved by the adoption of appropriate concurrent resolutions by the governing authorities of all such local governments.

If a development authority previously activated for two or more local governments is so dissolved, all assets and debts and rights and obligations of the former authority shall devolve to the parent local governments in such proportions and manner as shall be specified in the concurrent resolutions dissolving the authority.

If the governing bodies desire to change the features of a joint development authority within the parameters legally allowed, they are specifically authorized to amend the resolutions that created and activated the joint development authority.

### **OPERATION OF A JOINT DEVELOPMENT AUTHORITY**

Although the authorized variations for creating a joint development authority are few in number and simple in concept, the choices they represent can have a substantial effect on how a community's economic development program is operated. For example, note that there is no requirement for any member of an existing development authority also to be appointed to the Board of Directors of the new joint development authority, although such an appointment could be made.

However, the Development Authorities Law governs a joint development authority in the same manner as other authorities created pursuant thereto, except as to the variations that were discussed above.

For example, in the past, no director of a joint development authority (or any other statutory development authority) could be an officer or employee of a participating local government. Since 1995, the Development Authorities Law has provided that the governing authority of a county or municipality may appoint no more than one member of the governing authority as a director. However, a 1996 unofficial opinion of the Attorney General has opined that the governing bodies of a city and county may agree with one another not to appoint elected officials to a newly activated joint city-county development authority.

The 1995 amendment to the Development Authorities Law also requires each development authority (joint development authorities and others) to provide its respective county or municipal fiscal officer, as the case may be, an audited financial statement if such audit has been required by the respective county or municipality within six months of the end of the previous fiscal year.

The Development Authorities Law has in the past permitted a development authority to own and develop industrial parks, while denying a development authority the right to own a "speculative" building. This restriction was alleviated in 1996, when the Development Authorities Law was amended to provide that, as an alternative to selling or leasing a "project", such as a spec building, a development authority could instead place it under a management contract of the type specified in the amendment.

Further, Georgia law contains no provision for the merger of one existing development authority with another existing development authority, even if both development authorities are in the same county.

Thus, with the creation and activation of a new joint development authority, there is no inherent legal effect on the existence or powers of any existing development authority. An existing or "old" development authority will continue in existence, and can continue to handle transactions such as the issuance of industrial development revenue bonds. However, as a supplement, or as an alternative, a joint development authority can be used to accumulate expertise and experience in such transactions. These and other advantages of a joint development authority can be made generally available, and the operation of a joint development authority can be regulated, through a proper system of intergovernmental contracts. *See* the 1996 opinion of the Georgia Attorney General, which approved a city development authority's transferring assets, including cash and contract rights, to a joint city-county development authority in return for economic development services. 1996 Op. Att'y Gen. No. U96-24.

Like other "statutory" development authorities, joint development authorities and their directors are subject to Georgia's Code of Ethics for government service, and to the specific compliance provisions set forth in the Development Authorities Law at O.C.G.A. § 36-62-5.

This section was amended, effective July 1, 2010, to add to the conflict of interest provisions (which are applicable to directors of development authorities) a requirement that where a director or any organization or person with which the director is in any way interested or involved engages in a transaction with the development authority which has a value in excess of \$200.00 per calendar quarter, a notice of such transaction must be published by the authority in the local legal organ in each county affected by such interest at least 30 days in advance of consummating such transaction. In the case of a multi-county joint development authority, it would appear that this notice would need to be published in the legal organ of each participating county.

Finally, it is important to note that joint development authorities, like other “agencies”, are subject to Georgia’s Open Meetings and Open Records laws.

### **SPECIAL RULES FOR COUNTY JOINT DEVELOPMENT AUTHORITIES**

Special rules applicable to joint development authorities among contiguous counties have existed since 1995. These rules were intended to regulate certain aspects of Georgia's job tax credit program. However, the method chosen to accomplish this was to impose new substantive, obligations on these joint county development authorities. A joint development authority among contiguous counties that is subject to the new rules must comply with the following requirements:

- 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).

A county, under the current law, may belong to more than one such joint authority and there is no upper limit to the number of counties that may participate in a joint county development authority.

The requirements listed above do not apply to other types of authorities, or even other types of joint authorities.

No guidance has been provided as to what is sufficient to qualify a joint county development authority as being an "active, bona fide" authority. On the contrary, DCA’s job tax credit regulations expressly state that DCA will not regulate the creation or operation of joint development authorities nor will DCA define bona fide authorities for the purposes of the job tax credit program. However, for a taxpayer, the qualification stakes are substantial, since the Department of Revenue retains audit rights on tax returns.

### **CROSS-BORDER JOINT DEVELOPMENT AUTHORITIES**

Pursuant to a 2003 law, a joint development authority can be created and activated by “any county in this state and any contiguous county in an adjoining state.” As stated, the Georgia county has to be contiguous to the sister state’s county. In addition, because of general legal principles, the sister state must also authorize this type of cross-border development authority.

For example, in North Carolina, on June 3, 2003 a law (HB 582) became effective that allows Clay County (and just Clay County), by proper resolution of its governing body, to create a joint development agency with a contiguous county in an adjoining state.

It is not clear whether or not such a cross-border development authority qualifies for the increased job tax credit under O.C.G.A. § 36-62-5.1 (subparagraph (e) of that Code Section authorizes a \$500 per job increase for a “business enterprise located within the jurisdiction of a joint authority established by two or more contiguous counties”).

### **ECONOMIC DEVELOPMENT PROGRAMS**

The participating communities may wish to realize the benefits of a joint development authority, including increased cost effectiveness, by conducting a joint economic development program through a joint development authority. A system of intergovernmental contracts among the participating communities and the joint development authority would, in many cases, be the key mechanism. For example, the Development Authorities Law authorizes a joint development authority (and any other statutory development authority) to “---expend for the promotion of industry, agriculture, and trade within its area of operations any funds of the authority determined by the authority to be in excess of those needed for the other corporate purposes of the authority.” O.C.G.A. § 36-62-6(16).

Finally, a joint development authority offers a convenient structure for the participating communities to jointly own property, such as an industrial park, with associated costs and benefits being regulated by a proper system of intergovernmental contracts. The Georgia Court of Appeals has approved a similar structure<sup>1</sup> involving an industrial park, which provided developed real estate for ultimate use by private sector business and industries.

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<sup>1</sup> *Hay v. Newton County*, 246 Ga. App. 44, 538 S.E.2d 181 (2000), *cert denied* Feb. 2, 2001. The development authority involved was a joint county authority created under the Development Authorities Law, particularly O.C.G.A. § 36-62-5.1.

Alternatively, the communities could resort to the “regional facilities” amendment to Georgia's Constitution<sup>2</sup> that allows allocation among them of the proceeds from *ad valorem* taxes on real property in connection with a regional facility, such as an industrial park, subject to a proper system of intergovernmental contracts. If the regional facility approach is taken, a benefit is that, unless otherwise provided by law, such a regional facility will qualify for the greatest dollar amount of income tax credits which may be provided by general law for any of the communities which have entered into an agreement for the development of the regional facility, regardless of the county or municipality in which the business is physically located.

### **CONCLUSION**

Georgia is in the process of moving forward in expanding its business and industrial base. Thoughtful consideration is being given in Georgia to regionalism and to the increased competitiveness and cost effectiveness in terms of economies of scale generated by cooperative approaches to solving mutual problems. Although not the only solution, joint development authorities do offer one clear-cut method of achieving this cooperative approach.

As a community considers joining in a joint development authority, it is important for the community to realize not only how simple the process is to achieve, but also how much attention should be given to the details mentioned above.

### **MORE INFORMATION**

This paper is a quick reference guide for economic developers, community developers and business leaders, and their advisors. The information in this paper 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 (including any attachments) 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.)

If you have any questions or comments, we would be pleased to provide more information. Please contact:

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<sup>2</sup> Georgia Constitution Art. IX, Sec. IV, Para. IV. See related procedural requirements at O.C.G.A. § 36-73-1, *et seq.*

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## List of 2010 Registered Local Government Joint Development Authorities as of 6/30/2010

Atkinson County-Coffee County Joint Development Authority

Bartow-Cartersville Joint Development Authority

Ben Hill-Irwin Area Joint Development Authority

Butts, Henry, Lamar and Spalding County Joint Development Authority

Camden County Joint Development Authority

Central Georgia Joint Development Authority

Coweta, Fayette, Meriwether Joint Development Authority

Crisp-Dooly Joint Development Authority

Dalton-Whitfield County Joint Development Authority

Georgia Bioscience Joint Development Authority

Joint Development Authority of Baker, Dougherty, Terrell, and Lee Counties

Joint Development Authority of Banks, Habersham and Rabun Counties

Joint Development Authority of Bartow County and Pickens County

Joint Development Authority of Bleckley County and Dodge County

Joint Development Authority of Burke County and City of Waynesboro

Joint Development Authority of Carroll, Haralson, Polk, Heard, Troup, Paulding and Douglas Counties

Joint Development Authority of Colquitt, Grady, Mitchell, and Thomas Counties

Joint Development Authority of Dawson, Lumpkin and White Counties    08    General  
Statute Independent    Multi-Jurisdictional

Joint Development Authority of DeKalb County, Newton County, and Gwinnett County

Joint Development Authority of Franklin, Hart and Stephens Counties

Joint Development Authority of Gilmer County and Pickens County (created by a Local Law)

Joint Development Authority of Hazlehurst, Lumber City and Telfair County

Joint Development Authority of Jasper County, Morgan County, Newton County, and Walton County

Joint Development Authority of Jeff Davis County, Hazlehurst and Denton, Georgia

Joint Development Authority of Metropolitan Atlanta

Joint Development Authority of Mitchell County and Pelham

Joint Development Authority of Northeast Georgia

Joint Development Authority of Winder-Barrow County

Lanier Joint Development Authority

Laurens-Treutlen Joint Development Authority

Ocmulgee Regional Joint Development Authority

Schley-Sumter-Macon Counties Joint Development Authority

South Regional Joint Development Authority

Southeast Georgia Joint Development Authority

Southwest Georgia Joint Development Authority

The Northwest Georgia Joint Development Authority

Tift-Turner-Worth-Cook Joint Development Authority

Valley Partnership Joint Development Authority

West Central Georgia Joint Development Authority

West Georgia Joint Development Authority