

# BONDS AND CAPITAL STACKS



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# WHAT BONDS CAN DEVELOPMENT AUTHORITIES ISSUE?



# WHAT BONDS- WHO DECIDES?

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
- LOCAL CONSTITUTIONAL AMENDMENT (LCA)- EACH TO ITS OWN CONSTITUTIONAL DEVELOPMENT AUTHORITY
- DEVELOPMENT AUTHORITIES LAW- TO ALL STATUTORY DEVELOPMENT AUTHORITIES



# 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



# 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
  - THAT’S WHAT IT MEANS IN THIS PRESENTATION



# WHAT BONDS- TAX-EXEMPT?

- “TAX-EXEMPT” HAS NOTHING TO DO WITH GEORGIA LAW
  - EXCEPT IT IS A FEDERAL REQUIREMENT THAT THE BONDS BE LEGALLY ISSUED UNDER STATE LAW
  - JUST BECAUSE A GEORGIA DEVELOPMENT AUTHORITY ISSUES A BOND, DOES NOT AUTOMATICALLY MEAN IT IS TAX-EXEMPT UNDER FEDERAL LAW
    - THERE HAS TO BE AN EXEMPTION
    - AND MANY REQUIREMENTS HAVE TO BE MET



# CAN YOUR DEVELOPMENT AUTHORITY ISSUE BONDS LIKE THESE?

TYPE	CAN YOU ISSUE?
REVENUE BOND	Yes. Only revenue and other collateral from the private company is at risk. No repayment obligation on the part of the development authority, the city, the county or the State. Caveat: LCA for some Constitutional development authorities requires local government to pay off defaulted bonds.
GENERAL OBLIGATION BOND	No (with contract revenue bonds, millage payments under an intergovernmental agreement between the local government and the development authority are pledged). Exception- Most Constitutional development authorities can issue a note or a revenue bond that is its own general obligation, but not the local government's.



# CAN YOUR DEVELOPMENT AUTHORITY ISSUE BONDS LIKE THESE?

TYPE	CAN YOU ISSUE?
TAX-EXEMPT BOND	Yes- mainly “small issue” manufacturing bonds, qualified 501(c)(3) bonds, and exempt facility bonds (if state law authorizes for development authority). Federal tax laws make inducement resolution mandatory.
“TAXABLE” BOND	Yes. Inducement resolution is traditional but optional. Most bonds issued by development authorities today are “taxable.”





# CAN YOUR DEVELOPMENT AUTHORITY ISSUE BONDS LIKE THESE?

TYPE	CAN YOU ISSUE?
PRIVATELY PLACED	Yes. Example- bond sold to local bank. No underwriter necessary. Today, almost all development authority bonds are privately placed.
PUBLICLY SOLD	Yes. An underwriter is needed for public offerings. A bank letter of credit is almost always needed to secure the bonds. Fewer public offerings because fewer banks provide LOCs. Exception: “Taxable floaters” secured by Federal Home Loan Bank confirmation of community bank LOC are common.



# CAN YOUR DEVELOPMENT AUTHORITY ISSUE BONDS LIKE THESE?

TYPE	CAN YOU ISSUE?
PRIVATE ACTIVITY	Yes- If project is authorized by governing law. Statutory development authorities and most Constitutional development authorities can only issue bonds for private projects. Exception for statutory development authorities: see below.
GOVERNMENTAL PURPOSE	Statutory development authority: Only for qualified public/private partnership projects (P3). Constitutional development authority: Only if LCA permits.



# CAN YOUR DEVELOPMENT AUTHORITY ISSUE BONDS LIKE THESE?

TYPE	CAN YOU ISSUE?
WITHOUT LOCAL GOVERNMENT APPROVAL?	No- if bonds are to be tax-exempt. In order for private activity bonds to be tax-exempt, they have to be approved by the local government (TEFRA approval).
WITHOUT LOCAL GOVERNMENT APPROVAL?	Yes-Taxable bonds can always be issued by a development authority. Exception: With a Constitutional development authority, some LCAs require local government approval. Exception: If PILOT Restriction Act applies, approval of affected taxing jurisdiction required.



# CAN YOUR DEVELOPMENT AUTHORITY ISSUE BONDS LIKE THESE?

TYPE	CAN YOU ISSUE?
PILOT BONDS?	Yes. PILOT = “Payments In Lieu of Taxes.” PILOTs are revenue that can be monetized through a development authority’s revenue bonds. If PILOT Restriction Act applies, approval by taxing jurisdictions required. But normal bonds for title are not PILOT bonds in this sense.

# **THE BOND PROCESS**

## **Who Does What, When?**

## **How?**

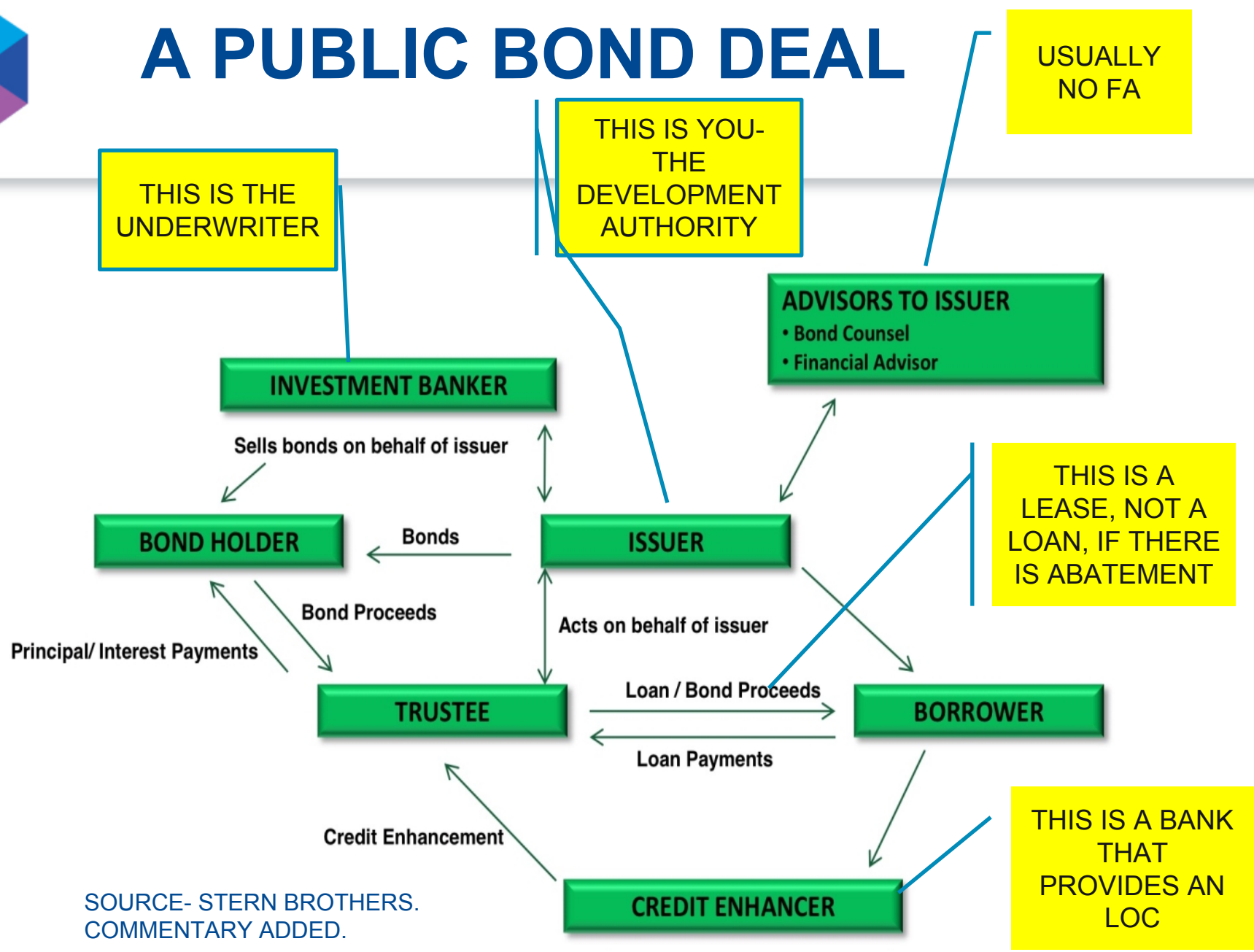
## **And for How Much?**



# 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.....

# A PUBLIC BOND DEAL



SOURCE- STERN BROTHERS.  
COMMENTARY ADDED.

# STEPS- Typical Schedule for an Issue of Bonds for Title

## PROPOSED SCHEDULE

*Development Authority of \_\_\_\_\_ County  
Taxable Revenue Bonds  
(\_\_\_\_\_ Project), Series 2015*

June 2015	July 2015	August 2015
S M T W T F S	S M T W T F S	S M T W T F S
1 2 3 4 5 6	1 2 3 4	2 3 4 5 6 7 8
7 8 9 10 11 12 13	5 6 7 8 9 10 11	9 10 11 12 13 14 15
14 15 16 17 18 19 20	12 13 14 15 16 17 18	16 17 18 19 20 21 22
21 22 23 24 25 26 27	19 20 21 22 23 24 25	23 24 25 26 27 28 29
28 29 30	26 27 28 29 30 31	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

<b>Week of 7/26</b>	<b>BY 7/29</b> – Final drafts of Bond Resolution, attachments and Validation Documents distributed <b>ON 7/28</b> – Issuer adopts Bond Resolution; Validation commenced; Judge signs order; Validation notice delivered to newspaper	Bond Counsel Issuer
<b>Week of 8/2</b>	First validation notice published <b>VERIFICATION OF COMPANY’S ANSWER SENT TO COMPANY FOR EXECUTION</b>	Newspaper Bond Counsel
<b>Week of 8/9</b>	Second validation notice published Company’s Answer provided to Issuer’s Counsel First drafts of Closing Documents distributed	Newspaper Company’s Counsel Bond Counsel
<b>Week of 8/16</b>	<b>ON 8/ @ __:00 _m.</b> – 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
<b>Week of 8/23</b>	<b>Basic documents and closing documents sent out for execution (Bond)</b>	Bond Counsel
<b>Week of 8/30</b>	<b>Preclosing and closing</b>	All



# 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



# SOME GUIDELINES FOR FUNDED BONDS

- “[T]he minimum issue size is a function of market conditions. Generally, the break-even point, below which conventional forms of financing may prove to be less expensive overall, is considered to be \$1,000,000. This is primarily a result of the fact that the issuance costs associated with this type of financing do not decrease proportionately as the size of the financing decreases.” Pasco Economic Development Council (FL)
- “Typically, smaller issues (less than \$3 million) are privately placed directly with a single financial institution, while larger issues may be sold through private placement or at public sale with the services of an underwriter.” Lee County, FL



# SOME FEDERAL TAX RULES

## IF THE BONDS ARE TAX-EXEMPT

- UP TO 2% OF THE PROCEEDS CAN BE SPENT FOR ISSUANCE COSTS (THIS 2% IS A PART OF THE 5% ALLOWABLE “BAD MONEY”)
- GENERALLY SPEAKING TAX-EXEMPT BONDS 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. SO, GENERALLY SPEAKING, WITH TAX-EXEMPT BONDS, ITS FINANCING FEE COULD NOT BE MORE THAN 1/8 OF 1% OF THE PRINCIPAL AMOUNT.



# 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 IS CALCULATED ON A PRESENT VALUE BASIS, SO THE ACTUAL PERCENTAGES COULD BE DIFFERENT WHEN AN ANNUAL FEE IS CHARGED.

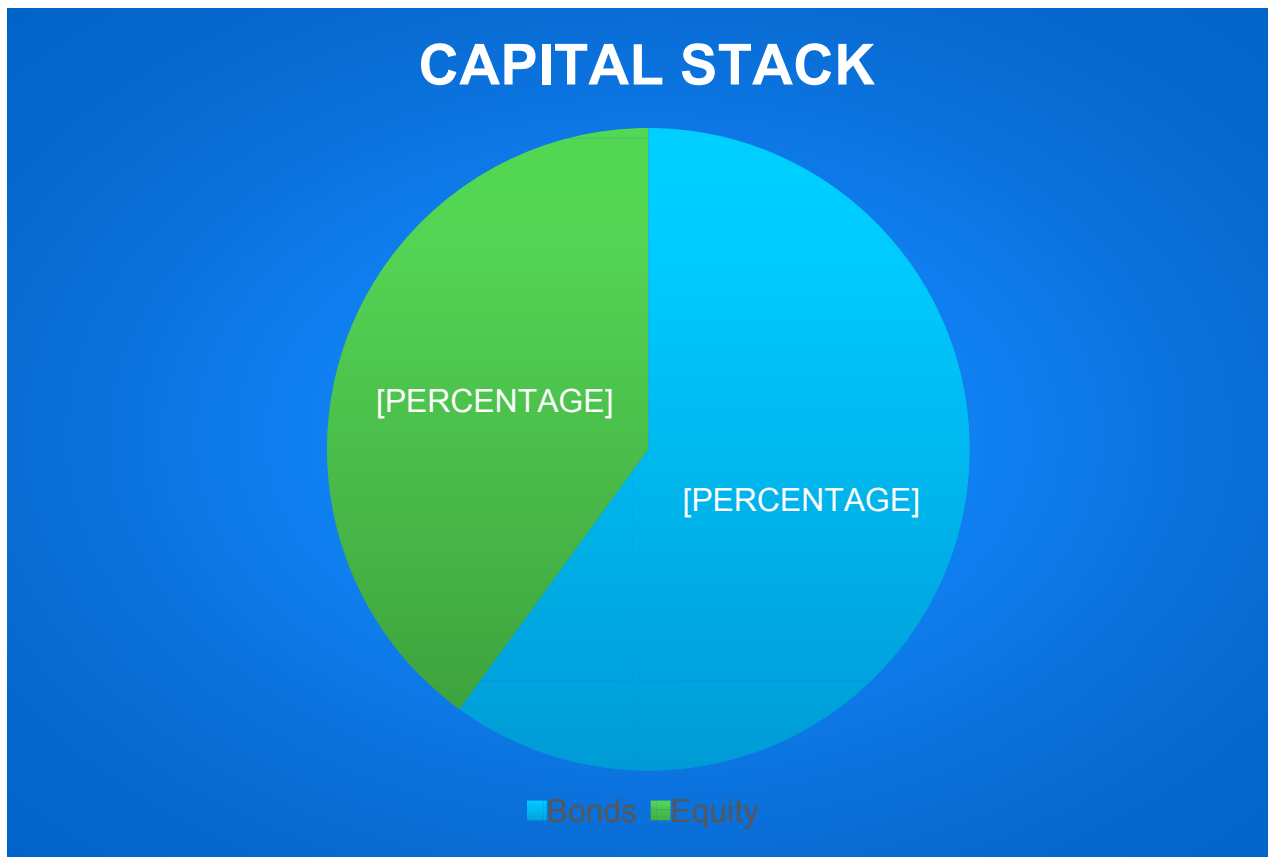


# DEVELOPMENT AUTHORITY FINANCING FEE

- 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.

# **WHAT OTHER CAPITAL DOES A PROJECT NEED BESIDES BONDS? AND WHY?**

# IF A PROJECT'S ONLY DEBT IS BONDS, THE CAPITAL STACK LOOKS LIKE THIS



ASSUMES MAXIMUM LTV/LTC OF 60%

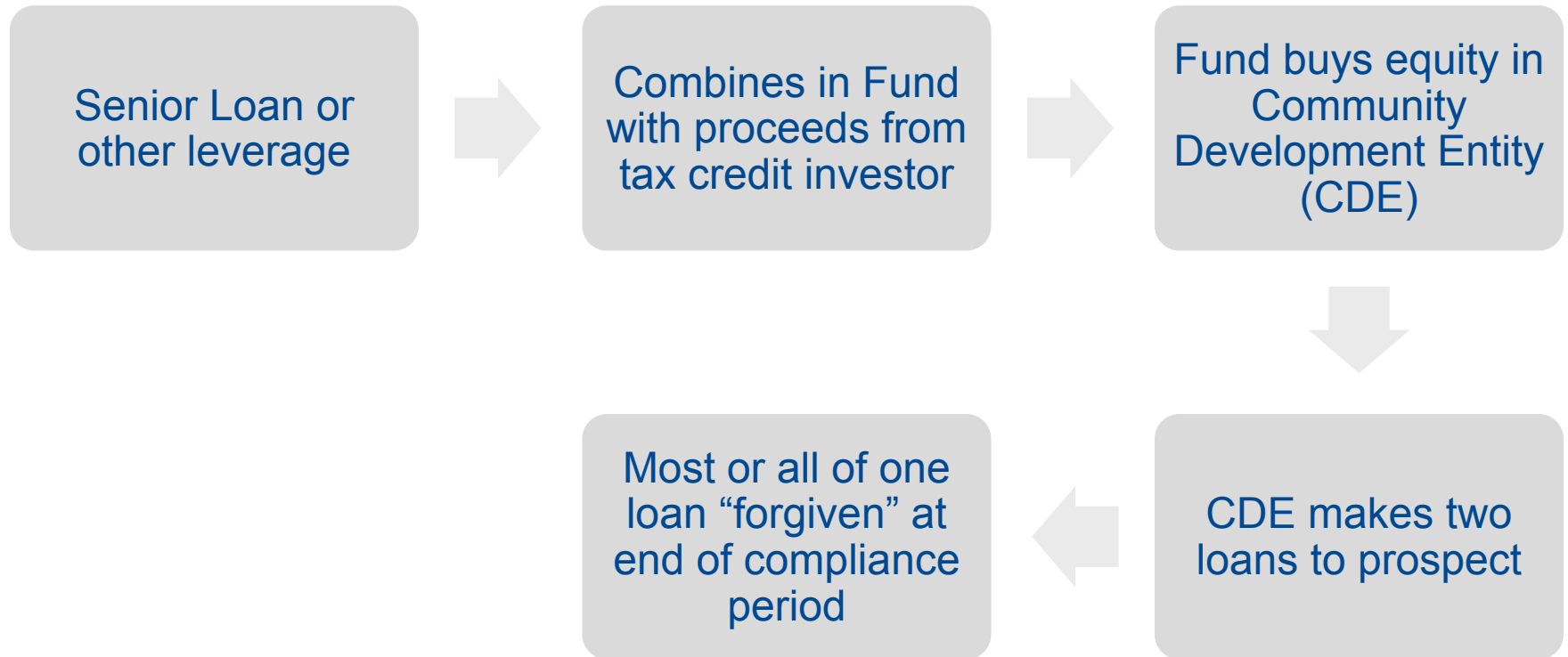




# ISSUES

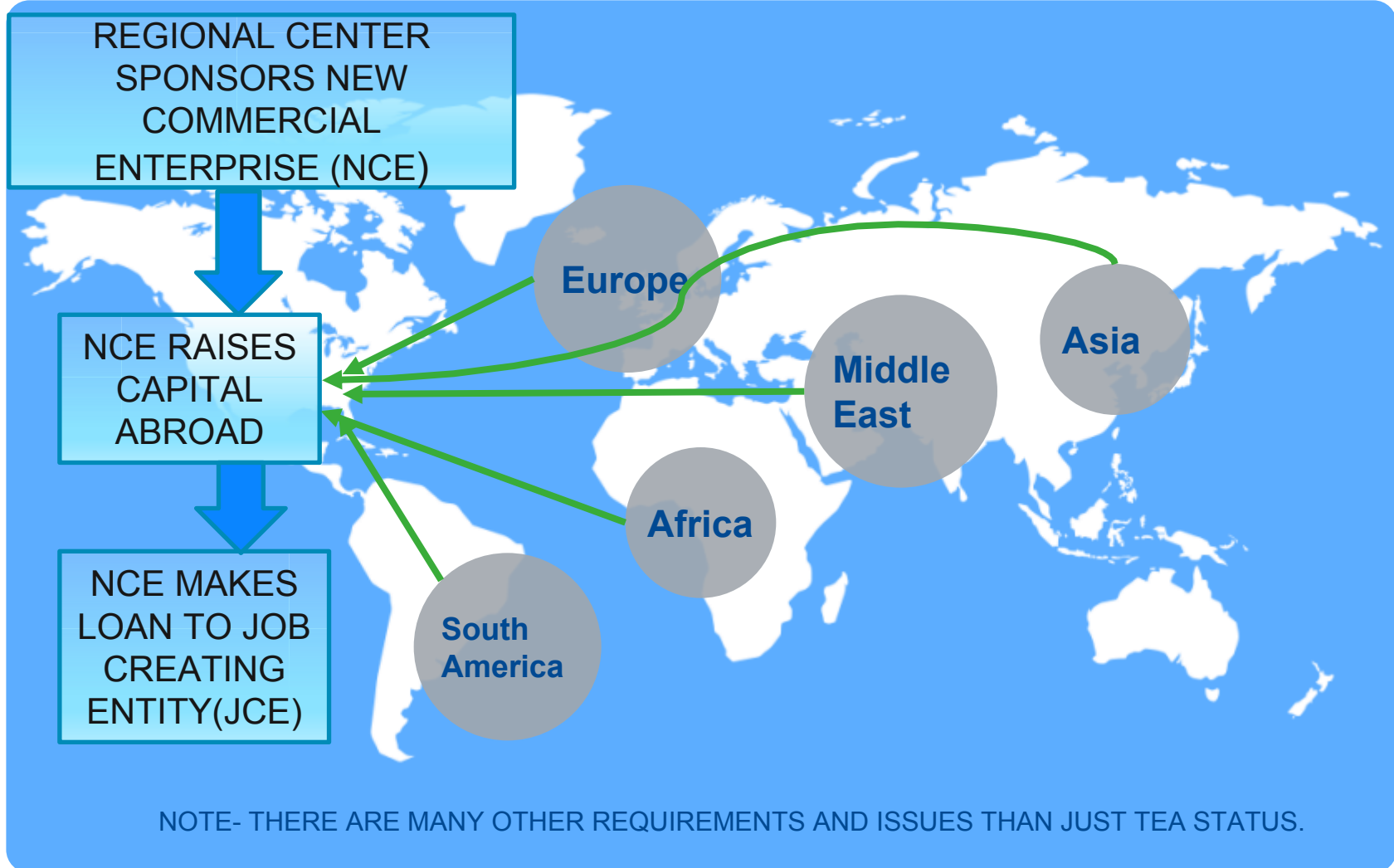
- EQUITY IS HARD TO GET, AND IS EXPENSIVE
- THERE ARE OTHER, LESS EXPENSIVE SOURCES OF CAPITAL
- IF THE NEW CAPITAL IS JUNIOR, OR SUBORDINATED, TO THE BONDS, THEN THE BOND INVESTORS VIEW IT LIKE EQUITY
- THE BOND INVESTORS CAN STILL LOAN NO MORE THAN 60% OF THE CAPITAL STACK
- BUT THE PROSPECT CAN AVOID RAISING SO MUCH EQUITY
- HERE ARE SOME WAYS TO DO THAT

# IF YOUR PROJECT IS IN A QUALIFIED CENSUS TRACT (QCT), GET EQUITY FROM NEW MARKETS TAX CREDITS (NMTC)



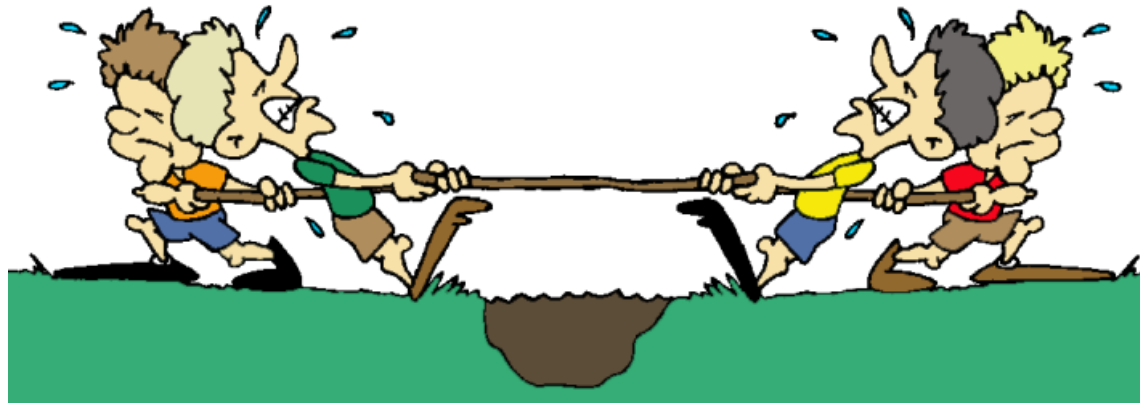
NOTE- THERE ARE MANY OTHER REQUIREMENTS AND ISSUES THAN JUST QCT STATUS.

# IF YOUR PROJECT IS IN A TARGETED EMPLOYMENT AREA (TEA), GET JUNIOR DEBT FROM EB-5 IMMIGRANT INVESTORS

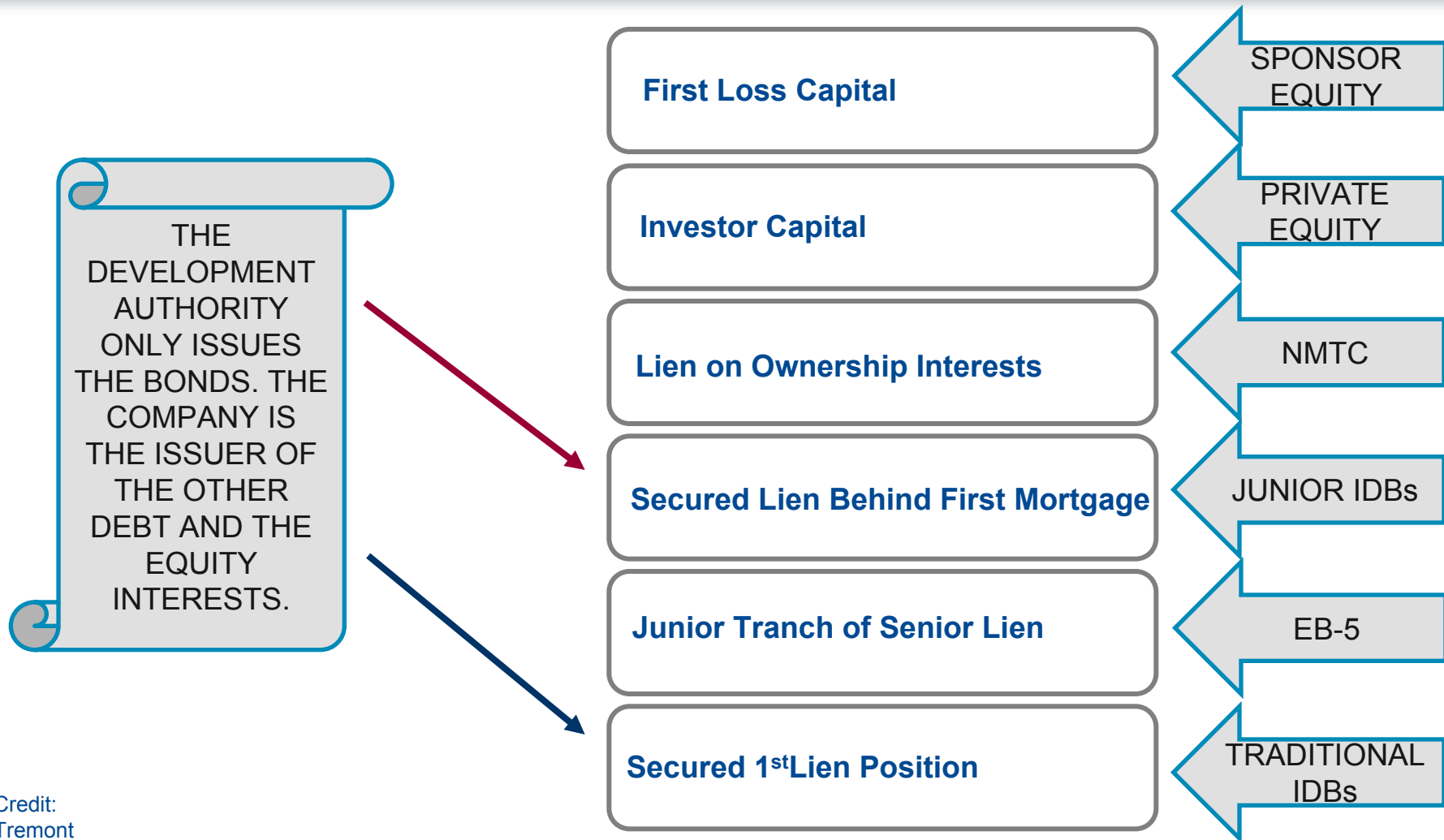


# GAPS OPEN

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



# NOW WE KNOW ABOUT SOME GAP-FILLERS



Credit:  
Tremont

# CONCLUSION



# YOU NEED TO KNOW

- A PROJECT CAN'T HAPPEN UNLESS IT CAN BE FINANCED
- NOW YOU 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 YOUR PROSPECT

# MORE INFORMATION





# QUESTIONS?

If you have any questions or comments on this presentation, please do not hesitate to let me know.

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# FOR MORE INFORMATION

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

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



# SCOPE

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