

# DEVELOPMENT AUTHORITIES 101

Daniel M. McRae, Esq.  
404.888.1883  
dmcrae@seyfarth.com

January  
2011

1

SEYFARTH  
ATTORNEYS SHAW

# INTRODUCTION

A LONG TIME AGO, A DEVELOPMENT AUTHORITY VIEWED ITS ONLY FUNCTION AS MEETING ONLY WHEN NECESSARY TO ISSUE BONDS

THEN, THE DEVELOPMENT AUTHORITY'S EXECUTIVE VIEWED HIS OR HER ONLY FUNCTION AS "SHOWING DIRT" TO PROSPECTS

TODAY, IT'S A DIFFERENT WORLD-

- \* "FINANCIAL ENGINEERING" HAS MADE THE BOND PROCESS MORE COMPLICATED
- \* THE DEVELOPMENT AUTHORITY, AND ITS BONDS, ARE INDISPENSABLE IN PROVIDING INCENTIVES TO PROSPECTS

YOU HAVE A VITAL ROLE IN ECONOMIC DEVELOPMENT TODAY.

I HOPE THIS PRESENTATION WILL HELP YOU.

# SO WHAT'S A DEVELOPMENT AUTHORITY?

# TWO BASIC TYPES--

## “Constitutional” Development Authorities

- Created by local constitutional amendment
- Can’t create anymore

## “Statutory” Development Authorities

- Activated under “Development Authorities Law” by County or City
- All have same powers
- Includes Joint Development Authorities

# YOUR COMMUNITY

## WHAT AUTHORITIES DO YOU HAVE?

- check local Constitutional amendment and local acts (Constitutional authorities only)
- check activating resolution of parent government (statutory authorities only)
- check filings with Secretary of State (statutory authorities only)
- check “Authorities Registration” with Georgia Department of Community Affairs (all authorities)

# RULES ABOUT BOARD MEMBERS

## Statutory Development Authorities

- **§ 36-62-4. Authorities created; directors; activation of authorities**
- (a) There is created in and for each county and municipal corporation in the state a public body corporate and politic to be known as the "development authority" of such county or municipal corporation, which shall consist of a board of not less than seven and not more than nine directors to be appointed by resolution of the governing body of the county or municipal corporation. At the expiration of the current terms of office of the first four members of the board of directors, the governing body of the county or municipal corporation shall elect successors to such members to serve for initial terms of two years and shall elect successors to the remaining members of the board for initial terms of four years. Thereafter, the terms of all directors shall be for four years. The terms of any directors added to the original seven directors shall be four years. If, at the end of any term of office of any director, a successor thereto has not been elected, the director whose term of office has expired shall continue to hold office until his successor is so elected.
- **§ 36-62-5. Qualifications of directors; officers; compensation; expenses; bylaws; powers**
- (a) The directors shall be taxpayers residing in the county or municipal corporation for which the authority is created, and their successors shall be appointed as provided by the resolution provided for in Code Section 36-62-4. The governing authority of a county or municipality may appoint no more than one member of the governing authority as a director.
- (b) The directors shall elect one of their members as chairman and another as vice-chairman and shall also elect a secretary and a treasurer or a secretary- treasurer, either of whom may, but need not, be a director.
- (c) The directors shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties; provided, however, the directors of the development authority activated by counties having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census shall be paid a per diem allowance to be determined by the governing authority of such counties for each day, or part thereof, spent in the performance of their duties.

# MORE RULES AFFECTING BOARD MEMBERS

## CONFLICTS SAFE HARBORS – STATUTORY DEVELOPMENT AUTHORITIES

- § 36-62-5(e)(1)(A) The provisions of Code Section 45-10-3 shall apply to all directors of the authority, and a director of the authority shall not engage in any transaction with the authority.
- (B) The provisions of paragraph (9) of Code Section 45-10-3 and subparagraph (A) of this paragraph shall be deemed to have been complied with and the authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any director or any organization or person with which any director of the authority is in any way interested or involved, provided (1) that any interest or involvement by such director is disclosed in advance to the directors of the authority and is recorded in the minutes of the authority, (2) that any interest or involvement by such director with a value in excess of \$200.00 per calendar quarter is published by the authority one time in the legal organ in which notices of sheriffs' sales are published in each county affected by such interest, at least 30 days in advance of consummating such transaction, (3) that no director having a substantial interest or involvement may be present at that portion of an authority meeting during which discussion of any matter is conducted involving any such organization or person, and (4) that no director having a substantial interest or involvement may participate in any decision of the authority relating to any matter involving such organization or person. As used in this subsection, a "substantial interest or involvement" means any interest or involvement which reasonably may be expected to result in a direct financial benefit to such director as determined by the authority, which determination shall be final and not subject to review.
- For Constitutional Development Authorities, see O.C.G.A. Sec. 36-62 A-1

# DO'S AND DON'T'S FOR DIRECTORS

- 1. **Do** get insurance.
- 2. **Do** be diligent. Spend the time that the job requires.
- 3. **Do** be knowledgeable. Don't hesitate to seek the advice of experts such as accountants, financial advisors and attorneys when needed.
- 4. **Do** exercise good, independent business judgment.
- 5. **Do** follow the rules that the law provides for your entity.

## *Don't's for Directors*

- 1. **Don't** approve or sign important documents without knowing what's in them.
- 2. If you don't understand something, **don't** hesitate to ask.
- 3. **Don't** ignore "red flags."
- 4. **Don't** abdicate your responsibilities.
- 5. It's good to be "*disinterested*" (i.e., no conflicts of interest), but **don't** be *uninterested*!

# WHAT'S YOUR PURPOSE? IT'S IN THE CONSTITUTION STATUTORY DEVELOPMENT AUTHORITY-

- Georgia Constitution Article IX, Sec. VI,-
- **“Paragraph III. *Development authorities.***
- The development of trade, commerce, industry, and employment opportunities being a public purpose vital to the welfare of the people of this state, the General Assembly may create development authorities to promote and further such purposes or may authorize the creation of such an authority by any county or municipality or combination thereof under such uniform terms and conditions as it may deem necessary. The General Assembly may exempt from taxation development authority obligations, properties, activities, or income and may authorize the issuance of revenue bonds by such authorities which shall not constitute an indebtedness of the state within the meaning of Section V of this article.”

# SOME POWERS

(6) "PROJECT" INCLUDES (statutory authority):

(A) ANY ONE OR MORE BUILDINGS OR STRUCTURES TO BE USED IN THE PRODUCTION, MANUFACTURING, PROCESSING, ASSEMBLING, STORING, OR HANDLING OF ANY AGRICULTURAL, MANUFACTURED, MINING, OR INDUSTRIAL PRODUCT OR ANY COMBINATION OF THE FOREGOING, IN EVERY CASE WITH ALL NECESSARY OR USEFUL FURNISHINGS, MACHINERY, EQUIPMENT, PARKING FACILITIES, LANDSCAPING, AND FACILITIES FOR OUTDOOR STORAGE, ALL AS DETERMINED BY THE AUTHORITY, WHICH DETERMINATION SHALL BE FINAL AND NOT SUBJECT TO REVIEW; AND THERE MAY BE INCLUDED AS PART OF ANY SUCH PROJECT ALL IMPROVEMENTS NECESSARY TO THE FULL UTILIZATION THEREOF, INCLUDING SITE PREPARATION, ROADS AND STREETS, SIDEWALKS, WATER SUPPLY, OUTDOOR LIGHTING, BELT LINE RAILROAD SIDINGS AND LEAD TRACKS, BRIDGES, CAUSEWAYS, TERMINALS FOR RAILROAD, AUTOMOTIVE, AND AIR TRANSPORTATION, TRANSPORTATION FACILITIES INCIDENTAL TO THE PROJECT, AND THE DREDGING AND IMPROVING OF HARBORS AND WATERWAYS, NONE OF WHICH FOREGOING DESCRIPTIVE WORDS SHALL BE CONSTRUED TO CONSTITUTE A LIMITATION, PROVIDED THAT NONE OF THE IMPROVEMENTS DESCRIBED IN THIS SENTENCE SHALL BE THE PRIMARY PURPOSE OF ANY PROJECT;

.....

# Some Powers-Continued

(N) THE ACQUISITION, CONSTRUCTION, INSTALLATION, MODIFICATION, RENOVATION, OR REHABILITATION OF LAND, INTERESTS IN LAND, BUILDINGS, STRUCTURES, FACILITIES, OR OTHER IMPROVEMENTS AND THE ACQUISITION, INSTALLATION, MODIFICATION, RENOVATION, REHABILITATION, OR FURNISHING OF FIXTURES, MACHINERY, EQUIPMENT, FURNITURE, OR OTHER PROPERTY OF ANY NATURE WHATSOEVER USED ON, IN, OR IN CONNECTION WITH ANY SUCH LAND, INTEREST IN LAND, BUILDING, STRUCTURE, FACILITY, OR OTHER IMPROVEMENT, ALL FOR THE ESSENTIAL PUBLIC PURPOSE OF THE DEVELOPMENT OF TRADE, COMMERCE, INDUSTRY, AND EMPLOYMENT OPPORTUNITIES. A PROJECT MAY BE FOR ANY INDUSTRIAL, COMMERCIAL, BUSINESS, OFFICE, PARKING, PUBLIC, OR OTHER USE, PROVIDED THAT A MAJORITY OF THE MEMBERS OF THE AUTHORITY DETERMINES, BY A DULY ADOPTED RESOLUTION, THAT THE PROJECT AND SUCH USE THEREOF WOULD FURTHER THE PUBLIC PURPOSE OF THIS CHAPTER. (statutory authority)

# SOME CONSTRAINTS IMPOSED BY THE DEVELOPMENT AUTHORITIES LAW

- Code Section 36-62-7. Lease, sale, or management of projects
- No project acquired under this chapter shall be operated by an authority or any municipal corporation, county, or other governmental subdivision. Such a project shall be leased or sold to, or managed by, one or more persons, firms, or private corporations. Any disposition of real property by an authority pursuant to paragraph (7) of Code Section 36-62-6 shall be made to one or more persons, firms, corporations, or governmental or public entities. If revenue bonds or other obligations are to be issued to pay all or part of the cost of the project, the project must be so leased or the contract for its sale or management must be entered into prior to or simultaneously with the issuance of the bonds or obligations; provided, however, that the acquisition and development of land by an authority as the site for an industrial park as provided in this chapter or the acquisition and development of land by an authority as the site for a sports facility or amphitheater in accordance with Code Section 36-62-2 and the operation of such a sports facility or amphitheater shall not be deemed to be the operation of a project and, notwithstanding anything in this chapter to the contrary, an authority shall not be required to enter into a lease of such a project or a contract for its sale or management as a condition to the issuance of bonds or other obligations of the authority to provide financing therefor. If sold, the purchase price may be paid at one time or in installments falling due over not more than 40 years from the date of transfer of possession. The lessee or purchaser shall be required to pay all costs of operating and maintaining the leased or purchased property and to pay rentals or installments in amounts sufficient to pay the principal of and the interest and premium, if any, on all of its bonds and other obligations as such principal and interest become due. If the project is managed, the management contract must contain a term not less than the final maturity date of any bonds or other obligations of the authority to provide financing for the managed project and must provide that all costs of operating and maintaining the managed project, including all management fees payable under the management contract, shall be paid solely from the revenues of the managed project and from the proceeds of any bonds or other obligations of the authority to provide financing for the managed project. Any such management contract may contain provisions allowing the authority to terminate the management contract, but if the authority exercises any right to terminate a management contract, it must immediately enter into another management contract meeting the requirements of this Code section.

# “CONSTITUTIONAL” DEVELOPMENT AUTHORITY

CONSULT YOUR LOCAL  
CONSTITUTIONAL AMENDMENT  
AND RELATED LOCAL ACTS

# Some Constraints Imposed by Other Laws

## CONSTRUCTION LAW

- **Georgia Local Government Public Works Construction Law**
- **Applies to both statutory and Constitutional development authorities**
- **Applies to “public works construction” meaning “the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any public real property” (other than certain transportation projects)**
- **“public improvements” and “public real property” not defined**
- **Requires public sealed bidding or public sealed proposals**
- **Advertising required**
- **Requires bid, payment and performance bonds**

# SOME CONSTRAINTS IMPOSED BY THE GEORGIA SUPREME COURT

- “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.
- “ In *Odom*, the DDA sought to issue revenue bonds, the proceeds of which would finance the construction of a new city hall, renovate the existing police station and jail, and improve city streets. The project thus consisted of purely public elements. This court held that the scope of this 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." 1983 Georgia Constitution, Art. IX, Sec. VI, Par. III. In the case before us the project is comprised of both public and private components which are integrated so as to produce the desired purposes. The trial court found that the project will promote and develop the public purposes of trade, commerce, industry, and employment opportunities. There is evidence in the record to support this determination.” *Nations I*, 1985.

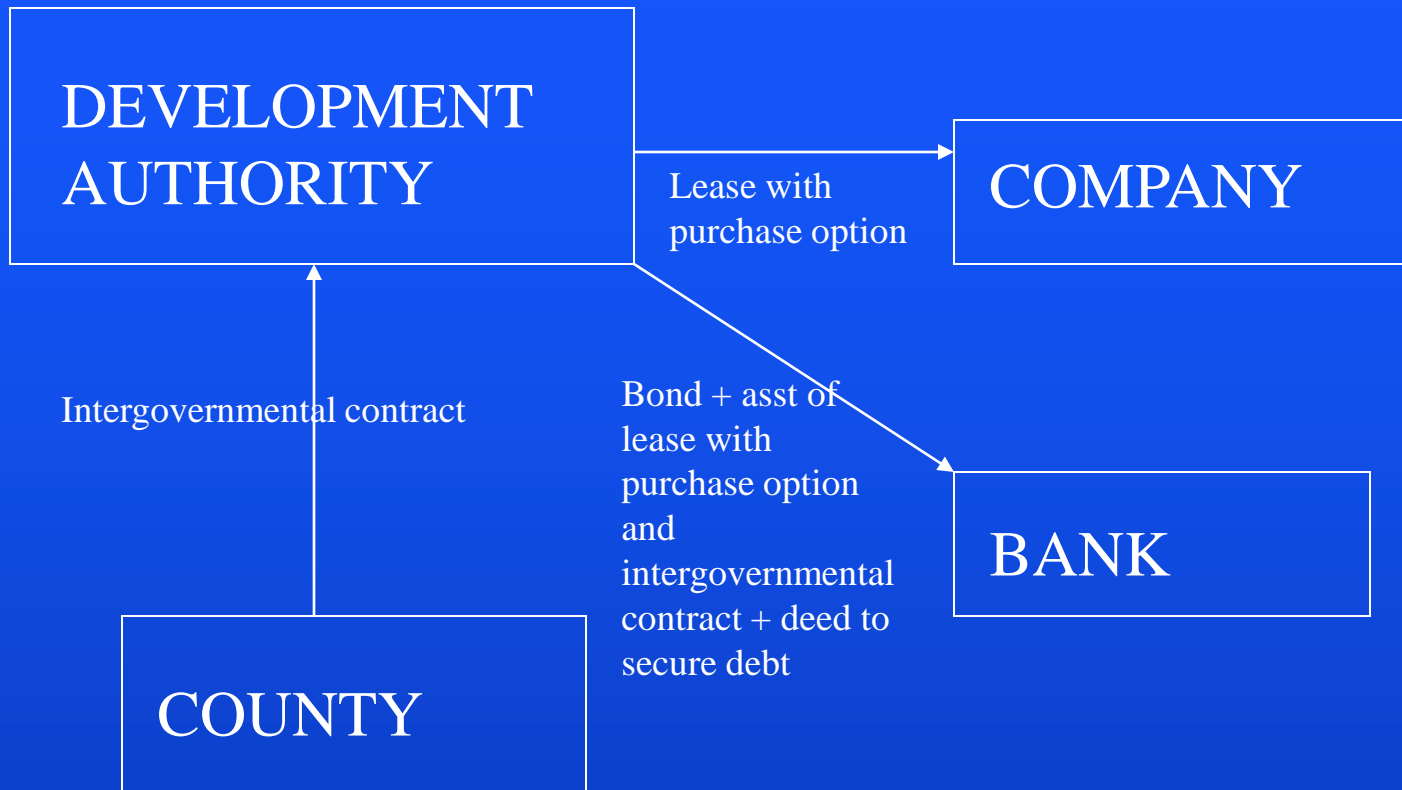
STATUTORY DEVELOPMENT  
AUTHORITY  
CAN'T ISSUE  
PROMISSORY NOTES

-ALL CAN ISSUE BONDS

# WHAT'S A BOND?

- JUST A WAY TO BORROW MONEY
- A COMPANY SHOULD NOT CONFUSE AN AUTHORITY'S AGREEING TO ISSUE INDUSTRIAL DEVELOPMENT REVENUE BONDS ("IDBS") WITH A PROMISE TO SELL BONDS BACKED BY THE COMMUNITY'S OWN CREDIT TO RAISE MONEY FOR THE COMPANY
- DEVELOPMENT AUTHORITY IS JUST A CONDUIT (I.E., A "CONDUIT ISSUER") FOR ISSUING BONDS REPRESENTING A FINANCING BY THE COMPANY (I.E., THE COMPANY IS A "CONDUIT BORROWER")
- DEVELOPMENT AUTHORITY'S NAME IS ON THE BONDS
- NO LIABILITY FOR THE REPAYMENT OF THE BONDS BY DEVELOPMENT AUTHORITY, CITY, COUNTY OR STATE
  - exceptions- some Constitutional authorities, "contract revenue bonds" (following slides)

- SOME INCENTIVES STRUCTURES INVOLVE CREDIT ENHANCEMENT BY THE COMMUNITY
- DOESN'T MAKE THE COMMUNITY LIABLE ON THE BONDS
  - ADDITIONAL SECURITY (SUCH AS AN INTERGOVERNMENTAL CONTRACT) IS BEING PROVIDED FOR THE BONDS (“CONTRACT REVENUE BONDS”)
- CAVEAT – IF “CONSTITUTIONAL DEVELOPMENT AUTHORITY,” CHECK LOCAL CONSTITUTIONAL AMENDMENT



# WHY ON EARTH WOULD I WANT TO DO THAT?

## ONE MAN'S OPINIONS-

- IF THIS IS A PROJECT THAT FOR ONE REASON OR ANOTHER THE COMMUNITY BADLY NEEDS, AND THIS IS THE ONLY WAY TO GET IT
  - EXAMPLE- NOT GETTING LOOKS FROM INDUSTRIAL PROJECTS AND THIS IS THE CHANCE OF A LIFETIME TO START TO BUILD AN INDUSTRIAL BASE
- IF SOMEONE WORKING FOR THE COMMUNITY AS ITS “FINANCIAL ADVISOR” DOES AN INDEPENDENT STUDY AND CONCLUDES THAT THE PROJECT LIKELY WILL WORK AND THAT THE BONDS LIKELY WILL BE REPAYED
- SAME OPINIONS APPLY TO WHETHER OR NOT TO AGREE TO ISSUE “JUNK” BONDS (UNRATED, OR RATED BELOW INVESTMENT GRADE) TO AN INVESTOR.
- EXCEPTIONS
  - IF A QUALIFIED FINANCIAL INSTITUTION THAT IS MAKING ITS OWN INVESTMENT DECISION IS BOND BUYER
  - CERTAIN QUALIFIED PROJECT FINANCE TRANSACTIONS

# “PROSPECTS” VERSUS “SUSPECTS”

- PROSPECT-  
BOND IS INVESTMENT GRADE (OR  
BANK LETTER OF CREDIT) OR  
PRIVATELY PLACED WITH  
FINANCIAL INSTITUTION
- SUSPECT – MOST JUNK BOND DEALS

# WHAT DOES “INVESTMENT GRADE” MEAN?

- **IN THE TERMINOLOGY USED BY S&P AND FITCH, FOR EXAMPLE, INVESTMENT GRADE IS A RATING OF BBB- THROUGH AAA**

**(MOODY’S IS THE OTHER MAJOR RATING AGENCY, AND HAS ITS OWN TERMINOLOGY)**

- **IF THE BONDS ARE SECURED BY A BANK LETTER OF CREDIT, THE BANK’S LETTERS OF CREDIT MUST BE RATED INVESTMENT GRADE**
- **ON THE STRENGTH OF THE LETTER OF CREDIT, THE RATING AGENCY WILL ASSIGN A RATING (THE SAME RATING AS THE LETTER OF CREDIT) TO THE BONDS**

SUMMARY OF RATING SYMBOLS AND DEFINITIONS			
MOODY'S	S&P	FITCH	BRIEF DEFINITION
<b>INVESTMENT GRADE—HIGH CREDITWORTHINESS</b>			
AAA	AAA	AAA	GILT EDGE, PRIME, MAXIMUM SAFETY
AA1	AA+	AA+	VERY HIGH GRADE, HIGH QUALITY
AA2	AA	AA	VERY HIGH GRADE, HIGH QUALITY
AA3	AA-	AA-	VERY HIGH GRADE, HIGH QUALITY
A1	A+	A+	VERY HIGH GRADE, HIGH QUALITY
A2	A	A	UPPER MEDIUM GRADE
A3	A-	A-	UPPER MED. GRADE
BAA1	BBB+	BBB+	UPPER MED. GRADE
BAA2	BBB	BBB	LOWER MED. GRADE
BAA3	BBB-	BBB-	LOWER MED. GRADE
<b>DISTINCTLY SPECULATIVE—LOW CREDITWORTHINESS</b>			
BA1	BB+	BB+	LOW GRADE, SPECULATIVE
BA2	BB	BB	LOW GRADE, SPEC.
BA3	BB-	BB-	LOW GRADE, SPEC.
B1	B+	B+	LOW GRADE, SPEC.
B2	B	B	HIGHLY SPECULATIVE
B3	B-	B-	HIGHLY SPECULATIVE
<b>PREDOMINANTLY SPECULATIVE—SUBSTANTIAL RISK OR IN DEFAULT</b>			
	CCC+		SUBSTANTIAL RISK, IN POOR STANDING
CAA	CCC	CCC	SAME AS ABOVE
	CCC-		SAME AS ABOVE
CA	CC	CC	MAY BE IN DEFAULT, EXTREMELY SPECULATIVE
C	C	C	EVEN MORE SPECULATIVE THAN THOSE ABOVE
	CL		CL=INCOME BONDS-NO INTEREST IS BEING PAID
		DDD	DEFAULT
		DD	DEFAULT
	D	D	DEFAULT

# CAN ANY BANK ISSUE THE LETTER OF CREDIT?

- ANY BANK CAN ISSUE A LETTER OF CREDIT
- BUT NOT JUST ANY BANK'S LETTER OF CREDIT WILL WORK IN A PUBLICLY SOLD BOND DEAL
- A BANK'S LETTER OF CREDIT ITSELF MUST BE RATED
- NOT JUST THAT, IT HAS TO BE RATED "INVESTMENT GRADE"
- "WRAP" LETTER OF CREDIT -- UNRATED BANK ISSUES A LETTER OF CREDIT TO A LARGER BANK TO OBTAIN AN INVESTMENT GRADE LETTER OF CREDIT FROM THE LARGER BANK FOR USE IN ISSUING BONDS PUBLICLY

ALLOWS THE COMPANY'S REGULAR BANK TO MAINTAIN ITS BANKING RELATIONSHIP WITH THE COMPANY, WHILE ALLOWING THE COMPANY TO OBTAIN THE FINANCING THAT IT WANTS

- COMMUNITY BANK CAN ALSO GET FHLB TO CONFIRM ITS LETTER OF CREDIT
- RESULT – “AAA” RATING

# WHAT BONDS CAN A DEVELOPMENT AUTHORITY ISSUE?

- BONDS FOR ANY PURPOSE PERMITTED BY THE GEORGIA CONSTITUTION AND THE GOVERNING LAW
- DEVELOPMENT AUTHORITIES LAW--FOR “STATUTORY” DEVELOPMENT AUTHORITIES
- THEIR RESPECTIVE LOCAL CONSTITUTIONAL AMENDMENTS AND RELATED LOCAL LEGISLATION--FOR CONSTITUTIONAL DEVELOPMENT AUTHORITIES

# SO, WHAT TYPES OF BONDS DOES A DEVELOPMENT AUTHORITY ISSUE?

# WHAT ARE BOND ANTONYMS?

<u>THIS</u>	IS THE <u>OPPOSITE</u> OF	<u>THIS</u>
REVENUE BOND		GENERAL OBLIGATION BOND
TAX-EXEMPT BOND		“TAXABLE” BOND
PRIVATELY PLACED		PUBLICLY SOLD
INVESTMENT GRADE		“JUNK”
PRIVATE ACTIVITY		GOVERNMENTAL
FLOATING RATE		FIXED RATE
NON-AMT		AMT
“BANK QUALIFIED”		NOT “BANK QUALIFIED”
AUTHORITY-ISSUED		COMPANY-ISSUED

# DEVELOPMENT AUTHORITY BONDS ARE REVENUE BONDS

- BUT NOT ALL DEVELOPMENT AUTHORITY BONDS ARE TAX-EXEMPT
- EXAMPLES OF TAX-EXEMPT BONDS
  - “MANUFACTURING” BONDS
  - “QUALIFIED (501(C)(3))” BONDS
  - EXEMPT FACILITY BONDS

# THE BONDS MOST OFTEN ISSUED BY DEVELOPMENT AUTHORITIES – “TAXABLE” BONDS

# A PROSPECT CAN'T GET MOST INCENTIVES WITHOUT A DEVELOPMENT AUTHORITY

- EXCEPTION – STATUTORY TAX  
CREDITS

# IF STATE GRANT MONEY IS AVAILABLE FOR THE PROJECT, IT HAS TO BE INVESTED THROUGH THE AUTHORITY

THE AUTHORITY ALWAYS HAS TO OWN THE  
PROPERTY THAT THE GRANT MONEY IS  
INVESTED IN

IF THE COMMUNITY PROVIDED ITS OWN GRANT  
MONEY, THIS STRUCTURE ALSO HAS TO BE USED

WHY? GEORGIA'S CONSTITUTION PROHIBITS  
THE PUBLIC SECTOR FROM CONFERRING A "GIFT  
OR GRATUITY" ON THE PRIVATE SECTOR

- CAVEAT – DON'T TAKE TITLE TO PROPERTY WITH ENVIRONMENTAL PROBLEMS
- CAVEAT – BE SURE YOU ARE COVERED BY LIABILITY INSURANCE, NOT JUST BY AN INDEMNITY IN THE LEASE

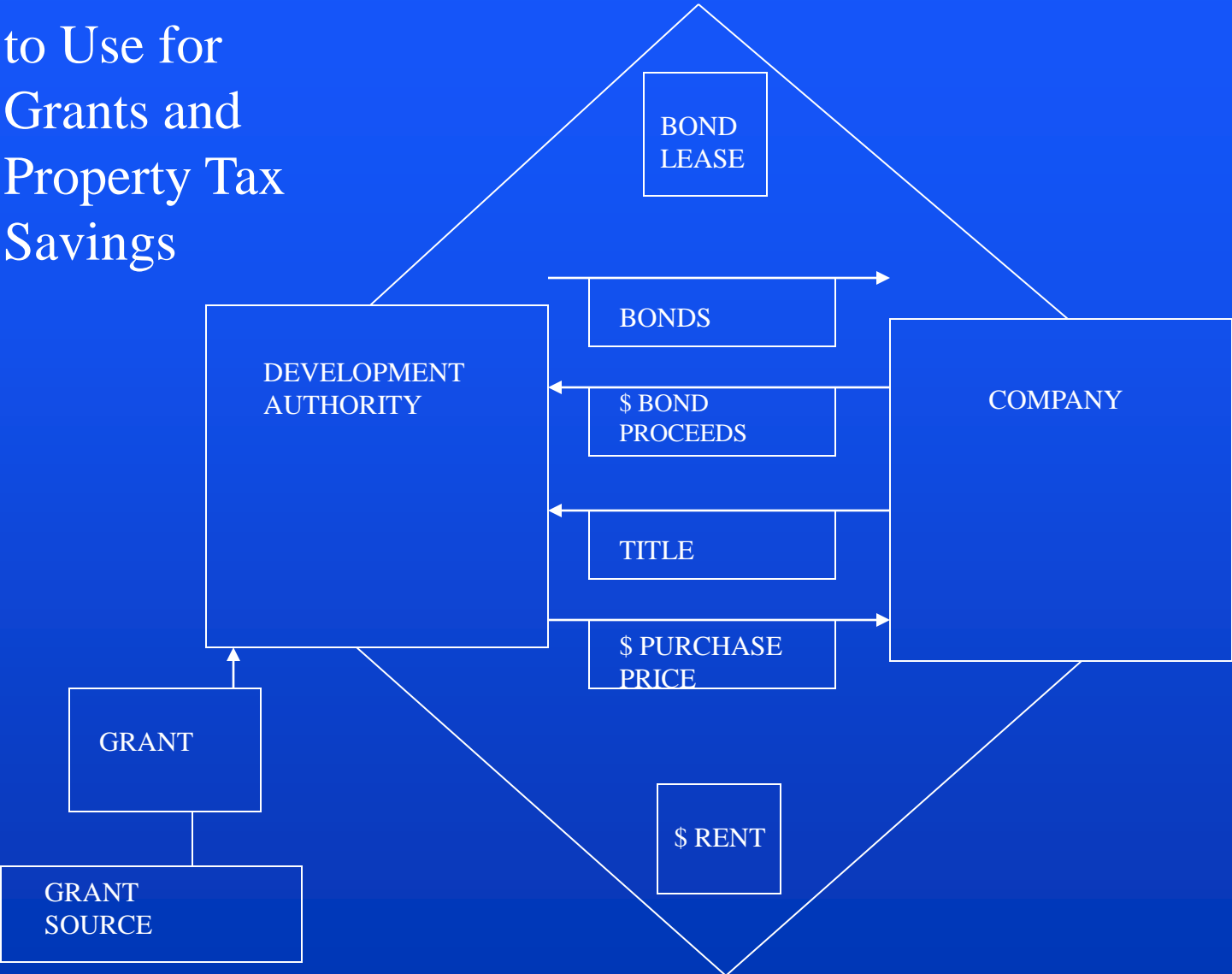
**AND TAKING TITLE  
VIRTUALLY ALWAYS IS IN A  
BOND-FINANCED SALE-  
LEASEBACK STRUCTURE**

# AND A DESIRABLE PROSPECT USUALLY PUTS PROPERTY TAX SAVINGS ON THE TABLE AS AN INCENTIVES REQUIREMENT

- IF THE COMMUNITY AGREES, THAT TAKES A BOND-FINANCED SALE LEASEBACK STRUCTURE
- GENERAL LAW AND LOCAL POLICIES CONSISTENT THEREWITH SHOULD ALWAYS BE FOLLOWED

**“BONDS FOR  
TITLE” IS HOW  
ALL OF THIS IS  
DONE -**

# Basic Structure to Use for Grants and Property Tax Savings



# “BONDS FOR TITLE”

SUPPORTS INCENTIVES BUT  
DOESN'T RAISE MONEY IF YOU STOP  
THERE

# HERE'S HOW BONDS ARE ISSUED TO RAISE MONEY

## FIRST – THE “CAST OF CHARACTERS”

# WHAT'S THE WHOLE CAST OF CHARACTERS IN A BOND ISSUE?

- IN THE CASE OF A TYPICAL PRIVATE PLACEMENT OF BONDS, THERE WOULD BE -

THE CONDUIT BORROWER (THE PROSPECT/COMPANY)

THE CONDUIT BORROWER'S COUNSEL

THE ISSUER (THE DEVELOPMENT AUTHORITY)

THE ISSUER'S COUNSEL

THE BOND COUNSEL

THE BOND PURCHASER

PERHAPS BOND PURCHASER'S COUNSEL

PERHAPS GUARANTORS THAT ARE STOCKHOLDERS OR AFFILIATES OF THE COMPANY

- IN THE CASE OF A PUBLIC OFFERING OF LOWER FLOATERS, THERE WOULD BE--

THE CONDUIT BORROWER

THE CONDUIT BORROWER'S COUNSEL

THE ISSUER

THE ISSUER'S COUNSEL

THE BOND COUNSEL

THE UNDERWRITER

AN UNDERWRITER'S COUNSEL

THE BOND TRUSTEE

THE TRUSTEE'S COUNSEL

THE REMARKETING AGENT

THE LETTER OF CREDIT BANK

THE LETTER OF CREDIT BANK'S COUNSEL

THERE MAY BE GUARANTORS THAT ARE STOCKHOLDERS OR AFFILIATES OF THE COMPANY

THEY WOULD GUARANTEE THE OBLIGATION OF THE COMPANY TO REIMBURSE THE LETTER OF CREDIT BANK FOR AMOUNTS DRAWN UNDER THE LETTER OF CREDIT

# WHAT ARE ALL OF THE STEPS IN A BOND ISSUE?

ALL (TAX-EXEMPT OR TAXABLE) BOND ISSUES IN GEORGIA FOLLOW THESE STEPS-

- THE COMPANY FILES A REQUEST WITH THE DEVELOPMENT AUTHORITY FOR BOND FINANCING  
NOT A LEGAL REQUIREMENT, BUT IS TYPICAL  
SOME DEVELOPMENT AUTHORITIES HAVE FORMAL APPLICATION PROCEDURES AND FORMS
- THE DEVELOPMENT AUTHORITY ADOPTS AN INDUCEMENT RESOLUTION
- THE DEVELOPMENT AUTHORITY AND THE COMPANY EXECUTE A LETTER OF INTENT AND INDUCEMENT AGREEMENT

- THE COMPANY FINDS A PURCHASER FOR THE BONDS (A BANK, FINANCIAL INSTITUTION OR UNDERWRITER)

IF A LETTER OF CREDIT IS NEEDED, THE COMPANY FINDS A LETTER OF CREDIT BANK

THE COMPANY WILL OBTAIN WRITTEN COMMITMENTS FROM THESE PARTICIPANTS

THE COMMITMENT(S) WILL DICTATE THE TERMS OF THE BONDS

- ONCE THE FINANCING COMMITMENTS HAVE BEEN RECEIVED, BOND COUNSEL CAN BEGIN DRAFTING DOCUMENTS

THESE DOCUMENTS ARE THEN DISTRIBUTED TO ALL OF THE PARTICIPANTS FOR REVIEW AND COMMENT

- WHEN THESE DOCUMENTS ARE FINALIZED, THE DEVELOPMENT AUTHORITY THEN ADOPTS A BOND RESOLUTION APPROVING THE BONDS AND THE FINAL BOND DOCUMENTS

IF THE BONDS ARE SUBJECT TO SEC DISCLOSURE REQUIREMENTS, UNDERWRITER'S COUNSEL AROUND THIS TIME WILL BE PREPARING THE DISCLOSURE DOCUMENT (I.E., THE OFFICIAL STATEMENT OR OFFERING MEMORANDUM).

- THE PARTIES INVOLVED IN THE JUDICIAL VALIDATION (DISTRICT ATTORNEY, CLERK OF COURT, ETC) ARE THEN BROUGHT INTO THE PROCESS

THE IMPENDING VALIDATION IS ADVERTISED IN THE LOCAL NEWSPAPER TWO WEEKS IN A ROW

- THE BONDS ARE THEN JUDICIALLY VALIDATED
- AFTER THE PARTIES SIGN CLOSING DOCUMENTS AND THE REQUIRED DOCUMENTS ARE RECORDED, THE BOND ISSUE IS CLOSED

IN THE CASE OF TAX-EXEMPT BONDS, THE FOLLOWING ADDITIONAL STEPS ARE INVOLVED-

- AS BOND COUNSEL, WE TRY TO GET THE COMPANY TO FILL OUT A TAX QUESTIONNAIRE WE PROVIDE AS SOON AS POSSIBLE

WE DISCUSS THIS QUESTIONNAIRE WITH THE COMPANY, AND DETERMINE IF THE BONDS CAN BE ISSUED AS TAX-EXEMPT BONDS

- NOTICE (CALLED A “TEFRA NOTICE”) OF A PUBLIC HEARING IS PUBLISHED IN THE LOCAL NEWSPAPER AT LEAST 14 DAYS IN ADVANCE OF THE HEARING AT WHICH MEMBERS OF THE PUBLIC MAY APPEAR AND COMMENT ON THE BONDS, ON THE NATURE AND LOCATION OF THE PROJECT AND ON THE PLAN OF FINANCING

THIS ADVERTISEMENT IS IN ADDITION TO THE ADVERTISEMENTS OF THE VALIDATION

THE TEFRA NOTICE GENERALLY RUNS PRIOR TO THE VALIDATION ADVERTISEMENTS

- THE HEARING (CALLED A “TEFRA HEARING”) IS HELD BEFORE THE DEVELOPMENT AUTHORITY (OR ITS HEARING OFFICER) OR THE BOARD OF COMMISSIONERS OF THE COUNTY (OR MAYOR AND CITY COUNCIL, IN THE CASE OF A CITY DEVELOPMENT AUTHORITY OR ITS HEARING OFFICER)

THE TEFRA HEARING MAY BE HELD BEFORE OR AFTER THE ADOPTION OF THE BOND RESOLUTION

- THE BONDS ARE THEN APPROVED (CALLED “TEFRA APPROVAL”) BY THE APPROPRIATE ELECTED OFFICIAL, WHICH WILL GENERALLY BE THE BOARD OF COMMISSIONERS OF THE COUNTY (OR MAYOR AND CITY COUNCIL, IN THE CASE OF A CITY DEVELOPMENT AUTHORITY), OR A DESIGNATED ELECTED OFFICIAL, SUCH AS THE CHAIRMAN OF THE BOARD OF COMMISSIONERS OR MAYOR

THE SCHEDULE FOR THIS APPROVAL IS USUALLY DICTATED BY THE MEETING SCHEDULE OF THE COUNTY OR CITY

- AN APPLICATION IS FILED WITH THE DEPARTMENT OF COMMUNITY AFFAIRS FOR AN ALLOCATION OF A PART OF THE STATE OF GEORGIA'S PRIVATE ACTIVITY BOND VOLUME CAP

AN ALLOCATION IS NOT NEEDED FOR QUALIFIED 501(C)(3) BONDS

THE DEVELOPMENT AUTHORITY WILL SIGN THE APPLICATION, WHICH USUALLY WILL BE FILED BY BOND COUNSEL

WE TRY TO FILE THE APPLICATION AS SOON AS ALL THE REQUIREMENTS HAVE BEEN MET (OBTAINING FINANCING COMMITMENT, HOLDING TEFRA HEARING, ETC)

- DCA ISSUES THE PRIVATE ACTIVITY BOND VOLUME CAP ALLOCATION
- AT THE CLOSING, THE DEVELOPMENT AUTHORITY AND THE COMPANY EXECUTE A TAX COMPLIANCE CERTIFICATE AND CERTAIN OTHER TAX-RELATED DOCUMENTS ARE EXECUTED IN ADDITION TO THE OTHER BOND DOCUMENTS
- AFTER THE CLOSING, AN IRS FORM 8038 IS FILED

- THE COMPANY IS RESPONSIBLE FOR THE COSTS OF ISSUING THE BONDS TO THE EXTENT NOT PAID FROM BOND PROCEEDS (ONLY 2% OF THE PROCEEDS OF TAX-EXEMPT PRIVATE ACTIVITY BONDS MAY BE APPLIED TO COSTS OF ISSUANCE)
- THE DEVELOPMENT AUTHORITY SHOULD BE SURE THAT THIS OBLIGATION IS SET FORTH IN THE INDUCEMENT AGREEMENT THAT THE COMPANY SIGNS EARLY IN THE PROCESS

# CONCLUSION

“YOU’VE GOT TO WORK HARD IF YOU WANT  
CHEAP MONEY!”

YOU’VE ALSO GOT TO WORK HARD IF YOU WANT ECONOMIC  
DEVELOPMENT TO SUCCEED

# IF YOU HAVE QUESTIONS OR NEED MORE INFORMATION:

Daniel M. McRae, Partner  
Seyfarth Shaw LLP  
1075 Peachtree Street, N.E.  
Suite 2500  
Atlanta, Georgia 30309  
Telephone: 404.888.1883  
Facsimile: 404.892.7056  
dmcrae@seyfarth.com  
dan@danmcrae.info

# MORE INFORMATION

This presentation is a quick-reference guide for elected and appointed officials and their staffs, company executives and managers, 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.)