



WEDNESDAY'S  
News You Can Use

## *“Bonds for Title”*

### *“Abatement” Implications for a Finance Officer*

Presented by

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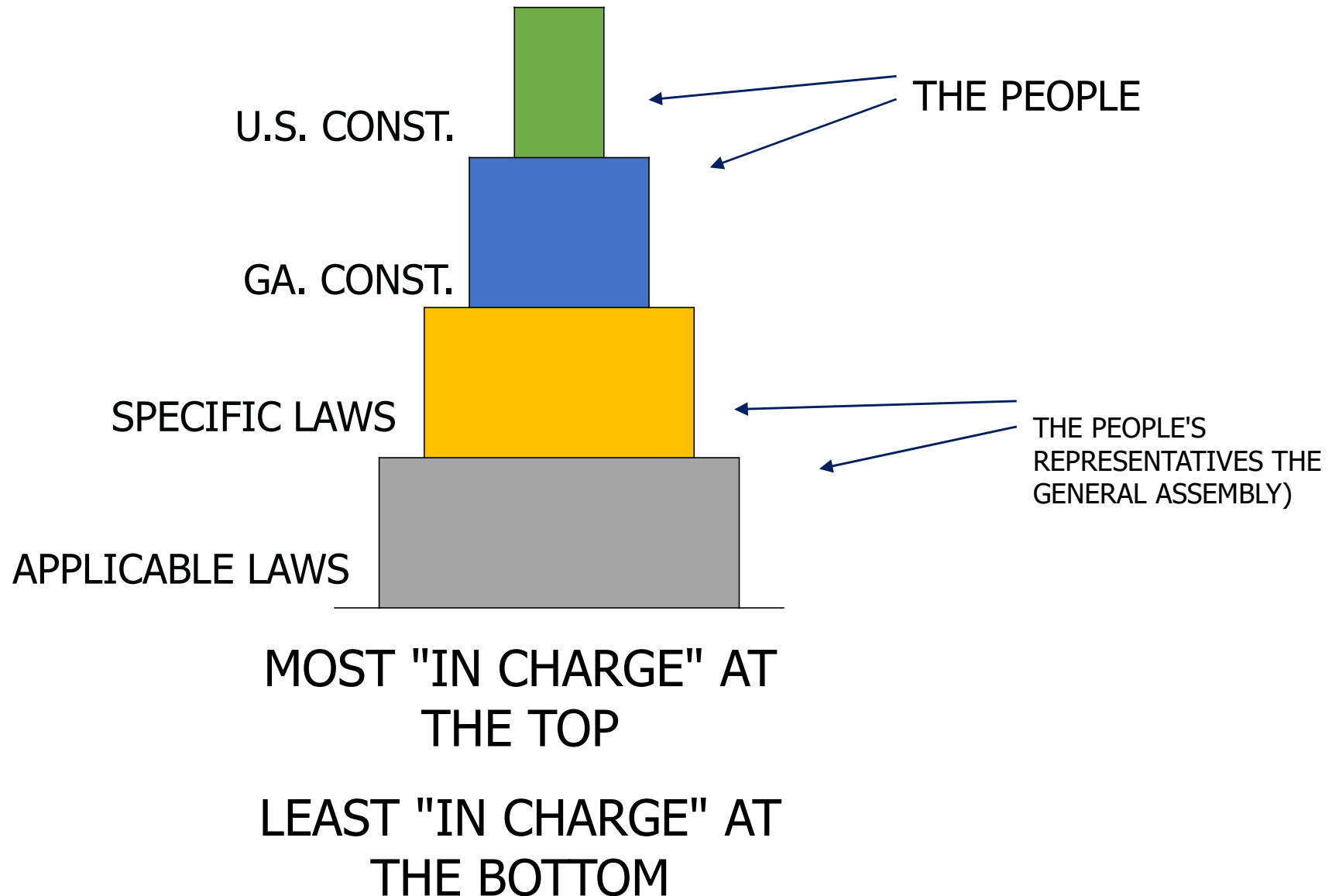


# *property tax “abatement” possibilities in Georgia*

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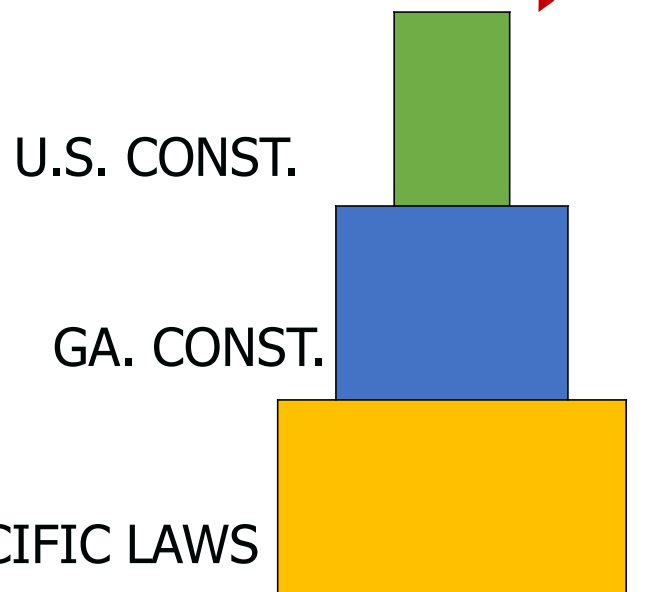
everything starts with the Constitution

# THE HIERARCHY OF GEORGIA'S LEGAL SYSTEM



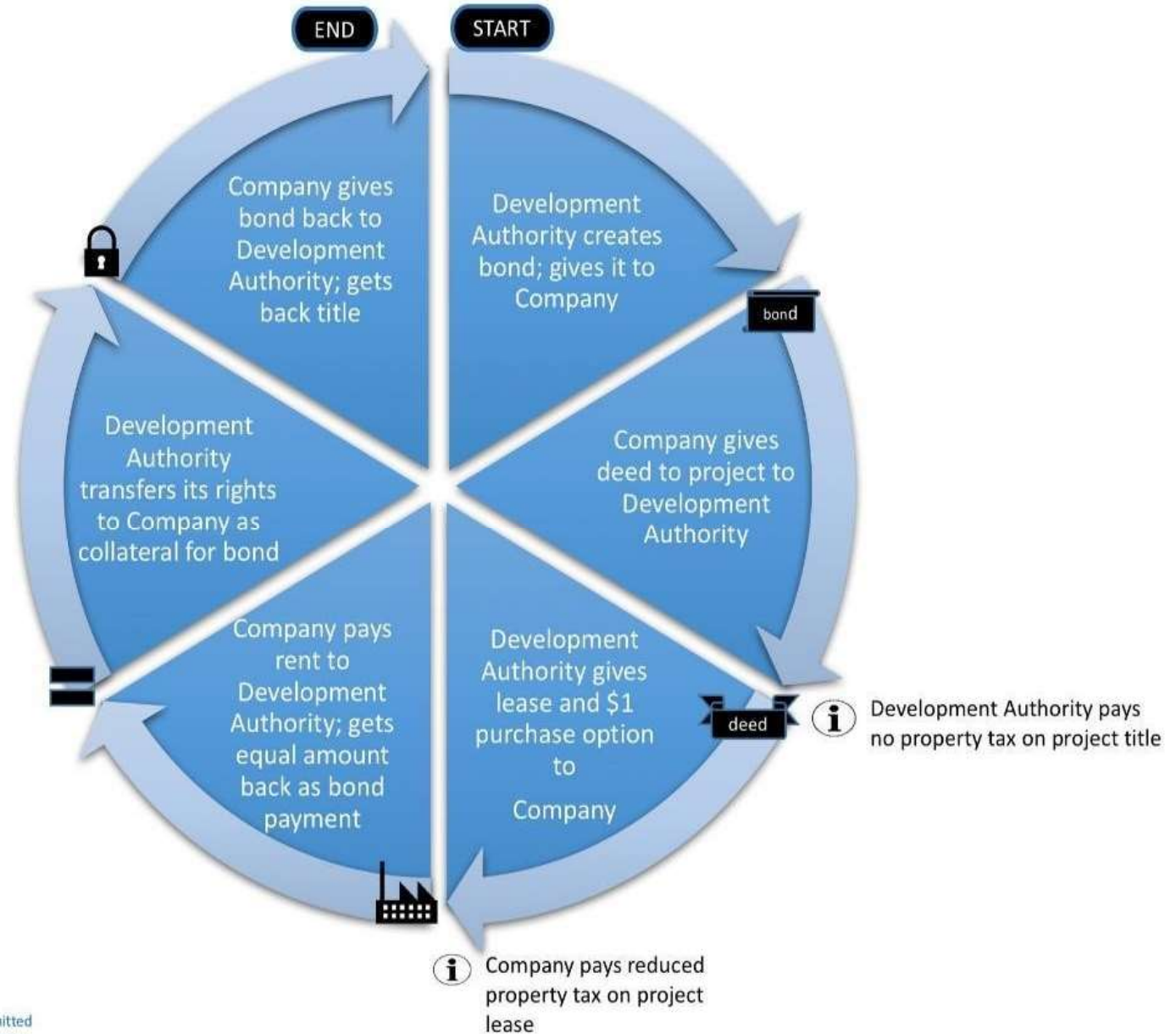
# THE HIERARCHY OF GEORGIA'S LEGAL SYSTEM

provision authorizing city to provide by ordinance for return or assessment, or both, of all property for taxation at its true cash market value, *held* not violative of **due process** (Laws 1901, p. 321; Const. Ga. art. 1, § 1, par. 3; Const. U. S. Amends. 5, 14). *Donalson v. City of Bainbridge*, 177 Ga. 7 (1933)



no authority that would permit a lease to circumvent the state **constitutional requirement of uniform taxation** or the **statutory requirement that all property be returned for taxation at its fair market value**. Ga. Const., Art. VII, Sec. I, Par. III; OCGA § 48-5-6. *Coweta County Bd. of Tax Assessors v. EGO Products, Inc.*, 241 Ga. App. 85 (1999)

# THE WORKAROUND BONDS FOR TITLE



HERE'S A **QUESTION** FOR YOU-  
IN ONE WORD, WHAT IS THE REASON THAT GEORGIA  
USES A BONDS FOR TITLE TRANSACTION  
FOR PROPERTY TAX "ABATEMENT" INCENTIVES?



# PROPERTY TAX SAVINGS

## THERE ARE TWO BASIC STRUCTURES

LEASEHOLD VALUATION  
or  
USUFRUCT (real estate)/BAILMENT (personal property)

FIGURING OUT HOW  
“ABATEMENT”  
WORKS



THE TOTALITY OF  
THE INTEREST IN PROPERTY  
HAS BEEN CALLED THE  
“BUNDLE OF STICKS”

# PROPERTY TAX SAVINGS

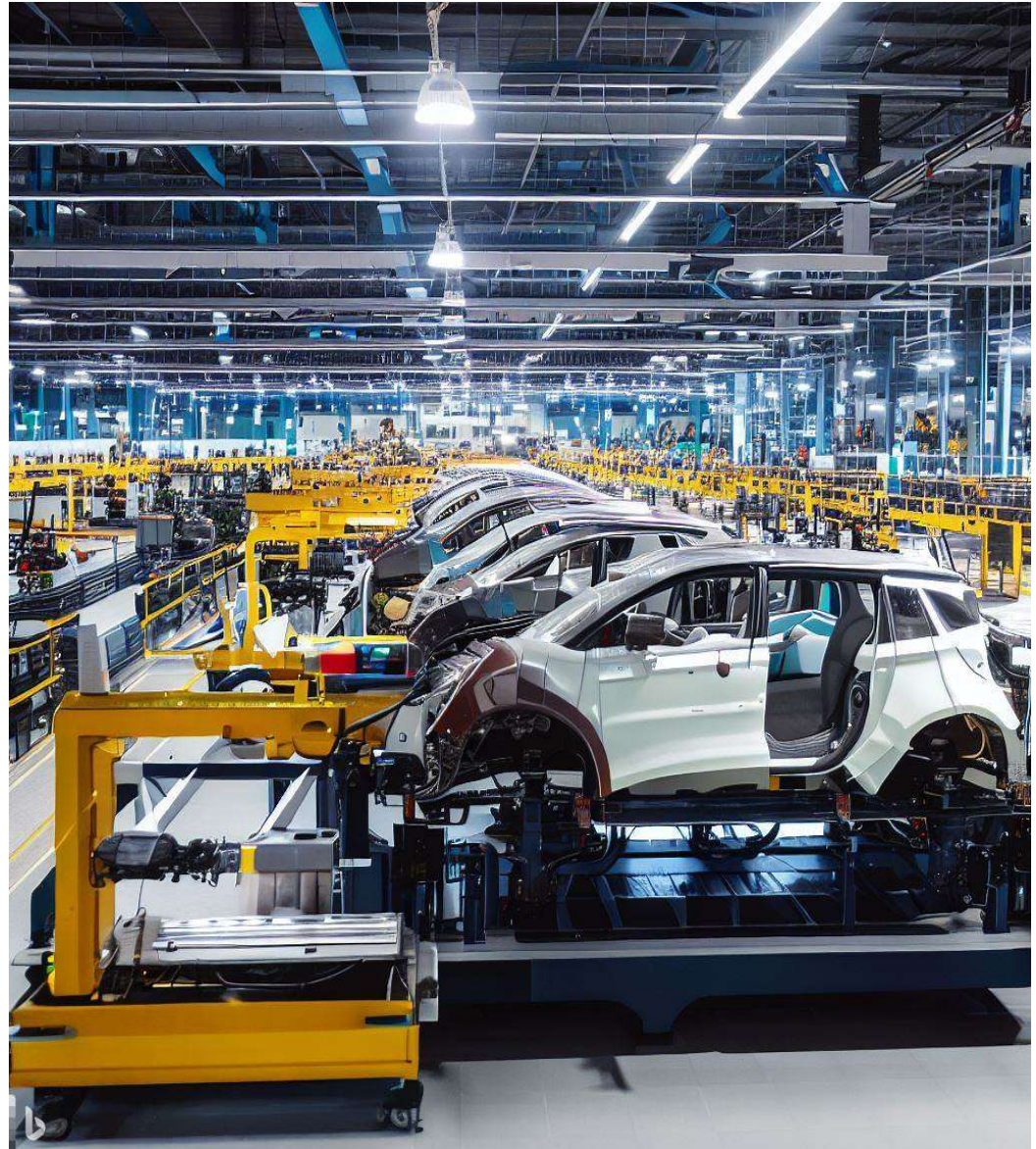
IF  
YOU HAVE A  
USUFRUCT  
FOR REAL  
PROPERTY  
LIKE AN  
ASSEMBLY  
PLANT  
AND





**IF  
YOU HAVE  
PERSONAL  
PROPERTY  
LIKE MACHINERY  
AND EQUIPMENT**

**THEN  
YOU ALSO NEED A  
BAILMENT FOR  
THE PERSONAL  
PROPERTY**



# LEASEHOLD VALUATION

THE "FEE"  
(LEGAL TITLE;  
LESSOR'S INTEREST)



A LEASE  
SEPARATES THE  
BUNDLE INTO  
TWO  
SEPARATE, AND  
DIFFERENT,  
INTERESTS IN  
THE PROPERTY



ESTATE FOR YEARS  
(LESSEE'S INTEREST)

Not taxed when  
the lessor is a  
development  
authority.

Make the value  
in each year  
match the  
year's taxability  
percentage.

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# USUFRUCT



**THE LEASE  
DOES NOT  
SEPARATE  
THE  
BUNDLE**

a simple contractual right to possess and enjoy the use of the project's real estate

**THE "FEE"  
(LEGAL TITLE;  
LESSOR'S INTEREST)**

Not taxed when the lessor is a development authority.

No tax because no property interest to tax. But contract payments can be required (PILOTs).

**USUFRUCT  
(LESSEE'S INTEREST)**



# BAILMENT

“As applied to **personalty**, an estate for years differs from a contract of hiring, which is a bailment conveying no interest in the property to the bailee but merely the right of use.” (Emphasis supplied.) OCGA § 44-6-101. “A bailment is a delivery of goods or property upon a contract, express or implied, to carry out the execution of a special object beneficial either to the bailor or bailee or both and to dispose of the property in conformity with the purpose of the trust.” OCGA § 44-12-40. “[A] bailment relationship is created when one party is involved in an undertaking for a consideration to safeguard the personal property of another and exercises complete dominion at all times over the property.” *5 Park 'N Go of Georgia, Inc. v. U.S. Fid. & Guar. Co.*, 266 Ga. 787, 790 (471 SE2d 500) (1996).<sup>12</sup>



April 28, 2023  
In the Court of Appeals of  
Georgia

A23A0574. JOINT  
DEVELOPMENT AUTHORITY  
OF JASPER COUNTY,  
MORGAN COUNTY,  
NEWTON COUNTY AND  
WALTON COUNTY v.  
McKENZIE et al.

A23A0596. STATE OF  
GEORGIA v. McKENZIE et  
al.



# BAILMENT

The JDA and the State both allege the same enumerations of error, specifically, that the superior court erred (1) in denying validation of the bonds based on improper consideration of the Project's economic feasibility; (2) in denying validation of the bonds because of concerns that local infrastructure costs may offset the Project's benefits; (3) in denying validation of the bonds on the ground that the Bond Resolution waived performance audit requirements; (4) in finding that the rental agreement between the parties does not create a bailment for hire; and (5) in finding that the rental agreement does not create a usufruct. For the reasons outlined below, we affirm the superior court's finding that the nature of Rivian's interest in the equipment of the Project is not a bailment for hire. We reverse the superior court as to its other findings.

## TURNING POINTS

1. Free right to dispose of project personal property (up to \$15 million).
2. Free right to regain title to project personal property.



# ALTERNATIVES?

These possibilities are few, qualified and subject to limitations and/or issues.

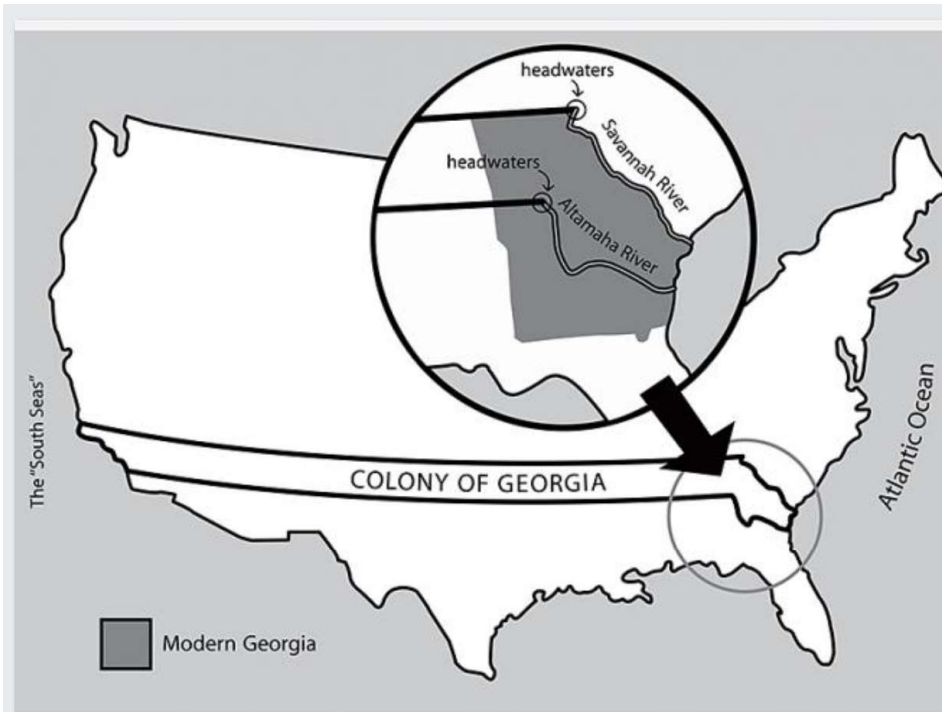
POSSIBILITY	HOW IT WORKS	ISSUES
A few Local Constitutional Amendments (LCA)	Direct abatement	approximately 6 LCAs, LCAs no longer permitted, usually manufacturing only, low investment ceiling
A few Constitutional Development Authorities	Usually combined with bonds for title, a very few use standalone sale-leasebacks	Very few LCAs with certain language, LCAs no longer permitted, often industrial authorities, if standalone leaseback then problematical because of issues including governmental mission, "gifts and gratuities", etc.
Enterprise Zones	Statute authorized by Constitution, O.C.G.A. §36-88-1 <i>et seq.</i>	Intended for distressed urban areas, eligibility requirements, abatement caps, inapplicable to school taxes and taxes to repay bonded indebtedness

# CAN'T- CONFER "GIFTS OR GRATUITIES"

Where did  
*that* come  
from?



# GEORGIA WAS ONCE THE LARGEST STATE



Georgia's original English land grant went westward across the country from the headwaters of the Savannah and Altamaha Rivers.

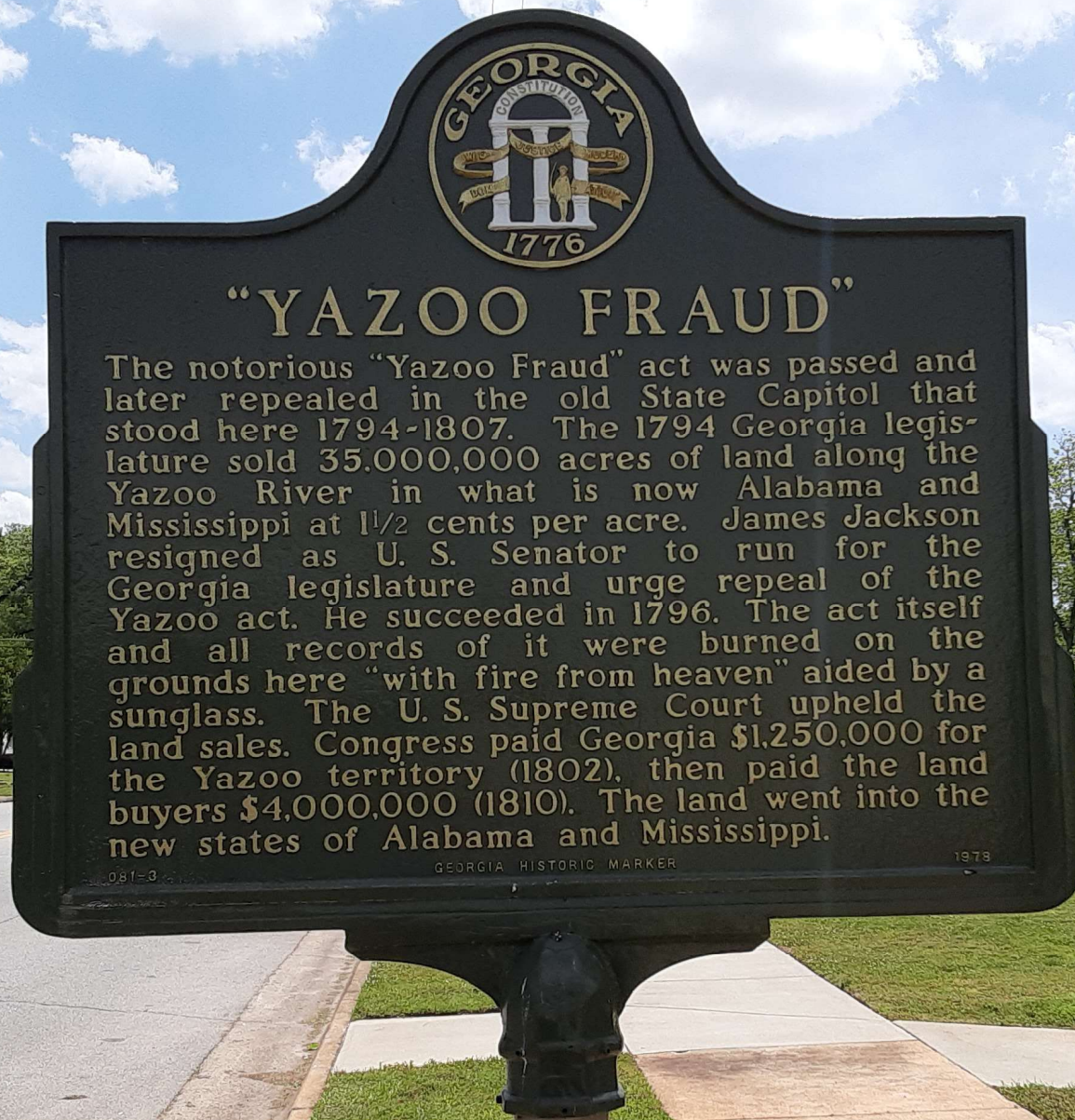


A later English map of the State of Georgia in the 18th century showing Georgia's borders extending westward to the Mississippi River including the states of Alabama and Mississippi.

map credit: "Vanishing West Georgia" Facebook Group



# BUT NOT AFTER SOME "GIFTS OR GRATUITIES" WERE MADE



## "YAZOO FRAUD"

The notorious "Yazoo Fraud" act was passed and later repealed in the old State Capitol that stood here 1794-1807. The 1794 Georgia legislature sold 35,000,000 acres of land along the Yazoo River in what is now Alabama and Mississippi at 1½ cents per acre. James Jackson resigned as U. S. Senator to run for the Georgia legislature and urge repeal of the Yazoo act. He succeeded in 1796. The act itself and all records of it were burned on the grounds here "with fire from heaven" aided by a sun-glass. The U. S. Supreme Court upheld the land sales. Congress paid Georgia \$1,250,000 for the Yazoo territory (1802), then paid the land buyers \$4,000,000 (1810). The land went into the new states of Alabama and Mississippi.

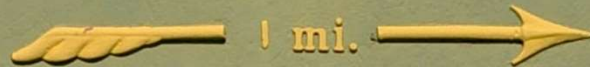
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GEORGIA HISTORIC MARKER

1978



## GOVERNOR MATHEWS' HOMESITE



George Mathews born in Va. in 1739, of Irish descent, lived in this area then known as "Goose Pond" from 1785. His home since burned. He won distinction fighting Indians in the N.W. Ter. and in 1775 became a Col. serving under Washington at Brandywine & Germantown. He came to Oglethorpe Co. in 1785 and after but one years residence was elected both Governor and Congressman. Re-elected in 1793 he signed the "Yazoo Act." In 1811 he was appointed by Pres. Madison U. S. Commissioner to negotiate the annexation of Florida. He died in Augusta Aug. 30, 1812 & is buried there.

# YOU CAN'T- "GIVE STUFF AWAY" BUT YOU CAN- MAKE A BARGAIN

More on that  
under  
*"cost/benefit  
and "but  
for" issues"*

**"I PUT JUST ENOUGH  
INCENTIVES IN THIS DEAL!"**



# STANDALONE LEASEBACK "GIFT OR GRATUITY"?

public gets...  
\$10?

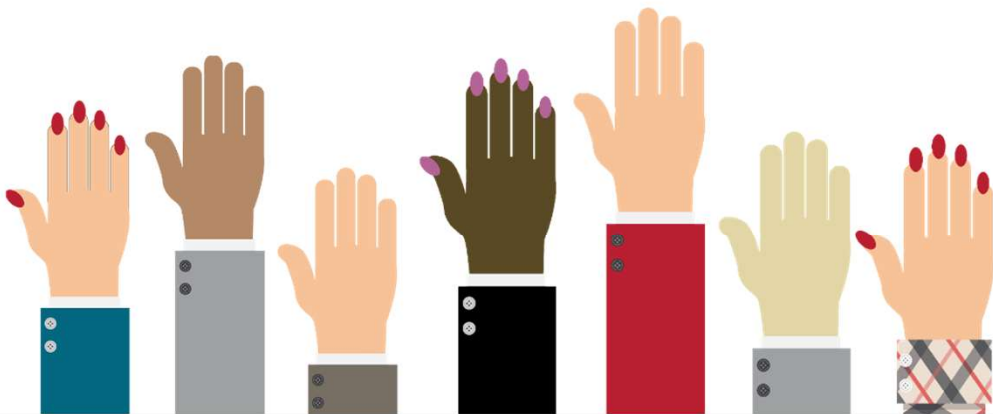
anything else?

bargain or  
gratuity-  
how do you  
know?  
how do  
you prove it?



company gets  
occupancy  
without cash  
rent and title  
back without  
cash payment

HERE'S A **QUESTION** FOR YOU-  
WHAT IS ONE WORD THAT STARTS WITH A "Y" AND IS WHY  
GEORGIA PROHIBITS "GIFTS AND GRATUITIES?"



# *the “bonds for title” structure*

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why or why not use it



# ADVANTAGE GEORGIA- WITH BONDS FOR TITLE

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In Georgia, this incentive is-

."abatement"

.discretionary

."local option"

- **not granted by a specific statute**

- **results from financial engineering**

.The incentive is negotiable

# ADVANTAGE GEORGIA- WITH BONDS FOR TITLE

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- GEORGIA HAS 159 COUNTIES AND MANY CITIES
  - GMA currently represents 537 cities
- SO, THERE ARE MANY WAYS THAT PROPERTY TAX "ABATEMENT" IS DONE IN GEORGIA
- TAKE-AWAY
  - IT'S NOT REALLY "ABATEMENT"
    - THAT'S A MISNOMER
- IT'S REALLY PROPERTY TAX SAVINGS
- BUT IN THIS PRESENTATION, WE'LL CALL IT "ABATEMENT", TOO
- JUST DON'T GET CONFUSED



# ADVANTAGE GEORGIA- WITH BONDS FOR TITLE

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- UNDERPINNINGS OF THE TRANSACTION
  - TITLEHOLDER (PUBLIC BODY) NEEDS TO BE EXEMPT FROM PAYING PROPERTY TAX OR PROPERTY NEEDS TO BE EXEMPTED
  - STILL NEED LEASE TO COMPANY
  - LEASE POTENTIALLY TAXABLE
- THE UNDERPINNINGS BASICALLY AMOUNT TO HAVING THE RIGHT STRUCTURE IN PLACE THAT SUPPORTS THE PROPERTY TAX INCENTIVE LEGALLY
- Note- Special Assessments are different. An assessment can be a fee, an assessment, or an *ad valorem* property tax. An assessment is based on something other than the value of property. So, fees and assessments are not subject to “abatement.”

# ADVANTAGE GEORGIA- WITH BONDS FOR TITLE

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- THE BONDS FOR TITLE STRUCTURE IS A COMMON THREAD IN ANY COMMUNITY
- BUT HERE'S WHAT CAN VARY FROM COMMUNITY TO COMMUNITY
- THE METHODOLOGY
  - LEASEHOLD VALUATION
  - NONTAXABLE LEASE (USUFRUCT/BAILMENT)
- THE TERMS AND CONDITIONS OF THE INCENTIVE

# ADVANTAGE GEORGIA- WITH BONDS FOR TITLE

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- Depending on the incentives structure, some or all of the following issues will be negotiable-
  - The percentage and duration of the “abatement”
  - What property is eligible
  - Whether existing investment and/or investment already on the tax digest (not always the same) can be included
  - The start date and treatment of any CIP (Construction in Progress)
  - More

# ADVANTAGE GEORGIA- WITH BONDS FOR TITLE

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- DEPENDING ON ABATEMENT STRUCTURE USED, LEASE MIGHT ACTUALLY NOT BE SUBJECT TO PROPERTY TAX
  - This is the usufruct/bailment structure; more on that later
- IF LEASE ISN'T TAXABLE, THEN SOME DOORS OPEN
  - 100% "ABATEMENT", OR
  - PAYMENTS IN LIEU OF TAXES (PILOT PAYMENTS)
- CONTRACTUAL PILOT PAYMENTS ARE OUTSIDE NORMAL PROPERTY TAX RULES
- SO, THEY ARE GOVERNED BY CONTRACT (PILOT AGREEMENT)
  - "PILOT RESTRICTION ACT" MIGHT ALSO APPLY
    - O.C.G.A. §36-80-161
  - DOES NOT APPLY TO NORMAL BONDS FOR TITLE STRUCTURES

# TRANSACTION OR NO TRANSACTION

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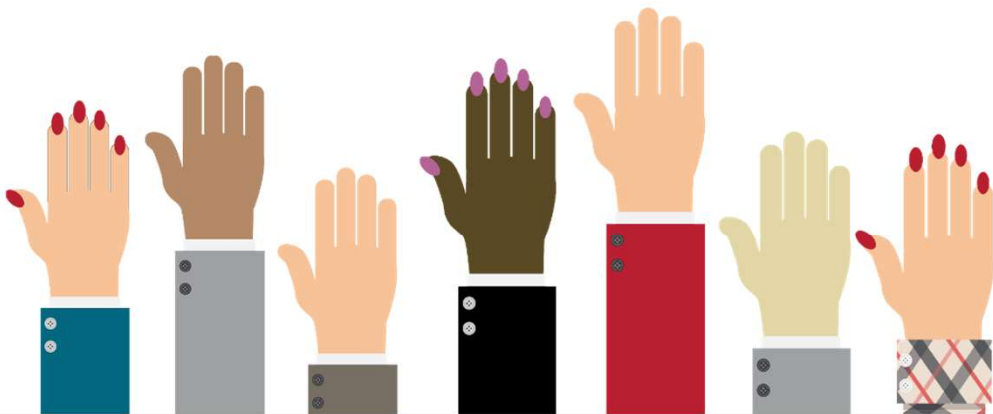
- IN SOME STATES, STATUTORY PROPERTY TAX ABATEMENT IS AUTHORIZED
  - example, Alabama: "To receive an abatement of sales and use taxes, property taxes, and/or mortgage and recording taxes under Chapter 9B and/or Chapter 9G of Title 40, Code of Alabama 1975, the law requires that certain actions must be taken by the private user, the granting authority, the Department of Revenue, local taxing authorities and/or the Governor." <https://www.revenue.alabama.gov/tax-incentives/tax-abatement-procedures/>
- OTHER STATES ARE TRANSACTION STATES LIKE GEORGIA
  - Some examples from personal experience or anecdotal: AR, KS, LA, MO, NM, NY, TN, TX (now lapsed), etc.
- THEY HAVE THE SAME REASON FOR DOING THIS THAT GEORGIA DOES- THEIR CONSTITUTIONS

# TRANSACTION OR NO TRANSACTION

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- THE EXPERIENCE IN A NON-TRANSACTION STATE IS OFTEN LIKE A BOND DEAL WITHOUT A BOND, BECAUSE OF THE EXTENSIVE DOCUMENTATION AND PROCESS THAT IS NECESSARY
- A NON-TRANSACTION STATE MIGHT OR MIGHT NOT HAVE SOME FLEXIBILITY BUILT INTO THE PARAMETERS FOR ABATEMENT, BUT WILL NOT HAVE THE FLEXIBILITY THAT A TRANSACTION STATE LIKE GEORGIA HAS TO NEGOTIATE THE PARAMETERS ON THE COMMUNITY LEVEL

HERE'S A **QUESTION** FOR YOU-  
NAME ONE OF THE POINTS THAT ARE NEGOTIABLE  
WHEN A COMMUNITY IS OFFERING  
PROPERTY TAX "ABATEMENT" AS AN INCENTIVE  
IN GEORGIA?



*“bonds for title”  
the process*

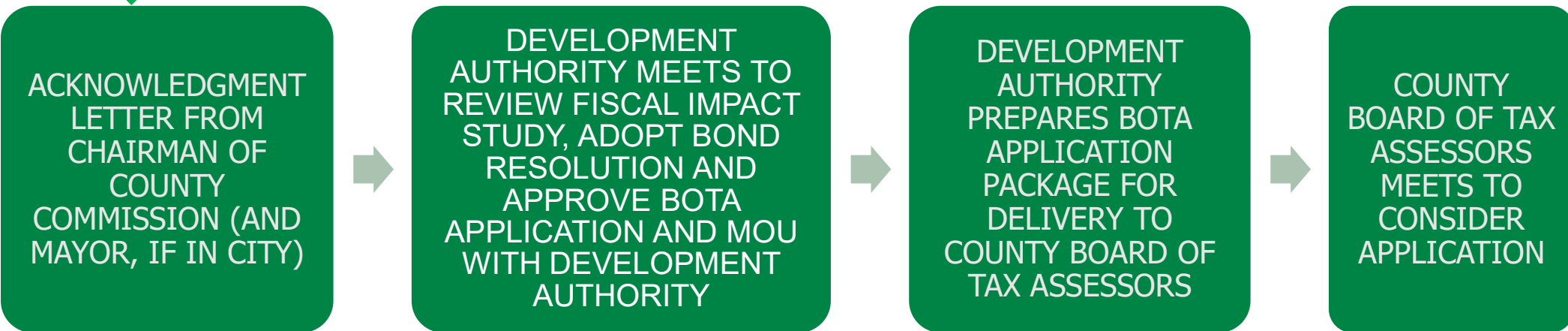
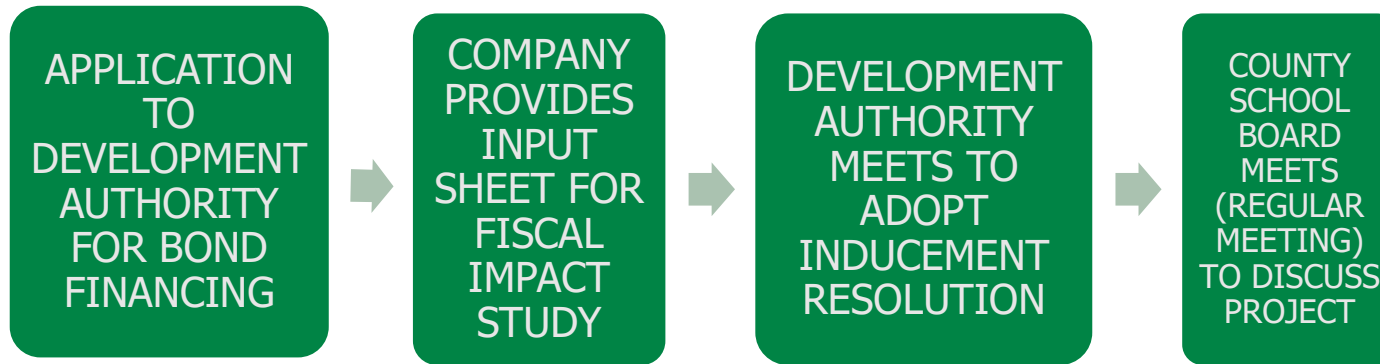
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who is or is not involved





# BONDS FOR TITLE PROCESS-EXAMPLE



# *cost/benefit and “but for” issues*

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who addresses these issues and how



# IF A PROJECT IS LARGE OR CONTROVERSIAL OR IF "BUT FOR" IS AN ISSUE

If a development authority has a written incentives policy,  
the development authority will need to apply it if the project is within its scope,  
exempt the project, if it is beyond the scope of policy,  
and justify what it is doing, regardless



# *insights into “abatement”*

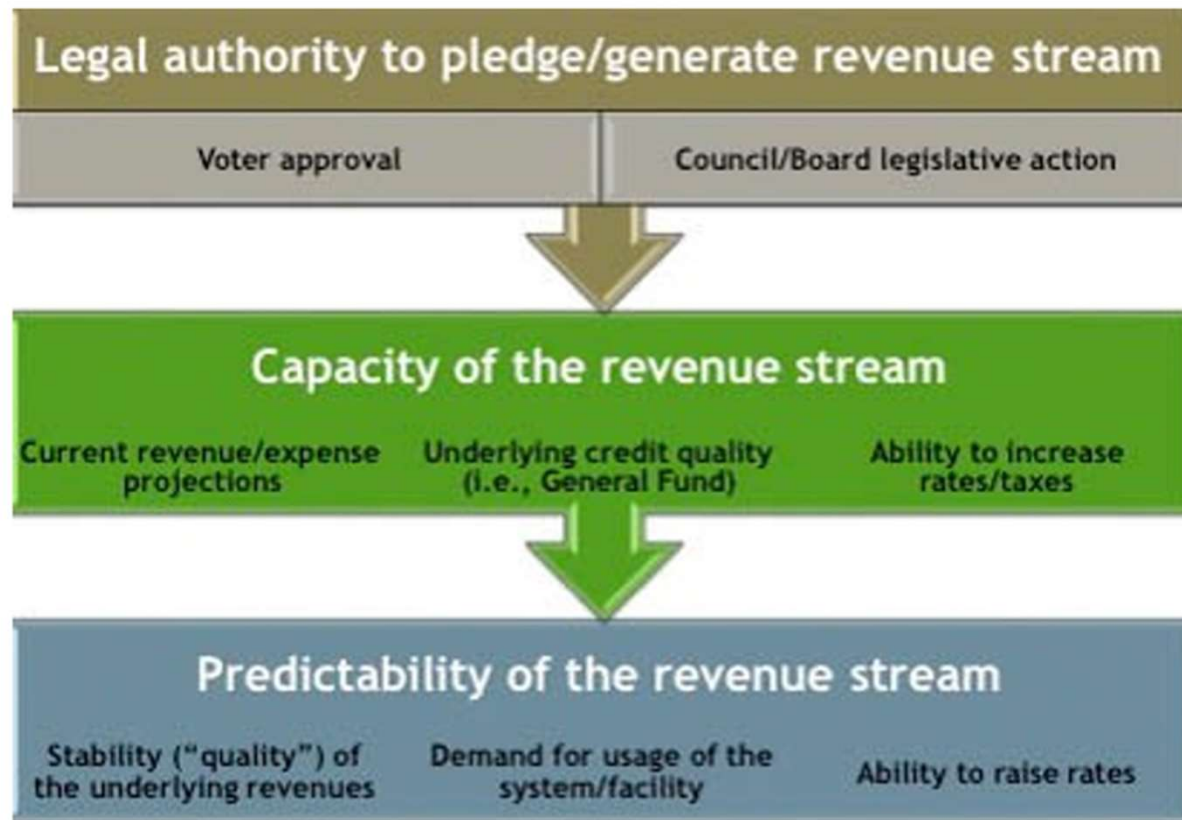
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- underwriting of bond transactions
- how property tax “abatement” can be “monetized”



## Step III: Assessing the “Finance Ability” of the Project

All portions of the capital stack that rely on the monetization of future revenue streams are subject to critical review and assessment.



Slide Credit: Terminus Securities

## Ways Municipalities Fund Projects

Cash (“Pay-As-You-Go”)	Bond Financing	Federal and State Grants or Loans
<ul style="list-style-type: none"><li>• Small and recurring capital projects</li><li>• Projects build slowly over time</li><li>• Future Council flexibility</li><li>• Opportunity cost of funds</li><li>• Easiest source of money</li></ul>	<ul style="list-style-type: none"><li>• Large capital expenditures</li><li>• Acquisition Projects</li><li>• Future revenues from Project available for debt service</li><li>• Interest and financing costs</li><li>• Staff resources required for financing</li></ul>	<ul style="list-style-type: none"><li>• “Free” money with strings</li><li>• May require oversight or through review</li><li>• Application process can be drawn-out and competitive</li><li>• Timing of funds can be uncertain</li></ul>

Slide Credit: Terminus Securities

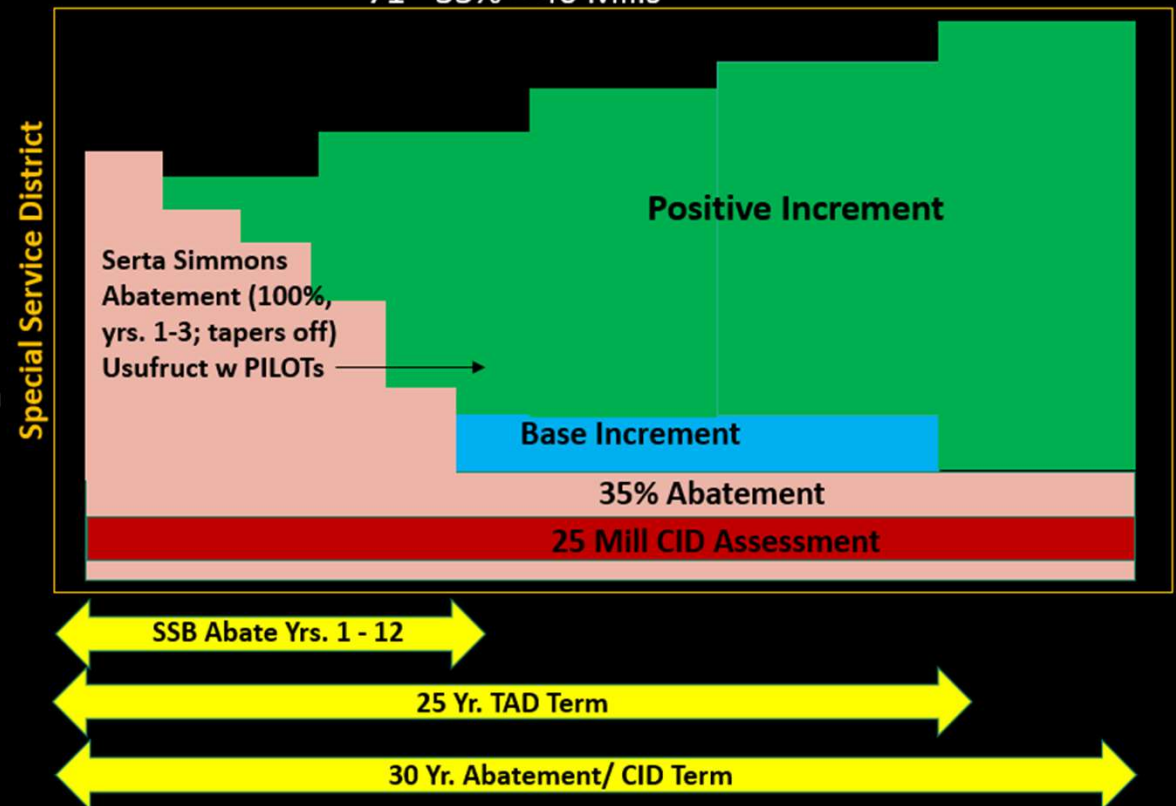
# FIRST EVER COMMUNITY IMPROVEMENT DISTRICT BOND ISSUE: ASSEMBLY PROJECT IN DORAVILLE

- TAD created 7/2014; DeKalb School District declines to participate
- Assembly CID created 8/2016; levies a 25 mill assessment (Constitutional max)
- DDA issues \$1.5 bn. in revenue bonds to provide a 35% “abatement,” 30 yr. term for the entire site in 8/2016
- 4/2017, CID issues \$53 million in obligated revenue bonds (a first in GA), monetizing 30yrs worth of the 25 mill; City agrees to help service bond debt with the TAD’s positive increment.
- City creates SSD for “infrastructure services” for the site/ CID at request of the bonds investor; levied only in the event of default, localizing the obligation
- SSB seeks \$4.5 million in incentives; the DDA provides the requested tax savings by going deeper in years 1-12 of the 30 year, 35% abatement
  - PILOT payments to the TAD fund; bond investor requests “weaponized” PILOT payments (lien status)

## DeKalb Tax Bill

County	12
Schools	21
City	13
CID	25

$$71 - 35\% = 46 \text{ Mills}$$



Slide Credit: Luke Howe



## Tax Abatement Transparency

Governments should disclose the appropriate information and adhere to the correct guidelines in its letter of transmittal, have finance staff initiate appropriate communication and relationships, and establish same relationships with other appropriate entities.



For accounting and financial reporting purposes, a *tax abatement* is an agreement whereby a government agrees to forgo tax revenues to which it is otherwise entitled in exchange for a promise by the counterparty to the agreement to take specific future actions that will contribute to the government's economic development, or which otherwise benefits the government or its citizens (GASB Statement No. 77, *Tax Abatement Disclosures*). GASB Concepts Statement No. 3, *Communication Methods in General Purpose External Financial Reports That Contain Basic Financial Statements*, indicates that the notes to the financial statements should *not* include "either (a) subjective assessments of the effects of reported information on the reporting unit's future financial position or (b) predictions about the effects of future events on future financial position." (paragraph 37). Moreover, information presented in the notes to the financial statements must be "essential to a user's understanding of those financial statements" (paragraph 36). Thus, governments may find themselves effectively prevented from providing certain highly useful information concerning the justification and expected long-term benefits of tax abatements in the notes to the financial statements. Consequently, if the annual comprehensive financial report of a government is to provide a complete picture of tax abatement transactions to the citizenry, the governing body, rating agencies, and other key stakeholders, additional information concerning the justification and expected long-term benefits of tax abatements may need to be provided elsewhere in the report.

The letter of transmittal, located in the Introductory Section of an annual comprehensive financial report, provides a government the opportunity to include information regarding its current economic condition, which includes the subjective analysis of its projected future financial direction. Therefore, the letter of transmittal is well suited to provide the justification and expected long-term benefits of tax abatements.

# GFOA





# *public revenues from an economic development project*

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revenues that are unaffected or even increased when a project gets “abatement”



## STUDIES

- The two most commonly used economic development study tools in Georgia now are probably LOCI and IMPLAN.
- LOCI stands for “Local Impact”.
- According to Georgia Tech’s Center for Economic Development Research (CEDR), LOCI “estimates how a proposed project or action impacts your community’s fiscal outlook. It describes the value of the project by showing how the project affects your community’s revenue and service needs.”  
<https://cedr.gatech.edu/economic-and-fiscal-impact-analysis/#:~:text=We%20invented%20the%20model%20that,impacts%20your%20community's%20fiscal%20outlook.>
- Here is an excerpt from a typical LOCI analysis:  
“Given the new revenues (the bulk of which are property and sales taxes) the net present value (NPV) of the net fiscal benefit of this project over the next [redacted] years is approximately \$[redacted] million to [redacted] County.”



• CEDR refers to IMPLAN as the “industry standard.” It describes IMPLAN as measuring “the impact of an industry in direct terms, such as jobs and payroll and describes economic impacts at the county, region, and state levels. It can build on the LOCI™ fiscal impact analysis to estimate regional multipliers, showing the indirect and induced economic impacts of the industry.” *Id.*

## Annual Totals Estimated Economic Impacts

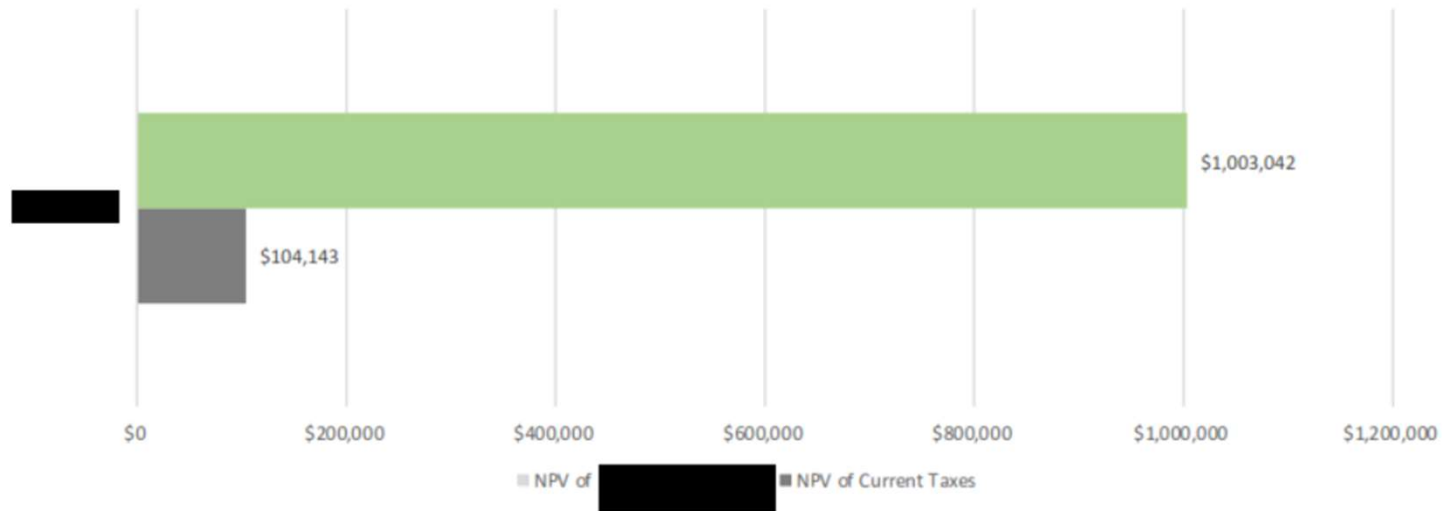
	Annual Jobs	Annual Payroll	Annual Output
Direct			
Indirect/Induced		redacted	
Total			

- Industries most affected by indirect/induced jobs during this project include:
  - Office administrative services
  - Retail - Food and beverage stores
  - Retail - Clothing and clothing accessories stores
  - Facilities support services
  - Retail - General merchandise stores

# Study by another economist of a city mixed-use project

In the full **20 years** of the forecast, the project's net present value (NPV) far exceeds what the city gets from current taxes on the property. With the abatement gone after year eight, net revenues are positive each year and the NPV grows to slightly over \$1 million.

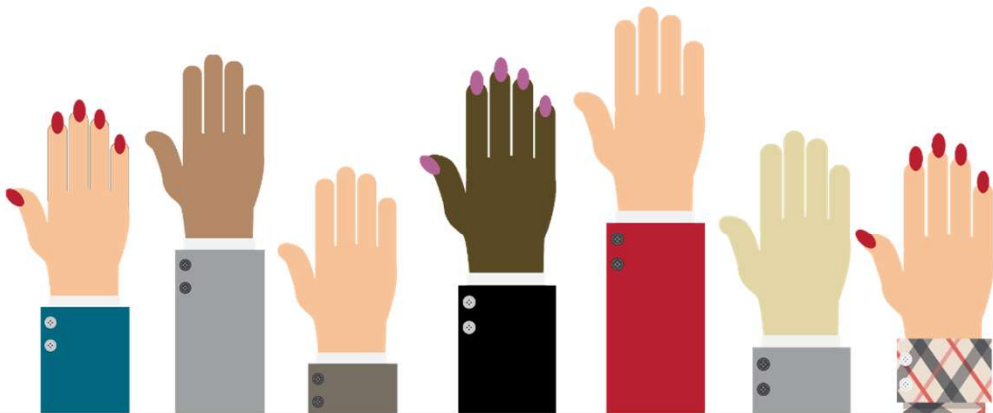
Comparison of Projected Revenue:  
Current Taxes against Project Net Revenues over 20 Years



Fiscal Impact of a Mixed-Use Project in [redacted] Georgia

# QUESTIONS?

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# Thank You!



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