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ANDREW YOUNG SCHOOL OF POLICY STUDIES
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SUBJECT: Analysis of HB 1323, Infrastructure Development Districts

Prepared by John Matthews

A proposed constitutional amendment, HR 1339, and enabling legislation, HB 1323, will allow creation of Infrastructure Development Districts in Georgia. Infrastructure Development Districts will be similar to Community Development Districts already enabled and used in Florida. This paper examines issues associated with Florida's existing and Georgia's proposed districts.

SB 414 and HB 1323 are similar bills; in many places their provisions are identical. Both allow, after adoption of a constitutional amendment, creation of a new type of development district. SB 414 is called the Rural Georgia Economic Development Act of 2006; its districts are called Residential Community Improvement Districts. HB 1323 is called the Georgia Smart Infrastructure Growth Act of 2006; its districts are called Infrastructure Development Districts. SB 414 has been tabled, but HB 1323 has been sent to the Senate along with its companion constitutional amendment, HR 1339.

The proposed law is modeled after Section 190, Community Development Districts, of Florida's Statutes, adopted in 1980. Community Development Districts (CDD) have become very popular; the Florida Department of Community Affairs currently lists 381 active CDDs (Florida Department of Community Affairs). Some claim they have become the most popular development tool in Florida for new home construction (Van Sickler and Zink 2003) and construction of gated communities (Van Sickler 2005). In Florida, these districts are governed by a five member board chosen by the developer. The districts, essentially general purpose local governments, issue tax exempt bonds to pay for roads and utilities and amenities such as clubhouses, pools, tennis courts, and golf courses (Van Sickler and Zink 2003).

Florida's CDDs are currently receiving a noticeable amount of criticism because of the way they are governed. The board, which decides on projects to build and commits all property in the district to taxes and debt payments, is not elected by individual home owners, but rather is appointed by the developer. Developer appointed board members do not have to stand for election by individual home buyers until 50 percent of the land is sold; and then only one of five is elected. Not until 80 percent of the land is sold are a majority of the seats subject to general election. Furthermore, district electors do not vote on the basis of one person one vote, but rather one acre one vote, ensuring the developer maintains total control through a long build-out period. One developer has gone so far as to create a development with a "family" of five CDDs. One district is entirely commercial; there are no individual owners. The developer's representatives will never stand for election. Early agreements in the family of districts ceded control of the housing CDDs to the commercial CDD (Gorman 2003).

CDDs in Florida were created to provide favorable financing for developer's subdivision infrastructure and help shift the burden of financing off-site roads and utilities from counties and municipalities to developers using long term tax free municipal bonds. For example:

- A developer beginning construction of a 300 acre phase of a large development would have to borrow a large sum of money for site preparation and infrastructure (Burton 2000). For the sake of illustration, let's say the costs are \$13,000 per acre. The borrowing is \$3,900,000. The loan will typically be a short term construction loan at relatively high interest; let's say 3 years at 12 percent compounded monthly. The monthly payment is \$129,536 (that is a big cash flow problem for the developer).
- At the end of three years all the lots are sold. The developer has made a total repayment on the loan of \$4,663,289, all of which is added to the price of lots. If the lots are one acre there are 300 lots. If each buyer gets financing for 30 years at 7.5 percent, they pay off their share of the \$4,633,289 site cost at a rate of \$108.69 per month for 30 years.
- If the developer did not have to use short-term, high interest financing, but instead could get a long term tax exempt bond, the cost is quite different. At tax exempt terms and rates, let's say 3 percent for 30 years, the monthly cost of the same borrowing of \$3,900,000 is \$16,442.
- There is a cash flow saving of over \$113,000 a month during build-out and sales. This reduced cash flow is a large benefit to the developer and also substantially reduces the developer's risk.
- At the end of three years, all the lots are sold and the developer has paid not \$4.66 million P&I for site development, but only \$591,932. This reduced cost is passed into the cost of lots; the monthly payment per lot – 30 years at 7.5 percent - is \$13.79. Lot purchasers must also continue to pay their share of the original long-term tax exempt bond; \$54.81 per month. The total monthly long-term cost of site development to final buyers is \$68.60 cents, not \$108.69.
- The same applies to off-site improvements such as road widening and sewer connections. Florida counties have extensive development impact fee programs. A developer facing a \$1 million impact fee charge would save over \$27,000 a month

(using the same comparison of rates and terms) using long term tax exempt bonds for financing the impact fee charge.

Developers get very favorable cash flow benefits. The final long term cost of infrastructure is passed along to final home buyers as long term, low interest, tax exempt bonded debt instead of short term high interest debt folded into the final cost of the home, and local governments get off-site infrastructure built with developer contributions in the form of impact fees instead of increased general property taxes.

Is this free money? No. Tax revenues to the Federal and State coffers are reduced. Taxes are no longer paid by lenders on the interest proceeds of their lending to developers. If taxes are raised to cover the reduction, all United States taxpayers and the individual state's taxpayers pay for the benefits of the CDD. If, on the other hand, public services are reduced due to reduced government revenue, citizens who would have received services wind up paying for the benefits enjoyed by participants in the CDD in the form of reduced services.

- Some economic and cost constraints are removed from the development process. Up-scale gated communities are over-produced.
- General taxpayers, most of whom cannot afford the housing being produced, bear the cost, but are excluded from use of the private facilities financed with public funds.

Georgia's proposed legislation mirrors Florida's statute. Under HB 1323 and its companion constitutional amendment (HR 1339)*, developers and landowners are allowed to petition a "host government" – the county, city, or combination of counties and /or cities in which the land is located – for creation of an Infrastructure Development District.** All land owners in the affected area must sign the petition. If the petition is approved by the appropriate government, a district is created (36-93-3).

- Note: No more than one land owner is required.

A district is governed by a five member board, four of whom are appointed in the petition (the appointees must be 18, resident of Georgia, and citizen of the U.S., but need not live anywhere near the district). Any subsequent elections for board members and bond referenda are held on the basis of one vote per acre of land owned.

- Note: Purchasers of individual homes in a district will not, under the legislation, have power to vote on three board positions (three is a majority of the board) until 80 percent of the land in the district has been sold (36-93-5).

The Infrastructure Development Districts that will be enabled by HB 1323 are:

- General purpose governments and might even have broader powers than city and county governments. (At 36-93-4(2) the bill declares that an Infrastructure Development District is not a general purpose government, but the following listing of powers and abilities seems to contradict that assertion. Note that the list contains

some powers that municipalities normally do not have, such as establishment of deed restrictions and construction of schools.) Districts may:

- Undertake projects including any development, improvement, property, utility, facility, works, enterprise, or service undertaken or established in accordance with the law (36-93-2(17)).
 - §36-93-8 specifies that districts may “finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems, facilities, and basic infrastructures” for the following:
 - Indoor and outdoor recreation facilities.
 - Water systems and water management systems.
 - Sewers and sewage treatment facilities.
 - Bridges, streets and culverts.
 - Security (but cannot exercise police power).
 - Establish deed restrictions (but cannot do zoning).
 - Fire facilities and operation.
 - Pest control.
 - Waste collection and disposal.
 - Schools.
 - An Infrastructure Development District may also (36-93-15)
 - Levy and assess ad valorem taxes.
 - Establish and collect fees and charges.
 - Establish and collect special assessments which may be used to retire debt or used for maintenance and operation of facilities and services.
 - They do not have power of eminent domain.
- The provisions for special assessments are interesting; they seem to obviate the idea of uniform taxation. For example, 36-93-15(b) provides for “maintenance special assessments”. Only lands benefited by maintenance of a facility are assessed for the maintenance and are assessed in proportion to their pro-rate benefit from the maintenance.
 - This same idea of non-uniform taxation is also found at 36-93-26. Any Districts which exceeds 1,500 acres may divide itself into sub-areas and “designate certain property of the district to pay for improvements, facilities, or services that primarily benefit that designated area or property and do not generally and directly benefit the district as a whole.”
 - §36-93-12 also gives Infrastructure Development Districts ability to issue tax exempt bonds.
- But “The district may incur debt without regard to the requirements of Article IX, Section V of the Constitution or any other provision of law prohibiting or restricting the borrowing of money or the creation of debt by political subdivisions of this state, which debt may be backed by the full faith, credit, and taxing power of the district but shall not be an obligation of this state, the local government or governments that approved the district, or any other unit of government of this state;” – This means there is no debt limit.

- Bond referenda are still required, but electors are still one acre one vote (36-93-13(d)).

Georgia's proposed HB1323 will allow establishment of Infrastructure Development Districts very similar, if not identical to, Florida's Community Development Districts. The CDDs have become very popular in Florida, but they have also become very controversial. First, it is charged they are non-democratic in that they are governed by developers, not residents. Second, they use tax exempt public financing to reduce the cost of private development (sometimes high end gated private communities), meaning that the entire public pays for benefits available to only a few. Infrastructure Development Districts will exercise the powers of a general purpose local government but be developer controlled, will enjoy public financing for private benefit, and will be exempt from constitutional restrictions on debt.

Notes

*Although Community Improvement Districts are allowed under Article IX, Section VII of the Georgia Constitution, but Article IX, Section VII(3)(c) restricts their use to non-agricultural, non-forestry, and non-residential areas. Consequently, a constitutional amendment is needed to permit creation of the new type district.

**In Georgia, a district is generally, a single purpose local government with the power of taxation, such as a school district. General purpose local governments with taxation are generally municipalities (Hepburn 1991).

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Author(s): John Matthews

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