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LOCAL GOVERNMENT Organization of County Government: Amend Title 36 of the Official Code of Georgia Annotated, Relating to Local Government, so as to Provide for a Comprehensive Program for the Creation of Infrastructure Development Districts; Provide for a Short Title; Provide for Definitions; Provide for the Powers, Duties, and Authority of Infrastructure Development Districts; Provide for a Board to Administer Infrastructure Development Districts; Provide for Appointment or Election of Members of an Infrastructure Development District Board; Provide for Fees and Assessments; Provide for the

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LOCAL GOVERNMENT

Organization of County Government: Amend Title 36 of the Official Code of Georgia Annotated, Relating to Local Government, so as to Provide for a Comprehensive Program for the Creation of Infrastructure Development Districts; Provide for a Short Title; Provide for Definitions; Provide for the Powers, Duties, and Authority of Infrastructure Development Districts; Provide for a Board to Administer Infrastructure Development Districts; Provide for Appointment or Election of Members of an Infrastructure Development District Board; Provide for Fees and Assessments; Provide for the Debt of Infrastructure Development Districts; Provide for Bonds, Notes, and Other Obligations of Infrastructure Development Districts; Provide for the Form of Bonds; Provide for Consolidation, Termination, or Dissolution of Infrastructure Development Districts; Provide for Notice of the Creation of the District; Amend Chapter 5 of Title 12 of the Official Code of Georgia Annotated, Relating to Water Resources, so as to Change Certain Provisions Regarding Permits for Discharging Pollutants into Waters; to Change Certain Provisions Regarding Permits for Surface-Water Withdrawal, Diversion, or Impoundment; to Change Certain Provisions Regarding Permits for Withdrawing, Obtaining, or Using Ground Water; Provide for Related Matters; Provide a Contingent Effective Date; Provide for Automatic Repeal Under Certain Circumstances; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 36-91-1 to -26 (new); § 12-5-30 (amended); § 12-5-31 (amended); § 12-5-96 (amended)
BILL NUMBER:	SB 200
ACT NUMBER:	372
GEORGIA LAWS:	2007 Ga. Laws 739
SUMMARY:	The Act authorizes the General Assembly to create infrastructure development districts (IDDs) by

general law. An IDD is a geographic area in which developers may issue tax-exempt bonds to finance infrastructure that supports new development inside the district. These new entities will provide a way for local governments experiencing population growth pressures to transfer the cost of financing public infrastructure to the private sector. The Act establishes procedures that allow landowners to petition a local government to create an IDD and, if approved, the procedures for creating a governing board. Most significantly, it provides the governing board with the authority to fund projects and maintain district infrastructure by borrowing money, issuing tax-exempt bonds, and levying assessments on new landowners, without regard to constitutional debt limitations. Senate Resolution 309 is the enabling legislation for Senate Bill 200, and calls for a constitutional amendment that would authorize the Georgia General Assembly to create and regulate Infrastructure Development Districts.¹

EFFECTIVE DATE:

January 1, 2009, contingent upon the ratification of Senate Resolution 309, at the November 4, 2008, general election.

1. SR 309, as passed, 2007 Ga. Gen. Assem. The ballot submitting the proposed amendment will ask, "Shall the Constitution of Georgia be amended so as to authorize the General Assembly to provide by general law for the creation and comprehensive regulation of infrastructure development districts for the provision of infrastructure as authorized by local governments?" *Id.*

History

Georgia is the fourth-fastest growing state in the nation, with 250,000 new residents projected to move into the state every year for the foreseeable future.² This rapid population growth has created a great need for new infrastructure such as roads, sewers, and police stations.³ The expense of providing this infrastructure falls heavily on local governments. Impact fees⁴ do not cover all of the costs associated with new development, like additional schools.⁵ Current city and county residents often object when property taxes are raised to cover the cost of infrastructure that will support new developments.⁶

The challenge of funding new infrastructure without raising taxes has led other rapidly growing states to approve the creation of “development districts.”⁷ Called Infrastructure Development Districts (IDDs) in Senate Bill 200, these new entities intend to make growth pay for itself, especially in cash-poor counties that cannot provide infrastructure quickly enough to keep up with the influx of new residents.⁸ SB 200 establishes the procedures for landowners—usually developers—to petition the appropriate local government to approve an IDD.⁹ Once approved, a governing board is appointed by the petitioners to oversee the build-out of the infrastructure, and to

2. Video Recording of Senate Proceedings, Mar. 27, 2007 at 1 hr., 48 min., 2 sec. (remarks by Sen. Johnny Grant (R-25th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_72682316,00.html [hereinafter Senate Video]; see U.S. Census Bureau, <http://www.census.gov> (last visited June 12, 2007).

3. Senate Video, *supra* note 2, at 1 hr., 48 min., 2 sec. (remarks by Sen. Johnny Grant (R-25th)).

4. “Impact fees are charges levied by local governments on new developments in order to pay a proportionate share of the capital costs of providing public infrastructure to those developments.” JULIAN C. JUERGENSMAYER & THOMAS E. ROBERTS, *LAND USE PLANNING AND DEVELOPMENT REGULATORY LAW* 350 (2003).

5. See O.C.G.A. §§ 36-71-1 to -13 (Supp. 2007).

6. See Video Recording of House Committee on Economic Development and Tourism, Apr. 10, 2007, at 1 hr., 13 min., 30 sec. (remarks by Clint Mueller, Legislative Director, Association County Commissioners of Georgia), http://www.legis.ga.gov/legis/2007_08/house/Committees/economicDev/economicArchives.htm [hereinafter House Committee Video]

7. See *id.* at 0 min., 35 sec. (remarks by Sen. Johnny Grant (R-25th)). According to Senator Grant, seventeen other states have entities similar to IDDs. *Id.* In many states, however, the districts are run by the local governments, not private boards.

8. See Interview with Sen. Johnny Grant (R-25th) (Apr. 20, 2007) [hereinafter Grant Interview]; Dave Williams, ‘Private Cities’ Measure Back Before Lawmakers, GWINNETT DAILY POST, Mar. 4, 2007, at C3.

9. O.C.G.A. § 36-93-3 (Supp. 2007).

manage the finances and operations of the IDD.¹⁰ At the center of all “development district” legislation is the ability of a local government to authorize a district governing board to issue tax-exempt bonds, which pay for the district’s up-front infrastructure needs.¹¹ These bonds are paid off by the new purchasers of land within the district, typically homeowners.

SB 200 was similar to two bills introduced in the 2006 Georgia General Assembly: SB 414, sponsored by Senator Cecil Staton (R-18th),¹² and House Bill (HB) 1323, sponsored by Representative Larry O’Neal (R-146th).¹³ As introduced, SB 414 gave district governing boards the power of eminent domain, did not require board records to comply with the Open Records Act, and provided board members compensation for attending meetings.¹⁴ This bill died in the Senate at the end of the 2006 session.¹⁵ In contrast, HB 1323, the Georgia Smart Infrastructure Growth Act of 2006, specifically stated that IDDs could not exercise powers of eminent domain, and required all district meetings and records to be open to the public.¹⁶ HB 1323 passed the House with 121 votes and bipartisan support.¹⁷ Although it was voted out of the Senate Committee on Economic Development, HB 1323 failed to reach the Senate floor for a vote.¹⁸

HB 1323 was modeled after Florida’s 1985 legislation creating “community development districts.”¹⁹ Florida now has approximately 500 community development districts that together have issued more than \$7 billion in bonds to pay for infrastructure.²⁰ In the 2007

10. O.C.G.A. § 36-93-5(b) (Supp. 2007). The petitioning developer appoints four members of the board, and the approving local government appoints one member. *Id.*

11. *See generally* Uniform Community Development District Act of 1980, FLA. STAT. § 13.190 (2007); TEX. WATER CODE ANN. § 54.001 (2002).

12. SB 414, 2006 Ga. Gen. Assem.

13. HB 1323, 2006 Ga. Gen. Assem.

14. SB 414, as introduced, 2006 Ga. Gen. Assem. It also made board members eligible for enrollment in the Employees’ Retirement System of Georgia. *Id.*

15. State of Georgia Final Composite Sheet, SB 414, Apr. 20, 2006.

16. *See* HB 1323, 2006 Ga. Gen. Assem.

17. Georgia House of Representatives Voting Record, HB 1323 (Mar. 13, 2006), available at http://www.legis.ga.gov/legis/2005_06/votes/hv0879.htm; *see* House Committee Video, *supra* note 6, at 0 min., 35 sec. (remarks by Sen. Johnny Grant (R-25th)).

18. *See* State of Georgia Final Composite Sheet, HB 1323, Apr. 20, 2006.

19. *See* House Committee Video, *supra* note 6, at 0 min., 35 sec. (remarks by Sen. Johnny Grant (R-25th)); *see also* Uniform Community Development District Act of 1980, FLA. STAT. § 13.190 (2007).

20. Phillipa Maister, *Developers Set to Clear Hurdle in the Race for Planned Cities*, FULTON COUNTY DAILY REP., Apr. 16, 2007, at 6.

session, HB 1323 was resurrected by Senator Johnny Grant (R-25th) as SB 200, the Georgia Smart Infrastructure Growth Act of 2007. Similar to 2006's HB 1323, SB 200 added a provision to prohibit IDD in counties where voters have passed caps on property tax rates.²¹

The bill's sponsor, Senator Johnny Grant, said the ten "mostly rural counties" he represents are experiencing population increases as people move east out of Atlanta and west out of Augusta.²² While some developed counties might not want IDDs, the counties in his district do not have the resources to address population growth and need IDDs as an infrastructure financing tool to provide quality infrastructure.²³ He sees rural counties using IDDs to provide infrastructure for large retirement communities that will eventually boost their local tax base.²⁴

Though similar legislation had been discussed in Georgia for a few years,²⁵ the 2007 bill benefited from a massive lobbying campaign by the home-building and real estate industries.²⁶ While some developers touted the virtues of IDDs themselves,²⁷ others hired contract lobbyists to advocate the bill's passage. Graham Brothers Construction Company, a homebuilding company in Dublin, Georgia,

21. O.C.G.A. § 36-93-14(j) (Supp. 2007). The ban now only applies to Muscogee, Richmond, and Houston counties. See Williams, *supra* note 8. Critics say this was to exempt Houston County, home to Oakley Woods, a 20,000 acre tract of land that became controversial in the 2006 governor's race. *Id.* Once owned by timber company Weyerhaeuser, Oakley Woods was sold to a group of real estate developers in 2004, despite being a "top priority for acquisition" by the state Department of Natural Resources. *Id.* Gov. Perdue, whose home is near Oakley Woods, then bought 101 acres of land adjacent to Oakley Woods. *Id.*

22. See Grant Interview, *supra* note 8.

23. House Committee Video, *supra* note 6, at 34 min., 35 sec. (remarks by Sen. Johnny Grant (R-25th)).

24. Grant Interview, *supra* note 8.

25. See Interview with Clint Mueller, Legislative Director, Assoc. County Comm'rs of Ga. (May 4, 2007) [hereinafter Mueller Interview].

26. See Ken Foskett & Walter Woods, *Builders Push for New Way to Grow: Welfare for Developers? Or Boon for Poor, Rural Areas? Tax Bill on 'Development Districts' Could Alter Growth in Georgia*, ATLANTA J.-CONST., Mar. 25, 2007, at A1; Sonji Jacobs, *Private Cities Measure Fails*, ATLANTA J.-CONST., Mar. 27, 2007, http://www.ajc.com/blogs/content/shared-blogs/ajc/georgia/entries/2007/03/27/private_cities.html; Andy Peters, *Measures to Privatize Cities Roil Legislature: Bill Would Allow Private Companies to Build Developments with Limited Government Oversight*, FULTON COUNTY DAILY REP., Mar. 30, 2007, at 1, available at <http://www.georgiawatch.org/news0718.html>; Maister, *supra* note 20.

27. See generally Arielle Kass, *Financing Tool More Useful in Rural Areas*, GWINNETT DAILY POST, Apr. 12, 2007, at A3; Maister, *supra* note 20.

hired House Speaker Glenn Richardson's former chief of staff, Jarrell "Jay" Walker, to lobby for IDD's.²⁸ Walker's consulting firm hired ConnectSouth lobbyists J. Clint Austin and Tony Simon, as well as lobbyist Roy B. Robinson, to promote the bill.²⁹ In 2005, Graham Brothers flew ten influential lawmakers to Florida to show off The Villages, a community development district covering 25,000 acres.³⁰

The Troutman Sanders Public Affairs Group hired Pete Robinson, Robb Willis, and Connell Stafford to lobby on behalf of Temple-Inland, Cousins Properties, Newland Communities, and the Home Builders Association of Georgia.³¹ Mark W. Sanders also lobbied on behalf of Temple-Inland, a pulp and paper company interested in selling its timberland for development.³² Governor Sonny Perdue's former spokesman, Derrick Dickey, was hired by supporters "to give strategic advice."³³

In the summer of 2006, the Association County Commissioners of Georgia (ACCG) held a two-day "study committee" at the Atlanta Regional Commission to evaluate IDD's.³⁴ Bond attorneys, county and city officials, environmental groups, urban planners, and utilities were represented at the meeting.³⁵ The ACCG decided that IDD's would offer a way for poor counties to finance quality infrastructure and expand their tax base, while rapidly growing counties could use IDD's to steer growth to where they wanted it.³⁶ The Georgia Association of Realtors, the Council for Quality Growth, and Georgia's electric membership corporations also formally backed the bill.³⁷

28. Peters, *supra* note 26.

29. *Id.*

30. Foskett & Woods, *supra* note 26.

31. Peters, *supra* note 26. Wendi Clifton also lobbied for Cousins Properties. *Id.*

32. *Id.*; see also Foskett & Woods, *supra* note 26.

33. Foskett & Woods, *supra* note 26.

34. House Committee Video, *supra* note 6, at 1 hr., 12 min., 8 sec. (remarks by Clint Mueller, Legislative Director, ACCG).

35. *Id.*; Student Observation of the Senate State and Local Governmental Operations Committee (Feb. 28, 2007) (remarks by Clint Mueller, Legislative Director, ACCG) (on file with the Georgia State University Law Review) [hereinafter SLGO Committee].

36. Mueller Interview, *supra* note 25.

37. House Committee Video, *supra* note 6, at 5 min, 0 sec. (remarks by Sen. Johnny Grant (R-25th)).

Opponents called the Act the “Private Cities bill.”³⁸ The real reason for the legislation, critics contended, was not to promote development in rural Georgia, but rather to offer developers cheap financing to jump-start large-scale communities anywhere in the state.³⁹ The Georgia Conservancy came out strongly against the bill because of its potential impact on water supply and quality, on rapidly disappearing greenspace, and on “current growth-management guidelines and policies.”⁴⁰ The Conservancy voiced concern that any financing mechanism that encourages new communities in rural areas increases “leapfrog” development,⁴¹ and that already “more than 39,000 acres of Georgia’s forests, farmland and coastal wetlands” are being paved over each year.⁴² The Georgia Chapter of the Sierra Club shared the Georgia Conservancy’s environmental concerns and criticized IDD’s for being “incentives for developers to overbuild.”⁴³ Sierra Club lobbyist Neil Herring felt the disclosure requirements to prospective residents were inadequate because the costs for infrastructure projects listed in the IDD petition are submitted “in good faith” but are subject to increase.⁴⁴ Georgia Watch, a consumer advocacy group, wanted the petition’s “good faith” cost estimate to be limited to a single-digit percentage increase and felt there should be a cap on the interest rates of district bonds.⁴⁵ Georgia Watch suggested fifteen changes to Senator Grant, who incorporated nine of the changes into the bill before sending it to the House.⁴⁶

38. Peters, *supra* note 26; The Sierra Club, *2007 Legislative Session: (SB 200)—Private Cities Legislation*, <http://georgia.sierraclub.org/tracker/SB200.html> (last visited Apr. 10, 2008) [hereinafter Sierra Club].

39. Walter Woods, *Legislature 2007: Bill to Give Aid to Rural Builders; Oak Woods Exempt: Measure Allows County or City Bonds to Help Cover Infrastructure Costs to Build Large, Outlying Subdivisions*, ATLANTA J.-CONST., Feb. 21, 2007, at B4.

40. House Committee Video, *supra* note 6, at 1 hr., 45 min., 23 sec. (remarks by Jill Johnson, Georgia Conservancy Land Conservation Program Manager).

41. See SLGO Committee, *supra* note 35 (remarks by Deborah Miness, Vice President of Land Programs, Georgia Conservancy).

42. *Id.*

43. See Woods, *supra* note 39; Sierra Club, *supra* note 38.

44. House Committee Video, *supra* note 6, at 1 hr., 29 min., 45 sec. (remarks by Neil Herring, lobbyist, Georgia Chapter of the Sierra Club).

45. *Id.* at 1 hr., 53 min., 30 sec. (remarks by Danny Orrock, Legislative Coordinator, Georgia Watch).

46. Grant Interview, *supra* note 8; Interview with Allison Wall, Executive Director, Georgia Watch (Apr. 20, 2007) [hereinafter Wall Interview].

While the Atlanta Regional Commission (ARC) did not publicly take a stand on IDD, Chairman Sam Olens personally opposed the bill because he did not believe many local governments could adequately evaluate IDD petitions. He also cited the risk of a bond default.⁴⁷ In Florida, there have been at least two bond defaults, and Olens felt a default would negatively impact the municipality home to a defunct IDD.⁴⁸ Tom Weyandt, Director of Comprehensive Planning for the ARC, said the bill could be a “sprawl generator.”⁴⁹ Other critics called for more government oversight of IDDs⁵⁰ and warned of the possibility of sweetheart deals between the petitioning developers and the governing board members they appoint.⁵¹

Senator Grant, however, believes that IDDs will be more environmentally-friendly than other developments and thinks that some groups will oppose any growth.⁵² He emphasized the bill’s requirement that 20% of the land within an IDD remain “greenspace,” which is the strictest greenspace requirement in Georgia law.⁵³ He testified repeatedly that the planned communities inside an IDD are subject to the same regulatory and environmental requirements as all other residential and mixed-use developments.⁵⁴ The ACCG predicted that without IDD assessments to pay for sewer infrastructure, some counties experiencing growth pressures would have to allow houses to be built on septic tanks, which require larger lots than houses built on sewers.⁵⁵ As for water concerns, SB 200 contains provisions regarding water resources, the permitting process

47. See Maister, *supra* note 20.

48. *Id.*

49. Interview with Tom Weyandt, Director of Comprehensive Planning, Atlanta Regional Commission (April, 2007).

50. Foskett & Woods, *supra* note 26; Video Recording of House Proceedings, Apr. 20, 2007, at 2 hr., 04 min., 47 sec. (remarks by Rep. Brian Thomas (D-100th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_72682804,00.html [hereinafter House Video].

51. House Committee Video, *supra* note 6, at 1 hr., 34 min., 0 sec. (remarks by Neil Herring, lobbyist, Georgia Chapter of the Sierra Club); *Id.* at 1 hr., 49 min., 40 sec. (remarks by Jill Johnson, Land Conservation Program Manager, Georgia Conservancy).

52. *Id.* at 1 hr., 0 min., 50 sec. (remarks by Sen. Johnny Grant (R-25th)); Grant Interview, *supra* note 8.

53. House Committee Video, *supra* note 6, at 1 hr., 0 min., 50 sec. (remarks by Sen. Johnny Grant (R-25th)).

54. *Id.*; Senate Video, *supra* note 2, at clip “27a,” 1 hr., 48 min., 2 sec. (remarks by Sen. Johnny Grant (R-25th)).

55. House Committee Video, *supra* note 6, at 1 hr., 13 min., 30 sec. (remarks by Clint Mueller, Legislative Director, ACCG).

for water withdrawal, and for discharging pollutants into water supplies.⁵⁶

Proponents of the bill said that consumers are fully protected by the deed disclosure just above the signature line in every sales contract, which tells purchasers the maximum amount of the annual assessment they must pay for the district's initial costs and projects.⁵⁷ The other annual assessment, for operation and maintenance, is also "capped and disclosed to purchasers by the board."⁵⁸ As for the risk of a bond default, supporters say only the bondholders, who will presumably be large institutional investors, will bear the risks associated with the debt issued by the district.⁵⁹ Senator Grant said the obligations of the homeowners are limited to what they sign in their sales contract, and local governments are explicitly immune from any liability.⁶⁰ Proponents insisted that the yearly audits of district finances, and the requirement that IDD records and meetings be open to the public, would be enough to prevent corruption.⁶¹

Support and opposition of the bill did not follow party lines. The first co-sponsor of the bill was a metro-Atlanta Democrat, Senator Steve Thompson (D-33rd).⁶² Representative Steve Davis (R-109th) said the bill was about "more government and more taxes," and called giving the power of taxation to developers "dangerous."⁶³ Senator Kasim Reed (D-35th) said there should be a state authority to monitor IDDs and that the legislation did not allow "for sufficient public hearings."⁶⁴ Senator Emanuel Jones (D-10th) said the bill seemed to be "targeted to a group of people who own large tracts of

56. O.C.G.A. §§ 12-5-30, -31, -96 (Supp. 2007).

57. See House Committee Video, *supra* note 6, at 52 min, 35 sec. (remarks by Sen. Johnny Grant (R-25th)); *id.* at 2 hr., 5 min. 5 sec. (remarks by Richard Bowers, Regional Manager, Wrathell, Hart, Hunt & Associates, LLC (a Florida community development district management company)); Mueller interview, *supra* note 25.

58. O.C.G.A. § 36-93-14(c) (Supp. 2007).

59. See House Committee Video, *supra* note 6, at 5 min., 0 sec. (remarks by Sen. Johnny Grant (R-25th)).

60. *Id.* at 44 min., 23 sec. and at 52 min., 35 sec. (remarks by Sen. Johnny Grant (R-25th)).

61. See SLGO Committee, *supra* note 35 (remarks by Sen. Johnny Grant (R-25th)).

62. See SB 200, as introduced, 2007 Ga. Gen. Assem.

63. Jeremy Redmon, *House Puts Off Decision on Private Development Districts*, ATLANTA J.-CONST., Apr. 16, 2007, http://www.ajc.com/blogs/content/shared-blogs/ajc/georgia/entries/2007/04/16/house_puts_off.html.

64. Maister, *supra* note 20.

land and don't want to pay the cost of development."⁶⁵ He questioned why the General Assembly should give private developers the power to tax.⁶⁶ House Democratic Caucus Chairman, Representative Calvin Smyre (D-132nd), voted for the bill.⁶⁷

SB 200 was tabled in the House during the last few days of the 2007 legislative session, so that supporters could secure more votes.⁶⁸ The massive lobbying effort proved successful when both the House and Senate passed the bill during the last two hours of the session.⁶⁹

Bill Tracking

Consideration and Passage by the Senate

Senators Johnny Grant (R-25th) and Steve Thompson (D-33rd) sponsored SB 200.⁷⁰ On February 21, 2007, the Senate first read SB 200.⁷¹ The bill was then referred to the Senate Committee on State and Local Government Operations (SLGO).⁷²

On March 1, SLGO favorably reported the bill, with one change offered by the sponsor.⁷³ The language in Code section 36-93-26, stating that the Department of Community Affairs "shall have the authority to study and review all districts," was changed to "shall study and review all districts."⁷⁴ This was to ensure the Department of Community Affairs would study the districts each year and report their findings to the General Assembly.⁷⁵ SB 200 was read for a second time on March 19, 2007, and for a third time on March 27.⁷⁶

65. Foskett & Woods, *supra* note 26.

66. *Id.*

67. Georgia House Voting Record, SB 200 (Apr. 20, 2007).

68. See Redmon, *supra* note 63.

69. See State of Georgia Final Composite Status Sheet, SB 200, June 5, 2007.

70. SB 200, as introduced, 2007 Ga. Gen. Assem.

71. State of Georgia Final Composite Status Sheet, SB 200, June 5, 2007.

72. *Id.*

73. *Id.*

74. Compare SB 200 as introduced, 2007 Ga. Gen. Assem. with SB 200 (SCS), 2007 Ga. Gen. Assem.

75. See Senate Committee Meeting Notes (Mar. 2007) (on file with the Georgia State University Law Review).

76. See State of Georgia Final Composite Status Sheet, SB 200, June 5, 2007; see also Senate Video, *supra* note 2, at 2 hr., 8 min., 55 sec. (showing the first four amendments passed by votes of 36-3, 40-0, 39-0, and 40-1, respectively, while the fifth amendment failed by a vote of 14-31).

Four successful floor amendments were made during the Senate debate, while a fifth amendment failed.⁷⁷ Senators Grant, Daniel Weber (R-40th), Steve Thompson, and Curt Thompson (D-5th) offered the first floor amendment in response to concerns from Georgia Watch that greater protection for consumers was needed.⁷⁸ The amendment requires the board members to make certain information available upon the request of a consumer, such as their name, where they can be contacted, and their relationship to other members of the board.⁷⁹ The original legislation stated that such information would be available upon request but only on an annual basis.⁸⁰ The amendment says that such a report shall still be provided upon request, even if the majority of the board was elected by qualified electors in the district.⁸¹ The amendment requires disclosure related to both public and private financing for all residents of the district. As introduced, the bill only required the district to furnish information about public financing.⁸² The amendment also provides additional consumer protection by requiring the board to disclose the interest rate and each property owner's share of the costs payable on all of the loans obtained by the district.⁸³

Additionally, the amendment requires the district to state that the bonds will not bear interest beyond a specified maximum that can fluctuate, if they choose not to disclose the interest rate.⁸⁴ It also requires the board to tell each property owner how much of the initial and additional project costs they would be responsible for at a pro rata share based upon acreage.⁸⁵ The amendment strikes the language "although subject to some fluctuation" from this disclosure, thus mandating a cap on the amount of taxes and assessments.⁸⁶ Finally, the amendment made the disclosure and the contract enforceable in court.⁸⁷

77. *Id.*

78. *See* Wall Interview, *supra* note 46.

79. *See* SB 200 (SFA), 2007 Ga. Gen. Assem.

80. *See* SB 200, as introduced, 2007 Ga. Gen. Assem.

81. *See* SB 200 (SFA), 2007 Ga. Gen. Assem.

82. *See* SB 200, as introduced, 2007 Ga. Gen. Assem.

83. *See* SB 200 (SFA), 2007 Ga. Gen. Assem.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

The second amendment was introduced by the sponsor, Senator Grant, as a means to clear up the definition of a local governing authority.⁸⁸ He urged the passage of this amendment to clarify what types of entities were intended to qualify as a local government.⁸⁹

Co-sponsor Senator Thompson introduced the third amendment, which requires that an appointee of the local government creating the district serve on the initial board of directors.⁹⁰ It also requires that, if a district is created by more than one local government, each shall appoint a member to the board.⁹¹ Senator Grant stated that this was their original intention in drafting the legislation and urged the passage of this provision.⁹² Senator Thompson also introduced the fourth floor amendment for the purpose of clarifying that prior agreements between the local government and the board could only be amended with the mutual consent of both the local government and the board.⁹³

The fifth amendment introduced was more controversial. Introduced by Senators Doug Stoner (D-6th), Tim Golden (D-8th), and Michael Meyer von Bremen (D-12th), this amendment called for the creation of a study committee to thoroughly assess the impact of IDD's to ensure that they were properly implemented.⁹⁴ Senator Grant urged that bill not be held over for another session, as it had been studied and debated before and had received strong bi-partisan support.⁹⁵ Senator Robert Brown (D-26th) urged the passage of the amendment because he felt that the implementation of the bill was moving "too rapidly" and was "a radical departure from the way people have done . . . development business in Georgia."⁹⁶ He argued that the bill should not be defeated simply because it was held over.⁹⁷

88. Senate Video, *supra* note 2, at 1 hr., 55 min., 49 sec. (remarks by Sen. Johnny Grant (R-25th)).

89. *Id.*

90. SB 200 (SFA), 2007 Ga. Gen. Assem.

91. *Id.*

92. Senate Video, *supra* note 2, at 1 hr., 55 min., 49 sec. (remarks by Sen. Johnny Grant (R-25th)).

93. SB 200 (SFA), 2007 Ga. Gen. Assem.

94. Failed House Floor Amendment to SB 200, introduced by Sen. Doug Stoner (D-6th), Sen. Tim Golden (D-8th) & Sen. Michael Meyer von Bremen (D-12th), Mar. 27, 2007; Senate Video, *supra* note 2, at 2 hr., 3 min., 54 sec. (remarks by Sen. Doug Stoner (D-6th)).

95. Senate Video, *supra* note 2, at 2 hr., 4 min., 52 sec. (remarks by Sen. Johnny Grant (R-25th)).

96. *Id.* at 2 hr., 5 min., 59 sec. (remarks by Sen. Robert Brown (D-26th)).

97. *Id.*

This amendment failed by a vote of 14 to 32.⁹⁸ The amended version of the bill passed the Senate on March 27, 2007, by a vote of 37 to 17.⁹⁹

Consideration and Passage by the House

The House first read SB 200 on March 28, 2007.¹⁰⁰ The bill was read by the House for a second time on March 29, 2007, and referred to the House Committee on Economic Development and Tourism (EDT).¹⁰¹ The bill was favorably adopted by substitute on April 11, 2007.¹⁰²

The EDT substitute first requires the IDD petitioner and the local government to submit to all rules and regulations relating to mediating the conflicts for developments of regional impact, regardless of whether a development of regional impact review determines that the development plan is deemed to be in the best interest of the state.¹⁰³ This amendment subjects IDD to the same requirements of a development of regional impact review when the development is large enough to mandate such examination.¹⁰⁴

The second change requires the petitioner for the creation of the IDD to report anticipated need for both taxable and tax-exempt bonds.¹⁰⁵ This change inserts the word “taxable” into the language of what must be written specifically in the IDD petition.¹⁰⁶

After concerns were expressed by the Georgia Municipal Association (GMA) and the ACCG, an amendment was proposed that would undo the Senate floor amendments that required a local government appointee to the IDD board.¹⁰⁷ These organizations felt

98. See Failed Senate Floor Amendment to SB 200, introduced by Sens. Doug Stoner (D-6th), Tim Golden (D-8th) and Michael Meyer von Bremen (D-12th), Mar. 27, 2007.

99. State of Georgia Final Composite Status Sheet, SB 200, June 5, 2007.

100. *Id.*

101. *Id.*

102. *Id.*

103. SB 200 (HCS), 2007 Ga. Gen. Assem.

104. See House Committee Video, *supra* note 6, at 15 min., 0 sec. (remarks by Sen. Johnny Grant (R-25th)).

105. See *id.*

106. See SB 200 (HCA), 2007 Ga. Gen. Assem.

107. See House Committee Video, *supra* note 6, at 17 min., 0 sec. (remarks by Sen. Johnny Grant (R-25th)).

that this provision should exist at the discretion of the local government, and requested that the “shall” be turned back into a “may.”¹⁰⁸ GMA was concerned that smaller counties may not have enough people to serve on the board, and thus may not be able to have IDD’s.¹⁰⁹ Although this provision was debated, the committee decided that if counties valued the creation of IDD’s they would be able to find people willing to serve on the boards.¹¹⁰ This amendment failed and the appointment of a governmental appointee to the board remains a mandatory provision.

On April 16, 2007, the bill was recommitted to the Rules Committee, but was withdrawn.¹¹¹ The bill was subsequently recommitted to the Rules Committee on April 19, 2007, but was again withdrawn from the Committee.¹¹² On the last day of the session, April 20, the bill was read for a third time, and was passed by the House of Representatives by a vote of 121 to 40; the Senate agreed to the House Substitute by a vote of 41 to 11.¹¹³ Governor Perdue signed the bill into law on May 30, 2007.¹¹⁴

The Act

The Act amends Title 36, relating to local government, by adding Chapter 93 to allow the creation of a new financing tool, Infrastructure Development Districts. Chapter 93 has twenty-six sections.¹¹⁵ The Act also amends Chapter 5 of Title 12, relating to water resources, which is beyond the scope of this legislative history.¹¹⁶

Before a local governing authority can create an IDD, either by ordinance or resolution, it must hold at least two public hearings to discuss “the use of districts as a tool for financing services and

108. *See id.*

109. *See id.* at 2 hr., 21 min., 25 sec. (remarks by Gwin Hall, Associate General Counsel, GMA). The GMA and ACCG had immunity language put into § 36-93-5(b) of the final version.

110. *Id.* at 2 hr., 21 min., 25 sec. (remarks by Rep. Allen Freeman (R-140th)).

111. *See* State of Georgia Final Composite Status Sheet, SB 200, June 5, 2007.

112. *Id.*

113. *Id.*

114. *See* State of Georgia Final Composite Status Sheet, SB 200, June 5, 2007.

115. O.C.G.A. § 36-93-1 to -26 (Supp. 2007).

116. O.C.G.A. §§ 12-5-30, -31, -96 (Supp. 2007).

infrastructure”¹¹⁷ Once the local government has the power to create IDD, a petitioner must submit an application fee and a proposed development plan to the government for consideration.¹¹⁸ All required reviews of the plan must be completed prior to local government approval, including the development of regional impact review.¹¹⁹ In assessing the plan’s proposed impact, the regional development center with jurisdiction must consider the comments of any contiguous regional development centers.¹²⁰

The Act requires the petitioner to submit a copy of its petition to all local governments whose boundaries are continuous with the district.¹²¹ The Act also requires a public hearing on the petition to be conducted.¹²² The local government shall consider the entire record of the hearing in determining whether to grant or deny the petition for the establishment of the district.¹²³ The local government may also consider: (1) whether the statements contained in the petition are true; (2) the size of the community and whether it is large enough and sufficiently contiguous to be developed as one functional interrelated community; (3) whether creation of the district is a reasonable alternative to providing infrastructure and facilities to the area to service the district; (4) whether the infrastructure is compatible with the capacity and uses of existing local and regional services and facilities, provided that the district submits a post-development storm-water management system plan; (5) whether the district’s projects are consistent or inconsistent with any element or portion of the local government’s comprehensive plan or an existing service delivery agreement; (6) whether the creation of the district is compatible with the local government and whether it will supplement or be a detriment to the general population; and (7) whether the district will result in an increase in taxes paid in the county or municipality by existing taxpayers outside of the district.¹²⁴ The petitioner must submit a copy of the petition to create the district, the

117. O.C.G.A. § 36-93-3 (Supp. 2007).

118. *Id.*

119. *Id.*

120. *Id.*

121. O.C.G.A. § 36-93-4 (Supp. 2007).

122. *Id.*

123. *Id.*

124. *Id.*

ordinance establishing the district, and the district's disclosures to the Department of Community Affairs.¹²⁵ The Act explicitly states that a district created in this section is not a local government.¹²⁶

The board created by this Act will consist of at least five members, appointed by the petitioner.¹²⁷ Each local government approving the creation of a district shall appoint an additional member to the board.¹²⁸ Each member will hold office for four years and until a successor is appointed or elected.¹²⁹ In instances in which districts are created by more than one local government entity, the petitioner may appoint an additional person for each additional governmental member appointed.¹³⁰ The local government and the governmental appointee are immune from actions seeking money for any actions or omissions taken by the district board, and are also immune for any act by the appointee as a member of the board, or as an employee, appointee, or official of the local government.¹³¹ The initial board will serve until replaced by the board or the appropriate local government, or until a nonpartisan election is held.¹³²

The first petitioner member must stand for election within six months of the sale of 30% of the district's land to the general public.¹³³ The second and third petitioner members must stand for election within six months of the sale of 50% and 70%, respectively, of the land to the general public.¹³⁴ The remaining members must be elected within six months of the sale of 75% of the district to the general public, or within six years after the establishment of the district, whichever is sooner.¹³⁵ All meetings of the board must be open to the public and held on the same date every year.¹³⁶ The board must also designate a non-board member as treasurer to manage

125. O.C.G.A. § 36-93-4(e) (Supp. 2007).

126. O.C.G.A. § 36-93-4(g)(1) (Supp. 2007).

127. O.C.G.A. § 36-93-5 (Supp. 2007).

128. *Id.*

129. *Id.*

130. *Id.*

131. O.C.G.A. § 36-93-5 (Supp. 2007).

132. *Id.*

133. O.C.G.A. § 36-93-4 (Supp. 2007).

134. *Id.*

135. *Id.*

136. O.C.G.A. § 36-93-5(h) (Supp. 2007).

district funds.¹³⁷ The treasurer shall prepare a proposed budget and the board must approve the budget at a public hearing.¹³⁸ The proposed budget must be submitted to the appropriate local government, “for purposes of disclosure and information only,” at least sixty days prior to the adoption of the annual budget.¹³⁹

In general, the district has the power to sue, execute contracts, borrow money, and issue bonds.¹⁴⁰ The district also has the following powers: to raise money for district activities and for upkeep of district facilities; to enforce the collection of such monies; to fix, establish, revise, and collect rates, fees, rentals and other charges which are “just and equitable and uniform for users of the same class and may be based or computed either upon the amount of service furnished, upon the number of average number of persons residing or working or otherwise occupying the premises served, upon any other factor affecting the use of the facilities furnished” and which are sufficient to cover operation and maintenance of projects, payment of all bonds and interests and costs.¹⁴¹ The board has many other enumerated powers, but the Act explicitly forbids IDD from exercising the power of eminent domain.¹⁴²

The district also has the power to issue notes in anticipation of bonds and renew the notes by issuing new notes, but only to provide funds which otherwise would be provided by issuing actual bonds.¹⁴³ The district may also obtain loans for short-term borrowing to pay expenses, in amounts and on conditions approved by the board.¹⁴⁴ The board must, however, disclose the interest rate on the loans and notify each property owner of his or her share of the costs to be repaid.¹⁴⁵

The bonds, notes, and obligations issued by the district will be paid from revenues and other property pledged to pay the bonds, notes,

137. O.C.G.A. § 36-93-6 (Supp. 2007).

138. O.C.G.A. § 36-93-7 (Supp. 2007).

139. O.C.G.A. § 36-93-7(c) (Supp. 2007).

140. O.C.G.A. § 36-93-8 (Supp. 2007).

141. *Id.*

142. O.C.G.A. § 36-93-9 (Supp. 2007).

143. O.C.G.A. § 36-93-11 (Supp. 2007). These notes can be sold and delivered in the same manner as bonds. *Id.*

144. O.C.G.A. § 36-93-11(b) (Supp. 2007).

145. *Id.*

and other obligations.¹⁴⁶ If the district defaults on its obligations, the landowners are responsible for the obligations that are associated with their property, but not the obligations of the district as a whole or any other landowner.¹⁴⁷ The board has the authority to incur debt for the initial costs upon creation of the district.¹⁴⁸ If the district seeks to finance the construction of additional projects using tax-exempt bonds, the board must petition the local government for permission.¹⁴⁹ The bonds, notes, and other obligations must mature within thirty years of the date of their issuance.¹⁵⁰

All bonds issued by IDD's are "exempt from all taxes of the state" and its political subdivisions.¹⁵¹ The interest rate at which the bonds bear interest may be fixed or may fluctuate.¹⁵² The resolution which authorizes bond issuance may also allow the officers of the district to set the final terms, conditions, and details of the bond issuance, including the rate at which the bonds accrue interest and the maturity date.¹⁵³ The Act does not set a limit on the rate of interest of any note, bond, or other obligation of the district.¹⁵⁴

The Act also gives the board the power to collect assessments on other taxable real property in the district to construct and maintain projects, to pay principal on bonds of the district, and to provide for any sinking or other funds established in connection with the bonds.¹⁵⁵ These maintenance and operation special assessments are a lien on property until paid, and are enforced in the same manner as taxes by the local government.¹⁵⁶ The maintenance and operation special assessments must be capped and disclosed to the purchasers.¹⁵⁷ The assessments must be apportioned equitably among properties according to the need for infrastructure created by the

146. O.C.G.A. § 36-93-12(a) (Supp. 2007).

147. *Id.*

148. O.C.G.A. § 36-93-12(b) (Supp. 2007).

149. *Id.*

150. O.C.G.A. § 36-93-12(c) (Supp. 2007).

151. O.C.G.A. § 36-93-12(k) (Supp. 2007).

152. *Id.*

153. O.C.G.A. § 36-93-12(c) (Supp. 2007).

154. O.C.G.A. § 36-93-12(f) (Supp. 2007).

155. O.C.G.A. § 36-93-14(a) (Supp. 2007).

156. O.C.G.A. § 36-93-14(b) (Supp. 2007).

157. O.C.G.A. § 36-93-14(c) (Supp. 2007).

density within the district.¹⁵⁸ The assessment will be collected by the local government, but will not be used to benefit the county or municipality as a whole; and all assessments, rates, fees, rentals, and charges of the district are liens which survive the sale of the property.¹⁵⁹ The district has the right to pay delinquent taxes on lands within the district and to be reimbursed from the sales proceeds upon the sale of the land.¹⁶⁰

The IDD board may require all lands within the district to use the water management, water control, and sewerage facilities of the district to the full extent permitted by law.¹⁶¹ The board may shut off water and sewer service if the fees are not paid when due.¹⁶² The Act requires IDD's to dedicate at least 20% of their area to permanent open space.¹⁶³

The board or any aggrieved person has all the remedies allowed under the law to ensure compliance with the Act.¹⁶⁴ For example, if a building or structure is erected that violates this Act, or violates the ordinance made pursuant to this Act, the board, a district landowner or resident, or the local government may institute appropriate legal action to prevent the unlawful construction.¹⁶⁵

The board may change the district boundaries after petitioning the relevant local government and having a public hearing on the issue.¹⁶⁶ A district will cease to exist if it merges with another district, all of the services it performs are transferred to another service delivery provider, or no landowner has received a building permit within five years of the date establishing the district.¹⁶⁷ A district may merge with another upon a two-thirds vote by the electors and after filing a petition by the local government, but merger does not result in dissolution of prior debts.¹⁶⁸ If the district is clear of outstanding

158. *Id.*

159. O.C.G.A. § 36-93-15 (Supp. 2007).

160. O.C.G.A. § 36-93-16 (Supp. 2007)

161. O.C.G.A. § 36-93-17 (Supp. 2007)

162. O.C.G.A. § 36-93-19 (Supp. 2007).

163. O.C.G.A. § 36-93-10 (Supp. 2007). There is an exception for "districts performing redevelopment activities inside municipalities." *Id.*

164. O.C.G.A. § 36-93-20 (Supp. 2007).

165. *Id.*

166. O.C.G.A. § 36-93-22 (Supp. 2007).

167. *Id.*

168. *Id.*

financial obligations and operating and maintenance responsibilities, it can be dissolved by court order or by resolution of the local government.¹⁶⁹

The Act requires the district to provide full disclosure of all information relating to financing of improvements to real property within the district, including the costs of improvements, facilities, infrastructure, and development.¹⁷⁰ The information must be made available to current and prospective residents alike, and each contract for sale of real property, residential unit, and lease agreement must include a disclosure in bold and conspicuous type immediately before the signature line.¹⁷¹ This disclosure must state that the property that is about to be leased or purchased is within an infrastructure improvement district; that there will be assessments on the property for improvements, facilities, infrastructure, and developments; that assessments for initial costs must not exceed the amount filled in on the provided line; and that additional assessments may pay the operation and maintenance of district projects, and that such costs are capped by law.¹⁷² Finally, the disclaimer must explain that these assessments are in addition to county and local government taxes.¹⁷³ A person who sells property within the district must provide a disclosure, similar to the disclosure described above.

The Act requires districts to adopt proposed plans for areas to be assessed special maintenance and operations assessments and improvements.¹⁷⁴ There are additional disclosure requirements for those properties within the areas designated for special assessments. These purchasers must be told that they are purchasing or leasing land in an area of the district that is subject to higher assessments.¹⁷⁵ They must be told that the rate assessed will be higher by a specific dollar amount for each \$1,000 of assessed valuation of the land not within the area.¹⁷⁶ Service providers offering service to those within

169. *Id.*

170. O.C.G.A. § 36-93-23(a) (Supp. 2007).

171. O.C.G.A. § 36-93-23(b) (Supp. 2007).

172. *Id.*

173. *Id.*

174. O.C.G.A. § 36-93-24 (Supp. 2007).

175. O.C.G.A. § 36-93-24(g) (Supp. 2007).

176. *Id.*

the district may not charge those outside the district higher fees for the same service.¹⁷⁷

Finally, the Act requires the Department of Community Affairs to study and review all districts created by this Act and report its findings to the General Assembly, the Senate Committee on Economic Development, and the House Committee on Economic Development and Tourism by January 31 of each year.¹⁷⁸

Analysis

Environmental and Land Use Issues

Several parties have criticized IDD as a financing tool that will lead to disjointed land development.¹⁷⁹ Through use of an IDD, rural counties will be able to put in large developments that they could not otherwise support for lack of a tax base. Critics believe that IDDs provide incentives for rural counties to overbuild.¹⁸⁰ While supporters tout IDDs as the way for the rural counties of south Georgia to grow, many of the developers who lobbied for the bill's passage own land closer to the Atlanta metro area.¹⁸¹ Instead of contributing to growth in rural counties, some predict that the developments will only contribute to the problem of traffic congestion in the metro Atlanta area.¹⁸²

Proponents of IDDs argue that the districts can be used as growth management tools. They argue that local governments can use IDDs to support smart growth by only allowing the districts to be placed where growth is already occurring, where they believe growth should occur, or where infrastructure can be connected to existing water and sewer facilities.¹⁸³ Some critics worry that creation of such districts will spur growth that would be overwhelming to the current

177. O.C.G.A. § 36-93-25 (Supp. 2007).

178. O.C.G.A. § 36-93-26 (Supp. 2007).

179. See *supra* notes 38 to 43, and accompanying text.

180. See Woods, *supra* note 39.

181. See Foskett & Woods, *supra* note 26. Three homebuilders "controlling 37,000 undeveloped acres within 50 miles of downtown Atlanta" supported SB 200. *Id.*

182. *Id.*

183. See Mueller Interview, *supra* note 25.

infrastructure.¹⁸⁴ For example, a county with limited water resources could become overextended by the creation of a large development, as there is no requirement that the district create or provide for additional water supplies.¹⁸⁵ Adjacent counties and water authorities could potentially be forced to invest additional funds in providing water or roads to accommodate the growth occurring within the districts.¹⁸⁶

However, the sponsor of the original IDD legislation, as well as other proponents, contends that IDD's will lead to better urban design and greater environmental protection by promoting greenspace within the development and assuring that infrastructure provision is concurrent with development.¹⁸⁷ Specifically, the Act requires that 20% of the district be designated as greenspace.¹⁸⁸ Supporters also point out that IDD's provide for better developments by imposing strict standards for water and sewer construction, and allowing local governments to set precise requirements concerning the type of development.¹⁸⁹

Despite the open space requirement, others are concerned that financing mechanisms encouraging development threaten wetlands and forests. Many feel that the Act will encourage the development of farmland and natural habitats that would not otherwise have been disturbed.¹⁹⁰

Supporters of IDD's explain that the districts can potentially encompass mixed use, high-density developments, and do not have to be used only for the construction of single-family residential homes.¹⁹¹ Florida successfully used a model similar to IDD's to address the influx of residents moving into the state.¹⁹² Proponents see IDD's as a vehicle to create planned upscale communities for the wealthy retirees in the state's poorest areas.¹⁹³

184. Foskett & Woods, *supra* note 26.

185. See SLGO Committee, *supra* note 35 (remarks by Deborah Miness, Vice President of Land Programs, Georgia Conservancy).

186. See Maister, *supra* note 20.

187. Grant Interview, *supra* note 8.

188. *Id.*

189. *Id.*; Mueller Interview, *supra* note 25.

190. See Williams, *supra* note 8; Peters, *supra* note 26.

191. Mueller Interview, *supra* note 25.

192. See Maister, *supra* note 20.

193. Foskett & Woods, *supra* note 26.

However, critics of the bill believe that only upper-income residents will benefit, as the target market for IDD's are not those who need low or middle-income housing.¹⁹⁴ Florida attracts retirees, while Georgia historically has attracted younger people looking for jobs.¹⁹⁵ It is questionable whether the growth Georgia is projected to experience will really be wealthy retirees. Further, there are questions whether these rural counties will be able to attract residents to remote areas that do not have an "obvious draw."¹⁹⁶

Before approving an IDD, the county or city government may also require the developer to build fire stations, schools, connector roads, and any other type of infrastructure needed by the new development.¹⁹⁷ Counties and cities can also condition approval on minimum infrastructure standards within the district.¹⁹⁸ Some argue that this makes an IDD the ultimate impact fee.¹⁹⁹ But because commissioners only get this one chance to comment and impose requirements, they must be sure to address all concerns about the amount of infrastructure needed outside of the district to support the development before construction of the IDD occurs.²⁰⁰ Some worry that one meeting for citizens and one meeting for the commissioners will not be enough to adequately discuss and address all of the potential impacts of the new developments.²⁰¹

The district will then give, lease, or rent the infrastructure back to the local government.²⁰² The government then staffs, operates, and maintains the infrastructure.²⁰³ School boards may be invited to initial conversations to discuss issues related to the creation of the IDD but

194. *Id.*

195. See Press Release, Metro Atlanta Chamber of Commerce, Metro Atlanta Leads Nation In Population Growth Fast-Growth Trend Expected to Continue (Apr. 5, 2007), available at http://www.metroatlantachamber.com/pr_populationgrowth.html.

196. Williams, *supra* note 8.

197. Foskett & Woods, *supra* note 26.

198. Mueller Interview, *supra* note 25.

199. *Id.*; Williams, *supra* note 8; see House Committee Video, *supra* note 6, at 1 hr., 26 min., 36 sec. (remarks by Rep. Ron Stephens (R-164th)).

200. Foskett & Woods, *supra* note 26.

201. *Id.*; House Committee Video, *supra* note 6, at 1 hr., 29 min., 45 sec. (remarks by Neil Herring, lobbyist, Georgia Chapter of the Sierra Club).

202. Grant Interview, *supra* note 8.

203. See House Committee Video, *supra* note 6, at 2 hr., 5 min., 5 sec. (remarks by Richard Bowers, Regional Manager, Wrathell, Hunt, Hart & Associates).

203. O.C.G.A. § 36-93-8(8)(D) (Supp. 2007).

are not required to be included in the decision making process that ultimately leads to the creation of IDD's.²⁰⁴ In essence, school boards may have to find staff and teachers for new schools, but do not have the power to prevent the creation of new districts.

Consumer Protection Concerns

Georgia Watch fears that the financial obligations that will be imposed upon those living in the district are not explained as clearly as they should be.²⁰⁵ Although the Act requires a disclosure at the end of every purchase or lease contract that states the amount for which each consumer will be responsible, Georgia Watch is concerned that the average consumer will not really understand the nature of their commitment.²⁰⁶ Under the statute, the district has the authority to raise a flat fee from the homeowners.²⁰⁷ While the disclosure requirements under the Act were strengthened by the floor amendments, there are also concerns about the amount that the homeowners will actually have to pay because there is no limit or maximum interest rate on any bonds, notes, or other obligations issued by the district.²⁰⁸ Georgia Watch called this provision "predatory lending for middle-class retirees."²⁰⁹ There is, however, a cap on the district project assessments and the operation and maintenance special assessments imposed by the district.²¹⁰

Further, Georgia Watch is concerned that district residents, who may not be able to afford to maintain the infrastructure, will be stuck paying for maintenance after developers are long gone.²¹¹ Other critics of the bill expressed concerns about what would happen to homeowners should the district default on the bonds.²¹² Supporters of the Act assert that any risks associated with possible default will

204. Grant Interview, *supra* note 8.

205. Wall Interview, *supra* note 46.

206. *Id.*

207. Jeremy Redmon, *Legislature 2007: House Gives Developers Latitude: Homeowners Could be Assessed Flat Fee, but Not 'Taxed'*, ATLANTA J.-CONST., Apr. 21, 2007 at A12.

208. O.C.G.A. § 36-93-12(f) (Supp. 2007).

209. Wall Interview, *supra* note 46; SLGO Committee, *supra* note 35.

210. O.C.G.A. §§ 36-93-14(a)-(c) (Supp. 2007).

211. Wall Interview, *supra* note 46; see also Janice C. Griffith, *Special Tax Districts to Finance Residential Infrastructure*, 39 URBAN LAW. 959, 977 (2007).

212. See Griffith, *supra* note 211, at 978-80.

primarily be borne by the bondholders, who will generally be institutional investors.²¹³ Although many of the amendments made on the Senate floor resulted from Georgia Watch's desire to create greater certainty for Georgia consumers, the consumer advocacy group believes that the Act still does not allow for enough government oversight of the board.²¹⁴

Constitutional Issues of One-Person, One-Vote

Much of the criticism of IDD's has been directed at the method by which members of the governing boards are elected.²¹⁵ When the IDD is created, the petitioning landowner and the approving local government appoint a governing board.²¹⁶ As the land within the district is sold off, elections are held to replace or re-elect the petitioner members of the board.²¹⁷ In these board elections, not every qualified voter living in the district has a vote, while some people living outside the district are entitled to vote.

Voting is limited to "qualified electors," meaning owners of land within the district who did not own land when the district was created.²¹⁸ Each qualified elector is entitled to cast one vote per acre of land he or she owns within the district, with a fraction of an acre treated as one acre.²¹⁹ Only one owner of jointly held property is entitled to be a qualified elector.²²⁰ Thus, a husband and wife cannot both cast votes. The owner of commercial property that is several acres in size will have multiple votes, despite the fact that the owner may not live in the district or may be a corporate entity.²²¹ Thus, the

213. House Committee Video, *supra* note 6, at 5 min., 0 sec. (remarks by Sen. Johnny Grant (R-25th)).

214. Wall Interview, *supra* note 46.

215. House Video, *supra* note 50, at 2 hr., 6 min., 0 sec. (remarks by Rep. Brian Thomas (D-100th)).

216. O.C.G.A. § 36-93-5 (Supp. 2007).

217. O.C.G.A. § 36-93-5(c)(1) (Supp. 2007); see discussion *supra* notes 127-135 and accompanying text.

218. O.C.G.A. § 36-93-2(20) (Supp. 2007). "Qualified elector" is defined as a landowner "within the district, who, at the time the district was created" was not a landowner of "one or more parcels of real estate within the district" *Id.*

219. O.C.G.A. § 36-93-5(c)(3) (Supp. 2007).

220. *Id.*

221. There is a restriction that no single qualified elector may cast more than 15% of the available votes in any election.

boards are elected in similar fashion to most homeowners' association boards, which are private entities.

Critics of IDD's have called this voting scheme taxation without representation.²²² It is likely to be challenged someday by homeowners who oppose the decisions of a district governing board. If litigation does ensue, one question for the courts will ultimately be: Do IDD's exercise general governmental powers so that their elections must comply with the one-person, one-vote requirement of the Equal Protection Clause?²²³

It is undisputed that state actors exercising general governmental powers are subject to the constitutional requirement of one person, one vote,²²⁴ and that the Supreme Court applies strict scrutiny to laws that "dilute the value of a vote" for these governments.²²⁵ However, the Supreme Court has carved out an exception to the Equal Protection Clause for special limited-purpose governments.²²⁶ There are certainly arguments for treating IDD's like private corporations or for holding them to the standards of general purpose governments. With tens of thousands of special districts across the country, any "attempt to classify governments along a public/private continuum according to the nature of the services they provide lacks analytical rigor and leads to arbitrary results."²²⁷

222. House Video, *supra* note 50, at 2 hr., 4 min., 47 sec. (remarks by Rep. Brian Thomas (D-100th)); House Committee Video, *supra* note 6, at 1 hr., 9 min., 43 sec. (remarks by Rep. Sistie Hudson (D-124th)); Redmon, *supra* note 63.

223. If IDD's exercise general governmental powers, the voting scheme must survive strict scrutiny analysis. If they are special purpose districts, a rational basis test will apply to the voting scheme. See generally Douglas S. Roberts, Note, *No Land, No Vote: Validating the One-Acre-One-Vote Provision for Elections in Florida's Community Development Districts*, 14 FLA. ST. U. L. REV. 183 (1986).

224. *Reynolds v. Sims*, 377 U.S. 533 (1964) (holding that state residents have the right to a vote equal in weight to the vote of every other resident when voting for state legislature); *Avery v. Midland County*, 390 U.S. 474 (1968) (holding the one-person, one-vote rule applies to a unit of local government having general governmental powers over its entire geographic area).

225. NORMAN REDLICH, JOHN ATTANASIO & JOEL K. GOLDSTEIN, *UNDERSTANDING CONSTITUTIONAL LAW* 471 (3d ed. 2005).

226. See *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719 (1973); *Ball v. James*, 451 U.S. 355 (1981).

227. Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365 (1999).

Local Governments and the One-Person, One-Vote Requirement

In *Avery v. Midland County*,²²⁸ the United States Supreme Court made clear that the Equal Protection Clause reaches a state's power exercised through its subdivisions, but it explicitly avoided the question whether "a special-purpose unit of government assigned to the performance of functions affecting definable groups of constituents more than others . . . may be apportioned in ways which give greater influence to the citizens most affected by the organization's functions."²²⁹ Before the Court answered that question in *Salyer Land Company v. Tulare Lake Basin Water Storage District*,²³⁰ the Court held that the one-person, one-vote rule must be applied to the election of trustees for a junior college district.²³¹

In *Hadley v. Junior College District of Metropolitan Kansas*, trustees for a junior college were able to levy taxes, issue bonds, employ teachers, make contracts, acquire property by condemnation, and generally manage the college's operations.²³² The Court found these powers were "general enough and have sufficient impact throughout the district to justify" application of the one-person, one-vote principle.²³³ Again, the Court left open the possibility that "there might be some case in which a State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with *Reynolds* [is not required]."²³⁴

In *Salyer*, the Supreme Court held that water storage districts are special purpose governmental units not subject to the one-person, one-vote rule.²³⁵ The Court upheld the constitutionality of the California Water Code, which used property values as the basis for

228. *Avery v. Midland County*, 390 U.S. 474 (1967) (finding that although Midland County Commissioners Court had negligible legislative functions, it was subject to the one-person, one-vote requirement because of powers to set a tax rate, issue bonds and adopt a budget for allocating the county's funds).

229. *Id.* at 483-84.

230. *Salyer Land Co. v. Tulare Lakes Basin Water Storage Dist.*, 410 U.S. 719 (1973).

231. *Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 397 U.S. 50 (1970).

232. *Id.* at 53.

233. *Id.* at 54.

234. *Id.* at 56.

235. *Salyer*, 410 U.S. at 728.

apportioning votes in elections for the board of water storage districts.²³⁶ In response to water shortages, the districts acquired, stored, and distributed irrigation water to farmland.²³⁷ The districts were financed by assessments levied on land in proportion to the benefits provided.²³⁸ The Water Code weighted a landowner's vote according to the value of the land, with nonresident landowners given a vote.²³⁹ Residents and franchise tenants, however, were excluded from voting. The Court explained that the statute was constitutional because the districts had a special limited purpose, and the actions of the board of directors disproportionately affected the landowners.²⁴⁰

Similarly in *Ball v. James*,²⁴¹ the Court upheld a voting scheme for the directors of an agricultural improvement and power district that required voters to own at least one acre of land in the district and apportioned votes based on the number of acres owned.²⁴² The district had the traditional governmental powers of condemning land, selling electricity, and imposing taxes based on acreage.²⁴³ The Court found that the one-person, one-vote rule did not apply to district elections because the district's purpose was sufficiently narrow and its activities disproportionately affected landowners.²⁴⁴ The Court then held that the voting scheme was rationally related to "its statutory objectives," and therefore constitutional.²⁴⁵ The opinions in both *Salyer* and *Ball* indicate a belief by the Court that the districts could not have been created if landowners had not been given a "special voice" in the conduct of the districts' business.²⁴⁶

236. *Id.* at 725.

237. *Id.* at 723.

238. *Id.* at 729.

239. *Id.* at 726.

240. *Id.* at 729.

241. *Ball v. James*, 451 U.S. 355 (1981).

242. *Id.* at 371.

243. *Id.* at 360.

244. *Id.* at 367-68.

245. *Id.* at 371.

246. *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 731 (1973); *Ball*, 451 U.S. at 371.

Arguments for Applying the One-Person, One-Vote Requirement

Columbia law professor Richard Briffault²⁴⁷ has summed up the Supreme Court's jurisprudence for determining exemptions to the one-person, one-vote requirement as a two-pronged test: "Does the government serve a 'special limited purpose,' and does it 'disproportionately' affect those who are enfranchised?" If the answers are yes, the one-person, one-vote requirement does not apply.²⁴⁸

When these questions are applied to IDD, it can be argued the answers are no. The Act gives the IDD the power to issue tax-exempt bonds²⁴⁹ and the power to levy two annual "assessments on property owners."²⁵⁰ While references to taxes were stripped from the Act,²⁵¹ the assessments levied by the IDD board are a lien on the property and are enforceable "in like manner as taxes."²⁵² IDD may be required to provide infrastructure outside the district, such as schools, libraries, and police and fire stations.²⁵³ Inside the district, IDD may build and maintain roads, bridges, and sidewalks.²⁵⁴ They may put in street lights, and provide buses or trolley service throughout the district.²⁵⁵ IDD also have environmental powers, such as controlling pests, maintaining conservation areas, and investigating environmental contamination.²⁵⁶

And, of course, IDD have the powers needed to operate the district and maintain the infrastructure. This includes the power to

247. Joseph P. Chamberlain Professor of Legislation and author of *Who Rules at Home? One Person, One Vote and Local Governments*, 60 U. CHI. L. REV. 339 (1993), and *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365 (1999).

248. Briffault, *supra* note 227, at 435.

249. O.C.G.A. § 36-93-8(3) (Supp. 2007).

250. O.C.G.A. § 36-93-14 (Supp. 2007).

251. See SB 200, as introduced, 2007 Ga. Gen. Assem.; Redmon, *supra* note 198.

252. O.C.G.A. § 36-93-14 (Supp. 2007).

253. O.C.G.A. § 36-93-8 (Supp. 2007); Mueller Interview, *supra* note 25. Any infrastructure located outside of the district and paid for by IDD special assessment bonds must have a proportional benefit to the district equal to the proportion funded by the district. *Id.*

254. O.C.G.A. § 36-93-8(11) (Supp. 2007).

255. *Id.*

256. *Id.*

sue, to apply for grants and loans, execute contracts, acquire or dispose of public easements, and lease out district facilities.²⁵⁷

Unlike other special districts that focus on providing one type of infrastructure or providing one type of service, IDD's can construct and operate infrastructure for water management and control facilities, sewerage management, and natural gas distribution facilities.²⁵⁸ While the district may lease the school it builds to the school board, or donate fire trucks to the local fire station, it may decide to continue to maintain the structures and equipment.²⁵⁹

IDDs also have the power to set the fees charged for using the district's "recreational facilities, water management and control facilities, and water and sewer systems."²⁶⁰ In other states, district landowners do not pay for using district amenities, like swimming pools and parks, because they pay the annual operation and maintenance assessment. Nonresidents, however, must pay fees set by the district's board.²⁶¹

The Act allows different fees to be charged to different classes of users, so long as they are "just and equitable" and "uniform for users of the same class."²⁶² Thus, the board can charge nonresidents more than residents, or tenants more than property owners, for use of "public" infrastructure. In Florida, some community developments districts are gated, though no one can legally be denied entry.²⁶³ Theoretically, an IDD could charge nonresidents a toll for driving on district roads. Once the petition for an IDD is approved, the local government has no real say in district affairs.²⁶⁴ The only way a member of the public could challenge the user fees would be by going to court and asserting the fees are not "just and equitable."

257. O.C.G.A. § 36-93-8 (Supp. 2007).

258. O.C.G.A. § 36-93-8(11) (Supp. 2007).

259. *Id.*

260. O.C.G.A. § 36-93-8(8)(B) (Supp. 2007).

261. See House Committee Video, *supra* note 6, at 2 hr., 11 min. 7 sec. (remarks by Richard Bowers, Regional Manager, Wrathell, Hart, Hunt & Associates).

262. O.C.G.A. § 36-93-8(8)(D) (Supp. 2007).

263. See House Committee Video, *supra* note 6, at 2 hr., 11 min. 7 sec. (remarks by Richard Bowers, Regional Manager, Wrathell, Hart, Hunt & Associates).

264. House Committee Video, *supra* note 6, at 1 hr., 29 min., 45 sec. (remarks by Neil Herring, lobbyist, Georgia Chapter of the Sierra Club); House Video, *supra* note 50, at 2 hr., 4 min., 47 sec. (remarks by Rep. Brian Thomas (D-100th)).

The *Salyer* Court found the water district board had limited governmental authority because it provided no “general public services such as schools, housing, transportation, utilities, roads or anything else . . . ordinarily financed by a municipal body.”²⁶⁵ There were no shops within the district and it did not have a “fire department, police, buses, or trains.”²⁶⁶ In *Ball*, the Court found it significant that the “district cannot impose ad valorem property taxes or sales taxes” and it did not administer “normal functions of government as the maintenance of streets, the operation of schools, or sanitation”²⁶⁷

IDDs have far broader powers than the governing boards involved in *Salyer* and *Ball*, and even the board of trustees in *Hadley*. As state actors vested with a combination of powers traditionally exercised by government—including those in the domains of education, security, sanitation, and the environment—IDDs have arguably breached the threshold of what is a “general-purpose government.” The functions of an IDD can hardly be considered “so far removed from normal governmental activities”²⁶⁸ as to make their governing bodies exempt from the one-person, one-vote requirement. In *Salyer*, the entitlement to receive water from the water district derived from land ownership and the assessments levied on the land.²⁶⁹ In contrast, the infrastructure in IDD is “public” and no one can be denied its use.

Even if a court were to find that an IDD is a special-purpose government, it is hard to see how the governing board’s decisions have a disproportionate effect on landowners, who may be corporate entities or people living outside the district. While landowners may bear the initial costs of the district, that is the cost for having quality infrastructure in place upon buying a home, not the cost of controlling government. The district project assessment paid annually by landowners is set by the initial governing board.²⁷⁰ The board members for whom “qualified electors” will be voting will make decisions about managing the district. All landowners could be

265. *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 728-29 (1973).

266. *Id.* at 729.

267. *Ball v. James*, 451 U.S. 355, 364 (1981).

268. *Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 397 U.S. 50 (1970).

269. *Salyer*, 410 U.S. 719.

270. O.C.G.A. § 36-93-14(i) (Supp. 2007).

charged the same amount for the annual operation and maintenance assessment, which “shall be apportioned among the benefited lands in proportion to the benefits received”²⁷¹ Lessors of land inside the district will no doubt pass on the costs of the assessments to their tenants, who will not be allowed to vote.

Although the right to vote may be denied to people whose interest in the function of a governing entity is slight,²⁷² residents of IDD have a substantial interest in the actions of a board that controls their community’s infrastructure, common areas, and environment. A decision about whether to lengthen the swimming pool hours, provide a security patrol, or widen a connector road into the district does not impact residents based on the amount of acreage they own. Using the reasoning in *Avery* and *Hadley*, an IDD governing board has general powers of “sufficient impact on residents throughout the district”²⁷³ that the Equal Protection Clause should apply to board elections.

Unlike the situations in *Salzer* and *Ball*, there is no reason to believe that these districts would not be created without tying voting strength to property ownership. Developers can build a house in an IDD cheaper than building elsewhere because some of their normal infrastructure costs get passed on to the buyer.²⁷⁴ Despite the annual assessments, developers can also sell the houses for more money than comparable houses in traditional developments, because people are willing to pay more when they see their community all built out.²⁷⁵ With the financing advantages to developers and the willingness of homebuyers to buy inside IDDs, there is no compelling state reason to base voting strength on land ownership.

Arguments Against Applying the One-Person, One-Vote Requirement

The opposing view is that IDDs are special-purpose bodies with limited authority, so the Equal Protection Clause should not be

271. O.C.G.A. § 36-93-14(b) (Supp. 2007).

272. See *Kramer v. Union Free School District*, 395 U.S. 621 (1969); *Hadley*, 397 U.S. at 54.

273. *Hadley*, 397 U.S. at 54.

274. See Mueller interview, *supra* note 25.

275. See Foskett & Woods, *supra* note 26; House Committee Video, *supra* note 6, at 1 hr., 16 min., 41 sec. (remarks by Clint Mueller, Legislative Director, ACCG).

applied. The Act itself states that an IDD “is not a general purpose local government and specifically shall not be included in the term ‘local government’ as that term is defined in paragraph (5.2) of Code Section 36-70-2”²⁷⁶

While IDDs have several powers, those powers can only be exercised after an agreement is reached between the governing board and the appropriate local government.²⁷⁷ The powers are needed to carry out the narrow purpose of providing infrastructure to new communities, without placing a financial burden on existing general purpose governments.²⁷⁸ Any changes to the IDD petition require approval of the local government, which maintains zoning, permitting, and land use powers.²⁷⁹ IDD governing boards cannot make new laws or exercise police powers, nor be delegated the power of eminent domain.²⁸⁰ While IDDs may finance structures traditionally provided by government, they do not operate and staff them. Thus, they do not exercise “general governmental powers” that would give rise to the one-person, one-vote requirement.

In *Avery*, the Supreme Court found that “states should be able to experiment with new mechanisms “suitable for local needs and efficient in solving local problems”²⁸¹ IDDs are one such mechanism, intended to solve the local problem of financing infrastructure in rapidly growing counties. IDDs are, in fact, similar to tens of thousands of special purpose districts across the country. Generally, special purpose districts are essentially autonomous in their daily operations, are authorized to tax or issue tax-exempt bonds, and focus on financing, constructing, and maintaining some type of physical infrastructure.²⁸² IDDs simply deal with many types of infrastructure, whereas most special districts focus on one area, such as sewer service.

276. O.C.G.A. § 36-93-4(g)(1) (Supp. 2007).

277. Mueller interview, *supra* note 25.

278. See Redmon, *supra* note 63.

279. See House Committee Video, *supra* note 6, at 5 min., 0 sec. (remarks by Sen. Johnny Grant (R-25th)).

280. *Id.*

281. *Avery v. Midland County*, 390 U.S. 474, 485 (1968).

282. Briffault, *supra* note 227, at 418.

Conclusion

In Florida, at least one challenge to a similar voting scheme for the boards of community development districts has been defeated.²⁸³ In *State of Florida v. Frontier Acres Community Development District Pasco County*, the court held that community development districts do not exercise general governmental functions, and disproportionately affect landowners because “they are the ones who must bear the initial burden of the district’s costs.”²⁸⁴ The Equal Protection Clause, therefore, did not preclude the legislature from denying the right to vote to those who “merely reside in the district.”²⁸⁵

However, the Florida law only allows landowners to elect the board of the district if the board chooses not to exercise its ad valorem taxing power.²⁸⁶ If the board chooses to exercise its ad valorem taxing power, the board must call an election in which qualified electors are allowed to vote for board members. In the Florida statute, “qualified elector” means “any person at least 18 years of age who is a citizen of the United States, a legal resident of Florida and of the district, and who registers to vote with the supervisor of elections in the county in which the district land is located.”²⁸⁷

The Act could have required local governments to appoint all members of an IDD’s governing board, and there would be no constitutional problem.²⁸⁸ Because the Act does call for elections, if the *Salyer* and *Ball* exception for special limited governments does not apply, IDDs are subject to the one-person, one-vote rule. Even if IDDs are held to be special-purpose districts, the state will have to show that landowners are substantially more affected by the results of an IDD election than other qualified voters, and that the exclusion of

283. *Florida v. Frontier Acres Cmty. Dev. Dist. Pasco Co.*, 472 So. 2d 455 (Fla. 1985) (finding community development districts do not exercise general governmental functions and their activities have a disproportionate effect on landowners).

284. *Id.* at 457.

285. *Id.*

286. Uniform Community Development District Act of 1980, FLA. STAT. § 190.006 (2007).

287. FLA. STAT. § 190.003 (2007).

288. *Sailor v. Bd. of Educ. of Kent County*, 387 U.S. 105, 108 (1967) (holding officers of nonlegislative character may constitutionally be chosen by legislature or some other appointive means).

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those other voters is rationally related to promoting the state's statutory objectives.

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