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CONSTITUTION OF THE STATE OF GEORGIA Proposing an Amendment to the Constitution so as to Authorize Community Redevelopment and Authorize Counties, Municipalities, and Local Boards of Education to Use Tax Funds for Redevelopment Purposes and Programs, Including the Payment of Debt Service on Tax Allocation Bonds; Provide for Submission of this Amendment for Ratification or Rejection; and for Other Purposes

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CONSTITUTION OF THE STATE OF GEORGIA

***Proposing an Amendment to the Constitution so as to Authorize
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Purposes***

CODE SECTION:	GA. CONST. art. IX, § 2, para. 7 (amended)
BILL NUMBER:	SR 996
ACT NUMBER:	777
GEORGIA LAWS:	2008 Ga. Laws 1211
SUMMARY:	The resolution proposes an amendment to the Georgia Constitution permitting the General Assembly to authorize counties, municipalities, and housing authorities to engage in community redevelopment. The resolution further proposes an amendment to the constitution permitting cities, counties, and local boards of education to pledge property tax revenues toward the payment of the debt arising from the issuance of tax allocation district (TAD) bonds. A referendum on the proposed amendments will appear on the general election ballot in November 2008.
EFFECTIVE DATE:	N/A

*History**Tax Allocation Districts Under the “Redevelopment Powers Law”*

In 1985, the Georgia Legislature adopted the Redevelopment Powers Law in part “to provide for tax allocation districts,”¹ commonly referred to as “TADs.” TADs are areas in which local government bodies use a method known nationally as “tax increment financing” to fund capital improvements.² The districts allow local governments to pay for redevelopment by issuing bonds, and then repay the bonds with the new property tax revenue that the governments expect to reap from increased property values in the TAD once redevelopment is complete.³

Local legislative bodies create TADs under the Redevelopment Powers Law by first designating an agency to prepare a redevelopment plan and to submit that plan to the political subdivision or board of education required to consent under Code section 36-44-9.⁴ Second, the agency must submit the plan to the local legislative body for approval.⁵ Third, the local legislative body must adopt a resolution approving the plan.⁶ The resolution must identify geographic boundaries of the TAD, a date of creation, an official name, an estimate of the tax allocation increment base, the ad valorem property taxes to be used for computing tax allocation increments, and property to be pledged as security for payment of the tax allocation bonds.⁷ It must also contain findings that the area’s property values have not been growing and would not grow without the area being designated as a TAD, and that creation of the TAD is “likely to enhance the value of a substantial portion of the other real property in the district.”⁸ Finally, the redevelopment agency must

1. 1985 Ga. Laws 1360, 1361, (codified at O.C.G.A. § 36-44-1, -23).

2. John Sarkis Reshwan, *Crossing the Threshold of Urban Mobility and Redevelopment: Using Tax Allocation Districts to Develop the Atlanta Beltline*, 23 GA. ST. U. L. REV. 681, 695 (2007).

3. *Id.*

4. O.C.G.A. § 36-44-8 (2006); *see also* Reshwan, *supra* note 2, at 696–97.

5. O.C.G.A. § 36-44-8 (2006); *see also* Reshwan, *supra* note 2, at 697.

6. O.C.G.A. § 36-44-8 (2006); *see also* Reshwan, *supra* note 2, at 697.

7. O.C.G.A. § 36-44-8 (2006); *see also* Reshwan, *supra* note 2, at 697–98.

8. O.C.G.A. § 36-44-8 (2006); *see also* Reshwan, *supra* note 2, at 697–98.

submit a certified copy of any consent resolution it has obtained to the legislative body.⁹

The TAD has an associated baseline property tax revenue, determined by the state revenue commissioner before creation of the district.¹⁰ Once the TAD is created, tax allocation bonds are issued to raise money for redevelopment of the area.¹¹ If property values increase as expected, tax revenue above the TAD base is set aside to service the bonds.¹²

Although the Redevelopment Powers Law took effect in 1985, it was not until 1998 that lawmakers created the Westside Redevelopment Area and Tax Allocation District, Georgia's first TAD.¹³ The prominent Atlantic Station TAD was the second TAD, created in 1999, and a total of six TADs existed by the end of 2002.¹⁴ The pace of TAD creation continued to increase, and by March 2007, a total of twenty-seven TADs existed with TAD referendums authorized by the legislature in an additional thirty-one jurisdictions.¹⁵

The Woodham Case

As these first TADs were being created, Atlanta community leaders began developing a plan for the "BeltLine," a twenty-two mile light-rail or street car ring around downtown Atlanta.¹⁶ The plan included increased park space and substantial redevelopment, and called for funding to come from a new BeltLine TAD.¹⁷ In April 2005, Atlanta Mayor Shirley Franklin announced the creation of the BeltLine Partnership, and in November 2006, the Atlanta City

9. O.C.G.A. § 36-44-8 (2006); see also Reshwan, *supra* note 2, at 698.

10. Reshwan, *supra* note 2, at 698.

11. *Id.*

12. *Id.*

13. Aisha I. Jefferson, *Study: TADs Boost Property Value, Accelerate Growth*, FULTON COUNTY DAILY REP., Oct. 5, 2007, at 6.

14. *Id.* Atlantic Station was originally named the Atlantic Steel TAD.

15. LIVABLE COMMUNITIES COALITION, SURVEY AND ANALYSIS OF TAX ALLOCATION DISTRICTS (TADS) IN GEORGIA: A LOOK AT THE FIRST EIGHT YEARS (2007), <http://www.atlantada.com/buildDev/documents/AlookAtTheFirstEightYears.pdf>.

16. Julie Hairston, *Officials Push Tax District for Beltline*, in AHEAD OF THE CURVE, ATLANTA J.-CONST., May 9, 2005, at E2.

17. *Id.*

Council adopted the BeltLine Redevelopment Plan by ordinance, thereby creating the BeltLine Redevelopment Area and Tax Allocation District Number Six.¹⁸ In December 2006, the Atlanta Public School Board of Education “agreed to participate in the BeltLine Plan by consenting to pledge a portion of tax increments derived from the educational ad valorem property taxes levied and collected within the BeltLine TAD.”¹⁹

Opponents of the BeltLine TAD, including local attorney John Woodham, intervened in the bond validation proceedings in Fulton County Superior Court, asserting that the proposed use of school taxes to fund the BeltLine violated the state constitution.²⁰ He pointed to the Educational Purposes Clause, which states “[s]chool tax funds shall be expended only for the support and maintenance of public schools, public vocational-technical schools, public education, and activities necessary or incidental thereto, including school lunch purposes.”²¹ Supporters of TADs dismissed Woodham’s suit as a nuisance,²² and indeed the trial court ruled in the city’s favor.²³ However, when Woodham appealed, the Supreme Court reversed.²⁴ The unanimous decision held that “[a]lthough . . . this provision vests broad powers in school districts to do those things properly determined to be necessary or incidental to public education,” a project providing a benefit to all citizens with “little, if any, nexus to the actual operation of public schools in the city of Atlanta” could not be considered “necessary or incidental to public education.”²⁵

18. Michael Pearson, *Annexation Organizers Step Up Effort, in AHEAD OF THE CURVE*, ATLANTA J.-CONST., July 25, 2005, at E2.

19. Woodham v. City of Atlanta, 657 S.E.2d 528, 529–30 (Ga. 2008).

20. State of Georgia v. City of Atlanta, Civ. No. 2006CV119932 (Fulton County Super. Ct. 2007) (bond validation order) (on file with Georgia State University Law Review).

21. GA. CONST. art. VIII, § VI, para. l(b); see Woodham, 657 S.E.2d at 529–30.

22. Paul Donsky, *Funding Lawsuit Ties Up Bellline*, ATLANTA J.-CONST., Dec. 27, 2007, at D6.

23. See Woodham, 657 S.E.2d at 529–30.

24. See id. at 531.

25. See id. at 530.

Response to Woodham

Response to the *Woodham* decision was swift.²⁶ BeltLine opponents hailed *Woodham* as having “won a big one for taxpayers.”²⁷ Mayor Shirley Franklin proclaimed that “[a]ll big dreams have challenges, but [the *Woodham* decision] is not one we are not prepared to meet.”²⁸ Legislators immediately began drafting efforts to amend the state constitution, and in less than ten days resolutions had been introduced in both houses to overturn the Supreme Court’s decision by amending the state constitution.²⁹

*SR 996**Consideration and Passage by the Senate*

The Senate response to *Woodham*, SR 996, was sponsored by Senators Dan Weber (R-40th), Kasim Reed (D-35th), Curt Thompson (D-5th), Don Balfour (R-9th), and Dan Moody (R-56th).³⁰ The Resolution proposed an amendment to article IX, section 2, paragraph 7 of the Constitution that would authorize community redevelopment by any county, municipality or housing authority and permit the use of school tax funds for redevelopment purposes.³¹ Section 1 of the bill proposed the amendment language while Section 2 set forth the referendum ballot language.³² The bill was first read in the Senate on February 21, 2008, and subsequently assigned to the Senate Finance Committee.³³ On February 28, 2008, the Finance Committee favorably reported a substitute version of the Resolution in which the following sentence was added to section 1 at line 24, p. 1: “No county, municipal, or school tax funds may be used for such

26. See generally Paul Donsky & Kevin Duffy, *Ruling Jolts Beltline, Other Projects*, ATLANTA J.-CONST., Feb. 12, 2008, at A1.

27. Jim Wooten, Editorial, *'David' Wins One for the Taxpayers*, ATLANTA J.-CONST., Feb. 12, 2008, at A19.

28. Donsky, *supra* note 26.

29. See SR 996, as introduced, 2008 Ga. Gen. Assem.; see also HR 1364, as introduced, 2008 Ga. Gen. Assem.

30. See SR 996, as introduced, 2008 Ga. Gen. Assem.

31. *Id.*

32. *Id.*

33. State of Georgia Final Composite Status Sheet, SR 996, Apr. 4, 2008.

purposes and programs without the approval by resolution of the governing body of the county, municipality, or local board of education.”³⁴

The Senate Finance committee substitute to SR 996 was read in the Senate on March 4, 2008.³⁵ At that time, Senators Weber and Bill Cowser (R-46th) introduced a floor amendment to that version of SR 996 that struck “approves” and inserted in its place “approved” in section 1 on line 23, p. 1, and also struck “or after” from lines 23 and 24.³⁶ Following a brief floor debate, the Senate adopted this amended version of the resolution by a vote of 46 to 3.³⁷

Consideration and Passage by the House

The House of Representatives first read SR 996 on March 5, 2008.³⁸ It favorably reported its own nearly identical resolution, HR 1364, one week earlier, but this companion to SR 996 was not adopted by the House by the session’s Crossover Day, March 11.³⁹ Assigned to the Judiciary (Civil) Committee, SR 996 received its second House reading on March 6, 2008, and the committee favorably reported a substitute on March 27, 2008.⁴⁰ This substitute contributed a one-word alteration to the resolution: the word “applicable” was inserted in front of the phrase “governing body.” on line 25, section 1, p. 1.⁴¹

SR 996 received its third reading in the House on April 4, 2008.⁴² At that time, the House Rules Committee submitted a substitute to the resolution which added the following sentence to line 26, section 1, p. 1: “No school tax funds may be used for such purposes and programs

34. SR 996, § 1, p. 1, line 24, as adopted, 2008 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, SR 996, Apr. 4, 2008.

35. Video Recording of Senate Proceedings, Mar. 4, 2008 at 1 hr., 21 min., 54 sec., [mms://mediam1.gpb.org/ga/leg/2008/ga-leg-senate-3_4_2008-10_04_30_AM.wmv](https://mediam1.gpb.org/ga/leg/2008/ga-leg-senate-3_4_2008-10_04_30_AM.wmv) [hereinafter Senate Video]; State of Georgia Final Composite Status Sheet, SR 996, Apr. 4, 2008.

36. SR 996 (SCFSA), § 1, p. 1, lines 23-24, 2008 Ga. Gen. Assem.

37. Senate Video *supra* note 35 at 1 hr., 31 min., 20 sec.; Georgia Senate Voting Record, SR 996 (Mar. 4, 2008).

38. State of Georgia Final Composite Status Sheet, SR 996, Apr. 4, 2008.

39. State of Georgia Final Composite Status Sheet, HR 1364, Apr. 4, 2008.

40. State of Georgia Final Composite Status Sheet, SR 996, Apr. 4, 2008.

41. Compare SR 996 (SCFSA), 2008 Ga. Gen. Assem., with SR 996 (HCS), § 1, p. 1, line 25, 2008 Ga. Gen. Assem.

42. State of Georgia Final Composite Status Sheet, HR 1364, Apr. 4, 2008.

except as authorized by general law after January 1, 2009; provided, however, that any school tax funds pledged for the repayment of tax allocation bonds which have been judicially validated pursuant to general law shall continue to be used for such purposes and programs.”⁴³ The Rules Committee substitute to SR 996 was adopted by a 129 to 38 vote.⁴⁴ As this version of the resolution differed from its adopted version in the Senate, SR 996 returned for renewed consideration by its originating chamber.⁴⁵

In an initial vote back in the Senate, the resolution passed by a vote of 35 to 16, a margin short of the required two-thirds majority.⁴⁶ In a second vote immediately thereafter, the Senate approved this version by the necessary super-majority in a vote of 43 to 8.⁴⁷ Governor Sonny Perdue signed the bill into law on May 14, 2008.⁴⁸ In November 2008, when the voters decide on whether or not to approve the referendum, whether or not Governor Perdue agrees with the outcome is irrelevant, as the governor does not “have the power to veto constitutional amendment resolutions.”⁴⁹

The Resolution

SR 996 has two sections: one setting forth the language of proposed constitutional amendments and a second setting forth the ballot language to be used in a referendum on such amendments.⁵⁰ Amendments were proposed to the Constitution’s article IX, section 2, paragraph 7, and the accompanying ballot language is set forth pursuant to its article X, section 1, paragraph 2.⁵¹

43. SR 996 (HRCs), § 1, pp. 1–2, line 26, 2008 Ga. Gen. Assem.

44. Georgia House of Representatives Voting Record, SR 996 (Apr. 4, 2008).

45. State of Georgia Final Composite Status Sheet, SR 996, Apr. 4, 2008.

46. Georgia Senate Voting Record, SR 996 (Apr. 4, 2008 at 11:44pm).

47. Georgia Senate Voting Record, SR 996 (Apr. 4, 2008 at 11:49pm).

48. Georgia General Assembly, SR 996, Resolution Tracking, http://www.legis.state.ga.us/legis/2007_08/sum/sr996.htm.

49. E-mail from Robert Highsmith, Partner, Holland & Knight, LLP, to Robbie Ashe, Legislative Editor, Georgia State University Law Review (Apr. 29, 2008, 14:19:38 EST) (on file with the Georgia State University Law Review). The editors would like to thank Mr. Highsmith, one of Georgia’s leading experts on state legislative issues, particularly redevelopment and election law, for his invaluable assistance on this project.

50. See SR 996, as passed, 2008 Ga. Gen. Assem.

51. See *id.*

The first proposed amendment is the addition of the following clause as a new subparagraph (a.1) to article IX, section 2, paragraph 7: “The General Assembly may authorize any county, municipality, or housing authority to undertake and carry out community redevelopment.”⁵² The resolution also proposes amendments to subparagraph (b) of this same article.⁵³ One proposed change to this subparagraph is the insertion into its first sentence of the word “also,” a grammatical precursor to substantive modifications to the article in later clauses.⁵⁴ These modifications authorize the General Assembly to grant counties or municipalities the power to issue tax allocation bonds to finance community redevelopment and to use county, municipal, or school tax funds to pay the debt incurred in issuing those bonds.⁵⁵ Moreover, the proposed amendments declare that such use of school tax funds is expressly permissible despite the constitution’s Educational Purposes Clause.⁵⁶ The resolution makes the use of tax funds for redevelopment purposes entirely contingent on the approval by resolution of the “applicable governing body of the county, municipality, or board of education.”⁵⁷ Finally, the resolution makes the use of school tax funds in TAD financing permissible only as authorized by general law after January 1, 2009, except that any school tax funds pledged to tax allocation bonds which have already been judicially validated are to be used for such purposes.⁵⁸

Section 2 of the resolution sets forth the ballot language through which these proposed constitutional amendments will be presented for public referendum.⁵⁹ Specifically, the ballot question will read: “Shall the Constitution of Georgia be amended so as to authorize community redevelopment and authorize counties, municipalities, and local boards of education to use tax funds for redevelopment purposes and programs?”⁶⁰ This section also specifies other language

52. *Id.*

53. *See id.*

54. *See id.*

55. *Id.*

56. SR 996, as passed, 2008 Ga. Gen. Assem.

57. *Id.*

58. *Id.*

59. *See id.*

60. *Id.*

to be included on the ballot pursuant to article X, section 1, paragraph 2 of the constitution.⁶¹

Analysis

The first element of the proposed constitutional amendment seeks to replace language “unintentionally stripped out” during a previous reform of eminent domain.⁶² An identical proposed subsection (a.1) in the House companion resolution was said to simply put that language back into place.⁶³ Representative Charles Martin (R-47th) suggested that, although the absence of such a provision had not been a barrier to local government-initiated redevelopment, its insertion would minimize the risk of litigation over this implied redevelopment power.⁶⁴ Legislators downplayed the novelty of this amendment, saying that it “simply restates” and “reaffirms” county, municipality, and housing authority redevelopment power.⁶⁵

The resolution’s subsection (b) more squarely embodied a legislative response to *Woodham*. Through the proposal of this amended subsection, said Representative Martin, the General Assembly meant to “ask voters if they want[ed] to clear up” the unconstitutionality of TAD school revenue usage and “allow educational funds to be used for this specific case of redevelopment.”⁶⁶ Introducing the resolution in the Senate on the day of its adoption by that chamber, Senator Dan Weber (R-40th) said pointedly, “SR 996 is a constitutional amendment to address a problem created by a recent Supreme Court decision.”⁶⁷ Supporting legislators consistently viewed the *Woodham* decision as frustrating an unofficial exception to the Educational Purposes Clause that had been relied upon by municipalities and voters for over twenty-two years.⁶⁸ SR 996 and its companion bill in the House were aimed at

61. *Id.*

62. Video Recording of House Judiciary Committee, Feb. 26, 2008 at 27 min., 30 sec. (remarks by Rep. Stacey Abrams (D-84th)), <http://media.legis.ga.gov/hav/08/comm/judy/judy022608.wmv> [hereinafter House Video].

63. *Id.*

64. See Interview with Rep. Charles Martin (R-47th) (Mar. 26, 2008) [hereinafter Martin Interview].

65. House Video, *supra* note 62; Martin Interview, *supra* note 64.

66. See Martin Interview, *supra* note 64.

67. Senate Video, *supra* note 35, at 1 hr., 23 min., 4 sec. (remarks by Sen. Dan Weber (R-40th)).

68. See Martin Interview, *supra* note 64.

making this unofficial exception an official, constitutional one.⁶⁹ This objective, and the means by which SR 996 pursues it, implicates several legal and policy issues.

SR 996 as a Constitutional Response to Woodham

The proposed amendment to article IX, section 2, paragraph 7, subsection (b) of the Georgia Constitution set forth in SR 996 would expressly authorize the use of school tax revenues for redevelopment purposes.⁷⁰ This would respond affirmatively to the Georgia Supreme Court's conclusion in *Woodham* that "the constitutional authorization for such expenditure is lacking."⁷¹ As pointed out by members of the House Judiciary Committee while discussing identical language in HR 1364, SR 996 would not modify the Educational Purposes Clause to authorize this specific use of school revenues and would potentially leave intact a conflict between it and the Redevelopment Powers Clause.⁷² Nonetheless, the amendment to subsection (b) would explicitly recognize this non-educational expenditure as an exception to the Educational Purposes Clause.⁷³ Moreover, the Supreme Court recently explained that if an adopted constitutional amendment conflicts with an existing provision of the constitution, "the amendment, being the last expression of the sovereign will of the people, will prevail as an implied modification pro tanto of the former provision," meaning that "an amendment will not be ineffectual or invalid merely because it conflicts with existing provisions."⁷⁴ In this case, the proposed amendment would both specifically disclaim conflict with the Educational Purposes Clause and modify it as a later expression of the people's will regarding the use of school revenue in financing TADs.⁷⁵

69. *Id.*

70. See SR 996, as passed, 2008 Ga. Gen. Assem.

71. *Woodham v. City of Atlanta*, 657 S.E.2d 528, 530 (Ga. 2008) (citing *Wright v. Absalom*, 159 S.E.2d 413, 415 (Ga. 1968)).

72. House Video, *supra* note 62 at 30 min., 52 sec. (remarks by Rep. Stacey Abrams (D-84th) and Rep. Mary Margaret Oliver (D-83rd)).

73. See SR 996, as passed, 2008 Ga. Gen. Assem.

74. *Columbus-Muscogee County Consol. Gov't v. CM Tax Equal., Inc.* 579 S.E.2d 200, 202 (Ga. 2003).

75. House Video, *supra* note 62, at 31 min., 51 sec. (remarks by Rep. Stacey Abrams (D-84th)).

Language of the SR 996 Ballot Question

In committee hearings, opponents of SR 996 questioned whether the language of the ballot question reflected the contents of the amendment, raising a potential constitutional problem with the resolution.⁷⁶ However:

[t]he complete text, or all details, of a proposed amendment need not be set out in a ballot for the approval of a constitutional amendment to be valid; only so much should be printed as may be necessary to indicate clearly the nature and purpose of the amendment and to permit the voters to cast an intelligent and informed ballot.⁷⁷

Supporters of the resolution agree that “[t]he ballot question has to fairly represent what is being requested in the language of the constitutional amendment, and we believe that those two things are very, very much in sync.”⁷⁸ Although the ballot question does not specifically refer to the power granted the General Assembly in subparagraph (a.1) to “authorize any . . . housing authority to undertake . . . redevelopment,” it does contain a phrase asking voters to approve the amendment “so as to authorize community redevelopment.”⁷⁹ Supporters insist this is clear and fair enough for voters to make an informed decision.⁸⁰ Because the legal requirement is not as high as demanding a word-for-word statement of the amendment, a challenge on these grounds is unlikely to succeed.⁸¹

76. See Student Observation of the House Judiciary Tumlin Subcommittee (Mar. 18, 2008) [hereinafter Tumlin Subcommittee] (on file with the Georgia State University Law Review).

77. 16 AM. JUR. 2D *Constitutional Law* § 32 (1998).

78. See Interview with Rep. Stacey Abrams (D-84th) (Mar. 27, 2008) [hereinafter Abrams Interview].

79. See SR 996, as passed, 2008 Ga. Gen. Assem.

80. See Tumlin Subcommittee, *supra* note 76.

81. See *Goldrush II v. City of Marietta*, 482 S.E.2d 347, 352 (Ga. 1997) (“[T]his court . . . [conducts] only a minimal review of ballot language if the state followed all of the constitutionally and statutorily required procedures for amending the constitution . . .”).

The Single-Issue Rule

Under the Georgia Constitution, voters must be allowed to vote on different amendments to the state constitution separately.⁸² The amendment in SR 996 includes both a new subparagraph (a.1) and a revision to subparagraph (b).⁸³ Although the two changes are distinct, supporters insist that the amendment is valid since “the general section of the constitution that we are dealing with is worried about the powers clause of the constitution that we’re addressing [and the two issues are] all within that same section.”⁸⁴

According to the Supreme Court of Georgia, “The test of whether an Act or a constitutional amendment violates the multiple subject matter rule is whether all of the parts of the Act or of the constitutional amendment are germane to the accomplishment of a single objective.”⁸⁵ Furthermore, “[a]pplication of the germaneness test requires identification of the subject-matter or objective of the amendment.”⁸⁶ Subparagraph (a.1) adds language explicitly stating that the General Assembly may authorize any “county, municipality, or housing authority to undertake and carry out community redevelopment.”⁸⁷ Subparagraph (b) authorizes use of school tax funds to fund redevelopment, including payment of debt service on tax allocation bonds, notwithstanding the educational purposes clause of the state constitution.⁸⁸ A narrow reading of the amendment could conceivably characterize the two subparagraphs as pursuing two different objectives. However, in *Perdue v. O’Kelley*, the Georgia Supreme Court recognized that:

[T]he word “subject matter” as used in the Constitution . . . is to be given a broad and extended meaning so as to allow the legislature authority to include in one Act all matters having a logical or natural connection. To constitute plurality of subject matter, an Act must embrace two or more dissimilar and

82. *Perdue v. O’Kelley*, 632 S.E.2d 110, 112 n.2 (Ga. 2006) (citing GA. CONST. art. X, § 1, para. II).

83. See SR 996, as passed, 2008 Ga. Gen. Assem.

84. See Abrams Interview, *supra* note 78.

85. *O’Kelley*, 632 S.E.2d at 112.

86. See *id.* at 113.

87. See SR 996, as passed, 2008 Ga. Gen. Assem.

88. See *id.*

discordant subjects that by no fair intendment can be considered as having any logical connection with or relation to each other.⁸⁹

Under this rule, the subject matter of the amendment would be defined quite broadly. Each part of the amendment would likely be found germane to such a broad subject matter, and a single-issue rule challenge is thus likely to fail.

The SR 996 Policy Debate and Opposition

Opponents of SR 996 objected generally to the policy of using education revenue for redevelopment purposes.⁹⁰ This concern was raised during the Senate debate on the resolution by Senator Vincent Fort (D-39th), a senator who ultimately voted against it.⁹¹ Senator Fort asked whether the resolution's sponsors were concerned that SR 996 authorized the use of "precious and scarce" education funds for non-educational purposes when comprehensive property tax reform was also being considered by the General Assembly.⁹² Representative Mike Jacobs (R-80th) opposed the bill both in committee and on the floor and explained that he thought "the Supreme Court got it right" in *Woodham* and, moreover, that taxpayers expect school taxes to be used for educational purposes.⁹³ "If not used for educational purposes, there is a compelling argument that school taxes should not be collected in the first place," he went on to say.⁹⁴

Other opposition stemmed from the desire to leave policy decisions on taxation and redevelopment to local governments. Supporters of the resolution acknowledged that the TAD policy was controversial and that arguments existed on both sides.⁹⁵ On the one hand, TAD proponents describe the mechanism as an invaluable means for local governmental entities to finance their redevelopment

89. *O'Kelley*, 632 S.E.2d at 113 (quoting *Crews v. Cook*, 220 Ga. 479, 481 (1964)).

90. Senate Video, *supra* note 35, at 1 hr., 26 min., 16 sec. (remarks by Sen. Vincent Fort (D-39th)).

91. *Id.*; Georgia Senate Voting Record, SR 996 (Mar. 4, 2008).

92. Senate Video, *supra* note 35, at 1 hr., 26 min., 31 sec. (remarks by Sen. Vincent Fort (D-39th)).

93. A TAD More Than We Bargained For, <http://repjacobs.com/2008/03/> (Mar. 8, 2008, 18:11 EST).

94. *Id.*

95. See Martin Interview, *supra* note 64.

and strengthen their long term tax base.⁹⁶ The *Woodham* decision, for example, derailed an initial \$28 million installment the City of Atlanta was set to pump into the BeltLine, a project expected to be worth \$1.7 billion in new taxes over twenty-five years.⁹⁷ On the other hand, Senator Fort, in debating SR 996, contemplated TADs as a form of “corporate welfare.”⁹⁸ Further, TAD debates implicate land use and education issues of localized and intense public sentiment. A TAD incentive recently approved for a 100-acre mixed-use development along Atlanta’s Briarcliff Road in DeKalb County, for example, has been highly controversial, and the governing school board chose not to pledge tax funds.⁹⁹ Finally, the question of whether TADs should focus only on “blighted” areas will probably remain part of the policy debate surrounding them irrespective of SR 996.¹⁰⁰

The supporters of SR 996 stressed that the resolution would merely make TAD participation an option for school boards and would not force them to pledge tax revenues toward community redevelopment.¹⁰¹ This feature of the resolution was cited as an explanation for why local school boards did not assert much of a presence in the debate over SR 996, let alone an organized opposition to it.¹⁰² Representative Martin (R-47th) explained that a requirement for local approval was already in the Redevelopment Powers Act, but that, out of an “overabundance of caution,” they wanted it in the constitution in the event that a later legislature tried to eliminate it.¹⁰³ During the floor debate of SR 996, Senator Kasim Reed (D-35th) alluded to the Finance Committee’s substitute language regarding local approval as among the “extraordinary steps” its sponsors took “to make sure that the school board remained in charge in terms of determining whether a TAD could go forward.”¹⁰⁴ Moreover, Senator

96. See Paul Donsky, *Constitutional Change Could Help Redevelop Fiber Optics Site*, ATLANTA J.-CONST., Mar. 15, 2008, at J3.

97. Wooten, *supra*, note 27.

98. Senate Video, *supra* note 35, 1 hr., 25 min., 36 sec. (remarks by Sen. Vincent Fort (D-39th)).

99. Wooten, *supra*, note 27.

100. See Telephone Interview with Rep. Mary Margaret Oliver (D-83rd) (Mar. 26, 2008) [hereinafter Oliver Interview].

101. House Video, *supra* note 62, at 28 min., 14 sec. (remarks by Rep. Edward Lindsey (R-54th)).

102. See Oliver Interview, *supra* note 100.

103. See Martin Interview, *supra* note 64.

104. Senate Video, *supra* note 35, 1 hr., 27 min., 57 sec (remarks by Sen. Kasim Reed (D-35th)).

Weber (R-40th) repeated the same basic thesis in answer to three questions by Senator Fort on the wisdom of using school revenues to finance TADs, saying in the last instance, “[T]hat’s a decision for the local board of education to make.”¹⁰⁵ This discretion is a significant feature of SR 996 because, although forty-eight states permit school revenues to be used in financing community redevelopment, only two states give school boards total control over the decision to do so.¹⁰⁶

Representative Edward Lindsey (R-54th) pointed out that, while the proposed amendment would give school boards the choice to participate in TADs, the only alternative available to them without it is “100% of nothing.”¹⁰⁷ In addition, while the supporters of SR 996 did not condone specific instances of TAD participation by school boards, they did generally weigh in on the merits of doing so.¹⁰⁸ Representative Lindsey, speaking in committee in support of HR 1364, emphasized that school boards enjoyed both short- and long-term benefits of TAD participation.¹⁰⁹ He pointed out that school boards often negotiate cash or new schools upfront and, once the bonds are paid off, enjoy a stronger tax base.¹¹⁰

In the end, voters will decide whether SR 996 will address the *Woodham* decision.¹¹¹ Representative Martin cited the resounding approval of the 1984 resolution on TADs as evidencing the need to give the people of Georgia the chance to again endorse this aspect of TAD financing.¹¹² Moreover, Representative Oliver put it plainly: “I expect developers will finance a campaign for it, but who will campaign against it?”¹¹³ Senator Weber also noted unified support for the resolution, describing it as the collaborative product of “bond attorneys, representatives of school boards, Georgia School Board

105. *Id.* at 1 hr., 26 min., 44 sec (remarks by Sen. Dan Weber (R-40th)).

106. NATIONAL EDUCATION ASSOCIATION, *Protecting Public Education from Tax Giveaways to Corporations: Property Tax Abatements, Tax Increment Financing, and Funding for Schools* 1, 15 (NEA Research, Working Paper, Jan. 2003), <http://www.nea.org/presscenter/images/protectingpubliceducationfullreport.pdf>.

107. House Video, *supra* note 62, at 29 min., 52 sec. (remarks by Rep. Edward Lindsey (R-54th)).

108. *See, e.g.*, Martin Interview, *supra* note 64.

109. House Video, *supra* note 62, at 29 min., 40 sec. (remarks by Rep. Edward Lindsey (R-54th)).

110. *Id.* at 29 min., 27 sec. (remarks by Rep. Edward Lindsey (R-54th)).

111. *See* Martin Interview, *supra* note 64.

112. House Video, *supra* note 62, at 32 min., 44 sec. (remarks by Rep. Charles Martin (R-47th)).

113. *See* Oliver Interview, *supra* note 100.

Association, counties and cities and their representatives”¹¹⁴
Because of its high profile, the BeltLine TAD may end up providing both the center of the dispute invalidating the use of school revenue for redevelopment purposes as well as the momentum necessary to carry the constitutional amendment forward in the Fall 2008 referendum.¹¹⁵ If so, SR 996 would reinstate a practice worth millions to pending redevelopment and commit its application to the discretion of the school boards whose short-term revenue is at stake.¹¹⁶

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Postscript

SR 996’s referendum appeared on the November 2008 general election ballot and was ratified by a margin of 1,868,112 to 1,756,809.¹¹⁷ It became part of the Georgia Constitution effective January 1, 2009.¹¹⁸

114. Senate Video, *supra* note 35, at 1 hr., 28 min., 41 sec. (remarks by Sen. Dan Weber (R-40th)).

115. See Oliver Interview, *supra* note 100.

116. See Martin Interview, *supra* note 64; *supra* text accompanying note 98.

117. Georgia Election Results, Official Results of the Tuesday, November 04, 2008 General Election (Feb. 18. 2009), http://sos.georgia.gov/ELECTIONS/election_results/2008_1104/swqa.htm

118. GA. CONST. art. X, § I, para. VI