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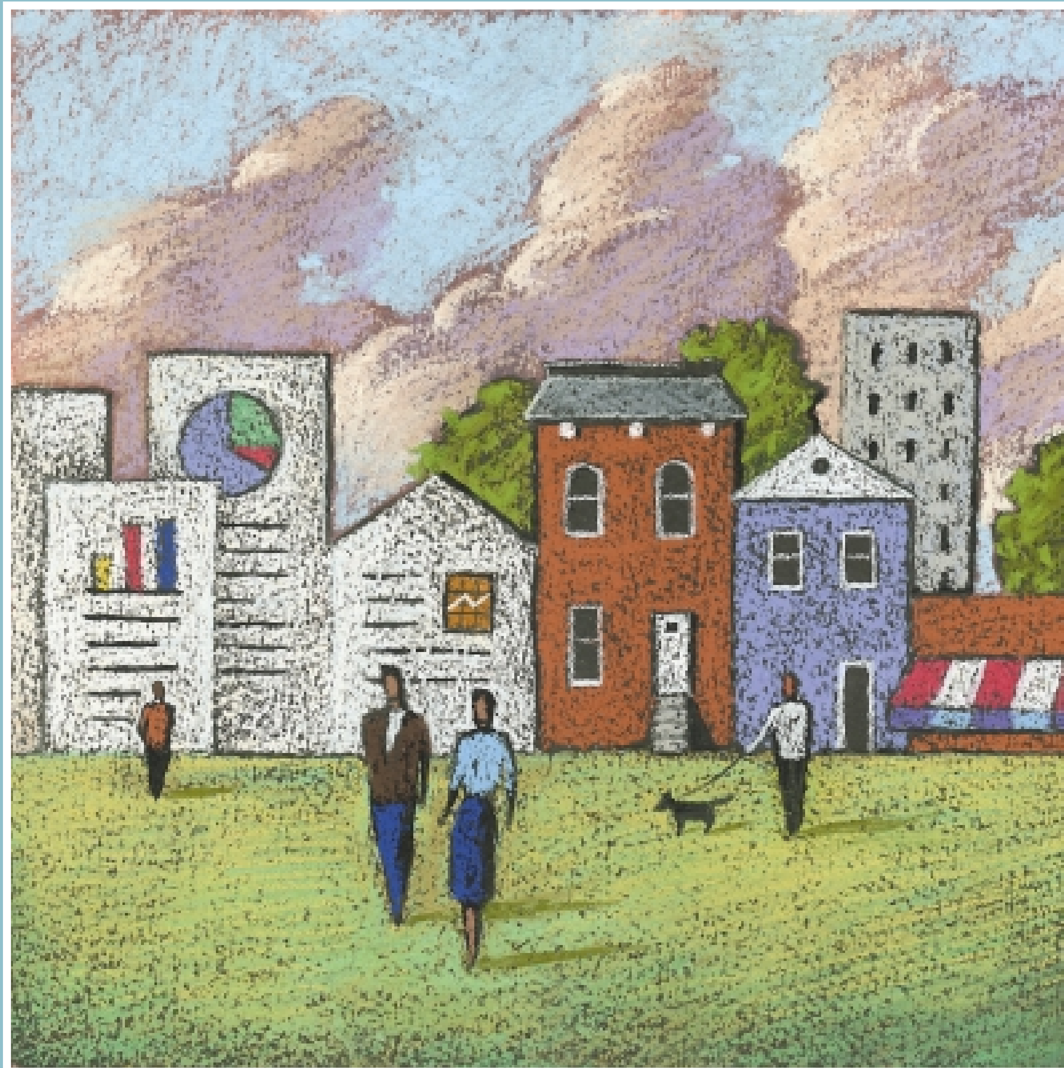
Report
March 2002

Housing Trust Funds

for

Local Governments in Georgia



Frank S. Alexander

Fannie Mae Foundation

The Fannie Mae Foundation creates affordable homeownership and housing opportunities through innovative partnerships and initiatives that build healthy, vibrant communities across the United States. The Foundation is specially committed to improving the quality of life for the people of its hometown, Washington, DC, and to enhancing the livability of the city's neighborhoods. Headquartered in Washington, DC, the Foundation is a private, nonprofit organization whose sole source of support is Fannie Mae, and has regional offices in Atlanta, Chicago, Dallas, Pasadena, and Philadelphia.

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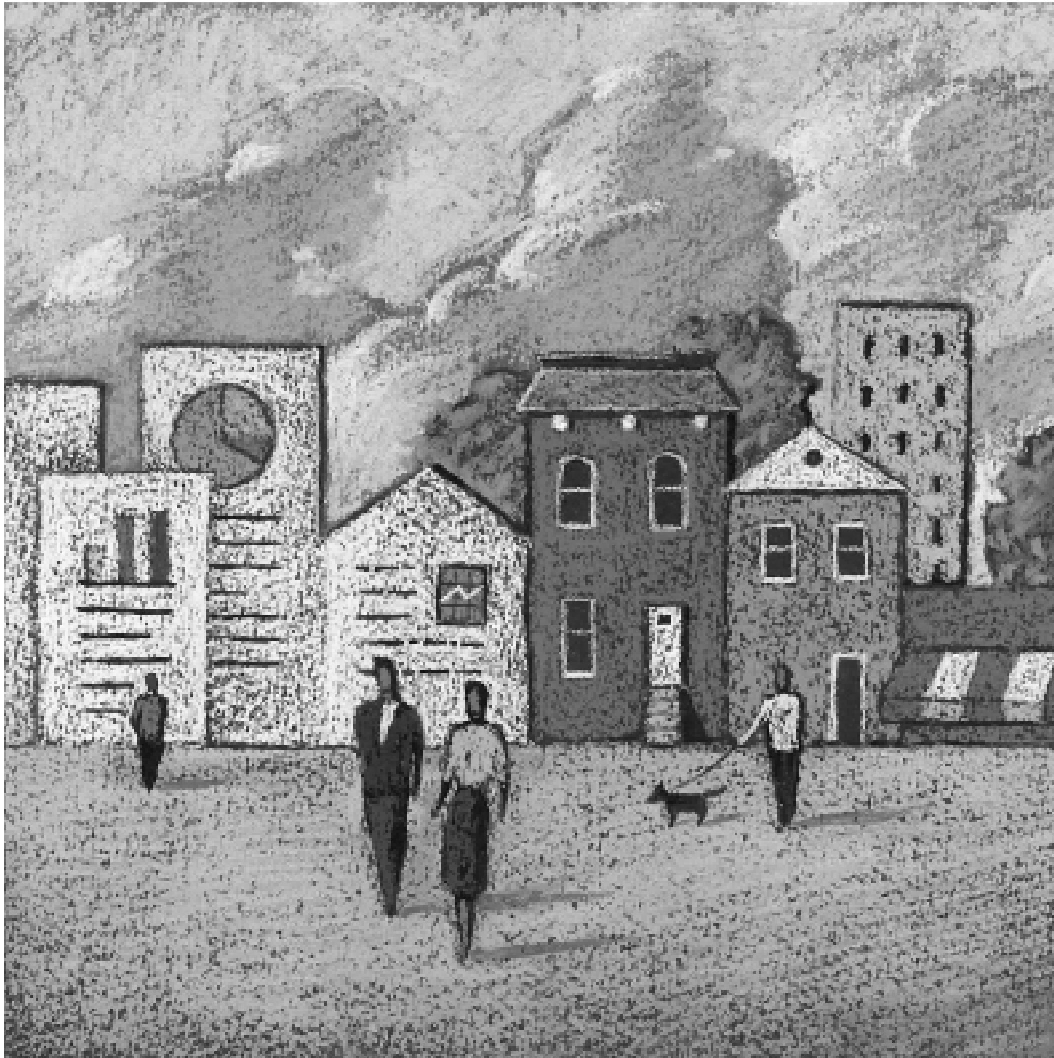

Frank S. Alexander

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Housing Trust Funds for Local Governments in Georgia

Contents

Foreword . . . v

Preface . . . vii

Executive Summary . . . ix

Financing Affordable Housing . . . 1

- The Lack of Affordable Housing . . . 1
- Housing Trust Funds . . . 2
- Structuring a Local Housing Trust Fund in Georgia . . . 5

Legal Constraints on Dedicated Funds . . . 6

- Legal Constraints on State Funds . . . 6
- Legal Constraints on Local Government Authority . . . 9
- The Existing Authority: What Can Local Governments Do Today? . . . 14

Creating a Local Government Housing Trust Fund in Georgia: Strategic Options . . . 16

- Strategic Decisions . . . 16
- Housing Trust Funds with Existing Dedicated Revenues . . . 17
- Housing Trust Funds with New Revenues . . . 18
- Governance of a Housing Trust Fund . . . 20

Conclusion . . . 21

Author . . . 22

Notes . . . 23

Foreword

Two key components of the Fannie Mae Foundation's mission are to increase affordable housing opportunities for all Americans and to create and share knowledge that is relevant to advancing policy, practice, and thought in the field of affordable housing and community development in order to build healthy communities across America.

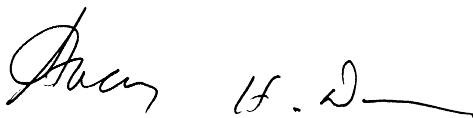
In support of its mission, the Fannie Mae Foundation is pleased to present this excellent analysis by Professor Frank S. Alexander—*Housing Trust Funds for Local Governments in Georgia*—to help Georgia's local government leaders understand how they could use housing trust funds to meet their residents' affordable housing needs.

Housing trust funds are powerful tools for providing locally targeted and managed assistance for affordable housing. The Center for Community Change (CCC), a nonprofit organization that tracks affordable housing trust funds, reports that as of February 2002 there are at least 257 housing trust funds in the United States, 36 at the state level and the rest established by cities and counties. According to CCC, more than $500 million is spent for affordable housing through these trust funds every year and the amount is increasing. On average, says CCC, for every $1 committed to a housing project by a housing trust fund, another $5 to $10 is leveraged in other public and private resources.

Affordable housing trust funds are used to finance a variety of housing programs, including construction of single-family or multifamily affordable housing, rehabilitation of existing units, rental assistance, home purchase assistance, and other activities targeted to low- and moderate-income households.

My home state of Georgia has an interesting political history that presents greater challenges to local governments interested in establishing housing trust funds than the challenges that may face jurisdictions in most other states. Professor Alexander's report cuts through the maze of often-confusing, and in some cases even conflicting, legal requirements imposed by Georgia's constitution and statutes, providing clear guidance for local governments to consider establishment of housing trust funds.

Housing affordability is an increasing concern nationwide, and no less so in Georgia. The complex challenge of providing decent, affordable housing for working families calls for a willingness to look for and implement innovative solutions that fit the times. State and local government officials should provide leadership toward development of comprehensive affordable housing programs. Housing trust funds can be one important tool to help structure multi-pronged, attainable solutions.



Stacey H. Davis
President and CEO
Fannie Mae Foundation

PREFACE

For most of the 20th century, housing was made available through the basic operation of private housing markets and through direct and indirect subsidies provided by the federal government. State governments played only marginal roles in the creation of safe, decent, and affordable housing, and the role of local governments consisted primarily of enforcing building and housing codes. This has begun to change.

In the last decade of the 20th century, cities and counties across the United States began to create innovative approaches to meeting the housing needs of their residents. One such approach has been the creation by local governments of trust funds dedicated to providing public subsidies for the development and operation of affordable housing. The distinct advantage of such a fund is that financial resources are locally raised and housing needs and priorities are locally determined.

Georgia presently has a State Housing Trust Fund, which was created by the General Assembly in 1988. The resources of the State Housing Trust Fund for the Homeless consist mainly of an annual appropriation of approximately $3.3 million by the General Assembly. These funds are used to provide the required state matching funds for federal homeless assistance grants and to provide development subsidies in conjunction with other state and federal programs. The State Housing Trust Fund provides virtually no support directly to local governments in meeting housing needs.

Georgia's legal history is a complex story of the shifting balance of power and authority between state and local governments. Until the latter portion of the 20th century, local governments had very little inherent authority and instead relied solely on detailed and limited authority granted by the General Assembly. Embedded within this story is yet another drama involving the dedication of taxes for particular purposes. Georgia's near bankruptcy in the aftermath of the Great Depression led to constitutional revisions prohibiting the dedication of taxes or revenues for any particular function.

This report examines the legal issues surrounding the creation of a housing trust fund by a city or county in Georgia. It is not the purpose of this report to demonstrate the need for public subsidies for affordable housing units, nor is it designed to identify a particular method of funding. Instead, the purpose is to sort through the maze of constitutional and statutory laws in Georgia that tend to constrain, and restrain, the power of local governments in Georgia to address the housing needs of their residents. Housing trust funds for local governments in Georgia remain a distinct possibility and hold the promise of innovative solutions to housing needs.

This report is intended to provide public officials throughout the state with an overview of the legal issues relevant to the creation of housing trust funds by local governments. For the benefit of city and county attorneys, extensive citations to pertinent state constitutional and statutory laws and judicial decisions are listed in the notes at the end of this report.

This study was made possible by the generous support of the Fannie Mae Foundation. The views expressed are those of the author and do not necessarily represent the views of the Foundation, its board of directors, or its officers.

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Housing Trust Funds for Local Governments in Georgia

Frank S. Alexander

Executive Summary

The State of Georgia has declared its policy—adopted in 1991—"to provide decent, safe and affordable housing…" for all Georgians. This ambitious goal is easier to declare than to realize. An estimated 40 percent of all Georgia households have low to moderate incomes, and many simply cannot afford suitable housing.

The challenge of providing safe, decent, and affordable housing to all citizens is increasingly falling on local governments throughout the country. It is a virtual certainty that in coming years local governments in Georgia will bear responsibility for providing affordable housing for their residents.

Affordable housing trust funds have emerged nationwide as important tools to provide affordable housing. More than 150 jurisdictions (states, cities, and counties) have created housing trust funds. As of 1999, housing trust funds had provided $1.5 billion to support more than 200,000 units of affordable housing across the country. Housing trust funds generally have these key features: 1) the fund is separate from the jurisdiction's budget and appropriations process; 2) the fund has a dedicated revenue source; and 3) the fund is administered by an independent board or commission.

Georgia has a statewide affordable housing trust fund—the State Housing Trust Fund for the Homeless—which passes through federal grant funds for certain programs and also receives a modest annual appropriation of state funds. It does not have all the key features of most affordable housing trust funds, however, and it has a narrow mandate to support programs for the homeless. With Georgia local governments looking for ways to help ensure that decent, affordable housing is available to their residents, local housing trust funds are a strong option. In this era of devolution, locally established, funded, and operated housing trust funds make sense; they can be controlled by the local jurisdiction and targeted to meet local housing needs, and their limited geographic scale generally ensures the flexibility to change the program as required.

For local governments to establish housing trust funds, however, a number of legal hurdles must be overcome. Georgia has a history of holding governmental power at the state level, except as power is specifically allocated to cities and counties, and all current legal provisions must be interpreted in the context of Georgia's cultural and constitutional history.

This report analyzes local governments' authority to create separate funds for affordable housing and dedicate public revenues to those funds, with particular focus on

Georgia's historic prohibition on earmarking revenue for specific purposes and its restrictions on home rule for local governments. Funds received by the State must generally go into the general revenue fund. Counties must be authorized by the State to do anything beyond providing roads and other transportation infrastructure, and cities have only the powers granted to them in their state charters.

It appears that local governments in Georgia have adequate discretionary authority to create a housing trust fund as a special revenue fund within their system of budgets and accounts. Certain funds that are in the jurisdiction's control can be allocated to the trust fund, but there are significant legal issues with providing a revenue stream for such a fund. Development or housing impact fees are a common dedicated revenue source for affordable housing trust funds, and other often-used sources of funds include the real estate transfer tax or mortgage recording tax. All of these are unavailable to Georgia local governments, under current state law.

Armed with an understanding of the legal issues, local governments in Georgia that are interested in establishing a housing trust fund face four strategic choices:

1. Whether to undertake local initiatives or to seek statutory changes by the Georgia General Assembly to provide a wide range of options—or both.

2. How to identify sources and types of funds within the sole control of the local government that could be transferred to a dedicated trust fund.

3. Whether, and how, to seek new dedicated sources of revenue for a housing trust fund.

4. How to administer and govern a housing trust fund.

The simplest and most important initial step a local government could take is to create a housing trust fund as a special revenue fund on its budgetary accounts. Housing-related funds received by the jurisdiction, such as federal Community Development Block Grants, could then be deposited to the fund with proper authorization. Non-tax-based revenues could also be allocated to the fund. To obtain new revenues for the fund likely would require state action.

A jurisdiction that chooses to move forward with establishing a housing trust fund will need to thoughtfully determine the fund's administrative structure, the target population to be served, and the range of techniques by which the fund could support affordable housing.

To meet the needs of their residents for affordable housing in the months and years to come, local governments will need to engage in innovative and creative planning. Affordable housing trust funds provide one of the most promising strategies available to local governments for this purpose. Although action by the Georgia General Assembly could broaden the revenue options, local jurisdictions are free to act now to begin using housing trust funds as powerful tools to help meet Georgia's policy goal to provide "decent, safe and affordable housing."

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Housing Trust Funds for Local Governments in Georgia

Frank S. Alexander

Financing Affordable Housing

The Lack of Affordable Housing

In the middle of the 20th century, Congress declared the goal of "a decent home and a suitable living environment" for every American family.[1] In 1991, the State of Georgia declared its own policy "to provide decent, safe and affordable housing to all segments of the population of this state."[2] This goal has remained far easier to announce than to meet. Largely because of the economic prosperity of the 1990s, the homeownership rate in the United States reached 68 percent in 2000, the highest percentage ever recorded. In Georgia, 67.5 percent of all housing units were owner occupied in 2000.[3] This success, however, should not mask the consistent difficulties faced by lower-income families in obtaining safe, decent, and affordable housing.

The economic prosperity at the close of the 20th century did little to close the gap between the very rich and the very poor in our society. Instead, this gap continued to grow. The median income of the top 20 percent of households ($141,621) was 13.9 times higher than the median income of the lowest 20 percent ($10,188); this is the highest gap in recent history.[4] Not surprisingly, the poor still tend to be concentrated in the central cities of metropolitan areas or located in rural portions of the state. Nationally, the median income of households in central cities was 72.3 percent of the median income of households in the suburbs, and in rural areas, the median income was only 65.33 percent of that of the metropolitan suburbs.[5]

The contrast is even more pronounced in the Atlanta metropolitan area. In 2000, the median income in the 20 counties comprising the metropolitan area was $63,100; in the city of Atlanta, it was only $35,360.[6] Over one-quarter (28.4 percent) of the families in the city of Atlanta had an income of less than $18,930.[7] In 2001, the fair market rent for a two-bedroom apartment in the counties of metropolitan Atlanta was $839 a month.[8] This amount is dramatically beyond the reach of over a quarter of the residents of the city of Atlanta, who could afford to pay at most only $473 a month.[9] This high cost of housing affects families throughout the state. Approximately 40 percent of all Georgia households are classified as low- or moderate-income families, and over 10 percent of all Georgia households pay more than 50 percent of their monthly income for housing.[10]

The challenge of providing safe, decent, and affordable housing to all citizens is increasingly falling on local governments throughout the country. Significant reforms in housing policies at the federal level, coupled with a steady trend in devolution of federal funding to state and local governments, are shifting the burden of meeting the housing needs of low- and moderate-income residents to our cities and counties. Welfare reform is succeeding in dramatically reducing the number of families receiving federal and state assistance, but families still need to be able to obtain affordable housing. Public housing authorities are engaging in a massive revitalization of large-scale public housing projects, but in the process are reducing the aggregate number of subsidized housing units and shifting their focus to providing housing for the working poor instead of families with the least income.

In coming years, local governments in Georgia will bear responsibility for ensuring that affordable housing is available. While existing housing programs at the state level may be marginally expanded, the historic tension in the General Assembly between rural and urban interests, coupled with the budgetary pressures of an economic recession, render new statewide housing initiatives highly unlikely. What is possible, however, is that the General Assembly will authorize cities and counties across the state to create locally funded and managed housing trust funds.

Housing Trust Funds

Housing trust funds are government programs that have developed across the country in just the past 25 years. During this period, over 150 different states, cities, and counties have created housing trust funds.[11] These funds have proven to be some of the most innovative, efficient housing programs developed in the past 100 years. By 1999, they collectively allocated approximately $1.5 billion to support 200,000 units of affordable housing.[12]

Housing trust funds can serve several functions:

1. As a dedicated or restricted account within the supervision and control of a state or local government entity, the trust fund provides a source of financial resources specifically targeted to meet the variety of housing needs within the entity's jurisdiction. The fund's existence ensures that resources will be available to meet housing needs on an ongoing basis independent, at least in part, of the budgetary cycles every government faces.

2. Housing trust funds enable a government to undertake multiyear programs and commitments. By their very nature, the affordable housing needs of a given community cannot be addressed adequately in a short time, and longer-term commitments are necessary to support the development and operation of housing assistance programs.

3. A housing trust fund provides the opportunity to marshal expertise and experience in the development and operation of housing programs. Quite commonly, a housing trust fund will involve as directors, advisers, or commissioners individuals from the public and private sectors with extensive experience in the many ways to address the need for affordable housing.

4. A housing trust fund is usually structured with a broad range of permissible objectives, all tied to the need for safe, decent, and affordable housing. This built-in flexibility permits a jurisdiction to adapt and vary its projects over time as the particular needs of a community change, whether subsidized housing for working families, special-needs housing, or homeless shelter facilities.

5. A housing trust fund may provide a strong conceptual, pragmatic connection between the revenues or taxes that are paid into the dedicated fund and the purpose for which those funds are used. Communities are more likely to support taxes or fees that are derived from general real estate activities (such as real estate transfer taxes or development impact fees) when there is a clear commitment that the revenues will be restricted to housing programs and not diverted to other public needs.

Each community has a different set of affordable housing needs and priorities that usually change over time as the community grows and evolves. For these reasons, a housing trust fund should be tailored to the particular characteristics of a jurisdiction, and rarely are any two funds identical in their structure, financing, and operation. All housing trust funds, however, share certain key features.

The first distinguishing feature is the creation of a distinct "fund" or set of financial accounts that are segregated from a local government's normal budget and appropriation procedures. The existence of a distinct fund has several advantages, even though it is still controlled by the local government.[13] Because the account is segregated, all moneys placed into the fund can be used only for the specified purposes of the fund. In a housing trust fund, all proceeds must be allocated for the housing functions identified in the laws creating the fund. In such a dedicated or restricted fund, it is also likely that loans made by the fund will be repaid to the fund and not to the government's general fund, thus providing a constantly renewing source of money for affordable housing. Many jurisdictions have budgeting requirements providing that all funds not spent or allocated in a given budget year be returned to the general budget. A segregated or dedicated trust fund is usually exempt from such a "lapse" provision. Finally, an independent housing trust fund can enter into multiyear commitments for housing subsidies even when a local government may face general restrictions on multiyear financial commitments.

A second pivotal feature of most housing trust funds across the country is a dedicated source of revenues. The chief advantage of this feature is that it separates the revenues, at least for a fixed period, from the annual budgeting process and ensures that they will be available for affordable housing. Unlike many public projects that require a single capital investment, such as the creation of a park or the construction of a

municipal water system, meeting the needs of low-income residents for affordable housing is an ongoing proposition requiring long-term commitments and a renewing source of funding. A dedicated source of revenue also carries the assurance that funds will be used for stated purposes. When the revenue source itself is tied to housing or real estate activities such as a real estate transfer tax or a development impact fee, it is easier to find public support for the tax and the activity it will fund. State and local housing trust funds across the country use a wide variety of revenue sources, including recording taxes or document taxes, impact fees related to commercial or residential development, interest on certain forms of public investments, and yields on bond financing proceeds.[14]

The third key feature is the existence of an independent board, commission, or authority charged with administering the fund. None of these funds comes into existence without formal legislative action by the governing body of the county, city, or state. The enabling legislation authorizes the creation of the fund, establishes the range of permitted functions and targeted purposes, designates the specific revenue source, and sets forth the administrative decision-making structure. While a few housing trust funds across the country are separately incorporated nonprofit entities or are managed by a local community foundation,[15] the vast majority remain an integral part of the governmental structure. They differ from a normal department or agency in that the trust fund commonly has its own board of directors, advisers, or commissioners. An independent board, appointed by and within the ultimate control of the entity that creates the fund, permits it to be directed by people who have a special interest and expertise in the development and operation of affordable housing. For trust funds created by local governments, this advantage is even more significant because it allows direct resident participation in guiding the fund to meet locally determined affordable housing needs in highly targeted geographic and demographic contexts.

Following the recommendations of a statewide study commission in 1988, the Georgia General Assembly created the State Housing Trust Fund for the Homeless.[16] This special fund has two of the three attributes key to housing trust funds. A special fund is created, and provision is made that moneys held in the fund do not lapse at the end of a fiscal year and are not returned to the state's general fund.[17] Instead, the State Housing Trust Fund is permitted to retain and reallocate all moneys it holds and receives to support residential housing opportunities for low-income persons.[18] To direct the fund's operations, the governor appoints commissioners who are "knowledgeable in the area of housing."[19] The attribute that is lacking is a dedicated source of revenues.

The General Assembly has appropriated approximately $3.3 million annually for the State Housing Trust Fund.[20] In addition, in fiscal year 2000, the fund received federal grant funds in the amount of $6.8 million from the U.S. Department of Housing and Urban Development's Emergency Shelter Grant Program, the Housing Opportunities for Persons with AIDS Program, and the Continuum of Care Program. These funds are distributed statewide to a broad range of public and private nonprofit agencies, with the bulk allocated to services for homeless persons.

The roughly $3.3 million the General Assembly appropriates each year makes a great deal of difference to a number of providers of homeless shelter assistance, but this amount is both unpredictable (because it is subject to annual appropriation) and wholly inadequate to meet the affordable housing needs of Georgia's residents. By contrast, in 1996 a dedicated revenue source in Florida generated more than $120 million for affordable housing, and in that same year seven other states generated more than $5 million each for affordable housing from dedicated revenue sources.[21]

Structuring a Local Housing Trust Fund in Georgia

Unless the General Assembly elects to expand significantly the resources available to the State Housing Trust Fund, the task of providing support for affordable housing will fall on cities and counties. Because of Georgia's unique cultural and constitutional history, however, creating a housing trust fund requires a local government to navigate a complex maze of laws. An analysis of local governments' authority to create a separate fund for affordable housing and to dedicate public revenues to the fund requires an understanding of two powerful currents in Georgia legal history: the laws concerning the dedication of revenues and the nature of home rule in Georgia.

The 20th century has seen a struggle in Georgia over the concept of dedicating revenues for particular projects. In 1945, after facing near bankruptcy during the Great Depression, when over 62 percent of the annual state budget was dedicated to specific functions, Georgia adopted a constitution containing a provision that the proceeds of a particular tax could not be allocated to any specific function. Unless directly authorized by the state constitution, all revenues must be paid to the general fund of the state and made available each year for annual appropriations. While this constitutional requirement appears to apply expressly only to *state* revenues and *state* appropriations, a local government's ability to dedicate revenues must be interpreted in light of this history, as well as the separate constitutional provisions applicable solely to local governments.

For most of its history, Georgia followed a legal concept known as "legislative home rule," in which the powers of local governments existed solely at the discretion of the General Assembly.[22] Cities and counties had no inherent power and could undertake only those actions expressly authorized by the State. County governments existed primarily for the limited purposes of public roads and transportation, and city governments could exercise only those powers specifically granted in a state charter. In the second half of the 20th century, however, a profound shift began to occur, as increasing authority was granted to local governments. Municipalities received much broader "home rule" powers through state statute, and counties obtained similar authority through statewide constitutional amendments. The extent of city and county power to create a local housing trust fund is determined in part by this shifting allocation of powers between state and local governments.

Within this legal and historical context, an analysis of the creation of a housing trust fund by a local government in Georgia requires that four separate yet overlapping issues of law be considered:

1. A threshold issue is simply the authority of a local government to expend its own funds (as opposed to federal or state grant funds) for affordable housing. Though relatively noncontroversial today, this remains an important question both because of the convoluted history of home rule in Georgia and because of the myriad financing techniques needed to create and operate affordable housing.

2. A second issue is a local government's ability to create, or designate, a distinct fund or trust account separate from the government's general funds.

3. The third issue is the ability to dedicate a tax, fee, or other revenue source to a particular program or purpose. Within this third issue lies the question of the forms of taxation, or revenues, that may be levied or imposed by local governments.

4. The final issue addresses the administration of a housing trust fund and the extent to which a local government may create an independent or quasi-independent governance structure for the fund.

Legal Constraints on Dedicated Funds

Legal Constraints on State Funds

The creation of a statewide housing trust fund in Georgia in 1991 had to confront directly the constitutional constraints on the budgeting authority of the General Assembly that arose in the aftermath of the Great Depression. In 1929, over 62 percent of aggregate state revenue was dedicated to two specific purposes—transportation and education—leaving only 38 percent to support all other state activities.[23] This left the General Assembly with little discretion, or authority, to allocate funds to meet changing needs in the economic collapse of the 1930s. The adoption of a new state constitution in 1945 had a profound impact on the structure and authority of state government finance. Three separate constitutional provisions—the Anti-Earmarking Clause, the General Fund Clause, and the Appropriation Clause—were enacted to ensure that the General Assembly had virtually complete control over the revenues and appropriations of the state at all times.

The current Anti-Earmarking Clause of the state constitution provides clearly and directly,

> Except as hereinafter provided, the appropriation for each department, officer, bureau, board, commission, agency, or institution for which appropriation is made, shall be for a specific sum of money, and *no appropriation shall allocate to any object, the proceeds of any particular tax or fund or a part or percentage thereof* [emphasis added].[24]

The immediate effect of the adoption of this constitutional provision in 1945 was to reduce the percentage of state revenues effectively beyond the control of the state legislature. Georgia went from being among the states with the highest dedicated revenues in 1929 to among the lowest in 1993 (at which time only 6 percent of state revenues were dedicated or earmarked for specific functions).[25]

The sheer power of this constitutional provision has led to concern that it ironically has the effect of denying power to the General Assembly to address social issues in creative ways. As a result, this provision has faced numerous amendments creating exceptions to the Anti-Earmarking Clause. One exception, which predated the clause itself, is the constitutionally mandated allocation of motor fuel tax revenues directly to the state Department of Transportation.[26] Additional amendments have made it possible for the General Assembly to dedicate, or earmark, specific revenues to funds such as the Subsequent Injury Workers' Compensation Fund,[27] Law Enforcement Training Fund,[28] Alcohol and Drug Abuse Treatment Fund,[29] Children's Trust Fund,[30] Seed-Capital Fund,[31] Local Government Jail Fund,[32] Indigent Care Trust Fund,[33] Emerging Crops Fund,[34] Brain and Spinal Injury Fund,[35] and Roadside Beautification Fund.[36]

With the sole exception of dedicated motor fuel taxes, each of these constitutional provisions is permissive rather than mandatory, with the General Assembly retaining full authority and control of the extent and duration of revenues allocated to these funds.[37] The recent trend toward returning to the earmarking of revenues is an indication of public support for tying particular revenues to particular expenditures. A general reluctance to support tax increases is not necessarily mirrored in the public's willingness to support the allocation of taxes, fees, or charges when it is assured of the ultimate use of such funds.

Two other key constitutional provisions that govern the budget authority of the General Assembly are the General Fund Clause and the Appropriation Clause, both of which bear on the operation of a trust fund supported by dedicated revenues. The General Fund Clause provides that all revenue "collected from taxes, fees, and assessments for State purposes, as authorized by revenue measures enacted by the General Assembly, shall be paid into the General Fund of the State Treasury."[38] This clause is the mirror image of the Anti-Earmarking Clause, focusing instead on the receipt of funds rather than on their allocation. The two clauses operate in tandem to restrict severely the discretion of the General Assembly to designate revenues in advance to be appropriated for a particular fund.[39]

The Appropriation Clause, which has been in every Georgia constitution since 1789, provides that "no money shall be drawn from the treasury except by appropriation made by law."[40] In many U.S. jurisdictions, a state law that authorizes multiyear appropriations to a particular fund or for a specific purpose is valid. Other jurisdictions permit dedication of revenues, but also require that they be appropriated annually. In Georgia, all appropriations must be through an annual appropriations bill unless there is express constitutional authority to do otherwise. The effect of this is that all appropriations require annual review and approval by the General Assembly, effec-

tively undercutting the goal of a predictable revenue stream for a trust fund without constitutional authorization and rendering quite difficult the enforceability of multi-year financing commitments. Related to the Appropriation Clause is a requirement that all funds not spent by a state department or agency within a designated fiscal year be returned to the General Fund at the end of that year.[41] This provision for the lapse of all remaining funds further undermines the ability of a dedicated trust fund to award, and disburse, grants or loans over longer than a 12-month period.

The State Housing Trust Fund was not created with authorization for funding through a dedicated revenue source. It must thus rely on annual appropriations by the General Assembly for its primary source of capital. A constitutional amendment was approved to exempt expressly this fund from the lapse requirements of the constitution,[42] thus permitting it to retain all amounts not allocated or disbursed in a given year, as well as all other funds received through grants or loan repayments.

Because housing trust funds throughout the United States are supported by a wide variety of different sources of revenue, it is important to determine the reach of these three Georgia constitutional provisions. They were designed primarily to preserve the authority and responsibility of the General Assembly to justify the relationship between its exercise of the power of taxation and its appropriations every year. The Anti-Earmarking Clause makes explicit reference to any "tax or fund," while the General Fund Clause refers to all revenues from "taxes, fees, and assessments." Over 33 different kinds of revenue sources have been dedicated to various housing trust funds in the United States,[43] and many of these revenues are not within the scope of "taxes, fees, and assessments" as used in the Georgia Constitution.

One method of defining the outer boundaries of these constitutional limitations is that they pertain only to funds that must be paid as a matter of state law.[44] Five categories of funds have been identified by the Georgia Attorney General as outside the scope of the General Fund Clause:

1. Gifts and grants
2. Proceeds of the sale of property
3. Funds received from other agencies of state government
4. Income received by the judiciary
5. Miscellaneous funds generated without a statutory basis[45]

These constitutional clauses do not extend to such specific items as revenues paid by telephone companies for pay phones located on state agency property[46] or proceeds of revenue bonds.[47] In addition, separate provision is made for the continued appropriation of federal grant funds to the extent that there may be a change in, increase in, or excess amount of such funds.[48]

These three clauses of the Georgia Constitution present substantial obstacles to the creation at the state level of a trust fund with a dedicated revenue source. It is clear that the dedication of any revenues derived from taxes, fees, or assessments imposed by law is possible only if there is an express constitutional exception. It is equally

clear, however, that these constitutional limitations are, on their face, applicable only to the actions of the *General Assembly*, to *state* trust funds, and to *state* revenues. They are not directly applicable to the actions of local governments in Georgia. The power and authority of local governments to create such dedicated trust funds must be interpreted in the context of this powerful history of legislative finance, as well as in the context of the evolution of home rule.

Legal Constraints on Local Government Authority

Local Government Home Rule

State statutes alone do not determine the authority of local governments in Georgia. For much of Georgia's history, local governments did indeed exist primarily by the grace of the state General Assembly. Counties and county officers had a very narrow range of powers conferred directly by the state constitution,[49] and municipalities were created and abolished at the sole discretion of the State. In the absence of express state legislative action, local governments generally had no legal authority. Coupled with this was the constitutional proposition that the General Assembly could not delegate to local governments in any broad fashion its own inherent legislative powers and responsibilities. Within this culture arose the convention that the General Assembly would grant, alter, or deny authority to local governments through state legislative acts known as "local laws": acts of the General Assembly that are limited to a particular jurisdiction (a named city or county). Local laws require special procedures for enactment (publication in the appropriate local newspapers) and receive relatively expedited consideration by the General Assembly precisely because their scope is geographically limited. Local laws were the manner in which the General Assembly governed very minute levels of local detail, such as the precise salary of a county officer, a city's ability to construct a specific road, or a local government's ability to hire certain employees. If there was any doubt about the constitutional authority of the General Assembly to authorize a certain action, a "local" constitutional amendment could be ratified, again limited in scope to a particular geographic area.[50]

The administrative inefficiency and cultural inconsistency that resulted from this micromanagement of local affairs by the General Assembly began to yield to reform in the middle of the 20th century. The Constitution of 1945 actually mandated that the General Assembly create statutory models for municipal self-governance,[51] although it took several legislative attempts[52] and an additional constitutional amendment[53] before the General Assembly enacted a constitutionally adequate statute—the Municipal Home Rule Act—in 1965.[54]

The Municipal Home Rule Act provides that

> The governing authority of each municipal corporation shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and

> which are not inconsistent with the Constitution or any charter provision applicable thereto.[55]

Although this statute effectively created a large degree of legislative home rule in Georgia, it did not represent a complete shift away from state control over the affairs of local governments. The statute expressly reserved the right of the General Assembly to modify or withdraw municipal powers by general law (as opposed to local law)[56] and expressly excluded from municipal home rule certain matters such as the power to tax unless separately authorized by the constitution or by general law.[57] Equally significant, the Municipal Home Rule Act did not extend home rule authority to the 159 counties in Georgia.

Counties acquired a substantial measure of direct home rule by virtue of a statewide constitutional amendment ratified in 1966.[58] Unlike the Municipal Home Rule Act of 1965, this constitutional amendment is a direct grant of authority to counties and requires no additional action by the General Assembly. It does, however, place in the General Assembly the authority to broaden, limit, or regulate the exercise of county home rule powers by the enactment of general laws.[59] Also, like the Municipal Home Rule Act, it contains certain express exclusions from county home rule authority,[60] among them the power to impose any form of taxation unless separately authorized by state law or the constitution.[61]

The distinction between the legislative and constitutional base for municipal home rule was partially bridged (if not blurred) by the ratification of an additional constitutional amendment in 1972 conferring "supplementary powers" on both municipalities and counties.[62] While these supplementary powers are more specifically delineated, the General Assembly retains the authority to regulate, restrict, or limit such powers by general law as long as it does not withdraw the power from the local governments.[63]

Affordable Housing as a Local Government Function

Although there may have been considerable doubt in the first half of the 20th century about the authority of local governments to address their residents' need for affordable housing, there is ample support today for housing as a permissible public function. The Supplementary Powers Amendment of 1972 expressly authorizes local governments to provide the service of "public housing,"[64] and the constitution separately authorizes them to expend public funds for any public service authorized in the constitution.[65] The Georgia Supreme Court has held that the promotion of housing for low- and moderate-income families and the stimulation of the housing market constitute valid public purposes.[66] The General Assembly has independently affirmed "the state's policy to provide decent, safe and affordable housing to all segments of the population of this state."[67]

Georgia has authorized the creation of a housing authority in every city and county in the state, recognizing that "there is a shortage of safe and sanitary dwelling accommodations available at rents which persons of low income can afford."[68] In authoriz-

ing the creation of Urban Residential Finance Authorities, the General Assembly made a similar declaration:

> There exists within the large municipalities of the state a serious shortage of decent, safe, and sanitary housing which a significant portion of the persons and families residing or desiring to reside in such municipalities can afford. This shortage is inimical to the safety, health and welfare of the residents of this state and the sound growth of its large municipalities.[69]

Local Budgeting Constraints

As a matter of state constitutional law, local governments in Georgia do not face the same obstacles as are presented to the General Assembly by the General Fund Clause and the Appropriation Clause. These constitutional provisions do, however, represent a powerful historical context for the interpretation of local government budget policies as authorized and guided by state statute. The closest parallel to the constitutional General Fund Clause is a statutory provision, applicable only to counties, that requires all county funds to be paid to and disbursed by the county treasurer.[70]

State statutes provide for minimum requirements for all budgeting, revenue, and appropriation procedures to be followed by local governments.[71] Balanced budgets, budget hearings, and annual audits are required of all local government units. The Georgia Department of Community Affairs has promulgated a uniform system of accounts to be followed by all jurisdictions.[72] Both the state statute and the uniform system of accounts recognize that local government budgets must include a General Fund, but are likely to include other designated or segregated funds, such as a Debt Service Fund, an Enterprise Fund, a Fiduciary Fund, an Internal Service Fund, and a Special Revenue Fund.[73] The statutory definition of a Special Revenue Fund is one "used to account for the proceeds of specific revenue sources, other than those for major capital projects or those held by the government in a trustee capacity, that are legally restricted to expenditure for specified purposes."[74]

Local governments in Georgia thus appear to have adequate discretionary authority to create a housing trust fund within their system of budgets and accounts and to treat it as a special revenue fund. Such a fund must have a balanced budget annually, with the funds being "legally restricted to expenditure for specified purposes."[75]

Local Government–Dedicated Revenues

The late 20th century transition to greater home rule powers for local governments in Georgia did not extend to the power of taxation. The general power of taxation is vested in the General Assembly[76] and is expressly excluded from home rule powers.[77] Beginning with the Constitution of 1877 and running through the Constitution of 1945, the General Assembly was explicitly prohibited from granting the power of tax-

ation to local governments except for a narrow range of purposes. To levy a tax, a local government had to have express statutory authorization, and the purposes of the tax had to fall within that narrow range of purposes.[78] Building on the home rule movement of the 1960s and 1970s, the Constitution of 1983 recognizes the *potential* of local governments to exercise the power of taxation.[79] With rare exceptions, a local government has no inherent constitutional authority to levy or impose a tax or fee.[80] The leading exception is that in the absence of general law, local governments may create service districts to provide public services and impose fees, assessments, and taxes within the districts to pay for such services.[81] In virtually all contexts, local governments seeking to levy or impose a tax or fee require enabling authorization from the General Assembly in the form of a general or local law.

In contrast to this relative flexibility in budgeting and appropriations, local governments in Georgia face a constitutional restriction that parallels the Anti-Earmarking Clause for the General Assembly. A separate provision of the constitution provides, for all local governments in Georgia, that

> No levy need state the particular purpose for which the same was made *nor shall any taxes collected be allocated for any particular purpose*, unless otherwise provided by this Constitution or by law [emphasis added].[82]

The effect of this constitutional provision is that while local governments are not required to state the intended uses of a particular tax, they are prohibited from imposing a tax and expressly dedicating its revenues to a particular purpose unless there is express authorization to do so by law.[83] The limiting words "particular purpose" have been construed to mean a particular activity and do not prohibit a county from creating a special fund for the tax revenues for a geographic area.[84]

General laws (statutes of statewide applicability) do authorize local governments to levy a broad range of taxes, such as property taxes,[85] sales taxes,[86] and business and occupation taxes.[87] The local option sales taxes are constitutionally structured on the basis of creating each county as a special tax district,[88] and two of them expressly require that the proceeds of sales taxes be applied to specified purposes such as property tax relief or capital construction projects. The special-purpose local option sales tax is an example of a local government tax whose proceeds are dedicated to specific purposes. It does not run afoul of the constitutional limitation against local governments' earmarking of taxes precisely because it is authorized by general state law.

Local governments are authorized to levy assessments and fees in addition to taxes, but because of the strong historical restraints on the power to tax, important distinctions are made between a tax and a fee. A tax is considered to be a charge designed to produce general revenue for public services and functions, while a fee is designed to be a charge tied to the regulation of an activity. When a fee is authorized by general law, the amount must not be calculated so as to produce revenues unrelated to the regulation of the activity in question.[89] Even when taxation is expressly permitted for a specific purpose, such as public education, fees imposed on one activity (such as building permits) may not be used as the basis for revenues for the otherwise permissible public service.[90]

The classic concept of a fee as compensation for the cost of a regulatory activity has been broadened in recent decades in Georgia by the introduction of development impact fees.[91] Development impact fees are charges levied by a local government for the issuance of new building permits, in recognition of the indirect costs imposed by development on the broader infrastructure and systems of a certain geographic area. Current statutory authorization permits development impact fees based on system improvement costs for public facilities,[92] which are defined broadly to include water supply and wastewater facilities, transportation, parks and recreation, public safety, and libraries.[93] Local governments that have adopted a comprehensive plan may designate one or more geographically specific "service areas" for purposes of calculating the costs of system improvements. All development impact fees must be maintained in segregated funds and spent only within the designated service areas for the specified forms of system improvements.[94] Development impact fees are thus an example of general laws of the General Assembly authorizing local governments to impose a charge (which bridges the traditional concepts of fees and taxes), with the revenues being placed into a dedicated and restricted local government fund.

Local Laws

For much of Georgia's legal history, authority was extended to local governments through local constitutional amendments and local acts of the General Assembly. The practice of adopting local constitutional amendments ended with the adoption of the Constitution of 1983,[95] but literally thousands of such amendments adopted before 1983 continue in full force.[96] Over 35 local constitutional amendments pertaining directly to the constitutional prohibition of allocating a tax for a particular purpose continue to be valid.[97] Any jurisdiction considering the possibility of creating a local housing trust fund should examine the nature and extent of existing local constitutional amendments that may pertain to such authority.

The second and even more prevalent form of local law during the 20th century consists of local acts of the General Assembly. The number of local acts has declined since 1983, but nonetheless continues to be a primary form of granting or modifying the powers of a particular local government without necessarily modifying the home rule authority of all local governments. The key home rule provisions of the current constitution render the powers of local governments subject to authorization by "general law." For example, the power of taxation of local governments requires express authorization by the Constitution "or by general law."[98] The home rule powers of counties are subject to regulation by general laws,[99] as are the supplementary powers of both counties and municipalities.[100]

The constitutional restriction on allocating tax revenues for particular purposes, however, is not limited to general laws, since the proviso prohibits such allocation "unless otherwise provided by this Constitution or by law."[101] This presents the possibility that existing tax revenues, or newly authorized tax revenues, could be allocated or dedicated to a housing trust fund if authorized by a local, as opposed to a general, law.

The Existing Authority: What Can Local Governments Do Today?

The unusual legal and cultural history of Georgia relating to the dedication of tax revenues for particular purposes and the allocation of power between state and local governments does not lead to easy or necessarily clear answers on the question of whether a local government has the authority to create a housing trust fund. Instead, the answers depend in large measure on the scope, structure, and funding of such an entity. A certain range of activities could be accomplished without the need for further action by the General Assembly, although some actions will require appropriate state enabling legislation. Following are the basic propositions that govern the creation of an affordable housing trust fund in Georgia:

1. *Providing funding for affordable housing.* It is clearly within local governments' authority to appropriate funds to provide safe, decent, and affordable housing. Such funds may consist of general revenues derived from existing taxes, from grant funds received from state or federal agencies, or from other funds wholly within the control of the local government, such as the proceeds from the sale or disposition of surplus properties.

2. *Creating a restricted fund for housing.* There appears to be no existing constitutional or statutory barrier to a local government's creating within its accounting system a designated fund for housing by ordinance or resolution. It could be specified that the funds in the account would be restricted for use for particular housing activities. The ordinance or resolution could provide that in the absence of further action by the local government, any surplus funds held in the account at the end of a fiscal year would remain in the account and not revert to the general fund. State law requires that each fiscal year, any such special revenue fund, or restricted fund, have a balanced budget. A local government has discretion to transfer into such a restricted fund any of the otherwise unrestricted assets within the control of the local government through its annual appropriations process, through a special budget allocation, or through designation of certain receipts.

3. *Dedicating existing taxes or fees to a housing trust fund.* Local governments lack adequate authority to provide that the proceeds of any existing local tax be allocated to a housing trust fund. Independent authorization by the General Assembly is necessary, but a constitutional amendment is not required. It is possible, but not entirely clear, that the necessary authorization from the General Assembly could take the form of a local law, as opposed to a general law.

4. *Creating new taxes or fees dedicated to a housing trust fund.* To impose a new tax, whether in the form of an increase in the real estate transfer tax, a dedicated portion of the *ad valorem* tax, or a special assessment, separate and independent authority in the form of a general law is required from the General Assembly. The statute authorizing development impact fees could be amended to permit housing impact fees, or permission could be granted to levy a local option real estate transfer tax, and a number of similar potential revenue sources could also be identified and authorized by state statute. The critical feature is that no new taxes may be

imposed or dedicated to a housing trust fund without action by the General Assembly.

5. *Creating a special services district for affordable housing.* The constitution grants directly to local governments the authority to create special districts for the provision of services as long as such local government action does not supersede statutes of the General Assembly.[102] A county government can create a special services district consisting of the entire county, and a municipality can do the same for the area within municipal boundaries. The constitutional provision expressly authorizes a local government to collect taxes, fees, and assessments within the special district to pay part or all of the costs of such services. Any such taxes must be levied in a uniform manner throughout the special district, and the proceeds spent only within that district.[103] For several reasons, however, it is not clear that this constitutional provision is adequate authority for a local government to create a special district to finance a local housing trust fund. The issue is whether this provision authorizes local governments to create and impose a form of taxation even in the absence of a general statute. The power of taxation may be granted by the constitution but otherwise requires action by the General Assembly.[104] There are no judicial opinions that construe this constitutional section as constituting a direct grant of authority to local governments to tax in addition to simply creating the special district.

   A second area of uncertainty arises because the special district powers of local governments are subordinate to the power of the General Assembly to create such districts or to mandate their creation. The General Assembly has authorized the creation of a housing authority in every jurisdiction, but this is not on the basis of creating special districts.[105] In at least two instances, the General Assembly has itself created such special districts,[106] suggesting that the creation of a special district is not a mutually exclusive activity.

6. *Using existing structures for housing trust funds.* Every local government jurisdiction in Georgia has been authorized to create a local, or even regional, housing authority,[107] and in the largest cities an Urban Residential Finance Authority has been created.[108] These authorities exist as independent legal entities with a strong degree of oversight control by the enabling local government in the appointment of commissioners. The finances of these authorities are separate from the general funds of local governments, and authorities hold all funds they receive for the statutory purposes for which they were created. It is possible for a local government to create within the structure of a housing authority, or residential finance authority, a dedicated housing trust fund into which it could transfer funds. The primary limitation on using an existing authority for a housing trust fund is that independent legal authority would continue to be needed for a dedicated source of revenues, and there would be concern that the funds intended for housing would be targeted toward the authorities' other projects and programs.

Creating a Local Government Housing Trust Fund in Georgia: Strategic Options

Strategic Decisions

To meet the growing need for affordable housing, local governments in Georgia need to take decisive and creative action. A housing trust fund with a dedicated source of revenue holds the greatest potential for providing the necessary funds over a sustained period of time. The emergence of home rule in Georgia in the latter half of the 20th century allows local governments the flexibility to meet the housing responsibilities being placed on them. The constitutional budgeting and appropriation constraints placed upon the General Assembly apply only partially to local governments, thereby giving them more options to meet the need for safe, decent, and affordable housing. In responding to this need, local governments face four strategic decisions:

1. *Whether to undertake local initiatives or to seek statewide support in the form of general laws enacted by the General Assembly.* These are not mutually exclusive options. It is not necessary to await action by the General Assembly to create in the local government budget a restricted fund to be used solely for affordable housing. It is also not necessary to await action by the General Assembly to designate certain categories of moneys to be deposited into the housing trust fund. While the General Assembly will need to act to identify new revenue sources such as impact fees, a local government could proceed to create a housing trust fund and provide for certain initial funding through current programs. Local governments could also pursue the possibility of expanded authorization and revenues at the state level. Taking the first step supports the need for the second step.

2. *How to identify sources and types of funds presently within the sole control of the local government that could be transferred to a dedicated trust fund.* Nationally, over 40 different revenue sources support housing trust funds.[109] Some of these sources are simply funds already being used by a local government for housing-related activities; others are funds with a clear, tangible relationship to the creation of affordable housing. A key aspect of this strategic decision is frequently the ability to marshal existing assets into a single coherent program that sustains housing initiatives over time.

3. *Whether, and how, to seek new dedicated sources of revenue for a housing trust fund.* The impact of such a fund on the development and maintenance of affordable housing in a community is directly related to the resources available to the fund. Fiscal pressures on local government budgets may make reallocating existing revenues difficult. At the same time, however, there may be sufficient support for new taxes or fees if the public is convinced that the revenues are derived from activities that adversely affect affordable housing and that the revenues will be used to support new affordable housing. Development impact fees and real estate transfer taxes on high-value real estate are two such examples.

4. *How to administer and govern a housing trust fund.* Creating an independent board of commissioners or directors to guide the fund tends to enhance the focus of its activities, provide a degree of separation from episodic political pressures, and involve persons with expertise and experience in affordable housing. There is an infinite range of governance structures for administering restricted funds, and many of them are already recognized under Georgia law. Within the administration of the fund, the local government must make key decisions on how to allocate the proceeds. These include creating legal definitions for "Affordable Housing" and for the eligible families to be targeted for assistance. It also requires determining the governing principles of geographic concentration or dispersion of affordable housing and the mix of grants and loans the fund will make.

Housing Trust Funds with Existing Dedicated Revenues

The simplest and perhaps most important initial step a local government could take is to create a housing trust fund as a special revenue fund on its budgetary accounts. The ordinance or resolution used to create such a fund should first, identify it as a special revenue fund; second, specify that at the end of each fiscal year any moneys left in the fund should remain in the fund and not revert to the general fund of the local government; and third, set forth the fund's governance and administrative structure. The legislation creating the fund should also specify assets that should be transferred or payable to the fund.

The easiest method of providing the fund with working capital would be to stipulate in the initial ordinance or resolution that all housing-related funds received by the local government be deposited directly into the trust fund. For many jurisdictions, the single largest source of such funds is Community Development Block Grant (CDBG) funds received from the federal government. CDBG funds are not restricted by the federal government to affordable housing alone, and a local government can at its discretion dedicate all or part of such funds for affordable housing.[110] Such a dedication could also include program income from CDBG funds, such as interest paid on CDBG-funded developments. A similar approach could be taken with other federal or state grant funds, such as HOME funds. A significant feature of the enabling legislation would be to provide that any loans extended by the housing trust fund would be repaid to the fund and available for subsequent loans or grants.

A second method of creating a source of dedicated revenues for a housing trust fund, within the existing authority of local governments, is to provide that the proceeds of certain non-tax-based revenues be automatically deposited in the fund. One example of a non-tax-based revenue would be the proceeds from a local government's sale or lease of real property. The enabling legislation could specify that all such proceeds be paid automatically to the housing trust fund or that only the proceeds from the sale or lease of certain forms of real property be targeted. Another example might be to increase the amount of the fines and penalties paid for housing code violations and specify that a portion of the increase be paid to the housing trust fund.[111]

Housing Trust Funds with New Revenues

If enough sources of potential revenue within the discretion and control of local governments are not identified, or if the revenues from such programs are not sufficient to sustain the ongoing work of a housing trust fund, local governments could seek authority to broaden an existing program. In these instances, a local government could create the housing trust fund on its own authority, but it would need state legislation in order to collect the additional revenues. Three such options would include modifying the development impact fee statute, redesigning the use of tax allocation district proceeds, and creating a special housing district to levy a supplemental tax on real estate transfers or the recording of mortgages.

In 1990, Georgia enacted the Development Impact Fee Act, which expressly authorizes local governments to impose development impact fees as a condition of development approval.[112] The rationale behind the Act is that development activities should bear both the direct and indirect costs imposed on government services as a result of the development. At present, the statute permits charging an impact fee if it is attributable to capital improvements that are public facilities (water supply, wastewater, or storm-water collection facilities; roads; parks and recreation areas; public safety facilities; and libraries).[113] All development impact fees must be held in a separate account and spent for system improvements in the defined service area in which they are collected.[114]

Housing impact fees have become the most common method of achieving a dedicated revenue source for municipally created housing trust funds.[115] Under the Georgia constitution, however, the presence of this development impact fee statute as a general law eliminates any home rule authority by which local governments could structure their own impact fees. As a consequence, if a local government seeks to have an impact fee related to meeting the need for affordable housing, amendments to the existing state statute will be necessary. At a minimum, the definition of "public facilities" would need to be broadened to include a housing trust fund, and a cost analysis would need to be authorized to determine the appropriate level of a particular impact fee.

A second option that has been followed in a number of jurisdictions is to require that a specified percentage of the property tax revenues generated in a special tax allocation district be designated for a housing trust fund.[116] The Georgia General Assembly authorized the creation of tax allocation districts and tax increment bond financing in 1985.[117] As presently structured, tax increment financing is limited to financing "redevelopment costs," which do not include costs related to affordable housing for potential residents or employees within the redevelopment area. Redevelopment costs do include costs authorized by a redevelopment plan for relocating persons displaced by the development.[118] Amending this statute would entail defining affordable housing costs as a part of redevelopment costs, specifying how to calculate such costs, and identifying the structure (such as a housing trust fund) for administering the designated funds.

The revenue program generating the largest amount of dedicated funding for housing trust funds in the United States has been an increase in the real estate transfer tax or mortgage recording tax. Historically, these taxes have their origins in the documentary taxes common at the time of the American Revolution. Throughout the 19th and 20th centuries, they were federally imposed taxes and were used to finance federal government costs during the Civil War, the Spanish American War, World War I, and World War II. They continued to be a source of federal revenue until they were repealed in 1965, at which time many states, including Georgia, elected to continue the tax as a source of state or local government revenue.[119]

The real estate transfer tax in Georgia is set by state statute at the rate of $1 per $1,000 of net value being transferred,[120] which is equal to or lower than the corresponding rate of taxation in other southern states. The mortgage recording tax is set at $3 per $1,000 of the face amount of the indebtedness secured by the mortgage.[121] All revenues generated by these taxes are distributed to cities, counties, and school districts in Georgia according to a complex formula based on the proportionate share of the overall property taxes imposed by the government entities where the property is located.[122] Legislation was approved in 1998 increasing, for four years, the real estate transfer tax rate from $1 to $2, with half of the proceeds being dedicated to the Land, Water, Wildlife, and Recreation Heritage Fund.[123] Because of the constitutional prohibition on dedication of state tax revenues, a constitutional amendment was necessary. The authorizing amendment was defeated in a general election in 1998, so the tax increase did not go into effect.

The conceptual advantage to using a real estate transfer tax or a mortgage recording tax for a housing trust fund is the sense that real estate finance and development should play a direct role in meeting a community's general need for affordable housing. The amount of the tax paid is directly tied to the value of the real estate transfers; thus, more expensive real estate pays a greater portion of the revenues allocated to affordable housing.

An increase in the real estate transfer tax to create a dedicated source of revenue for local housing trust funds could be structured so that it would not face the same obstacles as the unsuccessful 1998 referendum for a statewide increase in this tax. Existing state law could be amended to create a purely local option of increasing the tax, with the revenues retained solely by local governments and dedicated wholly or in part to locally created housing trust funds. Since no state tax revenues would be involved, a separate constitutional amendment would not be required. The local government could allocate a portion of the tax revenues to a dedicated trust fund as long as it was authorized to do so by general law.[124]

A variation of this approach would involve using the existing constitutional authority of local governments to create special districts for the provision of government services.[125] Although the constitutional provision appears, on its face, to permit local governments to levy taxes within a special district to meet the costs of services, other provisions of the constitution suggest that no such additional taxes can be levied without the approval of the General Assembly.[126]

These strategic options for creation of local government housing trust funds supported by dedicated new revenue sources will each require some degree of authorization by the General Assembly. While authorization through a local act, as opposed to a general statute, is possible and certainly easier to accomplish legislatively, it may not be adequate. Although the constitution permits local governments to allocate taxes to particular purposes if permitted "by law,"[127] the constitution requires that authorization to impose a tax be provided "by general law."[128]

Governance of a Housing Trust Fund

The creation of a housing trust fund by a local government involves more than simply creating a separate budget account for fund assets. A local government also needs to consider the fundamental issues of the fund's administrative structure, the targeted population to be served, and the range of techniques by which the fund could support affordable housing. These issues overlap in many respects, and there is no single approach that meets every jurisdiction's goals and needs. Each jurisdiction should evaluate the range of governance options in terms of its existing governmental and nongovernmental agencies and programs.

The administrative structure of a housing trust fund involves decisions on its relationship to the existing programs of the executive and legislative branches of the local government. A wide range of possible structures is available. In its simplest form, it could be a dedicated fund within the normal operating procedures of the county commission or municipal governing body, with existing departments and agencies administering it. Alternatively, the local government could create the fund as a separate legal entity, a public corporation or authority, having such powers as the government authorizes. A local government could choose to place the housing trust fund in an existing entity or in an entity it could create pursuant to state statute, such as a development authority,[129] a housing authority,[130] a land bank authority,[131] or another similar body.[132] It could also place the administration of the fund in a designated redevelopment agency[133] or in a multijurisdictional development authority.[134] A factor that will guide such a decision is the extent to which the local government wishes to vest the decision-making authority in a relatively independent board of appointed commissioners or retain such decisions for the existing legislative body of the jurisdiction.

For any housing trust fund, it is necessary that the enabling legislation clearly identify the population to be served. The most common approach is to define affordable housing by referring to the relative income of families. Federal housing programs rely primarily on statistical definitions of Area Median Income, although in metropolitan areas, these are not determined according to the geographic scope of a local government but rather are area statistics. The median income in an urban city may be significantly less than the median income of a metropolitan area. A task force has recently recommended to the City Council of Atlanta that it adopt as public policy a definition of "Affordable Housing" that corresponds more closely to the average income of families residing in the city limits rather than metropolitan-area average incomes.[135]

Within most federal and state definitions of Affordable Housing is an important corollary that housing is not affordable if a family has to pay more than 30 percent of its income for housing costs. Other jurisdictions establish priorities for housing opportunities for individuals or families with special needs, such as persons who are homeless, persons with chronic mental illness, or families with dependent children. In targeting the policies of the housing trust fund, the local government can also establish preferences or priorities with respect to the location of the housing (dispersal or concentration), ownership (rental housing or homeownership), or type (multifamily or single family).

The third category of governance decisions that should be made by a local government in creating a housing trust fund pertains to the range of programs that can be developed to support the availability of affordable housing. Most housing trust funds do not develop, own, or operate affordable housing. Instead, their primary role is to provide additional financial subsidies to public and private entities that are developing such housing. Financing techniques can involve development grants or short- or long-term loans. They can also take the form of construction guarantees, nonamortizing mortgages, or rent subsidies. Regardless of the techniques authorized, the housing trust fund will need to structure legally enforceable assurances that affordable housing will be used as intended for an agreed-upon period of time.

Conclusion

To meet the needs of their residents for affordable housing in the months and years to come, local governments will need to engage in innovative and creative planning. The pressure for safe, decent, and affordable housing will only increase as cities and counties succeed in attracting the development of housing for middle-income and high-income families without engaging in similar proactive strategies for affordable housing. Additional financial pressures will arise during recessions for those jurisdictions that depend primarily on sales taxes for government operations. More and more demands will be placed on local government revenues and programs, and fewer resources will be available to meet them.

One of the most promising options available to local governments in the face of these pressures is the creation of a housing trust fund with a dedicated source of revenue. A combination of existing funds and a new revenue stream derived from a fee or tax that corresponds in some manner to the existing level of real estate development in the community is likely to be required. Such a housing trust fund holds out the possibility and the promise that access to safe, decent, and affordable housing is within reach for all residents.

Local governments in Georgia have the legal authority to create a housing trust fund as a special revenue fund. They also have the authority to transfer to such a restricted fund nontax revenues such as grant funds received from the federal or state government, or the proceeds from the sale of excess public property.

To create a dedicated source of new tax revenues for a housing trust fund, the General Assembly will first need to pass enabling legislation. The three most promising options are to create a local option increase in the real estate transfer tax, to broaden the permissible range and scope of development impact fees, and to provide that financing in tax allocation districts include costs related to affordable housing. All three approaches could be authorized by the General Assembly without the need for statewide constitutional amendments.

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NOTES

[1] Housing Act of 1949, Pub. L. No. 81–171, ch. 338, 63 Stat. 413 (codified as amended at 42 U.S.C. § 1441). Congress reaffirmed this goal in 1968, Pub. L. No. 90–448, 82 Stat. 476 (1968) (codified at 12 U.S.C. § 1701t).

[2] Official Code of Georgia Annotated §8–3–171 (hereinafter cited as "O.C.G.A.").

[3] U.S. Bureau of the Census, Census 2000, Table DP–1: Profile of General Demographic Characteristics for Georgia 2000. In the central cities of Georgia's metropolitan areas, the homeownership rate is much lower. For example, in 2000, the percentage of homeownership in the city of Atlanta was 43.7 percent; in Savannah, 50.3 percent; and in Columbus, 56.4 percent. *State of the Cities Data Sets*, Census Data Output for Atlanta, Savannah, and Columbus, GA, U.S. Department of Housing and Urban Development (HUD) (September 2001).

[4] Table C, Selected Measures of Household Income Dispersion: 1967 to 2000, *Money Income in the United States: 2000*, U.S. Bureau of the Census (September 2001).

[5] Table A, Comparison of Summary Measures of Income by Selected Characteristics: 1993, 1999, and 2000, *Money Income in the United States: 2000,* U.S. Bureau of the Census (September 2001).

[6] *A City for All: Report of the Gentrification Task Force*, Atlanta City Council (September 17, 2001), Appendix E, p. 40 (hereinafter cited as *"A City for All")*.

[7] *A City for All*, *supra* note 6 at Appendix E, p. 40 .

[8] Fair Market Rents for Existing Housing, 2001 Data Sets, www.huduser.org (October 2001). The Fair Market Rent for fiscal year 2002 for a two-bedroom apartment in metropolitan Atlanta is $878. These rents are determined by HUD for purposes of establishing maximum rents for the Section 8 housing programs. 24 CFR 888.113. The rents include an estimated utility allowance (exclusive of telephone) paid by the tenant.

[9] The amount of $473 per month is determined by taking one-twelfth of 30 percent of the annual income of $18,930 of the Atlanta families that are at or below the HUD definition of "Extremely Low Income," which is 30 percent of Area Median Income.

[10] *FY 2000 Interim Consolidated Plan of the State of Georgia*, Executive Summary at 3, Georgia Department of Community Affairs (May 2000).

[11] Mary E. Brooks, *A Workbook for Creating a Housing Trust Fund*, p. 1, Housing Trust Fund Project, Center for Community Change (1999) (hereinafter cited as *"Workbook*"). The Housing Trust Fund Project has a very extensive database on all state and local housing trust funds in the country and is the single best source of information on the creation, structure, and operation of such funds. It publishes a newsletter called "News from the Housing Trust Fund Project," which can be obtained by contacting the Housing Trust Fund Project, 1113 Cougar Court, Frazier Park, CA 93225; tel: 661–245–0318.

[12] Brooks, *Workbook*, *supra* note 11 at 1.

[13] A small number of local government housing trust funds are created as separate from the local government and are administered by an independent nonprofit agency. Brooks, *Workbook*, *supra* note 11 at 25–26.

[14] Brooks, *Workbook*, *supra* note 11 at 42–56.

[15] See *A Status Report on Housing Trust Funds in the United States*, 75–78, 89–91, Housing Trust Fund Project, Center for Community Change (1997) (hereinafter cited as *"Status Report")*.

[16] 1988 Ga. Laws 717, codified at O.C.G.A. § 8–3–300. Though the formal name of this trust fund is the "State Housing Trust Fund for the Homeless," its statutory authority extends far beyond providing subsidies for shelters and other facilities for families that are homeless (hereinafter referred to as the "State Housing Trust Fund").

[17] O.C.G.A. § 8–3–302. The antilapse exception for the State Housing Trust Fund required a specific amendment to the state constitution. Ga. Const. of 1983, art. III, § 9, ¶ 4(d).

[18] O.C.G.A. § 8–3–301(6).

[19] O.C.G.A. § 8–3–306(a).

[20] *State Housing Trust Fund for the Homeless, Annual Report,* January 1, 2001.

[21] *Status Report*, *supra* note 15 at 75–78, 89–91.

[22] The history of home rule in Georgia is summarized in Frank S. Alexander, Inherent Tensions between Home Rule and Regional Planning, 35 *Wake Forest L. Rev.* 539, 541–48 (2000) (hereinafter cited as *"Inherent Tensions*").

[23] Malcolm H. Bryan, *The Fiscal Position of Georgia,* 87 (1930); Frank S. Alexander, Financing Affordable Housing in Georgia: The Possibility of a Dedicated Revenue Source, *13 Ga. St. L. Rev.* 363, 369 (1997) (hereinafter cited as *"Dedicated Revenue Source*").

[24] Ga. Const. of 1983, art. III, § 9, ¶ 6(a) (formerly Ga. Const. of 1945, art. VII, § 9, ¶ 4; Ga. Const. of 1976, art. III, § 9, ¶ 6).

[25] Alexander, *Dedicated Revenue Source*, *supra* note 23 at 371.

[26] Ga. Const. of 1983, art. III, § 9, ¶ 6(b).

[27] Ga. Const. of 1983, art. III, § 9, ¶ 6(c) (approved in 1976).

[28] Ga. Const. of 1983, art. III, § 9, ¶ 6(d) (present in the 1976 constitution).

[29] Ga. Const. of 1983, art. III, § 9, ¶ 6(e) (approved in 1983).

[30] Ga. Const. of 1983, art. III, § 9, ¶ 6(f) (approved in 1986).

[31] Ga. Const. of 1983, art. III, § 9, ¶ 6(g) (approved in 1988).

[32] Ga. Const. of 1983, art. III, § 9, ¶ 6(h) (approved in 1988, revised in 1990).

[33] Ga. Const. of 1983, art. III, § 9, ¶ 6(i) (approved in 1988, revised in 1992).

[34] Ga. Const. of 1983, art. III, § 9, ¶ 6(j) (approved in 1990).

[35] Ga. Const. of 1983, art. III, § 9, ¶ 6(k) (approved in 1998).

[36] Ga. Const. of 1983, art. III, § 9, ¶ 6(k) (approved in 1998). Attempts to create other funds for dedicated revenues, such as an Export Finance Fund (1988), a Transportation Trust Fund (1992), and a Land, Water, Wildlife, and Recreation Heritage Trust Fund (1998), have been defeated.

[37] Three of these amendments for specific trust funds (the Law Enforcement Training Fund, the Local Government Jail Fund, and the Alcohol and Drug Abuse Treatment Fund) do not appear to authorize the dedication of revenues, but seem rather to be exceptions to the separate requirement that appropriations be made for specific sums. Three of the remaining amendments (the Children's Trust Fund, the Seed-Capital Fund, and the Emerging Crops Fund) similarly do not contain an express authorization for dedication of revenues but instead appear to create an exception to a separate constitutional provision requiring the annual return of funds to the General Fund. See Alexander, *Dedicated Revenue Source*, *supra* note 23 at 372–73. The Georgia Supreme Court has indicated that in order for state legislation to dedicate revenues to a particular fund, the exception to the Anti-Earmarking Clause must be clear and express. See *Collins v. Woodham,* 257 Ga. 643, 362 S.E.2d 61 (1987).

[38] Ga. Const. of 1983, art. VII, § 3, ¶ 2(a). This provision originally appeared as Ga. Const. of 1945, art. VI, § 2, ¶ 3 and was continued in Ga. Const. of 1976, art. VII, § 2, ¶ 3. The statutory counterpart to this constitutional provision is found in O.C.G.A. § 45–12–92.

[39] *Gregory v. Hamilton,* 215 Ga. 735, 113 S.E.2d 395 (1960).

[40] Ga. Const. of 1983, art. III, § 9, ¶ 1.

[41] Ga. Const. of 1983, art. III, § 9, ¶ 4(c).

[42] Ga. Const. of 1983, art. III, § 9, ¶ 4(d). The same constitutional provision authorizes the Housing Trust Fund to appropriate funds to programs sponsored by churches and religious institutions.

[43] Brooks, *Workbook*, *supra* note 11 at 50. In this summary, Brooks has divided these revenue sources into six broad categories:

1. Property transactions: real estate transfer taxes, mortgage recording taxes, interest on escrow accounts; penalties for nonpayment of property taxes
2. Development charges: impact fees for a new development, in-lieu fees derived from inclusionary zoning, fees related to conversion from rental to condominium
3. Municipal taxes: sales and use taxes, tourism taxes, revenues from tax allocation districts
4. Government activities: proceeds from the sale of government-owned land, repayments of government loans, penalties for housing code violations, funds from unclaimed property
5. Bond programs: surplus from bond reserve accounts and bond refinancings, mortgage revenue bond fees
6. Other: interest from tenant security deposits

[44] The Attorney General has stated that the term "law" as it appears in the statutory parallel to General Fund Clause refers to revenues derived from enactments of the General Assembly. 1981 Op. Att'y Gen. No. 81–100.

[45] 1977 Op. Att'y Gen. No. 77–77. "Gifts and grants may be retained by an agency recipient, since gifts and grants are not 'taxes,' 'fees,' or 'assessments,' nor is an agency under a legal duty to collect them, although some agencies are by law authorized or required to accept whatever gifts may be made available to them." *Id*.

[46] 1997 Op. Att'y Gen. No. 97–77.

[47] *Rich v. State,* 237 Ga. 291, 227 S.E.2d 761 (1976).

[48] Ga. Const. of 1983, art. III, § 9, ¶ 2(b) and ¶ 4(a).

[49] For most of Georgia's history, the authority of county governments derived primarily from the constitutional provisions providing for the direct local election of officers, such as the clerk of the superior court, the judge of the probate court, the sheriff, and the tax commissioner. Ga. Const. of 1983, art. IX, § 1, ¶ 3.

[50] Between 1946 and 1980, the state constitution was amended 1,105 times; 197 of these were amendments of statewide applicability, while 908 were local constitutional amendments. Melvin B. Hill Jr., *The Georgia State Constitution: A Reference Guide,* 1, 19 (1994) (hereinafter cited as "Hill, *State Constitution*"). *See* Alexander, *Inherent Tensions*, *supra* note 22 at 544–45.

[51] Ga. Const. of 1945, art. XV, § 1.

[52] The initial attempt by the General Assembly to enact a statutory scheme for municipal self-governance failed the constitutional requirement of uniformity because it did not apply to the entire state. See Municipal Home Rule Law of 1947, 1947 Ga. Laws 1119. *Phillips v. City of Atlanta,* 210 Ga. 72, 77 S.E.2d 723 (1953).

[53] Ga. Const. of 1945, art. XV, § 1, ¶ 1 (as amended in 1954).

[54] 1965 Ga. Laws 298 (codified as amended at O.C.G.A. § 36–35–1 to 36–35–8 (2000)).

[55] O.C.G.A. § 36–35–3(a).

[56] O.C.G.A. § 36–35–3(a).

[57] O.C.G.A. § 36–35–6(a)(3).

[58] Ga. Const. of 1945, art. XV, § II–A (as amended in 1966). This county home rule provision, as subsequently modified, is found in Ga. Const. of 1983, art. IX, § 2, ¶ 1.

[59] Ga. Const. of 1983, art. IX, § 2, ¶ 1(a).

[60] Ga. Const. of 1983, art. IX, § 2, ¶ 1(c).

[61] Ga. Const. of 1983, art. IX, § 2, ¶ 1(c)(4).

[62] Ga. Const. of 1945, art. IX, § 3, ¶ 1 (as amended in 1972). This supplementary powers provision, as subsequently modified, is Ga. Const. of 1983, art. IX, § 2, ¶ 3.

[63] Ga. Const. of 1983, art. IX, § 2, ¶ 3(c).

[64] Ga. Const. of 1983, art. IX, § 2, ¶ 3(a)(8).

[65] Ga. Const. of 1983, art. IX, § 4, ¶ 2.

[66] *Rich v. State,* 237 Ga. 291, 294, 227 S.E.2d 761, 765 (1976). "[T]he promotion of safe, sanitary housing is a purpose cognizable by the state under the police power." 237 Ga. at 292, 227 S.E.2d at 764.

[67] O.C.G.A. § 8–3–171. "The General Assembly finds and declares that housing is an issue of paramount concern to this state which affects the health, welfare, and safety of the citizens of this state and the economic viability and planned growth of its communities." O.C.G.A. § 8–3–170.

[68] O.C.G.A. § 8–3–2. The housing authority within any given jurisdiction requires an enabling local government resolution or ordinance to be able to undertake activities. O.C.G.A. §§ 8–3–4, 8–3–5. As part of the housing authorities law, the General Assembly also declared that "from time to time there has existed and at the present time there exists an inadequate supply of funds at interest rates sufficiently low to enable the financing of safe and sanitary single and multifamily dwelling units for the citizens of the state with low and moderate income." O.C.G.A. § 8–3–35(a). There is explicit constitutional authorization for community redevelopment activities, including such activities by housing authorities and enterprise zones. Ga. Const. of 1983, art. IX, § 2, ¶ 7.

[69] O.C.G.A. §36–41–2. Counties also have specific statutory authorization to appropriate funds for charitable purposes. O.C.G.A § 36–1–19.1.

[70] O.C.G.A. § 36–6–15.

[71] O.C.G.A. ch. 36–81.

[72] *Uniform Chart of Accounts,* Georgia Department of Community Affairs (2nd ed., March 2001).

[73] O.C.G.A. §36–81–2.

[74] O.C.G.A. § 36–81–2(15). The Department of Community Affairs *Uniform Chart of Accounts* currently identifies eight separate Special Revenue Fund accounts: (1) Law Library Fund, (2) Confiscated Assets Fund, (3) Emergency 911 Telephone Fund, (4) Grant Fund, (5) Multiple Grant Fund, (6) Special District Fund, (7) Hotel/Motel Tax Fund, and (8) Rental Motor Vehicle Excise Tax Fund.

[75] O.C.G.A. § 36–81–3(b)(1).

[76] Ga. Const. of 1983, art. VII, § 3, ¶ 1. *Board of Commissioners of Taylor County v. Cooper,* 245 Ga. 251, 264 S.E.2d 193 (1980); *Blackmon v. Golia,* 231 Ga. 381, 202 S.E.2d 186 (1973).

[77] See Ga. Const. of 1983, art. IX, § 2, ¶ 1(c)(4) (not within county home rule powers); O.C.G.A. § 36–35–6(a)(3) (excluding the taxation power from municipal home rule).

[78] R. Perry Sentell Jr., *Additional Studies in Georgia Local Government Law,* 588–591 (1983).

[79] Ga. Const. of 1983, art. IX, § 4, ¶ 1(a).

[80] Counties may impose business license taxes and fees in the absence of a general law. Ga. Const. of 1983, art. IX, § 4, ¶ 1(b)(1).

[81] Ga. Const. of 1983, art. IX, § 2, ¶ 6. Debt may be incurred by local governments within such special districts, and taxes within the district may be dedicated to the repayment of the debt. Ga. Const. of 1983, art. IX, § 5, ¶ 2 and ¶ 6.

[82] Ga. Const. of 1983, art. IX, § 4, ¶ 3. This provision of the constitution was originally set forth in 1945, Ga. Const. of 1945, art. VII, § 4, ¶ 1, and carried forward in 1976, Ga. Const. of 1976, art. IX, § 5, ¶ 1 and ¶ 2.

[83] *DeKalb County v. Brown Builders Company,* 227 Ga. 777, 183 S.E.2d 367 (1971).

[84] *Richmond County Business Association, Inc., v. Richmond County,* 232 Ga. 462, 207 S.E.2d 450 (1974).

[85] O.C.G.A. ch. 48–5.

[86] The sales tax is a state tax, with the possibility of additional local option sales taxes. O.C.G.A. § 48–8–80, § 48–8–100, and § 48–8–110.

[87] O.C.G.A. § 48–13–5.

[88] The creation of special districts for the provision of services, and the levy of taxes to fund such services, is expressly authorized by the constitution. Ga. Const. of 1983, art. IX, § 2, ¶ 6. This provision has been interpreted to permit special districts for the provision of services and special districts for taxation, but not to permit differential taxation unrelated to the designated services. *Martin v. Ellis,* 242 Ga. 340, 249 S.E.2d 23 (1978).

[89] *Cotton States Mutual Insurance Company v. DeKalb County,* 252 Ga. 309, 304 S.E.2d 386 (1983); *see Luke v. Georgia Department of Natural Resources,* 270 Ga. 647, 513 S.E.2d 728 (1999) (a tax is an enforced contribution while a fee is a payment in exchange for a privilege or service). "The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the local government." O.C.G.A. § 48–13–5(6).

[90] *DeKalb County v. Brown Builders Company,* 227 Ga. 777, 183 S.E.2d 367 (1971).

[91] O.C.G.A. ch. 36–71.

[92] O.C.G.A. § 36–71–3.

[93] O.C.G.A. § 36–71–2(16).

[94] O.C.G.A. § 36–71–8.

[95] Ga. Const. of 1983, art. X, § 1, ¶ 1.

[96] See O.C.G.A., Volume 2, Appendices 1–4, pp. 841–926.

[97] See O.C.G.A., Volume 2, Appendix 4, Amendments to Ga. Const. of 1976, art. IX, § 5, ¶ 1 and ¶ 2 (at 901–02), and amendments to Ga. Const. of 1945, art. VII, § 4, ¶1 (at 907–09). Other potential constitutional amendments that could have been continued in force are set forth in Appendices 1, 2, and 3. Local constitutional amendments in force and effect as of July 1, 1993, are listed in Hill, *State Constitution, supra* note 50 at 229–65.

[98] Ga. Const. of 1983, art. IX, § 4, ¶ 1.

[99] Ga. Const. of 1983, art. IX, § 2, ¶ 1(a).

[100] Ga. Const. of 1983, art. IX, § 2, ¶ 3(c).

[101] Ga. Const. of 1983, art. IX, § 4, ¶ 3.

[102] Ga. Const. of 1983, art. IX, § 2, ¶ 6(c).

[103] *Youngblood v. State,* 259 Ga. 864, 388 S.E.2d 671 (1990).

[104] Ga. Const. of 1983, art. IX, § 4, ¶ 1.

[105] O.C.G.A. § 8–3–4.

[106] Local option sales taxes are imposed, if at all, in the 159 special districts created by the General Assembly. O.C.G.A. § 48–8–81. Each of the 159 counties is potentially a special district for purposes of regulation by the Georgia Regional Transportation Authority. O.C.G.A. § 50–32–12.

[107] O.C.G.A. §§ 8–3–4, 8–3–100.

[108] O.C.G.A. § 36–41–4.

[109] Brooks, *Workbook*, *supra* note 11 at 43.

[110] Even with respect to funds at the state level, grant funds are not within the scope of the General Fund Clause or the Appropriations Clause because they are grants rather than tax revenues. See 1977 Op. Att'y Gen. No. 77–77.

[111] The bulk of existing fines and penalties from criminal and quasi-criminal proceedings are already dedicated by state law to designated funds such as the Peace Officers and Prosecutors Training Fund (O.C.G.A. § 15–21–74), Crime Victims Emergency Fund (O.C.G.A. § 15–21–113), Judges of the Probate Court Retirement Fund (O.C.G.A. § 47–11–51), Superior Court Clerks' Retirement Fund (O.C.G.A. § 47–14–50), Sheriffs' Retirement Fund (O.C.G.A. § 47–16–61(b)), and Peace Officers' Annuity and Benefit Fund (O.C.G.A. § 47–17–60). Additional analysis would be required to determine the extent to which local governments retain discretion to increase fines, or add surcharges to fines, and retain such revenues for a locally dedicated fund.

[112] O.C.G.A. ch. 36–71.

[113] O.C.G.A. § 36–71–2(16).

[114] O.C.G.A. § 36–71–8.

[115] *See Status Report, supra* note 15 at 12.

[116] California has provided that 20 percent of tax increment revenues in redevelopment projects are to be allocated to affordable housing. *See* Brooks, *Workbook*, *supra* note 11 at 49.

[117] O.C.G.A. ch. 36–44.

[118] O.C.G.A. § 36–44–3(8)(E).

[119] See Alexander, *Dedicated Revenue Source*, *supra* note 23 at 377–79.

[120] O.C.G.A. § 48–6–1.

[121] O.C.G.A. § 48–6–61.

[122] O.C.G.A. § 48–6–8 and § 48–6–72.

[123] 1998 Ga. Laws 878.

[124] This general law authorization to impose the tax, and to allocate the funds for a particular purpose, would thus satisfy the existing constitutional constraints imposed on local governments. See Ga. Const. of 1983, art. IX, § 4, ¶ 1(a), art. IX, § 4, ¶ 3.

[125] Ga. Const. of 1983, art. IX, § 2, ¶ 6(c).

[126] Ga. Const. of 1983, art. IX, § 4, ¶ 1(a). The key question for this strategic option, on which there are no applicable rulings by the Georgia Supreme Court, is whether the requirement found in the phase "may exercise the power of taxation as authorized by this Constitution" (art. IX, § 4, ¶ 1(a)) would be deemed to be met by the authority granted in the phrase "and fees, assessments, and taxes may be levied and collected therein by any one or more of the following methods...(c) By municipal or county ordinance or resolution" (art. IX, § 2, ¶ 6(c)).

[127] Ga. Const. of 1983, art. IX, § 4, ¶ 3.

[128] Ga. Const. of 1983, art. IX, § 4, ¶ 1(a).

[129] See O.C.G.A. § 36–62–4.

[130] See O.C.G.A. § 8–3–30(a).

[131] See O.C.G.A. § 48–4–60.

[132] Other options include a Downtown Development Authority, O.C.G.A. § 36–42–4, or an Urban Residential Finance Authority, O.C.G.A. § 36–41–4.

[133] See O.C.G.A. § 36–44–4, § 36–61–17, and § 36–61–18.

[134] See O.C.G.A. § 36–62–5.1.

[135] *A City for All, supra* note 6 at Appendix E, 4–5.

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