



HANDBOOK

Ohio County Commissioners

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CHAPTER 80

COMMUNITY IMPROVEMENT CORPORATIONS (CIC'S) AND INDUSTRIAL DEVELOPMENT BONDS (IDB'S)

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80.01 INTRODUCTION

This Chapter of the *Handbook* will discuss community improvement corporations (CIC) that are organized solely as economic development corporations under ORC Chapter 1724. CIC's are non-profit corporations organized for the purposes of "advancing, encouraging, and promoting the industrial, economic, commercial and civic development of a community or area" ([ORC 1724.01\(B\)\(1\)](#)). A CIC is a tax exempt non-profit entity. It may also apply to become tax exempt for federal purposes. Legislation allowing for the establishment of CIC's was enacted by the General Assembly in 1961 (SB 299, effective August 17, 1961).

CIC's assist with the promotion and financing of economic development by providing loans to individuals and businesses; buying, selling, and leasing real and personal property for economic development purposes; and, by entering into contracts with the state and local governments. Until the mid-1980's, many CIC's focused on economic development financing through the issuance of tax exempt industrial development bonds (IDB's) authorized under ORC Chapter 165. While still available today as a potential economic development finance tool, IDB's are less frequently used today primarily because of the current low interest rates and requirements and restrictions imposed on their issuance by the IRS which has greatly limited their usefulness. Refer to Sections 80.34-80.36 for additional information on these federal requirements and restrictions.

Today CIC's in many counties presently serve a leadership role in promoting county and community economic development initiatives. In some counties the CIC serves by contract to staff the office of economic development pursuant to [ORC Section 307.07](#). CIC's also undertake economic development projects that are often too cumbersome and costly to undertake by counties and other political subdivisions under Ohio law. CIC's have the ability to be flexible and move quickly on various economic development transactions. This is especially true when acquiring, selling, or leasing property owned by the county, or other political subdivisions, that they want to offer for development, or other lands owned by the CIC. Such land transactions can be made by the CIC with fewer restrictions, as contracts and land sales are exempt from competitive bidding requirements.

80.02 TWO TYPES OF COMMUNITY IMPROVEMENT CORPORATIONS

ORC Chapter 1724 allows for the establishment by incorporation of two types of community improvement corporations (CIC). The first type of CIC is one organized as an *economic development corporation*. The second type of CIC is one organized as a *county land reutilization corporation*, commonly referred to as a *county land bank*.

While the law appears to allow a single CIC to be organized for the purposes of both an *economic development corporation* and a *county land reutilization corporation*, or later merged or consolidated by amending the articles of incorporation, this Chapter is written as if the CIC is a separate corporate entity performing only *economic development corporation* functions. Indeed, while it may be technically possible for one organization to serve both functions, membership requirements for the board of directors and other issues make it difficult for one corporate entity to perform both functions.

Thus, only the first type of CIC, a CIC functioning as an *economic development corporation* under ORC Chapter 1724, will be the focus of this Chapter. The next Chapter of the *Handbook*, Chapter 81, will focus on CIC's incorporated as *county land reutilization corporations*, or *county land banks*.

80.03 PURPOSES OF COMMUNITY IMPROVEMENT CORPORATIONS

As stated above, a community improvement corporation incorporated as an *economic development corporation* is organized for the purpose of “advancing, encouraging, and promoting the industrial, economic, commercial and civic development of a community or area” ([ORC 1724.01\(B\)\(1\)](#)).

A CIC organized as a *county land bank*, or a *county land reutilization corporation*, has as its primary purpose facilitating the return of vacant, abandoned, and tax foreclosed property to productive tax paying economic uses or to beneficial public uses. The purpose and use of this type of CIC will be discussed in Chapter 81 of this *Handbook*.

80.04 POWERS OF A CIC

The powers of the CIC specified in [ORC Section 1724.02](#) are broad and were expanded when the land bank legislation was enacted as many of the powers of an economic development CIC are the same powers granted to a county land bank. For a specific listing of the legal powers of a CIC refer to [Exhibit 80-1](#) at the end of this Chapter.

Nothing in [ORC Section 1724.02](#) limits the right of a CIC to become a member or a stockholder in a community development corporation established under ORC Chapter 1726. ([ORC 1724.02\(G\)](#)). Likewise, the powers specified in ORC Chapter 1724 are not to be “construed to limit the general powers of a community improvement corporation” and “the powers granted under this chapter are in addition to those powers granted by any other chapter of the Revised Code.”

In addition to these powers, the CIC may obtain certain other powers pursuant to an agreement with the county or other political subdivision under [ORC Section 1724.10](#) if the CIC is designated as the agent of the county or other political subdivision. These additional powers are described in [Section 80.08](#). A designated CIC also has certain powers and responsibilities related to the issuance of industrial development bonds pursuant to ORC Chapter 165 which will be discussed later in this Chapter.

80.05 ORGANIZATION OF COMMUNITY IMPROVEMENT CORPORATIONS

A community improvement corporation (CIC) is a non-profit corporation organized under the provisions of ORC Chapter 1724 following the requirements and procedures of Ohio’s Non-Profit Corporation Law, ORC Chapter 1702. The provisions of the non-profit corporation law are applicable to CIC’s to the extent they are not inconsistent with ORC Chapter 1724, which take precedence in its organization and structure ([ORC 1724.08](#)).

The articles of incorporation and the appointment of the original statutory agent, which must be signed by a majority of the incorporators, must be filed with the Secretary of State. In addition, a code of regulations must be adopted; books, records and meeting minutes must be maintained; a verified statement of continued existence of the CIC must be filed periodically; and, the non-profit must comply with other requirements of

the law. In addition, the law allows a CIC to amend its articles of incorporation and to merge or consolidate with other corporations.

The articles of incorporation of an economic development CIC must specify the territory within which it proposes to operate. More than one CIC may operate within the same territory, but only one CIC may be designated as the agent of the county or other political subdivision. In addition, the territory of multiple community improvement corporations may not overlap (OAG 70-007). A CIC also may be formed to serve multiple counties, however, in this case the county or other political subdivisions may not designate the multi-county CIC as its agent (OAG 63- 600).

Upon receipt of the articles of incorporation by the Secretary of State they are sent to the Attorney General for a legal compliance review. If the Attorney General finds compliance with ORC Chapter 1724, and that the articles of incorporation are not inconsistent with the U. S. and Ohio Constitutions and federal and Ohio laws, the articles are endorsed and returned to the Secretary of State who files and records the articles of incorporation and notifies the CIC. This same process is followed in the case of an amendment to the articles of incorporation and for any merger or consolidation with other corporations ([ORC 1724.04](#)).

80.06 ORGANIZATIONAL MEETING AND GOVERNANCE OF A CIC

After notification of incorporation by the Secretary of State, an organizational meeting of the CIC is generally conducted to elect a permanent board of directors, officers, and adopt a code of regulations. [ORC Section 1724.10\(B\)\(1\)](#) specifies that not less than 40% of the board of directors of a CIC, which is designated as the agent of the county or other political subdivisions, must be elected or appointed officials of the designating political subdivisions. Designation of a CIC will be discussed in [Section 80.07](#) of this Chapter.

Thus, at least 40% of the board must be county commissioners, mayors, municipal council members, township trustees, or other elected or appointed officials of political subdivisions that designate the CIC as its agent. In addition, each political subdivision that has designated the CIC must have at least one officer on the board. State law simply provides for this minimum composition requirement, but there is no limit on total membership on the board. The total number of board members should be included in the code of regulations of the CIC.

Membership on the CIC board does not constitute the holding of a public office under any section of the Ohio Revised Code. Membership on the board does not constitute either a direct or an indirect interest in a contract between the CIC and any county, municipality, township, or other political subdivision for the purpose of Ohio's ethics and related conflict of interest laws. Also, the expenditure of money by any political subdivision for land bank purposes does not constitute a conflict of interest when the official of the political subdivision also serves on the CIC board.

Likewise, membership on the CIC board does not disqualify any official from holding any public office or employment, or require forfeiture of any current office or position. However, if the CIC issues industrial development bonds, there could be a conflict of interest if the member of the CIC Board is directly or indirectly involved with companies for which the bonds will be issued. This will be discussed in more detail in the Section 80.061 of this Chapter.

Since state law includes only minimal details on the governance and conduct of the affairs and management of the property of a CIC, many of these issues are also established in the code of regulations, which is subject to the non-profit corporation law, ORC Chapter 1702. For an example of CIC code of regulations, please see [Exhibit 80-4](#) for the “Code of Regulations of Grow Licking County, A Community Improvement Corporation.”

The code of regulations often specifies various operational details of the CIC in addition to the number and qualifications of the board of directors. Other items often found in the code of regulations includes the method to change the number of directors; removal of directors; the place and time for holding meetings; how meetings are called; voting and quorum requirements; and, provisions for the appointment of an executive and other committees and the authority of committees.

80.061 POTENTIAL CONFLICTS OF INTEREST IN ISSUANCE OF IDB’s

County Commissioners and members of the board of a CIC may have a potential conflict of interest when recommending the issuance or the actual issuance of an IDB for a particular project. The Ohio Ethics law, along with [ORC Sections 305.27](#) and [2921.42](#), apply to any “officer of an issuer (including a county) who is an officer, director, stockholder, employee, or owner of any interest ([ORC 165.13](#))” in an entity that is the lessee of an IDB funded project.

Likewise, if the official has a similar relationship with the bond trustee, paying agent, the depository of the funds, or a supplier of materials or contractor for the project there is also a potential conflict that should be investigated ([ORC 165.13](#)). The Ohio Ethics Commission has issued at least three advisory opinions on this issue (Opinions 78-003, 78-005, and 80-006) related to this issue. For further information also refer to Section 24.13 of this *Handbook*, and it is always advisable to ask the Ohio Ethics Commission if there is any question *prior* to taking any action.

80.07 DESIGNATION OF CIC BY COUNTY COMMISSIONERS AND OTHER POLITICAL SUBDIVISIONS

A CIC may be designated by a county, one or more townships, one or more municipalities, two or more adjoining counties, or any combination of these political subdivisions. In the case of a township, designation requires a unanimous vote of the township trustees ([ORC 505.701](#)). A designated CIC is the agent of the political subdivision to promote and encourage the establishment and growth of industrial,

commercial, distribution, and research facilities in the jurisdiction. Prior to designating the CIC, the political subdivision must declare that it is the policy of the political subdivision to promote the health, safety, morals, and general welfare of its residents through the designation of the CIC as its agent. The designation is made for counties by resolution of the county commissioners.

It is advantageous for a CIC to be designated by a county or other political subdivision as its agent because it can then approve or certify projects for industrial development bond (IDB) financing. It can, however, without designation, still be used to expedite financing programs of the Ohio Development Services Agency (DSA).

80.08 AGREEMENTS WITH DESIGNATED CIC'S AND ADDITIONAL POWERS OF DESIGNATED CIC's

A CIC, when designated by a county, may enter into an agreement with the county commissioners, and may from time to time amend or supplement the agreement. The agreement must specify that the CIC designated as the agency of the county will promote and encourage the establishment and growth of industrial, commercial, distribution, and research facilities in the county. Any actions taken by a designated CIC must be in conformance with applicable planning and zoning regulations.

Under an agreement or contract between the designated CIC and the commissioners, in addition to the powers of a CIC pursuant to ORC Section 1702.02 as described in [Exhibit 80-1](#), the following additional powers may be specified in the agreement ([ORC 1724.10](#)):

1. Preparation of Economic Development Plan – This plan is for the industrial, commercial, distribution, and research development of the county. The plan will show how the CIC will participate as the agency of the county in carrying out the economic development activities proposed in the plan. This plan must be approved, or confirmed, by resolution of the county commissioners and signed on behalf of the CIC prior to the time the CIC can act as agent of the county with respect to the plan ([ORC 1724.10\(A\)\(1\)](#)). In accordance with such a plan a CIC may:
 - a. Insure mortgage payments required by a first mortgage on any industrial, economic, commercial or civic property for which funds have been loaned by any person, corporation, bank, or financial or lending institution upon such terms and conditions as the CIC may prescribe.
 - b. Incur debt, mortgage its property, and issue its obligations, for the purpose of acquiring, constructing, improving and equipping buildings, structures and other properties and acquiring sites for lease or sale by the CIC. Any such debt issued by a CIC is solely debt of the CIC and cannot be secured by the pledge of tax monies received or to be received by the county.

2. Authority for the CIC to sell county owned land (ORC 1724.10(B)(2)) – Pursuant to an agreement, the county may authorize the CIC, as its agent, to sell or lease lands or interests in lands owned by the county. The CIC can sell or lease such property without advertising or bidding and may execute deeds and leases conveying title or leases to accomplish the sale or lease. A copy of this agreement must be recorded with the county recorder before any deed or lease authorized by the agreement can be recorded. In addition, the following additional provisions of law apply to sales and leases under such an agreement:
 - a. The board of county commissioners must determine that the land owned by the commissioners is land *not* required for county purposes.
 - b. That the land to be sold by the CIC will be for uses specified by the commissioners. These uses will promote the welfare; stabilize the economy, provide employment, assist in the development of industrial, commercial, distribution, and research activities; and, will provide additional opportunities for gainful employment of county residents.
 - c. The price and other terms or considerations of the sale or lease of the land by the CIC.
3. Authority to convey county owned land to the CIC for sale by the CIC and for the CIC to otherwise acquire real property (ORC 1724.10(B)(3)) – Pursuant to an agreement, the county may sell or lease county owned property to the CIC. The agreement may also authorize the CIC to acquire real property and interests in property as the county agency for development. The sale or lease is not subject to advertising or bidding requirements.

Unlike the authority granted under number 2, the county actually transfers title of county owned property and the CIC is also authorized to obtain property from entities other than the county. The agreement need not be recorded by the county recorder prior to the sale or lease of county owned property to the CIC under the agreement.

As it relates to county owned property, prior to conveying property to a CIC under this provision of the law ([ORC 1724.10\(B\)\(3\)](#)) the following additional provisions apply:

- a. The board of county commissioners must determine that the land owned by the commissioners and to be conveyed to the CIC is not required for county purposes.
- b. That the land to be conveyed to the CIC will promote the welfare; stabilize the economy, provide employment, assist in the development of industrial, commercial, distribution, and research activities; and, will provide additional opportunities for gainful employment of county residents. Note

that under this provision of law the commissioners may not specify the use for which the land must be used by the CIC, unlike when agreements are executed under number 2.

- c. The price and other terms or considerations of the transfer of the land by the county to the CIC.

Finally, an agreement executed under [ORC Section 1724.10\(B\)\(3\)](#) provides that if the CIC sells property conveyed to a CIC by the commissioners at a higher price than the sale price, then the excess must be paid to the commissioners. Any excess is calculated by deducting the costs of acquisition and sale, taxes, assessments, costs of maintenance, costs of improvements to the real property, service fees, and any debt service charges.

It should be noted that the provisions included in this Section as they relate to counties also apply to other political subdivisions that may designate the CIC as their agent.

80.09 FUNDING FOR THE CIC

A CIC usually has a variety of funding sources in order to maintain staff and operate. The funding usually includes a combination of public and private sources of revenue and fees for services. Some CIC's receive donations from companies, and these donations may be tax exempt depending on the federal tax classification of the CIC. Other CIC's charge membership fees to business and industry that become members of the CIC and participate in its affairs. These fees are often proportional to the size of the business or industry. Others charge application and administrative fees when industrial development bonds are issued. Some CIC's apply for and manage state and federal grants.

CIC's sometimes receive revenue from the purchase, development, and sale of property and facilities it owns or leases. Another option is, pursuant to an agreement with a county or political subdivision that has designated the CIC as its agent, to sell publicly owned land for development purposes. In this case, the agreement with the county or other political subdivision could provide for a fee to the CIC similar to a real estate commission when land is sold. The following Sections include details on sources of public funding authorized under Ohio law.

80.10 COUNTY GENERAL FUND FINANCIAL CONTRIBUTIONS

County commissioners may contribute general fund money, supplies, equipment, office facilities, and other personal property or services to a CIC to defray the expenses of the CIC. The CIC may use the board's contributions for any authorized purpose under ORC Chapter 1724 ([ORC 307.78 \(A\), \(B\)](#)).

80.11 CONTRIBUTIONS FROM PROCEEDS OF ECONOMIC DEVELOPMENT PROPERTY TAX LEVY

Counties may submit to the voters a property tax levy for the “creation and operation of an office or joint office of economic development, for any economic development purpose of the office, and to otherwise provide for the establishment and operation of a program of economic development pursuant to sections 307.07 and 307.64 of the Revised Code ...” ([ORC 5705.19\(EE\)](#)).

While it is clear that the county may use levy proceeds to pay expenses of a *county land reutilization corporation* organized under ORC Chapter 1724 if the commissioners find that the purpose of a *county land bank* expenses “promote economic development in the county”, the authority to use levy proceeds for an economic development CIC is less direct under the law. In order to appropriate levy funds to a traditional CIC, a ruling from the county prosecutor is advisable. In order for the appropriation to be made it is necessary to show how the appropriation provides for the establishment and operation of a program of economic development under ORC Sections [307.07](#) and [307.64](#).

Another option is for the commissioners to enter into a contract, for up to three years, with the CIC using voted levy dollars if the county does not hire a county director of economic development. The contract would provide for the CIC to serve as the director of the county office of economic development pursuant to [ORC Section 307.07\(C\)](#). Such an agreement also must include the procedure by which the CIC will obtain approval of the commissioners for various actions authorized by statute.

80.12 TOWNSHIP AND MUNICIPAL CONTRIBUTIONS TO CIC’S

Township trustees may contribute general fund monies, not otherwise appropriated, and other services to a CIC to defray any expenses of the CIC, unless the use of township funds are limited by resolution of the trustees. This requires a unanimous vote of the township trustees ([ORC 505.701](#)).

Township trustees may also purchase real property for the purpose of transferring the property to a CIC. To finance the purchase of the real property, trustees may issue general obligation bonds for which the full faith and credit of the township can be pledged. A township, however, may not contribute or loan money to a CIC so that the CIC can acquire a site for future industrial development or to pay off a loan on an existing site owned by the CIC (OAG 85-025).

Municipalities also may make contributions to a CIC if the municipality determines that the contributions constitute a public purpose. The authority of municipalities is based on Constitutional home rule powers and not statutory law (OAG 91-071).

Finally, a CIC that receives financial support from a municipality and township may not contribute funds or other resources to an entity that has been established to support or

oppose a proposed ballot question on the merger of the two subdivisions ([OAG 2008-035](#)).

80.13 PUBLIC RECORDS LAW, CONFIDENTIALITY OF INFORMATION, AND SUNSHINE LAW

Prior to 2000, the applicability of Ohio's Public Records and Sunshine laws were not addressed directly in ORC Chapter 1724. Thus, the application of these laws to a CIC was a result of common law rulings or opinions of the Attorney General. For example, OAG Opinion 79-061 determined that board of directors of a CIC was not a "public body" for the purposes of the Sunshine Law *unless* the CIC was designated as the agent of the county or another political subdivision.

As a result of this ruling, the CIC had to follow the Sunshine Law when acting as an agent of the county but was not required to follow the law when it was not performing a function as the agent of the county. This was changed with the enactment of SB 137, effective 5-17-2000, which provided the following exceptions to the general provisions of Ohio's Public Records and Sunshine Laws:

1. Any *financial and proprietary information* submitted by or on behalf of an entity or held or kept by a CIC for an entity related to the relocation, location, expansion, improvement, or preservation of the business of that entity is "confidential information and is not subject to section 149.43 of the Revised Code" ([ORC 1724.11\(A\)\(1\)](#)). This exception to the public records law also applies to counties and other political subdivisions if the CIC has been designated by the county or other political subdivision. The proprietary information includes trade secrets. The provisions of [ORC Section 149.431](#) relating to non-profit corporations that have contracts with governmental entities also apply.
2. Any *other information* submitted by or for an entity and held or kept by a CIC which is related to the relocation, location, expansion, improvement, or preservation of the business of that entity "is confidential information and is not a public record subject to section 149.43 of the Revised Code." This exception to the public records law also applies to counties and other political subdivisions, if the CIC has been designated by the county or other political subdivision. But in this case, the information is confidential only until the entity commits, in writing, to proceed with the relocation, location, expansion, improvement, or preservation of its business.

A CIC is generally subject to Ohio's open meeting laws found in [ORC Section 121.22](#) unless the meeting of the CIC is to consider information which is not a public record as indicated above. In this case, the CIC board, or any committee or subcommittee, may vote to close the meeting, during the consideration of the confidential information. In order to close the meeting a vote must be taken and a majority must vote to close the meeting if a quorum is present. In addition, the board, committee or subcommittee is prohibited from considering any other information during the closed session.

Finally, it needs to be stressed that any meeting where a decision or determination of the CIC board is required in connection with the relocation, location, expansion, improvement, or preservation of the business of the entity cannot be closed and must be open to the public.

80.14 ANNUAL FINANCIAL REPORT

Each CIC must prepare and file an annual financial report in the form specified by the State Auditor no later than 120 days after the end of the fiscal year of the CIC, unless the State Auditor grants an extension. The report must be prepared according to generally accepted accounting principles (GAAP). It must be certified by the CIC board or its treasurer or chief fiscal officer. It also must be published on the CIC's web site if it has its own website, or on the county web site if the CIC does not have a web site ([ORC 1724.05](#)). The State Auditor must analyze the annual financial report to determine if the activities of the CIC are in compliance with law.

80.15 PENALTY FOR FAILING TO FILE AN ANNUAL FINANCIAL REPORT

If a CIC does not prepare the required annual financial report and file it with the State Auditor within 210 days after the end of the CIC's fiscal year, the State Auditor certifies this fact to the Secretary of State. The Secretary of State then records the certificate and cancels the articles of incorporation of the CIC. This action rescinds any rights, privileges, and franchises conferred upon the CIC by the articles of incorporation.

Likewise, if the State Auditor determines that the CIC cannot be audited and declares it un-auditable and the CIC fails to prepare and file the annual financial report within 90 days after the CIC was declared to be un-auditable, the State Auditor also certifies this fact to the Secretary of State who then cancels the articles of incorporation.

Reinstatement of the CIC can be made within two years if all delinquent annual financial reports are filed and approved by the State Auditor. If this occurs, the Secretary of State receives a certificate from the State Auditor. This certificate is then recorded in the corporate records of the Secretary of State, having the effect of reinstating the articles of incorporation.

The filing to achieve reinstatement can be made by any officer, member, creditor, receiver, lessee, or sub-lessee of the CIC. Such persons must be granted access to the books and records of the CIC so that they may file for reinstatement. The rights, privileges, and franchises of a CIC, whose articles of incorporation have been reinstated, are subject to [ORC Section 1702.60](#) ([ORC 1724.06](#)).

80.16 AUDITS OF COMMUNITY IMPROVEMENT CORPORATIONS

Each CIC also is required to submit to audits by the State Auditor, either annually or every two years, as if the CIC is a public office subject to [ORC Section 117.11](#).

Likewise, a CIC may request that the audit be performed by an independent CPA, or a firm of certified public accountants, pursuant to [ORC Section 115.56](#).

80.17 LIABILITY OF CIC BOARD MEMBERS AND EMPLOYEES OF A DESIGNATED CIC

A county designated CIC, members of the governing board, and any other employees of a CIC that perform functions on behalf of the county are all deemed to be "employees" of the county for purposes of the sovereign immunity law, ORC Chapter 2744 (OAG 87-024). As such, they are accorded limited immunity from liability as provided by that law. The sovereign immunity law also applies to determinations concerning the issuance of industrial development bonds by a CIC, as the Attorney General also ruled in this opinion that determinations concerning the issuance of IDB's are governmental functions under ORC Chapter 2744.

A county that has designated a CIC is obligated to defend and indemnify the CIC, any members of the governing board, and other employees of a CIC in any civil action arising from issuance of IDB's, provided the acts or omissions alleged to have caused injury occurred while the CIC and its employees were acting in good faith and within the scope of their official responsibilities. It should be noted that this obligation does not include judgments for punitive and exemplary damages ([ORC 2744.07\(A\)\(2\)](#)). For additional information refer to [Chapter 8](#) of this *Handbook*.

80.18 DISTRIBUTION OF ASSETS IF A CIC IS DISSOLVED

If a CIC is either voluntarily or involuntarily dissolved, liquidated, or the articles of incorporation are not reinstated, any assets remaining after the cancellation of the articles of incorporation are distributed by the board of directors of the CIC to civic projects or public charities. These distributions require the approval of the common pleas court.

80.19 FINANCING PROGRAMS

A CIC primarily provides services to the county and other political subdivisions for which it has been designated with respect to assisting with financing and providing facilities for economic development. As explained in the introduction, an early primary function of the CIC was in the issuance of industrial development bonds (IDB's), although their use has been made more difficult because of federal restrictions and requirements. IDB's will be explained in the next Sections of this Chapter and issues related to federal requirements and restrictions are summarized in Sections 80.34-80.36. In addition, a CIC can, and many do, serve to promote state economic development programs. For additional information on state economic development programs see [Chapter 78](#) of this *Handbook*.

80.20 INDUSTRIAL DEVELOPMENT BONDS (IDB's)

Industrial development bonds are a type of financing where the state or a local unit of government allows a private entity serving a public purpose to benefit from the status of the government as a tax exempt entity and its ability to issue debt obligations at tax exempt rates. In the case of IDB's the public purpose is to promote economic development and employment.

IDB's have been characterized as "corporate bonds disguised to look like municipal bonds." The state or local government, however, unlike when it issues general obligation bonds, does not pledge the "full faith and credit" of the governmental unit. Only the revenues that are generated from the project in the form of loan repayments, rental or lease income, or other non-tax revenues are obligated to repay the debt.

Industrial development bonds are authorized under ORC Chapter 165 which was originally enacted by the General Assembly in 1967 (SB 273, effective 6-26-67). Prior law authorized the issuance of these revenue bonds under legislation creating the Ohio Department of Development (DOD) and the Ohio Development Financing Commission (ODFC) in 1963. However, nine months after the establishment of ODFC, the Ohio Supreme Court found the use of the bonds for loans to private companies violated the Article VIII, Section 6 of the Ohio Constitution. In response the General Assembly proposed, and the voters approved an exception by amending the Ohio Constitution to add Section 13 to Article VIII to allow the use of revenue bonds for economic development purposes. For a summary and history of Ohio's constitutional provisions relating to the use of IDB's see [Exhibit 80-2](#) at the end of this Chapter.

[ORC Section 165.20](#) provides that political subdivisions and their agencies or instrumentalities may designate a CIC as its "agency to acquire, construct, reconstruct, enlarge, improve, furnish, or equip and to sell, lease, exchange, or otherwise dispose of property and facilities within the state for industry, commerce, distribution, and research."

As such, it has been determined that IDB's can be issued for the business of farming (*State ex rel. Board of Preble County Commissioners v. Mong*, 12 Ohio St. 3d 66) and that bonds can also be issued for a nursing home (OAG 81-095). IDB's can also be issued for pollution control or solid waste facilities as long as the purpose is to create or preserve jobs and employment opportunities or to improve the economic welfare of the state (OAG 84-032). An office building containing rental spaces for physicians, dentists, a pharmacy and a laboratory also constitute "commerce under Article VIII, Section 13 of the Constitution (*County of Stark v. Ferguson*, 2 Ohio App. 3d 72). The Attorney General also has ruled that a county may issue IDB's for projects located both in unincorporated areas and within a municipality (OAG 73-110).

It was determined in 1976 that IDB's could not be used for moderate and low income housing simply because the provision of financial assistance to the private building industry might preserve construction jobs and improve the "economic welfare of the people" (*State ex re. Brown vs. Beard*, 48 Ohio St. 2d 290). Later the Attorney General

found, in a case involving a city, that multi-family housing could be an eligible use if the issuance was based on the belief of city council that the multi-family housing “will assist in the development of industrial, commercial, distribution, and research activities (OAG 88-037).” It should be noted that in 1990 the Ohio constitution was amended with the enactment of Article VIII, Section 16 dealing with affordable housing. For additional information refer to [Chapter 82](#) dealing with *Housing Finance*.

The county may also have a beneficial interest in the corporation which includes the right to any property financed by IDB’s when the bonds are retired or may acquire the property for endowment or similar uses or for direct use, subject to any lease or mortgage securing the bonds.

80.21 POPULAR DISCUSSION OF THE ISSUANCE OF IDB’s

The issuance of the IDB’s involves relatively complex legal and financial transactions requiring a bond counsel and financial advisor with specialized knowledge of both state and federal law. This section will attempt to summarize these complex transactions for the layman.

In its most basic form, an IDB issued by the county (the issuer) is authorized by the commissioners (the issuing authority). This essentially involves the county issuing an IDB upon a request, or with a recommendation, from a CIC. The CIC must be a county designated CIC and the commissioners must have confirmed the plan that the CIC has prepared, thus effectively designating the CIC as an agent of the county.

IDB’s are commonly referred to as “conduit debt.” Conduit debt, as it relates to IDB’s, simply means that the county, or other governmental body issuing the bonds, is doing so for the benefit of the company and the company is obligated to repay the bonds, not the county or other governmental body. The transaction is secured by a security interest in the property from the project that is being financed; and, the obligation of the issuer (the county) is payable solely from payments from the project being financed.

In order to issue the debt, the commissioners adopt a resolution and must conduct a public hearing, which is required under federal law. This resolution is referred to as the “inducement resolution.” After its adoption, the company or the CIC is obligated to proceed with the IDB, which under state rules relating to volume cap must be done within 120 days after confirmation of the use of volume cap by DSA. A 60 day extension is also possible ([OAC 122-4-03](#)). During these periods, bond counsel, underwriters, and other financial professionals are involved in finalizing the transaction and in making arrangements for the placement or sale of the bonds. In addition, the inducement resolution allows eligible expenses made by the company, if paid no more than 60 days prior to the adoption of the inducement resolution, to be reimbursed to the company from the bond proceeds.

After closing on the bonds and the sale or placement of the bonds, the bond proceeds are loaned to the company for the project. Investors are willing to accept lower interest

on IDB's because the bonds are exempt from federal and some state and local income taxes pursuant to an unqualified opinion to that effect by bond counsel which lowers the cost of capital to the company. Companies also find it advantageous to use IDB's because they can treat the project as their own and can take depreciation on a straight line basis and can also expense the interest cost. After the project is completed, the company repays the county which causes principal and interest payments, usually through a bank trust department or paying agent, to be made to the bondholders.

Some aspects of the transaction are detailed in the following sections of this Chapter. This includes an explanation of the contents of documents that comprise the bonds proceedings; how the debt is secured through a mortgage or other mechanism; fixed and variable interest rate options; obtaining state volume cap to issue the bonds; credit enhancement of the bonds through letters of credit; how and why "put" provisions are included in IDB's for bondholders; and, refunding of previously issued IDB's. These sections will also discuss how bond counsel, underwriters, placement agents, remarketing agents, paying agents, letter of credit providers, and bank trust departments may be involved in the issuance of IDB's. Each IDB transaction is unique and thus the following sections will focus on the primary legal provisions of ORC Chapter 165 and various general requirements of federal law and the Internal Revenue Code (IRC).

80.22 INSTITUTIONAL PURCHASERS OF IDB's

While IDB's can be sold through brokers to individual purchasers most are sold to institutional investors. As stated in the previous section, IDB's can be attractive investments because of the favorable tax treatment afforded the bonds. IDB's are lawful investments for banks, savings and loans, deposit guarantee associations, trust companies, and insurance companies. They are also eligible investments for sinking, bond retirement, or other special funds of political subdivisions, the state sinking fund, workers compensation, and most state retirement systems. IDB's are also acceptable as security for these institutions when they serve as a depository of public funds ([ORC 165.08](#), OAG 73-109).

80.23 GENERAL PROVISIONS AND STRUCTURE OF ORC CHAPTER 165

ORC Chapter 165 was enacted, in part, to implement Article VIII, Section 13 of the Ohio Constitution "...in furtherance of the public purposes of the state to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the state ([ORC 165.02](#))."

The law defines an eligible "*issuer*" of IDB's to be the state, a county, or a municipality, but only one that has designated a CIC "as its *agency* for industrial, commercial, distribution, and research development "and for which a *plan* has been prepared by the CIC and confirmed by the issuing authority (county commissioners) ([ORC 165.01\(D\)](#)). See also [ORC 1724.10](#))."

The “*issuing authority*” in the case of the state is the Director of DSA; in the case of a county is the board of commissioners or county council; and, in the case of a municipality is the city or village council ([ORC 165.01\(E\)](#)). ORC Section 165.01 also defines such other terms related to industrial development bonds as “bond proceedings”, “pledged facilities”, “project”, “revenues”, and “security interest”, all of which have very exact meanings under the law.

80.24 SPECIFIC POWERS GRANTED TO ISSUERS OF IDB’S

Issuers of IDB’s, including counties, have the following specific powers, some of which are similar to the powers of a CIC under [ORC Section 1724.02](#). Implementation of all of these powers must be “in accordance with Section 13 of Article VIII, Ohio Constitution”:

1. To acquire by gift or purchase and hold and mortgage real estate and interests in real estate and personal property for projects.
2. To purchase, construct, reconstruct, enlarge, improve, furnish, and equip and to lease projects and sell, exchange, and otherwise dispose of projects. Sales may be made by conditional or installment sale and under an option to purchase upon terms specified in an agreement. The terms of sale may include a nominal amount or less than true value.
3. To issue bonds to provide funds, by loans or otherwise, for acquiring, constructing, reconstructing, enlarging, improving, furnishing, or equipping one or more projects.
4. To make loans for the acquisition, construction, reconstruction, enlargement, improvement, furnishing, or equipping of projects upon such terms as the issuing authority determines. This includes secured or unsecured loans. As such, the commissioners, or other issuing authorities, may execute loan agreements, accept notes or other forms of obligation to secure the debt, and take other actions needed to safeguard against losses. This includes the ability to foreclose on the property and to bid on the property in a foreclosure or other sale.
5. To execute contracts and other instruments necessary or appropriate to implement ORC Chapter 165.
6. To establish and collect rentals and other charges for the use of a project. The county may also lease the project to others. Such a contract may include an option for the lessee to purchase the project for a price determined in the sole discretion of the commissioners after retirement or redemption of the bonds.
7. To employ necessary personnel or contract with necessary financial consultants, appraisers, accounting experts, architects, engineers, attorneys, and others.

8. To pledge, assign or otherwise encumber as security for the bonds, rentals, revenues, charges, other income, and moneys received from the use, lease, sale, or other disposition of projects, as specified in the bond proceedings. Commissioners may also enter into trust agreements or indentures of mortgage to benefit the bondholders.
9. To enter into agreements with any federal or state department or agency or political subdivisions for the planning and installation of roads, water, and sanitary and storm sewage facilities. It should be noted that a “project” is defined to include sanitary facilities, drainage facilities, and prevention and replacement facilities as specified in the county sewer district law, ORC Chapter 6117. For additional information refer to [Chapter 28](#) of this *Handbook*.
10. To purchase special perils, liability and other insurance. The liability insurance is to protect against liability for damage to property or injury or death of persons relating to the project. Counties may also purchase any other insurance, such as bond insurance, if specified in the bond proceedings.
11. To sell, lease, or otherwise dispose of real and personal property acquired by the county and no longer needed for purposes related to the project, or by the county. The county may also grant easements related to the property. Any such sale or lease of the property is not subject to competitive bidding.
12. Do any other things necessary or appropriate to carry out the purposes of Article VIII, Section 13 of the Ohio Constitution and the purposes of ORC Chapter 165.

80.25 USING IDB PROCEEDS FOR GRANTS TO PRIVATE ENTITIES

As one reviews the various powers of IDB’s, it seems clear that the authority for issuing IDB’s is limited to loans that are secured by a lease, rentals, charges, and other similar types of income resulting from the project, as long as tax monies are not used as security. Yet, the Attorney General ruled in Opinion 98-034 that “Section 13 (of Article VIII) has been found to permit the issuance of grants to private entities, as well as the making of loans” ([OAG 2004-005](#)). While this 1998 opinion and a corresponding opinion ([OAG 2000-013](#)) both involved the Ohio Department of Development (now the DSA), the Attorney General later ruled similarly as it relates to other issuers, including counties.

Butler County asked the Attorney General if it could issue IDB’s and provide the proceeds to a private corporation to construct telecommunications facilities where there would be no requirement for the private corporation to make payments to the commissioners that would *fully* cover debt service on the IDB’s. Further, the Attorney General was asked, that *if* the commissioners could incur such debt, could they pledge non tax revenues as security for the repayment of principal and interest on the bonds.

In response to the first question, the Attorney General stated in [OAG 2004-005](#), that: “Although the statutes may appear, at first glance, to require the private corporation that benefits from county funds to pay in full the debt service incurred to acquire those funds, a more thorough examination of the statutes indicates that, although a full payment arrangement is permitted, it is not mandated by statute.” Concerning the second question, the Attorney General opined that: “As a matter of law, however, an issuer is permitted to pledge or obligate its non-tax revenue to pay debt service or to provide grants, rather than loans, for portions of projects.” Specifically the syllabus of this opinion reads as follows:

1. A board of county commissioners is authorized by ORC Chapter 165 to issue debt securities to raise funds for contribution to a private corporation for a project as defined in [ORC Section 165.01\(H\)](#) without requiring that the private corporation make payments to the board to fully cover the debt service on the securities.
2. In issuing debt securities pursuant to ORC Chapter 165, a board of county commissioners may pledge non-tax revenues of the county as security for the payment of the principal and interest on the debt securities, provided that the particular non-tax revenues so pledged are not restricted to other uses.

80.26 PURPOSES FOR WHICH IDB’S MAY BE ISSUED UNDER STATE LAW

A county, as an issuer of bonds, may use the bonds to purchase, construct, reconstruct, enlarge, improve, furnish, or equip projects or may provide the bond proceeds to make loans for these purposes. Commissioners must adopt resolutions to issue bonds, which in conjunction with various attachments such as trust agreements or a mortgage indenture, are commonly referred to as the “bond proceedings.”

The bond proceedings may contain a determination by the county that the project being financed is one defined in ORC Chapter 165 and is consistent with constitutional purposes. These determinations are conclusive as it relates to the validity and enforceability of the bonds issued under the bond proceedings, which may incorporate security interests, leases, subleases, and sale and loan agreements as a part of the bond proceedings.

80. 27 PROHIBITION TO OBLIGATE OR PLEDGE TAX MONEY FOR REPAYMENT OF IDB’S

The bond proceedings must provide that the principal and interest on the bonds and any other payments to be made under the bond proceedings “shall be payable solely from the revenues and secured by security interests as provided in such bond proceedings.” Further, the bond proceedings also “shall not obligate or pledge money raised by taxation” ([ORC 165.03\(A\)](#)).

80.28 ISSUANCE AND SALE OF BONDS; INTEREST RATE; PROCEDURAL REQUIREMENTS

Industrial development bonds may be issued at one time; over a period of time in different series; must be dated; and, mature at the times specified in the proceedings, but in not more than 30 years. They are subject to early redemption at prices and under any conditions specified in the bond proceedings.

The interest rate on the bonds may be fixed or variable as specified in the bond proceedings. Variable rate IDB's are often referred to in the industry as Variable Rate Demand Options (VRDO's). If the bond proceedings provide for variable rates, the proceedings must also provide a base or formula to be used to establish the rates.

The county determines whether the bonds will be registered; bond denominations; how the bonds will be executed; and, places where principal and interest will be paid. Since the bonds may be sold without registration under the Securities Act of 1933, the costs and time delays often experienced with registered bonds can be avoided. The bonds may be sold at public or private sale (ORC 165.03(B)). A private sale is often referred to as private placement.

Before the delivery of the IDB's the county is required:

1. To have received from the CIC, which the county has designated to be its agent, that the project is in accordance with the plan prepared by the CIC and confirmed by the county. This requirement, however, does *not* apply to projects for a sanitary, drainage, or prevention and replacement facility under the county sewer district law.
2. To have provided written notice mailed to the Ohio DSA Director advising the director of the proposed delivery of the bonds, the amount of the bonds, the proposed lessee, and a general description of the project. DSA has provided a form to be used for this purpose.

80.29 PRIVATE PLACEMENT OF BONDS; FIXED OR VARIABLE INTEREST RATES; LETTERS OF CREDIT

The direct purchase or private placement of Qualified Small Issue IDB's is an attractive option. With private placement, the bonds are placed directly with a bank or other eligible financial institution at either a variable or fixed interest rate and without credit enhancement. Private placement is an attractive option because there is usually no need to have the bonds rated. It is also attractive because the professional services of a placement agent, remarketing agent, letter of credit bank, paying agent, or bank trustee is usually not needed, although if purchased by a bank they often effectively serve these last two roles. Not having to pay these costs can have a significant impact on the effective cost of borrowing, but the interest rates are usually higher than if they are sold at variable rates with credit enhancement.

In the case of IDB's sold at variable interest rates with credit enhancement, the transaction requires a Letter of Credit (LOC) from a rated bank. These types of variable rate bonds are often referred to in the industry as a Variable Rate Demand Obligations (VRDO's).

The cost of a LOC can be a significant expense, often costing anywhere from .5% - 2.0%, of the outstanding bonds. A LOC is also an annual expense, not a one-time charge. Unlike with a private placement, the interest on the VRDO bonds are usually priced every 7 days through a remarketing agent. Using VRDO's often results in the lowest interest rate, but the cost of issuance and administration is usually higher than with fixed or variable rate private placements.

Letters of credit are usually provided by domestic or foreign rated banks. The structure of the letter of credit usually involves an agreement between the LOC provider and the company (not the county). The LOC is issued and payable to the bond trustee and requires the LOC provider to pay the bond trustee an amount equal to the full amount of outstanding bond principal payments plus a specified amount of interest. The bond trustee can draw on the LOC either to make all debt service payments (a direct pay LOC) or to cover a default on the bonds (a standby LOC). The agreement requires the borrower to reimburse the LOC provider for these payments.

A LOC, in the case of a VRDO issue, can also be used as a "liquidity facility" if the bonds are "puttable." A "puttable bond" is an option for the bondholder to demand early payment of principal and is often referred to as a "demand feature." With a "puttable" bond, the bondholders may demand to have their bonds purchased back by the issuer at par plus accrued interest, either periodically or at will, often with notice of anywhere from 7-30 days.

IDB's that have a demand feature and are puttable protect investors from rising interest rates which may result in value drops in the bonds. As such, for the additional protection, the bond holder is willing to accept less interest than if the bonds do not have a "put" provision. If a bondholder "put" their bonds and a remarketing agent cannot sell the bonds, the LOC provider, using the liquidity feature of the LOC, purchases the "put" bonds. Some states like Ohio have their own credit enhancement for programs for IDB's.

80.30 PROVISIONS IN BOND PROCEEDINGS INCLUDED IN CONTRACTS WITH BONDHOLDERS

In addition to the required and permissive items specified above, the following items may also be included in the bond proceedings. If included in the bond proceedings, the provisions will then be included in the contract with the purchasers of the bonds:

1. A pledge of rentals, charges, revenues, and other income for the payment of principal and interest and other payments that must be made under the bond proceedings.

2. The responsibility of the county in the acquisition, construction, reconstruction, enlargement, furnishing, equipment, operation, alternation, maintenance, insurance and repair of any pledged facilities.
3. Provisions concerning the purposes to which bond proceeds may be applied and the term of the bonds
4. How the rentals, charges and other income will be collected, maintained, and used. This also includes the use of money derived from the sale or lease of pledged facilities.
5. Terms and conditions under which additional bonds may be issued which may be secured by the same revenues specified above, or from a mortgage on the same facilities and property.
6. Terms of any trust agreement or mortgage indenture securing the bonds.
7. Provisions concerning the deposit, application, safeguarding, and investment of funds the county receives or holds under the bond proceedings. These funds are not subject to the provisions of the county investment law in ORC Chapter 135.
8. Other appropriate agreements with the bondholders concerning the pledged facilities and revenues received.

80.31 SECURITY OF IDB's BY TRUST AGREEMENTS AND ENFORCEMENT IN COURTS

IDB's may be secured by a trust agreement or mortgage between the county and a trust company or bank with a trust department. In most cases today, a mortgage is not used. However, if one is part of a security arrangement, it must be recorded with the county recorder. A trust agreement does not have to be recorded. The trust agreement, or mortgage, if used, generally includes the resolution of the commissioners issuing the bonds, and the following:

1. A pledge of the rentals, charges, revenues, and other income from which the principal and interest are payable and a mortgage of pledged facilities. This includes any enlargements to the facilities made at a later date.
2. How the trust agreement, mortgage, or other security pledge as security for the bonds will be maintained until the county has fully paid the principal of and interest on the bonds.
3. Provision providing that if a default occurs in any payments required in the bond proceedings, or in other agreements included in contracts with bondholder, enforcement may be achieved by a mandamus action in court, the appointment of a receiver, or foreclosure if the security is a mortgage.

4. Rights and remedies of the bondholders and the trustee and provisions for protecting and enforcing these rights. This may include a limitation on individual bondholders.
5. Any other provisions agreed to by the county, the original purchaser, and bond trustee.

In addition, each bondholder or the bond trustee may take legal action to protect their rights under the bond proceeding or other agreements, unless restricted in the bond proceedings. This includes the right to require the county to perform its responsibilities under law or the bond proceedings and the ability to enjoin unlawful activities. If the county defaults on the payment of any principal or interest or any other agreement made by the county, the parties may ask the court to appoint a receiver to administer and operate the agreement. The receiver would have full power to make such payments or perform other provisions included in agreements or bond proceedings. All of these actions are performed at the direction of the court. The authority of an appointed receiver includes the authority to foreclose on a mortgage, but excludes “any power to pledge additional rentals, revenues, or other income, charges, or moneys of the issuer (county), including those derived from taxation” to make principal and interest payments.

80.32 REFUNDING OF PREVIOUSLY ISSUED IDB's

Counties and other issuers of bonds may refund previously issued bonds for a period not to exceed 30 years for any of the following purposes:

1. Refunding bonds which have matured or are about to mature when the rentals, charges, revenues and other income pledged to repay the bonds are not adequate to make principal, interest, and other payments required by the bond proceedings.
2. Refunding any bonds to provide funds for reconstructing, enlarging, improving, or providing additional furnishings or equipment for the facilities for which the original bonds were issued.
3. Refunding all outstanding bonds when the rentals, charges, revenues, other income, and moneys pledged to service the bonds is not adequate to pay bonds which have matured, or are about to mature, or to make other payments required by the bond proceedings. Refunding in this case can only occur if the outstanding bonds can be retired by call, at maturity, or with the consent of the bondholders, items usually addressed in the bond proceedings. Also in this case, the amount of the refunding cannot exceed the par value of the original bonds that are being retired, any redemption premium, past due and future interest to maturity that cannot be paid otherwise plus any funds to reconstruct, enlarge, improve, furnish, or equip the facilities funded in the original issue.

4. Refunding any previously issued bonds when refunding will result in a lower interest rate than the original bonds. In this case the interest cost of the refunding bonds when computed to absolute maturity must be less than the original bonds, or the average life of the refunding must be greater than the remaining average life of the original bonds.

The Attorney General has ruled that the lower interest rate must prevail for the duration of the term over which the refunding bonds are issued (OAG 88-079). Later this opinion was clarified when the Attorney General stated that this applies when the issuing authority has a reasonable expectation that the final interest cost, computed to maturity, will be less than the final interest cost of the bonds to be refunded (OAG 89-040).

80.33 STATE ISSUANCE OF BONDS

If the State of Ohio is the issuer, then prior to the authorization of the bonds, the Director of Ohio DSA must receive a written request for issuance from the commissioners if the project is in the unincorporated area of the county. If the project is located in the unincorporated area of the county and the county has designated a CIC to be its agent, then prior to state issuance, the CIC that prepared the plan must certify to the Director of DSA that the project is in conformance with the plan. These same provisions apply to such projects within municipalities.

The Director of DSA, however, may not issue refunding bonds when the refunding is of bonds previously issued by a county or municipality (OAG 88-079). State bonds can also be issued by DSA at the request of a port authority which is discussed in Chapter 79, *Port Authorities*.

80.34 BACKGROUND ON FEDERAL RESTRICTIONS AND REQUIREMENTS FOR TAX EXEMPT IDB'S

At several places in this Chapter, reference has been made to how changes at the federal level have reduced the use of IDB's. This section explains some of the federal requirements and restrictions. It also needs to be noted, however, that other factors have contributed to the reduced use of IDB's. Among those is the general tightening of credit and the reluctance of companies to borrow in the wake of the recent "Great Recession". Generally low interest rates constrained by the Federal Reserve also has inhibited the use of IDB's given the relatively high transaction costs under the IDB program. Others believe another factor limiting IDB's is that the program requirements have not kept pace with structural changes in the new manufacturing economy."¹

¹ Hayashi, Kei. *Policy Brief: Industrial Revenue Bond Program*. Urban Manufacturing Alliance, April 2013. Prepared for the Urban Manufacturing Alliance by the Pratt Center for Community Development. An excellent summary for a better understanding of IDB's available at: http://prattcenter.net/sites/default/files/uma_irb_policy_brief_final.pdf

IDB's have been used since 1936 when Mississippi pioneered the concept. In 1954, the Internal Revenue Service formally acknowledged the tax exempt status of these kinds of bonds. In 1968, Congress enacted legislation that, in many important ways, established the framework that still exists today. While Congressional intent is often difficult to determine, most agree that Congress wanted to limit the use of IDB's to projects that were creating new economic activity. Thus, the general rule established by the IRS was that IDB's were generally taxable unless an exception to the general rule of taxability was made, as will be discussed later.

In the 1984 the federal Deficit Reduction Act led to additional restrictions being placed on tax exempt IDB's. In the 1986 Tax Reform Act, as a result of what some considered to be massive growth in "non-traditional" tax exempt debt, Congress placed limitations on the aggregate amount of "non-traditional" tax exempt debt that could be issued by establishing a state by state "volume cap" on IDB's and other categories of tax exempt debt. Volume Cap will be explained later in Section 80.35 and in [Exhibit 80-3](#).

Under [ORC Section 165.20](#), IDB's can be used for property and facilities "for industry, commerce, distribution, and research." However, one of the limitations imposed by federal law is that tax-exempt IDB's can now only be issued for manufacturing projects, whereas, in the past, they could be used for a broader variety of projects authorized under state law.

80.35 GENERAL FEDERAL REQUIREMENTS AND RESTRICTIONS ON TAX EXEMPT IDB's; PRIVATE ACTIVITY BONDS

In order to better understand IDB's, it is necessary to have some background on the broader structure of tax exempt bonds under federal law. Most commissioners are familiar with "traditional" tax exempt debt which is issued under ORC Chapter 133 for public buildings and facilities and public infrastructure improvements.

Counties can also issue "non-traditional" bonds on behalf of private entities. These bonds are referred to as "Private Activity Bonds" (PAB's) which, unless granted an exception by the federal government, are subject to federal income tax. Those PAB's excepted by the federal government are exempt from the federal income tax. But even those PAB's excepted by the federal government must meet other federal legal requirements. For example, the federal government has imposed a limit on the total annual dollar amount of these bonds that can be issued. This is referred to as the "state volume cap" or "state ceiling." The reason that Congress imposed this "cap" is to limit the extent tax exempt bonds were reducing federal revenue from investor income."²

Each state has a process to allocate the "cap" among various competing uses and users. In Ohio, the Volume Cap function is under the jurisdiction of the Ohio DSA, pursuant to Ohio Administrative Code Chapter 122-4, "Restricted Bonds." Those who have the ability to issue tax exempt PAB's in Ohio include counties, cities, port authorities, housing authorities, quasi-state agencies, and the state itself.

² Ibid at page 4.

Private Activity Bonds in Ohio are further divided into the following categories (1) Single Family Housing (2) Multi-Family Housing (3) Qualified Small Issue (4) Exempt Facilities (5) Qualified Student Loan, and (6) Director's Discretionary Fund. IDB's are included in the Qualified Small Issue category. In order to issue any of these bonds, including Qualified Small Issue IDB's, the county must be allocated a portion of this Volume Cap. For additional information on Volume Cap refer to [Exhibit 80-3](#).

80.36 SPECIFIC FEDERAL REQUIREMENTS AND RESTRICTIONS ON TAX EXEMPT QUALIFIED SMALL ISSUE IDB's

In addition to the previous general requirements and restrictions, Qualified Small Issue IDB's must comply with a series of other requirements and restrictions in order to qualify for tax exemption under federal law. The regulations are complex and their purpose is to limit access to the market and to ensure that smaller companies are devoting a high percentage of the bond proceeds to traditional manufacturing and production facilities, one of the complaints of new age urban manufacturers. Following is a summary of some of the program regulations:

1. Primary Use for Core Manufacturing Facilities—The bond proceeds must be used for manufacturing facilities which are facilities used in the production of tangible personal property. At least 95% of the bond proceeds must be used for land and other depreciable property. Further, manufacturing is broken down into two categories. These categories are referred to as “core facilities” and “ancillary facilities”, which are ancillary to but integral to the “core facilities.” Examples of ancillary facilities include storage of raw materials and manufactured products, administrative office buildings, packaging areas, laboratories, and employee parking located on the same site as the “core facilities.” For a project to be eligible for IDB's, at least 70% of the proceeds must be used for “core facilities” and no more than 25% of the net bond proceeds may be used for “ancillary facilities.”
2. Limits on Total Bonds Issued and per Project—A limit of \$10 million for capital expenditures per IDB issue is set by the regulations. There is also a \$20 million limit on total capital expenditures from all sources during a six year period, three years prior to the issue of IDB's and three years after.
3. Limit on Total Amount of Outstanding Bonded Debt of Borrower—In addition to the limits specified above, the company or borrower may not have more than \$40 million of IDB debt outstanding at any one time. This figure includes not only Ohio debt, but debt for the company or any related entity nationwide.
4. Limit on Amount Used to Acquire Real Estate—No more than 25% of the net bond proceeds may be used for the acquisition of real estate.

5. Limitations on Use of Bond Proceeds if Purchase is for Existing Manufacturing Facility—If the transaction involves the purchase of an existing manufacturing facility, bond proceeds equal to at least 15% of the price of the building must be used on rehabilitation work.
6. Limitations on Use of Proceeds to Purchase Used Equipment and Other Used Personal Property—Bond proceeds can only be utilized for used personal property purchases if rehabilitation work on the used property is at least 100% of the part using bond financing.
7. Limitation on Issuance Costs from Bond Proceeds—No more than 2% of the amount of bonds issued may be used for costs related to the issuance of the IDB.
8. Other Requirements and Restrictions—Other requirements include a provision that requires commissioners to hold a public hearing on the proposed project, a requirement not included in state law. Once the commissioners approve the bond issue, all bond proceeds must be spent by the company within three years from the date of issuance.

80.37 TAXATION AND EXEMPTION OF PROPERTIES FINANCED WITH IDB's

Real and personal property of the county which is acquired, constructed, reconstructed, enlarged, improved, furnished or equipped using IDB's, if subject to a lease or sublease, is generally subject to real property, sales, use, and franchise taxes to the same extent and in the same manner as if the property was acquired by the lessee or sub-lessee and they acquired the property. These same provisions apply to personal property, however, given the repeal of tangible personal property taxes, these provisions only apply to public utility personal property.

However, a county which issues IDB's for projects and facilities is exempt from real property taxes on the property that has been acquired, constructed, reconstructed, enlarged, improved, furnished, or equipped if:

1. The property is used for purposes that would otherwise exempt the property.
2. The property is no longer being used by a former lessee or sub-lessee and the facility is not occupied or used.
3. The property or facility has been acquired by the county, but development or reconstruction has yet to begin on the property or facility.

If special assessments are levied against the property they are not exempted from collection and must be paid. The special assessments are paid by the lessee, or if there is no lease in effect, by the county, or other issuer of the IDB.

As it relates to the sales and use tax, tangible personal property which is transferred under a lease or sublease under the authority of ORC Chapter 165, is not considered a sale. It is thus exempt from the sales and use tax. On the other hand, two regular exemptions from the sales and use tax do *not* apply to sales that are made for IDB projects as follows:

1. Sales to political subdivisions and to 501(C)(3) organizations, if the CIC has such a tax status with the IRS ([ORC 5739.02\(B\)\(1\) and \(13\)](#)).
2. Sales to construction contractors having a construction contract with a political subdivision or for projects that are accepted by the political subdivision at the time of completion of the project ([ORC 5739.02\(B\)\(13\)](#)). This also applies to projects of a CIC if it has a 501(C)(3) designation from the IRS and an exemption certificate from the Tax Commissioner.

Finally, IDB projects are also subject to fees associated with planning, zoning and building regulations. All of these provisions are contained in [ORC Section 165.09](#).

80.38 SALE OR EXCHANGE OF PUBLIC PROPERTY TO IDB ISSUER

The state, any political subdivision, taxing district, or other public body has the authority to convey or exchange unneeded real or personal property with the issuer of an IDB for use in connection with a project. Such a conveyance is not subject to competitive bidding. The property, or interest in the property, must be appraised at fair market value and the appraised value is the price for which the property is conveyed. If property is to be exchanged, the appraised value of the two properties must be substantially equal or the difference must be made up in cash.

80.39 APPLICATION OF PUBLIC CONSTRUCTION, COMPETITIVE BIDDING AND PREVAILING WAGE LAWS TO IDB PROJECTS

An IDB project is “. . . constructed, leased, sold, or otherwise disposed of in the manner determined by the issuing authority (county commissioners) in its sole discretion and any requirement of competitive bidding or other restriction, which may be lawfully waived by this section, imposed on the procedure for the award of contracts. . . or the lease, sale, or other disposition of the property of the issuer is not applicable to any action taken under the authority of Chapter 165 of the Revised Code” ([ORC 165.14\(B\)](#)).

Clearly, under this provision projects are exempt from the competitive bidding requirements of [ORC Section 307.86-307.92](#); public improvement contracting requirements of ORC Chapter 153; requirements for the sale and lease of real property in ORC Sections [307.09](#) and [307.10](#); and, requirements for the sale of unneeded personal property in [ORC Section 307.12](#). Since the language “or other restriction” is very broad, and there is very little case law on these issues, counties should check with the county prosecutor for guidance.

In addition, any IDB funded project is exempt from the requirements that certain improvements and facilities must comply with the requirements of ORC Sections [713.02](#) and [713.25](#). These statutes generally require certain facilities and improvements to conform with plans adopted by municipal or county and regional planning commissions (ORC 165.14(A)).

In the past, the prevailing wage law applied to projects funded with the issuance of IDB's, however, ORC Section 165.031 was repealed in 2011 (HB 153, effective 9-29-11). At the same time the requirement to pay prevailing wages was also eliminated for certain DSA programs; programs of the Air Quality Development Authority; municipal tax abatements under municipal community urban redevelopment corporations; and, projects receiving financial assistance from the Ohio Rail Development Commission. While the prevailing wage does not apply to IDB projects any longer, a county may require that local labor be used in the construction of an IDB funded project (OAG 83-087).

EXHIBIT 80-1

POWERS OF COMMUNITY IMPROVEMENT CORPORATIONS

(As specified in ORC Section 1724.02)

- To borrow money for any purpose of the CIC by means of loans, lines of credit or other financial instruments including the issuance of bonds or other evidences of indebtedness. The debt may be secured or unsecured. Debt may be secured by a mortgage, pledge, deed of trust, or other lien on all or part of its property, franchises, rights, and privileges.
- To make loans to persons, firms, partnerships, corporations, joint stock companies, associations, and trusts. The CIC must regulate the terms and conditions of such loans. Such loans cannot be approved by a CIC unless the person has tried to obtain a loan through ordinary banks or commercial channels and has been refused by at least one bank or financial institution.
- To purchase, receive, hold, manage, lease, lease-purchase or otherwise acquire real and personal property and rights and privileges associated with the property.
- To sell, convey, transfer, lease, sublease, or otherwise dispose of real and personal property and such rights and privileges associated with the property. This includes property acquired in satisfaction of debts or enforcement of obligations of the CIC.
- To enter into contracts relating to the purchase or sale of real or personal property with third parties, including the federal government, state government, any political subdivision, and any other public or private entity.
- To acquire the good will, business, rights, real and personal property, and other assets of persons, firms, partnerships, corporations, joint stock companies, associations, or trusts and to assume or pay the obligations, debts and liabilities of such entities.
- To acquire, reclaim, manage, or contract for the management of improved or unimproved and underutilized real estate for the purpose of constructing industrial plants, other business establishments, or housing. The CIC can also cause the same to occur for the purpose of assembling and enhancing the use of real property or to dispose of such property for the construction of industrial plants, other business establishments, or housing. A CIC, however, cannot become an agent of political subdivisions for civic development and be used as a vehicle for financing the needs of local governments such as a county library (OAG 68-071).

- To acquire, manage, contract for the management of, construct, reconstruct, alter maintain, operate, sell, convey transfer, lease, sublease, or otherwise dispose of industrial plants, business establishments, or housing.
- To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of stock, shares, bonds, notes or other securities of persons, firms, corporations, joint stock companies, associations, or trusts. While these assets are held by the CIC it may exercise all rights associated with such ownership, provided no tax revenue may be used for the acquisition.
- To mortgage, pledge or otherwise encumber any property acquired by the CIC pursuant to Divisions C, D, or E of ORC Section 1724.02.
- To exercise the powers on behalf of a county that organizes or contracts with a county land bank relating to land reutilization under ORC Chapter 5722.
- To serve as an agent for grant applications and for the administration of grants for traditional CIC purposes.
- To make application for and serve as the principal for grants for a county land reutilization corporation, or county land bank.
- To purchase tax lien certificates at auction, by negotiated sale, or from another party who originally purchased and held a tax lien certificate issued under ORC Sections 5721.30-5721.43. For additional information on delinquent tax lien sales and certificates refer to Chapter 14, *Local Property Taxes*, Section 14.285.
- To charge fees or exchange in-kind goods or services for services provided to political subdivisions and other persons or entities.
- To be assigned a mortgage on real property from a mortgagee in lieu of acquiring the property which is the subject of a mortgage.
- To do all acts and things necessary or convenient to carry out the purposes of ORC Section 1724.01 and the powers especially created for a CIC in ORC Chapter 1724, including but not limited to, contracting with the federal government, the state, or any political subdivision.
- To contract with the county commissioners under ORC Section 307.07 to perform the responsibilities of a county office of economic development if the commissioners have not appointed a county director of economic development.

EXHIBIT 80-2

THE OHIO CONSTITUTION AND INDUSTRIAL DEVELOPMENT BONDS

For a clear understanding of industrial revenue bonds it is important to have some core knowledge of Ohio's constitutional provisions as an issuer of IDB's. This Exhibit includes a short summary of the history of the original constitutional provisions prohibiting the lending of aid and credit to private entities and how the Ohio Constitution has been amended to allow, with certain restrictions, such aid and credit. It also explains some of the laws enacted to implement, or partially implement, the constitutional provisions.

CONSTITUTIONAL HISTORY ON STATE AND LOCAL GOVERNMENTS GIVING AID TO PRIVATE CORPORATIONS

Since statehood government has been a participant in Ohio's economic development. This was particularly true as it related to transportation and the ability to get agricultural products to market. Not long after the construction of the Erie Canal, "Governor Ethan Allen Brown called for a state-owned system of canals joining Lake Erie and the Ohio River."³ According to the Governor, the canals "would open a cheaper way to market for the surplus produce of a large portion of our fertile country" and "raise the character of our State by increasing industry and our resources."⁴

The General Assembly responded in 1825 by allowing the state to borrow money under a full faith and credit pledge. The Miami canal opened in 1829 and the Ohio Canal in 1833. Other areas now clamored for canals in their areas and the legislature responded in 1836 by authorizing six new canals. "The lawmakers further reacted to the popular enthusiasm for internal improvements by passing the 'Loan Law' of 1837, which required the state to give financial aid to private canal, turnpike and railroad companies."⁵ The "Loan Law" provided that railroads could qualify for state loans if two thirds of capital was from private investors and turnpike and canal companies could similarly qualify if private investors had taken a portion of the capital stock of the private companies.

The result was that state debt soared. "Between 1825 and 1830 the debt increased nearly eleven-fold, from \$400,000 to \$4,333,000. With the inauguration of new public works in 1836 and aid granted under the Loan Law, the debt almost doubled again, and by 1840 exceeded 12,000,000."⁶ The "Plunder Law", as it had become popularly known, was repealed in 1842 as the legislature was no longer inclined to allow the disturbing trend to continue.

³Gold, David M. Public Aid to Private Enterprise under the Ohio Constitution: Sections 4, 6, and 13 of Article VIII Historical Perspective. 16 U. Tol. L. Rev. 405, at 408.

⁴ Ibid at 408.

⁵ Ibid at 409-409.

⁶ Ibid at 409

However, with the continued clamor for more internal improvements and railroads in some parts of the state, laws were passed “authorizing local governments to issue bonds for railroad aid and a general law empowering county commissioners to call referenda on stock subscriptions in railroad and turnpike companies.”⁷ “Ohio’s local governments plunged with abandon into railroad projects in the 1840’s, but once again enthusiasm turned to disappointment. Some of the lines were never built; others promised to duplicate planned or existing service. Disgust with the results of local government aid to private corporations contributed to the movement for a state constitutional convention and severe constitutional restrictions on public aid to private enterprise.”⁸

THE CONSTITUTIONAL CONVENTION OF 1850

While the primary reason for the calling of the 1850 constitutional convention was an “anti-corporate sentiment within the Democratic party,”⁹ other issues including “agitation over race, temperance, and judicial reform” also contributed to the movement. “The Democratic Party was dominated by Jacksonians, who shared a general distrust of corporations, especially banks.”¹⁰ The Democrats had the majority of delegates to the convention. The other major political party of the day, the Whigs, “was aligned with powerful financial and business interests, and most Whigs defended the existing economic order. Whigs fought especially hard against repeal of special benefits for corporations.”¹¹

The convention prepared what is now referred to as Ohio’s second Constitution which was approved in 1851. Part of the anti-corporate agenda of the Jacksonians was adopted and placed restrictions on the power of the state and local governments to lend credit or become stockholders in private corporations. Today, both sections are basically unchanged from how they were adopted in 1851. Article VIII, Section 4 dealing with the state reads as follows:

Credit of state; the state shall not become joint owner or stockholder.

The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the State ever hereafter become a joint owner, or stockholder, in any company or association in this State, or elsewhere, formed for any purpose whatever.

Article VIII, Section 6 addresses local government aid and credit and was amended in 1912, but only to address issues related to insurance; so the primary provisions of this section read as they were enacted in 1851. This section reads as follows:

⁷ *Idid* at 410

⁸ *Idid* at 411

⁹ *Idid* at 411

¹⁰ Steinglass, Steven, H. and Scarselli, Gino, J. *The Ohio State Constitution. The Oxford Commentaries on the State Constitution of the United States.* Oxford University Press, 2011. Page 30.

¹¹ *Ibid* at 30

Counties, cities, towns, or townships, not authorized to become stockholders, etc.; insurance, etc.

No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state, or doing any insurance business in this state for profit.

1965 CONSTITUTIONAL AMENDMENT AND CURRENT CONSTITUTIONAL PROVISIONS RELATING TO IDB's

Move forward to 1962. Jim Rhodes was on the campaign trail running his “Jobs and Progress” campaign against incumbent Governor Mike DiSalle. Rhodes defeated the incumbent with 59% of the vote. Early during his first term the 105th Ohio General Assembly enacted legislation to establish the Ohio Department of Development. Included as a part of this legislation (H.B. 270, effective 6-13-63) the Ohio Development Financing Commission (ODFC) was established as the state vehicle to issue revenue bonds to assist private business and industry.

However, the authority to issue industrial revenue bonds was short lived. The Ohio Supreme Court, in an opinion that was almost apologetic, ruled in March of 1964 that the issuance of industrial revenue bonds by ODFC was unconstitutional. The fact that ODFC would use bond proceeds to make loans to private sector companies, violated the constitutional prohibition of the state lending aid and credit to private entities contained in Article VIII, Section 4 of the Constitution (*State ex rel. Saxbe v. Brand*, 176 Ohio St. 44).

Jim Rhodes railed against the ruling, believing that Ohio and “Rhodes Raiders” could not compete with other states in the promotion of industrial development and employment without the authority to issue industrial revenue bonds. Rhodes summoned the Legislature into special session to address the issue. He dispatched his development Director, Fred Neuenschwander, and a cadre of lawyers, to propose a constitutional amendment to overrule the decision of the Supreme Court. The amendment, Section 13 of Article VIII, created an exception to the constitutional limitation. The amendment was approved by the voters in May, 1965 by a vote of 711,031 to 542,802 at the same time the voters approved a state bond issue of \$290 Million for a variety of state development projects including money for research and development at state universities, state parks and natural resources, and for assistance to political subdivisions to extend water and sewer lines.

Article VIII, Section 13 is essentially an exception to the prohibitions on the use of public funds in the two sections of the Constitution noted above. It is a long section, was amended in 1974 to make pollution control and solid waste disposal applicable to the section, and today reads as follows:

Economic development.

To create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the state, to control air, water, and thermal pollution, or to dispose of solid waste, it is hereby determined to be in the public interest and a proper public purpose for the state or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, to acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange, or otherwise dispose of property, structures, equipment, and facilities within the state of Ohio for industry, commerce, distribution, and research, to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys for the acquisition, construction, enlargement, improvement, or equipment, of such property, structures, equipment and facilities. Laws may be passed to carry into effect such purposes and to authorize for such purposes the borrowing of money by, and the issuance of bonds or other obligations of, the state, or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, and to authorize the guarantees and loans and the lending of aid and credit, which laws, bonds, obligations, loans and guarantees, and lending of aid and credit shall not be subject to the requirements, limitations or prohibitions of any other section of Article VIII, or of Article XII, Sections 6 and 11, of the Constitution, provided that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under this section. Except for facilities for pollution control or solid waste disposal, as determined by law, no guarantees or loans and no lending of aid or credit shall be made under the laws enacted pursuant to this section of the constitution for facilities to be constructed for the purpose of providing electric or gas utility service to the public. The powers herein granted shall be in addition to and not in derogation of existing powers of the state or its political subdivisions, taxing districts, or public authorities, or their agencies or instrumentalities or corporations not for profit designated by any of them as such agencies or instrumentalities. Any corporation organized under the laws of Ohio is hereby authorized to lend or contribute moneys to the state or its political subdivisions or agencies or instrumentalities thereof on such terms as may be agreed upon in furtherance of laws enacted pursuant to this section.

One provision of Article VIII, Section 13 was that the General Assembly could pass laws to implement the constitutional provision. Thus, certain amendments to ORC Chapter 1724 and other provisions of Ohio law were passed in late 1965 to reinstate the authority, stripped by the Supreme Court, to issue industrial development bonds.

For example, H.B. 941 was enacted in late 1965 to address the provision of the amendment about designating a CIC, a non-profit under the amendment, as the agent of the county or other political subdivisions. Eventually, some of the previous laws relating to the issuance of bonds was re-codified when legislation was enacted creating ORC Chapter 165, dealing exclusively with industrial development bonds (S.B. 273, effective 6-26-67).

EXHIBIT 80-3

A GENERAL EXPLANATION OF OHIO'S VOLUME CAP UNDER FEDERAL LAW AND STATE PROCEDURES FOR OBTAINING VOLUME CAP

Industrial development bonds (IDB's) are a type of Private Activity Bond (PAB) that requires the allocation of a portion of the state's volume cap before the bonds can be issued. IDB's are classified as a category of PAB's called Qualified Small Issue Bonds.

While volume cap is relatively complex, in its simplest terms it is a cap that establishes for each state a maximum annual dollar ceiling for the amount of PAB's that may be issued in the state during any year. Volume cap was established in the Tax Reform Act of 1986 to rein in what some believed to be prior abuses of this type of tax exempt debt. Some in Congress and within the IRS saw how the growth in tax exempt debt was reducing revenue to the federal government. As a result Congress placed limitations on the aggregate amount of Private Activity Bonds that could be issued in each state. This is referred to as the "state ceiling."

In each state there is a process to allocate "volume cap" among various competing uses and users. In Ohio the Volume Cap function is under the jurisdiction of the Ohio DSA, pursuant to Ohio Administrative Code Chapter 122-4, "Restricted Bonds." In Ohio those who have the ability to issue tax exempt PAB's include counties, cities, port authorities, housing authorities, quasi-state agencies, and the state itself.

Each year the federal government establishes the state ceiling. The state ceiling is based upon an IRS Inflation Adjustment and IRS Calendar Year Resident Population Estimates. For 2015, the IRS Inflation Adjustment is \$100 per capita. Thus, for CY 2015 Ohio's state ceiling is \$1.16 Billion. The state ceiling is then allocated among the various types of Private Activity Bonds that are subject to the state ceiling as follows:

Volume Cap Category	Volume Cap Amount
Single Family Housing	\$300 Million
Multi-Family Housing	120 Million
Qualified Small Issue (includes IDB's)	100 Million
Exempt Facilities	100 Million
Qualified Student Loan	115.9 Million
Director's Discretionary Fund	423.5 Million
Total	\$1.6 Billion

In order to obtain an allocation of volume cap in order to issue tax exempt IDB's it is necessary to apply to Ohio DSA. After the bonds have been issued it is also necessary to notify them that the bonds have been issued. DSA publishes an informative Fact Sheet that can be accessed at:

<http://development.ohio.gov/files/bs/Volume%20Cap%20Fact%20Sheet%202014.pdf>.

Also the procedure to be allocated volume cap for a project has been summarized at:

<http://development.ohio.gov/files/bs/Process%20for%20Obtaining%20Volume%20Cap%20Allocation.pdf>.

Finally, to review rules established in the Ohio Administrative Code relating to the volume cap refer to OAC Chapter 122-4, "Restricted Bonds."

EXHIBIT 80-4

CODE OF REGULATIONS OF

GROW LICKING COUNTY, A COMMUNITY IMPROVEMENT CORPORATION

MEMBERS

Section 1. Members and Functions

There shall be three members of Grow Licking County ("GLC"): the Licking County Chamber of Commerce, the County of Licking, Ohio, and Heath-Newark-Licking County Port Authority. A member may resign upon written notice to the other members.

Section 2. Meetings

Meetings of the members shall be called by the Secretary pursuant to the request of the Chairman or Vice Chairman, by a majority of the directors acting with or without a meeting, or by a majority of the members. Such meetings may be held within or without the State of Ohio at such time and place as may be specified in the notice thereof.

Section 3. Notice of Meetings

Written notice of every meeting of the members stating the time, place and purposes thereof shall be given to each member by mailing the same to its last address appearing on the records of GLC, by email, or by facsimile at least seven days before the meeting. Any member may waive notice of any meeting, and, by attendance at any meeting without protesting the lack of proper notice, shall be deemed to have waived notice thereof.

Section 4. Quorum and Adjournments

Except as may be otherwise required by law or by the Articles of Incorporation, representatives of a majority of the member organizations shall constitute a quorum; provided that any meeting duly called, whether a quorum is present or otherwise may, by vote of the representatives of a majority of the members represented thereat, adjourn from time to time, in which case no further notice of the adjourned meeting need be given. At any meeting at which a quorum is present, all questions and business shall be determined by the affirmative vote of not less than a majority of the members represented, unless the act of a greater number is required by the Articles or these Regulations.

DIRECTORS

Section 5. Number

The number of directors shall not be less than three and not more than fifteen. The number of directors may be determined by the vote of the directors at any meeting, and when so fixed, such number shall continue to be the authorized number of directors until changed by the directors by vote as aforesaid.

Section 6. Appointment of Directors

Member County of Licking, Ohio, may appoint six of the maximum fifteen directors, member Heath-Newark-Licking County Port Authority may appoint one of the maximum fifteen directors, and member Licking County Chamber of Commerce may appoint eight of the maximum fifteen directors. At all times, at least 40% of the directors then serving must be appointees of member County of Licking, Ohio. The appointment of each director shall be effective as of the date of the first meeting of the directors following the date on which the appointment is made.

Section 7. Term of Office

Directors appointed by members County of Licking, Ohio, and Licking County Chamber of Commerce shall hold office for three year terms, or until their earlier resignation, death or removal from office. Directors appointed by members County of Licking, Ohio, and Licking County Chamber of Commerce may be elected for no more than three successive terms. The President of Heath-Newark-Licking County Port Authority shall be appointed as director by that member, to serve until his/her appointment as President terminates.

For the initial appointment of directors, two of the directors appointed by member County of Licking, Ohio, and three of the directors appointed by member Licking County Chamber of Commerce shall be appointed for one year terms; two of the directors appointed by member County of Licking, Ohio, and three of the directors appointed by member Licking County Chamber of Commerce shall be appointed for two year terms; and two of the directors appointed by member County of Licking, Ohio, two of the directors appointed by member Licking County Chamber of Commerce, and the director appointed by member Heath-Newark-Licking County Port Authority shall be appointed for three-year terms. Thereafter, each director shall be appointed for a three year term.

Section 8. Vacancies

Whenever any vacancy shall occur among the directors, the remaining directors shall constitute the directors of GLC until such vacancy is filled or until the number of directors is changed as in Section 5 hereof.

Section 9. Quorum and Adjournments

A majority of the directors in office at the time shall constitute a quorum, provided that any meeting duly called, whether a quorum is present or otherwise, may, by vote of a majority of the directors present, adjourn from time to time and place to place within or without the State of Ohio, in which case no further notice of the adjourned meeting need be given. At any meeting at which a quorum is present, all questions and business shall be determined by the affirmative vote of not less than a majority of the directors present, unless the act of a greater number is required by the articles, or the regulations.

Section 10. Regular Meetings

Regular meetings of the directors may be held at such times and places within or without the State of Ohio as may be provided for in by-laws or resolutions adopted by the directors and upon such notice, if any, as shall be so provided for.

Section 11. Special Meetings

Special meetings of the directors may be held at any time within or without the State of Ohio upon call by the Chairman or by any two directors. Notice of each such meeting shall be given to each director by letter, email, facsimile transmission or in person not less than forty-eight (48) hours prior to such meeting. Any director may waive notice of any meeting, and, by attendance at any meeting without protesting the lack of proper notice, shall be deemed to have waived notice thereof. Unless otherwise limited in the notice thereof, any business may be transacted at any organization, regular or special meeting.

Section 12. Compensation

The directors shall serve without compensation; however, they may be reimbursed for any expenses incurred by them in traveling to and from such meetings and for other reasonable expenses incurred by them in the performance of their duties.

OFFICERS

Section 13. Officers Designated

The directors, at the last regular meeting of each calendar year, shall elect a Chairman, a Secretary, a Treasurer, a Vice Chairman, and such other officers as the directors may see fit. The officers shall be chosen from among the directors. Any two or more of such offices other than that of Chairman and Secretary/Treasurer and of Chairman and Vice Chairman may be held by the same person, but no officer shall execute, acknowledge or verify any instrument in more than one capacity.

Section 14. Tenure of Office

The officers of the Corporation shall hold office from January 1 - December 31 of the year following the year in which election occurs and until their successors are chosen and qualified, except in case of resignation, death or removal. The directors may remove any officer at any time with or without cause by a majority vote of the directors in office at the time. A vacancy, however created, in any office may be filled by election by the directors.

Section 15. Chairman

The Chairman shall preside at all meetings of the directors. The Chairman shall be the Chief Executive Officer of GLC unless otherwise determined by the directors, and shall have general supervision over its property, business and affairs, and perform all the duties usually incident to such office, subject to the directions of the directors. Unless otherwise determined by the directors, he/she shall have authority to represent GLC at meetings of the member organizations. He/she may execute all authorized deeds, mortgages, bonds, contracts and other obligations, in the name of GLC, and shall have such other powers and duties as may be prescribed by the directors.

Section 16. Vice Chairman

The Vice Chairman shall have such powers and duties as may be prescribed by the directors or as may be delegated by the Chairman. In case of the absence or disability of the Chairman or when circumstances prevent the Chairman from acting, the Vice Chairman shall perform the

management and administrative duties of the Chairman, and in such case, the power of the Vice Chairman to execute all authorized deeds, mortgages, bonds, contracts and other obligations, in the name of GLC, shall be coordinate with like powers of the Chairman. In case the Chairman and such Vice Chairman are absent or unable to perform their duties, the directors may appoint a Chairman pro tempore.

Section 17. **Secretary**

The Secretary shall attend and keep the minutes of all meetings of the directors. He/she shall keep such books as may be required by the directors and shall give all notices of meetings of directors, provided however, that any persons calling such meetings may, at their options, themselves give such notice. He/she shall have such other powers and duties as may be prescribed by the directors.

Section 18. **Treasurer**

The Treasurer shall receive and have in charge all money, bills, notes, bonds, stocks in other corporations and similar property belonging to the Corporation and shall do with the same as shall be ordered by the directors. He/she shall keep accurate financial accounts, and hold the same open for inspection and examination of the directors. On the expiration of his/her term of office, he/she shall turn over to his successor, or the directors, all property, books, papers and money of the Corporation in his/her hands. He/she shall have such other powers and duties as may be prescribed by the directors.

Section 19. **Other Officers**

Other officers, if any, shall have such powers and duties as the directors may prescribe.

Section 20. **Delegation of Duties**

The directors are authorized to delegate the duties of any officers to any other officer and generally to control the action of the officers and to require the performance of duties in addition to those mentioned herein. In addition, officers may delegate the performance of duties to non-officers, provided, however, that the delegating officers) shall retain responsibility for the proper performance of such delegated duties.

Section 21. **Compensation**

The directors are authorized to determine or to provide the method of determining the compensation of officers, as deemed appropriate. No officers who are also directors shall be compensated for services, but may be reimbursed for reasonable expenses incurred by them in the performance of their duties.

Section 22. **Signing Checks and Other Instruments**

The directors are authorized to determine or provide the method of determining how checks, notes, bills of exchange and similar instruments shall be signed, countersigned or endorsed.

COMMITTEES

Section 23. Committees

The directors may create one or more committees of the directors, each to consist of not less than three persons, at least one of whom must be a director. The chairperson of each committee must be a director. The directors may delegate to such committees any of the authority of the directors, however conferred, other than that of filling vacancies among the committees of the directors and amendment of the Articles or these Regulations.

The directors may appoint one or more persons as alternate members of any such committee, who may take the place of any absent member or members at any meeting of such committee.

Such committees of the directors shall serve at the pleasure of the directors, shall act only in the intervals between meetings of the directors, and shall be subject to the control and direction of the directors. Each of such committees may act by a majority of its members at a meeting or by a writing or writings signed by all of its members.

Any act or authorization of an act by such committee within the authority delegated to it shall be as effective for all purposes as the act or authorization of the directors. Notice of the time and place of each meeting of any committee shall be given to each of its members. A meeting of any such committee may be called only by the Chairman or by a member of such committee.

PUBLIC RECORDS AND PUBLIC MEETINGS

Section 24. Applicability

To the extent required under Ohio law, GLC, if designated as the agency of a political subdivision, shall be subject to the provisions of Ohio Revised Code § 121.22 (the "Sunshine Law") and Ohio Revised Code § 143.43 (the "Public Records Act").

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 25. Indemnification

(a) GLC shall indemnify any director or officer or any former director or officer of GLC or any person who is or has served at the request of GLC as a director, officer, or director of another corporation, joint venture, trust or other enterprise against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of GLC, to which he was, is, or is threatened to be made a party by reason of the fact that he is or was such director or officer, provided it is determined in the manner set forth in paragraph (c) of this section that he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of GLC and that, with respect to any criminal action or proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) In the case of any threatened, pending or completed action or suit by or in the right of GLC, GLC shall indemnify each person indicated in paragraph (a) of this section against expenses, including attorneys' fees, actually and reasonably incurred in connection with the defense or settlement thereof, provided it is determined in the manner set forth in paragraph (c)

of this section that he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of GLC except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to GLC unless and only to the extent that the court of common pleas or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court of common pleas or such other court shall deem proper.

(c) The determinations referred to in paragraphs (a) and (b) of this section shall be made (1) by a majority vote of a quorum consisting of directors of GLC who were not and are not parties to or threatened with any such action, suit or proceeding, or (2) if such a quorum is not obtainable or if a majority vote of a quorum of disinterested directors so directs, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services for GLC, or any person to be indemnified, within the past five years, or (3) by the court of common pleas or the court in which such action, suit or proceeding was brought.

(d) Expenses, including attorneys' fees, incurred in defending any action, suit, or proceeding referred to in paragraphs (a) and (b) of this section, may be paid by GLC in advance of the final disposition of such action, suit, or proceeding as authorized by the directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by GLC as authorized in this section.

(e) The indemnification provided by this section shall not be deemed exclusive (1) of any other rights to which those seeking indemnification may be entitled under the Articles of Incorporation, any agreement, any insurance purchased by GLC, vote of disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, or of (2) the power of GLC to indemnify any person who is or was an employee or agent of GLC or of another corporation, joint venture, trust or other enterprise which he is serving or has served at the request of GLC, to the same extent and in the same situation and subject to the same determinations as are hereinabove set forth with respect to a director or officer. As used in this paragraph (e) references to the "CIC" include all constituent corporations in a consolidation or merger in which GLC or a predecessor to GLC by consolidation or merger was involved. The indemnification provided by this section shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

(f) The directors shall purchase or cause to be purchased insurance (commonly referred to as "directors and officers (D & O) insurance") to provide funds for the indemnification required under this Section in such amounts as the directors may determine to be reasonable and prudent, and shall ensure that such policy or policies of insurance are kept in force throughout the existence of GLC. In addition, the directors shall ensure that such directors, officers, employees, and agents of GLC are bonded as the directors may, in their discretion, determine, including, at a minimum, those persons who have funds-handling authority.

PROVISIONS OF ARTICLES OF INCORPORATION

Section 26. These Regulations are at all times subject to the provisions of the Articles of Incorporation of GLC (including in such term whenever used in these Regulations, amendments

thereto).

AMENDMENTS

Section 27. The Articles of Incorporation and these Regulations may be altered, changed or amended in any respect or superseded by new Articles or Regulations in whole or in part, by the affirmative vote of the majority of directors of GLC at a meeting called for such purpose or without a meeting by the written consent of two-thirds of the directors of GLC. In case of adoption of any regulation or amendment by such written consent, the Secretary shall enter the same in the corporate records and mail a copy thereof to each director who would have been entitled to vote thereon and did not participate in the adoption thereof.

Adopted by the unanimous consent of the Members of Grow Licking County on the date set forth beside each signature:

Licking County Chamber of Commerce

County of Licking, Ohio

By: _____
Cheri L. Hottinger, President

By: _____
Commissioner

Date: _____

By: _____
Commissioner

Heath-Newark-Licking County Port Authority

By: _____
Commissioner

By: _____

Its: _____

Date: _____