



# HANDBOOK

## Ohio County Commissioners

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## CHAPTER 81

# COMMUNITY IMPROVEMENT CORPORATIONS

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### 81.01 PURPOSE

A community improvement corporation (CIC) is a nonprofit corporation organized under the provisions of Chapter 1724 of the Revised Code for the sole purpose of promoting, advancing and encouraging the industrial, economic, commercial and civic development of the area. This chapter will describe the organization and powers of CIC's, their role in issuing industrial development bonds, and will explain their role in county depressed economic area linked deposit programs.

### 81.02 ORGANIZATION OF A CIC

A CIC may be organized in the manner specified and provided for in Sections 1724.01 to 1724.09 of the Revised Code. The articles of incorporation and the original appointment of statutory agent, which must be signed by the three incorporators of the CIC, are filed with the Secretary of State. The Secretary of State, in turn, will forward the articles of incorporation to the Attorney General for a legal compliance review. After the documents are returned to the Secretary of State, the CIC is notified that incorporation is completed.

The organizational meeting may then be held to elect a board of trustees, officers and adopt a code of regulations. The filing fees charged by the Secretary of State with respect to the filing of articles of incorporation and original appointment of statutory agent is \$25. The Ohio Department of Development (DOD) can provide guidance to political subdivisions considering the formation of a CIC.

### 81.03 POWERS

The powers of the CIC are broad and include, by way of illustration, the following:

1. To borrow money for any purpose of the corporation by issuing debt. Such debt is secured by a mortgage or other lien on its property.
2. To make loans to persons, partnerships, corporations or other business organizations and to 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 commercial channels and has been refused by at least one financial institution.
3. To purchase or acquire real and personal property and to dispose of such property.
4. To acquire the good will, business, rights, real and personal property, and other assets of firms and persons and to assume or pay debts and liabilities of such persons and firms.
5. To acquire real estate for the purpose of constructing industrial plants or business establishments or to dispose of such property for such purposes. In addition, a CIC may acquire industrial plants and business establishments and may sell, operate, maintain or lease such facilities.
6. To acquire, sell, pledge, etc., stock shares, bonds, notes or other securities of persons, firms, or corporations.
7. To do all things necessary to carry out the powers of a CIC.

#### **81.04 DESIGNATION BY COUNTY COMMISSIONERS**

A CIC may be designated by a county, one or more townships, one or more municipal corporations, two or more adjoining counties, or any combination of these political subdivisions. A designated CIC is the agent of the political subdivision for the industrial, commercial, distribution, and research development in the jurisdiction. The designation is made for counties by resolution of the county commissioners.

Not less than two-fifths of the governing board of any designated CIC must be composed of mayors, members of municipal legislative authorities, township trustees, county commissioners, or any other appointed or elected officers of such political subdivisions, provided that at least one officer from each subdivision must be a member of the governing board. A designated CIC, is considered a public body and must comply with Ohio Sunshine Law, (OAG 79-061).

It is advantageous for a CIC to be designated by a 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 Department of Development.

A CIC, designated by a county, and the 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 a political subdivision for purposes of the sovereign immunity law, Chapter 2744 of the Revised Code (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 revenue bonds by a CIC.

A county that has designated a CIC is obligated to defend 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.

A county may, when it deems appropriate, appeal an unfavorable decision and post an appeal bond on behalf of a CIC's board members and employees. A county is also obligated to indemnify and hold harmless the governing board of a designated CIC in the amount of treble damages in a federal anti-trust case alleging injury stemming from the issuance of IDB's if the CIC and its governing board were acting in good faith.

A CIC, when designated by a county or other political subdivision, prepares an economic development plan for the political subdivision. The plan will show how the CIC will participate in such plan of economic development activities proposed in the plan. This plan must be approved by the legislative authority of the political subdivision and signed on behalf of the CIC and political subdivision prior to the time the CIC can act as agent of the political subdivision with respect to the plan.

The primary function of many CICs has been to assist in the issuance of industrial development bonds (IDB's). Ohio law requires a CIC to certify that a project to be financed with IDB's is consistent with its approved economic development plan before the bonds are issued. A CIC may, however, and if in accordance with the plan:

1. 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.
2. Incur debt, mortgage its property acquired under Section 1724.10 of the Revised Code or otherwise, and issue its obligations, for the purpose of acquiring, constructing, improving and equipping buildings, structures and other properties and acquiring sites therefor, for lease or sale by the CIC. Any such debt issued by a CIC solely obligates the CIC, not the political subdivision.

A CIC, with the authorization of the political subdivision and under certain circumstances, may also sell or lease any land or interest in land owned by the political subdivision

determined by the legislative authority thereof not to be required by such political subdivision for its purposes.

All laborers and mechanics employed on projects financed by IDB's shall be paid prevailing wages in accordance with Chapter 4115 of the Revised Code (ORC 165.031). Projects funded in part by the issuance of IDB's and in part through private sources are also subject to prevailing wages. Prevailing wages must also be paid on construction projects completed or substantially completed with private funds if IDB's are subsequently issued and the proceeds are used to retire the original construction loan (OAG 82-096).

### **81.05 ANNUAL REPORT**

Annually, before January 31, the CIC must submit a report to the Director of the Department of Development. The annual report must cover all financial and other transactions for the preceding year. The report should also include a roster of officers and trustees for the previous year, and, if feasible, those who will be serving in the current year.

Each CIC is also required to have an audit prepared by a certified public accountant for submission to the DOD. The Director of Development must, by rule, establish guidelines governing the scope and frequency of audits (ORC 1724.05). Failure to submit the report within 90 days after January 31, or the results of an audit within 90 days of the date specified by the Director, shall result in cancellation of the articles of incorporation by the Secretary of State who will inform the CIC of such action. Reinstatement may be accomplished within two years of such cancellation by filing all delinquent reports and audits to the satisfaction of DOD. An additional fee of \$10 will then be charged by the Secretary of State.

### **81.06 FINANCIAL CONTRIBUTIONS**

County commissioners may contribute funds, supplies, equipment, office facilities, and other personal property or services to a CIC to help pay expenses. The CIC may use the board's contributions for any authorized purpose under Chapter 1724 of the Revised Code (ORC 307.78).

### **81.07 FINANCING PROGRAMS**

A CIC primarily services the political subdivision for which it has been designated with respect to IDB issues. However, a CIC can, and many do serve to promote state development programs. Two of the most important state programs for economic development are the direct loan and loan guarantee programs, administered by the DOD. These programs are explained in the next section.

## **81.08 DOD's DIRECT LOAN AND LOAN GUARANTEE PROGRAMS**

DOD provides direct loans and loan guarantees to businesses for new fixed-asset financing including land, buildings and equipment. Loans and loan guarantees are intended to create jobs and stimulate expansion or relocation of businesses engaged in industry, commerce, distribution or research. DOD evaluates applications considering the number of jobs to be created or retained and the need for government assistance. The evaluation also considers the applicants ability to repay the loan on the terms established. Approved applications must also be approved by the state Controlling Board.

The amount of each loan or loan guarantee is based upon the need for funds to make a project possible. The following guidelines apply to loans and loan guarantees:

1. LOANS - Up to 50 percent of the cost of acquisition, or \$500,000, which ever is less.
2. LOAN GUARANTEES - Up to 75 percent of the cost of acquisition, or \$500,000, which ever is less.

For more information about direct loans and loan guarantees, contact: Economic Development Financing Division, Ohio Department of Development, P.O. Box 1001, Columbus, Ohio 43266-0101, (614) 466-5420.

## **81.09 INDUSTRIAL DEVELOPMENT BONDS (IDB's)**

One of the primary functions of a designated CIC is to assist in issuing IDBs under Chapter 165 of the Revised Code. Under Chapter 165, a political subdivision may issue IDBs to finance a project which:

1. Consists of real or personal property or any combination thereof.
2. Is located within the boundaries of the political subdivision that is the issuer of the bonds.
3. Is for the assistance of industry, commerce, distribution and research.
4. Creates or preserves jobs.

The financing generally takes the form of a loan to the person or business entity desiring to build or expand business within the political subdivision issuing the bonds. The bonds are generally sold to financial institutions or the public through an underwriting firm. The bonds may have a term not to exceed 30 years.

Small issue IDB's are now called qualified small issue bonds under Section 144 of the Internal Revenue Code. Qualified small issue bonds are limited to \$10 million. The proceeds of such bonds must be expended for land or depreciable property. There is a

25 percent limitation on expenditures of bond proceeds for land alone. All capital expenditures (including those made from bonds proceeds) of the borrower are also limited to \$10 million for a period of three years before and after the bond issue unless such issue is made with respect to a UDAG Grant. In this case the limit is \$20 million. There is also a national limitation of \$40 million of such bonds for any one borrower.

Such bonds are further subject to the state unified volume cap provisions of Section 146 of the Internal Revenue Code. The volume cap is explained in detail in chapter 82 of this handbook. Qualified small issue bonds are not available for commercial facilities and, other than for certain borrowers, are only issued for manufacturing facilities. This includes any facility used in the manufacturing or production of tangible personal property. This is a very general description and there are other specific federal restrictions pertaining to the bonds that are too detailed for this handbook.

## **81.10 LINKED DEPOSIT PROGRAMS**

County commissioners may assist in providing low cost loans for economic development in their county under linked deposit programs. Commissioners may implement two types of linked deposit programs. A county linked deposit program involves the use of county monies and is explained in chapter 79 of this handbook. The other program, which involves state monies, is the Depressed Economic Area Linked Deposit Program of the State Treasurer. It is discussed in this chapter because such a program is authorized by county commissioners, who often designate a CIC as their agent for the program.

## **81.11 DEPRESSED ECONOMIC AREA LINKED DEPOSIT PROGRAM**

County commissioners of any county with a rate of unemployment, as determined by the Bureau of Employment Services, that is at least one percent higher than the statewide average rate of unemployment may authorize the county's participation in the Depressed Economic Area Linked Deposit Program under the provisions of Sections 135.81 - 135.88 of the Revised Code.

The law permits the State Treasurer to invest up to three percent of the state's total investment portfolio in depressed economic area linked deposits, provided that no more than \$1 million in such deposits are outstanding per county in any two year period. A depressed economic area linked deposit is a certificate placed by the State Treasurer with an eligible lending institution at up to three percent below current market rates.

The lending institution agrees to lend the value of the deposit under a deposit agreement to eligible businesses at three percent below the rate applicable to each business at the time of the deposit of state funds in the lending institution. The purpose of the program is to provide lower cost funds to businesses in economically depressed areas, to promote economic revitalization of those areas, to sustain or improve business profitability and to retain and increase employment in such areas (ORC 135.82, 135.83).

## **81.12 COUNTY AUTHORIZATION OF DEPRESSED ECONOMIC AREA LINKED DEPOSIT PROGRAM**

County commissioners of an eligible county may authorize the county's participation by appointing a qualified agent to operate the program. The agent may either be a CIC or a non-profit corporation organized under Chapter 1702 of the Revised Code that meets criteria established by the DOD.

Designation of a CIC as the qualified agent for the purpose of implementing a Depressed Economic Area Linked Deposit Program is separate from designation as the county agency for implementation of the community improvement corporation law (ORC 1724.10) and requires separate action by the county commissioners.

County commissioners have the following powers to authorize the county's participation in a Depressed Economic Area Linked Deposit Program (ORC 135.84):

1. To appoint a qualified agent.
2. To secure eligible lending institutions to participate in the program with preference to institutions from the county. An eligible lending institution must be authorized to make commercial loans, be a public depository of state funds and agree to participate in the program.
3. To approve loan applications prior to submission to the State Treasurer.
4. To encourage eligible businesses to make loan applications. An eligible business is any person organized for profit that maintains or will maintain offices and facilities in the county and transacts business in the county.
5. To employ staff and to develop forms and procedures to implement the program.
6. To establish, with the approval of the State Treasurer, a service fee not to exceed .5 percent of the discounted portion of the loan. This fee is paid to the county to defray the cost of implementing the program.
7. To fix the amount of a loan eligible for a reduced rate loan. The maximum may not exceed 50 percent of the total loan.

## **81.13 APPLICATION AND PROCESSING OF DEPRESSED ECONOMIC AREA LINKED DEPOSIT LOANS**

An eligible business may apply to an eligible lending institution in a county that has a Depressed Economic Area Linked Deposit Program utilizing forms provided by the lending institution. The lending institution evaluates the credit worthiness of each applicant

business and forwards any loan applications it approves to the county commissioners. The county commissioners have 14 working days to approve or disapprove a loan based on:

1. The immediacy of a business's financial need,
2. The economic needs of the area,
3. The number of jobs to be created or preserved through the loan, and
4. Other factors related to the financial need of the applicant and the county as a whole.

Loans approved by the lending institution and the commissioners are prepared as a package by the lending institution and sent to the State Treasurer for approval or disapproval on forms prescribed by the State Treasurer (ORC 135.85).

The State Treasurer has broad discretion to accept or reject any loan or loan package based on that office's evaluation of each business and its need, amount of the loan or package, economic needs of the area, and the ratio of state funds deposited to jobs created or preserved. DOD may advise the State Treasurer on the approval and rejection of loans. DOD may also recommend the suspension or redirection of linked deposits.

When a county ceases to be eligible to participate in the program because of a decline in the unemployment rate, the State Treasurer must notify the county commissioners, affected lending institutions and any qualified agent. A county may resume participation in the program subject to an increase in the unemployment rate and approval of the State Treasurer (ORC 135.84(B)).

Upon acceptance of a loan or loan package, the State Treasurer may place a linked deposit at a reduced rate with a lending institution that has entered into an agreement with the State Treasurer to implement the provisions of the program.

The law relieves county commissioners, qualified agents, the state, Treasurer of State and DOD from liability to pay the principal and interest on a reduced rate loan that is late or in default.