

# THE CITIZEN ADVOCACY CENTER'S

## Guide to Economic Development Corporations

(Issued 9/2017)



### Introduction

For decades, states have attempted to create an environment that promotes jobs and attracts businesses. States pursue these goals through incentives such as tax credits, favorable loans, and promoting state resources. The state department of commerce traditionally engages in these efforts and works with lawmakers and businesses to create a favorable business environment for economic development.

Recently, a string of states has transferred these responsibilities to private organizations in the form of Public-Private Partnerships (PPPs), known as Economic Development Corporations (EDC's). Proponents of EDC's believe that the private organizations can better incentivize business and economic growth by streamlining existing processes. Helmed by private business leaders and freed from restrictive government bureaucracy, proponents believe EDC's will propel state economic and job growth. Proponents emphasize that EDC's achieve greater efficiency without being hampered by government paperwork and processes.

Critics argue that removing typical public functions to the private sector subverts efforts towards transparency and oversight. Depending on state laws, EDC's may not be subject to open records or open meetings laws, and may act with less oversight from elected state officials despite carrying out traditionally governmental functions and despite often receiving tax dollars.

182 N. York St.  
Elmhurst, IL  
60126

Phone  
(630) 833-4080

Fax  
(630) 833-4083

E-Mail  
[cac@citizenadvocacycenter.org](mailto:cac@citizenadvocacycenter.org)

Website  
[citizenadvocacycenter.org](http://citizenadvocacycenter.org)

## What are EDC's?

Economic Development Corporations are private or semi-private entities designed to promote job and business growth. They are usually incorporated as nonprofit organizations under Section 501(c)(3) of the federal tax code.

Economic development corporations are designed to market a geographic area's resources and infrastructure in order to attract and accommodate business and job growth. They often operate at the state or local level. EDC's may be fully or partially funded through taxpayer dollars, or entirely through private contributions. EDC's also may employ government personnel to varying degrees.

An example of an EDC is the Illinois Business and Economic Development Corporation (ILBEDC). The ILBEDC is "dedicated exclusively to increasing Illinois' competitiveness for job creation and investment."<sup>1</sup> Governor Bruce Rauner ordered the ILBEDC to work with the Illinois Department of Commerce and Economic Opportunity, the state commerce department, to pursue this goal.<sup>2</sup>

## The Illinois Business and Economic Development Corporation

In 2016, Illinois joined a growing number of states to transfer duties and responsibilities from a state commerce department to a private sector organization.

The Illinois Business and Economic Development Corporation (ILBEDC) was incorporated as a nonprofit on January 27, 2016. One week later, Governor Bruce Rauner signed an executive order directing the Illinois Department of Commerce and Economic Opportunity (DCEO) to work in collaboration with the newly formed private organization.<sup>3</sup> According to its website, through fiscal year 2016, the ILBEDC will be funded by private donations.<sup>4</sup> It is unclear if public money or other sources will be used in the future.

As state law currently stands, the ILBEDC is not subject to Illinois's Freedom of Information Act (FOIA) or Open Meetings Act (OMA). Rather, citizens must rely on promises of transparency from the organization. Citizens may also be able to obtain some ILBEDC documents through FOIA requests to state agencies working with the ILBEDC, but this would only cover a portion of potential materials and place a heavier burden on citizens to track documents down.

---

<sup>1</sup> <http://intersectillinois.org/>

<sup>2</sup> <https://www.illinois.gov/dceo/Media/PressReleases/Pages/PR20160203.aspx>

<sup>3</sup> <https://www.illinois.gov/dceo/Media/PressReleases/Pages/PR20160203.aspx>

<sup>4</sup> "The formation of the Corporation and its operations at least through the state's 2016 Fiscal Year will be funded entirely with private donations." <http://intersectillinois.org/faqs/>

## How do EDC's differ from government?

EDC's often recruit private sector business-people for leadership and management roles. Unlike government agencies, EDC's often commingle taxpayer funding with private investment. Regardless of the source of funding, EDC's still perform the traditional public function of attracting business to the region.<sup>5</sup>

## How are EDC's regulated and monitored?

Regulation of EDC's varies from state to state. In Illinois, EDC's are not subject to state sunshine laws; the ILBEDC is not subject to the Illinois Open Meetings Act (OMA) or the Illinois Freedom of Information Act (FOIA).<sup>6</sup> Instead, watchdogs may obtain only those records that EDC's share with government officials.<sup>7</sup> According to its website, the ILBEDC promises transparency, including voluntary release of certain information;<sup>8</sup> but the promised transparency is far narrower than state laws require from government bodies. Significantly, its promise is unenforceable under either FOIA or OMA because as a private organization it is not regulated under either law.<sup>9</sup>

Some states fund EDC's partially or fully with taxpayer money, thereby investing public funds in organizations with less transparency and less accountability than a typical governmental body. This has led to allegations that EDC's misused taxpayer funds in at least three states.<sup>10</sup>

Even where EDC's are funded through private donations rather than taxpayer dollars, their use raises concerns about what private funders might expect in return. The ILBEDC has the power to implement policies normally reserved for fully public, accountable, and transparent agencies. Critics worry that the ILBEDC's structure and lack of mandatory transparency could lead to implementation of policies favoring private over public interest.

---

<sup>5</sup> "Economic development is government intervention to promote private sector economic activity in a particular locale." <http://www.goodjobsfirst.org/accountable-development/beginners-guide>

<sup>6</sup> The Freedom of Information Act and the Open Meetings Act only cover "public bodies"; EDCs are not covered by FOIA because they are private entities. Although the Illinois FOIA allows for records pursuant to contracts between private entities and public bodies, there is rarely if ever a contract between an EDC and a government entity. In the ILBEDC example, the state's cooperation with the ILBEDC is via executive order, not a contract.

<sup>7</sup> Any record shared with the government becomes public record subject to FOIA. See 5 ILCS 140/2(c), which states that public records include those records "having been prepared by or for, or having been or being used by, *received by*, in the possession of, or under the control of any public body" (emphasis added).

<sup>8</sup> <http://intersectillinois.org/faqs/>

<sup>9</sup> As a nonprofit, the ILBEDC is governed by a board of directors who are tasked, among other things, to follow the organization's bylaws. Board members typically hold each other accountable in following the bylaws.

<sup>10</sup> <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/scandalsnotjobs.pdf>

## **Are EDC's subject to oversight?**

Regulation of EDC's varies from state to state. In Illinois, EDC's are not subject to state sunshine laws; the ILBEDC is not subject to the Illinois Open Meetings Act (OMA) or the Illinois Freedom of Information Act (FOIA). Instead, watchdogs may obtain only those records that EDC's share with government officials. According to its website, the ILBEDC promises transparency, including voluntary release of certain information; but the promised transparency is far narrower than state laws require from government bodies. Significantly, its promise is unenforceable under either FOIA or OMA because as a private organization it is not regulated under either law.

Some states fund EDC's partially or fully with taxpayer money, thereby investing public funds in organizations with less transparency and less accountability than a typical governmental body. This has led to allegations that EDC's misused taxpayer funds in at least three states.

Even where EDC's are funded through private donations rather than taxpayer dollars, their use raises concerns about what private funders might expect in return. The ILBEDC has the power to implement policies normally reserved for fully public, accountable, and transparent agencies. Critics worry that the ILBEDC's structure and lack of mandatory transparency could lead to implementation of policies favoring private over public interest.

## **Why does this matter?**

Residents who monitor economic development and land use in their communities rely on sunshine laws to inform their civic engagement. The land use and economic development at the local and state government levels present issues that affect people most immediately and in their daily lives. Economic development is a traditional government function and its activities have been subject to oversight under state laws, thereby supporting civic engagement in the community. In Illinois when the function of economic development is delegated to a private entity, the framework supporting civic engagement in land use issues disappears.

Whether EDCs receive taxpayer money or are privately funded, residents expect them to produce results for the state or region at least as efficiently as the public bodies the EDCs replace. Without the ability to view the activities of the EDCs, residents are unable to fully assess performance. The public is left with a lesser ability to evaluate a traditional public function. When EDCs do receive public funds, the public is unable to see exactly how their money is being spent.

## **How can EDCs in Illinois be made more transparent, open, and accountable?**

Government accountability advocates in Illinois are fighting to include EDCs under state transparency laws. Although advocates argue for an expansive reading of Illinois state statutes, at least two Illinois appellate court cases have found that the current wording of the definition of “public body” in Illinois sunshine laws precludes application of them to EDCs.<sup>11</sup> Transparency proponents advocate inclusion of EDCs by amending laws.

### **Transparency of EDCs in Other States**

There are other ways to approach the privatization of economic development activities. Several states include economic development corporations in their public records request and open meetings laws.

The Wisconsin Economic Development Corporation is subject to the state’s public records and open meetings laws as a “quasi-governmental corporation.” The Wisconsin Supreme Court established that an entity such as an economic development corporation fits the definition of a quasi-governmental corporation if, “based on the totality of the circumstances, it resembles a governmental corporation in function, effect, or status.”<sup>12</sup>

Courts of appeals in New York and Maryland have taken similar approaches. In New York, the Empire State Development Corporation and New York City Economic Development Corporations are subject to the state freedom of information law.<sup>13</sup>

---

<sup>11</sup> *Rockford Newspapers, Inc. v. N. Ill. Council on Alcoholism & Drug Dependence*, 64 Ill. App. 3d 94; 380 N.E.2d 1192 (1978); *Hopf v. Topcorp, Inc.*, 256 Ill. App. 3d 887; 628 N.E.2d 311 (1993).

<sup>12</sup> *State of Wisconsin v. Beaver Dam Area Development Corporation*, 752 N.W.2d 295 (2008).

<sup>13</sup> See *Buffalo News v. Buffalo Enterprise Development Corp.*, 84 NY2d 488 (1994) and *City of Baltimore Development Corporation v. Carmel Realty Associates, et al.*, 910 A.2d 406 (2006).

## About the Citizen Advocacy Center

The Citizen Advocacy Center, a nonpartisan, 501(c)(3), not-for-profit organization, is dedicated to building democracy for the 21st Century by strengthening the public's capacities, resources, and institutions for self government. If you are interested in more information, becoming a volunteer, or making a tax-deductible contribution to the Center, please feel free to contact us at:

182 N. York Rd.  
Elmhurst, IL 60126-0420  
Phone: (630) 833-4080  
Fax: (630) 833-4083  
E-Mail: [cac@citizenadvocacycenter.org](mailto:cac@citizenadvocacycenter.org)

Website: [citizenadvocacycenter.org](http://citizenadvocacycenter.org)

©2017. Citizen Advocacy Center. All rights reserved. No part of this brochure may be reproduced in any form or by any means without the prior, written permission of the Citizen Advocacy Center.