Government without Government:
Alternatives to Market and Government Failure

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Dedication Page

For Lydia and Vicci

Acknowledgements

There have been times in my life when I have thrown myself on the kindness of strangers. This is always a frightening experience because I have done nothing to deserve kindness from these individuals. But I always underestimate the generosity of others. I want to thank people who went out of their way to help me and generously shared their time.

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Who always called or e-mailed with encouragement, who took care of Lydia, kept the house, bagged the leaves in the dark, took care of our lives while I was busy finishing this and never complained – now we both will be doctors…

Abstract

Government without Government is a theory covering private organizations carrying out government activities free of traditional contracts for service. This dissertation develops this theory as an alternative for situations where both markets and government fail to produce optimal results. These organizations operate with freedom from both markets and government because they are quasi-governmental organizations, not quite public and not quite private.

A national survey of business improvement districts (BIDs) was conducted to explore this theory. This survey was the second one conducted and provides an updated profile of BIDs in the United States.

This survey found that BIDs are created when both markets and government fail to adequately produce goods, that BIDs are quasi-governmental organizations, and that BIDs have substantial freedom from traditional democratic controls to set policy for government implementation.

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CHAPTER 1: STATEMENT OF RESEARCH PROBLEM

In 1957, Francis Bator, building on the work of Mills, Sidgwick, and others, synthesized the idea of market failure. Market failure occurs when the production of goods in a competitive market with self-interested agents is inefficient. In short, Adam Smith's "invisible hand" does always work. There are four generally accepted reasons that markets fail. Organizations can gain inappropriate levels of market power, allowing them to block trade, resulting in imperfect competition. This can lead to monopoly, monopsony, collusion, cartels, or oligopoly. A second problem is that markets do not price externalities, and such, do not reflect the true cost or benefits of a good. Third, there is no pricing mechanism for public goods because when they are provided for one, they are provided for all. Last, competition itself can be distorted due to transaction costs, agency problems, or information asymmetry. (Krugman, 2006)

In classical economics, the response to market failure is government. This response can be by government directly providing goods, through government regulation of the market, creation of laws governing the playing field for business, or other government actions. This is the justification given by classical economics for the existence of government. Government steps in when markets fail. (Krugman, 2006)

There is a corollary to market failure called government failure. Government failure occurs when there are systemic features of government that prevent it from adequately addressing issues. There are two categories of government inefficiencies: inefficiencies stemming from government administration and inefficiencies stemming from democracy or government policy-setting.

The question is what does society do when both the markets and government fail? What is the appropriate response when the market cannot address a problem and government cannot address a problem? Milton Friedman argued in his classic treatise "Capitalism and Freedom" (1962) that when faced with both market and government failure, society should choose markets over government:

> "When technical conditions make a monopoly, the natural outcome of competitive market forces, there are only three alternatives that seem available: private monopoly, public monopoly, or public regulation. All three are bad, so we must choose among the evils. Henry Simons, observing public regulation of monopoly in the United States, found the results so distasteful that he concluded that a public monopoly would be a lesser evil. Walter Eucken, a noted German liberal, observing public monopoly in German railroads, found the results so distasteful that he concluded public regulation would be a lesser evil. Having learned from both, I reluctantly conclude that, if tolerable, private monopoly may be the least of the evils." (Friedman, 1962, p. 28)

Most other economic theory assumes the answer is either markets or government. But are we caught in this dualism? Are our options public or private? Market failure or government failure? One evil over another? Or is there a third option, not quite public, not quite private, one free of markets and government? And if so, is it a better answer than trusting the marketplace or trusting government?

Government functions have traditionally been carried out through two means. The first is through employees reporting in a government hierarchy to sovereign elected officials. The second is through contracts for service between private organizations and sovereign government. These private organizations may be non-profit or for-profit but the relationship with government is the same. Contracts specify goods or services to be provided. Contracts also pass through a set of requirements that govern how the organization must act. Contractors have no leeway in determining what goods or services to provide or how they are provided – they simply fulfill the specific requirements of the contract. Policy-setting (decisions about what will be provided, how it will be provided, and quantities of goods or services) is retained by sovereign government.

However, a third way of providing government services has emerged. Private organizations now deliver government services but with independent policy-making separate from sovereign government. These organizations are not government and they are not government contractors. They are something different, something more.

This dissertation examines private organizations providing public goods and services but operating free of market controls and substantially free of democratic governmental controls.* These organizations sit in the murky middle between public and private, and represent a third way, government without government.

This dissertation will first examine theories arguing that either markets or government control all organizations. This literature review will show that prevailing thought is that all organizations are controlled either by markets or by government or

* These organizations are only substantially free of government controls because ultimately no organization, entity or individual operates completely independently of government. At some level, government has the right to intervene in or terminate any organization, entity or individual.

some combination of these two forces. It will then examine theories of market and government failure. This literature review holds that prevailing theories assume that in situations of market or government failure, that either a market (private) or a government (public) response is warranted. This dissertation will then look at theories that categorize organizations as public or private and show that two categories, "public" and "private" are inadequate. The murky middle of quasi-public organizations must be recognized.

This dissertation will then propose a theory for private organizations that provide governmental services without market control and with substantial freedom from government control. The organizations that are described under this theory are called "government without government." These private organizations carrying out government activities substantially free of sovereign government provide a third alternative to market and government failure beyond market or government solutions.

This dissertation will then examine an example of government without government (business improvement districts or BIDs) to see if this theory is applicable to the real world. It will present data from a national survey of business improvement districts that examines whether BIDs are quasi-government organizations; whether they respond in situations of market and government failure; and whether they operate substantially free of government and market controls, thereby supporting the theory of government without government. Also, because only one national survey of business improvement districts has ever conducted and conducted ten years ago, this research will provide basic information on the number and characteristics of BIDs in the United States.

Finally, this dissertation will look at the implications of delivering government services substantially free of market and democratic controls. This includes implications for the executive branch, which no longer has a monopoly on the implementation of government; the need for public administration theory to evolve to recognize the new methods of implementing government; the burden on public administrators when government is set free from traditional democratic controls; changes needed in civil law to mimic protections in constitutional law; and the recognition that government without government represents a different type of democracy, one where policy decisions are removed from citizens and elected officials.

CHAPTER 2: LITERATURE REVIEW

Overview

Market failure is when private markets produce suboptimal results. The free exchange of goods breaks down and the market no longer functions as it should. Classical economics argues that government should be created when markets fail.

Government failure is the corollary to market failure. Government failure occurs when fundamental features of government produce suboptimal results. Neoclassical economics argues that when government fails, market solutions should be sought unless they are completely unacceptable, at which point government solutions should be pursued. This chapter discusses market failure and government failure.

The ideas of market and government failure rest on two key points. First, for the response to market and government failure to be either markets or government, organizations must be either public or private. This chapter looks at various definitions of "public" and "private" and shows that these distinctions are not as clear as economic theory would purport. In the real world, a great number of organizations inhabit a fuzzy space between public and private. This chapter also looks at a theory that proposes that all organizations are public because all organizations (and individuals) are controlled by government to some degree, invalidating the distinction between public and private.

Second, for market failure and government failure to exist, organizations must either be under the control of the market or under the control of government. This dissertation proposes that there are organizations that are not under control by either. This section will look at the definitions of market control and governmental control and examine situations where organizations are under neither.

Market Failure

The question of the role of markets and the role of government stretches back into antiquity. The modern era of economic thought on the failure of markets to act efficiently began in 1957 with Francis Bator's work, "The Anatomy of Market Failure." Bator, building on the work of Mill (2002), Sidgwick (2007), Samuelson (1954), Scitovsky (1954), Meade (1952), and others, argued that market failure occurs when markets do not operate optimally. There are four generally accepted reasons that markets fail. Organizations can gain inappropriate levels of market power, allowing them to block trade, resulting in imperfect competition. This can lead to monopoly, monopsony, collusion, cartels, or oligopoly. A second problem is that markets do not price all of the impacts of their goods (known as externalities), thereby not reflecting the true cost or benefits of a good. Third, there is no pricing mechanism for public goods because when they are provided for one, they are provided for all. Last, competition itself can be distorted due to transaction costs, agency problems, or information asymmetry.

In classic economics, the response to market failure is to create government programs to fill the gap that the market cannot. This can be through direct provision of goods by government, market regulation by government or other government actions. This theory is accepted as part of economic theory and is taught in most economics textbooks. (Krugman, 2006; Mankiw, 2007)

Criticisms do exist of the theory of market failure. Winston questions how frequently market failure actually occurs. He reviewed a wide range of situations of government intervention in the economy and found that rarely were there true situations of market failure. (Winston, 2006) Zerbe and McCurdy found that market failure did not occur as predicted by market failure theory in the real world. Even classical examples of market failure do not hold up under real-world scrutiny. Lighthouses are often cited as an example of a public good. When they are provided for one, they are provided for all, making it impossible to charge users for this good. In the real world, however, lighthouses were provided privately for hundreds of years before government intervention. Fees were collected by private companies as part of docking fees at ports. Because of this, they conclude that market failure theory is not strongly applicable in the real world. (Zerbe & McCurdy, 1999) Standard criticisms of economic theory overall also apply to the theory of market failure.

Government Failure

"Government failure" evolved in economics as a complementary idea to market failure. Government failure occurs when the nature of government itself leads to systemic failures which prevent it from adequately and appropriately addressing the needs of citizens.

The application of economic theory to the activities of government began with Duncan Black, in 1948, when he developed the median voter theory. (Black, 1948) Other economists followed, with major contributions from Buchanan and Tulluck (1962), Downs (1957), Arrow (1951), Olson (1965), and others. This accumulated theory developed into Public Choice Theory. Public Choice Theory assumes that public administrators and politicians act in self-interested ways. This Theory also applies economic analysis (game theory and decision theory) to the political process to identify government inefficiencies. It also looks at limitations in information on the part of all actors in the political process which also result in inefficiencies. (Tullock, 2002) Charles Wolf introduced the term "non-market failure" to encompass all the various shortcomings of government found in economics. (Wolf, 1978) Anne Kruger (1990) introduced the term "government failure" in the United States and Julianle Grand in Great Britain (1991).

Although there is no widely accepted comprehensive inventory of the components of government failure, failures can be grouped into two categories. The first group is failure of administration. Downs argues that public administrators are self-interested, working for their own selfish interests rather than for the public good. Downs also discusses rational ignorance, where the effort to voters of educating themselves on an issue outweighs the benefits each will receive from voting on an issue. The result is that it rational for most voters to be ignorant on most issues. This can make it difficult for administrators to implement government that meets the desires of citizens when most citizens do not have informed opinions on most issues. (Downs, 1957) Friedman argued that government bureaucracies are inherently inefficient due to a lack of market discipline. (Friedman, 1962) Rausch identified the pressure to meet multiple and sometimes conflicting goals, making efficient implementation difficult. (Rauch, 1994) Bozeman notes that elected officials work under short timelines, usually only until the next election, while good administration often requires longer time horizons. (Bozeman, 2002)

A second group of government failures are failures of democratic processes. One subset is criticisms of voting processes. Duncan Black developed median voter theory, which argues that if there are two candidates (which is required in the form of democracy practiced in the United States), they should stake out positions as close to the middle and as close to each other as possible to capture the most voters. The result is a reduction in options for citizens to choose from. (Black, 1948) Black also pointed out other problems with voting, including Condorcet's paradox, where persons vote for the candidate that they most want but may end up with the candidate they prefer the least. Kenneth Arrow showed that if a decision-making body has at least two members and at least three options to choose from, there is no solution that maximizes the wishes of all voters. (Arrow, 1951)

Other issues with democratic processes beyond voting have been identified. Hinkley argues that even though individuals are elected, they don't necessarily represent the interests of persons who elected them. (Hinkley, 1971) This is the same conclusions that Frank found in his book "What's the Matter with Kansas: How Conservatives Won the Heart of America." (Frank, 2004) Downs looks at imperfect information about citizen desires, both on the part of citizens who are often not fully educated on issues and on the part of elected representatives, who often do not know exactly what citizens want. Downs also discussed logrolling, which leads to pork barreling. Downs argued that politicians are essentially-self interested, working for their own gain and their own reelection rather than the public good. He also argued that citizens are self-interested, working for their own narrow self-interests rather than a broad public good. All of these things result in democratic processes that do not provide for the broad common good. (Downs, 1957)

Mancur Olson argued that there are transaction costs inherent in democracy that makes it difficult to achieve optimal results for the majority of citizens. Democracy should produce the greatest good for the greatest number except that it is easier to organize small groups to demand narrow benefits rather than organize large groups to demand broad benefits. (Olson, 1965) The result is described by Rauch (1994) where the pile of small benefits for narrow groups stalemates large changes benefitting a broad group of citizens. Rent seeking occurs when an individual or organization makes money by manipulating government rather than by producing goods and services. (Krueger, 1974; Tullock, 1967) This leads to iron triangles. Politicians need campaign donations so they give considerations to special interest groups who then in turn donate to the politician. Lobbyists act as intermediaries between politicians and special interest groups, informing politicians of needs and funneling campaign money. (Adams, 1982) Riordan clarifies that these sorts of arrangements can lead to both “good graft” and “bad graft,” good graft being above board campaign donations or the use of knowledge about government activities to enrich themselves while bad graft being illegal contributions or illegal activities. Kevin Phillips shows how the rich translate their economic power into political power, giving the wealthy a disproportionate amount of political control. (Phillips, 2003)

Downs discusses rational ignorance, where the costs to a voter of educating themselves on an issue outweighs the benefits an individual will receive. The result is that it makes sense for most voters to be ignorant on most issues. (Downs, 1957) This can leave citizens vulnerable to influences which ultimately work against their self-interest. (Phillips, 2007) (Frank, 2004)

Wolf was one of the first researchers to construct a methodology for classifying government failure. He argued that non-market outputs are hard to identify and quantify, making it difficult to measure whether they are being created and distributed efficiently. He also argued that consumer signals are often missing from the production of non-public goods, making it difficult to know whether the goods being created are the ones desired by citizens. In addition, non-market goods are often produced by one entity, without rivals to question whether its approaches are effective or profit and loss to indicate unsuccessful activities. All of these factors make government inherently inefficient.

Wolf also identifies other inherent features of government that create failure. Media attention to market shortcomings place pressure on government to develop solutions even if government intervention is not warranted; politicians are elected because they propose solutions to problems, not for taking responsibility for creating them; time horizons for elected officials often extend only to their next election; public administrators are self-interested, resulting in excess goods being produced; administrators can be co-opted in iron triangles; and choosing winners and losers in the economy can lead to corruption. (Wolf, 1978)

Le Grand proposed an alternative theory of government failure. Le Grand argued that government has three responses to market failure: provision, taxation/subsidy, and regulation. When government provides services, it does so with a monopoly and without competition, which results in inefficiencies. In cases where government taxes or subsidizes a good, prices will diverge from true production costs, or marginal social costs, and consequently create inefficiencies. In cases where government regulates markets, it is difficult or impossible to obtain information necessary for regulatory systems to function efficiently. Also, regulatory capture means producers can control regulators. All of these factors mean that government is inherently inefficient. (Dollery & Worthington, 1996; Le Grand, 1991)

Bozeman developed a theory of government failure, one that pulls together the various theories of Public Choice Theory into a coherent whole. Bozeman identifies seven government failures: when mechanisms for values articulation and aggregation have broken down; imperfect monopolies; benefit hoarding; scarcity of provider of public value; short time horizons; lack of conservation of public resources; market transactions threaten fundamental human values. (Bozeman, 2002) He also notes that his theory is a starting point for further development.

There have been challenges to the theory of government failure. Wittman argues that both markets and democratic processes function quite well in the real world despite theoretical questions about their efficiency. He argues that democratic processes function much like efficient markets. Candidate behavior and voter responses mitigate rational voter ignorance. Competition for political office reduces opportunism by politicians. Political institutions reduce transition costs, thereby encouraging efficient exchange of political interests. Participants in political processes act rationally and produce optimal outcomes. He also looked at specific examples of government activities. He argues that bureaucracies operate relatively efficiently; that inefficiencies due to special interest groups are overstated; that majority rule aggregation issues are overcome by political markets, and Congress has mechanisms for overcoming localism. In the end, he argues that democracy and government has its own "invisible hand" that serves to keep government relatively efficient, or at least as efficient as private markets, which do not operate extremely efficiently either. (Wittman, 1995)

Charles Goodsell argues that government implementation is quite efficient by looking at real-world data on government performance. He showed that most citizens are happy with governmental services; that government employees are very productive, even when measured against the private sector; that government addresses issues much more complex than those undertaken by private markets; that government bureaucrats are pretty much like everyone else in society, with varying competencies; and that most of government is carried out by small, not large entities, which are responsive to citizen needs. (Goodsell, 1983)

Glazer and Rothenberg found that government is able to successfully do several things: affect the economy, redistribute funds, and regulate markets. They found that government is not as efficient as the private sector in producing goods. It also found that political markets are very complex and difficult to evaluate for efficiency. (Glazer & Rothenberg, 2001)

When Markets and Government Fail

It is clear that markets do not always produce optimal results. It is also clear that government does not always produce optimal results. The question then becomes what should society do when neither markets nor government can adequately produce goods?

For Bator and other followers of classical economics, the response to market failure is government intervention. (Bator, 1958) If government then fails, the response is to fix the government failure. This can mean hiring less self-interested public administrators; redesigning voting schemes to avoid systemic problems, like instant run-off voting; mandating public involvement processes to ensure better communication between government and the public; requiring elected officials to disclose conflicts of interest and the sources of campaign donations; using policy analysis to improve information about government; and many other activities to improve government implementation. Certain issues with voting, iron triangles, logrolling and other features of government are tolerated even though it is known that they lead to imperfect outcomes. Often, this is due to inertia, due to difficulties in finding better solutions or active resistance to other alternatives by persons benefitting from the failures, as in the case of iron triangles. (Rauch, 1994)

Neo-classical economists argue that if there is a choice between market failure and government failure, that market failure should be selected except when market solutions are utterly unacceptable. Milton Friedman argued:

> "When technical conditions make a monopoly, the natural outcome of competitive market forces, there are only three alternatives that seem available: private monopoly, public monopoly, or public regulation… I reluctantly conclude that, if tolerable, private monopoly may be the least of the evils." (Friedman, 1962, p. 28)

Debate in economics today centers around how often market failure truly occurs and whether market shortcoming should simply be tolerated. (Shepsle & Weingast, 1984; Winston, 2006) In situations where private responses are not acceptable, market approaches should be imposed on government. Some of the more prominent market approaches include contracting with private companies (Donahue, 1989; E. S. Savas, 1987), vouchers for privately provided services (Friedman, 1962), and government-created markets for externalities (Hausker, 1992).

All of these solutions, as Friedman pointed out, are dualistic: either markets or government. Either market failure or government failure. None of these theories propose a third option, organizations that are able to slip the fetters of both failures.

This dissertation proposes that there are organizations that are neither truly private nor truly public, neither truly under the control of the market nor government, organizations that slip the bounds of both markets and government. These are organizations that are legally private but which carry out government activities but with independent policy-setting authority separate from sovereign government. Their nature is such that they are able to address both market failure and government failure in ways that neither a purely private organization nor a purely public organization can.

Special Case of Market and Government Failure: Non-Profit Organizations

There is a special case of market failure, one that leads to a different outcome than either market driven organizations or government. This is the case of non-profit organizations. There are three leading theories about why non-profit organizations are created. One is when public goods need to be produced but the majority of persons do not want government to produce them. In this case, private non-profit organizations are created to fill the void that neither profit-seeking organizations nor government can fill. (Weisbrod, 1972) An alternative theory is that there are situations where purchasers of goods do not have certainty about the quality and quantity of goods. For example, few persons would want the cheapest hospital care available because of their fear of a profit-seeking entity of cutting corners on their care. (Hansmann, 1981) (James, 1986) (Ferris & Graddy, 1988) A third theory is that people distrust hierarchical government but they have a desire for public services. Non-profits allow the need for certain goods to be filled without directly engaging the machinery of sovereign government. (Salamon, 1987) (Smith & Lipsky, 1993) In fact, Saloman argues that government occurs when voluntary solutions fail. This means that government is really the special case, that government occurs when voluntary solutions fail, when both market driven (for-profit) and non-profit solutions do not work. (Salamon, 1987)

Theories of "Public" and "Private"

Theories of market and government control of organizations assume that organizations are either public or private. Likewise, theories about market failure and government failure also assume that organizations are clearly public or private. American public administration itself perceives two types of organizations: public and private. Public organizations report to an elected executive with their policies made by elected boards. They operate with no profit motive and are concerned with the broader needs of society. They also act in ways to promote public involvement in their decision-making processes. Private organizations report to private boards of directors. They seek to produce profits and dividends for their shareholders and as such, focus on the narrow interests of their owners. They have no expectation of involving the public in their processes. In fact, expectations of private organizations are that they keep their operations secret so competitors cannot replicate their market advantages.

Different researchers have taken different theoretical approaches to defining the boundary between public and private, each with substantial shortcomings when applied to the real world. Below is a discussion of the various methods and their shortcomings.

Is it Legally Private or Public?

The simplest answer to the question of what organizations are public and which are private is how the organization was established. For example, Amtrak was chartered as a private organization so it is private. The City of Minneapolis was created by an act of the State of Minnesota Legislature so it is public. This distinction is important because it determines whether an organization is under constitutional or civil law.

The difficulty of this approach is that not all private organizations act like private organizations. For example, Amtrak was created in 1970 by Congress when several private rail companies went out of business. It is legally a private corporation, incorporated under the District of Columbia Business Corporation Act. (National Archives, 2006) The congressional language that originally created it, the Rail Passenger Service Act of 1970 (45 USC 14), reinforced its private status by specifying that it was to be a “for-profit corporation."

Amtrak works to generate a profit for its shareholders like all private corporations, albeit not successfully. The corporation has stock but currently all of the preferred stock is owned by the federal government while the common stock is owned privately. American Financial Group Inc., a private company and the successor entity to Penn Central Corporation, owns 55% of the outstanding common stock. ("Testimony of Frank R. Goldstein on behalf of American Financial Group, Inc., Majority Common Stockholder of the National Railroad Passenger Corporation", 2002)

However, even though Amtrak is legally and functionally a private organization, it also functions like government. It was created to address market failure in the provision of rail passenger service. Private companies providing passenger rail service went out of business. Amtrak was created to fill the void. Amtrak is governed by a seven member board of directors, all appointed by the President of the United States rather than by shareholders. These directors choose to continue to provide unprofitable service to meet political goals rather than making a profit for shareholders. Because of this, it has operated at a deficit since its inception. This deficit is covered annually with tax revenues, a revenue source that belongs to government and not private industry.

To confuse matters, the Supreme Court has not been clear in its rulings on the status of Amtrak. Despite its being clearly charted as a private corporation with federal law clearly stating that it is a private corporation, in 1995 in *Lebron v. National Railroad Passenger Corporation,* 513 U.S. 374 (1995), the Supreme Court found that Amtrak was a public entity for the purposes of First Amendment rights. In this same ruling, however, the Supreme Court also noted that Amtrak could also be considered a private organization for other legal purposes. In the case of Amtrak, the fact that an organization is legally private does not make it clearly private.

Conversely, The Woodlands Texas is a private common interest development or homeowner association outside Houston Texas. The Woodlands Community Service Corporation is a private non-profit created by the developer of The Woodlands Texas to provide virtually all of the same services as a government municipality. It is governed by a board of directors which are democratically elected. Legally the organization is clearly private. But functionally, the organization looks and acts like local government, providing water, sewer, streets, parks, etc. It even has the coercive power of government. The Woodlands Community Service Corporation has the right, through homeowner covenants, to go onto an individual's property without their approval and take corrective actions to enforce the rules of the association. They also have the right to charge homeowners for those actions. The Corporation even has the right to involuntarily take property but through liens instead of tax forfeiture. About the only powers of government that the Corporation does not have is police powers of detention and deadly force. The Woodlands Texas may be legally private, but functionally it is government. Clearly, legal status alone does not clearly define what is public and what is private.

Does it provide for the Common Interest?

A criterion put forward by Peter Blau and William Scott in their book *Formal Organizations* (Blau & Scott, 1962) is whether an organization provides for the common good. Government is concerned about the wider interests of the whole society while private organizations are concerned about the narrow interests of the few.

The shortcoming with this and similar theories is that there can be conflicting answers to what exactly is the “common good.” Does the Ambassador Bridge, a private toll bridge carrying one-third of all commercial truck traffic between the United States and Canada provide for the common interest or is it really just a private entity meeting the needs of its shareholders? Clearly, a whole area benefits from access across a river, having larger hinterlands to draw commerce. However, each toll enriches the toll company’s owners. If government mandates that homeowners have building inspections but those inspections are done by private, not public organizations, are those private organizations providing for the common good? The whole community benefits from safer housing stock but each inspection enriches that private company. Does a private company which produces vaccines for a profit do so for the common good? It operates to make a profit but it creates a product that has substantial positive externalities.

Clearly, the criterion of “provider of goods and services for the common good” is not a good criterion in the real world.

Is it controlled by a Sovereign Political Authority or by Market Forces?

Charles Lindbloom and Robert Dahl (1953) argue that two forces control organizations. The first is called “polyarchy” or control through political forces. The second is the “price system” or the economic marketplace. Public organizations are controlled through polyarchy and private organizations are controlled by the price system.

However, Amtrak shows the difficulty with this. Amtrak is governed by both market forces and polyarchy. Amtrak faces market forces as it competes for travelers. It is also controlled by political pressures which force it to maintain unprofitable routes while still expecting it to become profitable. Likewise, a private regulated utility like a power company is much more controlled by political authority through its regulators than by market forces.

This criterion becomes even more problematic when one starts with the assumption that it is the role of government to set the rules of commerce. As such, every private organization is affected by the actions of polyarchy, regardless if they are a highly regulated private utility or just a small restaurant having to meet inspections. In essence, every organization is a public organization because it is affected by political processes. (Bozeman, 2004) Because of this, it can be very advantageous to private organizations to influence political authorities in their favor. Jonathan Rausch (1994) describes the “capture” of political processes by businesses, in essence melding political authority and market forces and making this distinction of commerce separate from political forces meaningless.

Is the Oversight Elected by Citizens or is it Appointed by its Shareholders?

It would seem intuitive that governmental organizations are overseen by elected officials while private organizations are overseen by individuals selected by their shareholders. But reality is not this simple. The Smithsonian Institute self-identifies as a governmental organization. It has a 17-member Board of Regents, eight which are federal officials. This includes the Vice President, the Chief Justice of the United States, three United States Senators appointed by the Vice President in his capacity as President of the Senate, and three Members of the U.S. House of Representatives appointed by the Speaker of the House. The remaining nine regents are appointed by a joint resolution of Congress. As such, only seven of its board members are directly elected. The Commodity Credit Corporation is legally a private organization with its board being made up of employees of the U.S. Department of Agriculture, most who are appointed not by the President but by the Secretary of the Department of Agriculture. The Corporation for Public Broadcasting has all of the members of its governing board appointed by the President but it identifies itself as a private non-profit. Amtrak currently has its board of directors appointed by the President but when it was originally established, half of the board was elected from the stockholders and half appointed by the President. Legally it is a private for-profit corporation.

At the local level, business improvement district boards are created in many ways. Some members are appointed by existing boards. Others are appointed by mayors, city councils, county boards or other units of government. Many BIDs have board members that are elected, but through voting schemas which vary substantially from one-citizen, one-vote typical in American democracy. Usually elections are restricted to property owners or business owners instead of citizens. Some schemas provide for voting proportional to taxes paid, which can concentrate power in the hands of larger businesses. Often seats are allocated to specific interest groups, such as four seats for businesses that rent space and three that own space. Sometimes boards are mixed, with some elected from businesses in their district and others appointed or even being elected officials, which can result in an oversight different from a board where all members are elected. Almost all voting schemas exclude residents, which is an increasing problem for downtowns with growing residential populations. All of these schemas vary substantially from the one-citizen, one-vote schema that typifies an elected board.

At the other end of the spectrum are homeowner associations, which are private non-profits. For example, The Woodlands Texas has an oversight board for its services which are elected from the residents of the community. These are democratic elections very similar to those conducted by sovereign government. Yet The Woodlands is a private organization.

In the end, policy board selection is a poor determinant of whether an organization is private or public.

Does it Act like Government?

In a practical sense, one can define an organization by whether it acts like government. Typically, government operates under rules that are different from private organizations. Government falls under sunshine-in-government laws such as open meeting laws, public pay and benefits, governmental accounting standards, and public financial records. Government also has rules to ensure equal access by all citizens such as the merit system, public procurement, and anti-nepotism. Other laws address the sovereignty of the government such as immunity from tort litigation, exclusion from taxation, indemnification for policy makers, and capped liability. Government organizations also have coercive powers to take liberty or property. Private organizations do not fall under these laws. Private organizations do not hold meetings in public, in fact, it is to their advantage to keep their operations secret from competitors. They do not invite public input into their activities. They do not function in ways that provides equal access and are free to award contracts to whoever they please and to hire whoever they please. They do not have immunity from tort litigation, exclusion from taxation, indemnification for their governing board, or capped liability.

In reality, the boundaries are blurred. Homeowner associations are private organizations, typically private non-profits. Under legal code, they are governed by civil, not constitutional law. Yet an extensive body of law has been developed to make them function like government. In California, the Davis-Stirling Act (California Codes - Civil Code Sections 1350-1376) sets forth government-like rules for homeowner associations. For example, homeowner associations now have sunshine-in-government laws, their power to seize property has been limited, and the courts have a clear role in adjudicating on whether associations follow their own laws, the same role that the courts hold with sovereign government. In this way, homeowner associations are made to function like government even though they are legally private.

Conversely, there are many organizations perceived to be governmental that do not follow these general tenets. Public authorities are legally part of government but have often been exempted from rules such as civil service, sunshine-in-government, detailed financial statements, public audit, public procurement processes, and other typical governmental strictures. For example, the Port Authority of New York and New Jersey, created in 1926 as a governmental entity, had its first detailed publicly available audit in 1970, something that every homeowner association in California is required by law. The Port Authority didn't make information like its minutes from its meetings or the pay of certain staff available until that time either. (Walsh, 1978) Because of this, the private homeowner association may operate more like government than actual governmental agencies like port authorities.

Does the Legal System recognize it under Civil or Constitutional law?

One way of defining whether organizations are public or private is whether they are sued under civil or constitutional law. If it is legally chartered as a private organization, it can be sued under civil law. If it has sovereign immunity, it is public and falls under constitutional law.

But it has not always been clear exactly what organizations are legally. In the case of Amtrak, it was chartered in 1970 as a private corporation and its enabling legislation states that it "will not be an agency or establishment of the United States Government," (45 USC 14). As such is a private corporation.

Several Supreme Court rulings have held that Amtrak is private. *National Railroad Passenger Corporation V. Atchison, Topeka & Santa Fe Railway Co. Et Al.* 470 U.S. 451 (1985) found Amtrak was not covered by the Due Process Clause of the Fifth Amendment. *Ehm v. Nat'l R.R. Passenger Corp.*, 732 F.2d 1250, 1251-53 (5th Cir. 1984) found that for the purposes of the Privacy Act (part of the Administrative Procedure Act 5 U.S.C. § 552a) and for the purposes of the Fourth Amendment, Amtrak is a private entity and does not have to protect individual privacy in the same way as government. In *90-1419 v. Boston and Maine Corporation et al.*, the Supreme Court stated that that

Amtrak is a private corporation when looking at condemnations done on its behalf by the Interstate Commerce Commission. In *Edward L. Totten vs. Corporation and Envirovac, Inc*. (No. 98cv00657) (1998) the United States District Court for the District of Columbia found that federal whistleblower status could not be granted to employees of Amtrak because Amtrak is not a governmental entity.

But in 1995 the Supreme Court ruled in *Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374 (1995) that Amtrak is a government entity at least for the purposes of First Amendment rights. Amtrak has to provide the same First Amendment protections as other governmental agencies, not like other private companies.

To confuse matters further, in *Lebron* the Supreme Court seemed to imply that different activities of the same organization could be considered either public or private. From *Lebron v. National Railroad Passenger Corporation (1995):* "it does not contradict those statements to hold that a corporation is an agency of the Government, for purposes of the constitutional *obligations* of Government, *rather than the 'privileges of the government,'* when the State has specifically created that corporation for the furtherance of governmental objectives, and not merely holds some shares but controls the operation of the corporation through its appointees" 513 U.S. at 399 (emphasis supplied). This further muddies whether an organization is public or private because it is not clear when the organization is operating under constitutional obligation vs. governmental privilege.

The test that the Supreme Court used to determine that Amtrak is acting as governmental agency is also problematic. The Supreme Court used a three-part test:

1) The sovereign government creates a corporation by special law

2) The organization is created to further governmental objectives

3) The sovereign government retains authority to appoint a majority of the persons on the board of directors

As noted above, it is impossible to determine in practice what a "governmental objective" is as the activities that government undertakes are very broad and can be viewed in a number of different lights. In addition, the courts accept that because an elected body appoints membership to a board, the duties and responsibilities of government flow to that board on par with the duties and responsibilities of elected boards even though appointed boards are at arms length from the electorate. It would seem that a board with only a majority of members also constitutes enough control to make an organization a public organization. This begs the question that if a member is missing, whether the actions of the board still mean the actions of the organization are that of a public body.

The Amtrak ruling is also at odds with rulings regarding the status of other government-created organizations. The United States Shipping Board Emergency Fleet Corporation was created by the federal government in 1917 to acquire, construct, and supervise the operation of merchant vessels to help with the war effort for World War I. In *Sloan Shipyards Corp. v. U.S. Shipping Bd. Emergency Fleet Corp.*, 258 U.S. 549 (1922), the Supreme Court found that the Shipping Board was a private business corporation with capacity to sue and be sued independently of the federal government. Also, it does not have exemption from bankruptcy. This was also upheld by the Supreme Court in *United States v. Strang*, 254 U.S. 491 (1921). The Reconstruction Finance Corporation was a private organization created by the federal government in 1932 to provide emergency loans to businesses and governments in danger of bankruptcy due to the Great Depression. In *Reconstruction Finance Corp. V. J. G. Menihan Corp.*, 312 U.S. 81 (1941) again the Supreme Court upheld that a government-created private organization was not a public organization. In the end, legal status does not provide a clear answer for what is a public organization and what is a private organization.

Does the Census define it as Public or Private?

The US Census Bureau has a definition for what is private and what is public in its role in counting institutions in America. As part of its “Census of Governments,” in 1952, the Census Bureau set up the following criteria for what is and is not government:

- Existence as an Organized Entity – Does it have corporate powers like perpetual succession, the right to sue, make contracts, acquire and dispose of property?
- Governmental Character – Does it have the features of government such as power to levy taxes, power to issue debt-paying interest exempt from federal taxation, responsibility for performing a function commonly regarded as governmental in nature or in some way a high degree of responsibility to the public?
- Substantial Autonomy – Does it determine its own budget? Does its governing body operate with substantial independence? Does it fill a unique role separate from other organizations?
- Additional influencing criteria:
    - Local Attitudes – Do local people believe that it is an independent governmental entity?
    - Geographical jurisdiction – Does the organization operate in a fixed geographic area?

The Census notes that governmental organizations perform activities that are also widely performed by private firms and that this has no impact on whether it classifies an organization as government. In addition, the Census Bureau does not look at whether an organization has sovereign immunity from tort claims.

Applying these criteria in reality has proven very difficult. James Leigland (1990) found the application of the Census Bureau's criteria "vague" and "inconsistently applied." (p. 376**)** In New Jersey, the Census only includes three of twenty-nine public benefit corporations identified by the New York State Governor's Office as independent governments. He also found that at least 42% of special districts debt issued for public works purposes is classified as state debt despite the fact it is not classified this way by the states themselves. He also found that 23.7% of entities in the public works categories were functionally inactive, with no expenditures, over 1600 organizations. So even thought the Census does have a classification system, there are substantial issues in applying it to the real world.

In one area, the Census has made peace with what is public and what is private by creating a census definition for privately governed places that do not incorporate as cities. (Dhavale, 2004) "Census-designated places" are essentially cities which have not created sovereign local governments. The official definition of a census-designated place is: "A geographic entity that serves as the statistical counterpart of an incorporated place for the purpose of presenting census data for an area with a concentration of population, housing, and commercial structures that is identifiable by name, but is not within an incorporated place. " (US Census Bureau, 1998) Census staff works with local jurisdictions in identifying these locations, as they cannot be defined by the boundaries of their sovereign government. This classification includes many of the largest local government without governments such as Town 'n' Country, Florida, population of 72,523, Highlands Ranch, Colorado, population 70,931 and The Woodlands, Texas population 55,649. (US Census, 2002)

Multi-Criteria Classifications

Several researchers have developed multi-criteria tests for what is public and what is private, although most fall back at least in part onto the criteria discussed above. Stanley Benn and G. F. Gaus (1983) argue that public and private vary among three dimensions:

- Interest: whether the benefits or losses are communal or restricted to individuals;
- Access: whether facilities, resources, and information are open to the public or not;
- Agency: whether the organization acts on behalf of the whole community or a smaller group of individuals.

There are problems with all of these criteria. Benefits from governmental activities can be restricted to individuals. For example, only the persons connected to a government-operated water system may benefit from that water system. Any losses from the operations of that water system would be borne only by the ratepayers. Access to government facilities may be controlled the same way that access to private facilities are. The Port Authority did not provide access to its financial information for almost fifty years while all publically traded private corporations must file detailed financial information with the Securities and Exchange Commission. A company that provides vaccines is acting to benefit the whole community even though they are also selling a product to make a profit.

James Perry and Hal Rainey (1988) use a different set of three criteria to define public versus private organizations:

- Ownership: is the organization formally privately chartered or is it public;
- Funding: is the organization primarily funded through public sources like tax revenues or is it funded through private sources.
- Method of control: is it controlled predominantly by government (polyarchy) or market forces.

Perry and Rainey rely on the formal definition of an organization, which may bear little relation to how the organization actually acts. They also look at funding. However, many public organizations raise revenues from sources other than taxes. Likewise, many private organizations are subsidized by government. All organizations are controlled to some degree by polyarchy. This can be seen by the number of lobbying groups in Washington DC. In the end, both of these schemas are lacking.

Abandonment of the Public versus Private Dualism

All of the above criteria which attempt to define what is a public and what is a private organization are problematic. The real world does not fit into a two-criterion classification system.

Two approaches have emerged to resolve this dilemma. Barry Bozeman (2004) argues that if one fundamental roles of government is to create the rules of the game for commerce, then every organization is under government control to some degree. Also, as businesses can influence political processes to their favor, even the most strictly private organization is public to some degree. Likewise, even the most purely governmental organization is influenced by the market, whether it is through the political influence of businesses or through the fortunes of the businesses it taxes. As such, Bozeman argues that there cannot be clear definitions of "public organizations" and "private organizations" but that every organization is public. Organizations can be arrayed on a continuum with two axes, the first being economic authority and the second being political authority. The degree of "publicness" and "privateness" may vary among private corporations, private highly regulated companies, public utilities, government contractors, government-sponsored enterprises, public authorities, and traditional government hierarchy, but both exist in all organizations. This argument flies in the face of public administration canon, as articulated by Graham Allison's "Public and Private Management: Are They Fundamentally Alike in All Unimportant Respects." (1980) and other articles cited in Chapter 2.

Public administration theory in other countries has moved away from the public/private dualism to theories that integrate organizations in the middle of public and private. In the United Kingdom, the term "quasi-autonomous non-governmental organization" or "quango" is attributed to Sir Douglas Hague to describe the organizations created through the de-evolution of government to the private sector. (Hood, 1997) Four categories of organizations are now recognized in Great Britain instead of the two "public" and "private." These four are pure government; quasi-governmental organization or quago; quasi non-governmental organization or quango; and purely private. A quago is a government organization that is assigned some, or many, of the attributes normally associated with the private sector. A quango is essentially a private organization that is assigned some, or many, of the attributes normally associated with the governmental sector. (Moe and Kosar, 2005) This typology explicitly recognizes organizations that sit in the murky middle between private and public.

Quangos are not simply government contractors; they are entities carrying out government but with independent policy-making authority separate from sovereign government. This means that democratic control of these organizations has been lessened. This phenomenon is called "de-politicization" or "boardization" of government delivery in the United Kingdom. (Wilks, 2007) Holland and New Zealand have also been leaders in this phenomenon. (Cosmo & Seth-Purdie, 2005; Olsen, 2006)

This dissertation focuses on quangos. However, the definitions presented here are loose. As noted above, there is no way to cleanly categorize private and public organizations.

Market Control vs. Government Control

Charles Lindbloom and Robert Dahl (1953) argue that two forces control all organizations. The first is called "polyarchy" or control through political forces. The second is the "price system" or the economic marketplace. Public organizations are controlled through polyarchy and private organizations are controlled by the price (market) system.

The idea that there are two fundamentally different forces controlling organizations permeates public administration literature. Graham Allison's "Public and Private Management: Are They Fundamentally Alike in All Unimportant Respects?" (Allison, 1980), one of the seminal works in public administration, enumerates how "public organizations" are distinct from "private organizations" because one functions under market controls and the other functions under political controls.

Rainey, Backoff, and Levine found similar answers to Allison when looking at why private organizations are different from public organizations. (Rainey, Backoff, & Levine, 1976) Wamsley and Zald provide a detailed discussion how public organizations are under political controls and how this differentiates them from private organizations. (Wamsley & Zald, 1973) Whorton and Worthley found that public sector managers have more difficult jobs than private sector managers because accountability under political control is much more complex than accountability under market control. (Whorton & Worthley, 1981) Lachman found that the leaders of private organizations have very different functions than the leaders of public organizations because one is under the control of markets and the other under the control of political forces. (Lachman, 1985) Schiflett and Zey found different production processes between private and public organizations, even when producing similar goods because some organizations functions under market controls and others functions under political controls. (Schiflett & Zey, 1990) Nutt found that private organizations have different decision-making processes because private organizations are under market controls while public organizations are under political controls. (2006)

An alternative theory is that organizations are under both political and market control to some degree. Lindblom argues that business is a player in government, and such there is not a clear distinction between organizations under market control and those under governmental control. Government relies on business to provide for the basic needs of citizens and as such, government is influenced by markets. (Lindblom, 1977) This idea of blurred or interdependent sectors is also supported by Moe and Stanton (1989), Sullivan (1987), Seidman (1998), Murray (Murray, 1975), Perry and Rainey, (1988) and others. Barry Bozeman in his book, “All Organizations are Public,” (2004) argues that because government makes the “rules of the road” for the economy, all private organizations are influenced by government. Likewise, government rests on the outcomes of the marketplace. Because of this, Bozeman lays out an evolutionary path from organizations mostly controlled by economic authority to those mostly controlled by political authority. Bozeman does not, however, allow for organizations to be free of both market and governmental controls.

Special Case: Non-profit organizations

Non-profit literature shows a unique combination of market control and government control. Non-profits, by definition do not directly participate in the market economy which means they are not under direct market control. Many are government contractors, placing them directly in control of government, but others are not.
They are under market and governmental controls, however, just in a different way from a for-profit organization. Non-profits are under market controls to the degree that they rely on fees and service charges or private giving for revenues. They have to compete in the private market for these revenues and they will go out of business if they cannot

obtain these revenues. (Weisbrod, 1972) They are also under governmental controls to the degree that they operate as contractors for government services (Salamon, 1987) In this way, they operate under both market and government control, depending on how they are funded.

Special Case: Federal Government Corporations

A different set of literature does identify a set of organizations that have substantially slipped the controls of both markets and government. These are private corporations created by the federal government to carry out public activities.

There is no agreed upon definition of these organizations or how many currently exist. The Government Accounting Office identified fifty-eight different entities in a study done in 1995. (United States General Accounting Office, 1995) A 1981 National Academy of Public Administration report identified twelve, while a 1983 GAO report identified forty-seven, a 1983 Congressional Budget Office report identified thirty-one, and the Senate Committee on Governmental Affairs identified twenty-three also in 1983. (GAO, 1995, page 4) In identifying fifty-eight organizations, the GAO did not provide a definition these organizations except to say they included:

> "(1) all GCs listed in the Government Corporation Control Act (GCCA) (excluding the United States Railway Association, which was abolished in 1987); (2) entities that were listed in at least three of five major government corporation studies done in the last 15 years; and (3) additional entities we identified during the course of our work." (GAO, 1995, page 1)

The unifying feature among these various entities is that each was created by the federal government to provide a public good or service but each is legally a private organization with unique connections to the federal government. Some are private corporations wholly owned by the federal government. This includes entities like the Commodity Credit Corporation (CCC), the Export-Import Bank (Ex-Im Bank), Federal Prison Industries, Inc (UNICOR), and the Pension Benefit Guaranty Corporation. Others are only partially owned by the federal government. These include organizations such as the Federal Deposit Insurance Corporation (FDIC), the National Railroad Passenger Corporation (Amtrak), the Resolution Funding Corporation (REFCORP), and the Resolution Trust Corporation (RTC). Some are not owned by the government at all. These include the Corporation for Public Broadcasting, the Securities Investor Protection Corporation and Legal Services Corporation which are non-profits and for-profits like CoBank, the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal Farm Credit System, and the Federal National Mortgage Association (Fannie Mae).

The degree to which these organizations are free of market and governmental controls varies. Some, like the Commodity Credit Corporation, function like governmental departments. Others operate with substantial freedom from both market and government controls, such as the Tennessee Valley Authority, Fannie Mae and the National Endowment for Democracy. (L. Epstein & Martin, 2003; R. C. Moe & Stanton, 1989)

Questions have been raised about what mechanisms control organizations operating free of market controls and substantially free of political controls. Moe argues that the use of government corporations is a danger to democracy, as it creates organizations that have the powers of government without the controls of government. He also argues that government corporations are a danger to good public administration because their private nature means that they are exempt from the democratically derived controls that control the implementation of government. (R. Moe, 1983, 1987; R. C. Moe & Kosar, 2005) Froomkiin finds that these organizations also operate with weak or non-existent market controls and limited political oversight. Froomkiin argues that most government corporations can either be transitioned to the private sector or made into full government departments. Some, like Fannie Mae and Freddie Mac could be split into many organizations to break the monopoly and create functioning markets. He also argues that if an organization cannot be made fully public or fully private, that all directors should be governmental appointees with short terms, making them accountable to the President; that situations of moral hazards be disclosed as part of the budget process; and that annual performance reporting should be required. (Froomkiin, 1995) Seidman argues that there are existing controls that could be "reactivated" to bring oversight to these organizations, most notably the Government Corporation Control Act of 1945. This act requires that government-related private corporations submit budgets to the President and then to Congress; that the Inspector General audit the books of each organization; that each organization submits a management report to Congress including a statement on its financial position and any outstanding audit issues; that funds will be deposited with the Secretary of the Treasury; and that the Secretary of the Treasury approve any debt issues. (Seidman, 1998)

Why does the federal government create government corporations? Michael Froomkiin, in his article, Reinventing the Government Corporation (Froomkiin, 1995), argues that there are four types of government failure that result in the creation of these organizations: efficiency, subsidy, subterfuge, and political insulation. There are organizations that support each of these four types of government failure. The Shipping Board (Sicotte, 1999), the defense-related corporations of World War II (Butkiewicz, 2006), and the Reconstruction Finance Corporation (Sprinkel, 1952) are examples of organizations created to get things done quickly, more quickly than they could be done following traditional government processes. These organizations provided a response faster than government could have provided.

At times, policy-makers have wanted to provide a subsidy certain groups without drawing attention to the fact they were doing so. Private corporations allow subsidies to be provided in ways not obvious to the public. The Ex-Im Bank (Progress Report, 1998) and the Overseas Private Investment Corporation (OPIC) (Sanders, May 15th, 2002) are examples of organizations which provide large corporate subsidies while the Commodity Credit Corporation, the Federal Crop Insurance Corporation, and the Farm Mortgage Corporation have provided large agricultural subsidies. The Tennessee Valley Authority provides a subsidy to residents and businesses within its service area. (Munson, 2001)

Policy-makers have also wanted to hide certain governmental activities from public scrutiny. The Endowment for Democracy, which influences elections in other countries, is an excellent example of the use of independent organizations to do things that would otherwise be politically unpalatable (Raman, 2000). The National Endowment for Democracy lets the federal government intervene in elections in other countries without directly having culpability for those activities. (Conry, 1993) The Resolution Funding Corporation and the Resolution Trust Corporation let the federal government address billions of dollars in losses from the savings and loan industry without bringing those losses onto government books.

Another reason that government corporations are created is because of distrust in democracy itself. Policy makers may want to insulate activities from democracy itself, so they turn to private organizations. The Corporation for Public Broadcasting was created as a non-profit exactly to shield it from the influence of politics. (Farhi, 2005) The Legal Services Corporation, which provides legal services to the poor, was created as a private entity for the same purpose. (Isaac, 1995; Office, 2007)

Froomkin misses two other important reasons that the federal government creates private organizations to carry out its work. First, it creates organizations with the expectation that they will transition to private organizations. These organizations are created when government feels that a vital service should be provided by the private sector but it needs time to fully develop into a viable private entity. Conrail, Sallie Mae, and the Federal Land Banks are examples of successful transitions to private organizations. The Inland Waterways Corporation was created to evolve to a private for-profit organization but it never successfully made the transition. Amtrak has also not made a successful transition. The jury is still out on whether United States Energy Corporation and In-Q-Tel will make successful transitions.

The second type of government failure missed by Froomkiin is the belief that government is inefficient and ineffective. Ideologically, it is more palatable to add private organizations than government bureaucracy. This ideology has been fairly recent, stemming from the privatization movement that took hold in the 1980's. Examples of these private organizations are the Millennium Corporation, the Corporation for National and Community Service, and the Universal Service Administrative Company. None of these had an overriding reason to be private organizations except the desire to avoid being part of the government bureaucracy.

What are the implications of these organizations being able to function without the typical controls placed on purely public or purely private organizations? Because these organizations do not have the controls that come with government, they are vulnerable to abuses that typically don't occur with purely public organizations. Some private organizations created by the federal government have had spectacular amounts of fraud. For example, the Universal Service Administrative Company dispenses billions of dollars of subsidies but does so without the traditional governmental controls. The result has been a huge amount of corruption, with one individual alone being responsible for the theft of $100 million. The Reconstruction Finance Corporation, the Bank of North America, the World War II corporations, the Shipping Board and the Emergency Fleet Corporation all were rife with kickbacks, bribery, and political favoritism in dispensing funds and contracts. The United States Enrichment Corporation, the Reconstruction Finance Corporation, the World War II corporations, the War Finance Corporation, and many of the other organizations have been criticized for enriching their management at the expense of meeting their public goals. (Becker, 2007)

Because they are not subject to market forces, they are often inefficient and would have gone into bankruptcy except for their special status. Amtrak, left to purely market pressures, would have gone out of business decades ago. UNICOR, with its shoddy goods, would have gone out of business decades ago if federal departments were not required to buy their goods. The Inland Waterways Corporation could not compete with trains and automobiles but was propped up by federal subsidies for decades. The Federal Deposit Insurance Corporation, the Federal Crop Insurance Corporation, the Federal Savings and Loan Insurance Corporation, and many others would have failed without a federal guarantee of their credit. The Bank of North American, the First Bank of the United States, and the Reconstruction Finance Corporation would have failed because of corruption and fraud in its lending had it not been for the federal backing of their debt. The Tennessee Valley Authority would have its debt sold at junk bond rates except for the implied backing of its debt by the federal government.

Being freed from market control also brings problems of moral hazard. Private organizations which undertake risky behavior usually go bankrupt. Instead, government without government shifts the responsibility for risky behavior from shareholders to taxpayers. This is most hotly debated today with Fannie Mae and Freddie Mac, but exists with most organizations of this type. Some of large bailouts have occurred with these organizations, including the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Federal Crop Insurance Corporation, and in the future, possibly the Pension Benefit Guaranty Corporation.

Freedom from political control also vests itself through the private nature of these organizations. Because they are private, they are free from the barrage of laws and rules governing the operations of government. The result is that organizations are able to act politically in ways that pure government could not. The classic example of this is the Tennessee Valley Authority (TVA). The TVA flooded hundreds of thousands of acres of lands, with thousands of citizens losing their homes and properties. Many received no compensation for their loss. Citizens in these areas had virtually no input into these processes as the TVA is headed by three individuals serving nine year terms who are nominally accountable only to the President and not at all accountable to local citizens. Had the board of directors been democratically elected and locally accountable, the TVA could not have acted as it did. (Munson, 2001) The National Endowment for Democracy has funded activities that most Americans find abhorrent, the overthrow of democratically elected representatives to further American, often American corporate interests. It would never be able to undertake these activities were there to be a public debate about how and where to spend taxpayer money. Instead, it is the Endowment's Board of Directors that makes these decisions. But it is the power and funding of government that lets the Endowment exist. (Conry, 1993)

Special Case: The Federal Reserve

One organization that stands unique among federal government corporations is the Federal Reserve. The question of whom and how the economy will be managed has been a topic that has torn apart the United States repeatedly. When the country was first formed, the First Bank of the United States was created to manage the country's economic affairs. Issues of trust, control and corruption grew and the First Bank of the United States was in essence terminated by Andrew Jackson in 1833, shifting control of the economy to the free market. The result was the Panic of 1837, followed by additional bank panics or economic declines attributable to problems in the banking system about every five years. In 1863, a form of government regulation of the free market banking system resulted in a system of national banks. This system did not resolve issues of seasonal liquidity and requirements to back up loans. The result was continued bank runs and panics. (Knox, 1900) (Hammond, 1957) A large panic occurred in 1907 which led to the creation of the Federal Reserve in 1913. (L. Epstein & Martin, 2003)

The Federal Reserve today is legally a private entity, comprised of twelve regional banks funded by stock issued by each banks. The Reserve Banks are not operated for a profit and ownership of a certain amount of stock is a condition of membership in the banking system. The stock may not be sold, traded, or pledged as security for a loan; dividends are, by law, six percent per year.

The Federal Reserve's responsibilities fall into four general areas: managing the economy through monetary policy that influences money and credit conditions; regulating banks; maintaining stability of the financial system; and providing financial services to the federal government, to other financial institutions, to foreign governments, and to citizens.

Even though the Federal Reserve is private, it has a seven member Board of Governors appointed by the federal government. These governors are nominated by the President and confirmed by the Senate. The full term of a governor is fourteen years, ensuring that no one president will have a majority of appointments for any appreciable amount of time. No governor may serve more than one term. Once appointed, governors may not be removed from office for their policy views. The lengthy terms and staggered appointments contribute to the insulation of the Board and the Federal Reserve System from political pressures. In essence, once a governor is selected, the government has no control over that individual, except the threat of rewriting the laws that create and maintain the Federal Reserve. The result is an organization insulated from both market and political control by design. (Federal Reserve, 2006)

This insulation from political control is especially notable as the Federal Reserve may be the most powerful non-elected organization in society. The Federal Reserve chooses who will win and who will lose in the economy, whether there will be widespread hardship or prosperity, and whether the wealthy will accumulate more wealth or whether wealth will be transferred to the middle and lower classes. Yet these critical decisions are neither under the direct control of democratically elected individuals nor under the invisible hand of the market. In fact, much of this control rests in the hands of one person, the Chair of the Federal Reserve. Alan Greenspan almost single-handedly created extremely high inflation rates in the 1980's, which caused wide hardship but also ended stagflation. (Greider, 1987)

Special Case: Fannie Mae and Freddie Mac

In 1938, the Reconstruction Finance Corporation (RFC), at the request of the President, created the National Mortgage Corporation to create a secondary market for Federal Housing Administration mortgages. Secondary markets provide for investor desire for liquidity (i.e. the ability to shift money from investment to investment) with borrower desire for long-term loans. At the time, it was difficult for an ordinary person to find someone in the private market who was willing to make a loan for the twenty or thirty years. Through government intervention, the National Mortgage Corporation created a secondary mortgage market by being a bridge between borrowers and lenders. (Butkiewicz, 2006) When the RFC was terminated, the National Mortgage Corporation was created as its own separate organization in 1950. (Butkiewicz, 2006) In 1968, the National Mortgage Corporation changed its name to the Federal National Mortgage

Corporation (Fannie Mae) and became a private corporation to remove it from the federal budget. (Alford, 2003) At the time, the portion of its activities that served low income people was shifted to a government-owned corporation, the Government National Mortgage Association, or Ginnie Mae. This also shifted higher risk borrowers from Fannie Mae to the federal government. Unlike Fannie Mae, Ginnie Mae is explicitly backed by the full faith and credit of the United States as opposed to the implied backing for Fannie Mae. Ginnie Mae is treated as a department within the Department of Housing and Urban Development (HUD) despite its private corporate status. It differs from Fannie Mae in that it deals with low income and risky loans, loans that possibly would not otherwise find funding in the private market due to their risk. Ginnie Mae also operates with a subsidy from the federal government. This allows Fannie Mae to avoid dealing with the most risky and difficult loans. (R. C. Moe & Stanton, 1989)

After Fannie Mae was shifted to a private corporation, it had a virtual monopoly on the secondary security market so Congress created Freddie Mac to provide competition for Fannie Mae. Freddie Mac is structured like Fannie Mae, as a private corporation operating for the benefit of shareholders. Instead of creating competition, however, Congress created oligopoly. Today Fannie Mae and Freddie Mac control about ninety percent of the secondary mortgage market (with Ginnie Mae and private lenders controlling the rest). Their assets combined are forty-five percent greater than that of the nation's largest bank. (Butkiewicz, 2006) Their combined debt is equal to forty-six percent of the current national debt. (Greenspan, 2005) Because of their size, Fannie Mae and Freddie Mac essentially block competitors from entering the secondary mortgage market and maintain oligopoly. (Wallison, 2001)

Even though Fannie Mae and Freddie Mac are private organizations, they have a special status with the federal government. They both have access to a line of credit to the U.S. Treasury; they are exempt from state and local income taxes; and they are exempt from SEC oversight. (Wallison, 2001) It is also generally understood that the federal government would not allow Fannie Mae or Freddie Mac to go bankrupt as the mortgages of most citizens would be in jeopardy. Because of this, the two corporations operate without true market discipline. It also means that investors are guaranteed that they will not lose their investments. This lets them borrow money almost at the same rate that the federal government borrows at, much lower than most private corporations. This gives them a substantial competitive advantage over companies who do not have this implicit pledge. Their stock prices are also higher and stockholders benefit from this implicit backing by the federal government. (Alford, 2003)

The federal government could terminate its relationship with Fannie Mae and Freddie Mac but they have built an extremely large lobbying apparatus with profits from their market monopoly. In 2005, they ranked eleventh in corporate lobbying. Fannie Mae has 55 "partnership offices," giving it the ability to lobby Congress in their home districts as well as in Washington. (Shin, 2006) Fannie Mae justifies these offices as critical to promoting home ownership to underserved communities even though Ginnie Mae is responsible for making loans to low income individuals.

Fannie Mae and Freddie Mac have also had a history of hiring well connected individuals as lobbyists and spending large amounts of money on contract lobbyists. Its list of lobbyists includes past Congressmen as well as key staffers and key federal administrators. In the first half of 2004, they spent $1.2 million with 60 Washington lobbyists at 16 different firms in addition to their own staff lobbyists. (Lee & Dash, 2004) Staffs from Fannie and Freddie also are heavy political contributors. (Koppell, 2001; Zuckman, 1991)

Fannie Mae created its own non-profit organization, the Fannie Mae Foundation, to donate funds to charitable activities. This allows Fannie Mae to make politically visible donations in key congressional districts to shore up support for Fannie Mae. Company's lobbyists can give any member of Congress a map showing how much Fannie has contributed within their district. (Lee & Dash, 2004) In 2007, Fannie Mae terminated the foundation and rolled these activities into Fannie Mae itself after substantial criticism of these activities.

Fannie Mae and Freddie Mac have also developed a strong network of allies which can be mobilized when political threats arise. These allies include banks, lenders, real estate agencies, builders, and other housing-related businesses that rely on Fannie Mae and Freddie Mac. Their monopoly status ensures that groups work with Fannie Mae and Freddie Mac because no other alternatives exist. They are able to mobilize these networks quickly when political threats arise. (Koppell, 2001)

Fannie Mae and Freddie Mac's monopolistic power translates into excess profits that the two corporations plow into government influence that in essence stalemates government control and democratic oversight. The result is that the two corporations operate substantially free of both market and political control. (Koppell, 2001; R. C. Moe & Stanton, 1989; Wallison, 2001)

Conclusions

The theory of market failure argues there are special conditions when markets break down and the orderly exchange of goods no longer occurs. One solution is to create government organizations. Unfortunately, there are structural features of government that mean it does not always produce optimal outcomes either. The question then becomes, what should be done? Classical economics argues for the creation of government. Neoclassical economics argues for the tolerance of market failure if at all possible and if not, government failure must be tolerated.

But these theories rest on two false suppositions. First, organizations are either private or public. When one looks at definitions of "public" and "private," it becomes clear that this dualism does not hold up in the real world. There are many organizations that are not quite public or private. British public administration theory assumes four types of organizations: purely private; quasi-government organization or quago; quasi-public non-government organization or quango; and purely government.

Second, economic theory assumes that every organization is under either market or government controls. When this assumption is studied in depth, it is clear there are organizations not under market or governmental controls.

The fact that there are organizations that are not truly private or truly public and not under market controls or governmental controls means that there is a third response available to market and government failure. The next section of this dissertation provides a definition and a description of organizations that meet market and government failure but are neither truly private nor truly public.

CHAPTER 3: GOVERNMENT WITHOUT GOVERNMENT

Government without government begins with a simple premise. There are private organizations carrying out governmental activities that do not operate under traditional contracts for service. This gives them self-determination beyond private companies, sovereign government or government contractors. Because of their nature, they are free from the constraints of both the market and government.

This section puts forward a definition and taxonomy for government without government. Because of the breadth of this topic, one type of organization, business improvement districts or BIDs, are examined in-depth. A definition of BIDs is established, a history of these unique public-private organizations is developed, and a summary of previous BID research is provided.

Features of Government without Government

Three critical features define organizations that are government without government. The first is that these organizations are legally private and not public. This does not mean that they are private in all senses however. Even though they are legally private, they have characteristics of public organizations which let them act in ways that other private organizations cannot. These organizations are quangos and sit in the fuzzy middle between public and private.

The second feature is they respond to market failure and government failure. They provide public goods, services traditionally provided government, but do so as private entities because government was not able to meet a need. For example, business improvement districts provide street cleaning, trash removal, security and policing, public signs, street furniture, and other activities traditionally carried out by local government. At the federal level, organizations fulfill the federal government's responsibility to provide the "rules of the game" for commerce such as the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Resolution Trust Corporation (RTC), Pension Benefit Guaranty Corporation, World Bank and others. Another set of organizations carry out core federal government functions like distributing foreign aid (Millennium Challenge Corporation), redistribution of wealth (Universal Service Administrative Company and its affiliated non-profit organizations), providing under-produced goods or services (Corporation for Public Broadcasting, the Legal Services Corporation), and carrying out foreign policy (National Endowment for Democracy and its affiliated non-profit organizations).

A third feature of these organizations is that they are free of market controls and substantially free of government control. No organization or even individual in a society is completely free of government. But these organizations have significant policy-setting ability separate from government, allowing them to function substantially separate from governmental controls. These organizations are insulated from market controls also.

Government without Government differences from Non-profit and Private Government Contractors

It is this self-determinism that separates government without government from privatized governmental services and from non-profit delivery of government services. In both instances, organizations (private for-profit companies or private non-profit organizations) are contractors to government. Government determines the types of services to be provided, the quantity of services to be provided, and the method for providing those services. In the case of government without government, the independent organizations determine the types of services to be delivered, levels and methods of service delivery. For example, business improvement districts (BID) have the ability to determine which services they will provide, what level of service they will provide, and how those services will be provided. The BID then determines the level of funding that it needs, which is levied by government on behalf of the BID. No traditional government contractor, private or non-profit, would ever be asked which services it wanted to provide, how much it wanted to provide, how it wanted to provide those services and how much money it wanted.

This self-determination also means that government without government has a fundamentally different relationship with democracy than government contractors. Democracy has direct control of government contractors, with elected representatives making policy decisions and passing those policy decisions through contracts. Organizations that are government without government make their own policy decisions, providing them substantial independence from democratic controls.

Taxonomy of Government without Government

This dissertation proposes that there are three ways these organizations are created. These methods also determine their characteristics. The first type of organization is those created by government. At the federal level, there are a broad array of organizations created by the federal government as private entities which receive government funding, maintain a level of integration with the federal government beyond a private contractor, and do not operate with a service contract. Examples include: the Federal Reserve, the Commodity Credit Corporation, and the National Endowment for Democracy. At the local level, local governments have vested business improvement districts with the authority to determine taxation levels, service bundles and levels, and methods of service delivery. They provide services traditionally provided by local government such as street cleaning, garbage collection, zoning, building inspections, even the supervision of persons convicted of crimes. Local units of government are also experimenting with extending this model to residential neighborhoods.

The second type of private organization that carries out government but with substantial freedom from government control is created through contractual relationships among citizens. These are common interest developments or CID's. Typically, these are private homeowner associations but can also include private business associations which govern an area. There are unincorporated areas as large as 60,000 or 70,000 people who receive almost all of their municipal services through these private organizations. (Woodlands Governance Committee, 2005) The only function that is not provided by these organizations is policing, as no one has found a way of privatizing the powers of a sworn police officer to detain or use deadly force. CID's often do provide private security services, however. These services are typically funded through a mandatory assessment or fee which every resident or business agree to pay as part of their contractual agreement with one another. Persons who do not pay can have their property seized through liens. In addition, contractual agreements stipulate that persons can be fined if they do not follow the rules of the association. If they do not pay, the association can place liens against their property and seize the property if fines are not paid. In this way, these organizations have coercive power similar to government. (Reston Association, 2007; Woodlands Governance Committee, 2005)

Finally, some organizations are created by government mandating that citizens purchase governmental services from a private company. This is called "load shedding." (E.S. Savas, 2000) For example, in Minneapolis residents are required to have a "Truth in Housing" inspection at the time of sale of their home. However, City inspectors do not carry out this work. Instead, they license a set of private, for-profit businesses to carry out the inspections and mandate that homeowners purchase services from one of these companies. These private inspectors do the inspections and send reports to the City. The City then follows up with City inspectors if problems are found. Another example is in Paradise Valley, Arizona. The local government does not provide fire protection. Instead, it passed an ordinance requiring every citizen to be a subscriber to the Rural/Metro Fire Department, a for-profit organization. Residents subscribe directly with Rural Metro. Failure to subscribe may result in a lien placed against property, misdemeanor criminal charges or high per-hour charges should a fire response be required.

Selection of Business Improvement Districts for Study

The theory of government without government encompasses a large number of organizations. Because of time constraints, it was necessary to study only one type of organization for this dissertation. Business improvement districts were selected because they fit the definition of government without government, being private organizations which carry out clearly governmental activities (many also provided by the local municipality). There is also widespread adoption of the BID model throughout the United States but implementation varies widely. Nation-wide research would allow a variety of implementations to be studied to see if they fit the definitions of government without government.

The BID model has traditionally been applied only to business areas. There is a movement in the last few years in several states to extend the BID model to neighborhoods and mixed use areas. This could be a significant expansion of government without government, which also made BIDs an interesting selection.

There was only one previous national study of business improvement districts, which meant that any national study would also be able to provide basic information on the characteristics of BIDs. Because of these reasons, BIDs were selected to be studied to explore the principals of government without government.

Definition of Business Improvement Districts

There is no standard definition of business improvement districts. This dissertation will use this definition:

> Business improvement districts (BIDs) are private organizations designated by government to provide public goods and services in a geographic area. These organizations usually determine the level of a mandatory tax or fee levied on their behalf. Local government sanctions and supports these activities but gives these private organizations substantial independence in policy setting.

Lawrence Houstoun, in one of only three books written on business improvement districts, suggests five characteristics of BIDs. (Houstoun, 1997) These are quasi-public or non-profit governance; providing a wide variety of on-going services; creation or authorization by government; a sustainable funding source; and cooperation within the private sector to resolve issues.

This definition differs from the one used in this dissertation in two critical ways. This dissertation only looks at organizations that are legally private organizations, governed by civil and not constitutional law. Quasi-public organizations may be legally public organizations, putting them under the control of constitutional law instead of civil law, a critical difference in how the organization can act. For example, Michigan has chosen downtown development authorities, legally public and not private organizations, instead of private business improvement districts as its method of providing these activities. These organizations from Michigan are not examined in this dissertation.

This dissertation looks only at organizations funded by a mandatory tax or fee set by these private organizations. There are private organizations providing marketing or security activities that are funded out of the general revenues of a municipality under contract to that municipality. These organizations are excluded from this dissertation because they have no autonomy in their funding levels or in their policy direction. In addition, there are other ways of deriving on-going revenues besides a mandatory tax or fee paid for by all businesses in an area. The most prominent funding method is used in Florida where districts are funded through tax increment financing. These organizations also do not have control over their own level of taxation nor are their costs spread across all businesses in a district. For this reason, these organizations are also excluded in this dissertation.

Lorlene Hoyt in her book *The Business Improvement District: An Internationally Diffused Approach to Revitalization* (Hoyt, 2005a) defined a business improvement district as:

> ... a publicly sanctioned, yet privately directed organization that supplements public services to improve shared, geographically defined, public spaces. Moreover, such organizations subscribe to a self-help doctrine, whereby a compulsory self-taxing mechanism generates multi-year revenue. (Hoyt, 2005, p.4)

This definition is close to the one used in this dissertation except that this dissertation recognizes that the powers of business improvement districts go beyond just improving public spaces. Most BIDs also conduct marketing, promotion and other activities that directly aid business sales. In addition, some BIDs have been given regulatory authority over things like facades and signage which reside on private property. Others have gone as far as being involved with courts and oversight of criminal restitution activities or the provision of social programs for the homeless or the unemployed. This dissertation looks at organizations that not only improve public spaces but also carry out other services.

BIDs are distinct from other types of local organizations that carry out similar activities. Business improvement districts are distinct from special services districts which are public and not private organizations. They are also distinct from chambers of commerce which are not funded by a self-determined mandatory tax. They also do not have a service area designated for them by government. They are distinct from economic development departments which are typically public organizations attached to local government. They are also distinct from port authorities and private economic development authorities, which do not provide services duplicating government, do not have separate and unique districts, and which do not have levies used for operations.

BIDs have different names in different states. Names include: Business Improvement Zone, Community Improvement Districts, Downtown Improvement Districts, Economic Improvement Districts, Economic Improvement Districts, Improvement Districts for Enhanced Municipal Services, Local Improvement Taxing Districts, Municipal Improvement Districts, Municipal Management Districts, Municipal

Service Districts, Municipal Special Services Districts, Neighborhood Improvement Districts, Parking and Business Improvement Districts, Principal Shopping Districts, Property-Based Improvement Districts, Public Improvement Districts, Self-Supported Municipal Improvement Districts, Special Benefit Assessment Districts, Special Business Districts, Special Improvement Districts, Special Community Benefit Districts and Special Service-Taxing Districts.

History of Business Improvement Districts

Business organizations draw their beginnings from downtown chambers of commerce and other voluntary business associations. One of the first organizations was in San Francisco, where businesses owners created the Down Town Association of San Francisco after the 1906 earthquake. This organization helped businesses coordinate their response to the earthquake and to act as a liaison with government during the reconstruction. In the 1930's and 1940's, more voluntary business associations were formed to address the migration of retail out of downtown cores. The out-migration of retail and other business activities became acute after World War II, when suburbanization firmly took hold and retail migrated out of the downtown. Downtown business owners, under stress from these new competitors, created chambers of commerce to promote the downtown through advertising, festivals, parades, coordinated window displays, and other marketing activities. They also worked to attract new businesses and advocate with government for projects to enhance the downtown. (Fogelson 2001)

However, these organizations were limited. Mancur Olson's theories about the under-provision of public goods in a voluntary system hold true in this situation. Business associations were hindered by a free rider problem. (Olson, 1965) All businesses benefited from marketing or increased security or litter cleanup or physical improvements done by the chamber or by a single business. Because of this, little incentive exists for businesses to join chambers of commerce. Because of this, chambers typically had low participation rates. Low participation rates meant that chambers had very little money to carry out programs, which limited their effectiveness, which limited business incentives to participate. (Fogelson 2001)

A second problem was that chambers had no ability to regulate the public space in a downtown. The control of space for private property owners ended at their property line. This left the government to regulate public space. One of the inherent failures of government is that it does a poor job of meeting geographically varying demand for services. Citizens want to be treated equally by government and government tries to respond by providing its services equally across its jurisdiction. This can be problematic when certain areas need a higher level of services, as commercial areas do. The Chambers could advocate with government for a higher level of policing or street sweeping or social services but business would always be a supplicant to government. Downtowns typically could not get the increased services needed, often resulting in dirty, unsafe, unattractive areas with no one responsible for public space. (Fogelson 2001)

The invention of the modern shopping mall brought a new set of challenges to downtown businesses. Malls addressed the free rider problem by having one central owner who benefited from overall maintenance, marketing and management of the mall.

That central owner could also use rent as a compulsory “tax” paid by all businesses owners to provide public goods which benefited all businesses. Mall owners would promote the mall using the money it collected from businesses, overcoming the free rider problem of chambers of commerce.

Shopping malls represented the privatization of public space. Mall owners could dictate the maintenance and cleanliness levels of “public” spaces because these public spaces were really private spaces. They could also regulate the activities of visitors in a way that could not and would not be done on public property. This allowed mall owners to create clean, safe environments for shoppers that could not be matched by downtowns.

In response to the rise of the private shopping mall, the Bloor West Village Business Improvement Area was created in 1965 in downtown Toronto. The impetus for the Bloor West Village BID was to try to duplicate the management abilities of a private shopping mall in a public space. (Houstoun, 2003) The BID was able to deal with the free rider problem inherent in voluntary business associations because government gave it the ability to set a mandatory tax. This also addressed the problem of a shortage of funds, allowing a more appropriate level of services to be provided. Being a private organization, it was separate from government, which let it provide a higher level of services without creating equity problems. Government also granted this organization the ability to actively manage public space, meaning that someone besides government was in charge of ensuring that public space was clean and safe.

The first BID in the United States was the New Orleans Downtown Development District created in 1975. Since that time, the business improvement district model has spread rapidly. There has been one inventory done, in 1997, which found 404 BIDs.

Two-thirds were organized after 1990, reflecting their rapid expansion. (Mitchell, 1999) The BID model has also expanded to other countries. A survey in 2005 found 185 in Australia; 347 in Canada; 225 in European countries; 261 in Japan; 140 in New Zealand; and 42 in South Africa (Hoyt 2005c, 2006)

Extension of the BID Model to other Areas of Government

One of the reasons that studying BIDs is so critical now is that the BID model is just beginning to be extended to other types of government services. Although this trend is just emerging, it appears that it is strengthening and growing. For example, the BID model is being extended to residential and mixed-use areas. California, Pennsylvania and the District of Columbia have recently passed legislation which allows for the formation of BID-like organizations in mixed-use areas and residential areas. Texas is discussing such legislation. Neighborhood non-profits would have the authority to set the level of a tax, receive these tax revenues and purchase a bundle of goods determined by the neighborhood non-profit. This would allow older neighborhoods to have benefits of common interest developments (CID's), also known as homeowner associations, even though one was not created when they were built.

Another trend is to extend the BID model narrowly to other services. For example, in Lincoln, Nebraska and New York City, they are discussing extending the BID model to parks. Neighborhood parks would be funded with an assessment on neighboring properties. Rather than these funds being used to provide services by government, funds are given to neighborhood non-profit organizations to purchase the bundle of services that they want. The levels of the levy are determined by these non-profit organizations. In Beverly Beach, Maryland, the BID model is used to provide funds to maintain a private beach. Again, the city levies a tax on surrounding properties at a level determined by the non-profit organization. The non-profit then determines the bundle of services to purchase with those funds and manages the implementation.

Summary of Previous Research

Below is a summary of previous research conducted on business improvement districts.

Lack of Robust Academic Research

There is a plethora of promotional and descriptive information on BIDs. This includes information on how to create a BID, descriptive materials on the activities of BIDs from individual organizations, and resources promoting the benefits of BIDs. However, this information does not evaluate or analyze BIDs, making it of little use academically.

There is not a large body of academic research on these organizations. One reason is their rapid growth. Mitchell, in 1997, found that two-thirds of the organizations identified in his survey were formed in the 1990's. (Mitchell, 1999) Even today, dozens of these organizations are still being formed. In many ways, academia is just recognizing this phenomenon.

A second issue is that these organizations fall in an academic "no man's land." They have aspects of public administration, non-profit administration, economic development, public affairs, and political science. Yet they fully belong to none of these traditions. This means that no academic tradition focuses on this type of organization.

A practical problem is that these organizations are created locally. Because of this, there is no centralized database of business improvement districts. Even in California and New York, the states with the largest concentrations of BIDs, the states themselves do not track the existence of these organizations. Because they are private, they are neither subject to the Census of Governments nor traceable through a centralized database. In addition, some states have implemented business improvement districts under central programs, most notability the Main Street Program, while others have left creation to local initiative. Because of this, identifying these organizations for research purposes can be an extremely difficult proposition.

How Many BIDs are there and what do they do?

The only large-scale academic survey of BIDs was done by Jerry Mitchell in 1997 in his work *Business Improvement Districts and Innovative Service Delivery*. This study was the only attempt made to get a comprehensive picture of what services BIDs provide, whether they are public or private, and what their management issues are. To begin, Mitchell undertook a large effort to identify organizations. Mitchell's study identified 404 BIDs and received surveys from 252 BIDs. Mitchell used a broader definition of BIDs than is used in this study, a definition that included hybrid and public organizations. This survey found that sixty-one percent of BIDs were operated by non-profit organizations, thirteen percent by governmental organizations, and twenty-six percent were hybrids. Budgets (in 1997) varied from $8,000 to $15 million. Services varied among organizations but included: (from most popular to least popular) consumer marketing, public space maintenance, capital improvements to public spaces, policy advocacy with government, regulation of public space, security, economic development, parking/ transportation services, and social programs. BIDs operating in big cities (with populations greater than 700,000) and with large budgets (over $700,000) were more likely to be involved with maintenance and security activities; those in small towns (with populations fewer than 25,000) and with modest budgets (less than $100,000) were more likely to be involved with marketing and capital improvements. Two performance measures were used most by BIDs: occupancy rates (55%) and citizen attitude surveys (42%). Other measures typically used to measure the performance of BIDs were crime rates (35%), lease rates (31%), taxable retail sales (19%), number of jobs created (28%), pedestrian/visitor counts (31%), and business license revenues (12%).

Since this time, no other comprehensive surveys of business improvement districts have been done. Mitchell also did not maintain his database, which means that this specific group cannot be surveyed again. Antidotal evidence would point to a large expansion in the number of business improvement districts even after Mitchell's survey.

Gross did a survey of forty-one New York City BIDs and found that small BIDs mainly focused on physical maintenance, mid-sized BIDs focused on marketing and promotion, and large BIDs carried out capital improvements, in addition to maintenance and marketing. (Gross, 2005)

Part of the work proposed in this dissertation is to update the survey done by Mitchell in 1997. This dissertation would provide an updated count of the number of business improvement districts that exist within the United States. It would also describe the kinds of services that these organizations provide.

BIDs are Effective at Reducing Crime and Improving Property Values

There is a large amount of promotional information on business improvement districts. Houstoun, for example, credits BIDs with revitalizing downtowns, reducing crime, increasing commercial activity, and generally saving communities. (Houstoun, 1997) However, this information does not objectively evaluate or analyze the performance of BIDs, making it of little use academically.

A small amount of academic research has been done analyzing the impacts of business improvement districts. One area has been in the question of whether or not BIDs are effective in reducing crime. Hoyt (2006) found that property crimes, thefts and auto theft were lower in BIDs. She also found BIDs did not simply move crime from BID districts to surrounding areas. (Hoyt, 2005b), Brooks (2006) and Calanog (2006) found the same results. In districts Brooks analyzed, she found a five percent to seven percent overall drop in crime, with the bulk of these declines attributable to decreases in serious crime. This study also found that these declines were not because of shifting crime to adjacent areas. (Brooks, 2006) One study looked specifically at declines in prostitution. “I Won't Do Manhattan: Causes and Consequences of a Decline in Street Prostitution” (2001) looked specifically at the types of programs that BIDs provided to combat prostitution compared to the programs provided by local government. This study found that BIDs, being private organizations, were able to provide more comprehensive responses to prostitution than government. As a result, BIDs were more successful at combating crime than government. (Weidner, 2001)

Business improvement districts have also been found to improve property values. An analysis by Ellen, Schwartz and Voicu found that business improvement districts increased property values by 15% on average. It was proposed that this increase was due to the safer, cleaner environment that business improvement districts provided, creating a better investment environment. (Ellen, Schwartz, & Voicu, 2007)

Data from business improvement districts themselves could also be used to evaluate the efficacy of BIDs but BID performance information has been found to be inadequate. An article by Caruso and Weber surveyed special service areas in Chicago and found that BIDs rarely evaluate their own performance. When forced to provide performance evaluations, they usually relied on subjective appraisals by stakeholders with conflicts of interest, they confused outputs with outcomes, and they relied on the political process of reauthorization of their districts as a proxy for performance. (Caruso & Weber, 2006)

The most obvious measure of success would be in increased sales within a district but no academic survey has tackled this question. Caruso and Weber found that the number of business licenses, taxable retail sales, or retail sales is often data tracked by an individual BID but no objective aggregation of these figures has been done. (Caruso & Weber, 2006)

BIDs: Tools of the Dominant Culture to Enforce its Values

Business desire to create a safe, comfortable environment to increase customer traffic and increase sales can mean removing persons or activities that make others uncomfortable. This has led to claims that BIDs are tools to enforce the values of the dominant culture and that they reduce diversity. The Times Square BID, for example, has been accused of the "Disnification" of urban public space (Hoffman, 1999) for the elimination of prostitutes, adult-oriented stores, and drug dealers from Times Square. Other BIDs have also been blamed for removing diversity and vitality from urban areas. (Hammett, Hammett, & Cooper, 2007) New York BIDs have been accused of conducting warfare on street performers and vendors (Lederman, 2007); San Francisco BIDs on the homeless (E. Epstein, 1999); and many different BIDs on a citizen's ability to just time in a public space even if they are not affluent. (Clough & Vanderbeck, 2006; Gallagher, 1995) Schaller and Modan studied the Mount Pleasant BID and found that the BID was a tool for local elites to control public spaces and reinforce existing class and ethnic boundaries. (Schaller & Modan, 2005)

Justice and Goldsmith reject the idea that BIDs are used to exclude persons not of the dominant culture. They argued that even though BIDs serve private concerns, it is the best interest of these private entities to attract as many people as possible to their district. This provides a counterbalance to exclusionary tendencies. (Justice & Goldsmith, 2006)

Levy supported the idea that BIDs do reduce the number of "undesirable" persons or activities but noted that this produced a more comfortable environment for all - a desirable outcome. (Levy, 2001) Gross felt that even though BIDs further the interests of the dominant culture, this was a reflection of the desires of the communities themselves and not a problem inherent to BIDs. (Gross, 2005)

Another question raised is whether BIDs result in a homogenized commercial marketplace, resulting in a loss of diversity in retail options and thus a loss of diversity in local culture. Research supports the idea that BIDs do result in more chain stores serving the dominant culture and fewer diverse retail options. (Caruso & Weber, 2006)

BIDs: Better Municipal Services for Wealthier Areas

BIDs have been accused of creating wealthy enclaves with better municipal services than poor areas. Because wealthy enclaves can use the BID mechanism to meet their needs, the better off tax themselves for the narrowly defined services that they want and resist higher general taxes. Taxes are driven downward, leaving poorer areas with inadequate services. The result is islands of safety and cleanliness surrounded by lower income areas with poorer services. (Pack, 1992) (McFarlane, 2006) This perspective was also reinforced by Garodnick in his review of the Grand Central BID (Garodnick, 2000), by Steel and Symes in their review of a lawsuit filed against four separate BIDs for violating civil rights due to their voting structures which concentrate power in the hands of the wealthy (Steel & Symes, 2005) and by Gross in her study of New York City BIDs. (Gross, 2005)

Gross argued that even though BIDs do further the interests of the wealthy, the improvements that they bring to the whole community outweigh the disproportionate benefits that go to the wealthy. (Gross, 2005)

Morcol and Patrick found that BID managers and governance members believed that these inequities were not only acceptable but were the inevitable results of the competitive market. (Goktug Morcol & Patrick, 2006)

BIDs: Meeting Variations in Citizen Demands for Services

Lloyd, et al, Symes and Steel, and Wolf argue that BIDs represent a way of fitting government to sub-municipal variations in demand for services. If one of the failings of government is that it handles variations in demands for its services poorly, then BIDs are a way that government can better meet the peaks in demands for services. In this way, government better meets the needs of its citizens. In essence, differences in service levels are positive outcomes of BIDs. (Lloyd, McCarthy, McGreal, & Berry, 2003) (Symes & Steel, 2003) (J. Wolf, 2006)

Hughes takes this so far as to argue that large local governments should disaggregate themselves using BIDs. One way of understanding government is that it is the aggregation of the desires of a number of people. Large cities are aggregations of large numbers of citizen's desires, making them blunt instruments when fitting the activities of government to an individual citizen's desires. BIDs, as much smaller organizations, represent the aggregation of a much smaller number of citizens, which allows government to better fit citizen desires. (Hughes, 2001)

Because of the idea that BIDs allow government to better "fit" the demands of small groups of citizens within a larger urban context, some researchers have been advocating expanding the BID model to residential and mixed-use developments. (Ellickson, 1998; Mandri, 2006; Robert Nelson, 2006) So far, California, Pennsylvania, Texas, and Washington DC have passed laws enabling a "residential BID." These organizations have come under the names of Neighborhood Improvement District, Community Benefit District, Residential Improvement District, Mixed-Use Improvement District, Multi-Family Improvement District, or Property Improvement District. At this point, very few of these new residential "BIDs" have been created but it appears that there is substantial momentum to create more of these organizations. The benefit of these organizations is that they allow existing urbanized areas to have the benefits of Common Interest Developments (CID's), also known as homeowner associations. Virtually all new development in the United States is covered under a homeowner association, which is private organization created through contracts among property owners to provide services which replace or enhance those provided by government. Residential "BIDs" would provide older communities with this same ability to enhance or go beyond the services provided by government to meet local demand for services.

BIDs: Private Government versus Public Micro-Government

There has been a debate about the true nature of business improvement districts. Do they really represent the emergence of private government divorced from democratic control? Or do they represent an extension of traditional government, just at a sub-municipal level? And if they really represent government freed of democratic control, are we really on the path to tyranny? Or does it mean the dominance of business values over democratic values in the provision of government services.

Streeck and Schmitter call the emergence of these types of government structures "neo-corporatism" and "private interest government" which is shortened to "PIG," reflecting the perspective of the researchers. They argue BIDs represent the privatization and "corporatization" and of government, to the detriment of democracy and the values of democracy itself. (Streeck & Schmitter, 1986) Morcol and Patrick also argue that BIDs are autonomous organizations, separate from government, and operating under private, not public values. (Goktug Morcol & Patrick, 2006)

Lloyd, Symes and Steel, Wolf, Hawkins, and Briffault argue that BIDs are really just sub-municipal extensions of local government rather than rogue private organizations. (Briffault, 1999; Hawkins, Perry, & Montreal, 1996; Levy, 2001; Lloyd, McCarthy, McGreal, & Berry, 2003; Symes & Steel, 2003; J. Wolf, 2006; J. F. Wolf, 2006) Meek and Hubler go so far as to argue that the two approaches to providing services, traditional government and BIDs, are complementary. Local government meets general needs while BIDs allow government to meet peak demands for service. (Meek & Hubler, 2006) Briffault and Steel argue that the success of BIDs is directly in relation to the failure of municipal government and the declining belief in the public sector. In essence, BIDs are local government, but an approach activated only when traditional local government fails. (Briffault, 1999; Steel & Symes, 2005)

Justice rejects the notion of either public or private and instead argues that BIDs need to be understood as quangos, genuine public-private organizations. With this duel nature, they are simultaneously instruments which advance general public interests and self-help entities that serve narrow private interests. (Justice & Goldsmith, 2006) This position is also supported by Morcol, Wolf and Vindevogel. (Goktug Morcol & Patrick, 2006; Vindevogel, 2005; J. Wolf, 2006)

The federal courts have also taken a position on the question of whether business improvement districts are rogue private organizations or extensions of local government. In *Kessler v. Grand Central District Management Association* 67 U.S.L.W. 1233 (2d Cir. Oct. 13, 1998) the United States Court Of Appeals for the Second Circuit found that the Grand Central Business Improvement District is an extension of the government, not an independent private organization. This conclusion was found even though the Grand Central BID is a private organization without the sovereign powers of government and operating without a contract for service with the City of New York. The courts came to this conclusion because the City retained some controls over the activities of the BID such as control over the maximum levy that could be set by the BID, handling the accounting for the BID, and requiring financial reporting by the BID. But it also found that because the activities of the BID are limited, it isn't subject to the rules of one-person, one-vote required in *Reynolds v. Sims*, 377 U.S. 533 (1964).

The difficulty with the arguments over whether BIDs represent private government freed of democracy or sub-municipal extensions of government is that there has not been any broad evaluation of the controls that government places over these private organizations. If enough controls are placed on these private organizations that function like government, then it may be that these organizations are, in essence, local government. But if these organizations have few controls over their activities, it may be that they really are government disconnected from democratic controls, which could lead to tyranny. Only empirical research on the types, extent and usage of government controls over these private organizations will tell which path business improvement districts represent.

BID Boards Are Not Strongly Democratic

Governance boards for BIDs are typically chosen in one of two ways: appointment by a governmental entity or direct elections. Both raise concerns about whether the governance of BIDs is open to the influence of citizens through democratic processes.

Many BIDs have boards appointed by a mayor, city council, or governor. The literature on government corporations and special authorities has a comprehensive discussion of the pitfalls of appointed boards. These include long, convoluted chains of accountability, boards insulated from influence by citizens, and board actions influenced by the personal values of the elected officials appointing board members. The result is that appointed governance boards can be insulated from the influence of citizens and not under strong democratic control. (Koppell, 2003; Walsh, 1978)

Some BIDs have boards that are elected. It would seem this would result in boards more open to citizen influence. Because of this, it is an approach to governance advocated by many theorists. (Houstoun, 1997) However, because business improvement districts tax and govern businesses and not individuals, they often have voting schemas which are not one-citizen, one-vote schemas. Usually elections are restricted to property owners or business owners instead of citizens. This gives business a “seat at the table” in a way that does not occur in traditional government. Some schemas provide for voting proportional to taxes paid, which can concentrate power in the hands of larger businesses. Often seats are allocated to specific interest groups, like four seats for businesses that rent, which can distort decision-making even though those representatives are elected. Sometimes boards are mixed, with some elected from businesses in their district and others appointed or even being elected officials, which can result in odd representation. Almost all voting schemas exclude residents, which is an increasing problem for downtowns with growing residential populations. In addition, all voting mechanisms are open to criticisms of interest group politics, lack of voter interest, lack of qualified candidates, and low voter participation. This has led to criticisms that BIDs with elected boards are inherently undemocratic. (Briffault, 1999; G. Morçöl, and Patrick, P. A., 2006; Pack, 1992; Schaller & Modan, 2005)

Other researchers have found that there is a fair amount of contention and strife within business improvement district governance. They argue that this is proof of the functioning of democratic processes even without persons elected in a one-citizen, one-vote schema. (Dickerson, 1998; Hochleutner, 2003)

The question of whether or not BIDs are democratic has been examined by the courts. So far, the courts have found that although BIDs fulfill a governmental function, they have limited authority. As such, they are not bound by laws about democratic voting schema. (*Kessler v. Grand Central District Management Association*, 67 U.S.L.W. 1233 (2d Cir. Oct. 13, 1998)

Garodnick supports the idea that certain BIDs have voting schemes that are not democratic but argues that because BIDs are effective in carryout their mission, issues of governance really do not matter. (Garodnick, 2000)

Are BIDs Accountable to the Governments that Create Them?

Business improvement districts are private organizations operating without service contracts to bind them to the governments that create them. Because of this, questions have been raised about whether these organizations are accountable to the governments that create them. Houstoun notes that the "most influential and accurate criticism of BIDs…is that they can lack accountability." (p. 147)

The *New York Times* first broadly brought forward questions of accountability in its article, "Public Needs, Private Answers: Business Districts Grow, At Price of Accountability." This article examined the operations of New York City BIDs. It looked at the lack of checks and balances over the activities of BID employees. For example, sworn police officers have a host of checks and balances over their actions, while private security guards have virtually none. It also looked at the problems of private organizations not bound by sunshine-in-government laws. There were organizations operating without open meetings, posted meeting times and locations, tracking of board actions, or open financial records. Governance boards at beset were insulated from citizen influence. At worst, BIDs were fiefdoms run by their executive directors, with non-functioning governance boards. The freedom of being private organizations carrying out public functions had benefits and costs. Grand Central Partnership was successful at reducing homelessness in its district by creating housing and job training programs more comprehensive than government but it was also chastised for paying homeless people to move away. Public unions criticize BIDs for undermining public unions by providing parallel, non-unionized service delivery at lower wages. (Lueck, 1994) (Adler, 2005)

New York City responded in its report, "Cities within Cities" Business Improvement Districts and the Emergence of the Micropolis." This study found that additional oversight and, in some cases, serious operational restructuring was needed. This study let to tightening of controls on BIDs in New York City, including shortening the length of time BIDs could operate without performance evaluations and explicit renewal; requiring surveys of constituents prior to renewal; requiring clear operating procedures mimicking sunshine-in-government approved and audited by the City; and clear conflict of interest and financial disclosure policies. (New York City Department of Finance, 1995)

This did not quell the discussion about whether or not BIDs are accountable to the governments that create them. Some researchers argue that BIDs can be accountable through measures such as performance reports, financial reports, customer surveys, and reauthorization requirements. (Briffault, 1999) (Houstoun, 1997) (Hochleutner, 2003) (J. Wolf, 2006)

Researchers looking at how BIDs actually work found that in reality, municipalities exert little control over BIDs. Members of BID governance boards, although officially appointed by government, in reality are picked by business leaders and rubber-stamped by local government. Reporting requirements are pro forma and rarely used by government to change the operations of BIDs. (Goktug Morcol & Patrick, 2006) Performance measures were found to be substantially inadequate, making it difficult for government to use this information to hold BIDs accountable. (Caruso & Weber, 2006) (G. Morcol & Zimmermann, 2006)

Morcol and Patrick argue that it does not matter that BIDs are not accountable to the governments that create them because they are accountable directly to the businesses that pay taxes to support them. Other research has shown, however, these are weak democratic controls at best. In addition, accountability can exclude residents of a district, visitors to a district, and persons and businesses in areas around a district, leaving many citizens without a voice in this form of government. (Goktug Morcol & Patrick, 2006)

One of the difficulties in answering the question of whether BIDs are accountable is that reporting requirements and governmental controls vary not only from state-to-state but also from community to community. Real-world studies have been limited to a small number of BIDs in a single state or city, leaving much of the theoretical discussion without an empirical pinning. No national or comprehensive look at what controls government places over these private organizations has been undertaken. Part of the research proposed in this dissertation is to help close this gap in knowledge.

Lack of Corruption

One thing that is missing from the literature is a discussion of corruption because there appears to be little corruption in business improvement districts. In the 1990's there were issues with the pay levels of executive directors in New York City but with changes in municipal rules for BIDs, this subsided. (Lueck, 1994) Beyond this, there have been questions about how books were maintained for a small number of BIDs but even this has subsided as BIDs and BID monitoring has matured. (Killion, 2007) This may be due to the relatively small amounts of funding that most BIDs receive and the relatively small size of programs provided. It may also be because BIDs are community-based programs and the persons who work with BIDs are subject to community pressures.

Summary

Government without government theory argues that there are private organizations carrying out governmental activities that do not operate under traditional contracts for service. This gives them self-determination beyond private companies, sovereign government or government contractors. Because of their nature, they are free constraints of both the market and government. There are three types of government without government: government-created organizations; citizen-created organizations; and government-mandated organizations. Examples include government corporations, business improvement districts, large homeowner associations, charter schools and load-shifting situations where government mandates that citizens procure governmental services from private organizations.

Business improvement districts were selected to provide a real-world test of the theories of government without government. These organizations are private non-profit organizations which carry out governmental activities but not under a traditional contract for service. Instead, these private organizations have the freedom to determine the bundle of services that they will provide, the level of service they will provide and the tax rate that will be levied to fund them. This gives them substantial freedom from sovereign government. These organizations allow business areas to compete with private malls by eliminating free rider aspects of public space maintenance, public safety activities and marketing programs.

Previous BID research found that BIDs do carry out governmental services. These are services are mostly public goods typically associated with market failure, such as public safety and maintenance of public spaces. Although there is no discussion in the literature, it can be assumed that BIDs are carrying out this service because municipal government was incapable of doing so.

BIDs are not particularly accountable to government. Their governing boards are selected in pro forma ways, at best rubber stamped by government and often selected separate from government. BID governance boards are not particularly under the influence of direct democratic controls either from sovereign government or from direct influence from citizens. There is little oversight and poor reporting of BID activities to government. In addition, it is not clear to what degree local government actually maintains controls over these organizations and to what degree they are free to function as unfettered private organizations.

Last, there is no nationwide view of how many business improvement districts exist, how they function and what services they provide. This makes research on BIDs at a national level difficult.

CHAPTER 4: SURVEY METHODOLOGY

This dissertation proposes to survey business improvement districts to understand how they function. The first step was to design a survey and survey methodology.

Population Identification

An initial step in the survey process was to identify the population of BIDs. This is especially difficult, as no national inventory of BIDs exists. A survey in 1999 found 404 BIDs, although only 61% were private organizations that would meet the definitions of this study. (Mitchell, 1999) No national organization of business improvement districts exists, although the International Downtown Association (IDA) is the closest with 650 members. However, about one-third of these organizations are not within the United States, and not all of its members meet the definition of BIDs used for this study.

Because there is no existing list of BIDs, it was necessary to create a list of BIDs for the survey. An Internet search was conducted from March to May 2007. This search began with a list of 224 organizations supplied by the International Downtown Association. It was then supplemented with a Google internet search using the various names for business improvement districts. Specific emphasis was put on finding websites that had comprehensive lists of organizations. This included web pages on the following websites: IDA Downtown Association, City of Milwaukee, the Colorado Community Revitalization Association, the University of Wisconsin, the State of Wisconsin, the

Business Improvement District Council of San Diego, the State of Texas, City of Denver, the District of Columbia, and the City of Philadelphia, Kansas City, the Town Center Business Improvement District in City of Atlanta, Downtown New Jersey, the Florin Road Partnership in Sacramento, the California Downtown Association, the League of Oregon Cities, the Illinois Main Street Program, the City of Seattle, and the City of Houston. The use of comprehensive lists allowed for the identification of the total number of BIDs in many states. No comprehensive list was found for New York State and it is possible that there are organizations in this state that was missed.

Each organization on the list was scrutinized to ensure that it fit the characteristics of being an independent private organization with revenue from a mandatory fee or tax and delivering services traditionally provided by government. Organizations that did not clearly meet these criteria were discarded. Organizations where technically a BID had been created but was operated by the city without independent policy setting were also discarded. Florida has adopted the use of tax increment financing instead of a mandatory tax or fee in many cases. These organizations were also excluded because they do not meet the criteria of a mandatory tax or fee paid by all entities in a district. The 176 downtown development authorities in Michigan were excluded because, being public, they do not meet the definition of business improvement districts in this study, although they may be considered business improvement districts under other definitions

It can be difficult to discern the differences among voluntary merchant associations, economic development agencies, and BIDs just from their names. Voluntary merchant associations do not have a government-established service area, nor do they have a mandatory levy and were thus excluded. Economic development agencies are government organizations and were excluded. Several states have aggressively adopted the *Main Street Program*, a program for revitalizing downtowns. As part of this effort, some organizations have adopted a mandatory tax or fee to fund on-going activities and some have not. Only organizations that met the criteria were included.

The 701 organizations were identified as being business improvement district potentially meeting the definitions in this study. This is substantially higher than the 404 identified by Mitchell. (1999) This list of 701 organizations is the most comprehensive list of business improvement districts compiled to date. It includes BIDs from every section of the country including 44 states and the District of Columbia. In most states, there is a high certainty that it comprises the complete list of BIDs in that state. The distribution of BIDs is as follows:

Table 1: Distribution of Business Improvement Districts by State

State	Number
Alabama	2
Alaska	2
Arizona	5
Arkansas	1
California	190
Colorado	18
Connecticut	6
Delaware	1
Florida	7
Georgia	15
Hawaii	5
Idaho	2
Illinois	27
Indiana	3
Iowa	10
Kansas	1
Kentucky	1
Louisiana	3
Maine	2
Maryland	8
Massachusetts	4
Michigan	8
Mississippi	1
Missouri	13
Montana	5
Nebraska	2
New Hampshire	1
New Jersey	55
New Mexico	1
New York	79
North Carolina	31
Ohio	9
Oklahoma	3
Oregon	6
Pennsylvania	30
Rhode Island	1
South Carolina	2
Tennessee	3
Texas	41
Utah	1
Vermont	3
Virginia	9
Washington	9
Washington DC	9
Wisconsin	65
Wyoming	1
Grand Total	701

As the survey was conducted on-line, e-mail contacts were required for each organization. This was problematic, as some organizations do not have e-mail contacts. It is also true of BIDs that are just being formed, a particular problem in California where the most BIDs are being created. A small number of BIDs have gone inactive or are in the process of changing their staff. In addition, some organizations guard their e-mail addresses to hide them from spam web crawlers. Due to these factors, 107 organizations were identified as meeting the criteria of this study but were excluded. The distribution of these organizations was as follows:

Table 2: Reasons for Excluding Organizations

Status	Total
Administered by city	7
Being discussed	11
Being formed	7
Just formed	37
Disbanded	5
No e-mail	35
Not completely clear how funded	5
Grand Total	107

Methodology

A survey of business improvement districts was conducted in order to explore issues of what controls government puts on business improvement districts. This survey was conducted via an on-line survey tool called Surveymonkey. This tool allows persons to click on a link embedded in an e-mail then respond to the survey via the Internet.

Prior to the commencement of the study, every known organization that deals with business improvement districts was contacted as well as prominent researchers publicizing the study. This helped when organizations had questions about the survey.

An invitation to participate was sent out via e-mail. The first invitation was sent out October 1st 2007 to all organizations with valid contacts. Follow up was done for any returned e-mails and invitations were resent to corrected contacts. The invitation was checked by spam software to ensure it had a high likelihood of passing spam filters. Only two e-mails were returned due to spam filters. The spam companies were contacted and the e-mails were resent. Of the 592 organizations in the original dataset, sixteen e-mails were returned and were ultimately undeliverable.

A second contact was made on October 4th with ninety organizations that have on-line comment forms. This method ensured that emails were not intercepted by spam blockers. In reviewing response rates, this method did not have any higher response rates over directly sending e-mails.

A third e-mail contact was made on October 6th 2007. In addition, a telephone call was made to each organization using an auto dialer on the same day asking people to participate in the survey. Both phone calls and e-mails were done on a Sunday night so both were available when staff came to work Monday morning. This prompted a number of phone calls, which were returned. Of the 454 organizations attempted to be reached by phone, twenty-four could not be reached by the telephone auto dialer. This phase of the survey ended on October 18, 2007. From three e-mail contacts and one phone contact, 138 responses were received.

A second phase of contacting BIDs was undertaken. The list of BIDs that had not responded was randomized and personal telephone calls were made to 217 organizations inviting them to participate in the survey. They were then either able to complete the survey over the phone, respond via a follow-up e-mail or respond using an e-mailed survey. These organizations were contacted from October 29th 2007 through November 21st 2007. From this effort, additional fifty responses were received. Personal invitations to participate were extended to fifty-four organizations were but subsequently chose to not participate in the survey. Messages were left with the 113 remaining organizations but no further contact was made.

Of the 592 organizations initially contacted, 188 responses were received. Of these, one respondent represented two BIDs, one represented seven BIDs and one represented three BIDs. In total, this data represents information from 198 BIDs. This represents 33.4% of the originally identified dataset, which provides a 95% confidence level plus or minus six percent.

6.7% of the dataset was unreachable by e-mail or phone. This is attributable to changes in staffing, changes in organizations, and the initial difficulty in identifying organizations. Half of the organizations that were personally contacted and asked to participate, subsequently did not participate. If it is assumed that half of the dataset will choose to not participate no matter what request is made, the response rate provides a confidence level of 95% plus or minus 4%.

Response Rates by State

The distribution of responses is as follows:

Table 3: Distribution of Responses by State

State	Count
Alaska	1
Alabama	2
Arizona	1
California	42
Colorado	5
Connecticut	4
Washington DC	3
Delaware	1
Florida	1
Georgia	6
Iowa	2
Indiana	1
Illinois	7
Indiana	1
Kansas	1
Massachusetts	1
Maryland	1
Maine	1
Michigan	2
Missouri	3
Mississippi	1
Montana	2
North Carolina	12
Nebraska	1
New Jersey	10
New York	18
Ohio	3
Oregon	1
Pennsylvania	10
Rhode Island	1
South Carolina	1
Tennessee	1
Texas	9
Utah	1
Virginia	5
Washington	5
Wisconsin	21
Grand Total	188

Table 4: Survey Population and Survey Respondents by State

	Identified	% Identified	Reachable	% Reachable	Responded	% Responded
Alaska	2	0.3%	2	0.3%	1	0.5%
Alabama	2	0.3%	2	0.3%	2	1.1%
Arizona	5	0.7%	5	0.8%	1	0.5%
Arkansas	1	0.1%	1	0.2%	0	0.0%
California	190	27.1%	146	24.7%	42	22.3%
Colorado	18	2.6%	13	2.2%	5	2.7%
Connecticut	6	0.9%	6	1.0%	4	2.1%
Delaware	1	0.1%	1	0.2%	1	0.5%
Florida	7	1.0%	6	1.0%	1	0.5%
Georgia	15	2.1%	14	2.4%	6	3.2%
Hawaii	5	0.7%	2	0.3%	0	0.0%
Idaho	2	0.3%	2	0.3%	1	0.5%
Illinois	27	3.9%	26	4.4%	7	3.7%
Indiana	3	0.4%	3	0.5%	1	0.5%
Iowa	10	1.4%	7	1.2%	2	1.1%
Kansas	1	0.1%	1	0.2%	1	0.5%
Kentucky	1	0.1%	1	0.2%	0	0.0%
Louisiana	3	0.4%	3	0.5%	0	0.0%
Maine	2	0.3%	2	0.3%	1	0.5%
Maryland	8	1.1%	7	1.2%	1	0.5%
Massachusetts	4	0.6%	2	0.3%	1	0.5%
Michigan	8	1.1%	7	1.2%	2	1.1%
Mississippi	1	0.1%	1	0.2%	1	0.5%
Missouri	13	1.9%	10	1.7%	3	1.6%
Montana	5	0.7%	5	0.8%	2	1.1%
Nebraska	2	0.3%	2	0.3%	1	0.5%
New Hampshire	1	0.1%	1	0.2%	0	0.0%
New Jersey	55	7.8%	50	8.4%	10	5.3%
New Mexico	1	0.1%	1	0.2%	0	0.0%
New York	79	11.3%	73	12.3%	18	9.6%
North Carolina	31	4.4%	29	4.9%	12	6.4%
Ohio	9	1.3%	8	1.4%	3	1.6%
Oklahoma	3	0.4%	3	0.5%	0	0.0%
Oregon	6	0.9%	5	0.8%	1	0.5%
Pennsylvania	30	4.3%	24	4.1%	10	5.3%
Rhode Island	1	0.1%	1	0.2%	1	0.5%
South Carolina	2	0.3%	2	0.3%	1	0.5%
Tennessee	3	0.4%	3	0.5%	1	0.5%
Texas	41	5.8%	25	4.2%	9	4.8%
Utah	1	0.1%	1	0.2%	1	0.5%
Vermont	3	0.4%	3	0.5%	0	0.0%
Virginia	9	1.3%	9	1.5%	5	2.7%
Washington	9	1.3%	8	1.4%	5	2.7%
Washington DC	9	1.3%	7	1.2%	3	1.6%
Wisconsin	65	9.3%	61	10.3%	21	11.2%
Wyoming	1	0.1%	1	0.2%	0	0.0%
Grand Total	701	100.0%	592	100%	188	32%

A Pearson's coefficient test was done on the two lists and found a 96% correlation between the two lists. This test shows that the distribution by state of the survey population closely matches the distribution by state of the results.

CHAPTER 5: SURVEY RESULTS

This survey collected information to determine whether BIDs support the idea of government without government. This was done by examining whether BIDs respond to market and governmental failure; whether they truly have independence from government; whether they are quasi-public organizations, and other features of government without government.

There has been only one national survey of business improvement districts and that was conducted some ten years ago. One of the purposes of this survey was to provide a current picture of how many business improvement districts are there, how they function and what services that they provide.

Extreme Growth in the Number of BIDs

In his 1997 survey, Mitchell (1999) found 404 BIDs in the United States while this study identified 701 BIDs. The two studies use slightly different definitions, with Mitchell's being slightly less restrictive than the definition used in this study. Despite this, the two studies are very comparable. It can be estimated that the number of BIDs grew 76% between 1997 and 2007 by comparing the results of this study against the

Mitchell study. This is a staggering amount of growth given the strong anti-government and anti-tax sentiments within the United States during this period. In this case, quasi-government is much more accepted than traditional government.

Largest Growth of BIDs in California but Substantial Growth in Many States

Each state must approve a model for the creation of BIDs. Once enabling legislation is approved, each municipality is free to adopt or not adopt the BID model. Because of this, it is useful to look at BIDs by state. The table below shows the change in the number of BIDs by state between the 1997 Mitchell survey and the survey conducted for this dissertation.

Because no national inventory exists, each survey was challenged to identify all the business improvement districts in the United States. Because of this, it is expected that there are some discrepancies. The other source of discrepancies is small differences in the definition of business improvement districts. This survey looked only at organizations that were funded by a mandatory fee or tax. In Florida, some BIDs are funded with tax increment financing, which means that not all organizations pay and not all organizations pay uniformly. Those were excluded from this survey and included in the Mitchell survey. In addition, in Minnesota, districts do not have separate independent organizations but are just advisory boards to the City, which met the requirements of the Mitchell survey but not this survey. Other discrepancies of one or two organizations in a state are probably due to slight undercounts by the survey done for this dissertation. Despite these small discrepancies, the information between the two surveys shows remarkably similar data.

Table 5: Comparison of the Distribution of Business Improvement Districts by State, Mitchell 1997 Survey vs. Survey Population

Number	Mitchell Survey	Current Survey	Variation
Alabama	1	2	1
Alaska	1	2	1
Arizona	3	5	2
Arkansas	2	1	-1
California	73	190	117
Colorado	7	18	11
Connecticut	3	6	3
Delaware	1	1	0
Florida	12	7	-5
Georgia	10	15	5
Hawaii	0	5	5
Idaho	2	2	0
Illinois	11	27	16
Indiana	2	3	1
Iowa	10	10	0
Kansas	2	1	-1
Kentucky	1	1	0
Louisiana	3	3	0
Maine	1	2	1
Maryland	2	8	6
Massachusetts	1	4	3
Michigan	0	8	8
Minnesota	3	0	-3
Mississippi	1	1	0
Missouri	3	13	10
Montana	2	5	3
Nebraska	1	2	1
Nevada	1	0	-1
New Hampshire	1	1	0
New Jersey	35	55	20
New Mexico	0	1	1
New York	63	79	16
North Carolina	32	31	-1
North Dakota	0	0	0
Ohio	7	9	2
Oklahoma	1	3	2
Oregon	8	6	-2
Pennsylvania	11	30	19
Rhode Island	0	1	1
South Carolina	2	2	0
South Dakota	0	0	0

Tennessee	2	3	1
Texas	10	41	31
Utah	1	1	0
Vermont	1	3	2
Virginia	10	9	-1
Washington	4	9	5
West Virginia	0	0	0
Wisconsin	54	65	11
Wyoming	0	1	1
Washington, D.C.	3	9	6
Grand Total	404	701	297

In looking at the change in the number of BIDs by state, several trends stand out. First, BIDs seem to be expanding in states that are perceived to have issues with the effectiveness of local government. The largest numbers of new BIDs are in California, with an increase of eighty-six between 1997 and 2007. In California, local government has been hampered by limitations imposed by Proposition 13, Proposition 218 and other referendum initiatives. (Chapman, 1998) BIDs provide a way of getting around Proposition 13 and other anti-government initiatives, allowing an expansion of key government services without expanding government itself.

Washington D.C. has a similar issue with the effectiveness of its local government. Much of the property base in Washington DC is owned by the federal government, which does not pay property taxes. This has resulted in some of the highest property taxes in the country and a government that has had substantial issues with management. (Powell, 1997) BIDs have been seen as a way of addressing the poor level of governmental services without becoming entangled with the issues of Washington DC itself.

BID's have been expanding in the nation's three largest regions, New York City (including portions of the region that extend into New Jersey), Los Angeles and Chicago.

This has been done because these large cities have recognized the difficulty that they have with meeting local variations in demand for services. For example, in New York City, Mayor Rudy Giuliani explicitly promoted the creation of BIDs to provide a mechanism for providing government services at a sub-municipal level in a way that the overarching government could not. (Martin, 1994) These same forces are at work in Los Angeles and Chicago. (Caruso & Weber, 2006)

A third trend in expansion of BIDs is that a handful of states are promoting BIDs as part of their *Main Street Program*. The *Main Street Program* is a program created by the National Trust for Historic Preservation designed to help smaller towns revitalize their commercial areas. The program creates a forum to for the planning for and implementation of public goods benefiting businesses, activities not provided by government. The "Four Points Program" organizes local businesses, creates a promotion program, creates an economic blueprint for the downtown and identifies needed physical improvements. These programs are often created because citizens frown on using their tax dollars to promote businesses. BIDs are often a tool for funding both physical improvements (which have been traditionally been the role of local government) and promotion (which has traditionally been the role of the Chamber of Commerce). Wisconsin, Missouri, Michigan, and Pennsylvania all have strong Main Street programs which promote BIDs for small town revitalization and all have had substantial expansions in the number of BIDs in their states.

Local governments do not want to be perceived as raising taxes, so they create districts with narrowly defined improvements which are then paid back by properties within that district. Colorado has taken this to an extreme, currently having seventy-seven different types of special districts - BIDs being one. Bonds are issued, capital investments made, and they are repaid by a special assessment by the district. This avoids having general districts such as cities or counties issue debt. Other traditional BID services are also provided, but a major impetus is funding of capital improvements.

Last, as is typical of innovation expansion, adoption occurs near other adopters. BIDs in a state often begat more BIDs.

BIDs are the Norm in Large Cities

In 2007, business improvement districts are the norm, not the exception for large urban areas. Forty-four of the fifty largest cities in the United States have business improvement districts.

Table 6: Top 50 Largest US Cities with BIDs

New York, New York
Los Angeles, California
Chicago, Illinois
Houston, Texas
Philadelphia, Pennsylvania
Phoenix, Arizona
San Antonio, Texas
San Diego, California
Dallas, Texas
San Jose, California
Detroit, Michigan
Jacksonville, Florida
San Francisco, California
Columbus, Ohio
Austin, Texas
Memphis, Tennessee
Baltimore, Maryland
Charlotte, North Carolina
El Paso, Texas
Milwaukee, Wisconsin

Seattle, Washington
Denver, Colorado
Louisville Kentucky
Washington, DC
Nashville Tennessee
Portland, Oregon
Oklahoma City, Oklahoma
Tucson, Arizona
Alburquerque, New Mexico
Long Beach, California
Atlanta, Georgia
Fresno, California
Sacramento, California
New Orleans, Louisiana
Cleveland, Ohio
Kansas City, Missouri
Mesa, Arizona
Omaha, Nebraska
Oakland, Californa
Miami, Florida
Tulsa, Oklahoma
Honolulu Hawái
Colorado Springs, Colorado
Arlington, Texas

Table 7: Top 50 Largest US Cities without BIDs

Indianapolis, Indiana
Fort Worth, Texas
Boston, Massachusetts
Las Vegas, Nevada
Virginia Beach, Virginia
Minneapolis, Minnesota

Wide Adaptability of the BID Model

One result of the survey is that it is possible to see the breadth of organizations that are created through the BID mechanism. The largest organization surveyed was Center City Philadelphia, which encompasses 5,000 businesses and has revenues of $12 million. Its service area is 180 square blocks with 3600 properties. On the other extreme, West Racine Business Improvement District #2 has 50 businesses and raised $18,500 in 2007 through its BID. The average funding from a mandatory tax or fee was $2.8 million but the median was $234,000. It was not possible to do an average for the number of businesses or blocks in a BID area.

This shows that the BID model has wide adaptability across a large number of applications, which is another reason for its rapid expansion. Small towns can use it for a limited number of services while large cities can use it for a much-expanded set of services. Budget levels can be easily adjusted to meet local needs.

This adaptability is key in BID expansion. California, Pennsylvania, Texas, and Washington DC recently have passed laws enabling some form of a "residential BID." If this form of a BID becomes successful, there could be even more rapid expansion of this model throughout the United States.

Few BIDs Have Been Terminated

The durability of the BID model can also be shown by the small number of BIDs that have been terminated. During the search for BID organizations, an attempt was also made to identify BIDs that had been disbanded to understand how frequently this occurs. Five organizations were identified. These organizations were the Allentown Downtown Improvement District Authority (Pennsylvania), Flint Downtown Business Improvement District (Michigan), the Bakersfield Downtown Business and Property Owner's Association (California), the Highline BID/Crystal Crossings (Lakewood, Colorado), and the 25th Avenue Business Improvement District (San Mateo, California). The Allentown and Flint BIDs were disbanded because of the poor economy in those locations. The other three BIDs appear to have been disbanded because it was decided they were no longer needed as local government was able to fulfill these needs. This is an extremely small number of organizations, about three quarters of one percent, which have been terminated.

Property Value Based Funding Mechanisms Most Prevalent

There are a wide number of alternatives for funding BIDs. Property taxes, property-based special assessments, license taxes, sales taxes, and mandatory association fees are the usual alternatives for allocating the costs of BIDs back to businesses in the district. The most prevalent method is a special assessment followed by a direct property tax. The two methods comprise eighty-nine percent of the total number of methods reported. Both methods are based on the value of property. Typically, a rate is set based per $1000 of property value. Revenues are collected through normal property tax processes. This keeps administrative overhead low and provides for an efficient system for dealing with scofflaws. It also means that larger businesses pay more and smaller businesses pay less. This helps match benefit to payment.

Table 8: Source of Mandatory Tax or Fee

	Percent	Responses
Property tax	29.2%	50
Special assessments	57.9%	99
Business license tax	9.9%	17
Area sales tax	2.3%	4
Association fee	0.6%	1
	100%	171
Did not respond		17

BID Governing Boards Typically Extremely Large

Edward Hall (1976) and many others argued that the optimal size for a group of decision-makers is eight to twelve people. More people mean that communications between individuals becomes difficult, that reaching agreement can be complex due to the large number of perspectives, and accountability is difficult due to the number of persons involved. (Hall, 1976)

61.5% of BID boards have twelve or more members. 23.7% have twenty or more members. Eight percent have thirty or more members. These large boards can provide more persons with a “seat at the table” but can also lessen accountability for BID actions due to the large number of persons involved. It can be difficult to know who to hold accountable with such large boards.

Table 9: Number of Board Members

Members	Total
3	1
5	5
6	1
7	13
8	7
9	23
10	7
11	8
12	3
13	9
14	5
15	24
16	5
17	6
18	9
19	3
20	3
21	3
22	1
23	6
24	3
25	4
26	2
27	1
28	2
29	1
30	5
31	2
33	1
34	1
35	4
40	1
Grand Total	169

BIDs Respond to Market Failure

One reason given for the formation of government is to provide public goods and services. Public goods are market failure when something is provided for one person, it is provided for all. No market mechanism exists to allocate the cost of a good to all beneficiaries. Because of this, these services are typically provided by government so they can be funded with a general tax. In this way, all beneficiaries pay.

Survey results show that BIDs do undertake activities that produce public goods. There are three areas that BIDs typically provide public goods: maintenance and management of public space, public safety, and the promotion of business. When litter is picked up, graffiti is removed, sidewalks are shoveled, and flowers are planted, all benefit. Likewise, when security officers watch crowds, when criminals are arrested, and when crime information is shared, all benefit. These two functions have typically fallen to government. The third activity, marketing, also shows market failure. When one business promotes an area, all benefit. This activity has traditionally been the function of chambers of commerce, working without a mandatory tax. This has created substantial free rider problems, as businesses do not have an incentive to participate. BIDs are able to market areas, thereby benefitting all businesses, but also tax all benefitting businesses, correcting the market failure experienced by chambers of commerce.

The data below shows the prevalence of BIDs addressing market failure

Table 10: Public Space Maintenance Activities

Service	BID Provides	Percent	Total Responses
Litter and graffiti removal	90	74.4%	121
Sidewalk washing/snow shoveling	73	61.9%	118
Grass and tree cutting, flower planting	72	59.5%	121
Streetscapes/lighting/street furniture installation	63	51.6%	122
Directional signage	45	38.1%	118
Rubbish collection	44	35.8%	123

Likewise, BIDs which are legally private organizations frequently provide activities which manage public space, also traditionally the function of government. 45.7%% manage street performances while 45.9% manage sidewalk vendors. Twenty-five percent manage loitering and 24.1% manage sidewalk vending. A small number of BIDs enforce some building codes, functions traditionally provided by city planning departments.

Table 11: Public Space Management Activities carried out by BIDs

Service	BID Provides	Percent	Total Responses
Development of urban design/facade guidelines	51	45.9%	111
Management of street performances and artists	48	45.7%	105
Management of loitering	28	25.0%	112
Sidewalk vending management	26	24.1%	108
Enforcement of facade or design requirements	20	18.3%	109
Code compliance	18	15.4%	117

BIDs also undertake public safety activities, another traditional function of government. 52.3% said they provided non-uniformed security personnel and 45.7% provided uniformed security guards. One thing that is striking is only 19.5% of respondents said that they used public employees. For police departments, this means that there is now a public and a private security force within their city. No longer is public safety purely the function of government. There is now a quasi-governmental entity also providing public safety. This adds a new layer of complexity to policing.

In addition, a small number of BIDs have ventured into the court system, either working directly with the court system or supervising persons sentenced from court. Direct intervention with the court system and probation work has also been traditionally reserved to government and not the private sector.

Table 12: Security Services Provided by BIDs

Service	BID Provides	Percent	Total Responses
Ambassadors or other non-uniformed program	46	52.3%	88
Community policing program	48	45.7%	105
Private uniformed security guards	28	35.0%	80
Electronic security/ security cameras	19	20.9%	91
Sworn police officers	23	19.5%	118
Supervision of persons serving a sentence	15	16.9%	89
Community court	4	4.5%	88

BIDs still also carry out functions of chambers of commerce and other business promotion. Almost all BIDs (93%) are involved in marketing and hospitality activities. One way to look at this is that these activities are outside the realm of what government does even though these activities provide public goods to businesses in the district. Another way is that because businesses have not had a direct voice in government, government has not provided necessary services to businesses. Once businesses are given a government structure that is responsible to them, these services are added to the bundle of services provided by government.

Table 13: Marketing and Hospitality Services provided by BIDs

Service	BID Provides	Percent	Total Responses
Marketing/advertising campaigns	111	93.3%	119
Festivals and events	104	88.1%	118
Maps and area information	98	84.5%	116
Holiday decorations	95	81.2%	117
Street guides or ambassadors	65	66.3%	98
Tourism kiosks	44	45.8%	96

BIDs Respond to Government Failure

Government failure is the government corollary to market failure. Government failure occurs when there are systemic reasons that government is unable to respond adequately to an issue. As part of this survey, a number of leading business improvement district leaders and theorists were asked why BIDs were created. What kept government from providing an adequate level of funding for public safety and maintenance of public spaces, which led to the creation of business improvement districts? These leaders identified a number of factors.

Elected officials are selected by citizens, not businesses. Typically, businesses are only secondary actors in elections. Because of this, elected officials tend to give priority for services to residential areas over commercial areas. This can leave business areas without the level of services that they need. BIDs allow businesses to have a direct say in the levels and types of services provided to them. (Levy, 2007)

At the same time, commercial areas tend to have high levels of traffic and need higher levels of services than business areas. Political processes are geared to treating everyone in the same way, making it difficult for elected officials to allocate services at a higher level in one location than in another. The result is that businesses areas often cannot get the level of service that they need. In this case, many business areas were willing to pay for more service but government was simply unable to respond to this micro-level demand and willingness for taxation. BIDs are the vehicle for these organizations to get higher levels of services. (Caruso, 2007) (Houstoun, 2007)

Even if they were responsive, local government also struggles with funding levels. There is no direct link between taxes and services in the same way that there is a link between private purchases and payment. Because of this, it is hard for the average citizen to weigh the costs of taxes and the benefits of government. Regardless of how much they pay, most citizens believe they pay too much for governmental services. This can lead to the under-provision of governmental services even when there is demand for higher levels of service. Businesses may have wanted more service but government was not able to respond. Business improvement districts allow businesses to tightly link benefits with taxation levels and have a much higher level of transparency than local government. (Caruso, 2007; Lueck, 1994)

Another issue is that government is slow and inefficient compared to business. The weight of public process and government rules means that it takes much longer for government to act and that government services can be more expensive or more complicated than if the same services were provided by a private entity. Government also struggles because elected officials want to please all of their constituents. This can lead to government that is bloated or with unclear mandates. BIDs allow governmental services to be provided without the complications that come along with government provision of services. (Feehan, 2007)

Businesses, used to more efficient service delivery, often have a distrust of government. Because of this, business wanted to use business models for provision of services rather than government models. These features include narrowly cast mandates, small administrations, private procurement of services, avoidance of government overburden and periodic reviews so organizations are always at risk of being terminated if they underperform. These features allow BIDs to function somewhat like private organizations. (Feehan, 2007)

Last, corruption exists in many areas of local government. Elected officials often demand illegal spiffs or legal campaign donations in a quid pro quo. Removing policy governance from the regular political processes and giving it only weak democratic controls meant insulating it from traditional forms of corruption. BIDs have had remarkably few instances of corruption when compared to regular government. This is aided by the fact that most BIDs are quite small and narrowly cast, leaving little room for corruption. (Feehan, 2007)

Empirical evidence supports these ideas. In looking at the change in the number of BIDs by state, California has had by far the largest increase in the number of BIDs, with an increase of 160% between 1997 and 2007 to 190 BIDs. California also has local government hampered by limitations imposed by Proposition 13, Proposition 218 and other referendum initiatives. (Chapman, 1998) BIDs provide a way of getting around Proposition 13 and other anti-government initiatives, allowing an expansion of key government services without expanding government itself.

Washington D.C. has a similar issue with the effectiveness of its local government and an increase in the number of BIDs from three to nine between 1997 and 2007. Much of the property base in Washington DC is owned by the federal government, which does not pay property taxes. This has resulted in some of the highest property taxes in the country and some of the lowest levels of services. In addition, it has had a local government with substantial management issues. (Powell, 1997) BIDs are a way of addressing the poor level of governmental services without becoming entangled with the management issues of the city itself.

The growth of BIDs in Texas appears to stem from the same issues of local governments inability to address problems. BIDs in Texas have grown almost four-fold, from ten to forty-one in the last ten years. Local government in Texas is severely constrained by state government. The state limits cities in the property taxes they may impose and allows citizens to seek a rollback election to nullify any tax increase should a tax increase be put in place. Taxing systems are substantially regressive and most municipal construction projects are financed by bond sales which require citizen approval. The result is a hamstrung local government. (Dye, 2007) This has created pressure to use private service providers and special service districts, exactly how BIDs function, to avoid the constraints put on local government by the state.

BIDs have been expanding in the nation's three largest regions, Greater New York City (including portions of the region in New Jersey), Greater Los Angeles and Greater Chicago. This has been done because these large cities have recognized the difficulty that they have with meeting variations in demand for services. For example, in New York City, Mayor Rudy Giuliani explicitly promoted the creation of BIDs to provide a mechanism for providing government services at a sub-municipal level in a way that the overarching government could not. (Martin, 1994) These same forces are at work in Los Angeles and Chicago. (Caruso & Weber, 2006)

Local governments do not want to be perceived as raising taxes. One alternative is to create special districts with narrowly-defined benefits funded with a district-wide tax. This avoids raising general levies. Colorado has taken this to some extreme, currently having seventy-seven different types of special districts, BIDs being one. Colorado has increased its number of BIDs from seven in 1997 to eighteen in 2007.

BIDs are a Response when Both Markets and Government Fail

It is clear that business improvement districts exist to respond to market failure. They step in to provide public goods when the market does not. It is also clear that BIDs exist to respond to government failure. There are clear reasons why government struggles to respond to the needs of businesses and BIDs provide an alternative to government. Survey data shows that growth of the BID model has been greatest in areas where local governments struggle to provide adequate services. BIDs are a response when both markets and government fail.

BIDs as "Public" or "Private" Organizations

The theoretical section of this survey argues that it is not always possible to simply categorize some organizations as "public" or "private." Organizations created to meet government failure can fall into a fuzzy middle between public and private.

Defining public versus private in the real world was very difficult because BIDs mix public and private. As Chuck Law put it, “Staff skip back and forth between public and private, landing wherever it is advantageous at the time.” In some cases, staff literally code part of their time to the public community development organization and other time to the private BID. (Law, 2007) In Colorado, every BID is legally a governmental entity. The governmental entity may not have any staff however, contracting for all of its services, including policy setting, with a private non-profit. (Law, 2007) In New York, the BID may contract with a private for-profit to carry out all of their activities, including both policymaking and policy implementation roles. In Chicago, policy setting and administration have been separated. Legally, the BID is a public body constituted by the City to determine taxation levels and bundles of services. Service implementation is then carried out by the City contracting with a private non-profit. Both are considered the “business improvement district.” Even though policymaking and policy setting are officially two entities, up to one-third of the membership of the public policy board can be on the board of the private service implementer. (Caruso, 2007) Even though there is an entity that is legally private, it is clear that BIDs sit in the fuzzy middle between public and private.

The difficulty with a “public” vs. “private” dualism was shown explicitly in the results of this survey. The survey was designed to look at organizations that are legally private. Every BID in this dataset was verified to have a private entity that functioned as the BID. Even though this was done, 27% of respondents identified themselves as government entities. This was not in error on the part of the respondents – it shows the limitations of the “public” and “private” dualism. Portions of BID activities can be considered "public" and other activities can be considered "private." Depending on the individual, exactly who they work for, and the timing, respondents chose one alternative or another. Many survey comments were received about it being inappropriate to not have a "quasi-public" alternative instead of just the dualism of "public" and "private." Because of this, there may have been places where this survey did not accurately capture the rich texture in how BIDs move between public and private.

Based on these survey results, it is clear that BIDs are quasi-public organizations.

BIDs are Free of Market Controls

Seventy-seven percent of BIDs surveyed indicated that they are non-profit organizations. The remainder indicated that they are governmental organizations. No entity reported being a for-profit organization, an indicator that these organizations are not competing in the marketplace.

Also, BIDs are funded with a mandatory tax or fee, which means that they do not have to compete in the private market for donations or grants for their primary source of funding. In fact, eighty-nine percent had some sort of property-based mandatory tax as their primary revenue source. Ten percent of organizations had a mandatory business license tax. Both of these items show that BIDs are not under market controls.

BIDs Have Substantial Independent Policy-setting Authority Separate from Government

A set of questions were asked about BIDs ability to set their own policy separate from government to understand the extent of their independence. Eighty-eight percent of respondents reported that BIDs choose what services they will provide and ninety-one percent reported that they decided the level of services that they will provide. These results support the assertion that BIDs have substantial independent authority to decide what services they will provide.

BIDs are also free to choose how they achieved their results. 83.8% said they have the authority to set their own budget and 92.2% said they had the authority to make their own hiring decisions. These responses show that BIDs have substantial independent authority to decide how they will provide services.

Forty-four percent of BIDs reported that they set their own tax revenues while forty percent said they recommended a tax level but that government decides. Only 18.7% of BIDs said that they did not control the level of their major revenue. This shows that many BIDs have substantial independent authority over taxation and funding levels.

Table 14: BID Policy Independence

Does the BID:	% Yes	% No	BID recommends, government decides	Responses
Make choices about the bundle of services provided?	88.0%	1.8%	10.2%	167
Make choices over the level of services provided?	91.0%	0.0%	9.0%	167
Set its own budget?	83.8%	1.2%	15.0%	167
Make personnel/hiring decisions?	92.2%	5.4%	2.4%	167
Set its own level of tax or assessment revenues?	44.0%	18.7%	37.3%	166

A follow-up question was asked to see how much control government exerts on BIDs. Previous researchers found that government controls are rarely used, leaving BIDs substantially free to chart their own course. (Goktug Morcol & Patrick, 2006) Most BIDs rely on government to actually levy their tax or fee, which means government has a natural intervention point into BID activities. If a BID is not doing what a City wants, a City can authorize a different level of funding. BIDs were asked how often government has set a levy separate from what the BID requested. Only 6% said that government had ever set a levy different from what the BID requested. This substantiates the argument of Morcol and Patrick that BIDs have substantial policy-setting authority separate from government.

Table 15: Has Government Ever Set a Different Levy from the Amount Requested?

	Percent	Number
Government doesn't levy funding	5%	9
No	89%	149
Yes	6%	10
	100%	168

Bids are Free of Market Controls and Substantially Free of Government Controls

It is clear from the survey information that BIDs are free of market controls. Survey data also shows that BIDs have policy-setting independence from government, letting them operate substantially free of government controls also.

Most BIDs provide Performance and Financial Information to Government

One control that government puts on BIDs is the requirement to submit annual reports to government. 80% of organizations said they were required to report performance information to government and 91% said they were required to report financial or budget information.

It is not clear that this creates accountability, however. Other researchers have found reporting requirements are pro forma and rarely used by government. (Goktug Morcol & Patrick, 2006) Performance measures were found to be substantially inadequate, making it difficult for government to use this information to hold BIDs accountable. (Caruso & Weber, 2006; G. Morçöl & Zimmermann, 2006) Therefore, even though BIDs do submit reports to government, it is not clear that this information is used to provide oversight of BID activities.

Laws Governing the Activities of BIDs Restrict A Small Number of BIDs

One control is government legislation that specifically governs the activities of BIDs. Most BIDs have laws governing their activities. These laws most often come from state statutes and less frequently from city statutes.

Table 16: Level of Government Regulating BIDs

Level of government with laws affecting BIDs	Responses	Percent	Total Responses
State law or statute	122	81.3%	150
City law or statute	82	54.7%	150
Other level of government law or statute	5	3.3%	150
No laws specifically govern my organization	6	4.0%	150

About two-thirds of BIDs said they are restricted from certain activities. By far, the largest number said that they were restricted from lobbying, a requirement that comes both from federal non-profit status as well as local or state laws. This restriction protects government from organizations using government funding to influence government.

There was a smattering of other restrictions. About ten percent of respondents said that they were restricted to a specific list of activities as set out by state statute. Another ten percent stated that they were required to provide only services that were named in a plan submitted to a unit of government. About ten percent mentioned that they are prohibited from replacing a service already provided by a city or that the city is barred from ending services it has been providing. Several mentioned they were barred from borrowing money for more than one year, did not have the power of condemnation, or were banned from taxing residential or agricultural property. In addition, several mentioned being banned from doing anything not specifically in either state law or in management plans.

Table 17: BIDs with laws restricting them from activities

Response	Responses	Percent
No	51	31.7%
Yes	110	68.3%
	161	100%

About 30% of BIDs said that laws required that they carry out certain activities. For the respondents who listed what laws required, the list is very similar to the list of services in the description of the services provided by BIDs. The list is also very specific as to the services that can be provided.

Table 18: BIDs with laws requiring them to carry out certain activities

Response	Responses	Percent
No	115	68.9%
Yes	52	30.5%
	167	100%

Other than lobbying, the majority of BIDs are free to choose the bundle of services that they want. Most are neither restricted to a set number of activities nor banned from certain activities. This fits with the description of government without government where organizations are given independent policy authority from government.

Time Limitations on BID Funding and Organizations Widely Used

Another type of government control over BIDs time limitations either on the funding for the BID, the BID itself. By doing this, government forces a periodic review of the BID and its activities. It also often requires an affirmative action on the part of government for a BID to continue. 61.4% of BIDs have funding that expires and requires renewal.

Table 19: BIDs with Funding Time Limits

	Responses	Percent
Expires	102	61.4%
Exists indefinitely	64	38.6%
	166	100%

There are 46.7% of BID organizations that require renewal. This also forces a periodic review of BID activities.

Table 20: BIDs with Organizational Time Limits

	Responses	Percent
Expires	77	46.7%
Exists indefinitely	88	53.3%
	165	100%

These are widely used controls. When these two questions were looked at together, 84.4% of organizations had either the authority for their organization or the authority for their funding expire periodically and require renewal.

Several people interviewed for this paper said that one reason that BIDs are successful is that they will be terminated if they are not successful. Businesses, used to having unsuccessful organizations being terminated as part of the normal market cycle, have insisted on a period termination process to mimic market cycles. This is different from government which lasts indefinitely and may be part of why BIDs are perceived to be more efficient and effective than government. Several persons interviewed also said that these review points are not pro forma but that BIDs feel that they are at risk each time these come up.

Virtually All BID Board Members have Term Limits

Only two percent of BID governing board members hold their seats indefinitely. This means that virtually every BID board member undergoes periodic review of his or her performance.

Seventy-two percent have terms that are three years or less and thirty-seven percent have terms of two years or less. This means that board member performance is evaluated frequently, which could lead to higher levels of accountability. It is not clear that government takes advantage of this potential performance review. Researchers looking at how BIDs actually work found that members of BID governance boards are picked by business leaders and rubber-stamped by local government. (Goktug Morcol & Patrick, 2006)

Table 21: Governing Board Member Term Lengths

Term Lengths	Responses	Percent
One year	8	4.6%
Two years	41	23.4%
Three years	74	42.3%
Four years	20	11.4%
Five years	5	2.9%
Varies by group	20	11.4%
Indefinitely	7	4.0%
	175	100.0%

Variety of Methods of Selecting Board Members Used, bringing Varying Opportunities for Governmental Control

There are four ways of selecting policy board members. The most prevalent is having elected bodies appoint BID board members, with sixty-seven percent of BIDs using this method. Mayors and city councils are the typical appointing bodies. This does give government the right to remove BID members that do not act in accordance with government's wishes, creating a clear line of accountability back to sovereign government. It also, however, creates a long and convoluted chain of accountability for a citizen who wants to hold BID members accountable.

Direct election of BID board members by businesses within the district is the second most prevalent way of selecting board members, with forty-five percent of BIDs using this method. This creates a line of accountability directly from the BID board to the businesses impacted by the BID. Theorists like Houston (1997) argue this brings the most accountability. Even so, less than fifty percent of boards use this method.

The least accountable method of selecting BID governing boards is having the existing board appoint new board members. This method is almost as prevalent direct elections, with forty-two percent of BIDs using this method. This method provides no direct accountability by either government or the businesses.

The last way of providing BID board members is by having elected officials directly on BID boards. This provides a direct tie back to government but only 9% of BIDs use this method and none have elected officials as the majority on their boards.

One approach that may increase accountability is combining different methods of selecting board members. On one particular board, some members may be appointed, some elected, and some self-selected. These different approaches may provide better accountability by balancing the shortcomings of various selection methods and also by guaranteeing different perspectives. Forty-six percent combine methods of board member selection.

Table 22: Method of Governing Board Member Selection

Method of selection	Number	Percent
Appointed by state governor	0	0.0%
Appointed by state legislature	2	1.7%
Appointed by city mayor	43	35.8%
Appointed by city council	43	35.8%
Appointed by another level of government	17	14.2%
Selected by organization's existing governing board	61	50.8%
Members are elected officials	10	8.3%
Elections held within the service district to select representatives	58	48.3%
Representatives from other boards	2	1.7%
Total Responders	120	100%

Majority of BID Boards Have Specific Groups Represented, Increasing Accountability

Another way of increasing accountability is to make sure that specific groups impacted by BIDs are represented on BID governing boards. Sixty-seven percent of BIDs are required to have individuals representing specific groups on their governing board. Groups represented vary from BID to BID and are listed in Appendix B.

The largest source of this requirement is organization's own operating documents. Only 44.5% of organizations that have specific groups on their governing boards do so because they are required to do so by government. 55.5% do it because their own organization's constitution or operating plans require it.

Table 23: Source of Requirement that Groups be represented on Governing Boards

	Responses	Percent
State legislation requires certain groups be represented	20	16.8%
City legislation requires certain groups be represented	18	15.1%
Other unit of government requires certain groups be represented	1	0.8%
The organization's constitution or operating plan	66	55.5%
	105	100%

A Small Number of BIDs do not rely on Government to Levy a Tax or Fee, Removing a Critical Opportunity for Government Oversight

Every BID, by definition, has a tax or mandatory fee paid by businesses within its district. Typically, these taxes or fees are levied and collected by government. City government levies 68% of all of the BID taxes. County government levies 18%.

What is surprising is that 13% of organizations reported being able to levy a fee independent of government approvals. The decision to levy a tax or fee for a BID is a critical decision-making point for local government. Levying the tax or fee means an implicit approval of the activities of the BID. Organizations that do not have this approval requirement from local government have substantial freedom from government oversight. Only a relatively small number of BIDs have this freedom however.

Table 24: Level of Government Levying Tax or Fee on Behalf of BID

	Percent	Number
City government	68%	79
County government	18%	21
Another level of government	1%	1
Our organization is able to levy a fee itself	13%	15
	100%	116

Non-Profit Status Means Minimal Federal Oversight

Seventy-seven percent of organizations surveyed identified themselves as non-profit organizations. BIDs filed under three different sections of IRS code. 44.8% were 501 (c) (3), 11.9% were 501 (c) (4) and 38.1% were 501 (c) (6). 5.2%% filed under more than one designation.

Table 25: Summary of Survey Respondents by Non-Profit Status

Type of organization	Percent	Responses
501 (c)(3) Charitable, non-profit, religious, and educational	44.8%	60
501 (c)(4) Political education organizations	11.9%	16
501 (c)(6) Business leagues and chamber of commerce	38.1%	51
501 (c)(3) and 501 (c)(4)	0.7%	1
501 (c)(3) and 501 (c)(6)	3.7%	5
501 (c)(3), 501 (c)(4) and 501 (c)(6)	0.7%	1
Total	100.0%	134

These classifications represent differences in how BIDs can act. 501(c)(4) organizations are permitted to lobby while 501(c)(3) and 501(c)(6) are prohibited from any substantial lobbying. Donations to 501(c)(3) organizations are tax-deductible while donations to the two other types of non-profits are not, which can affect voluntary donations. Donations to 501(c)(6) organizations are not required to be disclosed while donations under the other two may be.

Non-profit status brings certain governmental controls. Organizations have to conform to federal non-profit rules or they risk losing their non-profit status. Reporting requirements include sources and uses of funds, program service accomplishments, assets and liabilities, officers and key employees, changes in activities or methods of conducting activities; lobbying activities, income-producing activities, and relationship of activities to tax-exempt purpose. This provides some small amount of oversight to BIDs and makes certain standard information available to citizens who want to search it out.

BIDs Voluntarily Follow Some Critical Processes to bring Accountability to BID Activities, but not all

The way that government functions creates accountability. Civil Service is designed to ensure that every citizen has equal access to employment by government. Government procurement and minority business laws exist to provide transparency in purchasing decisions and to ensure every business has equal access to government contracts. Open meeting laws exist to ensure that every citizen has the ability to participate in government policy setting. Open accounting and public disclosure of pay provides every citizen with the ability to examine the operations of government. Organizations that follow these practices provide citizens with the ability to know what their government is doing and to give voice to issues with government activities.

Some BIDs are required to function in some ways like government. These requirements come from state or local legislation. Survey questions were asked to examine how often BIDs are required by government to function like government. Of respondents that identified themselves as private, the most prevalent requirement was to follow open meeting and open accounting rules. The least prevalent was to provide preference to minority businesses.

Table 26: BIDs Covered by Laws Requiring Traditional Government Practices

	Responses	Percent	Total
Open meeting laws	128	80.5%	159
Open accounting laws	118	78.1%	151
Public disclosure of pay	56	39.4%	142
Government procurement laws	56	37.8%	148
Anti-nepotism laws	45	32.1%	140
Civil Service laws	34	23.8%	143
Minority business preference	33	22.8%	145

Even though BIDs are not legally required to follow traditional government practices, many do because it is perceived as good business practice for an entity providing public services. For example, eighty percent of organizations say that they are covered by open meeting laws but eighty-eight percent of organizations have meetings open to the public.

Even so, some of the other features of traditional government practices are not as prevalent in BID practices. For example, in government it is not enough to just hold open meetings. Agendas must be posted so citizens know what will be discussed at a meeting. Prior notification is given if a meeting will be closed to the public. Meeting minutes are published so citizens can know what has occurred at meetings. Members are prohibited from holding secret meetings away from the public. For BIDs, although most hold open meetings, less than half post agendas, publish meeting minutes or prohibit members meeting in private. BIDs only use some tools of government to bring transparency.

Table 27: BID Open Meeting Practices

	Responses	Percent	Total
Have its meetings open to the public	139	88.0%	158
Track actions taken by the board	131	85.6%	153
Publicly post its meeting times	128	79.5%	161
Publicly publish its meeting agendas	83	53.2%	156
Publicly publish the minutes from its meetings	69	45.4%	152
Only have closed meetings if it provides public notice first	56	38.6%	145
Prohibit members from meeting in private	51	34.5%	148

Transparency with financial information is also something that many BIDs are required to do but even more choose to do voluntarily. Seventy-three percent of BIDs said they were subject to rules about open books but ninety-two percent publish an annual budget and ninety percent publish a financial report.

Table 28: BID Open Books Practices

	Responses	Percent	Total
Publish an annual budget	148	91.9%	161
Publish an annual financial report	142	89.9%	158
Conduct an annual independent financial audit	131	85.1%	154
Publish annual performance information	109	72.7%	150

Even though only thirteen percent of BIDs are covered under Civil Service rules, many still follow some Civil Service-type practices. 76.3% publicly post jobs, 87.9% have written job descriptions and 84.4% interview multiple candidates for positions. Even so, less than fifty percent use competitive tests, have anti-nepotism rules, or make pay levels public and slightly more than fifty percent require board approval for hiring.

Table 29: BID Personnel Practices

BID Personnel Practices include	Responses	Percent	Total
Written job descriptions	138	87.9%	157
Multiple candidates interviewed for a position	130	84.4%	154
Publicly posting open jobs	119	76.3%	156
Interviews done by a panel	94	62.3%	151
Conflict of interest statements	84	59.6%	141
Board approval for hiring	81	53.3%	152
Competitive tests or interviews	65	45.1%	144
Make pay levels publicly available	62	40.5%	153

BID purchasing practices also show BIDs choosing to act like government at times even when not mandated to. Only 37.8% of BIDs report being required to follow public procurement practices but 76.3% use competitive procurements and 88.5% require major purchases be approved by governing boards. Yet only 23.3% provide a preference to disadvantaged or minority businesses and 16.3% publicly post procurements.

Table 30: BID Purchasing Practices

Purchasing practices that include:	Responses	Percent	Total
Approval of major procurements by your Governing Board	138	88.5%	156
Competitive bidding of major contracts	122	76.3%	160
Major procurements at sole discretion of administrators	53	36.6%	145
Preferences for disadvantaged or minority businesses	34	23.3%	146
Public notification of procurements	24	16.3%	147

Overall, BIDs have adopted some of the procedures that government follows to bring transparency and accountability to their activities. Meetings open to the public, publishing a budget and an annual financial report, and publicly posting job openings bring a level of openness to the activities of BIDs. These activities are critical to BID accountability. Some government accountability practices, however, are not widely followed. Less than 50% of BIDs publicly publish meeting agendas, provide prior notification of closed meetings or publicly publish meeting minutes. Therefore, even though some open meeting activities are carried out, there is room for expanded adoption of some processes, especially those relating to open meetings.

BIDs do not follow all the rules of government. BID theorists argue that BIDs take the most important features of government but leave behind those that would make them inflexible and slow moving like government. Data supports this perspective. Some activities like minority preference, competitive tests, public notification of procurements and banning board members from meeting in private all add time and complexity to implementation. Fewer than fifty percent of BIDs follow these practices.

Summary: BIDs Support the Idea of Government without Government

This BID survey supports the theory of Government without Government. BIDs are created to address situations of both market and government failure. They are quasi-public organizations, with clear features of both government and private organizations. They are free of market controls and substantially free of government controls, with BIDs free to determine what services they will provide, how much of the various services they will provide and the amount of taxes that will be levied to support those activities. Government does typically retain a veto over the existence of the organization and sometimes over board membership, but beyond that BIDs are substantially free to chart their own course separate from sovereign government.

This survey also shows the growing acceptance and expansion of this model. BIDs have expanded rapidly throughout the country, to the point where most large cities have at least one and the country's largest cities have dozens. Once created, BIDs are rarely terminated. This reflects the attractiveness of quasi-government approaches.

CHAPTER 6: CONCLUSIONS

BIDs are Quasi-Governmental Organizations

BIDs are private organizations with some features of government. As such, they are quasi-government organizations or quangos.

BIDs are Created when Both Markets and Government Fail

The reason for the existence of BIDs is clear. The market does not produce certain public goods and government is not able to fill this need either. BIDs provide a response when neither markets nor government can.

BIDs support the Theory of Government without Government

Government without government begins with a simple premise. There are private organizations carrying out governmental activities that do not operate under traditional contracts for service but instead have substantial policy-setting freedom separate from government. Because of their nature as quasi-public organizations, they are free of market and political control. This freedom lets society deal with problems that result from both market and government failure.

This dissertation shows that business improvement districts support this theory. This survey shows that BIDS are private organizations that provide services like maintenance of public spaces, public safety, and public infrastructure that have traditionally been provided by government. They have substantial freedom to determine their own taxation levels, service bundles and service levels independent from government. Because of this, they are free of market control and have substantial freedom from political control. This is the essence of government without government.

BIDs show Government without Government is created due to Government Failure

This survey and supporting interviews show that BIDs are created due to government failure. A service needs to be provided but the market could not provide it and government could not provide it. So BIDs are created.

BIDs address a number of different types of government failure. This survey showed that BIDs are growing fastest in California, a state that has passed many laws and referendums that hamstring local government. BIDs provide a way around local government constraints, having their own funding source and being legally separate from government. The survey also showed that BIDS are also growing quickly in the country's largest cities, where government struggles to respond to micro-variations in demand for and willingness to pay for services. BIDs allow sub-municipal variations in services and taxation, better responding to citizen needs. Businesses do not vote, which means that often they have struggle to get the political system to respond to their needs. BIDs provide a government responsive to business directly. It is difficult for citizens to match taxes with benefits, which leads to chronic under funding of government, especially local government. BIDs provide a tight match between taxes and benefits, providing easy legibility to taxpayers. Last, local government can be corrupt. Elected officials can demand either illegal bribes or legal campaign donations in a quid pro quo for government services or considerations. BIDs provide an alternative to corrupt local government as their size and scope are limited enough that there is little temptation for corruption. BIDs are created in response to government failure.

BIDS show Theory that All Organizations are either under Market or Political Control Is Wrong

Charles Lindbloom and Robert Dahl (1953), Graham Allison (1980), Barry Bozeman (2004), and others argues that there are two types of control over organizations, market and political. Private organizations are under market control and government organizations are under political control. This survey results flies in the face of this accepted doctrine by showing that BIDs are neither under market control nor under strong political control. Instead, BIDs are substantially free to chart their own course separate from market or government politics.

In many ways, however, the results of this study support Bozeman’s assertion that all organizations are public - that all organizations are influenced by political processes. Even though BIDs are private organizations free to chart their course day-to-day, typically government still retains veto control over the existence of BIDs. Government retains veto power over all organizations and even individuals in society so this is not unusual. Government's veto ability does shape the activities of BIDs, as well as all other actors in society. As such, every organization and every person is public to some degree.

Government without Government Provides an Alternative for Market and Government Failure

This BID survey shows that BIDs are quasi-government organizations that respond to both market and government failure. They are able to do so because they have substantial freedom from both markets and government. This has profound implications for public administration because it shows that there is a third way of responding beyond Friedman's government or markets. There are a wide number of issues in our society which are stalemated between a market choice and a government choice which could be addressed through this approach. Public schools are often trapped under the burden of so many democratically-derived rules that they get in the way of actually educating children. Health care reform is stuck between a non-functioning market and an unacceptable expansion of government. Highway funding is trapped between an electorate that does not want to raise general taxes and private companies who want to purchase highways because they are monopolies on travel. In all of these cases, the government without government model may provide a third alternative when pure government and pure private sector do not work. Further study is needed to explore this third option in these and other policy stalemates.

A Shattered Executive Branch and a Public Administration no longer Public

In high school civics class, we are taught that there are three branches of government: legislative, judicial and executive. The legislative branch makes laws; the executive branch carries out laws; and the judicial branch ensures laws are consistent and carried out properly. But this is not true. Government without government, specifically business improvement districts, shows that America has created a way of implementing government outside the executive branch.

This doppelganger to the executive branch is not a monolithic structure. It is government shattered, looking more like a marketplace of independent organizations working in their own separate spheres rather than the centralized structure that has defined American government in the past.

One implication of this shattering of government is that there is no one person in control. There is no mayor or president or governor at the top of a pyramid reporting to the electorate. Instead, power is scattered, held by many rather than concentrated in the hands of a few. This means there is no one individual to hold accountable for the implementation of government.

Another implication is that public employees and government contractors no longer have a monopoly over government implementation. There are separate private quasi-governmental organizations also carrying out the same activities except working for different policy boards. This can mean different personnel practices and approaches for the exact same services.

Implementation of government is now much more complex. Public managers not only have to manage their own employees and contractors - they have to manage relationships among organizations carrying out the same services within their city but reporting to different policy boards. Approaches to management like those put forward in “Governing by Network” (Goldsmith & Eggers, 2004) become much more critical when multiple organizations are carrying out the same activities within the same jurisdiction.

Public Administration Theory needs to Recognize Government by Quasi-Public Organizations

Providing government services by private organizations fundamentally means that public administrators are no longer “public.” They are not exactly private either, but a combination of public and private. Unfortunately public administration theory in the United States does not have framework for organizations that exist between public and private. That is not true internationally. In New Zealand for example, there is a framework adopted by the national government which lays out three types of organizations that provide government services: traditional hierarchical government reporting directly to elected officials, contractors to the governmental hierarchy, and government-created semi-autonomous private organizations. This theory provides a clear understanding of the uses and roles of these approaches to providing government services. The United States needs a similar comprehensive framework for quasi-government organizations like BIDs. This theory should explain when quasi-government approaches should be used, what their role should be, and what controls should be placed on them.

This is especially critical because there is a backlash against government within the United States. There is strong opposition to expansion of government and organized forces are pushing privatization. New approaches are needed, approaches that keep the best of public and the best of private to meet the needs of citizens. BIDs are one approach to doing so and others are beginning to evolve.

Heavier Burden for Public Administrators

Because democratic controls are weak or non-existent, public administrators take on a heavier burden in policy-making. Paul Appleby (1949) was one of the first public administration theorists to argue that administrators are not just tasked with carrying out policy but are also actors in shaping policy. The Minnowbrook Conference (Marini & al, 1971) took this one step further in arguing that public administrators were policy makers in their own right and that they had their own separate responsibility to the larger society. Because private organizations carrying out government are by definition separate from sovereign democracy, BID managers carry an even larger burden than traditional public administrators to ensure that the best interests of the public are being met.

Providing government services by private organizations fundamentally means that public administrators are no longer "public." In the case of BIDs, managers are not exactly private either. The skill sets are a combination of both public and private management. Training and education needs to begin to accommodate these duel needs. Rutgers University started a Certificate in Business District Management Program in

2007 which provides both aspects of private management and public management to respond to this demand but more needs to be done.

Features of Constitutional Law Need to Extend to Civil Law

Constitutional law is the law governing the operations of government and is distinct from civil law which governs the activities of private organizations. Because government without government operates under civil law, the laws controlling the activities of government do not apply to them. This allows them to act like private organizations while carrying out government activities. This legal distinction is the basis for some of their freedom of action. However, this also means that the protections contained in constitutional law developed over the last two hundred years also do not apply. (Sullivan, 1987) Organizations under government without government have more freedom to act but also less accountability.

To some degree, BIDs have chosen to function like government even though they are not compelled by constitutional law to do so. BIDs voluntarily follow processes like open meetings, open books, and performance reporting. If they began to not act in these ways, however, it may be necessary for civil law to evolve to extend government controls in constitutional law to these private organizations.

Government without Government: A Different Kind of Democracy

Plato argued that democracy would be hijacked either by the mob, swayed by emotion, or hijacked by the rich, pursing their own interests. He argued that the best approach to governance is a cadre of wise public administrators insulated from the citizenry making informed, dispassionate decisions.

Most BIDs have substantial policy-setting independent from sovereign government. This results in a situation very similar to that described by Plato. Administrators make good administrative decisions, not strongly controlled by democratic means but insulated from them. This represents a different kind of governance for government activities, one not tightly connected to democracy as we typically conceive of it. This does not means that BIDs ignore citizen concerns. In fact, evidence is that they are better able to respond without all of the constraints imposed by democratic controls.

Does this lead to better government or government out of control? Do BIDs represent government freed of special interest politics and whipsawing by public opinion or do BIDs serve special interests to the detriment of the common good? The rapid expansion of BIDs, the lack of corruption, the expansion of this model into new areas and the lack of termination of these organizations show that BIDs result in efficient and effective government even though they are insulated from the effects of democracy. It appears that citizens are happy to let BIDs function without strong democratic controls as long as they have a veto if BIDs act too egregiously.

Additional Study

Additional study is needed to expand on the concept of government without government. Other situations of government without government need to be examined. These include government organizations created at the federal level, organizations created through contracts between citizens and situations of load shifting, where government is carried out by mandating the use of private service providers.

Additional study is also needed to generalize the conclusions of this study and evaluate the efficacy of various tools for controlling organizations which have only weak democratic controls. Clearly some controls work better than others do. Research should tell us which are the most successful so these can be widely implemented.

Additional study is needed to develop further the connections between the theory of government failure and organizations that fall within government without government. Real-world examples of how and why government fails need to be developed to provide a better understanding of the pitfalls of our own form of government.

BIDs also need additional study because they are a real-world example of the theory of government without government. One question that needs further study is exactly to what degree are BIDs quasi-government. There is always some sort of government-defined district and there is always a private non-profit, but the exact relationship between the two varies substantially around the country. How these two entities work together would provide substantial insight on how government without government is implemented and how implementation varies throughout the country.

A second area of exploration is exactly what opportunities government has structured to control this type of quasi-government and how often it actually uses these tools to set policy for these organizations. This survey indicates that rarely does government step in to change policy set by BIDs. Further work is needed to understand how often government steps in and why. A related area is the investigation of why a small number of BIDs have been terminated. Were there issues of conflicting policy-setting between sovereign government and quasi-government or were there other factors? Last, an examination of the contractual relationship between BIDs and sovereign government would help to understand specifically what tools government chooses to use or not use in controlling BIDs.

Thoughts

There is a rising distrust of government. One reason is the postmodernism movement beginning in the 1960's. (R. Nelson, 2005) The postmodern movement rejected universal paradigms and brought a sense that truths are variable depending on an individual's perceptions. With the rejection of universal truths also comes a rejection of paternalistic organizations like government which impose their values and truths on individuals.

Another major factor in the increasing distrust of government has been the rise of the Chicago School of Economics. Friedman, one of its leading spokespersons, saw government's coercive power as an anathema to freedom. As such, it should be limited to the absolute degree possible. (Friedman, 1962) This branch of economics has come to dominate intellectual thought over the last 30 years and developed vociferous advocates in the neo-conservative movement who promote the ideology that government is inefficient and ineffective.

Another ideology driving the distrust of government is that there is a growing sense that the weight of democracy is too heavy. After two hundred years, the laws and rules surrounding government administration have become so cumbersome that it is desirable to free government from the constraints of government itself. For example, when San Francisco wanted to build a light rail line, it created a private non-profit to do so, simply to avoid the overburden of government.

There is also a growing understanding that democracy itself has shortcomings. Political processes do not always produce optimum outcomes. Averaging the opinions of an uninformed electorate often does not result in the best outcomes. The lack of voter participation seems to reflect citizens opting out of the political process because of this.

If there is growing disenchantment with government itself, then where do we turn? Hybrids between public and private, with limited democratic controls may be a way that America deals with the loss in belief in government itself. This tool may help address key issues which cannot be solved by either market or government approaches. Obviously further work is needed to develop these options.

Appendix A – Survey Questions

Introduction Page

In 1997, Jerry Mitchell conducted the only national survey of business improvement districts. Many things have happened in the ensuing ten years. Because of this, I am conducting this survey to provide a fresh look at what business improvement districts do.

This survey should take about 15 minutes and has six pages. The last page, which inventories services provided by your BID, is the longest. I am opening this survey on October 1st and closing it on October 15, giving folks two weeks to participate. All individual responses will be kept confidential. Aggregate responses will be available via the Internet. The link to these aggregated responses is available at the end of this survey.

If you have questions, please contact me, at cbecker01@hamline.edu.

One of the beliefs behind BID's is that we are all stronger when we work together. Thank you for participating in this survey and upholding that philosophy.

Carol Becker

Page 1: Information About Your Organization

1. Name of Organization

2. Address

3. City

4. State

5. ZIP

6. Organization website address

7. Name of person filling out survey

8. Phone number

9. Your E-mail Address

10. Does your organization receive money from a mandatory tax or fee levied in a special district?

- ◯ Yes
- ◯ No

11. Approximately how much was raised in 2007 from this mandatory fee or tax?

12. Size of your service area in city blocks or in the number of businesses or properties.

13. Is your organization legally a:

- ◯ Government entity
- ◯ For-profit organization
- ◯ Non-profit organization

If it is a non-profit, what federal tax desigation does it have? (for example, 501(c)3)

Page 2: Legal Authority for Organization

14. Business improvement districts are usually created and controlled by state or local laws. What is the citation of the laws that govern your organization?

State law or statute

City law or statute

Other level of government law or statute

No laws specifically govern my organization

15. Do laws restrict you from certain activities? (like do city laws bar you from using tax funds for lobbying)

◯ No

◯ Yes

◯ If yes, please describe what you are restricted from doing

16. Do laws require you to provide certain services or activities? (like you must provide garbage collection or you must provide street sweeping)

◯ No

◯ Yes

◯ If yes, please list services or activities you are required to provide

17. Does your organization's tax, fee or assessment exist for a limited time, at which point government has to renew approval? Or does it exist indefinitely?

◯ Expires

◯ Exists indefinitely

18. Does your organization exist only for a limited time, at which point

government has to renew your organization?

- ◯ My organization exists indefinitely
- ◯ My organization requires periodic renewal by government

If it requires periodic renewal, how many years between renewal?

Page 3: Governing Boards

19. How many people are on your Governing Board?

20. How are the members of your board elected or appointed? (click all that apply)

- ☐ Appointed by state governor
- ☐ Appointed by state legislature
- ☐ Appointed by city mayor
- ☐ Appointed by city council
- ☐ Appointed by another level of government
- ☐ Selected by organization's existing governing board
- ☐ Members are elected officials from city, state or other government
- ☐ Elections held within the service district to select representatives

Other (please specify)

21. How are the members of your board elected or appointed? (click all that apply)

- ☐ Appointed by state governor
- ☐ Appointed by state legislature
- ☐ Appointed by city mayor
- ☐ Appointed by city council
- ☐ Appointed by another level of government
- ☐ Selected by organization's existing governing board
- ☐ Members are elected officials from city, state or other government
- ☐ Elections held within the service district to select representatives

Other (please specify)

22. If elections are held within your service district to select members of your governing board, who conducts those elections? (for example, the City or the BID itself)

23. Are you required to have certain members of your board represent specific interests? (you must have one board member who is a renter or two board members who are business owners, etc)

- Yes
- No

24. If you are required to have certain members of your board represent specific interests, where does that requirement come from?

- State legislation requires certain groups be represented
- City legislation requires certain groups be represented
- Other unit of government requires certain groups be represented
- The organization's constitution or operating plan requires certain groups be represented
- Other (please specify)

25. If your board must have certain interests represented, who must be represented? (like one member must be a renter, one member must be a business owner, or one member must be the Mayor or a Council Member)

26. If you do or ever had elected officials on your Governing Board, what level of government do they come from?

- No elected officials on governing board
- State

City
County
Other unit of government (please specify)

27. What is the length of term of board members?

One year
Two years
Three years
Four years
Indefinitely
Other (please specify)

Page 4: Relationship to elected organizations

28. This question is to understand how much freedom your organization has to make decisions and how much control government retains. Does your Governing Board have the right to:

	Yes	No	We recommend, government decides
• Set its own level of tax or assessment revenues?			
• Set its own budget?			
• Make personnel/hiring decisions?			
• Make choices about the bundle of services provided?			
• Make choices over the level of services provided?			

29. The next questions are about the source of the tax, assessment or fee that provides a major source of funding to your organization. This is a tax or fee that all businesses in your district pay to support your organization.

What is the source of your mandatory tax or fee?

Property tax
Special assessments
Business license tax
Area sales tax
Association fee
Other (please specify)

30. Does government levy this mandatory tax, assessment or fee on your behalf?

- ◯ Yes, government levies it on our behalf
- ◯ No, we levy it ourselves
- ◯ If government doesn't levy it and you don't levy it, how do you obtain the major source of your revenues?

31. Is this mandatory tax, assessment or fee levied by:

- ◯ City government
- ◯ County government
- ◯ Another level of government
- ◯ Our organization is able to levy a fee itself
- ◯ Our organization is not funded by a tax, assessment or fee

32. Has government ever set a different level of funding than the one you originally requested?

- ◯ Government doesn't levy funding for us
- ◯ No
- ◯ Yes
- ◯ If Yes, Please describe

Page 5: Operation of Organization

33. Is your organization covered by laws requiring that it follow:

	Yes	No
• Civil Service laws	◯	◯
• Government procurement laws(open bidding)	◯	◯
• Anti-nepotism laws	◯	◯
• Open meeting laws (published agendas, posted meeting times, meetings open to the public)	◯	◯
• Open accounting laws (published budgets and financial records)	◯	◯
• Minority business preference	◯	◯
• Public disclosure of pay	◯	◯

34. Do your personnel practices include:

	Yes	No
• Publicly posting open jobs	◯	◯
• Written job descriptions	◯	◯
• Interviews done by a panel	◯	◯
• Multiple candidates interviewed for a position	◯	◯
• Competitive tests or interviews	◯	◯
• Board approval for hiring	◯	◯
• Conflict of interest statements	◯	◯
• Anti-nepotism rules	◯	◯

35. When you purchase things, do you do:

	Yes	No
• Public notification of procurements	◯	◯
• Competitive bidding of major contracts	◯	◯
• Major procurements decisions at the sole discretion of administrators	◯	◯
• Approval of major procurements by your Governing Board	◯	◯
• Preferences for disadvantaged or minority businesses	◯	◯

36. In regards to the meetings held by your governing board, does your board:

	Yes	No
• Publicly post its meeting times	◯	◯
• Publicly publish its meeting agendas	◯	◯
• Have its meetings open to the public	◯	◯
• Only have closed meetings if it provides public notice first	◯	◯

• Publicly publish the minutes from its meetings	◯	◯
• Track actions taken by the board	◯	◯
• Prohibit members from meeting in private	◯	◯

37. Does your organization:

	Yes	No
• Report performance information to a governmental organization	◯	◯
• Publish an annual budget	◯	◯
• Publish an annual financial report	◯	◯
• Conduct an annual independent financial audit	◯	◯
• Publish annual performance information	◯	◯
• Report budget or other financial information to a governmental organization	◯	◯
• Publish or make publicly available the pay levels of employees	◯	◯

Page 6: LAST PAGE - Services Provided

These questions inventory the services that your organization provides and those provided by government. Please mark the services that your organization provides and those that government provides.

38. Please indicate how the following Maintenance services are provided in your service area:

	My organization	Both government and my organization	Neither government nor my organization	Government	My organization and we are government
• Rubbish collection	◯	◯	◯	◯	◯
• Litter and graffiti removal	◯	◯	◯	◯	◯
• Sidewalk washing/snow shoveling	◯	◯	◯	◯	◯
• Grass and tree cutting, flower planting	◯	◯	◯	◯	◯
• Streetscapes/lighting/street furniture installation	◯	◯	◯	◯	◯
• Directional signage	◯	◯	◯	◯	◯

39. Please indicate how the following Security services are provided in your service area:

	My organization	Both government and my organization	Neither government nor my organization	Government	My organization and we are government
• Ambassadors or other non-uniformed program	◯	◯	◯	◯	◯

• Private uniformed security guards					
• Sworn police officers					
• Electronic security/ security cameras					
• Community policing program or program to share crime information					
• Community court					
• Supervision of persons serving a sentence from community court					

40. Please indicate how the following Transportation activities are provided in your service area:

	My organization	Both government and my organization	Neither government nor my organization	Government	My organization and we are government
• Parking system management					
• Transit shelter maintenance					
• Ridesharing programs					

41. Please indicate how the following Marketing and Hospitality services are provided in your service area:

	My organization	Both government and my organization	Neither government nor my organization	Government	My organization and we are government
• Street guides or ambassadors					
• Tourism kiosks					
• Maps and area information					
• Marketing/advertising campaigns					
• Festivals and events					
• Holiday decorations					

42. Please indicate how the following Public Space activities are provided in your service area:

	My organization	Both government and my organization	Neither government nor my organization	Government	My organization and we are government
• Sidewalk vending management					
• Management of street performances and artists					
• Code compliance					
• Management of loitering					
• Development of urban design/facade					

guidelines	○	○	○	○	○
• Enforcement of facade or design requirements	○	○	○	○	○

43. Please indicate how the following Social Service activities are provided in your service area:

	Both government and my organization	Neither government nor my organization	My organization	Government	My organization and we are government
• Programs for the homeless in your area	○	○	○	○	○
• Job training programs for underemployed persons in your area	○	○	○	○	○
• Youth programs in your service area	○	○	○	○	○

44. Please indicate which how the following Business Recruitment and Retention activities are provided in your service area:

	My organization	Both government and my organization	Neither government nor my organization	Government	My organization and we are government
• Market research	○	○	○	○	○
• Performance reporting	○	○	○	○	○
• Financial incentives for new/expanding businesses	○	○	○	○	○
• Marketing	○	○	○	○	○

Thank you

Thank you for taking the time to fill out this survey. To see the aggregated results of this survey, click here
I will be closing the survey on October 15th. After that date, you can use this same link to see the final results. If you would like to contact me, I can be reached at cbecker01@hamline.edu or at 612-275-4437. Again, thank you again for participating. By working together, we are all stronger. Carol Becker

Appendix B: Groups represented on BID Governance Boards

12 - Business owners 3 - Associate Members (Donors, Property Owners)
City manager, city council member, property owners, chamber of commerce president, convention & tourism director, grow greater Burlington representative
The attempt is to have representation from each assessment group which include: property owners, business owners, non-profits, financial institutions.
Six persons shall own or occupy real property within the BID. Three persons shall be appointed at large. One Village Board representative, and One CDA representative.
the advisory body must include owners of property representing more that 50 percent of the total value
one member must represent area tenants
11 members of the board are elected from downtown business and property owners. We try to get a mix that includes an attorney, a realtor, a small business owner, and property owners. One City Council member and one City staff member are appointed.
1 residential owner, 1 cultural/arts rep, 1 shop owner, 1 restaurant owner, 1 city council member, 1 rep of city manager
Majority = property owners Tenants Resident Five Government Officials
City rep (not specifically elected) + Chamber rep
One representative from City Council, County Board of Supervisors, Housing & Redevelopment Agency, City Economic Development Agency, County Economic Development Agency, and if possible, a rep from Regional Transit District.
We manage a property based improvement district (PBID)and a business based improvement district (BID). Individuals represent the different areas of each PBID and BID.
Elected Directors: No less than 51% property owners, no less than 30% business owners Non-Elected Directors: 5 property owners with the highest valued real properties, Immediate Past-President, City Manager designee
Four property owners, four merchants, one-two Merchant/Property owner, one representative from the independent Economic Development Corporation, and one representative from the Village. (Village Employee)
1 business owner 1 property owner 2 from University
they all must own property or occupy property in the district except for three. Those three must have some special ability or expertise that is useful to the district.
business owners, property owners, community groups
elected board members must be business or property owners (or their employees) within the MSD
Up to 8 members who are from major employers in the tax district, the Vice Chairman of Chamber of Commerce, 2 Residents of tax district, 3 Former Chairmen, 1 member City Council, 1 member County Commission and the following ex-officio members: City Manager, County Manager, President of the Greater Charlotte Chamber of Commerce, President of the Arts & Science Council; Director of the Charlotte-Mecklenburg Planning Commission, CEO of the Charlotte Regional Visitors Authority, and Superintendent of Charlotte-Mecklenburg Schools.
The following entities have permanent seats on the board: the Aurora Civic Center Authority, the Hollywood Casino, the Aurora Area Convention and Visitors Bureau, the Aurora Economic Development Commission, the City of Aurora (mayor), Wabaunsee Community College, the Greater Aurora Chamber of Commerce, and two local banks with downtown branches. When the organization was originally created, every local bank with a downtown branch had a seat. Over the years as mergers and acquisitions have occurred, banks have lost their seats because of failure to attend meetings. The same is true for Chambers of Commerce. Aurora has three: the GACC, the Aurora Hispanic Chamber of Commerce, and the African-American Chamber of Commerce. The latter two lost their permanent seats because of failure to attend meetings. When an organization loses its permanent seat, that seat is converted to an "at-large" seat, which is either filled by the Chairman of the Board, or put out for general election (depending on the time of year).
All members must be stakeholders along SSA boundaries (property/business owner, renter).

We just have to have a majority be property owners in the district. City representatives may attend meetings, but they are prohibited in the state statute to vote on any matters that come before the board.
Mayor's rep City council rep President of each of 4 neighborhood associations One appointed rep from each neighborhood association One at-large elected rep of each neighborhood two-thirds of the board must be property owners or their rep
ALL directors must be 1) a resident in the district; 2) owner of property in the district; 3) owner of stock in the district; or 4) an agent, employee, or tenant of a person covered by Subdivision 2) 3) or 4). Appointments thereafter require experience in 1 of the following: energy matters, commercial banking, real estate development, finance & insurance matters, provision of utilities, or general issues which the district will address.
Ordinance specifies member of governing body must be on Board.
council member is only specific requirement
representatives from various assessed value sections - see operating plan on website - board composition
City, county, 6 trustees representing business owners
N/A
Businesses and homeowners
Property owners from all four quadrants of the district
By % representing the make up of the existing downtown businesses: E.g., Property Owner; Retail & Services; Restaurant, Lodging & Entertainment; Professional and Ex-Officio
Property owners Commercial tenants residential tenants municipality
8 must be property owners within BID 3 must be commercial tenants within BID 1 must be residential tenant within BID 3 are appointed by City (and can be anyone)
businesses owners
Commercial property owners, commercial tenants, resident, mayor, city council, comptroller, borough president
One member appointed by the Mayor.
35% property owners who are assessed the EID fee must be on the Board.
3 Village appointed 7-8 Commercial Owners 7-8 Commercial Tenants 1 Resident Tenant
The City of Cleveland Heights has representation as our district includes a city outdoor performance theater, a mixed-use development site in which they own part of the land and a mini park. The City Manager has representation on the Board, and a Councilperson is also on the Board.
property owners, business owners, residents, Mayor, Borough President, Comptroller, City Council member representing the largest portion of the district
Small property owner, large property owner, residential owner, tenant
One County Representative
(3) landlords who own real property in the district, (3)retail business owners in the district, (1) borough official, (3) licensed professionals who practice their profession in the district, (1) resident, (2) alternates from any of the above categories
4 Business Owners 1 Lease holder
7 Owners of real estate- 2 must rep buildings of 50,000 square feet or more reps 1 rep for retail/restaurants 1 rep for service business tenants 1 rep for office tenants
See notes in email.
Downtown merchants and business leaders are selected by the HVDDC Board, City appoints 1 member and County Commissioners appoint 1. Ex-Offio members are: Economic Development Authority-1, Chamber of Commerce-1, County Manager, City Manager, City Planner and myself as Executive Director.
property owners, tenants, residential owners, retailers, county staff
One member from each of three merchant groups, one member to represent City Council and three at-large. Also, directors must be representative of major business types: three retail business, two professional/service, one hospitality/restaurant/bar, one manufacturing or wholesale. There is a provision in the City ordinance and contract to have other business owners or managers in place of the ideal make-up if no one can serve.
property owners, uptown businesses, city government, county government

County, City Council, City Development Agency must be represented. Property owners, business owners, arts groups, residents, health care, education, public safety, hospitality, and Chamber of Commerce are groups from which directors may be chosen for appointment.
no classification represented by more than three. There is to be 2 property owners and 2 retailers at all times
majority must be property owners
elected commission comprised of 5 property owners, 2 business lessees, 1 alternate who can be either a property owner or a lessee. Ex Officio: Pres. of Chamber of Commerce, Director of Planning & Neighborhood Services, representative of a church in the Downtown
Class A - 51% of members must be property owners Class B - commercial tenants Class C - city reps (Mayor rep, Council rep, Comptroller rep) Class C - County leg. rep Class D - resident rep Ex officio-Chamber, Cornell U, Ithaca College, Community College
building business owner building business renter business retailer business service renter service owner retail
Board must have property owners represented but also includes business owners and community representatives
it is proportion based with the majority being property owners the Mayor, Comptroller, Councilman, Borough President are voting members Community Board has a non voting representative
Board members are property owners that are in businesses also. Corp officers are on the Board
Majority must be owners or occupants of properties within the district.
- Six (6) Owner Occupants - Two (2) Non-Owner Occupants - Two (2) Property Owners - One (1) Resident Appointed at large - One (1) Beloit College Representative - One (1) Council Representative
The majority of BID Board members must own property or run a businesses in the BID
Property owners, county councilmen, city councilmen, chamber, USC
owners, or principals, agents, partners, managers, trustees, stockholders, officers, or directors of owners, and commercial tenants, and also may include residents, community members, and governmental officials; provided, that not less than a majority of all Board members shall represent owners.
State law requires that "NIDMA boards shall include a representative of property owners located in the NID, business owners located in the NID and any institutions located in the NID." Our own bylaws go much further; they require that the following interests be represented on the board: Four (4) members appointed by the Chairman of the Corporation for two (2) year terms. Five (5) members appointed by the President of the Greater Wilkes-Barre Chamber of Business and Industry. The following members shall be appointed by the Board of Directors and shall be: The Mayor of the City of Wilkes-Barre or his representative; One (1) representative chosen by Wilkes-Barre City Council; The State Representative from the District within which the City of Wilkes-Barre is located or his representative; The State Senator from the District within which the City of Wilkes-Barre is located or his representative; The United States Congressman from the District within which the City of Wilkes-Barre is located or his representative; The President of United Way of Wyoming Valley or his representative; The Chairman of the Luzerne County Commissioners or his representative; The President of Wilkes University or his representative; The President of King's College or his representative; The President of Luzerne County Community College or his representative; The President/CEO of the Greater Wilkes-Barre Chamber of Business & Industry or his representative; The Superintendent of the Wilkes Barre School District or his representative; The President of the Luzerne County Historical Society or his representative; One (1) representative of the Council of College Presidents; Three (3) representatives, one from each of the major print and television media whose headquarters are based in the City of Wilkes-Barre; Two (2) representatives from the Downtown Ministerium; Two (2) representatives of the Downtown Wilkes-Barre Business Association; One (1) representative of the Fine Arts Fiesta; One (1) representative of the F. M. Kirby Center for the Performing Arts; Two (2) representatives of the Downtown Residents Association; One (1) representative of the Luzerne County Medical Society; Two (2) representatives of the Wilkes-Barre Metropolitan Development Corporation; and One (1) representative of CityWest. In addition, five members shall be appointed by the Mayor of the City of Wilkes-Barre to serve as representatives of property owners located in the Downtown Wilkes-Barre Business Improvement District ("DWBBID"): one representing each quintile of assessments paid to the DWBBID.
Property owners and long vested business owners

23 members to be elected - 17 representatives, 5 shall be owners or designees with assessed property value over $500,000 6 at large reps 7 appointed by mayor - mayor or designee, borough council member, reps from Riverview Medical Center, Monmouth Council Arts Council, Eastern Monmouth Chamber of Commerce
2 property owners, 2 tenants, 1- president of the Business Association
Members from specific geographic areas, members representing businesses in the district
1/3 must fall in lower 1/3 of value of entire property values
at least five of the directors shall be owners and at least three of the directors shall be operators.
Property Owners
4 property owners 3 renters
6 persons engaged in professional, service or financial occupations in district; 6 persons engaged in retail occupations in district; 4 persons owning property in district; 2-5 residents of Township; 2-6 persons at large; one Council member; one person representing the Paper Mill Playhouse; Township Administrator; one person representing the Chamber of Commerce
At least four members shall be owners of property within the District. One member shall be the owner of a business within the District. The Alderman of the First District and the Chairman of the Downtown Racine Corporation board (or his designee) shall be ex officio members.
12 members must be commercial property owners or businesses within the district Up to 3 can be from non-profits operating in the district.
Board must have a minimum of 5 members. A majority of board members shall own or occupy real property in the BID.
50% must be commercial property owners; at least one commercial tenant and resident; voting representatives from City Council, Mayor, Borough President, and City Comptroller.
Three of the 15 seats are appointed by council; typically this has been a representative from Council, City Police Department and City Manager.
Majority must reside in the municipality.
Affected business people
3 of 5 members must be business owners. 2 must be renters
service sector, community, city rep (alderperson) hospitality and retail one member with an opposing view of the BID
4 members appointed from the Downtown Development Authority and they must be financial participants within the district. 4 members are elected from the membership - 2 must be property owners and 2 business owners. One City Commissioner is appointed by the commission and the other member is the Financial Director for the City
Property Owners (25%) * Large Small Resident Downtown Business (40%) * Office Retail - non-tourism Retail - tourism Restaurant Hotel At-Large (15%) * Alaska Railroad University Other (20%) * Public Agency (Fed, St, City) Prof. Service Provider
one member must be a representative of the city the majority of the 9-member board must be property owners
Mayor appointee, 1/3 property owners, 1/3 large property/business owner, 1/3 medium to small property/business owner
Property Owners, Merchants, renters and city officials
They most be either a land owner or business owner.
Must be a property owner or designated property owner within the district
majority must be commercial property owners, which includes residential condo owners, as well as commercial tenants (at least 2) residential tenants (at least 1) and the City Council, Mayor, Borough President, Comptroller, and the local community boards
3 merchants, 3 property owners, 3 office businesses, 3 arts group representatives, 3 area neighborhood residents, 1 representative of historic preservation interests, the city manager, the county administrator, a representative of the regional economic development organization, a representative from the University of Arizona, and a representative of the Downtown Development Corp.
7 property owners, 2 tenants w/ property tax responsibility, 1 chair, 3 city officials (city councilor: elected & 2: city manager, city comptroller appointed), 1 honorary, 1 at-large

All members must be residents or business owners in the jurisdiction.
Owners (15), tenants (3), Mayor (1), Council (1), Chamber (1), Merchants association (1), Arts Council (1)
Retail establishments by square footage (above and below 50,000sf)
State statute requires a minimum of one elected representative; local ordinance allows a mayor's representative; a council representative and representative of the Port Authority of NY/NJ.
Property Owners Retailers Commercial Bankers Energy real estate development utilities
See response to above question, we also try to balance representation geographically across our 66-block BID and to have non-voting liaisons from the Mayor, City Council, Governor, County Board and Chamber.
Majority members must be building owners.
See description above answered in question 20.
divided by property types - building owners by size, land owners, retail owners, hotel management, and at-large.
One seat is appointed by City Council
Property owners majority, Commercial tenants
Business property owners
1 property owner, 1 business owner, 1 nonprofit representative
One member of University, One Member of Borough Council, Property Owners
The City of Dayton must have a representative. We have different classes of votes so these different classes must have representatives elected.
Members must represent particular geographical areas of downtown (East End, West End, Pearl Street Mall, at large)
Again, I was not able to check all that apply in # 23. State law requires that at least 20% of the Board of Directors be non-property owners (which usually means non-property owning business owners) . Our by-laws further indicate that another 20% of the Board of Directors be non-property owning residents.
this is done on percentage from the district
All Board members must be full or partial property owners, or the designated representative of such.
Resident and merchants. This is a property owner based BID
At least one member of the advisory board shall be a business licensee within the district who is not also a property owner within the district.
all members must be property owners, but there are 7 different types of property owner based on size, geographic location or property usage
See answer to #20 The 7 appointed city members include reps from the City Council, Planning Commission, Historic Preservation Committee, Architectural Review Commission, Education and the residual neighborhood.
The State law says that the Board must have at least one elected official, but we break our board into special categories such as owners, renters, residents, and landlords.
business owners that have paid their fees
(1) Except as provided in subsections (7), (8), and (9), an authority shall be under the supervision and control of a board consisting of the chief executive officer of the municipality and not less than 8 or more than 12 members as determined by the governing body of the municipality. Members shall be appointed by the chief executive officer of the municipality, subject to approval by the governing body of the municipality. Not less than a majority of the members shall be persons having an interest in property located in the downtown district or officers, members, trustees, principals, or employees of a legal entity having an interest in property located in the downtown district. Not less than 1 of the members shall be a resident of the downtown district, if the downtown district has 100 or more persons residing within it. Of the members first appointed, an equal number of the members, as near as is practicable, shall be appointed for 1 year, 2 years, 3 years, and 4 years. A member shall hold office until the member's successor is appointed. Thereafter, each member shall serve for a term of 4 years. An appointment to fill a vacancy shall be made by the chief executive officer of the municipality for the unexpired term only. Members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses. The chairperson of the board shall be elected by the board.

We have nine property owners, two tenants and 1 council person and two community representatives that make up our board of directors.
Class A Commissioners (6) represent separate holders of taxable interests in real property in the District not qualifying as Class B Commissioners. Class B Commissioners (5) represent separate holders of taxable interests in real property in the District which are among the twenty (20) largest such holders by assessed value in the District. Class C Commissioners (4) represent members not qualifying as Class A or B Commissioners who reside in the District or operate a trade or business or lease real estate in the District or who represent a business entity or trust which operates a trade or business or leases real estate in the District. Class D Commissioners represent governmental or non-governmental organizations which contribute and/or pay in the aggregate at least One Hundred Thousand Dollars ($100,000) to the District for its next following fiscal year. The contributing organization shall designate a representative to serve ex-officio with a vote.

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