

## ARTICLE 10. BUSINESS DISQUALIFICATION

### Rule 1. Definitions and Policy

#### 55 IAC 10-1-1 Definitions

Authority: IC 5-28-5-8

Affected: IC 6-3-2; IC 6-3-3; IC 36-7-14-39

Sec.1. (a) Use—to invest or otherwise provide, in a tangible and measurable manner, an amount in addition to what had been invested or provided to date.

(b) Assist—the provision of funds, goods or services to support the zone Urban Enterprise Association in the costs of its mission to initiate, manage and administer community economic development projects for the zone. (*Indiana Economic Development Corporation; 55 IAC 10-1-1; filed Jan 29, 1987, 3:45 pm: 10 IR 1211; readopted filed Dec 2, 2001, 12:30 p.m.: 25 IR 1267; readopted filed Nov 25, 2008, 9:57 a.m.: 20081217-IR-055080749RFA*) NOTE: Transferred from the Enterprise Zone Board (58 IAC 2-1-1) to the Department of Commerce (55 IAC 10-1-1) by P.L.4-2005, SECTION 153, effective February 9, 2005.

#### 55 IAC 10-1-2 Policy

Authority: IC 5-28-5-8

Affected: IC 6-3-2; IC 6-3-3; IC 36-7-14-39

Sec.2. (a) The enterprise zone board will disqualify a zone business from enterprise zone benefits and incentives if the board finds that the zone business has not used all of its benefits and incentives:

- (1) for its property or its employees in the zone; or
- (2) to assist the zone Urban Enterprise Association.

(b) Examples of action by a zone business which would be sufficient to avoid disqualification include:

- (1) a capital expenditure for building, machinery or equipment equal to or exceeding the enterprise zone tax benefits and incentives for that year;
- (2) an increase in total compensation for all zone resident employees equal to or exceeding the enterprise zone tax benefits and incentives for that year;
- (3) a contribution of funds, goods, or services to the zone Urban Enterprise Association equal to or exceeding the enterprise zone tax benefits and incentives for that year;
- (4) some combination of the above examples equal to or exceeding the enterprise zone tax benefits and incentives for that year.

(c) Prior to making a petition to the board recommending disqualification of a zone business, a zone Urban Enterprise Association must:

- (1) Contact the zone business by an initial letter, certified mail, return receipt requested, which shall:

- (A) outline enterprise zone responsibilities as stated in the applicable statute and these rules; and
- (B) request a verified written summary of the enterprise zone tax benefits and incentives that zone business has received, and an explanation of the use of those benefits and incentives by the zone business no later than thirty (30) days from receipt of the initial letter; and
- (C) request a personal meeting at which zone benefits, incentives, and responsibilities will be discussed by the zone Urban Enterprise Association and the zone business.

(2) Contact the zone business by a second letter, certified mail, return receipt requested, not less than fourteen days prior to submission of the petition to the board, which letter shall discuss why the zone business's response to the initial letter was inadequate to fully comply with the applicable statute and these rules.

(d) In the event a petition recommending disqualification of a zone business from eligibility for enterprise tax benefits and incentives is received by the enterprise zone board, the board's staff shall attempt to settle the dispute.

(e) In the event that the dispute is not settled, the chairman of the board shall appoint one member of the board to hold an evidentiary hearing and make a recommendation as to what the board's order or determination on the petition should be.

(1) The board shall cause a copy of the recommendation to be delivered to the parties, which include the zone business and the zone Urban Enterprise Association.

(2) A party who wishes to oppose the board's adoption of the recommendation as a final order or determination shall, within ten (10) days of the party's receipt of the recommendation, file written objections with the board. A party at its own expense may cause to be filed with the board a transcript of the oral testimony or any other part of the record of the proceedings. If any

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such objections are filed, the board shall set the same for hearing on the record so filed with it. The board may hear additional evidence or remand the petition to the hearing member with appropriate instructions. The board may adopt the recommendation of the hearing member, may amend or modify the recommendation, or may make such order or determination as is proper on the record.

(3) The final order or determination made by the board shall be made by a majority of the quorum needed for board meetings.

(f) The enterprise zone board and the hearing member may request any information or documentation they deem necessary to make a recommendation or determination. Lack of response to such requests will constitute evidence of the zone business's ineligibility for enterprise zone tax benefits and incentives.

(g) The board reserves the discretion to reject any petition recommending disqualification on the basis of information it views as incomplete, inaccurate or inadequate to make a determination.

(h) A zone business disqualified pursuant to these rules shall be disqualified from zone benefits and incentives for one year following the date of disqualification. A zone business disqualified pursuant to these rules may, no sooner than one (1) year following the date of disqualification, petition the board for reinstatement of benefits. A copy of the petition shall be forwarded to the zone Urban Enterprise Association by the board. The petition shall be heard and determined as provided in these rules for petitions recommending disqualification. In the event that the board approves the petition, benefits may be reinstated retroactively to the date of the petition. In the event the board does not approve the petition, the zone business may submit another petition for reinstatement of benefits no sooner than one (1) year following the date of the denied petition. If the year following the date of disqualification would be after the zone expires under law, the zone business will be disqualified for the previous year and be subject to repayment of any zone benefits and incentives received in that year. (*Indiana Economic Development Corporation; 55 IAC 10-1-2; filed Jan 29, 1987, 3:45 pm: 10 IR 1211; readopted filed Dec 2, 2001, 12:30 p.m.: 25 IR 1267; readopted filed Nov 25, 2008, 9:57 a.m.: 20081217-IR-055080749RFA*) NOTE: Transferred from the Enterprise Zone Board (58 IAC 2-1-2) to the Department of Commerce (55 IAC 10-1-2) by P.L.4-2005, SECTION 153, effective February 9, 2005.

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