IC 5-28-9

Chapter 9. Industrial Development Program and Fund

IC 5-28-9-1

"Enterprise zone"

Sec. 1. As used in this chapter, "enterprise zone" means an enterprise zone created under IC 5-28-15 (or IC 4-4-6.1 before its repeal).

As added by P.L.4-2005, SEC.34.

IC 5-28-9-2

"Governing body"

Sec. 2. As used in this chapter, "governing body" means the legislative body of a city, town, or county, an economic development commission, or a board administering the affairs of a special taxing district.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-3

"Industrial development program"

Sec. 3. As used in this chapter, "industrial development program" means a program designed to aid the growth of industry in Indiana and includes the:

(1) construction of airports, airport facilities, and tourist attractions;

(2) construction, extension, or completion of sewerlines, waterlines, streets, sidewalks, bridges, roads, highways, public ways, and information and high technology infrastructure;

(3) leasing or purchase of property, both real and personal; and

(4) preparation of surveys, plans, and specifications for the construction of publicly owned and operated facilities, utilities, and services.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-4

"Information and high technology infrastructure"

Sec. 4. As used in this chapter, "information and high technology infrastructure" includes, but is not limited to, fiber optic cable and other infrastructure that supports high technology growth and the purchase and installation of fiber optic cable and other infrastructure.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-5

"Minority enterprise small business investment company"

Sec. 5. As used in this chapter, "minority enterprise small business investment company" means an investment company licensed under 15 U.S.C. 681(D).

As added by P.L.4-2005, SEC.34.

IC 5-28-9-6
"Qualified entity"

Sec. 6. As used in this chapter, "qualified entity" means a city, a town, a county, an economic development commission, or a special taxing district.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-7
"Small business investment company"

Sec. 7. As used in this chapter, "small business investment company" means an investment company licensed under 15 U.S.C. 691 et seq. or a successor statute.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-8
Findings

Sec. 8. The general assembly finds that:

(1) areas in Indiana have insufficient employment opportunities and insufficient diversification of industry;

(2) these conditions are harmful to the health, prosperity, economic stability, and general welfare of these areas and, if not remedied, will be detrimental to the development of these areas; and

(3) the use of money under this chapter and the fostering of industrial development programs serves a public purpose.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-8.5
Legalization of certain loans, loan agreements, and similar arrangements of department of commerce and qualified entities

Sec. 8.5. (a) As used in this section, "department" refers to the department of commerce (before its abolition by P.L.4-2005) established by IC 4-4-3-2 (before its repeal).

(b) Notwithstanding any other law, all loans, loan agreements, or similar arrangements between the department and a qualified entity are legalized and declared valid if these loans, loan agreements, or similar arrangements have been delivered and the department has lent money pursuant to them before April 18, 1985. All proceedings had and actions taken under which these loans, loan agreements, or similar arrangements were undertaken are fully legalized and declared valid.

As added by P.L.220-2011, SEC.107.

IC 5-28-9-9
Fund established; purpose; administration

Sec. 9. (a) The industrial development fund is established within the state treasury. Loans may be made to qualified entities, small business investment companies, and minority enterprise small

business investment companies in accordance with this chapter and the policies and guidelines adopted under it.

(b) The fund consists of appropriations from the general assembly and loan repayments.

(c) The corporation and the state board of finance shall jointly administer the fund. The following may be paid from money in the fund:

(1) Expenses of administering the fund.

(2) Nonrecurring administrative expenses incurred to carry out the purposes of this chapter.

(d) Earnings from loans made under this chapter shall be deposited in the fund.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(f) The corporation, subject to the approval of the state board of finance, may adopt policies and guidelines for the proper administration of the fund and this chapter. The corporation may employ personnel necessary to efficiently administer this chapter.
As added by P.L.4-2005, SEC.34.

IC 5-28-9-10

Loans for approved programs; amount restriction; limitations

Sec. 10. (a) Two million dollars ($2,000,000) in the industrial development fund does not revert to the state general fund but constitutes a revolving fund to be used exclusively for the purpose of this chapter. The corporation, subject to the approval of the state board of finance, may order the auditor of state to make an approved loan from the revolving fund to a qualified entity (including the purchase of bonds of the qualified entity), a small business investment company, or a minority enterprise small business investment company.

(b) A qualified entity may borrow funds from the corporation under this chapter and shall use the loan proceeds to institute and administer an approved industrial development program. The combined amount of outstanding loans to any one (1) program may not exceed one million dollars ($1,000,000). However, the one million dollar ($1,000,000) restriction in this subsection does not apply to an approved industrial development program in an economic development district established by a qualified entity under IC 6-1.1-39. A loan made under this chapter to an economic development commission is not a loan to or an obligation of the qualified entity that formed the commission, if the repayment of the loan is limited to a specified revenue source under section 15 of this chapter.

(c) A small business investment company or a minority enterprise small business investment company may use the loan proceeds for

any lawful purpose.

(d) Notwithstanding any other law (including IC 5-1-11), the loan to a qualified entity under this section may be directly negotiated with the corporation without public sale of bonds or other evidences of indebtedness of the qualified entity.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-11

Industrial development programs

Sec. 11. A qualified entity may institute and administer an industrial development program that is approved by ordinance or resolution adopted by the governing body of the qualified entity and approved by the corporation.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-12

Loans to qualified entities; conditions

Sec. 12. (a) The state board of finance and the corporation shall authorize the making of a loan to a qualified entity under this chapter only when all the following conditions exist:

(1) An application for the loan has been submitted by the qualified entity, in a verified petition, to the state board of finance and the corporation in the manner and form as the state board of finance and the corporation direct. The application must set forth all the following:

(A) The need for the program and the need for funds for instituting and administering the program.

(B) An engineering estimate of the cost of the proposed program acceptable to the state board of finance and the corporation.

(C) The amount of money needed.

(D) Other information that is requested by the state board of finance and the corporation.

(2) The proposed program has been approved by the state board of finance and the corporation, which they may do only if they have determined that the program is based on sound engineering principles and is in the interest of industrial development.

(3) The loan does not exceed one hundred percent (100%) of the cost to the qualified entity of an approved program, with the cost of the program to be based on an estimate made by a competent engineering authority and approved by the corporation.

(4) The qualified entity has agreed to furnish assurance, satisfactory to the state board of finance and the corporation, that the qualified entity will operate and maintain the program, after completion, in a satisfactory manner.

(b) The state board of finance and the corporation shall authorize a loan to a small business investment company or minority enterprise

small business investment company under this chapter only if:

(1) the small business investment company or minority enterprise small business investment company has loaned to or invested in a business located in an enterprise zone for a purpose directly related to the enterprise zone an amount that is at least twice the amount of the requested loan; and

(2) the small business investment company or minority enterprise small business investment company has submitted an application, before the beginning of the phase out period of the enterprise zone, to the state board of finance and the corporation that shows the amount of the loan requested and other information that is requested by the state board of finance and the corporation.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-13

Participation in program or project by entity; share of cost

Sec. 13. (a) The qualified entity may provide labor, equipment, and materials from any source at its disposal for such a program, and participation in accomplishment of the project or projects may be:

(1) evaluated by the state board of finance and the corporation; and

(2) computed as a part or all of the share of cost that the qualified entity is required to pay toward the total cost of the project or projects for which the loan is obtained.

(b) When participation as described in this section is authorized, the participation must be under direction of the governing body, and when cash amounts are included in the qualified entity's share of total cost, the cost amounts shall be provided in the usual and accepted manner for the financing of the affairs of the qualified entity. Costs of engineering and legal services to the borrower may be regarded as a part of the total cost of the project.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-14

Priority rating of applicant for loan

Sec. 14. (a) The state board of finance and the corporation shall determine and ascribe to an applicant for a loan a priority rating. The rating must be based primarily on the need of the qualified entity for a proposed program or on the need of the small business investment company or minority enterprise small business investment company for the loan as the need is related to the needs of other applicants for loans.

(b) The qualified entities, small business investment companies, or minority enterprise small business investment companies with the highest priority rating shall be given first consideration when loans are made under this chapter. The loans shall be made in descending order as shown by the priority ratings.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-15

Loans; restrictions; ordinance requirement

Sec. 15. (a) A loan made under this chapter is subject to the following restrictions:

(1) The repayment period may not exceed fifteen (15) years.

(2) The interest rate is to be set by the state board of finance at the time the loan is approved.

(3) Interest reverts to the industrial development fund established by this chapter.

(4) The loan must be repaid in installments, including interest on the unpaid balance, according to a repayment schedule approved by the state board of finance for that loan. However, on the approval of the state board of finance, the repayment of principal may be deferred for a period not to exceed two (2) years.

(5) Subject to subsection (b), the repayment of the loan may be limited to a specified revenue source of the qualified entity and, if limited, is not a general obligation of the unit and is payable solely from the specified revenue source.

(6) If the qualified entity levies a tax to repay the loan, the first installment of the loan is due from funds received from the first levy.

(7) If prepayment of the loan is made, a penalty may not be charged.

(b) A qualified entity may borrow money under this chapter only under an ordinance adopted under IC 36-1-3-6 as follows:

(1) If the qualified entity is a city, town, or county, by the qualified entity.

(2) If the qualified entity is an economic development commission, by the city, town, or county that established the economic development commission.

(3) If the qualified entity is a special taxing district established by the city, town, or county, by the city, town, or county that established the special taxing district.

(4) If the qualified entity is a special taxing district that was not established by a city, town, or county, by the county in which the special taxing district is located.

If repayment of the loan is to be from a specified revenue source under subsection (a)(5), the ordinance must state the revenue source and must state that the qualified entity is not obligated to pay the principal or interest on the loan except from the specified revenue source. An ordinance may not provide for repayment from a specified revenue source if the repayment would impair the qualified entity's contract with an owner of outstanding obligations payable from the specified revenue source.

(c) Notwithstanding any other law, the qualified entity may enter

into loans under this chapter without obtaining the approval of any other body.
As added by P.L.4-2005, SEC.34.

IC 5-28-9-16
Revenue to pay annual loan installment and interest; levy of tax

Sec. 16. A qualified entity receiving a loan under this chapter may levy an annual tax on personal and real property located within the qualified entity's geographical limits for industrial development purposes, in addition to any other tax authorized by statute to be levied for such purposes, at a rate that will produce sufficient revenue to pay the annual installment and interest on a loan made under this chapter. The tax may be in addition to the maximum annual rates prescribed by IC 6-1.1-18, IC 6-1.1-18.5, and other statutes.
As added by P.L.4-2005, SEC.34. Amended by P.L.2-2006, SEC.34; P.L.146-2008, SEC.40.

IC 5-28-9-17
Failure to repay money lent; action to recover

Sec. 17. (a) If a qualified entity fails to make repayment of money lent under this chapter or is in any way indebted to the industrial development fund for any amounts incurred or accrued, the amount payable may be:

(1) withheld by the auditor of state, as set forth in the loan agreement with the qualified entity, from any money payable to the qualified entity and transferred to the fund; or

(2) recovered in an action by the state on relation of the corporation, prosecuted by the attorney general, in the circuit or superior court of the county in which the qualified entity is located.

(b) If a small business investment company or a minority enterprise small business investment company fails to make repayment of money lent under this chapter or is in any way indebted to the industrial development fund for any amounts incurred or accrued, the amount payable may be recovered in an action by the state on relation of the company, prosecuted by the attorney general, in the circuit or superior court of the county in which the small business investment company or minority enterprise small business investment company is located.
As added by P.L.4-2005, SEC.34.

IC 5-28-9-18
Appropriation

Sec. 18. There is appropriated annually to the corporation from the state general fund, from money not otherwise appropriated, an amount sufficient to administer this chapter, subject to the approval of the budget committee.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-19

Sale of notes or other debt obligations by a county, city, or town; deposit and use of proceeds

Sec. 19. (a) The corporation, with the approval of the state board of finance, may sell to a person (including the board for depositories) the notes or other debt obligations issued by a county, city, or town under this chapter or IC 6-1.1-39 for any borrowing from the industrial development fund under this chapter.

(b) A sale by the corporation of a note or another debt obligation of a county, city, or town as authorized by subsection (a) shall be made:

(1) without recourse against the corporation, the state board of finance, or the industrial development fund; and

(2) on the other terms and conditions that the corporation, with the approval of the state board of finance, establishes.

(c) A purchaser of a note or another debt obligation succeeds to all the rights, entitlements, conditions, and limitations under the note or other debt obligation. However, section 17 of this chapter does not apply to a note or another debt obligation that has been sold under subsection (a).

(d) After a sale of a note or another debt obligation, the corporation, the state board of finance, and the industrial development fund have no right, title, or interest in or to the note or debt obligation.

(e) The proceeds from a sale of a note or another debt obligation shall be deposited in the industrial development fund to be used exclusively for the purpose of this chapter.

As added by P.L.4-2005, SEC.34.

IC 5-28-9-20

Loan with simultaneous or successive sale of note or other obligation; legal investments

Sec. 20. (a) For industrial development projects (as defined in IC 4-4-10.9-11(a)) that have a cost of the project (as defined in IC 4-4-10.9-5) greater than one hundred million dollars ($100,000,000), the corporation may coordinate a loan to a county, city, or town under this chapter that is to be funded under IC 6-1.1-39 with a simultaneous or successive sale of the note or other debt obligation issued or to be issued by the county, city, or town to evidence the borrowing under this chapter. For such a coordinated or simultaneous lending and sale, the sale proceeds may be applied to the funding of the loan to the county, city, or town.

(b) Notes or other debt obligations of a county, city, or town that may be sold by the corporation under this section or section 19 of this chapter are declared to be legal investments for:

(1) all insurance companies and associations and other persons

carrying on an insurance business; and

(2) all banks, bankers, banking associations, trust companies, savings associations including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business.

These entities may invest their funds, including capital, in the notes or other debt obligations, notwithstanding any law to the contrary.

As added by P.L.4-2005, SEC.34. Amended by P.L.1-2006, SEC.127.