



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

May 7, 2002

**Jim Ryan**  
ATTORNEY GENERAL

FILE NO. 02-006

ADMINISTRATIVE LAW:  
Certification of New  
Enterprise Zones

The Honorable George F. Scully  
State Representative, 80th District  
Chairman, House Commerce & Business  
Development Committee  
344 Victory Drive  
Park Forest, Illinois 60466

Dear Representative Scully:

I have your letter wherein you inquire whether, pursuant to the provisions of subsection 5.3(d) of the Illinois Enterprise Zone Act (20 ILCS 655/5.3(d) (West 2000), as amended by Public Act 92-016, effective June 28, 2001), the Department of Commerce and Community Affairs has the continuing authority to certify the creation of new enterprise zones in the State of Illinois. For the reasons hereinafter stated, it is my opinion that the Department of Commerce and Community Affairs does not currently possess the authority to do so.

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The Illinois Enterprise Zone Act was enacted by the General Assembly in 1982 to assist "\* \* \* certain depressed areas in this State that need the particular attention of government, business, labor and the citizens of Illinois \* \* \* attract private sector investments into th[ose] areas and directly aid the local community and its residents. \* \* \*" (See Public Act 82-1019, effective December 7, 1982, now codified at 20 ILCS 655/2 (West 2000).) Under the terms of the Act, municipalities and counties that are located in "depressed areas", as defined in the Act (20 ILCS 655/3(c) (West 2000)), are authorized to seek certification of enterprise zones by the Department of Commerce and Community Affairs (hereinafter referred to as the "Department"). (20 ILCS 655/3, 4 (West 2000).) Upon the Department's certification of an area as an enterprise zone, qualifying businesses located therein may qualify for applicable tax incentives and other economic benefits. Your question concerns whether the Department currently has the authority to certify additional enterprise zones.

Section 5.3 of the Enterprise Zone Act (20 ILCS 655/5.3 (West 2000), as amended by Public Act 92-016, effective June 28, 2001) addresses the certification and establishment of enterprise zones, providing, in pertinent part:

" \* \* \*

(c) An Enterprise Zone shall be in effect for 30 calendar years, or for a lesser number of years specified in the certified designating ordinance. \* \* \*

(d) No more than 12 Enterprise Zones may be certified by the Department in calendar year 1984, no more than 12 Enterprise Zones may be certified by the Department in calendar year 1985, no more than 13 Enterprise Zones may be certified by the Department in calendar year 1986, no more than 15 Enterprise Zones may be certified by the Department in calendar year 1987, and no more than 20 Enterprise Zones may be certified by the Department in the calendar year 1990. In other calendar years, no more than 13 Enterprise Zones may be certified by the Department. The Department may also designate up to 8 additional Enterprise Zones outside the regular application cycle if warranted by the extreme economic circumstances as determined by the Department. The Department may also designate one additional Enterprise Zone outside the regular application cycle if an aircraft manufacturer agrees to locate an aircraft manufacturing facility in the proposed Enterprise Zone. Notwithstanding any other provision of this Act, no more than 89 Enterprise Zones may be certified by the Department for the 10 calendar years commencing with 1983. The 7 additional Enterprise Zones authorized by Public Act 86-15 shall not lie within municipalities or unincorporated areas of counties that abut or are contiguous to Enterprise Zones certified pursuant to this Section prior to June 30, 1989. The 7 additional Enterprise Zones (excluding the additional Enterprise Zone which may be designated outside the regular application cycle) authorized by Public Act 86-1030 shall not lie within municipalities or unincorporated areas of counties that abut

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or are contiguous to Enterprise Zones certified pursuant to this Section prior to February 28, 1990. In any calendar year, the Department may not certify more than 3 Zones located within the same municipality. The Department may certify Enterprise Zones in each of the 10 calendar years commencing with 1983. The Department may not certify more than a total of 18 Enterprise Zones located within the same county (whether within municipalities or within unincorporated territory) for the 10 calendar years commencing with 1983. Thereafter, the Department may not certify any additional Enterprise Zones, but may amend and rescind certifications of existing Enterprise Zones in accordance with Section 5.4.

\* \* \*

"

(Emphasis added.)

You have indicated that there is disagreement concerning whether, under the language of section 5.3 of the Enterprise Zone Act, it was the intention of the General Assembly to withdraw the Department's authority to certify new enterprise zones at the expiration of "\* \* \* the 10 calendar years commencing with 1983". Specifically, it has been noted that although section 5.3 provides that after calendar year 1992, "\* \* \* the Department may not certify any additional Enterprise Zones, but may amend and rescind certifications of existing Enterprise Zones in accordance with Section 5.4", it also provides that "\* \* \* in other calendar years [than 1984, 1985, 1986, 1987 and 1990], no more than 13 Enterprise Zones may be certified."

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When the language of a statute is susceptible of two interpretations, the language should be construed to effectuate the intention of the General Assembly in its enactment. (American Country Insurance Co. v. Wilcoxon (1989), 127 Ill. 2d 230, 238.) Where the language of the statute is ambiguous, resort may be had to extrinsic aids of construction. (Laue v. Leifheit (1984), 105 Ill. 2d 191, 196.) Thus, it has been held that consideration may be given to the history of the statute, the reasons for its enactment, the circumstances of its adoption and the result to be achieved. (In re Marriage of Logston (1984), 103 Ill. 2d 266, 279.) Moreover, where an amendment is at issue, it is necessary to compare the statutory language before and after the change, and then weigh the entire statute in light of these considerations. In re Marriage of Logston, 103 Ill. 2d at 279.

The provisions of what is now section 5.3 of the Enterprise Zone Act originated in section 5.3 of "AN ACT to designate depressed areas, relax governmental controls and provide tax incentives, to allow for economic development therein and to amend certain Acts in connection therewith" (see Public Act 82-1019, effective December 7, 1982; Ill. Rev. Stat. 1983, ch. 67 ½, par. 608), which was the General Assembly's initial grant of authority to the Department to certify enterprise zones

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in qualifying "depressed areas". In that Act, the General Assembly provided that:

" \* \* \*

(d) No more than 8 Enterprise Zones may be certified by the Department in any calendar year. In any calendar year, the Department may not certify more than 3 Zones located within the same county (whether within municipalities or within unincorporated territory), nor more than 3 Zones in the same municipality. The Department may certify Enterprise Zones in each of the 6 calendar years commencing with 1983. Thereafter, the Department may not certify any additional Enterprise Zones, but may amend and rescind certifications of existing Enterprise Zones in accordance with Section 5.4." (Emphasis added.)

Under the plain language of the original statutory enactment, the Department was authorized, beginning in 1983, to certify up to eight enterprise zones per year for a period of six years. At the end of this period, the Department's authority to certify additional enterprise zones would cease.

In the years following, the language of section 5.3 of the Enterprise Zone Act was amended on several occasions. Public Act 83-1114, effective June 8, 1984, amended subsection 5.3(d) to provide:

" \* \* \*

(d) No more than 12 Enterprise Zones may be certified by the Department in calendar year 1984. In other calendar years, no more

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than 8 Enterprise Zones may be certified by the Department. Notwithstanding any other provision of this Act, no more than 48 Enterprise Zones may be certified by the Department for the 6 calendar years commencing with 1983. In any calendar year, the Department may not certify more than 3 Zones located within the same municipality. The Department may certify Enterprise Zones in each of the 6 calendar years commencing with 1983. The Department may not certify more than a total of 18 Enterprise Zones located within the same county (whether within municipalities or within unincorporated territory) for the 6 calendar years commencing with 1983. Thereafter, the Department may not certify any additional Enterprise Zones, but may amend and rescind certifications of existing Enterprise Zones in accordance with Section 5.4." (Emphasis added.) (Ill. Rev. Stat. 1985, ch. 67 ½, par. 608.)

Public Acts 84-9, effective June 27, 1985, and 84-166, effective August 16, 1985, amended subsection 5.3(d) to authorize the certification of "\* \* \* no more than 12 Enterprise Zones \* \* \* in calendar year 1985[,] \* \* \*" an increase of four enterprise zones over the original statutory limitations. Subsequently, Public Act 84-817, effective September 22, 1985, increased from eight to twelve the number of enterprise zones that could be certified in calendar year 1985, and authorized the Department to designate "\* \* \* up to 2 additional Enterprise Zones outside the regular application cycle if warranted by the extreme economic circumstances \* \* \*." Public Act 84-1124, effective June 30, 1986, amended subsection 5.3(d) to provide

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that "\* \* \* no more than 13 such Enterprise Zones may be certified by the Department in calendar year 1986. \* \* \*"

In 1987, the General Assembly amended subsection 5.3(d) of the Enterprise Zone Act to provide:

" \* \* \*

(d) No more than 12 Enterprise Zones may be certified by the Department in calendar year 1984 and no more than 12 such Enterprise Zones may be certified by the Department in calendar year 1985. In other calendar years, no more than 13 Enterprise Zones may be certified by the Department. The Department may also designate up to 4 additional Enterprise Zones outside the regular application cycle if warranted by the extreme economic circumstances as determined by the Department. Notwithstanding any other provision of this Act, no more than 60 Enterprise Zones may be certified by the Department for the 6 calendar years commencing with 1983. In any calendar year, the Department may not certify more than 3 Zones located within the same municipality. The Department may certify Enterprise Zones in each of the 6 calendar years commencing with 1983. The Department may not certify more than a total of 18 Enterprise Zones located within the same county (whether within municipalities or within unincorporated territory) for the 6 calendar years commencing with 1983. Thereafter, the Department may not certify any additional Enterprise Zones, but may amend and rescind certifications of existing Enterprise Zones in accordance with Section 5.4." (Emphasis added.) (See Public Acts 84-1440, effective January 2, 1987; and 84-1451, effective January 5, 1987.)



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Public Acts 85-1021, effective June 28, 1988; 86-15, effective June 30, 1989; 86-1030, effective February 28, 1990; 86-1456, effective December 12, 1990; and 87-1177, effective September 21, 1992, respectively increased from 65 to 67, 74, 81, 88 and 89 the total number of enterprise zones that were authorized to be certified by the Department. Public Act 86-1175, effective August 15, 1990, increased from 7 to 8 the number of additional enterprise zones to be certified outside of the regular application process.

It is clear that, at its inception, subsection 5.3(d) of the Enterprise Zone Act granted to the Department the authority to certify no more than 8 enterprise zones per calendar year, for a six year period commencing in 1983, and that, at the conclusion of that period, "\* \* \* the Department may not certify any additional Enterprise Zones \* \* \*." Although, as noted above, subsection 5.3(d) of the Act has been amended on numerous occasions: (1) to increase and to specify the number of enterprise zones that may be certified in particular calendar years; (2) to increase the total number of enterprise zones that may be certified; and (3) to expand the number of years within which new enterprise zones may be certified, there is nothing in the legislative history of subsection 5.3(d) of the Act to suggest any intention on the part of the General Assembly to extend the

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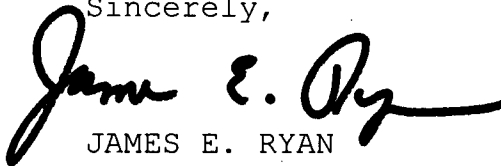
authority of "\* \* \* [t]he Department \* \* \* [to] certify Enterprise Zones \* \* \* [beyond] the 10 calendar years commencing with 1983. \* \* \*" Therefore, it is my opinion that under the current language of subsection 5.3(d) of the Enterprise Zone Act, the Department of Commerce and Community Affairs is not authorized to certify any new enterprise zones subsequent to the expiration of "\* \* \* the 10 calendar years commencing with 1983", or 1992.

In reaching this conclusion, I note that the language of subsection 5.3(d) of the Act providing that "[i]n other calendar years, no more than 8 [and later 13] Enterprise Zones may be certified by the Department \* \* \*" cannot be read in isolation. This language was added by Public Act 83-1114, effective June 8, 1984, which also amended the original language of subsection 5.3(d) to provide that in 1984 no more than 12 enterprise zones were to be certified. The introductory clause "in other calendar years" was intended to distinguish the maximum number of enterprise zones that could be certified in the remaining five years of the original six year certification period. Although amendatory language has been added to subsection 5.3(d) of the Act to authorize specific or additional certifications for particular calendar years, and the particular sentences to which your inquiry relates were separated by the insertion of that language, nothing in the provisions of the statute itself, in the

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pertinent amendments or in the legislative debates related thereto indicates any intention on the part of the General Assembly to grant to the Department the authority to certify new enterprise zones into perpetuity. Thus, when read in conjunction with the other provisions of subsection 5.3(d), the phrase "[i]n other calendar years \* \* \*" simply refers to the maximum number of certifications that the Department was authorized to grant in calendar years 1988, 1989, 1991 and 1992.

Sincerely,

A handwritten signature in black ink, reading "James E. Ryan". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

JAMES E. RYAN  
Attorney General