

TITLE 68 INDIANA GAMING COMMISSION

Emergency Rule

LSA Document #10-____ (E)

DIGEST

Temporarily adds rules regarding local development agreements. Statutory authority: IC 4-33. Effective upon filing with the publisher.

SECTION 1. a) The purpose of this rule is to promote transparency and to ensure the integrity of economic development payments in accordance with state and federal law.

b) The definitions in IC 4-33 and 68 IAC 1-1 apply to this document.

SECTION 2. “Development agreement” means a written agreement that:
(1) is between a person or a unit of government, and a development provider; and
(2) sets forth the financial commitments of a development provider to support economic development, including, without limitation, charitable or educational purposes in a specified location.

SECTION 3. “Economic development payment” means a monetary disbursement that is:
(1) paid under a development agreement;
(2) received by a unit of government or any other person; and
(3) not paid in legitimate exchange for any thing of value, including, without limitation:
(A) a purchase order;
(B) a lease; or
(C) a service contract;
in accordance with the terms of a development agreement.

SECTION 4. “Development provider” means any:
(1) riverboat licensee; or
(2) operating agent;
or affiliate thereof who makes or may make an economic development payment.

SECTION 5 “Party” means a signatory to a development agreement.

SECTION 6. “Specified recipient” means a person that is named in a development agreement that:
(1) receives an economic development payment from a development provider; and
(2) is not a party.

SECTION 7. “Unspecified recipient” means a person that is not named in a development agreement that receives a disbursement of money from a specified recipient.

SECTION 8. (a) The commission has continuous jurisdiction over development agreements, including, without limitation, the ability to disapprove part or all of a development agreement if disapproval would ensure:

- (1) compliance with state and federal law;**
- (2) the integrity of gambling operations in Indiana; and**
- (3) compliance with the purposes of the agreement.**

(b) The commission may verify and ensure that development agreements, economic development payments, disbursements to unspecified recipients, and expenditures of third party recipients:

- (1) comply with state and federal law;**
- (2) do not adversely affect the integrity of gambling operations in Indiana; and**
- (3) comply with the purposes of the agreement.**

SECTION 9. All development agreements must contain the following clause after July 1, 2011: “[a]ll parties to this agreement recognize the authority of the Indiana Gaming Commission over this agreement, including, without limitation, the authority to disapprove all or part of this agreement, to verify and ensure payments made under this agreement, to verify and ensure expenditures by recipients, to verify and ensure that compliance with the purposes of the agreement, and to act concerning modifications to the agreement. All parties to this agreement agree to comply fully with any requests for information or directives related to the exercise of the Commission’s authority.”

SECTION 10. (a) A development provider shall report annually to the commission the following:

- (1) the total dollar amounts of economic development payments;**
- (2) the parties or specified recipients, or both, that receive economic development payments; and**
- (3) Any other items related to an economic development payment that the commission may require.**

(b) a specified recipient of an economic development payment shall report annually to the commission an accounting of:

- (1) any economic development payment received by the recipient; and**
- (2) any disbursements of economic development payment money that the recipient makes to:**
 - (A) another specified recipient; or**
 - (B) an unspecified recipient.**

- (c) A report submitted under subsection (b) must include:
- (1) the legal name of the person submitting the report;
 - (2) the date, amount, and purpose of each disbursement;
 - (3) the name of each specified or unspecified recipient receiving a disbursement;
 - (4) any other information that the commission may require.

(d) Upon request of the commission, a person submitting a report under subsections (a) or (b) shall attach to the report sufficient documentation to support a transaction described in the report.

(e) a report submitted under subsection (a) or (b) must be made available electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

(f) The commission may require, with respect to a report required by this SECTION:

- (1) the format of the report;
- (2) the deadline by which the report must be filed; and
- (3) the manner in which the report must be maintained and filed.

SECTION 11. (a) A party may not be a for-profit person.

(b) A specified recipient may not be a for-profit person.

(c) A specified recipient who disburses part or all of an economic development payment to an unspecified recipient has a duty to ensure that the expenditures made by an unspecified recipient directly advance the stated purposes of the economic development payment.

SECTION 12. (a) Each non-profit specified recipient must have a conflict-of-interest statement that complies with state and federal law, and must provide the commission with a copy of the statement.

(b) Each non-profit specified recipient must provide the commission with a copy of its bylaws.

SECTION 13. (a) Any recipient of an economic development payment must deposit the economic development payment into a separate and segregated bank account within five (5) days of its receipt.

- (b) The bank account referenced in subsection (a):
- (1) must only be used to account for and report the proceeds of economic development payments;
 - (2) must only allow for expenditures pursuant to the terms of the economic development agreement; and

(3) must be maintained at an FDIC insured bank that is located in and has a corporate presence in the State of Indiana.

SECTION 14. (a) If all parties to a development agreement agree to modify a development agreement, the parties shall:

- (1) submit to the commission a written request for modification, which shall be signed by all parties;**
- (2) submit a copy of the development agreement as it would appear after modification; and**
- (3) submit a document explaining the parties' reasons for the requested modifications;**

(b) If the parties follow the steps listed in subsection (a), the commission may consider the request.

(c) If the commission approves the parties' request, the parties shall provide the commission with a fully executed copy of the new development agreement no later than 30 days after the date of commission approval.

SECTION 15. (a) A development provider may request a modification to a development agreement when at least one party does not agree on the modification. The development provider requesting a modification shall submit to the commission:

- (1) a copy of the development agreement as it would appear after modification;**
- (2) a listing of all proposed modifications; and**
- (3) a written request for a modification that provides evidence that the modification is necessary.**

(b) The development provider shall notify all other parties to the development agreement that it has submitted a modification request to the commission.

(c) If the development provider requesting a modification follows the steps listed in subsections (a) and (b), the commission may consider the request.

(d) A party to a development agreement may submit to the commission any information that it considers relevant to the proposed modification.