§ 969. Termination or revision of an empire zone. (a) Except as provided in this section, any designation of an area as an empire zone shall remain in effect during the period beginning on the date of designation and ending June thirtieth, two thousand ten.

(b) After consultation with the director of the budget and the commissioner of labor, the commissioner may terminate the designation of an area as an empire zone upon a finding that (1) the applicant has failed substantially to implement the empire zone development plan within the time stated therein; (2) there has been no substantial business development or job creation within the area designated as an empire zone within five years after such designation; (3) there has been inadequate management and evaluation of the zone at the local level; or (4) the applicant has repeatedly failed to comply with program reporting requirements, provided, however, that no termination shall occur unless and until written notice has been given to the applicant and a public hearing has been held thirty days prior to the effective date of such termination.

(c) The governing body of a city, county, town or village may, by resolution, submit to the commissioner a request to revise the boundaries of an existing empire zone. The commissioner may, after consultation with the commissioner of labor, approve such revision subject to the following provisions:

(1) Any revision of the borders of an empire zone shall be based upon a determination by the commissioner that a change in circumstances has occurred since the establishment of the existing borders which makes revision of such borders necessary or desirable.

(2) The commissioner shall affirm that such revision would not have the effect of producing an empire zone which does not satisfy the criteria for empire zone designation established by or pursuant to section nine hundred fifty-eight of this article.

(3) The commissioner may grant approval of revision of the borders of an empire zone after prior public notice and a public hearing at least thirty days prior to the effective date of such revision, if such revision adds territory to an existing empire zone.

(4) The commissioner may grant approval of a revision of the borders of an empire zone after public notice of such proposed revision and a public hearing at least thirty days prior to the effective date of such

revision, if such revision removes territory from an existing empire zone.

(5) The revision of the borders of an empire zone shall have no effect on the duration of the designation of such empire zone as provided by subdivision (a) of this section.

(6) It is the policy to allow each zone no more than one boundary amendment within a twelve month period. If, however, there is a change in circumstances involving extenuating factors within the year (such as the attraction/retention of a regionally significant project, which is consistent with the zone's development plan), the request will be considered. Any request to revise the boundaries of an existing empire zone that would add or remove acreage from a zone shall not be submitted until the provisions of this subdivision are satisfied and the designation of the distinct and separate contiguous areas are submitted as required by section nine hundred fifty-seven of this article, unless the zone administrative board demonstrates that prior to the effective date of the amendments to this subdivision made by a chapter of the laws of two thousand five it has been working in conjunction with a business for the purpose of submitting such boundary revision that would result in the creation of jobs within the zone. For purposes of section one hundred eighty-seven-j and articles nine-A, twenty-two, thirty-two, and thirty-three of the tax law, such business shall be deemed to have been certified prior to April first, two thousand five.

(7) The area subject to the boundary amendment is in an area where there is no viable alternative area that has existing public sewer or water infrastructure.

(d) Upon the termination or revision of the borders of an empire zone as provided in this section, the commissioner shall file notice of such action as required by section nine hundred fifty-nine of this article.

(e) Notwithstanding the provisions of this section, for any empire zone acreage designated as a result of a revision of the borders of an empire zone prior to the effective date of this subdivision that is outside of the distinct and separate contiguous areas that has not demonstrated any appreciable commercial activity and/or any appreciable capital improvement over a two year period from the time of designation, such acreage shall be identified by the local empire zone administrative board, which shall determine whether such acreage has been proposed for

development in a manner consistent with the empire zone development plan. If such acreage has not been proposed for development in such manner the local empire zone administrative board shall remove such acreage from the zone. Any affected business or businesses shall be immediately decertified.

(f) Notwithstanding subdivision (a) of this section, if the zone administrative board demonstrates that, prior to the date the empire zones expire under this section, that it had submitted a preliminary application to the department of economic development requesting to revise the boundaries of its zone in order to accommodate a project that would result in the creation of jobs within the zone, the commissioner of economic development may review and approve such boundary revision and, if approved, may establish an effective date prior to the date the empire zones expire pursuant to subdivision (a) of this section.

(g) Notwithstanding any regulations to the contrary, a regionally significant project as defined in paragraph (i) of subdivision (d) of section nine hundred fifty-seven of this article, that was deemed eligible by the local zone administrative board and recommended for approval to the commissioner of economic development on or before the date the empire zones expire pursuant to subdivision (a) of this section, the commissioner of economic development, if the project is approved, may establish an effective date prior to the date the empire zones expire pursuant to subdivision (a) of this section.