

WEST VIRGINIA CODE: §12-7-8A

§12-7-8a. New millennium fund; new millennium fund promissory notes; nonincentive tax credits; rulemaking.

(a) The new millennium fund is continued to permit the board to better fulfill its mission to mobilize financing and capital for emerging, expanding and restructuring businesses in the state. New millennium fund moneys are to consist of all appropriations for use by the jobs investment trust board made by the Legislature subsequent December 31, 1999, and funds borrowed from private or institutional lenders by the board through the issuance of promissory notes. Fund moneys may be held in a separate account or accounts by or at the West Virginia Housing Development Fund for the board until the board disburses any portion of the funds. Fund moneys that are not set aside or otherwise designated for paying interest on the promissory notes may be used by the board in accordance with and to effectuate the purposes of this article. The board may impose reasonable fees and charges associated with its investment of funds from the new millennium fund in eligible businesses to be paid in any combination of money, warrants or equity interests.

(b) Without limiting the powers otherwise enumerated in this article, the board may: (1) Sell and transfer portions of the nonincentive tax credits created, issued and transferred to the board pursuant to the provisions of this section to contracting taxpayers and/or their assigns in return for the payments described in subsection (f) of this section; (2) issue or provide promissory notes on loans made to the board having terms of up to ten years on a zero-coupon basis or otherwise; (3) enter into put options or similar commitment contracts with taxpayers that would be for terms of up to ten years committing, at the board's option, to sell and transfer to the contracting taxpayers or their assigns at the end of the term and as soon after the term as is reasonable under the circumstances portions of the nonincentive tax credits created, issued and transferred to the board pursuant to this section; (4) grant, transfer and assign the benefits of the put options or similar commitment contracts as collateral to secure the board's obligations pursuant to its promissory notes; (5) satisfy the board's payment obligations under its promissory notes from assets of the board, other than the benefits of the put options or similar commitment contracts, then to effect a corresponding cancellation of the board's related nonincentive tax credit commitment; and (6) satisfy the board's payment obligations under its promissory notes from the benefits of the put options or similar commitment contracts, then to effect a corresponding sale and transfer of nonincentive tax credits. The terms and conditions of the promissory notes, put options or similar commitment contracts shall be consistent with the purposes of this section, and approved by board resolution, and may be different for separate transactions.

(c) Without limiting the powers otherwise enumerated in this article and with regard to the new millennium fund, the board has and may exercise all powers necessary to further the purposes of this section, including, but not limited to, the power to commit, sell and transfer nonincentive tax credits up to the total amount of \$30,000,000.

(d) The board may issue its promissory notes pursuant to this section in amounts totaling no more than \$6,000,000 in each of the fiscal years ending in 2001, 2002, 2003, 2004 and 2005 and may issue its nonincentive tax credit commitments in amounts totaling no more than \$6,000,000 in each of the fiscal years ending in 2001, 2002, 2003, 2004 and 2005. The board may agree to sell and transfer, at its option, nonincentive tax credits to taxpayers ten years after the date of its commitments and as soon thereafter as it is reasonable under the circumstances.

(e) Prior to committing to the sale and transfer of any nonincentive tax credits, the board shall first determine that:

(1) The new millennium fund moneys to be received in relationship to the commitment shall be used for the development, promotion and expansion of the economy of the state; and

(2) The existence and pledge of a put option or similar commitment contract that is supported by the nonincentive tax credits that are committed by the board is a material inducement to the private or institutional lender transferring moneys to the board to be placed in the new millennium fund.

(f) The board may sell and transfer nonincentive tax credits only in conjunction with the satisfaction of its obligations under its promissory notes issued pursuant to this section. Each original sale and transfer of nonincentive tax credits by the board shall be consummated upon payment to the board, or for its benefits, of an amount equal to the dollar amount of the nonincentive tax credits sold and transferred. The nonincentive tax credits sold and transferred by the board pursuant to this section shall be claimed as a credit on the tax returns for the year or years in which the nonincentive tax credits are sold and transferred by the board. The amount of the nonincentive tax credit that exceeds the taxpayer's tax liability for the taxable year in the year of the purchase may be carried to succeeding taxable years until used in full up to two years after the year of purchase and may not be carried back to prior taxable years. Any nonincentive tax credit sold and transferred by the board that remains outstanding after the third taxable year subsequent to and including the year of the transfer is forfeited.

(g) Nonincentive tax credits are created, issued and transferred by the state to the board in a total amount of \$30,000,000 to be used by taxpayers, including persons, firms, corporations and all other business entities, to reduce the tax liabilities imposed upon them pursuant to articles twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four, chapter eleven of this code. The total amount of nonincentive tax credits that are created, issued and transferred to the board is \$30,000,000. The nonincentive tax credits are freely transferable to subsequent transferees. The board shall immediately notify the President of the Senate, the Speaker of the House of Delegates and the Governor in writing if and when any nonincentive tax credits are sold and transferred by the board.

(h) In conjunction with the Department of Tax and Revenue, the board shall develop a system for: (i) Registering nonincentive tax credits, commitments for the sale and transfer of

nonincentive tax credits, the assignments of the commitments and the assignments of the nonincentive tax credits; and (ii) certifying nonincentive tax credits so that when nonincentive tax credits are claimed on a tax return, they may be verified as validly issued by the board, properly taken in the year of claim and in accordance with the requirements of this section.

(i) The board may promulgate, repeal, amend and change rules consistent with the provisions of this article to carry out the purposes of this section. These rules are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the Secretary of State.