WEST VIRGINIA CODE CHAPTER 12 ARTICLE 7

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§12-7-1. Purposes and objectives; how article cited.

This article, which may be cited as the "Jobs Investment Trust Act", is enacted to create a jobs investment trust to be used for the development, promotion and expansion of West Virginia's economy and to provide opportunities to businesses and college and university students to develop and implement plans for innovative projects and investment opportunity.

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§12-7-2. Legislative findings.

(a) The Legislature finds that the Jobs Investment Trust is a necessary tool to make investment funds available to eligible businesses, would stimulate economic growth, and provide or retain jobs within the state. Accordingly, it is declared to be the public policy of the state to create an investment program to inject needed capital into the business community, sustain or improve business profitability, and provide jobs to the citizens of the state.

(b) The Legislature further finds that:

(1) The availability of financial assistance through the creation of the jobs investment trust will promote economic development in the state and will serve the public purposes of the state;

(2) The public policy of the state will be served through financing projects, extending loans, providing financing or credit for working capital, creating innovative investment plans and options, and providing equity financing or the refinancing of existing debt of an enterprise;

(3) It is in the public interest, in order to address the needs of the business community and the citizens of the state, that a public body corporate be created with full power to accept grants, gifts, and appropriations; to generate revenues to furnish money and credit to approved businesses or enterprises; to promote the establishment of new and innovative projects; and to upgrade, expand, and retain existing projects; and

(4) Fundamental changes are occurring in national and international markets that increase the need for debt financing, equity capital, and near-equity capital for emerging, expanding, and restructuring business opportunities in the state.

(c) The Legislature further finds that:

(1) Due to the creation of the Jobs Investment Trust, moneys will be available for venture capital in this state;

(2) The implementation of this innovative program may supplant the need for the state to otherwise assist private venture capital concerns through other tax credits;

(3) Due to the availability of venture capital funds through this program the granting of venture capital company credits under the Capital Company Act should be reduced for three fiscal years pending the full implementation of the Jobs Investment Trust Program;

(4) Due to this reduction in the certification of tax credits, additional general revenue may become available for new economic development programs;

(5) These economic development programs may be funded from general revenue in an amount appropriate to effectuate the purposes of these programs; and

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(6) Due to the foregoing findings, there shall be an annual line item appropriation, in an amount determined by the Legislature, to the West Virginia Development Office for a matching grant program for regional economic development corporations or authorities.

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§12-7-3. Definitions.

For purposes of this article:

(a) "Board" means the West Virginia Economic Development Authority, established pursuant to §31-15-1 *et seq*. of this code.

(b) "Eligible business" means any business, including, but not limited to, a business licensed or seeking licensure by the small business administration as a small business investment company under the Small Business Investment Act, which is qualified to do business in West Virginia and is in good standing with all applicable laws affecting the conduct of such business.

(c) "Non-incentive tax credits" means the non-incentive tax credits issued by the state to the Jobs Investment Trust Board and authorized for sale and transfer by the jobs investment trust board pursuant to §12-7-8a of this code.

(d) "Securities" means all bonds, notes, stocks, units of ownership, debentures, or any other form of negotiable or nonnegotiable evidence of indebtedness or ownership.

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§12-7-4. Jobs Investment Trust Board; termination; vesting with the Economic Development Authority.

(a) The Jobs Investment Trust Board is hereby terminated, and the management and control of the Jobs Investment Trust shall be vested in the West Virginia Economic Development Authority.

(b)The board shall meet on a quarterly basis or more often, if necessary, to carry out the powers and duties of the board with respect to the management of the Jobs Investment Trust, as set forth in this article.

(c) For the purposes of managing the Jobs Investment Trust, the rules related to board makeup and quorum requirements shall be the same as those set forth in §31-15-5 of this code.

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§12-7-5. Management and control of jobs investment trust vested in board; officers; liability; authority of executive director to act on behalf of board; relationship to higher education institutions.

(a) It is the duty of the board to manage and control the Jobs Investment Trust. With the advice and consent of the Senate, the Governor appoints an executive director of the Jobs Investment Trust who is or has been a senior executive of a major financial institution, brokerage firm, investment firm or similar institution, with extensive experience in capital market development. The director serves at the Governor's will and pleasure and is responsible for managing and administering the daily functions of the Jobs Investment Trust and for performing other functions necessary to the effective operation of the trust. The compensation of the director is annually fixed by the board.

(b) The board annually elects a secretary to keep a record of the proceedings of the board, who need not be a member of the board.

(c) The members and officers of the board are not liable personally, either jointly or severally, for any debt or obligation created by the board.

(d) The acts of the board are solely the acts of its corporation and are not those of an agent of the state. A debt or obligation of the board is not a debt or obligation of the state.

(e) Upon the affirmative vote of at least a majority of those members in attendance in a meeting of the board, the board may approve any action to be taken and authorize the executive director for and on behalf of the board to execute and deliver all instruments, agreements, or other documents that are required or are reasonably necessary to effectuate the decisions or acts of the board.

(f) The West Virginia Economic Development Authority shall provide office space and staff support services for the director and the board shall act as fiscal agent for the board and, as such, shall provide accounting services for the board, invest all funds as directed by the board, service all investment activities of the board, and shall make the disbursements of all funds as directed by the board, for which the West Virginia Economic Development Authority shall be reasonably compensated as determined by the board.

(g) The board and the executive director shall involve students and faculty members of state institutions of higher education in the board's activities in order to enhance the opportunities at the institutions for learning and for participation in the board's investment activities and in the economic development of the state, whether in research, financial analysis, management participation, or in such other ways as the board and the executive director may find appropriate.

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§12-7-6. Corporate powers.

The board may:

(1)(A) Make loans to eligible businesses with or without interest secured if and as required by the board; and (B) acquire ownership interests in eligible businesses. These investments may be made in eligible businesses that stimulate economic growth and provide or retain jobs in this state and shall be made only upon the determination by the board that the investments are prudent and meet the criteria established by the board;

(2) Accept appropriations, gifts, grants, bequests, and devises and use or dispose of them to carry out its corporate purposes;

(3) Make and execute contracts, releases, compromises, agreements, and other instruments necessary or convenient for the exercise of its powers or to carry out its corporate purposes;

(4) Collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments, and other evidence of indebtedness, in connection with making equity investments and in connection with providing technical, consultative, and project assistance services;

(5) Sue and be sued;

(6) Make, amend, and repeal bylaws and rules consistent with the provisions of this article;

(7) Hire its own employees, who shall be employees of the State of West Virginia for purposes of §5-10-1 *et seq*. and §5-16-1 *et seq*. of this code, and appoint officers and consultants and fix their compensation and prescribe their duties;

(8) Acquire, hold, and dispose of real and personal property for its corporate purposes;

(9) Enter into agreements or other transactions with any federal or state agency, college or university, any person and any domestic or foreign partnership, corporation, association, or organization;

(10) Acquire real and personal property, or an interest in real or personal property, in its own name, by purchase or foreclosure when acquisition is necessary or appropriate to protect any loan in which the board has an interest; to sell, transfer, and convey any real or personal property to a buyer; and, in the event a sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease real or personal property to a tenant;

(11) Purchase, sell, own, hold, negotiate, transfer, or assign: (A) Any mortgage, instrument, note, credit, debenture, guarantee, bond, or other negotiable instrument or obligation securing a loan, or any part of a loan; (B) any security or other instrument evidencing ownership or indebtedness; or (C) equity or other ownership interest. An offering of one of

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these instruments shall include the representation and qualification that the board is a public body corporate, managing a venture capital fund that includes high-risk investments and that in any transfer, sale, or assignment of any interest, the transferee, purchaser, or assignee accepts any risk without recourse to the Jobs Investment Trust or to the state;

(12) Procure insurance against losses to its property in amounts, and from insurers, as is prudent;

(13) Consent, when prudent, to the modification of the rate of interest, time of maturity, time of payment of installments of principal or interest, or any other terms of the investment, loan, contract, or agreement in which the board is a party;

(14) Establish training and educational programs to further the purposes of this article;

(15) File its own travel rules;

(16) Borrow money to carry out its corporate purpose in principal amounts and upon terms as are necessary to provide sufficient funds for achieving its corporate purpose;

(17) Take options in or warrants for, subscribe to, acquire, purchase, own, hold, transfer, sell, vote, employ, mortgage, pledge, assign, pool, or syndicate: (A) Any loans, notes, mortgages, or securities; (B) debt instruments, ownership certificates, or other instruments evidencing loans or equity; or (C) securities or other ownership interests of or in domestic or foreign corporations, associations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, joint ventures, or other private enterprise to foster economic growth, jobs preservation and creation in the State of West Virginia, and all other acts that carry out the board's purpose;

(18) Contract with either Marshall University or West Virginia University, or both, for the purpose of retaining the services of, and paying the reasonable cost of, services performed by the institution for the board to effectuate the purposes of this article;

(19) Enter into collaborative arrangements or contracts with private venture capital companies when considered advisable by the board;

(20) Provide equity financing for any eligible business that will stimulate economic growth and provide or retain jobs in this state and hold, transfer, sell, assign, pool, or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities, debt instruments, or other instruments evidencing loans or equity interest in furtherance of the board's corporate purposes;

(21) Form partnerships, create subsidiaries, or take all other actions necessary to qualify as a small business investment company under the United States Small Business Investment Act, PL 85-699, as amended;

(22) Provide for staff payroll and make purchases in the same manner as the West Virginia

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Economic Development Authority;

(23) Indemnify its members, directors, officers, employees, and agents relative to actions and proceedings to which they have been made parties and make advances for expenses relative thereto and purchase and maintain liability insurance on behalf of those persons all to the same extent as authorized for West Virginia business corporations under present or future laws of the state applicable to business corporations generally; and

(24) Contract for the provision of legal services by private counsel and, notwithstanding the provisions of §5-3-1 *et seq*. of this code, counsel may, but is not limited to, represent the board in court, negotiate contracts and other agreements on behalf of the board, render advice to the board on any matter relating thereto, prepare contracts and other agreements, and provide any other legal services requested by the board.

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§12-7-7. Limitation on investments.

Subject to the provisions of §12-7-9 of this code, the board may invest in any eligible business: *Provided*, That at the time of the placement of the investment not more than 20 percent of the board's total investment portfolio is invested in one eligible business within any two-year period: *Provided, however*, That the board may invest in an eligible business up to an additional 20 percent of the board's total investment portfolio, or up to a total of $2,000,000, whichever is less. The additional investment must be in the form of a short-term debt investment to be repaid within 12 months of the investment: *Provided further*, That the board may extend said 12-month repayment term and upon terms consistent with the actions of other investors involved in similar investments with the eligible business if the eligible business demonstrates to the board: (1) That said business is progressing with a plan for capital formation and business development; and (2) that said extension of the 12-month period, and any other modification thereto, will not substantially prejudice the position of the board in relation to the other investors in, and creditors of, the eligible business: *And Provided further*, That the board shall report to the Governor and the Joint Committee on Government and Finance of its intention to extend any repayment term at least 20 days prior to the board approving any extension made on or after April 1, 1994. Any reported intent to extend any repayment term may be made electronically.

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§12-7-8. Funding.

[Repealed.]

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§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

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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.

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§12-7-9. Applications for investment priority; investment package.

(a) The board shall accept and review applications from eligible businesses and shall determine the investment worthiness, the benefits to the West Virginia economy, the leverage potential for investments in small business investment companies, the jobs creation potential, and the economic circumstances of the region or regions of the state that would benefit from each proposal. The board shall attempt to balance its investments, as nearly as is practicable, among the geographic regions of the state.

(b) Any faculty or students of a public or private institution of higher education in the state may present for the board's consideration proposals relating to innovative projects or investment opportunities.

(c) An annual audit shall be conducted by an independent firm of certified public accountants and shall be made available to the Legislature annually. A copy of the audit may be provided to the Legislature electronically and paper copies may be provided upon the request of any member.

(d) The board shall forward to the West Virginia Economic Development Authority for its review and information approved investment packages containing information as is necessary to permit the West Virginia Economic Development Authority to carry out its duties under this article. The board shall determine whether each applicant is an eligible business.

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§12-7-10. Acceptance or rejection of investment package.

(a) The board may approve or disapprove an investment package or any portion thereof: Provided, That notwithstanding any provision of this article to the contrary, the board may not accept any investment package or any portion thereof unless the same has been reviewed and approved by the board's executive director in his or her sole discretion.

(b) The board shall disapprove any investment package if the business requesting such investment is not in good standing with all applicable laws affecting the conduct of such business. Upon request of the board, each affected state agency shall provide the board with such information as to the standing of each applicant, notwithstanding any provision of this code to the contrary.

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§12-7-11. Documentary materials concerning trade secrets; commercial, financial or personal information; confidentiality.

Any documentary material or data made or received by the board for the purpose of furnishing assistance, to the extent that the material or data consists of trade secrets, commercial, financial or personal information regarding the financial position or activities of such business or person, shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of the trade secrets, commercial, financial or personal information may be held by the board in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code: Provided, That the board shall make public the following information regarding executed investments: (1) The names and addresses of the principals of the business and its board of directors; (2) the location or locations of the projects; (3) the amount of the investment or financial assistance provided by the board; (4) the purpose of the investment or financial assistance; (5) the maturity, interest rate and other pertinent terms of the investment; (6) the fixed assets which serve as security for the investment; and (7) the names and addresses of all persons holding twenty-five percent or more of the equity of the entity receiving investment assistance: Provided, however, That the board shall keep available in its offices for inspection by any citizen of this state the annual report prepared pursuant to the requirements of section twelve of this article and the annual audit report prepared pursuant to the requirements of sections nine and fourteen of this article.

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§12-7-12. Reports of board; report of housing development fund.

NOTE: West Virginia Code §12-7-12 was amended by two bills passed during the 2022 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

The latter act, Senate Bill 523 (passed on March 7, 2022), amended West Virginia Code §12-7-12 to read as follows:

(a) The board shall prepare annually, or more frequently if deemed necessary by the board, a report of its operations and the performance of the various investments administered by it. A copy thereof shall be furnished to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, and, upon request, to any legislative committee. Such report shall be kept available for inspection by any citizen of this state. The report required in this subsection may be made available electronically on the board's website or through the website of the West Virginia Economic Development Authority. The report may be submitted to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, or to any legislative committee electronically and paper copies must be provided upon request.

(b) The West Virginia Economic Development Authority shall prepare annually and submit to the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, and, upon request, any legislative committee, a report on the performance of the board and the quality of its investments for the preceding year. The report required in this subsection may be made available electronically on the West Virginia Economic Development Authority's website. The report may be submitted to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, or to any legislative committee electronically and paper copies must be provided upon request.

The earlier act, House Bill 4067 (passed on February 10, 2022) amended West Virginia Code §12-7-12 to read as follows:

(a) The board shall prepare annually, or more frequently if deemed necessary by the board, a report of its operations and the performance of the various investments administered by it. A copy thereof shall be furnished to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor and, upon request, to any legislative committee. Such report shall be kept available for inspection by any citizen of this state.

(b) The West Virginia housing development fund shall prepare annually and submit to the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor and, upon request, any legislative committee, a report on the performance of the board and the quality of its investments for the preceding year.

(c) The report shall be transmitted to the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor and, upon request, any legislative committee electronically. Further, the report shall be provided to the legislative librarian to be posted

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to the legislative website. No hard copy of the report shall be issued; however, upon request a hard copy shall be provided.

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§12-7-13. Earnings.

All earnings, interest and fees collected by the board on or in respect of funds provided by the West Virginia housing development fund shall go back into the jobs development fund created pursuant to section twenty-c, article eighteen, chapter thirty-one of this code, for reinvestment and no such earnings, interest or fees shall be considered part of the general revenue of the state.

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§12-7-14. Exemption from certain requirements; audit.

In order to provide excellent investment opportunities and to effectively implement the new millennium fund, the investment activity and the new millennium fund activity provided by this article shall be exempt from the bidding and public sale requirements, from the approval of contractual agreements by the department of finance and administration or the attorney general and from the requirements of chapter five-a of this code. The transactions provided by this article shall be subject to an annual audit by an independent firm of certified public accountants.

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§12-7-15. Conflicts of interest.

(a) No member of the board or officer, agent or employee thereof shall, in his or her own name or in the name of a nominee, hold an ownership interest of more than seven and one-half percent in any association, trust, corporation, partnership or other entity which is, in its own name or in the name of a nominee, a party to a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote.

(b) With respect to any direct or any indirect interest, other than an interest prohibited in subsection (a) of this section, in a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote, the member of the board or officer, agent or employee thereof holding such interest shall disclose the same to the board secretary prior to the taking of final action by the board concerning such contract or agreement and shall disclose the nature and extent of such interest and the date of his or her acquisition thereof, which disclosure shall be publicly acknowledged by the board and entered upon the minutes of the board. If a member of the board or officer, agent or employee thereof holds such an interest, he or she shall refrain from any further involvement on behalf of the board in regard to such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other members of the board or its officers, agents and employees concerning said contract or agreement. Notwithstanding any other provision of law, any contract or agreement entered into in conformity with this subsection shall not be void or invalid by reason of the interest described in this subsection, nor shall any person so disclosing the interest and refraining from further official involvement as provided in this subsection be guilty of an offense, be removed from office or be subject to any other penalty or legal disability on account of such interest.

(c) Any contract or agreement made in violation of subsection (a) or (b) of this section shall be null and void and shall give rise to no civil or criminal action against the board or any member thereof.

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§12-7-16. Credit of state not pledged.

The provisions of this article do not and shall not be construed to authorize the jobs investment trust board at any time or in any manner to grant or pledge the credit or taxing power of the state. None of the obligations or debts created by the jobs investment trust board under the authority granted in this article are or are to be construed to be obligations of the state.

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