

SB 4002

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
FOURTH EXTRAORDINARY SESSION, 2009

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ENROLLED

Senate Bill No. 4002

(BY SENATORS TOMBLIN (MR. PRESIDENT)
AND CARUTH, BY REQUEST OF THE EXECUTIVE)

[Passed November 19, 2009; in effect from passage.]

OFFICE OF THE CLERK
SECRETARY OF STATE

2009 DEC -7 PM 3:44

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(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-7-1, §5B-7-2, §5B-7-3, §5B-7-4 and §5B-7-5, all relating to authorizing counties to issue recovery zone bonds; allocating recovery zone bond volume cap; implementing a process for the reallocation, suballocation and waiver of recovery zone bonds volume cap; and defining terms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5B-7-1, §5B-7-2, §5B-7-3, §5B-7-4 and §5B-7-5, all to read as follows:

ARTICLE 7. RECOVERY ZONE BONDS.

§5B-7-1. Definitions.

1 Unless the context clearly indicates otherwise, as used in
2 this article:

3 (1) "Economic Development Authority" or "authority"
4 means the West Virginia Economic Development Author-
5 ity as continued in section five, article fifteen, chapter
6 thirty-one of this code.

7 (2) "Recovery zone bonds" means recovery zone eco-
8 nomic development bonds and recovery zone facility
9 bonds, authorized under Section 1401 of Title I of Subtitle
10 B of the American Recovery and Reinvestment Act of
11 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), that may
12 be issued by states, counties, certain municipalities and
13 other qualified issuers within each state before January 1,
14 2011.

15 (3) "Recovery zone economic development bond" means
16 the term as defined in 26 U. S. C. §1400U-2.

17 (4) "Recovery zone facility bond" means the term as
18 defined in 26 U. S. C. §1400U-3.

19 (5) "Volume cap" means the recovery zone bond volume
20 limitation allocated to each state and to counties and
21 municipalities within each state in accordance with 26 U.
22 S. C. §1400U-1.

**§5B-7-2. Allocation of volume cap for recovery zone bonds;
obligations not debt of state.**

1 Pursuant to 26 U. S. C. §1400U-1(a)(3)(A), the State of
2 West Virginia shall allocate the volume cap among the
3 counties of the state in the same manner as described in
4 Section 6.04 of Internal Revenue Service Notice 2009-50.
5 Bonds, notes and other obligations issued pursuant to this
6 article shall not constitute a debt or a pledge of the faith
7 and credit or taxing power of this state and the holders
8 and owners thereof shall have no right to have taxes levied
9 by the Legislature for the payment of the principal thereof
10 or interest thereon, but such bonds, notes and other
11 obligations shall be payable solely from revenues and

12 funds pledged for their payment as established in the
13 authorizing orders, ordinances and resolutions of such
14 issuers. All such bonds and notes, and all documents
15 evidencing any other obligation, shall contain on the face
16 thereof a statement to the effect that the bonds, notes or
17 such other obligation as to both principal and interest, are
18 not debts of the state but are payable solely from revenues
19 and funds pledged for their payment.

§5B-7-3. Certification and waiver of volume cap allocation.

1 (a) *Preliminary certification.* —

2 (1) Each county allocated volume cap in accordance with
3 this article shall submit a preliminary certification to the
4 Governor that includes:

5 (A) The amount of volume cap the county intends to use;

6 (B) The entity issuing each series of recovery zone bonds.
7 If the county has suballocated volume cap to an entity, the
8 certification shall include a copy of an order, ordinance or
9 resolution of the county commission authorizing the sub-
10 allocation;

11 (C) The projects, including, but not limited to, road
12 transportation projects, to be financed by the issuance of
13 each series of recovery zone bonds; and

14 (D) The financing plan for each series of recovery zone
15 bonds, including the source of payment of the debt service
16 of each series of recovery zone bonds.

17 (2) Preliminary certifications for recovery zone economic
18 development bonds shall be submitted to the Governor on
19 or before January 31, 2010.

20 (3) Preliminary certifications for recovery zone facility
21 bonds shall be submitted to the Governor on or before
22 February 28, 2010.

23 (4) Any portion of volume cap allocated to a county that
24 is not certified for use by the county in accordance with
25 this subsection is considered waived.

26 (5) A county may waive its allocation of volume cap by
27 providing written notice of such waiver to the Governor on
28 or before January 31, 2010, in the case of volume cap for
29 recovery zone economic development bonds, or on or
30 before February 28, 2010, in the case of volume cap for
31 recovery zone facility bonds.

32 (b) *Final certification.* —

33 (1) Each county that has submitted a preliminary
34 certification to the Governor shall submit a final certifica-
35 tion to the Governor on or before July 31, 2010. The final
36 certification shall establish: (i) That the county or other
37 entity receiving a suballocation from the county has closed
38 on each series of recovery zone bonds or has entered into
39 a bond purchase agreement that requires closing on each
40 series of recovery zone bonds prior to August 31, 2010; and
41 (ii) the amount of volume cap used by the county.

42 (2) Any portion of volume cap allocated to a county that
43 is not certified as used in accordance with this subsection
44 is considered waived. However, if an entity receiving a
45 suballocation from a county submits a timely certification
46 pursuant to section five of this article, that suballocated
47 portion of the county's volume cap is not considered
48 waived.

49 (3) If, after submitting a preliminary certification to the
50 Governor, a county determines to waive any portion of its
51 allocation of volume cap, it may waive its allocation of
52 such portion by notifying the Governor in writing on or
53 before July 31, 2010.

54 (c) *Notice of waiver.* — The Governor shall provide
55 timely written notice to the Economic Development

56 Authority of any written volume cap waiver submitted by
57 a county.

§5B-7-4. Reallocation of volume cap.

1 (a) The Economic Development Authority shall reallo-
2 cate volume cap that has been waived pursuant to this
3 article. The authority may reallocate the volume cap to
4 the state, state agencies, counties, municipalities or any
5 other political subdivisions or any other eligible issuer
6 authorized to issue recovery zone bonds pursuant to
7 Section 5.04 of Internal Revenue Service Notice 2009-50.

8 (b) As soon as reasonably possible after the effective date
9 of this section the authority shall adopt a procedure for
10 the solicitation and receipt of applications, on a form and
11 in a manner prescribed by the authority, for eligible
12 issuers seeking reallocated volume cap.

13 (c) Within ninety days of receipt of written notice from
14 the Governor the authority shall reallocate any amount of
15 volume cap waived by a county pursuant to this article.
16 The authority shall provide written notice of any realloca-
17 tion to the entity receiving the reallocation.

**§5B-7-5. Suballocation of volume cap by counties; counties
authorized to take action to issue recovery zone
bonds.**

1 Counties allocated volume cap pursuant to this article
2 may, by order, ordinance or resolution of the county
3 commission, suballocate such allocation to municipalities
4 or any other eligible issuers authorized to issue recovery
5 zone bonds pursuant to Section 5.04 of Internal Revenue
6 Service Notice 2009-50. Each county that suballocates
7 volume cap shall attach a copy of the order, ordinance or
8 resolution authorizing the suballocation to the preliminary
9 certification required in section three of this article.
10 Entities receiving a suballocation pursuant to this section

11 shall certify to the county and to the Governor no later
12 than July 31, 2010, that the entity has closed on the
13 recovery zone bonds using the volume cap suballocation or
14 has entered into a bond purchase agreement that requires
15 a closing on the recovery zone bonds prior to August 31,
16 2010. Counties shall be authorized to take any other
17 action required by Internal Revenue Service Notice 2009-
18 50 to issue recovery zone bonds.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *7th*
Day of *December*, 2009.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

DEC 2 2009

Time 4:20 pm