

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 109

BY SENATOR TRUMP

[Originating in the Committee on Banking and
Insurance; reported on January 27, 2016]

1 A BILL to repeal §31A-2-4c of the Code of West Virginia, 1931, as amended; to repeal §38-1-8a
2 of said code; to repeal §44-13-4a of said code; to amend and reenact §31-18-6 of said
3 code; and to amend and reenact §59-1-10 of said code, all relating to repealing provisions
4 concerning filing certain foreclosure disclosure forms; repealing provisions requiring
5 compiling and maintaining information relating to certain deeds of trust; and eliminating all
6 requirements concerning certain foreclosure disclosure forms.

Be it enacted by the Legislature of West Virginia:

7 That §31A-2-4c of the Code of West Virginia, 1931, as amended, be repealed; that §38-
8 1-8a of said code be repealed; that §44-13-4a of said code be repealed; that §31-18-6 of said
9 code be amended and reenacted; and that §59-1-10 of said code be amended and reenacted, all
10 to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

'31-18-6. Corporate powers.

1 The Housing Development Fund is hereby granted, has and may exercise all powers
2 necessary or appropriate to carry out and effectuate its corporate purpose, including, but not
3 limited to, the following:

4 (1) To make or participate in the making of federally insured construction loans to sponsors
5 of land development, residential housing or nonresidential projects. Such loans shall be made
6 only upon determination by the Housing Development Fund that construction loans are not
7 otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and
8 conditions;

9 (2) To make temporary loans, with or without interest, but with such security for repayment
10 as the Housing Development Fund determines reasonably necessary and practicable, from the
11 operating loan fund, if created, established, organized and operated in accordance with the

12 provisions of section nineteen of this article, to defray development costs to sponsors of land
13 development, residential housing or nonresidential projects which are eligible or potentially
14 eligible for federally insured construction loans, federally insured mortgages, federal mortgages
15 or uninsured construction loans or uninsured mortgage loans;

16 (3) To make or participate in the making of long-term federally insured mortgage loans to
17 sponsors of land development, residential housing or nonresidential projects. Such loans shall be
18 made only upon determination by the Housing Development Fund that long-term mortgage loans
19 are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent
20 terms and conditions;

21 (4) To establish residential housing and nonresidential and land development projects for
22 counties declared to be in a disaster area by the Federal Emergency Management Agency or
23 other agency or instrumentality of the United States or this state;

24 (5) To accept appropriations, gifts, grants, bequests and devises and to utilize or dispose
25 of the same to carry out its corporate purpose;

26 (6) To make and execute contracts, releases, compromises, compositions and other
27 instruments necessary or convenient for the exercise of its powers, or to carry out its corporate
28 purpose;

29 (7) To collect reasonable fees and charges in connection with making and servicing loans,
30 notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection
31 with providing technical, consultative and project assistance services;

32 (8) To invest any funds not required for immediate disbursement in any of the following
33 securities:

34 (i) Direct obligations of or obligations guaranteed by the United States of America or for
35 the payment of the principal and interest on which the full faith and credit of the United States of
36 America is pledged;

37 (ii) Bonds, debentures, notes or other evidences of indebtedness issued by any of the

38 following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan
39 bank system; export-import bank of the United States; federal land banks; Tennessee valley
40 authority; United States postal service; inter-American development bank; international bank for
41 reconstruction and development; small business administration; Washington metropolitan area
42 transit authority; general services administration; federal financing bank; federal home loan
43 mortgage corporation; student loan marketing association; farmer's home administration; the
44 federal national mortgage association or the government national mortgage association; or any
45 bond, debenture, note, participation certificate or other similar obligation to the extent such
46 obligations are guaranteed by the government national mortgage association or federal national
47 mortgage association or are issued by any other federal agency and backed by the full faith and
48 credit of the United States of America;

49 (iii) Public housing bonds issued by public agencies or municipalities and fully secured as
50 to the payment of both principal and interest by a pledge of annual contributions under an annual
51 contributions contract or contracts with the United States of America; or temporary notes,
52 preliminary loan notes, or project notes issued by public agencies or municipalities, in each case,
53 fully secured as to the payment of both principal and interest by a requisition or payment
54 agreement with the United States of America;

55 (iv) Certificates of deposit, time deposits, investment agreements, repurchase agreements
56 or similar banking arrangements with a member bank or banks of the federal reserve system or
57 a bank the deposits of which are insured by the federal deposit insurance corporation, or its
58 successor, or a savings and loan association or savings bank the deposits of which are insured
59 by the federal savings and loan insurance corporation, or its successor, or government bond
60 dealers reporting to, trading with and recognized as primary dealers by a federal reserve bank:
61 *Provided*, That such investments shall only be made to the extent insured by the federal deposit
62 insurance corporation or the federal savings and loan insurance corporation or to the extent that
63 the principal amount thereof shall be fully collateralized by obligations which are authorized

64 investments for the Housing Development Fund pursuant to this section;

65 (v) Direct obligations of or obligations guaranteed by the State of West Virginia;

66 (vi) Direct and general obligations of any other state, municipality or other political
67 subdivision within the territorial United States: *Provided*, That at the time of their purchase, such
68 obligations are rated in either of the two highest-rating categories by a nationally recognized bond-
69 rating agency;

70 (vii) Any bond, note, debenture or annuity issued by any corporation organized and
71 operating within the United States: *Provided*, That such corporation shall have a minimum net
72 worth of \$15 million and its securities or its parent corporation's securities are listed on one or
73 more of the national stock exchanges: *Provided, however*, That: (1) Such corporation has earned
74 a profit in eight of the preceding ten fiscal years as reflected in its statements; and (2) such
75 corporation has not defaulted in the payment of principal or interest on any of its outstanding
76 funded indebtedness during its preceding ten fiscal years; and (3) the bonds, notes or debentures
77 of such corporation to be purchased are rated AA or the equivalent thereof or better than AA or
78 the equivalent thereof by at least two or more nationally recognized rating services such as
79 Standard and Poor's, Dunn & Bradstreet, Best's or Moody's;

80 (viii) If entered into solely for the purpose of reducing investment, interest rate, liquidity or
81 other market risks in relation to obligations issued or to be issued or owned or to be owned by the
82 Housing Development Fund, options, futures contracts (including index futures but exclusive of
83 commodities futures, options or other contracts), standby purchase agreements or similar hedging
84 arrangements listed by a nationally recognized securities exchange or a corporation described in
85 paragraph (vii) above;

86 (ix) Certificates, shares or other interests in mutual funds, unit trusts or other entities
87 registered under section eight of the United States Investment Company Act of 1940, but only to
88 the extent that the terms on which the underlying investments are to be made prevent any more
89 than a minor portion of the pool which is being invested in to consist of obligations other than

90 investments permitted pursuant to this section; and

91 (x) To the extent not inconsistent with the express provisions of this section, obligations of
92 the West Virginia State Board of Investments or any other obligation authorized as an investment
93 for the West Virginia State Board of Investments under article six, chapter twelve of this code or
94 for a public housing authority under article fifteen, chapter sixteen of this code;

95 (9) To sue and be sued;

96 (10) To have a seal and alter the same at will;

97 (11) To make, and from time to time, amend and repeal bylaws and rules and regulations
98 not inconsistent with the provisions of this article;

99 (12) To appoint such officers, employees and consultants as it deems advisable and to fix
100 their compensation and prescribe their duties;

101 (13) To acquire, hold and dispose of real and personal property for its corporate purposes;

102 (14) To enter into agreements or other transactions with any federal or state agency, any
103 person and any domestic or foreign partnership, corporation, association or organization;

104 (15) To acquire real property, or an interest therein, in its own name, by purchase or
105 foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the
106 Housing Development Fund has an interest and to sell, transfer and convey any such property to
107 a buyer and, in the event of such sale, transfer or conveyance cannot be effected with reasonable
108 promptness or at a reasonable price, to lease such property to a tenant;

109 (16) To purchase or sell, at public or private sale, any mortgage or other negotiable
110 instrument or obligation securing a construction, rehabilitation, improvement, land development,
111 mortgage or temporary loan;

112 (17) To procure insurance against any loss in connection with its property in such amounts,
113 and from such insurers, as may be necessary or desirable;

114 (18) To consent, whenever it deems it necessary or desirable in the fulfillment of its
115 corporate purpose, to the modification of the rate of interest, time of payment or any installment

116 of principal or interest, or any other terms, of mortgage loan, mortgage loan commitment,
117 construction loan, rehabilitation loan, improvement loan, temporary loan, contract or agreement
118 of any kind to which the Housing Development Fund is a party;

119 (19) To make and publish rules and regulations respecting its federally insured mortgage
120 lending, uninsured mortgage lending, construction lending, rehabilitation lending, improvement
121 lending and lending to defray development costs and any such other rules and regulations as are
122 necessary to effectuate its corporate purpose;

123 (20) To borrow money to carry out and effectuate its corporate purpose and to issue its
124 bonds or notes as evidence of any such borrowing in such principal amounts and upon such terms
125 as shall be necessary to provide sufficient funds for achieving its corporate purpose, except that
126 no notes shall be issued to mature more than ten years from date of issuance and no bonds shall
127 be issued to mature more than fifty years from date of issuance;

128 (21) To issue renewal notes, to issue bonds to pay notes and, whenever it deems
129 refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be
130 refunded have or have not matured except that no such renewal notes shall be issued to mature
131 more than ten years from date of issuance of the notes renewed and no such refunding bonds
132 shall be issued to mature more than fifty years from the date of issuance;

133 (22) To apply the proceeds from the sale of renewal notes or refunding bonds to the
134 purchase, redemption or payment of the notes or bonds to be refunded;

135 (23) To make grants and provide technical services to assist in the purchase or other
136 acquisition, planning, processing, design, construction or rehabilitation, improvement or operation
137 of residential housing, nonresidential projects or land development: *Provided*, That no such grant
138 or other financial assistance shall be provided except upon a finding by the Housing Development
139 Fund that such assistance and the manner in which it will be provided will preserve and promote
140 residential housing in this state or the interests of this state in maintaining or increasing
141 employment or the tax base;

142 (24) To provide project assistance services for residential housing, nonresidential projects
143 and land development, including, but not limited to, management, training and social and other
144 services;

145 (25) To promote research and development in scientific methods of constructing low cost
146 land development, residential housing or nonresidential projects of high durability including
147 grants, loans or equity contributions for research and development purposes: *Provided*, That no
148 such grant or other financial assistance shall be provided except upon a finding by the Housing
149 Development Fund that such assistance and the manner in which it will be provided will preserve
150 and promote residential housing in this state or the interests of this state in maintaining and
151 increasing employment and the tax base;

152 (26) With the proceeds from the issuance of notes or bonds of the Housing Development
153 Fund, including, but not limited to, mortgage finance bonds, or with other funds available to the
154 Housing Development Fund for such purpose, to participate in the making of or to make loans to
155 mortgagees approved by the Housing Development Fund and take such collateral security
156 therefor as is approved by the Housing Development Fund and to invest in, purchase, acquire,
157 sell or participate in the sale of, or take assignments of, notes and mortgages, evidencing loans
158 for the construction, rehabilitation, improvement, purchase or refinancing of land development,
159 residential housing or nonresidential projects in this state: *Provided*, That the Housing
160 Development Fund shall obtain such written assurances as shall be satisfactory to it that the
161 proceeds of such loans, investments or purchases will be used, as nearly as practicable, for the
162 making of or investment in long-term federally insured mortgage loans or federally insured
163 construction loans, uninsured mortgage loans or uninsured construction loans, for land
164 development, residential housing or nonresidential projects or that other moneys in an amount
165 approximately equal to such proceeds shall be committed and used for such purpose;

166 (27) To make or participate in the making of uninsured construction loans for land
167 development, residential housing or nonresidential projects. Such loans shall be made only upon

168 determination by the Housing Development Fund that construction loans are not otherwise
169 available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

170 (28) To make or participate in the making of long-term uninsured mortgage loans for land
171 development, residential housing or nonresidential projects. Such loans shall be made only upon
172 determination by the Housing Development Fund that long-term mortgage loans are not otherwise
173 available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

174 (29) To obtain options to acquire real property, or any interest therein, in its own name, by
175 purchase, or lease or otherwise, which is found by the Housing Development Fund to be suitable,
176 or potentially suitable, as a site, or as part of a site, for land development or the construction of
177 residential housing or nonresidential projects; to hold such real property or to acquire by purchase
178 or otherwise, and to transfer by sale or otherwise, any ownership or equity interests in any other
179 legal entity which holds such real property; to finance the performance of land development,
180 residential housing or nonresidential projects on or in connection with any such real property or
181 to perform land development, residential housing or nonresidential projects on or in connection
182 with any such real property; to own, operate and sponsor or participate in the sponsorship of land
183 development, residential housing or nonresidential projects; or to sell, transfer and convey, lease
184 or otherwise dispose of such real property, or lots, tracts or parcels of such real property, for such
185 prices, upon such terms, conditions and limitations, and at such time or times as the Housing
186 Development Fund shall determine;

187 (30) To make loans, with or without interest, but with such security for repayment as the
188 Housing Development Fund determines reasonably necessary and practicable from the land
189 development fund, if created, established, organized and operated in accordance with the
190 provisions of section twenty-a of this article, to sponsors of land development, to defray
191 development costs and other costs of land development;

192 (31) To exercise all of the rights, powers and authorities of a public housing authority as
193 set forth and provided in article fifteen, chapter sixteen of this code, in any area or areas of the

194 state which the Housing Development Fund shall determine by resolution to be necessary or
195 appropriate;

196 (32) To provide assistance to urban renewal projects in accordance with the provisions of
197 section twenty-eight, article eighteen, chapter sixteen of this code and in so doing to exercise all
198 of the rights, powers and authorities granted in this article or in said article, in and for any
199 communities of the state which the Housing Development Fund shall determine by resolution to
200 be necessary or appropriate;

201 (33) To make or participate in the making of loans for the purpose of rehabilitating or
202 improving existing residential and temporary housing or nonresidential projects, or to owners of
203 existing residential or temporary housing for occupancy by eligible persons and families for the
204 purpose of rehabilitating or improving such residential or temporary housing or nonresidential
205 projects and, in connection therewith, to refinance existing loans involving the same property.
206 Such loans shall be made only upon determination by the Housing Development Fund that
207 rehabilitation or improvement loans are not otherwise available, wholly or in part, from private
208 lenders upon reasonably equivalent terms and conditions;

209 (34) Whenever the Housing Development Fund deems it necessary in order to exercise
210 any of its powers set forth in subdivision (29) of this section, and upon being unable to agree with
211 the owner or owners of real property or interest therein sought to be acquired by the fund upon a
212 price for acquisition of private property not being used or operated by the owner in the production
213 of agricultural products, to exercise the powers of eminent domain in the acquisition of such real
214 property or interest therein in the manner provided under chapter fifty-four of this code, and the
215 purposes set forth in said subdivision are hereby declared to be public purposes for which private
216 property may be taken. For the purposes of this section, the determination of "use or operation
217 by the owner in the production of agricultural products" means that the principal use of such real
218 estate is for the production of food and fiber by agricultural production other than forestry, and the
219 fund shall not initiate or exercise any powers of eminent domain without first receiving an opinion

220 in writing from both the Governor and the Commissioner of Agriculture of this state that at the
221 time the fund had first attempted to acquire such real estate or interest therein, such real estate
222 or interest therein was not in fact being used or operated by the owner in the production of
223 agricultural products;

224 (35) To acquire, by purchase or otherwise, and to hold, transfer, sell, assign, pool or
225 syndicate, or participate in the syndication of, any loans, notes, mortgages, securities or debt
226 instruments collateralized by mortgages or interests in mortgages or other instruments evidencing
227 loans or equity interests in or for the construction, rehabilitation, improvement, renovation,
228 purchase or refinancing of land development, residential housing and nonresidential projects in
229 this state; and

230 (36) To form one or more nonprofit corporations, whose board of directors shall be the
231 same as the board of directors of the Housing Development Fund, which shall be authorized and
232 empowered to carry out any or all of the corporate powers or purposes of the Housing
233 Development Fund, including, without limitation, acquiring limited or general partnership interests
234 and other forms of equity ownership.

235 ~~(37) To receive and compile data into an electronic database and make available the raw~~
236 ~~mortgage foreclosure data that is required to be reported to county clerks by trustees pursuant to~~
237 ~~the provisions of section eight-a [§ 38-1-8a], article one, chapter thirty-eight of this code, including~~
238 ~~all data that has been received by the banking commissioner pursuant to subsection (a) of section~~
239 ~~four-c [§ 31A-2-4c], article two, chapter thirty-one a of this code, as of the effective date of the~~
240 ~~effective date of the amendments made to said section during the regular session of the 2010~~
241 ~~legislature. This information shall be periodically forwarded by county clerks to the housing~~
242 ~~development fund, in accordance with the provisions of section four-a [§ 44-13-4a], article~~
243 ~~thirteen, chapter forty-four of this code.~~

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS;

LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

'59-1-10. Fees to be charged by clerk of county commission.

1 For the purpose of this section, the word "page" is defined as being a paper or electronic
2 writing of not more than legal size, 8 1/2" x 14".

3 (a) When a writing is admitted to record, for receiving proof of acknowledgment thereof,
4 entering an order in connection therewith, endorsing clerk's certificate of recordation thereon and
5 indexing in a proper index, the clerk of the county commission shall charge and collect the
6 following fees:

7 (1) Fifteen dollars for a deed of conveyance (with or without a plat), trust deed, fixture filing
8 or security agreement concerning real estate lease.

9 (2) ~~Forty~~ Twenty dollars for a trustee's report of sale for any residential property. ~~for which~~
10 ~~additional information and filing requirements are required by section eight-a, article one, chapter~~
11 ~~thirty-eight of this code. Twenty dollars of each recording fee received pursuant to this subdivision~~
12 ~~shall be deposited into the county's General Revenue Fund and \$20 paid quarterly by the clerk~~
13 ~~of the county commission to the West Virginia Housing Development Fund established in article~~
14 ~~eighteen, chapter thirty-one of this code.~~

15 (3) Ten dollars for a financing, continuation, termination or other statement or writing
16 permitted to be filed under chapter forty-six of this code.

17 (4) Ten dollars for a plat or map (with no deed of conveyance).

18 (5) No charge for a service discharge record.

19 (6) Ten dollars for any document or writing other than those referenced in subdivisions
20 (1), (2), (3), (4) and (5) of this subsection.

21 (7) One dollar for each additional page for documents or writings containing more than
22 five pages.

23 For any of the documents admitted to record pursuant to this subsection, if the clerk of the
24 county commission has the technology available to receive these documents in electronic form
25 or other media, the clerk shall set a reasonable fee to record these writings not to exceed the cost
26 for filing paper documents.

27 (8) Of the fees collected pursuant to subdivision (1) of this subsection, \$10 shall be
28 deposited in the county general fund in accordance with section twenty-eight of this article and \$1
29 shall be deposited in the county general fund and dedicated to the operation of the county clerk=
30 office. Four dollars of the fees collected pursuant to subdivision (1) of this subsection and \$5 of
31 the fees collected pursuant to subdivision (6) of this subsection shall be paid by the county clerk
32 into the State Treasury and deposited in equal amounts for deposit into the Farmland Protection
33 Fund created in article twelve, chapter eight-a of this code for the benefit of the West Virginia
34 Agricultural Land Protection Authority and into the Outdoor Heritage Conservation Fund created
35 in article two-g, chapter five-b of this code. The funds deposited in the State Treasury pursuant to
36 this subdivision may only be used for costs, excluding personnel costs, associated with purpose
37 of land conservation, as defined in subsection (f), section seven of said article.

38 (b) Five dollars for administering any oath other than oaths by officers and employees of
39 the state, political subdivisions of the state or a public or quasi-public entity of the state or a
40 political subdivision of the state, taken in his or her official capacity.

41 (c) Fifty-five dollars for issuance of marriage license and other duties pertaining to the
42 marriage license (including preparation of the application, administering the oath, registering and
43 recording the license, mailing acknowledgment of minister=s return to one of the licensees and
44 notification to a licensee after sixty days of the nonreceipt of the minister=s return). This fee is
45 reduced to \$35 if the applicants present a premarital education course completion certificate
46 issued pursuant to section seven hundred one, article two, chapter forty-eight of this code and
47 dated within one year of the application for a marriage license.

48 (1) One dollar of the marriage license fee received pursuant to this subsection shall be
49 paid by the county clerk into the State Treasury as a state registration fee in the same manner
50 that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

51 (2) Fifteen dollars of the marriage license fee received pursuant to this subsection shall
52 be paid by the county clerk into the State Treasury for the Family Protection Shelter Support Act
53 in the same manner that license taxes are paid into the Treasury under article twelve, chapter
54 eleven of this code;

55 (3) Ten dollars of the marriage license fee received pursuant to this subsection shall be
56 deposited in the Courthouse Facilities Improvement Fund created by section six, article
57 twenty-six, chapter twenty-nine of this code; and

58 (4) If a premarital education course completion certificate is not presented, the county
59 clerk shall, on or before the tenth day of each month, transmit \$20 of the marriage license fee
60 received pursuant to this subsection to the state treasurer for deposit in the state treasury as
61 follows:

62 (A) Five dollars to the credit of the Family Protection Shelter Support Act in the same
63 manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this
64 code.

65 (B) Five dollars to the credit of the special revenue account, hereby created, designated
66 the Fund for Civil Legal Services for Low-Income Persons, which shall consist of all gifts, grants,
67 bequests, transfers, appropriations or other donations or payments which may be received and
68 administered by the Division of Justice and Community Services from any governmental entity or
69 unit or any person, firm, foundation, or corporation for the purposes of this section, and all interest
70 or other return earned from investment of the fund. Expenditures from the fund shall be made by
71 the Director of the Division of Justice and Community Services and shall be limited to grants to
72 nonprofit agencies which provide civil legal services to low-income persons made at his or her
73 discretion. Any balance in the fund at the end of each fiscal year shall not revert to the general

74 revenue fund but shall remain in the fund and be expended as provided by this section.

75 (C) Ten dollars to the credit of the Marriage Education Fund created pursuant to section
76 seven hundred two, article two, chapter forty-eight of this code.

77 (d) (1) One dollar and fifty cents for a copy of any writing or document, if it is not otherwise
78 provided for.

79 (2) One dollar for each additional page if the writing or documents contains more than two
80 pages.

81 (3) One dollar for annexing the seal of the commission or clerk to any paper.

82 (4) Five dollars for a certified copy of a birth certificate, death certificate or marriage
83 license.

84 (e) For copies of any record in electronic form or a medium other than paper, a reasonable
85 fee set by the clerk of the county commission not to exceed the costs associated with document
86 search and duplication.