

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 261

FISCAL  
NOTE

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

[BY REQUEST OF THE EXECUTIVE]

[Introduced January 12, 2018; Referred  
to the Committee on Government Organization; and then  
to the Committee on Finance]

1 A BILL to repeal §31-18D-1, §31-18D-2, §31-18D-3, §31-18D-4, §31-18D-5, §31-18D-6, §31-  
2 18D-7, §31-18D-8, §31-18D-9, §31-18D-10, §31-18D-11, §31-18D-12, §31-18D-13, and  
3 §31-18D-14 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-  
4 15-4c of said code; to amend and reenact §11-22-2 of said code; to amend and reenact  
5 §31-18-3, §31-18-6, and §31-18-22 of said code; and to amend said code by adding  
6 thereto a new section, designated §31-18-20d, all relating to the transfer of certain powers  
7 and programs of the West Virginia Affordable Housing Trust Fund to the West Virginia  
8 Housing Development Fund; eliminating the West Virginia Affordable Housing Trust Fund  
9 and the West Virginia Affordable Housing Trust Fund Board of Directors; creating  
10 Affordable Housing Fund of the West Virginia Housing Development Fund and providing  
11 for uses therefor; providing for assessment of fee on all sales by licensed dealers of  
12 factory-built homes to be deposited in Affordable Housing Fund of the West Virginia  
13 Housing Development Fund; providing for assessment of fee upon the privilege of  
14 transferring real estate for consideration to be deposited in the Affordable Housing Fund  
15 of the West Virginia Housing Development Fund; defining "Affordable Housing Fund";  
16 authorizing West Virginia Housing Development Fund to provide funding to increase the  
17 capacity of nonprofit community housing organizations; providing for uses of funds in  
18 Affordable Housing Fund; and providing for disposition of Affordable Housing Fund in the  
19 event of termination or dissolution of West Virginia Housing Development Fund.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 11. TAXATION**

### **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

**§11-15-4c. Collection of fee in addition to the consumers sales tax for sales of mobile  
factory-built homes; deposit of additional fee in West Virginia Affordable Housing  
Trust Fund.**

1 (a) There is imposed, in addition to the sales tax imposed by the provisions of this article  
 2 and article fifteen-a of this chapter, a fee of \$20 on all sales by licensed dealers of factory-built  
 3 homes as that term is defined in §37-15-2 of this code to be collected as provided in article fifteen-  
 4 b of this chapter and remitted to the Tax Commissioner to be deposited by the commissioner in  
 5 the ~~West Virginia Affordable Housing Trust Fund~~ Affordable Housing Fund, as provided in §31-  
 6 18D-1 *et seq.* of this code.

7 (b) The moneys collected from this additional fee shall be segregated from other funds ~~in~~  
 8 ~~the West Virginia Affordable Housing Trust Fund~~ of the West Virginia Housing Development Fund  
 9 and shall be accounted for separately. Not more than ten percent of these additional moneys may  
 10 be expended by the West Virginia ~~Affordable Housing Trust Fund~~ Housing Development Fund to  
 11 defray administrative and operating costs and expenses actually incurred by the West Virginia  
 12 ~~Affordable Housing Trust Fund~~ Housing Development Fund.

## **ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.**

### **§11-22-2. Rate of tax; when and by whom payable; additional county tax.**

1 (a) Every person who delivers, accepts or presents for recording any document, or in  
 2 whose behalf any document is delivered, accepted or presented for recording, is subject to pay  
 3 for, and in respect to the transaction or any part thereof, a state excise tax upon the privilege of  
 4 transferring title to real estate at the rate of \$1.10 for each \$500 value or fraction thereof as  
 5 represented by the document as defined in section one of this article. The state tax is payable at  
 6 the time of delivery, acceptance or presenting for recording of the document. In addition to the  
 7 state excise tax described in this subsection, there is assessed a fee of \$20 upon the privilege of  
 8 transferring real estate for consideration. The clerk of the county commission shall collect the  
 9 additional \$20 fee before recording a transfer of title to real estate and shall deposit the moneys  
 10 from the additional fees into the ~~West Virginia Affordable Housing Trust Fund~~ Affordable Housing  
 11 Fund as provided in §31-18D-1 *et seq.* of this code. The moneys collected from this additional fee  
 12 shall be segregated from other funds ~~in the West Virginia Affordable Housing Trust Fund~~ of the

13 West Virginia Housing Development Fund and shall be accounted for separately. Not more than  
14 ten percent of these additional moneys may be expended by the West Virginia ~~Affordable Housing~~  
15 ~~Trust Fund~~ Housing Development Fund to defray administrative and operating costs and  
16 expenses actually incurred by the West Virginia ~~Affordable Housing Trust Fund~~ Housing  
17 Development Fund. The West Virginia Housing Development Fund as fiscal agent of the ~~West~~  
18 ~~Virginia Affordable Housing Trust Fund~~ shall publish monthly on the Internet site an accounting  
19 of all revenue deposited into the fund during the month and a full disclosure of all expenditures  
20 from the fund including the group receiving funds, their location and any contractor awarded the  
21 construction contract. ~~Additionally, the West Virginia Affordable Housing Trust Fund is to provide~~  
22 ~~an annual report to the Joint Committee on Government and Finance before December 1, 2007,~~  
23 ~~and each year thereafter~~

24 (b) Effective January 1, 1968, and thereafter, there is imposed an additional county excise  
25 tax for the privilege of transferring title to real estate at the rate of 55¢ for each \$500 value or  
26 fraction thereof as represented by such document as defined in section one of this article, which  
27 county tax shall be payable at the time of delivery, acceptance or presenting for recording of such  
28 document: *Provided*, That after July 1, 1989, the county may increase said excise tax to an  
29 amount equal to the state excise tax. The additional tax hereby imposed is declared to be a county  
30 tax and to be used for county purposes: *Provided, however*, That after July 1, 2017, the county  
31 may increase the excise tax to an amount not to exceed \$1.65 for each \$500 value, or fraction  
32 thereof, as represented by a document as defined in section one of this article: *Provided further*,  
33 That only one such state tax and one such county tax shall be paid on any one document and  
34 shall be collected in the county where the document is first admitted to record and the tax shall  
35 be paid by the grantor therein unless the grantee accepts the document without such tax having  
36 been paid, in which event such tax shall be paid by the grantee: *And provided further*, That on  
37 any transfer of real property from a trustee or a county clerk transferring real estate sold for taxes,  
38 such tax shall be paid by the grantee. The county excise tax imposed under this section may not

39 be increased in any county unless the increase is approved by a majority vote of the members of  
 40 the county commission of such county. Any county commission intending to increase the excise  
 41 tax imposed in its county shall publish a notice of its intention to increase such tax not less than  
 42 thirty days nor more than sixty days prior to the meeting at which such increase will be considered,  
 43 such notice to be published as a Class I legal advertisement in compliance with the provisions of  
 44 §59-3-1 *et seq.* of this code and the publication area shall be the county in which such county  
 45 commission is located.

**CHAPTER 31. CORPORATIONS.**

**ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.**

**§31-18-3. Definitions.**

1 As used in this article, unless the context otherwise requires:

2 (1) "Affordable Housing Fund" means the affordable housing fund created and established  
 3 by the Housing Development Fund in accordance with §31-18-20d of this code.

4 ~~(4)~~ (2) "Annual sinking fund payment" means the amount of money specified in the  
 5 resolution or resolutions authorizing term bonds as payable into a sinking fund during a particular  
 6 calendar year for the retirement of term bonds at maturity after such calendar year, but shall not  
 7 include any amount payable by reason only of the maturity of a bond.

8 ~~(2)~~ (3) "Development costs" means the costs approved by the Housing Development Fund  
 9 as appropriate expenditures by the Housing Development Fund or by sponsors, for land  
 10 development, residential housing, or nonresidential projects within this state, including, but not  
 11 limited to:

12 (a) Payments for options to purchase proposed sites, necessary easements and other  
 13 related property rights, deposits on contracts of purchase, or, with prior approval of the Housing  
 14 Development Fund, payments for the purchase of such properties;

15 (b) Legal and organizational expenses, including payments of attorneys' fees, utility and

16 governmental application and filing fees and expenses, project manager and clerical staff salaries,  
17 office rent and other incidental expenses;

18 (c) Payment of fees and expenses for preliminary feasibility studies and costs estimates  
19 and advances for planning, engineering and architectural work;

20 (d) Expenses for tenant surveys and market analyses; and

21 (e) Necessary application, approval and other fees.

22 ~~(3)~~ (4) "Eligible persons and families" means:

23 (a) Persons and families of low and moderate income; or

24 (b) Persons or families of higher income to the extent the Housing Development Fund  
25 shall find and determine, by resolution, that construction of new or rehabilitated residential  
26 housing for occupancy by them will cause to be vacated existing sanitary, decent and safe  
27 residential housing available at prices or rentals which persons and families of low and moderate  
28 income can afford; or

29 (c) Persons or families of higher income to the extent the Housing Development Fund shall  
30 find and determine, by resolution, that construction of new or rehabilitated multifamily rental  
31 housing or new, rehabilitated or existing home ownership housing in the state for occupancy by  
32 them will further economic growth, increase the housing stock in the state by eliminating  
33 substandard or deteriorating housing conditions, or provide additional housing opportunities in  
34 the state; or

35 (d) Persons who because of age or physical disability are found and determined by the  
36 Housing Development Fund, by resolution, to require residential housing of a special location or  
37 design in order to provide them with sanitary, decent and safe residential housing; or

38 (e) Persons and families for whom, as found and determined by the Housing Development  
39 Fund by resolution, construction of new or rehabilitated residential housing in some designated  
40 area or areas of the state is necessary for the purpose of retaining in, or attracting to, such area  
41 or areas qualified manpower resources essential to modern mining, industrial and commercial

42 operations and development in such area or areas.

43 ~~(4)~~ (5) "Federally insured construction loan" means a construction loan for land  
44 development, residential housing or nonresidential projects, which are either secured or  
45 guaranteed, in whole or in part, by a federally insured mortgage or a federal mortgage, or which  
46 are insured or guaranteed, in whole or in part, by the United States or an instrumentality thereof,  
47 or a commitment by the United States or an instrumentality thereof to insure such loan.

48 ~~(5)~~ (6) "Federally insured mortgage" means a mortgage loan for land development,  
49 residential housing or nonresidential projects with a commitment by the United States or an  
50 instrumentality thereof to insure or guarantee such a mortgage.

51 ~~(6)~~ (7) "Federal mortgage" means a mortgage loan for land development, residential  
52 housing or nonresidential projects made by the United States or an instrumentality thereof, or a  
53 commitment by the United States or an instrumentality thereof to make such a mortgage loan.

54 ~~(7)~~ (8) "Housing development fund" means the West Virginia Housing Development Fund  
55 heretofore created and established by §31-18-4 of this code.

56 ~~(8)~~ (9) "Land development" means the process of acquiring land for residential housing  
57 construction or nonresidential projects or of making, installing or constructing improvements,  
58 including waterlines and water supply installations, sewer lines and sewage disposal installations,  
59 steam, gas, telephone and telecommunications and electric lines and installations, roads, railroad  
60 spurs, docking and shipping facilities, streets, curbs, gutters, sidewalks, drainage and flood  
61 control facilities, whether on or off the site, which the Housing Development Fund deems  
62 necessary or desirable to prepare such land for construction within this state.

63 ~~(9)~~ (10) "Land development fund" means the land development fund which may be created  
64 and established by the Housing Development Fund in accordance with §31-18-20a of this code.

65 ~~(10)~~ (11) "Minimum bond insurance requirement" means, as of any particular date of  
66 computation, an amount of money equal to the greatest of the respective amounts, for the then  
67 current or any future calendar year, of annual debt service of the Housing Development Fund on

68 all outstanding mortgage finance bonds, such annual debt service for any calendar year being  
69 the amount of money equal to the aggregate of: (a) All interest payable during such calendar year  
70 on such mortgage finance bonds on said date of computation; plus (b) the principal amount of  
71 such mortgage finance bonds outstanding which matures during such calendar year, other than  
72 mortgage finance bonds for which annual sinking fund payments have been or are to be made in  
73 accordance with the resolution authorizing such bonds; plus (c) the amount of all annual sinking  
74 fund payments payable during such calendar year with respect to any such mortgage finance  
75 bonds, all calculated on the assumption that bonds will after said date of computation cease to be  
76 outstanding by reason, but only by reason, of the payment of bonds when due, and the payment  
77 when due and application in accordance with the resolution authorizing such bonds of all such  
78 sinking fund payments payable at or after said date of computation.

79 ~~(44)~~ (12) "Mortgage finance bonds" means bonds issued or to be issued by the Housing  
80 Development Fund and secured by a pledge of amounts payable from the mortgage finance bond  
81 insurance fund in the manner and to the extent provided in §31-18-20b of this code.

82 ~~(42)~~ (13) "Mortgage finance bond insurance fund" means the special trust fund created  
83 and established in the State Treasury in accordance with §31-18-20b of this code.

84 ~~(43)~~ (14) "Nonresidential project" means a project in the state, whether or not directly  
85 related to the providing of residential housing, determined by the Housing Development Fund as  
86 likely to foster and enhance economic growth and development in the area of the state in which  
87 such project is developed, for retail, commercial, industrial, community improvement or  
88 preservation or other proper purpose, including tourism and recreational housing, land, air or  
89 water transportation facilities, facilities for vocational or other training or to provide medical care  
90 and other special needs of persons residing in the state, sports complexes and cultural, artistic  
91 and other exhibition centers, industrial or commercial projects and facilities, mail order, wholesale  
92 and retail sales facilities and other real or personal properties including facilities which are owned  
93 or leased by this state, any county or municipality or other public body within the state, and



94 includes, without limitation, the process of acquiring, holding, operating, planning, financing,  
95 demolition, construction, renovation, leasing or otherwise disposing of such project or any part  
96 thereof or interest therein. Any such project may include appurtenant machinery and equipment.

97 ~~(14)~~ (15) "Operating loan fund" means the operating loan fund which may be created and  
98 established by the Housing Development Fund in accordance with §31-18-19 of this code.

99 ~~(15)~~ (16) "Persons and families of low and moderate income" means persons and families,  
100 irrespective of race, creed, national origin or sex, determined by the Housing Development Fund  
101 to require such assistance as is made available by this article on account of personal or family  
102 income not sufficient to afford sanitary, decent and safe housing, and to be eligible or potentially  
103 eligible to occupy residential housing constructed and financed, wholly or in part, with federally  
104 insured construction loans, federally insured mortgages, federal mortgages or with other public  
105 or private assistance, or with uninsured construction loans, or uninsured mortgage loans, and in  
106 making such determination the fund shall take into account the following: (a) The amount of the  
107 total income of such persons and families available for housing needs; (b) the size of the family;  
108 (c) the cost and condition of housing facilities available; (d) the eligibility of such persons and  
109 families for federal housing assistance of any type predicated upon low or moderate income basis;  
110 and (e) the ability of such persons and families to compete successfully in the normal housing  
111 market and to pay the amounts at which private enterprise is providing sanitary, decent and safe  
112 housing: *Provided*, That to the extent found and determined by the Housing Development Fund,  
113 by resolution, to be necessary or appropriate for the purposes of eliminating undesirable social  
114 conditions and permanently eliminating slum conditions, the income limitation requirements of this  
115 article may be waived as to any persons or families who are eligible to occupy residential housing  
116 constructed in whole, or in part, with federally insured construction loans, federally insured  
117 mortgages or federal mortgages under housing assistance or mortgage insurance programs of  
118 the United States, or an instrumentality thereof, predicated upon any low or moderate income  
119 basis.

120           ~~(16)~~ (17) "Residential housing" means a specific work or improvement within this state  
121 undertaken primarily to provide dwelling accommodations, including the acquisition, construction  
122 or rehabilitation of land, buildings and improvements thereto, for residential housing for occupancy  
123 by eligible persons and families, including, but not limited to, facilities for temporary housing and  
124 emergency housing, nursing homes and intermediate care facilities, and such other nonhousing  
125 facilities as may be incidental or appurtenant thereto.

126           ~~(17)~~ (18) "Special bond insurance commitment fee" means a fee in the amount of one per  
127 centum of the total principal amount of each loan which is to be temporarily or permanently  
128 financed from the proceeds of mortgage finance bonds, other than a federally insured construction  
129 loan, a federally insured mortgage or a federal mortgage, or an amount equal to an equivalent  
130 discount on each loan purchased or invested in by the Housing Development Fund from the  
131 proceeds of mortgage finance bonds, other than a federally insured construction loan, a federally  
132 insured mortgage or a federal mortgage, and which may be payable from the proceeds of such  
133 bonds or any other source available to the Housing Development Fund for such use: *Provided,*  
134 That if the period of time between the first disbursement of proceeds of such loan and the date  
135 upon which it is specified that the first repayment of principal of such a loan shall be payable  
136 exceeds twelve months, an additional amount computed on the basis of one twelfth of one per  
137 centum per month on the total principal amount of such loan over the number of months of such  
138 period of time in excess of twelve months shall be included in such fee.

139           ~~(18)~~ (19) "Special bond insurance premium" means: (i) A fee at the rate of one half of one  
140 percent per annum on the outstanding principal balance which the Housing Development Fund  
141 shall charge the borrower of a mortgage loan, or of a loan secured by a mortgage, financed from  
142 the proceeds of mortgage finance bonds, other than a federally insured construction loan, a  
143 federally insured mortgage or a federal mortgage, which shall accrue from a date which is one  
144 month prior to the date on which the first installment payment of principal of such a loan is payable  
145 and which shall be payable thereafter in monthly installments on the same day of each successive

146 month that installment payments of principal of such a loan are payable; and (ii) with respect to  
147 any loan, other than a federally insured construction loan, a federally insured mortgage or a  
148 federal mortgage, purchased, or invested in with such proceeds, an equivalent amount which the  
149 Housing Development Fund shall set aside from payments it receives on such loan or from any  
150 other source available to the Housing Development Fund for such use.

151 ~~(19)~~ (20) "State sinking fund commission" means the commission known as such and  
152 continued in existence pursuant to §13-3-1 *et seq.* of this code and any body, board, person or  
153 commission which shall, by law, hereafter succeed to the powers and duties of such commission.

154 ~~(20)~~ (21) "Temporary housing" means a specific work or improvement within this state  
155 undertaken primarily to provide dwelling accommodations, including the acquisition, construction  
156 or rehabilitation of land, buildings and improvements thereto, for temporary residential housing,  
157 including, but not limited to, shelters for homeless people, housing for victims of floods and other  
158 disasters, shelters for abused or battered persons and their children, housing for families with  
159 hospitalized family members, housing for students and student families, and housing for the  
160 handicapped and such other nonhousing facilities as may be incidental or appurtenant thereto.

161 ~~(21)~~ (22) "Uninsured construction loans" means a construction loan for land development,  
162 residential housing or nonresidential projects which is not secured by either a federally insured  
163 mortgage or a federal mortgage, and which is not insured by the United States or an  
164 instrumentality thereof, and as to which there is no commitment by the United States or an  
165 instrumentality thereof to provide insurance.

166 ~~(22)~~ (23) "Uninsured mortgage" and "uninsured mortgage loan" means mortgage loans for  
167 land development, residential housing or nonresidential projects which are not insured or  
168 guaranteed by the United States or an instrumentality thereof, and as to which there is no  
169 commitment by the United States or an instrumentality thereof to provide insurance.

**§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 §31-18-19 of this code, 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  
61 bank: *Provided*, That such investments shall only be made to the extent insured by the federal  
62 deposit insurance corporation or the federal savings and loan insurance corporation or to the  
63 extent that the principal amount thereof shall be fully collateralized by obligations which are  
64 authorized 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"  
78 or 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 §12-6-1 *et seq.* of this code or for a public  
94 housing authority under §16-15-1 *et seq.* 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  
137 operation of residential housing, nonresidential projects or land development: *Provided*, That no  
138 such grant or other financial assistance shall be provided except upon a finding by the Housing  
139 Development Fund that such assistance and the manner in which it will be provided will preserve  
140 and promote residential housing in this state or the interests of this state in maintaining or  
141 increasing 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 §31-18-20a of this code, to sponsors of land development, to defray development  
191 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 §16-15-1 *et seq.* of this code, in any area or areas of the state which the  
194 Housing Development Fund shall determine by resolution to be necessary or appropriate;

195 (32) To provide assistance to urban renewal projects in accordance with the provisions of  
196 §16-18-28 of this code and in so doing to exercise all of the rights, powers and authorities granted  
197 in this article or in said article, in and for any communities of the state which the Housing  
198 Development Fund shall determine by resolution to be necessary or appropriate;

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

207 (34) Whenever the Housing Development Fund deems it necessary in order to exercise  
208 any of its powers set forth in §31-18-6(29) of this code, and upon being unable to agree with the  
209 owner or owners of real property or interest therein sought to be acquired by the fund upon a price

210 for acquisition of private property not being used or operated by the owner in the production of  
211 agricultural products, to exercise the powers of eminent domain in the acquisition of such real  
212 property or interest therein in the manner provided under §54-1-1 *et seq.* of this code, and the  
213 purposes set forth in said subdivision are hereby declared to be public purposes for which private  
214 property may be taken. For the purposes of this section, the determination of "use or operation  
215 by the owner in the production of agricultural products" means that the principal use of such real  
216 estate is for the production of food and fiber by agricultural production other than forestry, and the  
217 fund shall not initiate or exercise any powers of eminent domain without first receiving an opinion  
218 in writing from both the Governor and the commissioner of agriculture of this state that at the time  
219 the fund had first attempted to acquire such real estate or interest therein, such real estate or  
220 interest therein was not in fact being used or operated by the owner in the production of  
221 agricultural products;

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

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

233 (37) To receive and compile data into an electronic database and make available the raw  
234 mortgage foreclosure data that is required to be reported to county clerks by trustees pursuant to  
235 the provisions of §38-1-8a of this code, including all data that has been received by the banking

236 commissioner pursuant to §31A-2-4c(a) of this code, as of the effective date of the effective date  
 237 of the amendments made to said section during the regular session of the 2010 Legislature. This  
 238 information shall be periodically forwarded by county clerks to the Housing Development Fund, in  
 239 accordance with the provisions of §44-13-4a of this code; and

240 (38) Provide funding to increase the capacity of nonprofit community housing  
 241 organizations to serve their communities.

**§31-18-20d. Affordable Housing Fund.**

1 (a) There is hereby created and established a special fund to be designated as the  
 2 "Affordable Housing Fund" into which the Housing Development Fund shall deposit the funds  
 3 received pursuant to §11-15-4c and §11-22-2 of this code and any funds transferred pursuant to  
 4 §31-18d-15 of this code. Such funds shall be governed, administered and accounted for by the  
 5 Housing Development Fund as a special purpose account separate and distinct from any other  
 6 moneys, fund or funds owned or managed by the Housing Development Fund. The moneys  
 7 deposited in such fund may be invested and reinvested by the Housing Development Fund as  
 8 authorized under §31-18d-6(8) of this code.

9 (b) The Housing Development Fund shall use the moneys from the Affordable Housing  
 10 Fund to make, or participate in the making of, loans or grants for eligible activities that shall  
 11 include, but not be limited to:

12 (1) Providing funds for new construction, rehabilitation, repair or acquisition of housing to  
 13 assist low or moderate income citizens including land and land improvements;

14 (2) Providing matching funds for federal housing moneys requiring a local or state match;

15 (3) Providing funds for administrative costs for housing assistance programs or nonprofit  
 16 organizations eligible for funding pursuant to §31-18-20d(c) of this code if the grants or loans  
 17 provided will substantially increase the recipient's access to housing funds or increase its capacity  
 18 to supply affordable housing;

19 (4) Providing loan guarantees and other financial mechanisms to facilitate the provision of

20 housing products or services;

21 (5) Providing funds for down payments, closing costs, foreclosure prevention, home  
22 ownership counseling and security bonds which facilitate the construction, rehabilitation, repair or  
23 acquisition of housing by low to moderate income citizens;

24 (6) Providing risk underwriting products not provided by private sector entities to facilitate  
25 broader accessibility of citizens to other federal or state housing funds or loan programs. The  
26 products shall be established using professional risk underwriting standards and separate  
27 corporate vehicles may be created and capitalized by the Trust Fund to provide the products; and

28 (7) Providing start-up funds for initial operational expenses of local government programs  
29 to reduce substandard housing or inappropriate land use patterns.

30 (c) Organizations eligible for funding from the Affordable Housing Fund include: (1) Local  
31 governments; (2) local government housing authorities; (3) nonprofit organizations recognized as  
32 exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as  
33 amended, codified in 26 U.S.C. § 501(c)(3), and which are organized and operated exclusively  
34 for charitable purposes within the meaning of that section, and in accordance with those purposes  
35 provide assistance to low or moderate income citizens of this state; and (4) regional or statewide  
36 housing assistance organizations that have been recognized as exempt under Section 501(c)(3)  
37 of the Internal Revenue Code, as amended, and which provide assistance to low and moderate  
38 income or low income citizens of this state.

**§31-18-22. Termination or dissolution.**

1 Upon the termination or dissolution, all rights and properties of the Housing Development  
2 Fund, including the Operating Loan Fund, the Land Development Fund, ~~and~~ the Mortgage  
3 Finance Bond Insurance Fund, and the Affordable Housing Fund, shall pass to and be vested in  
4 the State of West Virginia, subject to the rights of bondholders, lienholders and other creditors.

**ARTICLE 18D. WEST VIRGINIA AFFORDABLE HOUSING TRUST FUND.**

**§31-18D-1. Short title.**

1 [Repealed.]

**§31-18D-2. Legislative finding and purpose.**

1 [Repealed.]

**§31-18D-3. Definitions.**

1 [Repealed.]

**§31-18D-4. Affordable housing trust fund.**

1 [Repealed.]

**§31-18D-5. Housing Trust Fund Board of Directors.**

1 [Repealed.]

**§31-18D-6. Powers and responsibilities of the board.**

1 [Repealed.]

**§31-18D-7. Eligible activities; eligible organizations.**

1 [Repealed.]

**§31-18D-8. Corporate powers.**

1 [Repealed.]

**§31-18D-9. Applications and selection criteria.**

1 [Repealed.]

**§31-18D-10. Documentary materials concerning financial or personal information;  
confidentiality.**

1 [Repealed.]

**§31-18D-11. Conflicts.**

1 [Repealed.]

**§31-18D-12. Tax exemption.**

1 [Repealed.]

**§31-18D-13. Annual report.**

1 [Repealed.]

**§31-18D-14. Exemption from certain requirements; audit.**

1 [Repealed.]

NOTE: The purpose of this bill is to eliminate the West Virginia Affordable Housing Trust Fund and the West Virginia Affordable Housing Trust Fund Board of Directors, and authorize the West Virginia Housing Development Fund to carry on the activities previously undertaken by the West Virginia Affordable Housing Trust Fund. Two fees previously deposited in the West Virginia Affordable Housing Trust Fund shall be deposited in the West Virginia Housing Development Fund's Affordable Housing Fund, so that the West Virginia Housing Development Fund may continue providing funds to entities previously provided funds by the West Virginia Affordable Housing Trust Fund.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.