

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 686

BY SENATORS TRUMP AND NELSON

[Introduced February 21, 2022; referred
to the Committee on Finance]

1 A BILL to amend and reenact §31-18-6 and §31-19-9 of the Code of West Virginia, 1931, as
2 amended, relating to clarify the use of notes or bonds of the West Virginia Housing
3 Development Fund and to authorize the allocation from time to time of a portion of its state
4 ceiling allocation under §13-2C-21(b) of said code to political subdivisions or city or county
5 housing authorities authorized to issue bonds or notes for qualified residential rental
6 projects.

Be it enacted by the Legislature of West Virginia:

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 §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

18 be made only upon determination by the Housing Development Fund that long-term mortgage
19 loans are not otherwise available, wholly or in part, from private lenders upon reasonably
20 equivalent 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
39 Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Tennessee
40 Valley Authority; United States Postal Service; Inter-American Development Bank; International
41 Bank for Reconstruction and Development; Small Business Administration; Washington
42 Metropolitan Area Transit Authority; General Services Administration; Federal Financing Bank;
43 Federal Home Loan Mortgage Corporation; Student Loan Marketing Association; Farmer's Home

44 Administration; the Federal National Mortgage Association or the Government National Mortgage
45 Association; or any bond, debenture, note, participation certificate or other similar obligation to
46 the extent such obligations are guaranteed by the Government National Mortgage Association or
47 Federal National Mortgage Association or are issued by any other federal agency and backed by
48 the full faith and 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
56 agreements, or similar banking arrangements with a member bank or banks of the federal reserve
57 system or a bank the deposits of which are insured by the federal deposit insurance corporation,
58 or its successor, or a savings and loan association or savings bank the deposits of which are
59 insured by the federal savings and loan insurance corporation, or its successor, or government
60 bond 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 10 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 10 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
84 hedging arrangements listed by a nationally recognized securities exchange or a corporation
85 described in §31-18-6(8)(vii) of this code;

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
100 fix 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
107 to a buyer and, in the event of such sale, transfer, or conveyance cannot be effected with
108 reasonable 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 ~~40~~ 20 years from date of issuance and no bonds
127 shall be issued to mature more than 50 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 ~~40~~20 years from date of issuance of the notes renewed and no such refunding bonds
132 shall be issued to mature more than 50 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
219 time the fund had first attempted to acquire such real estate or interest therein, such real estate
220 or 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;

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 amendments
237 made to said section during the regular session of the 2010 Legislature. This information shall be
238 periodically forwarded by county clerks to the Housing Development Fund, in accordance with
239 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;

242 (39) Notwithstanding any other provision of law, no loan may be made or purchased with
243 proceeds of notes or bonds of the Housing Development Fund unless: (i) The related note or bond
244 has received an investment grade rating from a nationally recognized bond-rating agency; or
245 (ii) all payments of principal of and interest on such loan are the subject of credit enhancement
246 that is a senior obligation of a bank, national bank, trust company, savings bank, savings and loan
247 association, insurance company, governmental agency of the United States, the Federal National

248 Mortgage Association, the Federal Home Loan Mortgage Corporation, or any combination
249 thereof; or (iii) at or prior to the issuance of the related note or bond, permanent financing is in full
250 force and effect which will be drawn upon to pay all unpaid amounts with respect to such loan
251 remaining at its maturity; or (iv) all payments of principal and interest on the related note or bond
252 are the subject of credit enhancement that is a senior obligation of a bank, national bank, trust
253 company, savings bank, savings and loan association, insurance company, governmental agency
254 of the United States, the Federal National Mortgage Association, the Federal Home Loan
255 Mortgage Corporation, or any combination thereof; or (v) the related note or bond is fully cash-
256 collateralized; or (vi) the related note or bond is a mortgage finance bond; and

257 (40) To allocate from time to time a portion of its state ceiling allocation under §13-2C-
258 21(b) of this code to any political subdivision or city or county housing authority authorized to
259 issue bonds or notes for qualified residential rental projects, upon such terms and conditions as
260 the board of directors deems reasonable and appropriate: *Provided*, That any amounts so
261 allocated by the Housing Development Fund that remain unused by December 31 in any year not
262 otherwise subject to a carryforward pursuant to section 146(f) of the Internal Revenue Code shall
263 be allocated to the Housing Development Fund, which shall be considered to have elected to
264 carryforward the unused allocation for the purpose of issuing qualified mortgage bonds, qualified
265 mortgage credit certificates or bonds for qualified residential rental projects, each as defined in
266 the Internal Revenue Code.

§31-19-9. Borrowing of money.

1 The borrowing of money and the notes and bonds evidencing any such borrowing shall
2 be authorized by resolution approved by the Board of Directors of the Housing Development
3 Fund, shall bear such date or dates, and shall mature at such time or times, in the case of any
4 such note or any renewal thereof, not exceeding ~~ten~~ 20 years from the date of issue of such
5 original note, and, in the case of any such bond, not exceeding 50 years from the date of issue,
6 as such resolution or resolutions may provide. The notes and bonds shall bear interest at such

7 rate or rates, be in such denominations, be in such form, either coupon or registered, carry such
8 registration privileges, be executed in such manner, be payable in such medium of payment, at
9 such place or places, and be subject to such terms or conditions of redemption as such resolution
10 or resolutions may provide.