

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 297

FISCAL
NOTE

By Senators Tarr, Woodrum, Phillips, Plymale, and
Queen

[Introduced January 19, 2023; referred
to the Committee on Economic Development; and then to
the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated, §5B-2K-1, §5B-2K-2, §5B-2K-3, §5B-2K-4, §5B-2K-5, §5B-2K-6, §5B-2K-7,
 3 §5B-2K-8, §5B-2K-9, §5B-2K-10, §5B-2K-11, §5B-2K-12, and §5B-2K-13, all relating to
 4 creation of the Mountain Homes Act; setting out a short title; setting out legislative findings;
 5 defining terms; providing for rulemaking; providing for an effective date; providing for a
 6 sunset date; creating the Mountain Homes Fund; providing for the purposes of the fund;
 7 providing for administration of the fund; providing for record keeping; requiring reporting to
 8 the Joint Committee on Government and Finance and the Governor; setting out required
 9 elements for the report; exempting certain materials from the Freedom of Information Act;
 10 establishing criteria for eligibility for use of funds; requiring an application for use of funds;
 11 setting out elements necessary to be included on the application; providing for exclusions
 12 from use of funds; providing for application approval; establishing evaluation standards
 13 and criteria; providing for a final agreement; setting out terms of the agreement; allowing
 14 for an extension of time; requiring adjacent properties to be subject to additional approval;
 15 providing for administration of the act; setting out powers and duties of the Department of
 16 Economic Development; and providing for a criminal penalty for a false statement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2K. MOUNTAIN HOMES ACT.

Part I. General

§5B-2K-1. Short title.

1 This article shall be known as the Mountain Homes Act.

§5B-2K-2. Legislative findings.

1 (a) The Legislature finds that continued economic growth in West Virginia creates a
 2 responsibility in the state for the furtherance of the general welfare of our citizens. The state's
 3 focus on and promotion of economic development has created a business-friendly atmosphere for

4 businesses to continue to remain and locate here. The continued development of a business-
5 friendly environment must include factors to promote positive social and personal development.

6 (b) As our economy continues to experience change and is restructured from being
7 primarily energy based, our population will also shift. This shift will create a need for additional
8 services, most importantly in the housing and housing development sector. As the state
9 encourages business activity and creates a more balanced economic base the state must be
10 mindful of the need of the workers who are gainfully employed in this state and who are necessary
11 to accomplish the purposes of both entities that are presently doing business here and potential
12 businesses considering this state for future business activity and commerce.

13 (c) The constraints on obtaining funding for housing construction potentially creates a
14 hinderance to continued economic development as businesses consider West Virginia as an
15 option. Workers who may locate here as businesses move here have an expectation of their
16 quality of life. Fulfilling this expectation is a necessary component of the state's economic
17 development.

18 (d) Therefore, the Legislature recognizes the need to support and encourage business
19 entities and realizes that they can only achieve success with a quality, hardworking, gainfully
20 employed workforce. To achieve and advance a better workforce in this state, the Legislature
21 hereby establishes the Mountain Homes Act, with the intent to remove barriers to funding for home
22 construction with the goal of promoting a sustainable quality of life for the state's workforce.

§5B-2K-3.

Definitions.

1 (a) General. — When used in this article, or in the administration of this article, terms
2 defined in this section have the meanings ascribed to them by this section unless a different
3 meaning is clearly required by the context in which the term is used.

4 (b) Terms defined. — As used in this article, unless the context clearly indicates otherwise:
5 "Applicant" means a business entity seeking a loan guarantee from the Department.

6 "Approved private entity" or "private entity" means any natural person, corporation, general

7 partnership, limited liability company, limited partnership, joint venture, business trust, public
8 benefit corporation, nonprofit entity, other private business entity or combination thereof seeking
9 approval to participate in a public-private partnership pursuant to the provisions of this article.

10 "Common areas" means, but is not limited to, lawns, roads, streets, alleys, sidewalks,
11 parks, waterways, driveways, stairways, hallways, lobbies, corridors, sidewalks, parking lots,
12 parking garages, community swimming pools, community laundry facilities, elevators, roofs,
13 maintenance buildings, maintenance facilities, stairways, lobbies, corridors, and other property
14 available for common use by all tenants and groups of tenants and their invitees.

15 "Default" means any default by an applicant as that term is defined in this section or an
16 approved private entity as that term is defined in this section in the performance of their duties as
17 outlined in a final loan or loan guarantee agreement or a final public-private agreement and is not
18 remedied following notice and a reasonable cure period.

19 "Department" means the Department of Economic Development.

20 "Department of Economic Development" means the West Virginia Department of
21 Economic Development established pursuant to the provisions of §5B-2-1 et seq. of this code.

22 "Develop" shall mean to plan, design, develop, finance, lease, acquire, install, construct, or
23 expand a qualifying project as set forth in this article.

24 "Eligible lender" means any person who makes or offers to make or accepts or offers to
25 accept or purchases or services any primary or subordinate construction loan in the regular course
26 of business. A person is considered to be acting in the regular course of business if he or she
27 makes or accepts, or offers to make or accept, any primary or subordinate mortgage loans in any
28 one calendar year.

29 "Fees" means rates, tolls, fees, or other charges imposed by the private partner or the
30 department for use of all or a portion of a qualifying infrastructure project pursuant to a final public-
31 private agreement.

32 "Final approval" or "approval" means the action taken by the Secretary of the Department

33 of Economic Development to approve a construction loan guarantee pursuant to §5B-2K-8 of this
34 code or a public private partnership agreement pursuant to §5B-2K15 of this code.

35 "Final loan or loan guarantee agreement" of "Guarantee" means an agreement or pledge
36 with respect to the payment of all or part of a portion of a construction loan obligation by a borrower
37 in the event that the borrower's defaults.

38 "Fund" means the Mountain Homes Fund created in §5B-2K-6 of this code.

39 "Infrastructure" means, and is limited to, the real and tangible personal property located in
40 a project that is directly used in, and necessary for, providing broadband internet access,
41 electricity, water, natural gas, sewer service, sewage treatment service, rubbish disposal, and
42 other utility services for residential units within a Mountain Homes project. An electrical charging
43 facility for charging electrical motor vehicles, or electrical hybrid motor vehicles of Mountain
44 Homes project residents may be treated as an infrastructure component of a Mountain Homes
45 project: *Provided*, That in no case shall any property or space that is used, in whole or in part, as a
46 gasoline filling station or other motor vehicle fueling station constitute project property, or any part
47 thereof.

48 "Mountain Homes project" or "project" means Mountain Homes projects that have received
49 approval from the Department of Economic Development in accordance with this article. A
50 Mountain Homes project shall be a guarantee for a borrower's required cash portion of a
51 construction loan for a construction project of residential housing of at least six homes in a single
52 subdivision, housing development, or gated community. The required cash portion must be at
53 least fifty percent of the total cost of the construction project.

54 "Natural person" or "individual" means a human being.

55 "Person" means and includes any natural person, corporation, limited liability company,
56 flow-through entity, or partnership.

57 "Secretary" means the Secretary of the Department of Economic Development or his or
58 her designee.

59 "Subdivision, housing development, or gated community" means a division of a lot, tract, or
 60 parcel of land separated into two or more lots, plats, sites, or other division for the purpose of
 61 construction of a group of individual dwellings of similar design built and sold by one management
 62 group. The houses may be in a residential area with roads that have gates to control the
 63 movement or traffic and people into and out of the area.

64 "Timeshare" means an agreement or arrangement in which two or more parties share the
 65 ownership of, or right to use, property (e.g., an apartment or condominium) that authorizes
 66 occupation by each party, typically for periods of less than a year. "Timeshare" includes a deeded
 67 contract providing such an arrangement and a fractional ownership agreement or arrangement.
 68 "Timeshare" means and includes property that the subject of any such agreement or arrangement.

§5B-2K-4. Rulemaking.

1 In order to effectuate the purposes of this article, the Department of Economic
 2 Development or any agency, division, or subdivision thereof, may promulgate procedural rules,
 3 interpretive rules, and legislative rules, including emergency rules, or any combination thereof in
 4 accordance with §29A-3-1 et seq. of this code. Any rules promulgated pursuant to this article shall
 5 not require participation in any projects authorized pursuant to this article by organized labor.

§5B-2K-5. Effective date and expiration date.

1 (a) Any final loan or loan guarantee agreement authorized by this article or a public-private
 2 partnership agreement legally executed by the necessary parties shall be effective beginning on
 3 and after January 1, 2024.

4 (b) Effective January 1, 2034, the provisions of this article shall expire and have no further
 5 force or effect: *Provided*, That any project duly authorized pursuant to a final loan or loan
 6 guarantee agreement entered into pursuant to the provisions of this article or a public-private
 7 partnership entered into pursuant to the provisions of this article shall continue to be valid and final
 8 loan or loan guarantee agreement or public-private partnership shall remain in effect until
 9 completion of the project pursuant to the provisions of this article.

Part II. CREATION OF MOUNTAIN HOMES FUND.

§5B-2K-6. Mountain Homes Fund; record keeping.

1 (a) There is hereby created a special revenue fund in the State Treasury known as the
 2 "Mountain Homes Fund". The fund shall consist of all moneys from available revenue surplus
 3 funds, gifts, grants, contributions, any earnings, or interest accruing to said fund, and any other
 4 moneys appropriated to said fund by the Legislature. Expenditures from the fund shall be for the
 5 purposes set forth in this article. The fund shall be managed by the Department of Economic
 6 Development. The department may invest and reinvest moneys in the fund with the West Virginia
 7 Investment Management Board or the Board of Treasury Investments.

8 (b) In addition to any powers granted to the department pursuant to any other section of
 9 this code, the department may use the fund to offer loan guarantee for construction loans that
 10 meet the requirements of §5B-2K-7 of this article by offering guarantees on loans for the
 11 provisions of a construction loan which requires debtor to have up to a fifty percent down
 12 payments a contingent of loan approval. The provisions of the fund are exempt from oversight and
 13 regulation by the Insurance Commissioner, the Commissioner of Banking, the provisions of §46A-
 14 1-1 et seq. of this code, and the provisions of §33-1-1 et seq. of this code.

15 (c) The department shall keep itemized records of all fund transactions and agreements
 16 entered into in furtherance of the objectives of the fund. In administering the fund, the department
 17 shall adopt appropriate accounting practices and internal controls, including but not limited to,
 18 strict compliance with the requirements of §5A-8-9 of this code. Fund transactions shall be subject
 19 to an annual audit by an independent firm of certified public accountants.

20 (d) The department shall prepare and submit to the Joint Committee on Government and
 21 Finance and the Governor an annual report addressing the status of each project with outstanding
 22 financing issued pursuant to this section. The report shall, at a minimum, provide project-specific
 23 data addressing:

- 24 (1) The outstanding amount of department financing for each project;
- 25 (2) The total amount of private investment in each project;
- 26 (3) The number of residences either under construction or completed by each project since
- 27 the fund’s inception; and
- 28 (4) Any other information or data requested by the Joint Committee on Government and
- 29 Finance.
- 30 (5) The time between completion and sale to a residential owner of a single family home
- 31 pursuant to this article.
- 32 (e) Except for the records and audit required under subsection (c) of this section and the
- 33 annual reports required under subsection (d) of this section, any documentary material, data, or
- 34 other writing made or received by the department relating to projects pursuant to this article, shall
- 35 be exempt from §29B-1-1 et seq. of this code: *Provided*, That any agreement entered into or
- 36 signed by the department which obligates public funds for any Mountain Homes projects shall be
- 37 subject to inspection and copying pursuant to §29B-1-1 et seq. of this code as of the date the
- 38 agreement or resolution is entered into, signed, or otherwise made public.

Part III. MOUNTAIN HOMES FUND ADMINISTRATION.

§5B-2K-7. Criteria for eligibility.

- 1 (a) To be considered eligible for a loan guarantee through Mountain Homes an applicant
- 2 for a loan with an eligible lender must:
- 3 (1) Be qualified and licensed to do business in West Virginia.
- 4 (2) Be current in all tax obligations to the State of West Virginia.
- 5 (3) Demonstrate creditworthiness to the department.
- 6 (4) Certify that the anticipated project in situate in the State of West Virginia.
- 7 (5) Certify the project will have an appraised completed value of at least \$800,000 and
- 8 includes at least six residential units or houses situate in a subdivision. housing development, or

9 gated community.

10 (6) Demonstrate there is substantial and credible evidence that the project is likely to be
11 started and completed in a timely fashion.

12 (7) Demonstrate that the project will, directly or indirectly, improve the opportunities in the
13 area where the project will be located for the successful establishment or expansion of other
14 commercial businesses.

15 (8) Demonstrate that the project will, directly or indirectly, assist in the creation of additional
16 employment opportunities in the area where the project will be located beyond the jobs associated
17 with the Mountain Homes project.

18 (10) Demonstrate that the project is consistent with the goals of this article.

19 (11) Demonstrate that the project is economically and fiscally sound using recognized
20 business standards of finance and accounting.

21 (12) Demonstrate that the project will meet the immediate future needs of the area.

22 (13) Have applied for or received unconditional approval from an eligible lender for a loan
23 sufficient to cover up to fifty percent of the anticipated cost of the full project.

24 (14) Have met all the necessary terms and conditions set by an eligible lender for a
25 construction loan in the amount of or in excess of \$800,000. The terms and conditions of the loan
26 must require the applicant to have cash reserves sufficient to cover the remaining fifty percent of
27 the anticipated cost of the project. The department shall ascertain that the applicant is unable to
28 obtain or does not have sufficient cash reserves necessary for the loan approval and the eligible
29 lender shall certify to the department that without the guarantee the eligible lender would not
30 otherwise approve the construction loan: *Provided*, That, a construction loan may include the
31 purchase of any real estate upon which an approved project may be situate, working capital,
32 necessary equipment and fixtures, the purchase of building materials and tangible personal
33 property directly incorporated into the project, common areas, and infrastructure during
34 construction. The department may request evidence of approval for financing for an eligible lender.

35 (15) Certify that the terms and conditions of the loan from the eligible lender requires an
36 interest rate at or above the percentage rate currently being offered by lenders.

37 (16) Meet any other terms and conditions set by the department in legislative rule
38 promulgated pursuant to the provisions of this article.

39 (b) The applicant shall comply with the provisions of the State of West Virginia Alcohol and
40 Drug-Free Workplace Act set out in §21-1D-1 et seq. of this code and any state policy concerning
41 drug-free and alcohol-free workplaces and shall make a good-faith effort to eliminate illegal drug
42 use and alcohol and drug abuse from places where work is performed.

§5B-2K-8. Guarantee application.

1 (a) Each applicant that seeks a construction loan guarantee for a proposed Mountain
2 Homes project must file a written application for approval for a loan guarantee with the Department
3 of Economic Development.

4 (b) With respect to each applicant making an application to the Department of Economic
5 Development seeking approval for a construction loan guarantee for a Mountain Homes project
6 from the department shall submit all required documentation requested or required by the
7 department, including a completed application, from the applicant that shall include the following:

8 (1) A description and location of the proposed project including a detailed strategic
9 business plan for construction of housing developments that meet the provisions of this article and
10 any rules filed by the department.

11 (2) The amount and type of funds available to the applicant without financial assistance
12 from the department.

13 (3) The amount of and guarantee sought from the department.

14 (4) Information concerning where in the state the housing construction will take place.

15 (5) Evidence of the inability of the applicant to meet the necessary cash reserve to secure
16 approval for the loan.

17 (c) Information that relates to the financial status of the applicant, including, if applicable

18 and requested by the department:

19 (d) Any other relevant information the Department requests.

20 (e) The aggregate sum of costs for all projects for any fiscal year shall not exceed
21 \$10,000,000. Any project application submitted for certification in the fiscal year after the sum of
22 \$10,000,000 has been reached shall not be approved. Notwithstanding any other provision of this
23 code, for any fiscal year, the Secretary of the Department of Economic Development may not
24 approve any single proposed project as a Mountain Homes project for the fiscal year unless the
25 proposed project has an aggregate value that is at least \$800,000 or the proposed project includes
26 at least six residential units or houses situate in a subdivision, housing development or gated
27 community. No project may be approved that utilizes mobile homes as residential dwellings upon
28 completion of the project.

29 (f) The Secretary of the Department of Economic Development, within 60 days following
30 receipt of an application or receipt of any additional information requested by the Department of
31 Economic Development respecting the application, whichever is later, shall act to grant or not to
32 grant approval of the guarantee.

33 (g) Decisions made by the Department of Economic Development on any application for a
34 guarantee are final and conclusive. Such decisions are not subject to review. Decisions shall be
35 in writing and shall be issued within sixty days of receipt of the application. Any denial of an
36 application shall state the reason or reasons for the denial.

§5B-2K-9. Guarantee project exclusions.

1 (a) In no case shall any property or space that is used, in whole or in part, as a residential
2 timeshare, commercial timeshare, or as part of any similar arrangement, constitute project
3 property, or any part thereof.

4 (b) In no case shall any property or space that is used in whole or in part as an industrial or
5 manufacturing operation, constitute project property, or any part thereof.

6 (c) In no case shall any property or space that is used in whole or in part as a warehouse,

7 distribution center, telephone call center, or telemarketing operation, constitute project property, or
8 any part thereof.

9 (d) In no case shall any property or space that is used, in whole or in part, as an airport
10 constitute project property, or any part thereof.

11 (e) In no case shall any property or space that is used primarily for business activity,
12 business, or other operation or activity excluded from certification by the Department of Economic
13 Development by rule or administrative notice, constitute project property, or any part thereof.

14 (f) The Department of Economic Development may establish additional criteria for
15 consideration when evaluating and approving applications for Mountain Homes projects.

16 (g) The decision by the Secretary of the Department of Economic Development as to
17 certification of a proposed project, refusal to certify a proposed project, decertification, or
18 revocation of certification of a project is final.

§5B-2K-10. Guarantee project approval, evaluation standards and provisions.

1 (a) Upon a determination that all of the provisions of §5B-2K-7 of this code have been met
2 and an application has been properly filed pursuant to the provisions of §5B-2K-8 of this code, the
3 department may approve an applicant for a loan or guarantee for the loan. Coverage is limited to a
4 guarantee on the fifty percent of the completed Mountain Homes Project. The guarantee may not
5 exceed \$400,000.

6 (b) The term of the final loan or loan guarantee agreement shall be for a period not to
7 exceed 5 years or the date of the completion of the project for whichever is shorter. Amortization
8 shall not exceed 20 years. Interest charges shall be equal to that of lending institutions.

9 (c) The department may request as a condition of approval that they be granted a
10 subordinate lien or security interest in any real estate covered by the guarantee for any
11 construction loan.

12 (d) Should the applicant default on any provision of the loan to an eligible lender, the
13 eligible lender shall place the department on notice of their intent to collect on the default pursuant

14 to the terms of the final loan or loan guarantee agreement. The department shall notify the
 15 applicant and provide them thirty days to cure the default. At the conclusion of the thirty-day
 16 period, if the default has not been cured, the department shall pay the eligible lender pursuant to
 17 the terms of the final loan or loan guarantee agreement.

18 (e) If the applicant should default on the construction loan and the department makes
 19 payment to an eligible lender pursuant to the final loan or loan guarantee agreement, the
 20 department shall have the right to a cause of action against the applicant for any amount paid by
 21 the department to an eligible lender, plus interest, pursuant to the terms of the final loan or
 22 guarantee agreement: *Provided*, That any lien held by the department shall be subordinate to liens
 23 from _____ lending _____ institutions.

**§5B-2K-11 Final loan or loan guarantee agreement between Department of Economic
 Development and an approved applicant.**

1 (a) Upon final approval of the application by the Secretary, the department may enter into a
 2 legally binding final loan or loan guarantee agreement with the applicant.

3 (b) The terms and provisions of each agreement shall include, but not be limited to:

4 (1) All provisions required by legislative rule.

5 (2) Total projected costs. Within three months of the completion date, the approved
 6 applicant shall document:

7 (A) The actual cost of the project through a certification of the costs to the Department of
 8 Economic Development by an independent certified public accountant acceptable to the
 9 Department of Economic Development;

10 (B) A date certain by which the approved applicant shall have completed and opened the
 11 project for occupancy; and

12 (C) The time between project completion of a residence and the sale of said residence.

13 (c) Any approved applicant, having received final approval may request, and the
 14 Department of Economic Development may grant, an extension of time or change to the expected

15 timeline. However, in no event shall the extension exceed three years from the date of certification
16 to the completion date specified in the agreement with the approved applicant.

17 (d) Although adjacent properties may be developed and expanded upon by approved
18 applicants, and Mountain Homes project property may not itself be expanded upon unless the
19 initial loan or loan guarantee is paid in full by refinancing or other means, in such cases, the
20 Mountain Homes project designation and benefits of this article shall not apply with relation to such
21 nonapproved developments or expansions, except upon the issuance of a subsequent approval
22 by the Department of Economic Development for such development or expansion. In no case may
23 an approved project be augmented, enlarged, extended, or expanded, except pursuant to
24 issuance of an additional and separate approval by the Department of Economic Development.
25 Any augmentation, enlargement, extension, or expansion may only be approved pursuant to the
26 submission of a new request for project approval, with full payment of all associated fees, and
27 submission of full documentation as required pursuant to this article for a new project.

28 (e) An approval of a loan or loan guarantee of any loan is non-transferrable.

§5B-2K-12. Project administration and certification.

1 The Department of Economic Development has the following powers and duties
2 necessary to carry out the purposes of this article, including, but not limited to:

3 (1) To issue approval of and certify all applications for projects and enter into final loan or
4 loan guarantee agreements pertaining to Mountain Homes projects with approved applicants;

5 (2) To employ fiscal consultants, attorneys, appraisers, and other agents as the Secretary
6 of the Department of Economic Development finds necessary or convenient for the preparation
7 and administration of agreements and documents necessary or incidental to any project;

8 (3) To impose and collect fees and charges in connection with any transaction sufficient to
9 cover the costs associated with the provisions of subdivision (2) of this subsection;

10 (4) To impose and collect from the applicant a nonrefundable application fee in the amount
11 an amount to be paid to the Department of Economic Development when the application is filed.

12 This fee shall be set forth in rules promulgated pursuant to this article;

13 (5) To issue approval or denial of all Mountain Homes projects;

14 (6) To decertify, refuse to certify or revoke approval of any proposed or approved Mountain
15 Homes project, upon a finding that any person or entity involved therein, or any approved
16 company, or any eligible taxpayer, has failed to comply with the requirements of this article, or
17 upon a finding that residential housing units, common areas or infrastructure of a Mountain Homes
18 project have been constructed with shoddy workmanship or materials, or that the approved
19 applicant has failed to maintain or repair project property in a manner consistent with accepted
20 standards or standards prescribed by the Department of Economic Development, or that any
21 aspect of the undertaking has been the result of, or involved, fraud, malfeasance, bribery,
22 embezzlement, corruption, intimidation or gross misconduct.; and

23 (7) Recognize and establish areas throughout where there exist high demands for
24 residential homes and prioritize these areas as the top priority for projects authorized by the
25 provisions _____ of _____ this _____ article.

§5B-2K-13. False statement; penalty.

1 (a) A person may not knowingly make or cause any false statement or report to be made:

2 (1) In any application or document furnished to the department;

3 (2) For the purpose of influencing the action of the department:

4 (A) On an application for financial assistance, or

5 (B) Affecting financial assistance whether or not assistance may have already been
6 extended.

7 (b) A person convicted of making a false statement pursuant to the provisions of this
8 section is guilty of a misdemeanor, and on conviction is subject to a fine not exceeding \$1,000 or
9 imprisonment not exceeding 1 year, or both.

NOTE: The purpose of this bill is to create the Mountain Homes Act and creating the

Mountain Homes Fund to remove barriers to funding for home construction with the goal of promoting a sustainable quality of life for the state's workforce.

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