

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 188

By Senators Tarr, Deeds, Phillips, Jeffries, Woodrum,
and Plymale

[Originating in the Committee on Finance; reported
February 21, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §5B-2P-1, §5B-2P-2, §5B-2P-3, §5B-2P-4, §5B-2P-5, §5B-2P-6, §5B-2P-7,
3 §5B-2P-8, §5B-2P-9, §5B-2P-10, §5B-2P-11, §5B-2P-12, and §5B-2P-13, all relating to
4 creating the Mountain Homes Act; setting out a short title; setting out legislative findings;
5 defining terms; authorizing rulemaking; providing an effective date; providing for a sunset
6 date; creating the Mountain Homes Fund; providing for the purposes of the fund; providing
7 for administration of the fund; providing for recordkeeping; requiring reporting to the Joint
8 Committee on Government and Finance and the Governor; setting out required elements
9 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 Economic
16 Development Authority; and providing for a criminal penalty for a false statement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2P. MOUNTAIN HOMES ACT.

Part I. General

§5B-2P-1. Short title.

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

§5B-2P-2. Legislative findings.

1 (a) The Legislature finds that:

2 (1) Continued economic growth in West Virginia creates a responsibility in the state for the
3 furtherance of the general welfare of our citizens. The state's focus on and promotion of economic

1 development has created a business-friendly atmosphere for businesses to remain and locate
2 here. The continued development of a business-friendly environment must include factors to
3 promote positive social and personal development;

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

10 (3) The constraints on obtaining funding for housing construction potentially create a
11 hinderance to continued economic development as businesses consider West Virginia as an
12 option. Workers who may locate here as businesses move here have an expectation of their
13 certain quality of life, including adequate housing. Fulfilling this expectation is a necessary
14 component of the state's economic development.

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

§5B-2P-3.

Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 "Applicant" means a business entity seeking a loan guarantee from the department.

3 "Approved private entity" or "private entity" means any natural person, corporation, general
4 partnership, limited liability company, limited partnership, joint venture, business trust, public
5 benefit corporation, nonprofit entity, other private business entity, or combination thereof, seeking
6 approval to participate in a public-private partnership pursuant to the provisions of this article.

7 "Authority" means the same as that term is defined in §31-15-4 of this code.

8 "Board of directors" means the board created in §31-15-5 of this code.

9 "Cash reserve" means applicant's 50 percent or more share of the anticipated total cost to
10 build a mountain homes project.

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

16 "Construction loan" means or includes the purchase of any real estate upon which an
17 approved project may be constructed, working capital, necessary equipment and fixtures, the
18 purchase of building materials, and tangible personal property directly incorporated into the
19 project, common areas, and infrastructure during construction.

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

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

26 "Economic Development Authority" or "authority" means the West Virginia Economic
27 Development Authority established pursuant to the provisions of §31-15-1 et seq. of this code.

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

32 "Executive director" means the Executive Director of the Economic Development Authority

33 or his or her designee.

34 "Fees" means rates, tolls, or other charges imposed by the private partner or the authority
35 for use of all or a portion of a qualifying infrastructure project pursuant to a final public-private
36 agreement.

37 "Final approval" or "approval" means the action taken by the Executive Director of the
38 Economic Development Authority to approve a construction loan guarantee pursuant to this
39 article.

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

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

49 "Loan guarantee agreement" or "agreement" means an agreement guaranteeing the cash
50 reserve which a lender requires applicant to have as a condition for approving a construction loan
51 for a project.

52 "Mountain homes project" or "project" means a housing project consisting of six or more
53 residential units or dwellings in a subdivision, housing development, or gated community in the
54 state with an appraised completed value of at least \$800,000.

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

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

58 "Subdivision, housing development, or gated community" means a lot, tract, or parcel of

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

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

§5B-2P-4. Rulemaking.

1 To implement the provisions of this article, the executive director may propose rules for
2 legislative approval, or promulgate procedural, interpretive, or emergency rules, in accordance
3 with the provisions of §29-3-1 et seq. of this code: *Provided*, That no rule may require participation
4 in _____ any _____ project _____ by _____ organized _____ labor.

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

1 (a) Any loan guarantee agreement authorized by this article shall take effect on and after
2 January 1, 2025.

3 (b) Effective January 1, 2035, the provisions of this article shall expire and have no further
4 force or effect: *Provided*, That any loan guarantee agreement entered into pursuant to this article
5 shall continue to be valid and remain in effect until completion of the project.

Part II. CREATION OF MOUNTAIN HOMES FUND.

§5B-2P-6. Mountain Homes Fund; recordkeeping.

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 money from available revenue surplus funds,
3 gifts, grants, contributions, any earnings, or interest accruing to said fund, and any other money

4 appropriated to said fund by the Legislature. Expenditures from the fund shall be for the purposes
5 set forth in this article. The fund shall be managed by the authority. The authority may invest and
6 reinvest moneys in the fund with the West Virginia Investment Management Board or the Board of
7 Treasury Investments.

8 (b) In addition to any other powers granted to the authority pursuant to this code, the
9 authority may use the fund to offer loan guarantee agreements for construction loans that meet the
10 requirements of this article. The provisions of the fund are exempt from oversight and regulation by
11 the Insurance Commissioner, the Commissioner of Banking, and the provisions of §33-1-1 et seq.
12 and §46A-1-101 et seq. of this code.

13 (c) The authority shall keep itemized records of all fund transactions and agreements
14 entered in furtherance of the objectives of the fund. In administering the fund, the authority shall
15 adopt appropriate accounting practices and internal controls. Fund transactions shall be subject to
16 an annual audit by an independent firm of certified public accountants.

17 (d) The authority shall submit to the Joint Committee on Government and Finance and the
18 Governor an annual report addressing the status of each project with outstanding financing issued
19 pursuant to this article. The report shall, at a minimum, provide project-specific data addressing:

20 (1) The outstanding amount of authority financing for each project;

21 (2) The total amount of private investment in each project;

22 (3) The number of residences either under construction or completed by each project since
23 the fund's inception;

24 (4) The time between completion and sale to a residential owner of a single family home
25 pursuant to this article; and

26 (5) Any other information or data requested by the Joint Committee on Government and
27 Finance.

28 (e) Except for the records and audit required under subsection (c) of this section and the
29 annual reports required under subsection (d) of this section, any documentary material, data, or

30 other writing made or received by the authority relating to projects pursuant to this article shall be
31 exempt from §29B-1-1 et seq. of this code: *Provided*, That any agreement entered into or signed
32 by the authority which obligates public funds for any mountain homes projects shall be subject to
33 inspection and copying, pursuant to §29B-1-1 et seq. of this code, as of the date the agreement or
34 resolution is entered into, signed, or otherwise made public.

Part III. MOUNTAIN HOMES FUND ADMINISTRATION.

§5B-2P-7. Eligibility requirements.

- 1 (a) To be eligible for a loan guarantee agreement, an applicant must:
2 (1) Be qualified and licensed to do business in West Virginia.
3 (2) Be current on all tax obligations to the state of West Virginia.
4 (3) Demonstrate creditworthiness to the department.
5 (4) Certify that the anticipated project will be in West Virginia.
6 (5) Certify the anticipated project will have an appraised completed value of at least
7 \$800,000 and will consist of at least six residential units or dwellings in a subdivision, housing
8 development, or gated community in this state.
9 (6) Demonstrate there is substantial and credible evidence that the project is likely to be
10 started and completed in a timely fashion.
11 (7) Demonstrate that the project will, directly or indirectly, improve the opportunities in the
12 area where the project will be located for the successful establishment or expansion of other
13 commercial businesses.
14 (8) Demonstrate that the project will, directly or indirectly, assist in the creation of additional
15 employment opportunities in the area where the project will be located beyond the jobs associated
16 with the mountain homes project.
17 (9) Demonstrate that the project is consistent with the goals of this article.
18 (10) Demonstrate that the project is economically and fiscally sound using recognized
19 business standards of finance and accounting.

20 (11) Demonstrate that the project will meet the immediate future needs of the area.

21 (12) Certify that the terms and conditions of the loan from the eligible lender require an
22 interest rate at or above the percentage rate currently being offered by lenders.

23 (13) Meet any other terms and conditions set by the authority by legislative rule.

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

§5B-2P-8. Application for loan guarantee; information required.

1 An application for a loan guarantee agreement for a mountain homes project shall be on a
2 form approved by the ashall include the following information:

3 (1) A description and location of the project including a detailed strategic business plan for
4 constructing the project that meets the requirements of this article and any authority rule;

5 (2) Applicant's construction experience and list of completed projects;

6 (3) Applicant's financial statement prepared by a certified public account;

7 (4) The amount of guarantee sought from the authority;

8 (5) The amount and type of funds available to the applicant without financial assistance
9 from the authority;

10 (6) Proof of applicant's inability to meet the required cash reserve to secure a
11 construction loan from a lender;

12 (7) Copy of application to an eligible lender for a construction loan to cover up to 50
13 percent of the anticipated cost of the project;

14 (8) Lender's conditional approval for a construction loan, if applicable;

15 (9) Certification from lender that approval of the construction loan is contingent upon
16 applicant having the required cash reserve to cover the anticipated cost to complete the project;

17 (10) Demonstration of compliance with the eligibility requirements in section seven of this

1 article; and

2 (11) Any other relevant information requested by the executive director.

5B-2P-9. Decision on loan guarantee application, evaluation standards and provisions.

1 (a) Upon a determination that all provisions of this article have been met, the board of
2 directors may approve an application for a loan guarantee. Coverage is limited to a guarantee of
3 applicant's required cash reserve: *Provided*, That no guarantee may exceed \$400,000.

4 (b) The term of the loan guarantee agreement shall not exceed five years or the date of the
5 completion of the project, whichever is shorter.

6 (c) The authority may request as a condition of approval that it be granted a subordinate
7 lien or security interest in any real estate covered by the guarantee for any construction loan.

8 (d) Should the applicant default on any provision of the loan to an eligible lender, the
9 eligible lender shall place the authority on notice of their intent to collect on the default, pursuant to
10 the terms of the final loan or loan guarantee agreement. The authority shall notify the applicant and
11 provide them 30 days to cure the default. At the conclusion of the 30-day period, if the default has
12 not been cured, the authority shall pay the eligible lender pursuant to the terms of the final loan or
13 loan guarantee agreement.

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

19 (f) The board of directors shall, within 60 days following receipt of a completed application
20 or receipt of any additional information requested by the authority, whichever is later, issue a
21 decision on the application.

22 (g) Decisions by the board of directors are conclusive and not subject to review. They shall
23 be in writing and any denial shall state the reason or reasons for the denial.

24 (h) The decision by the executive director, or his or her designee, as to certification of a
25 proposed project, refusal to certify a proposed project, decertification, or revocation of certification
26 of a project is final.

27 (i) The authority may establish additional criteria for evaluating applications for loan
28 guarantee agreements.

29 (j) The aggregate sum of costs for all projects for any fiscal year may not exceed
30 \$10,000,000. Any application submitted in the fiscal year after the sum of \$10,000,000 has been
31 reached shall not be approved. Notwithstanding any other provision of this code, for any fiscal
32 year, the executive director may not approve any application for a guarantee for any project that
33 does not qualify as mountain homes project as defined in section three of this article.

§5B-2P-10. Loan guarantee agreement; terms and provisions.

1 (a) Upon approval of an application, the authority may enter into a loan guarantee
2 agreement with the applicant.

3 (b) The terms and conditions of each agreement shall be on a form approved by the
4 authority and include, but not be limited to:

5 (1) All provisions required by legislative rule;

6 (2) Total projected costs, and within three months of the completion date, the approved
7 applicant shall document:

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

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

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

14 (c) An approved applicant may request, and the authority may grant, an extension of time
15 or change to any expected timeline. However, in no event shall the extension exceed three years

16 from the date of certification of the completion date specified in the agreement with the approved
17 applicant.

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

29 (e) A loan guarantee agreement is not transferrable.

§5B-2P-11. Prohibited projects.

1 Projects ineligible for consideration include, but are not limited to, property or space used,
2 in whole or part, for:

- 3 (1) A residential or commercial timeshare;
- 4 (2) An industrial or manufacturing operation;
- 5 (3) A warehouse, distribution center, telephone call center, or telemarketing operation;
- 6 (4) An airport;
- 7 (5) Any business activity;
- 8 (6) Mobile homes; or
- 9 (7) Any other operation or activity excluded by authority rule.

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

1 The executive director has the following powers and duties necessary to carry out the

2 purposes of this article, including, but not limited to:

3 (1) To approve applications for projects and enter into loan guarantee agreements for
4 construction loans for mountain homes projects with approved applicants;

5 (2) To employ fiscal consultants, attorneys, appraisers, and other agents as the Executive
6 Director of the Economic Development Authority 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 to be paid to
11 the Economic Development Authority when the application is filed. This fee shall be set forth in
12 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, any approved company,
16 or any eligible taxpayer, has failed to comply with the requirements of this article, or upon a finding
17 that residential housing units, common areas or infrastructure of a mountain homes project have
18 been constructed with shoddy workmanship or materials, or that the approved applicant has failed
19 to maintain or repair project property in a manner consistent with accepted standards or standards
20 prescribed by the Economic Development Authority, or that any aspect of the undertaking has
21 been the result of, or involved, fraud, malfeasance, bribery, embezzlement, corruption,
22 intimidation, or gross misconduct; and

23 (7) To establish and prioritize areas throughout the state where high demand exists for
24 residential housing projects.

§5B-2P-13. Violations; criminal penalties.

1 Any person who intentionally misrepresents any material fact in an application, record,
2 report, plan, or any other document filed or required to be maintained under the provisions of this

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3 article or any rule promulgated by the executive director is guilty of a misdemeanor and, upon
4 conviction thereof, shall be fined not more than \$1,000, or confined in jail not more than one year,
5 or both fined and confined.