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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



# ENROLLED

## House Bill No. 2905

(By Delegates Perdue, Kuhn and Angotti)



Passed April 11, 2001

In Effect Ninety Days from Passage

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**H. B. 2905**

(BY DELEGATES PERDUE, KUHN AND ANGOTTI)

[Passed April 11, 2001; in effect ninety days of passage.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen-d, relating to the establishment and administration of a West Virginia affordable housing trust fund; creating an affordable housing trust fund board of directors and specifying its powers and responsibilities; defining eligible activities and organizations; requiring an application period and selection criteria; requiring confidentiality; prohibiting conflicts; providing tax exemptions; requiring the publication of an annual report; requiring an annual audit by a licensed accountant; and providing for dissolution or liquidation of trust fund.

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

That chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eighteen-d, to read as follows:

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

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Enr. H. B. 2905]

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**§31-18D-1. Short title.**

1 This article may be known and cited as the “West Virginia  
2 Affordable Housing Trust Fund Act.”

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

1 The Legislature finds that current and past economic  
2 conditions in this state, changing federal housing policies which  
3 devolve responsibility for housing back to state government,  
4 declining resources at the federal level and changing demo-  
5 graphics have resulted in low and moderate income persons,  
6 including elderly persons and persons with special needs, being  
7 unable to obtain safe, decent and affordable housing in this  
8 state. Lack of affordable housing affects the ability of commu-  
9 nities to develop and maintain strong and stable economies and  
10 impairs the health, stability and self-esteem of individuals and  
11 families. The Legislature further finds that financing affordable  
12 housing, especially in rural areas and small communities, is  
13 becoming increasingly difficult and is often characterized by  
14 fragmented, uncoordinated, burdensome and expensive funding  
15 mechanisms. For these reasons, it is in the public interest to  
16 establish a new resource known as the West Virginia affordable  
17 housing trust fund to encourage stronger partnerships, collabo-  
18 ration and greater involvement of local communities in meeting  
19 housing needs in West Virginia. It is the intent of the Legisla-  
20 ture that this trust fund assist in increasing the capacity of  
21 community housing organizations and encourage private sector  
22 businesses and individuals to contribute capital to community-  
23 based organizations and assist them in providing safe, decent  
24 and affordable housing to our citizens.

**§31-18D-3. Definitions.**

1 (a) “Board” is the board of directors of the West Virginia  
2 affordable housing trust fund established pursuant to this  
3 article.

4 (b) "Housing" includes owner-occupied dwellings, rental  
5 units and other types of shelter for individuals and families.

6 (c) "Low or moderate income" means the income of  
7 individuals or families that is determined from time to time by  
8 the board as a percentage of the area median income for the  
9 state. The board may use the income data provided by the  
10 United States department of housing and urban development or  
11 other reliable income data as determined by a resolution of the  
12 board.

13 (d) "Technical assistance" means activities that are directly  
14 related to a nonprofit organization's ability to provide housing  
15 for low income persons and includes, but is not limited to, land  
16 use and planning costs, design and engineering services, loan  
17 packaging assistance, program development assistance and  
18 construction consultation.

19 (e) "Trust fund" means the West Virginia affordable  
20 housing trust fund established by this article.

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

1 The West Virginia affordable housing trust fund is estab-  
2 lished as a governmental instrumentality of the state and public  
3 body corporate.

#### **§31-18D-5. Housing trust fund board of directors.**

1 (a) The affordable housing trust fund has a board of  
2 directors, which consists of eleven voting members. The  
3 members of the board are responsible for administering the trust  
4 fund.

5 (b) The trust fund board of directors consists of:

6 (1) The secretary of the department of health and human  
7 resources, ex officio, or his or her designee;

8 (2) The executive director of the West Virginia develop-  
9 ment office, ex officio, or his or her designee;

10 (3) The executive director of the West Virginia housing  
11 development fund, ex officio, or his or her designee;

12 (4) One member who is chosen from the private directors  
13 appointed by the governor to the board of the West Virginia  
14 housing development fund;

15 (5) One member who is an officer of a corporation or  
16 member of a limited liability company, which is currently  
17 licensed to do business in West Virginia and is engaged in real  
18 estate development;

19 (6) Three members who are executive directors or officers  
20 of not-for-profit organizations, which are not affiliated with one  
21 another through common management control and which are  
22 currently licensed to do business in West Virginia and which  
23 have been recognized as exempt from federal income tax under  
24 Section 501(c)(3) of the Internal Revenue Code, as amended,  
25 codified in 26 U.S.C. §501 (c) (3), and are organized and  
26 operated exclusively for charitable purposes within the meaning  
27 of that section, and in accordance with those purposes, provide  
28 housing assistance to low or moderate income citizens of this  
29 state;

30 (7) One member representative of the banking industry;

31 (8) One citizen member who is representative of the  
32 population served by the trust fund; and

33 (9) One member who is an executive director of a public  
34 housing authority operating in a county or municipality in this  
35 state.

36 (c) Not more than three members, excluding the ex officio  
37 members, shall be appointed from any one congressional  
38 district. Not more than four of the members, excluding the ex

39 officio members, may belong to the same political party. Except  
40 for initial appointments and midterm special appointments  
41 made to fill irregular vacancies on the board, members shall be  
42 appointed for terms of three years each. Initial appointments  
43 shall consist of three members whose terms expire after two  
44 years, three members whose terms expire after three years and  
45 two members whose terms expire after four years. Members are  
46 eligible for reappointment. However, no member may serve for  
47 more than two consecutive full terms. Except for midterm  
48 special appointments made to fill irregular vacancies on the  
49 board, appointment terms shall begin on the first day of July of  
50 the beginning year. All appointment terms, special and regular,  
51 end on the thirtieth day of June of the final year of the term.

52 (d) All members of the board except those who serve ex  
53 officio shall be appointed by the governor, with the advice and  
54 consent of the Senate.

55 (e) The governor may remove any appointed member in  
56 case of incompetency, neglect of duty, moral turpitude or  
57 malfeasance in office, and the governor may declare the office  
58 vacant and fill the vacancy as provided in other cases of  
59 vacancy.

60 (f) The governor shall designate one of the initial members  
61 as chairperson of the board. During or after the first meeting of  
62 the board the board may select a new chairperson and shall  
63 annually select its chairperson.

64 (g) The board shall meet not less than four times during the  
65 fiscal year, and additional meetings may be held upon a call of  
66 the chairperson or of a majority of the members. Board mem-  
67 bers shall be reimbursed for sums necessary to carry out  
68 responsibilities of the board and for reasonable travel expenses  
69 to attend board meetings. The ex officio members may not be  
70 reimbursed by the fund for travel expenses to attend board  
71 meetings.

72 (h) Six members of the board is a quorum. No vacancy in  
73 the membership of the board impairs the right of a quorum to  
74 exercise all the rights and perform all the duties of the board.  
75 No action may be taken by the board except upon the affirma-  
76 tive vote of at least six of the members.

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

1 (a) It is the duty of the board to manage and control the  
2 affordable housing trust fund. In order to carry out the  
3 day-to-day management and control of the trust fund and  
4 effectuate the purposes of this article, the board may appoint an  
5 executive director and other staff. The board shall fix the  
6 executive director's duties and compensation as well as that of  
7 other staff. The executive director and other staff serve at the  
8 will and pleasure of the board. The board may provide for staff  
9 payroll and employee benefits in the same manner as the West  
10 Virginia housing development fund provides for its employees.

11 (b) The members of the board and its officers are not liable  
12 personally, either jointly or severally, for any debt or obligation  
13 created by the board.

14 (c) Members of the board and its officers and employees  
15 shall be provided insurance coverage by the state's risk and  
16 insurance management board to the same extent and in the same  
17 manner the coverage is applicable to state government agencies  
18 and appointed state officials and employees. The board may  
19 elect to obtain other forms of insurance coverage it considers  
20 reasonable for its operations.

21 (d) The acts of the board are solely acts of its corporation  
22 and are not those of an agent of the state, nor is any debt or  
23 obligation of the board a debt or obligation of the state.

24 (e) The board shall:

25 (1) Develop and implement comprehensive policies and  
26 programs for the use of the trust fund that ensures the equitable  
27 distribution of moneys from the trust fund throughout the  
28 various geographic areas of this state and between urban and  
29 rural areas of this state;

30 (2) Develop and implement an application and selection  
31 system to identify housing sponsors or providers of affordable  
32 housing developments or programs that qualify to receive  
33 assistance from the trust fund for eligible activities;

34 (3) Provide funds for technical assistance to prospective  
35 applicants;

36 (4) Monitor services, developments, projects or programs  
37 receiving assistance from the trust fund to ensure that the  
38 developments are operated in a manner consistent with this  
39 article and in accordance with the representations made to the  
40 trust fund board by the sponsors of the services, developments,  
41 projects or programs;

42 (5) Recommend legislation to further its mission of  
43 providing housing for low to moderate income citizens of this  
44 state;

45 (6) Provide funding to increase the capacity of nonprofit  
46 community housing organizations to serve their communities;

47 (7) Research and study housing needs and potential  
48 solutions to the substandard quality or lack of affordable  
49 housing;

50 (8) Coordinate programs with other entities when doing so  
51 fulfills its mission to provide housing to low to moderate  
52 income citizens of this state;

53 (9) Convene public meetings to gather information or  
54 receive public comments regarding housing policy or issues;



55 (10) Distribute available funds pursuant to policies estab-  
56 lished by it which may permit the establishment of a permanent  
57 endowment; and

58 (11) Serve as a clearing house for information regarding  
59 housing services and providers within this state.

60 (f) The West Virginia housing development fund shall  
61 provide office space and staff support services for the executive  
62 director and the board, shall act as fiscal agent for the board  
63 and, as such, shall provide accounting services for the board,  
64 invest all funds as directed by the board, service all investment  
65 and loan activities of the board as requested, and shall make the  
66 disbursements of all funds as directed by the board, for which  
67 the West Virginia housing development fund shall be reason-  
68 ably compensated, as determined by the board.

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

1 (a) The board shall use the moneys from the trust fund to  
2 make, or participate in the making, of loans or grants for  
3 eligible activities that shall include, but not be limited to:

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

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

9 (3) Providing funds for administrative costs for housing  
10 assistance programs or nonprofit organizations eligible for  
11 funding pursuant to subsection (b) of this section if the grants  
12 or loans provided will substantially increase the recipient's  
13 access to housing funds or increase its capacity to supply  
14 affordable housing;

15 (4) Providing loan guarantees and other financial mecha-  
16 nisms to facilitate the provision of housing products or services;

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

22 (6) Providing risk underwriting products not provided by  
23 private sector entities to facilitate broader accessibility of  
24 citizens to other federal or state housing funds or loan pro-  
25 grams. The products shall be established using professional risk  
26 underwriting standards and separate corporate vehicles may be  
27 created and capitalized by the trust fund to provide the prod-  
28 ucts.

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

### **§31-18D-8. Corporate powers.**

1 The board has the power:

2 (1) To make loans or grants;

3       (2) To accept appropriations, gifts, grants, bequests and  
4       devises and to utilize or dispose of the same to carry out its  
5       corporate purposes. The board has the discretion to refuse any  
6       gift it considers inappropriate;

7       (3) To make and execute contracts, releases, compromises,  
8       agreements and other instruments necessary or convenient for  
9       the exercise of its powers or to carry out its corporate purposes;

10      (4) To collect reasonable fees and charges in connection  
11      with making and servicing loans, notes, bonds, obligations,  
12      commitments and other evidences of indebtedness, and in  
13      connection with providing technical, consultative and project  
14      assistance services;

15      (5) To sue and be sued;

16      (6) To have a seal and alter the same at will;

17      (7) To hire its own employees and appoint officers and  
18      consultants as it considers advisable, and to fix their compensa-  
19      tion and prescribe their duties;

20      (8) To acquire, hold and dispose of real and personal  
21      property for its corporate purposes;

22      (9) To enter into agreements or other transactions with any  
23      federal or state agency, any person and any domestic or foreign  
24      partnership, corporation, association or organization;

25      (10) To acquire real property, or an interest in real property,  
26      in its own name, by purchase, transfer, bequest, gift or foreclo-  
27      sure, where appropriate or is necessary to protect any loan in  
28      which the board has an interest and to sell, transfer and convey  
29      any property to a buyer and, in the event that a sale, transfer or  
30      conveyance cannot be effected with reasonable promptness or  
31      at a reasonable price, to lease property to a tenant. Before any

32 real property is transferred to the trust, the seller or donor must  
33 have clear title to the property. The board has the discretion to  
34 require that the seller or donor agree, in the terms of the  
35 transfer, that any liability for environmental defects on the  
36 property is not waived by the transfer and that the seller or  
37 donor indemnify the trust for any liability associated with  
38 activities that occurred or conditions that exist on the property.  
39 The board may require the transferor of the property to bear the  
40 costs of an environmental assessment of the property, con-  
41 ducted in a manner satisfactory to the board;

42 (11) To purchase or sell, at public or private sale, any  
43 mortgage or other negotiable instrument or obligation securing  
44 a loan;

45 (12) To procure insurance against any loss in connection  
46 with its property in such amounts, and from such insurers, as  
47 may be necessary or desirable;

48 (13) To consent, whenever it considers it necessary or  
49 desirable in the fulfillment of its corporate purpose, to the  
50 modification of the rate of interest, time of payment or any  
51 installment of principal or interest or any other terms, of an  
52 investment, loan, contract or agreement of any kind to which  
53 the board is a party;

54 (14) To establish training and educational programs to  
55 further the purposes of this article;

56 (15) To acquire, by purchase or otherwise, and to hold,  
57 transfer, sell, assign, pool or syndicate or participate in the  
58 syndication of, any loans, notes, mortgages, securities or debt  
59 instruments or other instruments evidencing loans or equity  
60 interests in or for the fostering, repairing, or providing afford-  
61 able housing to the citizens of this state;

62 (16) The board has the authority to make, and from time to  
63 time, amend and repeal bylaws and rules not inconsistent with  
64 the provisions of this article; and

65 (17) To have and exercise all other general powers of a  
66 corporation in this state.

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

1 (a) The board shall announce by public notice at least two  
2 periods annually for prospective applicants to submit proposals,  
3 applications or requests for funding. Each period shall be for at  
4 least ninety days duration during each calendar year in which  
5 funds are available from the trust fund. The board shall approve  
6 or deny properly submitted and completed applications,  
7 proposals or requests within sixty days of their receipt.

8 (b) The board shall determine whether each person making  
9 an application, proposal or request for funding is an eligible  
10 entity and approve as many applications, proposals or requests  
11 as will effectively use the available moneys in the trust fund  
12 less costs required to administer the program. In selecting  
13 entities to receive trust fund assistance, the board shall develop  
14 a qualified allocation and selection plan as often as it considers  
15 appropriate in order to provide affordable housing and improve  
16 the capacity of nonprofit housing entities to supply affordable  
17 housing to low and moderate income citizens of this state. The  
18 allocation and selection plan for each period shall be available  
19 for review of prospective applicants and the general public in  
20 sufficient time for prospective applicants to reasonably prepare  
21 an application, project proposal or request for funding.

22 (c) No moneys may be expended from the trust fund for  
23 projects that discriminate against any buyer or renter because of  
24 race, religion, sex, familial status or national origin.

25 (d) The board shall forward to the West Virginia housing  
26 development fund for its review and information approved  
27 requests, applications and proposals for funding containing  
28 information as is necessary to permit the West Virginia housing  
29 development fund to carry out its duties under this article.

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

1 Any documentary material or data made or received by the  
 2 board for the purpose of furnishing assistance, to the extent that  
 3 the material or data consists of financial or personal information  
 4 regarding the financial position or activities of a for-profit  
 5 business or natural person, are not public records and are  
 6 exempt from any disclosure pursuant to the provisions of  
 7 chapter twenty-nine-b of this code. Any discussion or consider-  
 8 ation of the financial or personal information may be held by  
 9 the board in executive session closed to the public, notwith-  
 10 standing the provisions of article nine-a, chapter six of this  
 11 code.

**§31-18D-11. Conflicts.**

1 In addition to any requirements imposed in article two,  
 2 chapter six-b of this code, if the board receives an application,  
 3 request for funding or proposal from any entity of which a  
 4 member of the board, or an immediate family member of a  
 5 board member, is also an officer, director, employee or owner  
 6 of any entity which is a party to the proposed transaction, the  
 7 board member shall:

- 8 (1) Disclose the relationship to the board, in writing;
- 9 (2) Refrain from participating in board discussions concern-  
 10 ing the application, request for funding or proposal; and
- 11 (3) Refrain from voting the application, request for funding  
 12 or proposal.

**§31-18D-12. Tax exemption.**

1 The trust fund is not required to pay any taxes and assess-  
 2 ments to the state of West Virginia, or any county, municipality

3 or other governmental subdivision of the state of West Virginia,  
4 upon any of its property or upon its obligations or other  
5 evidences of indebtedness pursuant to the provisions of this  
6 article, or upon any moneys, funds, revenues or other income  
7 held or received by the trust fund and the income from it is  
8 exempt from taxation, except for death and gift taxes, taxes on  
9 transfers, sales taxes, real property taxes and business and  
10 occupation taxes.

**§31-18D-13. Annual report.**

1 The board shall make a report to the governor and the  
2 Legislature within ninety days of the close of each fiscal year.  
3 The report shall include summaries of all meetings of the board,  
4 an analysis of the overall progress of the program, fiscal  
5 concerns, the relative impact the program is having on the state,  
6 and any suggestions and policy or legislative recommendations  
7 that the board may have. The report shall include: (1) The  
8 applications funded in the previous calendar year; (2) the  
9 identity of organizations receiving funds and significant private  
10 sector partners of each project or program; (3) the location of  
11 each project unless the disclosure would endanger occupants or  
12 unduly invade the privacy of occupants; (4) the amount,  
13 maturity, interest rate, collateral and other pertinent terms of  
14 funding provided to the project or program and the amount of  
15 other funds leveraged; (5) the number of units of housing  
16 created by the project and the occupancy rate; (6) the expected  
17 cost of rent or monthly payment for those units; and (7) the  
18 amount of revenue deposited into the West Virginia affordable  
19 housing trust fund. The report is public information and shall be  
20 made available to the general public for examination and  
21 copying.

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

1 (a) In order to provide the greatest flexibility to entities  
2 receiving funding from the trust fund, the proposals, applica-  
3 tions and requests funded under this article are exempt from the

4 bidding and public sale requirements, from the approval of  
5 contractual agreements by the department of administration or  
6 the attorney general and from the requirements of chapter five-a  
7 of this code.

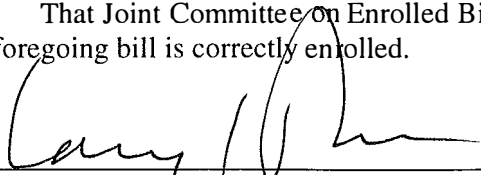
8 (b) The trust fund's financial position, activities, transac-  
9 tions, documents and records are subject to an annual audit by  
10 an independent firm of certified public accountants.

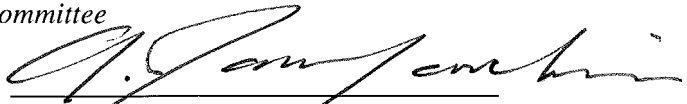
**§31-18D-15. Dissolution or liquidation of trust fund.**

1 In the event that the trust fund is dissolved or liquidated by  
2 the Legislature, after payment of all debts, obligations or  
3 expenses of the trust fund, all assets then remaining in the trust  
4 fund shall be distributed to the West Virginia housing develop-  
5 ment fund, a governmental instrumentality of the state of West  
6 Virginia created pursuant to section four, article eighteen of  
7 chapter thirty-one.



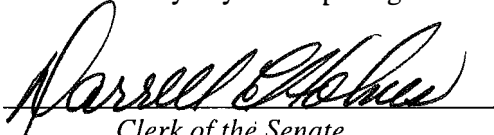
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

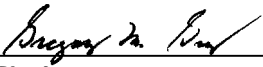
  
Chairmgn Senate Committee

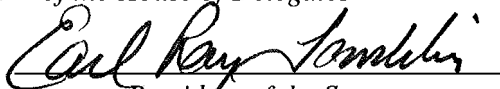
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

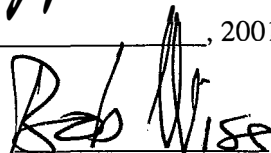
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 1st  
day of May, 2001.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/01

Time 2:15 pm