

HB 4008 S

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4008

(By Delegates Cann, Beane and Ennis)



Passed March 10, 2006

In Effect Ninety Days from Passage

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H. B. 4008

(BY DELEGATES CANN, BEANE AND ENNIS)

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AN ACT to amend and reenact §16-15-1 and §16-15-3a of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §16-15-3b, all relating to authorizing mergers to form regional housing authorities; providing definitions; authorizing subsequent joining of local and regional housing authorities; authorizing housing authorities to initiate merger by joint resolution; providing that contents of joint resolution include transfer of assets and liabilities, membership of authority and adoption of a plan of merger; and conferring on the regional housing authority the powers and duties of authorities it succeeds.

Be it enacted by the Legislature of West Virginia:

That §16-15-1 and §16-15-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that said code be amended by adding thereto a new section designated §16-15-3b, all to read as follows:

ARTICLE 15. STATE HOUSING LAW.

§16-15-1. Definitions.

1 The following terms, wherever used or referred to in this
2 article, shall have the following respective meanings, unless in
3 any case a different meaning clearly appears from the context:

4 (1) “Affiliate” means any corporation, entity, partnership,
5 venture, syndicate or arrangement in which a housing authority
6 participates by holding an ownership interest or participating in
7 its governance, including both controlled and noncontrolled
8 affiliates as herein defined.

9 (2) “Affordable housing” means dwelling units that may be
10 rented or purchased, as the case may be, by persons of eligible
11 income, as defined herein.

12 (3) “Annual sinking fund payment” means the amount of
13 money specified in the resolution or resolutions authorizing
14 term bonds as payable into a sinking fund during a particular
15 calendar year for the retirement of term bonds at maturity after
16 such calendar year, but shall not include any amount payable by
17 reason only of the maturity of a bond.

18 (4) “Area of operation” means the geographical area within
19 which a housing authority owns or operates housing develop-
20 ments or administers other housing programs including any
21 city, county or combination thereof in which it was operating
22 on the effective date of this article.

23 (5) “Arrangement” means a legal relationship with another
24 party that may include, but not be limited to, a general or
25 limited partnership; joint venture; syndicate or syndication;
26 corporation; limited liability cooperative, corporation or
27 partnership; an unincorporated association; a cooperative; a

28 consortium; and all other structures, organizations, and forms
29 of legal relationships with third parties.

30 (6) “Authority” or “housing authority” means a corporate
31 body organized in accordance with the provisions of this article
32 for the purposes, with the powers, and subject to the restrictions
33 hereinafter set forth. Where the context requires or permits, this
34 term shall be deemed to include regional housing authorities
35 and/or controlled affiliates of a housing authority.

36 (7) “Bond” or “bonds” means any bonds, notes, interim
37 certificates, debentures, or other obligations issued by an
38 authority pursuant to this article.

39 (8) “City” means and includes any political subdivision of
40 this state, whether incorporated or unincorporated, known as a
41 city, municipality, town or village. With respect to the provi-
42 sions of other sections of this article and their application to
43 housing authorities of counties, the term “city” shall be
44 construed as referring to a county unless a different meaning
45 clearly appears from the context.

46 (9) “Clerk” means the clerk or recorder of the city or the
47 clerk of the county, as the case may be, or the officer charged
48 with the duties customarily imposed on the clerk or recorder.

49 (10) “Commissioner” means one of the members of the
50 governing board of a housing authority appointed in accordance
51 with the provisions of this article.

52 (11) “Community facilities” means lands, buildings and
53 equipment, real and personal property suitable for recreational,
54 or social assembly, for educational, health, or welfare purposes
55 and other necessary activities for the use and benefit of the
56 occupants of housing developments and the public.

57 (12) “Controlled affiliate” means any affiliate of a housing
58 authority: (i) In which commissioners, officers, employees and
59 agents of the authority constitute a majority of the governing
60 body; or (ii) in which the authority holds a majority of the
61 ownership interests.

62 (13) “Council” means the chief legislative body of the city.

63 (14) “County” means and includes any political subdivision
64 of this state known as a county.

65 (15) “Development” or “housing development” means and
66 includes all dwellings and associated appurtenances, including
67 real and personal property, and all other facilities and improve-
68 ments of every kind and description, which a housing authority
69 may own or operate or in which it may hold an interest under
70 the provisions of this article, all land upon which such dwell-
71 ings, appurtenances, and facilities are situate; all work and
72 activities undertaken by a housing authority or others relating
73 to the creation of such property; all tangible and intangible
74 personal property relating thereto, including all leases, licenses,
75 agreements, and other instruments and all rights and obligations
76 arising thereunder, establishing or confirming ownership, title,
77 or right of use or possession in or to any such property by a
78 housing authority, all as more particularly described and
79 authorized in this article.

80 (16) “Farmers of low or moderate income” means persons
81 or families who at the time of their admission to occupancy in
82 a dwelling of the authority: (A) Live under unsafe and unsani-
83 tary housing conditions; (B) derive their principal income from
84 operating or working upon a farm; and (C) had an aggregate
85 average annual net income for the three years preceding their
86 admission that was less than the amount determined by the
87 authority to be necessary, within its area of operation, to enable

88 them, without financial assistance, to obtain decent, safe and
89 sanitary housing.

90 (17) "Governing body" means, in the case of a city, the
91 council of the city, and in the case of a county, the county
92 commission.

93 (18) "Government" means the state and federal govern-
94 ments and any subdivisions, authority or instrumentality,
95 corporate or otherwise, of either of them.

96 (19) "Guest" means any person, not a resident of the
97 development, who is present within the development, or within
98 a dwelling in a development, as an invitee of or otherwise with
99 the express or implied consent of a resident of the development
100 or dwelling.

101 (20) "Hold an interest" means ownership or control of, or
102 participation in an arrangement with respect to, a development
103 by a housing authority or any affiliate thereof.

104 (21) "Low-cost housing" shall include any housing accom-
105 modations which are or are to be rented at not in excess of a
106 maximum rate per room, or maximum average rate per room,
107 which shall be specified or provided by the housing authority of
108 the city in which such housing accommodations are or are to be
109 located, or the Legislature, or a duly constituted agency of the
110 state, or of the United States of America.

111 (22) "Mayor" means the chief executive of the city,
112 whether the official designation of his office be mayor, city
113 manager or otherwise: *Provided*, That the term "mayor" may
114 also be the chief elected officer of the municipality regardless
115 of whether or not the corporate charter provides for a city
116 manager appointed by the city council who is the chief execu-
117 tive officer.

118 (23) "Noncontrolled affiliate" means affiliate in which a
119 housing authority participates, but does not constitute a
120 majority of the governing body nor have a majority ownership
121 interest.

122 (24) "Obligee of the authority" or "obligee" means any
123 bondholder, trustee or trustees for any bondholders, or lessor
124 demising to an authority property used in connection with a
125 housing development, or any assignee or assignees of the
126 lessor's interest or any part thereof, and the federal government
127 when it is a party to any contract with the authority.

128 (25) "Person" means a family and, where the context so
129 requires, a household.

130 (26) "Persons of eligible income" means individuals or
131 families as defined by a public housing authority within the
132 applicable local, state and federal funding guidelines.

133 (27) "Public agency" means and includes: (i) Any county;
134 city; village; township; any school, drainage, tax, improvement
135 or other district; any department, division, or political subdivi-
136 sion of this state or another state; any housing authority,
137 housing finance authority, or housing trust of this state or
138 another state; and any other agency, bureau, office, authority,
139 or instrumentality of this state or another state; (ii) any board,
140 agency, commission, division or other instrumentality of a city
141 or county; and (iii) any board, commission, agency, department,
142 or other instrumentality of the United States, or any political
143 subdivision or governmental unit of any of them.

144 (28) "Regional housing authority" means a housing
145 authority formed by two or more cities, counties or housing
146 authorities pursuant to the authority provided in sections three-a
147 and three-b of this article.

148 (29) "Resident" means a person residing in a development
149 of a housing authority, with the consent of such authority,
150 according to its policies, rules and procedures.

151 (30) "Slum clearance" means the removal of housing
152 conditions which shall be considered by the housing authority
153 of the city in which such conditions exist to be unsanitary or
154 substandard or a menace to public health.

155 (31) "State" means the state of West Virginia and its duly
156 constituted government.

§16-15-3a. Regional housing authorities.

1 (a) Any two or more cities or counties, or any combination
2 thereof, may, by resolution of their separate governing bodies,
3 establish a regional housing authority, by adopting a joint
4 resolution declaring that there is a need for a regional housing
5 authority to provide decent, safe and sanitary housing that is
6 affordable to persons of low and moderate income residing in
7 a multijurisdictional area and that this need would be more
8 efficiently served by the establishment of a regional housing
9 authority: *Provided*, That any authority in existence prior to the
10 effective date of this article that is providing services outside of
11 the city or county boundaries will continue to have jurisdiction
12 in the areas where the authority is providing services on the
13 effective date of this article.

14 (b) Upon adoption of a resolution by two or more cities or
15 counties, or a combination thereof, a regional housing authority
16 shall be established and, except as otherwise provided in this
17 article, the regional housing authority shall have perpetual
18 existence, unless dissolved in accordance with law. Each
19 regional housing authority established pursuant to this section,
20 shall adopt a name for all legal and operating purposes.

21 (c) A certified copy of the resolutions establishing a
22 regional housing authority shall serve as conclusive evidence
23 that the authority has been properly established, is authorized
24 to transact business, and exercise its powers under this article.

25 (d) After a regional housing authority has been established,
26 any additional city, county or housing authority may elect to
27 participate as a member of the regional housing authority, upon
28 adoption of a resolution to that effect: *Provided*, That a majority
29 of the existing commissioners of the regional housing authority
30 and all participating political subdivisions, by action of their
31 respective governing bodies, shall consent to the additional
32 member or members.

33 (e) Any city or county may withdraw from participation in
34 the regional housing authority by resolution of its governing
35 body. Any withdrawal from participation shall be subject to the
36 following conditions:

37 (1) The regional housing authority has no bonds, notes, or
38 other obligations outstanding, or adequate provision for
39 payment of bonds, notes, or other obligations, by escrow or
40 otherwise, has been made. Past performance without breach or
41 default of an obligation secured only by one or more develop-
42 ments or the income thereof shall be deemed to be "adequate
43 provision";

44 (2) The withdrawing city or county shall make adequate
45 provision for the performance of all of its outstanding obliga-
46 tions and responsibilities as a participant in the regional housing
47 authority;

48 (3) The withdrawing city or county shall give six months
49 written notice to the regional housing authority and all other
50 cities and counties participating therein; or

51 (4) The commissioner or commissioners appointed by the
52 withdrawing city or county shall be deemed to have resigned as
53 of the date upon which the withdrawal is effective. Vacancies
54 on the board of commissioners created by withdrawal of a city
55 or county shall be filled in such manner as the cities and
56 counties remaining as participants shall agree.

57 Notwithstanding the withdrawal of any participating city or
58 county, the legal title to and operating responsibility for any
59 development located outside the area of operation of the
60 regional housing authority remaining after such withdrawal has
61 occurred shall continue to be vested in the regional housing
62 authority, unless a different arrangement is made.

63 (f) If only one city or county remains as a participant in any
64 regional housing authority, the regional housing authority shall
65 become the housing authority of the remaining city or county
66 at the discretion of its governing body, or the regional housing
67 authority shall be dissolved and its assets and liabilities
68 transferred to another existing housing authority or to a city or
69 county or other public agency.

§16-15-3b. Consolidated housing authorities.

1 (a) Two or more cities or counties may, by joint resolution
2 of their governing bodies, merge their housing authorities to
3 establish a regional housing authority: *Provided*, That each city
4 or county considering the merger shall hold a public hearing in
5 its area of operation prior to adopting the joint resolution.

6 (b) The joint resolution must provide for:

7 (1) The transfer of assets and liabilities and the perfor-
8 mance of all outstanding obligations and responsibilities;

9 (2) The membership, terms and manner of appointment of
10 commissioners of the regional housing authority; and

11 (3) The preparation, adoption and implementation of a plan
12 of merger.

13 (c) Consolidations by merger pursuant to this section are
14 subject to all of the provisions of article eleven, chapter thirty-
15 one-e of this code except where inconsistent with the provisions
16 of this article and except as to those provisions of article eleven,
17 chapter thirty-one-e which have no practical application.

18 (d) A regional housing authority established pursuant to this
19 section acquires and succeeds to all rights, obligations, duties
20 and privileges of the housing authorities of which it is a
21 successor, and will be considered for all purposes a regional
22 housing authority established pursuant to section three-a of this
23 article and subject to all applicable provisions of this article.

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

Clardy White
Chairman Senate Committee

H. Brown
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Daniel Stokes
Clerk of the Senate

Bruce M. Gray
Clerk of the House of Delegates

Carl Ray Brubaker
President of the Senate

Robert D. ...
Speaker of the House of Delegates

The within *is approved* this the *29th*
day of *March*, 2006.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

MAR 23 2006

Time 3:15p