

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 297

BY SENATORS TARR, WOODRUM, PHILLIPS, PLYMALE,

AND QUEEN

[Originating in the Committee on Economic

Development; reported on February 17, 2023]

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 forth a short title; setting forth legislative
5 findings; defining terms; providing for rulemaking; providing for an effective date; providing
6 for a sunset date; creating the Mountain Homes Fund; providing for the purposes of the
7 fund; providing for administration of the fund; providing for recordkeeping; requiring
8 reporting to the Joint Committee on Government and Finance and the Governor; setting
9 forth required elements for the report; exempting certain materials from the Freedom of
10 Information Act; establishing eligibility requirements for guarantee agreement; requiring
11 an application for guarantee agreement; setting forth required elements in application;
12 providing for decision on application for guarantee; establishing evaluation standards and
13 criteria; providing for guarantee agreement; setting forth required terms in agreement;
14 allowing for an extension of time; requiring adjacent properties to be subject to additional
15 guarantee; providing for project administration and certification; setting forth powers and
16 duties of secretary of Department of Economic Development; prohibiting certain projects;
17 and providing for violations and criminal penalties.

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 and cited as the Mountain Homes Act.

§5B-2K-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
4 development has created a business-friendly atmosphere for businesses to continue to remain
5 and locate here. The continued development of a business-friendly environment must include
6 factors to promote positive social and personal development;

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

13 (3) 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 certain quality of life, including adequate housing. Fulfilling this expectation is a necessary
17 component of the state's economic development.

18 (b) Therefore, the Legislature recognizes the need to support and encourage businesses
19 and realizes that they can only achieve success with a quality, hardworking, gainfully employed
20 workforce. To achieve and advance a better workforce in this state, the Legislature hereby
21 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 As used in this article, unless the context clearly requires a different meaning:

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

3 (2) "Approved private entity" or "private entity" means any natural person, corporation,
4 general partnership, limited liability company, limited partnership, joint venture, business trust,

5 public benefit corporation, nonprofit entity, other private business entity, or combination thereof
6 seeking approval to participate in a public-private partnership pursuant to the provisions of this
7 article.

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

10 (4) "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 (5) "Construction loan" means or includes the purchase of any real estate upon which an
16 approved project may be constructed, working capital, necessary equipment and fixtures, the
17 purchase of building materials, and tangible personal property directly incorporated into the
18 project, common areas, and infrastructure during construction.

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

23 (7) "Department of Economic Development" or "department" means the West Virginia
24 Department of Economic Development established pursuant to the provisions of §5B-2-1 et seq.
25 of this code.

26 (8) "Develop" shall mean to plan, design, finance, lease, acquire, install, construct, or
27 expand a qualifying project as set forth in this article.

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

31 accepts, or offers to make or accept, any primary or subordinate mortgage loans in any one
32 calendar year.

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

36 (11) "Final approval" or "approval" means the action taken by the secretary of the
37 Department of Economic Development to approve a construction loan guarantee pursuant to this
38 article.

39 (12) "Fund" means the Mountain Homes Fund created in §5B-2K-6 of this code.

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

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

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

55 (16) "Natural person" or "individual" means a human being.

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

58 (18) "Secretary" means the Secretary of the Department of Economic Development or his
59 or her designee.

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

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

§5B-2K-4. Rulemaking.

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

§5B-2K-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, 2024.

3 (b) Effective January 1, 2034, 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-2K-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 department. The department may invest
6 and reinvest moneys in the fund with the West Virginia Investment Management Board or the
7 Board of Treasury Investments.

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

13 (c) The department 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 department
15 shall adopt appropriate accounting practices and internal controls. Fund transactions shall be
16 subject to an annual audit by an independent firm of certified public accountants.

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

21 (1) The outstanding amount of department financing for each project;

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

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

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

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

29 (e) Except for the records and audit required under subsection (c) of this section and the
30 annual reports required under subsection (d) of this section, any documentary material, data, or
31 other writing made or received by the department relating to projects pursuant to this article, shall
32 be exempt from §29B-1-1 et seq. of this code: Provided, That any agreement entered into or
33 signed by the department which obligates public funds for any mountain homes projects shall be
34 subject to inspection and copying, pursuant to §29B-1-1 et seq. of this code, as of the date the
35 agreement or resolution is entered into, signed, or otherwise made public.

PART III. MOUNTAIN HOMES FUND ADMINISTRATION.

§5B-2K-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 in 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 (10) Demonstrate that the project is consistent with the goals of this article.

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

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

21 (13) 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 (14) Meet any other terms and conditions set by the department by legislative rule.

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

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

1 An application for a loan guarantee agreement for a mountain homes project shall be on
2 a form approved by the secretary and shall 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 department 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 department;

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

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

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

3 (8) Lender's conditional approval for a construction loan, if applicable.

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

6 (10) Demonstration of compliance with the eligibility requirements in §5B-2K-7 of this
7 code; and

8 (11) Any other relevant information requested by the secretary.

5B-2K-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 secretary
2 may approve an application for a loan guarantee. Coverage is limited to a guarantee of applicant's
3 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
5 the completion of the project ~~for~~, whichever is shorter. Amortization shall not exceed 20 years.
6 Interest charges shall be equal to that of lending institutions.

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

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

15 (e) If the applicant should default on the construction loan and the department makes
16 payment to an eligible lender pursuant to the final loan or loan guarantee agreement, the
17 department shall have the right to a cause of action against the applicant for any amount paid by

18 the department to an eligible lender, plus interest, pursuant to the terms of the final loan or
19 guarantee agreement: *Provided*, That any lien held by the department shall be subordinate to
20 liens from lending institutions.

21 (f) The Secretary shall, within 60 days following receipt of a completed application or
22 receipt of any additional information requested by the department, whichever is later, issue a
23 decision on the application.

24 (g) Decisions by the secretary are conclusive and not subject to review. They shall be in
25 writing and any denial shall state the reason or reasons for the denial.

26 (h) The decision by the secretary as to certification of a proposed project, refusal to certify
27 a proposed project, decertification, or revocation of certification of a project is final.

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

30 (j) The aggregate sum of costs for all projects for any fiscal year may not exceed
31 \$10,000,000. Any application submitted in the fiscal year after the sum of \$10,000,000 has been
32 reached shall not be approved. Notwithstanding any other provision of this code, for any fiscal
33 year, the secretary may not approve any application for a guarantee for any project that does not
34 qualify as mountain homes project as defined in §5B-2K-3(15) of this code.

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

1 (a) Upon approval of an application, the secretary 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 secretary 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 department may grant an extension of
15 time or change to any expected timeline. However, in no event shall the extension exceed three
16 years from the date of certification of the completion date specified in the agreement with the
17 approved applicant.

18 (d) Although adjacent properties may be developed and expanded upon by approved
19 applicants, and mountain homes project property may not itself be expanded upon unless the
20 initial loan or loan guarantee is paid in full by refinancing or other means, in such cases, the
21 mountain homes project designation and benefits of this article shall not apply with relation to
22 such nonapproved developments or expansions, except upon the issuance of a subsequent
23 approval by the Department of Economic Development for such development or expansion. In no
24 case may an approved project be augmented, enlarged, extended, or expanded, except pursuant
25 to issuance of an additional and separate approval by the Department of Economic Development.
26 Any 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-2K-11. Prohibited projects.

1 (a) Projects ineligible for consideration include, but are not limited to, property or space
2 used, 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 department rule.

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

1 The secretary has the following powers and duties necessary to carry out the purposes of
2 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 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
9 to 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
15 mountain homes project, upon a finding that any person or entity involved therein, 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) To establish and prioritize areas throughout the state where high demand exists for
24 residential housing projects.

§5B-2K-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
3 article or any rule promulgated by the secretary is guilty of a misdemeanor and, upon conviction
4 thereof, shall be fined not more than \$1,000, or confined in jail not more than one year, or both
5 fined and confined.