WEST VIRGINIA CODE CHAPTER 31 ARTICLE 18A

WV Legislature

§31-18A-1. Short title.

This article shall be known and may be cited as the "West Virginia Energy Conservation Revolving Loan Fund."

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§31-18A-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.

It is hereby determined and declared as a matter of legislative finding: (a) That an energy shortage exists within the State of West Virginia; (b) that the energy shortage is severe in certain areas of the state and may become severe, from time to time, in other areas of the state; (c) that the cost to the consumer for energy usage continues to increase at an accelerated rate; (d) that the energy shortage has produced widespread unemployment, threatening the economic stability of this state; and (e) that these conditions are inimical to the health, welfare and prosperity of all residents of the state and to the sound growth of the state.

It is hereby declared to be the public policy and a responsibility of this state to assist its residents in improving the energy efficiency of their residential dwellings. It is the purpose and intent of the Legislature in enacting this article to provide low interest loans to residents of this state of low and moderate income, who own and occupy single family residential dwellings, as an incentive for the improvement of the energy efficiency of such dwellings.

The Legislature finds that the public policy and responsibility of the state as set forth in this section cannot be effectively attained without the funding, establishment, operation and maintenance of the energy conservation revolving loan fund.

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§31-18A-3. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Residential dwelling" means a single family residence located in the State of West Virginia, which it is determined by the Housing Development Fund can be substantially aided in the conservation of energy by the making of improvements financed with a loan under this article;

(2) "Eligible owner of a residential dwelling" means:

(a) Person or persons of low and moderate income who own and occupy a residential dwelling; or

(b) Person or persons of higher income who own and occupy a residential dwelling in such area or areas of this state which are determined by the West Virginia Housing Development Fund, in consultation with the Public Service Commission, by resolution, to be a critical energy shortage area; or

(c) Person or persons who own and occupy a residential dwelling and who because of age or disability are found and determined by the West Virginia Housing Development Fund, by resolution, to require assistance in improving the energy efficiency of such dwellings to insure their health, safety and welfare;

(3) "Housing development fund" means the West Virginia Housing Development Fund created and established by section four, article eighteen, chapter thirty-one of this code;

(4) "Revolving loan fund" means the West Virginia energy conservation revolving loan fund which is created and established by section six of this article;

(5) "Person or persons of low and moderate income" means a person or persons, irrespective of race, creed, national origin or sex, determined by the Housing Development Fund to require such assistance as is made available by this article on account of personal or family income not sufficient to afford to implement or install energy conservation materials or equipment designed to improve the energy efficiency of residential dwellings, and in making such determination the Housing Development Fund shall take into account the following: (a) The amount of the total income of such persons and families for housing energy needs; (b) the size of the family; (c) the cost and condition of the residential dwelling; and (d) the eligibility of such persons or families for federal housing energy conservation assistance of any type based upon low or moderate income basis.

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§31-18A-4. Administration of revolving loan fund by West Virginia Housing Development Fund.

The West Virginia energy conservation revolving loan fund, established and authorized by section six of this article, shall be administered by the board of directors of the West Virginia Housing Development Fund, a public corporate body, created and established by section four, article eighteen, chapter thirty-one of this code.

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§31-18A-5. Powers and duties of Housing Development Fund regarding revolving loan fund.

The West Virginia Housing Development Fund is hereby authorized and empowered:

(1) To accept appropriations, gifts, grants, bequests and devises, and to utilize or dispose of the same to carry out the purposes of this article;

(2) To make and execute contracts, releases, compromises, compositions and other instruments necessary or convenient for the exercise of its powers, or to carry out its purposes under this article;

(3) To collect reasonable fees and charges in connection with making and servicing loans, notes, obligations, commitments and other evidences of indebtedness, which fees shall be limited to the amounts required to pay the costs of the Housing Development Fund, including operating and administrative costs;

(4) To invest funds not required for immediate disbursement in any of the following securities:

(i) Direct obligations of or obligations guaranteed by the United States of America;

(ii) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Bank for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal land banks; the Federal National Mortgage Association or the Government National Mortgage Association;

(iii) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge or annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisite or payment agreement with the United States of America;

(iv) Certificates of deposit secured by obligations of the United States of America;

(v) Direct obligations of or obligations guaranteed by the State of West Virginia;

(vi) Direct and general obligations of any other state within the territorial United States, to the payment of the principal of and interest on which the full faith and credit of such state is pledged: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond rating agency; and

(vii) Any fixed interest bond, note or debenture of any corporation organized and operating within the United States: Provided, That such corporation shall have a minimum net worth of $15 million and its securities or its parent corporation's securities are listed on one or more

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of the national stock exchanges: Provided, however, That (1) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, and (2) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years, and (3) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dun & Bradstreet or Moody's;

(5) To sue and be sued;

(6) To promulgate and publish rules and regulations not inconsistent with the provisions of this article;

(7) To appoint such employees and consultants as it deems advisable and to fix their compensation and prescribe their duties;

(8) To acquire, hold and dispose of personal property for its purposes under this article;

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

(10) To sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a loan made under the provisions of this article;

(11) To establish guidelines to be complied with by any person, firm, association, partnership or corporation, engaged in supplying, retailing or installing energy conservation materials or equipment designed to improve the energy efficiency of residential dwellings to be improved with financing under this article;

(12) To approve any person, firm, association, partnership or corporation who shall enter into any bargain, agreement or contract to furnish or install energy conservation materials or equipment for a residential dwelling, the cost and expense of which shall be defrayed by a loan made pursuant to this article;

(13) To make loans in the manner and under the terms and conditions prescribed by this article to eligible owners of residential dwellings to defray the costs of financing the purchase and installation of energy conservation materials and equipment, designed to improve the energy efficiency of such dwelling;

(14) To establish and supervise an inspection program to assure the satisfactory nature of all materials and workmanship for energy efficiency improvements financed by loans made pursuant to this article and to utilize to the extent possible the services of municipal building inspectors;

(15) To enter into agreements with banks, public utilities and other entities for advertising the energy conservation revolving loan fund, for taking applications for loans from such

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fund, for supervising the execution of promissory notes, deeds of trust and other papers associated with the energy conservation revolving loan fund, for approving and inspecting energy conservation loan contracts to insure compliance with the provisions of this article, for accepting and transmitting loan payments, for the operation and administration of any other aspect of the energy conservation revolving loan fund established by this article and for reimbursing such banks, public utilities and other entities for any reasonable and necessary expenses incurred in the implementation of any such agreements.

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§31-18A-6. Revolving loan fund created; purpose; investment of funds; loan agreements; expenditures.

(a) The board of directors of the Housing Development Fund shall create and establish a special revolving fund of moneys made available by appropriations, grants, contributions, bequests, devises, loan payments, interest and investment income, to be known as the energy conservation revolving loan fund and to be governed, administered and accounted for by the directors, officers and managerial staff of the Housing Development Fund as a special purpose trust account separate and distinct from any other moneys, fund or funds owned and managed by the Housing Development Fund.

(b) The purpose of the energy conservation revolving loan fund shall be to provide a source from which the Housing Development Fund may make loans to eligible owners of residential dwellings.

(c) The Housing Development Fund may invest and reinvest all moneys in the revolving loan fund in any investments authorized by section five of this article, pending the disbursement thereof in connection with loans made pursuant to this article.

(d) The Housing Development Fund may expend any income from loans or investments authorized by this article in payment or reimbursement of all expenses of the Housing Development Fund which, as determined in accordance with procedures approved by the board of directors, are fairly allocable to such financing or activities authorized by this article: Provided, That no funds shall be used to carry on propaganda or otherwise attempt to influence legislation.

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§31-18A-7. Terms and conditions of loans from revolving loan fund.

No loans shall be made by the Housing Development Fund except to eligible owners of residential dwellings who meet reasonable criteria of credit worthiness as defined by the Housing Development Fund and in accordance with a written loan agreement which shall include, but not be limited to, the following terms and conditions:

(1) No loan shall be made under the provisions of this article, unless an affidavit shall be executed by the eligible owner asserting his title to the residential dwelling and submitted to the Housing Development Fund together with evidence of his source of title;

(2) The proceeds of all such loans shall be used only for financing the cost of improving the energy efficiency of residential dwellings through the installation or upgrading of insulation, storm windows and doors, caulking, weather stripping, heat pumps, or other energy conservation materials or equipment in such dwellings;

(3) All such loans shall be repaid in full over a period of time not to exceed three years and at a rate of interest not to exceed three percent;

(4) All such loans shall be limited to a maximum amount of $2,000 for each residential dwelling: Provided, That in no event shall the amount of the loan exceed the actual cost of materials purchased, or the actual cost of materials and labor furnished or supplied by any person, firm, association, partnership or corporation certified by the Housing Development Fund;

(5) Each such loan shall be evidenced by a negotiable promissory note executed and delivered by the eligible owner or owners and shall be secured by a deed of trust upon the property and dwelling improved by the proceeds of the loan: Provided, That in no event shall a certificate of title, title insurance or other title security be required;

(6) All notes and deeds of trust accepted as security for loans under this article shall be payable to the order of and for the use and benefit of the West Virginia Housing Development Fund;

(7) Payment of the loan proceeds shall be made by the Housing Development Fund jointly to the owner and any person, firm, association, partnership or corporation supplying and furnishing materials or labor and materials upon a determination by the Housing Development Fund and certification by the eligible owner that the workmanship and materials for energy efficiency improvements are satisfactory.

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§31-18A-8. Prohibition on funds inuring to the benefit of or being distributable to the directors or officers.

No part of the funds of the energy conservation revolving loan fund shall inure to the benefit of or be distributable to the directors or officers of the Housing Development Fund except that the Housing Development Fund shall be authorized and empowered to pay reasonable compensation for services rendered and to make loans as previously specified in furtherance of its purposes under this article.

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§31-18A-9. Termination or dissolution.

Upon termination or dissolution of the Housing Development Fund or the energy conservation revolving loan fund, all rights and properties held pursuant to the provisions of this article shall pass to and be vested in the State of West Virginia, subject to the rights of lienholders and other creditors.

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§31-18A-10. Annual audit.

The Housing Development Fund shall cause an annual audit to be made of the energy conservation revolving loan fund by a resident independent certified public accountant of its books, accounts, and records, with respect to its receipts, disbursements, contracts, mortgages or deeds of trust, assignments, loans and all other matters relating to its financial operations of the revolving loan fund. The person, firm, association, partnership or corporation performing such audit shall furnish copies of the audit report to the commissioner of finance and administration, where they shall be placed on file and made available for inspection by the general public.

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§31-18A-11. Severability clause.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

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