# WEST VIRGINIA CODE CHAPTER 31 ARTICLE 18B

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## §31-18B-1. Legislative intent.

The Legislature finds and declares that:

(1) The vast majority of West Virginians have pursued a goal of owning a home, a center of family life and family independence deeply cherished and highly valued.

(2) In many parts of the state there is a large number of single-family residential units that cannot presently be marketed because of high interest rates and adverse economic conditions, or because of having been declared to be a federal disaster area by the Federal Emergency Management Agency.

(3) In addition, the state and its inhabitants are suffering high unemployment and low income because of the depressed state of the housing market and because of its inability to attract new business. This situation adversely affects potential home buyers, home builders, skilled craftsmen, realtors and their employees and other citizens. These conditions also reduce state revenues and frustrate the laudable aspirations of many West Virginians to enjoy the pleasures of home ownership and pursue productive employment, or because of having been declared to be a federal disaster area by the Federal Emergency Management Agency.

(4) By the cooperative efforts of our citizens there is a large pool of resources held in trust by the state for the sole benefit of West Virginians, including funds reserved for workers injured in the course of employment.

(5) Some of these funds, particularly the workers' compensation fund, are invested under the actuarial assumption of a yield less than that of current market investments. Yet the current yield on some of these funds, and particularly the workers' compensation fund, is lower than the actuarially assumed interest rate, and has been for at least three years.

(6) The common good does not require that all of these funds be invested so as to yield the very highest investment return offered in the market, especially when the current rate of market interest is:

(a) So high that it stifles the legitimate aspirations and attainable dreams of so many West Virginians and West Virginia businesses; and

(b) So high that it encourages the flight of capital accumulated by West Virginians for the benefit of West Virginians to national markets where the only consideration is the highest rate of return.

(7) In these circumstances, prudence does not require that the state Board of Investments seek the highest rate of return on all investments. Rather, prudence requires that in investing federally tax-free funds the state Board of Investments should seek a rate of return commensurate with its public charter. Furthermore, prudence demands that the board immediately seek fiscally sound investments within the State of West Virginia which offer

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sound security and directly serve the hopes and aspirations in housing and employment of the inhabitants of this state.

(8) The survival and renewal of a vibrant market for single-family residential units and the opportunity to attract new businesses to the state is a sound and preferred investment for the resources held in trust by this state for its citizens. Such investments deserve precedence and encouragement, even at the expense of foregoing the highest rate of investment return, an investment return which the tax paying investor might gain in the current market place but which prudence dictates that the state Board of Investments need not pursue.

(9) The success of the undertakings required by this article will be amply demonstrated by: (a) The increased financial stability of the state, (b) the contribution which will occur when the dreams of hundreds of West Virginians are realized, (c) the intrinsic worth of enhancing the cooperative spirit of the inhabitants of this state in employment and housing, and (d) the enhancement of revenue to the state which will be generated by the commerce West Virginia seeks to stimulate. In addition, the rate of return realized by these funds will be at least as high as the actuarial assumptions, and, given the rates of return demonstrated over the past three years, probably higher than the current rate of return.

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**§31-18B-2. Establishment of state mortgage and industrial development investment pool; investment of workers' compensation funds and other funds in such pool; schedule of moneys invested; authority of state board of investments to invest funds from the pool in short-term investments; reversion of control of state board of investments.**

(a) There is hereby created and established a "state mortgage and industrial development investment pool" into which moneys shall be paid as provided in this section. The state mortgage and industrial development investment pool shall consist of a portion of the moneys and funds entrusted to the state Board of Investments by the commissioner of workers' compensation and other state agencies and organizations, which funds are invested by the state Board of Investments in long-term securities according to the provisions of this code: Provided, That no moneys or funds from any pension plan shall be invested in the state mortgage and industrial development investment pool.

(b) Notwithstanding any of the restrictions of section nine, article six, chapter twelve, the state Board of Investments shall make available from the workers' compensation funds and other such funds which it invests, moneys for the state mortgage and industrial development investment pool. Such moneys shall be drawn from workers' compensation funds and other funds except pension funds currently invested by the state Board of Investments and shall be made available for investment on or before the dates established in subsection (c) of this section: Provided, That should the workers' compensation fund fall below $300,000,000, then no further transfers provided in this section be granted until the fund again reaches $400,000,000.

(c) The state Board of Investments shall make available for investment in the state mortgage and industrial development investment pool the funds identified in subsections (a) and (b) of this section according to the following schedule:

(1) On the effective date of this act, $25,000,000, of which $20,000,000 is to be deposited in the pool for investment by the Housing Development Fund and $5,000,000 is to be deposited in the pool for investment by the economic development authority.

(2) On October 1, 1982, $25,000,000, of which $20,000,000 is to be deposited in the pool for investment by the Housing Development Fund, and $5,000,000 is to be deposited in the pool for investment by the economic development authority.

(3) On January 1, 1983, $25,000,000, of which $10,000,000 is to be deposited in the pool for investment by the Housing Development Fund, and $15,000,000 is to be deposited in the pool for investment by the economic development authority.

(4) On April 1, 1983, $25,000,000, all of which is to be deposited in the pool for investment by the economic development authority.

Investments by the Housing Development Fund are to be made pursuant to the provisions of

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section three of this article, and by the economic development authority pursuant to section four of this article.

(d) The state board of investment may, after committing these funds to the state mortgage and industrial development investment pool, at the discretion of the Treasurer's Office, invest the moneys of such pool in any short-term investments as may be deemed to be prudent and proper until such funds are invested by the Housing Development Fund or the West Virginia economic development authority. The income from such short-term investments shall accrue to and be credited to the accounts from which such funds were drawn in proportion to the amount of funds so drawn.

(e) The funds invested in the state mortgage and industrial development pool shall be invested solely for the benefit of the accounts from which the funds are drawn in proportion to the amount so drawn. For purposes of crediting of investment returns to the proper account, the state Board of Investments is to consider the state mortgage and industrial development investment pool as it would any other long-term investment at a fixed rate of return.

(f) The Housing Development Fund and the West Virginia economic development authority may release the funds from the state mortgage and industrial development investment pool to the control of the state Board of Investments if it determines that lower interest rates than those now prevailing require that such funds cannot be competitively invested in first mortgages on residential property or industrial development projects located in the state.

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**§31-18B-3. Housing development fund to make available state mortgage and industrial development investment pool funds for mortgages on single-family residential units; limitations upon type and size of such mortgages.**

(a) The Housing Development Fund shall make available at the interest rate specified in section six of this article, one half of the moneys from the state mortgage and industrial development investment pool for investment in mortgages on single-family residential units, twenty-five percent of which shall be designated and restricted, for a period of twelve months, to new and never occupied single-family residential units which shall, if not so used, revert to investments in other nonrestricted mortgages. For the purposes of this article, a single-family residential unit means a detached unit on a separate piece of land used solely for the housing of one family, and only one family, which family owns the dwelling and the land or has a mortgage thereupon, and also includes townhouses or row houses used by a family as a residential dwelling, and owned by the family.

(b) Loans made by the Housing Development Fund from the state mortgage and industrial development investment pool are to be made solely for the purpose of purchasing real estate upon which is situate a single-family unit, or for the construction of a single-family residential unit upon real estate by the buyer of such unit to provide housing for only himself and his family, or for the purpose of the payment of a loan theretofore made for the construction of a single-family residential unit, or for the purpose of purchasing real estate upon which is situate a single-family residential unit and making additions or improvements thereto: Provided, That none of these loans shall be used to refinance existing loans, except construction loans or loans made to such units situated in a federal disaster area as so declared by the Federal Emergency Management Agency. Each such loan must be secured by a first mortgage or first deed of trust upon such real property. Such mortgage or deed of trust shall be held by the Housing Development Fund or its assignee.

(c) Loans made pursuant to the provisions of this section may not exceed eighty-five percent of the appraised value of the real estate and single-family residential unit: Provided, That if the loan is for the purchase of a single-family residential unit for the purpose of making additions and improvements thereto, such loan shall be no more than eighty-five percent of the appraised value of the property including such improvements when made, as estimated by an appraiser retained by the fund.

(d) In no event may a loan obtained pursuant to this section be for an amount greater than $75,000.

(e) Mortgage loans made pursuant to the provisions of this section shall be insured for at least twenty percent of the amount of the loan by either an agency of the federal government or a private mortgage insurance company licensed in the state.

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**§31-18B-4. West Virginia economic development authority to make available state mortgage and industrial development investment pool funds for investment in industrial development; amount of funds available; interest rate specified.**

(a) The West Virginia economic development authority may use for any investments authorized by sections seven and seven-a, article fifteen, chapter thirty-one of this code, up to one half of the funds of the state mortgage and industrial development investment pool: Provided, That the economic development authority shall deposit with the treasurer of the state for the credit of the state mortgage and industrial development pool such notes, security interests or bonds issued by the economic development authority evidencing the indebtedness of the authority to the pool.

(b) Such notes, security interests or bonds issued by the authority shall be secured by security equal to or better than one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: Provided, That notes, security interests or bonds evidencing indebteness of $2 million or less may be secured by a letter of credit guarantee issued by a bank having an unsecured legal lending limit greater than $1 million.

(c) The interest rate and the maturity dates of the notes, security interests or bonds held by the treasurer for the state mortgage and industrial development investment pool shall be determined by the economic development authority according to the provisions of section eleven, article fifteen, chapter thirty-one of this code: Provided, That such interest rate shall not be less than the prior four-week auction average yield for thirteen-week treasury bills and such rate shall be valid for a term of not more than three years: Provided, however, That the economic development authority may determine a variable rate of interest to be adjusted no less frequently than semiannually, and such variable interest rate shall not be less than the prior four-week auction average yield for thirteen-week treasury bills.

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## §31-18B-5. Reversion to state Board of Investments of money not used for mortgages.

Should the Housing Development Fund or its agents fail to loan all or a portion of the funds made available pursuant to section two of this article within one year of the date those funds become a part of the state mortgage and industrial development investment pool, then that portion of the funds not invested shall revert to the exclusive control of the state Board of Investments and shall no longer be required to be available to the state mortgage and industrial development investment pool.

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## §31-18B-6. Interest rate charged by housing development fund; other charges; points .

(a) The interest charged for mortgage loans obtained according to the provisions of section three of this article shall not exceed the monthly index of long-term United States government bond yields for the calendar month preceding the date the commitment for such loan is made: Provided, That in no event shall the interest rate be more than twelve percent per annum, nor less than ten percent per annum. For the purposes of this section, the monthly index of long-term United States government bond yields means the monthly unweighted average of the daily unweighted average of the closing bid yield quotations in the over-the-counter market for all outstanding United States treasury bond issues which mature twenty years or more from the date the index is calculated, but shall not include such bonds as are redeemable at par for payment of federal estate taxes.

(b) The Housing Development Fund may charge such points to the seller of the real estate covered by the first mortgage deed or deed of trust as are necessary to offset costs of making the loan, including, but not limited to, the costs of processing the loan application and the costs of interest charges incurred between the commitment date of the loan and the date the property is actually purchased: Provided, That such points charged shall not exceed two points and shall be charged to the seller: Provided, however , That the real estate broker shall, from his or her commission, pay an amount equal to one point. The seller shall furnish to the fund satisfactory proof that he or she has not within the two years preceding the contract of the sale offered the house to the buyer for less than the sale price provided in the contract or sale between them. The proceeds from such points paid by the seller and broker to the Housing Development Fund, less actual Housing Development Fund expenses up to one half of one point, and less an amount equal to the first year cost for mortgage insurance required by section three of this article, shall be transmitted to the state Board of Investments as provided in section ten of this article.

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## §31-18B-7. Term of mortgage loans; renegotiation after ten years; promulgation of legislative rules.

(a) The term of the loans made pursuant to the provisions of this article shall be not less than twenty nor more than thirty years and shall be assumable by a person financially qualified according to the provisions of section eight of this article.

(b) The Housing Development Fund may include in the first mortgage agreement or deed of trust a provision which allows it to renegotiate the rate of return after ten years. Such provision may be written to allow the Housing Development Fund to increase the interest rate for the remainder of the loan to the then monthly index of long-term United States government bond yields as defined in section six of this article for the calendar month preceding registration, as defined in section six of this article, plus two percent per annum: Provided , That the maximum renegotiated rate may not exceed fourteen percent per annum: Provided, however , That if the holder of the mortgage presents evidence that his average gross income for the two years prior to the renegotiation is no more than one sixth greater than his income at the time the loan was made, then the loan shall not be renegotiated.

(c) The Housing Development Fund shall propose legislative rules according to the provisions of chapter twenty-nine-a of this code to implement this section.

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**§31-18B-8. Persons eligible for loans from the state mortgage and industrial development investment pool; Housing Development Fund to have sole discretion in determining who is to receive loans; discrimination prohibited .**

(a) Any person is entitled to receive a first mortgage or deed of trust from the state mortgage and industrial development investment pool for real estate situated within the boundaries of the state if the person's family income for each of the two years preceding the commitment year is $50,000 or less: Provided, That such person must be purchasing the real estate for use as his or her single- family residential unit as defined in section three of this article: Provided, however, That such person is qualified for the loan as provided in this section.

(b) The Housing Development Fund shall have sole discretion in determining who is qualified to receive mortgage loans from the state mortgage and industrial development investment pool, subject to the provisions of section fourteen of this article. The Housing Development Fund shall establish by interpretive rule promulgated pursuant to the provisions of chapter twenty-nine-a guidelines for the exercise of this discretion.

(c) The Housing Development Fund shall issue mortgage loans to such qualified buyers on the basis of the first of such buyers in the order in which the applications are approved.

(d) In view of the uncertain economic conditions prevailing, the fund may propose legislative rules which, if promulgated, suspend all or any of the provisions of this section.

(e) The Housing Development Fund shall not discriminate against buyers on the basis of race, sex, national origin, religion or location in the state in which the buyer resides.

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**§31-18B-9. Housing development fund may contract with private institutions to place and service loans or may itself provide such servicing; increasing interest rate and payment of a portion of interest to cover cost of servicing.**

(a) The Housing Development Fund may contract with private mortgage companies, savings and loan associations or banks to provide for the placement, origination and servicing of the mortgages described in this article or the Housing Development Fund may provide such servicing: Provided, That such institutions must be licensed to do business in West Virginia and, in the case of a savings and loan, or a bank, must be under the supervision of the department of banking of this state as provided in chapter thirty-one-a of this code or must be a national bank or a federally insured savings and loan. Such institutions shall follow the same restrictions as the Housing Development Fund, and shall act only as the agent for such.

(b) Notwithstanding the maximum interest rate specified in section six of this article, the Housing Development Fund is authorized to increase the interest rate, up to one half of one percent over the rate provided in section six to pay the cost of placing and servicing the mortgages.

(c) If the Housing Development Fund so determines, one of the points provided for in section six of this article may be paid to the private mortgage company, bank or savings and loan to cover the expense of origination of the loan.

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## §31-18B-10. Disposition of interest income and repayments of principal.

(a) The interest received from mortgage payments made pursuant to the provisions of this article shall be transmitted to the state Board of Investments monthly.

(b) Such interest shall be treated by the state Board of Investments as an investment return, and shall be credited to the workers' compensation account or other appropriate accounts in the same manner as interest received on other investments.

(c) The funds from repayment of principal of mortgage loans shall be reinvested by the Housing Development Fund according to the provisions of section five of this article. Funds which have been repaid to the state mortgage and industrial development investment pool and not reinvested in mortgages within one year shall revert to the sole control of the state Board of Investments and shall no longer be considered part of the state mortgage and industrial development investment pool.

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## §31-18B-11. Procedural rules required.

The Housing Development Fund may promulgate procedural rules pursuant to chapter twenty-nine-a which describe procedures used to procure a loan pursuant to the provisions of this article and to introduce such forms as may be required.

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## §31-18B-12. Rules of construction and interpretation for prompt implementation of this article.

It is the intent of the Legislature that the Housing Development Fund shall proceed with the implementation of this article promptly upon the effective date of this article under the provisions of this section and of Enrolled Committee Substitute for Senate Bill No. 409, enacted at the regular session of the Legislature in the year one thousand nine hundred eighty-two.

Notwithstanding the provisions of sections seven and eight of this article for the promulgation of legislative rules and notwithstanding any contrary provisions of chapter twenty-nine-a of this code:

(1) The Housing Development Fund may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to implement this article. Any such emergency rule, whether procedural, interpretive or legislative, shall be effective upon filing thereof in the state register. No findings of circumstances to justify such emergency rules shall be required; such emergency rules shall be deemed to have been promulgated to comply with a time limitation established by this code. No action shall lie for de novo or other review of such rule to contest or question the existence of circumstances justifying the promulgation of an emergency rule nor to challenge the validity of such rule because of its classification as an emergency rule: Provided, That no such rule shall suspend the provisions of section eight of this article.

(2) Any deed, deed of trust, mortgage or other instrument or document utilized in connection with any transaction arising under or affected by this article may contain provisions related to any emergency rule promulgated under this section and any extension or amendment thereof and shall, to the extent the instrument or document so provides, fully bind and be enforceable by the parties thereto as if such rule had been properly made effective under law and whether or not such rule thereafter expires or is revoked: Provided, That no such provision or agreement under this subdivision shall suspend the provisions of this article or exceed its limitations.

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