WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED

SENATE BILL NO. 439

(By Senator Tucker, Mr. President, et al.)

PASSED April 8, 1989
In Effect from Passage
AN ACT to amend and reenact sections two, three, six, twenty-a, twenty-one and twenty-four, article eighteen, chapter thirty-one, of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article eighteen by adding thereto two new sections, designated sections twenty-six and twenty-seven, all relating to the West Virginia housing development fund; providing additional legislative findings; adding, amending and clarifying certain definitions; expanding and clarifying the powers of the fund; providing additional purposes for the fund; authorizing fund to finance or otherwise participate in certain nonresidential projects under certain conditions; adding certain provisions relating to conflict of interest involving officers or directors of the fund; prohibiting certain transactions involving such officers and directors except in certain circumstances; permitting annual audits to be performed by a nonresident as well as resident independent certified public accountant; declaring that projects shall not be deemed public improvements; and providing for confidentiality of documentary materials and other data received or made by fund.
Be it enacted by the Legislature of West Virginia:

That sections two, three, six, twenty-one and twenty-four, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article eighteen be further amended by adding thereto two new sections, designated sections twenty-six and twenty-seven, all to read as follows:

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-2. Legislative findings and purpose.

(a) The Legislature hereby finds and declares that as a result of public actions involving highways, public facilities, flood-control projects and urban renewal activities, and as a result of the spread of slum conditions and blight to formerly sound urban and rural neighborhoods, there exists in the state of West Virginia a serious shortage of sanitary, decent and safe residential housing available at low prices or rentals to persons and families of low and moderate income. This shortage is severe in certain urban areas of the state, is especially critical in the rural areas of West Virginia, and is inimical to the health, welfare and prosperity of all residents of the state and to the sound growth of West Virginia communities.

(b) The Legislature hereby finds and declares further that private enterprise and investment have not been able to produce, without assistance, the needed construction of sanitary, decent and safe residential housing at low prices or rentals which persons and families of low and moderate income can afford, to provide sufficient long-term mortgage financing for residential housing for occupancy by persons and families of low and moderate income or to achieve the urgently needed rehabilitation of much of the present low and moderate income housing stock. It is imperative that the supply of residential housing for persons and families displaced by public actions or natural disaster be increased; that private enterprise and investment be encouraged both to sponsor land development for residential housing for such persons and
families and to sponsor, build and rehabilitate residential housing for such persons and families; and that private financing be supplemented by financing as in this article provided, to help prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout West Virginia.

(c) The Legislature hereby finds and declares further that experience has demonstrated that concentration in residential housing developments, or residential housing areas, of only persons and families who, without some form of private or public assistance, do not have incomes sufficient to afford sanitary, decent and safe residential housing, frequently does not eliminate, or avoid, undesirable social conditions and frequently does not permanently eliminate, or avoid, slum conditions, and that in such instances occupancy of some of the residential housing units in such residential housing developments, or residential housing areas, by persons and families of higher income is desirable and beneficial in achieving the stated public purposes for enacting this legislation.

(d) The Legislature hereby finds and declares further that depressed economic conditions in this state and a related lack of employment and business opportunities caused thousands of people to leave this state to find employment elsewhere; that such depressed economic conditions and related exodus of population adversely affected the property tax base of this state, adversely affected the excise tax base of this state, diminished the manpower resources of this state necessary for modern mining, industrial and commercial operations and development in this state, caused the population of this state to include a disproportionately high number of elderly, disabled and economically disadvantaged persons, resulted in the spread of slum conditions and blight to formerly sound urban and rural neighborhoods, retarded, and continue to retard, the repair and improvement of existing residential housing and the construction of new residential housing, adversely affected, and continue to adversely affect, land development, including the
extension and construction of water systems, nonpolluting sewer systems, other utility facilities and off-highway streets and roads essential to new industrial, commercial and residential housing development, critically restricted, and continue to critically restrict, the construction of public housing for occupancy by persons and families at the lowest level of the low and moderate income segment of the population of this state, critically restricted, and continue to critically restrict, the opportunities of persons and families at all levels of the low and moderate income segment of the population of this state for improved residential housing, either newly constructed or which would normally become available to them when vacated by persons and families of higher income occupying newly constructed residential housing, and critically restricted, and continue to critically restrict, the construction of new residential housing, including, but not limited to, nursing homes and intermediate care facilities, of design and location suitable for occupancy by disabled and by elderly persons; that as a result of public actions involving highways, public facilities, flood-control projects and urban-renewal activities undertaken as a part of the programs of this state to improve economic conditions and increase employment opportunities in this state with a view to improving the health, welfare and prosperity of residents of this state and reversing the outward movement of population in this state, extensive areas which are suitable for industrial, commercial and residential housing uses have been, or in the near future will be, opened up for development for such purposes but in many instances will be without the land development, including water and nonpolluting sewer systems, other utility facilities and off-highway street and road improvements essential to use of the same for such purposes; that as a result of the unique physical, economic, demographic and other characteristics of this state, including its rugged mountainous terrain, scarcity of land at low or moderate cost suitable for residential housing, low population density and cultural preferences which are not suited for the denser,
larger-scale housing projects typical of more urban
areas and high costs of land development and housing
construction, the difficulties of providing land develop-
ment, including water and nonpolluting sewer sys-
tems, other utility facilities and off-highway streets
and roads, and of providing residential housing, are
unusually severe within this state and have restricted
and continue to restrict, land development and hous-
ing construction needed for the people of the state;
that as a direct consequence of the foregoing there
exists in this state a serious shortage of sanitary,
decent and safe residential housing available for
occupancy by persons and families of all but the
highest income levels and there exists in this state a
serious shortage of water and nonpolluting sewer
systems, other utility facilities and off-highway street
and road developments essential to utilization of land
for industrial, commercial and residential housing
purposes which, due to public actions involving high-
ways, public facilities, flood-control projects and
urban-renewal activities, is, or will soon become,
available for needed industrial, commercial and resi-
dential housing purposes; that these shortages are
severe in certain urban areas of this state, are espe-
cially critical in rural areas of this state and are
inimical to the present and future health, welfare and
prosperity of all residents of this state and to the sound
growth and development of communities in this state;
and that unless promptly remedied these shortages
will continue to seriously retard the sound economic
growth and development of this state, the related
property tax and excise tax bases of this state and the
availability in this state of manpower resources
essential to modern mining, industrial and commercial
operations and development which are essential to the
health, welfare and prosperity of this state and its
residents.

(e) The Legislature hereby finds and declares fur-
ther that private enterprise and investment have not
been able to produce, or provide mortgage financing
for, sufficient new sanitary, decent and safe residential
housing at prices or rentals low enough to enable
sufficient persons and families having incomes at or immediately above the higher level of the low and moderate income segment of the population of this state to occupy the same and thereby provide opportunities for persons and families of lesser income to occupy existing sanitary, decent and safe residential housing thereby vacated, have not been able to produce, or provide mortgage financing for, sufficient new residential housing essential to retain and attract qualified manpower resources in and to many areas of this state where such resources are, or shortly will be, critically needed for existing, expanding and new mining, industrial and commercial operations and development, have not been able to produce, or provide mortgage financing for, sufficient new residential housing, including, but not limited to, nursing homes and intermediate care facilities, of design and location suitable for occupancy by elderly and by disabled persons, have not been able to finance sufficient land development, including extensions or construction of water and nonpolluting sewer systems, other utility facilities and off-highway streets and roads, essential to utilization of undeveloped areas of this state for industrial, commercial and residential housing purposes, and have not been able to achieve urgently needed rehabilitation of much of the present housing stock of this state; that it is imperative that the supply of residential housing necessary to retain and attract qualified manpower resources in and to many areas of this state where such resources are, or shortly will be, critically needed for existing, expanding and new mining, industrial and commercial operations and developments be provided, that sufficient new residential housing, including, without limitation, nursing homes and intermediate care facilities, designed and located so as to be suitable for occupancy by elderly persons and by disabled persons be provided, that needed public housing for occupancy by persons and families at the lowest level of the low and moderate income segment of the population of this state be provided, that land development, including water and nonpolluting sewer systems and other
utilities and off-highway streets and roads in this state
necessary or desirable for new commercial, industrial
and residential housing uses be provided, and that the
existing political subdivisions of this state, and private
time, encouraged to sponsor and finance land development,
utilities and off-highway streets and roads, and to
finance, construct and rehabilitate such residential
housing; and that it is necessary that such efforts be
supplemented by this state as in this article provided.

(f) The Legislature hereby finds and declares further
that political subdivisions in West Virginia which are
presently authorized and empowered by law to
acquire, construct, operate and manage public housing
projects have not been able to acquire and construct,
even with available federal and state assistance, public
housing projects sufficient to fulfill the needs for
sanitary, decent and safe residential housing for
occupancy by persons and families at the lowest level
of the low and moderate income segment of the
population of this state who have been entitled to
occupy public housing in many smaller municipalities
in West Virginia and especially in the rural areas of
West Virginia; that the primary cause of such shortage
of needed public housing projects is the inability of
such political subdivisions to remedy such shortages
because the number of units of public housing needed
within its territorial jurisdiction is not sufficient to
generate, and justify the expenditure of, adequate
funds to provide the requisite arranging of financing
for, and planning, development, acquisition, construc-
tion, operation and management of such public hous-
ing; and that the acquisition, construction, planning,
development, financing and management of public
housing projects in this state by a governmental
instrumentality and public body corporate with state-
wide jurisdiction as authorized herein will permit or
facilitate the arranging of financing for, and planning,
development, acquisition, construction, operation or
management of public housing units, even though
such units are included in several projects each of
which contains a relatively small number of such
units, sufficient in the aggregate to generate, and
justify the expenditure of, sufficient funds to provide
the requisite arranging of financing for, and planning,
development, acquisition, construction, operation and
management of such public housing, thereby provid-
ing the means to alleviate the existing shortages of
public housing in many municipalities in West Vir-
ginia and in the rural areas of West Virginia.

(g) The Legislature hereby finds and declares fur-
ther that its intention by enacting this legislation is to
provide for the continuation of the West Virginia
housing development fund, the corporate purpose of
which is to provide financing for development costs
and land development to public and private sponsors
of land development in this state; further to provide
federally insured construction loans to public and
private sponsors of land development or to public and
private sponsors of residential housing for occupancy
by eligible persons and families; further to provide
uninsured construction loans to public and private
sponsors of land development or to public and private
sponsors of residential housing for occupancy by
eligible persons and families or to eligible persons and
families who may construct such housing; further to
provide long term federally insured mortgage loans to
public and private sponsors of residential housing for
occupancy by eligible persons and families and to
eligible persons and families who may purchase or
construct such housing; further to provide long-term
uninsured mortgage loans to public and private spon-
sors of residential housing for occupancy by eligible
persons and families and to eligible persons and
families who may purchase or construct such housing;
further to provide technical, consultative and project
assistance service to public and private sponsors of
such land development or residential housing; further
to increase the construction of residential housing for
occupancy by eligible persons and families through
participating in the making of, or the making of, loans
to mortgagees approved by the housing development
fund, and taking as collateral security therefor, or
purchasing, or investing in long-term federal mortgages or federally insured mortgages, or uninsured mortgages, on residential housing constructed in this state, thereby increasing the supply of funds for long-term mortgage financing of residential housing for occupancy by eligible persons and families and freeing funds for use in short-term construction financing of residential housing for occupancy by eligible persons and families; further to plan, develop, finance, acquire, construct, mortgage or otherwise encumber, operate, manage, sell, lease or otherwise dispose of public housing projects; and finally to assist in coordinating federal, state, regional and local public and private efforts and resources to otherwise increase the supply of such residential housing.

(h) The Legislature hereby finds and declares further that in accomplishing this purpose, the West Virginia housing development fund, heretofore created and established by this article, is acting in all respects for the benefit of the people of the state of West Virginia to serve a public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the West Virginia housing development fund, heretofore created and established, is empowered, hereby, to act on behalf of the state of West Virginia and its people in serving this public purpose for the benefit of the general public.

(i) The Legislature hereby finds and declares further that during a period of national growth this state has experienced a lack of employment and business opportunities, which have caused a reduction in the tax base of the state, diminishing the resources available to this state to provide for the health, safety and welfare of its citizens; that there has been and continues to be a need for economic development and improvement and capital investment in this state, including, but not limited to, the real estate and construction industries, both residential and nonresidential; that there exists in this state a shortage of the capital needed to finance general economic development through investment in enterprises which have
the potential to create new employment opportunities in this state and that there also exists a shortage of construction and real estate development financing, underwriting and construction expertise, which shortage can be alleviated by utilizing the expertise of the housing development fund and its staff, which are hereby determined to be suited to facilitate, implement and undertake the general economic development and real estate construction and development projects, both residential and nonresidential, which are necessary to support the capital base and employment levels and remedy many of the underlying causes of the current economic difficulties existing in this state; that many other states have facilitated the development of capital and the growth of employment opportunities through state programs which provide combined technical and financial assistance for business and real estate development in such states; and the Legislature hereby finds and declares further in support of the foregoing that it shall be a corporate purpose of the housing development fund to provide assistance by loans, grants or otherwise for the costs, including development and direct and indirect costs, and financing for public and private sponsors of land development, residential housing and nonresidential projects in this state, and further to provide construction loans and mortgage loans (including privately insured and uninsured) to public and private sponsors of land development and residential housing and nonresidential projects in this state, to make grants and provide technical, consultative and project assistance services to public and private sponsors of land development and residential housing and nonresidential projects in this state, and to plan, develop, finance, acquire, construct, renovate, improve, mortgage or otherwise encumber, operate, manage, sell, lease or otherwise dispose of general economic development and land development projects and residential projects and nonresidential projects in this state.

(j) The Legislature hereby finds and declares further that the housing development fund and its staff have extensive expertise in real estate development financ-
ing, underwriting and construction activities, and further that there is a need on behalf of public and educational bodies to facilitate the construction of new facilities or renovation of existing facilities, which need can best be met by making available to such public agencies and bodies the real estate and construction development services and consultative expertise of the housing development fund at such cost and fees as the housing development fund would normally impose, subject to the provisions of this article relating to the powers of the housing development fund.


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

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

(2) “Development costs” means the costs approved by the housing development fund as appropriate expenditures by the housing development fund or by sponsors, for land development, of residential housing, or nonresidential projects within this state, including, but not limited to:

(a) Payments for options to purchase proposed sites necessary easements and other related property rights, deposits on contracts of purchase, or, with prior approval of the housing development fund, payments for the purchase of such properties;

(b) Legal and organizational expenses, including payments of attorneys' fees, utility and governmental application and filing fees and expenses, project manager and clerical staff salaries, office rent and other incidental expenses;

(c) Payment of fees and expenses for preliminary feasibility studies and costs estimates and advances for
(d) Expenses for tenant surveys and market analyses; and
(e) Necessary application, approval and other fees.

(3) "Eligible persons and families" means:
(a) Persons and families of low and moderate income; or
(b) Persons or families of higher income to the extent the housing development fund shall find and determine, by resolution, that construction of new or rehabilitated residential housing for occupancy by them will cause to be vacated existing sanitary, decent and safe residential housing available at prices or rentals which persons and families of low and moderate income can afford; or
(c) Persons or families of higher income to the extent the housing development fund shall find and determine, by resolution, that construction of new or rehabilitated multi-family rental housing or new, rehabilitated or existing home ownership housing in the state for occupancy by them will further economic growth, increase the housing stock in the state by eliminating substandard or deteriorating housing conditions, or provide additional housing opportunities in the state; or
(d) Persons who because of age or physical disability are found and determined by the housing development fund, by resolution, to require residential housing of a special location or design in order to provide them with sanitary, decent and safe residential housing; or
(e) Persons and families for whom, as found and determined by the housing development fund by resolution, construction of new or rehabilitated residential housing in some designated area or areas of the state is necessary for the purpose of retaining in, or attracting to, such area or areas qualified manpower resources essential to modern mining, industrial and
commercial operations and development in such area
or areas.

(4) "Federally insured construction loan" means a
construction loan for land development, residential
housing or nonresidential projects, which are either
secured or guaranteed, in whole or in part, by a
federally insured mortgage or a federal mortgage, or
which are insured or guaranteed, in whole or in part,
by the United States or an instrumentality thereof, or
a commitment by the United States or an instrument-
tality thereof to insure such loan.

(5) "Federally insured mortgage" means a mortgage
loan for land development, residential housing or
nonresidential projects with a commitment by the
United States or an instrumentality thereof to insure
or guarantee such a mortgage.

(6) "Federal mortgage" means a mortgage loan for
land development, residential housing or nonresiden-
tial projects made by the United States or an instru-
mentality thereof, or a commitment by the United
States or an instrumentality thereof to make such a
mortgage loan.

(7) "Housing development fund" means the West
Virginia housing development fund heretofore created
and established by section four of this article.

(8) "Land development" means the process of
acquiring land for residential housing construction or
nonresidential projects or of making, installing or
constructing improvements, including waterlines and
water supply installations, sewer lines and sewage
disposal installations, steam, gas, telephone and tele-
communications and electric lines and installations,
roads, railroad spurs, docking and shipping facilities,
streets, curbs, gutters, sidewalks, drainage and flood
control facilities, whether on or off the site, which the
housing development fund deems necessary or desir-
able to prepare such land for construction within this
state.

(9) "Land development fund" means the land devel-
(10) "Minimum bond insurance requirement" means, as of any particular date of computation, an amount of money equal to the greatest of the respective amounts, for the then current or any future calendar year, of annual debt service of the housing development fund on all outstanding mortgage finance bonds, such annual debt service for any calendar year being the amount of money equal to the aggregate of (a) all interest payable during such calendar year on such mortgage finance bonds on said date of computation, plus (b) the principal amount of such mortgage finance bonds outstanding which matures during such calendar year, other than mortgage finance bonds for which annual sinking fund payments have been or are to be made in accordance with the resolution authorizing such bonds, plus (c) the amount of all annual sinking fund payments payable during such calendar year with respect to any such mortgage finance bonds, all calculated on the assumption that bonds will after said date of computation cease to be outstanding by reason, but only by reason, of the payment of bonds when due, and the payment when due and application in accordance with the resolution authorizing such bonds of all such sinking fund payments payable at or after said date of computation.

(11) "Mortgage finance bonds" means bonds issued or to be issued by the housing development fund and secured by a pledge of amounts payable from the mortgage finance bond insurance fund in the manner and to the extent provided in section twenty-b of this article.

(12) "Mortgage finance bond insurance fund" means the special trust fund created and established in the state treasury in accordance with section twenty-b of this article.

(13) "Nonresidential project" means a project in the state, whether or not directly related to the providing
of residential housing, determined by the housing development fund as likely to foster and enhance economic growth and development in the area of the state in which such project is developed, for retail, commercial, industrial, community improvement or preservation or other proper purpose, including tourism and recreational housing, land, air or water transportation facilities, facilities for vocational or other training or to provide medical care and other special needs of persons residing in the state, sports complexes and cultural, artistic and other exhibition centers, industrial or commercial projects and facilities, mail order, wholesale and retail sales facilities and other real or personal properties including facilities which are owned or leased by this state, any county or municipality or other public body within the state, and includes, without limitation, the process of acquiring, holding, operating, planning, financing, demolition, construction, renovation, leasing or otherwise disposing of such project or any part thereof or interest therein. Any such project may include appurtenant machinery and equipment.

(14) “Operating loan fund” means the operating loan fund which may be created and established by the housing development fund in accordance with section nineteen of this article.

(15) “Persons and families of low and moderate income” means persons and families, 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 sanitary, decent and safe housing, and to be eligible or potentially eligible to occupy residential housing constructed and financed, wholly or in part, with federally insured construction loans, federally insured mortgages, federal mortgages or with other public or private assistance, or with uninsured construction loans, or uninsured mortgage loans, and in making such determination the fund shall take into account the following: (a) The amount of the total income of
such persons and families available for housing needs,
(b) the size of the family, (c) the cost and condition of
housing facilities available, (d) the eligibility of such
persons and families for federal housing assistance of
any type predicated upon low or moderate income
basis, and (e) the ability of such persons and families
to compete successfully in the normal housing market
and to pay the amounts at which private enterprise is
providing sanitary, decent and safe housing: Provided,
That to the extent found and determined by the
housing development fund, by resolution, to be neces-
sary or appropriate for the purposes of eliminating
undesirable social conditions and permanently elimi-
nating slum conditions, the income limitation require-
ments of this article may be waived as to any persons
or families who are eligible to occupy residential
housing constructed in whole, or in part, with feder-
ally insured construction loans, federally insured
mortgages or federal mortgages under housing assis-
tance or mortgage insurance programs of the United
States, or an instrumentality thereof, predicated upon
any low or moderate income basis.

(16) “Residential housing” means a specific work or
improvement within this state undertaken primarily
to provide dwelling accommodations, including the
acquisition, construction or rehabilitation of land,
bUILDINGS and improvements thereto, for residential
housing for occupancy by eligible persons and families,
including, but not limited to, facilities for temporary
housing and emergency housing, nursing homes and
intermediate care facilities, and such other nonhousing
facilities as may be incidental or appurtenant thereto.

(17) “Special bond insurance commitment fee”
means a fee in the amount of one per centum of the
total principal amount of each loan which is to be
temporarily or permanently financed from the pro-
cceeds of mortgage finance bonds, other than a feder-
ally insured construction loan, a federally insured
mortgage or a federal mortgage, or an amount equal to
an equivalent discount on each loan purchased or
invested in by the housing development fund from the
proceeds of mortgage finance bonds, other than a federally insured construction loan, a federally insured mortgage or a federal mortgage, and which may be payable from the proceeds of such bonds or any other source available to the housing development fund for such use: Provided, That if the period of time between the first disbursement of proceeds of such loan and the date upon which it is specified that the first repayment of principal of such a loan shall be payable exceeds twelve months, an additional amount computed on the basis of one twelfth of one per centum per month on the total principal amount of such loan over the number of months of such period of time in excess of twelve months shall be included in such fee.

(18) "Special bond insurance premium" means (i) a fee at the rate of one half of one percent per annum on the outstanding principal balance which the housing development fund shall charge the borrower of a mortgage loan, or of a loan secured by a mortgage, financed from the proceeds of mortgage finance bonds, other than a federally insured construction loan, a federally insured mortgage or a federal mortgage, which shall accrue from a date which is one month prior to the date on which the first installment payment of principal of such a loan is payable and which shall be payable thereafter in monthly installments on the same day of each successive month that installment payments of principal of such a loan are payable, and (ii) with respect to any loan, other than a federally insured construction loan, a federally insured mortgage or a federal mortgage, purchased, or invested in with such proceeds, an equivalent amount which the housing development fund shall set aside from payments it receives on such loan or from any other source available to the housing development fund for such use.

(19) "State sinking fund commission" means the commission known as such and continued in existence pursuant to article three, chapter thirteen of this code and any body, board, person or commission which shall, by law, hereafter succeed to the powers and
(20) “Temporary housing” means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for temporary residential housing, including, but not limited to, shelters for homeless people, housing for victims of floods and other disasters, shelters for abused or battered persons and their children, housing for families with hospitalized family members, housing for students and student families, and housing for the handicapped and such other nonhousing facilities as may be incidental or appurtenant thereto.

(21) “Uninsured construction loans” means a construction loan for land development, residential housing or nonresidential projects which is not secured by either a federally insured mortgage or a federal mortgage, and which is not insured by the United States or an instrumentality thereof, and as to which there is no commitment by the United States or an instrumentality thereof to provide insurance.

(22) “Uninsured mortgage” and “uninsured mortgage loan” means mortgage loans for land development, residential housing or nonresidential projects which are not insured or guaranteed by the United States or an instrumentality thereof, and as to which there is no commitment by the United States or an instrumentality thereof to provide insurance.

§31-18-6. Corporate powers.

1 The housing development fund is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose, including, but not limited to, the following, except that notwithstanding any other provision of this article, the housing development fund shall not directly or indirectly make a loan for or otherwise finance or review any nonresidential project unless (a) the governor’s office of community and industrial development, in writing, has referred the nonresiden-
tial project under consideration to the housing development fund, and (b) the board of directors of the housing development fund shall have by resolution first found and determined (i) that such loan or other financing is not available upon reasonably equivalent terms and conditions from financial institutions, based upon, among other pertinent factors, that at least three financial institutions have had at least forty-five days to make a loan to or otherwise finance such project, but have failed to act upon or declined or refused opportunity within such forty-five day period; and (ii) that such loan or other financing is not available on reasonably equivalent terms and conditions from the United States, this state, any county or municipality in this state or any board, agency, department or commission of any thereof:

(1) To make or participate in the making of federally insured construction loans to sponsors of land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(2) To make temporary loans, with or without interest, but with such security for repayment as the housing development fund determines reasonably necessary and practicable, from the operating loan fund, if created, established, organized and operated in accordance with the provisions of section nineteen of this article, to defray development costs to sponsors of land development, residential housing or nonresidential projects which are eligible or potentially eligible for federally insured construction loans, federally insured mortgages, federal mortgages, or uninsured construction loans or uninsured mortgage loans;

(3) To make or participate in the making of long-term federally insured mortgage loans to sponsors of land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that
long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(4) To establish residential housing and nonresidential and land development projects for counties declared to be in a disaster area by the Federal Emergency Management Agency or other agency or instrumentality of the United States or this state;

(5) To accept appropriations, gifts, grants, bequests and devises, and to utilize or dispose of the same to carry out its corporate purpose;

(6) 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 corporate purpose;

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

(8) To invest any 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 or for the payment of the principal and interest on which the full faith and credit of the United States of America is pledged;

(ii) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal land banks; Tennessee Valley Authority; United States Postal Service; Inter-American Development Bank; International Bank for Reconstruction and Development; Small Business Administration; Washington Metropolitan Area Transit Authority; General Services Administration; Federal Financing Bank; Federal Home Loan Mortgage Corporation; Student Loan Marketing Association; Farmer’s Home Administration; the Federal
National Mortgage Association or the Government National Mortgage Association; or any bond, debenture, note, participation certificate or other similar obligation to the extent such obligations are guaranteed by the Government National Mortgage Association or Federal National Mortgage Association or are issued by any other federal agency and backed by the full faith and credit of the United States of America;

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

(iv) Certificates of deposit, time deposits, investment agreements, repurchase agreements or similar banking arrangements with a member bank or banks of the federal reserve system or a bank the deposits of which are insured by the Federal Deposit Insurance Corporation, or its successor, or a savings and loan association or savings bank the deposits of which are insured by the Federal Savings and Loan Insurance Corporation, or its successor, or government bond dealers reporting to, trading with and recognized as primary dealers by a Federal Reserve Bank: Provided, That such investments shall only be made to the extent insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or to the extent that the principal amount thereof shall be fully collateralized by obligations which are authorized investments for the housing development fund pursuant to this section;

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

(vi) Direct and general obligations of any other state, municipality or other political subdivision within the
Enr. S. B. No. 439] 22

territorial United States: 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;

(vii) Any bond, note, debenture or annuity issued by
any corporation organized and operating within the
United States: Provided, That such corporation shall
have a minimum net worth of fifteen million dollars
and its securities or its parent corporation's securities
are listed on one or more of the national stock
exchanges: Provided, however, That (1) such corpora-
tion 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 & Brad-
street, Best's or Moody's;

(viii) If entered into solely for the purpose of
reducing investment, interest rate, liquidity or other
market risks in relation to obligations issued or to be
issued or owned or to be owned by the housing
development fund, options, futures contracts (includ-
ing index futures but exclusive of commodities
futures, options or other contracts), standby purchase
agreements or similar hedging arrangements listed by
a nationally recognized securities exchange or a
corporation described in (vii) above;

(ix) Certificates, shares or other interests in mutual
funds, unit trusts or other entities registered under
section eight of the United States investment company
act of 1940, but only to the extent that the terms on
which the underlying investments are to be made
prevent any more than a minor portion of the pool
which is being invested in to consist of obligations
other than investments permitted pursuant to this
section; and
(x) To the extent not inconsistent with the express provisions of this section, obligations of the West Virginia state board of investments or any other obligation authorized as an investment for the West Virginia state board of investments under article six, chapter twelve of this code or for a public housing authority under article fifteen, chapter sixteen of this code;

(9) To sue and be sued;

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

(11) To make, and from time to time, amend and repeal bylaws and rules and regulations not inconsistent with the provisions of this article;

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

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

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

(15) To acquire real property, or an interest therein, in its own name, by purchase or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the housing development fund has an interest and to sell, transfer and convey any such property to a buyer and, in the event of such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease such property to a tenant;

(16) To purchase or sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a construction, rehabilitation, improvement, land development, mortgage or temporary loan;

(17) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;
Enr. S. B. No. 439]

(18) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment or any installment of principal or interest, or any other terms, of mortgage loan, mortgage loan commitment, construction loan, rehabilitation loan, improvement loan, temporary loan, contract or agreement of any kind to which the housing development fund is a party;

(19) To make and publish rules and regulations respecting its federally insured mortgage lending, uninsured mortgage lending, construction lending, rehabilitation lending, improvement lending and lending to defray development costs and any such other rules and regulations as are necessary to effectuate its corporate purpose;

(20) To borrow money to carry out and effectuate its corporate purpose and to issue its bonds or notes as evidence of any such borrowing in such principal amounts and upon such terms as shall be necessary to provide sufficient funds for achieving its corporate purpose, except that no notes shall be issued to mature more than ten years from date of issuance and no bonds shall be issued to mature more than fifty years from date of issuance;

(21) To issue renewal notes, to issue bonds to pay notes and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes shall be issued to mature more than ten years from date of issuance of the notes renewed and no such refunding bonds shall be issued to mature more than fifty years from the date of issuance;

(22) To apply the proceeds from the sale of renewal notes or refunding bonds to the purchase, redemption or payment of the notes or bonds to be refunded;

(23) To make grants and provide technical services to assist in the purchase or other acquisition, planning, processing, design, construction, or rehabilitation,
improvement or operation of residential housing, nonresidential projects or land development: Provided, That no such grant or other financial assistance shall be provided except upon a finding by the housing development fund that such assistance and the manner in which it will be provided will preserve and promote residential housing in this state or the interests of this state in maintaining or increasing employment or the tax base;

(24) To provide project assistance services for residential housing, nonresidential projects and land development, including, but not limited to, management, training and social and other services;

(25) To promote research and development in scientific methods of constructing low cost land development, residential housing or nonresidential projects of high durability including grants, loans or equity contributions for research and development purposes: Provided, That no such grant or other financial assistance shall be provided except upon a finding by the housing development fund that such assistance and the manner in which it will be provided will preserve and promote residential housing in this state or the interests of this state in maintaining and increasing employment and the tax base;

(26) With the proceeds from the issuance of notes or bonds of the housing development fund, including, but not limited to, mortgage finance bonds, or with other funds available to the housing development fund for such purpose, to participate in the making of or to make loans to mortgagees approved by the housing development fund and take such collateral security therefor as is approved by the housing development fund and to invest in, purchase, acquire, sell or participate in the sale of, or take assignments of, notes and mortgages, evidencing loans for the construction, rehabilitation, improvement, purchase or refinancing of land development, residential housing or nonresidential projects in this state: Provided, That the housing development fund shall obtain such written assurances as shall be satisfactory to it that the
proceeds of such loans, investments or purchases will be used, as nearly as practicable, for the making of or investment in long-term federally insured mortgage loans or federally insured construction loans, uninsured mortgage loans or uninsured construction loans, for land development, residential housing or nonresidential projects or that other moneys in an amount approximately equal to such proceeds shall be committed and used for such purpose;

(27) To make or participate in the making of uninsured construction loans for land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(28) To make or participate in the making of long-term uninsured mortgage loans for land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(29) To obtain options to acquire real property, or any interest therein, in its own name, by purchase, or lease, or otherwise, which is found by the housing development fund to be suitable, or potentially suitable, as a site, or as part of a site, for land development or the construction of residential housing or nonresidential projects; to hold such real property or to acquire by purchase or otherwise and to transfer by sale or otherwise any ownership or equity interests in any other legal entity which holds such real property; to finance the performance of land development, residential housing or nonresidential projects on or in connection with any such real property or to perform land development, residential housing or nonresidential projects on or in connection with any such real property; to own, operate and sponsor or participate in
the sponsorship of land development, residential
housing or nonresidential projects; or to sell, transfer
and convey, lease or otherwise dispose of such real
property, or lots, tracts or parcels of such real prop-
erty, for such prices, upon such terms, conditions and
limitations, and at such time or times as the housing
development fund shall determine;

(30) To make loans, with or without interest, but
with such security for repayment as the housing
development fund determines reasonably necessary
and practicable from the land development fund, if
created, established, organized and operated in accor-
dance with the provisions of section twenty-a of this
article, to sponsors of land development, to defray
development costs and other costs of land development;

(31) To exercise all of the rights, powers and author-
ities of a public housing authority as set forth and
provided in article fifteen, chapter sixteen of this code,
in any area or areas of the state which the housing
development fund shall determine by resolution to be
necessary or appropriate;

(32) To provide assistance to urban renewal projects
in accordance with the provisions of section twenty-
eight, article eighteen, chapter sixteen of this code and
in so doing to exercise all of the rights, powers and
authorities granted in this article or in article eight-
een, chapter sixteen of this code, in and for any
communities of the state which the housing develop-
ment fund shall determine by resolution to be neces-
sary or appropriate;

(33) To make or participate in the making of loans
for the purpose of rehabilitating or improving existing
residential and temporary housing or nonresidential
projects, or to owners of existing residential or tempo-
rary housing for occupancy by eligible persons and
families for the purpose of rehabilitating or improving
such residential or temporary housing or nonresiden-
tial projects and, in connection therewith, to refinance
existing loans involving the same property. Such loans
shall be made only upon determination by the housing
development fund that rehabilitation or improvement loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(34) Whenever the housing development fund deems it necessary in order to exercise any of its powers set forth in subdivision (28) of this section, and upon being unable to agree with the owner or owners of real property or interest therein sought to be acquired by the fund upon a price for acquisition of private property not being used or operated by the owner in the production of agricultural products, to exercise the powers of eminent domain in the acquisition of such real property or interest therein in the manner provided under chapter fifty-four of this code, and the purposes set forth in subdivision (28) of this section are hereby declared to be public purposes for which private property may be taken. For the purposes of this section, the determination of “use or operation by the owner in the production of agricultural products” means that the principal use of such real estate is for the production of food and fiber by agricultural production other than forestry, and the fund shall not initiate or exercise any powers of eminent domain without first receiving an opinion in writing from both the governor and the commissioner of agriculture of this state that at the time the fund had first attempted to acquire such real estate or interest therein, such real estate or interest therein was not in fact being used or operated by the owner in the production of agricultural products; and

(35) To acquire, by purchase or otherwise, and to hold, transfer, sell, assign, pool or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities or debt instruments collateralized by mortgages or interests in mortgages or other instruments evidencing loans or equity interests in or for the construction, rehabilitation, improvement, renovation, purchase or refinancing of land development, residential housing and nonresidential projects in this state.
§31-18-20a. Land development fund.

(a) The board of directors of the housing development fund may create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan, to be known as the land development 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 account separate and distinct from any other moneys, fund or funds owned and managed by the housing development fund.

(b) The purpose of the land development fund shall be to provide a source from which the housing development fund may finance development costs and land development in this state by making loans or grants therefrom, such loans to be with or without interest and with such security for repayment as the housing development fund deems reasonably necessary and practicable, or by expending moneys therefrom, for development costs and land development in this state.

(c) The housing development fund may invest and reinvest all moneys in the land development fund in any investments authorized under section six of this article, pending the disbursement thereof in connection with the financing of development costs and land development in this state.

(d) No loans shall be made by the housing development fund from the land development fund except in accordance with a written loan agreement which shall include, but not be limited to, the following terms and conditions:

(1) The proceeds of all such loans shall be used only for development costs and land development;

(2) All such loans shall be repaid in full, with or without interest, as provided in the agreement;

(3) All repayments shall be made concurrent with receipt by the borrower of the proceeds of a construction loan or mortgage, as the case may be, or at such other times as the housing development fund deems
reasonably necessary or practicable; and

(4) Specification of such security for repayments upon such terms and conditions as the housing development fund deems reasonably necessary or practicable.

(e) No grants shall be made by the housing development fund from the land development fund except in accordance with a written grant agreement which shall require that the proceeds of all such grants shall be used only for development costs or land development and containing such other terms and provisions as the housing development fund may require to ensure that the public purposes of this article are furthered by such grant.

(f) The housing development fund may expend any income from the financing of development costs and land development with moneys in the land development fund, and from investment of such moneys, 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 of the housing development fund, are fairly allocable to such financing or its land-development activities: Provided, That no funds from the land development fund shall be used to carry on propaganda, or otherwise attempt to influence legislation.

§31-18-21. Prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons; transactions between the housing development fund and directors or officers having certain interests in such transactions.

(a) No part of the funds of the housing development fund, or of the operating loan fund, or of the land development fund, shall inure to the benefit of or be distributable to its directors or officers or other private persons except that the housing development fund shall be authorized and empowered to pay reasonable compensation, other than to the directors, including the chairman, vice chairman and treasurer of the
board of directors and the secretary of the board of
directors, for services rendered and to make loans and
exercise its other powers as previously specified in
furtherance of its corporate purpose: Provided, That
no such loans shall be made, and no property shall be
purchased or leased from, or sold, leased or otherwise
disposed of, to any director or officer of the housing
development fund.

(b) Notwithstanding any provision contained in
paragraph (a) of this section, no loans shall be made by
the housing development fund to, and no property
shall be purchased or leased from, or sold, leased or
otherwise disposed of to, any corporation or other
entity in which any officer or director is a stockholder
or is otherwise financially interested, unless:

(1) The interest of such director or officer in such
transaction is specifically and fully disclosed to the
board of directors of the housing development fund at
the time it authorizes, approves or ratifies such
transaction and the fact and nature of such interest
are stated in the minutes of each meeting of the board
of directors at which such transaction is considered;

(2) Such transaction is fair and reasonable to the
housing development fund; and

(3) In the case of a director, such director abstains
from voting or written consent as to the authorization,
approval or ratification of such transaction by the
board of directors of the housing development fund.

§31-18-24. Annual audit; reports to joint committee on
government and finance; information to joint
committee or legislative auditor.

The housing development fund shall cause an
annual audit to be made by an independent certified
public accountant of its books, accounts and records,
with respect to its receipts, disbursements, contracts,
mortgages, leases, assignments, loans and all other
matters relating to its financial operations, including
those of the operating loan fund, the land development
fund, and the mortgage finance bond insurance fund.
The person 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. The person performing such audit shall also furnish copies of the audit report to the speaker of the House of Delegates, the president of the Senate and the majority and minority leaders of both houses.

In addition to the foregoing annual audit report, the housing development fund shall also render every six months to the joint committee on government and finance a report setting forth in detail a complete analysis of the activities, indebtedness, receipts and financial affairs of such fund and the operating loan fund, the land development fund, and the mortgage finance bond insurance fund. Upon demand, the housing development fund shall also submit to the joint committee on government and finance or the legislative auditor any other information requested by such committee or the legislative auditor.

§31-18-26. Projects not to be deemed public improvements.

No project or business facility acquired, constructed, maintained, or financed in whole or in part by the housing development fund shall be deemed to be a “public improvement” within the meaning of the provisions of article five-a, chapter twenty-one of this code, as a result of such financing.

§31-18-27. Documentary materials concerning trade secrets; commercial, financial, or personal information; confidentiality.

Any documentary material or data made or received by the housing development fund for the purpose of furnishing assistance, to the extent that such material or data consists of trade secrets, commercial, financial or personal information regarding the financial position or business operation of such business or person, shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of such trade secrets, commercial,
financial or personal information may be held by the housing development fund in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code: Provided, That the housing development fund shall make publicly available the following information regarding executed loans: (1) The name of the debtor, (2) location(s) of the project, (3) amount of the loan or financial assistance provided by the fund, (4) the purpose of the loan or financial assistance, (5) the term, rate, and interest of the loan, and (6) the fixed assets which serve as security for the loan.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 27th day of April, 1989.

Governor