House Bill No. 2905

(By Delegates Perdue, Kuhn and Angotti)

Passed April 11, 2001

In Effect Ninety Days from Passage
AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen-d, relating to the establishment and administration of a West Virginia affordable housing trust fund; creating an affordable housing trust fund board of directors and specifying its powers and responsibilities; defining eligible activities and organizations; requiring an application period and selection criteria; requiring confidentiality; prohibiting conflicts; providing tax exemptions; requiring the publication of an annual report; requiring an annual audit by a licensed accountant; and providing for dissolution or liquidation of trust fund.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eighteen-d, to read as follows:

ARTICLE 18D. WEST VIRGINIA AFFORDABLE HOUSING TRUST FUND.
§31-18D-1. Short title.

This article may be known and cited as the “West Virginia Affordable Housing Trust Fund Act.”

§31-18D-2. Legislative finding and purpose.

The Legislature finds that current and past economic conditions in this state, changing federal housing policies which devolve responsibility for housing back to state government, declining resources at the federal level and changing demographics have resulted in low and moderate income persons, including elderly persons and persons with special needs, being unable to obtain safe, decent and affordable housing in this state. Lack of affordable housing affects the ability of communities to develop and maintain strong and stable economies and impairs the health, stability and self-esteem of individuals and families. The Legislature further finds that financing affordable housing, especially in rural areas and small communities, is becoming increasingly difficult and is often characterized by fragmented, uncoordinated, burdensome and expensive funding mechanisms. For these reasons, it is in the public interest to establish a new resource known as the West Virginia affordable housing trust fund to encourage stronger partnerships, collaboration and greater involvement of local communities in meeting housing needs in West Virginia. It is the intent of the Legislature that this trust fund assist in increasing the capacity of community housing organizations and encourage private sector businesses and individuals to contribute capital to community-based organizations and assist them in providing safe, decent and affordable housing to our citizens.

§31-18D-3. Definitions.

(a) “Board” is the board of directors of the West Virginia affordable housing trust fund established pursuant to this article.
(b) “Housing” includes owner-occupied dwellings, rental units and other types of shelter for individuals and families.

(c) “Low or moderate income” means the income of individuals or families that is determined from time to time by the board as a percentage of the area median income for the state. The board may use the income data provided by the United States department of housing and urban development or other reliable income data as determined by a resolution of the board.

(d) “Technical assistance” means activities that are directly related to a nonprofit organization’s ability to provide housing for low income persons and includes, but is not limited to, land use and planning costs, design and engineering services, loan packaging assistance, program development assistance and construction consultation.

(e) “Trust fund” means the West Virginia affordable housing trust fund established by this article.

§31-18D-4. Affordable housing trust fund.

The West Virginia affordable housing trust fund is established as a governmental instrumentality of the state and public body corporate.

§31-18D-5. Housing trust fund board of directors.

(a) The affordable housing trust fund has a board of directors, which consists of eleven voting members. The members of the board are responsible for administering the trust fund.

(b) The trust fund board of directors consists of:

(1) The secretary of the department of health and human resources, ex officio, or his or her designee;
(2) The executive director of the West Virginia development office, ex officio, or his or her designee;

(3) The executive director of the West Virginia housing development fund, ex officio, or his or her designee;

(4) One member who is chosen from the private directors appointed by the governor to the board of the West Virginia housing development fund;

(5) One member who is an officer of a corporation or member of a limited liability company, which is currently licensed to do business in West Virginia and is engaged in real estate development;

(6) Three members who are executive directors or officers of not-for-profit organizations, which are not affiliated with one another through common management control and which are currently licensed to do business in West Virginia and which have been recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended, codified in 26 U.S.C. §501 (c) (3), and are organized and operated exclusively for charitable purposes within the meaning of that section, and in accordance with those purposes, provide housing assistance to low or moderate income citizens of this state;

(7) One member representative of the banking industry;

(8) One citizen member who is representative of the population served by the trust fund; and

(9) One member who is an executive director of a public housing authority operating in a county or municipality in this state.

(c) Not more than three members, excluding the ex officio members, shall be appointed from any one congressional district. Not more than four of the members, excluding the ex
officio members, may belong to the same political party. Except for initial appointments and midterm special appointments made to fill irregular vacancies on the board, members shall be appointed for terms of three years each. Initial appointments shall consist of three members whose terms expire after two years, three members whose terms expire after three years and two members whose terms expire after four years. Members are eligible for reappointment. However, no member may serve for more than two consecutive full terms. Except for midterm special appointments made to fill irregular vacancies on the board, appointment terms shall begin on the first day of July of the beginning year. All appointment terms, special and regular, end on the thirtieth day of June of the final year of the term.

(d) All members of the board except those who serve ex officio shall be appointed by the governor, with the advice and consent of the Senate.

(e) The governor may remove any appointed member in case of incompetency, neglect of duty, moral turpitude or malfeasance in office, and the governor may declare the office vacant and fill the vacancy as provided in other cases of vacancy.

(f) The governor shall designate one of the initial members as chairperson of the board. During or after the first meeting of the board the board may select a new chairperson and shall annually select its chairperson.

(g) The board shall meet not less than four times during the fiscal year, and additional meetings may be held upon a call of the chairperson or of a majority of the members. Board members shall be reimbursed for sums necessary to carry out responsibilities of the board and for reasonable travel expenses to attend board meetings. The ex officio members may not be reimbursed by the fund for travel expenses to attend board meetings.
(h) Six members of the board is a quorum. No vacancy in the membership of the board impairs the right of a quorum to exercise all the rights and perform all the duties of the board. No action may be taken by the board except upon the affirmative vote of at least six of the members.

§31-18D-6. Powers and responsibilities of the board.

(a) It is the duty of the board to manage and control the affordable housing trust fund. In order to carry out the day-to-day management and control of the trust fund and effectuate the purposes of this article, the board may appoint an executive director and other staff. The board shall fix the executive director’s duties and compensation as well as that of other staff. The executive director and other staff serve at the will and pleasure of the board. The board may provide for staff payroll and employee benefits in the same manner as the West Virginia housing development fund provides for its employees.

(b) The members of the board and its officers are not liable personally, either jointly or severally, for any debt or obligation created by the board.

(c) Members of the board and its officers and employees shall be provided insurance coverage by the state’s risk and insurance management board to the same extent and in the same manner the coverage is applicable to state government agencies and appointed state officials and employees. The board may elect to obtain other forms of insurance coverage it considers reasonable for its operations.

(d) The acts of the board are solely acts of its corporation and are not those of an agent of the state, nor is any debt or obligation of the board a debt or obligation of the state.

(e) The board shall:
(1) Develop and implement comprehensive policies and programs for the use of the trust fund that ensures the equitable distribution of moneys from the trust fund throughout the various geographic areas of this state and between urban and rural areas of this state;

(2) Develop and implement an application and selection system to identify housing sponsors or providers of affordable housing developments or programs that qualify to receive assistance from the trust fund for eligible activities;

(3) Provide funds for technical assistance to prospective applicants;

(4) Monitor services, developments, projects or programs receiving assistance from the trust fund to ensure that the developments are operated in a manner consistent with this article and in accordance with the representations made to the trust fund board by the sponsors of the services, developments, projects or programs;

(5) Recommend legislation to further its mission of providing housing for low to moderate income citizens of this state;

(6) Provide funding to increase the capacity of nonprofit community housing organizations to serve their communities;

(7) Research and study housing needs and potential solutions to the substandard quality or lack of affordable housing;

(8) Coordinate programs with other entities when doing so fulfills its mission to provide housing to low to moderate income citizens of this state;

(9) Convene public meetings to gather information or receive public comments regarding housing policy or issues;
(10) Distribute available funds pursuant to policies established by it which may permit the establishment of a permanent endowment; and

(11) Serve as a clearing house for information regarding housing services and providers within this state.

(f) The West Virginia housing development fund shall provide office space and staff support services for the executive director and the board, shall act as fiscal agent for the board and, as such, shall provide accounting services for the board, invest all funds as directed by the board, service all investment and loan activities of the board as requested, and shall make the disbursements of all funds as directed by the board, for which the West Virginia housing development fund shall be reasonably compensated, as determined by the board.

§31-18D-7. Eligible activities; eligible organizations.

(a) The board shall use the moneys from the trust fund to make, or participate in the making, of loans or grants for eligible activities that shall include, but not be limited to:

(1) Providing funds for new construction, rehabilitation, repair or acquisition of housing to assist low or moderate income citizens including land and land improvements;

(2) Providing matching funds for federal housing moneys requiring a local or state match;

(3) Providing funds for administrative costs for housing assistance programs or nonprofit organizations eligible for funding pursuant to subsection (b) of this section if the grants or loans provided will substantially increase the recipient's access to housing funds or increase its capacity to supply affordable housing;
(4) Providing loan guarantees and other financial mechanisms to facilitate the provision of housing products or services;

(5) Providing funds for down payments, closing costs, foreclosure prevention, home ownership counseling and security bonds which facilitate the construction, rehabilitation, repair or acquisition of housing by low to moderate income citizens; and

(6) Providing risk underwriting products not provided by private sector entities to facilitate broader accessibility of citizens to other federal or state housing funds or loan programs. The products shall be established using professional risk underwriting standards and separate corporate vehicles may be created and capitalized by the trust fund to provide the products.

(b) Organizations eligible for funding from the trust fund include the following: (1) Local governments; (2) local government housing authorities; (3) nonprofit organizations recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended, codified in 26 U.S.C. §501 (c) (3), and which are organized and operated exclusively for charitable purposes within the meaning of that section, and in accordance with those purposes provide assistance to low or moderate income citizens of this state; and (4) regional or statewide housing assistance organizations that have been recognized as exempt under Section 501(c)(3) of the Internal Revenue Code, as amended, and which provide assistance to low and moderate income or low income citizens of this state.


The board has the power:

(1) To make loans or grants;
(2) To accept appropriations, gifts, grants, bequests and devises and to utilize or dispose of the same to carry out its corporate purposes. The board has the discretion to refuse any gift it considers inappropriate;

(3) To make and execute contracts, releases, compromises, agreements and other instruments necessary or convenient for the exercise of its powers or to carry out its corporate purposes;

(4) 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;

(5) To sue and be sued;

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

(7) To hire its own employees and appoint officers and consultants as it considers advisable, and to fix their compensation and prescribe their duties;

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

(9) 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;

(10) To acquire real property, or an interest in real property, in its own name, by purchase, transfer, bequest, gift or foreclosure, where appropriate or is necessary to protect any loan in which the board has an interest and to sell, transfer and convey any property to a buyer and, in the event that a sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease property to a tenant. Before any
real property is transferred to the trust, the seller or donor must have clear title to the property. The board has the discretion to require that the seller or donor agree, in the terms of the transfer, that any liability for environmental defects on the property is not waived by the transfer and that the seller or donor indemnify the trust for any liability associated with activities that occurred or conditions that exist on the property. The board may require the transferor of the property to bear the costs of an environmental assessment of the property, conducted in a manner satisfactory to the board;

(11) To purchase or sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a loan;

(12) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(13) To consent, whenever it considers 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 an investment, loan, contract or agreement of any kind to which the board is a party;

(14) To establish training and educational programs to further the purposes of this article;

(15) 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 or other instruments evidencing loans or equity interests in or for the fostering, repairing, or providing affordable housing to the citizens of this state;

(16) The board has the authority to make, and from time to time, amend and repeal bylaws and rules not inconsistent with the provisions of this article; and

(a) The board shall announce by public notice at least two periods annually for prospective applicants to submit proposals, applications or requests for funding. Each period shall be for at least ninety days duration during each calendar year in which funds are available from the trust fund. The board shall approve or deny properly submitted and completed applications, proposals or requests within sixty days of their receipt.

(b) The board shall determine whether each person making an application, proposal or request for funding is an eligible entity and approve as many applications, proposals or requests as will effectively use the available moneys in the trust fund less costs required to administer the program. In selecting entities to receive trust fund assistance, the board shall develop a qualified allocation and selection plan as often as it considers appropriate in order to provide affordable housing and improve the capacity of nonprofit housing entities to supply affordable housing to low and moderate income citizens of this state. The allocation and selection plan for each period shall be available for review of prospective applicants and the general public in sufficient time for prospective applicants to reasonably prepare an application, project proposal or request for funding.

(c) No moneys may be expended from the trust fund for projects that discriminate against any buyer or renter because of race, religion, sex, familial status or national origin.

(d) The board shall forward to the West Virginia housing development fund for its review and information approved requests, applications and proposals for funding containing information as is necessary to permit the West Virginia housing development fund to carry out its duties under this article.
§31-18D-10. Documentary materials concerning financial or personal information; confidentiality.

Any documentary material or data made or received by the board for the purpose of furnishing assistance, to the extent that the material or data consists of financial or personal information regarding the financial position or activities of a for-profit business or natural person, are not public records and are exempt from any disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of the financial or personal information may be held by the board in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code.


In addition to any requirements imposed in article two, chapter six-b of this code, if the board receives an application, request for funding or proposal from any entity of which a member of the board, or an immediate family member of a board member, is also an officer, director, employee or owner of any entity which is a party to the proposed transaction, the board member shall:

1. Disclose the relationship to the board, in writing;
2. Refrain from participating in board discussions concerning the application, request for funding or proposal; and
3. Refrain from voting the application, request for funding or proposal.

§31-18D-12. Tax exemption.

The trust fund is not required to pay any taxes and assessments to the state of West Virginia, or any county, municipality
or other governmental subdivision of the state of West Virginia, 
upon any of its property or upon its obligations or other 
evidences of indebtedness pursuant to the provisions of this 
article, or upon any moneys, funds, revenues or other income 
held or received by the trust fund and the income from it is 
exempt from taxation, except for death and gift taxes, taxes on 
transfers, sales taxes, real property taxes and business and 
occupation taxes.


The board shall make a report to the governor and the 
Legislature within ninety days of the close of each fiscal year. 
The report shall include summaries of all meetings of the board, 
an analysis of the overall progress of the program, fiscal 
concerns, the relative impact the program is having on the state, 
and any suggestions and policy or legislative recommendations 
that the board may have. The report shall include: (1) The 
applications funded in the previous calendar year; (2) the 
identity of organizations receiving funds and significant private 
sector partners of each project or program; (3) the location of 
each project unless the disclosure would endanger occupants or 
unduly invade the privacy of occupants; (4) the amount, 
maturity, interest rate, collateral and other pertinent terms of 
funding provided to the project or program and the amount of 
other funds leveraged; (5) the number of units of housing 
created by the project and the occupancy rate; (6) the expected 
cost of rent or monthly payment for those units; and (7) the 
amount of revenue deposited into the West Virginia affordable 
housing trust fund. The report is public information and shall be 
made available to the general public for examination and 
copying.

§31-18D-14. Exemption from certain requirements; audit.

(a) In order to provide the greatest flexibility to entities 
receiving funding from the trust fund, the proposals, applica-
tions and requests funded under this article are exempt from the
bidding and public sale requirements, from the approval of contractual agreements by the department of administration or the attorney general and from the requirements of chapter five-a of this code.

(b) The trust fund’s financial position, activities, transactions, documents and records are subject to an annual audit by an independent firm of certified public accountants.

§31-18D-15. Dissolution or liquidation of trust fund.

In the event that the trust fund is dissolved or liquidated by the Legislature, after payment of all debts, obligations or expenses of the trust fund, all assets then remaining in the trust fund shall be distributed to the West Virginia housing development fund, a governmental instrumentality of the state of West Virginia created pursuant to section four, article eighteen of chapter thirty-one.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the day of May, 2001.

Governor