

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 227**

4 (By Senators Browning, Unger, Plymale, Kessler (Acting  
5 President), McCabe, Prezioso, Stollings, Klempa, Foster, Jenkins  
6 and Minard)

7 \_\_\_\_\_  
8 [Originating in the Committee on Economic Development;  
9 reported February 7, 2011.]

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11  
12 A BILL to amend the Code of West Virginia, 1931, as amended, by  
13 adding thereto a new article, designated §5B-2H-1, §5B-2H-2,  
14 §5B-2H-3, §5B-2H-4, §5B-2H-5, §5B-2H-6, §5B-2H-7, §5B-2H-8,  
15 §5B-2H-9, §5B-2H-10, §5B-2H-11 and §5B-2H-12, all relating to  
16 the Creative Communities Development Pilot Program; providing  
17 legislative findings and intent; creating the Creative  
18 Communities Development Fund; establishing the Creative  
19 Communities Development Board; providing requirements for  
20 applications for the use of matching funds from the Creative  
21 Communities Development Fund; providing for review of  
22 applications by the West Virginia Development Office;  
23 establishing that the Creative Communities Development Board  
24 shall have the authority to approve matching grants from  
25 Creative Communities Development Fund; establishing matching  
26 requirements from applicants; establishing eligible

1 expenditures; defining parameters of agreement between West  
2 Virginia Development Office and a community for use of grant  
3 funds; providing for a review and audit of expenditures by  
4 West Virginia Development Office; and providing for review of  
5 Creative Communities Development Pilot Program.

6 *Be it enacted by the Legislature of West Virginia:*

7 That the Code of West Virginia, 1931, as amended, be amended  
8 by adding thereto a new article, designated §5B-2H-1, §5B-2H-2,  
9 §5B-2H-3, §5B-2H-4, §5B-2H-5, §5B-2H-6, §5B-2H-7, §5B-2H-8, §5B-2H-  
10 9, §5B-2H-10, §5B-2H-11 and §5B-2H-12, all to read as follows:

11 **ARTICLE 2H. CREATIVE COMMUNITIES DEVELOPMENT PILOT PROGRAM.**

12 **§5B-2H-1. Purposes and objectives; short title; legislative**  
13 **findings; definitions.**

14 The Legislature finds and declares that:

15 (1) The development and enhancement of communities in West  
16 Virginia with the ability to thrive in the face of the economic and  
17 environmental challenges of the twenty-first century will make for  
18 a stronger West Virginia by creating jobs, attracting new  
19 professions, and developing additional sources of capital.

20 (2) The public policy of the state will be served through a  
21 matching grant pilot program designed to foster innovative planning  
22 to enhance communities with the following key foundations of  
23 economic and environmental sustainability, including:

24 (A) Providing access to technological advances among citizens,  
25 business, nonprofit entities, and governmental entities;

1 (B) Developing community centers, arts, historical, cultural  
2 and recreational facilities;

3 (C) Providing aesthetic improvements to existing communities  
4 and infrastructure;

5 (D) Fostering academic innovation in kindergarten through  
6 twelfth-grade and lifelong learning programs;

7 (E) Fostering the development of diversity and inclusiveness  
8 programs that help bridge ethnic, socioeconomic, historical and  
9 cultural divides; and

10 (F) Fostering the development of renewable and alternative  
11 energy sources.

12 (3) It is the intent of the Legislature in enacting this  
13 article to create a matching grant pilot program to foster the  
14 implementation of innovative planning strategies to develop and  
15 expand communities that can maximize emerging economic  
16 opportunities and environmental challenges and thrive in the  
17 twenty-first century.

18 (4) This article may be cited as the "Creative Communities  
19 Development Act."

20 (5) Definitions.

21 (A) "Applicant" means a community submitting an application  
22 requesting grant funds pursuant to this article.

23 (B) "Board" means the Creative Communities Development Board  
24 created pursuant to section three of this article.

25 (C) "Community" means a county or municipality in the State of  
26 West Virginia; a county or municipality development authority as

1 defined in article seven of chapter twelve of this code; a metro  
2 government as defined in article one of chapter seven-a of this  
3 code; a state institution of higher learning as defined in article  
4 one of chapter eighteen-a of this code; or a local government  
5 partnership as approved by the board.

6 (D) "Development Office" means the West Virginia Development  
7 Office.

8 (E) "Local government partnership" means a partnership between  
9 governmental entities that has been approved by the board under the  
10 rules promulgated pursuant to section six of this article.

11 (F) "Project" means a plan submitted by an applicant for  
12 matching grant funds pursuant to this article.

13 **§5B-2H-2. Creation of Creative Communities Development Fund.**

14 (a) All moneys collected for the purposes of the program shall  
15 be deposited in a special State Treasury revenue account to be  
16 known as the "Creative Communities Development Fund". The Creative  
17 Communities Development Fund is a permanent and perpetual fund  
18 administered by the development office. Expenditures from the fund  
19 shall be for the purposes set forth in this section and made and  
20 are authorized from collection and not legislative appropriations.  
21 Creative Communities Development Fund amounts not expended at the  
22 close of the fiscal year do not lapse or revert to the General Fund  
23 but are carried forward to the next fiscal year. Interest earnings  
24 on the fund become a part of the fund and do not lapse or revert to  
25 the General Fund.

26 (b) The special revenue account consists of appropriations

1 made by the Legislature, income from the investment of moneys held  
2 in the special revenue account and all other sums available for  
3 deposit to the special revenue account from any source, public or  
4 private.

5 (c) Revenue shall be disbursed in the manner provided in this  
6 article and for the purposes stated in this article and may not be  
7 treated by the Auditor and Treasurer as part of the general revenue  
8 of the state.

9 **§5B-2H-3. Creation of Creative Communities Development Board.**

10 (a) The Creative Communities Development Board is created  
11 consisting of the following members:

12 (1) The Secretary of the Department of Commerce or designee;

13 (2) The Commissioner of Agriculture or designee;

14 (3) The Secretary of the Department of Education and the Arts  
15 or designee;

16 (4) The Executive Director of the Housing Development Fund or  
17 designee;

18 (5) The Governor shall appoint with the advice and consent of  
19 the Senate:

20 (A) One representative with general expertise on topics  
21 related to:

22 (I) Broadband availability and adoption among consumers and  
23 small businesses;

24 (ii) Issues related to very high-speed broadband availability  
25 for larger organizations with high-bandwidth requirements; and

26 (iii) Issues related to public-private research opportunities

1 and commercialization strategies;

2 (B) One representative with general expertise on issues  
3 related to:

4 (I) Sustainable economic and community development;

5 (ii) Housing and real estate, including "creative class"-  
6 themed requirements;

7 (iii) Arts, historical and cultural initiatives and their  
8 economic impact on communities; and

9 (iv) Issues related to the impact of "third places"-  
10 historical, cultural and outdoor amenities, restaurants,  
11 entertainment services and other similar services; and

12 (C) One representative with general expertise related to:

13 (I) The value of diversity in a community and economy and how  
14 to foster diversity;

15 (ii) Issues related to communication and education of  
16 historical and cultural values; and

17 (iii) Organizational and institutional issues related to  
18 diversity.

19 (b) The board may exercise all powers necessary to carry out  
20 and effectuate its duties and decisions under this article. The  
21 board shall appoint a secretary and the secretary shall take  
22 minutes of all board proceedings. The minutes shall be held by the  
23 Development Office.

24 (c) The Secretary of the Department of Commerce or designee  
25 serves as chair of the board. The Commissioner of Agriculture or  
26 designee serves as vice chair of the board.

1 (d) The Secretary of the Department of Commerce or designee,  
2 the Commissioner of Agriculture or designee, the Secretary of the  
3 Department of Education and the Arts or designee and the Executive  
4 Director of the Housing Development Fund or designee are ineligible  
5 to receive compensation for serving as board members. For each day  
6 or portion of a day spent in the discharge of duties pursuant to  
7 this article, the board shall pay from the fund to eligible members  
8 the same compensation and expense reimbursement as is paid to  
9 members of the Legislature for their interim duties.

10 (e) The Development Office shall provide administrative  
11 support for the board.

12 (f) The board may meet on a bi-monthly basis.

13 **§5B-2H-4. Availability of funds; grant levels; matching**  
14 **requirement.**

15 (a) All funds to be disbursed pursuant to a grant authorized  
16 under this article may be made available only after the community  
17 submits proper invoices in a timely manner to the Development  
18 Office for expenditures authorized by the board as established in  
19 the project agreement entered into pursuant to section eight of  
20 this article.

21 (b) The board may provide a match rate of up to fifty percent  
22 for a project for qualified invoices reflecting approved expenses  
23 approved by the board pursuant to this article.

24 (c) Cost overruns above the award amount established by the  
25 board shall be borne by the community and are not eligible for  
26 grant funds unless the community submits a request to the board for

1 additional grant funds and the board grants approval in writing  
2 prior to the expenditure of the costs by the community.

3 (d) In-kind services are not eligible for reimbursement.

4 (e) Matching funds may come from any source except that no  
5 state funds from any source may be used for a match: *Provided,*  
6 That the use of state funds for a project does not prohibit a  
7 community from receiving grant funds pursuant to this article by  
8 using matching funds from sources other than state funds.

9 (f) The following matching levels are applicable:

10 (1) For a community with a population less than five thousand,  
11 the maximum grant level per year is \$200,000;

12 (2) For a community with a population more than or equal to  
13 five thousand but less than fifteen thousand, the maximum grant  
14 level per year is \$300,000;

15 (3) For a community with a population more than or equal to  
16 fifteen thousand but less than thirty thousand, the maximum grant  
17 level per year is \$500,000; and

18 (4) For a community with a population equal to or greater than  
19 thirty thousand, the maximum grant level per year is \$1 million.

20 (g) Notwithstanding the provisions of subsection (f) of this  
21 section, the maximum grant level per year is \$1 million for a  
22 community that is:

23 (1) A state institution of higher learning as defined in  
24 article one of chapter eighteen-a of this code;

25 (2) A local government partnership as approved by the board;  
26 or

1 (3) A metro government as defined in article one of chapter  
2 seven-a of this code.

3 **§5B-2H-5. Application to creative communities development board**  
4 **for matching funds.**

5 (a) The board shall develop grant application forms to  
6 facilitate the board's evaluation of whether a project receives a  
7 grant based on the following criteria:

8 (1) Whether the project will provide or expand access to  
9 technological advances among citizens, business, nonprofit entities  
10 and governmental entities affected by the project;

11 (2) Whether the project will develop or enhance community  
12 centers, arts, historical, cultural and recreational facilities;

13 (3) Whether the project will provide aesthetic improvements to  
14 existing communities and infrastructure;

15 (4) Whether the project will foster academic innovation in  
16 kindergarten through twelfth grade and lifelong learning programs;

17 (5) Whether the project will foster the development of  
18 diversity and inclusiveness programs that help bridge ethnic,  
19 socioeconomic, historical and cultural divides;

20 (6) Whether the project will foster the development of  
21 renewable or alternative energy sources;

22 (7) How the project will be funded, including whether other  
23 sources of funds have been secured;

24 (8) How the project will use existing state, federal or local  
25 programs;

26 (9) Whether any public-private partnerships have been

1 established for investment in the project;

2 (10) Whether colleges or universities are participating in the  
3 project; and

4 (11) How the project will impact the attraction, retention,  
5 and development of entrepreneurs in high-technology,  
6 environmentally friendly, scientific, arts, historical, cultural,  
7 design, engineering and similar industries.

8 (b) In addition to the requirements of subsection (a) of this  
9 section, applications shall include the following:

10 (1) Total project cost;

11 (2) The amount of grant requested;

12 (3) The estimated completion date for the project; and

13 (4) Any other information required by the board.

14 (c) The applicant in the application shall disclose the  
15 following:

16 (1) Any financial benefit that will be received, if the  
17 application is approved, by any entity in which the applicant, its  
18 representatives, partner organizations, or its employees have an  
19 ownership interest;

20 (2) Any other employees or representatives of the applicant or  
21 partner organizations may have with a vested interest that is not  
22 otherwise described as part of the project;

23 (3) If the applicant and all partner organizations are  
24 presently in compliance with all state, federal and local laws,  
25 including, but not limited to, tax obligations, insurance  
26 obligations, including workers' compensation coverage and

1 unemployment compensation obligations; and

2 (4) If the applicant or partner organizations are presently  
3 involved in a bankruptcy proceeding, who within their organization  
4 may be contacted for details of the bankruptcy proceeding.  
5 Involvement in bankruptcy proceedings is not automatic  
6 disqualification from the grants program, but the commission  
7 reserves the right to request additional information regarding any  
8 bankruptcy proceedings to insure the state's money is being granted  
9 appropriately.

10 (d) Failure to accurately disclose the information required  
11 pursuant to subsection (c) of this section shall result in the  
12 cancellation of any grant to the applicant previously approved by  
13 the board and the disqualification of the community and its  
14 representatives from future grant awards.

15 (e) Applications for grants pursuant to this article shall be  
16 submitted by July 1 of each year.

17 **§5B-2H-6. Rules.**

18 The board with the assistance of the Development Office shall  
19 propose rules, for legislative approval in accordance with article  
20 three, chapter twenty-nine-a of this code to determine the  
21 standards of eligibility for local government partnerships.

22 **§5B-2H-7. Review of applications by West Virginia Development  
23 Office and Creative Communities Development Board.**

24 (a) The Development Office shall review all applications for  
25 completeness and conformance to this article, including any

1 requirements established by the board. If an application is found  
2 incomplete or not in conformance, the Development Office may return  
3 the application to the applicant for additional information or  
4 otherwise contact the applicant and request the information  
5 required.

6 (b) Once the Development Office determines that an application  
7 is complete and complies with the provisions of this article, the  
8 Development Office shall evaluate and develop a recommendation for  
9 the board as to whether the board should approve the application.

10 (c) In reviewing applications for submission to the board, the  
11 Development Office shall make recommendations as to the priority of  
12 all applications.

13 (d) The board shall review all applications found by the  
14 Development Office to be in compliance with this article. Awards  
15 of grants shall be based upon a vote of the board.

16 (e) Grants shall be awarded on a competitive basis, in  
17 accordance with the criteria established by section five of this  
18 article.

19 (f) The board may reject, modify or approve an application  
20 based on how successfully the application meets the evaluation  
21 criteria.

22 (g) The board may award grants at levels up to fifty percent  
23 of the project cost.

24 (h) The Development Office shall notify unsuccessful  
25 applicants in writing within fifteen days of the board's decision  
26 on the application.

1 (I) Grant applicants failing to receive an award due to  
2 funding limitations may revise the grant request according to  
3 recommendations of the Development Office and board, and resubmit  
4 a grant application along with a letter of request for  
5 reconsideration in accordance with deadlines established by the  
6 Development Office.

7 **§5B-2H-8. Eligible expenditures of grant funds; agreement for use**  
8 **of funds.**

9 (a) A community may use grant funds for the following: Cost of  
10 improvements, repairs, and renovations, costs of all lands, water  
11 areas, property rights and easements, financing charges, interest  
12 prior to and during construction cost of architectural,  
13 engineering, legal, planning and financial or other consulting  
14 services, plans, site assessments, site remediation costs,  
15 specifications and surveys, estimates of costs and any other  
16 expenses necessary or incident to determining the feasibility or  
17 practicability of any project, together with other costs and  
18 expenses as may be necessary or incidental to the financing and the  
19 construction or acquisition of the creative community development  
20 or enhancement or completing the development or enhancement.

21 (b) Notwithstanding the provisions of subsection (a) of this  
22 subsection, the board may limit the expenditures of any proposed  
23 grant in approving or modifying an application. The board may  
24 direct the Development Office to place requirements on the use of  
25 grant funds as part of any creative communities development project  
26 agreement entered into pursuant to section nine of this article.

1 **§5B-2H-9. Creative communities development project agreement.**

2 The grant shall be finalized upon the entry of an agreement  
3 between the Development Office and the applicant. The agreement  
4 shall include, but is not limited to, the following:

5 (1) A statement that the information provided within the  
6 application is true and correct, and that the applicant has read  
7 and understands this article;

8 (2) The grant amount;

9 (3) A promise by the applicant and partner organizations that  
10 no in-kind services have been used to match any portion of the  
11 grant;

12 (4) A commitment of the applicant to submit proper invoices in  
13 a timely fashion for authorized expenses;

14 (5) A promise by the applicant not to assign or transfer any  
15 of the rights, duties or obligations of the applicant without the  
16 written consent of the Development Office;

17 (6) A promise by the applicant not to amend the grant without  
18 the written consent of the Development Office;

19 (7) A commitment that the project must be completed by the  
20 ending project date, unless a written request for an extension is  
21 submitted no later than thirty days prior to the ending project  
22 date;

23 (8) A commitment that the community will provide an annual  
24 report to the Development Office detailing project status including  
25 the percentage of the project that is complete and the number of  
26 jobs created by the project; and

1 (9) Any other condition required by the board as a condition  
2 of the approval of any authorized grant.

3 **§5B-2H-10. Material changes to project after grant award.**

4 If the community desires to make material changes to the  
5 project, the applicant shall notify the Development Office prior to  
6 the project change. The Development Office shall review the  
7 proposed modification and determine whether the project should  
8 continue to receive funds within established grant levels pursuant  
9 to the grant award. The Development Office may refuse to reimburse  
10 any costs expended pursuant to a material change without the prior  
11 notification and approval of the modification by the Development  
12 Office. If the Development Office determines that the modification  
13 to the project is not subject to reimbursement, the community may  
14 apply to the board for a modification to the exiting grant.

15 **§5B-2H-11. Audit and compliance.**

16 (a) The Development Office may review, including audit an  
17 applicant's or a partner organization's records, including  
18 financial statements and supporting records, relating to any  
19 approved project. Records, including financial statements and  
20 supporting records, must be retained by the applicant and all  
21 partners for a minimum of three years after the completion of the  
22 project.

23 (b) The Development Office may terminate any project agreement  
24 upon discovery of any violation of the terms of the agreement,  
25 state, or federal law by the applicant or partner organizations.

26 **§5B-2H-12. Review of creative communities development pilot**

1                                   **program.**

2           On or before July 1, 2016, the Joint Committee on Government  
3 and Finance shall conduct a performance review on the pilot  
4 program.

NOTE: The purpose of this bill is to develop a matching grant program to foster the development of creative communities in West Virginia.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Committee on Economic Development.

This article is new; therefore, strike-throughs and underscoring have been omitted.