

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 227**

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

9 _____
10 [Originating in the Committee on Finance;
11 reported February 15, 2011.]

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

1 Creative Communities Development Fund; establishing matching
2 requirements from applicants; establishing eligible
3 expenditures; defining parameters of agreement between West
4 Virginia Development Office and a community for use of grant
5 funds; providing for a review and audit of expenditures by
6 West Virginia Development Office; and providing for review of
7 Creative Communities Development Pilot Program.

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

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

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

14 **§5B-2H-1. Purposes and objectives; short title; legislative**
15 **findings; definitions.**

16 The Legislature finds and declares that:

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

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

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

3 (B) Developing community centers, arts, historical, cultural
4 and recreational facilities;

5 (C) Providing aesthetic improvements to existing communities
6 and infrastructure;

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

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

12 (F) Fostering the development of renewable and alternative
13 energy sources.

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

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

22 (5) Definitions.

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

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

1 (C) "Community" means a county or municipality in the State of
2 West Virginia; a county or municipality development authority
3 created pursuant to article twelve of chapter seven of this code;
4 a metro government as defined in article one of chapter seven-a of
5 this code; a state institution of higher learning as defined in
6 section two, article one of chapter eighteen-b of this code; or a
7 local government partnership as approved by the board.

8 (D) "Development Office" means the West Virginia Development
9 Office.

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

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

15 **§5B-2H-2. Creation of Creative Communities Development Fund.**

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

1 the General Fund.

2 (b) The special revenue account consists of appropriations
3 made by the Legislature, income from the investment of moneys held
4 in the special revenue account and all other sums available for
5 deposit to the special revenue account from any source, public or
6 private.

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

11 **§5B-2H-3. Creation of Creative Communities Development Board.**

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

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

15 (2) The Commissioner of Agriculture or designee;

16 (3) The Secretary of the Department of Education and the Arts
17 or designee;

18 (4) The Executive Director of the Housing Development Fund or
19 designee;

20 (5) The Governor shall appoint with the advice and consent of
21 the Senate:

22 (A) One representative with general expertise on topics
23 related to:

24 (i) Broadband availability and adoption among consumers and
25 small businesses;

26 (ii) Issues related to very high-speed broadband availability

1 for larger organizations with high-bandwidth requirements; and

2 (iii) Issues related to public-private research opportunities
3 and commercialization strategies;

4 (B) One representative with general expertise on issues
5 related to:

6 (i) Sustainable economic and community development;

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

9 (iii) Arts, historical and cultural initiatives and their
10 economic impact on communities; and

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

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

15 (i) The value of diversity in a community and economy and how
16 to foster diversity;

17 (ii) Issues related to communication and education of
18 historical and cultural values; and

19 (iii) Organizational and institutional issues related to
20 diversity.

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

26 (c) The Secretary of the Department of Commerce or designee

1 serves as chair of the board. The Commissioner of Agriculture or
2 designee serves as vice chair of the board.

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

12 (e) The Development Office shall provide administrative
13 support for the board.

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

15 **§5B-2H-4. Availability of funds; grant levels; matching**
16 **requirement.**

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

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

26 (c) Cost overruns above the award amount established by the

1 board shall be borne by the community and are not eligible for
2 grant funds unless the community submits a request to the board for
3 additional grant funds and the board grants approval in writing
4 prior to the expenditure of the costs by the community.

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

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

11 (f) The following matching levels are applicable:

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

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

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

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

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

25 (1) A state institution of higher learning as defined in
26 section two, article one of chapter eighteen-b of this code;

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

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

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

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

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

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

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

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

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

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

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

26 (8) How the project will use existing state, federal or local

1 programs;

2 (9) Whether any public-private partnerships have been
3 established for investment in the project;

4 (10) Whether colleges or universities are participating in the
5 project; and

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

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

12 (1) Total project cost;

13 (2) The amount of grant requested;

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

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

16 (c) The applicant in the application shall disclose the
17 following:

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

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

25 (3) If the applicant and all partner organizations are
26 presently in compliance with all state, federal and local laws,

1 including, but not limited to, tax obligations, insurance
2 obligations, including workers' compensation coverage and
3 unemployment compensation obligations; and

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

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

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

19 **§5B-2H-6. Rules.**

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

24 **§5B-2H-7. Review of applications by West Virginia Development**
25 **Office and Creative Communities Development Board.**

1 (a) The Development Office shall review all applications for
2 completeness and conformance to this article, including any
3 requirements established by the board. If an application is found
4 incomplete or not in conformance, the Development Office may return
5 the application to the applicant for additional information or
6 otherwise contact the applicant and request the information
7 required.

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

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

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

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

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

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

26 (h) The Development Office shall notify unsuccessful

1 applicants in writing within fifteen days of the board's decision
2 on the application.

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

9 **§5B-2H-8. Eligible expenditures of grant funds; agreement for use**
10 **of funds.**

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

23 (b) Notwithstanding the provisions of subsection (a) of this
24 subsection, the board may limit the expenditures of any proposed
25 grant in approving or modifying an application. The board may
26 direct the Development Office to place requirements on the use of

1 grant funds as part of any creative communities development project
2 agreement entered into pursuant to section nine of this article.

3 **§5B-2H-9. Creative communities development project agreement.**

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

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

10 (2) The grant amount;

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

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

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

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

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

25 (8) A commitment that the community will provide an annual
26 report to the Development Office detailing project status including

1 the percentage of the project that is complete and the number of
2 jobs created by the project; and

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

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

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

17 **§5B-2H-11. Audit and compliance.**

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

25 (b) The Development Office may terminate any project agreement
26 upon discovery of any violation of the terms of the agreement,

1 state, or federal law by the applicant or partner organizations.

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

4 On or before July 1, 2016, the Joint Committee on Government
5 and Finance shall conduct a performance review on the pilot
6 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.)