

H. B. 2448

(By Delegates Kominar, Varner and Ferro)
[Introduced January 13, 2011; referred to the
Committee on Energy, Industry and Labor, Economic
Development and Small Business then Finance.]

**FISCAL
NOTE**

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

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

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

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

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

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

15 The Legislature finds and declares that:

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

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

1 economic and environmental sustainability, including:

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

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

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

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

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

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

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

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

23 (5) Definitions.

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

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

5 (C) "Community" means a county or municipality in the State of
6 West Virginia; a county or municipality development authority as
7 defined in article seven of chapter twelve of this code; a metro
8 government as defined in article one of chapter seven-a of this
9 code; a state institution of higher learning as defined in article
10 one of chapter eighteen-a of this code; or a local government
11 partnership as approved by the board.

12 (D) "Development Office" means the West Virginia Development
13 Office.

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

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

19 **§5B-2H-2. Creation of Creative Communities Development Fund.**

20 (a) All moneys collected for the purposes of the program shall
21 be deposited in a special State Treasury revenue account to be
22 known as the "Creative Communities Development Fund." Expenditures
23 from the special revenue account shall be for the purposes set

1 forth in this section and made in accordance with appropriations
2 from the Legislature and pursuant to the provisions of article
3 three, chapter twelve of this code and after the fulfilment of the
4 provisions of article two, chapter eleven-b of this code:

5 *Provided*, That for the fiscal year ending June 30, 2012,
6 expenditures are authorized from collections.

7 (b) The special revenue account consists of appropriations
8 made by the Legislature, income from the investment of moneys held
9 in the special revenue account and all other sums available for
10 deposit to the special revenue account from any source, public or
11 private.

12 (c) Revenue shall be disbursed in the manner provided in this
13 article and for the purposes stated in this article and may not be
14 treated by the Auditor and Treasurer as part of the general revenue
15 of the state.

16 **§5B-2H-3. Creation of Creative Communities Development Board.**

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

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

20 (2) The Commissioner of Agriculture or designee;

21 (3) The Secretary of the Department of Education and the Arts
22 or designee;

23 (4) The Executive Director of the Housing Development Fund or

1 designee;

2 (5) The Governor shall appoint with the advice and consent of
3 the Senate:

4 (A) One representative with general expertise on topics
5 related to:

6 (i) Broadband availability and adoption among consumers and
7 small businesses;

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

10 (iii) Issues related to public-private research opportunities
11 and commercialization strategies;

12 (B) One representative with general expertise on issues
13 related to:

14 (i) Sustainable economic and community development;

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

17 (iii) Arts, historical and cultural initiatives and their
18 economic impact on communities; and

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

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

23 (i) The value of diversity in a community and economy and how

1 to foster diversity;

2 (ii) Issues related to communication and education of
3 historical and cultural values; and

4 (iii) Organizational and institutional issues related to
5 diversity.

6 (b) The board may exercise all powers necessary to carry out
7 and effectuate its duties and decisions under this article. The
8 board shall appoint a secretary and the secretary shall take
9 minutes of all board proceedings. The minutes shall be held by the
10 Development Office.

11 (c) The Secretary of the Department of Commerce or designee
12 serves as chair of the board. The Commissioner of Agriculture or
13 designee serves as vice chair of the board.

14 (d) The Secretary of the Department of Commerce or designee,
15 the Commissioner of Agriculture or designee, the Secretary of the
16 Department of Education and the Arts or designee and the Executive
17 Director of the Housing Development Fund or designee are ineligible
18 to receive compensation for serving as board members. For each day
19 or portion of a day spent in the discharge of duties pursuant to
20 this article, the board shall pay from the fund to eligible members
21 the same compensation and expense reimbursement as is paid to
22 members of the Legislature for their interim duties.

23 (e) The Development Office shall provide administrative

1 support for the board.

2 (f) The board may meet on at least a bi-monthly basis.

3 **§5B-2H-4. Availability of funds; grant levels; matching**
4 **requirement.**

5 (a) All funds to be disbursed pursuant to a grant authorized
6 under this article may be made available only after the community
7 submits proper invoices in a timely manner to the Development
8 Office for expenditures authorized by the board as established in
9 the project agreement entered into pursuant to section eight of
10 this article.

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

14 (c) Cost overruns above the award amount established by the
15 board shall be borne by the community and are not eligible for
16 grant funds unless the community submits a request to the board for
17 additional grant funds and the board grants approval in writing
18 prior to the expenditure of the costs by the community.

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

20 (e) Matching funds may come from any source except that no
21 state funds from any source may be used for a match: *Provided,*
22 That the use of state funds for a project does not prohibit a
23 community from receiving grant funds pursuant to this article by

1 using matching funds from sources other than state funds.

2 (f) The following matching levels are applicable:

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

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

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

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

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

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

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

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

22 **§5B-2H-5. Application to creative communities development board**
23 **for matching funds.**

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (1) Total project cost;

10 (2) The amount of grant requested;

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

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

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

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

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

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

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

1 **§5B-2H-7. Review of applications by West Virginia Development**
2 **Office and Creative Communities Development Board.**

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

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

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

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

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

23 (f) The board may reject, modify or approve an application based

1 on how successfully the application meets the evaluation criteria.

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

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

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

13 **§5B-2H-8. Eligible expenditures of grant funds; agreement for use**
14 **of funds.**

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

1 expenses as may be necessary or incidental to the financing and the
2 construction or acquisition of the creative community development
3 or enhancement or completing the development or enhancement.

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

10 **§5B-2H-9. Creative communities development project agreement.**

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

14 (1) A statement that the information provided within the
15 application is true and correct, and that the applicant has read
16 and understands this article;

17 (2) The grant amount;

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

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

23 (5) A promise by the applicant not to assign or transfer any of

1 the rights, duties or obligations of the applicant without the
2 written consent of the Development Office;

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

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

9 (8) A commitment that the community will provide an annual
10 report to the Development Office detailing project status including
11 the percentage of the project that is complete and the number of
12 jobs created by the project; and

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

15 **§5B-2H-10. Material changes to project after grant award.**

16 If the community desires to make material changes to the
17 project, the applicant shall notify the Development Office prior to
18 the project change. The Development Office shall review the
19 proposed modification and determine whether the project should
20 continue to receive funds within established grant levels pursuant
21 to the grant award. The Development Office may refuse to reimburse
22 any costs expended pursuant to a material change without the prior
23 notification and approval of the modification by the Development

1 Office. If the Development Office determines that the modification
2 to the project is not subject to reimbursement, the community may
3 apply to the board for a modification to the exiting grant.

4 **§5B-2H-11. Audit and compliance.**

5 (a) The Development Office may review, including audit an
6 applicant's or a partner organization's records, including
7 financial statements and supporting records, relating to any
8 approved project. Records, including financial statements and
9 supporting records, must be retained by the applicant and all
10 partners for a minimum of three years after the completion of the
11 project.

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

15 **§5B-2H-12. Review of creative communities development pilot**
16 **program.**

17 On or before July 1, 2016, the Joint Committee on Government
18 and Finance shall conduct a performance review on the pilot
19 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.