

Senate Bill No. 227

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

Interim Bill

[Introduced January 20, 2011; referred to the Committee on Economic Development; then to the Committee on 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.

24 (A) "Applicant" means a community submitting an application

1 requesting grant funds pursuant to this article.

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

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

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

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

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

18 **§5B-2H-2. Creation of Creative Communities Development Fund.**

19 (a) All moneys collected for the purposes of the program shall
20 be deposited in a special State Treasury revenue account to be
21 known as the "Creative Communities Development Fund." Expenditures
22 from the special revenue account shall be for the purposes set
23 forth in this section and made in accordance with appropriations
24 from the Legislature and pursuant to the provisions of article

1 three, chapter twelve of this code and after the fulfilment of the
2 provisions of article two, chapter eleven-b of this code:
3 *Provided*, That for the fiscal year ending June 30, 2012,
4 expenditures are authorized from collections.

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

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

14 **§5B-2H-3. Creation of Creative Communities Development Board.**

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

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

18 (2) The Commissioner of Agriculture or designee;

19 (3) The Secretary of the Department of Education and the Arts
20 or designee;

21 (4) The Executive Director of the Housing Development Fund or
22 designee;

23 (5) The Governor shall appoint with the advice and consent of
24 the Senate:

1 (A) One representative with general expertise on topics
2 related to:

3 (I) Broadband availability and adoption among consumers and
4 small businesses;

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

7 (iii) Issues related to public-private research opportunities
8 and commercialization strategies;

9 (B) One representative with general expertise on issues
10 related to:

11 (I) Sustainable economic and community development;

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

14 (iii) Arts, historical and cultural initiatives and their
15 economic impact on communities; and

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

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

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

22 (ii) Issues related to communication and education of
23 historical and cultural values; and

24 (iii) Organizational and institutional issues related to

1 diversity.

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

7 (c) The Secretary of the Department of Commerce or designee
8 serves as chair of the board. The Commissioner of Agriculture or
9 designee serves as vice chair of the board.

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

19 (e) The Development Office shall provide administrative
20 support for the board.

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

22 **§5B-2H-4. Availability of funds; grant levels; matching**
23 **requirement.**

24 (a) All funds to be disbursed pursuant to a grant authorized

1 under this article may be made available only after the community
2 submits proper invoices in a timely manner to the Development
3 Office for expenditures authorized by the board as established in
4 the project agreement entered into pursuant to section eight of
5 this article.

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

9 (c) Cost overruns above the award amount established by the
10 board shall be borne by the community and are not eligible for
11 grant funds unless the community submits a request to the board for
12 additional grant funds and the board grants approval in writing
13 prior to the expenditure of the costs by the community.

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

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

20 (f) The following matching levels are applicable:

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

23 (2) For a community with a population more than or equal to
24 five thousand but less than fifteen thousand, the maximum grant

1 level per year is \$300,000;

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

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

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

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

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

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

16 **§5B-2H-5. Application to creative communities development board**
17 **for matching funds.**

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

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

24 (2) Whether the project will develop or enhance community

1 centers, arts, historical, cultural and recreational facilities;

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

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

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

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

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

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

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

17 (10) Whether colleges or universities are participating in the
18 project; and

19 (11) How the project will impact the attraction, retention,
20 and development of entrepreneurs in high-technology,
21 environmentally friendly, scientific, arts, historical, cultural,
22 design, engineering and similar industries.

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

1 (1) Total project cost;

2 (2) The amount of grant requested;

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

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

5 (c) The applicant in the application shall disclose the
6 following:

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

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

14 (3) If the applicant and all partner organizations are
15 presently in compliance with all state, federal and local laws,
16 including, but not limited to, tax obligations, insurance
17 obligations, including workers' compensation coverage and
18 unemployment compensation obligations; and

19 (4) If the applicant or partner organizations are presently
20 involved in a bankruptcy proceeding, who within their organization
21 may be contacted for details of the bankruptcy proceeding.
22 Involvement in bankruptcy proceedings is not automatic
23 disqualification from the grants program, but the commission
24 reserves the right to request additional information regarding any

1 bankruptcy proceedings to insure the state's money is being granted
2 appropriately.

3 (d) Failure to accurately disclose the information required
4 pursuant to subsection (c) of this section shall result in the
5 cancellation of any grant to the applicant previously approved by
6 the board and the disqualification of the community and its
7 representatives from future grant awards.

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

10 **§5B-2H-6. Rules.**

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

15 **§5B-2H-7. Review of applications by West Virginia Development
16 Office and Creative Communities Development Board.**

17 (a) The Development Office shall review all applications for
18 completeness and conformance to this article, including any
19 requirements established by the board. If an application is found
20 incomplete or not in conformance, the Development Office may return
21 the application to the applicant for additional information or
22 otherwise contact the applicant and request the information
23 required.

24 (b) Once the Development Office determines that an application

1 is complete and complies with the provisions of this article, the
2 Development Office shall evaluate and develop a recommendation for
3 the board as to whether the board should approve the application.

4 (c) In reviewing applications for submission to the board, the
5 Development Office shall make recommendations as to the priority of
6 all applications.

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

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

13 (f) The board may reject, modify or approve an application
14 based on how successfully the application meets the evaluation
15 criteria.

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

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

21 (i) Grant applicants failing to receive an award due to
22 funding limitations may revise the grant request according to
23 recommendations of the Development Office and board, and resubmit
24 a grant application along with a letter of request for

1 reconsideration in accordance with deadlines established by the
2 Development Office.

3 **§5B-2H-8. Eligible expenditures of grant funds; agreement for use**
4 **of funds.**

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

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

23 **§5B-2H-9. Creative communities development project agreement.**

24 The grant shall be finalized upon the entry of an agreement

1 between the Development Office and the applicant. The agreement
2 shall include, but is not limited to, the following:

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

6 (2) The grant amount;

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

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

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

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

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

21 (8) A commitment that the community will provide an annual
22 report to the Development Office detailing project status including
23 the percentage of the project that is complete and the number of
24 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,

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.