

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### Senate Bill 325

FISCAL  
NOTE

BY SENATORS MILLER, BEACH, KESSLER, KIRKENDOLL,  
LAIRD, PALUMBO, SNYDER, STOLLINGS, UNGER,  
WALTERS, WILLIAMS, WOELFEL, YOST AND PLYMALE

[Introduced January 19, 2016;  
Referred to the Committee on Economic  
Development; and then to the Committee on  
Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §5B-2I-1, §5B-2I-2, §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7, §5B-2I-  
 3 8, §5B-2I-9, §5B-2I-10, §5B-2I-11 and §5B-2I-12, all relating to Community Sustainability  
 4 Investment Pilot Program; providing legislative findings and intent; creating the fund;  
 5 establishing Community Sustainability Investment Board; providing requirements for  
 6 applications for use of matching funds from Community Sustainability Investment Fund;  
 7 providing for review of applications by West Virginia Development Office; establishing that  
 8 Community Sustainability Investment Board shall have authority to approve matching  
 9 grants from Community Sustainability Investment Fund; establishing matching  
 10 requirements from applicants; establishing eligible expenditures; and defining parameters  
 11 of agreement between West Virginia Development Office and a community for use.

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

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

**ARTICLE 2I. COMMUNITY SUSTAINABILITY INVESTMENT PILOT PROGRAM.**

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

1 The Legislature finds and declares that:

2 (1) The development and enhancement of communities in West Virginia with the ability to  
 3 thrive in the face of the economic and environmental challenges of the Twenty-First Century will  
 4 make for a stronger West Virginia by creating jobs, attracting new professions, and developing  
 5 additional sources of capital.

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

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

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

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

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

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

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

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

22           (4) This article may be cited as the “Community Sustainability Investment Act.”

23           (5) Definitions.

24           (A) “Applicant” means a community submitting an application requesting grant funds  
25 pursuant to this article.

26           (B) “Board” means the Community Sustainability Investment Board created pursuant to  
27 section three of this article.

28           (C) “Community” means a county or municipality in the State of West Virginia; a county or  
29 municipality development authority as that term is used in article twelve, chapter seven of this  
30 code; a metro government as defined in article one, chapter seven-a of this code; a state  
31 institution of higher education as defined in article one, chapter eighteen-b of this code; or a local  
32 government partnership as approved by the board.

33           (D) “Development Office” means the West Virginia Development Office.

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

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

**§5B-2I-2. Creation of Community Sustainability Investment Fund.**

1 (a) All moneys collected for the purposes of the program shall be deposited in a special  
2 State Treasury revenue account to be known as the "Community Sustainability Investment Fund."  
3 Expenditures from the special revenue account shall be for the purposes set forth in this section  
4 and made in accordance with appropriations from the Legislature and pursuant to article three,  
5 chapter twelve of this code and after the fulfilment of the provisions of article two, chapter eleven-  
6 b of this code: *Provided*, That for the fiscal year ending June 30, 2017, expenditures are  
7 authorized from collections.

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

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

**§5B-2I-3. Creation of Community Sustainability Investment Board.**

1 (a) The Community Sustainability Investment Board is created consisting of the following  
2 members:

- 3 (1) The Secretary of the Department of Commerce or designee;  
4 (2) The Commissioner of Agriculture or designee;  
5 (3) The Secretary of the Department of Education and the Arts or designee;  
6 (4) The Executive Director of the Housing Development Fund or designee;

- 7           (5) The Governor shall appoint with the advice and consent of the Senate:
- 8           (A) One representative with general expertise on topics related to:
- 9           (i) Broadband availability and adoption among consumers and small businesses;
- 10           (ii) Issues related to very high-speed broadband availability for larger organizations with
- 11 high-bandwidth requirements; and
- 12           (iii) Issues related to public-private research opportunities and commercialization
- 13 strategies;
- 14           (B) One representative with general expertise on issues related to:
- 15           (i) Sustainable economic and community development;
- 16           (ii) Housing and real estate, including “creative class”- themed requirements;
- 17           (iii) Arts, historical and cultural initiatives and their economic impact on communities; and
- 18           (iv) Issues related to the impact of “third places”- historical, cultural and outdoor amenities,
- 19 restaurants, entertainment services and other similar services; and
- 20           (C) One representative with general expertise related to:
- 21           (i) The value of diversity in a community and economy and how to foster diversity;
- 22           (ii) Issues related to communication and education of historical and cultural values; and
- 23           (iii) Organizational and institutional issues related to diversity.
- 24           (b) The board may exercise all powers necessary to carry out and effectuate its duties and
- 25 decisions under this article. The board shall appoint a secretary and the secretary shall take
- 26 minutes of all board proceedings. The minutes shall be held by the Development Office.
- 27           (c) The Secretary of the Department of Commerce or designee serves as chair of the
- 28 board. The Commissioner of Agriculture or designee serves as vice chair of the board.
- 29           (d) The Secretary of the Department of Commerce or designee, the Commissioner of
- 30 Agriculture or designee, the Secretary of the Department of Education and the Arts or designee
- 31 and the Executive Director of the Housing Development Fund or designee are ineligible to receive
- 32 compensation for serving as board members. For each day or portion of a day spent in the

33 discharge of duties pursuant to this article, the board shall pay from the fund to eligible members  
34 the same compensation and expense reimbursement as is paid to members of the Legislature for  
35 their interim duties.

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

37 (f) The board shall meet on at least a bi-monthly basis.

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

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

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

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

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

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

16 (f) The following matching levels are applicable:

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

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

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

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

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

27 (1) A state institution of higher education as defined in article one, chapter eighteen-b of  
28 this code;

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

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

**§5B-2I-5. Application to Community Sustainability Investment Board for matching funds.**

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (1) Total project cost;

27 (2) The amount of grant requested;

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

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

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

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

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

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

39 (4) If the applicant or partner organizations are presently involved in a bankruptcy  
40 proceeding, who within their organization may be contacted for details of the bankruptcy

41 proceeding. Involvement in bankruptcy proceedings is not automatic disqualification from the  
42 grants program, but the commission reserves the right to request additional information regarding  
43 any bankruptcy proceedings to insure the state's money is being granted appropriately.

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

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

**§5B-2I-6. Rules.**

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

**§5B-2I-7. Review of applications by West Virginia Development Office and Community**  
**Sustainability Investment Board.**

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

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

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

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

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

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

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

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

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

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

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

9 (b) Notwithstanding the provisions of subsection (a) of this subsection, the board may limit  
10 the expenditures of any proposed grant in approving or modifying an application. The board may  
11 direct the Development Office to place requirements on the use of grant funds as part of any

12 Community Sustainability Investment Project Agreement entered into pursuant to section nine of  
13 this article.

**§5B-2I-9. Community Sustainability Investment Project Agreement.**

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

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

5 (2) The grant amount;

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

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

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

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

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

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

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

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

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

**§5B-2I-11. Audit and compliance.**

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

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

**§5B-2I-12. Review of Community Sustainability Investment Pilot Program.**

1 On or before July 1, 2019, the Joint Committee on Government & Finance shall conduct  
2 a performance review on the pilot program.

NOTE: The purpose of this bill is to develop a matching grant program to foster the development of creative communities in West Virginia. The bill creates the Community Sustainability Investment Pilot Program. The bill makes legislative findings and declares its intent. The bill creates the Community Sustainability Investment Fund. The bill establishes the Community Sustainability Investment Board. The bill provides requirements for applications for the use of matching funds from the Community Sustainability Investment Fund. The bill provides for review of applications by the West Virginia Development Office. The bill establishes that the Community Sustainability Investment Board has the authority to approve matching grants from Community Sustainability Investment Fund. The bill establishes matching requirements from

applicants. The bill establishes eligible expenditures. The bill establishes parameters of agreement between the Development Office and a community for use of grant funds. The bill provides for a review and audit of expenditures by the Development Office. The bill and provides for a performance review of Community Sustainability Investment Pilot Program.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.