

H. B. 2422

(By Delegates Moore, Kominar, Varner and T. Campbell)
[Introduced January 12, 2011; referred to the
Committee on Energy, Industry and Labor, Economic
Development and Small Business then Finance.]

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 and §5B-2H-11, all relating to the
Creative Communities Development Pilot Program; pronouncing
legislative finding 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
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,
10 §5B-2H-9, §5B-2H-10 and §5B-2H-11, 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:

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

3 (B) Developing community centers, arts, cultural and
4 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, socio-economic, and cultural
11 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.

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

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

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

11 (E) "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." Expenditures
17 from the special revenue account shall be for the purposes set
18 forth in this section and made in accordance with appropriations
19 from the Legislature and pursuant to the provisions of article
20 three, chapter twelve of this code and after the fulfilment of the
21 provisions of article two, chapter eleven-b of this code:
22 Provided, That for the fiscal year ending June 30, 2011
23 expenditures are authorized from collections.

24 (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) There is created a Creative Communities Development Board
11 consisting of the following seven 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 President of Vision Shared, Inc. or any successor
19 nonprofit organization;

20 (6) The Executive Director of West Virginia Coalition for
21 Technology Based Economic Development, Inc. or any successor
22 nonprofit organization; and

23 (7) The Executive Director of Creative Communities Network,
24 Inc. or any successor nonprofit organization.

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

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

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

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

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

21 **§5B-2H-4. Availability of funds; grant levels; matching**
22 **requirement.**

23 (a) All funds disbursed pursuant to a grant authorized under
24 this article shall be made only after the community submits proper

1 invoices in a timely manner to the Development Office for
2 expenditures authorized by the board as established in the project
3 agreement entered into pursuant to section eight of this article.

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

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

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

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

18 (f) The following matching levels are applicable:

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

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

24 (3) For a community with a population more than or equal to

1 fifteen thousand but less than thirty thousand, the maximum grant
2 level per year is \$500,000; and

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

5 (g) Notwithstanding the provisions of subsection (f) of this
6 section, the maximum grant level per year is \$1 million for a
7 community that is: (1) A metro government as defined in article
8 one of chapter seven-a of this code; or (2) is a state institution
9 of higher learning as defined in article one of chapter eighteen-a
10 of this code.

11 **§5B-2H-5. Application to creative communities development board**
12 **for matching funds.**

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

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

19 (2) Whether the project will develop or enhance community
20 centers, arts, cultural and recreational facilities;

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

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

1 (5) Whether the project will foster the development of
2 diversity and inclusiveness programs that help bridge ethnic,
3 socio-economic, and cultural divides;

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

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

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

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

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

14 (11) How the project will impact the attraction, retention,
15 and development of entrepreneurs in high-technology,
16 environmentally friendly, scientific, arts, cultural, design,
17 engineering, and similar industries.

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

20 (1) Total project cost;

21 (2) The amount of grant requested;

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

23 (4) Any other information required by the board;

24 (c) The applicant in the application shall disclose the

1 following:

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

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

9 (3) If the applicant and all partner organizations are
10 presently in compliance with all state, federal and local laws,
11 including, but not limited to, tax obligations, insurance
12 obligations (including workers compensation coverage), and
13 unemployment compensation obligations;

14 (4) If the applicant or partner organizations are presently
15 involved in a bankruptcy proceeding, and who within their
16 organization may be contacted for details of the bankruptcy
17 proceeding. Involvement in bankruptcy proceedings is not automatic
18 disqualification from the grants program, but the commission
19 reserves the right to request additional information regarding any
20 bankruptcy proceedings to insure the state's money is being granted
21 appropriately.

22 (d) Failure to accurately disclose the information required
23 pursuant to subsection (c) of this section shall result in the
24 cancellation of any grant to the applicant previously approved by

1 the board and the disqualification of the community and its
2 representatives from future grant awards.

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

5 **§5B-2H-6. Review of applications by West Virginia Development**
6 **Office and Creative Communities Development Board.**

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

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

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

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

24 (e) Grants will be awarded on a competitive basis, in

1 accordance with the criteria established by section five of this
2 article.

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

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

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

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

17 **§5B-2H-7. Eligible expenditures of grant funds; agreement for**
18 **use of funds.**

19 (a) A community may use grant funds for the following: cost of
20 improvements, repairs, and renovations, costs of all lands, water
21 areas, property rights and easements, financing charges, interest
22 prior to and during construction cost of architectural,
23 engineering, legal, planning, and financial or other consulting
24 services, plans, site assessments, site remediation costs,

1 specifications and surveys, estimates of costs and any other
2 expenses necessary or incident to determining the feasibility or
3 practicability of any project, together with such other costs and
4 expenses as may be necessary or incidental to the financing and the
5 construction or acquisition of the creative community development
6 or enhancement or completing the development or enhancement.

7 (b) Notwithstanding the provisions of subsection (a) of this
8 subsection, the board may limit the expenditures of any proposed
9 grant in approving or modifying an application. The board may
10 direct the Development Office to place requirements on the use of
11 grant funds as part of any Creative Communities Development Project
12 Agreement entered into pursuant to section eight of this article.

13 **§5B-2H-8. Creative communities development project agreement.**

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

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

20 (2) The grant amount;

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

24 (4) A commitment of the applicant to submit proper invoices in

1 a timely fashion for authorized expenses;

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

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

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

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

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

17 **§5B-2H-9. Material changes to project after grant award.**

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

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

5 **§5B-2H-10. Audit and compliance.**

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

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

16 **§5B-2H-11. Review of creative communities development pilot**
17 **program.**

18 On or before July 1, 2015, the Joint Committee on Government
19 and Finance shall conduct a performance review on the pilot
20 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 article is new; therefore, it has been completely underscored.