

COMMITTEE SUBSTITUTE

FOR

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FOR

## **Senate Bill No. 227**

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

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[Originating in the Committee on Finance;  
reported February 15, 2011.]

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

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

That the Code of West Virginia, 1931, as amended, be 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 to read as follows:

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

**§5B-2H-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  
3 West Virginia with the ability to thrive in the face of the  
4 economic and environmental challenges of the twenty-first  
5 century will make for a stronger West Virginia by creating  
6 jobs, attracting new professions, and developing additional  
7 sources of capital.

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

13 (A) Providing access to technological advances among  
14 citizens, business, nonprofit entities, and governmental  
15 entities;

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

18 (C) Providing aesthetic improvements to existing commu-  
19 nities and infrastructure;

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

22 (E) Fostering the development of diversity and inclusive-  
23 ness programs that help bridge ethnic, socioeconomic,  
24 historical and cultural divides; and

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

27 (3) It is the intent of the Legislature in enacting this article  
28 to create a matching grant pilot program to foster the  
29 implementation of innovative planning strategies to develop  
30 and expand communities that can maximize emerging  
31 economic opportunities and environmental challenges and  
32 thrive in the twenty-first century.

33 (4) This article may be cited as the “Creative Communities  
34 Development Act.”

35 (5) Definitions.

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

38 (B) “Board” means the Creative Communities Development  
39 Board created pursuant to section three of this article.

40 (C) “Community” means a county or municipality in the  
41 State of West Virginia; a county or municipality development  
42 authority created pursuant to article twelve of chapter seven  
43 of this code; a metro government as defined in article one of

44 chapter seven-a of this code; a state institution of higher  
45 learning as defined in section two, article one of chapter  
46 eighteen-b of this code; or a local government partnership as  
47 approved by the board.

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

50 (E) “Local government partnership” means a partnership  
51 between governmental entities that has been approved by the  
52 board under the rules promulgated pursuant to section six of  
53 this article.

54 (F) “Project” means a plan submitted by an applicant for  
55 matching grant funds pursuant to this article.

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

1 (a) All moneys collected for the purposes of the program  
2 shall be deposited in a special State Treasury revenue  
3 account to be known as the “Creative Communities Develop-  
4 ment Fund”. The Creative Communities Development Fund  
5 is a permanent and perpetual fund administered by the  
6 development office. Expenditures from the fund shall be for  
7 the purposes set forth in this section and made and are  
8 authorized from collection and not legislative appropria-  
9 tions. Creative Communities Development Fund amounts not

10 expended at the close of the fiscal year do not lapse or revert  
11 to the General Fund but are carried forward to the next  
12 fiscal year. Interest earnings on the fund become a part of the  
13 fund and do not lapse or revert to the General Fund.

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

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

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

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

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

5 (2) The Commissioner of Agriculture or designee;

6 (3) The Secretary of the Department of Education and the  
7 Arts or designee;

8 (4) The Executive Director of the Housing Development  
9 Fund or designee;

10 (5) The Governor shall appoint with the advice and consent  
11 of the Senate:

12 (A) One representative with general expertise on topics  
13 related to:

14 (i) Broadband availability and adoption among consumers  
15 and small businesses;

16 (ii) Issues related to very high-speed broadband availabil-  
17 ity for larger organizations with high-bandwidth require-  
18 ments; and

19 (iii) Issues related to public-private research opportunities  
20 and commercialization strategies;

21 (B) One representative with general expertise on issues  
22 related to:

23 (i) Sustainable economic and community development;

24 (ii) Housing and real estate, including “creative class”-  
25 themed requirements;

26 (iii) Arts, historical and cultural initiatives and their  
27 economic impact on communities; and

28 (iv) Issues related to the impact of “third places”- histori-  
29 cal, cultural and outdoor amenities, restaurants, entertain-  
30 ment services and other similar services; and

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

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

34 (ii) Issues related to communication and education of  
35 historical and cultural values; and

36 (iii) Organizational and institutional issues related to  
37 diversity.

38 (b) The board may exercise all powers necessary to carry  
39 out and effectuate its duties and decisions under this article.

40 The board shall appoint a secretary and the secretary shall  
41 take minutes of all board proceedings. The minutes shall be  
42 held by the Development Office.

43 (c) The Secretary of the Department of Commerce or  
44 designee serves as chair of the board. The Commissioner of  
45 Agriculture or designee serves as vice chair of the board.

46 (d) The Secretary of the Department of Commerce or  
47 designee, the Commissioner of Agriculture or designee, the  
48 Secretary of the Department of Education and the Arts or  
49 designee and the Executive Director of the Housing Develop-  
50 ment Fund or designee are ineligible to receive compensation  
51 for serving as board members. For each day or portion of a  
52 day spent in the discharge of duties pursuant to this article,



53 the board shall pay from the fund to eligible members the  
54 same compensation and expense reimbursement as is paid to  
55 members of the Legislature for their interim duties.

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

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

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

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

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

11 (c) Cost overruns above the award amount established by  
12 the board shall be borne by the community and are not  
13 eligible for grant funds unless the community submits a  
14 request to the board for additional grant funds and the board

15 grants approval in writing prior to the expenditure of the  
16 costs by the community.

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

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

24 (f) The following matching levels are applicable:

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

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

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

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

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

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

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

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

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

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

4 (1) Whether the project will provide or expand access to  
5 technological advances among citizens, business, nonprofit  
6 entities 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 improve-  
10 ments to existing communities and infrastructure;

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

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

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

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

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

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

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

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

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

- 33 (1) Total project cost;
- 34 (2) The amount of grant requested;
- 35 (3) The estimated completion date for the project; and
- 36 (4) Any other information required by the board.
- 37 (c) The applicant in the application shall disclose the
- 38 following:
- 39 (1) Any financial benefit that will be received, if the
- 40 application is approved, by any entity in which the appli-
- 41 cant, its representatives, partner organizations, or its
- 42 employees have an ownership interest;
- 43 (2) Any other employees or representatives of the applicant
- 44 or partner organizations may have with a vested interest that
- 45 is not otherwise described as part of the project;
- 46 (3) If the applicant and all partner organizations are
- 47 presently in compliance with all state, federal and local laws,
- 48 including, but not limited to, tax obligations, insurance
- 49 obligations, including workers' compensation coverage and
- 50 unemployment compensation obligations; and
- 51 (4) If the applicant or partner organizations are presently
- 52 involved in a bankruptcy proceeding, who within their
- 53 organization may be contacted for details of the bankruptcy
- 54 proceeding. Involvement in bankruptcy proceedings is not

55 automatic disqualification from the grants program, but the  
56 commission reserves the right to request additional informa-  
57 tion regarding any bankruptcy proceedings to insure the  
58 state's money is being granted appropriately.

59 (d) Failure to accurately disclose the information required  
60 pursuant to subsection (c) of this section shall result in the  
61 cancellation of any grant to the applicant previously ap-  
62 proved by the board and the disqualification of the commu-  
63 nity and its representatives from future grant awards.

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

**§5B-2H-6. Rules.**

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

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

1 (a) The Development Office shall review all applications  
2 for completeness and conformance to this article, including

3 any requirements established by the board. If an application  
4 is found incomplete or not in conformance, the Development  
5 Office may return the application to the applicant for  
6 additional information or otherwise contact the applicant  
7 and request the information required.

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

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

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

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

22 (f) The board may reject, modify or approve an application  
23 based on how successfully the application meets the evalua-  
24 tion criteria.

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

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

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

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

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



10 together with other costs and expenses as may be necessary  
11 or incidental to the financing and the construction or  
12 acquisition of the creative community development or  
13 enhancement or completing the development or enhance-  
14 ment.

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

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

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

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

7 (2) The grant amount;

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

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

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

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

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

22 (8) A commitment that the community will provide an  
23 annual report to the Development Office detailing project  
24 status including the percentage of the project that is com-  
25 plete and the number of jobs created by the project; and

26 (9) Any other condition required by the board as a condi-  
27 tion of the approval of any authorized grant.

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

1 If the community desires to make material changes to the  
2 project, the applicant shall notify the Development Office  
3 prior to the project change. The Development Office shall  
4 review the proposed modification and determine whether the

5 project should continue to receive funds within established  
6 grant levels pursuant to the grant award. The Development  
7 Office may refuse to reimburse any costs expended pursuant  
8 to a material change without the prior notification and  
9 approval of the modification by the Development Office. If  
10 the Development Office determines that the modification to  
11 the project is not subject to reimbursement, the community  
12 may apply to the board for a modification to the exiting  
13 grant.

**§5B-2H-11. Audit and compliance.**

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

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

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

- 1 On or before July 1, 2016, the Joint Committee on Govern-
- 2 ment and Finance shall conduct a performance review on the
- 3 pilot program.

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(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.)