

Senate Bill No. 122

(By Senators Miller and McCabe)

[Introduced February 13, 2013; referred to the Committee on
Economic Development; and then to the Committee on Finance.]

**FISCAL
NOTE**

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §5B-2I-1, §5B-2I-2,
12 §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7, §5B-2I-8,
13 §5B-2I-9, §5B-2I-10, §5B-2I-11 and §5B-2I-12, all relating to
14 the Creative Communities Development Pilot Program; providing
15 legislative findings and intent; creating the Creative
16 Communities Development Fund; establishing the Creative
17 Communities Development Board; providing requirements for
18 applications for the use of matching funds from the Creative
19 Communities Development Fund; providing for review of
20 applications by the West Virginia Development Office;
21 establishing that the Creative Communities Development Board
22 shall have the authority to approve matching grants from
23 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-2I-1, §5B-2I-2,
10 §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7, §5B-2I-8,
11 §5B-2I-9, §5B-2I-10, §5B-2I-11 and §5B-2I-12, all to read as
12 follows:

13 **ARTICLE 2I. CREATIVE COMMUNITIES DEVELOPMENT PILOT PROGRAM.**

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

16 The Legislature finds and declares that:

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

22 (2) The public policy of the state will be served through a
23 matching grant pilot program designed to foster innovative planning

1 to enhance communities with the following key foundations of
2 economic and environmental sustainability, including:

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

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

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

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

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

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

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

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

1 (5) Definitions.

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

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

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

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

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

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

20 **§5B-2I-2. Creation of Creative Communities Development Fund.**

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

1 from the special revenue account shall be for the purposes set
2 forth in this section and made in accordance with appropriations
3 from the Legislature and pursuant to the provisions of article
4 three, chapter twelve of this code and after the fulfilment of the
5 provisions of article two, chapter eleven-b of this code:
6 *Provided*, That for the fiscal year ending June 30, 2014,
7 expenditures are authorized from collections.

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

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

17 **§5B-2I-3. Creation of Creative Communities Development Board.**

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

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

21 (2) The Commissioner of Agriculture or designee;

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

1 (4) The Executive Director of the Housing Development Fund or
2 designee;

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

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

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

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

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

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

15 (i) Sustainable economic and community development;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (e) Matching funds may come from any source except that no
22 state funds from any source may be used for a match: *Provided,*
23 That the use of state funds for a project does not prohibit a

1 community from receiving grant funds pursuant to this article by
2 using matching funds from sources other than state funds.

3 (f) The following matching levels are applicable:

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

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

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

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

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

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

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

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

23 **§5B-2I-5. Application to creative communities development board**

1 **for matching funds.**

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

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

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

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

12 (4) Whether the project will foster academic innovation in
13 kindergarten through twelfth grade and lifelong learning 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 other
20 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

1 established for investment in the project;

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

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

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

10 (1) Total project cost;

11 (2) The amount of grant requested;

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

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

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

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

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

23 (3) If the applicant and all partner organizations are

1 presently in compliance with all state, federal and local laws,
2 including, but not limited to, tax obligations, insurance
3 obligations, including workers' compensation coverage and
4 unemployment compensation obligations; and

5 (4) If the applicant or partner organizations are presently
6 involved in a bankruptcy proceeding, who within their organization
7 may be contacted for details of the bankruptcy proceeding.
8 Involvement in bankruptcy proceedings is not automatic
9 disqualification from the grants program, but the commission
10 reserves the right to request additional information regarding any
11 bankruptcy proceedings to insure the state's money is being granted
12 appropriately.

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

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

20 **§5B-2I-6. Rules.**

21 The board with the assistance of the Development Office shall
22 propose rules, for legislative approval in accordance with article
23 three, chapter twenty-nine-a of this code to determine the

1 standards of eligibility for local government partnerships.

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

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

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

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

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

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

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

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

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

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

15 **§5B-2I-8. Eligible expenditures of grant funds; agreement for use**
16 **of funds.**

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

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

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

12 **§5B-2I-9. Creative communities development project agreement.**

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

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

19 (2) The grant amount;

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

23 (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 must be completed by the
8 ending 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-2I-10. 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

1 any costs expended pursuant to a material change without the prior
2 notification and approval of the modification by the Development
3 Office. If the Development Office determines that the modification
4 to the project is not subject to reimbursement, the community may
5 apply to the board for a modification to the exiting grant.

6 **§5B-2I-11. Audit and compliance.**

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

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

17 **§5B-2I-12. Review of creative communities development pilot**
18 **program.**

19 On or before July 1, 2018, the Joint Committee on Government
20 and Finance shall conduct a performance review on the pilot
21 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, strike-throughs and underscoring have been omitted.