

Senate Bill No. 135

(By Senators Miller and Williams)

[Introduced January 14, 2015; referred to the Committee on Government Organization; and 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-2I-1, §5B-2I-2, §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7, §5B-2I-8, §5B-2I-9, §5B-2I-10, §5B-2I-11 and §5B-2I-12, all relating to the Creative Communities Development Pilot Program; providing legislative findings and intent; creating the Creative Communities Development Fund; establishing Creative Communities Development Board; providing requirements for applications for use of matching funds from Creative Communities Development Fund; providing for review of applications by West Virginia Development Office; establishing that Creative Communities Development Board shall have 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 review and audit of expenditures by West

1 Virginia Development Office; and providing for review of Creative Communities
2 Development Pilot Program.

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

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

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

8 **§5B-2I-1. Purposes and objectives; short title; legislative findings; definitions.**

9 The Legislature finds and declares that:

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

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

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

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

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

21 (D) Fostering academic innovation in kindergarten through twelfth-grade and lifelong

1 learning programs;

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

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

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

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

10 (5) Definitions.

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

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

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

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

21 (E) “Local government partnership” means a partnership between governmental entities that

1 has been approved by the board under the rules promulgated pursuant to section six of this article.

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

4 **§5B-2I-2. Creation of Creative Communities Development Fund.**

5 (a) All moneys collected for the purposes of the program shall be deposited in a special State
6 Treasury revenue account to be known as the "Creative Communities Development Fund."
7 Expenditures from the special revenue account shall be for the purposes set forth in this section and
8 made in accordance with appropriations from the Legislature and pursuant to article three, chapter
9 twelve of this code and after the fulfilment of the provisions of article two, chapter eleven-b of this
10 code: *Provided*, That for the fiscal year ending June 30, 2016, expenditures are authorized from
11 collections.

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

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

18 **§5B-2I-3. Creation of Creative Communities Development Board.**

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

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

- 1 (2) The Commissioner of Agriculture or designee;
- 2 (3) The Secretary of the Department of Education and the Arts or designee;
- 3 (4) The Executive Director of the Housing Development Fund or designee;
- 4 (5) The Governor shall appoint with the advice and consent of the Senate:
 - 5 (A) One representative with general expertise on topics related to:
 - 6 (i) Broadband availability and adoption among consumers and small businesses;
 - 7 (ii) Issues related to very high-speed broadband availability for larger organizations with
 - 8 high-bandwidth requirements; and
 - 9 (iii) Issues related to public-private research opportunities and commercialization strategies;
 - 10 (B) One representative with general expertise on issues related to:
 - 11 (i) Sustainable economic and community development;
 - 12 (ii) Housing and real estate, including “creative class”- themed requirements;
 - 13 (iii) Arts, historical and cultural initiatives and their economic impact on communities; and
 - 14 (iv) Issues related to the impact of “third places”- historical, cultural and outdoor amenities,
 - 15 restaurants, entertainment services and other similar services; and
 - 16 (C) One representative with general expertise related to:
 - 17 (i) The value of diversity in a community and economy and how to foster diversity;
 - 18 (ii) Issues related to communication and education of historical and cultural values; and
 - 19 (iii) Organizational and institutional issues related to diversity.
- 20 (b) The board may exercise all powers necessary to carry out and effectuate its duties and
- 21 decisions under this article. The board shall appoint a secretary and the secretary shall take minutes

1 of all board proceedings. The minutes shall be held by the Development Office.

2 (c) The Secretary of the Department of Commerce or designee serves as chair of the board.

3 The Commissioner of Agriculture or designee serves as vice chair of the board.

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

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

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

13 **§5B-2I-4. Availability of funds; grant levels; matching requirement.**

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

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

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

1 for additional grant funds and the board grants approval in writing prior to the expenditure of the
2 costs by the community.

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

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

8 (f) The following matching levels are applicable:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (1) Total project cost;

8 (2) The amount of grant requested;

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

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

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

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

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

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

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

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

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

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

8 **§5B-2I-6. Rules.**

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

12 **§5B-2I-7. Review of applications by West Virginia Development Office and Creative**
13 **Communities Development Board.**

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **§5B-2I-9. Creative communities development project agreement.**

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

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

13 (2) The grant amount;

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

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

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

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

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

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

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

8 **§5B-2I-10. Material changes to project after grant award.**

9 If the community desires to make material changes to the project, the applicant shall notify
10 the Development Office prior to the project change. The Development Office shall review the
11 proposed modification and determine whether the project should continue to receive funds within
12 established grant levels pursuant to the grant award. The Development Office may refuse to
13 reimburse any costs expended pursuant to a material change without the prior notification and
14 approval of the modification by the Development Office. If the Development Office determines that
15 the modification to the project is not subject to reimbursement, the community may apply to the
16 board for a modification to the exiting grant.

17 **§5B-2I-11. Audit and compliance.**

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

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

3 **§5B-2I-12. Review of creative communities development pilot program.**

4 On or before July 1, 2019, the Joint Committee on Government Operations shall conduct a
5 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 Creative Communities Development Pilot Program. The bill makes legislative findings and declares its intent. The bill creates the Creative Communities Development Fund. The bill establishes the Creative Communities Development Board. The bill provides requirements for applications for the use of matching funds from the Creative Communities Development Fund. The bill provides for review of applications by the West Virginia Development Office. The bill establishes that the Creative Communities Development Board has the authority to approve matching grants from Creative Communities Development 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 review of Creative Communities Development Pilot Program.

This article is new; therefore, strike-throughs and underscoring have been omitted.