

1 **H. B. 3264**

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3 (By Delegates Fragale, Paxton and Iaquinta)
4 [Introduced February 21, 2011; referred to the
5 Committee on Education then Finance.]
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10 A BILL to amend and reenact §29-22-18a of the Code of West
11 Virginia, 1931, as amended, relating to designating \$10
12 million of the State Excess Lottery Revenue Fund for the
13 funding of high school and middle school athletics.

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

15 That §29-22-18a of the Code of West Virginia, 1931, as
16 amended, be amended and reenacted to read as follows:

17 **ARTICLE 22. STATE LOTTERY ACT.**

18 **§29-22-18a. State Excess Lottery Revenue Fund.**

19 (a) The State Lottery Fund in the State Treasury which is
20 designated and known as the State Excess Lottery Revenue Fund is
21 continued. The fund consists of all appropriations to the fund and
22 all interest earned from investment of the fund and any gifts,
23 grants or contributions received by the fund. All revenues

1 received under the provisions of sections ten-b and ten-c, article
2 twenty-two-a of this chapter and under article twenty-two-b of this
3 chapter, except the amounts due the commission under subdivision
4 (1), subsection (a), section one thousand four hundred eight,
5 article twenty-two-b of this chapter, shall be deposited in the
6 State Treasury and placed into the State Excess Lottery Revenue
7 Fund. The revenue shall be disbursed in the manner provided in
8 this section for the purposes stated in this section and shall not
9 be treated by the State Auditor and the State Treasurer as part of
10 the general revenue of the state.

11 (b) For the fiscal year beginning July 1, 2002, the commission
12 shall deposit: (1) \$65 million into the subaccount of the State
13 Excess Lottery Revenue Fund hereby created in the State Treasury to
14 be known as the general purpose account to be expended pursuant to
15 appropriation of the Legislature; (2) \$10 million into the
16 Education Improvement Fund for appropriation by the Legislature to
17 the PROMISE Scholarship Fund created in section seven, article
18 seven, chapter eighteen-c of this code; (3) \$19 million into the
19 Economic Development Project Fund created in subsection (e) of this
20 section for the issuance of revenue bonds and to be spent in
21 accordance with the provisions of said subsection; (4) \$20 million
22 into the School Building Debt Service Fund created in section six,
23 article nine-d, chapter eighteen of this code for the issuance of
24 revenue bonds; (5) \$40 million into the West Virginia

1 Infrastructure Fund created in section nine, article fifteen-a,
2 chapter thirty-one of this code to be spent in accordance with the
3 provisions of said article; (6) \$10 million into the Higher
4 Education Improvement Fund for Higher Education; and (7) \$5 million
5 into the State Park Improvement Fund for park improvements. For
6 the fiscal year beginning July 1, 2003, the commission shall
7 deposit: (1) \$65 million into the general purpose account to be
8 expended pursuant to appropriation of the Legislature; (2) \$17
9 million into the Education Improvement Fund for appropriation by
10 the Legislature to the PROMISE Scholarship Fund created in section
11 seven, article seven, chapter eighteen-c of this code; (3) \$19
12 million into the Economic Development Project Fund created in
13 subsection (e) of this section for the issuance of revenue bonds
14 and to be spent in accordance with the provisions of said
15 subsection; (4) \$20 million into the School Building Debt Service
16 Fund created in section six, article nine-d, chapter eighteen of
17 this code for the issuance of revenue bonds; (5) \$40 million into
18 the West Virginia Infrastructure Fund created in section nine,
19 article fifteen-a, chapter thirty-one of this code to be spent in
20 accordance with the provisions of said article; (6) \$10 million
21 into the Higher Education Improvement Fund for Higher Education;
22 and (7) \$7 million into the State Park Improvement Fund for park
23 improvements.

24 (c) For the fiscal year beginning July 1, 2004, and subsequent

1 fiscal years through the fiscal year ending June 30, 2009, the
2 commission shall deposit: (1) \$65 million into the general purpose
3 account to be expended pursuant to appropriation of the
4 Legislature; (2) \$27 million into the Education Improvement Fund
5 for appropriation by the Legislature to the PROMISE Scholarship
6 Fund created in section seven, article seven, chapter eighteen-c of
7 this code; (3) \$19 million into the Economic Development Project
8 Fund created in subsection (e) of this section for the issuance of
9 revenue bonds and to be spent in accordance with the provisions of
10 said subsection; (4) \$19 million into the School Building Debt
11 Service Fund created in section six, article nine-d, chapter
12 eighteen of this code for the issuance of revenue bonds: *Provided,*
13 That for the fiscal year beginning July 1, 2008, and subsequent
14 fiscal years, no moneys shall be deposited in the School Building
15 Debt Service Fund pursuant to this subsection and instead \$19
16 million shall be deposited into the Excess Lottery School Building
17 Debt Service Fund; (5) \$40 million into the West Virginia
18 Infrastructure Fund created in section nine, article fifteen-a,
19 chapter thirty-one of this code to be spent in accordance with the
20 provisions of said article; (6) \$10 million into the Higher
21 Education Improvement Fund for Higher Education; and (7) \$5 million
22 into the State Park Improvement Fund for Park Improvements. No
23 portion of the distributions made as provided in this subsection
24 and subsection (b) of this section, except distributions made in

1 connection with bonds issued under subsection (e) of this section,
2 may be used to pay debt service on bonded indebtedness until after
3 the Legislature expressly authorizes issuance of the bonds and
4 payment of debt service on the bonds through statutory enactment or
5 the adoption of a concurrent resolution by both houses of the
6 Legislature. Until subsequent legislative enactment or adoption of
7 a resolution that expressly authorizes issuance of the bonds and
8 payment of debt service on the bonds with funds distributed under
9 this subsection and subsection (b) of this section, except
10 distributions made in connection with bonds issued under subsection
11 (d) of this section, the distributions may be used only to fund
12 capital improvements that are not financed by bonds and only
13 pursuant to appropriation of the Legislature.

14 (d) For the fiscal year beginning July 1, 2009, and subsequent
15 fiscal years, the commission shall deposit: (1) \$65 million into
16 the General Purpose Account to be expended pursuant to
17 appropriation of the Legislature; (2) \$29 million into the
18 Education Improvement Fund for appropriation by the Legislature to
19 the PROMISE Scholarship Fund created in section seven, article
20 seven, chapter eighteen-c of this code; (3) \$19 million into the
21 Economic Development Project Fund created in subsection (e) of this
22 section for the issuance of revenue bonds and to be spent in
23 accordance with the provisions of said subsection; (4) \$19 million
24 into the Excess Lottery School Building Debt Service Fund created

1 in section six, article nine-d, chapter eighteen of this code; (5)
2 \$40 million into the West Virginia Infrastructure Fund created in
3 section nine, article fifteen-a, chapter thirty-one of this code to
4 be spent in accordance with the provisions of said article; (6) \$10
5 million into the Higher Education Improvement Fund for Higher
6 Education; and (7) \$5 million into the State Park Improvement Fund
7 for park improvements. No portion of the distributions made as
8 provided in this subsection and subsection (b) of this section,
9 except distributions made in connection with bonds issued under
10 subsection (e) of this section, may be used to pay debt service on
11 bonded indebtedness until after the Legislature expressly
12 authorizes issuance of the bonds and payment of debt service on the
13 bonds through statutory enactment or the adoption of a concurrent
14 resolution by both houses of the Legislature. Until subsequent
15 legislative enactment or adoption of a resolution that expressly
16 authorizes issuance of the bonds and payment of debt service on the
17 bonds with funds distributed under this subsection and subsection
18 (b) of this section, except distributions made in connection with
19 bonds issued under subsection (e) of this section, the
20 distributions may be used only to fund capital improvements that
21 are not financed by bonds and only pursuant to appropriation of the
22 Legislature.

23 (e) The Legislature finds and declares that in order to
24 attract new business, commerce and industry to this state, to

1 retain existing business and industry providing the citizens of
2 this state with economic security and to advance the business
3 prosperity of this state and the economic welfare of the citizens
4 of this state, it is necessary to provide public financial support
5 for constructing, equipping, improving and maintaining economic
6 development projects, capital improvement projects and
7 infrastructure which promote economic development in this state.

8 (1) The West Virginia Economic Development Authority created
9 and provided for in article fifteen, chapter thirty-one of this
10 code shall, by resolution, in accordance with the provisions of
11 this article and article fifteen, chapter thirty-one of this code,
12 and upon direction of the Governor, issue revenue bonds of the
13 Economic Development Authority in no more than two series to pay
14 for all or a portion of the cost of constructing, equipping,
15 improving or maintaining projects under this section or to refund
16 the bonds at the discretion of the authority. Any revenue bonds
17 issued on or after July 1, 2002, which are secured by state excess
18 lottery revenue proceeds shall mature at a time or times not
19 exceeding thirty years from their respective dates. The principal
20 of and the interest and redemption premium, if any, on the bonds
21 shall be payable solely from the special fund provided in this
22 section for the payment.

23 (2) The special revenue fund named the Economic Development
24 Project Fund into which shall be is deposited the amounts to be

1 deposited in the fund as specified in subsections (b), (c) and (d)
2 of this section is continued. The Economic Development Project
3 Fund shall consist of all such moneys, all appropriations to the
4 fund, all interest earned from investment of the fund and any
5 gifts, grants or contributions received by the fund. All amounts
6 deposited in the fund shall be pledged to the repayment of the
7 principal, interest and redemption premium, if any, on any revenue
8 bonds or refunding revenue bonds authorized by this section,
9 including any and all commercially customary and reasonable costs
10 and expenses which may be incurred in connection with the issuance,
11 refunding, redemption or defeasance of the bonds. The West
12 Virginia Economic Development Authority may further provide in the
13 resolution and in the trust agreement for priorities on the
14 revenues paid into the Economic Development Project Fund that are
15 necessary for the protection of the prior rights of the holders of
16 bonds issued at different times under the provisions of this
17 section. The bonds issued pursuant to this subsection shall be
18 separate from all other bonds which may be or have been issued,
19 from time to time, under the provisions of this article.

20 (3) After the West Virginia Economic Development Authority has
21 issued bonds authorized by this section and after the requirements
22 of all funds have been satisfied, including any coverage and
23 reserve funds established in connection with the bonds issued
24 pursuant to this subsection, any balance remaining in the Economic

1 Development Project Fund may be used for the redemption of any of
2 the outstanding bonds issued under this subsection which, by their
3 terms, are then redeemable or for the purchase of the outstanding
4 bonds at the market price, but not to exceed the price, if any, at
5 which redeemable, and all bonds redeemed or purchased shall be
6 immediately canceled and shall not again be issued.

7 (4) Bonds issued under this subsection shall state on their
8 face that the bonds do not constitute a debt of the State of West
9 Virginia; that payment of the bonds, interest and charges thereon
10 cannot become an obligation of the State of West Virginia; and that
11 the bondholders' remedies are limited in all respects to the
12 Special Revenue Fund established in this subsection for the
13 liquidation of the bonds.

14 (5) The West Virginia Economic Development Authority shall
15 expend the bond proceeds from the revenue bond issues authorized
16 and directed by this section for projects certified under the
17 provision of this subsection: *Provided*, That the bond proceeds
18 shall be expended in accordance with the requirements and
19 provisions of article five-a, chapter twenty-one of this code and
20 either article twenty-two or twenty-two-a, chapter five of this
21 code, as the case may be: *Provided, however*, That if the bond
22 proceeds are expended pursuant to article twenty-two-a, chapter
23 five of this code and if the Design-Build Board created under said
24 article determines that the execution of a design-build contract in

1 connection with a project is appropriate pursuant to the criteria
2 set forth in said article and that a competitive bidding process
3 was used in selecting the design builder and awarding the contract,
4 the determination shall be conclusive for all purposes and shall be
5 considered to satisfy all the requirements of said article.

6 (6) For the purpose of certifying the projects that will
7 receive funds from the bond proceeds, a committee is hereby
8 established and comprised of the Governor, or his or her designee,
9 the Secretary of the Department of Revenue, the Executive Director
10 of the West Virginia Development Office and six persons appointed
11 by the Governor: *Provided*, That at least one citizen member must
12 be from each of the state's three congressional districts. The
13 committee shall meet as often as necessary and make certifications
14 from bond proceeds in accordance with this subsection. The
15 committee shall meet within thirty days of the effective date of
16 this section.

17 (7) Applications for grants submitted on or before July 1,
18 2002, shall be considered refiled with the committee. Within ten
19 days from the effective date of this section as amended in the year
20 2003, the lead applicant shall file with the committee any
21 amendments to the original application that may be necessary to
22 properly reflect changes in facts and circumstances since the
23 application was originally filed with the committee.

24 (8) When determining whether or not to certify a project, the

1 committee shall take into consideration the following:

2 (A) The ability of the project to leverage other sources of
3 funding;

4 (B) Whether funding for the amount requested in the grant
5 application is or reasonably should be available from commercial
6 sources;

7 (C) The ability of the project to create or retain jobs,
8 considering the number of jobs, the type of jobs, whether benefits
9 are or will be paid, the type of benefits involved and the
10 compensation reasonably anticipated to be paid persons filling new
11 jobs or the compensation currently paid to persons whose jobs would
12 be retained;

13 (D) Whether the project will promote economic development in
14 the region and the type of economic development that will be
15 promoted;

16 (E) The type of capital investments to be made with bond
17 proceeds and the useful life of the capital investments; and

18 (F) Whether the project is in the best interest of the public.

19 (9) A grant may not be awarded to an individual or other
20 private person or entity. Grants may be awarded only to an agency,
21 instrumentality or political subdivision of this state or to an
22 agency or instrumentality of a political subdivision of this state.

23 The project of an individual or private person or entity may
24 be certified to receive a low-interest loan paid from bond

1 proceeds. The terms and conditions of the loan, including, but not
2 limited to, the rate of interest to be paid and the period of the
3 repayment, shall be determined by the Economic Development
4 Authority after considering all applicable facts and circumstances.

5 (10) Prior to making each certification, the committee shall
6 conduct at least one public hearing, which may be held outside of
7 Kanawha County. Notice of the time, place, date and purpose of the
8 hearing shall be published in at least one newspaper in each of the
9 three congressional districts at least fourteen days prior to the
10 date of the public hearing.

11 (11) The committee may not certify a project unless the
12 committee finds that the project is in the public interest and the
13 grant will be used for a public purpose. For purposes of this
14 subsection, projects in the public interest and for a public
15 purpose include, but are not limited to:

16 (A) Sports arenas, fields, parks, stadiums and other sports
17 and sports-related facilities;

18 (B) Health clinics and other health facilities;

19 (C) Traditional infrastructure, such as water and wastewater
20 treatment facilities, pumping facilities and transmission lines;

21 (D) State-of-the-art telecommunications infrastructure;

22 (E) Biotechnical incubators, development centers and
23 facilities;

24 (F) Industrial parks, including construction of roads, sewer,

1 water, lighting and other facilities;

2 (G) Improvements at state parks, such as construction,
3 expansion or extensive renovation of lodges, cabins, conference
4 facilities and restaurants;

5 (H) Railroad bridges, switches and track extension or spurs on
6 public or private land necessary to retain existing businesses or
7 attract new businesses;

8 (I) Recreational facilities, such as amphitheatres, walking
9 and hiking trails, bike trails, picnic facilities, restrooms, boat
10 docking and fishing piers, basketball and tennis courts, and
11 baseball, football and soccer fields;

12 (J) State-owned buildings that are registered on the National
13 Register of Historic Places;

14 (K) Retail facilities, including related service, parking and
15 transportation facilities, appropriate lighting, landscaping and
16 security systems to revitalize decaying downtown areas; and

17 (L) Other facilities that promote or enhance economic
18 development, educational opportunities or tourism opportunities
19 thereby promoting the general welfare of this state and its
20 residents.

21 (12) Prior to the issuance of bonds under this subsection, the
22 committee shall certify to the Economic Development Authority a
23 list of those certified projects that will receive funds from the
24 proceeds of the bonds. Once certified, the list may not thereafter

1 be altered or amended other than by legislative enactment.

2 (13) If any proceeds from sale of bonds remain after paying
3 costs and making grants and loans as provided in this subsection,
4 the surplus may be deposited in an account in the State Treasury
5 known as the Economic Development Project Bridge Loan Fund
6 administered by the Economic Development Authority created in
7 article fifteen, chapter thirty-one of this code. Expenditures
8 from the fund are not authorized from collections but are to be
9 made only in accordance with appropriation by the Legislature and
10 in accordance with the provisions of article three, chapter twelve
11 of this code and upon fulfillment of the provisions of article two,
12 chapter five-a of this code. Loan repayment amounts, including the
13 portion attributable to interest, shall be paid into the fund
14 created in this subdivision.

15 (f) If the commission receives revenues in an amount that is
16 not sufficient to fully comply with the requirements of subsections
17 (b), (c), (d) and (i) of this section, the commission shall first
18 make the distribution to the Economic Development Project Fund;
19 second, make the distribution or distributions to the other funds
20 from which debt service is to be paid; third, make the distribution
21 to the Education Improvement Fund for appropriation by the
22 Legislature to the PROMISE Scholarship Fund; and fourth, make the
23 distribution to the general purpose account: *Provided*, That subject
24 to the provisions of this subsection, to the extent the revenues are

1 not pledged in support of revenue bonds which are or may be issued,
2 from time to time, under this section, the revenues shall be
3 distributed on a pro rata basis.

4 (g) Each fiscal year, the commission shall, after meeting the
5 requirements of subsections (b), (c), (d) and (i) of this section
6 and after transferring to the State Lottery Fund created under
7 section eighteen of this article an amount equal to any transfer
8 from the State Lottery Fund to the Excess Lottery Fund pursuant to
9 subsection (f), section eighteen of this article, deposit fifty
10 percent of the amount by which annual gross revenue deposited in the
11 State Excess Lottery Revenue Fund exceeds \$225 million in a fiscal
12 year in a separate account in the State Lottery Fund to be available
13 for appropriation by the Legislature.

14 (h) When bonds are issued for projects under subsection (d) (e)
15 of this section or for the School Building Authority,
16 infrastructure, higher education or park improvement purposes
17 described in this section that are secured by profits from lotteries
18 deposited in the State Excess Lottery Revenue Fund, the Lottery
19 Director shall allocate first to the Economic Development Project
20 Fund an amount equal to one-tenth of the projected annual principal,
21 interest and coverage requirements on any and all revenue bonds
22 issued, or to be issued as certified to the Lottery Director; and
23 second, to the fund or funds from which debt service is paid on
24 bonds issued under this section for the School Building Authority,

1 infrastructure, higher education and park improvements an amount
2 equal to one-tenth of the projected annual principal, interest and
3 coverage requirements on any and all revenue bonds issued, or to be
4 issued as certified to the Lottery Director. In the event there are
5 insufficient funds available in any month to transfer the amounts
6 required pursuant to this subsection, the deficiency shall be added
7 to the amount transferred in the next succeeding month in which
8 revenues are available to transfer the deficiency.

9 (i) Prior to the distributions provided in subsection (d) of
10 this section, the Lottery Commission shall deposit into the General
11 Revenue Fund amounts necessary to provide reimbursement for the
12 refundable credit allowable under section twenty-one, article
13 twenty-one, chapter eleven of this code.

14 (j) (1) The Legislature considers the following as priorities
15 in the expenditure of any surplus revenue funds:

16 (A) Providing salary and/or increment increases for
17 professional educators and public employees;

18 (B) Providing adequate funding for the Public Employees
19 Insurance Agency; ~~and~~

20 (C) Providing funding to help address the shortage of qualified
21 teachers and substitutes in areas of need, both in number of
22 teachers and in subject matter areas; and

23 (D) Providing funding for high school and middle school
24 athletics in the amount of \$10 million to be dispersed to the county

1 boards of education for the amounts that each high school and middle
2 school is awarded: *Provided*, That such funding may not be used to
3 supplant existing funding for high school and middle school
4 athletics.

5 (2) The provisions of this subsection may not be construed by
6 any court to require any appropriation or any specific appropriation
7 or level of funding for the purposes set forth in this subsection.

8 (k) The Legislature further directs the Governor to focus
9 resources on the creation of a prescription drug program for senior
10 citizens by pursuing a Medicaid waiver to offer prescription drug
11 services to senior citizens; by investigating the establishment of
12 purchasing agreements with other entities to reduce costs; by
13 providing discount prices or rebate programs for seniors; by
14 coordinating programs offered by pharmaceutical manufacturers that
15 provide reduced cost or free drugs; by coordinating a collaborative
16 effort among all state agencies to ensure the most efficient and
17 cost-effective program possible for the senior citizens of this
18 state; and by working closely with the state's congressional
19 delegation to ensure that a national program is implemented. The
20 Legislature further directs that the Governor report his or her
21 progress back to the Joint Committee on Government and Finance on
22 an annual basis until a comprehensive program has been fully
23 implemented.

24 (1) After all of the expenditures in subsections (a) through

1 (i) of this section have been satisfied in any fiscal year, the next
2 \$2 million shall be distributed as follows:

3 (1) On the last day of the fiscal year that begins on July 1,
4 2010, and for each fiscal year thereafter, forty-six percent shall
5 be placed in the general purse fund of a thoroughbred racetrack
6 licensee that did not participate in the Thoroughbred Development
7 Fund for at least four consecutive calendar years prior to December
8 31, 1992, for payment of regular purses;

9 (2) Forty-three and one-half percent shall be distributed to
10 the Racing Commission special account - unredeemed pari-mutual
11 tickets established on behalf of a thoroughbred racetrack licensee
12 that did participate in the Thoroughbred Development Fund for at
13 least four consecutive calendar years prior to December 31, 1992;

14 (3) Five and one-half percent shall be distributed to the
15 Racing Commission special account - unredeemed pari-mutual tickets
16 established on behalf of a thoroughbred racetrack licensee that did
17 not participate in the Thoroughbred Development Fund for at least
18 four consecutive calendar years prior to December 31, 1992; and

19 (4) Five percent shall be distributed to the West Virginia
20 Racing Commission special account - Greyhound Breeding Development
21 Fund.

NOTE: The purpose of this bill is to designate \$10 million from the State Excess Lottery Revenue Fund for funding high school and middle school athletics.

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