

1 **H. B. 2581**

2
3 (By Delegates Fleischauer, Barrett, Lawrence, Diserio,
4 Young, Stephens, Miller, Sobonya, Longstreth, Marshall and Barill)

5
6 [Introduced February 21, 2013; referred to the
7 Committee on Education then Finance.]

8 **FISCAL**
9 **NOTE**

10 A BILL to amend and reenact §29-22-18a of the Code of West
11 Virginia, 1931, as amended, relating to requiring that a sum
12 certain be deposited into the Education Improvement Fund for
13 appropriation by the Legislature to the PROMISE Scholarship
14 Fund to provide full tuition and fees for PROMISE scholarships
15 for fiscal year 2014.

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

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

19 **ARTICLE 22. STATE LOTTERY ACT.**

20 **§29-22-18a. State Excess Lottery Revenue Fund.**

21 (a) The State Lottery Fund in the State Treasury which is
22 designated and known as the State Excess Lottery Revenue Fund is
23 continued. The fund consists of all appropriations to the fund and
24 all interest earned from investment of the fund and any gifts,
25 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) Sixty-five million dollars into the subaccount
13 of the state Excess Lottery Revenue Fund hereby created in the
14 State Treasury to be known as the General Purpose Account to be
15 expended pursuant to appropriation of the Legislature; (2) ten
16 million dollars into the Education Improvement Fund for
17 appropriation by the Legislature to the PROMISE Scholarship Fund
18 created in section seven, article seven, chapter eighteen-c of this
19 code; (3) nineteen million dollars into the Economic Development
20 Project Fund created in subsection (e) of this section for the
21 issuance of revenue bonds and to be spent in accordance with the
22 provisions of said subsection; (4) twenty million dollars into the
23 School Building Debt Service Fund created in section six, article
24 nine-d, chapter eighteen of this code for the issuance of revenue

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

1 Improvement Fund for Park Improvements.

2 (c) For the fiscal year beginning July 1, 2004, and subsequent
3 fiscal years through the fiscal year ending June 30, 2009, the
4 commission shall deposit: (1) Sixty-five million dollars into the
5 General Purpose Account to be expended pursuant to appropriation of
6 the Legislature; (2) twenty-seven million dollars into the
7 Education Improvement Fund for appropriation by the Legislature to
8 the PROMISE Scholarship Fund created in section seven, article
9 seven, chapter eighteen-c of this code; (3) nineteen million
10 dollars into the Economic Development Project Fund created in
11 subsection (e) of this section for the issuance of revenue bonds
12 and to be spent in accordance with the provisions of said
13 subsection; (4) nineteen million dollars into the School Building
14 Debt Service Fund created in section six, article nine-d, chapter
15 eighteen of this code for the issuance of revenue bonds: *Provided,*
16 That for the fiscal year beginning July 1, 2008, and subsequent
17 fiscal years, no moneys shall be deposited in the School Building
18 Debt Service Fund pursuant to this subsection and, instead, \$19
19 million shall be deposited into the Excess Lottery School Building
20 Debt Service Fund; (5) forty million dollars into the West Virginia
21 Infrastructure Fund created in section nine, article fifteen-a,
22 chapter thirty-one of this code to be spent in accordance with the
23 provisions of said article; (6) ten million dollars into the Higher
24 Education Improvement Fund for Higher Education; and (7) five

1 million dollars into the State Park Improvement Fund for Park
2 Improvements. No portion of the distributions made as provided in
3 this subsection and subsection (b) of this section, except
4 distributions made in connection with bonds issued under subsection
5 (e) of this section, may be used to pay debt service on bonded
6 indebtedness until after the Legislature expressly authorizes
7 issuance of the bonds and payment of debt service on the bonds
8 through statutory enactment or the adoption of a concurrent
9 resolution by both houses of the Legislature. Until subsequent
10 legislative enactment or adoption of a resolution that expressly
11 authorizes issuance of the bonds and payment of debt service on the
12 bonds with funds distributed under this subsection and subsection
13 (b) of this section, except distributions made in connection with
14 bonds issued under subsection (d) of this section, the
15 distributions may be used only to fund capital improvements that
16 are not financed by bonds and only pursuant to appropriation of the
17 Legislature.

18 (d) For the fiscal year beginning July 1, 2009, and subsequent
19 fiscal years, the commission shall deposit: (1) Sixty-five million
20 dollars into the General Purpose Account to be expended pursuant to
21 appropriation of the Legislature; (2) twenty-nine million dollars
22 into the Education Improvement Fund for appropriation by the
23 Legislature to the PROMISE Scholarship Fund created in section
24 seven, article seven, chapter eighteen-c of this code: Provided,

1 That for fiscal year 2014, a sum in the amount of \$3,409,525 shall
2 be deposited into the Education Improvement Fund for appropriation
3 by the Legislature for the purpose of providing full tuition and
4 fee awards for PROMISE scholars at public institutions and for
5 providing a comparable amount for PROMISE scholars at private
6 institutions; (3) nineteen million dollars into the Economic
7 Development Project Fund created in subsection (e) of this section
8 for the issuance of revenue bonds and to be spent in accordance
9 with the provisions of said subsection; (4) nineteen million
10 dollars into the Excess Lottery School Building Debt Service Fund
11 created in section six, article nine-d, chapter eighteen of this
12 code; (5) forty million dollars into the West Virginia
13 Infrastructure Fund created in section nine, article fifteen-a,
14 chapter thirty-one of this code to be spent in accordance with the
15 provisions of said article; (6) ten million dollars into the Higher
16 Education Improvement Fund for Higher Education; and (7) five
17 million dollars into the State Park Improvement Fund for Park
18 Improvements. No portion of the distributions made as provided in
19 this subsection and subsection (b) of this section, except
20 distributions made in connection with bonds issued under subsection
21 (e) of this section, may be used to pay debt service on bonded
22 indebtedness until after the Legislature expressly authorizes
23 issuance of the bonds and payment of debt service on the bonds
24 through statutory enactment or the adoption of a concurrent

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

10 (e) The Legislature finds and declares that in order to
11 attract new business, commerce and industry to this state, to
12 retain existing business and industry providing the citizens of
13 this state with economic security and to advance the business
14 prosperity of this state and the economic welfare of the citizens
15 of this state, it is necessary to provide public financial support
16 for constructing, equipping, improving and maintaining economic
17 development projects, capital improvement projects and
18 infrastructure which promote economic development in this state.

19 (1) The West Virginia Economic Development Authority created
20 and provided for in article fifteen, chapter thirty-one of this
21 code shall, by resolution, in accordance with the provisions of
22 this article and article fifteen, chapter thirty-one of this code,
23 and upon direction of the Governor, issue revenue bonds of the
24 Economic Development Authority in no more than two series to pay

1 for all or a portion of the cost of constructing, equipping,
2 improving or maintaining projects under this section or to refund
3 the bonds at the discretion of the authority. ~~Any~~ Revenue bonds
4 issued on or after July 1, 2002, which are secured by state excess
5 lottery revenue proceeds ~~shall~~ mature at a time or times not
6 exceeding thirty years from their respective dates. The principal
7 of and the interest and redemption premium, if any, on the bonds
8 ~~shall be~~ are payable solely from the special fund provided in this
9 section for the payment.

10 (2) The special revenue fund named the Economic Development
11 Project Fund into which shall be ~~is~~ deposited the amounts ~~to be~~
12 ~~deposited in the fund as~~ specified in subsections (b), (c) and (d)
13 of this section is continued. The Economic Development Project
14 Fund ~~shall consist~~ consists of all such moneys, all appropriations
15 to the fund, all interest earned from investment of the fund and
16 any gifts, grants or contributions received by the fund. All
17 amounts deposited in the fund shall be pledged to the repayment of
18 the principal, interest and redemption premium, if any, on any
19 revenue bonds or refunding revenue bonds authorized by this
20 section, including any and all commercially customary and
21 reasonable costs and expenses which may be incurred in connection
22 with the issuance, refunding, redemption or defeasance of the
23 bonds. The West Virginia Economic Development Authority may
24 ~~further~~ provide in the resolution and in the trust agreement for

1 priorities on the revenues paid into the Economic Development
2 Project Fund that are necessary for the protection of the prior
3 rights of the holders of bonds issued at different times under the
4 provisions of this section. The bonds issued pursuant to this
5 subsection shall be separate from all other bonds which may be or
6 have been issued, from time to time, under the provisions of this
7 article.

8 (3) After the West Virginia Economic Development Authority has
9 issued bonds authorized by this section and after the requirements
10 of all funds have been satisfied, including any coverage and
11 reserve funds established in connection with the bonds issued
12 pursuant to this subsection, any balance remaining in the Economic
13 Development Project Fund may be used for the redemption of any of
14 the outstanding bonds issued under this subsection which, by their
15 terms, are then redeemable or for the purchase of the outstanding
16 bonds at the market price, but not to exceed the price, if any, at
17 which redeemable, and all bonds redeemed or purchased shall be
18 immediately canceled and shall not again be issued.

19 (4) Bonds issued under this subsection shall state on their
20 face that the bonds do not constitute a debt of the State of West
21 Virginia; that payment of the bonds, interest and charges thereon
22 cannot become an obligation of the State of West Virginia; and that
23 the bondholders' remedies are limited in all respects to the
24 Special Revenue Fund established in this subsection for the

1 liquidation of the bonds.

2 (5) The West Virginia Economic Development Authority shall
3 expend the bond proceeds from the revenue bond issues authorized
4 and directed by this section for projects certified under the
5 provision of this subsection: *Provided*, That the bond proceeds
6 shall be expended in accordance with the requirements and
7 provisions of article five-a, chapter twenty-one of this code and
8 either article twenty-two or twenty-two-a, chapter five of this
9 code, as the case may be: *Provided, however*, That if the bond
10 proceeds are expended pursuant to article twenty-two-a, chapter
11 five of this code and if the Design-Build Board created under said
12 article determines that the execution of a design-build contract in
13 connection with a project is appropriate pursuant to the criteria
14 set forth in said article and that a competitive bidding process
15 was used in selecting the design builder and awarding the contract,
16 the determination ~~shall be~~ is conclusive for all purposes and shall
17 be considered to satisfy all the requirements of said article.

18 (6) For the purpose of certifying the projects that will
19 receive funds from the bond proceeds, a committee is hereby
20 established and comprised of the Governor or his or her designee,
21 the Secretary of the Department of Revenue, the Executive Director
22 of the West Virginia Development Office and six persons appointed
23 by the Governor: *Provided*, That at least one citizen member must
24 be from each of the state's three congressional districts. The

1 committee shall meet as often as necessary and make certifications
2 from bond proceeds in accordance with this subsection. ~~The~~
3 ~~committee shall meet within thirty days of the effective date of~~
4 ~~this section.~~

5 (7) Applications for grants submitted on or before July 1,
6 2002, shall be considered refiled with the committee. Within ten
7 days from the effective date of this section as amended in the year
8 2003, the lead applicant shall file with the committee any
9 amendments to the original application that may be necessary to
10 properly reflect changes in facts and circumstances since the
11 application was originally filed with the committee.

12 (8) When determining whether or not to certify a project, the
13 committee shall take into consideration the following:

14 (A) The ability of the project to leverage other sources of
15 funding;

16 (B) Whether funding for the amount requested in the grant
17 application is or reasonably should be available from commercial
18 sources;

19 (C) The ability of the project to create or retain jobs,
20 considering the number of jobs, the type of jobs, whether benefits
21 are or will be paid, the type of benefits involved and the
22 compensation reasonably anticipated to be paid persons filling new
23 jobs or the compensation currently paid to persons whose jobs would
24 be retained;

1 (D) Whether the project will promote economic development in
2 the region and the type of economic development that will be
3 promoted;

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

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

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

11 The project of an individual or private person or entity may
12 be certified to receive a low-interest loan paid from bond
13 proceeds. The terms and conditions of the loan including, but not
14 limited to, the rate of interest to be paid and the period of the
15 repayment, ~~shall be~~ is determined by the Economic Development
16 Authority after considering all applicable facts and circumstances.

17 (10) Prior to making each certification, the committee shall
18 conduct at least one public hearing which may be held outside of
19 Kanawha County. Notice of the time, place, date and purpose of the
20 hearing shall be published in at least one newspaper in each of the
21 three congressional districts at least fourteen days prior to the
22 date of the public hearing.

23 (11) The committee may not certify a project unless the
24 committee finds that the project is in the public interest and the

1 grant will be used for a public purpose. For purposes of this
2 subsection, projects in the public interest and for a public
3 purpose include, but are not limited to:

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

6 (B) Health clinics and other health facilities;

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

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

10 (E) Biotechnical incubators, development centers and
11 facilities;

12 (F) Industrial parks, including construction of roads, sewer,
13 water, lighting and other facilities;

14 (G) Improvements at state parks, such as construction,
15 expansion or extensive renovation of lodges, cabins, conference
16 facilities and restaurants;

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

20 (I) Recreational facilities, such as amphitheaters, walking
21 and hiking trails, bike trails, picnic facilities, restrooms, boat
22 docking and fishing piers, basketball and tennis courts, and
23 baseball, football and soccer fields;

24 (J) State-owned buildings that are registered on the National

1 Register of Historic Places;

2 (K) Retail facilities, including related service, parking and
3 transportation facilities, appropriate lighting, landscaping and
4 security systems to revitalize decaying downtown areas; and

5 (L) Other facilities that promote or enhance economic
6 development, educational opportunities or tourism opportunities
7 thereby promoting the general welfare of this state and its
8 residents.

9 (12) Prior to the issuance of bonds under this subsection, the
10 committee shall certify to the Economic Development Authority a
11 list of those certified projects that will receive funds from the
12 proceeds of the bonds. Once certified, the list may not ~~thereafter~~
13 be altered or amended other than by legislative enactment.

14 (13) If ~~any~~ proceeds from sale of bonds remain after paying
15 costs and making grants and loans as provided in this subsection,
16 the surplus may be deposited in an account in the State Treasury
17 known as the Economic Development Project Bridge Loan Fund
18 administered by the Economic Development Authority created in
19 article fifteen, chapter thirty-one of this code. Expenditures
20 from the fund are not authorized from collections but are to be
21 made only in accordance with appropriation by the Legislature and
22 in accordance with the provisions of article three, chapter twelve
23 of this code and upon fulfillment of the provisions of article two,
24 chapter five-a of this code. Loan repayment amounts, including the

1 portion attributable to interest, shall be paid into the fund
2 created in this subdivision.

3 (f) If the commission receives revenues in an amount that is
4 not sufficient to fully comply with the requirements of subsections
5 (b), (c), (d) and (i) of this section, the commission shall first
6 make the distribution to the Economic Development Project Fund;
7 second, make the distribution or distributions to the other funds
8 from which debt service is to be paid; third, make the distribution
9 to the Education Improvement Fund for appropriation by the
10 Legislature to the PROMISE Scholarship Fund; and fourth, make the
11 distribution to the General Purpose Account: *Provided, That*
12 subject to the provisions of this subsection, to the extent the
13 revenues are not pledged in support of revenue bonds which are or
14 may be issued, from time to time, under this section, the revenues
15 shall be distributed on a pro rata basis.

16 (g) Each fiscal year, the commission shall, after meeting the
17 requirements of subsections (b), (c), (d) and (i) of this section
18 and after transferring to the State Lottery Fund created under
19 section eighteen of this article an amount equal to any transfer
20 from the State Lottery Fund to the Excess Lottery Fund pursuant to
21 subsection (f), section eighteen of this article, deposit fifty
22 percent of the amount by which annual gross revenue deposited in
23 the State Excess Lottery Revenue Fund exceeds \$225 million in a
24 fiscal year in a separate account in the State Lottery Fund to be

1 available for appropriation by the Legislature.

2 (h) When bonds are issued for projects under ~~subsection (d)~~
3 ~~(e)~~ subsections (d) and (e) of this section or for the School
4 Building Authority, infrastructure, higher education or park
5 improvement purposes described in this section that are secured by
6 profits from lotteries deposited in the State Excess Lottery
7 Revenue Fund, the Lottery Director shall allocate first to the
8 Economic Development Project Fund an amount equal to one tenth of
9 the projected annual principal, interest and coverage requirements
10 on any and all revenue bonds issued or to be issued as certified to
11 the Lottery Director; and second, to the fund or funds from which
12 debt service is paid on bonds issued under this section for the
13 School Building Authority, infrastructure, higher education and
14 park improvements an amount equal to one tenth of the projected
15 annual principal, interest and coverage requirements on any and all
16 revenue bonds issued or to be issued as certified to the Lottery
17 Director. In the event there are insufficient funds available in
18 any month to transfer the amounts required pursuant to this
19 subsection, the deficiency shall be added to the amount transferred
20 in the next succeeding month in which revenues are available to
21 transfer the deficiency.

22 (i) Prior to the distributions provided in subsection (d) of
23 this section, the Lottery Commission shall deposit into the General
24 Revenue Fund amounts necessary to provide reimbursement for the

1 refundable credit allowable under section twenty-one, article
2 twenty-one, chapter eleven of this code.

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

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

7 (B) Providing adequate funding for the Public Employees
8 Insurance Agency; and

9 (C) Providing funding to help address the shortage of
10 qualified teachers and substitutes in areas of need, both in number
11 of teachers and in subject matter areas.

12 (2) The provisions of this subsection ~~may not be construed by~~
13 ~~any court to~~ do not require any appropriation or any specific
14 appropriation or level of funding for the purposes set forth in
15 this subsection.

16 (k) The Legislature further directs the Governor to focus
17 resources on the creation of a prescription drug program for senior
18 citizens by pursuing a Medicaid waiver to offer prescription drug
19 services to senior citizens; by investigating the establishment of
20 purchasing agreements with other entities to reduce costs; by
21 providing discount prices or rebate programs for seniors; by
22 coordinating programs offered by pharmaceutical manufacturers that
23 provide reduced cost or free drugs; by coordinating a collaborative
24 effort among all state agencies to ensure the most efficient and

1 cost-effective program possible for the senior citizens of this
2 state; and by working closely with the state's congressional
3 delegation to ensure that a national program is implemented. The
4 Legislature further directs that the Governor report his or her
5 progress back to the Joint Committee on Government and Finance on
6 an annual basis until a comprehensive program has been fully
7 implemented.

8 (1) After all of the expenditures in subsections (a) through
9 (i) of this section have been satisfied in any fiscal year, the
10 next \$2 million shall be distributed as follows:

11 (1) On the last day of the fiscal year that begins on July 1,
12 2010, and for each fiscal year thereafter, forty-six percent shall
13 be placed in the general purse fund of a thoroughbred racetrack
14 licensee that did not participate in the Thoroughbred Development
15 Fund for at least four consecutive calendar years prior to December
16 31, 1992, for payment of regular purses;

17 (2) Forty-three and one half percent shall be distributed to
18 the Racing Commission Special Account - unredeemed pari-mutual
19 tickets established on behalf of a thoroughbred racetrack licensee
20 that did participate in the Thoroughbred Development Fund for at
21 least four consecutive calendar years prior to December 31, 1992;

22 (3) Five and one half percent shall be distributed to the
23 Racing Commission Special Account - unredeemed pari-mutual tickets
24 established on behalf of a thoroughbred racetrack licensee that did

1 not participate in the Thoroughbred Development Fund for at least
2 four consecutive calendar years prior to December 31, 1992; and
3 (4) Five percent shall be distributed to the West Virginia
4 Racing Commission Special Account - Greyhound Breeding Development
5 Fund.

NOTE: The purpose of this bill is to require that a sum certain be deposited into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund to provide full tuition and fees for PROMISE scholarships for fiscal year 2014.

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