

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 13

SENATOR BLAIR, *original sponsor*

[Originating in the Committee on Finance; Reported

on February 6, 2019]

1 A BILL to amend and reenact §29-22-18a of the Code of West Virginia, 1931, as amended,
2 relating to distributions from the State Excess Lottery Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18a. State Excess Lottery Reserve Fund.

1 (a) The State Lottery Fund in the State Treasury which is designated and known as the
2 State Excess Lottery Revenue Fund is continued. The fund consists of all appropriations to the
3 fund and all interest earned from investment of the fund and any gifts, grants, or contributions
4 received by the fund. All revenues received under the provisions of §29-22A-10b and §29-22A-
5 10c of this code and under §29-22B-101 *et seq.*, of this code, except the amounts due the
6 commission under §29-22B-1408(a)(1) of this code, shall be deposited in the State Treasury and
7 placed into the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the
8 manner provided in this section for the purposes stated in this section and shall not be treated by
9 the State Auditor and the State Treasurer as part of the general revenue of the state.

10 (b) For the fiscal year beginning July 1, 2002, the commission shall deposit: (1) \$65 million
11 into the subaccount of the State Excess Lottery Revenue Fund hereby created in the State
12 Treasury to be known as the General Purpose Account to be expended pursuant to appropriation
13 of the Legislature; (2) \$10 million into the Education Improvement Fund for appropriation by the
14 Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) \$19 million
15 into the Economic Development Project Fund created in subsection (e) of this section for the
16 issuance of revenue bonds and to be spent in accordance with the provisions of said subsection;
17 (4) \$20 million into the School Building Debt Service Fund created in §18-9D-6 of this code for
18 the issuance of revenue bonds; (5) \$40 million into the West Virginia Infrastructure Fund created
19 in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) \$10
20 million into the Higher Education Improvement Fund for Higher Education; and (7) \$5 million into
21 the State Park Improvement Fund for Park Improvements. For the fiscal year beginning July 1,

22 2003, the commission shall deposit: (1) \$65 million into the General Purpose Account to be
23 expended pursuant to appropriation of the Legislature; (2) \$17 million into the Education
24 Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund
25 created in §18C-7-7 of this code; (3) \$19 million into the Economic Development Project Fund
26 created in subsection (e) of this section for the issuance of revenue bonds and to be spent in
27 accordance with the provisions of said subsection; (4) \$20 million into the School Building Debt
28 Service Fund created in §18-9D-6 of this code for the issuance of revenue bonds; (5) \$40 million
29 into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in
30 accordance with the provisions of said article; (6) \$10 million into the Higher Education
31 Improvement Fund for Higher Education; and (7) \$7 million into the State Park Improvement Fund
32 for Park Improvements.

33 (c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the
34 fiscal year ending June 30, 2009, the commission shall deposit: (1) \$65 million into the General
35 Purpose Account to be expended pursuant to appropriation of the Legislature; (2) \$27 million into
36 the Education Improvement Fund for appropriation by the Legislature to the PROMISE
37 Scholarship Fund created in §18C-7-7 of this code; (3) \$19 million into the Economic
38 Development Project Fund created in subsection (e) of this section for the issuance of revenue
39 bonds and to be spent in accordance with the provisions of said subsection; (4) \$19 million into
40 the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of
41 revenue bonds: *Provided*, That for the fiscal year beginning July 1, 2008, and subsequent fiscal
42 years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this
43 subsection and instead \$19 million shall be deposited into the Excess Lottery School Building
44 Debt Service Fund; (5) \$40 million into the West Virginia Infrastructure Fund created in §31-15A-
45 9 of this code to be spent in accordance with the provisions of said article; (6) \$10 million into the
46 Higher Education Improvement Fund for Higher Education; and (7) \$5 million into the State Park
47 Improvement Fund for Park Improvements. No portion of the distributions made as provided in

48 this subsection and subsection (b) of this section, except distributions made in connection with
49 bonds issued under subsection (e) of this section, may be used to pay debt service on bonded
50 indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment
51 of debt service on the bonds through statutory enactment or the adoption of a concurrent
52 resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption
53 of a resolution that expressly authorizes issuance of the bonds and payment of debt service on
54 the bonds with funds distributed under this subsection and subsection (b) of this section, except
55 distributions made in connection with bonds issued under subsection (d) of this section, the
56 distributions may be used only to fund capital improvements that are not financed by bonds and
57 only pursuant to appropriation of the Legislature.

58 (d) For the fiscal year beginning July 1, 2009, and subsequent fiscal years, the
59 commission shall deposit: (1) \$65 million into the General Purpose Account to be expended
60 pursuant to appropriation of the Legislature; (2) \$29 million into the Education Improvement Fund
61 for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of
62 this code; (3) \$19 million into the Economic Development Project Fund created in subsection (e)
63 of this section for the issuance of revenue bonds and to be spent in accordance with the provisions
64 of said subsection; (4) \$19 million into the Excess Lottery School Building Debt Service Fund
65 created in §18-9D-6 of this code; (5) \$40 million into the West Virginia Infrastructure Fund created
66 in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) \$10
67 million into the Higher Education Improvement Fund for Higher Education; and (7) \$5 million into
68 the State Park Improvement Fund for Park Improvements. No portion of the distributions made
69 as provided in this subsection and subsection (b) of this section, except distributions made in
70 connection with bonds issued under subsection (e) of this section, may be used to pay debt
71 service on bonded indebtedness until after the Legislature expressly authorizes issuance of the
72 bonds and payment of debt service on the bonds through statutory enactment or the adoption of
73 a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment

74 or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt
75 service on the bonds with funds distributed under this subsection and subsection (b) of this
76 section, except distributions made in connection with bonds issued under subsection (e) of this
77 section, the distributions may be used only to fund capital improvements that are not financed by
78 bonds and only pursuant to appropriation of the Legislature.

79 (e) The Legislature finds and declares that in order to attract new business, commerce,
80 and industry to this state, to retain existing business and industry providing the citizens of this
81 state with economic security, and to advance the business prosperity of this state and the
82 economic welfare of the citizens of this state, it is necessary to provide public financial support for
83 constructing, equipping, improving, and maintaining economic development projects, capital
84 improvement projects, and infrastructure which promote economic development in this state.

85 (1) The West Virginia Economic Development Authority created and provided for in §31-
86 15-1 *et seq.*, of this code shall, by resolution, in accordance with the provisions of this article and
87 §31-15-1 *et seq.*, of this code, and upon direction of the Governor, issue revenue bonds of the
88 Economic Development Authority in no more than two series to pay for all or a portion of the cost
89 of constructing, equipping, improving, or maintaining projects under this section or to refund the
90 bonds at the discretion of the authority. Any revenue bonds issued on or after July 1, 2002, which
91 are secured by state excess lottery revenue proceeds shall mature at a time or times not
92 exceeding 30 years from their respective dates. The principal of and the interest and redemption
93 premium, if any, on the bonds shall be payable solely from the special fund provided in this section
94 for the payment.

95 (2) The special revenue fund named the Economic Development Project Fund into which
96 shall be deposited the amounts to be deposited in the fund as specified in subsections (b), (c),
97 and (d) of this section is continued. The Economic Development Project Fund shall consist of all
98 such moneys, all appropriations to the fund, all interest earned from investment of the fund, and
99 any gifts, grants, or contributions received by the fund. All amounts deposited in the fund shall be

100 pledged to the repayment of the principal, interest, and redemption premium, if any, on any
101 revenue bonds or refunding revenue bonds authorized by this section, including any and all
102 commercially customary and reasonable costs and expenses which may be incurred in
103 connection with the issuance, refunding, redemption, or defeasance of the bonds. The West
104 Virginia Economic Development Authority may further provide in the resolution and in the trust
105 agreement for priorities on the revenues paid into the Economic Development Project Fund that
106 are necessary for the protection of the prior rights of the holders of bonds issued at different times
107 under the provisions of this section. The bonds issued pursuant to this subsection shall be
108 separate from all other bonds which may be or have been issued, from time to time, under the
109 provisions of this article.

110 (3) After the West Virginia Economic Development Authority has issued bonds authorized
111 by this section and after the requirements of all funds have been satisfied, including any coverage
112 and reserve funds established in connection with the bonds issued pursuant to this subsection,
113 any balance remaining in the Economic Development Project Fund may be used for the
114 redemption of any of the outstanding bonds issued under this subsection which, by their terms,
115 are then redeemable for the purchase of the outstanding bonds at the market price, but not to
116 exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be
117 immediately canceled and shall not again be issued.

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

123 (5) The West Virginia Economic Development Authority shall expend the bond proceeds
124 from the revenue bond issues authorized and directed by this section for projects certified under
125 the provision of this subsection: *Provided*, That the bond proceeds shall be expended in

126 accordance with the requirements and provisions of §21-5A-1 *et seq.*, of this code and either §5-
127 22-1 *et seq.*, or §5-22A-1 *et seq.*, of this code, as the case may be: *Provided, however,* That if
128 the bond proceeds are expended pursuant to §5-22A-1 *et seq.*, of this code and if the Design-
129 Build Board created under said article determines that the execution of a design-build contract in
130 connection with a project is appropriate pursuant to the criteria set forth in said article and that a
131 competitive bidding process was used in selecting the design builder and awarding the contract,
132 the determination shall be conclusive for all purposes and shall be considered to satisfy all the
133 requirements of said article.

134 (6) For the purpose of certifying the projects that will receive funds from the bond
135 proceeds, a committee is hereby established and comprised of the Governor, or his or her
136 designee, the Secretary of the Department of Revenue, the Executive Director of the West
137 Virginia Development Office, and six persons appointed by the Governor: *Provided,* That at least
138 one citizen member must be from each of the state's three congressional districts. The committee
139 shall meet as often as necessary and make certifications from bond proceeds in accordance with
140 this subsection. The committee shall meet within 30 days of the effective date of this section.

141 (7) Applications for grants submitted on or before July 1, 2002, shall be considered refiled
142 with the committee. Within 10 days from the effective date of this section as amended in the year
143 2003, the lead applicant shall file with the committee any amendments to the original application
144 that may be necessary to properly reflect changes in facts and circumstances since the
145 application was originally filed with the committee.

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

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

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

151 (C) The ability of the project to create or retain jobs, considering the number of jobs, the
152 type of jobs, whether benefits are or will be paid, the type of benefits involved, and the
153 compensation reasonably anticipated to be paid persons filling new jobs or the compensation
154 currently paid to persons whose jobs would be retained;

155 (D) Whether the project will promote economic development in the region and the type of
156 economic development that will be promoted;

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

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

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

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

167 (10) Prior to making each certification, the committee shall conduct at least one public
168 hearing, which may be held outside of Kanawha County. Notice of the time, place, date, and
169 purpose of the hearing shall be published in at least one newspaper in each of the three
170 congressional districts at least 14 days prior to the date of the public hearing.

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

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

175 (B) Health clinics and other health facilities;

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

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

179 (E) Biotechnical incubators, development centers, and facilities;

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

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

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

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

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

190 (K) Retail facilities, including related service, parking and transportation facilities,
191 appropriate lighting, landscaping, and security systems to revitalize decaying downtown areas;
192 and

193 (L) Other facilities that promote or enhance economic development, educational
194 opportunities, or tourism opportunities thereby promoting the general welfare of this state and its
195 residents.

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

200 (13) If any proceeds from sale of bonds remain after paying costs and making grants and
201 loans as provided in this subsection, the surplus may be deposited in an account in the State

202 Treasury known as the Economic Development Project Bridge Loan Fund administered by the
203 Economic Development Authority created in §31-15-1 *et seq.*, of this code. Expenditures from the
204 fund are not authorized from collections but are to be made only in accordance with appropriation
205 by the Legislature and in accordance with the provisions of §12-3-1 *et seq.*, of this code and upon
206 fulfillment of the provisions of §5A-2-1 *et seq.*, of this code. Loan repayment amounts, including
207 the portion attributable to interest, shall be paid into the fund created in this subdivision.

208 (f) If the commission receives revenues in an amount that is not sufficient to fully comply
209 with the requirements of subsections (b), (c), (d), ~~and (i)~~, and (m) of this section, the commission
210 shall first make the distribution to the Economic Development Project Fund; second, make the
211 distribution or distributions to the other funds from which debt service is to be paid; third, make
212 the distribution to the Education Improvement Fund for appropriation by the Legislature to the
213 PROMISE Scholarship Fund; and fourth, make the distribution to the General Purpose Account:
214 *Provided, That*, subject to the provisions of this subsection, to the extent the revenues are not
215 pledged in support of revenue bonds which are or may be issued, from time to time, under this
216 section, the revenues shall be distributed on a pro rata basis.

217 (g) Each fiscal year, the commission shall, after meeting the requirements of subsections
218 (b), (c), (d), and (i) of this section and after transferring to the State Lottery Fund created under
219 §29-22-18 of this code an amount equal to any transfer from the State Lottery Fund to the Excess
220 Lottery Fund pursuant to §29-22-18(f) of this code, deposit 50 percent of the amount by which
221 annual gross revenue deposited in the State Excess Lottery Revenue Fund exceeds \$225 million
222 in a fiscal year in a separate account in the State Lottery Fund to be available for appropriation
223 by the Legislature.

224 (h) When bonds are issued for projects under subsections (d) and (e) of this section or for
225 the School Building Authority, infrastructure, higher education, or park improvement purposes
226 described in this section that are secured by profits from lotteries deposited in the State Excess
227 Lottery Revenue Fund, the Lottery Director shall allocate first to the Economic Development

228 Project Fund an amount equal to one tenth of the projected annual principal, interest, and
229 coverage requirements on any and all revenue bonds issued, or to be issued as certified to the
230 Lottery Director; and second, to the fund or funds from which debt service is paid on bonds issued
231 under this section for the School Building Authority, infrastructure, higher education, and park
232 improvements an amount equal to one tenth of the projected annual principal, interest, and
233 coverage requirements on any and all revenue bonds issued, or to be issued as certified to the
234 Lottery Director. In the event there are insufficient funds available in any month to transfer the
235 amounts required pursuant to this subsection, the deficiency shall be added to the amount
236 transferred in the next succeeding month in which revenues are available to transfer the
237 deficiency.

238 (i) Prior to the distributions provided in subsection (d) of this section, the Lottery
239 Commission shall deposit into the General Revenue Fund amounts necessary to provide
240 reimbursement for the refundable credit allowable under §11-21-21 *et seq.*, of this code.

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

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

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

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

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

251 (k) The Legislature further directs the Governor to focus resources on the creation of a
252 prescription drug program for senior citizens by pursuing a Medicaid waiver to offer prescription
253 drug services to senior citizens; by investigating the establishment of purchasing agreements with

254 other entities to reduce costs; by providing discount prices or rebate programs for seniors; by
255 coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free
256 drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient
257 and cost-effective program possible for the senior citizens of this state; and by working closely
258 with the state's congressional delegation to ensure that a national program is implemented. The
259 Legislature further directs that the Governor report his or her progress back to the Joint Committee
260 on Government and Finance on an annual basis until a comprehensive program has been fully
261 implemented.

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

264 (1) On the last day of the fiscal year that begins on July 1, 2010, and for each fiscal year
265 thereafter, 46 percent shall be placed in the general purse fund of a thoroughbred racetrack
266 licensee that did not participate in the Thoroughbred Development Fund for at least four
267 consecutive calendar years prior to December 31, 1992, for payment of regular purses;

268 (2) Forty-three and one-half percent shall be distributed to the racing commission special
269 account — unredeemed pari-mutual tickets, established on behalf of a thoroughbred racetrack
270 licensee that did participate in the Thoroughbred Development Fund for at least four consecutive
271 calendar years prior to December 31, 1992;

272 (3) Five and one-half percent shall be distributed to the racing commission special account
273 — unredeemed pari-mutuel tickets, established on behalf of a thoroughbred racetrack licensee
274 that did not participate in the Thoroughbred Development Fund for at least four consecutive
275 calendar years prior to December 31, 1992; and

276 (4) Five percent shall be distributed to the racing commission special account —
277 Greyhound Breeding Development Fund.

278 (m) For the fiscal year beginning July 1, 2019, and subsequent fiscal years, the
279 commission shall deposit \$11 million to be distributed into the special funds established by the

280 respective licensees and used for the payment of regular purses in addition to the other amounts
281 provided in §19-23-1 et seq. of this code; such distribution shall be on a pro rata basis based
282 upon the actual purse earnings of each such licensee as specified in §29-22A-10(c)(2) and §29-
283 22A-10b(a)(2) of this code.