

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 245**

7 (By Senators Kessler (Acting President), Snyder, Browning,
8 Foster, Laird, Yost, Stollings, Beach, Fanning, Unger, Wills,
9 Barnes, Miller, Edgell, McCabe, Plymale, Klempa and Williams)

10 _____
11 [Originating in the Committee on Finance;
12 reported February 24, 2011.]

13 _____
14
15
16 A Bill to amend and reenact §22C-1-27 of the Code of West Virginia,
17 1931, as amended; to amend and reenact §29-22-18a of said
18 code; to amend said code by adding thereto a new section,
19 designated §29-22-18d; to amend and reenact §31-15A-9 of said
20 code; and to amend said code by adding thereto a new section,
21 designated §31-15A-17b, all relating to protection of the
22 Chesapeake Bay Watershed; increasing the bonding authority of
23 the Water Development Authority for limited purpose;
24 increasing amount of excess lottery revenue deposited to
25 infrastructure fund; providing for distribution to
26 infrastructure fund where excess lottery revenue shortfall

1 occurs; providing exemption for excess lottery revenue
2 deposited to infrastructure fund; creating the West Virginia
3 Infrastructure Lottery Revenue Debt Service Fund and providing
4 for purpose of new fund; authorizing Water Development
5 Authority to issue revenue bonds for certain Chesapeake Bay
6 Watershed projects; establishing deadline for publicly owned
7 wastewater facilities subject to Chesapeake Bay compliance
8 standards to submit ten-year projected capital funding plan to
9 Infrastructure Council for review and approval; providing
10 eligibility for funding; requiring Water Development Authority
11 to report to Joint Committee on Government and Finance
12 regarding total cost of Chesapeake Bay compliance projects;
13 establishing distribution guidelines for grants to eligible
14 projects; making Chesapeake Bay compliance projects with
15 funding approved before a certain date eligible for grant
16 funding; and limiting eligibility of grant funding.

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

18 That §22C-1-27 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted; that §29-22-18a of said code be amended
20 and reenacted; that said code be amended by adding thereto a new
21 section, designated §29-22-18d; that §31-15A-9 of said code be
22 amended and reenacted; and that said code be amended by adding
23 thereto a new section, designated §31-15A-17b, all to read as
24 follows:

25 **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS,**
26 **AUTHORITIES, COMMISSIONS AND COMPACTS.**

1 **ARTICLE 1. WATER DEVELOPMENT AUTHORITY.**

2 **§22C-1-27. Authorized limit on borrowing.**

3 (a) The aggregate principal amount of bonds and notes issued
4 by the authority may not exceed \$500 million outstanding at any one
5 time: *Provided*, That before the authority issues bonds and notes in
6 excess of \$400 million the Legislature must pass a resolution
7 authorizing this action: *Provided, however*, That in computing the
8 total amount of bonds and notes which may at any one time be
9 outstanding, the principal amount of any outstanding bonds or notes
10 refunded or to be refunded either by application of the proceeds of
11 the sale of any refunding bonds or notes of the authority or by
12 exchange for any refunding bonds or notes, shall be excluded.

13 (b) In addition to the amounts authorized by subsection (a) of
14 this section, the authority may issue, pursuant to section
15 seventeen-b, article fifteen-a, chapter thirty-one of this code,
16 bonds or notes in the aggregate principal amount not to exceed \$180
17 million. This authorization is for the limited purpose of
18 providing grants for capital improvements for publicly owned
19 wastewater treatment facilities with an authorized permitted flow
20 of four hundred thousand gallons per day or more which are required
21 to maintain compliance with nutrient standards for discharges to
22 the Chesapeake Bay Watershed.

23 **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

24 **ARTICLE 22. STATE LOTTERY ACT.**

25 **§29-22-18a. State Excess Lottery Revenue Fund.**

1 (a) The State Lottery Fund in the State Treasury which is
2 designated and known as the State Excess Lottery Revenue Fund is
3 continued. The fund consists of all appropriations to the fund and
4 all interest earned from investment of the fund and any gifts,
5 grants or contributions received by the fund. All revenues
6 received under the provisions of sections ten-b and ten-c, article
7 twenty-two-a of this chapter and under article twenty-two-b of this
8 chapter, except the amounts due the commission under subdivision
9 (1), subsection (a), section one thousand four hundred eight,
10 article twenty-two-b of this chapter, shall be deposited in the
11 State Treasury and placed into the State Excess Lottery Revenue
12 Fund. The revenue shall be disbursed in the manner provided in
13 this section for the purposes stated in this section and shall not
14 be treated by the State Auditor and the State Treasurer as part of
15 the general revenue of the state.

16 (b) For the fiscal year beginning July 1, 2002, the commission
17 shall deposit: (1) \$65 million into the subaccount of the state
18 Excess Lottery Revenue Fund hereby created in the State Treasury to
19 be known as the General Purpose Account to be expended pursuant to
20 appropriation of the Legislature; (2) \$10 million into the
21 Education Improvement Fund for appropriation by the Legislature to
22 the PROMISE Scholarship Fund created in section seven, article
23 seven, chapter eighteen-c of this code; (3) \$19 million into the
24 Economic Development Project Fund created in subsection (e) of this
25 section for the issuance of revenue bonds and to be spent in
26 accordance with the provisions of said subsection; (4) \$20 million

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

1 (c) For the fiscal year beginning July 1, 2004, and subsequent
2 fiscal years through the fiscal year ending June 30, 2009, the
3 commission shall deposit: (1) \$65 million into the General Purpose
4 Account to be expended pursuant to appropriation of the
5 Legislature; (2) \$27 million into the Education Improvement Fund
6 for appropriation by the Legislature to the PROMISE Scholarship
7 Fund created in section seven, article seven, chapter eighteen-c of
8 this code; (3) \$19 million into the Economic Development Project
9 Fund created in subsection (e) of this section for the issuance of
10 revenue bonds and to be spent in accordance with the provisions of
11 said subsection; (4) \$19 million into the School Building Debt
12 Service Fund created in section six, article nine-d, chapter
13 eighteen of this code for the issuance of revenue bonds: *Provided,*
14 That for the fiscal year beginning July 1, 2008, and subsequent
15 fiscal years, no moneys shall be deposited in the School Building
16 Debt Service Fund pursuant to this subsection and instead \$19
17 million shall be deposited into the Excess Lottery School Building
18 Debt Service Fund; (5) \$40 million into the West Virginia
19 Infrastructure Fund created in section nine, article fifteen-a,
20 chapter thirty-one of this code to be spent in accordance with the
21 provisions of said article; (6) \$10 million into the Higher
22 Education Improvement Fund for Higher Education; and (7) \$5 million
23 into the State Park Improvement Fund for Park Improvements. No
24 portion of the distributions made as provided in this subsection
25 and subsection (b) of this section, except distributions made in
26 connection with bonds issued under subsection (f) of this section,

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

13 (d) For the fiscal year beginning July 1, 2009, and subsequent
14 fiscal years, the commission shall deposit: (1) \$65 million into
15 the General Purpose Account to be expended pursuant to
16 appropriation of the Legislature; (2) \$29 million into the
17 Education Improvement Fund for appropriation by the Legislature to
18 the PROMISE Scholarship Fund created in section seven, article
19 seven, chapter eighteen-c of this code; (3) \$19 million into the
20 Economic Development Project Fund created in subsection (e) of this
21 section for the issuance of revenue bonds and to be spent in
22 accordance with the provisions of said subsection; (4) \$19 million
23 into the Excess Lottery School Building Debt Service Fund created
24 in section six, article nine-d, chapter eighteen of this code; (5)
25 \$40 million into the West Virginia Infrastructure Fund created in
26 section nine, article fifteen-a, chapter thirty-one of this code to

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

20 (e) The Legislature finds and declares that in order to
21 attract new business, commerce and industry to this state, to
22 retain existing business and industry providing the citizens of
23 this state with economic security and to advance the business
24 prosperity of this state and the economic welfare of the citizens
25 of this state, it is necessary to provide public financial support
26 for constructing, equipping, improving and maintaining economic

1 development projects, capital improvement projects and
2 infrastructure which promote economic development in this state.

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

18 (2) The special revenue fund named the Economic Development
19 Project Fund into which ~~shall be~~ is deposited the amounts to be
20 deposited in the fund as specified in subsections (b), (c), and (d)
21 of this section is continued. The Economic Development Project
22 Fund shall consist of all such moneys, all appropriations to the
23 fund, all interest earned from investment of the fund and any
24 gifts, grants or contributions received by the fund. All amounts
25 deposited in the fund shall be pledged to the repayment of the
26 principal, interest and redemption premium, if any, on any revenue

1 bonds or refunding revenue bonds authorized by this section,
2 including any and all commercially customary and reasonable costs
3 and expenses which may be incurred in connection with the issuance,
4 refunding, redemption or defeasance of the bonds. The West
5 Virginia Economic Development Authority may further provide in the
6 resolution and in the trust agreement for priorities on the
7 revenues paid into the Economic Development Project Fund that are
8 necessary for the protection of the prior rights of the holders of
9 bonds issued at different times under the provisions of this
10 section. The bonds issued pursuant to this subsection shall be
11 separate from all other bonds which may be or have been issued,
12 from time to time, under the provisions of this article.

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

24 (4) Bonds issued under this subsection shall state on their
25 face that the bonds do not constitute a debt of the State of West
26 Virginia; that payment of the bonds, interest and charges thereon

1 cannot become an obligation of the State of West Virginia; and that
2 the bondholders' remedies are limited in all respects to the
3 Special Revenue Fund established in this subsection for the
4 liquidation of the bonds.

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

21 (6) For the purpose of certifying the projects that will
22 receive funds from the bond proceeds, a committee is hereby
23 established and comprised of the Governor, or his or her designee,
24 the Secretary of the Department of Revenue, the Executive Director
25 of the West Virginia Development Office and six persons appointed
26 by the Governor: *Provided*, That at least one citizen member must

1 be from each of the state's three congressional districts. The
2 committee shall meet as often as necessary and make certifications
3 from bond proceeds in accordance with this subsection. The
4 committee shall meet within thirty days of the effective date of
5 this section.

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

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

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

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

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

26 (D) Whether the project will promote economic development in

1 the region and the type of economic development that will be
2 promoted;

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

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

6 (9) A grant may not be awarded to an individual or other
7 private person or entity. Grants may be awarded only to an agency,
8 instrumentality or political subdivision of this state or to an
9 agency or instrumentality of a political subdivision of this state.
10 The project of an individual or private person or entity may be
11 certified to receive a low-interest loan paid from bond proceeds.

12 The terms and conditions of the loan, including, but not limited
13 to, the rate of interest to be paid and the period of the
14 repayment, shall be determined by the Economic Development
15 Authority after considering all applicable facts and circumstances.

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

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

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

3 (B) Health clinics and other health facilities;

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

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

7 (E) Biotechnical incubators, development centers and
8 facilities;

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

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

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

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

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

23 (K) Retail facilities, including related service, parking and
24 transportation facilities, appropriate lighting, landscaping and
25 security systems to revitalize decaying downtown areas; and

26 (L) Other facilities that promote or enhance economic

1 development, educational opportunities or tourism opportunities
2 thereby promoting the general welfare of this state and its
3 residents.

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

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

22 (f) If the commission receives revenues in an amount that is
23 not sufficient to fully comply with the requirements of subsections
24 (b), (c), (d), and (i) of this section, the commission shall first
25 make the distribution to the Economic Development Project Fund;
26 second, make the distribution or distributions to the other funds

1 from which debt service is to be paid; third, make the distribution
2 to the Education Improvement Fund for appropriation by the
3 Legislature to the PROMISE Scholarship Fund; fourth, make the
4 distribution to the West Virginia Infrastructure Fund, not already
5 distributed pursuant to this subsection; and ~~fourth~~ fifth, make the
6 distribution to the General Purpose Account: *Provided, That,*
7 subject to the provisions of this subsection, to the extent the
8 revenues are not pledged in support of revenue bonds which are or
9 may be issued, from time to time, under this section, the revenues
10 shall be distributed on a pro rata basis.

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

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

1 Project Fund an amount equal to one tenth of the projected annual
2 principal, interest and coverage requirements on any and all
3 revenue bonds issued, or to be issued as certified to the Lottery
4 Director; and second, to the fund or funds from which debt service
5 is paid on bonds issued under this section for the School Building
6 Authority, infrastructure, higher education and park improvements
7 an amount equal to one tenth of the projected annual principal,
8 interest and coverage requirements on any and all revenue bonds
9 issued, or to be issued as certified to the Lottery Director. In
10 the event there are insufficient funds available in any month to
11 transfer the amounts required pursuant to this subsection, the
12 deficiency shall be added to the amount transferred in the next
13 succeeding month in which revenues are available to transfer the
14 deficiency.

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

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

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

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

26 (C) Providing funding to help address the shortage of

1 qualified teachers and substitutes in areas of need, both in number
2 of teachers and in subject matter areas.

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

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

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

26 (1) On the last day of the fiscal year that begins on July 1,

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

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

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

16 (4) Five percent shall be distributed to the West Virginia
17 racing commission special account - Greyhound Breeding Development
18 Fund.

19 **§29-22-18d. Increase in allocation to West Virginia Infrastructure**
20 **Fund from State Excess Lottery Revenue Fund.**

21 Notwithstanding any provision of subsection (d), section
22 eighteen-a of this article to the contrary, the deposit of \$40
23 million into the West Virginia Infrastructure Fund set forth above
24 is for the fiscal year beginning July 1, 2010, only. For the
25 fiscal year beginning July 1, 2011, and subsequent fiscal years,
26 the commission shall deposit \$46 million into the West Virginia

1 Infrastructure Fund.

2 **CHAPTER 31. CORPORATIONS.**

3 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**
4 **COUNCIL.**

5 **§31-15A-9. Infrastructure fund; deposits in fund; disbursements**
6 **to provide loans, loan guarantees, grants and**
7 **other assistance; loans, loan guarantees, grants**
8 **and other assistance shall be subject to**
9 **assistance agreements.**

10 (a) The Water Development Authority shall create and
11 establish a special revolving fund of moneys made available by
12 appropriation, grant, contribution or loan to be known as the
13 "West Virginia Infrastructure Fund". This fund shall be governed,
14 administered and accounted for by the directors, officers and
15 managerial staff of the Water Development Authority as a special
16 purpose account separate and distinct from any other moneys,
17 funds or funds owned and managed by the Water Development
18 Authority. The infrastructure fund shall consist of sub-accounts,
19 as deemed necessary by the council or the Water Development
20 Authority, for the deposit of: (1) Infrastructure revenues; (2)
21 any appropriations, grants, gifts, contributions, loan proceeds
22 or other revenues received by the infrastructure fund from any
23 source, public or private, except for the first \$6 million
24 deposited pursuant to section eighteen-d, article twenty-two,
25 chapter twenty-nine of this code; (3) amounts received as

1 payments on any loans made by the Water Development Authority to
2 pay for the cost of a project or infrastructure project; (4)
3 insurance proceeds payable to the Water Development Authority or
4 the infrastructure fund in connection with any infrastructure
5 project or project; (5) all income earned on moneys held in the
6 infrastructure fund; (6) all funds deposited in accordance with
7 section four of article fifteen-b; and (7) all proceeds derived
8 from the sale of bonds issued pursuant to article fifteen-b of
9 this chapter.

10 Any money collected pursuant to this section shall be paid
11 into the West Virginia infrastructure fund by the state agent or
12 entity charged with the collection of the same, credited to the
13 infrastructure fund, and used only for purposes set forth in this
14 article or article fifteen-b.

15 Amounts in the infrastructure fund shall be segregated and
16 administered by the water development authority separate and
17 apart from its other assets and programs. Amounts in the
18 infrastructure fund may not be transferred to any other fund or
19 account or used, other than indirectly, for the purposes of any
20 other program of the Water Development Authority, except that the
21 Water Development Authority may use funds in the infrastructure
22 fund to reimburse itself for any administrative costs incurred by
23 it and approved by the council in connection with any loan, loan
24 guarantee, grant or other funding assistance made by the Water
25 Development Authority pursuant to this article.

26 (b) Notwithstanding any provision of this code to the

1 contrary, amounts in the infrastructure fund shall be deposited
2 by the Water Development Authority in one or more banking
3 institutions: *Provided*, That any moneys so deposited shall be
4 deposited in a banking institution located in this state. The
5 banking institution shall be selected by the Water Development
6 Authority by competitive bid. Pending the disbursement of any
7 money from the infrastructure fund as authorized under this
8 section, the Water Development Authority shall invest and
9 reinvest the moneys subject to the limitations set forth in
10 article eighteen, chapter thirty-one of this code.

11 (c) To further accomplish the purposes and intent of this
12 article and article fifteen-b of this chapter, the Water
13 Development Authority may pledge infrastructure revenues and from
14 time to time establish one or more restricted accounts within the
15 infrastructure fund for the purpose of providing funds to
16 guarantee loans for infrastructure projects or projects:
17 *Provided*, That for any fiscal year the Water Development
18 Authority may not deposit into the restricted accounts more than
19 twenty percent of the aggregate amount of infrastructure revenues
20 deposited into the infrastructure fund during the fiscal year. No
21 loan guarantee shall be made pursuant to this article unless
22 recourse under the loan guarantee is limited solely to amounts in
23 the restricted account or accounts. No person shall have any
24 recourse to any restricted accounts established pursuant to this
25 subsection other than those persons to whom the loan guarantee or
26 guarantees have been made.

1 (d) Each loan, loan guarantee, grant or other assistance
2 made or provided by the Water Development Authority shall be
3 evidenced by a loan, loan guarantee, grant or assistance
4 agreement between the Water Development Authority and the project
5 sponsor to which the loan, loan guarantee, grant or assistance
6 shall be made or provided, which agreement shall include, without
7 limitation and to the extent applicable, the following
8 provisions:

9 (1) The estimated cost of the infrastructure project or
10 project, the amount of the loan, loan guarantee or grant or the
11 nature of the assistance, and in the case of a loan or loan
12 guarantee, the terms of repayment and the security therefor, if
13 any;

14 (2) The specific purposes for which the loan or grant
15 proceed shall be expended or the benefits to accrue from the loan
16 guarantee or other assistance, and the conditions and procedure
17 for disbursing loan or grant proceeds;

18 (3) The duties and obligations imposed regarding the
19 acquisition, construction, improvement or operation of the
20 project or infrastructure project; and

21 (4) The agreement of the governmental agency to comply with
22 all applicable federal and state laws, and all rules and
23 regulations issued or imposed by the Water Development Authority
24 or other state, federal or local bodies regarding the
25 acquisition, construction, improvement or operation of the
26 infrastructure project or project and granting the Water

1 Development Authority the right to appoint a receiver for the
2 project or infrastructure if the project sponsor should default
3 on any terms of the agreement.

4 (e) Any resolution of the Water Development Authority
5 approving loan, loan guarantee, grant or other assistance shall
6 include a finding and determination that the requirements of this
7 section have been met.

8 (f) The interest rate on any loan to governmental, quasi-
9 governmental, or not for profit project sponsors for projects
10 made pursuant to this article shall not exceed three percent per
11 annum. Due to the limited availability of funds available for
12 loans for projects, it is the public policy of this state to
13 prioritize funding needs to first meet the needs of governmental,
14 quasi- governmental and not for profit project sponsors and to
15 require that loans made to for-profit entities shall bear
16 interest at the current market rates. Therefore, no loan may be
17 made by the council to a for-profit entity at an interest rate
18 which is less than the current market rate at the time of the
19 loan agreement.

20 (g) The Water Development Authority shall cause an annual
21 audit to be made by an independent certified public accountant of
22 its books, accounts and records, with respect to the receipts,
23 disbursements, contracts, leases, assignments, loans, grants and
24 all other matters relating to the financial operation of the
25 infrastructure fund, including the operating of any sub-account
26 within the infrastructure fund. The person performing such audit

1 shall furnish copies of the audit report to the commissioner of
2 finance and administration, where they shall be placed on file
3 and made available for inspection by the general public. The
4 person performing such audit shall also furnish copies of the
5 audit report to the Legislature's Joint Committee on Government
6 and Finance.

7 (h) There is hereby created in the Water Development
8 Authority a separate, special account which shall be designated
9 and known as the "West Virginia Infrastructure Lottery Revenue
10 Debt Service Fund," into which shall be deposited annually
11 commencing July 1, 2011, the first \$6 million transferred
12 pursuant to section eighteen-d, article twenty-two, chapter
13 twenty-nine of this code and any other funds provided therefor:
14 Provided, That such deposits and transfers are not subject to the
15 reservations of funds or requirements for distributions of funds
16 established by sections ten and eleven of this article. Moneys
17 in the West Virginia Infrastructure Lottery Revenue Debt Service
18 Fund shall be used to pay debt service on bonds or notes issued
19 by the Water Development Authority for Chesapeake Bay projects as
20 provided in section seventeen-b of this article, and to the
21 extent not needed to pay debt service, for the design or
22 construction of improvements for Chesapeake Bay projects. Moneys
23 in the West Virginia Infrastructure Lottery Revenue Debt Service
24 Fund not expended at the close of the fiscal year do not lapse or
25 revert to the General Fund but are carried forward to the next
26 fiscal year.

1 **§31-15A-17b. Infrastructure lottery revenue bonds for Chesapeake**
2 **Bay watershed projects.**

3 (a) The Chesapeake Bay has been identified as an impaired
4 water body due to excessive nutrients entering the Bay from
5 various sources in six states, including wastewater facilities
6 in West Virginia. To restore the Chesapeake Bay, the states have
7 agreed to reduce their respective nutrient contributions to the
8 Chesapeake Bay.

9 (b) Notwithstanding any other provision of this code to the
10 contrary, the Water Development Authority may issue, in
11 accordance with the provisions of section seventeen of this
12 article, infrastructure lottery revenue bonds payable from the
13 West Virginia Infrastructure Lottery Revenue Debt Service Fund
14 created by section nine of this article and such other sources as
15 may be legally pledged for such purposes other than the West
16 Virginia Infrastructure Revenue Debt Service Fund created by
17 section seventeen of this article.

18 (c) The council shall direct the Water Development Authority
19 to issue bonds in one or more series when it has approved
20 Chesapeake Bay projects with an authorized permitted flow of four
21 hundred thousand gallons per day or more. The proceeds of the
22 bonds shall be used solely to pay costs of issuance, fund a debt
23 service reserve account, capitalize interest, pay for security
24 instruments necessary to market the bonds and to make grants to
25 governmental instrumentalities of the state for the construction
26 of approved Chesapeake Bay projects. To the extent funds are

1 available in the West Virginia Infrastructure Lottery Revenue
2 Debt Service Fund that are not needed for debt service, the
3 council may direct the water development authority to make grants
4 to project sponsors for the design or construction of approved
5 Chesapeake Bay projects.

6 (d) No later than June 30, 2012, each publicly owned
7 facility with an authorized permitted flow of 400,000 gallons per
8 day or more that is subject to meeting Chesapeake Bay compliance
9 standards shall submit to the Council a ten year projected
10 capital funding plan for Bay compliance projects, including a
11 general project description, cost estimate and estimated or
12 actual project start date and project completion date, if any.
13 Council shall timely review the submitted capital funding plans
14 and forward approved plans to the water development authority for
15 further processing and implementation pursuant to this article.
16 If the Council finds a plan to be incomplete, inadequate or
17 otherwise problematic, it shall return the plan to the applicant
18 with comment on the plan shortcomings. The applicant may then
19 resubmit to council an amended capital funding plan for further
20 consideration pursuant to the terms of this paragraph.

21 (e) Upon approval, each proposed Chesapeake Bay project or
22 portion of a larger project, which portion is dedicated to
23 compliance with nutrient standards established for the protection
24 and restoration of the Chesapeake Bay, shall be eligible for
25 grant funding by funds generated by the infrastructure revenue
26 bonds described in section (b) of this section. At the request

1 of the applicant, the remaining percentage of project funding not
2 otherwise funded by grant under the provisions of this article
3 may be reviewed as a standard project funding application.

4 (f) No later than December 1, 2012, the Water Development
5 Authority shall report to the Joint Committee on Government and
6 Finance the total cost of Chesapeake Bay compliance projects and the
7 proposed grant awards for each eligible project. Grant awards shall
8 be of equal ratio among all applicants of the total cost of each
9 eligible project.

10 (g) Eligible projects that have obtained project financing
11 prior to December 31, 2011 may apply to the Council for funding
12 under the provisions of this section. These applications shall be
13 processed and considered as all other eligible projects, and any
14 grant funding awarded shall be dedicated solely to payment of
15 principal and interest of funding previously awarded to governmental
16 instrumentalities of the state for required Chesapeake Bay nutrient
17 removal projects. The use of grant funding to retire part or all
18 of such debt is specifically authorized, subject to the bond
19 covenants and contractual obligations of the borrowing governmental
20 entity. However, any private portion of funding provided by
21 agreement between a political subdivision and one or more private
22 entities, either by direct capital investment or debt service
23 obligation, shall not be eligible for grant funding under the
24 provisions of this article.

25

26 (NOTE: Strike-throughs indicate language that would be

1 stricken from the present law, and underscoring indicates new
2 language that would be added.

3

4 §29-22-18d and §31-15A-17b are new; therefore, strike-throughs
5 and underscoring have been omitted.

6

7 This bill was recommended for introduction and passage during
8 the Regular Session of the Legislature by the Joint Judiciary
9 Committee.)