

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 245**

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

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February 15, 2011.]
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12
13 A BILL to amend and reenact §22C-1-27 of the Code of West Virginia,
14 1931, as amended; to amend and reenact §29-22-18a of said
15 code; to amend said code by adding thereto a new section,
16 designated §29-22-18d; to amend and reenact §31-15A-9 of said
17 code; and to amend said code by adding thereto a new section,
18 designated §31-15A-17b, all relating to protection of the
19 Chesapeake Bay Watershed; increasing the bonding authority of
20 the Water Development Authority for limited purpose;
21 increasing amount of excess lottery revenue deposited to
22 infrastructure fund; providing for distribution to
23 infrastructure fund where excess lottery revenue shortfall
24 occurs; providing exemption for excess lottery revenue
25 deposited to infrastructure fund; creating the West Virginia
26 Infrastructure Lottery Revenue Debt Service Fund and providing

1 for purpose of new fund; authorizing Water Development
2 Authority to issue revenue bonds for certain Chesapeake Bay
3 Watershed projects; establishing deadline for publicly owned
4 wastewater facilities subject to Chesapeake Bay compliance
5 standards to submit ten-year projected capital funding plan to
6 Infrastructure Council for review and approval; providing
7 eligibility for funding; requiring Water Development Authority
8 to report to Joint Committee on Government and Finance
9 regarding total cost of Chesapeake Bay compliance projects;
10 making Chesapeake Bay compliance projects with funding
11 approved before a certain date eligible for grant funding; and
12 limiting eligibility of grant funding.

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

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

21 **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS,**

22 **AUTHORITIES, COMMISSIONS AND COMPACTS.**

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

24 **§22C-1-27. Authorized limit on borrowing.**

25 (a) The aggregate principal amount of bonds and notes issued

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

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

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

21 **ARTICLE 22. STATE LOTTERY ACT.**

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

23 (a) The State Lottery Fund in the State Treasury which is
24 designated and known as the State Excess Lottery Revenue Fund is
25 continued. The fund consists of all appropriations to the fund and

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

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

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

24 (c) For the fiscal year beginning July 1, 2004, and subsequent
25 fiscal years through the fiscal year ending June 30, 2009, the
26 commission shall deposit: (1) \$65 million into the General Purpose

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

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

10 (d) For the fiscal year beginning July 1, 2009, and subsequent
11 fiscal years, the commission shall deposit: (1) \$65 million into
12 the General Purpose Account to be expended pursuant to
13 appropriation of the Legislature; (2) \$29 million into the
14 Education Improvement Fund for appropriation by the Legislature to
15 the PROMISE Scholarship Fund created in section seven, article
16 seven, chapter eighteen-c of this code; (3) \$19 million into the
17 Economic Development Project Fund created in subsection (e) of this
18 section for the issuance of revenue bonds and to be spent in
19 accordance with the provisions of said subsection; (4) \$19 million
20 into the Excess Lottery School Building Debt Service Fund created
21 in section six, article nine-d, chapter eighteen of this code; (5)
22 \$40 million into the West Virginia Infrastructure Fund created in
23 section nine, article fifteen-a, chapter thirty-one of this code to
24 be spent in accordance with the provisions of said article; (6) \$10
25 million into the Higher Education Improvement Fund for Higher
26 Education; and (7) \$5 million into the State Park Improvement Fund

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

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

26 (1) The West Virginia Economic Development Authority created

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

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

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

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

21 (4) Bonds issued under this subsection shall state on their
22 face that the bonds do not constitute a debt of the State of West
23 Virginia; that payment of the bonds, interest and charges thereon
24 cannot become an obligation of the State of West Virginia; and that
25 the bondholders' remedies are limited in all respects to the
26 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 conclusive for all purposes and shall be
17 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
25 committee shall meet as often as necessary and make certifications
26 from bond proceeds in accordance with this subsection. The

1 committee shall meet within thirty days of the effective date of
2 this section.

3 (7) Applications for grants submitted on or before July 1,
4 2002, shall be considered refiled with the committee. Within ten
5 days from the effective date of this section as amended in the year
6 2003, the lead applicant shall file with the committee any
7 amendments to the original application that may be necessary to
8 properly reflect changes in facts and circumstances since the
9 application was originally filed with the committee.

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

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

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

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

23 (D) Whether the project will promote economic development in
24 the region and the type of economic development that will be
25 promoted;

26 (E) The type of capital investments to be made with bond

1 proceeds and the useful life of the capital investments; and

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

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

7 The project of an individual or private person or entity may be
8 certified to receive a low-interest loan paid from bond proceeds.

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

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

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

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

26 (B) Health clinics and other health facilities;

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

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

4 (E) Biotechnical incubators, development centers and
5 facilities;

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

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

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

14 (I) Recreational facilities, such as amphitheatres, walking
15 and hiking trails, bike trails, picnic facilities, restrooms, boat
16 docking and fishing piers, basketball and tennis courts, and
17 baseball, football and soccer fields;

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

20 (K) Retail facilities, including related service, parking and
21 transportation facilities, appropriate lighting, landscaping and
22 security systems to revitalize decaying downtown areas; and

23 (L) Other facilities that promote or enhance economic
24 development, educational opportunities or tourism opportunities
25 thereby promoting the general welfare of this state and its
26 residents.

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

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

19 (f) If the commission receives revenues in an amount that is
20 not sufficient to fully comply with the requirements of subsections
21 (b), (c), (d), and (i) of this section, the commission shall first
22 make the distribution to the Economic Development Project Fund;
23 second, make the distribution or distributions to the other funds
24 from which debt service is to be paid; third, make the distribution
25 to the Education Improvement Fund for appropriation by the
26 Legislature to the PROMISE Scholarship Fund; fourth, make the

1 distribution to the West Virginia Infrastructure Fund; and ~~fourth~~
2 fifth, make the distribution to the General Purpose Account:
3 *Provided, That,* subject to the provisions of this subsection, to
4 the extent the revenues are not pledged in support of revenue bonds
5 which are or may be issued, from time to time, under this section,
6 the revenues shall be distributed on a pro rata basis.

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

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

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

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

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

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

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

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

25 (2) The provisions of this subsection may not be construed by
26 any court to require any appropriation or any specific

1 appropriation or level of funding for the purposes set forth in
2 this subsection.

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

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

22 (1) On the last day of the fiscal year that begins on July 1,
23 2010, and for each fiscal year thereafter, forty-six percent shall
24 be placed in the general purse fund of a thoroughbred racetrack
25 licensee that did not participate in the Thoroughbred Development
26 Fund for at least four consecutive calendar years prior to December

1 31, 1992, for payment of regular purses;

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

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

12 (4) Five percent shall be distributed to the West Virginia
13 racing commission special account - Greyhound Breeding Development
14 Fund.

15 **§29-22-18d. Increase in allocation to West Virginia**

16 **Infrastructure Fund from State Excess Lottery**

17 **Revenue Fund.**

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

25 **CHAPTER 31. CORPORATIONS.**

1 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**
2 **COUNCIL.**

3 **§31-15A-9. Infrastructure fund; deposits in fund; disbursements**
4 **to provide loans, loan guarantees, grants and**
5 **other assistance; loans, loan guarantees, grants**
6 **and other assistance shall be subject to**
7 **assistance agreements.**

8 (a) The Water Development Authority shall create and
9 establish a special revolving fund of moneys made available by
10 appropriation, grant, contribution or loan to be known as the "West
11 Virginia Infrastructure Fund". This fund shall be governed,
12 administered and accounted for by the directors, officers and
13 managerial staff of the Water Development Authority as a special
14 purpose account separate and distinct from any other moneys, funds
15 or funds owned and managed by the Water Development Authority. The
16 infrastructure fund shall consist of sub-accounts, as deemed
17 necessary by the council or the Water Development Authority, for
18 the deposit of: (1) Infrastructure revenues; (2) any
19 appropriations, grants, gifts, contributions, loan proceeds or
20 other revenues received by the infrastructure fund from any source,
21 public or private, except for the first \$6 million deposited
22 pursuant to section eighteen-d, article twenty-two, chapter twenty-
23 nine of this code; (3) amounts received as payments on any loans
24 made by the Water Development Authority to pay for the cost of a
25 project or infrastructure project; (4) insurance proceeds payable

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

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

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

23 (b) Notwithstanding any provision of this code to the contrary,
24 amounts in the infrastructure fund shall be deposited by the Water
25 Development Authority in one or more banking institutions: *Provided,*
26 That any moneys so deposited shall be deposited in a banking

1 institution located in this state. The banking institution shall be
2 selected by the Water Development Authority by competitive bid.
3 Pending the disbursement of any money from the infrastructure fund
4 as authorized under this section, the Water Development Authority
5 shall invest and reinvest the moneys subject to the limitations set
6 forth in article eighteen, chapter thirty-one of this code.

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

22 (d) Each loan, loan guarantee, grant or other assistance made
23 or provided by the Water Development Authority shall be evidenced
24 by a loan, loan guarantee, grant or assistance agreement between the
25 Water Development Authority and the project sponsor to which the
26 loan, loan guarantee, grant or assistance shall be made or provided,

1 which agreement shall include, without limitation and to the extent
2 applicable, the following provisions:

3 (1) The estimated cost of the infrastructure project or
4 project, the amount of the loan, loan guarantee or grant or the
5 nature of the assistance, and in the case of a loan or loan
6 guarantee, the terms of repayment and the security therefor, if any;

7 (2) The specific purposes for which the loan or grant proceed
8 shall be expended or the benefits to accrue from the loan guarantee
9 or other assistance, and the conditions and procedure for disbursing
10 loan or grant proceeds;

11 (3) The duties and obligations imposed regarding the
12 acquisition, construction, improvement or operation of the project
13 or infrastructure project; and

14 (4) The agreement of the governmental agency to comply with all
15 applicable federal and state laws, and all rules and regulations
16 issued or imposed by the Water Development Authority or other state,
17 federal or local bodies regarding the acquisition, construction,
18 improvement or operation of the infrastructure project or project
19 and granting the Water Development Authority the right to appoint
20 a receiver for the project or infrastructure if the project
21 sponsor should default on any terms of the agreement.

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

26 (f) The interest rate on any loan to governmental, quasi-

1 governmental, or not for profit project sponsors for projects made
2 pursuant to this article shall not exceed three percent per annum.
3 Due to the limited availability of funds available for loans for
4 projects, it is the public policy of this state to prioritize
5 funding needs to first meet the needs of governmental, quasi-
6 governmental and not for profit project sponsors and to require that
7 loans made to for-profit entities shall bear interest at the current
8 market rates. Therefore, no loan may be made by the council to a
9 for-profit entity at an interest rate which is less than the current
10 market rate at the time of the loan agreement.

11 (g) The Water Development Authority shall cause an annual audit
12 to be made by an independent certified public accountant of its
13 books, accounts and records, with respect to the receipts,
14 disbursements, contracts, leases, assignments, loans, grants and all
15 other matters relating to the financial operation of the
16 infrastructure fund, including the operating of any sub-account
17 within the infrastructure fund. The person performing such audit
18 shall furnish copies of the audit report to the commissioner of
19 finance and administration, where they shall be placed on file and
20 made available for inspection by the general public. The person
21 performing such audit shall also furnish copies of the audit report
22 to the Legislature's Joint Committee on Government and Finance.

23 (h) There is hereby created in the Water Development Authority
24 a separate, special account which shall be designated and known as
25 the "West Virginia Infrastructure Lottery Revenue Debt Service
26 Fund," into which shall be deposited annually commencing July 1,

1 2011, the first \$6 million transferred pursuant to section eighteen-
2 d, article twenty-two, chapter twenty-nine of this code, any
3 assessments collected pursuant to section five, article one, chapter
4 twenty-two-c of this code and any other funds provided therefor:
5 Provided, That such deposits and transfers are not subject to the
6 reservations of funds established by sections ten and eleven of this
7 article. Moneys in the West Virginia Infrastructure Lottery Revenue
8 Debt Service Fund shall be used to pay debt service on bonds or
9 notes issued by the Water Development Authority for Chesapeake Bay
10 projects as provided in section seventeen-b of this article, and to
11 the extent not needed to pay debt service, for the design of
12 improvements for Chesapeake Bay projects.

13 **§31-15A-17b. Infrastructure lottery revenue bonds for Chesapeake**
14 **Bay watershed projects.**

15 (a) The Chesapeake Bay has been identified as an impaired
16 water body due to excessive nutrients entering the Bay from various
17 sources in six states, including wastewater facilities in West
18 Virginia. To restore the Chesapeake Bay, the states have agreed to
19 reduce their respective nutrient contributions to the Chesapeake
20 Bay.

21 (b) Notwithstanding any other provision of this code to the
22 contrary, the Water Development Authority may issue, in accordance
23 with the provisions of section seventeen of this article,
24 infrastructure lottery revenue bonds payable from the West Virginia
25 Infrastructure Lottery Revenue Debt Service Fund created by section
26 nine of this article and such other sources as may be legally

1pledged for such purposes other than the West Virginia
2Infrastructure Revenue Debt Service Fund created by section
3seventeen of this article.

4 (c) The council shall direct the Water Development Authority
5to issue bonds when it has approved Chesapeake Bay projects with an
6authorized permitted flow of four hundred thousand gallons per day
7or more. The proceeds of the bonds shall be used solely to pay
8costs of issuance, fund a debt service reserve account and to make
9grants to governmental instrumentalities of the state for the
10construction of approved Chesapeake Bay projects. To the extent
11funds are available in the West Virginia Infrastructure Lottery
12Revenue Debt Service Fund that are not needed for debt service, the
13council may direct the water development authority to make grants
14to project sponsors for the design of approved Chesapeake Bay
15projects.

16 (d) No later than June 30, 2012, each publicly owned facility
17with an authorized permitted flow of 400,000 gallons per day or more
18that is subject to meeting Chesapeake Bay compliance standards shall
19submit to the Council a ten year projected capital funding plan for
20Bay compliance projects, including a general project description,
21cost estimate and estimated or actual project start date and project
22completion date, if any. Council shall timely review the submitted
23capital funding plans and forward approved plans to the water
24development authority for further processing and implementation
25pursuant to this article. If the Council finds a plan to be
26incomplete, inadequate or otherwise problematic, it shall return the

1 plan to the applicant with comment on the plan shortcomings. The
2 applicant may then resubmit to council an amended capital funding
3 plan for further consideration pursuant to the terms of this
4 paragraph.

5 (e) Upon approval, each Chesapeake Bay project or portion of
6 a larger project, which portion is dedicated to compliance with
7 nutrient standards established for the protection and restoration
8 of the Chesapeake Bay, shall be eligible for grant funding by funds
9 generated by the infrastructure revenue bonds described in section
10 (b) of this section.

11 (f) No later than December 1, 2012, the water development
12 authority shall report to the Joint Committee on Government and
13 Finance the total cost of Chesapeake Bay compliance projects and the
14 proposed grant awards for each eligible project. Grant awards shall
15 be of equal percentage among applicants of the total cost of each
16 applicant project or the cost of a portion of a larger project,
17 which portion is dedicated to compliance with nutrient standards
18 established for the Chesapeake Bay. At the request of the applicant,
19 the remaining percentage of project funding not otherwise funded by
20 grant under the provisions of this article may be administered as
21 a normal project funding application.

22 (g) Existing or planned publicly owned facilities with an
23 authorized permitted flow of 400,000 gallons per day or more that
24 have obtained project financing prior to December 31, 2011 for
25 required nutrient removal projects may apply to the Council for
26 grant funding under the provisions of this section. These funding

1 applications shall be processed and considered as all other
2 projects, and any grant funding obtained for these projects shall
3 be dedicated solely to payment of principal and interest of funding
4 previously awarded to governmental instrumentalities of the state
5 for required Chesapeake Bay compliant nutrient removal projects.
6 Funding provided by agreement between a political subdivision and
7 one or more private entities, either by direct capital investment
8 or debt service obligation, shall not be eligible for grant funding
9 under the provisions of this article. The Legislature specifically
10 finds that nothing shall prohibit the use of grant funding to retire
11 part or all of the debt service associated with the funding
12 previously awarded to the governmental entity of the state that
13 qualifies for Grant funding under this section.

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

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

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