

H. B. 2844

(By Delegates Manchin, Miley, Evans, Fleischauer,
Caputo, Wells, Barker, Moore and Ferro)

[Introduced January 25, 2011; referred to the
Committee on the Judiciary then Finance.]

**Interim
Bill**

10 A BILL to amend and reenact §22C-1-6 and §22C-1-27 of the Code of
11 West Virginia, 1931, as amended; to amend and reenact §29-22-
12 18a of said code; to amend and reenact §31-15A-9 of said code;
13 and to amend said code by adding thereto a new section,
14 designated §31-15A-17b, all relating to protection of the
15 Chesapeake Bay Watershed; authorizing the Water Development
16 Authority to require consolidation of wastewater treatment
17 facilities; increasing the bonding authority of the Water
18 Development Authority for limited purpose; increasing amount
19 of excess lottery revenue deposited to infrastructure fund;
20 providing for distribution to infrastructure fund where excess
21 lottery revenue shortfall occurs; providing exemption for
22 excess lottery revenue deposited to infrastructure fund;
23 creating the West Virginia Infrastructure Lottery Revenue Debt
24 Service Fund and providing for purpose of new fund; and
25 authorizing Water Development Authority to issue revenue bonds

1 for certain Chesapeake Bay watershed projects.

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

3 That §22C-1-6 and §22C-1-27 of the Code of West Virginia,
4 1931, as amended, be amended and reenacted; that §29-22-18a of said
5 code be amended and reenacted; that §31-15A-9 of said code be
6 amended and reenacted; and that said code be amended by adding
7 thereto a new section, designated §31-15A-17b, all to read as
8 follows:

9 **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS,**
10 **AUTHORITIES, COMMISSIONS AND COMPACTS.**

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

12 **§22C-1-6. Powers, duties and responsibilities of authority**
13 **generally.**

14 The Water Development Authority has and may exercise all
15 powers necessary or appropriate to carry out and effectuate its
16 corporate purpose. The authority has the power and capacity to:

17 (1) Adopt and, from time to time, amend and repeal bylaws
18 necessary and proper for the regulation of its affairs and the
19 conduct of its business and rules to implement and make effective
20 its powers and duties, such rules to be promulgated in accordance
21 with the provisions of chapter twenty-nine-a of this code.

22 (2) Adopt an official seal.

23 (3) Maintain a principal office and, if necessary, regional
24 suboffices at locations properly designated or provided.

1 (4) Sue and be sued in its own name and plead and be impleaded
2 in its own name and particularly to enforce the obligations and
3 covenants made under sections nine, ten and sixteen of this
4 article. Any actions against the authority shall be brought in the
5 circuit court of Kanawha County in which the principal office of
6 the authority shall be located.

7 (5) Make loans and grants to governmental agencies for the
8 acquisition or construction of water development projects by any
9 such governmental agency and, in accordance with the provisions of
10 chapter twenty-nine-a of this code, adopt rules and procedures for
11 making such loans and grants. As a condition of eligibility for
12 any loan or grant, the authority may require governmental agencies
13 to consolidate new or existing water development projects.

14 (6) Acquire, construct, reconstruct, enlarge, improve,
15 furnish, equip, maintain, repair, operate, lease or rent to, or
16 contract for operation by a governmental agency or person, water
17 development projects and, in accordance with the provisions of
18 chapter twenty-nine-a of this code, adopt rules for the use of such
19 projects.

20 (7) Make available the use or services of any water
21 development project to one or more persons, one or more
22 governmental agencies or any combination thereof.

23 (8) Issue water development revenue bonds and notes and water
24 development revenue refunding bonds of the state, payable solely

1 from revenues as provided in section nine of this article unless
2 the bonds are refunded by refunding bonds, for the purpose of
3 paying all or any part of the cost of, or financing by loans to
4 governmental agencies, one or more water development projects or
5 parts thereof.

6 (9) Acquire by gift or purchase, hold and dispose of real and
7 personal property in the exercise of its powers and the performance
8 of its duties as set forth in this article.

9 (10) Acquire in the name of the state, by purchase or
10 otherwise, on such terms and in such manner as it deems proper, or
11 by the exercise of the right of eminent domain in the manner
12 provided in chapter fifty-four of this code, such public or private
13 lands, or parts thereof or rights therein, rights-of-way, property,
14 rights, easements and interests it deems necessary for carrying out
15 the provisions of this article, but excluding the acquisition by
16 the exercise of the right of eminent domain of any public water
17 facilities, stormwater systems or wastewater facilities, operated
18 under permits issued pursuant to the provisions of article eleven,
19 chapter twenty-two of this code and owned by any person or
20 governmental agency, and compensation shall be paid for public or
21 private lands so taken.

22 (11) Make and enter into all contracts and agreements and
23 execute all instruments necessary or incidental to the performance
24 of its duties and the execution of its powers. When the cost under

1 any such contract or agreement, other than compensation for
2 personal services, involves an expenditure of more than \$2,000, the
3 authority shall make a written contract with the lowest responsible
4 bidder after public notice published as a Class II legal
5 advertisement in compliance with the provisions of article three,
6 chapter fifty-nine of this code, the publication area for such
7 publication to be the county wherein the work is to be performed or
8 which is affected by the contract, which notice shall state the
9 general character of the work and the general character of the
10 materials to be furnished, the place where plans and specifications
11 therefor may be examined and the time and place of receiving bids,
12 but a contract or lease for the operation of a water development
13 project constructed and owned by the authority or an agreement for
14 cooperation in the acquisition or construction of a water
15 development project pursuant to section sixteen of this article is
16 not subject to the foregoing requirements and the authority may
17 enter into such contract or lease or such agreement pursuant to
18 negotiation and upon such terms and conditions and for such period
19 as it finds to be reasonable and proper under the circumstances and
20 in the best interests of proper operation or of efficient
21 acquisition or construction of such project. The authority may
22 reject any and all bids. A bond with good and sufficient surety,
23 approved by the authority, is required of all contractors in an
24 amount equal to at least fifty percent of the contract price,

1 conditioned upon the faithful performance of the contract.

2 (12) Employ managers, superintendents and other employees, who
3 are covered by the state civil service system, and retain or
4 contract with consulting engineers, financial consultants,
5 accounting experts, architects, attorneys and such other
6 consultants and independent contractors as are necessary in its
7 judgment to carry out the provisions of this article and fix the
8 compensation or fees thereof. All expenses thereof are payable
9 solely from the proceeds of water development revenue bonds or
10 notes issued by the authority, from revenues and from funds
11 appropriated for such purpose by the Legislature.

12 (13) Receive and accept from any federal agency, subject to
13 the approval of the Governor, grants for or in aid of the
14 construction of any water development project or for research and
15 development with respect to public water facilities, stormwater
16 systems or wastewater facilities and receive and accept aid or
17 contributions from any source of money, property, labor or other
18 things of value to be held, used and applied only for the purposes
19 for which such grants and contributions are made.

20 (14) Engage in research and development with respect to public
21 water facilities, stormwater systems or wastewater facilities.

22 (15) Purchase property coverage and liability insurance for
23 any water development project and for the principal office and
24 suboffices of the authority, insurance protecting the authority and

1 its officers and employees against liability, if any, for damage to
2 property or injury to or death of persons arising from its
3 operations and any other insurance the authority may agree to
4 provide under any resolution authorizing the issuance of water
5 development revenue bonds or in any trust agreement securing the
6 same.

7 (16) Charge, alter and collect rentals and other charges for
8 the use or services of any water development project as provided in
9 this article and charge and collect reasonable interest, fees and
10 charges in connection with the making and servicing of loans to
11 governmental agencies in the furtherance of the purposes of this
12 article.

13 (17) Establish or increase reserves from moneys received or to
14 be received by the authority to secure or to pay the principal of
15 and interest on the bonds and notes issued by the authority
16 pursuant to this article.

17 (18) Administer on behalf of the Department of Environmental
18 Protection the Dam Safety Rehabilitation Revolving Fund Loan
19 Program pursuant to the provisions of article fourteen of chapter
20 twenty-two of this code. Revenues or moneys designated by this
21 code or otherwise appropriated for use by the authority pursuant to
22 the provisions of this article may not be used for the Dam Safety
23 Rehabilitation Revolving Fund Loan Program and moneys in the Dam
24 Safety Rehabilitation Revolving Fund shall be kept separate from

1 all revenues and moneys of the authority.

2 (19) Do all acts necessary and proper to carry out the powers
3 expressly granted to the authority in this article.

4 **§22C-1-27. Authorized limit on borrowing.**

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

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

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

2 **ARTICLE 22. STATE LOTTERY ACT.**

3 **§29-22-18a. State Excess Lottery Revenue Fund.**

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

19 (b) For the fiscal year beginning July 1, 2002, the commission
20 shall deposit: (1) \$65 million into the subaccount of the state
21 Excess Lottery Revenue Fund hereby created in the State Treasury to
22 be known as the General Purpose Account to be expended pursuant to
23 appropriation of the Legislature; (2) \$10 million into the
24 Education Improvement Fund for appropriation by the Legislature to

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

1 this code for the issuance of revenue bonds; (5) \$40 million into
2 the West Virginia Infrastructure Fund created in section nine,
3 article fifteen-a, chapter thirty-one of this code to be spent in
4 accordance with the provisions of said article; (6) \$10 million
5 into the Higher Education Improvement Fund for Higher Education;
6 and (7) \$7 million into the State Park Improvement Fund for Park
7 Improvements.

8 (c) For the fiscal year beginning July 1, 2004, and subsequent
9 fiscal years through the fiscal year ending June 30, 2009, the
10 commission shall deposit: (1) \$65 million into the General Purpose
11 Account to be expended pursuant to appropriation of the
12 Legislature; (2) \$27 million into the Education Improvement Fund
13 for appropriation by the Legislature to the PROMISE Scholarship
14 Fund created in section seven, article seven, chapter eighteen-c of
15 this code; (3) \$19 million into the Economic Development Project
16 Fund created in subsection (e) of this section for the issuance of
17 revenue bonds and to be spent in accordance with the provisions of
18 said subsection; (4) \$19 million into the School Building Debt
19 Service Fund created in section six, article nine-d, chapter
20 eighteen of this code for the issuance of revenue bonds: *Provided,*
21 That for the fiscal year beginning July 1, 2008, and subsequent
22 fiscal years, no moneys shall be deposited in the School Building
23 Debt Service Fund pursuant to this subsection and instead \$19
24 million shall be deposited into the Excess Lottery School Building

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

22 (d) For the fiscal year beginning July 1, 2009, and subsequent
23 fiscal years, the commission shall deposit: (1) \$65 million into
24 the General Purpose Account to be expended pursuant to

1 appropriation of the Legislature; (2) \$29 million into the
2 Education Improvement Fund for appropriation by the Legislature to
3 the PROMISE Scholarship Fund created in section seven, article
4 seven, chapter eighteen-c of this code; (3) \$19 million into the
5 Economic Development Project Fund created in subsection (e) of this
6 section for the issuance of revenue bonds and to be spent in
7 accordance with the provisions of said subsection; (4) \$19 million
8 into the Excess Lottery School Building Debt Service Fund created
9 in section six, article nine-d, chapter eighteen of this code; (5)
10 \$40 million into the West Virginia Infrastructure Fund created in
11 section nine, article fifteen-a, chapter thirty-one of this code to
12 be spent in accordance with the provisions of said article; (6) \$10
13 million into the Higher Education Improvement Fund for Higher
14 Education; and (7) \$5 million into the State Park Improvement Fund
15 for Park Improvements. No portion of the distributions made as
16 provided in this subsection and subsection (b) of this section,
17 except distributions made in connection with bonds issued under
18 subsection (f) of this section, may be used to pay debt service on
19 bonded indebtedness until after the Legislature expressly
20 authorizes issuance of the bonds and payment of debt service on the
21 bonds through statutory enactment or the adoption of a concurrent
22 resolution by both houses of the Legislature. Until subsequent
23 legislative enactment or adoption of a resolution that expressly
24 authorizes issuance of the bonds and payment of debt service on the

1 bonds with funds distributed under this subsection and subsection
2 (b) of this section, except distributions made in connection with
3 bonds issued under subsection (f) of this section, the
4 distributions may be used only to fund capital improvements that
5 are not financed by bonds and only pursuant to appropriation of the
6 Legislature.

7 (e) For the fiscal year beginning July 1, 2011, and subsequent
8 fiscal years, the commission shall deposit: (1) \$65 million into
9 the General Purpose Account to be expended pursuant to
10 appropriation of the Legislature; (2) \$29 million into the
11 Education Improvement Fund for appropriation by the Legislature to
12 the PROMISE Scholarship Fund created in section seven, article
13 seven, chapter eighteen-c of this code; (3) \$19 million into the
14 Economic Development Project Fund created in subsection (f) of this
15 section for the issuance of revenue bonds and to be spent in
16 accordance with the provisions of that subsection; (4) \$19 million
17 into the Excess Lottery School Building Debt Service Fund created
18 in section six, article nine-d, chapter eighteen of this code; (5)
19 \$46 million into the West Virginia Infrastructure Fund created in
20 section nine, article fifteen-a, chapter thirty-one of this code to
21 be spent in accordance with the provisions of that article; (6) \$10
22 million into the Higher Education Improvement Fund for Higher
23 Education; and (7) \$5 million into the State Park Improvement Fund
24 for Park Improvements. No portion of the distributions made as

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

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

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

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

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

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

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

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

24 (6) For the purpose of certifying the projects that will

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

11 (7) Applications for grants submitted on or before July 1,
12 2002, shall be considered refiled with the committee. Within ten
13 days from the effective date of this section as amended in the year
14 2003, the lead applicant shall file with the committee any
15 amendments to the original application that may be necessary to
16 properly reflect changes in facts and circumstances since the
17 application was originally filed with the committee.

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

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

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

1 (C) The ability of the project to create or retain jobs,
2 considering the number of jobs, the type of jobs, whether benefits
3 are or will be paid, the type of benefits involved and the
4 compensation reasonably anticipated to be paid persons filling new
5 jobs or the compensation currently paid to persons whose jobs would
6 be retained;

7 (D) Whether the project will promote economic development in
8 the region and the type of economic development that will be
9 promoted;

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

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

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

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

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

23 (10) Prior to making each certification, the committee shall
24 conduct at least one public hearing, which may be held outside of

1 Kanawha County. Notice of the time, place, date and purpose of the
2 hearing shall be published in at least one newspaper in each of the
3 three congressional districts at least fourteen days prior to the
4 date of the public hearing.

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

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

12 (B) Health clinics and other health facilities;

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

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

16 (E) Biotechnical incubators, development centers and
17 facilities;

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

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

23 (H) Railroad bridges, switches and track extension or spurs on
24 public or private land necessary to retain existing businesses or

1 attract new businesses;

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

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

8 (K) Retail facilities, including related service, parking and
9 transportation facilities, appropriate lighting, landscaping and
10 security systems to revitalize decaying downtown areas; and

11 (L) Other facilities that promote or enhance economic
12 development, educational opportunities or tourism opportunities
13 thereby promoting the general welfare of this state and its
14 residents.

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

20 (13) If any proceeds from sale of bonds remain after paying
21 costs and making grants and loans as provided in this subsection,
22 the surplus may be deposited in an account in the State Treasury
23 known as the Economic Development Project Bridge Loan Fund
24 administered by the Economic Development Authority created in

1 article fifteen, chapter thirty-one of this code. Expenditures
2 from the fund are not authorized from collections but are to be
3 made only in accordance with appropriation by the Legislature and
4 in accordance with the provisions of article three, chapter twelve
5 of this code and upon fulfillment of the provisions of article two,
6 chapter five-a of this code. Loan repayment amounts, including the
7 portion attributable to interest, shall be paid into the fund
8 created in this subdivision.

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

24 ~~(g)~~ (h) Each fiscal year, the commission shall, after meeting

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

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

1 the event there are insufficient funds available in any month to
2 transfer the amounts required pursuant to this subsection, the
3 deficiency shall be added to the amount transferred in the next
4 succeeding month in which revenues are available to transfer the
5 deficiency.

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

11 ~~(j)~~ (k) (1) The Legislature considers the following as
12 priorities in the expenditure of any surplus revenue funds:

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

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

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

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

24 ~~(k)~~ (l) The Legislature further directs the Governor to focus

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

16 ~~(i)~~ (m) After all of the expenditures in subsections (a)
17 through ~~(i)~~ (j) of this section have been satisfied in any fiscal
18 year, the next \$2 million shall be distributed as follows:

19 (1) On the last day of the fiscal year that begins on July 1,
20 2010, and for each fiscal year thereafter, forty-six percent shall
21 be placed in the general purse fund of a thoroughbred racetrack
22 licensee that did not participate in the Thoroughbred Development
23 Fund for at least four consecutive calendar years prior to December
24 31, 1992, for payment of regular purses;

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

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

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

14 **CHAPTER 31. CORPORATIONS.**

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

17 **§31-15A-9. Infrastructure fund; deposits in fund; disbursements**
 18 **to provide loans, loan guarantees, grants and**
 19 **other assistance; loans, loan guarantees, grants**
 20 **and other assistance shall be subject to**
 21 **assistance agreements.**

22 (a) The Water Development Authority shall create and
 23 establish a special revolving fund of moneys made available by
 24 appropriation, grant, contribution or loan to be known as the "West

1 Virginia Infrastructure Fund". This fund shall be governed,
2 administered and accounted for by the directors, officers and
3 managerial staff of the Water Development Authority as a special
4 purpose account separate and distinct from any other moneys, funds
5 or funds owned and managed by the Water Development Authority. The
6 infrastructure fund shall consist of sub-accounts, as deemed
7 necessary by the council or the Water Development Authority, for
8 the deposit of: (1) Infrastructure revenues; (2) any
9 appropriations, grants, gifts, contributions, loan proceeds or
10 other revenues received by the infrastructure fund from any source,
11 public or private, except for the first \$6 million deposited
12 pursuant to section eighteen-a, article twenty-two, chapter twenty-
13 nine of this code; (3) amounts received as payments on any loans
14 made by the Water Development Authority to pay for the cost of a
15 project or infrastructure project; (4) insurance proceeds payable
16 to the Water Development Authority or the infrastructure fund in
17 connection with any infrastructure project or project; (5) all
18 income earned on moneys held in the infrastructure fund; (6) all
19 funds deposited in accordance with section four of article fifteen-
20 b; and (7) all proceeds derived from the sale of bonds issued
21 pursuant to article fifteen-b of this chapter.

22 Any money collected pursuant to this section shall be paid
23 into the West Virginia infrastructure fund by the state agent or
24 entity charged with the collection of the same, credited to the

1 infrastructure fund, and used only for purposes set forth in this
2 article or article fifteen-b.

3 Amounts in the infrastructure fund shall be segregated and
4 administered by the water development authority separate and apart
5 from its other assets and programs. Amounts in the infrastructure
6 fund may not be transferred to any other fund or account or used,
7 other than indirectly, for the purposes of any other program of the
8 Water Development Authority, except that the Water Development
9 Authority may use funds in the infrastructure fund to reimburse
10 itself for any administrative costs incurred by it and approved by
11 the council in connection with any loan, loan guarantee, grant or
12 other funding assistance made by the Water Development Authority
13 pursuant to this article.

14 (b) Notwithstanding any provision of this code to the contrary,
15 amounts in the infrastructure fund shall be deposited by the Water
16 Development Authority in one or more banking institutions: *Provided,*
17 That any moneys so deposited shall be deposited in a banking
18 institution located in this state. The banking institution shall be
19 selected by the Water Development Authority by competitive bid.
20 Pending the disbursement of any money from the infrastructure fund
21 as authorized under this section, the Water Development Authority
22 shall invest and reinvest the moneys subject to the limitations set
23 forth in article eighteen, chapter thirty-one of this code.

24 (c) To further accomplish the purposes and intent of this

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

15 (d) Each loan, loan guarantee, grant or other assistance made
16 or provided by the Water Development Authority shall be evidenced
17 by a loan, loan guarantee, grant or assistance agreement between the
18 Water Development Authority and the project sponsor to which the
19 loan, loan guarantee, grant or assistance shall be made or provided,
20 which agreement shall include, without limitation and to the extent
21 applicable, the following provisions:

22 (1) The estimated cost of the infrastructure project or
23 project, the amount of the loan, loan guarantee or grant or the
24 nature of the assistance, and in the case of a loan or loan

1 guarantee, the terms of repayment and the security therefor, if any;

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

6 (3) The duties and obligations imposed regarding the
7 acquisition, construction, improvement or operation of the project
8 or infrastructure project; and

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

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

21 (f) The interest rate on any loan to governmental, quasi-
22 governmental, or not for profit project sponsors for projects made
23 pursuant to this article shall not exceed three percent per annum.
24 Due to the limited availability of funds available for loans for

1 projects, it is the public policy of this state to prioritize
2 funding needs to first meet the needs of governmental, quasi-
3 governmental and not for profit project sponsors and to require that
4 loans made to for-profit entities shall bear interest at the current
5 market rates. Therefore, no loan may be made by the council to a
6 for-profit entity at an interest rate which is less than the current
7 market rate at the time of the loan agreement.

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

20 (h) There is hereby created in the Water Development Authority
21 a separate, special account which shall be designated and known as
22 the "West Virginia Infrastructure Lottery Revenue Debt Service
23 Fund," into which shall be deposited annually commencing July 1,
24 2011, the first \$6 million transferred pursuant to section eighteen-

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

12 **§31-15A-17b. Infrastructure lottery revenue bonds for Chesapeake**
13 **Bay watershed projects.**

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

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

1 nine of this article and such other sources as may be legally
2 pledged for such purposes other than the West Virginia
3 Infrastructure Revenue Debt Service Fund created by section
4 seventeen of this article.

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

NOTE: The purpose of this bill is to establish a program to provide financial assistance to wastewater treatment facilities in the Chesapeake Bay Watershed that are required to install expensive technology in order to meet stringent nutrient standards imposed by the U.S. Environmental Protection Agency..

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

§31-15A-17b is new; therefore, it has been completely underscored.

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