

ENROLLED

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 245

(SENATORS KESSLER (ACTING PRESIDENT), SNYDER,
BROWNING, FOSTER, LAIRD, YOST, STOLLINGS,
BEACH, FANNING, UNGER, WILLS, BARNES,
MILLER, EDGELL, MCCABE, PLYMALE,
KLEMPA AND WILLIAMS, *original sponsors*)

[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §22C-1-27 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29-22-18d; to amend and reenact §31-15A-9 of said code; and to amend said code by adding thereto a new section, designated §31-15A-17b, all relating to protection of the watersheds of the Chesapeake Bay and the Greenbrier River; increasing the bonding authority of the Water Development Authority for limited purposes; directing an annual amount of excess lottery revenue to newly created debt service fund to pay costs of and debt service on bonds; providing for the issuance of bonds when watershed

compliance projects have been approved; establishing deadline for certain publicly owned wastewater facilities to submit ten-year projected capital funding plan to the West Virginia Infrastructure and Jobs Development Council for review and approval; providing eligibility for funding; requiring Water Development Authority to report to Joint Committee on Government and Finance; establishing distribution guidelines for grants to eligible projects; making eligible projects with funding approved before a certain date eligible for grant funding to the extent permitted by law and bond covenants; and limiting eligibility of grant funding.

Be it enacted by the Legislature of West Virginia:

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

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

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

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

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

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18d. Allocation to West Virginia Infrastructure Lottery Revenue Debt Service Fund and West Virginia Infrastructure Fund from State Excess Lottery Revenue Fund beginning July 1, 2011.

1 Notwithstanding any provision of subsection (d), section
2 eighteen-a of this article to the contrary, the deposit of \$40
3 million into the West Virginia Infrastructure Fund set forth
4 above is for the fiscal year beginning July 1, 2010, only. For
5 the fiscal year beginning July 1, 2011, and each fiscal year
6 thereafter, in lieu of the deposits required under subdivision
7 (5), subsection (d), section eighteen-a of this article, the
8 commission shall, first, deposit \$6 million into the West
9 Virginia Infrastructure Lottery Revenue Debt Service Fund
10 created in subsection (h), section nine, article fifteen-a,
11 chapter thirty-one of this code, to be spent in accordance
12 with the provisions of that subsection, and, second, deposit
13 \$40 million into the West Virginia Infrastructure Fund
14 created in subsection (a), section nine, article fifteen-a,
15 chapter thirty-one of this code, to be spent in accordance
16 with the provisions of that article.

CHAPTER 31. CORPORATIONS.

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

§31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements; West Virginia Infrastructure Lottery Revenue Debt Service Fund; use of funds for projects.

1 (a) The Water Development Authority shall create and
2 establish a special revolving fund of moneys made available
3 by appropriation, grant, contribution or loan to be known as
4 the “West Virginia Infrastructure Fund”. This fund shall be
5 governed, administered and accounted for by the directors,
6 officers and managerial staff of the Water Development
7 Authority as a special purpose account separate and distinct
8 from any other moneys, funds or funds owned and managed
9 by the Water Development Authority. The infrastructure
10 fund shall consist of sub-accounts, as deemed necessary by
11 the council or the Water Development Authority, for the
12 deposit of: (1) Infrastructure revenues; (2) any appropria-
13 tions, grants, gifts, contributions, loan proceeds or other
14 revenues received by the infrastructure fund from any
15 source, public or private; (3) amounts received as payments
16 on any loans made by the Water Development Authority to
17 pay for the cost of a project or infrastructure project; (4)
18 insurance proceeds payable to the Water Development
19 Authority or the infrastructure fund in connection with any
20 infrastructure project or project; (5) all income earned on
21 moneys held in the infrastructure fund; (6) all funds depos-
22 ited in accordance with section four of article fifteen-b; and
23 (7) all proceeds derived from the sale of bonds issued pursu-
24 ant to article fifteen-b of this chapter.

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

30 Amounts in the infrastructure fund shall be segregated and
31 administered by the Water Development Authority separate
32 and apart from its other assets and programs. Amounts in the
33 infrastructure fund may not be transferred to any other fund
34 or account or used, other than indirectly, for the purposes of
35 any other program of the Water Development Authority,
36 except that the Water Development Authority may use funds
37 in the infrastructure fund to reimburse itself for any admin-
38 istrative costs incurred by it and approved by the council in
39 connection with any loan, loan guarantee, grant or other
40 funding assistance made by the Water Development Author-
41 ity pursuant to this article.

42 (b) Notwithstanding any provision of this code to the
43 contrary, amounts in the infrastructure fund shall be
44 deposited by the Water Development Authority in one or
45 more banking institutions: *Provided*, That any moneys so
46 deposited shall be deposited in a banking institution located
47 in this state. The banking institution shall be selected by the
48 Water Development Authority by competitive bid. Pending
49 the disbursement of any money from the infrastructure fund
50 as authorized under this section, the Water Development
51 Authority shall invest and reinvest the moneys subject to the
52 limitations set forth in article eighteen, chapter thirty-one of
53 this code.

54 (c) To further accomplish the purposes and intent of this
55 article and article fifteen-b of this chapter, the Water
56 Development Authority may pledge infrastructure revenues
57 and from time to time establish one or more restricted
58 accounts within the infrastructure fund for the purpose of
59 providing funds to guarantee loans for infrastructure
60 projects or projects: *Provided*, That for any fiscal year the
61 Water Development Authority may not deposit into the
62 restricted accounts more than twenty percent of the aggre-
63 gate amount of infrastructure revenues deposited into the
64 infrastructure fund during the fiscal year. No loan guarantee
65 shall be made pursuant to this article unless recourse under
66 the loan guarantee is limited solely to amounts in the
67 restricted account or accounts. No person shall have any

68 recourse to any restricted accounts established pursuant to
69 this subsection other than those persons to whom the loan
70 guarantee or guarantees have been made.

71 (d) Each loan, loan guarantee, grant or other assistance
72 made or provided by the Water Development Authority shall
73 be evidenced by a loan, loan guarantee, grant or assistance
74 agreement between the Water Development Authority and
75 the project sponsor to which the loan, loan guarantee, grant
76 or assistance shall be made or provided, which agreement
77 shall include, without limitation and to the extent applica-
78 ble, the following provisions:

79 (1) The estimated cost of the infrastructure project or
80 project, the amount of the loan, loan guarantee or grant or
81 the nature of the assistance, and in the case of a loan or loan
82 guarantee, the terms of repayment and the security therefor,
83 if any;

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

88 (3) The duties and obligations imposed regarding the
89 acquisition, construction, improvement or operation of the
90 project or infrastructure project; and

91 (4) The agreement of the governmental agency to comply
92 with all applicable federal and state laws, and all rules and
93 regulations issued or imposed by the Water Development
94 Authority or other state, federal or local bodies regarding the
95 acquisition, construction, improvement or operation of the
96 infrastructure project or project and granting the Water
97 Development Authority the right to appoint a receiver for
98 the project or infrastructure if the project sponsor should
99 default on any terms of the agreement.

100 (e) Any resolution of the Water Development Authority
101 approving loan, loan guarantee, grant or other assistance

102 shall include a finding and determination that the require-
103 ments of this section have been met.

104 (f) The interest rate on any loan to governmental, quasi-
105 governmental, or not for profit project sponsors for projects
106 made pursuant to this article shall not exceed three percent
107 per annum. Due to the limited availability of funds available
108 for loans for projects, it is the public policy of this state to
109 prioritize funding needs to first meet the needs of govern-
110 mental, quasi- governmental and not for profit project
111 sponsors and to require that loans made to for-profit entities
112 shall bear interest at the current market rates. Therefore, no
113 loan may be made by the council to a for-profit entity at an
114 interest rate which is less than the current market rate at the
115 time of the loan agreement.

116 (g) The Water Development Authority shall cause an
117 annual audit to be made by an independent certified public
118 accountant of its books, accounts and records, with respect
119 to the receipts, disbursements, contracts, leases, assignments,
120 loans, grants and all other matters relating to the financial
121 operation of the infrastructure fund, including the operating
122 of any sub-account within the infrastructure fund. The
123 person performing such audit shall furnish copies of the
124 audit report to the commissioner of finance and administra-
125 tion, where they shall be placed on file and made available
126 for inspection by the general public. The person performing
127 such audit shall also furnish copies of the audit report to the
128 Legislature's Joint Committee on Government and Finance.

129 (h) There is hereby created in the Water Development
130 Authority a separate, special account which shall be desig-
131 nated and known as the "West Virginia Infrastructure
132 Lottery Revenue Debt Service Fund," into which shall be
133 deposited annually for the fiscal year beginning July 1, 2011,
134 and each fiscal year thereafter, the first \$6 million trans-
135 ferred pursuant to section eighteen-d, article twenty-two,
136 chapter twenty-nine of this code and any other funds
137 provided therefor: *Provided*, That such deposits and trans-
138 fers are not subject to the reservations of funds or require-

139 ments for distributions of funds established by sections ten
140 and eleven of this article. Moneys in the West Virginia
141 infrastructure lottery revenue debt service fund shall be used
142 to pay debt service on bonds or notes issued by the Water
143 Development Authority for watershed compliance projects
144 as provided in section seventeen-b of this article, and to the
145 extent not needed to pay debt service, for the design or
146 construction of improvements for watershed compliance
147 projects. Moneys in the West Virginia infrastructure lottery
148 revenue debt service fund not expended at the close of the
149 fiscal year do not lapse or revert to the General Fund but are
150 carried forward to the next fiscal year.

§31-15A-17b. Infrastructure lottery revenue bonds for watershed compliance projects.

1 (a)(1) The Chesapeake Bay has been identified as an
2 impaired water body due to excessive nutrients entering the
3 Bay from various sources in six states, including wastewater
4 facilities in West Virginia. To restore the Chesapeake Bay,
5 the states have agreed to reduce their respective nutrient
6 contributions to the Chesapeake Bay.

7 (2) The Greenbrier River Watershed in southeastern West
8 Virginia which encompasses approximately 1,646 square
9 miles, the majority of which lies within Pocahontas,
10 Greenbrier, Monroe and Summers counties, has been
11 identified as an impaired water body due to excessive levels
12 of fecal coliform and phosphorus entering the Watershed
13 from various sources, including wastewater facilities in West
14 Virginia. To restore the Greenbrier River Watershed, the
15 state agrees to reduce the fecal coliform and phosphorus
16 contributions to the Greenbrier River Watershed.

17 (b) Notwithstanding any other provision of this code to the
18 contrary, the Water Development Authority may issue, in
19 accordance with the provisions of section seventeen of this
20 article, infrastructure lottery revenue bonds payable from
21 the West Virginia infrastructure lottery revenue debt service
22 fund created by section nine of this article and such other

23 sources as may be legally pledged for such purposes other
24 than the West Virginia infrastructure revenue debt service
25 fund created by section seventeen of this article.

26 (c) The council shall direct the Water Development
27 Authority to issue bonds in one or more series when it has
28 approved Chesapeake Bay watershed compliance projects
29 and Greenbrier River watershed compliance projects with an
30 authorized permitted flow of four hundred thousand gallons
31 per day or more. The proceeds of the bonds shall be used
32 solely to pay costs of issuance, fund a debt service reserve
33 account, capitalize interest, pay for security instruments
34 necessary to market the bonds and to make grants to govern-
35 mental instrumentalities of the state for the construction of
36 approved Chesapeake Bay watershed compliance projects
37 and Greenbrier River watershed compliance projects. To the
38 extent funds are available in the West Virginia Infrastruc-
39 ture Lottery Revenue Debt Service Fund that are not needed
40 for debt service, the council may direct the Water Develop-
41 ment Authority to make grants to project sponsors for the
42 design or construction of approved Chesapeake Bay water-
43 shed compliance projects and Greenbrier River watershed
44 compliance projects.

45 (d) No later than June 30, 2012, each publicly owned
46 facility with an authorized permitted flow of 400,000 gallons
47 per day or more that is subject to meeting Chesapeake Bay
48 compliance standards or Greenbrier River watershed
49 compliance standards shall submit to the council a ten year
50 projected capital funding plan for Chesapeake Bay water-
51 shed compliance projects or Greenbrier River watershed
52 compliance projects, as the case may be, including a general
53 project description, cost estimate and estimated or actual
54 project start date and project completion date, if any. The
55 council shall timely review the submitted capital funding
56 plans and forward approved plans to the Water Development
57 Authority for further processing and implementation
58 pursuant to this article. If the council finds a plan to be
59 incomplete, inadequate or otherwise problematic, it shall
60 return the plan to the applicant with comment on the plan

61 shortcomings. The applicant may then resubmit to council an
62 amended capital funding plan for further consideration
63 pursuant to the terms of this subsection.

64 (e) Upon approval, each proposed Chesapeake Bay water-
65 shed compliance project or Greenbrier River watershed
66 compliance project, or portion of a larger project, which
67 portion is dedicated to compliance with nutrient standards,
68 or fecal coliform and phosphorus standards, established for
69 the protection and restoration of the Chesapeake Bay or the
70 Greenbrier River Watershed, as the case may be, shall be
71 eligible for grant funding by funds generated by the infra-
72 structure lottery revenue bonds described in section (b) of
73 this section. At the request of the applicant, the remaining
74 percentage of project funding not otherwise funded by grant
75 under the provisions of this article may be reviewed as a
76 standard project funding application.

77 (f) No later than December 1, 2012, the Water Development
78 Authority shall report to the Joint Committee on Govern-
79 ment and Finance the total cost of Chesapeake Bay water-
80 shed compliance projects and the Greenbrier River water-
81 shed compliance projects and the proposed grant awards for
82 each eligible project. Grant awards shall be of equal ratio
83 among all applicants of the total cost of each eligible project.

84 (g) Eligible projects that have obtained project financing
85 prior to December 31, 2011 may apply to the council for
86 funding under the provisions of this section. These applica-
87 tions shall be processed and considered as all other eligible
88 projects, and any grant funding awarded shall, to the extent
89 allowed by law, be dedicated to prepay all or a portion of
90 debt previously incurred by governmental instrumentalities
91 of the state for required Chesapeake Bay nutrient removal
92 projects or Greenbrier River watershed fecal coliform and
93 phosphorus removal projects, subject to the bond covenants
94 and contractual obligations of the borrowing governmental
95 entity. However, any private portion of funding provided by
96 agreement between a political subdivision and one or more

97 private entities, either by direct capital investment or debt
98 service obligation, shall not be eligible for grant funding
99 under the provisions of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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Acting President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2011.

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Governor