

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 245

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

[Originating in the Committee on Finance;
reported February 24, 2011.]

A BILL to amend and reenact §22C-1-27 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22-18a of said code; 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 Chesapeake Bay Watershed; increasing the bonding authority of the Water Development Authority for limited

purpose; increasing amount of excess lottery revenue deposited to infrastructure fund; providing for distribution to infrastructure fund where excess lottery revenue shortfall occurs; providing exemption for excess lottery revenue deposited to infrastructure fund; creating the West Virginia Infrastructure Lottery Revenue Debt Service Fund and providing for purpose of new fund; authorizing Water Development Authority to issue revenue bonds for certain Chesapeake Bay Watershed projects; establishing deadline for publicly owned wastewater facilities subject to Chesapeake Bay compliance standards to submit ten-year projected capital funding plan to Infrastructure Council for review and approval; providing eligibility for funding; requiring Water Development Authority to report to Joint Committee on Government and Finance regarding total cost of Chesapeake Bay compliance projects; making Chesapeake Bay compliance projects with funding approved before a certain date eligible for grant funding; 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 §29-22-18a of said code 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 authority may issue, pursuant to section

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

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

1 (a) The State Lottery Fund in the State Treasury which is
2 designated and known as the State Excess Lottery Revenue
3 Fund is continued. The fund consists of all appropriations to
4 the fund and all interest earned from investment of the fund
5 and any gifts, grants or contributions received by the fund.
6 All revenues received under the provisions of sections ten-b
7 and ten-c, article twenty-two-a of this chapter and under
8 article twenty-two-b of this chapter, except the amounts due
9 the commission under subdivision (1), subsection (a), section
10 one thousand four hundred eight, article twenty-two-b of

11 this chapter, shall be deposited in the State Treasury and
12 placed into the State Excess Lottery Revenue Fund. The
13 revenue shall be disbursed in the manner provided in this
14 section for the purposes stated in this section and shall not
15 be treated by the State Auditor and the State Treasurer as
16 part of the general revenue of the state.

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

33 article fifteen-a, chapter thirty-one of this code to be spent
34 in accordance with the provisions of said article; (6) \$10
35 million into the Higher Education Improvement Fund for
36 Higher Education; and (7) \$5 million into the State Park
37 Improvement Fund for Park Improvements. For the fiscal
38 year beginning July 1, 2003, the commission shall deposit: (1)
39 \$65 million into the General Purpose Account to be ex-
40 pended pursuant to appropriation of the Legislature; (2) \$17
41 million into the Education Improvement Fund for appropria-
42 tion by the Legislature to the PROMISE Scholarship Fund
43 created in section seven, article seven, chapter eighteen-c of
44 this code; (3) \$19 million into the Economic Development
45 Project Fund created in subsection (e) of this section for the
46 issuance of revenue bonds and to be spent in accordance
47 with the provisions of said subsection; (4) \$20 million into
48 the School Building Debt Service Fund created in section
49 six, article nine-d, chapter eighteen of this code for the
50 issuance of revenue bonds; (5) \$40 million into the West
51 Virginia Infrastructure Fund created in section nine, article
52 fifteen-a, chapter thirty-one of this code to be spent in
53 accordance with the provisions of said article; (6) \$10 million
54 into the Higher Education Improvement Fund for Higher

55 Education; and (7) \$7 million into the State Park Improve-
56 ment Fund for Park Improvements.

57 (c) For the fiscal year beginning July 1, 2004, and subse-
58 quent fiscal years through the fiscal year ending June 30,
59 2009, the commission shall deposit: (1) \$65 million into the
60 General Purpose Account to be expended pursuant to
61 appropriation of the Legislature; (2) \$27 million into the
62 Education Improvement Fund for appropriation by the
63 Legislature to the PROMISE Scholarship Fund created in
64 section seven, article seven, chapter eighteen-c of this code;
65 (3) \$19 million into the Economic Development Project Fund
66 created in subsection (e) of this section for the issuance of
67 revenue bonds and to be spent in accordance with the
68 provisions of said subsection; (4) \$19 million into the School
69 Building Debt Service Fund created in section six, article
70 nine-d, chapter eighteen of this code for the issuance of
71 revenue bonds: *Provided*, That for the fiscal year beginning
72 July 1, 2008, and subsequent fiscal years, no moneys shall be
73 deposited in the School Building Debt Service Fund pursu-
74 ant to this subsection and instead \$19 million shall be
75 deposited into the Excess Lottery School Building Debt
76 Service Fund; (5) \$40 million into the West Virginia Infra-

77 structure Fund created in section nine, article fifteen-a,
78 chapter thirty-one of this code to be spent in accordance
79 with the provisions of said article; (6) \$10 million into the
80 Higher Education Improvement Fund for Higher Education;
81 and (7) \$5 million into the State Park Improvement Fund for
82 Park Improvements. No portion of the distributions made as
83 provided in this subsection and subsection (b) of this section,
84 except distributions made in connection with bonds issued
85 under subsection (f) of this section, may be used to pay debt
86 service on bonded indebtedness until after the Legislature
87 expressly authorizes issuance of the bonds and payment of
88 debt service on the bonds through statutory enactment or the
89 adoption of a concurrent resolution by both houses of the
90 Legislature. Until subsequent legislative enactment or
91 adoption of a resolution that expressly authorizes issuance
92 of the bonds and payment of debt service on the bonds with
93 funds distributed under this subsection and subsection (b) of
94 this section, except distributions made in connection with
95 bonds issued under subsection (d) of this section, the distri-
96 butions may be used only to fund capital improvements that
97 are not financed by bonds and only pursuant to appropria-
98 tion of the Legislature.

99 (d) For the fiscal year beginning July 1, 2009, and subse-
100 quent fiscal years, the commission shall deposit: (1) \$65
101 million into the General Purpose Account to be expended
102 pursuant to appropriation of the Legislature; (2) \$29 million
103 into the Education Improvement Fund for appropriation by
104 the Legislature to the PROMISE Scholarship Fund created
105 in section seven, article seven, chapter eighteen-c of this
106 code; (3) \$19 million into the Economic Development Project
107 Fund created in subsection (e) of this section for the issuance
108 of revenue bonds and to be spent in accordance with the
109 provisions of said subsection; (4) \$19 million into the Excess
110 Lottery School Building Debt Service Fund created in
111 section six, article nine-d, chapter eighteen of this code; (5)
112 \$40 million into the West Virginia Infrastructure Fund
113 created in section nine, article fifteen-a, chapter thirty-one
114 of this code to be spent in accordance with the provisions of
115 said article; (6) \$10 million into the Higher Education
116 Improvement Fund for Higher Education; and (7) \$5 million
117 into the State Park Improvement Fund for Park Improve-
118 ments. No portion of the distributions made as provided in
119 this subsection and subsection (b) of this section, except
120 distributions made in connection with bonds issued under

121 subsection (f) of this section, may be used to pay debt service
122 on bonded indebtedness until after the Legislature expressly
123 authorizes issuance of the bonds and payment of debt service
124 on the bonds through statutory enactment or the adoption of
125 a concurrent resolution by both houses of the Legislature.
126 Until subsequent legislative enactment or adoption of a
127 resolution that expressly authorizes issuance of the bonds
128 and payment of debt service on the bonds with funds
129 distributed under this subsection and subsection (b) of this
130 section, except distributions made in connection with bonds
131 issued under subsection (f) of this section, the distributions
132 may be used only to fund capital improvements that are not
133 financed by bonds and only pursuant to appropriation of the
134 Legislature.

135 (e) The Legislature finds and declares that in order to
136 attract new business, commerce and industry to this state, to
137 retain existing business and industry providing the citizens
138 of this state with economic security and to advance the
139 business prosperity of this state and the economic welfare of
140 the citizens of this state, it is necessary to provide public
141 financial support for constructing, equipping, improving and
142 maintaining economic development projects, capital im-

143 provement projects and infrastructure which promote
144 economic development in this state.

145 (1) The West Virginia Economic Development Authority
146 created and provided for in article fifteen, chapter thirty-one
147 of this code shall, by resolution, in accordance with the
148 provisions of this article and article fifteen, chapter thirty-
149 one of this code, and upon direction of the Governor, issue
150 revenue bonds of the Economic Development Authority in no
151 more than two series to pay for all or a portion of the cost of
152 constructing, equipping, improving or maintaining projects
153 under this section or to refund the bonds at the discretion of
154 the authority. Any revenue bonds issued on or after July 1,
155 2002, which are secured by state excess lottery revenue
156 proceeds shall mature at a time or times not exceeding thirty
157 years from their respective dates. The principal of and the
158 interest and redemption premium, if any, on the bonds shall
159 be payable solely from the special fund provided in this
160 section for the payment.

161 (2) The special revenue fund named the Economic Develop-
162 ment Project Fund into which ~~shall be~~ is deposited the
163 amounts to be deposited in the fund as specified in subsec-
164 tions (b), (c), and (d) of this section is continued. The Eco-

165 nomic Development Project Fund shall consist of all such
166 moneys, all appropriations to the fund, all interest earned
167 from investment of the fund and any gifts, grants or contri-
168 butions received by the fund. All amounts deposited in the
169 fund shall be pledged to the repayment of the principal,
170 interest and redemption premium, if any, on any revenue
171 bonds or refunding revenue bonds authorized by this section,
172 including any and all commercially customary and reason-
173 able costs and expenses which may be incurred in connection
174 with the issuance, refunding, redemption or defeasance of
175 the bonds. The West Virginia Economic Development
176 Authority may further provide in the resolution and in the
177 trust agreement for priorities on the revenues paid into the
178 Economic Development Project Fund that are necessary for
179 the protection of the prior rights of the holders of bonds
180 issued at different times under the provisions of this section.
181 The bonds issued pursuant to this subsection shall be
182 separate from all other bonds which may be or have been
183 issued, from time to time, under the provisions of this article.

184 (3) After the West Virginia Economic Development Author-
185 ity has issued bonds authorized by this section and after the
186 requirements of all funds have been satisfied, including any

187 coverage and reserve funds established in connection with
188 the bonds issued pursuant to this subsection, any balance
189 remaining in the Economic Development Project Fund may
190 be used for the redemption of any of the outstanding bonds
191 issued under this subsection which, by their terms, are then
192 redeemable or for the purchase of the outstanding bonds at
193 the market price, but not to exceed the price, if any, at which
194 redeemable, and all bonds redeemed or purchased shall be
195 immediately canceled and shall not again be issued.

196 (4) Bonds issued under this subsection shall state on their
197 face that the bonds do not constitute a debt of the State of
198 West Virginia; that payment of the bonds, interest and
199 charges thereon cannot become an obligation of the State of
200 West Virginia; and that the bondholders' remedies are
201 limited in all respects to the Special Revenue Fund estab-
202 lished in this subsection for the liquidation of the bonds.

203 (5) The West Virginia Economic Development Authority
204 shall expend the bond proceeds from the revenue bond issues
205 authorized and directed by this section for projects certified
206 under the provision of this subsection: *Provided*, That the
207 bond proceeds shall be expended in accordance with the
208 requirements and provisions of article five-a, chapter

209 twenty-one of this code and either article twenty-two or
210 twenty-two-a, chapter five of this code, as the case may be:
211 *Provided, however,* That if the bond proceeds are expended
212 pursuant to article twenty-two-a, chapter five of this code
213 and if the Design-Build Board created under said article
214 determines that the execution of a design-build contract in
215 connection with a project is appropriate pursuant to the
216 criteria set forth in said article and that a competitive
217 bidding process was used in selecting the design builder and
218 awarding the contract, the determination shall be conclusive
219 for all purposes and shall be considered to satisfy all the
220 requirements of said article.

221 (6) For the purpose of certifying the projects that will
222 receive funds from the bond proceeds, a committee is hereby
223 established and comprised of the Governor, or his or her
224 designee, the Secretary of the Department of Revenue, the
225 Executive Director of the West Virginia Development Office
226 and six persons appointed by the Governor: *Provided,* That
227 at least one citizen member must be from each of the state's
228 three congressional districts. The committee shall meet as
229 often as necessary and make certifications from bond
230 proceeds in accordance with this subsection. The committee

231 shall meet within thirty days of the effective date of this
232 section.

233 (7) Applications for grants submitted on or before July 1,
234 2002, shall be considered refiled with the committee. Within
235 ten days from the effective date of this section as amended in
236 the year 2003, the lead applicant shall file with the commit-
237 tee any amendments to the original application that may be
238 necessary to properly reflect changes in facts and circum-
239 stances since the application was originally filed with the
240 committee.

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

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

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

248 (C) The ability of the project to create or retain jobs,
249 considering the number of jobs, the type of jobs, whether
250 benefits are or will be paid, the type of benefits involved and
251 the compensation reasonably anticipated to be paid persons

252 filling new jobs or the compensation currently paid to
253 persons whose jobs would be retained;

254 (D) Whether the project will promote economic develop-
255 ment in the region and the type of economic development
256 that will be promoted;

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

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

260 (9) A grant may not be awarded to an individual or other
261 private person or entity. Grants may be awarded only to an
262 agency, instrumentality or political subdivision of this state
263 or to an agency or instrumentality of a political subdivision
264 of this state. The project of an individual or private person or
265 entity may be certified to receive a low-interest loan paid
266 from bond proceeds. The terms and conditions of the loan,
267 including, but not limited to, the rate of interest to be paid
268 and the period of the repayment, shall be determined by the
269 Economic Development Authority after considering all
270 applicable facts and circumstances.

271 (10) Prior to making each certification, the committee shall
272 conduct at least one public hearing, which may be held
273 outside of Kanawha County. Notice of the time, place, date

274 and purpose of the hearing shall be published in at least one
275 newspaper in each of the three congressional districts at
276 least fourteen days prior to the date of the public hearing.

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

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

284 (B) Health clinics and other health facilities;

285 (C) Traditional infrastructure, such as water and
286 wastewater treatment facilities, pumping facilities and
287 transmission lines;

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

289 (E) Biotechnical incubators, development centers and
290 facilities;

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

293 (G) Improvements at state parks, such as construction,
294 expansion or extensive renovation of lodges, cabins, confer-
295 ence facilities and restaurants;

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

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

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

305 (K) Retail facilities, including related service, parking and
306 transportation facilities, appropriate lighting, landscaping
307 and security systems to revitalize decaying downtown areas;
308 and

309 (L) Other facilities that promote or enhance economic
310 development, educational opportunities or tourism opportu-
311 nities thereby promoting the general welfare of this state and
312 its residents.

313 (12) Prior to the issuance of bonds under this subsection,
314 the committee shall certify to the Economic Development
315 Authority a list of those certified projects that will receive
316 funds from the proceeds of the bonds. Once certified, the list

317 may not thereafter be altered or amended other than by
318 legislative enactment.

319 (13) If any proceeds from sale of bonds remain after paying
320 costs and making grants and loans as provided in this
321 subsection, the surplus may be deposited in an account in the
322 State Treasury known as the Economic Development Project
323 Bridge Loan Fund administered by the Economic Develop-
324 ment Authority created in article fifteen, chapter thirty-one
325 of this code. Expenditures from the fund are not authorized
326 from collections but are to be made only in accordance with
327 appropriation by the Legislature and in accordance with the
328 provisions of article three, chapter twelve of this code and
329 upon fulfillment of the provisions of article two, chapter
330 five-a of this code. Loan repayment amounts, including the
331 portion attributable to interest, shall be paid into the fund
332 created in this subdivision.

333 (f) If the commission receives revenues in an amount that
334 is not sufficient to fully comply with the requirements of
335 subsections (b), (c), (d), and (i) of this section, the commission
336 shall first make the distribution to the Economic Develop-
337 ment Project Fund; second, make the distribution or distri-
338 butions to the other funds from which debt service is to be

339 paid; third, make the distribution to the Education Improve-
340 ment Fund for appropriation by the Legislature to the
341 PROMISE Scholarship Fund; fourth, make the distribution
342 to the West Virginia Infrastructure Fund, not already
343 distributed pursuant to this subsection; and ~~fourth~~ fifth,
344 make the distribution to the General Purpose Account:
345 *Provided, That,* subject to the provisions of this subsection,
346 to the extent the revenues are not pledged in support of
347 revenue bonds which are or may be issued, from time to time,
348 under this section, the revenues shall be distributed on a pro
349 rata basis.

350 (g) Each fiscal year, the commission shall, after meeting the
351 requirements of subsections (b), (c), (d), and (i) of this section
352 and after transferring to the State Lottery Fund created
353 under section eighteen of this article an amount equal to any
354 transfer from the State Lottery Fund to the Excess Lottery
355 Fund pursuant to subsection (f), section eighteen of this
356 article, deposit fifty percent of the amount by which annual
357 gross revenue deposited in the State Excess Lottery Revenue
358 Fund exceeds \$225 million in a fiscal year in a separate
359 account in the State Lottery Fund to be available for appro-
360 priation by the Legislature.

361 (h) When bonds are issued for projects under subsections
362 (d) and (e) of this section or for the School Building Author-
363 ity, infrastructure, higher education or park improvement
364 purposes described in this section that are secured by profits
365 from lotteries deposited in the State Excess Lottery Revenue
366 Fund, the Lottery Director shall allocate first to the Eco-
367 nomic Development Project Fund an amount equal to one
368 tenth of the projected annual principal, interest and coverage
369 requirements on any and all revenue bonds issued, or to be
370 issued as certified to the Lottery Director; and second, to the
371 fund or funds from which debt service is paid on bonds
372 issued under this section for the School Building Authority,
373 infrastructure, higher education and park improvements an
374 amount equal to one tenth of the projected annual principal,
375 interest and coverage requirements on any and all revenue
376 bonds issued, or to be issued as certified to the Lottery
377 Director. In the event there are insufficient funds available
378 in any month to transfer the amounts required pursuant to
379 this subsection, the deficiency shall be added to the amount
380 transferred in the next succeeding month in which revenues
381 are available to transfer the deficiency.

382 (i) Prior to the distributions provided in subsection (d) of
383 this section, the Lottery Commission shall deposit into the
384 General Revenue Fund amounts necessary to provide
385 reimbursement for the refundable credit allowable under
386 section twenty-one, article twenty-one, chapter eleven of this
387 code.

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

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

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

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

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

401 (k) The Legislature further directs the Governor to focus
402 resources on the creation of a prescription drug program for
403 senior citizens by pursuing a Medicaid waiver to offer

404 prescription drug services to senior citizens; by investigating
405 the establishment of purchasing agreements with other
406 entities to reduce costs; by providing discount prices or
407 rebate programs for seniors; by coordinating programs
408 offered by pharmaceutical manufacturers that provide
409 reduced cost or free drugs; by coordinating a collaborative
410 effort among all state agencies to ensure the most efficient
411 and cost-effective program possible for the senior citizens of
412 this state; and by working closely with the state's congressio-
413 nal delegation to ensure that a national program is imple-
414 mented. The Legislature further directs that the Governor
415 report his or her progress back to the Joint Committee on
416 Government and Finance on an annual basis until a compre-
417 hensive program has been fully implemented.

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

421 (1) On the last day of the fiscal year that begins on July 1,
422 2010, and for each fiscal year thereafter, forty-six percent
423 shall be placed in the general purse fund of a thoroughbred
424 racetrack licensee that did not participate in the Thorough-
425 bred Development Fund for at least four consecutive calen-

426 dar years prior to December 31, 1992, for payment of regular
427 purses;

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

434 (3) Five and one half percent shall be distributed to the
435 racing commission special account - unredeemed pari-
436 mutuel tickets established on behalf of a thoroughbred
437 racetrack licensee that did not participate in the Thorough-
438 bred Development Fund for at least four consecutive calen-
439 dar years prior to December 31, 1992; and

440 (4) Five percent shall be distributed to the West Virginia
441 racing commission special account - Greyhound Breeding
442 Development Fund.

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

Fund from State Excess Lottery Revenue Fund.

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 subsequent fiscal
6 years, the commission shall deposit \$46 million into the West
7 Virginia Infrastructure Fund.

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 agree-
ments.**

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, except for the first \$6 million
16 deposited pursuant to section eighteen-d, article twenty-two,
17 chapter twenty-nine of this code; (3) amounts received as
18 payments on any loans made by the Water Development
19 Authority to pay for the cost of a project or infrastructure
20 project; (4) insurance proceeds payable to the Water Devel-
21 opment Authority or the infrastructure fund in connection
22 with any infrastructure project or project; (5) all income
23 earned on moneys held in the infrastructure fund; (6) all
24 funds deposited in accordance with section four of article
25 fifteen-b; and (7) all proceeds derived from the sale of bonds
26 issued pursuant to article fifteen-b of this chapter.

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

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

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

54 limitations set forth in article eighteen, chapter thirty-one of
55 this code.

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

73 (d) Each loan, loan guarantee, grant or other assistance
74 made or provided by the Water Development Authority shall
75 be evidenced by a loan, loan guarantee, grant or assistance

76 agreement between the Water Development Authority and
77 the project sponsor to which the loan, loan guarantee, grant
78 or assistance shall be made or provided, which agreement
79 shall include, without limitation and to the extent applica-
80 ble, the following provisions:

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

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

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

93 (4) The agreement of the governmental agency to comply
94 with all applicable federal and state laws, and all rules and
95 regulations issued or imposed by the Water Development
96 Authority or other state, federal or local bodies regarding the
97 acquisition, construction, improvement or operation of the

98 infrastructure project or project and granting the Water
99 Development Authority the right to appoint a receiver for
100 the project or infrastructure if the project sponsor should
101 default on any terms of the agreement.

102 (e) Any resolution of the Water Development Authority
103 approving loan, loan guarantee, grant or other assistance
104 shall include a finding and determination that the require-
105 ments of this section have been met.

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

118 (g) The Water Development Authority shall cause an
119 annual audit to be made by an independent certified public

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

131 (h) There is hereby created in the Water Development
132 Authority a separate, special account which shall be desig-
133 nated and known as the "West Virginia Infrastructure
134 Lottery Revenue Debt Service Fund," into which shall be
135 deposited annually commencing July 1, 2011, the first \$6
136 million transferred pursuant to section eighteen-d, article
137 twenty-two, chapter twenty-nine of this code and any other
138 funds provided therefor: *Provided*, That such deposits and
139 transfers are not subject to the reservations of funds or
140 requirements for distributions of funds established by
141 sections ten and eleven of this article. Moneys in the West

142 Virginia Infrastructure Lottery Revenue Debt Service Fund
143 shall be used to pay debt service on bonds or notes issued by
144 the Water Development Authority for Chesapeake Bay
145 projects as provided in section seventeen-b of this article,
146 and to the extent not needed to pay debt service, for the
147 design or construction of improvements for Chesapeake Bay
148 projects. Moneys in the West Virginia Infrastructure Lottery
149 Revenue Debt Service Fund not expended at the close of the
150 fiscal year do not lapse or revert to the General Fund but are
151 carried forward to the next fiscal year.

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

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

7 (b) Notwithstanding any other provision of this code to the
8 contrary, the Water Development Authority may issue, in
9 accordance with the provisions of section seventeen of this
10 article, infrastructure lottery revenue bonds payable from

11 the West Virginia Infrastructure Lottery Revenue Debt
12 Service Fund created by section nine of this article and such
13 other sources as may be legally pledged for such purposes
14 other than the West Virginia Infrastructure Revenue Debt
15 Service Fund created by section seventeen of this article.

16 (c) The council shall direct the Water Development
17 Authority to issue bonds in one or more series when it has
18 approved Chesapeake Bay projects with an authorized
19 permitted flow of four hundred thousand gallons per day or
20 more. The proceeds of the bonds shall be used solely to pay
21 costs of issuance, fund a debt service reserve account,
22 capitalize interest, pay for security instruments necessary to
23 market the bonds and to make grants to governmental
24 instrumentalities of the state for the construction of ap-
25 proved Chesapeake Bay projects. To the extent funds are
26 available in the West Virginia Infrastructure Lottery Reve-
27 nue Debt Service Fund that are not needed for debt service,
28 the council may direct the water development authority to
29 make grants to project sponsors for the design or construc-
30 tion of approved Chesapeake Bay projects.

31 (d) No later than June 30, 2012, each publicly owned
32 facility with an authorized permitted flow of 400,000 gallons

33 per day or more that is subject to meeting Chesapeake Bay
34 compliance standards shall submit to the Council a ten year
35 projected capital funding plan for Bay compliance projects,
36 including a general project description, cost estimate and
37 estimated or actual project start date and project completion
38 date, if any. Council shall timely review the submitted
39 capital funding plans and forward approved plans to the
40 water development authority for further processing and
41 implementation pursuant to this article. If the Council finds
42 a plan to be incomplete, inadequate or otherwise problem-
43 atic, it shall return the plan to the applicant with comment
44 on the plan shortcomings. The applicant may then resubmit
45 to council an amended capital funding plan for further
46 consideration pursuant to the terms of this paragraph.

47 (e) Upon approval, each proposed Chesapeake Bay project
48 or portion of a larger project, which portion is dedicated to
49 compliance with nutrient standards established for the
50 protection and restoration of the Chesapeake Bay, shall be
51 eligible for grant funding by funds generated by the infra-
52 structure revenue bonds described in section (b) of this
53 section. At the request of the applicant, the remaining
54 percentage of project funding not otherwise funded by grant

55 under the provisions of this article may be reviewed as a
56 standard project funding application.

57 (f) No later than December 1, 2012, the water development
58 authority shall report to the Joint Committee on Government
59 and Finance the total cost of Chesapeake Bay compliance
60 projects and the proposed grant awards for each eligible
61 project.

62 (g) Any private portion of funding provided by agreement
63 between a political subdivision and one or more private
64 entities, either by direct capital investment or debt service
65 obligation, shall not be eligible for grant funding under the
66 provisions of this article.

(NOTE: 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.)