

**Senate Bill No. 339**

(By Senator Beach)

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[Introduced February 21, 2013; referred to the Committee on  
Education; and then to the Committee on Finance.]  
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**FISCAL  
NOTE**

A BILL to amend and reenact §29-22-18a of the Code of West Virginia, 1931, as amended, relating to requiring that a sum certain be deposited into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund to provide tuition and fees for PROMISE scholarships at public institutions for fiscal year 2014.

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

That §29-22-18a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 22. STATE LOTTERY ACT.**

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

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

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

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

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

1 fifteen-a, chapter thirty-one of this code to be spent in  
2 accordance with the provisions of said article; (6) ten million  
3 dollars into the Higher Education Improvement Fund for Higher  
4 Education; and (7) seven million dollars into the State Park  
5 Improvement Fund for Park Improvements.

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

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

23 (d) For the fiscal year beginning July 1, 2009, and subsequent

1 fiscal years, the commission shall deposit: (1) Sixty-five million  
2 dollars into the General Purpose Account to be expended pursuant to  
3 appropriation of the Legislature; (2) twenty-nine million dollars  
4 into the Education Improvement Fund for appropriation by the  
5 Legislature to the PROMISE Scholarship Fund created in section  
6 seven, article seven, chapter eighteen-c of this code: Provided,  
7 That for fiscal year 2014, a sum in the amount of \$3,409,525 shall  
8 be deposited into the Education Improvement Fund for appropriation  
9 by the Legislature for the purpose of providing tuition and fee  
10 awards for PROMISE scholars at public institutions; (3) nineteen  
11 million dollars into the Economic Development Project Fund created  
12 in subsection (e) of this section for the issuance of revenue bonds  
13 and to be spent in accordance with the provisions of said  
14 subsection; (4) nineteen million dollars into the Excess Lottery  
15 School Building Debt Service Fund created in section six, article  
16 nine-d, chapter eighteen of this code; (5) forty million dollars  
17 into the West Virginia Infrastructure Fund created in section nine,  
18 article fifteen-a, chapter thirty-one of this code to be spent in  
19 accordance with the provisions of said article; (6) ten million  
20 dollars into the Higher Education Improvement Fund for Higher  
21 Education; and (7) five million dollars into the State Park  
22 Improvement Fund for Park Improvements. No portion of the  
23 distributions made as provided in this subsection and subsection

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

15 (e) The Legislature finds and declares that in order to  
16 attract new business, commerce and industry to this state, to  
17 retain existing business and industry providing the citizens of  
18 this state with economic security and to advance the business  
19 prosperity of this state and the economic welfare of the citizens  
20 of this state, it is necessary to provide public financial support  
21 for constructing, equipping, improving and maintaining economic  
22 development projects, capital improvement projects and  
23 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~~ are 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) and (d)  
19 of this section is continued. The Economic Development Project  
20 Fund ~~shall consist~~ consists 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



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

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

1 which redeemable, and all bonds redeemed or purchased shall be  
2 immediately canceled and shall not again be issued.

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

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

1 the determination ~~shall be~~ is conclusive for all purposes and shall  
2 be considered to satisfy all the requirements of said article.

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

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

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

23       (A) The ability of the project to leverage other sources of

1 funding;

2 (B) Whether funding for the amount requested in the grant  
3 application is or reasonably should be available from commercial  
4 sources;

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

11 (D) Whether the project will promote economic development in  
12 the region and the type of economic development that will be  
13 promoted;

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

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

17 (9) A grant may not be awarded to an individual or other  
18 private person or entity. Grants may be awarded only to an agency,  
19 instrumentality or political subdivision of this state or to an  
20 agency or instrumentality of a political subdivision of this state.

21 The project of an individual or private person or entity may  
22 be certified to receive a low-interest loan paid from bond  
23 proceeds. The terms and conditions of the loan including, but not

1 limited to, the rate of interest to be paid and the period of the  
2 repayment, ~~shall be~~ is determined by the Economic Development  
3 Authority after considering all applicable facts and circumstances.

4 (10) Prior to making each certification, the committee shall  
5 conduct at least one public hearing which may be held outside of  
6 Kanawha County. Notice of the time, place, date and purpose of the  
7 hearing shall be published in at least one newspaper in each of the  
8 three congressional districts at least fourteen days prior to the  
9 date of the public hearing.

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

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

17 (B) Health clinics and other health facilities;

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

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

21 (E) Biotechnical incubators, development centers and  
22 facilities;

23 (F) Industrial parks, including construction of roads, sewer,

1 water, lighting and other facilities;

2 (G) Improvements at state parks, such as construction,  
3 expansion or extensive renovation of lodges, cabins, conference  
4 facilities and restaurants;

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

8 (I) Recreational facilities, such as amphitheaters, walking  
9 and hiking trails, bike trails, picnic facilities, restrooms, boat  
10 docking and fishing piers, basketball and tennis courts, and  
11 baseball, football and soccer fields;

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

14 (K) Retail facilities, including related service, parking and  
15 transportation facilities, appropriate lighting, landscaping and  
16 security systems to revitalize decaying downtown areas; and

17 (L) Other facilities that promote or enhance economic  
18 development, educational opportunities or tourism opportunities  
19 thereby promoting the general welfare of this state and its  
20 residents.

21 (12) Prior to the issuance of bonds under this subsection, the  
22 committee shall certify to the Economic Development Authority a  
23 list of those certified projects that will receive funds from the

1 proceeds of the bonds. Once certified, the list may not ~~thereafter~~  
2 be altered or amended other than by legislative enactment.

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

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

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

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

16 (h) When bonds are issued for projects under ~~subsection (d)~~  
17 ~~(e)~~ subsections (d) and (e) of this section or for the School  
18 Building Authority, infrastructure, higher education or park  
19 improvement purposes described in this section that are secured by  
20 profits from lotteries deposited in the State Excess Lottery  
21 Revenue Fund, the Lottery Director shall allocate first to the  
22 Economic Development Project Fund an amount equal to one tenth of  
23 the projected annual principal, interest and coverage requirements



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

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

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

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

22 (B) Providing adequate funding for the Public Employees  
23 Insurance Agency; and

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

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

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

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

4           (1) On the last day of the fiscal year that begins on July 1,  
5 2010, and for each fiscal year thereafter, forty-six percent shall  
6 be placed in the general purse fund of a thoroughbred racetrack  
7 licensee that did not participate in the Thoroughbred Development  
8 Fund for at least four consecutive calendar years prior to December  
9 31, 1992, for payment of regular purses;

10          (2) Forty-three and one half percent shall be distributed to  
11 the Racing Commission Special Account - unredeemed pari-mutual  
12 tickets established on behalf of a thoroughbred racetrack licensee  
13 that did participate in the Thoroughbred Development Fund for at  
14 least four consecutive calendar years prior to December 31, 1992;

15          (3) Five and one half percent shall be distributed to the  
16 Racing Commission Special Account - unredeemed pari-mutual tickets  
17 established on behalf of a thoroughbred racetrack licensee that did  
18 not participate in the Thoroughbred Development Fund for at least  
19 four consecutive calendar years prior to December 31, 1992; and

20          (4) Five percent shall be distributed to the West Virginia  
21 Racing Commission Special Account - Greyhound Breeding Development  
22 Fund.

NOTE: The purpose of this bill is to require that a sum certain be deposited into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund to provide tuition and fees for PROMISE scholarships at public institutions for fiscal year 2014.

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