

FILED

2003 JUL 14 P 4: 31

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*2nd Extraordinary Session, 2003*

**ENROLLED**

SENATE BILL NO. 2007

(By Senators Tomblin, Mr. President, and *to*  
Sprouse, By Request of the Executive)

PASSED July 4, 2003

In Effect from          Passage

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**Senate Bill No. 2007**

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE)

[Passed July 1, 2003; in effect from passage.]

AN ACT to amend and reenact section eighteen-a, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to state excess lottery fund; deleting obsolete language; providing that certain bonds issued state on their face that they do not constitute a debt of the state; providing that the governor appoint six persons to the committee certifying projects to receive funds from bond proceeds; designating prior applications as refiled; requiring a certain applicant to file additional information with the committee; providing criteria to be used by the committee in certifying projects; prohibiting grants to individuals or private entities, but allowing low-interest loans to such persons; giving examples of the types of projects considered to be in the public interest; and providing that any excess funds be placed in the economic development project bridge loan fund.

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

That section eighteen-a, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 22. STATE LOTTERY ACT.**

**§29-22-18a. State excess lottery revenue fund.**

1 (a) There is continued a special revenue fund within the  
2 state lottery fund in the state treasury which is designated  
3 and known as the “state excess lottery revenue fund”. The  
4 fund consists of all appropriations to the fund and all  
5 interest earned from investment of the fund and any gifts,  
6 grants or contributions received by the fund. All revenues  
7 received under the provisions of sections ten-b and ten-c,  
8 article twenty-two-a of this chapter and under article  
9 twenty-two-b of this chapter, except the amounts due the  
10 commission under section 29-22B-1408(a)(1) of this  
11 chapter, shall be deposited in the state treasury and placed  
12 into the “state excess lottery revenue fund”. The revenue  
13 shall be disbursed in the manner provided in this section  
14 for the purposes stated in this section and shall not be  
15 treated by the auditor and the state treasurer as part of the  
16 general revenue of the state.

17 (b) For the fiscal year beginning the first day of July, two  
18 thousand two, the commission shall deposit: (1) Sixty-five  
19 million dollars into the subaccount of the state excess  
20 lottery revenue fund hereby created in the state treasury  
21 to be known as the “general purpose account” to be  
22 expended pursuant to appropriation of the Legislature; (2)  
23 ten million dollars into the education improvement fund  
24 for appropriation by the Legislature to the “promise  
25 scholarship fund” created in section seven, article seven,  
26 chapter eighteen-c of this code; (3) nineteen million dollars  
27 into the economic development project fund created in  
28 subsection (d) of this section for the issuance of revenue  
29 bonds and to be spent in accordance with the provisions of  
30 said subsection; (4) twenty million dollars into the school

31 building debt service fund created in section six, article  
32 nine-d, chapter eighteen of this code for the issuance of  
33 revenue bonds; (5) forty million dollars into the West  
34 Virginia infrastructure fund created in section nine, article  
35 fifteen-a, chapter thirty-one of this code to be spent in  
36 accordance with the provisions of said article; (6) ten  
37 million dollars into the higher education improvement  
38 fund for higher education; and (7) five million dollars into  
39 the state park improvement fund for park improvements.  
40 For the fiscal year beginning the first day of July, two  
41 thousand three, the commission shall deposit: (1) Sixty-  
42 five million dollars into the general purpose account to be  
43 expended pursuant to appropriation of the Legislature; (2)  
44 seventeen million dollars into the education improvement  
45 fund for appropriation by the Legislature to the “promise  
46 scholarship fund” created in section seven, article seven,  
47 chapter eighteen-c of this code; (3) nineteen million dollars  
48 into the economic development project fund created in  
49 subsection (d) of this section for the issuance of revenue  
50 bonds and to be spent in accordance with the provisions of  
51 said subsection; (4) twenty million dollars into the school  
52 building debt service fund created in section six, article  
53 nine-d, chapter eighteen of this code for the issuance of  
54 revenue bonds; (5) forty million dollars into the West  
55 Virginia infrastructure fund created in section nine, article  
56 fifteen-a, chapter thirty-one of this code to be spent in  
57 accordance with the provisions of said article; (6) ten  
58 million dollars into the higher education improvement  
59 fund for higher education; and (7) five million dollars into  
60 the state park improvement fund for park improvements.

61 (c) For the fiscal year beginning the first day of July, two  
62 thousand four, and subsequent fiscal years, the commis-  
63 sion shall deposit: (1) Sixty-five million dollars into the  
64 general purpose account to be expended pursuant to  
65 appropriation of the Legislature; (2) twenty-seven million  
66 dollars into the education improvement fund for appropri-  
67 ation by the Legislature to the “promise scholarship fund”  
68 created in section seven, article seven, chapter eighteen-c

69 of this code; (3) nineteen million dollars into the economic  
70 development project fund created in subsection (d) of this  
71 section for the issuance of revenue bonds and to be spent  
72 in accordance with the provisions of said subsection; (4)  
73 nineteen million dollars into the school building debt  
74 service fund created in section six, article nine-d, chapter  
75 eighteen of this code for the issuance of revenue bonds; (5)  
76 forty million dollars into the West Virginia infrastructure  
77 fund created in section nine, article fifteen-a, chapter  
78 thirty-one of this code to be spent in accordance with the  
79 provisions of said article; (6) ten million dollars into the  
80 higher education improvement fund for higher education;  
81 and (7) five million dollars into the state park improve-  
82 ment fund for park improvements. No portion of the  
83 distributions made as provided in this subsection and  
84 subsection (b) of this section, except distributions made in  
85 connection with bonds issued under subsection (d) of this  
86 section, may be used to pay debt service on bonded  
87 indebtedness until after the Legislature expressly autho-  
88 rizes issuance of the bonds and payment of debt service on  
89 the bonds through statutory enactment or the adoption of  
90 a concurrent resolution by both houses of the Legislature.  
91 Until subsequent legislative enactment or adoption of a  
92 resolution that expressly authorizes issuance of the bonds  
93 and payment of debt service on the bonds with funds  
94 distributed under this subsection and subsection (b) of this  
95 section, except distributions made in connection with  
96 bonds issued under subsection (d) of this section, the  
97 distributions may be used only to fund capital improve-  
98 ments that are not financed by bonds and only pursuant to  
99 appropriation of the Legislature.

100 (d) The Legislature finds and declares that in order to  
101 attract new business, commerce and industry to this state,  
102 to retain existing business and industry providing the  
103 citizens of this state with economic security and to ad-  
104 vance the business prosperity of this state and the eco-  
105 nomic welfare of the citizens of this state, it is necessary to  
106 provide public financial support for constructing, equip-

107 ping, improving and maintaining economic development  
108 projects, capital improvement projects and infrastructure  
109 which promote economic development in this state.

110 (1) The West Virginia economic development authority  
111 created and provided for in article fifteen, chapter thirty-  
112 one of this code shall, by resolution, in accordance with  
113 the provisions of this article and article fifteen, chapter  
114 thirty-one of this code, and upon direction of the governor,  
115 issue revenue bonds of the economic development author-  
116 ity in no more than two series to pay for all or a portion of  
117 the cost of constructing, equipping, improving or main-  
118 taining projects under this section or to refund the bonds  
119 at the discretion of the authority. Any revenue bonds  
120 issued on or after the first day of July, two thousand two,  
121 which are secured by state excess lottery revenue proceeds  
122 shall mature at a time or times not exceeding thirty years  
123 from their respective dates. The principal of, and the  
124 interest and redemption premium, if any, on, the bonds  
125 shall be payable solely from the special fund provided in  
126 this section for the payment.

127 (2) There is continued in the state treasury a special  
128 revenue fund named the "economic development project  
129 fund" into which shall be deposited on and after the first  
130 day of July, two thousand two, the amounts to be depos-  
131 ited in said fund as specified in subsections (b) and (c) of  
132 this section. The economic development project fund shall  
133 consist of all such moneys, all appropriations to the fund,  
134 all interest earned from investment of the fund and any  
135 gifts, grants or contributions received by the fund. All  
136 amounts deposited in the fund shall be pledged to the  
137 repayment of the principal, interest and redemption  
138 premium, if any, on any revenue bonds or refunding  
139 revenue bonds authorized by this section, including any  
140 and all commercially customary and reasonable costs and  
141 expenses which may be incurred in connection with the  
142 issuance, refunding, redemption or defeasance thereof.  
143 The West Virginia economic development authority may

144 further provide in the resolution and in the trust agree-  
145 ment for priorities on the revenues paid into the economic  
146 development project fund as may be necessary for the  
147 protection of the prior rights of the holders of bonds issued  
148 at different times under the provisions of this section. The  
149 bonds issued pursuant to this subsection shall be separate  
150 from all other bonds which may be or have been issued  
151 from time to time under the provisions of this article.

152 (3) After the West Virginia economic development  
153 authority has issued bonds authorized by this section and  
154 after the requirements of all funds have been satisfied,  
155 including any coverage and reserve funds established in  
156 connection with the bonds issued pursuant to this subsec-  
157 tion, any balance remaining in the economic development  
158 project fund may be used for the redemption of any of the  
159 outstanding bonds issued under this subsection which, by  
160 their terms, are then redeemable or for the purchase of the  
161 outstanding bonds at the market price, but not to exceed  
162 the price, if any, at which redeemable, and all bonds  
163 redeemed or purchased shall be immediately canceled and  
164 shall not again be issued.

165 (4) Bonds issued under this subsection shall state on their  
166 face that the bonds do not constitute a debt of the state of  
167 West Virginia; that payment of the bonds, interest and  
168 charges thereon cannot become an obligation of the state  
169 of West Virginia; and that the bondholders' remedies are  
170 limited in all respects to the "special revenue fund"  
171 established in this subsection for the liquidation of the  
172 bonds.

173 (5) The West Virginia economic development authority  
174 shall expend the bond proceeds from the revenue bond  
175 issues authorized and directed by this section for such  
176 projects as may be certified under the provision of this  
177 subsection: *Provided*, That the bond proceeds shall be  
178 expended in accordance with the requirements and  
179 provisions of article five-a, chapter twenty-one of this  
180 code and either article twenty-two or twenty-two-a,

181 chapter five of this code, as the case may be: *Provided,*  
182 *however,* That if such bond proceeds are expended pursu-  
183 ant to article twenty-two-a, chapter five of this code and  
184 if the design-build board created under said article  
185 determines that the execution of a design-build contract in  
186 connection with a project is appropriate pursuant to the  
187 criteria set forth in said article and that a competitive  
188 bidding process was used in selecting the design builder  
189 and awarding such contract, such determination shall be  
190 conclusive for all purposes and shall be deemed to satisfy  
191 all the requirements of said article.

192 (6) For the purpose of certifying the projects that will  
193 receive funds from the bond proceeds, a committee is  
194 hereby established and comprised of the governor, or his  
195 or her designee, the secretary of the department of tax and  
196 revenue, the executive director of the West Virginia  
197 development office and six persons appointed by the  
198 governor: *Provided,* That at least one citizen member must  
199 be from each of the state's three congressional districts.  
200 The committee shall meet as often as necessary and make  
201 certifications from bond proceeds in accordance with this  
202 subsection. The committee shall meet within thirty days  
203 of the effective date of this section.

204 (7) Applications for grants submitted on or before the  
205 first day of July, two thousand two, shall be considered  
206 refiled with the committee. Within ten days from the  
207 effective date of this section as amended in the year two  
208 thousand three, the lead applicant shall file with the  
209 committee any amendments to the original application  
210 that may be necessary to properly reflect changes in facts  
211 and circumstances since the application was originally  
212 filed with the committee.

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

215 (A) The ability of the project to leverage other sources of  
216 funding;



217 (B) Whether funding for the amount requested in the  
218 grant application is or reasonably should be available from  
219 commercial sources;

220 (C) The ability of the project to create or retain jobs,  
221 considering the number of jobs, the type of jobs, whether  
222 benefits are or will be paid, the type of benefits involved  
223 and the compensation reasonably anticipated to be paid  
224 persons filling new jobs or the compensation currently  
225 paid to persons whose jobs would be retained;

226 (D) Whether the project will promote economic develop-  
227 ment in the region and the type of economic development  
228 that will be promoted;

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

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

233 (9) No grant may be awarded to an individual or other  
234 private person or entity. Grants may be awarded only to  
235 an agency, instrumentality or political subdivision of this  
236 state or to an agency or instrumentality of a political  
237 subdivision of this state.

238 The project of an individual or private person or entity  
239 may be certified to receive a low-interest loan paid from  
240 bond proceeds. The terms and conditions of the loan,  
241 including, but not limited to, the rate of interest to be paid  
242 and the period of the repayment, shall be determined by  
243 the economic development authority after considering all  
244 applicable facts and circumstances.

245 (10) Prior to making each certification, the committee  
246 shall conduct at least one public hearing, which may be  
247 held outside of Kanawha County. Notice of the time,  
248 place, date and purpose of the hearing shall be published  
249 in at least one newspaper in each of the three congressio-

250 nal districts at least fourteen days prior to the date of the  
251 public hearing.

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

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

259 (B) Health clinics and other health facilities;

260 (C) Traditional infrastructure, such as water and  
261 wastewater treatment facilities, pumping facilities and  
262 transmission lines;

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

264 (E) Biotechnical incubators, development centers and  
265 facilities;

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

268 (G) Improvements at state parks, such as construction,  
269 expansion or extensive renovation of lodges, cabins,  
270 conference facilities and restaurants;

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

274 (I) Recreational facilities, such as amphitheaters, walk-  
275 ing and hiking trails, bike trails, picnic facilities,  
276 restrooms, boat docking and fishing piers, basketball and  
277 tennis courts, and baseball, football and soccer fields;

278 (J) State-owned buildings that are registered on the  
279 national register of historic places;

280 (K) Retail facilities, including related service, parking  
281 and transportation facilities, appropriate lighting, land-  
282 scaping and security systems to revitalize decaying  
283 downtown areas; and

284 (L) Other facilities that promote or enhance economic  
285 development, educational opportunities or tourism  
286 opportunities thereby promoting the general welfare of  
287 this state and its residents.

288 (12) Prior to the issuance of bonds under this subsection,  
289 the committee shall certify to the economic development  
290 authority a list of those certified projects that will receive  
291 funds from the proceeds of the bonds. Once certified, the  
292 list may not thereafter be altered or amended other than  
293 by legislative enactment.

294 (13) If any proceeds from sale of bonds remain after  
295 paying costs and making grants and loans as provided in  
296 this subsection, the surplus may be deposited in an account  
297 created in the state treasury to be known as the "economic  
298 development project bridge loan fund" to be administered  
299 by the council for community and economic development  
300 created in section two, article two, chapter five-b of this  
301 code. Expenditures from the fund are not authorized from  
302 collections but are to be made only in accordance with  
303 appropriation by the Legislature and in accordance with  
304 the provisions of article three, chapter twelve of this code  
305 and upon fulfillment of the provisions of article two,  
306 chapter five-a of this code. Loan repayment amounts,  
307 including the portion attributable to interest shall be paid  
308 into the fund created in this subdivision.

309 (e) If the commission receives revenues in an amount that  
310 is not sufficient to fully comply with the requirements of  
311 subsections (b), (c) and (h) of this section, the commission  
312 shall first make the distribution to the economic develop-  
313 ment project fund; second, make the distribution or  
314 distributions to the other funds from which debt service is  
315 to be paid; third, make the distribution to the education

316 improvement fund for appropriation by the Legislature to  
317 the promise scholarship fund; and fourth, make the  
318 distribution to the general purpose account: *Provided*,  
319 That, subject to the provisions of this subsection, to the  
320 extent such revenues are not pledged in support of revenue  
321 bonds which are or may be issued from time to time under  
322 this section, the revenues shall be distributed on a pro rata  
323 basis.

324 (f) For the fiscal year beginning on the first day of July,  
325 two thousand two, and each fiscal year thereafter, the  
326 commission shall, after meeting the requirements of  
327 subsections (b), (c) and (h) of this section and after trans-  
328 ferring to the state lottery fund created under section  
329 eighteen of this article an amount equal to any transfer  
330 from the state lottery fund to the excess lottery fund  
331 pursuant to subsection (f), section eighteen of this article,  
332 deposit fifty percent of the amount by which annual gross  
333 revenue deposited in the state excess lottery revenue fund  
334 exceeds two hundred twenty-five million dollars in a fiscal  
335 year in a separate account in the state lottery fund to be  
336 available for appropriation by the Legislature.

337 (g) When bonds are issued for projects under subsection  
338 (d) of this section or for the school building authority,  
339 infrastructure, higher education or park improvement  
340 purposes described in this section that are secured by  
341 profits from lotteries deposited in the state excess lottery  
342 revenue fund, the lottery director shall allocate first to the  
343 economic development project fund an amount equal to  
344 one tenth of the projected annual principal, interest and  
345 coverage requirements on any and all revenue bonds  
346 issued, or to be issued, on or after the first day of July, two  
347 thousand two, as certified to the lottery director; and  
348 second, to the fund or funds from which debt service is  
349 paid on bonds issued under this section for the school  
350 building authority, infrastructure, higher education and  
351 park improvements an amount equal to one tenth of the  
352 projected annual principal, interest and coverage require-

353 ments on any and all revenue bonds issued, or to be issued,  
354 on or after the first day of April, two thousand two, as  
355 certified to the lottery director. In the event there are  
356 insufficient funds available in any month to transfer the  
357 amounts required pursuant to this subsection, the defi-  
358 ciency shall be added to the amount transferred in the next  
359 succeeding month in which revenues are available to  
360 transfer the deficiency.

361 (h) In fiscal year two thousand four and thereafter, prior  
362 to the distributions provided in subsection (c) of this  
363 section, the lottery commission shall deposit into the  
364 general revenue fund amounts necessary to provide  
365 reimbursement for the refundable credit allowable under  
366 section twenty-one, article twenty-one, chapter eleven of  
367 this code.

368 (i) (1) The Legislature considers the following as priori-  
369 ties in the expenditure of any surplus revenue funds:

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

372 (B) Providing adequate funding for the public employees  
373 insurance agency; and

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

377 (2) The provisions of this subsection may not be con-  
378 strued by any court to require any appropriation or any  
379 specific appropriation or level of funding for the purposes  
380 set forth in this subsection.

381 (j) The Legislature further directs the governor to focus  
382 resources on the creation of a prescription drug program  
383 for senior citizens by pursuing a medicaid waiver to offer  
384 prescription drug services to senior citizens; by investigat-  
385 ing the establishment of purchasing agreements with other  
386 entities to reduce costs; by providing discount prices or

387 rebate programs for seniors; by coordinating programs  
388 offered by pharmaceutical manufacturers that provide  
389 reduced cost or free drugs; by coordinating a collaborative  
390 effort among all state agencies to ensure the most efficient  
391 and cost effective program possible for the senior citizens  
392 of this state; and by working closely with the state's  
393 congressional delegation to ensure that a national program  
394 is implemented. The Legislature further directs that the  
395 governor report his progress back to the joint committee  
396 on government and finance on an annual basis beginning  
397 in November of the year two thousand one until a compre-  
398 hensive program has been fully implemented.

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

*Cary Hines*  
.....  
Chairman Senate Committee

*Sharon Spencer*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Parcell E. Hobbs*  
.....  
Clerk of the Senate

*Bryson M. Paul*  
.....  
Clerk of the House of Delegates

*Carl Ray Jombik*  
.....  
President of the Senate

*Robert Skiss*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *14<sup>th</sup>*  
Day of *July* ....., 2003.

*Bob Wise*  
.....  
Governor

SENT TO THE  
GOVERNOR

7/3/03

4:40 pm