

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 245**

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

10 \_\_\_\_\_  
11 [Passed March 12, 2011; in effect ninety days from passage.]  
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14  
15 AN ACT to amend and reenact §22C-1-27 of the Code of West Virginia,  
16 1931, as amended; to amend said code by adding thereto a new  
17 section, designated §29-22-18d; to amend and reenact §31-15A-9  
18 of said code; and to amend said code by adding thereto a new  
19 section, designated §31-15A-17b, all relating to protection of  
20 the watersheds of the Chesapeake Bay and the Greenbrier River;  
21 increasing the bonding authority of the Water Development  
22 Authority for limited purposes; directing an annual amount of  
23 excess lottery revenue to newly created debt service fund to  
24 pay costs of and debt service on bonds; providing for the  
25 issuance of bonds when watershed compliance projects have been  
26 approved; establishing deadline for certain publicly owned

1 wastewater facilities to submit ten-year projected capital  
2 funding plan to the West Virginia Infrastructure and Jobs  
3 Development Council for review and approval; providing  
4 eligibility for funding; requiring Water Development Authority  
5 to report to Joint Committee on Government and Finance;  
6 establishing distribution guidelines for grants to eligible  
7 projects; making eligible projects with funding approved  
8 before a certain date eligible for grant funding to the extent  
9 permitted by law and bond covenants; and limiting eligibility  
10 of grant funding.

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

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

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

20 **ARTICLE 1. WATER DEVELOPMENT AUTHORITY.**

21 **§22C-1-27. Authorized limit on borrowing.**

22 (a) The aggregate principal amount of bonds and notes issued  
23 by the authority may not exceed \$500 million outstanding at any  
24 one time: *Provided*, That before the authority issues bonds and  
25 notes in excess of \$400 million the Legislature must pass a

1 resolution authorizing this action: *Provided, however,* That in  
2 computing the total amount of bonds and notes which may at any  
3 one time be outstanding, the principal amount of any outstanding  
4 bonds or notes refunded or to be refunded either by application  
5 of the proceeds of the sale of any refunding bonds or notes of  
6 the authority or by exchange for any refunding bonds or notes,  
7 shall be excluded.

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

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

20 **ARTICLE 22. STATE LOTTERY ACT.**

21 **§29-22-18d. Allocation to West Virginia Infrastructure Lottery**

22 **Revenue Debt Service Fund and West Virginia**

23 **Infrastructure Fund from State Excess Lottery**

24 **Revenue Fund beginning July 1, 2011.**

25 Notwithstanding any provision of subsection (d), section

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

16 **CHAPTER 31. CORPORATIONS.**

17 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**

18 **COUNCIL.**

19 **§31-15A-9. Infrastructure fund; deposits in fund; disbursements**  
20 **to provide loans, loan guarantees, grants and**  
21 **other assistance; loans, loan guarantees, grants**  
22 **and other assistance shall be subject to**  
23 **assistance agreements; West Virginia**  
24 **Infrastructure Lottery Revenue Debt Service**  
25 **Fund; use of funds for projects.**

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

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

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

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

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

25       (c) To further accomplish the purposes and intent of this  
26 article and article fifteen-b of this chapter, the Water

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

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

23 (1) The estimated cost of the infrastructure project or  
24 project, the amount of the loan, loan guarantee or grant or the  
25 nature of the assistance, and in the case of a loan or loan  
26 guarantee, the terms of repayment and the security therefor, if

1 any;

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

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

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

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

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



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

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

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

1 eighteen-d, article twenty-two, chapter twenty-nine of this code  
2 and any other funds provided therefor: *Provided*, That such  
3 deposits and transfers are not subject to the reservations of  
4 funds or requirements for distributions of funds established by  
5 sections ten and eleven of this article. Moneys in the West  
6 Virginia infrastructure lottery revenue debt service fund shall  
7 be used to pay debt service on bonds or notes issued by the Water  
8 Development Authority for watershed compliance projects as  
9 provided in section seventeen-b of this article, and to the  
10 extent not needed to pay debt service, for the design or  
11 construction of improvements for watershed compliance projects.  
12 Moneys in the West Virginia infrastructure lottery revenue debt  
13 service fund not expended at the close of the fiscal year do not  
14 lapse or revert to the General Fund but are carried forward to  
15 the next fiscal year.

16 **§31-15A-17b. Infrastructure lottery revenue bonds for watershed**  
17 **compliance projects.**

18 (a) (1) The Chesapeake Bay has been identified as an impaired  
19 water body due to excessive nutrients entering the Bay from  
20 various sources in six states, including wastewater facilities in  
21 West Virginia. To restore the Chesapeake Bay, the states have  
22 agreed to reduce their respective nutrient contributions to the  
23 Chesapeake Bay.

24 (2) The Greenbrier River Watershed in southeastern West  
25 Virginia which encompasses approximately 1,646 square miles, the  
26 majority of which lies within Pocahontas, Greenbrier, Monroe and

1 Summers counties, has been identified as an impaired water body  
2 due to excessive levels of fecal coliform and phosphorus entering  
3 the Watershed from various sources, including wastewater  
4 facilities in West Virginia. To restore the Greenbrier River  
5 Watershed, the state agrees to reduce the fecal coliform and  
6 phosphorus contributions to the Greenbrier River Watershed.

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 the  
11 West Virginia infrastructure lottery revenue debt service fund  
12 created by section nine of this article and such other sources as  
13 may be legally pledged for such purposes other than the West  
14 Virginia infrastructure revenue debt service fund created by  
15 section seventeen of this article.

16 (c) The council shall direct the Water Development Authority  
17 to issue bonds in one or more series when it has approved  
18 Chesapeake Bay watershed compliance projects and Greenbrier River  
19 watershed compliance projects with an authorized permitted flow  
20 of four hundred thousand gallons per day or more. The proceeds  
21 of the bonds shall be used solely to pay costs of issuance, fund  
22 a debt service reserve account, capitalize interest, pay for  
23 security instruments necessary to market the bonds and to make  
24 grants to governmental instrumentalities of the state for the  
25 construction of approved Chesapeake Bay watershed compliance  
26 projects and Greenbrier River watershed compliance projects. To

1 the extent funds are available in the West Virginia  
2 Infrastructure Lottery Revenue Debt Service Fund that are not  
3 needed for debt service, the council may direct the Water  
4 Development Authority to make grants to project sponsors for the  
5 design or construction of approved Chesapeake Bay watershed  
6 compliance projects and Greenbrier River watershed compliance  
7 projects.

8 (d) No later than June 30, 2012, each publicly owned  
9 facility with an authorized permitted flow of 400,000 gallons per  
10 day or more that is subject to meeting Chesapeake Bay compliance  
11 standards or Greenbrier River watershed compliance standards  
12 shall submit to the council a ten year projected capital funding  
13 plan for Chesapeake Bay watershed compliance projects or  
14 Greenbrier River watershed compliance projects, as the case may  
15 be, including a general project description, cost estimate and  
16 estimated or actual project start date and project completion  
17 date, if any. The council shall timely review the submitted  
18 capital funding plans and forward approved plans to the Water  
19 Development Authority for further processing and implementation  
20 pursuant to this article. If the council finds a plan to be  
21 incomplete, inadequate or otherwise problematic, it shall return  
22 the plan to the applicant with comment on the plan shortcomings.  
23 The applicant may then resubmit to council an amended capital  
24 funding plan for further consideration pursuant to the terms of  
25 this subsection.

26 (e) Upon approval, each proposed Chesapeake Bay watershed

1 compliance project or Greenbrier River watershed compliance  
2 project, or portion of a larger project, which portion is  
3 dedicated to compliance with nutrient standards, or fecal  
4 coliform and phosphorus standards, established for the protection  
5 and restoration of the Chesapeake Bay or the Greenbrier River  
6 Watershed, as the case may be, shall be eligible for grant  
7 funding by funds generated by the infrastructure lottery revenue  
8 bonds described in section (b) of this section. At the request  
9 of the applicant, the remaining percentage of project funding not  
10 otherwise funded by grant under the provisions of this article  
11 may be reviewed as a standard project funding application.

12 (f) No later than December 1, 2012, the Water Development  
13 Authority shall report to the Joint Committee on Government and  
14 Finance the total cost of Chesapeake Bay watershed compliance  
15 projects and the Greenbrier River watershed compliance projects  
16 and the proposed grant awards for each eligible project. Grant  
17 awards shall be of equal ratio among all applicants of the total  
18 cost of each eligible project.

19 (g) Eligible projects that have obtained project financing  
20 prior to December 31, 2011 may apply to the council for funding  
21 under the provisions of this section. These applications shall  
22 be processed and considered as all other eligible projects, and  
23 any grant funding awarded shall, to the extent allowed by law, be  
24 dedicated to prepay all or a portion of debt previously incurred  
25 by governmental instrumentalities of the state for required  
26 Chesapeake Bay nutrient removal projects or Greenbrier River

1 watershed fecal coliform and phosphorus removal projects, subject  
2 to the bond covenants and contractual obligations of the  
3 borrowing governmental entity. However, any private portion of  
4 funding provided by agreement between a political subdivision and  
5 one or more private entities, either by direct capital investment  
6 or debt service obligation, shall not be eligible for grant  
7 funding under the provisions of this article.