

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 315**

4 (By Senators Kessler (Acting President), Unger and Plymale)

5 _____
6 [Originating in the Committee on Education;
7 reported February 23, 2011.]
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11 A BILL to amend and reenact §29-22-18a of the Code of West
12 Virginia, 1931, as amended, relating to making funding for
13 high school athletics one of the priorities in the expenditure
14 of any surplus excess lottery revenue funds; providing for the
15 apportionment and dispersing of funds; and prohibiting the
16 funds from supplanting existing funding for high school
17 athletics.

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

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

21 **ARTICLE 22. STATE LOTTERY ACT.**

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

23 (a) The State Lottery Fund in the State Treasury which is
24 designated and known as the State Excess Lottery Revenue Fund is
25 continued. The fund consists of all appropriations to the fund and
26 all interest earned from investment of the fund and any gifts,
27 grants or contributions received by the fund. All revenues

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

11 (b) For the fiscal year beginning July 1, 2002, the commission
12 shall deposit: (1) \$65 million into the subaccount of the state
13 Excess Lottery Revenue Fund hereby created in the State Treasury to
14 be known as the General Purpose Account to be expended pursuant to
15 appropriation of the Legislature; (2) \$10 million into the
16 Education Improvement Fund for appropriation by the Legislature to
17 the PROMISE Scholarship Fund created in section seven, article
18 seven, chapter eighteen-c of this code; (3) \$19 million into the
19 Economic Development Project Fund created in subsection (e) of this
20 section for the issuance of revenue bonds and to be spent in
21 accordance with the provisions of said subsection; (4) \$20 million
22 into the School Building Debt Service Fund created in section six,
23 article nine-d, chapter eighteen of this code for the issuance of
24 revenue bonds; (5) \$40 million into the West Virginia
25 Infrastructure Fund created in section nine, article fifteen-a,
26 chapter thirty-one of this code to be spent in accordance with the
27 provisions of said article; (6) \$10 million into the Higher
28 Education Improvement Fund for Higher Education; and (7) \$5 million

1 into the State Park Improvement Fund for Park Improvements. For
2 the fiscal year beginning July 1, 2003, the commission shall
3 deposit: (1) \$65 million into the General Purpose Account to be
4 expended pursuant to appropriation of the Legislature; (2) \$17
5 million into the Education Improvement Fund for appropriation by
6 the Legislature to the PROMISE Scholarship Fund created in section
7 seven, article seven, chapter eighteen-c of this code; (3) \$19
8 million into the Economic Development Project Fund created in
9 subsection (e) of this section for the issuance of revenue bonds
10 and to be spent in accordance with the provisions of said
11 subsection; (4) \$20 million into the School Building Debt Service
12 Fund created in section six, article nine-d, chapter eighteen of
13 this code for the issuance of revenue bonds; (5) \$40 million into
14 the West Virginia Infrastructure Fund created in section nine,
15 article fifteen-a, chapter thirty-one of this code to be spent in
16 accordance with the provisions of said article; (6) \$10 million
17 into the Higher Education Improvement Fund for Higher Education;
18 and (7) \$7 million into the State Park Improvement Fund for Park
19 Improvements.

20 (c) For the fiscal year beginning July 1, 2004, and subsequent
21 fiscal years through the fiscal year ending June 30, 2009, the
22 commission shall deposit: (1) \$65 million into the General Purpose
23 Account to be expended pursuant to appropriation of the
24 Legislature; (2) \$27 million into the Education Improvement Fund
25 for appropriation by the Legislature to the PROMISE Scholarship
26 Fund created in section seven, article seven, chapter eighteen-c of
27 this code; (3) \$19 million into the Economic Development Project
28 Fund created in subsection (e) of this section for the issuance of

1 revenue bonds and to be spent in accordance with the provisions of
2 said subsection; (4) \$19 million into the School Building Debt
3 Service Fund created in section six, article nine-d, chapter
4 eighteen of this code for the issuance of revenue bonds: *Provided,*
5 That for the fiscal year beginning July 1, 2008, and subsequent
6 fiscal years, no moneys shall be deposited in the School Building
7 Debt Service Fund pursuant to this subsection and instead \$19
8 million shall be deposited into the Excess Lottery School Building
9 Debt Service Fund; (5) \$40 million into the West Virginia
10 Infrastructure Fund created in section nine, article fifteen-a,
11 chapter thirty-one of this code to be spent in accordance with the
12 provisions of said article; (6) \$10 million into the Higher
13 Education Improvement Fund for Higher Education; and (7) \$5 million
14 into the State Park Improvement Fund for Park Improvements. No
15 portion of the distributions made as provided in this subsection
16 and subsection (b) of this section, except distributions made in
17 connection with bonds issued under subsection (e) of this section,
18 may be used to pay debt service on bonded indebtedness until after
19 the Legislature expressly authorizes issuance of the bonds and
20 payment of debt service on the bonds through statutory enactment or
21 the adoption of a concurrent resolution by both houses of the
22 Legislature. Until subsequent legislative enactment or adoption of
23 a resolution that expressly authorizes issuance of the bonds and
24 payment of debt service on the bonds with funds distributed under
25 this subsection and subsection (b) of this section, except
26 distributions made in connection with bonds issued under subsection
27 (d) of this section, the distributions may be used only to fund
28 capital improvements that are not financed by bonds and only

1 pursuant to appropriation of the Legislature.

2 (d) For the fiscal year beginning July 1, 2009, and subsequent
3 fiscal years, the commission shall deposit: (1) \$65 million into
4 the General Purpose Account to be expended pursuant to
5 appropriation of the Legislature; (2) \$29 million into the
6 Education Improvement Fund for appropriation by the Legislature to
7 the PROMISE Scholarship Fund created in section seven, article
8 seven, chapter eighteen-c of this code; (3) \$19 million into the
9 Economic Development Project Fund created in subsection (e) of this
10 section for the issuance of revenue bonds and to be spent in
11 accordance with the provisions of said subsection; (4) \$19 million
12 into the Excess Lottery School Building Debt Service Fund created
13 in section six, article nine-d, chapter eighteen of this code; (5)
14 \$40 million into the West Virginia Infrastructure Fund created in
15 section nine, article fifteen-a, chapter thirty-one of this code to
16 be spent in accordance with the provisions of said article; (6) \$10
17 million into the Higher Education Improvement Fund for Higher
18 Education; and (7) \$5 million into the State Park Improvement Fund
19 for Park Improvements. No portion of the distributions made as
20 provided in this subsection and subsection (b) of this section,
21 except distributions made in connection with bonds issued under
22 subsection (e) of this section, may be used to pay debt service on
23 bonded indebtedness until after the Legislature expressly
24 authorizes issuance of the bonds and payment of debt service on the
25 bonds through statutory enactment or the adoption of a concurrent
26 resolution by both houses of the Legislature. Until subsequent
27 legislative enactment or adoption of a resolution that expressly
28 authorizes issuance of the bonds and payment of debt service on the

1 bonds with funds distributed under this subsection and subsection
2 (b) of this section, except distributions made in connection with
3 bonds issued under subsection (e) of this section, the
4 distributions may be used only to fund capital improvements that
5 are not financed by bonds and only pursuant to appropriation of the
6 Legislature.

7 (e) The Legislature finds and declares that in order to
8 attract new business, commerce and industry to this state, to
9 retain existing business and industry providing the citizens of
10 this state with economic security and to advance the business
11 prosperity of this state and the economic welfare of the citizens
12 of this state, it is necessary to provide public financial support
13 for constructing, equipping, improving and maintaining economic
14 development projects, capital improvement projects and
15 infrastructure which promote economic development in this state.

16 (1) The West Virginia Economic Development Authority created
17 and provided for in article fifteen, chapter thirty-one of this
18 code shall, by resolution, in accordance with the provisions of
19 this article and article fifteen, chapter thirty-one of this code,
20 and upon direction of the Governor, issue revenue bonds of the
21 Economic Development Authority in no more than two series to pay
22 for all or a portion of the cost of constructing, equipping,
23 improving or maintaining projects under this section or to refund
24 the bonds at the discretion of the authority. Any revenue bonds
25 issued on or after July 1, 2002, which are secured by state excess
26 lottery revenue proceeds shall mature at a time or times not
27 exceeding thirty years from their respective dates. The principal
28 of and the interest and redemption premium, if any, on the bonds

1 shall be payable solely from the special fund provided in this
2 section for the payment.

3 (2) The special revenue fund named the Economic Development
4 Project Fund into which ~~shall be~~ is deposited the amounts to be
5 deposited in the fund as specified in subsections (b), (c) and (d)
6 of this section is continued. The Economic Development Project
7 Fund shall consist of all such moneys, all appropriations to the
8 fund, all interest earned from investment of the fund and any
9 gifts, grants or contributions received by the fund. All amounts
10 deposited in the fund shall be pledged to the repayment of the
11 principal, interest and redemption premium, if any, on any revenue
12 bonds or refunding revenue bonds authorized by this section,
13 including any and all commercially customary and reasonable costs
14 and expenses which may be incurred in connection with the issuance,
15 refunding, redemption or defeasance of the bonds. The West
16 Virginia Economic Development Authority may further provide in the
17 resolution and in the trust agreement for priorities on the
18 revenues paid into the Economic Development Project Fund that are
19 necessary for the protection of the prior rights of the holders of
20 bonds issued at different times under the provisions of this
21 section. The bonds issued pursuant to this subsection shall be
22 separate from all other bonds which may be or have been issued,
23 from time to time, under the provisions of this article.

24 (3) After the West Virginia Economic Development Authority has
25 issued bonds authorized by this section and after the requirements
26 of all funds have been satisfied, including any coverage and
27 reserve funds established in connection with the bonds issued
28 pursuant to this subsection, any balance remaining in the Economic

1 Development Project Fund may be used for the redemption of any of
2 the outstanding bonds issued under this subsection which, by their
3 terms, are then redeemable or for the purchase of the outstanding
4 bonds at the market price, but not to exceed the price, if any, at
5 which redeemable, and all bonds redeemed or purchased shall be
6 immediately canceled and shall not again be issued.

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

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

1 considered to satisfy all the requirements of said article.

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

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

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

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

24 (B) Whether funding for the amount requested in the grant
25 application is or reasonably should be available from commercial
26 sources;

27 (C) The ability of the project to create or retain jobs,
28 considering the number of jobs, the type of jobs, whether benefits

1 are or will be paid, the type of benefits involved and the
2 compensation reasonably anticipated to be paid persons filling new
3 jobs or the compensation currently paid to persons whose jobs would
4 be retained;

5 (D) Whether the project will promote economic development in
6 the region and the type of economic development that will be
7 promoted;

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

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

11 (9) A grant may not be awarded to an individual or other
12 private person or entity. Grants may be awarded only to an agency,
13 instrumentality or political subdivision of this state or to an
14 agency or instrumentality of a political subdivision of this state.

15 The project of an individual or private person or entity may
16 be certified to receive a low-interest loan paid from bond
17 proceeds. The terms and conditions of the loan, including, but not
18 limited to, the rate of interest to be paid and the period of the
19 repayment, shall be determined by the Economic Development
20 Authority after considering all applicable facts and circumstances.

21 (10) Prior to making each certification, the committee shall
22 conduct at least one public hearing, which may be held outside of
23 Kanawha County. Notice of the time, place, date and purpose of the
24 hearing shall be published in at least one newspaper in each of the
25 three congressional districts at least fourteen days prior to the
26 date of the public hearing.

27 (11) The committee may not certify a project unless the
28 committee finds that the project is in the public interest and the

1 grant will be used for a public purpose. For purposes of this
2 subsection, projects in the public interest and for a public
3 purpose include, but are not limited to:

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

6 (B) Health clinics and other health facilities;

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

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

10 (E) Biotechnical incubators, development centers and
11 facilities;

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

14 (G) Improvements at state parks, such as construction,
15 expansion or extensive renovation of lodges, cabins, conference
16 facilities and restaurants;

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

20 (I) Recreational facilities, such as amphitheaters, walking
21 and hiking trails, bike trails, picnic facilities, restrooms, boat
22 docking and fishing piers, basketball and tennis courts, and
23 baseball, football and soccer fields;

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

26 (K) Retail facilities, including related service, parking and
27 transportation facilities, appropriate lighting, landscaping and
28 security systems to revitalize decaying downtown areas; and

1 (L) Other facilities that promote or enhance economic
2 development, educational opportunities or tourism opportunities
3 thereby promoting the general welfare of this state and its
4 residents.

5 (12) Prior to the issuance of bonds under this subsection, the
6 committee shall certify to the Economic Development Authority a
7 list of those certified projects that will receive funds from the
8 proceeds of the bonds. Once certified, the list may not thereafter
9 be altered or amended other than by legislative enactment.

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

23 (f) If the commission receives revenues in an amount that is
24 not sufficient to fully comply with the requirements of subsections
25 (b), (c), (d) and (i) of this section, the commission shall first
26 make the distribution to the Economic Development Project Fund;
27 second, make the distribution or distributions to the other funds
28 from which debt service is to be paid; third, make the distribution

1 to the Education Improvement Fund for appropriation by the
2 Legislature to the PROMISE Scholarship Fund; and fourth, make the
3 distribution to the General Purpose Account: *Provided, That*
4 subject to the provisions of this subsection, to the extent the
5 revenues are not pledged in support of revenue bonds which are or
6 may be issued, from time to time, under this section, the revenues
7 shall be distributed on a pro rata basis.

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

18 (h) When bonds are issued for projects under subsection (d)
19 (e) of this section or for the School Building Authority,
20 infrastructure, higher education or park improvement purposes
21 described in this section that are secured by profits from
22 lotteries deposited in the State Excess Lottery Revenue Fund, the
23 Lottery Director shall allocate first to the Economic Development
24 Project Fund an amount equal to one tenth of the projected annual
25 principal, interest and coverage requirements on any and all
26 revenue bonds issued, or to be issued as certified to the Lottery
27 Director; and second, to the fund or funds from which debt service
28 is paid on bonds issued under this section for the School Building

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

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

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

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

19 (B) Providing adequate funding for the Public Employees
20 Insurance Agency; ~~and~~

21 (C) Providing funding to help address the shortage of
22 qualified teachers and substitutes in areas of need, both in number
23 of teachers and in subject matter areas; and

24 (D) Providing funding for high school athletics. The funding
25 shall be apportioned in such a manner that forty percent will be
26 apportioned for all class "AAA" high schools, thirty-two percent
27 will be apportioned for all class "AA" high schools and twenty-
28 eight percent will be apportioned for all class "A" high schools.

1 The funding apportioned for each class of high school shall be
2 dispersed in such a manner that all high schools in each class
3 receive an equal amount of funding. The funding may not be used to
4 supplant existing funding for high school athletics.

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

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

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

28 (1) On the last day of the fiscal year that begins on July 1,

1 2010, and for each fiscal year thereafter, forty-six percent shall
2 be placed in the general purse fund of a thoroughbred racetrack
3 licensee that did not participate in the Thoroughbred Development
4 Fund for at least four consecutive calendar years prior to December
5 31, 1992, for payment of regular purses;

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

11 (3) Five and one half percent shall be distributed to the
12 racing commission special account - unredeemed pari-mutual tickets
13 established on behalf of a thoroughbred racetrack licensee that did
14 not participate in the Thoroughbred Development Fund for at least
15 four consecutive calendar years prior to December 31, 1992; and

16 (4) Five percent shall be distributed to the West Virginia
17 racing commission special account - greyhound breeding development
18 fund.