

Senate Bill No. 245

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

**Interim
Bill**

[Introduced January 24, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §22C-1-6 and §22C-1-27 of the Code of
West Virginia, 1931, as amended; to amend and reenact §29-22-
18a of said code; to amend and reenact §31-15A-9 of said code;
and to amend said code by adding thereto a new section,
designated §31-15A-17b, all relating to protection of the
Chesapeake Bay Watershed; authorizing the Water Development
Authority to require consolidation of wastewater treatment
facilities; increasing the bonding authority of the Water
Development Authority for limited purpose; increasing amount
of excess lottery revenue deposited to infrastructure fund;
providing for distribution to infrastructure fund where excess
lottery revenue shortfall occurs; providing exemption for
excess lottery revenue deposited to infrastructure fund;
creating the West Virginia Infrastructure Lottery Revenue Debt
Service Fund and providing for purpose of new fund; and

1 authorizing Water Development Authority to issue revenue bonds
2 for certain Chesapeake Bay Watershed projects.

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

4 That §22C-1-6 and §22C-1-27 of the Code of West Virginia,
5 1931, as amended, be amended and reenacted; that §29-22-18a of said
6 code be amended and reenacted; that §31-15A-9 of said code be
7 amended and reenacted; and that said code be amended by adding
8 thereto a new section, designated §31-15A-17b, all to read as
9 follows:

10 **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS,**
11 **AUTHORITIES, COMMISSIONS AND COMPACTS.**

12 **ARTICLE 1. WATER DEVELOPMENT AUTHORITY.**

13 **§22C-1-6. Powers, duties and responsibilities of authority**
14 **generally.**

15 The Water Development Authority has and may exercise all
16 powers necessary or appropriate to carry out and effectuate its
17 corporate purpose. The authority has the power and capacity to:

18 (1) Adopt and, from time to time, amend and repeal bylaws
19 necessary and proper for the regulation of its affairs and the
20 conduct of its business and rules to implement and make effective
21 its powers and duties, such rules to be promulgated in accordance
22 with the provisions of chapter twenty-nine-a of this code.

23 (2) Adopt an official seal.

24 (3) Maintain a principal office and, if necessary, regional

1 suboffices at locations properly designated or provided.

2 (4) Sue and be sued in its own name and plead and be impleaded
3 in its own name and particularly to enforce the obligations and
4 covenants made under sections nine, ten and sixteen of this
5 article. Any actions against the authority shall be brought in the
6 circuit court of Kanawha County in which the principal office of
7 the authority shall be located.

8 (5) Make loans and grants to governmental agencies for the
9 acquisition or construction of water development projects by any
10 such governmental agency and, in accordance with the provisions of
11 chapter twenty-nine-a of this code, adopt rules and procedures for
12 making such loans and grants. As a condition of eligibility for
13 any loan or grant, the authority may require governmental agencies
14 to consolidate new or existing water development projects.

15 (6) Acquire, construct, reconstruct, enlarge, improve,
16 furnish, equip, maintain, repair, operate, lease or rent to, or
17 contract for operation by a governmental agency or person, water
18 development projects and, in accordance with the provisions of
19 chapter twenty-nine-a of this code, adopt rules for the use of such
20 projects.

21 (7) Make available the use or services of any water
22 development project to one or more persons, one or more
23 governmental agencies or any combination thereof.

24 (8) Issue water development revenue bonds and notes and water

1 development revenue refunding bonds of the state, payable solely
2 from revenues as provided in section nine of this article unless
3 the bonds are refunded by refunding bonds, for the purpose of
4 paying all or any part of the cost of, or financing by loans to
5 governmental agencies, one or more water development projects or
6 parts thereof.

7 (9) Acquire by gift or purchase, hold and dispose of real and
8 personal property in the exercise of its powers and the performance
9 of its duties as set forth in this article.

10 (10) Acquire in the name of the state, by purchase or
11 otherwise, on such terms and in such manner as it deems proper, or
12 by the exercise of the right of eminent domain in the manner
13 provided in chapter fifty-four of this code, such public or private
14 lands, or parts thereof or rights therein, rights-of-way, property,
15 rights, easements and interests it deems necessary for carrying out
16 the provisions of this article, but excluding the acquisition by
17 the exercise of the right of eminent domain of any public water
18 facilities, stormwater systems or wastewater facilities, operated
19 under permits issued pursuant to the provisions of article eleven,
20 chapter twenty-two of this code and owned by any person or
21 governmental agency, and compensation shall be paid for public or
22 private lands so taken.

23 (11) Make and enter into all contracts and agreements and
24 execute all instruments necessary or incidental to the performance

1 of its duties and the execution of its powers. When the cost under
2 any such contract or agreement, other than compensation for
3 personal services, involves an expenditure of more than \$2,000, the
4 authority shall make a written contract with the lowest responsible
5 bidder after public notice published as a Class II legal
6 advertisement in compliance with the provisions of article three,
7 chapter fifty-nine of this code, the publication area for such
8 publication to be the county wherein the work is to be performed or
9 which is affected by the contract, which notice shall state the
10 general character of the work and the general character of the
11 materials to be furnished, the place where plans and specifications
12 therefor may be examined and the time and place of receiving bids,
13 but a contract or lease for the operation of a water development
14 project constructed and owned by the authority or an agreement for
15 cooperation in the acquisition or construction of a water
16 development project pursuant to section sixteen of this article is
17 not subject to the foregoing requirements and the authority may
18 enter into such contract or lease or such agreement pursuant to
19 negotiation and upon such terms and conditions and for such period
20 as it finds to be reasonable and proper under the circumstances and
21 in the best interests of proper operation or of efficient
22 acquisition or construction of such project. The authority may
23 reject any and all bids. A bond with good and sufficient surety,
24 approved by the authority, is required of all contractors in an

1 amount equal to at least fifty percent of the contract price,
2 conditioned upon the faithful performance of the contract.

3 (12) Employ managers, superintendents and other employees, who
4 are covered by the state civil service system, and retain or
5 contract with consulting engineers, financial consultants,
6 accounting experts, architects, attorneys and such other
7 consultants and independent contractors as are necessary in its
8 judgment to carry out the provisions of this article and fix the
9 compensation or fees thereof. All expenses thereof are payable
10 solely from the proceeds of water development revenue bonds or
11 notes issued by the authority, from revenues and from funds
12 appropriated for such purpose by the Legislature.

13 (13) Receive and accept from any federal agency, subject to
14 the approval of the Governor, grants for or in aid of the
15 construction of any water development project or for research and
16 development with respect to public water facilities, stormwater
17 systems or wastewater facilities and receive and accept aid or
18 contributions from any source of money, property, labor or other
19 things of value to be held, used and applied only for the purposes
20 for which such grants and contributions are made.

21 (14) Engage in research and development with respect to public
22 water facilities, stormwater systems or wastewater facilities.

23 (15) Purchase property coverage and liability insurance for
24 any water development project and for the principal office and

1 suboffices of the authority, insurance protecting the authority and
2 its officers and employees against liability, if any, for damage to
3 property or injury to or death of persons arising from its
4 operations and any other insurance the authority may agree to
5 provide under any resolution authorizing the issuance of water
6 development revenue bonds or in any trust agreement securing the
7 same.

8 (16) Charge, alter and collect rentals and other charges for
9 the use or services of any water development project as provided in
10 this article and charge and collect reasonable interest, fees and
11 charges in connection with the making and servicing of loans to
12 governmental agencies in the furtherance of the purposes of this
13 article.

14 (17) Establish or increase reserves from moneys received or to
15 be received by the authority to secure or to pay the principal of
16 and interest on the bonds and notes issued by the authority
17 pursuant to this article.

18 (18) Administer on behalf of the Department of Environmental
19 Protection the Dam Safety Rehabilitation Revolving Fund Loan
20 Program pursuant to the provisions of article fourteen of chapter
21 twenty-two of this code. Revenues or moneys designated by this
22 code or otherwise appropriated for use by the authority pursuant to
23 the provisions of this article may not be used for the Dam Safety
24 Rehabilitation Revolving Fund Loan Program and moneys in the Dam

1 Safety Rehabilitation Revolving Fund shall be kept separate from
2 all revenues and moneys of the authority.

3 (19) Do all acts necessary and proper to carry out the powers
4 expressly granted to the authority in this article.

5 **§22C-1-27. Authorized limit on borrowing.**

6 (a) The aggregate principal amount of bonds and notes issued
7 by the authority may not exceed \$500 million outstanding at any one
8 time: *Provided*, That before the authority issues bonds and notes in
9 excess of \$400 million the Legislature must pass a resolution
10 authorizing this action: *Provided, however*, That in computing the
11 total amount of bonds and notes which may at any one time be
12 outstanding, the principal amount of any outstanding bonds or notes
13 refunded or to be refunded either by application of the proceeds of
14 the sale of any refunding bonds or notes of the authority or by
15 exchange for any refunding bonds or notes, shall be excluded.

16 (b) In addition to the amounts authorized by subsection (a) of
17 this section, the authority may issue, pursuant to section
18 seventeen-b, article fifteen-a, chapter thirty-one of this code,
19 bonds or notes in the aggregate principal amount not to exceed \$180
20 million. This authorization is for the limited purpose of
21 providing grants for capital improvements for public wastewater
22 treatment facilities with an authorized permitted flow of four
23 hundred thousand gallons per day or more which are required to
24 maintain compliance with nutrient standards for discharges to the

1 Chesapeake Bay Watershed.

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

3 **ARTICLE 22. STATE LOTTERY ACT.**

4 **§29-22-18a. State Excess Lottery Revenue Fund.**

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

20 (b) For the fiscal year beginning July 1, 2002, the commission
21 shall deposit: (1) \$65 million into the subaccount of the state
22 Excess Lottery Revenue Fund hereby created in the State Treasury to
23 be known as the General Purpose Account to be expended pursuant to
24 appropriation of the Legislature; (2) \$10 million into the

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

1 Fund created in section six, article nine-d, chapter eighteen of
2 this code for the issuance of revenue bonds; (5) \$40 million into
3 the West Virginia Infrastructure Fund created in section nine,
4 article fifteen-a, chapter thirty-one of this code to be spent in
5 accordance with the provisions of said article; (6) \$10 million
6 into the Higher Education Improvement Fund for Higher Education;
7 and (7) \$7 million into the State Park Improvement Fund for Park
8 Improvements.

9 (c) For the fiscal year beginning July 1, 2004, and subsequent
10 fiscal years through the fiscal year ending June 30, 2009, the
11 commission shall deposit: (1) \$65 million into the General Purpose
12 Account to be expended pursuant to appropriation of the
13 Legislature; (2) \$27 million into the Education Improvement Fund
14 for appropriation by the Legislature to the PROMISE Scholarship
15 Fund created in section seven, article seven, chapter eighteen-c of
16 this code; (3) \$19 million into the Economic Development Project
17 Fund created in subsection (e) of this section for the issuance of
18 revenue bonds and to be spent in accordance with the provisions of
19 said subsection; (4) \$19 million into the School Building Debt
20 Service Fund created in section six, article nine-d, chapter
21 eighteen of this code for the issuance of revenue bonds: *Provided,*
22 That for the fiscal year beginning July 1, 2008, and subsequent
23 fiscal years, no moneys shall be deposited in the School Building
24 Debt Service Fund pursuant to this subsection and instead \$19

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

23 (d) For the fiscal year beginning July 1, 2009, and subsequent
24 fiscal years, the commission shall deposit: (1) \$65 million into

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

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

8 (e) For the fiscal year beginning July 1, 2011, and subsequent
9 fiscal years, the commission shall deposit: (1) \$65 million into
10 the General Purpose Account to be expended pursuant to
11 appropriation of the Legislature; (2) \$29 million into the
12 Education Improvement Fund for appropriation by the Legislature to
13 the PROMISE Scholarship Fund created in section seven, article
14 seven, chapter eighteen-c of this code; (3) \$19 million into the
15 Economic Development Project Fund created in subsection (f) of this
16 section for the issuance of revenue bonds and to be spent in
17 accordance with the provisions of that subsection; (4) \$19 million
18 into the Excess Lottery School Building Debt Service Fund created
19 in section six, article nine-d, chapter eighteen of this code; (5)
20 \$46 million into the West Virginia Infrastructure Fund created in
21 section nine, article fifteen-a, chapter thirty-one of this code to
22 be spent in accordance with the provisions of that article; (6) \$10
23 million into the Higher Education Improvement Fund for Higher
24 Education; and (7) \$5 million into the State Park Improvement Fund

1 for Park Improvements. No portion of the distributions made as
2 provided in this subsection and subsection (b) of this section,
3 except distributions made in connection with bonds issued under
4 subsection (f) of this section, may be used to pay debt service on
5 bonded indebtedness until after the Legislature expressly
6 authorizes issuance of the bonds and payment of debt service on the
7 bonds through statutory enactment or the adoption of a concurrent
8 resolution by both houses of the Legislature. Until subsequent
9 legislative enactment or adoption of a resolution that expressly
10 authorizes issuance of the bonds and payment of debt service on the
11 bonds with funds distributed under this subsection and subsection
12 (b) of this section, except distributions made in connection with
13 bonds issued under subsection (f) of this section, the
14 distributions may be used only to fund capital improvements that
15 are not financed by bonds and only pursuant to appropriation of the
16 Legislature.

17 ~~(e)~~ (f) The Legislature finds and declares that in order to
18 attract new business, commerce and industry to this state, to
19 retain existing business and industry providing the citizens of
20 this state with economic security and to advance the business
21 prosperity of this state and the economic welfare of the citizens
22 of this state, it is necessary to provide public financial support
23 for constructing, equipping, improving and maintaining economic
24 development projects, capital improvement projects and

1 infrastructure which promote economic development in this state.

2 (1) The West Virginia Economic Development Authority created
3 and provided ~~for~~ in article fifteen, chapter thirty-one of this
4 code shall, by resolution, in accordance with the provisions of
5 this article and article fifteen, chapter thirty-one of this code,
6 and upon direction of the Governor, issue revenue bonds of the
7 Economic Development Authority in no more than two series to pay
8 for all or a portion of the cost of constructing, equipping,
9 improving or maintaining projects under this section or to refund
10 the bonds at the discretion of the authority. Any revenue bonds
11 issued on or after July 1, 2002, which are secured by state excess
12 lottery revenue proceeds shall mature at a time or times not
13 exceeding thirty years from their respective dates. The principal
14 of and the interest and redemption premium, if any, on the bonds
15 shall be payable solely from the special fund provided in this
16 section for the payment.

17 (2) The special revenue fund named the Economic Development
18 Project Fund into which ~~shall be~~ is deposited the amounts to be
19 deposited in the fund as specified in subsections (b), (c), (d) and
20 ~~(d)~~ (e) of this section is continued. The Economic Development
21 Project Fund shall consist of all such moneys, all appropriations
22 to the fund, all interest earned from investment of the fund and
23 any gifts, grants or contributions received by the fund. All
24 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
24 which redeemable, and all bonds redeemed or purchased shall be

1 immediately canceled and shall not again be issued.

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

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

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

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

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

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

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

1 sources;

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

8 (D) Whether the project will promote economic development in
9 the region and the type of economic development that will be
10 promoted;

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

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

14 (9) A grant may not be awarded to an individual or other
15 private person or entity. Grants may be awarded only to an agency,
16 instrumentality or political subdivision of this state or to an
17 agency or instrumentality of a political subdivision of this state.
18 The project of an individual or private person or entity may be
19 certified to receive a low-interest loan paid from bond proceeds.
20 The terms and conditions of the loan, including, but not limited
21 to, the rate of interest to be paid and the period of the
22 repayment, shall be determined by the Economic Development
23 Authority after considering all applicable facts and circumstances.

24 (10) Prior to making each certification, the committee shall

1 conduct at least one public hearing, which may be held outside of
2 Kanawha County. Notice of the time, place, date and purpose of the
3 hearing shall be published in at least one newspaper in each of the
4 three congressional districts at least fourteen days prior to the
5 date of the public hearing.

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

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

13 (B) Health clinics and other health facilities;

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

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

17 (E) Biotechnical incubators, development centers and
18 facilities;

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

21 (G) Improvements at state parks, such as construction,
22 expansion or extensive renovation of lodges, cabins, conference
23 facilities and restaurants;

24 (H) Railroad bridges, switches and track extension or spurs on

1 public or private land necessary to retain existing businesses or
2 attract new businesses;

3 (I) Recreational facilities, such as amphitheaters, walking
4 and hiking trails, bike trails, picnic facilities, restrooms, boat
5 docking and fishing piers, basketball and tennis courts, and
6 baseball, football and soccer fields;

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

9 (K) Retail facilities, including related service, parking and
10 transportation facilities, appropriate lighting, landscaping and
11 security systems to revitalize decaying downtown areas; and

12 (L) Other facilities that promote or enhance economic
13 development, educational opportunities or tourism opportunities
14 thereby promoting the general welfare of this state and its
15 residents.

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

21 (13) If any proceeds from sale of bonds remain after paying
22 costs and making grants and loans as provided in this subsection,
23 the surplus may be deposited in an account in the State Treasury
24 known as the Economic Development Project Bridge Loan Fund

1 administered by the Economic Development Authority created in
2 article fifteen, chapter thirty-one of this code. Expenditures
3 from the fund are not authorized from collections but are to be
4 made only in accordance with appropriation by the Legislature and
5 in accordance with the provisions of article three, chapter twelve
6 of this code and upon fulfillment of the provisions of article two,
7 chapter five-a of this code. Loan repayment amounts, including the
8 portion attributable to interest, shall be paid into the fund
9 created in this subdivision.

10 ~~(f)~~ (g) If the commission receives revenues in an amount that
11 is not sufficient to fully comply with the requirements of
12 subsections (b), (c), (d), (e) and ~~(i)~~ (j) of this section, the
13 commission shall first make the distribution to the Economic
14 Development Project Fund; second, make the distribution or
15 distributions to the other funds from which debt service is to be
16 paid; third, make the distribution to the Education Improvement
17 Fund for appropriation by the Legislature to the PROMISE
18 Scholarship Fund; fourth, make the distribution to the West
19 Virginia Infrastructure Fund; and ~~fourth~~ fifth, make the
20 distribution to the General Purpose Account: *Provided, That,*
21 subject to the provisions of this subsection, to the extent the
22 revenues are not pledged in support of revenue bonds which are or
23 may be issued, from time to time, under this section, the revenues
24 shall be distributed on a pro rata basis.

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

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

1 issued, or to be issued as certified to the Lottery Director. In
2 the event there are insufficient funds available in any month to
3 transfer the amounts required pursuant to this subsection, the
4 deficiency shall be added to the amount transferred in the next
5 succeeding month in which revenues are available to transfer the
6 deficiency.

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

12 ~~(j)~~ (k) (1) The Legislature considers the following as
13 priorities in the expenditure of any surplus revenue funds:

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

16 (B) Providing adequate funding for the Public Employees
17 Insurance Agency; and

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

21 (2) The provisions of this subsection may not be construed by
22 any court to require any appropriation or any specific
23 appropriation or level of funding for the purposes set forth in
24 this subsection.

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

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

20 (1) On the last day of the fiscal year that begins on July 1,
21 2010, and for each fiscal year thereafter, forty-six percent shall
22 be placed in the general purse fund of a thoroughbred racetrack
23 licensee that did not participate in the Thoroughbred Development
24 Fund for at least four consecutive calendar years prior to December

1 31, 1992, for payment of regular purses;

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

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

12 (4) Five percent shall be distributed to the West Virginia
13 racing commission special account - Greyhound Breeding Development
14 Fund.

15 **CHAPTER 31. CORPORATIONS.**

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

18 **§31-15A-9. Infrastructure fund; deposits in fund; disbursements**
19 **to provide loans, loan guarantees, grants and**
20 **other assistance; loans, loan guarantees, grants**
21 **and other assistance shall be subject to**
22 **assistance agreements.**

23 (a) The Water Development Authority shall create and
24 establish a special revolving fund of moneys made available by

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

23 Any money collected pursuant to this section shall be paid
24 into the West Virginia infrastructure fund by the state agent or

1 entity charged with the collection of the same, credited to the
2 infrastructure fund, and used only for purposes set forth in this
3 article or article fifteen-b.

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

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

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

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

23 (1) The estimated cost of the infrastructure project or
24 project, the amount of the loan, loan guarantee or grant or the

1 nature of the assistance, and in the case of a loan or loan
2 guarantee, the terms of repayment and the security therefor, if any;

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

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

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

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

22 (f) The interest rate on any loan to governmental, quasi-
23 governmental, or not for profit project sponsors for projects made
24 pursuant to this article shall not exceed three percent per annum.

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

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

21 (h) There is hereby created in the Water Development Authority
22 a separate, special account which shall be designated and known as
23 the "West Virginia Infrastructure Lottery Revenue Debt Service
24 Fund," into which shall be deposited annually commencing July 1,

1 2011, the first \$6 million transferred pursuant to section eighteen-
2 a, article twenty-two, chapter twenty-nine of this code, any
3 assessments collected pursuant to section five, article one, chapter
4 twenty-two-c of this code and any other funds provided therefor:
5 Provided, That such deposits and transfers are not subject to the
6 reservations of funds established by sections ten and eleven of this
7 article. Moneys in the West Virginia Infrastructure Lottery Revenue
8 Debt Service Fund shall be used to pay debt service on bonds or
9 notes issued by the Water Development Authority for Chesapeake Bay
10 projects as provided in section seventeen-b of this article, and to
11 the extent not needed to pay debt service, for the design of
12 improvements for Chesapeake Bay projects.

13 **§31-15A-17b. Infrastructure lottery revenue bonds for Chesapeake**
14 **Bay watershed projects.**

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

21 (b) Notwithstanding any other provision of this code to the
22 contrary, the Water Development Authority may issue, in accordance
23 with the provisions of section seventeen of this article,
24 infrastructure lottery revenue bonds payable from the West Virginia

1 Infrastructure Lottery Revenue Debt Service Fund created by section
2 nine of this article and such other sources as may be legally
3 pledged for such purposes other than the West Virginia
4 Infrastructure Revenue Debt Service Fund created by section
5 seventeen of this article.

6 (c) The council shall direct the Water Development Authority
7 to issue bonds when it has approved Chesapeake Bay projects with an
8 authorized permitted flow of four hundred thousand gallons per day
9 or more. The proceeds of the bonds shall be used solely to pay
10 costs of issuance, fund a debt service reserve account and to make
11 grants to approved project sponsors for Chesapeake Bay projects.
12 To the extent funds are available in the West Virginia
13 Infrastructure Lottery Revenue Debt Service Fund that are not needed
14 for debt service, the council may direct the water development
15 authority to make grants to project sponsors for the design of
16 approved Chesapeake Bay projects.

NOTE: The purpose of this bill is to establish a program to provide financial assistance to wastewater treatment facilities in the Chesapeake Bay Watershed that are required to install expensive technology in order to meet stringent nutrient standards imposed by the U.S. Environmental Protection Agency..

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

§31-15A-17b is new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Judiciary

Committee.