

**Senate Bill No. 315**

(By Senator Kessler (Acting President), Unger and Plymale)

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[Introduced January 27, 2011; referred to the Committee on  
Education; and then to the Committee on Finance.]  
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10 A BILL to amend and reenact §29-22-18a of the Code of West  
11 Virginia, 1931, as amended, relating to designating \$10  
12 million of the State Excess Lottery Revenue Fund for the  
13 funding of high school and middle school athletics.

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

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

17 **ARTICLE 22. STATE LOTTERY ACT.**

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

19 (a) The State Lottery Fund in the State Treasury which is  
20 designated and known as the State Excess Lottery Revenue Fund is  
21 continued. The fund consists of all appropriations to the fund and  
22 all interest earned from investment of the fund and any gifts,  
23 grants or contributions received by the fund. All revenues  
24 received under the provisions of sections ten-b and ten-c, article  
25 twenty-two-a of this chapter and under article twenty-two-b of this  
26 chapter, except the amounts due the commission under subdivision

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

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

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

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

1 Fund created in subsection (e) of this section for the issuance of  
2 revenue bonds and to be spent in accordance with the provisions of  
3 said subsection; (4) \$19 million into the School Building Debt  
4 Service Fund created in section six, article nine-d, chapter  
5 eighteen of this code for the issuance of revenue bonds: *Provided,*  
6 That for the fiscal year beginning July 1, 2008, and subsequent  
7 fiscal years, no moneys shall be deposited in the School Building  
8 Debt Service Fund pursuant to this subsection and instead \$19  
9 million shall be deposited into the Excess Lottery School Building  
10 Debt Service Fund; (5) \$40 million into the West Virginia  
11 Infrastructure Fund created in section nine, article fifteen-a,  
12 chapter thirty-one of this code to be spent in accordance with the  
13 provisions of said article; (6) \$10 million into the Higher  
14 Education Improvement Fund for Higher Education; and (7) \$5 million  
15 into the State Park Improvement Fund for Park Improvements. No  
16 portion of the distributions made as provided in this subsection  
17 and subsection (b) of this section, except distributions made in  
18 connection with bonds issued under subsection (e) of this section,  
19 may be used to pay debt service on bonded indebtedness until after  
20 the Legislature expressly authorizes issuance of the bonds and  
21 payment of debt service on the bonds through statutory enactment or  
22 the adoption of a concurrent resolution by both houses of the  
23 Legislature. Until subsequent legislative enactment or adoption of  
24 a resolution that expressly authorizes issuance of the bonds and  
25 payment of debt service on the bonds with funds distributed under  
26 this subsection and subsection (b) of this section, except

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

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

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

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

21 (1) The West Virginia Economic Development Authority created  
22 and provided for in article fifteen, chapter thirty-one of this  
23 code shall, by resolution, in accordance with the provisions of  
24 this article and article fifteen, chapter thirty-one of this code,  
25 and upon direction of the Governor, issue revenue bonds of the  
26 Economic Development Authority in no more than two series to pay

1 for all or a portion of the cost of constructing, equipping,  
2 improving or maintaining projects under this section or to refund  
3 the bonds at the discretion of the authority. Any revenue bonds  
4 issued on or after July 1, 2002, which are secured by state excess  
5 lottery revenue proceeds shall mature at a time or times not  
6 exceeding thirty years from their respective dates. The principal  
7 of and the interest and redemption premium, if any, on the bonds  
8 shall be payable solely from the special fund provided in this  
9 section for the payment.

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

1 bonds issued at different times under the provisions of this  
2 section. The bonds issued pursuant to this subsection shall be  
3 separate from all other bonds which may be or have been issued,  
4 from time to time, under the provisions of this article.

5 (3) After the West Virginia Economic Development Authority has  
6 issued bonds authorized by this section and after the requirements  
7 of all funds have been satisfied, including any coverage and  
8 reserve funds established in connection with the bonds issued  
9 pursuant to this subsection, any balance remaining in the Economic  
10 Development Project Fund may be used for the redemption of any of  
11 the outstanding bonds issued under this subsection which, by their  
12 terms, are then redeemable or for the purchase of the outstanding  
13 bonds at the market price, but not to exceed the price, if any, at  
14 which redeemable, and all bonds redeemed or purchased shall be  
15 immediately canceled and shall not again be issued.

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

23 (5) The West Virginia Economic Development Authority shall  
24 expend the bond proceeds from the revenue bond issues authorized  
25 and directed by this section for projects certified under the  
26 provision of this subsection: *Provided*, That the bond proceeds



1 shall be expended in accordance with the requirements and  
2 provisions of article five-a, chapter twenty-one of this code and  
3 either article twenty-two or twenty-two-a, chapter five of this  
4 code, as the case may be: *Provided, however,* That if the bond  
5 proceeds are expended pursuant to article twenty-two-a, chapter  
6 five of this code and if the Design-Build Board created under said  
7 article determines that the execution of a design-build contract in  
8 connection with a project is appropriate pursuant to the criteria  
9 set forth in said article and that a competitive bidding process  
10 was used in selecting the design builder and awarding the contract,  
11 the determination shall be conclusive for all purposes and shall be  
12 considered to satisfy all the requirements of said article.

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

24 (7) Applications for grants submitted on or before July 1,  
25 2002, shall be considered refiled with the committee. Within ten  
26 days from the effective date of this section as amended in the year

1 2003, the lead applicant shall file with the committee any  
2 amendments to the original application that may be necessary to  
3 properly reflect changes in facts and circumstances since the  
4 application was originally filed with the committee.

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

7 (A) The ability of the project to leverage other sources of  
8 funding;

9 (B) Whether funding for the amount requested in the grant  
10 application is or reasonably should be available from commercial  
11 sources;

12 (C) The ability of the project to create or retain jobs,  
13 considering the number of jobs, the type of jobs, whether benefits  
14 are or will be paid, the type of benefits involved and the  
15 compensation reasonably anticipated to be paid persons filling new  
16 jobs or the compensation currently paid to persons whose jobs would  
17 be retained;

18 (D) Whether the project will promote economic development in  
19 the region and the type of economic development that will be  
20 promoted;

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

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

24 (9) A grant may not be awarded to an individual or other  
25 private person or entity. Grants may be awarded only to an agency,  
26 instrumentality or political subdivision of this state or to an

1 agency or instrumentality of a political subdivision of this state.

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

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

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

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

21       (B) Health clinics and other health facilities;

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

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

25       (E) Biotechnical incubators, development centers and  
26 facilities;

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

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

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

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

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

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

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

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

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

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

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

11           (h) When bonds are issued for projects under subsection (d)  
12 (e) 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  
25 issued, or to be issued as certified to the Lottery Director. In  
26 the event there are insufficient funds available in any month to

1 transfer the amounts required pursuant to this subsection, the  
2 deficiency shall be added to the amount transferred in the next  
3 succeeding month in which revenues are available to transfer the  
4 deficiency.

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

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

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

14 (B) Providing adequate funding for the Public Employees  
15 Insurance Agency; ~~and~~

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

19 (D) Providing funding for high school and middle school  
20 athletics in the amount of \$10 million to be dispersed to the  
21 county boards of education for the amounts that each high school  
22 and middle school is awarded: *Provided*, That such funding may not  
23 be used to supplant existing funding for high school and middle  
24 school athletics.

25 (2) The provisions of this subsection may not be construed by  
26 any court to require any appropriation or any specific

1 appropriation or level of funding for the purposes set forth in  
2 this subsection.

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

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

22       (1) On the last day of the fiscal year that begins on July 1,  
23 2010, and for each fiscal year thereafter, forty-six percent shall  
24 be placed in the general purse fund of a thoroughbred racetrack  
25 licensee that did not participate in the Thoroughbred Development  
26 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-mutual 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.

NOTE: The purpose of this bill is to designate \$10 million from the State Excess Lottery Revenue Fund for funding high school and middle school athletics.

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