

Senate Bill No. 137

(By Senators Snyder and Unger)

[Introduced January 11, 2012; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §29-22C-27 of the Code of West
Virginia, 1931, as amended, relating to use of lottery funds for
public works projects.

Be it enacted by the Legislature of West Virginia:

That §29-22C-27 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

**ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE
GAMES ACT.**

**§29-22C-27. West Virginia Lottery Racetrack Table Games Fund;
Community-Based Service Fund; State Debt
Reduction Fund; distribution of funds.**

- 1 (a) (1) The special fund in the State Treasury known as
2 the West Virginia Lottery Racetrack Table Games Fund is

3 continued and all tax collected under this article shall be
4 deposited with the State Treasurer and placed in the West
5 Virginia Lottery Racetrack Table Games Fund. The fund
6 ~~shall be~~ is an interest-bearing account with all interest or
7 other return earned on the money of the fund credited to and
8 deposited in the fund.

9 (2) Notwithstanding any provision of this article to the
10 contrary, all racetrack table games license fees received by
11 the commission pursuant to section eight of this article shall
12 be deposited into the Community-Based Service Fund which
13 is continued in the State Treasury. Moneys of the fund shall
14 be expended by the Bureau of Senior Services upon appro-
15 priation of the Legislature solely for the purpose of enabling
16 the aged and disabled citizens of this state to maintain their
17 residency in the community-based setting through the
18 provision of home and community-based services.

19 (b) From the gross amounts deposited into the Racetrack
20 Table Games Fund pursuant to subsection (a) of this section,
21 the commission shall:

22 (1) Retain an amount for the administrative expenses of
23 the commission as determined by the commission in accor-
24 dance with subsection (e) of this section;

25 (2) Transfer two and one-half percent of adjusted gross
26 receipts from all thoroughbred racetracks with West Virginia
27 Lottery table games to the special funds established by each
28 thoroughbred racetrack table games licensees for the
29 payment of regular racetrack purses, the amount being
30 divided on a pro rata basis between the special funds of each
31 thoroughbred racetrack table games licensee and transfer
32 two and one-half percent of adjusted gross receipts from all
33 greyhound racetracks with West Virginia Lottery table
34 games to the special funds established by each greyhound
35 racetrack table games licensees for the payment of regular
36 racetrack purses, the amount being divided equally between
37 the special funds of each greyhound racetrack table games
38 licensee;

39 (3) Transfer two percent of the adjusted gross receipts
40 from all licensed racetracks to the West Virginia Thorough-
41 bred Development Fund created under section thirteen-b,
42 article twenty-three, chapter nineteen of this code and the
43 West Virginia Greyhound Breeding Development Fund
44 created under section ten, article twenty-three, chapter
45 nineteen of this code. The total amount transferred under
46 this subdivision shall be divided pro rata among the develop-

47 ment funds for each racetrack table games licensee based on
48 relative adjusted receipts from each racetrack. The amounts
49 transferred to these funds may not be used for the benefit of
50 any person or activity other than at or associated with a
51 racetrack table games licensee;

52 (4) Transfer one percent of the adjusted gross receipts
53 from each licensed racetrack to the county commissions of
54 the counties where racetracks with West Virginia Lottery
55 table games are located. County commissions may pledge this
56 money to make payments on lottery revenue bonds issued
57 pursuant to article two-h, chapter thirteen of this code. The
58 one percent transferred under this subdivision shall be
59 divided pro rata among the counties with a racetrack with
60 West Virginia Lottery table games based on relative adjusted
61 gross receipts from each county's racetrack: *Provided, That*
62 the county board of education of a growth county, as that
63 term is defined in section three, article twenty, chapter seven
64 of this code, which has enacted the Local Powers Act, and in
65 which county a racetrack is located that has participated in
66 the West Virginia Thoroughbred Development Fund since on
67 or before January 1, 1991, shall receive the one percent of
68 adjusted gross receipts as provided in this subdivision for the

69 purpose of public projects, as defined in section two, article
70 two-h, chapter thirteen of this code or to make payments on
71 lottery revenue bonds issued to finance public projects;

72 (5) Transfer two percent of the adjusted gross receipts
73 from each licensed racetrack to the governing bodies of
74 municipalities within counties where racetracks with West
75 Virginia Lottery table games are located. Municipalities may
76 pledge the money to make payments on lottery revenue
77 bonds issued pursuant to article two-h, chapter thirteen of
78 this code. This money shall be allocated as follows:

79 (A) One half of the amounts transferred under this
80 subdivision shall be allocated to the municipalities within
81 each county having a racetrack table games licensee, based
82 on relative adjusted gross receipts from West Virginia
83 Lottery table games from those racetracks and the total
84 amount allocated to the municipalities within a county shall
85 be divided pro rata among the municipalities based on each
86 municipality's population determined at the most recent
87 United States decennial census of population: *Provided,*
88 That: (i) For each allocation, when a municipality is physi-
89 cally located in two or more counties, only that portion of its
90 population residing in the county where the authorized table

91 games are located shall be considered; (ii) a single munici-
92 pality in a county where West Virginia Lottery racetrack
93 table games are played may not receive a total share under
94 this paragraph that is in excess of seventy-five percent of the
95 total distribution under this paragraph for the county in
96 which the municipality is located; and (iii) a municipality
97 receiving moneys under this paragraph may not receive an
98 amount which is less than that received by a municipality
99 under provisions of subdivision (4), subsection (d) of this
100 section; and

101 (B) One half of the amounts transferred under this
102 subdivision shall be allocated pro rata to the municipalities
103 within all the counties, having a racetrack table games
104 licensee based on each municipality's population determined
105 at the most recent United States decennial census of popula-
106 tion: *Provided, That:* (i) A municipality which received funds
107 above its pro rata share pursuant to subpart (iii), paragraph
108 (A) of this subdivision may not receive an allocation under
109 this paragraph; (ii) for each allocation, when a municipality
110 is physically located in two or more counties, only that
111 portion of its population residing in the county where the
112 authorized table games are located shall be considered; and

113 (iii) a single municipality in a county where West Virginia
114 Lottery racetrack games are played may not receive a total
115 share under this paragraph that is in excess of twenty-five
116 percent of the total transfers under this paragraph: *Provided,*
117 *however,* That the county board of education of a growth
118 county, as that term is defined in section three, article
119 twenty, chapter seven of this code, which has enacted the
120 Local Powers Act, and in which county a racetrack is located
121 that has participated in the West Virginia Thoroughbred
122 Development Fund since on or before January 1, 1991, shall
123 receive the two percent of adjusted gross receipts as provided
124 in this subdivision for the purpose of public projects, as
125 defined in section two, article two-h, chapter thirteen of this
126 code, or to make payments on lottery revenue bonds issued
127 to finance the public projects;

128 (6) Transfer one half of one percent of the adjusted gross
129 receipts to the governing bodies of municipalities in which
130 a racetrack table games licensee is located. The municipali-
131 ties shall each receive an equal share of the total amount
132 allocated under this subdivision ~~*Provided,*~~ except that
133 distribution under this subdivision may not be made to any
134 municipality which did not have a licensed racetrack within

135 its municipal boundaries as they existed on January 1, 2007.
136 ~~Provided, however, That~~ If no racetrack table games licensee
137 is located within a municipality, a transfer may not be made
138 under this subdivision. The municipality may pledge this
139 money to make payments on lottery revenue bonds issued
140 pursuant to article two-h, chapter thirteen of this code; and

141 (7) Distribute the remaining amounts, hereinafter
142 referred to as the net amounts in the Racetrack Table Games
143 Funds, in accordance with the provisions of subsection (d) of
144 this section.

145 (c) Beginning with the fiscal year following the licensing
146 of every licensed racetrack to offer West Virginia Lottery
147 racetrack table games under this article, subsection (b) of
148 this section ~~shall be~~ is superseded and replaced by this
149 subsection for distribution of the balances in the fund
150 established by subsection (a) of this section. From the gross
151 amounts deposited into the fund, the commission shall:

152 (1) Retain an amount for the administrative expenses of
153 the commission as determined by the commission in accor-
154 dance with subsection (e) of this section;

155 (2) Transfer two and one-half percent of adjusted gross
156 receipts from all thoroughbred racetracks with West Virginia

157 Lottery table games to the special funds established by each
158 thoroughbred racetrack table games licensee for the payment
159 of regular racetrack purses, the amount being divided on a
160 pro rata basis between the special funds of each thorough-
161 bred racetrack table games licensee and transfer two and
162 one-half percent of adjusted gross receipts from all grey-
163 hound racetracks with West Virginia Lottery table games to
164 the special funds established by each greyhound racetrack
165 table games licensee for the payment of regular racetrack
166 purses, the amount being divided equally between the special
167 funds of each greyhound racetrack table games licensee;

168 (3) Transfer two percent of the adjusted gross receipts
169 from all licensed racetracks to the West Virginia Thorough-
170 bred Development Fund created under section thirteen-b,
171 article twenty-three, chapter nineteen of this code and the
172 West Virginia Greyhound Breeding Development Fund
173 created under section ten, article twenty-three, chapter
174 nineteen of this code. The total amount transferred under
175 this subdivision shall be divided pro rata among the develop-
176 ment funds for each racetrack table games licensee based on
177 relative adjusted receipts from each racetrack. The amounts
178 transferred to these funds may not be used for the benefit of

179 any person or activity other than at or associated with a
180 racetrack table games licensee;

181 (4) Transfer two percent of the adjusted gross receipts
182 from each licensed racetrack to the county commissions of
183 the counties where racetracks with West Virginia Lottery
184 table games are located. The money transferred under this
185 subdivision shall be divided pro rata among the counties
186 with a racetrack with West Virginia Lottery table games
187 based on relative adjusted gross receipts from each county's
188 racetrack: *Provided*, That the county board of education of
189 a growth county, as that term is defined in section three,
190 article twenty, chapter seven of this code, which has enacted
191 the Local Powers Act, and in which a racetrack is located
192 that has participated in the West Virginia Thoroughbred
193 Development Fund since on or before January 1, 1991, shall
194 receive one half of that county's share of adjusted gross
195 receipts as provided in this subdivision for the purpose of
196 ~~capital improvements; public projects, as defined in section~~
197 two, article two-h, chapter thirteen of this code, or to make
198 payments on lottery revenue bonds issued pursuant to article
199 two-h, chapter thirteen of this code to finance public
200 projects.

201 (5) Transfer three percent of the adjusted gross receipts
202 from each licensed racetrack to the governing bodies of
203 municipalities within counties where racetracks with West
204 Virginia Lottery table games are located, which shall be
205 allocated as follows:

206 (A) One half of the money transferred by this subdivision
207 shall be allocated to the municipalities within each county,
208 other than a county described in paragraph (C) of this
209 subdivision, having a racetrack table games licensee based
210 on relative adjusted gross receipts from West Virginia
211 Lottery table games from those racetracks and the total
212 amount allocated to the municipalities within a county shall
213 be divided pro rata among the municipalities based on each
214 municipality's population determined at the most recent
215 United States decennial census of population: *Provided,*
216 That: (i) For each allocation, when a municipality is physi-
217 cally located in two or more counties, only that portion of its
218 population residing in the county where the authorized table
219 games are located shall be considered; (ii) a single munici-
220 pality in a county where West Virginia Lottery racetrack
221 table games are played may not receive a total share under
222 this paragraph that is in excess of seventy-five percent of the

223 total distribution under this paragraph for the county in
224 which the municipality is located; and (iii) a municipality
225 receiving moneys under this paragraph may not receive an
226 amount which is less than that received by a municipality
227 under provisions of subdivision (4), subsection (d) of this
228 section.

229 (B) One half of the money transferred under this subdivi-
230 sion shall be allocated pro rata to the municipalities within
231 all the counties, other than a county described in paragraph
232 (C) of this subdivision, having a racetrack table games
233 licensee based on each municipality's population determined
234 at the most recent United States decennial census of popula-
235 tion: *Provided, That:* (i) A municipality which received funds
236 above its pro rata share pursuant to subparagraph (iii),
237 paragraph (A) of this subdivision shall not receive an
238 allocation under this paragraph; (ii) for each allocation,
239 when a municipality is physically located in two or more
240 counties, only that portion of its population residing in the
241 county where the authorized table games are located shall be
242 considered; and (iii) a single municipality in a county where
243 West Virginia Lottery racetrack games are played may not
244 receive a total share under this paragraph that is in excess of

245 twenty-five percent of the total transfers under this para-
246 graph.

247 (C) Notwithstanding the provisions of paragraphs (A)
248 and (B) of this subdivision, when a racetrack is located in a
249 growth county, as that term is defined in section three,
250 article twenty, chapter seven of this code, which has enacted
251 the Local Powers Act, and in which county a racetrack is
252 located that has participated in the West Virginia Thorough-
253 bred Development Fund since on or before January 1, 1991,
254 the county board of education shall receive two thirds of the
255 share of adjusted gross receipts from West Virginia Lottery
256 table games from the racetrack in the county as provided in
257 this subdivision and the municipalities within the county
258 shall share the remaining one third of the total amount
259 allocated as provided in this paragraph. The municipal one-
260 third share shall be divided pro rata among the municipali-
261 ties based on each municipality's population determined at
262 the most recent United States decennial census of popula-
263 tion. All money transferred under this paragraph shall be
264 used by the county board of education and by the municipal-
265 ities for the purpose of ~~capital improvements~~; public pro-
266 jects, as defined in section two, article two-h, chapter

267 thirteen of this code, or to make payments on lottery revenue
268 bonds issued pursuant to article two-h, chapter thirteen of
269 this code to finance public projects.

270 (6) Transfer one half of one percent of the adjusted gross
271 receipts to the governing bodies of municipalities in which
272 a racetrack table games licensee is located. The municipali-
273 ties shall each receive an equal share of the total amount
274 allocated under this subdivision ~~Provided,~~ except that
275 distribution under this subdivision may not be made to any
276 municipality that did not have a licensed racetrack within its
277 municipal boundaries as they existed on January 1, 2007,
278 ~~Provided, however, That~~ and if no racetrack table games
279 licensee is located within a municipality, a transfer may not
280 be made under this subdivision; and

281 (7) Distribute the remaining amounts, hereinafter
282 referred to as the net amounts in the Racetrack Table Games
283 Funds, in accordance with the provisions of subsection (d) of
284 this section.

285 (d) From the net amounts in the Racetrack Table Games
286 Fund, the commission shall:

287 (1) Transfer seventy-six percent to the State Debt
288 Reduction Fund which is hereby continued in the State

289 Treasury. Moneys of the fund shall be expended solely for the
290 purpose of accelerating the reduction of existing unfunded
291 liabilities and existing bond indebtedness of the state and
292 shall be expended or transferred only upon appropriation of
293 the Legislature;

294 (2) Transfer four percent, divided pro rata based on
295 relative adjusted gross receipts from the individual licensed
296 racetracks for and on behalf of all employees of each licensed
297 racing association, into a special fund to be established by
298 the Racing Commission to be used for payment into the
299 pension plan for all employees of each licensed racing
300 association;

301 (3) Transfer ten percent, to be divided and paid in equal
302 shares, to each county commission in the state that is not
303 eligible to receive a distribution under subdivision (4),
304 subsection (b) of this section ~~Provided, That funds trans-~~
305 ~~ferred to county commissions under this subdivision shall to~~
306 be used only to pay regional jail expenses and the costs of
307 infrastructure improvements and other capital improvements
308 ~~Provided, however, except~~ that up to fifty percent of these
309 funds may be pledged to make payments on lottery revenue

310 bonds issued pursuant to article two-h, chapter thirteen of
311 this code; and

312 (4) Transfer ten percent, to be divided and paid in equal
313 shares, to the governing bodies of each municipality in the
314 state that is not eligible to receive a distribution under
315 subdivisions (5) and (6), subsection (b) of this section ~~Pro-~~
316 ~~vided, That funds transferred to municipalities under this~~
317 ~~subdivision shall~~ to be used only to pay for debt reduction in
318 municipal police and fire pension funds and the costs of
319 infrastructure improvements and other capital improvements
320 ~~Provided, however, except~~ that up to fifty percent of these
321 funds may be pledged to make payments on lottery revenue
322 bonds issued pursuant to article two-h, chapter thirteen of
323 this code.

324 (e) All expenses of the commission incurred in the
325 administration and enforcement of this article shall be paid
326 from the Racetrack Table Games Fund, including reimburse-
327 ment of state law-enforcement agencies for services per-
328 formed at the request of the commission pursuant to this
329 article. The commission's expenses associated with a particu-
330 lar racetrack with authorized table games under this article
331 may not exceed three percent of the total annual adjusted

332 gross receipts received from that licensee's operation of table
333 games under this article, including, but not limited to, all
334 license fees or other amounts attributable to the licensee's
335 operation of table games under this article, except as
336 provided in subdivision (2), subsection (a) of this section.
337 However, for the fiscal year following the licensing of every
338 licensed racetrack to offer West Virginia Lottery racetrack
339 table games under this article and for the fiscal year thereaf-
340 ter, the commission's expenses associated with a particular
341 racetrack with authorized table games under this article may
342 not exceed four percent of the total annual adjusted gross
343 receipts received from that licensee's operation of table
344 games under this article, including, but not limited to, all
345 license fees or other amounts attributable to the licensee's
346 operation of table games under this article, except as
347 provided in subdivision (2), subsection (a) of this section.
348 These expenses shall either be allocated to the racetrack
349 with West Virginia Lottery table games for which the
350 expense is incurred, if practicable, or be treated as general
351 expenses related to all racetrack table games facilities and
352 be allocated pro rata among the racetrack table games
353 facilities based on the ratio that annual adjusted gross

354 receipts from operation of table games at each racetrack
355 with West Virginia Lottery table games bears to total annual
356 adjusted gross receipts from operation of table games at all
357 racetracks with West Virginia Lottery table games during
358 the fiscal year of the state. From this allowance, the commis-
359 sion shall transfer at least \$100,000 but not more than
360 \$500,000 into the Compulsive Gambling Treatment Fund
361 created in section nineteen, article twenty-two-a of this
362 chapter.

(NOTE: The purpose of this bill is to require that certain lottery funds be used for public works.

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

JUDICIARY COMMITTEE AMENDMENT

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill No. 137—A BILL to amend and reenact §29-22C-27 of the Code of West Virginia, 1931, as amended, relating to use of lottery funds by certain county boards of education.