

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 339**

4 (By Senators Carmichael, D. Hall and Nohe)

5 _____
6 [Originating in the Committee on Energy, Industry and Mining;

7 reported February 11, 2015.]
8 _____

9 **FISCAL
NOTE**

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11 A BILL to repeal 11-13V-4 of the Code of West Virginia, 1931, as amended; to amend and reenact
12 23-2D-5 of said code; and to amend and reenact 29-22A-10 and 29-22A-10b of said code,
13 all relating to sources of funding for Workers' Compensation Debt Reduction Fund.

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

15 That 11-13V-4 of the Code of West Virginia, 1931, as amended, be repealed; that 23-2D-5
16 of said code be amended and reenacted; and that 29-22A-10 and 29-22A-10b of said code be
17 amended and reenacted, all to read as follows:

18 **ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.**

19 **|11-13V-4. Repeal of additional taxes.**

20 11-13V-4 of the Code of West Virginia, as amended, is hereby repealed effective July 1,
21 2015.

22 **§23-2D-5. Special account created; use of moneys in the Fund.**

23 (a) There is hereby created in the state Treasury a special interest bearing account known as
24 the "Workers' Compensation Debt Reduction Fund." Funds in this account may be invested in the
25 manner permitted by the provisions of article six, chapter twelve of this code, with interest income
26 a proper credit to this fund.

(b) Moneys to be deposited in this account include:

(1) The amounts provided in section two, article eleven-a, chapter four of this code; and

(2) The net amount of all moneys received by the Tax Commissioner from collection of the

30 new taxes imposed by section four, article thirteen-v, chapter eleven of this code, including any

31 interest, additions to tax, or penalties collected with respect to these taxes pursuant to article ten;

32 chapter eleven of this code;

(3)(2) The net amount of moneys received by the Insurance Commissioner from collection

34 of the new premiums tax imposed by section three, article two-c of this chapter; and

35 (4) Moneys from racetrack video lottery net terminal income, as provided in section ten and

36 ten-b, article twenty-two-a, chapter twenty-nine of this code.

37 (c) Moneys in this account are to be used and expended to reduce the Workers'

38 Compensation debt or to pay debt service on bonds sold pursuant to this article for the purpose of

39 reducing or paying the Workers' Compensation debt, or for any combination of both of these

40 purposes.

41 (d) From the moneys deposited in this fund, there shall first be transferred each month to the

42 debt service fund created in section six of this article sufficient amounts to provide for the timely

43 payment of the principal, interest and redemption premium, if any, on any revenue bonds or

44 refunding bonds issued pursuant to this article, as determined in the trust agreement or agreements.

43 Remaining monies shall be transferred monthly to the old fund.

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47 §29-22A-10. Accounting and reporting; commission to provide communications protocol
48 data; distribution of net terminal income; remittance through
49 electronic transfer of funds; establishment of accounts and
50 nonpayment penalties; commission control of accounting for net
51 terminal income; settlement of accounts; manual reporting and
52 payment may be required; request for reports; examination of

53

accounts and records.

54 (a) The commission shall provide to manufacturers, or applicants applying for a
55 manufacturer's permit, the protocol documentation data necessary to enable the respective
56 manufacturer's video lottery terminals to communicate with the commission's central computer for
57 transmitting auditing program information and for activation and disabling of video lottery terminals.

58 (b) The gross terminal income of a licensed racetrack shall be remitted to the commission
59 through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all
60 information and bank authorizations required to facilitate the timely transfer of moneys to the
61 commission. Licensed racetracks must provide the commission thirty days' advance notice of any
62 proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the
63 gross terminal income remitted by the licensee to the commission:

64 (1) The commission shall deduct an amount sufficient to reimburse the commission for its
65 actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack
66 and the resulting amount after the deduction is the net terminal income. The amount deducted for
67 administrative costs and expenses of the commission may not exceed four percent of gross terminal
68 income: *Provided*, That any amounts deducted by the commission for its actual costs and expenses
69 that exceeds its actual costs and expenses shall be deposited into the State Lottery Fund. For the
70 fiscal years ending June 30, 2011 through June 30, 2020, the term "actual costs and expenses" may
71 include transfers of \$ up to \$10 million in surplus allocations for each fiscal year, as calculated by
72 the commission when it has closed its books for the fiscal year, to the Licensed Racetrack
73 Modernization Fund created by subdivision(2), subsection (b) of this section. For all fiscal years
74 beginning on or after July 1, 2001, the commission shall not receive an amount of gross terminal
75 income in excess of the amount of gross terminal income received during the fiscal year ending on
76 June 30, 2001, but four percent of any amount of gross terminal income received in excess of the
77 amount of gross terminal income received during the fiscal year ending on June 30, 2001, shall be
78 deposited into the fund established in section eighteen-a, article twenty-two of this chapter; and

79 (2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all
80 fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1,
81 2020, the commission shall deposit such amounts as are available according to subdivision (1),
82 subsection (b) of this section into a separate facility modernization account maintained within the
83 Licensed Racetrack Modernization Fund for each racetrack. Each racetrack's share of each year's
84 deposit shall be calculated in the same ratio as each racetrack's apportioned contribution to the four
85 percent administrative costs and expenses allowance provided for in subdivision (1), subsection (b)
86 of this section for that year. For each two dollars expended by a licensed racetrack for facility
87 modernization improvements at the racetrack, having a useful life of three or more years and placed
88 in service after July 1, 2011, the licensed racetrack shall receive \$1 in recoupment from its facility
89 modernization account. If the licensed racetrack's facility modernization account contains a balance
90 in any fiscal year, the unexpended balance from that fiscal year will be available for matching for
91 one additional fiscal year, after which time, the remaining unused balance carried forward shall
92 revert to the lottery fund. For purposes of this section, the term "facility modernization
93 improvements" includes acquisitions of new and unused video lottery terminals and related
94 equipment. Video lottery terminals financed through the recoupment provided in this subdivision
95 must be retained by the licensee in its West Virginia licensed location for a period of not less than
96 five years from the date of initial installation.

97 (c) The amount resulting after the deductions required by subsection (b) of this section
98 constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal years
99 beginning on or after July 1, 2001, any amount of net terminal income received in excess of the
100 amount of net terminal income received during the fiscal year ending on June 30, 2001, shall be
101 divided as set out in section ten-b of this article. The licensed racetrack's share is in lieu of all lottery
102 agent commissions and is considered to cover all costs and expenses required to be expended by the
103 licensed racetrack in connection with video lottery operations. The division shall be made as
104 follows:

105 (1) The commission shall receive thirty percent of net terminal income, which shall be paid
106 into the State Lottery Fund as provided in section ten-a of this article;

107 (2) Until July 1, 2005, fourteen percent of net terminal income at a licensed racetrack shall
108 be deposited in the special fund established by the licensee, and used for payment of regular purses
109 in addition to other amounts provided for in article twenty-three, chapter nineteen of this code, on
110 and after July 1, 2005, the rate shall be seven percent of net terminal income;

111 (3) The county where the video lottery terminals are located shall receive two percent of the
112 net terminal income: *Provided*, That:

113 (A) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received
114 during the fiscal year 1999 by a county in which a racetrack is located that has participated in the
115 West Virginia Thoroughbred Development Fund since on or before January 1, 1999 shall be divided
116 as follows:

117 (I) The county shall receive fifty percent of the excess amount; and
118 (ii) The municipalities of the county shall receive fifty percent of the excess amount, said fifty
119 percent to be divided among the municipalities on a per capita basis as determined by the most recent
120 decennial United States census of population; and

121 (B) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received
122 during the fiscal year 1999 by a county in which a racetrack other than a racetrack described in
123 paragraph (A) of this proviso is located and where the racetrack has been located in a municipality
124 within the county since on or before January 1, 1999 shall be divided, if applicable, as follows:

125 (I) The county shall receive fifty percent of the excess amount; and
126 (ii) The municipality shall receive fifty percent of the excess amount; and
127 (C) This proviso shall not affect the amount to be received under this subdivision by any
128 other county other than a county described in paragraph (A) or (B) of this proviso;

129 (4) One percent of net terminal income shall be paid for and on behalf of all employees of
130 the licensed racing association by making a deposit into a special fund to be established by the

131 Racing Commission to be used for payment into the pension plan for all employees of the licensed
132 racing association;

133 (5) The West Virginia Thoroughbred Development Fund created under section thirteen-b,
134 article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding
135 Development Fund created under section ten of said article shall receive an equal share of a total of
136 not less than one and one-half percent of the net terminal income;

137 (6) The West Virginia Racing Commission shall receive one percent of the net terminal
138 income which shall be deposited and used as provided in section thirteen-c, article twenty-three,
139 chapter nineteen of this code.

140 (7) A licensee shall receive forty-six and one-half percent of net terminal income.

141 (8)(A) The Tourism Promotion Fund established in section twelve, article two, chapter five-b
142 of this code shall receive three percent of the net terminal income: *Provided*, That for the fiscal year
143 beginning July 1, 2003, the tourism commission shall transfer from the Tourism Promotion Fund
144 \$5 million of the three percent of the net terminal income described in this section and section ten-b
145 of this article into the fund administered by the West Virginia Economic Development Authority
146 pursuant to section seven, article fifteen, chapter thirty-one of this code, \$5 million into the Capitol
147 Renovation and Improvement Fund administered by the Department of Administration pursuant to
148 section six, article four, chapter five-a of this code and \$5 million into the Tax Reduction and
149 Federal Funding Increased Compliance Fund; and

150 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for
151 each fiscal year beginning after June 30, 2004, this three percent of net terminal income and the three
152 percent of net terminal income described in paragraph (B), subdivision (8), subsection (a), section
153 ten-b of this article shall be distributed as provided in this paragraph as follows:

154 (I) 1.375 percent of the total amount of net terminal income described in this section and in
155 section ten-b of this article shall be deposited into the Tourism Promotion Fund created under section
156 twelve, article two, chapter five-b of this code;

157 (ii) 0.375 percent of the total amount of net terminal income described in this section and in
158 section ten-b of this article shall be deposited into the Development Office Promotion Fund created
159 under section three-b, article two, chapter five-b of this code;

160 (iii) 0.5 percent of the total amount of net terminal income described in this section and in
161 section ten-b of this article shall be deposited into the Research Challenge Fund created under
162 section ten, article one-b, chapter eighteen-b of this code;

163 (iv) 0.6875 percent of the total amount of net terminal income described in this section and
164 in section ten-b of this article shall be deposited into the Capitol Renovation and Improvement Fund
165 administered by the Department of Administration pursuant to section six, article four, chapter five-a
166 of this code; and

167 (v) 0.0625 percent of the total amount of net terminal income described in this section and
168 in section ten-b of this article shall be deposited into the 2004 Capitol Complex Parking Garage Fund
169 administered by the Department of Administration pursuant to section five-a, article four, chapter
170 five-a of this code;

171 (9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited into
172 the Workers' Compensation Debt Reduction Fund created in section five, article two-d, chapter
173 twenty-three of this code: *Provided*, That in any fiscal year when the amount of money generated by
174 this subdivision totals \$11 million, all subsequent distributions under this subdivision shall be
175 deposited in the special fund established by the licensee and used for the payment of regular purses
176 in addition to the other amounts provided in article twenty-three, chapter nineteen of this code;

177 (B) The deposit of the seven percent of net terminal income into the Worker's Compensation
178 Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to
179 these funds and shall be deposited in the special fund established by the licensee and used for
180 payment of regular purses in addition to the other amounts provided in article twenty-three, chapter
181 nineteen of this code, on and after ~~the first day of the month following the month in which the~~
182 Governor certifies to the Legislature that: (I) The revenue bonds issued pursuant to article two-d,

183 ~~chapter twenty-three of this code, have been retired or payment of the debt service provided for; and~~
184 (ii) that an independent certified actuary has determined that the unfunded liability of the old fund,
185 as defined in chapter twenty-three of this code, has been paid or provided for in its entirety July 1,
186 2015; and

187 (10) The remaining one percent of net terminal income shall be deposited as follows:
188 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive
189 one percent of the net terminal income until sufficient moneys have been received to complete the
190 veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The
191 moneys shall be deposited in the State Treasury in the Division of Culture and History special fund
192 created under section three, article one-I, chapter twenty-nine of this code: *Provided*, That only after
193 sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in
194 full the annual bonded indebtedness on the veterans memorial, not more than \$20,000 of the one
195 percent of net terminal income provided in this subdivision shall be deposited into a special revenue
196 fund in the State Treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this
197 fund shall be expended by the Division of Veterans Affairs to provide for the placement of markers
198 for the graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall
199 promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this
200 code specifying the manner in which the funds are spent, determine the ability of the surviving
201 spouse to pay for the placement of the marker and setting forth the standards to be used to determine
202 the priority in which the veterans grave markers will be placed in the event that there are not
203 sufficient funds to complete the placement of veterans grave markers in any one year, or at all. Upon
204 payment in full of the bonded indebtedness on the veterans memorial, \$100,000 of the one percent
205 of net terminal income provided in this subdivision shall be deposited in the special fund in the
206 Division of Culture and History created under section three, article one-I, chapter twenty-nine of this
207 code and be expended by the Division of Culture and History to establish a West Virginia veterans
208 memorial archives within the Cultural Center to serve as a repository for the documents and records

209 pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the
210 capitol grounds: *Provided, however,* That \$500,000 of the one percent of net terminal income shall
211 be deposited in the State Treasury in a special fund of the Department of Administration, created
212 under section five, article four, chapter five-a of this code, to be used for construction and
213 maintenance of a parking garage on the state Capitol Complex; and the remainder of the one percent
214 of net terminal income shall be deposited in equal amounts in the Capitol Dome and Improvements
215 Fund created under section two, article four, chapter five-a of this code and Cultural Facilities and
216 Capitol Resources Matching Grant Program Fund created under section three, article one of this
217 chapter.

218 (B) For each fiscal year beginning after June 30, 2004:

219 (I) Five hundred thousand dollars of the one percent of net terminal income shall be deposited
220 in the State Treasury in a special fund of the Department of Administration, created under section
221 five, article four, chapter five-a of this code, to be used for construction and maintenance of a
222 parking garage on the State Capitol Complex; and

223 (ii) The remainder of the one percent of net terminal income and all of the one percent of net
224 terminal income described in paragraph (B), subdivision (9), subsection (a), section ten-b of this
225 article shall be distributed as follows: The net terminal income shall be deposited in equal amounts
226 into the Capitol Dome and Capitol Improvements Fund created under section two, article four,
227 chapter five-a of this code and the Cultural Facilities and Capitol Resources Matching Grant Program
228 Fund created under section three, article one, chapter twenty-nine of this code until a total of
229 \$1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant Program
230 Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol Improvements
231 Fund.

232 (d) Each licensed racetrack shall maintain in its account an amount equal to or greater than
233 the gross terminal income from its operation of video lottery machines, to be electronically
234 transferred by the commission on dates established by the commission. Upon a licensed racetrack's

235 failure to maintain this balance, the commission may disable all of a licensed racetrack's video lottery
236 terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance
237 at a rate consistent with the amount charged for state income tax delinquency under chapter eleven
238 of this code. The interest shall begin to accrue on the date payment is due to the commission.

239 (e) The commission's central control computer shall keep accurate records of all income
240 generated by each video lottery terminal. The commission shall prepare and mail to the licensed
241 racetrack a statement reflecting the gross terminal income generated by the licensee's video lottery
242 terminals. Each licensed racetrack shall report to the commission any discrepancies between the
243 commission's statement and each terminal's mechanical and electronic meter readings. The licensed
244 racetrack is solely responsible for resolving income discrepancies between actual money collected
245 and the amount shown on the accounting meters or on the commission's billing statement.

246 (f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the
247 commission may make no credit adjustments. For any video lottery terminal reflecting a
248 discrepancy, the licensed racetrack shall submit to the commission the maintenance log which
249 includes current mechanical meter readings and the audit ticket which contains electronic meter
250 readings generated by the terminal's software. If the meter readings and the commission's records
251 cannot be reconciled, final disposition of the matter shall be determined by the commission. Any
252 accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the
253 commission.

254 (g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not
255 operational or the commission notifies licensed racetracks that remittance by this method is required.
256 The licensed racetracks shall report an amount equal to the total amount of cash inserted into each
257 video lottery terminal operated by a licensee, minus the total value of game credits which are cleared
258 from the video lottery terminal in exchange for winning redemption tickets, and remit the amount
259 as generated from its terminals during the reporting period. The remittance shall be sealed in a
260 properly addressed and stamped envelope and deposited in the United States mail no later than noon

261 on the day when the payment would otherwise be completed through electronic funds transfer.

262 (h) Licensed racetracks may, upon request, receive additional reports of play transactions for
263 their respective video lottery terminals and other marketing information not considered confidential
264 by the commission. The commission may charge a reasonable fee for the cost of producing and
265 mailing any report other than the billing statements.

266 (I) The commission has the right to examine all accounts, bank accounts, financial statements
267 and records in a licensed racetrack's possession, under its control or in which it has an interest and
268 the licensed racetrack shall authorize all third parties in possession or in control of the accounts or
269 records to allow examination of any of those accounts or records by the commission.

270 **§29-22A-10b. Distribution of excess net terminal income.**

271 (a) For all years beginning on or after July 1, 2001, any amount of net terminal income
272 generated annually by a licensed racetrack in excess of the amount of net terminal income generated
273 by that licensed racetrack during the fiscal year ending on June 30, 2001, shall be divided as follows:

274 (1) The Commission shall receive forty-one percent of net terminal income, which the
275 Commission shall deposit in the state Excess Lottery Revenue Fund created in section eighteen-a,
276 article twenty-two of this chapter;

277 (2) Until July 1, 2005, eight percent of net terminal income at a licensed racetrack shall be
278 deposited in the special fund established by the licensee and used for payment of regular purses in
279 addition to other amounts provided in article twenty-three, chapter nineteen of this code; on and after
280 July 1, 2005, the rate shall be four percent of net terminal income;

281 (3) The county where the video lottery terminals are located shall receive two percent of the
282 net terminal income *Provided*, That:

283 (A) Any amount by which the total amount under this section and subdivision (3), subsection
284 (c), section ten of this article is in excess of the two percent received during fiscal year 1999 by a
285 county in which a racetrack is located that has participated in the West Virginia thoroughbred
286 development fund since on or before January 1, 1999, shall be divided as follows:

287 (I) The county shall receive fifty percent of the excess amount; and
288 (ii) The municipalities of the county shall receive fifty percent of the excess amount, the fifty
289 percent to be divided among the municipalities on a per capita basis as determined by the most recent
290 decennial United States census of population; and

291 (B) Any amount by which the total amount under this section and subdivision (3), subsection
292 (c), section ten of this article is in excess of the two percent received during fiscal year 1999 by a
293 county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is
294 located and where the racetrack has been located in a municipality within the county since on or
295 before January 1, 1999, shall be divided, if applicable, as follows:

296 (I) The county shall receive fifty percent of the excess amount; and
297 (ii) The municipality shall receive fifty percent of the excess amount; and
298 (C) This proviso shall not affect the amount to be received under this subdivision by any
299 county other than a county described in paragraph (A) or (B) of this proviso;

300 (4) One half of one percent of net terminal income shall be paid for and on behalf of all
301 employees of the licensed racing association by making a deposit into a special fund to be
302 established by the Racing Commission to be used for payment into the pension plan for all
303 employees of the licensed racing association;

304 (5) The West Virginia Thoroughbred Development Fund created under section thirteen-b,
305 article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding
306 development fund created under section ten of said article shall receive an equal share of a total of
307 not less than one and one-half percent of the net terminal income.

308 (6) The West Virginia Racing Commission shall receive one percent of the net terminal
309 income which shall be deposited and used as provided in section thirteen-c, article twenty-three,
310 chapter nineteen of this code;

311 (7) A licensee shall receive forty-two percent of net terminal income;

312 (8) The tourism promotion fund established in section twelve, article two, chapter five-b of

313 this code shall receive three percent of the net terminal income: *Provided*, That for each fiscal year
314 beginning after June 30, 2004, this three percent of net terminal income shall be distributed pursuant
315 to the provisions of paragraph (B), subdivision (8), subsection (c), section ten of this article;

316 (9) (A) On and after July 1, 2005, four percent of net terminal income shall be deposited into
317 the Workers' Compensation Debt Reduction Fund created in section five, article two-d, chapter
318 twenty-three of this code: *Provided*, That in any fiscal year when the amount of money generated
319 by this subdivision together with the total allocation transferred by the operation of subdivision (9),
320 subsection (c), section ten of this article totals \$11,000,000, all subsequent distributions under this
321 subdivision (9) during that fiscal year shall be deposited in the special fund established by the
322 licensee and used for payment of regular purses in addition to other amounts provided in article
323 twenty-three, chapter nineteen of this code;

324 (B) The deposit of the four percent of net terminal income into the Worker's Compensation
325 Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to
326 these funds, which shall be deposited in the special fund established by the licensee and used for
327 payment of regular purses in addition to the other amounts provided in article twenty-three, chapter
328 nineteen of this code on and after the first day of the month following the month in which the
329 Governor certifies to the Legislature that: (I) The revenue bonds issued pursuant to article two-d,
330 chapter twenty-three of this code have been retired or payment of the debt service is provided for;
331 and (ii) that an independent certified actuary has determined that the unfunded liability of the Old
332 Fund, as defined in chapter twenty-three of this code, has been paid or provided in its entirety July
333 1, 2015; and

334 (10) (A) One percent of the net terminal income shall be deposited in equal amounts in the
335 capitol dome and improvements fund created under section two, article four, chapter five-a of this
336 code and cultural facilities and capitol resources matching grant program fund created under section
337 three, article one of this chapter; and

338 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for

339 each fiscal year beginning after June 30, 2004, this one percent of net terminal income shall be
340 distributed pursuant to the provisions of subparagraph (ii), paragraph (B), subdivision (9), subsection
341 (c), section ten of this article.

342 (b) The Commission may establish orderly and effective procedures for the collection and
343 distribution of funds under this section in accordance with the provisions of this section and section
344 ten of this article.

NOTE: The purpose of this bill is to eliminate certain severance taxes on coal, natural gas and timber which are deposited into the Workers' Compensation Debt Reduction Fund, and also eliminate the deposit of a percentage of proceeds from racetrack video lottery net terminal income into the Workers' Compensation Debt Reduction Fund and divert this percentage of such proceeds back to where they it was deposited under statute prior to the creation of the Workers' Compensation Debt Reduction Fund.

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