

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4613**

BY DELEGATES ROHRBACH, BARRETT, HOUSEHOLDER,

LOVEJOY, AMBLER AND FLEISCHAUER

[Introduced February 13, 2018; Referred

to the Committee on Finance.]

1 A BILL to amend and reenact §29-22-18a of the Code of West Virginia, 1931, as amended,  
2 relating to providing funds from the State Excess Lottery Revenue Fund to the Ron Yost  
3 Personal Assistance Services Fund, the Employment Attendant Care Fund, and to a fund  
4 for Centers for Independent Living.

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

## **ARTICLE 22. STATE LOTTERY ACT.**

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

1 (a) The State Lottery Fund in the State Treasury which is designated and known as the  
2 State Excess Lottery Revenue Fund is continued. The fund consists of all appropriations to the  
3 fund and all interest earned from investment of the fund and any gifts, grants or contributions  
4 received by the fund. All revenues received under the provisions of §29-22A-10b and §29-22A-  
5 10c of this code and under §29-22B-1 *et seq.* of this code except the amounts due the commission  
6 under §29-22B-1408(a)(1) of this code shall be deposited in the State Treasury and placed into  
7 the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the manner provided  
8 in this section for the purposes stated in this section and shall not be treated by the State Auditor  
9 and the State Treasurer as part of the general revenue of the state.

10 (b) For the fiscal year beginning July 1, 2002, the commission shall deposit: (1) \$65 million  
11 into the subaccount of the State Excess Lottery Revenue Fund hereby created in the State  
12 Treasury to be known as the General Purpose Account to be expended pursuant to appropriation  
13 of the Legislature; (2) \$10 million into the Education Improvement Fund for appropriation by the  
14 Legislature to the PROMISE Scholarship Fund created in §18-7-7 of this code; (3) \$19 million into  
15 the Economic Development Project Fund created in subsection (e) of this section for the issuance  
16 of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) \$20  
17 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the  
18 issuance of revenue bonds; (5) \$40 million into the West Virginia Infrastructure Fund created in  
19 §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) \$10 million

20 into the Higher Education Improvement Fund for Higher Education; and (7) \$5 million into the  
21 State Park Improvement Fund for Park Improvements. For the fiscal year beginning July 1, 2003,  
22 the commission shall deposit: (1) \$65 million into the General Purpose Account to be expended  
23 pursuant to appropriation of the Legislature; (2) \$17 million into the Education Improvement Fund  
24 for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of  
25 this code; (3) \$19 million into the Economic Development Project Fund created in subsection (e)  
26 of this section for the issuance of revenue bonds and to be spent in accordance with the provisions  
27 of said subsection; (4) \$20 million into the School Building Debt Service Fund created in §18-9D-  
28 6 of this code for the issuance of revenue bonds; (5) \$40 million into the West Virginia  
29 Infrastructure Fund created in §31-15A-6.of this code to be spent in accordance with the  
30 provisions of §31-15A-1 *et seq.*; (6) \$10 million into the Higher Education Improvement Fund for  
31 Higher Education; and (7) \$7 million into the state Park Improvement Fund for Park  
32 Improvements.

33 (c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the  
34 fiscal year ending June 30, 2009, the commission shall deposit: (1) \$65 million into the General  
35 Purpose Account to be expended pursuant to appropriation of the Legislature; (2) \$27 million into  
36 the Education Improvement Fund for appropriation by the Legislature to the PROMISE  
37 Scholarship Fund created in §18C-7-7 of this code; (3) \$19 million into the Economic  
38 Development Project Fund created in subsection (e) of this section for the issuance of revenue  
39 bonds and to be spent in accordance with the provisions of said subsection; (4) \$19 million into  
40 the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of  
41 revenue bonds: *Provided*, That for the fiscal year beginning July 1, 2008, and subsequent fiscal  
42 years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this  
43 subsection and instead \$19 million shall be deposited into the Excess Lottery School Building  
44 Debt Service Fund; (5) \$40 million into the West Virginia Infrastructure Fund created in §31-15A-  
45 9 of this code to be spent in accordance with the provisions of said article; (6) \$10 million into the

46 Higher Education Improvement Fund for Higher Education; and (7) \$5 million into the State Park  
47 Improvement Fund for Park Improvements. No portion of the distributions made as provided in  
48 this subsection and subsection (b) of this section, except distributions made in connection with  
49 bonds issued under subsection (e) of this section, may be used to pay debt service on bonded  
50 indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment  
51 of debt service on the bonds through statutory enactment or the adoption of a concurrent  
52 resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption  
53 of a resolution that expressly authorizes issuance of the bonds and payment of debt service on  
54 the bonds with funds distributed under this subsection and subsection (b) of this section, except  
55 distributions made in connection with bonds issued under subsection (d) of this section, the  
56 distributions may be used only to fund capital improvements that are not financed by bonds and  
57 only pursuant to appropriation of the Legislature.

58 (d) For the fiscal year beginning July 1, 2009, and subsequent fiscal years, the commission  
59 shall deposit: (1) \$65 million into the General Purpose Account to be expended pursuant to  
60 appropriation of the Legislature; (2) \$29 million into the Education Improvement Fund for  
61 appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this  
62 code; (3) \$19 million into the Economic Development Project Fund created in subsection (e) of  
63 this section for the issuance of revenue bonds and to be spent in accordance with the provisions  
64 of said subsection; (4) \$19 million into the Excess Lottery School Building Debt Service Fund  
65 created in §18-9D-6 of this code; (5) \$40 million into the West Virginia Infrastructure Fund created  
66 in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) \$10  
67 million into the Higher Education Improvement Fund for Higher Education; and (7) \$5 million into  
68 the State Park Improvement Fund for Park Improvements. No portion of the distributions made  
69 as provided in this subsection and subsection (b) of this section, except distributions made in  
70 connection with bonds issued under subsection (e) of this section, may be used to pay debt  
71 service on bonded indebtedness until after the Legislature expressly authorizes issuance of the

72 bonds and payment of debt service on the bonds through statutory enactment or the adoption of  
73 a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment  
74 or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt  
75 service on the bonds with funds distributed under this subsection and subsection (b) of this  
76 section, except distributions made in connection with bonds issued under subsection (e) of this  
77 section, the distributions may be used only to fund capital improvements that are not financed by  
78 bonds and only pursuant to appropriation of the Legislature.

79 (e) The Legislature finds and declares that in order to attract new business, commerce  
80 and industry to this state, to retain existing business and industry providing the citizens of this  
81 state with economic security and to advance the business prosperity of this state and the  
82 economic welfare of the citizens of this state, it is necessary to provide public financial support for  
83 constructing, equipping, improving and maintaining economic development projects, capital  
84 improvement projects and infrastructure which promote economic development in this state.

85 (1) The West Virginia Economic Development Authority created and provided for in §31-  
86 15-1 *et seq.* of this code shall, by resolution, in accordance with the provisions of this article and  
87 §31-15-1 *et seq.* of this code, and upon direction of the Governor, issue revenue bonds of the  
88 Economic Development Authority in no more than two series to pay for all or a portion of the cost  
89 of constructing, equipping, improving or maintaining projects under this section or to refund the  
90 bonds at the discretion of the authority. Any revenue bonds issued on or after July 1, 2002, which  
91 are secured by State Excess Lottery Revenue Fund proceeds shall mature at a time or times not  
92 exceeding 30 years from their respective dates. The principal of and the interest and redemption  
93 premium, if any, on the bonds shall be payable solely from the special fund provided in this section  
94 for the payment.

95 (2) The special revenue fund named the Economic Development Project Fund into which  
96 shall be deposited the amounts to be deposited in the fund as specified in subsections (b), (c)  
97 and (d) of this section is continued. The Economic Development Project Fund shall consist of all

98 such moneys, all appropriations to the fund, all interest earned from investment of the fund and  
99 any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be  
100 pledged to the repayment of the principal, interest and redemption premium, if any, on any  
101 revenue bonds or refunding revenue bonds authorized by this section, including any and all  
102 commercially customary and reasonable costs and expenses which may be incurred in  
103 connection with the issuance, refunding, redemption or defeasance of the bonds. The West  
104 Virginia Economic Development Authority may further provide in the resolution and in the trust  
105 agreement for priorities on the revenues paid into the Economic Development Project Fund that  
106 are necessary for the protection of the prior rights of the holders of bonds issued at different times  
107 under the provisions of this section. The bonds issued pursuant to this subsection shall be  
108 separate from all other bonds which may be or have been issued, from time to time, under the  
109 provisions of this article.

110 (3) After the West Virginia Economic Development Authority has issued bonds authorized  
111 by this section and after the requirements of all funds have been satisfied, including any coverage  
112 and reserve funds established in connection with the bonds issued pursuant to this subsection,  
113 any balance remaining in the Economic Development Project Fund may be used for the  
114 redemption of any of the outstanding bonds issued under this subsection which, by their terms,  
115 are then redeemable or for the purchase of the outstanding bonds at the market price, but not to  
116 exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be  
117 immediately canceled and shall not again be issued.

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

123 (5) The West Virginia Economic Development Authority shall expend the bond proceeds

124 from the revenue bond issues authorized and directed by this section for projects certified under  
125 the provision of this subsection: *Provided*, That the bond proceeds shall be expended in  
126 accordance with the requirements and provisions of §21-5A-1 *et seq.* of this code and either §5-  
127 22-1 *et seq.* of this code or §5-22A-1 *et seq.* of this code, as the case may be: *Provided, however*,  
128 That if the bond proceeds are expended pursuant to §5-22A-1 *et seq.* of this code and if the  
129 Design-Build Board created under ~~said~~ that article determines that the execution of a design-build  
130 contract in connection with a project is appropriate pursuant to the criteria set forth in said article  
131 and that a competitive bidding process was used in selecting the design builder and awarding the  
132 contract, the determination shall be conclusive for all purposes and shall be considered to satisfy  
133 all the requirements of said article.

134 (6) For the purpose of certifying the projects that will receive funds from the bond  
135 proceeds, a committee is hereby established and comprised of the Governor, or his or her  
136 designee, the Secretary of the Department of Revenue, the Executive Director of the West  
137 Virginia Development Office and six persons appointed by the Governor: *Provided*, That at least  
138 one citizen member must be from each of the state's three congressional districts. The committee  
139 shall meet as often as necessary and make certifications from bond proceeds in accordance with  
140 this subsection. The committee shall meet within 30 days of the effective date of this section.

141 (7) Applications for grants submitted on or before July 1, 2002, shall be considered refiled  
142 with the committee. Within 10 days from the effective date of this section as amended in the year  
143 2003, the lead applicant shall file with the committee any amendments to the original application  
144 that may be necessary to properly reflect changes in facts and circumstances since the  
145 application was originally filed with the committee.

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

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

149 (B) Whether funding for the amount requested in the grant application is or reasonably

150 should be available from commercial sources;

151 (C) The ability of the project to create or retain jobs, considering the number of jobs, the  
152 type of jobs, whether benefits are or will be paid, the type of benefits involved and the  
153 compensation reasonably anticipated to be paid persons filling new jobs or the compensation  
154 currently paid to persons whose jobs would be retained;

155 (D) Whether the project will promote economic development in the region and the type of  
156 economic development that will be promoted;

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

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

160 (9) A grant may not be awarded to an individual or other private person or entity. Grants  
161 may be awarded only to an agency, instrumentality or political subdivision of this state or to an  
162 agency or instrumentality of a political subdivision of this state. The project of an individual or  
163 private person or entity may be certified to receive a low-interest loan paid from bond proceeds.  
164 The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid  
165 and the period of the repayment, shall be determined by the Economic Development Authority  
166 after considering all applicable facts and circumstances.

167 (10) Prior to making each certification, the committee shall conduct at least one public  
168 hearing, which may be held outside of Kanawha County. Notice of the time, place, date and  
169 purpose of the hearing shall be published in at least one newspaper in each of the three  
170 congressional districts at least 14 days prior to the date of the public hearing.

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

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

175 (B) Health clinics and other health facilities;



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

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

179 (E) Biotechnical incubators, development centers and facilities;

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

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

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

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

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

190 (K) Retail facilities, including related service, parking and transportation facilities,  
191 appropriate lighting, landscaping and security systems to revitalize decaying downtown areas;  
192 and

193 (L) Other facilities that promote or enhance economic development, educational  
194 opportunities or tourism opportunities thereby promoting the general welfare of this state and its  
195 residents.

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

200 (13) If any proceeds from sale of bonds remain after paying costs and making grants and  
201 loans as provided in this subsection, the surplus may be deposited in an account in the State

202 Treasury known as the Economic Development Project Bridge Loan Fund administered by the  
203 Economic Development Authority created in §31-15-1 *et seq.* of this code. Expenditures from the  
204 fund are not authorized from collections but are to be made only in accordance with appropriation  
205 by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon  
206 fulfillment of the provisions of §5A-2-1 *et seq.* of this code. Loan repayment amounts, including  
207 the portion attributable to interest, shall be paid into the fund created in this subdivision.

208 (f) If the commission receives revenues in an amount that is not sufficient to fully comply  
209 with the requirements of subsections (b), (c), (d) and (i) of this section, the commission shall first  
210 make the distribution to the Economic Development Project Fund; second, make the distribution  
211 or distributions to the other funds from which debt service is to be paid; third, make the distribution  
212 to the Education Improvement Fund for appropriation by the Legislature to the PROMISE  
213 Scholarship Fund; and fourth, make the distribution to the General Purpose Account: *Provided,*  
214 That subject to the provisions of this subsection, to the extent the revenues are not pledged in  
215 support of revenue bonds which are or may be issued, from time to time, under this section, the  
216 revenues shall be distributed on a pro rata basis.

217 (g) Each fiscal year, the commission shall, after meeting the requirements of subsections  
218 (b), (c), (d) and (i) of this section and after transferring to the State Lottery Fund created under  
219 §29-22-18 of this code an amount equal to any transfer from the State Lottery Fund to the Excess  
220 Lottery Fund pursuant to §29-22-18(f) of this code, deposit 50 percent of the amount by which  
221 annual gross revenue deposited in the State Excess Lottery Revenue Fund exceeds \$225 million  
222 in a fiscal year in a separate account in the State Lottery Fund to be available for appropriation  
223 by the Legislature.

224 (h) When bonds are issued for projects under subsection (d) or (e) of this section or for  
225 the School Building Authority, infrastructure, higher education or park improvement purposes  
226 described in this section that are secured by profits from lotteries deposited in the State Excess  
227 Lottery Revenue Fund, the Lottery Director shall allocate first to the Economic Development

228 Project Fund an amount equal to one-tenth of the projected annual principal, interest and  
229 coverage requirements on any and all revenue bonds issued, or to be issued as certified to the  
230 Lottery Director; and second, to the fund or funds from which debt service is paid on bonds issued  
231 under this section for the School Building Authority, infrastructure, higher education and park  
232 improvements an amount equal to one-tenth of the projected annual principal, interest and  
233 coverage requirements on any and all revenue bonds issued, or to be issued as certified to the  
234 Lottery Director. In the event there are insufficient funds available in any month to transfer the  
235 amounts required pursuant to this subsection, the deficiency shall be added to the amount  
236 transferred in the next succeeding month in which revenues are available to transfer the  
237 deficiency.

238 (i) Prior to the distributions provided in subsection (d) of this section, the Lottery  
239 Commission shall deposit into the General Revenue Fund amounts necessary to provide  
240 reimbursement for the refundable credit allowable under §11-21-21 of this code.

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

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

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

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

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

251 (k) The Legislature further directs the Governor to focus resources on the creation of a  
252 prescription drug program for senior citizens by pursuing a Medicaid waiver to offer prescription  
253 drug services to senior citizens; by investigating the establishment of purchasing agreements with

254 other entities to reduce costs; by providing discount prices or rebate programs for seniors; by  
255 coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free  
256 drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient  
257 and cost-effective program possible for the senior citizens of this state; and by working closely  
258 with the state's congressional delegation to ensure that a national program is implemented. The  
259 Legislature further directs that the Governor report his or her progress back to the Joint Committee  
260 on Government and Finance on an annual basis until a comprehensive program has been fully  
261 implemented.

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

264 (1) On the last day of the fiscal year that begins on July 1, 2010, and for each fiscal year  
265 thereafter, 46 percent shall be placed in the general purse fund of a thoroughbred racetrack  
266 licensee that did not participate in the Thoroughbred Development Fund for at least four  
267 consecutive calendar years prior to December 31, 1992, for payment of regular purses;

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

272 (3) Five and one-half percent shall be distributed to the Racing Commission special  
273 account - unredeemed pari-mutuel tickets established on behalf of a thoroughbred racetrack  
274 licensee that did not participate in the Thoroughbred Development Fund for at least four  
275 consecutive calendar years prior to December 31, 1992; and

276 (4) Five percent shall be distributed to the West Virginia Racing Commission special  
277 account Greyhound Breeding Development Fund.

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

- 280           (1) Twenty-five percent shall be transferred to the Ron Yost Personal Assistance Services  
281 Fund created in §18-10L-5 of this code to be distributed as provided in that section;
- 282           (2) Twenty-five percent shall be transferred to the Employment Attendant Care Program  
283 created in §18-10A-4a of this code to be distributed as provided in that section; and
- 284           (3) Fifty percent shall be transferred to a new line item for Centers for Independent Living  
285 as authorized in §18-10M-1 *et seq.* of this code and distributed as directed by the West Virginia  
286 State Plan for Independent Living established in §18-10M-7 of this code.

NOTE: The purpose of this bill is to appropriate funds from the State Excess Lottery Revenue Fund to the Ron Yost Personal Assistance Services Fund, the Employment Attendant Care Program and to expand the network of Centers for Independent Living to help West Virginians with disabilities live in their own homes and communities, pursue and maintain gainful employment.

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