WEST VIRGINIA CODE: §29-22-18a

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

(a) The State Lottery Fund in the State Treasury which is designated and known as the State Excess Lottery Revenue Fund is continued. The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants, or contributions received by the fund. All revenues received under the provisions of §29-22A-10b and §29-22A-10c of this code and under §29-22B-101 et seq., of this code, except the amounts due the commission under §29-22B-1408(a)(1) of this code, shall be deposited in the State Treasury and placed into the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the State Auditor and the State Treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning July 1, 2002, the commission shall deposit: (1) $65 million into the subaccount of the State Excess Lottery Revenue Fund hereby created in the State Treasury to be known as the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $10 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $20 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of revenue bonds; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $5 million into the State Park Improvement Fund for Park Improvements. For the fiscal year beginning July 1, 2003, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $17 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $20 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of revenue bonds; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $7 million into the State Park Improvement Fund for Park Improvements.

(c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the fiscal year ending June 30, 2009, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $27

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million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $19 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of revenue bonds: *Provided*, That for the fiscal year beginning July 1, 2008, and subsequent fiscal years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this subsection and instead $19 million shall be deposited into the Excess Lottery School Building Debt Service Fund; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $5 million into the State Park Improvement Fund for Park Improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(d) For the fiscal year beginning July 1, 2009, and subsequent fiscal years, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $29 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $19 million into the Excess Lottery School Building Debt Service Fund created in §18-9D-6 of this code; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $5 million into the State Park Improvement Fund for Park Improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and

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

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

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

(2) The special revenue fund named the Economic Development Project Fund into which shall be deposited the amounts to be deposited in the fund as specified in subsections (b), (c), and (d) of this section is continued. The Economic Development Project Fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund, and any gifts, grants, or contributions received by the fund. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest, and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding, redemption, or defeasance of the bonds. The West Virginia Economic Development Authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the Economic Development Project Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have been issued, from time to time, under the provisions of this article.

(3) After the West Virginia Economic Development Authority has issued bonds authorized by this section and after the requirements of all funds have been satisfied, including any coverage and reserve funds established in connection with the bonds issued pursuant to this subsection, any balance remaining in the Economic Development Project Fund may be used for the redemption of any of the outstanding bonds issued under this subsection which, by

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their terms, are then redeemable for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Health clinics and other health facilities;

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

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

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

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

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

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

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

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

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

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

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

(13) If any proceeds from sale of bonds remain after paying costs and making grants and loans as provided in this subsection, the surplus may be deposited in an account in the State Treasury known as the Economic Development Project Bridge Loan Fund administered by the Economic Development Authority created in §31-15-1 et seq., of this code. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq., of this code and upon fulfillment of the provisions of §5A-2-1 et seq., of this code. Loan repayment amounts, including the portion attributable to interest, shall be paid into the fund created in this subdivision.

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

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

(h) When bonds are issued for projects under subsections (d) and (e) of this section or for the School Building Authority, infrastructure, higher education, or park improvement purposes described in this section that are secured by profits from lotteries deposited in the State Excess Lottery Revenue Fund, the Lottery Director shall allocate first to the Economic Development Project Fund an amount equal to one tenth of the projected annual principal, interest, and coverage requirements on any and all revenue bonds issued, or to be issued as certified to the Lottery Director; and second, to the fund or funds from which debt service is paid on bonds issued under this section for the School Building Authority, infrastructure, higher education, and park improvements an amount equal to one tenth of the projected annual principal, interest, and coverage requirements on any and all revenue bonds issued, or to be issued as certified to the Lottery Director. In the event there are insufficient funds available in any month to transfer the amounts required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

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

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

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

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

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

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

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

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

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

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

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

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

(4) Five percent shall be distributed to the racing commission special account – Greyhound Breeding Development Fund.

(m) For the fiscal year beginning July 1, 2019, and subsequent fiscal years, the commission shall deposit $11 million to be distributed into the special funds established by the respective licensees and used for the payment of regular purses in addition to the other amounts provided in §19-23-1 et seq. of this code; such distribution shall be on a pro rata basis based upon the actual purse earnings of each such licensee as specified in §29-22A-10(c)(2) and §29-22A-10b(a)(2) of this code.

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