WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000

ENROLLED

SENATE BILL NO. 657
(Originating in the Committee on Finance)

PASSED March 11, 2000
In Effect ninety days from Passage
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AN ACT to amend and reenact section three, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article twenty-two-a of said chapter, all relating to the grants for competitive arts program fund; establishing the cultural facilities and capital resources grant matching program; and dedicating moneys from the state lottery to the fund.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section ten, article twenty-two-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.
§29-1-3. Commission on the arts.

(a) The commission on the arts is continued and shall be composed of fifteen appointed members.

(b)(1) The governor shall appoint, by and with the advice and consent of the Senate, the members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

(2) No more than eight members may be of the same political party. Members of the commission shall be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state and the geographic regions of the state.

(3) The commission shall elect one of its members as chair. It shall meet at the times specified by the chair. Notice of each meeting shall be given to each member by the chair in compliance with the open meetings laws of the state. A majority of the members constitute a quorum for the transaction of business. The director of the arts section shall be an ex officio nonvoting member of the commission and shall serve as secretary. The director or a majority of the members may also call a meeting upon notice as provided in this section.

(4) Each member or ex officio member of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties of the office; except that in the event the expenses are paid, or are to be paid, by a third party, the member or ex officio member, as the case may be, shall not be reimbursed by the state.

(5) Upon recommendation of the commissioner, the governor may also appoint those officers of the state that
are appropriate to serve on the commission as ex officio nonvoting members.

(c) The commission has the following powers:

(1) To advise the commissioner and the director of the arts section concerning the accomplishment of the purposes of that section and to establish a state plan with respect to the arts section;

(2) To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the arts section;

(3) To request, accept or expend federal funds to accomplish the purposes of the arts section when federal law or regulations would prohibit the same by the commissioner or section director, but would permit the same to be done by the commission on the arts;

(4) To otherwise encourage and promote the purposes of the arts section;

(5) To approve rules concerning the professional policies and functions of the section as promulgated by the director of the arts section; and

(6) To advise and consent to the appointment of the director by the commissioner.

(d) There is created in the state treasury a special revenue account created by the amendment to this section in one thousand nine hundred ninety-nine and hereby continued and redesignated as the “cultural facilities and capital resources matching grant program fund”. The fund shall consist of moneys received under section ten, article twenty-two-a of this chapter and funds from any other source. Moneys in the fund shall be expended for capital improvements: Provided, That the commission shall make a women’s veterans memorial statue a priority
statue a priority when expending the funds: Provided, however, That the commission shall submit the plans for the statue to the secretary of administration for his or her approval. The commission on the arts shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to create a matching grant program for cultural facilities and capital resources;

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

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

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

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the
commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack and the resulting amount after such deduction shall be the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income.

(c) Net terminal income shall be divided as set out in this subsection. The licensed racetrack’s share shall be in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive thirty percent of net terminal income, which shall be paid into the general revenue fund of the state to be appropriated by the Legislature;

(2) Fourteen percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in article twenty-three, chapter nineteen of this code;

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

(A) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack is located that has participated in the West Virginia thoroughbred development fund since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided as follows:
(i) The county shall receive fifty percent of the excess amount; and

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

(B) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipality shall receive fifty percent of the excess amount; and

(C) This proviso shall not affect the amount to be received under this subdivision by any county other than a county described in paragraph (A) or (B) of this proviso;

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

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three,
chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten, article twenty-three, chapter nineteen of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income: Provided, That for any racetrack which does not have a breeder’s program supported by the thoroughbred development fund or the greyhound breeding development fund, the one and one-half percent provided for in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses, in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia thoroughbred breeders classic shall receive one percent of the net terminal income which shall be used for purses. The moneys shall be deposited in the separate account established for the classic under section thirteen, article twenty-three, chapter nineteen of this code;

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

(8) The tourism promotion fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income; and

(9) The veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the state capitol complex in Charleston, West Virginia. The moneys shall be deposited in the state treasury in the division of culture and history special fund created under section three, article one-i of this chapter: Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial
and to pay in full the annual bonded indebtedness on the veterans memorial, not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the "John F. 'Jack' Bennett fund". The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, one hundred thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited in the special fund in the division of culture and history created under section three, article one-i of this chapter and be expended by the division of culture and history to establish a West Virginia veterans memorial archives within the cultural center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds, and not more than twenty thousand dollars be deposited in the "John F. 'Jack' Bennett fund": Provided, however, That five hundred thousand dollars of the one percent of net terminal income shall be deposited in the state treasury in a special fund of the department of administration, created under section five, article four, chapter five-a of this code to be used for construction and maintenance of a parking garage on the state capitol complex: Provided further,
That the remainder of the one percent of net terminal income shall be deposited in equal amounts in the capitol dome and improvements fund created under section two, article four, chapter five-a of this code and the cultural facilities and capitol resources matching grant program fund created under section three, article one of this chapter.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack's failure to maintain this balance, the commission may disable all of a licensed racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency under chapter eleven of this code, which interest shall begin to accrue on the date payment is due to the commission.

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

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

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

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

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack must authorize all third parties in possession or in control of the
accounts or records to allow examination of any of those accounts or records by the commission.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within............. approved............. this the............. Day of............. 2000.

Governor
PRESENTED TO THE
GOVERNOR,
Date 3/31/10
Time 4:15 pm