WEST VIRGINIA LEGISLATURE
2nd Extraordinary Session, 2003

ENROLLED

SENATE BILL NO. 2007

(By Senators Tomblin, Mr. President, and Sprouse, by Request of the Executive)

PASSED July 4, 2003

In Effect from Passage
ENROLLED

Senate Bill No. 2007

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed July 1, 2003; in effect from passage.]

AN ACT to amend and reenact section eighteen-a, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to state excess lottery fund; deleting obsolete language; providing that certain bonds issued state on their face that they do not constitute a debt of the state; providing that the governor appoint six persons to the committee certifying projects to receive funds from bond proceeds; designating prior applications as refiled; requiring a certain applicant to file additional information with the committee; providing criteria to be used by the committee in certifying projects; prohibiting grants to individuals or private entities, but allowing low-interest loans to such persons; giving examples of the types of projects considered to be in the public interest; and providing that any excess funds be placed in the economic development project bridge loan fund.

Be it enacted by the Legislature of West Virginia:
That section eighteen-a, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 22. STATE LOTTERY ACT.**

§29-22-18a. State excess lottery revenue fund.

(a) There is continued a special revenue fund within the state lottery fund in the state treasury which is designated and known as the “state excess lottery revenue fund”. 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 sections ten-b and ten-c, article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the amounts due the commission under section 29-22B-1408(a)(1) of this chapter, 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 auditor and the state treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning the first day of July, two thousand two, the commission shall deposit: (1) Sixty-five million dollars 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) ten million dollars into the education improvement fund for appropriation by the Legislature to the “promise scholarship fund” created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars into the school
building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements.

For the fiscal year beginning the first day of July, two thousand three, the commission shall deposit: (1) Sixty-five million dollars into the general purpose account to be expended pursuant to appropriation of the Legislature; (2) seventeen million dollars into the education improvement fund for appropriation by the Legislature to the "promise scholarship fund" created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars into the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements.

(c) For the fiscal year beginning the first day of July, two thousand four, and subsequent fiscal years, the commission shall deposit: (1) Sixty-five million dollars into the general purpose account to be expended pursuant to appropriation of the Legislature; (2) twenty-seven million dollars into the education improvement fund for appropriation by the Legislature to the "promise scholarship fund" created in section seven, article seven, chapter eighteen-c
of this code; (3) nineteen million dollars into the economic
development project fund created in subsection (d) of this
section for the issuance of revenue bonds and to be spent
in accordance with the provisions of said subsection; (4)
nineteen million dollars into the school building debt
service fund created in section six, article nine-d, chapter
eighteen of this code for the issuance of revenue bonds; (5)
fourty million dollars into the West Virginia infrastructure
fund created in section nine, article fifteen-a, chapter
thirty-one of this code to be spent in accordance with the
provisions of said article; (6) ten million dollars into the
higher education improvement fund for higher education;
and (7) five million dollars into the state park improve-
ment 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 (d) of this
section, may be used to pay debt service on bonded
indebtedness until after the Legislature expressly autho-
rizes 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 improve-
ments that are not financed by bonds and only pursuant to
appropriation of the Legislature.

(d) 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 ad-
advance the business prosperity of this state and the eco-
omic welfare of the citizens of this state, it is necessary to
provide public financial support for constructing, equip-
ping, 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 article fifteen, chapter thirty-one of this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one 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 the first day of July, two thousand two, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding thirty 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) There is continued in the state treasury a special revenue fund named the “economic development project fund” into which shall be deposited on and after the first day of July, two thousand two, the amounts to be deposited in said fund as specified in subsections (b) and (c) of this section. 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 thereof. The West Virginia economic development authority may
144 further provide in the resolution and in the trust agree-
145 ment for priorities on the revenues paid into the economic
devision project fund as may be necessary for the
147 protection of the prior rights of the holders of bonds issued
148 at different times under the provisions of this section. The
149 bonds issued pursuant to this subsection shall be separate
150 from all other bonds which may be or have been issued
151 from time to time under the provisions of this article.
152
153 (3) After the West Virginia economic development
154 authority has issued bonds authorized by this section and
155 after the requirements of all funds have been satisfied,
156 including any coverage and reserve funds established in
157 connection with the bonds issued pursuant to this subsec-
158 tion, any balance remaining in the economic development
159 project fund may be used for the redemption of any of the
160 outstanding bonds issued under this subsection which, by
161 their terms, are then redeemable or for the purchase of the
162 outstanding bonds at the market price, but not to exceed
163 the price, if any, at which redeemable, and all bonds
164 redeemed or purchased shall be immediately canceled and
165 shall not again be issued.

166 (4) Bonds issued under this subsection shall state on their
167 face that the bonds do not constitute a debt of the state of
168 West Virginia; that payment of the bonds, interest and
169 charges thereon cannot become an obligation of the state
170 of West Virginia; and that the bondholders' remedies are
171 limited in all respects to the "special revenue fund"
172 established in this subsection for the liquidation of the
173 bonds.

174 (5) The West Virginia economic development authority
175 shall expend the bond proceeds from the revenue bond
176 issues authorized and directed by this section for such
177 projects as may be certified under the provision of this
178 subsection: Provided, That the bond proceeds shall be
179 expended in accordance with the requirements and
180 provisions of article five-a, chapter twenty-one of this
181 code and either article twenty-two or twenty-two-a,
chapter five of this code, as the case may be: Provided, however, That if such bond proceeds are expended pursuant to article twenty-two-a, chapter five 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 such contract, such determination shall be conclusive for all purposes and shall be deemed 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 tax and 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 thirty days of the effective date of this section.

(7) Applications for grants submitted on or before the first day of July, two thousand two, shall be considered refiled with the committee. Within ten days from the effective date of this section as amended in the year two thousand three, 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;

(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) No grant may 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 congressio-
nal districts at least fourteen days prior to the date of the public hearing.

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;

(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 created in the state treasury to be known as the “economic development project bridge loan fund” to be administered by the council for community and economic development created in section two, article two, chapter five-b 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 article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code. Loan repayment amounts, including the portion attributable to interest shall be paid into the fund created in this subdivision.

(e) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (b), (c) and (h) 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 such 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.

(f) For the fiscal year beginning on the first day of July,
two thousand two, and each fiscal year thereafter, the
commission shall, after meeting the requirements of
subsections (b), (c) and (h) of this section and after trans-
ferring to the state lottery fund created under section
eighteen of this article an amount equal to any transfer
from the state lottery fund to the excess lottery fund
pursuant to subsection (f), section eighteen of this article,
deposit fifty percent of the amount by which annual gross
revenue deposited in the state excess lottery revenue fund
exceeds two hundred twenty-five million dollars in a fiscal
year in a separate account in the state lottery fund to be
available for appropriation by the Legislature.

(g) When bonds are issued for projects under subsection
d 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, on or after the first day of July, two
thousand two, 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 require-
ments on any and all revenue bonds issued, or to be issued, on or after the first day of April, two thousand two, 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.

(h) In fiscal year two thousand four and thereafter, prior to the distributions provided in subsection (c) of this section, the lottery commission shall deposit into the general revenue fund amounts necessary to provide reimbursement for the refundable credit allowable under section twenty-one, article twenty-one, chapter eleven of this code.

(i) (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.

(j) 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 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 progress back to the joint committee
on government and finance on an annual basis beginning
in November of the year two thousand one until a compre-
hensive program has been fully implemented.
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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within was approved this the 14th Day of July, 2003.

Governor
SENTED TO THE GOVERNOR

7/16/03
4:40 PM