WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED
Committee Substitute D-
SENATE BILL NO. 197

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

PASSED March 13, 2004

In Effect 90 days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 197

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

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended,
by adding thereto three new sections, designated §5A-4-5a,
§5A-4-6 and §5A-4-7; to amend and reenact §5B-2-12 of said
code; and to amend and reenact §29-22A-10 and §29-22A-
10b of said code, all relating generally to distribution of net
terminal income of racetrack video lottery terminals for
funding purposes; creating a fund to be used for the con-
struction and maintenance of a parking garage; distributing
net terminal income to funds for the construction and
maintenance of parking garages, to the capitol dome and
improvements fund, to the cultural facilities and capitol
resources matching grant program fund, to the capitol
renovation and improvement fund, to the tourism promotion
fund and to purposes determined by appropriation in the
state budget; creating a fund for renovations and improve-
ments of the existing state capitol building and the capitol
complex; and prohibiting members of the tourism commission from participating in the discussion of, or action upon, an application for or an award of any grant in which the member has a direct financial interest.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto three new sections, designated §5A-4-5a, §5A-4-6 and §5A-4-7; that §5B-2-12 of said code be amended and reenacted; and that §29-22A-10 and §29-22A-10b of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 4. GENERAL SERVICES DIVISION.

§5A-4-5a. Construction of parking garage for general public; creation of fund.

(a) It is the intent of the Legislature to provide a parking facility for the general public and to direct the secretary of the department of administration to plan and construct a parking garage at the state capitol complex that will provide sufficient and additional parking exclusively for the general public.

(b) There is created the state treasury, to be administered by the department of administration, a special fund to be named the "2004 capitol complex parking garage fund" in which shall be deposited funds that are appropriated and funds from other sources to be used for the construction and maintenance of a parking garage on or adjacent to the state capitol complex.

§5A-4-6. Distribution of funds.

Notwithstanding any other provision of this code to the contrary, in each fiscal year beginning after the thirtieth day of June, two thousand four, the total amount of the remainder of the one percent of net terminal income described in subparagraph (ii), paragraph (B), subdivision
(9), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code and all of the one percent of net terminal income described in subdivision (9), subsection (a), section ten-b of said article shall be distributed as follows:

Equal amounts of the total shall be deposited in the capitol dome and improvements fund created under section two, article four, chapter five-a of this code and cultural facilities and capitol resources matching grant program fund created under section three, article one of this chapter until a total of one million five hundred thousand dollars is deposited into the cultural facilities and capitol resources matching grant program fund; thereafter, the remainder shall be deposited into the capitol dome and improvements fund.

§5A-4-7. Renovation and improvement of capitol building and capitol complex.

(a) It is the intent of the Legislature to provide renovation and improvement of the existing state capitol building and the capitol complex and to direct the secretary of the department of administration to plan and make renovations and improvements of the existing state capitol building and the capitol complex for the purpose of reversing deterioration to existing facilities, securing the safety of the general public and state employees, promoting efficiency of governmental operations and to enhance tourism in the state.

(b) There is created the state treasury to be administered by the department of administration a special fund to be named the "capitol renovation and improvement fund" in which shall be deposited funds that are appropriated and funds from other sources to be used for renovations and improvements of the existing state capitol building and the capitol complex.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.
ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12. Tourism promotion fund continued; use of funds.

There is hereby continued in the state treasury the special revenue fund known as the "tourism promotion fund" created under prior enactment of section nine, article one of this chapter.

(a) A minimum of five percent of the moneys deposited in the fund each year shall be used solely for direct advertising for West Virginia travel and tourism: Provided, That no less than twenty percent of these funds be expended with the approval of the director of the division of natural resources to effectively promote and market the state's parks, state forests, state recreation areas and wildlife recreational resources. Direct advertising means advertising which is limited to television, radio, mailings, newspaper, magazines and outdoor billboards, or any combination thereof.

(b) The balance of the moneys deposited in the fund shall be used for direct advertising within the state's travel regions as defined by the commission. The funds shall be made available to these districts beginning the first day of July, one thousand nine hundred ninety-five, according to legislative rules authorized for promulgation by the tourism commission.

(c) All advertising expenditures over twenty-five thousand dollars from the tourism promotion fund require prior approval by recorded vote of the commission. No member of the commission or of any committee created by the commission to evaluate applications for advertising or other grants may participate in the discussion of, or action upon, an application for or an award of any grant in which the member has a direct financial interest.

(d) Notwithstanding any other provision of this code to the contrary:
(1) In the fiscal year beginning the first day of July, two
thousand four, the total amount of the three percent of net
terminal income described in paragraph (B), subdivision
(8), subsection (c), section ten, article twenty-two-a,
chapter twenty-nine of this code and the three percent of
net terminal income described in paragraph (B), subdivi-
sion (9), subsection (a), section ten-b of said article shall be
distributed as follows:

(A) Not more than six million dollars shall be deposited
in the tourism promotion fund;

(B) Not more than five hundred thousand dollars shall be
deposited in the state treasury in a special fund of the
department of administration, created under section five-
a, article four, chapter five-a of this code to be used for
construction and maintenance of a parking garage on or
adjacent to the state capitol complex;

(C) Not more than five million five hundred thousand
dollars shall be deposited in the state treasury in a special
fund of the department of administration, created under
section seven, article four, chapter five-a of this code to be
used for renovation and improvement of the existing state
capitol building and the capitol complex; and

(D) The remainder of the three percent of net terminal
income shall be available only upon appropriation by the
Legislature as part of the state budget.

(2) In each fiscal year beginning after the thirtieth day of
June, two thousand five, the total amount of the three
percent of net terminal income described in paragraph (B),
subdivision (8), subsection (c), section ten, article twenty-
two-a, chapter twenty-nine of this code and the three
percent of net terminal income described in paragraph (B),
subdivision (9), subsection (a), section ten-b of said article
shall be distributed as follows:

(A) Not more than eleven million dollars shall be depos-
ited in the tourism promotion fund;
(B) Not more than five hundred thousand dollars shall be deposited in the state treasury in a special fund of the department of administration, created under section five-a, chapter five-a of this code to be used for construction and maintenance of a parking garage on or adjacent to the state capitol complex;

(C) Not more than five million five hundred thousand dollars shall be deposited in the state treasury in a special fund of the department of administration, created under section seven, article four, chapter five-a of this code to be used for renovation and improvement of the existing state capitol building and the capitol complex; and

(D) The remainder of the three percent of net terminal income shall be available only upon appropriation by the Legislature as part of the state budget.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

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 the deduction is the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income: Provided, That any amounts deducted by the commission for its actual costs and expenses that exceeds its actual costs and expenses shall be deposited into the state lottery fund. For all fiscal years beginning on or after the first day of July, two thousand one, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, shall be deposited into the fund established in section eighteen-a, article twenty-two of this chapter.

(c) Net terminal income shall be divided as set out in this subsection. For all fiscal years beginning on or after the first day of July, two thousand one, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, shall be divided as set out in section ten-b of this article. The
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licensed racetrack's share is in lieu of all lottery agent
commissions and is considered to cover all costs and
expenses required to be expended by the licensed race-
track 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 state lottery
fund as provided in section ten-a of this article;

(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 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) 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 develop-
ment 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, the 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) 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 subdivision;

(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 of said article 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 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 in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia racing commission shall receive one percent of the net terminal income which shall be deposited and used as provided in section thirteen-c, article twenty-three, chapter nineteen of this code;
(7) A licensee shall receive forty-seven percent of net terminal income;

(8)(A) 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: Provided, That for the fiscal year beginning the first day of July, two thousand three, the tourism commission shall transfer from the tourism promotion fund no more than five million dollars of the three percent of the net terminal income into the fund administered by the West Virginia economic development authority pursuant to section seven, article fifteen, chapter thirty-one of this code; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after the thirtieth day of June, two thousand four, this three percent of net terminal income shall be distributed pursuant to the provisions of subsection (d), section twelve, article two, chapter five-b of this code; and

(9) The remaining one percent of net terminal income shall be deposited as follows:

(A) For the fiscal year beginning the first day of July, two thousand three, the veterans memorial program shall receive that 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, chapter twenty-nine of this code: 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 perpetu-
al 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, chapter
twenty-nine of this code 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 monu-
ments and memorial on the capitol grounds: 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; and 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 cultural
facilities and capitol resources matching grant program
fund created under section three, article one of this
chapter.

(B) For each fiscal year beginning after the thirtieth day
of June, two thousand four:

192  (i) Five hundred thousand dollars of the one percent of
193 net terminal income shall be deposited in the state trea-
194 sury in a special fund of the department of administration,
195 created under section five, article four, chapter five-a of
196 this code, to be used for construction and maintenance of
197 a parking garage on the state capitol complex; and
198
199  (ii) The remainder of the one percent of net terminal
200 income shall be distributed pursuant to the provisions of
201 section six, article four, chapter five-a of this code.
202
203  (d) Each licensed racetrack shall maintain in its account
204 an amount equal to or greater than the gross terminal
205 income from its operation of video lottery machines, to be
206 electronically transferred by the commission on dates
207 established by the commission. Upon a licensed race-
208 track's failure to maintain this balance, the commission
209 may disable all of a licensed racetrack's video lottery
210 terminals until full payment of all amounts due is made.
211 Interest shall accrue on any unpaid balance at a rate
212 consistent with the amount charged for state income tax
213 delinquency under chapter eleven of this code. The
214 interest shall begin to accrue on the date payment is due to
215 the commission.
216
217  (e) The commission's central control computer shall keep
218 accurate records of all income generated by each video
219 lottery terminal. The commission shall prepare and mail
220 to the licensed racetrack a statement reflecting the gross
221 terminal income generated by the licensee's video lottery
222 terminals. Each licensed racetrack shall report to the
223 commission any discrepancies between the commission's
224 statement and each terminal's mechanical and electronic
225 meter readings. The licensed racetrack is solely responsi-
226 ble for resolving income discrepancies between actual
227 money collected and the amount shown on the accounting
228 meters or on the commission's billing statement.
229
230  (f) Until an accounting discrepancy is resolved in favor
231 of the licensed racetrack, the commission may make no
credit adjustments. For any video lottery terminal reflecting 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 the 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 shall 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.

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

(a) For all years beginning on or after the first day of July, two thousand one, any amount of net terminal income generated annually by a licensed racetrack in excess of the amount of net terminal income generated by that licensed racetrack during the fiscal year ending on the thirtieth day of June, two thousand one, shall be divided as follows:

(1) The commission shall receive forty-one percent of net terminal income, which the commission shall deposit in the state excess lottery revenue fund created in section eighteen-a, article twenty-two of this chapter;

(2) Eight 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) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is 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, the 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) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is 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 devel-
opment 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 racing commission shall receive one percent of the net terminal income which shall be deposited and used as provided in section thirteen-c, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-two 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: Provided, That for each fiscal year beginning after the thirtieth day of June, two thousand four, this three percent of net terminal income shall be distributed pursuant to the provisions of subsection (d), section twelve, article two, chapter five-b of this code; and

(9)(A) One percent of the 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 cultural facilities and capitol resources matching grant program fund created under section three, article one of this chapter; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after the thirtieth day of June, two thousand four, this one percent of net terminal income shall be distributed pursuant to the provisions of section six, article four, chapter five-a of this code.

(b) The commission may establish orderly and effective procedures for the collection and distribution of funds
under this section in accordance with the provisions of this
section and section ten of this article.
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 is disapproved this the 21st Day of March, 2004.

Governor