WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 337
(Senators Snyder, Unger and Kessler, original sponsors)

[Passed March 13, 2010; in effect ninety days from passage.]
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AN ACT to amend and reenact §19-23-10, §19-23-13 and §19-23-13b of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22-18a of said code; and to amend and reenact §29-22C-27 of said code, all relating to receipts and expenditures of moneys in the conduct of the racing industry in the state generally; providing as an additional purpose for which certain moneys may be used the purpose of greyhound adoption programs to include spaying and neutering; modifying the distribution of funds derived from horse racetrack unredeemed pari-mutuel tickets and other sources to owners, breeders and owners of sires of certain winning horses; providing for the deposit of surplus funds held for those purposes into horse racetrack regular purse funds; removing provisions requiring that certain unexpended balances be paid to certain horse racetrack licensees and expended for certain purposes; combining and distributing funds derived from dog racetrack unredeemed pari-mutuel tickets into the greyhound breeding develop-
ment fund; removing authority for racing commission to expend certain excess moneys as purse money, to supplement purses and to establish stakes races and racing handicaps; removing requirements that certain moneys from unredeemed pari-mutuel tickets be allocated and paid by the racing commission into the greyhound breeding development fund, into a special account to be used for certain stakes races, into a trust to provide health and disability benefits to eligible active or disabled West Virginia jockeys, and into an unspecified trust administered by an organization representative of jockeys; providing for the payment of claims received on purses won on or before June 30, 2010; transferring a specified amount of funds from the state excess lottery revenue fund and additional amounts from certain special accounts to pay for those claims; extinguishing obligation of the state for payments made on certain claims; removing the requirement that a certain racing commission report to the legislative auditor include certain information; authorizing the racing commission to promulgate emergency rules; specifying which racing secretary is to be a member of a certain committee; removing expired requirements for the submission of a report; providing for the contingent distribution of an annual amount from the state excess lottery revenue fund into a certain thoroughbred racetrack purse fund, into certain thoroughbred racetrack unredeemed pari-mutuel tickets accounts, and into a certain greyhound breeding development fund; and changing the allocation of a certain distribution from the lottery racetrack table games fund to the purse funds of the thoroughbred racetracks from an equal allocation among the tracks to a pro rata distribution.

Be it enacted by the Legislature of West Virginia:

That §19-23-10, §19-23-13 and §19-23-13b of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-22-18a of said code be amended and reenacted; and
that §29-22C-27 of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of $250. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of $150. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of $150. In the event thoroughbred racing, harness racing, dog racing or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of $250 shall be paid for that day. Any daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the Racing Commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax set forth in subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article. The tax, on the pari-mutuel pools conducted or made each day during
the months of January, February, March, October, November and December, shall be calculated at four-tenths of one percent of the pool; and, on the pari-mutuel pools conducted or made each day during all other months, shall be calculated at one and four-tenths percent of the pool: Provided, That out of the amount realized from the three tenths of one percent decrease in the tax effective for fiscal year 1991 and thereafter, which decrease correspondingly increases the amount of commission retained by the licensee, the licensee shall annually expend or dedicate: (i) One half of the realized amount for capital improvements in its barn area at the track, subject to the Racing Commission's prior approval of the plans for the improvements; and (ii) the remaining one half of the realized amount for capital improvements as the licensee may determine appropriate at the track. The term “capital improvement” shall be as defined by the Internal Revenue Code: Provided, however, That any racing association operating a horse racetrack in this state having an average daily pari-mutuel pool on horse racing of $280,000 or less per day for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel pool tax, calculated as in this subsection, be permitted to conduct pari-mutuel wagering at the horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding $300,000 the daily pari-mutuel pool tax shall be $1,000 plus the otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if any, in excess of $300,000: Provided further, That upon the effective date of the reduction of the daily pari-mutuel pool tax to $1,000 from the former $2,000, the association or licensee shall daily deposit $500 into the special fund for regular purses established by subdivision (1), subsection (b), section nine of this article: And provided further, That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to
thirteen races in a calendar day, the association or licensee
shall pay both the daily license tax imposed in subsection
(a) of this section and the alternate tax in this subsection
for each performance: And provided further, That a
licensee qualifying for the foregoing alternate tax is
excluded from participation in the fund established by
section thirteen-b of this article: And provided further,
That this exclusion shall not apply to any thoroughbred
racetrack at which the licensee has participated in the
West Virginia Thoroughbred Development Fund for more
than four consecutive years prior to December 31, 1992.

(c) Any racing association licensed by the Racing Com-
mission to conduct harness racing and permitting and
conducting pari-mutuel wagering under the provisions of
this article shall, in addition to the daily license tax
required under subsection (a) of this section, pay to the
Racing Commission, from the commission deducted each
day by the licensee from the pari-mutuel pools on harness
racing, as a tax, three percent of the first $100,000 wagered,
or any part thereof; four percent of the next
$150,000; and five and three-fourths percent of all over
that amount wagered each day in all pari-mutuel pools
conducted or made at any and every harness race meeting
of the licensee licensed under the provisions of this article.

(d) Any racing association licensed by the Racing
Commission to conduct dog racing and permitting and
conducting pari-mutuel wagering under the provisions of
this article shall, in addition to the daily license tax
required under subsection (a) of this section, pay to the
Racing Commission, from the commission deducted each
day by the licensee from the pari-mutuel pools on dog
racing, as a tax, four percent of the first $50,000 or any
part thereof of the pari-mutuel pools, five percent of the
next $50,000 of the pari-mutuel pools, six percent of the
next $100,000 of the pari-mutuel pools, seven percent of
the next $150,000 of the pari-mutuel pools, and eight
percent of all over $350,000 wagered each day: Provided,
That the licensee shall deduct daily from the pari-mutuel
tax an amount equal to one tenth of one percent of the
daily pari-mutuel pools in dog racing in fiscal year 1990;
fifteen hundredths of one percent in fiscal year 1991; two
tenths of one percent in fiscal year 1992; one quarter of
one percent in fiscal year 1993; and three tenths of one
percent in fiscal year 1994 and every fiscal year thereafter.
The amounts deducted shall be paid to the Racing Com-
mission to be deposited by the Racing Commission in a
banking institution of its choice in a special account to be
known as "West Virginia Racing Commission-Special
Account-West Virginia Greyhound Breeding Development
Fund". The purpose of the fund is to promote better
breeding, training track facilities and racing of grey-
hounds in the state through awards and purses to bona
fide resident registered greyhound owners of accredited
West Virginia whelped greyhounds. In order to participate
and be eligible to receive an award or purse through the
fund, the registered greyhound owner must have an
appropriate license from the Racing Commission to race in
West Virginia. The registered greyhound dam at the time
of breeding must be wholly or solely owned or leased by a
bona fide resident or residents of West Virginia. The
accredited West Virginia whelped greyhound must be
wholly or solely owned by a bona fide resident or residents
of this state. To qualify as a bona fide resident of West
Virginia, a registered greyhound owner may not claim
residency in any other state. A registered greyhound
owner must prove bona fide residency by providing to the
commission personal income tax returns filed in the State
of West Virginia for the most recent tax year and the three
previous tax years, has real or personal property in this
state on which the owner has paid real or personal prop-
erty taxes during the most recent tax year and the previ-
ous three tax years and an affidavit stating that the owner
claims no other state of residency. The Racing Commis-
sion shall maintain a registry for West Virginia bred greyhounds. The moneys shall be expended by the Racing Commission for purses for stake races, training track facilities, supplemental purse awards, administration, promotion, education and greyhound adoption programs involving West Virginia whelped dogs, owned by residents of this state under rules promulgated by the Racing Commission. The Racing Commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of $75,000 for the fiscal year ending June 30, 1994. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules promulgated by the Racing Commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the registered greyhound owner of an accredited greyhound. The registered greyhound owner of accredited West Virginia whelped greyhounds that earn points at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia Greyhound Breeding Development fund monthly.

The total amount of the fund available for the owners' awards shall be distributed according to the ratio of points earned by an accredited greyhound to the total amount earned in races by all accredited West Virginia whelped greyhounds for that month as a percentage of the funds dedicated to the owners' purse supplements. The point value at all greyhound tracks shall be the same as approved by the Racing Commission to be effective April 1,
2007. The West Virginia Greyhound Owners and Breeders Association shall submit a list of any additions or deletions to the registry of accredited West Virginia whelped greyhounds on the first of each month. The Racing Commission shall not require anyone to be a member of a particular association in order to participate in the West Virginia Greyhound Breeding Development Fund.

The registered greyhound owner of an accredited West Virginia whelped greyhound shall file a purse distribution form with the Racing Commission for a percentage of his or her dog's earnings to be paid directly to the registered greyhound owner or owners of the greyhound. Distribution shall be made on the fifteenth day of each month for the preceding month’s achievements.

In no event shall points earned at a meet held at a track which did not make contributions to the West Virginia Greyhound Breeding Development Fund out of the daily pool on the day the meet was held qualify or count toward eligibility for supplemental purse awards.

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year: Provided, That not more than $2 million from the balance in the purse supplemental fund shall be used for the construction and maintenance of two dog training track facilities if such be approved by the Racing Commission: Provided, however, That not more than $1 million may be allocated for the construction and maintenance of each training track: Provided further, That both training track facilities must be located in West Virginia. The West Virginia Racing Commission shall be authorized to promulgate rules governing dog training tracks: And provided further, That the Racing Commission shall: (1) Provide a process in its rules for competitive bidding of the construction or maintenance, or both, of the training
tracks; and (2) set standards to assure that only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

In an effort to further promote the breeding of quality West Virginia whelped greyhounds, a bonus purse supplement shall be established in the amount of $50,000 per annum, to be paid in equal quarterly installments of $12,500 per quarter using the same method to calculate and distribute these funds as the regular supplemental purse awards. This bonus purse supplement is for three years only, commencing on July 1, 1993, and ending June 30, 1996. This money would come from the current existing balance in the greyhound development fund.

Each pari-mutuel greyhound track shall provide stakes races for accredited West Virginia whelped greyhounds: Provided, That each pari-mutuel track shall have one juvenile and one open stake race annually. Each pari-mutuel dog track shall provide at least three restricted races for accredited West Virginia whelped greyhounds per race card: Provided, however, That sufficient dogs are available. To assure breeders of accredited West Virginia whelped greyhounds an opportunity to participate in the West Virginia Greyhound Breeding Development Fund the West Virginia Racing Commission by July 1, each year shall establish and announce the minimum number of accredited West Virginia whelped greyhounds that greyhound racing kennels at West Virginia dog tracks must have on their racing active list during the calendar year following such action. The minimum number may vary from dog track to dog track. The minimum number shall be established after consultation with the West Virginia Greyhound Owners and Breeders Association and kennel owners and operators. Factors to be considered in establishing this minimum number shall be the number of individually registered accredited West Virginia whelped greyhounds whelped in the previous two years. The
number of all greyhounds seeking qualification at each West Virginia dog track, the ratio of active running greyhounds to housed number of greyhounds at each West Virginia dog track, and the size and number of racing kennels at each West Virginia dog track. Any greyhound racing kennel not having the minimum number of accredited West Virginia whelped greyhounds determined by the West Virginia Racing Commission on their active list shall only be permitted to race the maximum allowable number on the active list less the number of accredited West Virginia whelped greyhounds below the established minimum number. Consistent violations of this minimum requirement may be reviewed by the Racing Commission and may constitute cause for denial or revocation of a kennel’s racing license. The Racing Commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the greyhound breeding development fund beginning July 1, 1993 and continuing each year thereafter, shall be withheld by the Racing Commission and placed in a special revenue account hereby created in the State Treasury called the “administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering account”. The Racing Commission is authorized to expend the moneys deposited in the administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the greyhound development program: Provided, That beginning with fiscal year 1995 and in each fiscal year thereafter in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the
executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering. The commission shall make an annual report to the Legislature on the status of the administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering account, including the previous year's expenditures and projected expenditures for the next year.

The Racing Commission, for the fiscal year 1994 only, may expend up to $35,000 from the West Virginia Greyhound Breeding Development Fund to accomplish the purposes of this section without strictly following the requirements in the previous paragraph.

(e) All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the Racing Commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.

(f) Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine and ten of this article, shall annually submit to the Racing Commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publica-
tion of notice; irredeemable tickets; payment of past obligations.

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of a horse or dog race meeting or the televised racing day, as the case may be, in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of the ninety-day period, and the licensee shall give any information required by the racing commission concerning the outstanding and unredeemed tickets. The moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets.” Notice of the amount, date and place of each deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of the outstanding and unredeemed pari-mutuel tickets, notifying them to present their unredeemed tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of the notice. The notice shall be published within fifteen days following the receipt of the outstanding and unredeemed pari-mutuel ticket moneys by the commission from the licensee as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county in which the horse or dog race meeting was held and the county in which the televised racing day wagering was conducted in this state.

(b) Any outstanding and unredeemed pari-mutuel tickets that are not presented for payment within ninety days from the date of the publication of the notice are thereafter irredeemable, and the moneys theretofore held for the
35 redemption of the pari-mutuel tickets shall become the
36 property of the racing commission and shall be expended
37 as provided in subsections (c) and (d) of this section. The
38 racing commission shall maintain separate accounts for
39 each licensee and shall record in each separate account the
40 moneys turned over by the licensee and the amount
41 expended at the licensee’s track for the purposes set forth
42 in this subsection.

43 (c) In the fiscal year beginning on July 1, 2010, the racing
44 commission shall keep separate the unredeemed pari-
45 mutuel tickets received from each of the two licensee horse
46 racetracks.

47 (1) The unredeemed pari-mutuel tickets attributable to
48 each licensee horse racetrack together with funds distrib-
49 uted pursuant to section eighteen-a, article twenty-two,
50 chapter twenty-nine of this code shall be used for claims
51 received pursuant to this subsection by the Racing Com-
52 mission each calendar quarter: Provided, That the first
53 distribution after the effective date of amendments to this
54 section made during the 2010 regular legislative session
55 shall not occur until February 2011 and then each calen-
56 dar quarter thereafter. Any claims made pursuant to this
57 subsection must be submitted to the racing commission no
58 later than fifteen days after the race where the funds are
59 awarded. The funds in the two special accounts - unre-
60 deemed pari-mutuel tickets shall be distributed based on
61 claims received from each horse racetrack as follows:

62 (A) To the owner of the winning horse in any horse race
63 at a horse race meeting held or conducted by any licensee:
64 Provided, That the owner of the horse is at the time of the
65 horse race a bona fide resident of this state, a sum equal to
66 ten percent of the purse won by the horse at that race:
67 Provided, however, That in the event there are more than
68 ten races in any performance, the award to the resident
69 owner of the winning horse will be that fractional share of
the purse with a numerator of one and a denominator representing the number of races on the day of the perfor-
mance. The commission may require proof that the owner was, at the time of the race, a bona fide resident of this state. Upon proof by the owner that he or she filed a personal income tax return in this state for the previous two years and that he or she owned real or personal property in this state and paid taxes in this state on real or personal property for the previous two years, he or she shall be presumed to be a bona fide resident of this state; and

(B) To the breeder (that is, the owner of the mare) of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the mare foaled in this state, a sum equal to ten percent of the purse won by the horse: Provided, however, That in the event there are more than ten races in any performance, the award to the breeder will be that fractional share of the purse with a numerator of one and a denominator representing the number of races on the day of the performance; and

(C) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the mare which foaled the winning horse was served by a stallion standing and registered in this state, a sum equal to ten percent of the purse won by the horse: Provided, however, That in the event there are more than ten races in any performance, the award to the owner of the stallion will be percentage of the purse based upon the fractional share represented by the number of races on the day of the performance.

(2) If in any calendar quarter insufficient funds are available in each licensee horse racetrack's special account - unredeemed pari-mutuel tickets administered by the Racing Commission for payments pursuant to subdivision
(1), payments shall be made on a pro rata basis pursuant to paragraphs (A), (B) and (C) of subdivision (1) of this subsection of the claims submitted from races won at each horse racetrack. Once payments on each claim are made, whether in full or on a pro rata basis, no further obligation for payment is created by this subdivision. Claims received after the deadline are not valid.

(3) If after paying any claims pursuant to this subsection and funds remain in the accounts, those funds shall carry over to the next calendar quarter. If in any quarter the surplus in either account reaches a balance of $1 million, then that surplus balance shall be placed in to the regular purse fund of that licensee horse racetrack whose unredeemed pari-mutuel account achieves the surplus.

(d) Any unredeemed pari-mutuel tickets received from licensee dog racetracks shall be combined into a single balance and distributed quarterly to the West Virginia racing commission special account - West Virginia greyhound breeding development fund. The deposit made pursuant to this subsection does not create a continuing obligation of payment except to the extent that there are unredeemed pari-mutuel tickets from the licensee dog racetracks.

(e) The amendments to this section made during the 2010 regular legislative session shall become effective July 1, 2010.

(f) The Racing Commission shall satisfy obligations of the prior enactment of this section for all claims received on purses won on or before June 30, 2010. Claimants must submit all claims on or before July 15, 2010 for verification by the Racing Commission. Claims received after July 15, 2010 are not valid.

(1) A transfer of $2.5 million from the State Excess Lottery Revenue Fund available on the last day of the
fiscal year which began July 1, 2009 shall be made to the nonappropriated fund with the State Treasurer known as the Unredeemed Pari-Mutuel Tickets Fund. The Racing Commission shall also transfer to the account with the State Treasurer monies from the racing commission special accounts - unredeemed pari-mutuel tickets for deposits received in each of those accounts that have been credited with unredeemed pari-mutuel tickets for races completed at any licensee racetrack as of June 30, 2010, and any other monies appropriated by the legislature. Unredeemed pari-mutuel tickets for races completed after June 30, 2010 must remain in the special accounts - unredeemed pari-mutuel tickets to satisfy future payments pursuant to this section.

(2) The Racing Commission is authorized to pay claims received for races completed on or before June 30, 2010 without regard to date of deposit or date of claim. Claims shall be paid in date order, with the oldest claims being paid first, until all claims have been satisfied. All payments made pursuant to this subsection for claims received on purses won on or before June 30, 2010 shall extinguish any further obligation by the state with respect to those claims.

(g) The commission shall submit to the legislative auditor a quarterly report and accounting of the income and expenditures in the special account created by this section known as the West Virginia racing commission special account - unredeemed pari-mutuel tickets.

(h) Nothing contained in this article shall prohibit one person from qualifying for all or more than one of the aforesaid awards or for awards under section thirteen-b of this article.

(i) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools'
tax provided for in section ten of this article, when not
otherwise provided in the budget; but no such costs shall
be paid unless an itemized account thereof, under oath, be
first filed with the state auditor.

(j) The racing commission is authorized to promulgate
emergency rules, prior to September 1, 2010, to incorpo-
rate the revisions to this article enacted during the 2010
regular legislative session.

§19-23-13b. West Virginia Thoroughbred Development Fund;
distribution; restricted races; nonrestricted
purse supplements; preference for West Vir-
ginia accredited thoroughbreds.

(a) The Racing Commission shall deposit moneys re-
quired to be withheld by an association or licensee in
subsection (b), section nine of this article in a banking
institution of its choice in a special account to be known
as “West Virginia Racing Commission Special Account –
West Virginia Thoroughbred Development Fund”:
Provided, That after the West Virginia Lottery Commission
has divided moneys between the West Virginia Thorough-
bred Development Fund and the West Virginia Greyhound
Breeding Development Fund pursuant to the provisions of
sections ten and ten-b, article twenty-two-a, chapter
twenty-nine of this code, the Racing Commission shall,
beginning October 1, 2005, deposit the remaining moneys
required to be withheld from an association or licensee
designated to the Thoroughbred Development Fund under
the provisions of subsection (b), section nine of this article,
subdivision (3), subsection (e), section twelve-b of this
article, subsection (b), section twelve-c of this article,
paragraph (B), subdivision (3), section (b), section
thirteen-c of this article and sections ten and ten-b, article
twenty-two-a, chapter twenty-nine of this code into
accounts for each thoroughbred racetrack licensee with a
banking institution of its choice with a separate account
for each association or licensee. Each separate account shall be a special account to be known as “West Virginia Racing Commission Special Account – West Virginia Thoroughbred Development Fund” and shall name the licensee for which the special account has been established: Provided, however, That the Racing Commission shall deposit all moneys paid into the Thoroughbred Development Fund by 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 from July 8, 2005 until the effective date of the amendment to this section passed during the fourth extraordinary session of the seventy-seventh Legislature shall be paid into the purse fund of that thoroughbred racetrack licensee: Provided further, That the moneys paid into the Thoroughbred Development Fund by 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, shall be transferred into that licensee’s purse fund until April 1, 2006. Notice of the amount, date and place of the deposits shall be given by the Racing Commission, in writing, to the State Treasurer. The purpose of the funds is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners: And provided further, That five percent of the deposits required to be withheld by an association or licensee in subsection (b), section nine of this article shall be placed in a special revenue account hereby created in the state Treasury called the “Administration and Promotion Account”.

(b) The Racing Commission is authorized to expend the moneys deposited in the administration and promotion account at times and in amounts as the Commission determines to be necessary for purposes of administering
and promoting the thoroughbred development program: 

Provided, That during any fiscal year in which the Commission anticipates spending any money from the account, the Commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The Commission shall make an annual report to the Legislature on the status of the administration and promotion account, including the previous year's expenditures and projected expenditures for the next year.

(c) The fund or funds and the account or accounts established in subsection (a) of this section shall operate on an annual basis.

(d) Funds in the Thoroughbred Development Fund or funds in the separate accounts for each association or licensee as provided in subsection (a) of this section shall be expended for awards and purses except as otherwise provided in this section. Annually, the first $800,000 shall be available for distribution for a minimum of fourteen accredited stakes races at a racetrack which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992. The weights for all accredited stakes races shall be weight for age. One of the stakes races shall be the West Virginia Futurity and the second shall be the Frank Gall Memorial Stakes. For the purpose of participating in the West Virginia Futurity only, all mares, starting with the breeding season beginning the first day of February through July 31, 2004, and each successive breeding season thereafter shall be bred back that year to an accredited West Virginia stallion only which is registered with the West Virginia Thoroughbred Breeders Association. The accredited stake races shall be
chosen by the committee set forth in subsection (f) of this section.

(e) Awards and purses shall be distributed as follows:

(1) The breeders/raisers of accredited thoroughbred horses that earn a purse at a participating West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders' raisers' awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in the participating races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder(raiser may receive from the fund dedicated to breeders' raisers' awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse's breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the proceeds. The bonus referred to in this subdivision may only be paid on the first $100,000 of any purse and not on any amounts in excess of the first $100,000.

(2) The owner of an accredited West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at a participating West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen percent of the fund available for distribution in any one year. The total amount available for the sire owners' awards shall be distributed according to the ratio of purses earned by the progeny of accredited West Virginia stallions in the participating races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in the participating
races. However, no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty-five percent of the accredited earnings for each sire. The bonus referred to in this subdivision shall only be paid on the first $100,000 of any purse and not on any amounts in excess of the first $100,000.

(3) The owner of an accredited thoroughbred horse that earns a purse in any participating race at a West Virginia meet shall receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in the races of a particular race horse to the total amount earned by all accredited race horses in the participating races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each accredited race horse. The bonus referred to in this subdivision shall only be paid on the first $100,000 of any purse and not on any amounts in excess of the first $100,000.

(4) In no event may purses earned at a meet held at a track which did not make a contribution to the Thoroughbred Development Fund out of the daily pool on the day the meet was held qualify or count toward eligibility for an award under this subsection.

(5) Any balance in the breeders/raisers, sire owners and purse supplement funds after yearly distributions shall first be used to fund the races established in subsection (f) of this section. Any amount not so used shall revert into the general account of the Thoroughbred Development Fund for each racing association or licensee for distribution in the next year.
Distribution shall be made on the fifteenth day of each February for the preceding year's achievements.

(f)(1) Each pari-mutuel thoroughbred horse track shall provide at least one restricted race per racing day: Provided, That sufficient horses and funds are available. For purposes of this subsection, there are sufficient horses if there are at least seven single betting interests received for the race: Provided further, That, if sufficient horses and funds are available, any thoroughbred horse racetrack whose licensee participated in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992, shall provide two restricted races per racing day, at least one of which may be split at the discretion of the racing secretary. The restricted race required by this section must be included in the first nine races written in the condition book for that racing day.

(2) The restricted races established in this subsection shall be administered by a three-member committee at each track consisting of:

(A) The racing secretary at each track;

(B) A member appointed by the authorized representative of a majority of the owners and trainers at the thoroughbred track; and

(C) A member appointed by the West Virginia Thoroughbred Breeders Association.

(3) Restricted races shall be funded by each racing association from:

(A) Moneys placed in the General Purse Fund: Provided, That a thoroughbred horse racetrack which did not participate in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive years prior to December 31, 1992, may fund restricted races in an amount not to exceed $1 million per year.
(B) Moneys as provided in subdivision (5), subsection (e) of this section, which shall be placed in a special fund called the "West Virginia Accredited Race Fund".

(4) The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia Racing Commission.

(5) If less than seventy-five percent of the restricted races required by this subsection fail to receive enough entries to race, the Racing Commission shall, on a quarterly basis, dedicate funds in each fund back to the general purse fund of the racing association or licensee: Provided, That no moneys may be dedicated back to a General purse fund if the dedication would leave less than $250,000 in the fund.

(g) As used in this section, "West Virginia bred-foal" means a horse that was born in the State of West Virginia.

(h) To qualify for the West Virginia Accredited Race Fund, the breeder must qualify under one of the following:

(1) The breeder of the West Virginia bred-foal is a West Virginia resident;

(2) The breeder of the West Virginia bred-foal is not a West Virginia resident, but keeps his or her breeding stock in West Virginia year round; or

(3) The breeder of the West Virginia bred-foal is not a West Virginia resident and does not qualify under subdivision (2) of this subsection, but either the sire of the West Virginia bred-foal is a West Virginia stallion, or the mare is covered only by a West Virginia accredited stallion or stallions before December 31 of the calendar year following the birth of that West Virginia bred-foal.

(i) From July 1, 2001, West Virginia accredited thoroughbred horses have preference for entry in all accredited

230 races at a thoroughbred race track at which the licensee
231 participates in the West Virginia Thoroughbred Develop-
232 ment Fund.

233 (j) Beginning July 1, 2006, any racing association
234 licensed by the Racing Commission to conduct thorough-
235 bred racing and permitting and conducting pari-mutuel
236 wagering under the provisions of this article must have a
237 West Virginia Thoroughbred Racing Breeders Program.

CHAPTER 29. MISCELLANEOUS
BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.


1 (a) The State Lottery Fund in the State Treasury which
2 is designated and known as the State Excess Lottery
3 Revenue Fund is continued. The fund consists of all
4 appropriations to the fund and all interest earned from
5 investment of the fund and any gifts, grants or contribu-
6 tions received by the fund. All revenues received under
7 the provisions of sections ten-b and ten-c, article twenty-
8 two-a of this chapter and under article twenty-two-b of
9 this chapter, except the amounts due the commission
10 under subdivision (1), subsection (a), section one thousand
11 four hundred eight, article twenty-two-b of this chapter,
12 shall be deposited in the State Treasury and placed into
13 the State Excess Lottery Revenue Fund. The revenue shall
14 be disbursed in the manner provided in this section for the
15 purposes stated in this section and shall not be treated by
16 the State Auditor and the State Treasurer as part of the
17 general revenue of the state.

18 (b) For the fiscal year beginning July 1, 2002, the com-
19 mission shall deposit: (1) $65 million into the subaccount
20 of the state Excess Lottery Revenue Fund hereby created
21 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 section seven, article seven, chapter eighteen-c 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 section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) $40 million 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) $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 section seven, article seven, chapter eighteen-c 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 section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) $40 million 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) $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 million 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) $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 section six, article nine-d, chapter eighteen 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 section nine, article fifteen-a, chapter thirty-one 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 section seven, article seven, chapter eighteen-c 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 section six, article nine-d, chapter eighteen of this code; (5) $40 million 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) $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 distrib-
uted under this subsection and 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 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 July 1, 2002, 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) The special revenue fund named the Economic Development Project Fund into which shall be is 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 their terms, are then redeemable or 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 article five-a, chapter twenty-one of this code and either article twenty-two or twenty-two-a, chapter five of this code, as the case may be: *Provided, however, That* if the 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 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 thirty days of the effective date of this section.
Applications for grants submitted on or before July 1, 2002, shall be considered refiled with the committee. Within ten 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.

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.

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.

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 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;
305  (G) Improvements at state parks, such as construction,
306  expansion or extensive renovation of lodges, cabins,
307  conference facilities and restaurants;
308  (H) Railroad bridges, switches and track extension or
309  spurs on public or private land necessary to retain existing
310  businesses or attract new businesses;
311  (I) Recreational facilities, such as amphitheaters,
312  walking and hiking trails, bike trails, picnic facilities,
313  restrooms, boat docking and fishing piers, basketball and
314  tennis courts, and baseball, football and soccer fields;
315  (J) State-owned buildings that are registered on the
316  National Register of Historic Places;
317  (K) Retail facilities, including related service, parking
318  and transportation facilities, appropriate lighting, land-
319  scaping and security systems to revitalize decaying
320  downtown areas; and
321  (L) Other facilities that promote or enhance economic
322  development, educational opportunities or tourism
323  opportunities thereby promoting the general welfare of
324  this state and its residents.
325  (12) Prior to the issuance of bonds under this subsection,
326  the committee shall certify to the Economic Development
327  Authority a list of those certified projects that will receive
328  funds from the proceeds of the bonds. Once certified, the
329  list may not thereafter be altered or amended other than
330  by legislative enactment.
331  (13) If any proceeds from sale of bonds remain after
332  paying costs and making grants and loans as provided in
333  this subsection, the surplus may be deposited in an
334  account in the State Treasury known as the Economic
335  Development Project Bridge Loan Fund administered by
336  the Economic Development Authority created in article
337  fifteen, chapter thirty-one 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 fulfill-
ment 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.

(f) If the commission receives revenues in an amount that
is not sufficient to fully comply with the requirements of
subsections (b), (c), (d) and (i) of this section, the commis-
sion 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.

(g) Each fiscal year, the commission shall, after meeting
the requirements of subsections (b), (c), (d) and (i) of this
section and after transferring 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 $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 subsection
(d) (e) of this section or for the School Building Authority,
374 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 section twenty-one, article twenty-one, chapter eleven 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.
(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 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, forty-six 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-mutual tickets established on behalf of a thorough-
bred 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 West Virginia racing commission special account - greyhound breeding development fund.

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community-Based Service Fund; State Debt Reduction Fund; distribution of funds.

(a)(1) The special fund in the State Treasury known as the West Virginia Lottery Racetrack Table Games Fund is continued and all tax collected under this article shall be deposited with the State Treasurer and placed in the West Virginia Lottery Racetrack Table Games Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund.

(2) Notwithstanding any provision of this article to the contrary, all racetrack table games license fees received by the commission pursuant to section eight of this article shall be deposited into the Community-Based Service Fund which is continued in the State Treasury. Moneys of the fund shall be expended by the Bureau of Senior Services upon appropriation of the Legislature solely for the purpose of enabling the aged and disabled citizens of
this state to maintain their residency in the community-based setting through the provision of home and community-based services.

(b) From the gross amounts deposited into the Racetrack Table Games Fund pursuant to subsection (a) of this section, the commission shall:

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection (e) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensee for the payment of regular racetrack purses, the amount being divided on a pro rata basis between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound racetracks with West Virginia Lottery table games to the special funds established by each greyhound racetrack table games licensees for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to 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. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack. The amounts transferred to these funds may not be used for the benefit of any person or activity
other than at or associated with a racetrack table games licensee;

(4) Transfer one percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games are located. The one percent transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from each county's racetrack: Provided, That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the one percent of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements;

(5) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the governing bodies of municipalities within counties where racetracks with West Virginia Lottery table games are located, which shall be allocated as follows:

(A) One half of the amounts transferred under this subdivision shall be allocated to the municipalities within each county having a racetrack table games licensee, based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population: Provided, That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the
authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of seventy-five percent of the total distribution under this paragraph for the county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section; and

(B) One half of the amounts transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, having a racetrack table games licensee based on each municipality's population determined at the most recent United States decennial census of population: Provided, That: (i) A municipality which received funds above its pro rata share pursuant to subpart (iii), paragraph (A) of this subdivision may not receive an allocation under this paragraph; (ii) for each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of twenty-five percent of the total transfers under this paragraph: Provided, however, That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the two percent of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements;
(6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies of municipalities in which a racetrack table games licensee is located. The municipalities shall each receive an equal share of the total amount allocated under this subdivision: Provided, That distribution under this subdivision may not be made to any municipality which did not have a licensed racetrack within its municipal boundaries as they existed on January 1, 2007: Provided, however, That if no racetrack table games licensee is located within a municipality, a transfer may not be made under this subdivision; and

(7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

(c) Beginning with the fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery racetrack table games under this article, subsection (b) of this section shall be superseded and replaced by this subsection for distribution of the balances in the fund established by subsection (a) of this section. From the gross amounts deposited into the fund, the commission shall:

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection(e) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensee for the payment of regular racetrack purses, the amount being divided on a pro rata basis between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound racetracks with West
Virginia Lottery table games to the special funds established by each greyhound racetrack table games licensee for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to 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. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games are located. The money transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from each county’s racetrack: Provided, That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive one half of that county’s share of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements;
(5) Transfer three percent of the adjusted gross receipts from each licensed racetrack to the governing bodies of municipalities within counties where racetracks with West Virginia Lottery table games are located, which shall be allocated as follows:

(A) One half of the money transferred by this subdivision shall be allocated to the municipalities within each county, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population: Provided, That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of seventy-five percent of the total distribution under this paragraph for the county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section.

(B) One half of the money transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on each municipality's population determined at the most recent United States decennial census of population: Provided, That: (i) A municipality which received funds above its pro rata share pursuant to
(iii), paragraph (A) of this subdivision shall not receive an allocation under this paragraph; (ii) for each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of twenty-five percent of the total transfers under this paragraph.

(C) Notwithstanding the provisions of paragraphs (A) and (B) of this subdivision, when a racetrack is located in a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, the county board of education shall receive two thirds of the share of adjusted gross receipts from West Virginia Lottery table games from the racetrack in the county as provided in this subdivision and the municipalities within the county shall share the remaining one third of the total amount allocated as provided in this paragraph. The municipal one-third share shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population. All money transferred under this paragraph shall be used by the county board of education and by the municipalities for the purpose of capital improvements;

(6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies of municipalities in which a racetrack table games licensee is located. The municipalities shall each receive an equal share of the total amount allocated under this subdivision: Provided, That distribution under this subdivision may not be made to
any municipality that did not have a licensed racetrack
within its municipal boundaries as they existed on January 1, 2007: Provided, however, That if no racetrack table
games licensee is located within a municipality, a transfer
may not be made under this subdivision; and

(7) Distribute the remaining amounts, hereinafter
referred to as the net amounts in the Racetrack Table
Games Funds, in accordance with the provisions of
subsection (d) of this section.

(d) From the net amounts in the Racetrack Table Games
Fund, the commission shall:

(1) Transfer seventy-six percent to the State Debt
Reduction Fund which is hereby continued in the State
Treasury. Moneys of the fund shall be expended solely for
the purpose of accelerating the reduction of existing
unfunded liabilities and existing bond indebtedness of the
state and shall be expended or transferred only upon
appropriation of the Legislature;

(2) Transfer four percent, divided pro rata based on
relative adjusted gross receipts from the individual
licensed racetracks for and on behalf of all employees of
each licensed racing association, into a special fund to be
established by the Racing Commission to be used for
payment into the pension plan for all employees of each
licensed racing association;

(3) Transfer ten percent, to be divided and paid in equal
shares, to each county commission in the state that is not
eligible to receive a distribution under subdivision (4),
subsection (b) of this section: Provided, That funds
transferred to county commissions under this subdivision
shall be used only to pay regional jail expenses and the
costs of infrastructure improvements and other capital
improvements; and
(4) Transfer ten percent, to be divided and paid in equal shares, to the governing bodies of each municipality in the state that is not eligible to receive a distribution under subdivisions (5) and (6), subsection (b) of this section: Provided, That funds transferred to municipalities under this subdivision shall be used only to pay for debt reducton in municipal police and fire pension funds and the costs of infrastructure improvements and other capital improvements.

(e) All expenses of the commission incurred in the administration and enforcement of this article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-enforcement agencies for services performed at the request of the commission pursuant to this article. The commission's expenses associated with a particular racetrack with authorized table games under this article may not exceed three percent of the total annual adjusted gross receipts received from that licensee's operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee's operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. However, for the fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery racetrack table games under this article and for the fiscal year thereafter, the commission's expenses associated with a particular racetrack with authorized table games under this article may not exceed four percent of the total annual adjusted gross receipts received from that licensee's operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee's operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. These expenses shall either be allocated to the racetrack with West Virginia Lottery table games for
which the expense is incurred, if practicable, or be treated as general expenses related to all racetrack table games facilities and be allocated pro rata among the racetrack table games facilities based on the ratio that annual adjusted gross receipts from operation of table games at each racetrack with West Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table games at all racetracks with West Virginia Lottery table games during the fiscal year of the state. From this allowance, the commission shall transfer at least $100,000 but not more than $500,000 into the Compulsive Gambling Treatment Fund created in section nineteen, article twenty-two-a of this chapter.
Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Speaker House of Delegates

The within is approved this the __ day of __, 2010.