WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED

Senate Bill No. 612
(By Senators Plymale, Unger, Bowman, D. Facemire, Minard, Snyder, Kessler, Wells, Yost, Jenkins and Prezioso)

[Passed March 13, 2010; in effect from passage.]
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(BY SENATORS PLYMALE, UNGER, BOWMAN, D. FACEMIRE, MINARD, SNYDER, KESSLER, WELLS, YOST, JENKINS AND PREZIOSO)

[Passed March 13, 2010; in effect from passage.]

AN ACT to amend and reenact §29-22-18 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29-22-18c; and to amend and reenact §31-15-16a of said code, all relating to funding of higher education capital projects; authorizing the Governor to certify certain revised lists of capital improvement projects; authorizing the Economic Development Authority to issue bonds in certain amounts and for certain purposes; specifying that the Economic Development Authority may grant second-in-priority and third-in-priority liens on proceeds of the State Lottery Fund up to a certain amount in favor of the bonds; increasing the amount paid annually to the Higher Education Improvement Fund from $10 million to $15 million; and making other technical corrections."

Be it enacted by the Legislature of West Virginia:

That §29-22-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended
by adding thereto a new section, designated §29-22-18c; and
that §31-15-16a of said code be amended and reenacted, all to
read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS
AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State Lottery Fund; appropriations and deposits;
not part of general revenue; no transfer of state
funds after initial appropriation; use and repay-
ment of initial appropriation; allocation of fund
for prizes, net profit and expenses; surplus; State
Lottery Education Fund; State Lottery Senior
Citizens Fund; allocation and appropriation of
net profits.

(a) There is continued a Special Revenue Fund in the
State Treasury which shall be designated and known as
the State Lottery Fund. The fund consists of all appropri-
ations to the fund and all interest earned from investment
of the fund and any gifts, grants or contributions received
by the fund. All revenues received from the sale of lottery
tickets, materials and games shall be deposited with the
State Treasurer and placed into the State Lottery Fund.
The revenue shall be disbursed in the manner provided in
this section for the purposes stated in this section and
shall not be treated by the Auditor and Treasurer as part
of the general revenue of the state.

(b) No appropriation, loan or other transfer of state
funds may be made to the commission or Lottery Fund
after the initial appropriation.

(c) A minimum annual average of forty-five percent of
the gross amount received from each lottery shall be
allocated and disbursed as prizes.
(d) Not more than fifteen percent of the gross amount received from each lottery may be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed $250,000. On a monthly basis, the director shall report to the Joint Committee on Government and Finance of the Legislature any surplus in excess of $250,000 and remit to the State Treasurer the entire amount of those surplus funds in excess of $250,000 which shall be allocated as net profit.

(f) After first satisfying the requirements for funds dedicated to the School Building Debt Service Fund in subsection (h) of this section to retire the bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, then satisfying the requirements for funds dedicated to the Education, Arts, Sciences and Tourism Debt Service Fund, in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code and section sixteen-a, article fifteen, chapter thirty-one of this code, and then satisfying the requirements for funds dedicated to the Community and Technical College Capital Improvement Fund in subsection (j) of this section to retire the bonds for community and technical college capital improvements authorized to be issued pursuant to section eight, article ten, chapter eighteen-b of this code, any and all remaining funds in the State Lottery Fund shall be made available to pay debt service in connection with any revenue bonds issued pursuant to section eighteen-a of this article, if and to the extent needed for
such purpose from time to time. The Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The Lottery Education Fund created in subsection (g) of this section; (2) the School Construction Fund created in section six, article nine-d, chapter eighteen of this code; (3) the Lottery Senior Citizens Fund created in subsection (k) of this section; and (4) the Division of Natural Resources created in section three, article one, chapter twenty of this code and the West Virginia Development Office as created in section one, article two, chapter five-b of this code, in accordance with subsection (i) of this section. No transfer to any account other than the School Building Debt Service Fund, the Education, Arts, Sciences and Tourism Debt Service Fund, the Community and Technical College Capital Improvement Fund, the Economic Development Project Fund created under section eighteen-a, article twenty-two, chapter twenty-nine of this code, or any fund from which debt service is paid under subsection (c), section eighteen-a of this article may be made in any period of time in which a default exists in respect to debt service on bonds issued by the School Building Authority, the State Building Commission, the Higher Education Policy Commission, the Economic Development Authority or which are otherwise secured by lottery proceeds. No additional transfer may be made to any account other than the School Building Debt Service Account and the Education, Arts, Sciences and Tourism Debt Service Fund, and the Community and Technical College Capital Improvement Fund, when net profits for the preceding twelve months are not at least equal to one hundred fifty percent of debt service on bonds issued by the School Building Authority, the State Building Commission, the Higher Education Policy Commission and the Economic Development Authority which are secured by net profits.
There is continued a special revenue fund in the State Treasury which shall be designated and known as the Lottery Education Fund. The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the Lottery Education Fund by the State Treasurer. The Lottery Education Fund shall also consist of all interest earned from investment of the Lottery Education Fund and any other appropriations, gifts, grants, contributions or moneys received by the Lottery Education Fund from any source. The revenues received or earned by the Lottery Education Fund shall be disbursed in the manner provided below and may not be treated by the Auditor and Treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the Lottery Education Fund to the state system of public and higher education for these educational programs it considers beneficial to the citizens of this state.

On or before the twenty-eighth day of each month, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the School Building Debt Service Fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after April 1, 1994, as certified to the lottery director in accordance with the provisions of section six, article nine-d, chapter eighteen of this code. In no event shall the monthly amount allocated exceed $1.8 million nor may the total allocation of the net profits to be paid into the School Building Debt Service Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or $18 million. In
the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the School Debt Service Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed $27 million annually, may be granted by the School Building Authority in favor of the bonds it issues which are secured by the net lottery profits. When the school improvement bonds, secured by profits from the lottery and deposited in the School Debt Service Fund, mature, the profits shall become available for debt service on additional school improvement bonds as a first priority from the net profits of the lottery or may at the discretion of the authority be placed into the School Construction Fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code.

(i) Beginning on or before July 28, 1996, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds issued in accordance with section eleven-a, article six, chapter five or section sixteen-a, article fifteen, chapter thirty-one of this code are outstanding, the lottery director shall allocate to the Education, Arts, Sciences and Tourism Debt Service Fund, created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a second priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after April 1, 1996, as certified to the lottery director in accordance with the provisions of section eleven-a, article six, chapter five or section sixteen-a, article fifteen, chapter
thirty-one of this code. In no event may the monthly amount allocated exceed $1 million nor may the total allocation paid into the Education, Arts, Sciences and Tourism Debt Service Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or $10 million. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the Education, Arts, Sciences and Tourism Debt Service Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A second-in-priority lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed $15 million annually, may be granted by the State Building Commission or the Economic Development Authority in favor of the bonds issued in accordance with section eleven-a, article six, chapter five or section sixteen-a, article fifteen, chapter thirty-one of this code.

(j) Beginning on or before July 28, 2008, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the Community and Technical College Capital Improvement Fund, created pursuant to section eight, article ten, chapter eighteen-b of this code, as a third priority from net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued or to be issued, on or after April 1, 2008, as certified by the lottery director in accordance with the provisions of that section. In no event may the monthly amount allocated exceed $500,000 nor may the total allocation paid to the Commu-
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200 nity and Technical Capital Improvement Fund, as pro-
201 vided in this section, in any fiscal year exceed the lesser of
202 the principal and interest requirements certified to the
203 lottery director or $5 million. In the event there are
204 insufficient funds available in any month to transfer the
205 amount required pursuant to this subsection to the
206 Community and Technical College Capital Improvement
207 Fund, the deficiency shall be added to the amount trans-
208 ferred in the next succeeding month in which revenues are
209 available to transfer the deficiency.

210 (1) A third-in-priority lien on the proceeds of the State
211 Lottery Fund up to a maximum amount equal to the
212 projected annual principal, interest and coverage ratio
213 requirements, not exceeding $7.5 million annually, may be
214 granted by the Higher Education Policy Commission in
215 favor of the bonds it issues which are secured by the net
216 lottery profits.

217 (2) When the community and technical college capital
218 improvement bonds secured by profits from the lottery
219 and deposited in the Community and Technical College
220 Capital Improvement Fund mature, the profits shall
221 become available for debt service on additional commu-
222 nity and technical college capital improvement bonds as a
223 third priority from the net profits of the lottery.

224 (3) The Council for Community and Technical College
225 Education shall approve all community and technical
226 college capital improvement projects prior to the distribu-
227 tion of bond proceeds.

228 (4) Prior to the issuance of community and technical
229 college revenue bonds pursuant to this subsection, the
230 lottery director shall transfer $5 million to the Community
231 and Technical College Improvement Fund, less any
232 amounts needed for initial debt service payments, to be
233 used on a cash basis for community and technical college
234 capital improvements and capital projects.
(k) There is continued a special revenue fund in the State Treasury which shall be designated and known as the Lottery Senior Citizens Fund. The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the Lottery Senior Citizens Fund by the State Treasurer. The Lottery Senior Citizens Fund shall also consist of all interest earned from investment of the Lottery Senior Citizens Fund and any other appropriations, gifts, grants, contributions or moneys received by the Lottery Senior Citizens Fund from any source. The revenues received or earned by the Lottery Senior Citizens Fund shall be distributed in the manner provided below and may not be treated by the Auditor or Treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the Lottery Senior Citizens Fund to any senior citizens medical care and other programs it considers beneficial to the citizens of this state.

(l) The Division of Natural Resources and the West Virginia Development Office, as appropriated by the Legislature, may use the amounts allocated to them pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the authority granted to it under article five, chapter twenty of this code; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the Division of Natural Resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.
§29-22-18c. Increase in allocation to Higher education Improvement Fund from State Excess Lottery Revenue Fund.

1 Notwithstanding any provision of subsection (d), section eighteen-a of this article to the contrary, the deposit of $10 million into the Higher Education Improvement Fund for Higher Education set forth above is for the fiscal year beginning July 1, 2009, only. For the fiscal year beginning July 1, 2010, and subsequent fiscal years, the commission shall deposit $15 million into the Higher Education Improvement Fund for Higher Education.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-16a. Bonds for capital improvements at institutions of higher education, state parks, the State Capitol complex, other state facilities or tourism sites; limitations; authority to issue revenue bonds; use of funds to pay for projects.

1 (a)(1) The economic development authority shall, in accordance with the provisions of this article, issue revenue bonds from time to time, to pay for a portion of the cost of constructing, equipping, improving or maintaining capital improvement projects under this section or to refund the bonds, at the discretion of the authority. The principal amount of the bonds issued under this section shall not exceed, in the aggregate, an amount that, in the opinion of the authority, is necessary to provide sufficient funds for achievement of the purposes of this section and is within the limits of moneys pledged for the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding bonds authorized by this section. Any revenue bonds issued on or after the effective date of this section which are secured by lottery 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 Education, Arts, Sciences and Tourism Debt Service Fund established in section eleven-a, article six, chapter five and continued by this section.

(2) 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. The authority may further provide in the trust agreement for priorities on the revenues paid into the Education, Arts, Sciences and Tourism Debt Service Fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section or section eleven-a, article six, chapter five of this code. The bonds issued pursuant to this section shall be separate from all other bonds which may be or have been issued from time to time under the provisions of section eleven-a, article six, chapter five of this code. The Education, Arts, Sciences and Tourism Debt Service Fund shall be pledged solely for the repayment of bonds issued pursuant to this section and section eleven-a, article six, chapter five of this code. On or prior to May 1 of each year, commencing May 1, 2010, the authority shall certify to the state lottery director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds or refunding revenue bonds issued pursuant to this section, and for which moneys deposited in the Education, Arts, Sciences and Tourism Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

(3) After the authority has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant
to this section, any balance remaining in the Education, Arts, Sciences and Tourism Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this section 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.

(b) The authority shall expend sixty percent of the bond proceeds, net of issuance costs, reserve funds and refunding costs, for certified capital improvement projects at state institutions of higher education. The Higher Education Policy Commission shall submit a proposed list of capital improvement projects to the Governor on or before January 1, 2010. Thereafter, the Governor shall certify to the authority on or before February 1, 2010, a list of those capital improvement projects at state institutions of higher education that will receive funds from the proceeds of bonds issued pursuant to this section.

At any time prior to the issuance of bonds under this section, the Governor may certify to the authority a revised list of capital improvement projects at state institutions of higher education that will receive funds from the proceeds of bonds issued pursuant to this section. The Governor shall consult with the Higher Education Policy Commission prior to certifying a revised list of capital improvement projects to the authority.

(c) The authority shall expend the balance of the bond proceeds for certified projects at state parks, the capitol complex, other state facilities or tourism sites.

(1) A committee comprised of the secretary of the Department of Administration, the director of the Division of Natural Resources, the director of the West Virginia Development Office and a representative of the capitol
building commission, other than the secretary of the Department of Administration, who shall be selected by the capitol building commission, shall submit a proposed list of capital improvement projects to the Governor on or before January 1, 2010. Thereafter, the Governor shall certify to the authority on or before February 1, 2010, a list of those capital improvement projects at state parks, the State Capitol complex, other state facilities or tourism sites that will receive funds from the proceeds of bonds issued pursuant to this section.

(2) At any time prior to the issuance of bonds under this section, the Governor may certify to the authority a revised list of capital improvement projects at state parks, the State Capitol Complex, other state facilities or tourism sites that will receive funds from the proceeds of bonds issued pursuant to this section. The Governor shall consult with the committee established by this subsection prior to certifying a revised list of capital improvement projects to the authority.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the Day of _, 2010.

Governor