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WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SB
612

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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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[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 repayment 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.

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

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

16 (c) A minimum annual average of forty-five percent of
17 the gross amount received from each lottery shall be
18 allocated and disbursed as prizes.

19 (d) Not more than fifteen percent of the gross amount
20 received from each lottery may be allocated to and may be
21 disbursed as necessary for fund operation and administra-
22 tion expenses.

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

35 (f) After first satisfying the requirements for funds
36 dedicated to the School Building Debt Service Fund in
37 subsection (h) of this section to retire the bonds authorized
38 to be issued pursuant to section eight, article nine-d,
39 chapter eighteen of this code, then satisfying the require-
40 ments for funds dedicated to the Education, Arts, Sciences
41 and Tourism Debt Service Fund, in subsection (i) of this
42 section to retire the bonds authorized to be issued pursu-
43 ant to section eleven-a, article six, chapter five of this code
44 and section sixteen-a, article fifteen, chapter thirty-one of
45 this code, and then satisfying the requirements for funds
46 dedicated to the Community and Technical College
47 Capital Improvement Fund in subsection (j) of this section
48 to retire the bonds for community and technical college
49 capital improvements authorized to be issued pursuant to
50 section eight, article ten, chapter eighteen-b of this code,
51 any and all remaining funds in the State Lottery Fund
52 shall be made available to pay debt service in connection
53 with any revenue bonds issued pursuant to section
54 eighteen-a of this article, if and to the extent needed for

55 such purpose from time to time. The Legislature shall
56 annually appropriate all of the remaining amounts
57 allocated as net profits in subsection (e) of this section, in
58 such proportions as it considers beneficial to the citizens
59 of this state, to: (1) The Lottery Education Fund created in
60 subsection (g) of this section; (2) the School Construction
61 Fund created in section six, article nine-d, chapter eigh-
62 teen of this code; (3) the Lottery Senior Citizens Fund
63 created in subsection (k) of this section; and (4) the
64 Division of Natural Resources created in section three,
65 article one, chapter twenty of this code and the West
66 Virginia Development Office as created in section one,
67 article two, chapter five-b of this code, in accordance with
68 subsection (l) of this section. No transfer to any account
69 other than the School Building Debt Service Fund, the
70 Education, Arts, Sciences and Tourism Debt Service Fund,
71 the Community and Technical College Capital Improve-
72 ment Fund, the Economic Development Project Fund
73 created under section eighteen-a, article twenty-two,
74 chapter twenty-nine of this code, or any fund from which
75 debt service is paid under subsection (c), section eighteen-
76 a of this article may be made in any period of time in
77 which a default exists in respect to debt service on bonds
78 issued by the School Building Authority, the State Build-
79 ing Commission, the Higher Education Policy Commission,
80 the Economic Development Authority or which are
81 otherwise secured by lottery proceeds. No additional
82 transfer may be made to any account other than the
83 School Building Debt Service Account and the Education,
84 Arts, Sciences and Tourism Debt Service Fund, and the
85 Community and Technical College Capital Improvement
86 Fund, when net profits for the preceding twelve months
87 are not at least equal to one hundred fifty percent of debt
88 service on bonds issued by the School Building Authority,
89 the State Building Commission, the Higher Education
90 Policy Commission and the Economic Development
91 Authority which are secured by net profits.

92 (g) There is continued a special revenue fund in the State
93 Treasury which shall be designated and known as the
94 Lottery Education Fund. The fund shall consist of the
95 amounts allocated pursuant to subsection (f) of this
96 section, which shall be deposited into the Lottery Educa-
97 tion Fund by the State Treasurer. The Lottery Education
98 Fund shall also consist of all interest earned from invest-
99 ment of the Lottery Education Fund and any other
100 appropriations, gifts, grants, contributions or moneys
101 received by the Lottery Education Fund from any source.
102 The revenues received or earned by the Lottery Education
103 Fund shall be disbursed in the manner provided below and
104 may not be treated by the Auditor and Treasurer as part of
105 the general revenue of the state. Annually, the Legislature
106 shall appropriate the revenues received or earned by the
107 Lottery Education Fund to the state system of public and
108 higher education for these educational programs it
109 considers beneficial to the citizens of this state.

110 (h) On or before the twenty-eighth day of each month, as
111 long as revenue bonds or refunding bonds are outstanding,
112 the lottery director shall allocate to the School Building
113 Debt Service Fund created pursuant to the provisions of
114 section six, article nine-d, chapter eighteen of this code, as
115 a first priority from the net profits of the lottery for the
116 preceding month, an amount equal to one tenth of the
117 projected annual principal, interest and coverage ratio
118 requirements on any and all revenue bonds and refunding
119 bonds issued, or to be issued, on or after April 1, 1994, as
120 certified to the lottery director in accordance with the
121 provisions of section six, article nine-d, chapter eighteen
122 of this code. In no event shall the monthly amount
123 allocated exceed \$1.8 million nor may the total allocation
124 of the net profits to be paid into the School Building Debt
125 Service Fund, as provided in this section, in any fiscal year
126 exceed the lesser of the principal and interest require-
127 ments certified to the lottery director or \$18 million. In

128 the event there are insufficient funds available in any
129 month to transfer the amount required to be transferred
130 pursuant to this subsection to the School Debt Service
131 Fund, the deficiency shall be added to the amount trans-
132 ferred in the next succeeding month in which revenues are
133 available to transfer the deficiency. A lien on the proceeds
134 of the State Lottery Fund up to a maximum amount equal
135 to the projected annual principal, interest and coverage
136 ratio requirements, not to exceed \$27 million annually,
137 may be granted by the School Building Authority in favor
138 of the bonds it issues which are secured by the net lottery
139 profits. When the school improvement bonds, secured by
140 profits from the lottery and deposited in the School Debt
141 Service Fund, mature, the profits shall become available
142 for debt service on additional school improvement bonds
143 as a first priority from the net profits of the lottery or may
144 at the discretion of the authority be placed into the School
145 Construction Fund created pursuant to the provisions of
146 section six, article nine-d, chapter eighteen of this code.

147 (i) Beginning on or before July 28, 1996, and continuing
148 on or before the twenty-eighth day of each succeeding
149 month thereafter, as long as revenue bonds or refunding
150 bonds issued in accordance with section eleven-a, article
151 six, chapter five or section sixteen-a, article fifteen,
152 chapter thirty-one of this code are outstanding, the lottery
153 director shall allocate to the Education, Arts, Sciences and
154 Tourism Debt Service Fund, created pursuant to the
155 provisions of section eleven-a, article six, chapter five of
156 this code, as a second priority from the net profits of the
157 lottery for the preceding month, an amount equal to one
158 tenth of the projected annual principal, interest and
159 coverage ratio requirements on any and all revenue bonds
160 and refunding bonds issued, or to be issued, on or after
161 April 1, 1996, as certified to the lottery director in accor-
162 dance with the provisions of section eleven-a, article six,
163 chapter five or section sixteen-a, article fifteen, chapter

164 thirty-one of this code. In no event may the monthly
165 amount allocated exceed \$1 million nor may the total
166 allocation paid into the Education, Arts, Sciences and
167 Tourism Debt Service Fund, as provided in this section, in
168 any fiscal year exceed the lesser of the principal and
169 interest requirements certified to the lottery director or
170 \$10 million. In the event there are insufficient funds
171 available in any month to transfer the amount required
172 pursuant to this subsection to the Education, Arts, Sci-
173 ences and Tourism Debt Service Fund, the deficiency shall
174 be added to the amount transferred in the next succeeding
175 month in which revenues are available to transfer the
176 deficiency. A second-in-priority lien on the proceeds of
177 the State Lottery Fund up to a maximum amount equal to
178 the projected annual principal, interest and coverage ratio
179 requirements, not to exceed \$15 million annually, may be
180 granted by the State Building Commission or the Eco-
181 nomic Development Authority in favor of the bonds issued
182 in accordance with section eleven-a, article six, chapter
183 five or section sixteen-a, article fifteen, chapter thirty-one
184 of this code.

185 (j) Beginning on or before July 28, 2008, and continuing
186 on or before the twenty-eighth day of each succeeding
187 month thereafter, as long as revenue bonds or refunding
188 bonds are outstanding, the lottery director shall allocate
189 to the Community and Technical College Capital Improve-
190 ment Fund, created pursuant to section eight, article ten,
191 chapter eighteen-b of this code, as a third priority from
192 net profits of the lottery for the preceding month, an
193 amount equal to one tenth of the projected annual princi-
194 pal, interest and coverage ratio requirements on any and
195 all revenue bonds and refunding bonds issued or to be
196 issued, on or after April 1, 2008, as certified by the lottery
197 director in accordance with the provisions of that section.
198 In no event may the monthly amount allocated exceed
199 \$500,000 nor may the total allocation paid to the Commu-

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.

235 (k) There is continued a special revenue fund in the State
236 Treasury which shall be designated and known as the
237 Lottery Senior Citizens Fund. The fund shall consist of
238 the amounts allocated pursuant to subsection (f) of this
239 section, which amounts shall be deposited into the Lottery
240 Senior Citizens Fund by the State Treasurer. The Lottery
241 Senior Citizens Fund shall also consist of all interest
242 earned from investment of the Lottery Senior Citizens
243 Fund and any other appropriations, gifts, grants, contribu-
244 tions or moneys received by the Lottery Senior Citizens
245 Fund from any source. The revenues received or earned by
246 the Lottery Senior Citizens Fund shall be distributed in
247 the manner provided below and may not be treated by the
248 Auditor or Treasurer as part of the general revenue of the
249 state. Annually, the Legislature shall appropriate the
250 revenues received or earned by the Lottery Senior Citizens
251 Fund to any senior citizens medical care and other pro-
252 grams it considers beneficial to the citizens of this state.

253 (l) The Division of Natural Resources and the West
254 Virginia Development Office, as appropriated by the
255 Legislature, may use the amounts allocated to them
256 pursuant to subsection (f) of this section for one or more of
257 the following purposes: (1) The payment of any or all of
258 the costs incurred in the development, construction,
259 reconstruction, maintenance or repair of any project or
260 recreational facility, as these terms are defined in section
261 four, article five, chapter twenty of this code, pursuant to
262 the authority granted to it under article five, chapter
263 twenty of this code; (2) the payment, funding or refunding
264 of the principal of, interest on or redemption premiums on
265 any bonds, security interests or notes issued by the parks
266 and recreation section of the Division of Natural Re-
267 sources under article five, chapter twenty of this code; or
268 (3) the payment of any advertising and marketing expenses
269 for the promotion and development of tourism or any
270 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
2 eighteen-a of this article to the contrary, the deposit of \$10
3 million into the Higher Education Improvement Fund for
4 Higher Education set forth above is for the fiscal year
5 beginning July 1, 2009, only. For the fiscal year beginning
6 July 1, 2010, and subsequent fiscal years, the commission
7 shall deposit \$15 million into the Higher Education
8 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
2 accordance with the provisions of this article, issue
3 revenue bonds from time to time, to pay for a portion of
4 the cost of constructing, equipping, improving or main-
5 taining capital improvement projects under this section or
6 to refund the bonds, at the discretion of the authority. The
7 principal amount of the bonds issued under this section
8 shall not exceed, in the aggregate, an amount that, in the
9 opinion of the authority, is necessary to provide sufficient
10 funds for achievement of the purposes of this section and
11 is within the limits of moneys pledged for the repayment
12 of the principal, interest and redemption premium, if any,
13 on any revenue bonds or refunding bonds authorized by
14 this section. Any revenue bonds issued on or after the
15 effective date of this section which are secured by lottery
16 proceeds shall mature at a time or times not exceeding

17 thirty years from their respective dates. The principal of,
18 and the interest and redemption premium, if any, on the
19 bonds shall be payable solely from the Education, Arts,
20 Sciences and Tourism Debt Service Fund established in
21 section eleven-a, article six, chapter five and continued by
22 this section.

23 (2) All amounts deposited in the fund shall be pledged to
24 the repayment of the principal, interest and redemption
25 premium, if any, on any revenue bonds or refunding
26 revenue bonds authorized by this section. The authority
27 may further provide in the trust agreement for priorities
28 on the revenues paid into the Education, Arts, Sciences
29 and Tourism Debt Service Fund as may be necessary for
30 the protection of the prior rights of the holders of bonds
31 issued at different times under the provisions of this
32 section or section eleven-a, article six, chapter five of this
33 code. The bonds issued pursuant to this section shall be
34 separate from all other bonds which may be or have been
35 issued from time to time under the provisions of section
36 eleven-a, article six, chapter five of this code. The Educa-
37 tion, Arts, Sciences and Tourism Debt Service Fund shall
38 be pledged solely for the repayment of bonds issued
39 pursuant to this section and section eleven-a, article six,
40 chapter five of this code. On or prior to May 1 of each
41 year, commencing May 1, 2010, the authority shall certify
42 to the state lottery director the principal and interest and
43 coverage ratio requirements for the following fiscal year
44 on any revenue bonds or refunding revenue bonds issued
45 pursuant to this section, and for which moneys deposited
46 in the Education, Arts, Sciences and Tourism Debt Service
47 Fund have been pledged, or will be pledged, for repayment
48 pursuant to this section.

49 (3) After the authority has issued bonds authorized by
50 this section, and after the requirements of all funds have
51 been satisfied, including coverage and reserve funds
52 established in connection with the bonds issued pursuant

53 to this section, any balance remaining in the Education,
54 Arts, Sciences and Tourism Debt Service Fund may be
55 used for the redemption of any of the outstanding bonds
56 issued under this section which, by their terms, are then
57 redeemable or for the purchase of the outstanding bonds
58 at the market price, but not to exceed the price, if any, at
59 which redeemable, and all bonds redeemed or purchased
60 shall be immediately canceled and shall not again be
61 issued.

62 (b) The authority shall expend sixty percent of the bond
63 proceeds, net of issuance costs, reserve funds and refund-
64 ing costs, for certified capital improvement projects at
65 state institutions of higher education. The Higher Educa-
66 tion Policy Commission shall submit a proposed list of
67 capital improvement projects to the Governor on or before
68 January 1, 2010. Thereafter, the Governor shall certify to
69 the authority on or before February 1, 2010, a list of those
70 capital improvement projects at state institutions of
71 higher education that will receive funds from the proceeds
72 of bonds issued pursuant to this section.

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

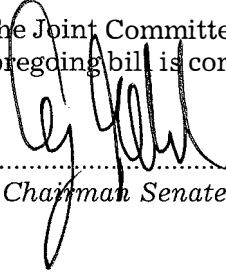
81 (c) The authority shall expend the balance of the bond
82 proceeds for certified projects at state parks, the capitol
83 complex, other state facilities or tourism sites.

84 (1) A committee comprised of the secretary of the
85 Department of Administration, the director of the Division
86 of Natural Resources, the director of the West Virginia
87 Development Office and a representative of the capitol

88 building commission, other than the secretary of the
89 Department of Administration, who shall be selected by
90 the capitol building commission, shall submit a proposed
91 list of capital improvement projects to the Governor on or
92 before January 1, 2010. Thereafter, the Governor shall
93 certify to the authority on or before February 1, 2010, a
94 list of those capital improvement projects at state parks,
95 the State Capitol complex, other state facilities or tourism
96 sites that will receive funds from the proceeds of bonds
97 issued pursuant to this section.

98 (2) At any time prior to the issuance of bonds under this
99 section, the Governor may certify to the authority a
100 revised list of capital improvement projects at state parks,
101 the State Capitol Complex, other state facilities or tourism
102 sites that will receive funds from the proceeds of bonds
103 issued pursuant to this section. The Governor shall
104 consult with the committee established by this subsection
105 prior to certifying a revised list of capital improvement
106 projects to the authority.


The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

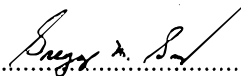

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Chairman Senate Committee

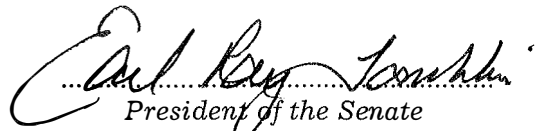

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Chairman House Committee


Originated in the Senate.

In effect 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 *6th*
Day of *April*, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 30 2010

Time

4:20 pm