WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2011

ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 245

(SENATORS KESSLER (ACTING PRESIDENT), SNYDER, BROWNING, FOSTER, LAIRD, YOST, STOLLINGS, BEACH, FANNING, UNGER, WILLS, BARNES, MILLER, EDGELL, MCCABE, PLYMALE, KLEMPA AND WILLIAMS, ORIGINAL SPONSORS)

[PASSED MARCH 12, 2011; IN EFFECT NINETY DAYS FROM PASSAGE.]
Senate Bill No. 245

(Senators Kessler (Acting President), Snyder, Browning, Foster, Laird, Yost, Stollings, Beach, Fanning, Unger, Wills, Barnes, Miller, Edgell, McCabe, Plymale, Klempa and Williams, original sponsors)

[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §22C-1-27 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29-22-18d; to amend and reenact §31-15A-9 of said code; and to amend said code by adding thereto a new section, designated §31-15A-17b, all relating to protection of the watersheds of the Chesapeake Bay and the Greenbrier River; increasing the bonding authority of the Water Development Authority for limited purposes; directing an annual amount of excess lottery revenue to newly created debt service fund to pay costs of and debt service on bonds; providing for the issuance of bonds when watershed
compliance projects have been approved; establishing deadline for certain publicly owned wastewater facilities to submit ten-year projected capital funding plan to the West Virginia Infrastructure and Jobs Development Council for review and approval; providing eligibility for funding; requiring Water Development Authority to report to Joint Committee on Government and Finance; establishing distribution guidelines for grants to eligible projects; making eligible projects with funding approved before a certain date eligible for grant funding to the extent permitted by law and bond covenants; and limiting eligibility of grant funding.

Be it enacted by the Legislature of West Virginia:

That §22C-1-27 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 §29-22-18d; that §31-15A-9 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §31-15A-17b, all to read as follows:

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-27. Authorized limit on borrowing.

(a) The aggregate principal amount of bonds and notes issued by the authority may not exceed $500 million outstanding at any one time: Provided, That before the authority issues bonds and notes in excess of $400 million the Legislature must pass a resolution authorizing this action: Provided, however, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any refunding bonds or notes, shall be excluded.
In addition to the amounts authorized by subsection (a) of this section, the Water Development Authority may issue, pursuant to section seventeen-b, article fifteen-a, chapter thirty-one of this code, bonds or notes in the aggregate principal amount not to exceed $180 million. This authorization is for the limited purpose of providing grants for capital improvements for publicly owned wastewater treatment facilities with an authorized permitted flow of four hundred thousand gallons per day or more which are required to maintain compliance with certain standards for discharges into watersheds in accordance with said section seventeen-b.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18d. Allocation to West Virginia Infrastructure Lottery Revenue Debt Service Fund and West Virginia Infrastructure Fund from State Excess Lottery Revenue Fund beginning July 1, 2011.

Notwithstanding any provision of subsection (d), section eighteen-a of this article to the contrary, the deposit of $40 million into the West Virginia Infrastructure Fund set forth above is for the fiscal year beginning July 1, 2010, only. For the fiscal year beginning July 1, 2011, and each fiscal year thereafter, in lieu of the deposits required under subdivision (5), subsection (d), section eighteen-a of this article, the commission shall, first, deposit $6 million into the West Virginia Infrastructure Lottery Revenue Debt Service Fund created in subsection (h), section nine, article fifteen-a, chapter thirty-one of this code, to be spent in accordance with the provisions of that subsection, and, second, deposit $40 million into the West Virginia Infrastructure Fund created in subsection (a), section nine, article fifteen-a, chapter thirty-one of this code, to be spent in accordance with the provisions of that article.

CHAPTER 31. CORPORATIONS.
ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements; West Virginia Infrastructure Lottery Revenue Debt Service Fund; use of funds for projects.

(a) The Water Development Authority shall create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan to be known as the "West Virginia Infrastructure Fund". This fund shall be governed, administered and accounted for by the directors, officers and managerial staff of the Water Development Authority as a special purpose account separate and distinct from any other moneys, funds or funds owned and managed by the Water Development Authority. The infrastructure fund shall consist of sub-accounts, as deemed necessary by the council or the Water Development Authority, for the deposit of: (1) Infrastructure revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the infrastructure fund from any source, public or private; (3) amounts received as payments on any loans made by the Water Development Authority to pay for the cost of a project or infrastructure project; (4) insurance proceeds payable to the Water Development Authority or the infrastructure fund in connection with any infrastructure project or project; (5) all income earned on moneys held in the infrastructure fund; (6) all funds deposited in accordance with section four of article fifteen-b; and (7) all proceeds derived from the sale of bonds issued pursuant to article fifteen-b of this chapter.

Any money collected pursuant to this section shall be paid into the West Virginia infrastructure fund by the state agent or entity charged with the collection of the same, credited to the infrastructure fund, and used only for purposes set forth in this article or article fifteen-b.
Amounts in the infrastructure fund shall be segregated and administered by the Water Development Authority separate and apart from its other assets and programs. Amounts in the infrastructure fund may not be transferred to any other fund or account or used, other than indirectly, for the purposes of any other program of the Water Development Authority, except that the Water Development Authority may use funds in the infrastructure fund to reimburse itself for any administrative costs incurred by it and approved by the council in connection with any loan, loan guarantee, grant or other funding assistance made by the Water Development Authority pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure fund shall be deposited by the Water Development Authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the Water Development Authority by competitive bid. Pending the disbursement of any money from the infrastructure fund as authorized under this section, the Water Development Authority shall invest and reinvest the moneys subject to the limitations set forth in article eighteen, chapter thirty-one of this code.

(c) To further accomplish the purposes and intent of this article and article fifteen-b of this chapter, the Water Development Authority may pledge infrastructure revenues and from time to time establish one or more restricted accounts within the infrastructure fund for the purpose of providing funds to guarantee loans for infrastructure projects or projects: Provided, That for any fiscal year the Water Development Authority may not deposit into the restricted accounts more than twenty percent of the aggregate amount of infrastructure revenues deposited into the infrastructure fund during the fiscal year. No loan guarantee shall be made pursuant to this article unless recourse under the loan guarantee is limited solely to amounts in the restricted account or accounts. No person shall have any
recourse to any restricted accounts established pursuant to this subsection other than those persons to whom the loan guarantee or guarantees have been made.

(d) Each loan, loan guarantee, grant or other assistance made or provided by the Water Development Authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the Water Development Authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

(1) The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;

(2) The specific purposes for which the loan or grant proceed shall be expended or the benefits to accrue from the loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

(3) The duties and obligations imposed regarding the acquisition, construction, improvement or operation of the project or infrastructure project; and

(4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the Water Development Authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the Water Development Authority the right to appoint a receiver for the project or infrastructure if the project sponsor should default on any terms of the agreement.

(e) Any resolution of the Water Development Authority approving loan, loan guarantee, grant or other assistance
shall include a finding and determination that the requirements of this section have been met.

(f) The interest rate on any loan to governmental, quasi-governmental, or not for profit project sponsors for projects made pursuant to this article shall not exceed three percent per annum. Due to the limited availability of funds available for loans for projects, it is the public policy of this state to prioritize funding needs to first meet the needs of governmental, quasi-governmental and not for profit project sponsors and to require that loans made to for-profit entities shall bear interest at the current market rates. Therefore, no loan may be made by the council to a for-profit entity at an interest rate which is less than the current market rate at the time of the loan agreement.

(g) The Water Development Authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records, with respect to the receipts, disbursements, contracts, leases, assignments, loans, grants and all other matters relating to the financial operation of the infrastructure fund, including the operating of any sub-account within the infrastructure fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration, where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Legislature's Joint Committee on Government and Finance.

(h) There is hereby created in the Water Development Authority a separate, special account which shall be designated and known as the "West Virginia Infrastructure Lottery Revenue Debt Service Fund," into which shall be deposited annually for the fiscal year beginning July 1, 2011, and each fiscal year thereafter, the first $6 million transferred pursuant to section eighteen-d, article twenty-two, chapter twenty-nine of this code and any other funds provided therefor: Provided, That such deposits and transfers are not subject to the reservations of funds or require-
ments for distributions of funds established by sections ten and eleven of this article. Moneys in the West Virginia infrastructure lottery revenue debt service fund shall be used to pay debt service on bonds or notes issued by the Water Development Authority for watershed compliance projects as provided in section seventeen-b of this article, and to the extent not needed to pay debt service, for the design or construction of improvements for watershed compliance projects. Moneys in the West Virginia infrastructure lottery revenue debt service fund not expended at the close of the fiscal year do not lapse or revert to the General Fund but are carried forward to the next fiscal year.

§31-15A-17b. Infrastructure lottery revenue bonds for watershed compliance projects.

(a)(1) The Chesapeake Bay has been identified as an impaired water body due to excessive nutrients entering the Bay from various sources in six states, including wastewater facilities in West Virginia. To restore the Chesapeake Bay, the states have agreed to reduce their respective nutrient contributions to the Chesapeake Bay.

(2) The Greenbrier River Watershed in southeastern West Virginia which encompasses approximately 1,646 square miles, the majority of which lies within Pocahontas, Greenbrier, Monroe and Summers counties, has been identified as an impaired water body due to excessive levels of fecal coliform and phosphorus entering the Watershed from various sources, including wastewater facilities in West Virginia. To restore the Greenbrier River Watershed, the state agrees to reduce the fecal coliform and phosphorus contributions to the Greenbrier River Watershed.

(b) Notwithstanding any other provision of this code to the contrary, the Water Development Authority may issue, in accordance with the provisions of section seventeen of this article, infrastructure lottery revenue bonds payable from the West Virginia infrastructure lottery revenue debt service fund created by section nine of this article and such other
sources as may be legally pledged for such purposes other
than the West Virginia infrastructure revenue debt service
fund created by section seventeen of this article.

(c) The council shall direct the Water Development
Authority to issue bonds in one or more series when it has
approved Chesapeake Bay watershed compliance projects
and Greenbrier River watershed compliance projects with an
authorized permitted flow of four hundred thousand gallons
per day or more. The proceeds of the bonds shall be used
solely to pay costs of issuance, fund a debt service reserve
account, capitalize interest, pay for security instruments
necessary to market the bonds and to make grants to govern-
mental instrumentalities of the state for the construction of
approved Chesapeake Bay watershed compliance projects
and Greenbrier River watershed compliance projects. To the
extent funds are available in the West Virginia Infrastruc-
ture Lottery Revenue Debt Service Fund that are not needed
for debt service, the council may direct the Water Develop-
ment Authority to make grants to project sponsors for the
design or construction of approved Chesapeake Bay water-
shed compliance projects and Greenbrier River watershed
compliance projects.

(d) No later than June 30, 2012, each publicly owned
facility with an authorized permitted flow of 400,000 gallons
per day or more that is subject to meeting Chesapeake Bay
compliance standards or Greenbrier River watershed
compliance standards shall submit to the council a ten year
projected capital funding plan for Chesapeake Bay water-
shed compliance projects or Greenbrier River watershed
compliance projects, as the case may be, including a general
project description, cost estimate and estimated or actual
project start date and project completion date, if any. The
Council shall timely review the submitted capital funding
plans and forward approved plans to the Water Development
Authority for further processing and implementation
pursuant to this article. If the council finds a plan to be
incomplete, inadequate or otherwise problematic, it shall
return the plan to the applicant with comment on the plan
shortcomings. The applicant may then resubmit to council an amended capital funding plan for further consideration pursuant to the terms of this subsection.

(e) Upon approval, each proposed Chesapeake Bay watershed compliance project or Greenbrier River watershed compliance project, or portion of a larger project, which portion is dedicated to compliance with nutrient standards, or fecal coliform and phosphorus standards, established for the protection and restoration of the Chesapeake Bay or the Greenbrier River Watershed, as the case may be, shall be eligible for grant funding by funds generated by the infrastructure lottery revenue bonds described in section (b) of this section. At the request of the applicant, the remaining percentage of project funding not otherwise funded by grant under the provisions of this article may be reviewed as a standard project funding application.

(f) No later than December 1, 2012, the Water Development Authority shall report to the Joint Committee on Government and Finance the total cost of Chesapeake Bay watershed compliance projects and the Greenbrier River watershed compliance projects and the proposed grant awards for each eligible project. Grant awards shall be of equal ratio among all applicants of the total cost of each eligible project.

(g) Eligible projects that have obtained project financing prior to December 31, 2011 may apply to the council for funding under the provisions of this section. These applications shall be processed and considered as all other eligible projects, and any grant funding awarded shall, to the extent allowed by law, be dedicated to prepay all or a portion of debt previously incurred by governmental instrumentalities of the state for required Chesapeake Bay nutrient removal projects or Greenbrier River watershed fecal coliform and phosphorus removal projects, subject to the bond covenants and contractual obligations of the borrowing governmental entity. However, any private portion of funding provided by agreement between a political subdivision and one or more
private entities, either by direct capital investment or debt service obligation, shall not be eligible for grant funding under the provisions of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th Day of March, 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 2 3 2011

Time 3:45 p.m.