



STATE OF WEST VIRGINIA
LOTTERY POLICY STATEMENT 11-06/RVL
ELIGIBILITY FOR SPENDING RECOUPMENT UNDER
RACETRACK MODERNIZATION FUND (SB 550)
West Virginia Legislature 2011 Regular Session
W. Va. Code §29-22A-10

[Adopted June 23, 2011; Amended November 27, 2012, December 19, 2018, April 26, 2023, and March 26, 2025]

§1. Enacting legislation: Senate Bill 550, which took effect on July 1, 2011, created a *Licensed Racetrack Modernization Fund* containing four modernization accounts, one for each of the four racetrack casinos. This provision is codified at W. Va. Code §29-22A-10(b)(2). A different provision applies to the Greenbrier Casino and is not addressed in this Lottery Commission Policy Statement.

§2. Review of the funding mechanism: W. Va. Code §29-22A-10(b)(2) establishes the *Licensed Racetrack Modernization Fund* within the existing State Lottery Fund. After the close of each fiscal year, the State Lottery Commission may transfer any remaining surplus from the 4% allowance for racetrack video lottery administrative costs into the Licensed Racetrack Modernization Fund. This transfer is capped each year at a total of \$9 million. Any surplus amount designated for transfer will be allocated to the four modernization accounts within the Fund, in the same proportion as each racetrack contributed to the 4% allowance in that fiscal year.

§3. Overview of recoupment and eligibility: Under W. Va. Code §29-22A-10(b)(2), licensed racetracks can recoup \$1 for each \$2 spent on Covered Acquisitions (defined below), capped at the amount of the racetrack's account for the fiscal year. Any unused amounts in a racetrack's account may carry forward only one additional year. If the amount(s) of the submitted claim or claims of the racetrack exceed the balance of the fund at the time the claim is filed, the Commission will pay the claim as funds become available.

Covered Acquisitions are "facility modernization improvements or capital improvements at facilities located in this state that are on or contiguous to the premises of the licensed racetrack, having a useful life of three or more years and placed in service after July 1, 2011." *W. Va. Code §29-22A-10(b) (2023)*. Those "facility modernization improvements" eligible for recoupment are: (1) new and unused video lottery terminals and related equipment (See §4 for list of related equipment); and (2) new and unused purchases of sports pool systems or other equipment necessary to modernize a licensed racetrack facility to accept sports wagers. See *W. Va. §29-22D-16(d) (2018)*; *W. Va. Code State R. §179-9-20 (2023)*. Those "capital improvements" eligible for recoupment are defined as "real property that is expected to replace or modernize buildings, equipment, machinery and other tangible property used in connection with the operation of the

gaming, hospitality, or entertainment at the facility.” *Id.* Because the law was amended effective June 4, 2023 (HB 3450) to allow for the recoupment of “capital improvements” and such amendment was intended to be prospective, reimbursable “capital improvements” will apply to those improvements that meet the definition and are made on or after June 4, 2023. All Covered Acquisitions are subject to a three-year (3) useful life requirement. The Lottery reserves the right to require the requesting racetrack casino to provide a copy of such casino’s corresponding Capitalization Schedule(s) as evidence of any improvement’s three-year useful life.

Each racetrack casino also has a Capital Reinvestment Fund for which such casinos can use to fund capital improvements. The terms and conditions for such funds are separate and independent of the Licensed Racetrack Modernization Fund and those addressed by this Policy Statement. Because the Lottery believes the decision as to which fund to use for any requested recoupment is ultimately a business decision that affects the respective racetrack casino making such decision, racetrack casinos will be solely responsible for selecting the fund, or priority of funds, to be used to recoup eligible capital improvements.

§4. Covered Acquisitions: The following are items for which recoupment from the Racetrack Modernization Fund is permitted:

- a. New and unused video lottery terminals
- b. New and unused “related equipment,” which includes any hardware located on the licensed racetracks premises that is connected to the video lottery system for the purpose of performing communications, validation, or other functions. Examples include controllers, modems, servers, and validation equipment, as well as any Internet access equipment or software necessary to the functioning of the video lottery system or gaming operations.
- c. New and unused conversion kits consist of hardware and software to be installed on video lottery terminals or other areas related to gaming operations.
- d. New and unused sports pool systems and other equipment (including hardware, software, and surveillance equipment) necessary to modernize the facility to accept sports wagers.
- e. The cost of Covered Acquisitions may include any pre-paid maintenance contract for qualifying equipment that is purchased at the same time as the equipment of more than five years; only the cost attributable to the first five years may be eligible for recoupment.
- f. Capital improvements at the casino facilities located in this state that is on or contiguous to the premises of such facilities. The term “capital improvements” means real property that is expected to replace or modernize buildings, equipment, machinery, and other tangible property used in connection with the operation of gaming, hospitality, or entertainment at the facility.

§5. Acquisitions not covered (not an all-inclusive listing): The following acquisitions are not eligible for recoupment from the Racetrack Modernization Fund:

- a. Lease equipment, services (i.e. mobile apps, etc.), or items for which the Racetrack does not have ownership.
- b. Those items purchased, but not placed into service are deemed extras and not eligible for recoupment.

§6. Retention of equipment partly paid for by this program: Video lottery terminals, related equipment, and all covered acquisitions financed through this fund must remain at the licensed racetrack for a minimum of five years, as required by statute. No transfer or sale of the acquired

items shall be permitted, even where the acquired items are damaged or destroyed. Acquired items may be destroyed and crushed within the state. The intention is that no casino shall use this program to benefit or enrich gambling operations it may own or operate outside of West Virginia.

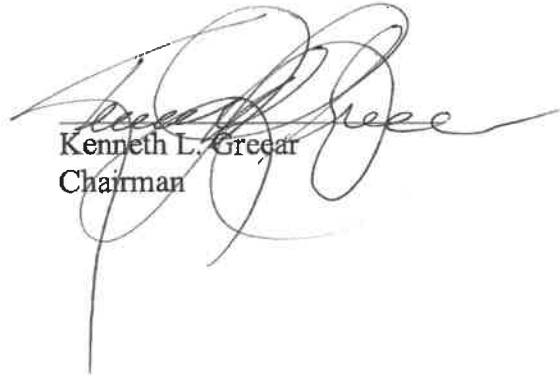
§7. Destruction of equipment partly paid for by this program: When Racetracks wish to destroy acquired items, they are required to obtain permission in advance and follow the process defined by the Lottery. Any destruction of acquired items must be witnessed by a lottery designee.

§8. Adoption.

This policy statement was adopted by the West Virginia Lottery Commission at its June 23, 2011 meeting and amended at its meetings of November 27, 2012, December 19, 2018, April 26, 2023, and March 26, 2025, by majority vote after fair and frank discussion.



Andrea Bower
Recording Secretary



Kenneth L. Greer
Chairman