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H. B. 2864

(By Delegates Skaff, Moore, Poore, Raines,
Wells, Stowers, Morgan, Reynolds,
Lane, Eldridge and Manypenny)

[Introduced March 7, 2013; referred to the
Committee on Education then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §18B-18A-1, §18B-18A-2, §18B-18A-3,
§18B-18A-9, §18B-18A-11 and §18B-18A-12 of the Code of West
Virginia, 1931, as amended, all relating to the West Virginia
Research Trust Fund; increasing the recipients of the fund to
include all state land grant institutions of higher education;
redistribution of moneys; deposit into fund from General
Revenue Fund under certain conditions; deadline and
consequences for failure to obtain matching funds and
donations; legislative rule making; and reporting requirement.

Be it enacted by the Legislature of West Virginia:

That §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-9, §18B-18A-
11 and §18B-18A-12 of the Code of West Virginia, 1931, as amended,
be amended and reenacted, all to read as follows:

ARTICLE 18A. DIRECTED RESEARCH ENDOWMENTS.

§18B-18A-1. Legislative findings; purpose; and intent.

1 (a) The Legislature finds that the continued expansion of the
2 nation's economy is dependent upon the ability of its institutions
3 of higher education to increase the quality, quantity and
4 productivity of its citizens who are engaged in scientific and
5 technical fields of study. Failure of the United States to compete
6 in these areas may lead to lower standards of living, dependence
7 upon foreign intellectual capital and international insecurity.
8 The economic future of West Virginia is equally dependent upon the
9 ability of ~~Marshall University and West Virginia University, the~~
10 ~~state's two doctoral-granting, public research universities, its~~
11 higher education institutions to promote, educate and train
12 researchers and research support staff in these diverse fields of
13 study.

14 The Legislature further finds that a recent emphasis on the
15 creation of innovative curricula and the receipt of significant
16 private donations by ~~Marshall University and West Virginia~~
17 ~~University~~ West Virginia's higher education institutions has led to
18 major expansions in certain areas of study, including energy,
19 national security technology, environmental sciences, health and
20 biomedical sciences, biometrics, biotechnology and nanotechnology.
21 Despite these expansions, the additional investment of both private
22 donations and state moneys is critical to recruiting world-class
23 scientists, researchers, research staff, technicians and
24 professional degree graduates, as well as providing funding for

1 laboratories and scientific equipment.

2 (b) The purpose of the Legislature in enacting this article is
3 to establish a state fund to be administered by the Higher
4 Education Policy Commission to address the findings outlined in
5 subsection (a) of this section. The fund will make public moneys
6 available to the state's two doctoral-granting public research
7 universities and any state land grant higher education institution
8 to match qualified private donations and qualified private donation
9 pledges thereby creating an incentive for donors to support certain
10 priority areas of study consistent with each participating
11 institution's long-range strategic plan for research. Creation of
12 this fund promotes strategic private donations targeted to specific
13 areas of research and creates a sustainable source of funding for
14 research initiatives that are critical to achieving long-term goals
15 including, but not limited to, the following:

16 (1) Research-based economic development and economic
17 diversification; and

18 (2) Increased potential for patenting, licensing and related
19 technology transfer and commercialization of scientific and
20 technological research in the state.

21 **§18B-18A-2. Definitions.**

22 (a) *General* -- For the purposes of this article, terms have
23 the meaning ascribed to them in section two, article one of this
24 chapter, unless the context in which the term is used clearly

1 requires a different meaning or a specific definition is provided
2 in this section.

3 (b) *Definitions* --

4 (1) "Directed research endowment" or "research endowment"
5 means an account established at or administered by a participating
6 institution or its affiliated research corporation or foundation in
7 accordance with the provisions of section four of this article;

8 (2) "Directed research endowment plan" or "research plan"
9 means the strategies and procedures formally approved and adopted
10 by a governing board of a participating institution pursuant to
11 section seven of this article outlining how a participating
12 institution proposes to use directed research endowment proceeds to
13 meet established goals and objectives;

14 (3) "Directed research endowment proceeds" or "endowment
15 proceeds" means those investment earnings accruing to a
16 participating institution's directed research endowment and
17 available for expenditure by a participating institution or its
18 affiliated research corporation in accordance with the provisions
19 of section four of this article;

20 (4) "Trust fund" means the special account designated as the
21 West Virginia Research Trust Fund established in section three of
22 this article;

23 (5) "Participating institution" means Marshall University, ~~or~~
24 West Virginia University and any other state land grant higher

1 education institution;

2 (6) "Qualified private donation" or "qualified donation" means
3 ~~any~~ a private donation, gift or bequest to a directed research
4 endowment that meets the criteria set forth in section five of this
5 article;

6 (7) "Qualified private donation pledge" or "qualified pledge"
7 means ~~any~~ a pledge, commitment or other agreement to give a private
8 donation to a directed research endowment that is made pursuant to
9 a written agreement between the donor and the institution or its
10 affiliated research corporation or foundation and that meets the
11 criteria set forth in section five of this article;

12 (8) "Foundation" means a corporation created, organized and
13 located in West Virginia that meets the following conditions:

14 (A) Is organized and operated for educational purposes in
15 support of one or more state institutions of higher education;

16 (B) Is designated by the board of Governors of one or more
17 state institutions of higher education to receive charitable
18 contributions for educational purposes on behalf of the institution
19 or institutions;

20 (C) Does not have any part of its earnings inuring to the
21 benefit of ~~any~~ a private shareholder or individual;

22 (D) Is not disqualified from tax exemption under 26 U.S.C.
23 §501(c)(3) for any reason; and

24 (E) Does not participate or intervene in, on behalf of or in

1 opposition to, ~~any~~ political campaigns for public office;

2 (9) "Research corporation" means an organization created
3 pursuant to the provisions of article twelve of this chapter; and

4 (10) "State college" means the West Virginia School of
5 Osteopathic Medicine, Bluefield State College, Concord University,
6 Fairmont State University, Glenville State College, Shepherd
7 University, West Liberty State College or West Virginia State
8 University.

9 **§18B-18A-3. West Virginia Research Trust Fund.**

10 (a) There is created in the State Treasury a special fund to
11 be known as the West Virginia Research Trust Fund which ~~shall~~
12 ~~consist~~ consists of ~~any~~ appropriations of moneys to the fund made
13 by the Legislature, all earnings from investment of the fund and
14 any unmatched portion of state moneys returned by a State
15 Institution of Higher Education.

16 (b) Expenditures from the trust fund shall be made for the
17 purposes set forth in this article and are not subject to separate
18 appropriation by the Legislature. Any balance, including accrued
19 investment earnings on any unmatched portion of state moneys
20 returned by a state institution of higher education in the trust
21 fund at the end of each fiscal year ~~shall~~ does not expire to the
22 General Revenue Fund but ~~shall remain~~ remains in the trust fund and
23 ~~be~~ expended as provided by this article.

24 (c) In accordance with the provisions of section eight of this

1 article, the commission shall make available ~~seventy~~ sixty-five
 2 percent of moneys in this account to match qualified donations and
 3 qualified pledges to West Virginia University; ~~and thirty~~ twenty-
 4 five percent of the moneys to match qualified donations and
 5 qualified pledges to Marshall University; and ten percent of moneys
 6 in this account to match qualified donations and qualified pledges
 7 to any other state land grant higher education institution.

8 (d) Investment earnings accruing in the account may be
 9 expended by the commission to provide matching research funds to
 10 state colleges in accordance with the provisions of section ten of
 11 this article.

12 (e) The Legislature shall make available \$25 million from the
 13 state's General Revenue Fund to be deposited into the West Virginia
 14 Research Trust Fund. This additional \$25 million is available only
 15 to Marshall University, West Virginia University and any state land
 16 grant higher education institution to the extent these universities
 17 raise the same amount in matching funds. The funds made available
 18 by this subsection are distributed as described in subsection (c)
 19 of this section.

20 **§18B-18A-9. Reallocation of matching moneys.**

21 (a) No later than ~~seven~~ two years from ~~the effective date of~~
 22 ~~this article,~~ July 1, 2013, each participating institution shall
 23 have deposited into its research endowments an amount of qualified
 24 donations equal to or greater than the total amount of moneys

1 allocated for distribution to the institution pursuant to the
2 provisions of subsection (c), section three of this article.

3 (1) If one of the participating institutions fails to have
4 deposited into its research endowments the requisite amount of
5 qualified donations by the end of this ~~seven~~ two year period, then
6 any portion of the moneys allocated to the institution that has not
7 been distributed shall be reallocated for distribution to the other
8 participating ~~institution~~ institutions pursuant to the terms of
9 this article.

10 (2) To be eligible to receive a distribution of reallocated
11 moneys pursuant to this subsection, the other participating
12 ~~institution~~ institutions shall have qualified donations in excess
13 of the amount required by subsection (a) of this section deposited
14 into its research endowment(s) in an amount equal to or greater
15 than the amount of reallocated moneys.

16 (3) If the other participating ~~institution~~ institutions does
17 not have excess qualified donations on deposit, the reallocated
18 moneys shall be made available for distribution by the commission
19 to state colleges in accordance with the provisions of section ten
20 of this article.

21 (b) If ~~any~~ a pledge previously used by a participating
22 institution to obtain a distribution of matching moneys from the
23 trust fund has not been paid in full within ~~seven~~ two years from
24 ~~the effective date of this article,~~ July 1, 2013, then the

1 institution shall return the unmatched portion of state moneys to
2 the trust fund. These moneys shall be reallocated for distribution
3 to the other participating ~~institution~~ institutions or to the state
4 colleges pursuant to the terms of this section and section ten of
5 this article as applicable.

6 (c) If ~~both~~ the participating institutions fail to have
7 deposited into their respective research endowments the requisite
8 amount of qualified donations within ~~seven~~ two years from ~~the~~
9 ~~effective date of this article,~~ July 1, 2013, then any moneys
10 remaining in the trust fund that have not been distributed shall be
11 made available for distribution by the commission to state colleges
12 in accordance with the provisions of this article.

13 **§18B-18A-11. Higher Education Policy Commission rule required;**
14 **emergency rule authorized.**

15 (a) By October 1, ~~2008,~~ 2013, the commission shall propose a
16 rule for legislative approval in accordance with the provisions of
17 section six, article one of this chapter and article three-a,
18 chapter twenty-nine-a of this code to implement the provisions and
19 purposes of this article. The rule shall include the following:

20 (1) Documentation standards and review procedures to determine
21 whether a donation or pledge meets the criteria of a qualified
22 donation or qualified pledge when initially received or when the
23 terms of a qualified donation or a qualified pledge are materially
24 altered;

1 (2) Eligibility criteria in accordance with the provisions of
2 section six of this article for the expenditure of endowment
3 proceeds to pay the base salaries of personnel, to fund research
4 fellowships and to purchase basic infrastructure;

5 (3) Procedures to ensure that endowment proceeds are expended
6 in compliance with the provisions of this article;

7 (4) A requirement for each participating institution to report
8 on the total amount of qualified donations received, the investment
9 earnings realized and any anticipated expenditures of the research
10 endowment proceeds in its annual operating budget; and

11 (5) Procedures for the competitive application and review of
12 requests from state colleges and criteria for the eligible use of
13 moneys distributed pursuant to section ten of this article.

14 (b) The Legislature finds that an emergency exists and,
15 therefore, the commission shall file a rule to implement the
16 provisions of this article as an emergency rule pursuant to the
17 provisions of article three-a, chapter twenty-nine-a of this code.
18 The rule is subject to the prior approval of the Legislative
19 Oversight Commission on Education Accountability.

20 **§18B-18A-12. Annual report.**

21 By January 1, ~~2010, and annually thereafter,~~ 2015, the
22 commission shall submit a report to the Governor, the President of
23 the Senate, the Speaker of the House of Delegates and the
24 Legislative Oversight Commission on Education Accountability

1 detailing implementation of the research endowments at each
2 participating institution, the amount of qualified donations
3 received by each participating institution in the preceding fiscal
4 year, the amount of any distributions made from the trust fund and
5 a description of the research and outcomes supported by those
6 moneys.

NOTE: The purpose of this bill is to increase the recipients of the West Virginia Research Trust Fund to include all state land grant institutions of higher education, to redistribute funds, to deposit into the fund a sum certain from the General Revenue Fund under certain conditions, to establish a deadline and consequences for failure to obtain matching funds and donations, to authorize legislative rule making and to require a report from commission by January 1, 2015.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.