

Senate Bill No. 444

(By Senators Plymale, Jenkins and Beach)

[Introduced March 5, 2013; referred to the Committee on Education; and then to the Committee on Finance.]

10 A BILL to amend and reenact §12-1-12d of the Code of West Virginia,
11 1931, as amended, relating to increasing the amounts that
12 Marshall University and West Virginia University may have
13 invested with their respective foundations under certain
14 conditions.

15 Be it enacted by the Legislature of West Virginia:

16 That §12-1-12d of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 ARTICLE 1. STATE DEPOSITORYES.

19 §12-1-12d. Investments by Marshall University and West Virginia
20 University.

21 (a) Notwithstanding any provision of this article to the
22 contrary, the governing boards of Marshall University and West
23 Virginia University each may invest certain funds with its

1 respective nonprofit foundation that has been established to
2 receive contributions exclusively for that university and which
3 exists on January 1, 2005. ~~Any such~~ The investment is subject to
4 the limitations of this section.

5 (b) A governing board, through its chief financial officer may
6 enter into agreements, approved as to form by the State Treasurer,
7 for the investment by its foundation of certain funds subject to
8 their administration. Any interest or earnings on the moneys
9 invested is retained by the investing university.

10 (c) Moneys of a university that may be invested with its
11 foundation pursuant to this section are those subject to the
12 administrative control of the university that are collected under
13 an act of the Legislature for specific purposes and do not include
14 any funds made available to the university from the state General
15 Revenue Fund or the funds established in sections eighteen or
16 eighteen-a, article twenty-two, chapter twenty-nine of this code.
17 Moneys permitted to be invested under this section may be
18 aggregated in an investment fund for investment purposes.

19 (d) Of the moneys authorized for investment by this section,
20 Marshall University and West Virginia University each,
21 respectively, may have invested with its foundation at any time not
22 more than the greater of:

23 (1) \$18 million for Marshall University and \$25 million for
24 West Virginia University; or

1 (2) Sixty-five percent of its unrestricted net assets as
2 presented in the statement of net assets for the fiscal year end
3 audited financial reports.

4 (3) Notwithstanding subdivisions (1) and (2) of this
5 subsection, with the approval of the Higher Education Policy
6 Commission, Marshall University may increase the amount invested to
7 ~~\$30~~ \$60 million and West Virginia University may increase the
8 amount invested to ~~\$40~~ \$70 million.

9 (e) Investments by foundations that are authorized under this
10 section shall be made in accordance with and subject to the
11 provisions of the Uniform Prudent Investor Act codified as article
12 six-c, chapter forty-four of this code. As part of its fiduciary
13 responsibilities, each governing board shall establish investment
14 policies in accordance with the Uniform Prudent Investor Act for
15 those moneys invested with its foundation. The governing board
16 shall review, establish and modify, if necessary, the investment
17 objectives as incorporated in its investment policies so as to
18 provide for the financial security of the moneys invested with its
19 foundation. The governing boards shall give consideration to the
20 following:

- 21 (1) Preservation of capital;
22 (2) Diversification;
23 (3) Risk tolerance;
24 (4) Rate of return;

1 (5) Stability;
2 (6) Turnover;
3 (7) Liquidity; and
4 (8) Reasonable cost of fees.

5 (f) A governing board shall report annually by December 31 to
6 the Governor and to the Joint Committee on Government and Finance
7 on the performance of investments managed by its foundation
8 pursuant to this section.

9 (g) The amendments to this section in the second extraordinary
10 session of the Legislature in 2010 ~~shall~~ apply retroactively so
11 that the authority granted by this section shall be construed as if
12 that authority did not expire on July 1, 2010.

NOTE: The purpose of this bill is to increase the amounts that Marshall University and West Virginia University may have invested with their respective foundations.

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