

# H. B. 3162

---

(BY DELEGATE(S) WHITE, WILLIAMS, MARSHALL, IAQUINTA,  
SKAFF, GUTHRIE, CRAIG, PHILLIPS, R., MILLER,  
WALTERS, AND NELSON, E.)

---

(Originating in the Committee on Finance)

[March 29, 2013]

A BILL to amend and reenact §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-8, §18B-18A-9 and §18B-18A-11 of the Code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new section, designated §18B-18A-3a, all relating to providing for the allocation of matching funds from future moneys deposited into the West Virginia Research Trust Fund generally; expanding the eligible recipients of matching funds to include West Virginia State University in certain circumstances; modifying criteria for eligibility to receive certain matching funds; and requiring new legislative rule.

*Be it enacted by the Legislature of West Virginia:*

That §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-8, §18B-18A-9 and §18B-18A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §18B-18A-3a, 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. The  
8 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  
18 to major expansions in certain areas of study, including energy,  
19 national security technology, environmental sciences, health and  
20 biomedical sciences, biometrics, biotechnology and  
21 nanotechnology. Despite these expansions, the additional  
22 investment of both private donations and state moneys is critical  
23 to recruiting world-class scientists, researchers, research staff,  
24 technicians and professional degree graduates, as well as  
25 providing funding for laboratories and scientific equipment.

26 (b) The purpose of the Legislature in enacting this article is  
27 to establish a state fund to be administered by the Higher  
28 Education Policy Commission to address the findings outlined  
29 in subsection (a) of this section. The fund will make public  
30 moneys available to the state's two doctoral-granting public  
31 research universities, Marshall University and West Virginia  
32 University, and its other state land grant higher education  
33 institution, West Virginia State University, to match qualified

34 private donations and qualified private donation pledges thereby  
35 creating an incentive for donors to support certain priority areas  
36 of study consistent with each participating institution's long-  
37 range strategic plan for research. Creation of this fund promotes  
38 strategic private donations targeted to specific areas of research  
39 and creates a sustainable source of funding for research  
40 initiatives that are critical to achieving long-term goals  
41 including, but not limited to, the following:

- 42 (1) Research-based economic development and economic  
43 diversification; and  
44 (2) Increased potential for patenting, licensing and related  
45 technology transfer and commercialization of scientific and  
46 technological research in the state.

**§18B-18A-2. Definitions.**

1 (a) *General* — For the purposes of this article, terms have  
2 the meaning ascribed to them in section two, article one of this  
3 chapter, unless the context in which the term is used clearly  
4 requires a different meaning or a specific definition is provided  
5 in this section.

6 (b) *Definitions* —

7 (1) “Directed research endowment” or “research  
8 endowment” means an account established at or administered by  
9 a participating institution or its affiliated research corporation or  
10 foundation in accordance with the provisions of section four of  
11 this article;

12 (2) “Directed research endowment plan” or “research plan”  
13 means the strategies and procedures formally approved and  
14 adopted by a governing board of a participating institution  
15 pursuant to section seven of this article outlining how a  
16 participating institution proposes to use directed research  
17 endowment proceeds to meet established goals and objectives;

18 (3) “Directed research endowment proceeds” or “endowment  
19 proceeds” means those investment earnings accruing to a  
20 participating institution’s directed research endowment and  
21 available for expenditure by a participating institution or its  
22 affiliated research corporation in accordance with the provisions  
23 of section four of this article;

24 (4) “Trust fund” means the special account designated as the  
25 West Virginia Research Trust Fund established in section three  
26 of this article;

27 (5) “Participating institution” means Marshall University, ~~or~~  
28 West Virginia University and West Virginia State University;

29 (6) “Qualified private donation” or “qualified donation”  
30 means ~~any~~ a private donation, gift or bequest to a directed  
31 research endowment that meets the criteria set forth in section  
32 five of this article;

33 (7) “Qualified private donation pledge” or “qualified pledge”  
34 means ~~any~~ a pledge, commitment or other agreement to give a  
35 private donation to a directed research endowment that is made  
36 pursuant to a written agreement between the donor and the  
37 institution or its affiliated research corporation or foundation and  
38 that meets the criteria set forth in section five of this article;

39 (8) “Foundation” means a corporation created, organized and  
40 located in West Virginia that meets the following conditions:

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

43 (B) Is designated by the board of Governors of one or more  
44 state institutions of higher education to receive charitable  
45 contributions for educational purposes on behalf of the  
46 institution or institutions;

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

49 (D) Is not disqualified from tax exemption under 26 U.S.C.  
50 §501(c)(3) for any reason; and

51 (E) Does not participate or intervene in, on behalf of or in  
52 opposition to, ~~any~~ political campaigns for public office;

53 (9) “Research corporation” means an organization created  
54 pursuant to the provisions of article twelve of this chapter; and

55 (10) “State college” means the West Virginia School of  
56 Osteopathic Medicine, Bluefield State College, Concord  
57 University, Fairmont State University, Glenville State College,  
58 Shepherd University; or West Liberty State College ~~or West~~  
59 ~~Virginia State University.~~

**§18B-18A-3. West Virginia Research Trust Fund; availability of funds deposited prior to January 1, 2013; use of investment earnings.**

1 (a) There is ~~created~~ continued in the State Treasury a special  
2 fund to be known as the West Virginia Research Trust Fund  
3 which shall consist of ~~any~~ appropriations of moneys to the fund  
4 made by the Legislature, all earnings from investment of the  
5 fund and any unmatched portion of state moneys returned by a  
6 state institution of higher education.

7 (b) Expenditures from the trust fund shall be made for the  
8 purposes set forth in this article and are not subject to separate  
9 appropriation by the Legislature. Any balance, including accrued  
10 investment earnings on any unmatched portion of state moneys  
11 returned by a state institution of higher education in the trust  
12 fund at the end of each fiscal year ~~shall~~ does not expire to the  
13 general revenue fund but shall remain in the trust fund and be  
14 expended as provided by this article.

15 (c) In accordance with and subject to the provisions of  
16 section eight of this article, from funds attributed to moneys  
17 deposited to the trust fund prior to January 1, 2013, the  
18 commission shall make available seventy percent of moneys in  
19 this account to match qualified donations and qualified pledges  
20 to West Virginia University; and thirty percent of the moneys to  
21 match qualified donations and qualified pledges to Marshall  
22 University.

23 (d) Investment earnings accruing in the account may be  
24 expended by the commission to provide matching research funds  
25 to state colleges in accordance with the provisions of section ten  
26 of this article.



**§18B-18A-3a. Availability of funds deposited on or after January 1, 2013.**

1 In accordance with and subject to the provisions of section  
2 eight of this article, from funds attributed to moneys deposited  
3 to the trust fund on and after January 1, 2013, the commission  
4 shall make available sixty-five percent of moneys in this account  
5 to match qualified donations and qualified pledges to West  
6 Virginia University; twenty-five percent of the moneys to match  
7 qualified donations and qualified pledges to Marshall University;  
8 and ten percent of moneys in this account to match qualified  
9 donations and qualified pledges to West Virginia State  
10 University.

**§18B-18A-8. Distributions from West Virginia Research Trust Fund.**

1 (a) ~~☆~~ An eligible participating institution seeking a  
2 distribution of matching moneys from the trust fund attributed to  
3 moneys deposited to the trust fund prior to January 1, 2013, first  
4 shall obtain qualified donations ~~and/or~~ or qualified pledges, or  
5 both, in an amount equal to the amount of matching moneys  
6 requested for distribution. An eligible participating institution  
7 seeking a distribution of matching moneys from the trust fund

8 attributed to moneys deposited to the trust fund on or after  
9 January 1, 2013, first shall obtain qualified donations or  
10 qualified pledges, or both, in an amount that is at least twice the  
11 amount of matching moneys requested for distribution. A  
12 participating institution seeking a distribution of matching  
13 moneys from the trust fund under this subsection ~~and~~ shall  
14 submit a request to the commission setting forth the following:

15 (1) The amount of qualified donations ~~and/or~~ or qualified  
16 pledges, or both, designated for use in requesting the distribution  
17 of matching moneys from the trust fund and the amount of any  
18 previous distributions of matching moneys from the trust fund;

19 (2) The amount requested for distribution to the participating  
20 institution pursuant to section three or three-a of this article, as  
21 applicable;

22 (3) An explanation of how the proposed use satisfies the  
23 criteria for the eligible uses of endowment proceeds set forth in  
24 section six of this article;

25 (4) An explanation of how the proposed use of the  
26 endowment proceeds furthers the purposes of this article and  
27 addresses the research needs of the institution as identified in the  
28 research plan; and

29 (5) A designation of the applicable research endowment into  
30 which the requested matching moneys are to be deposited.

31 (b) The commission shall review each request for  
32 distribution of matching money from the trust fund for  
33 compliance with the provisions of this article and the rule  
34 promulgated pursuant to section eleven of this article.

35 (c) Once the commission approves the request of a  
36 participating institution, it shall distribute matching moneys  
37 from those allocated to the institution in the trust fund to the  
38 applicable research endowment in an amount equal to the  
39 amount of qualified donations ~~and/or~~ or qualified pledges, or  
40 both, if applicable .

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

1 (a) To seek a distribution of matching moneys from the trust  
2 fund attributed to moneys deposited to the trust fund prior to  
3 January 1, 2013, ~~No~~ no later than seven years from the effective  
4 date of this article, each participating institution eligible for  
5 those matching moneys shall have deposited into its research  
6 endowments an amount of qualified donations equal to or greater  
7 than the total amount of moneys allocated for distribution to the

8 institution pursuant to the provisions of subsection (c), section  
9 three of this article. To seek a distribution of matching moneys  
10 from the trust fund attributed to moneys deposited to the trust  
11 fund on or after January 1, 2013, no later than two years from the  
12 effective date of the amendments to this article in 2013, each  
13 participating institution eligible for those matching moneys shall  
14 have deposited into its research endowments an amount of  
15 qualified donations that is at least twice the amount the total  
16 amount of moneys allocated for distribution to the institution  
17 pursuant to the provisions of section three-a of this article.

18 (1) If one of the participating institutions fails to have  
19 deposited into its research endowments the requisite amount of  
20 qualified donations by the end of this seven or two year period,  
21 as applicable, then any portion of the moneys allocated to the  
22 institution that has not been distributed shall be reallocated for  
23 distribution to the other participating ~~institution~~ institutions  
24 equally pursuant to the terms of this article.

25 (2) To be eligible to receive a distribution of reallocated  
26 moneys pursuant to this subsection, the other participating  
27 institution or institutions, as applicable, shall have qualified

28 donations in excess of the amount required by subsection (a) of  
29 this section deposited into its research endowment(s) in an  
30 amount equal to or greater than the amount of reallocated  
31 moneys.

32 (3) If the other participating institution or institutions, as  
33 applicable, does do not have excess qualified donations on  
34 deposit, the reallocated moneys shall be made available for  
35 distribution by the commission to state colleges in accordance  
36 with the provisions of section ten of this article.

37 (b) If ~~any~~ a pledge previously used by a participating  
38 institution to obtain a distribution of matching moneys from the  
39 trust fund has not been paid in full within seven or two years, as  
40 applicable, from the applicable effective date ~~of this article~~ set  
41 forth in subsection (a) of this section, then the institution shall  
42 return the unmatched portion of state moneys to the trust fund.  
43 These moneys shall be reallocated for distribution to the other  
44 participating institution or institutions, as applicable, or to the  
45 state colleges pursuant to the terms of this section and section  
46 ten of this article as applicable.

47 (c) If ~~both~~ all of the participating institutions fail to have  
48 deposited into their respective research endowments the requisite

49 amount of qualified donations within seven or two years, as  
50 applicable, from the applicable effective date ~~of this article~~ set  
51 forth in subsection (a) of this section, then any moneys  
52 remaining in the trust fund that have not been distributed shall be  
53 made available for distribution by the commission to state  
54 colleges in accordance with the provisions of this article.

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

1 (a) By October 1, ~~2008~~, 2013, the commission shall propose  
2 a rule for legislative approval in accordance with the provisions  
3 of section six, article one of this chapter and article three-a,  
4 chapter twenty-nine-a of this code to implement the provisions  
5 and purposes of this article. The rule shall include the following:  
6 (1) Documentation standards and review procedures to  
7 determine whether a donation or pledge meets the criteria of a  
8 qualified donation or qualified pledge when initially received or  
9 when the terms of a qualified donation or a qualified pledge are  
10 materially altered;  
11 (2) Eligibility criteria in accordance with the provisions of  
12 section six of this article for the expenditure of endowment  
13 proceeds to pay the base salaries of personnel, to fund research  
14 fellowships and to purchase basic infrastructure;

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

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

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

25 (b) The Legislature finds that an emergency exists and,  
26 therefore, the commission shall file a rule to implement the  
27 provisions of this article as an emergency rule pursuant to the  
28 provisions of article three-a, chapter twenty-nine-a of this code.  
29 The rule is subject to the prior approval of the Legislative  
30 Oversight Commission on Education Accountability.

