

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4435**

4 (By Delegates White, Arvon, Boggs, Canterbury, Moye, O'Neal,  
5 Perry, M. Poling, Reynolds, Walters and Marcum)

6 (Originating in the Committee on Finance)

7 [February 20, 2014]

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9  
10 A BILL to amend and reenact §12-1-12d of the Code of West Virginia,  
11 1931, as amended, relating to adding West Virginia School of  
12 Osteopathic Medicine to the list of state institutions of  
13 higher education that are permitted to invest certain moneys  
14 with its foundation; establishing a cap on the amount of moneys  
15 that it may invest and clarifying investment caps for other  
16 institutions.

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

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

20 **ARTICLE 1. STATE DEPOSITORIES.**

21 **§12-1-12d. Investments by Marshall University, West Virginia**  
22 **University and West Virginia School of Osteopathic**  
23 **Medicine.**

24 (a) Notwithstanding any provision of this article to the  
25 contrary, the governing boards of Marshall University, ~~and~~ West

1 Virginia University and West Virginia School of Osteopathic  
2 Medicine each may invest certain funds with its respective  
3 nonprofit foundation that has been established to receive  
4 contributions exclusively for that university and which exists on  
5 January 1, 2005. The investment is subject to the limitations of  
6 this section.

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

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

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

1           (1) ~~18~~ \$60 million for Marshall University, \$25 million for  
2 West Virginia School of Osteopathic Medicine and ~~25~~ \$70 million  
3 for West Virginia University; or

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

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

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

24                   (1) Preservation of capital;

25                   (2) Diversification;

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

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

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