

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 510**

4 (By Senators Plymale, Stollings, D. Hall, Wells and McCabe)

5 \_\_\_\_\_  
6 [Originating in the Committee on Education;

7 reported February 14, 2014.]

8 \_\_\_\_\_  
9 **FISCAL**  
10 **NOTE**

11 A BILL to amend and reenact §18B-18A-1, §18B-18A-2, §18B-18A-3,  
12 §18B-18A-9, §18B-18A-11 and §18B-18A-12 of the Code of West  
13 Virginia, 1931, as amended, all relating to the West Virginia  
14 Research Trust Fund; increasing the recipients of the fund to  
15 include all state land grant institutions of higher education;  
16 providing for the redistribution of moneys; providing for a  
17 \$25 million transfer from the General Revenue Fund, under  
18 certain conditions, into the West Virginia Research Trust  
19 Fund; setting forth deadline and consequences for failure to  
20 obtain matching funds and donations; providing for rulemaking;  
21 and requiring reporting.

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

23 That §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-9,  
24 §18B-18A-11 and §18B-18A-12 of the Code of West Virginia, 1931, as

1 amended, be amended and reenacted, all to read as follows:

2 **ARTICLE 18A. DIRECTED RESEARCH ENDOWMENTS.**

3 **§18B-18A-1. Legislative findings; purpose; and intent.**

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

17 The Legislature further finds that a recent emphasis on the  
18 creation of innovative curricula and the receipt of significant  
19 private donations by ~~Marshall University and West Virginia~~  
20 ~~University~~ West Virginia's higher education institutions has led to  
21 major expansions in certain areas of study, including energy,  
22 national security technology, environmental sciences, health and  
23 biomedical sciences, biometrics, biotechnology and nanotechnology.  
24 Despite these expansions, the additional investment of both private

1 donations and state moneys is critical to recruiting world-class  
2 scientists, researchers, research staff, technicians and  
3 professional degree graduates, as well as providing funding for  
4 laboratories and scientific equipment.

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

19 (1) Research-based economic development and economic  
20 diversification; and

21 (2) Increased potential for patenting, licensing and related  
22 technology transfer and commercialization of scientific and  
23 technological research in the state.

24 **§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 endowment"  
8 means an account established at or administered by a participating  
9 institution or its affiliated research corporation or foundation in  
10 accordance with ~~the provisions of~~ section four of this article;

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

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

23           (4) "Trust fund" means the special account designated as the  
24 West Virginia Research Trust Fund established in section three of

1 this article;

2 (5) "Participating institution" means Marshall University or  
3 West Virginia University and any other state land grant higher  
4 education institution;

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

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

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

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

19 (B) Is designated by the Board of Governors of one or more  
20 state institutions of higher education to receive charitable  
21 contributions for educational purposes on behalf of the institution  
22 or institutions;

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

1 (D) Is not disqualified from tax exemption under 26 U.S.C.  
2 §501(c) (3) for any reason; and

3 (E) Does not participate or intervene in, on behalf of or in  
4 opposition to ~~any a political campaigns~~ campaign for public office;

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

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

12 **§18B-18A-3. West Virginia Research Trust Fund.**

13 (a) There is created in the State Treasury a special fund to  
14 be known as the West Virginia Research Trust Fund which ~~shall~~  
15 ~~consist~~ consists of ~~any~~ appropriations of moneys to the fund made  
16 by the Legislature, all earnings from investment of the fund and  
17 any unmatched portion of state moneys returned by a state  
18 institution of higher education.

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

1 General Revenue Fund, but ~~shall remain~~ remains in the trust fund  
2 and ~~be~~ expended as provided by this article.

3 (c) In accordance with ~~the provisions of~~ section eight of this  
4 article, the commission shall make available ~~seventy~~ sixty percent  
5 of moneys in this account to match qualified donations and  
6 qualified pledges to West Virginia University; ~~and~~ thirty percent  
7 of the moneys to match qualified donations and qualified pledges to  
8 Marshall University; and ten percent of moneys in this account to  
9 match qualified donations and qualified pledges to any other state  
10 land grant higher education institution.

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

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

23 **§18B-18A-9. Reallocation of matching moneys.**

24 (a) No later than ~~seven~~ two years from ~~the effective date of~~

1 ~~this article,~~ July 1, 2014 each participating institution shall  
2 have deposited into its research endowments an amount of qualified  
3 donations equal to or greater than the total amount of moneys  
4 allocated for distribution to the institution pursuant to ~~the~~  
5 ~~provisions of~~ subsection (c), section three of this article.

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

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

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

24 (b) If ~~any~~ a pledge previously used by a participating



1 institution to obtain a distribution of matching moneys from the  
2 trust fund has not been paid in full within ~~seven~~ two years from  
3 ~~the effective date of this article~~ July 1, 2014, then the  
4 institution shall return the unmatched portion of state moneys to  
5 the trust fund. These moneys shall be reallocated for distribution  
6 to the other participating ~~institution~~ institutions or to the state  
7 colleges pursuant to the terms of this section and section ten of  
8 this article as applicable.

9 (c) If ~~both~~ the participating institutions fail to have  
10 deposited into their respective research endowments the requisite  
11 amount of qualified donations within ~~seven~~ two years from ~~the~~  
12 ~~effective date of this article~~ July 1, 2014, then any moneys  
13 remaining in the trust fund that have not been distributed shall be  
14 made available for distribution by the commission to state colleges  
15 in accordance with ~~the provisions of~~ this article.

16 **§18B-18A-11. Higher Education Policy Commission rule required;**  
17 **emergency rule authorized.**

18 (a) By October 1, ~~2008~~ 2014, the commission shall propose a  
19 rule for legislative approval in accordance with ~~the provisions of~~  
20 section six, article one of this chapter and article three-a,  
21 chapter twenty-nine-a of this code to implement ~~the provisions and~~  
22 ~~purposes of~~ this article. The rule shall include the following:

23 (1) Documentation standards and review procedures to determine  
24 whether a donation or pledge meets the criteria of a qualified

1 donation or qualified pledge when initially received or when the  
2 terms of a qualified donation or a qualified pledge are materially  
3 altered;

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

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

10 (4) Develop criteria linking endowment funds to institutional  
11 performance metrics, including, but not limited to, student  
12 retention and graduation rates;

13 ~~(4)~~ (5) A requirement for each participating institution to  
14 report on the total amount of qualified donations received, the  
15 investment earnings realized and any anticipated expenditures of  
16 the research endowment proceeds in its annual operating budget; and

17 ~~(5)~~ (6) Procedures for the competitive application and review  
18 of requests from state colleges and criteria for the eligible use  
19 of moneys distributed pursuant to section ten of this article.

20 (b) The Legislature finds that an emergency exists and,  
21 therefore, the commission shall file a rule to implement ~~the~~  
22 ~~provisions of~~ this article as an emergency rule pursuant to ~~the~~  
23 ~~provisions of~~ article three-a, chapter twenty-nine-a of this code.  
24 The rule is subject to the prior approval of the Legislative

1 Oversight Commission on Education Accountability.

2 **§18B-18A-12. Annual report.**

3       By January 1, ~~2010~~ 2016, and annually thereafter, the  
4 commission shall submit a report to the Governor, the President of  
5 the Senate, the Speaker of the House of Delegates and the  
6 Legislative Oversight Commission on Education Accountability  
7 detailing implementation of the research endowments at each  
8 participating institution, the amount of qualified donations  
9 received by each participating institution in the preceding fiscal  
10 year, the amount of any distributions made from the trust fund and  
11 a description of the research and outcomes supported by those  
12 moneys.