

1 **H. B. 4496**

2
3 (By Delegates Skaff, Mr. Speaker (Mr. Miley),
4 White, Paxton, Armstead, Lane, E. Nelson,
5 Fragale, Moore, McCuskey and Poore)

6 [Introduced February 13, 2014; referred to the
7 Committee on Education then Finance.]

**FISCAL
NOTE**

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9
10 A BILL to amend and reenact §18B-18A-1, §18B-18A-2 and §18B-18A-3
11 of the Code of West Virginia, 1931, as amended; to amend said
12 code by adding thereto a new section, designated §18B-18A-3a;
13 and to amend and reenact §18B-18A-8, §18B-18A-9 and §18B-18A-
14 11 of said code, all relating to providing for the allocation
15 of matching funds from future moneys deposited into the West
16 Virginia Research Trust Fund generally; expanding the eligible
17 recipients of matching funds to include West Virginia State
18 University in certain instances; modifying criteria for
19 eligibility to receive certain matching funds; delineating
20 funds attributed to moneys before January 1, 2014 and those
21 after that date; and requiring a new legislative rule.

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

23 That §18B-18A-1, §18B-18A-2 and §18B-18A-3 of the Code of West
24 Virginia, 1931, as amended, be amended and reenacted; that said
25 code be amended by adding thereto a new section, designated §18B-

1 18A-3a; and to amend and reenact §18B-18A-8, §18B-18A-9 and §18B-
2 18A-11 of said code, all to read as follows:

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

4 **§18B-18A-1. Legislative findings; purpose; and intent.**

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

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

1 Despite these expansions, the additional investment of both private
2 donations and state moneys is critical to recruiting world-class
3 scientists, researchers, research staff, technicians and
4 professional degree graduates, as well as providing funding for
5 laboratories and scientific equipment.

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

22 (1) Research-based economic development and economic
23 diversification; and

24 (2) Increased potential for patenting, licensing and related

1 technology transfer and commercialization of scientific and
2 technological research in the state.

3 **§18B-18A-2. Definitions.**

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

9 (b) *Definitions* -

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

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

20 (3) "Directed research endowment proceeds" or "endowment
21 proceeds" means those investment earnings accruing to a
22 participating institution's directed research endowment and
23 available for expenditure by a participating institution or its
24 affiliated research corporation in accordance with the provisions

1 of section four of this article;

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

5 (5) "Participating institution" means Marshall University, ~~or~~
6 West Virginia University or West Virginia State University;

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

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

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

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

21 (B) Is designated by the board of Governors of one or more
22 State Institutions of Higher Education to receive charitable
23 contributions for educational purposes on behalf of the institution
24 or institutions;

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

3 (D) Is not disqualified from tax exemption under 26 U.S.C.
4 §501(c)(3) for any reason; and

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

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

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

14 **§18B-18A-3. West Virginia Research Trust Fund; availability of**
15 **funds deposited prior to January 1, 2014; use of**
16 **investment earnings.**

17 (a) There is ~~created~~ continued in the State Treasury a special
18 fund to be known as the West Virginia Research Trust Fund which
19 shall consist of ~~any~~ appropriations of moneys to the fund made by
20 the Legislature, all earnings from investment of the fund and any
21 unmatched portion of state moneys returned by a State Institution
22 of Higher Education.

23 (b) Expenditures from the trust fund shall be made for the
24 purposes set forth in this article and are not subject to separate

1 appropriation by the Legislature. Any balance, including accrued
2 investment earnings on any unmatched portion of state moneys
3 returned by a State Institution of Higher Education in the trust
4 fund at the end of each fiscal year ~~shall~~ does not expire to the
5 General Revenue Fund, but shall remain in the trust fund and be
6 expended as provided by this article.

7 (c) In accordance with and subject to the provisions of
8 section eight of this article, from funds attributed to moneys
9 deposited to the trust fund prior to January 1, 2014, the
10 commission shall make available seventy percent of moneys in this
11 account to match qualified donations and qualified pledges to West
12 Virginia University and thirty percent of the moneys to match
13 qualified donations and qualified pledges to Marshall University.

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

18 **§18B-18A-3a. Availability of funds on or after January 1, 2014.**

19 In accordance with and subject to the provisions of section
20 eight of this article, from funds attributed to moneys deposited to
21 the trust fund on and after January 1, 1014, the commission shall
22 make available sixty-five percent of moneys in this account to
23 match qualified donations and qualified pledges to West Virginia
24 University; twenty-five percent of the moneys to match qualified

1 donations and qualified pledges to Marshall University; and ten
2 percent of moneys in this account to match qualified donations and
3 qualified pledges to West Virginia State University.

4 **§18B-18A-8. Distributions from West Virginia Research Trust Fund.**

5 (a) ~~A~~ An eligible participating institution seeking a
6 distribution of matching moneys from the trust fund attributed to
7 moneys deposited to the trust fund prior to January 1, 2014, first
8 shall obtain qualified donations ~~and/or~~ or qualified pledges, or
9 both, in an amount equal to the amount of matching moneys requested
10 for distribution. ~~and~~ An eligible participating institution seeking
11 a distribution of matching moneys from the trust fund attributed to
12 moneys deposited to the trust fund on or after January 1, 2014,
13 first shall obtain qualified donations or qualified pledges, or
14 both, in an amount that is at least twice the amount of matching
15 moneys requested for distribution. A participating institution
16 seeking a distribution of matching moneys from the trust fund under
17 this subsection shall submit a request to the commission setting
18 forth the following:

19 (1) The amount of qualified donations ~~and/or~~ or qualified
20 pledges, or both, designated for use in requesting the distribution
21 of matching moneys from the trust fund and the amount of any
22 previous distributions of matching moneys from the trust fund;

23 (2) The amount requested for distribution to the participating
24 institution pursuant to section three or three-a of this article,

1 as applicable;

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

5 (4) An explanation of how the proposed use of the endowment
6 proceeds furthers the purposes of this article and addresses the
7 research needs of the institution as identified in the research
8 plan; and

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

11 (b) The commission shall review each request for distribution
12 of matching money from the trust fund for compliance with the
13 provisions of this article and the rule promulgated pursuant to
14 section eleven of this article.

15 (c) Once the commission approves the request of a
16 participating institution, it shall distribute matching moneys from
17 those allocated to the institution in the trust fund to the
18 applicable research endowment in an amount equal to the amount of
19 qualified donations ~~and/or~~ or qualified pledges, or both, if
20 applicable.

21 **§18B-18A-9. Reallocation of matching moneys.**

22 (a) ~~No~~ To seek a distribution of matching moneys from the
23 trust fund attributed to moneys deposited to the trust fund prior
24 to January 1, 2014, no later than seven years from the effective

1 date of this article, each participating institution eligible for
2 those matching funds shall have deposited into its research
3 endowments an amount of qualified donations equal to or greater
4 than the total amount of moneys allocated for distribution to the
5 institution pursuant to the provisions of subsection (c), section
6 three of this article. To seek a distribution of matching moneys
7 from the trust fund attributed to moneys deposited to the trust
8 fund on or after January 1, 2014, no later than two years from the
9 effective date of the amendments to this article made during 2014,
10 each participating institution eligible for those matching moneys
11 shall have deposited into its research endowments an amount of
12 qualified donations that is at least twice the amount the total
13 amount of moneys allocated for distribution to the institution
14 pursuant to the provisions of section three-a of this article.

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

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

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

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

9 (b) If ~~any~~ a pledge previously used by a participating
10 institution to obtain a distribution of matching moneys from the
11 trust fund has not been paid in full within seven years or two
12 years, as applicable, from the applicable effective date ~~of this~~
13 ~~article~~ set forth in subsection (a) of this section, then the
14 institution shall return the unmatched portion of state moneys to
15 the trust fund. These moneys shall be reallocated for distribution
16 to the other participating institution or institutions, as
17 applicable, or to the state colleges pursuant to the terms of this
18 section and section ten of this article as applicable.

19 (c) If ~~both~~ all of the participating institutions fail to have
20 deposited into their respective research endowments the requisite
21 amount of qualified donations within seven years or two years, as
22 applicable, from the applicable effective date ~~of this article~~ set
23 forth in subsection (a) of this section, then any moneys remaining
24 in the trust fund that have not been distributed shall be made

1 available for distribution by the commission to state colleges in
2 accordance with the provisions of this article.

3 **§18B-18A-11. Higher Education Policy Commission rule required;**
4 **emergency rule authorized.**

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

10 (1) Documentation standards and review procedures to determine
11 whether a donation or pledge meets the criteria of a qualified
12 donation or qualified pledge when initially received or when the
13 terms of a qualified donation or a qualified pledge are materially
14 altered;

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

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

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

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

4 (b) The Legislature finds that an emergency exists and,
5 therefore, the commission shall file a rule to implement the
6 provisions of this article as an emergency rule pursuant to the
7 provisions of article three-a, chapter twenty-nine-a of this code.
8 The rule is subject to the prior approval of the Legislative
9 Oversight Commission on Education Accountability.

NOTE: The purpose of this bill is to provide for the allocation of matching funds from future moneys deposited into the West Virginia Research Trust Fund generally. The bill expands the eligible recipients of matching funds to include West Virginia State University in certain instances. The bill modifies criteria for eligibility to receive certain matching funds. The bill delineates funds attributed to moneys before January 1, 2014 and those after that date. The bill requires a new legislative rule.

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

§18B-18A-3a is new; therefore, it has been completely underscored.