

1 **H. B. 3162**

2  
3 (By Delegates White, Williams, Marshall, Iaquina, Skaff,  
4 Guthrie, Craig, Phillips, R., Miller, Walters, and Nelson, E.)  
5

6 (Originating in the Committee on Finance)

7  
8 [March 29, 2013]  
9

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

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

22 That §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-8, §18B-18A-  
23 9 and §18B-18A-11 of the Code of West Virginia, 1931, as amended,  
24 be amended and reenacted; and that said code be further amended by  
25 adding thereto a new section, designated §18B-18A-3a, all to read  
26 as follows:

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

2 **§18B-18A-1. Legislative findings; purpose; and intent.**

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

16 The Legislature further finds that a recent emphasis on the  
17 creation of innovative curricula and the receipt of significant  
18 private donations by ~~Marshall University and West Virginia~~  
19 ~~University~~ West Virginia's higher education institutions has led to  
20 major expansions in certain areas of study, including energy,  
21 national security technology, environmental sciences, health and  
22 biomedical sciences, biometrics, biotechnology and nanotechnology.  
23 Despite these expansions, the additional investment of both private  
24 donations and state moneys is critical to recruiting world-class  
25 scientists, researchers, research staff, technicians and  
26 professional degree graduates, as well as providing funding for

1 laboratories and scientific equipment.

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

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

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

23 **§18B-18A-2. Definitions.**

24 (a) *General* -- For the purposes of this article, terms have  
25 the meaning ascribed to them in section two, article one of this  
26 chapter, unless the context in which the term is used clearly

1 requires a different meaning or a specific definition is provided  
2 in this section.

3 (b) *Definitions* --

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

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

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

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

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

25 (6) "Qualified private donation" or "qualified donation" means  
26 ~~any~~ a private donation, gift or bequest to a directed research

1 endowment that meets the criteria set forth in section five of this  
2 article;

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

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

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

13 (B) Is designated by the board of Governors of one or more  
14 state institutions of higher education to receive charitable  
15 contributions for educational purposes on behalf of the institution  
16 or institutions;

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

19 (D) Is not disqualified from tax exemption under 26 U.S.C.  
20 §501(c)(3) for any reason; and

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

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

25 (10) "State college" means the West Virginia School of  
26 Osteopathic Medicine, Bluefield State College, Concord University,

1 Fairmont State University, Glenville State College, Shepherd  
2 University, or West Liberty State College ~~or West Virginia State~~  
3 ~~University.~~

4 **§18B-18A-3. West Virginia Research Trust Fund; availability of**  
5 **funds deposited prior to January 1, 2013; use of**  
6 **investment earnings.**

7 (a) There is ~~created~~ continued in the State Treasury a special  
8 fund to be known as the West Virginia Research Trust Fund which  
9 shall consist of ~~any~~ appropriations of moneys to the fund made by  
10 the Legislature, all earnings from investment of the fund and any  
11 unmatched portion of state moneys returned by a state institution  
12 of higher education.

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

21 (c) In accordance with and subject to the provisions of  
22 section eight of this article, from funds attributed to moneys  
23 deposited to the trust fund prior to January 1, 2013, the  
24 commission shall make available seventy percent of moneys in this  
25 account to match qualified donations and qualified pledges to West

1 Virginia University; and thirty percent of the moneys to match  
2 qualified donations and qualified pledges to Marshall University.

3 (d) Investment earnings accruing in the account may be  
4 expended by the commission to provide matching research funds to  
5 state colleges in accordance with the provisions of section ten of  
6 this article.

7 **§18B-18A-3a. Availability of funds deposited on or after January**  
8 **1, 2013.**

9 In accordance with and subject to the provisions of section  
10 eight of this article, from funds attributed to moneys deposited to  
11 the trust fund on and after January 1, 2013, the commission shall  
12 make available sixty-five percent of moneys in this account to  
13 match qualified donations and qualified pledges to West Virginia  
14 University; twenty-five percent of the moneys to match qualified  
15 donations and qualified pledges to Marshall University; and ten  
16 percent of moneys in this account to match qualified donations and  
17 qualified pledges to West Virginia State University.

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

19 (a) ~~A~~ An eligible participating institution seeking a  
20 distribution of matching moneys from the trust fund attributed to  
21 moneys deposited to the trust fund prior to January 1, 2013, first  
22 shall obtain qualified donations ~~and/or~~ or qualified pledges, or  
23 both, in an amount equal to the amount of matching moneys requested  
24 for distribution. An eligible participating institution seeking a  
25 distribution of matching moneys from the trust fund attributed to

1 moneys deposited to the trust fund on or after January 1, 2013,  
2 first shall obtain qualified donations or qualified pledges, or  
3 both, in an amount that is at least twice the amount of matching  
4 moneys requested for distribution. A participating institution  
5 seeking a distribution of matching moneys from the trust fund under  
6 this subsection ~~and~~ shall submit a request to the commission  
7 setting forth the following:

8       (1) The amount of qualified donations ~~and/or~~ or qualified  
9 pledges, or both, designated for use in requesting the distribution  
10 of matching moneys from the trust fund and the amount of any  
11 previous distributions of matching moneys from the trust fund;

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

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

18       (4) An explanation of how the proposed use of the endowment  
19 proceeds furthers the purposes of this article and addresses the  
20 research needs of the institution as identified in the research  
21 plan; and

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

24       (b) The commission shall review each request for distribution  
25 of matching money from the trust fund for compliance with the  
26 provisions of this article and the rule promulgated pursuant to



1 section eleven of this article.

2 (c) Once the commission approves the request of a  
3 participating institution, it shall distribute matching moneys from  
4 those allocated to the institution in the trust fund to the  
5 applicable research endowment in an amount equal to the amount of  
6 qualified donations ~~and/or~~ or qualified pledges, or both, if  
7 applicable .

8 **§18B-18A-9. Reallocation of matching moneys.**

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

26 (1) If one of the participating institutions fails to have

1 deposited into its research endowments the requisite amount of  
2 qualified donations by the end of this seven or two year period, as  
3 applicable, then any portion of the moneys allocated to the  
4 institution that has not been distributed shall be reallocated for  
5 distribution to the other participating ~~institution~~ institutions  
6 equally pursuant to the terms of this article.

7 (2) To be eligible to receive a distribution of reallocated  
8 moneys pursuant to this subsection, the other participating  
9 institution or institutions, as applicable, shall have qualified  
10 donations in excess of the amount required by subsection (a) of  
11 this section deposited into its research endowment(s) in an amount  
12 equal to or greater than the amount of reallocated moneys.

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

18 (b) If ~~any~~ a pledge previously used by a participating  
19 institution to obtain a distribution of matching moneys from the  
20 trust fund has not been paid in full within seven or two years, as  
21 applicable, from the applicable effective date ~~of this article~~ set  
22 forth in subsection (a) of this section, then the institution shall  
23 return the unmatched portion of state moneys to the trust fund.  
24 These moneys shall be reallocated for distribution to the other  
25 participating institution or institutions, as applicable, or to the  
26 state colleges pursuant to the terms of this section and section

1 ten of this article as applicable.

2 (c) If ~~both~~ all of the participating institutions fail to have  
3 deposited into their respective research endowments the requisite  
4 amount of qualified donations within seven or two years, as  
5 applicable, from the applicable effective date ~~of this article~~ set  
6 forth in subsection (a) of this section, then any moneys remaining  
7 in the trust fund that have not been distributed shall be made  
8 available for distribution by the commission to state colleges in  
9 accordance with the provisions of this article.

10 **§18B-18A-11. Higher Education Policy Commission rule required;**  
11 **emergency rule authorized.**

12 (a) By October 1, ~~2008,~~ 2013, the commission shall propose a  
13 rule for legislative approval in accordance with the provisions of  
14 section six, article one of this chapter and article three-a,  
15 chapter twenty-nine-a of this code to implement the provisions and  
16 purposes of this article. The rule shall include the following:

17 (1) Documentation standards and review procedures to determine  
18 whether a donation or pledge meets the criteria of a qualified  
19 donation or qualified pledge when initially received or when the  
20 terms of a qualified donation or a qualified pledge are materially  
21 altered;

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

26 (3) Procedures to ensure that endowment proceeds are expended

1 in compliance with the provisions of this article;

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

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

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