

1 **Senate Bill No. 560**

2 (By Senators Palumbo, McCabe, Wells, Walters, D. Hall, Unger,
3 Beach, Williams and Stollings)

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5 [Introduced March 18, 2013; referred to the Committee on
6 Education; and then to the Committee on Finance.]

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8 **FISCAL**
9 **NOTE**

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

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

21 That §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-9, §18B-
22 18A-11 and §18B-18A-12 of the Code of West Virginia, 1931, as
23 amended, be amended and reenacted, all to read 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
4 the nation's economy is dependent upon the ability of its
5 institutions of higher education to increase the quality,
6 quantity and productivity of its citizens who are engaged in
7 scientific and technical fields of study. Failure of the United
8 States to compete in these areas may lead to lower standards of
9 living, dependence upon foreign intellectual capital and
10 international insecurity. The economic future of West Virginia
11 is equally dependent upon the ability of ~~Marshall University and~~
12 ~~West Virginia University, the state's two doctoral granting,~~
13 ~~public research universities,~~ its higher education institutions
14 to promote, educate and train researchers and research support
15 staff in these diverse fields of 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
20 to major expansions in certain areas of study, including energy,
21 national security technology, environmental sciences, health and
22 biomedical sciences, biometrics, biotechnology and
23 nanotechnology. Despite these expansions, the additional

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

5 (b) The purpose of the Legislature in enacting this article
6 is 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
11 institution to match qualified private donations and qualified
12 private donation pledges thereby creating an incentive for donors
13 to support certain priority areas of study consistent with each
14 participating institution's long-range strategic plan for
15 research. Creation of this fund promotes strategic private
16 donations targeted to specific areas of research and creates a
17 sustainable source of funding for research initiatives that are
18 critical to achieving long-term goals including, but not limited
19 to, the following:

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

22 (2) Increased potential for patenting, licensing and related
23 technology transfer and commercialization of scientific and

1 technological research in the state.

2 **§18B-18A-2. Definitions.**

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

8 (b) *Definitions* --

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

1 affiliated research corporation in accordance with the provisions
2 of section four of this article;

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

6 (5) "Participating institution" means Marshall University,
7 ~~or~~ West Virginia University and any other state land grant higher
8 education institution;

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

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

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

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

1 (B) Is designated by the board of Governors of one or more
2 state institutions of higher education to receive charitable
3 contributions for educational purposes on behalf of the
4 institution or institutions;

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

7 (D) Is not disqualified from tax exemption under 26 U.S.C.
8 §501(c) (3) for any reason; and

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

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

13 (10) "State college" means the West Virginia School of
14 Osteopathic Medicine, Bluefield State College, Concord
15 University, Fairmont State University, Glenville State College,
16 Shepherd University, West Liberty State College or West Virginia
17 State University.

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

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

1 Institution of Higher Education.

2 (b) Expenditures from the trust fund shall be made for the
3 purposes set forth in this article and are not subject to
4 separate appropriation by the Legislature. Any balance,
5 including accrued investment earnings on any unmatched portion of
6 state moneys returned by a state institution of higher education
7 in the trust fund at the end of each fiscal year ~~shall~~ does not
8 expire to the General Revenue Fund but ~~shall remain~~ remains in
9 the trust fund and ~~be~~ expended as provided by this article.

10 (c) In accordance with the provisions of section eight of
11 this article, the commission shall make available ~~seventy sixty-~~
12 five percent of moneys in this account to match qualified
13 donations and qualified pledges to West Virginia University; ~~and~~
14 ~~thirty~~ 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
17 and qualified pledges to any other state land grant higher
18 education institution.

19 (d) Investment earnings accruing in the account may be
20 expended by the commission to provide matching research funds to
21 state colleges in accordance with the provisions of section ten
22 of this article.

23 (e) The Legislature shall make available \$25 million from

1 the state's General Revenue Fund to be deposited into the West
2 Virginia Research Trust Fund. This additional \$25 million is
3 available only to Marshall University, West Virginia University
4 and any state land grant higher education institution to the
5 extent these universities raise the same amount in matching
6 funds. The funds made available by this subsection are
7 distributed as described in subsection (c) of this section.

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

9 (a) No later than ~~seven~~ two years from ~~the effective date of~~
10 ~~this article,~~ July 1, 2013, each participating institution shall
11 have deposited into its research endowments an amount of
12 qualified donations equal to or greater than the total amount of
13 moneys allocated for distribution to the institution pursuant to
14 the provisions of subsection (c), section three 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~~ two year period,
18 then any portion of the moneys allocated to the institution that
19 has not been distributed shall be reallocated for distribution to
20 the other participating ~~institution~~ institutions pursuant to the
21 terms of this article.

22 (2) To be eligible to receive a distribution of reallocated
23 moneys pursuant to this subsection, the other participating

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

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

10 (b) If ~~any~~ a pledge previously used by a participating
11 institution to obtain a distribution of matching moneys from the
12 trust fund has not been paid in full within ~~seven~~ two years from
13 ~~the effective date of this article,~~ July 1, 2013, then the
14 institution shall return the unmatched portion of state moneys to
15 the trust fund. These moneys shall be reallocated for
16 distribution to the other participating ~~institution~~ institutions
17 or to the state colleges pursuant to the terms of this section
18 and section ten of this article as applicable.

19 (c) If ~~both~~ the participating institutions fail to have
20 deposited into their respective research endowments the requisite
21 amount of qualified donations within ~~seven~~ two years from ~~the~~
22 ~~effective date of this article,~~ July 1, 2013, then any moneys
23 remaining in the trust fund that have not been distributed shall

1 be made available for distribution by the commission to state
2 colleges in 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~~, 2013, the commission shall propose a
6 rule for legislative approval in accordance with the provisions
7 of section six, article one of this chapter and article three-a,
8 chapter twenty-nine-a of this code to implement the provisions
9 and purposes of this article. The rule shall include the
10 following:

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

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

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

22 (4) A requirement for each participating institution to
23 report on the total amount of qualified donations received, the

1 investment earnings realized and any anticipated expenditures of
2 the research endowment proceeds in its annual operating budget;
3 and

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

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

13 **§18B-18A-12. Annual report.**

14 By January 1, ~~2010, and annually thereafter,~~ 2015, the
15 commission shall submit a report to the Governor, the President
16 of the Senate, the Speaker of the House of Delegates and the
17 Legislative Oversight Commission on Education Accountability
18 detailing implementation of the research endowments at each
19 participating institution, the amount of qualified donations
20 received by each participating institution in the preceding
21 fiscal year, the amount of any distributions made from the trust
22 fund and a description of the research and outcomes supported by
23 those moneys.

NOTE: The purpose of this bill is to increase the recipients of the West Virginia Research Trust Fund to include all state land grant institutions of higher education, to redistribute funds, to deposit into the fund a sum certain from the General Revenue Fund under certain conditions, to establish a deadline and consequences for failure to obtain matching funds and donations, to authorize legislative rule making and to require a report from commission by January 1, 2015.

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