

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4496**

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

7 (Originating in the Committee on Finance)

8 [February 21, 2014]

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, all relating generally to  
13 providing for the allocation of matching funds from the West  
14 Virginia Research Trust Fund; expanding the eligible  
15 recipients of matching funds to include West Virginia State  
16 University; and continuing legislative rule and expanding its  
17 application.

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

19 That §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-8,  
20 §18B-18A-9 and §18B-18A-11 of the Code of West Virginia, 1931, as  
21 amended, be amended and reenacted, all to read as follows:

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

23 **§18B-18A-1. Legislative findings; purpose; and intent.**

24 (a) The Legislature finds that the continued expansion of the  
25 nation's economy is dependent upon the ability of its institutions  
26 of higher education to increase the quality, quantity and

1 productivity of its citizens who are engaged in scientific and  
2 technical fields of study. Failure of the United States to compete  
3 in these areas may lead to lower standards of living, dependence  
4 upon foreign intellectual capital and international insecurity.  
5 The economic future of West Virginia is equally dependent upon the  
6 ability of Marshall University and West Virginia University, the  
7 state's two doctoral-granting, public research universities, as  
8 well as its other higher education institutions to promote, educate  
9 and train researchers and research support staff in these diverse  
10 fields of study.

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

22       (b) The purpose of the Legislature in enacting this article is  
23 to establish a state fund to be administered by the Higher  
24 Education Policy Commission to address the findings outlined in  
25 subsection (a) of this section. The fund will make public moneys  
26 available to the state's two doctoral-granting public research

1 universities, Marshall University and West Virginia University, and  
2 a state land grant higher education institution, West Virginia  
3 State University, to match qualified private donations and  
4 qualified private donation pledges; thereby creating an incentive  
5 for donors to support certain priority areas of study consistent  
6 with each participating institution's long-range strategic plan for  
7 research. Creation of this fund promotes strategic private  
8 donations targeted to specific areas of research and creates a  
9 sustainable source of funding for research initiatives that are  
10 critical to achieving long-term goals including, but not limited  
11 to, the following:

12 (1) Research-based economic development and economic  
13 diversification; and

14 (2) Increased potential for patenting, licensing and related  
15 technology transfer and commercialization of scientific and  
16 technological research in the state.

17 **§18B-18A-2. Definitions.**

18 (a) *General.* - For the purposes of this article, terms have  
19 the meaning ascribed to them in section two, article one of this  
20 chapter, unless the context in which the term is used clearly  
21 requires a different meaning or a specific definition is provided  
22 in this section.

23 (b) *Definitions.* - Solely for the purposes of this article,  
24 the following words and phrases have the meanings ascribed to them.

25 (1) "Directed research endowment" or "research endowment"  
26 means an account established at or administered by a participating

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

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

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

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

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

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

24 (7) "Qualified private donation pledge" or "qualified pledge"  
25 means ~~any~~ a pledge, commitment or other agreement to give a private  
26 donation to a directed research endowment that is made pursuant to

1 a written agreement between the donor and the institution or its  
2 affiliated research corporation or foundation and that meets the  
3 criteria set forth in section five of this article;

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

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

8 (B) Is designated by the board of governors of one or more  
9 state institutions of higher education to receive charitable  
10 contributions for educational purposes on behalf of the institution  
11 or institutions;

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

14 (D) Is not disqualified from tax exemption under 26 U.S.C.  
15 §501(c) (3) for any reason; and

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

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

20 (10) "State college" means the West Virginia School of  
21 Osteopathic Medicine, Bluefield State College, Concord University,  
22 Fairmont State University, Glenville State College, Shepherd  
23 University or ~~West Liberty State College or West Virginia State~~  
24 University.

25 **§18B-18A-3. West Virginia Research Trust Fund; use of investment**  
26 **earnings.**

1 (a) There is ~~created~~ continued in the State Treasury a special  
2 fund to be known as the West Virginia Research Trust Fund which  
3 shall consist of ~~any~~ appropriations of moneys to the fund made by  
4 the Legislature, all earnings from investment of the fund and any  
5 unmatched portion of state moneys returned by a state institution  
6 of higher education.

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

16 (c) In accordance with and subject to the provisions of  
17 section eight of this article, the commission shall make available  
18 moneys in this account to match qualified donations and qualified  
19 pledges as follows:

20 (1) Sixty-five percent ~~Seventy percent~~ of moneys in this  
21 ~~account to match qualified donations and qualified pledges~~ to West  
22 Virginia University; ~~and~~

23 (2) Twenty-five percent ~~Thirty percent~~ of the moneys to match  
24 ~~qualified donations and qualified pledges~~ to Marshall University;  
25 and

26 (3) Ten percent to West Virginia State University.

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

5 **§18B-18A-8. Distributions from West Virginia Research Trust Fund.**

6 (a) A participating institution seeking a distribution of  
7 matching moneys from the trust fund first shall obtain qualified  
8 donations, ~~and/or~~ qualified pledges, or both, in an amount equal to  
9 the amount of matching moneys requested for distribution and shall  
10 submit a request to the commission setting forth the following:

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

15 (2) The amount requested for distribution to the participating  
16 institution pursuant to section three of this article;

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

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

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

26 (b) The commission shall review each request for distribution

1 of matching moneys from the trust fund for compliance with the  
2 provisions of this article and the rule promulgated pursuant to  
3 section eleven of this article.

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

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

10 (a) No later than seven years from the ~~effective date of this~~  
11 ~~article~~ July 1, 2014, each participating institution shall have  
12 deposited into its research endowments an amount of qualified  
13 donations equal to or greater than the total amount of moneys  
14 allocated for distribution to the institution pursuant to the  
15 provisions of subsection (c), section three of this article.

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

23 (2) To be eligible to receive a distribution of reallocated  
24 moneys pursuant to this subsection, ~~the other participating~~  
25 ~~institution~~ another participating institution shall have qualified  
26 donations in excess of the amount required by subsection (a) of



1 this section deposited into its research endowment(s) in an amount  
2 equal to or greater than the amount of reallocated moneys.

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

8 (b) If any pledge previously used by a participating  
9 institution to obtain a distribution of matching moneys from the  
10 trust fund has not been paid in full within seven years from ~~the~~  
11 ~~effective date of this article~~ July 1, 2014, then the institution  
12 shall return the unmatched portion of state moneys to the trust  
13 fund. These moneys shall be reallocated for distribution to the  
14 other participating ~~institution~~ institutions or to the state  
15 colleges pursuant to the terms of this section and section ten of  
16 this article as applicable.

17 (c) If ~~both~~ all participating institutions fail to have  
18 deposited into their respective research endowments the requisite  
19 amount of qualified donations within seven years from ~~the effective~~  
20 ~~date of this article~~ July 1, 2014, then any moneys remaining in the  
21 trust fund that have not been distributed shall be made available  
22 for distribution by the commission to state colleges in accordance  
23 with the provisions of this article.

24 **§18B-18A-11. Higher Education Policy Commission rule.**

25 (a) ~~By October 1, 2008, the commission shall propose a rule~~  
26 ~~for legislative approval~~ The commission's legislative rule to

1 implement the provisions and purposes of this article which is in  
2 effect on July 1, 2014, continues in effect unless repealed or  
3 amended in accordance with the provisions of section six, article  
4 one of this chapter and article three-a, chapter twenty-nine-a of  
5 this code. ~~to implement the provisions and purposes of this article~~  
6 The rule shall be interpreted to include West Virginia State  
7 University as a participating institution as provided in this  
8 article.

9       (b) 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

25       (5) Procedures for the competitive application and review of  
26 requests from state colleges and criteria for the eligible use of

1 moneys distributed pursuant to section ten of this article.

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