

**H. B. 4435**

(By Delegates White, Arvon, Boggs, Canterbury,  
Moye, O'Neal, Perry, M. Poling,  
Reynolds, Walters and Marcum)

(By request of the West Virginia School  
of Osteopathic Medicine)

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

A BILL to amend and reenact §12-1-12d of the Code of West Virginia,  
1931, as amended, relating to adding West Virginia School of  
Osteopathic Medicine to the list of state institutions of  
higher education that are permitted to invest certain moneys  
with its foundation and establishing a cap on the amount of  
moneys that it may invest.

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

That §12-1-12d of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 1. STATE DEPOSITORIES.**

**§12-1-12d. Investments by Marshall University, West Virginia  
University and West Virginia School of Osteopathic  
Medicine.**

(a) Notwithstanding any provision of this article to the  
contrary, the governing boards of Marshall University, ~~and~~ West  
Virginia University and West Virginia School of Osteopathic

1 Medicine each may invest certain funds with its respective  
2 nonprofit foundation that has been established to receive  
3 contributions exclusively for that university and which exists on  
4 January 1, 2005. The investment is subject to the limitations of  
5 this section.

6 (b) A governing board, through its chief financial officer,  
7 may enter into agreements, approved as to form by the State  
8 Treasurer, for the investment by its foundation of certain funds  
9 subject to their administration. Any interest or earnings on the  
10 moneys invested is retained by the investing university.

11 (c) Moneys of a university that may be invested with its  
12 foundation pursuant to this section are those subject to the  
13 administrative control of the university that are collected under  
14 an act of the Legislature for specific purposes and do not include  
15 any funds made available to the university from the State General  
16 Revenue Fund or the funds established in sections eighteen or  
17 eighteen-a, article twenty-two, chapter twenty-nine of this code.  
18 Moneys permitted to be invested under this section may be  
19 aggregated in an investment fund for investment purposes.

20 (d) (1) Of the moneys authorized for investment by this  
21 section, Marshall University and West Virginia University each,  
22 respectively, may have invested with its foundation at any time not  
23 more than the greater of:

24 ~~(1)~~ (A) \$18 million for Marshall University and \$25 million

1 for West Virginia University; or

2 ~~(2)~~ (B) Sixty-five percent of its unrestricted net assets as  
3 presented in the statement of net assets for the fiscal year end  
4 audited financial reports.

5 ~~(3)~~ (2) Notwithstanding ~~subdivisions (1) and (2)~~ subdivision  
6 (1) of this subsection, with the approval of the Higher Education  
7 Policy Commission, Marshall University may increase the amount  
8 invested to \$60 million and West Virginia University may increase  
9 the amount invested to \$70 million.

10 (e) Of the moneys authorized for investment by this section,  
11 West Virginia School of Osteopathic Medicine may have invested with  
12 its foundation not more than \$25 million at any time.

13 ~~(e)~~ (f) Investments by foundations that are authorized under  
14 this section shall be made in accordance with and subject to the  
15 provisions of the Uniform Prudent Investor Act codified as article  
16 six-c, chapter forty-four of this code. As part of its fiduciary  
17 responsibilities, each governing board shall establish investment  
18 policies in accordance with the Uniform Prudent Investor Act for  
19 those moneys invested with its foundation. The governing board  
20 shall review, establish and modify, if necessary, the investment  
21 objectives as incorporated in its investment policies so as to  
22 provide for the financial security of the moneys invested with its  
23 foundation. The governing boards shall give consideration to the  
24 following:

- 1 (1) Preservation of capital;
- 2 (2) Diversification;
- 3 (3) Risk tolerance;
- 4 (4) Rate of return;
- 5 (5) Stability;
- 6 (6) Turnover;
- 7 (7) Liquidity; and
- 8 (8) Reasonable cost of fees.

9 ~~(f)~~ (g) A governing board shall report annually by December 31  
10 to the Governor and to the Joint Committee on Government and  
11 Finance on the performance of investments managed by its foundation  
12 pursuant to this section.

13 ~~(g)~~ (h) The amendments to this section in the second  
14 extraordinary session of the Legislature in 2010 apply  
15 retroactively so that the authority granted by this section shall  
16 be construed as if that authority did not expire on July 1, 2010.

NOTE: The purpose of this bill is to add West Virginia School of Osteopathic Medicine to the list of state institutions of higher education that are permitted to invest certain moneys with its foundation. The bill limits the amount that may be invested to \$25 million.

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