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WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 287

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND CARUTH,
BY REQUEST OF THE EXECUTIVE)

[Passed March 8, 2008; in effect from passage.]

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LEGISLATIVE DEPARTMENT
STATE OF WEST VIRGINIA

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-4, §18B-18A-5, §18B-18A-6, §18B-18A-7, §18B-18A-8,

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§18B-18A-9, §18B-18A-10, §18B-18A-11 and §18B-18A-12, all relating to public higher education; research; establishing the West Virginia Research Trust Fund; legislative findings; defining terms; creating special account in the State Treasury; providing for allocation of moneys; authorizing Marshall University and West Virginia University to establish directed research endowments; providing requirements for and administration of directed research endowments; authorizing use of investment earnings; prohibiting expenditure of principal in directed research endowments; providing criteria and restrictions for qualified private donations and qualified private donation pledges; establishing eligible uses of directed research endowment proceeds; requiring directed research endowment plans; establishing criteria and procedures for distribution of matching moneys from the West Virginia Research Trust Fund and providing for reallocation of moneys under certain conditions; requiring participating institutions to return unmatched moneys to the trust fund under certain circumstances; authorizing distribution of certain moneys to state colleges; directing and authorizing Higher Education Policy Commission to promulgate rules; and requiring annual reports.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-4, §18B-18A-5, §18B-18A-6, §18B-18A-7, §18B-18A-8, §18B-18A-9, §18B-18A-10, §18B-18A-11 and §18B-18A-12, all to read as follows:

ARTICLE 18A. DIRECTED RESEARCH ENDOWMENTS.

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

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

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

29 (b) The purpose of the Legislature in enacting this
30 article is to establish a state fund to be administered by
31 the Higher Education Policy Commission to address the
32 findings outlined in subsection (a) of this section. The
33 fund will make public moneys available to the state's

34 two doctoral-granting public research universities to
35 match qualified private donations and qualified private
36 donation pledges; thereby creating an incentive for
37 donors to support certain priority areas of study
38 consistent with each participating institution's long-
39 range strategic plan for research. Creation of this fund
40 promotes strategic private donations targeted to
41 specific areas of research and creates a sustainable
42 source of funding for research initiatives that are
43 critical to achieving long-term goals including, but not
44 limited to, the following:

45 (1) Research-based economic development and
46 economic diversification; and

47 (2) Increased potential for patenting, licensing and
48 related technology transfer and commercialization of
49 scientific and technological research in the state.

§18B-18A-2. Definitions.

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

6 (b) *Definitions* —

7 (1) “Directed research endowment” or “research
8 endowment” means an account established at or
9 administered by a participating institution or its
10 affiliated research corporation or foundation in
11 accordance with the provisions of section four of this
12 article.

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

20 (3) “Directed research endowment proceeds” or
21 “endowment proceeds” means those investment
22 earnings accruing to a participating institution’s
23 directed research endowment and available for
24 expenditure by a participating institution or its
25 affiliated research corporation in accordance with the
26 provisions of section four of this article.

27 (4) “Trust fund” means the special account designated
28 as the West Virginia Research Trust Fund established
29 in section three of this article.

30 (5) “Participating institution” means Marshall
31 University or West Virginia University;

32 (6) “Qualified private donation” or “qualified
33 donation” means any private donation, gift or bequest
34 to a directed research endowment that meets the
35 criteria set forth in section five of this article;

36 (7) “Qualified private donation pledge” or “qualified
37 pledge” means any pledge, commitment or other
38 agreement to give a private donation to a directed
39 research endowment that is made pursuant to a written
40 agreement between the donor and the institution or its
41 affiliated research corporation or foundation and that
42 meets the criteria set forth in section five of this article;

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

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

49 (B) Is designated by the board of governors of one or
50 more state institutions of higher education to receive
51 charitable contributions for educational purposes on
52 behalf of the institutions or institutions;

53 (C) Does not have any part of its earnings inuring to
54 the benefit of any private shareholder or individual;

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

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

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

63 (10) "State college" means the West Virginia School
64 of Osteopathic Medicine, Bluefield State College,
65 Concord University, Fairmont State University,
66 Glenville State College, Shepherd University, West
67 Liberty State College or West Virginia State University.

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

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

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

17 (c) In accordance with the provisions of section eight
18 of this article, the commission shall make available
19 seventy percent of moneys in this account to match
20 qualified donations and qualified pledges to West
21 Virginia University and thirty percent of the moneys to
22 match qualified donations and qualified pledges to
23 Marshall University..

24 (d) Investment earnings accruing in the account may
25 be expended by the commission to provide matching
26 research funds to state colleges in accordance with the
27 provisions of section ten of this article:

§18B-18A-4. Directed research endowments.

1 (a) The governing board of each participating
2 institution may create and administer or enter into an

3 agreement with its research corporation and/or
4 foundation to administer one or more directed research
5 endowments to receive qualified donations and
6 matching state moneys allocated for distribution to that
7 institution.

8 (b) A research endowment consists of qualified
9 donations and matching moneys distributed by the
10 commission from the trust fund in accordance with the
11 provisions of section eight of this article.

12 (c) Subject to the following conditions, the governing
13 board of a participating institution or its research
14 corporation may invest moneys deposited into the
15 research endowment either directly or through a
16 foundation subject to the following conditions:

17 (1) Any interest or other investment earnings on the
18 moneys invested are retained by the participating
19 institution to be used for the purposes set forth in this
20 article;

21 (2) Any investments authorized by this subsection are
22 made in accordance with and subject to the provisions
23 of the Uniform Prudent Investor Act codified as article
24 six-c, chapter forty-four of this code; and

25 (3) Any investments authorized by this subsection are
26 not subject to the provisions of section twelve-d, article
27 one, chapter twelve of this code.

28 (d) Investment earnings accruing to a participating
29 institution's research endowment, hereinafter referred
30 to as endowment proceeds, may be expended by the
31 governing board of the participating institution or its

32 research corporation, subject to the provisions of
33 section six of this article and the following conditions:

34 (1) Endowment proceeds may be expended only for
35 the eligible uses designated; and

36 (2) The principal of a research endowment may not
37 be expended for any purpose.

38 (e) The governing board of a participating institution
39 is exempt from liability for any loss or decrease in value
40 of the assets or income of a directed research
41 endowment, except as losses or decreases in value are
42 shown to be the result of bad faith, gross negligence or
43 intentional misconduct.

44 (f) The governing board of each participating
45 institution shall promulgate a rule or rules for the
46 administration of research endowments that fulfills the
47 purposes and requirements of this article and section
48 six, article one of this chapter.

§18B-18A-5. Qualified private donations.

1 (a) Private donations and pledges to a research
2 endowment meet the criteria for designation as a
3 qualified donation or qualified pledge under the
4 following conditions:

5 (1) The donation or pledge is expressly and
6 specifically restricted by the donor for one or more of
7 the eligible uses designated in section six of this article;
8 however, nothing in this subdivision prohibits a
9 participating institution from designating unrestricted
10 gifts or bequests, or any portion thereof, for use as a

11 qualified donation;

12 (2) The individual donation or pledge is a minimum of
13 fifty thousand dollars or is bundled with other qualified
14 donations or qualified pledges to meet the fifty
15 thousand-dollar threshold; and

16 (3) Donations or pledges may be accepted from
17 individuals, partnerships, associations, public and
18 private for-profit and nonprofit corporations and
19 nongovernmental foundations.

20 (b) The following may not be included as a qualified
21 donation or a qualified pledge:

22 (1) Any donation or pledge received by a participating
23 institution or its affiliated research corporation or
24 foundation prior to the effective date of this article;

25 (2) Educational and general fees, auxiliary fees or
26 other student fees generated by the participating
27 institution;

28 (3) Proceeds from promissory notes, bonds, loans or
29 other instruments evidencing an indebtedness or any
30 other obligation of repayment by the governing board
31 to the maker of the instrument;

32 (4) Any moneys or assets, other than qualified
33 donations or qualified pledges, received from the
34 participating institution's affiliated research
35 corporation or foundation; or

36 (5) Any other moneys received from the state or
37 federal government.

38 (c) The president of each participating institution or
39 his or her designee shall make the initial determination
40 of whether a donation or pledge meets the criteria for
41 qualified donations or qualified pledges as set forth in
42 this section. The president shall also provide a report
43 to the governing board at least once each fiscal year
44 regarding the amount of qualified donations and
45 qualified pledges the participating institution has
46 received.

**§18B-18A-6. Eligible uses of directed research endowment
proceeds.**

1 (a) Endowment proceeds may be expended by a
2 participating institution or its affiliated research
3 corporation for any of the following designated uses:

4 (1) To pay the base salaries of newly endowed
5 department chairs, new professorship positions, new
6 research scientists and new research staff positions,
7 including, but not limited to, research technicians and
8 support personnel, and to fund affiliated graduate or
9 undergraduate student research fellowships.

10 All positions or fellowships shall be engaged
11 primarily in one of the following areas of research:

12 (A) Energy and environmental sciences;

13 (B) Nanotechnology and materials science;

14 (C) Biological, biotechnological and biomedical
15 sciences;

16 (D) Transportation technology and logistics;

17 (E) Biometrics, security, sensing and related
18 identification technologies; or

19 (F) Gerontology; or

20 (2) To purchase basic infrastructure directly related
21 to an area of research identified in subdivision (1) of
22 this subsection, including, but not limited to, laboratory
23 and scientific equipment, and other essential equipment
24 and materials.

25 (b) Eligibility criteria regarding the expenditure of
26 directed endowment proceeds to pay the base salaries
27 of personnel, to fund student fellowships and to
28 purchase basic infrastructure shall be established by
29 rules of the commission promulgated pursuant to
30 section eleven of this article.

§18B-18A-7. Directed research endowment plans.

1 (a) To facilitate the goals of this article and to ensure
2 the prudent expenditure of state moneys, the governing
3 board of each participating institution shall submit to
4 the commission a directed research endowment plan.

5 (b) The research plan shall include, but is not limited
6 to, the following:

7 (1) An assessment of the participating institution's
8 current research initiatives, including any initiatives
9 falling within an area of research identified in section
10 six of this article;

11 (2) An analysis of possible strategies to enhance
12 current research initiatives;

13 (3) An outline of the participating institution's
14 proposed uses of endowment proceeds, including
15 identification of any specific disciplinary hires,
16 collaborations or acquisitions currently under
17 consideration;

18 (4) A list of proposed uses contained in the research
19 plan including the anticipated costs associated with
20 each proposed use;

21 (5) An analysis of the anticipated costs compared to
22 the expected endowment proceeds available to the
23 institution;

24 (6) An evaluation of how the research plan furthers
25 the purposes of this article and addresses the research
26 needs of the institution;

27 (7) Identification of the proposed uses for which
28 alternative funding sources may be sought to enhance
29 the comprehensive research initiatives contemplated by
30 the participating institution. Alternative funding
31 sources exclude qualified donations, matching moneys
32 from the trust fund and the endowment proceeds
33 generated from the trust fund; and

34 (8) Notation of the amount allocated for distribution
35 to the participating institution pursuant to section three
36 of this article.

37 (c) The governing board of each participating
38 institution shall submit its research plan to the
39 commission prior to submitting its first request for a
40 distribution of matching moneys from the trust fund.

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

1 (a) A participating institution seeking a distribution
2 of matching moneys from the trust fund first shall
3 obtain qualified donations and/or qualified pledges in
4 an amount equal to the amount of matching moneys
5 requested for distribution and shall submit a request to
6 the commission setting forth the following:

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

12 (2) The amount requested for distribution to the
13 participating institution pursuant to section three of
14 this article;

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

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

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

25 (b) The commission shall review each request for
26 distribution of matching money from the trust fund for

27 compliance with the provisions of this article and the
28 rule promulgated pursuant to section eleven of this
29 article.

30 (c) Once the commission approves the request of a
31 participating institution, it shall distribute matching
32 moneys from those allocated to the institution in the
33 trust fund to the applicable research endowment in an
34 amount equal to the amount of qualified donations
35 and/or qualified pledges.

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

1 (a) No later than five years from the effective date of
2 this article, each participating institution shall have
3 deposited into its research endowments an amount of
4 qualified donations equal to or greater than the total
5 amount of moneys allocated for distribution to the
6 institution pursuant to the provisions of subsection (c),
7 section three of this article.

8 (1) If one of the participating institutions fails to have
9 deposited into its research endowments the requisite
10 amount of qualified donations by the end of this five-
11 year period, then any portion of the moneys allocated to
12 the institution that has not been distributed shall be
13 reallocated for distribution to the other participating
14 institution pursuant to the terms of this article.

15 (2) To be eligible to receive a distribution of
16 reallocated moneys pursuant to this subsection, the
17 other participating institution shall have qualified
18 donations in excess of the amount required by
19 subsection (a) of this section deposited into its research
20 endowment(s) in an amount equal to or greater than the

21 amount of reallocated moneys.

22 (3) If the other participating institution does not have
23 excess qualified donations on deposit, the reallocated
24 moneys shall be made available for distribution by the
25 commission to state colleges in accordance with the
26 provisions of section ten of this article.

27 (b) If any pledge previously used by a participating
28 institution to obtain a distribution of matching moneys
29 from the trust fund has not been paid in full within five
30 years from the effective date of this article, then the
31 institution shall return the unmatched portion of state
32 moneys to the trust fund. These moneys shall be
33 reallocated for distribution to the other participating
34 institution or to the state colleges pursuant to the terms
35 of this section and section ten of this article as
36 applicable.

37 (c) If both participating institutions fail to have
38 deposited into their respective research endowments
39 the requisite amount of qualified donations within five
40 years from the effective date of this article, then any
41 moneys remaining in the trust fund that have not been
42 distributed shall be made available for distribution by
43 the commission to state colleges in accordance with the
44 provisions of this article.

§18B-18A-10. Distributions to state colleges.

1 (a) The commission may use a portion of those moneys
2 derived from investment earnings accruing to the trust
3 fund in accordance with the provisions of section three
4 of this article, as well as moneys that are not
5 distributed to participating institutions in accordance

6 with the provisions of section nine of this article, to
7 distribute state matching moneys to state colleges, as
8 that term is defined in section two of this article.

9 (b) In the rules required by section eleven of this
10 article, the commission shall establish procedures for
11 the competitive application and review of requests from
12 state colleges and criteria for the eligible use of moneys
13 distributed pursuant to this section.

14 (c) To qualify for a distribution of state matching
15 moneys pursuant to this section, a state college shall
16 meet the following conditions:

17 (1) Obtain qualified donations in an amount equal to
18 or greater than the amount of matching moneys
19 requested for distribution from the trust fund; and

20 (2) Deposit the qualified donations and any matching
21 moneys distributed from the trust fund into the
22 accounts of the institution or its affiliated research
23 corporation or foundation.

24 (d) State matching moneys may be expended only for
25 a research-oriented initiative approved by the
26 commission.

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

1 (a) By the first day of October, two thousand eight,
2 the commission shall propose a rule for legislative
3 approval in accordance with the provisions of section
4 six, article one of this chapter and article three-a,
5 chapter twenty-nine-a of this code to implement the

6 provisions and purposes of this article. The rule shall
7 include the following:

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

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

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

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

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

30 (b) The Legislature finds that an emergency exists
31 and, therefore, the commission shall file a rule to
32 implement the provisions of this article as an
33 emergency rule pursuant to the provisions of article
34 three-a, chapter twenty-nine-a of this code. The rule is

35 subject to the prior approval of the Legislative
36 Oversight Commission on Education Accountability.

§18B-18A-12. Annual report.

1 By the first day of January, two thousand ten, and
2 annually thereafter, the commission shall submit a
3 report to the Governor, the President of the Senate, the
4 Speaker of the House of Delegates, and the Legislative
5 Oversight Commission on Education Accountability
6 detailing implementation of the research endowments
7 at each participating institution, the amount of
8 qualified donations received by each participating
9 institution in the preceding fiscal year, the amount of
10 any distributions made from the trust fund and a
11 description of the research and outcomes supported by
12 those moneys.



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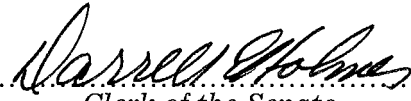
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

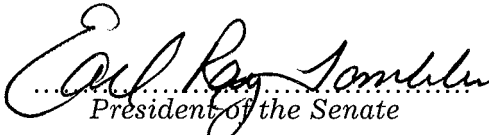

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Chairman House Committee


Originated in the Senate.

In effect from passage.



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Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within *w. appended* this
the *18th* Day of *April*, 2008.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2008

Time 10:05pm