

1                                    **Senate Bill No. 444**

2                                    (By Senators Plymale, Jenkins and Beach)

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

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10 A BILL to amend and reenact §12-1-12d of the Code of West Virginia,  
11                                    1931, as amended, relating to increasing the amounts that  
12                                    Marshall University and West Virginia University may have  
13                                    invested with their respective foundations under certain  
14                                    conditions.

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

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

18 **ARTICLE 1.    STATE DEPOSITORIES.**

19 **§12-1-12d.    Investments by Marshall University and West Virginia**  
20                                    **University.**

21                                    (a) Notwithstanding any provision of this article to the  
22 contrary, the governing boards of Marshall University and West  
23 Virginia University each may invest certain funds with its

1 respective nonprofit foundation that has been established to  
2 receive contributions exclusively for that university and which  
3 exists on January 1, 2005. ~~Any such~~ The investment is subject to  
4 the limitations of this section.

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

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

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

23 (1) \$18 million for Marshall University and \$25 million for  
24 West Virginia University; or

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

4           (3) Notwithstanding subdivisions (1) and (2) of this  
5 subsection, with the approval of the Higher Education Policy  
6 Commission, Marshall University may increase the amount invested to  
7 ~~\$30~~ \$60 million and West Virginia University may increase the  
8 amount invested to ~~\$40~~ \$70 million.

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

- 21           (1) Preservation of capital;
- 22           (2) Diversification;
- 23           (3) Risk tolerance;
- 24           (4) Rate of return;

1 (5) Stability;

2 (6) Turnover;

3 (7) Liquidity; and

4 (8) Reasonable cost of fees.

5 (f) A governing board shall report annually by December 31 to  
6 the Governor and to the Joint Committee on Government and Finance  
7 on the performance of investments managed by its foundation  
8 pursuant to this section.

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

NOTE: The purpose of this bill is to increase the amounts that Marshall University and West Virginia University may have invested with their respective foundations.

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