

Senate Bill No. 510

(By Senators Plymale, Stollings, D. Hall, Wells and McCabe)

[Introduced February 7, 12014; referred to the Committee on
Education; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-9, §18B-18A-11 and §18B-18A-12 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Research Trust Fund; increasing the recipients of the fund to include all state land grant institutions of higher education; providing for the redistribution of moneys; providing for a \$25 million transfer from the General Revenue Fund, under certain conditions, into the West Virginia Research Trust Fund; setting forth deadline and consequences for failure to obtain matching funds and donations; providing for rulemaking; and requiring reporting.

Be it enacted by the Legislature of West Virginia:

That §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-9, §18B-18A-11 and §18B-18A-12 of the Code of West Virginia, 1931, as

1 amended, be amended and reenacted, all to read as follows:

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

3 **§18B-18A-1. Legislative findings; purpose; and intent.**

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

17 The Legislature further finds that a recent emphasis on the
18 creation of innovative curricula and the receipt of significant
19 private donations by ~~Marshall University and West Virginia~~
20 ~~University~~ West Virginia's higher education institutions has led to
21 major expansions in certain areas of study, including energy,
22 national security technology, environmental sciences, health and
23 biomedical sciences, biometrics, biotechnology and nanotechnology.

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

6 (b) The purpose of the Legislature in enacting this article is
7 to establish a state fund to be administered by the Higher
8 Education Policy Commission to address the findings outlined in
9 subsection (a) of this section. The fund will make public moneys
10 available to the state's two doctoral-granting public research
11 universities and any state land grant higher education institution
12 to match qualified private donations and qualified private donation
13 pledges; thereby creating an incentive for donors to support
14 certain priority areas of study consistent with each participating
15 institution's long-range strategic plan for research. Creation of
16 this fund promotes strategic private donations targeted to specific
17 areas of research and creates a sustainable source of funding for
18 research initiatives that are critical to achieving long-term goals
19 including, but not limited 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 participating
11 institution or its affiliated research corporation or foundation in
12 accordance with ~~the provisions of~~ section four of this article;

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

19 (3) "Directed research endowment proceeds" or "endowment
20 proceeds" means those investment earnings accruing to a
21 participating institution's directed research endowment and
22 available for expenditure by a participating institution or its
23 affiliated research corporation in accordance with ~~the provisions~~

1 ~~of~~ section four of this article;

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

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

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

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

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

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

22 (B) Is designated by the Board of Governors of one or more
23 state institutions of higher education to receive charitable

1 contributions for educational purposes on behalf of the institution
2 or institutions;

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

5 (D) Is not disqualified from tax exemption under 26 U.S.C.
6 §501(c)(3) for any reason; and

7 (E) Does not participate or intervene in, on behalf of or in
8 opposition to ~~any a political campaigns~~ campaign for public office;

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

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

16 **§18B-18A-3. West Virginia Research Trust Fund.**

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

23 (b) Expenditures from the trust fund shall be made for the

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

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

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

20 (e) The Legislature shall make available \$25 million from the
21 state's General Revenue Fund to be deposited into the West Virginia
22 Research Trust Fund. This additional \$25 million is available only
23 to Marshall University, West Virginia University and any state land

1 grant higher education institution to the extent these institutions
2 raise the same amount in matching funds. The funds made available
3 by this subsection are distributed as described in subsection (c)
4 of this section.

5 **§18B-18A-9. Reallocation of matching moneys.**

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

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

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

1 than the amount of reallocated moneys.

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

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

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

23 **§18B-18A-11. Higher Education Policy Commission rule required;**

1 **emergency rule authorized.**

2 (a) By October 1, ~~2008~~ 2014, the commission shall propose a
3 rule for legislative approval in accordance with ~~the provisions of~~
4 section six, article one of this chapter and article three-a,
5 chapter twenty-nine-a of this code to implement ~~the provisions and~~
6 ~~purposes of~~ this article. The rule shall include the following:

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

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

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

18 (4) Develop criteria linking endowment funds to institutional
19 performance metrics, including, but not limited to, student
20 retention and graduation rates;

21 ~~(4)~~ (5) A requirement for each participating institution to
22 report on the total amount of qualified donations received, the
23 investment earnings realized and any anticipated expenditures of

1 the research endowment proceeds in its annual operating budget; and
2 ~~(5)~~ (6) Procedures for the competitive application and review
3 of requests from state colleges and criteria for the eligible use
4 of moneys distributed pursuant to section ten of this article.

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

11 **§18B-18A-12. Annual report.**

12 By January 1, ~~2010~~ 2016, and annually thereafter, the
13 commission shall submit a report to the Governor, the President of
14 the Senate, the Speaker of the House of Delegates and the
15 Legislative Oversight Commission on Education Accountability
16 detailing implementation of the research endowments at each
17 participating institution, the amount of qualified donations
18 received by each participating institution in the preceding fiscal
19 year, the amount of any distributions made from the trust fund and
20 a description of the research and outcomes supported by those
21 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. The bill increases the recipients of the fund to include all state land grant institutions of higher education. The bill provides for the redistribution of moneys. The bill provides for a \$25 million transfer from the General Revenue Fund under, certain conditions, into the West Virginia Research Trust Fund. The bill sets forth deadline and consequences for failure to obtain matching funds and donations. The bill provides for rule making. The bill requires reporting.

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