WEST VIRGINIA CODE CHAPTER 18B ARTICLE 18A

WV Legislature

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

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

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

(b) The purpose of the Legislature in enacting this article is to establish a state fund to be administered by the Higher Education Policy Commission to address the findings outlined in subsection (a) of this section. The fund will make public moneys available to the state's two doctoral-granting public research universities, Marshall University and West Virginia University, and a state land grant higher education institution, West Virginia State University, to match qualified private donations and qualified private donation pledges; thereby creating an incentive for donors to support certain priority areas of study consistent with each participating institution's long-range strategic plan for research. Creation of this fund promotes strategic private donations targeted to specific areas of research and creates a sustainable source of funding for research initiatives that are critical to achieving long-term goals including, but not limited to, the following:

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

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

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§18B-18A-2. Definitions.

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

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

(1) "Directed research endowment" or "research endowment" means an account established at or administered by a participating institution or its affiliated research corporation or foundation in accordance with the provisions of section four of this article;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Sixty-five percent to West Virginia University;

(2) Thirty percent to Marshall University; and

(3) Five percent to West Virginia State University.

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

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

(a) The governing board of each participating institution may create and administer or enter into an agreement with its research corporation and/or foundation to administer one or more directed research endowments to receive qualified donations and matching state moneys allocated for distribution to that institution.

(b) A research endowment consists of qualified donations and

matching moneys distributed by the commission from the trust fund in accordance with the provisions of section eight of this article.

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

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

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

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

(d) Investment earnings accruing to a participating institution's research endowment, hereinafter referred to as endowment proceeds, may be expended by the governing board of the participating institution or its research corporation, subject to the provisions of section six of this article and the following conditions:

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

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

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

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

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

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

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

(2) The individual donation or pledge is a minimum of $50,000 or is bundled with other qualified donations or qualified pledges to meet the $50,000 threshold; and

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

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

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

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

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

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

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

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

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

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

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

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

(A) Energy and environmental sciences;

(B) Nanotechnology and materials science;

(C) Biological, biotechnological and biomedical sciences;

(D) Transportation technology and logistics;

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

(F) Gerontology; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The commission shall review each request for distribution of matching moneys from the trust fund for compliance with the provisions of this article and the rule promulgated pursuant to section eleven of this article.

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

WV Legislature

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

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

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

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

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

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

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

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

(a) The commission may use a portion of those moneys derived from investment earnings accruing to the trust fund in accordance with the provisions of section three of this article, as well as moneys that are not distributed to participating institutions in accordance with the provisions of section nine of this article, to distribute state matching moneys to state colleges, as that term is defined in section two of this article.

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

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

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

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

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

WV Legislature

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

(a) The commission's legislative rule to implement the provisions and purposes of this article which is in effect on July 1, 2014, continues in effect unless repealed or amended in accordance with the provisions of section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code. The rule shall be interpreted to include West Virginia State University as a participating institution as provided in this article.

(b) The rule shall include the following:

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

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

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

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

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

WV Legislature

§18B-18A-12. Annual report.

[Repealed].

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