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WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014

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ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4496

(By Delegates Skaff, Mr. Speaker (Mr. Miley),
White, Paxton, Armstead, Lane, E. Nelson,
Fragale, Moore, McCuskey and Poore)

—●—
Passed March 6, 2014

In effect ninety days from passage.

HB 4496

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FOR

H. B. 4496

(BY DELEGATES SKAFF, MR. SPEAKER (MR. MILEY),
WHITE, PAXTON, ARMSTEAD, LANE, E. NELSON,
FRAGALE, MOORE, MCCUSKEY AND POORE)

[Passed March 6, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-8, §18B-18A-9 and §18B-18A-11 of the Code of West Virginia, 1931, as amended, all relating generally to providing for the allocation of matching funds from the West Virginia Research Trust Fund; expanding the eligible recipients of matching funds to include West Virginia State University; and continuing legislative rule and expanding its application.

Be it enacted by the Legislature of West Virginia:

That §18B-18A-1, §18B-18A-2, §18B-18A-3, §18B-18A-8, §18B-18A-9 and §18B-18A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, 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 of the
2 nation's economy is dependent upon the ability of its institutions
3 of higher education to increase the quality, quantity and
4 productivity of its citizens who are engaged in scientific and
5 technical fields of study. Failure of the United States to compete
6 in these areas may lead to lower standards of living, dependence
7 upon foreign intellectual capital and international insecurity. The
8 economic future of West Virginia is equally dependent upon the
9 ability of Marshall University and West Virginia University, the
10 state's two doctoral-granting, public research universities, as
11 well as its other higher education institutions to promote, educate
12 and train researchers and research support staff in these diverse
13 fields of study.

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

26 (b) The purpose of the Legislature in enacting this article is
27 to establish a state fund to be administered by the Higher
28 Education Policy Commission to address the findings outlined
29 in subsection (a) of this section. The fund will make public
30 moneys available to the state's two doctoral-granting public
31 research universities, Marshall University and West Virginia
32 University, and a state land grant higher education institution,

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

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

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

§18B-18A-2. Definitions.

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

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

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

14 (2) “Directed research endowment plan” or “research plan”
15 means the strategies and procedures formally approved and
16 adopted by a governing board of a participating institution

17 pursuant to section seven of this article outlining how a
18 participating institution proposes to use directed research
19 endowment proceeds to meet established goals and objectives;

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

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

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

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

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

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

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

45 (B) Is designated by the board of governors of one or more
46 state institutions of higher education to receive charitable

47 contributions for educational purposes on behalf of the
48 institution or institutions;

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

51 (D) Is not disqualified from tax exemption under 26 U.S.C.
52 §501(c)(3) for any reason; and

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

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

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

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

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

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

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

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

20 (2) Thirty percent to Marshall University; and

21 (3) Five percent to West Virginia State University.

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

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

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

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

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

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

15 (4) An explanation of how the proposed use of the
16 endowment proceeds furthers the purposes of this article and

17 addresses the research needs of the institution as identified in the
18 research plan; and

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

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

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

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

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

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

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

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

24 (b) If any pledge previously used by a participating
25 institution to obtain a distribution of matching moneys from the
26 trust fund has not been paid in full within seven years from July
27 1, 2014, then the institution shall return the unmatched portion
28 of state moneys to the trust fund. These moneys shall be
29 reallocated for distribution to the other participating institutions
30 or to the state colleges pursuant to the terms of this section and
31 section ten of this article as applicable.

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

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

1 (a) The commission's legislative rule to implement the
2 provisions and purposes of this article which is in effect on July
3 1, 2014, continues in effect unless repealed or amended in
4 accordance with the provisions of section six, article one of this
5 chapter and article three-a, chapter twenty-nine-a of this code.
6 The rule shall be interpreted to include West Virginia State
7 University as a participating institution as provided in this
8 article.

9 (b) The rule shall include the following:

10 (1) Documentation standards and review procedures to
11 determine whether a donation or pledge meets the criteria of a

12 qualified donation or qualified pledge when initially received or
13 when the terms of a qualified donation or a qualified pledge are
14 materially altered;

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

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

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

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

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

Danny Wells

Chairman, House Committee

Robert F. Johnson

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Bryan R. Saw

Clerk of the House of Delegates

Joseph M. Menard

Clerk of the Senate

Justin G. Gray

Speaker of the House of Delegates

Joseph V. ...

President of the Senate

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The within is approved this the 26th
day of March, 2014.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAR 20 2014

Time 11:50 am