

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 484**

5 (SENATORS McCABE, UNGER, FOSTER, STOLLINGS, WELLS, MINARD, BEACH AND KESSLER
6 (ACTING PRESIDENT), *original sponsors*)

7 _____
8 [Passed March 12, 2011; in effect from passage.]
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13 AN ACT to amend the Code of West Virginia, 1931, as amended, by
14 adding thereto a new article, designated §18B-1E-1, §18B-1E-2,
15 §18B-1E-3, §18B-1E-4, §18B-1E-5, §18B-1E-6, §18B-1E-7, §18B-
16 1E-8 and §18B-1E-9, all relating to powers and duties of the
17 policy commission; authorizing creation of certain
18 corporations; authorizing policy commission to enter into
19 certain agreements and contractual arrangements; terms and
20 conditions; legislative findings, purpose and intent;
21 definitions; establishing essential criteria for certain
22 corporations; specifying corporation membership, organization
23 and financial requirements; providing for appointment of and
24 specifying qualifications for executive director; requiring
25 annual audit of corporation operations; clarifying issues of
26 conflicts of interest; prohibiting waiver of sovereign
27 immunity; clarifying issues of debt obligations; requiring
28 memorandum of agreement on research collaboration and

1 cooperation; specifying parties to agreement and setting forth
2 certain conditions; specifying certain deadlines; and
3 requiring certain reports.

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

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

9 **ARTICLE 1E. MANAGEMENT AGREEMENTS FOR THE HIGHER EDUCATION POLICY**
10 **COMMISSION.**

11 **§18B-1E-1. Legislative findings and purpose.**

12 (a) The Legislature finds that economic development in West
13 Virginia depends in part on collaborations developed between higher
14 education and businesses and industry, particularly in the
15 advancement of new and emerging technologies. It is in the best
16 interests of the citizens of the state to implement programs which
17 promote this research and contribute to the general economic
18 welfare.

19 (b) The Legislature further finds that the transfer of
20 property to the Commission to establish the West Virginia
21 Education, Research and Technology Park created a new and
22 unprecedented opportunity to promote research and development in
23 the state. An efficiently managed Technology Park will encourage
24 private sector participation in and support for research and
25 economic development and will facilitate collaboration among the
26 commission, the doctoral institutions and their research
27 corporations.

28 (c) It is the responsibility of the commission to ensure that

1 the day to day operations of the Technology Park are carried out
2 effectively and efficiently in order to provide the greatest
3 investment return to the people of West Virginia. To this end the
4 Legislature finds that a mechanism is needed to simplify and
5 expedite property management and purchasing of equipment, material
6 and personal services.

7 (d) Therefore, the purpose of this article is to provide the
8 commission with the authority necessary to carry out its
9 responsibilities related to the operation of the Technology Park.
10 The commission is authorized to enter into agreements and other
11 contractual relationships with an affiliated corporation in order
12 to achieve maximum efficiency in managing the Technology Park.

13 **§18B-1E-2. Definitions.**

14 The following words used in this article have the meanings
15 ascribed to them in this section unless the context clearly
16 indicates a different meaning:

17 (a) "Affiliated corporation" or "corporation" means a
18 corporation which meets the essential criteria prescribed in
19 section three of this article and whose purpose is to provide
20 management services to the commission in carrying out the day to
21 day operations of the Technology Park;

22 (b) "Agreement" means an agreement or contractual relationship
23 entered into between the commission and an affiliated corporation
24 pursuant to the provisions of this article;

25 (c) "Board of directors" means the governing body of a
26 corporation created pursuant to section three of this article;

27 (d) "Doctoral institution" means Marshall University or West
28 Virginia University;

1 (e) "Executive director" means the chief executive officer of
2 an affiliated corporation employed pursuant to section five of this
3 article;

4 (f) "Potential membership" means the total number of members
5 who comprise the board of directors when all membership seats are
6 filled;

7 (g) "Private sector member" means a director of an affiliated
8 corporation who is not an employee of the commission nor of any
9 entity bearing a direct or indirect relationship to the commission;

10 (h) "Research corporation" means a corporation established
11 with respect to Marshall University or West Virginia University
12 pursuant to section three, article twelve of this chapter; and

13 (i) "Technology Park" means the state-owned West Virginia
14 Education, Research and Technology Park affiliated with the
15 commission.

16 **§18B-1E-3. Commission authorized to contract with corporation;**
17 **corporation to meet essential criteria; corporation membership**
18 **and organization; financial requirements.**

19 (a) The commission is authorized to enter into agreements and
20 any other contractual relationships with an affiliated corporation
21 formed as set forth in this article.

22 (b) The affiliated corporation shall meet the following
23 essential criteria:

24 (1) *Corporation status.* -- The corporation is organized as a
25 non-profit, non-stock corporation under the general corporation
26 laws of the state exclusively for charitable, educational or
27 scientific purposes within the meaning of section 501(c) of the
28 Internal Revenue Code of 1986, as amended.

1 (2) *Corporation membership, meetings, officers.* --

2 (A) Members of the board of directors of the affiliated
3 corporation serve terms as prescribed in the bylaws of the
4 corporation and are selected by the commission in consultation with
5 the chancellor. The commission shall make all appointments to the
6 board of directors by majority vote of its members and shall
7 include the individual votes as a part of the minute record.

8 (B) Private sector members shall constitute a majority of the
9 potential membership of the board of directors. Vacancies shall be
10 filled in such a way that the majority status of private sector
11 membership is maintained.

12 (C) By July 1, 2011, and at least biennially thereafter, the
13 board of directors shall elect a chair from among its members.

14 **§18B-1E-4. Powers and duties of board of directors and corporation.**

15 (a) The primary responsibility of the corporation is to manage
16 the day to day operations of the Technology Park through
17 collaboration agreements with the commission. To that end, the
18 board of directors has the following powers and duties:

19 (1) To employ an executive director subject to the provisions
20 of section five of this article;

21 (2) To approve employment of other staff recommended by the
22 executive director as being necessary and appropriate to carry out
23 the purposes of this article and subject to agreements with the
24 commission;

25 (3) To serve as fiscal agent and provide additional services,
26 including, but not limited to, property management, human resources
27 management, and purchasing;

1 (4) To meet as a governing body. A corporation created under
2 this article is exempt from the provisions of section three,
3 article nine-a, chapter six of this code and from the provisions of
4 article one, chapter twenty-nine-b of this code;

5 (5) To receive, purchase, hold, lease, use, sell and dispose
6 of real and personal property of all classes, subject to the
7 provisions of subdivision (8) of this subsection and section eight
8 of this article;

9 (6) To receive from any source whatsoever grants to be
10 expended in accomplishing the objectives of this article;

11 (7) To receive from any source whatsoever aid or contributions
12 of money, property or other things of value to be held, used and
13 applied only for the purposes for which the aid or contributions
14 may be made;

15 (8) To accept and expend any gift, grant, contribution,
16 bequest, endowment or other money for the purposes of this article.
17 Any transfer of endowment or other assets by the commission to the
18 corporation or by the corporation to the commission for management
19 shall be formalized in a memorandum of agreement to assure, at a
20 minimum, that any restrictions governing the future disposition of
21 funds are preserved. The commission may not transfer ownership of
22 the Technology Park property to the corporation;

23 (9) To make, amend and repeal bylaws, rules and its governing
24 documents consistent with the provisions of this article to
25 effectuate the purpose and scope of the corporation;

26 (10) To alter the purpose or scope of the corporation; and

27 (11) To delegate the exercise of any of its powers except for
28 the power to approve budgets to the executive director, subject to

1 the directions and limitations contained in its governing
2 documents.

3 (b) In addition to the powers and duties provided for in this
4 section and any other powers and duties that may be assigned to it
5 by law or agreement, the corporation has other powers and duties
6 necessary to accomplish the objectives of this article or as
7 provided by law.

8 **§18B-1E-5. Appointment of executive director; qualifications.**

9 (a) The commission shall set the qualifications for the
10 position of executive director and shall conduct a thorough search
11 for qualified candidates. A qualified candidate is one who meets
12 at least the following criteria:

13 (1) Possesses a broad understanding of the relationship
14 between public and private sector research and the need for
15 cooperation and collaboration among the commission and the research
16 corporations;

17 (2) Holds at least a bachelor's degree in a field related to
18 the duties and responsibilities of the position of executive
19 director;

20 (3) Demonstrates strong communication skills and the ability
21 to work with all types of businesses and industry, government
22 agencies and higher education institutions; and

23 (4) Possesses other skills, qualifications or attributes as
24 the commission considers appropriate or desirable.

25 (b) The commission shall select the executive director for the
26 corporation and may not delegate this duty to the chancellor. The
27 executive director may have dual appointment with the commission,
28 but may not be a corporation director.

1 (1) The commission shall appoint the executive director by
2 majority vote of its members and shall include the vote as a part
3 of the minute record.

4 (2) The executive director shall inform the board of directors
5 and the commission annually of his or her employment status with
6 any other institution, agency or organization.

7 (c) The day to day operations of the corporation are under the
8 control and supervision of the executive director. With the
9 approval of the board of directors the executive director may
10 employ staff as necessary to carry out the corporation's purposes
11 as set forth in this article.

12 **§18B-1E-6. Agreements; required provisions.**

13 (a) The commission may enter into agreements or other
14 contractual relationships with a corporation that meets the
15 conditions set forth in section three of this article. Any
16 agreement shall specify that the corporation is accountable to the
17 commission for the efficient operations of the Technology Park.

18 (b) On the effective date of the agreement, the corporation
19 becomes the fiscal agent for operations of the Technology Park on
20 behalf of the commission pursuant to terms of the agreement.

21 (c) If an agreement is terminated, the funds, contributions or
22 grants paid or held by the corporation and not encumbered or
23 committed prior to termination shall be distributed as provided for
24 in the agreement.

25 (d) If made part of the agreement, the corporation may use
26 services of both corporation employees and personnel of the
27 commission. The corporation may pay the costs incurred by the
28 commission, including personnel funded on grants and contracts,

1 fringe benefits of personnel funded on grants and contracts,
2 administrative support costs and other costs which may require
3 reimbursement. The corporation may include as costs any applicable
4 overhead and fringe benefit assessments necessary to recover the
5 costs expended by the commission, pursuant to the terms of the
6 agreement, and the commission may be reimbursed for expenses
7 incurred by it pursuant to the agreement.

8 **§18B-1E-7. Audits required; financial reports; conflicts of**
9 **interest.**

10 (a) The financial statements of the corporation shall be
11 audited annually by an independent certified public accountant or
12 firm. Within thirty days of completion, the financial audit report
13 shall be presented to the corporation's board of directors for
14 approval, after which a copy of the financial audit and required
15 statements shall be submitted to the commission.

16 (b) Notwithstanding any other provision of this code to the
17 contrary, any officer or employee of the commission, who is not the
18 executive director of the corporation, may hold an appointment as
19 a member and as an officer of the corporation board of directors.

20 **§18B-1E-8. No waiver of sovereign immunity; not obligation of the**
21 **state.**

22 (a) Nothing contained in this article waives or abrogates in
23 any way the sovereign immunity of the state or deprives the
24 commission or any officer or employee of the commission of
25 sovereign immunity.

26 (b) Obligations of the board of directors or the corporation
27 do not constitute debts or obligations of the commission or the
28 state.

1 **§18B-1E-9. Legislative findings and intent; memorandum of agreement**
2 **required; terms and conditions; reports.**

3 (a) The Legislature finds that the Technology Park is a
4 diversified, multi-tenant research, development and
5 commercialization park focused on energy, chemicals and other
6 sciences and technologies for the advancement of education and
7 economic development in West Virginia. The areas of primary
8 research and development include energy, chemicals and materials,
9 and biotechnology. It is the intent of the Legislature to provide
10 the commission with the tools needed to manage the Technology Park
11 and facilitate the translation of state investment dollars in
12 higher education and research into business and economic growth
13 that will provide tangible benefits for the citizens of the state.

14 (b) To achieve the goals set forth in this section, it is
15 essential that the commission include in its research and
16 development efforts the talents and expertise available at the
17 doctoral institutions and their research corporations. Therefore,
18 by July 1, 2011, the commission shall enter into a memorandum of
19 agreement with the research corporations to delineate the role each
20 party will play in furthering the goals of research and economic
21 development as set forth in this article. The agreement shall
22 focus on collaboration and cooperation among the commission and the
23 two research corporations.

24 (1) The agreement is not effective until all parties have
25 agreed to the included terms and conditions.

26 (2) The commission shall file a report, including a copy of
27 the completed agreement and any relevant documents, with the Joint
28 Committee on Government and Finance and the Legislative Oversight

1 Commission on Education Accountability by July 15, 2011.

2 (3) The agreement may be amended by mutual consent of the
3 parties. Within fifteen days of the date a new agreement is
4 signed, the commission shall file a report as provided in
5 subdivision (2) of this subsection.