

ENGROSSED
COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 484

(By Senators McCabe, Unger, Foster, Stollings, Wells, Minard,
Beach and Kessler (Acting President))

[Originating in the Committee on Education;
reported February 28, 2011.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-1E-1, §18B-1E-2, §18B-1E-3, §18B-1E-4, §18B-1E-5, §18B-1E-6, §18B-1E-7, §18B-1E-8 and §18B-1E-9, all relating to management agreements of the higher education policy commission, authorizing creation of certain corporations; authorizing policy commission to enter into certain agreements and contractual arrangements; terms and conditions; legislative findings, purpose and intent; providing certain definitions; setting forth essential criteria for certain corporations; specifying corpora-

tion membership, organization and financial requirements; providing for appointment of executive director; specifying qualifications; requiring annual audit of corporation operations; clarifying issues of conflicts of interest; prohibiting waiver of sovereign immunity; clarifying issues of debt obligations; requiring memorandum of agreement on research collaboration and cooperation; specifying parties to agreement and setting forth certain conditions; specifying certain deadlines; and requiring reports in certain instances.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 18B. HIGHER EDUCATION.

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

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

- 1 (a) The Legislature finds that economic development in
- 2 West Virginia depends in part on collaborations developed
- 3 between higher education and businesses and industry,

4 particularly in the advancement of new and emerging
5 technologies. It is in the best interests of the citizens of the
6 state to implement programs which promote this research
7 and contribute to the general economic welfare.

8 (b) The Legislature further finds that the transfer of
9 property to the Commission to establish the West Virginia
10 Education, Research and Technology Park created a new and
11 unprecedented opportunity to promote research and develop-
12 ment in the state. An efficiently managed Technology Park
13 will encourage private sector participation in and support for
14 research and economic development and will facilitate
15 collaboration among the commission, the doctoral institu-
16 tions and their research corporations.

17 (c) It is the responsibility of the commission to ensure that
18 the day to day operations of the Technology Park are carried
19 out effectively and efficiently in order to provide the greatest
20 investment return to the people of West Virginia. To this end
21 the Legislature finds that a mechanism is needed to simplify
22 and expedite property management and purchasing of
23 equipment, material, and personal services.

24 (d) Therefore, the purpose of this article is to provide the
25 Commission with the authority necessary to carry out its

26 responsibilities related to the operation of the Technology
27 Park. The commission is authorized to enter into agreements
28 and other contractual relationships with an affiliated
29 corporation in order to achieve maximum efficiency in
30 managing the Technology Park.

§18B-1E-2. Definitions.

1 The following words used in this article have the meanings
2 ascribed to them in this section unless the context clearly
3 indicates a different meaning:

4 “Affiliated corporation” or “corporation” means a corpo-
5 ration which meets the essential criteria prescribed in
6 section three of this article and whose purpose is to provide
7 management services to the commission in carrying out the
8 day to day operations of the Technology Park.

9 “Agreement” means an agreement or contractual relation-
10 ship being entered into between the commission and an
11 affiliated corporation pursuant to the provisions of this
12 article.

13 “Board of directors” means the governing body of the
14 corporation created pursuant to section three of this article.

15 “Doctoral institution” means Marshall University or West
16 Virginia University.

17 “Executive director” means the chief executive officer of
18 the affiliated corporation employed pursuant to section five
19 of this article.

20 “Potential membership” means the total number of
21 members who comprise the board of directors when all
22 membership seats are filled.

23 “Private sector member” means a director of the affiliated
24 corporation who is not an employee of the commission nor of
25 any entity bearing a direct or indirect relationship to the
26 commission.

27 “Research corporation” means a corporation established
28 with respect to Marshall University or West Virginia Univer-
29 sity pursuant to section three, article twelve of this chapter.

30 “Technology Park” means the state-owned West Virginia
31 Education, Research and Technology Park affiliated with the
32 commission.

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

1 (a) The commission is authorized to enter into agreements
2 and any other contractual relationships with the affiliated
3 corporation formed as set forth in this article.

4 (b) The affiliated corporation shall meet the following
5 essential criteria:

6 (1) *Corporation status.* — The corporation is organized as
7 a non-profit, non-stock corporation under the general
8 corporation laws of the state exclusively for charitable,
9 educational or scientific purposes within the meaning of
10 section 501(c) of the Internal Revenue Code of 1986, as
11 amended.

12 (2) *Corporation membership, meetings, officers.* —

13 (A) Members of the board of directors of the affiliated
14 corporation serve terms as prescribed in the bylaws of the
15 corporation and are selected by the commission in consulta-
16 tion with the chancellor. The commission shall make all
17 appointments to the board of directors by majority vote of its
18 members and shall include the individual votes as a part of
19 the minute record.

20 (B) Private sector members shall constitute a majority of
21 the potential membership of the corporate directors. Vacan-
22 cies shall be filled in such a way that the majority status of
23 private sector membership is maintained.

24 (C) By July 1, 2011, and at least biennially thereafter, the
25 corporate directors shall elect a chair from among their
26 members.

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

1 The primary responsibility of the corporation is to manage
2 the day to day operations of the Technology Park through
3 collaboration agreements with the commission. To that end,
4 the board of directors of the corporation has the following
5 powers and duties:

6 (a) To employ an executive director subject to the provi-
7 sions of section five of this article;

8 (b) To approve employment of other staff recommended by
9 the executive director as being necessary and appropriate to
10 carry out the purposes pursuant to this article and subject to
11 agreements with the commission;

12 (c) To serve as fiscal agent and provide additional services,
13 including, but not limited to, property management, human
14 resources management, and purchasing;

15 (d) To meet as a governing body. A corporation created
16 under this article is exempt from the provisions of section
17 three, article nine-a, chapter six of this code and from the
18 provisions of article one, chapter twenty-nine-b of this code;

19 (e) To receive, purchase, hold, lease, use, sell and dispose of
20 real and personal property of all classes, subject to the
21 provisions of section eight of this article;

22 (f) To receive and accept from any public or private agency,
23 corporation, association, person, partnership, company or
24 any other organization or entity of any nature whatsoever
25 grants to be expended in accomplishing the objectives of this
26 article and to receive and accept from the state, from any
27 municipality, county or other political subdivision of the
28 state and from any other source, aid or contributions of
29 either money, property or other things of value to be held,
30 used and applied only for the purposes for which the grants
31 and contributions may be made;

32 (g) To accept and expend any gift, grant, contribution,
33 bequest, endowment or other money for the purposes of this
34 article. Any transfer of endowment or other assets by the
35 commission to the corporation or by the corporation to the
36 commission for management shall be formalized in a memo-
37 randum of agreement to assure, at a minimum, that any
38 restrictions governing the future disposition of funds are
39 preserved. The commission may not transfer ownership of
40 the Technology Park property to the corporation;

41 (h) To make, amend and repeal bylaws and rules consistent
42 with the provisions of this article to carry into effect the
43 purpose and scope of the corporation and, subject to the

44 directions and limitations contained in its governing docu-
45 ments, to delegate the exercise of any of its powers to the
46 executive director except for the power to approve budgets;
47 to make, amend or repeal its governing documents; or to alter
48 the purpose or scope of the corporation;

49 (i) In addition to the powers and duties provided for in this
50 section and any other powers and duties that may be as-
51 signed to it by law or agreement, the corporation has other
52 powers and duties necessary to accomplish the objectives of
53 this article or as provided by law.

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

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

5 (1) Possesses a broad understanding of the relationship
6 between public and private sector research and the need for
7 cooperation and collaboration among the commission and
8 the research corporations;

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

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

15 (4) Possesses other skills, qualifications or attributes as the
16 board of directors may consider appropriate or desirable.

17 (b) The commission shall select the executive director for
18 the corporation who may have dual appointment with the
19 commission, but may not be a corporation director. The
20 commission may not delegate this duty to the chancellor.

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

24 (2) The executive director shall inform the corporate
25 directors and the commission annually of his or her employ-
26 ment status with any other institution, agency or organiza-
27 tion.

28 (c) The corporation is under the control and supervision of
29 the executive director who, with the approval of the board of
30 directors, may employ staff as necessary to carry out the
31 corporation's purposes as set forth in this article.

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

1 (a) The commission is hereby authorized to enter into
2 agreements or other contractual relationships with a corpo-
3 ration that meets the conditions set forth in section three of
4 this article. Any agreement shall specify that the corporation
5 is accountable to the commission for the efficient operations
6 of the Technology Park.

7 (b) On the effective date of the agreement, the corporation
8 becomes the fiscal agent for operations of the Technology
9 Park on behalf of the commission pursuant to terms of the
10 agreement.

11 (c) If an agreement is terminated, the funds, contributions
12 or grants paid or held by the corporation and not encum-
13 bered or committed prior to termination shall be distributed
14 as provided for in the agreement.

15 (d) If made part of the agreement, the corporation may use
16 services of both corporation employees and personnel of the
17 commission. The corporation may pay the costs incurred by
18 the commission, including personnel funded on grants and
19 contracts, fringe benefits of personnel funded on grants and
20 contracts, administrative support costs and other costs which
21 may require reimbursement. The corporation may include as
22 costs any applicable overhead and fringe benefit assessments

23 necessary to recover the costs expended by the commission,
24 pursuant to the terms of the agreement, and the commission
25 may be reimbursed for expenses incurred by it pursuant to
26 the agreement.

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

1 (a) The financial statements of the corporation shall be
2 audited annually by an independent certified public accoun-
3 tant or firm. Within thirty days of completion, the financial
4 audit report shall be presented to the corporation's govern-
5 ing board for approval, after which a copy of the financial
6 audit and required statements shall be submitted to the
7 commission.

8 (b) Notwithstanding any other provision of this code to the
9 contrary, officers and employees of the commission may hold
10 appointments to offices of the corporation and be members
11 of its board of directors. The board of directors shall make an
12 annual report of these appointments to the commission.

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

1 (a) Nothing contained in this article waives or abrogates in
2 any way the sovereign immunity of the state or deprives the

3 commission or any officer or employee of the commission of
4 sovereign immunity.

5 (b) Obligations of the board of directors or the corporation
6 do not constitute debts or obligations of the commission or
7 the state.

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

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

13 (b) To achieve the goals set forth in this section, it is
14 essential that the commission include in its research and
15 development efforts the talents and expertise available at the

16 doctoral institutions and their research corporations.
17 Therefore, by July 1, 2011, the commission shall enter into a
18 memorandum of agreement with the research corporations
19 to delineate the role each party will play in furthering the
20 goals of research and economic development as set forth in
21 this article. The agreement shall focus on collaboration and
22 cooperation among the commission and the two research
23 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
28 the Joint Committee on Government and Finance and the
29 Legislative Oversight Commission on Education Account-
30 ability by July 15, 2011.

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

**CHAPTER 18C. STUDENT LOANS,
SCHOLARSHIPS AND STATE AID.**

**ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES
FOR MAXIMIZING IN-STATE STUDENT EXCEL-
LENCE SCHOLARSHIP PROGRAM.**

**§18C-7-5. Powers and duties of the West Virginia Higher Educa-
tion Policy Commission regarding the PROMISE
Scholarship.**

1 (a) *Powers of commission.* — In addition to the powers
2 granted by any other provision of this code, the commission
3 has the powers necessary or convenient to carry out the
4 purposes and provisions of this article including, but not
5 limited to, the following express powers:

6 (1) To promulgate legislative rules in accordance with the
7 provisions of article three-a, chapter twenty-nine-a of this
8 code to effectuate the purposes of this article;

9 (2) To invest any of the funds of the West Virginia PROM-
10 ISE Scholarship Fund established in section seven of this
11 article with the West Virginia Investment Management
12 Board in accordance with the provisions of article six,
13 chapter twelve of this code. Any investments made pursuant
14 to this article shall be made with the care, skill, prudence
15 and diligence under the circumstances then prevailing that
16 a prudent person acting in a like capacity and familiar with

17 such matters would use in conducting an enterprise of a like
18 character and with like aims. Fiduciaries shall diversify plan
19 investments to the extent permitted by law to minimize the
20 risk of large losses, unless under the circumstances it is
21 clearly prudent not to do so;

22 (3) To execute contracts and other necessary instruments;

23 (4) To impose reasonable requirements for residency for
24 students applying for the PROMISE scholarship. Except as
25 provided in section four, article one of this chapter, a student
26 shall have met the following requirements to be eligible:

27 (A) Completed at least one half of the credits required for
28 high school graduation in a public or private high school in
29 this state; or

30 (B) Received instruction in the home or other approved
31 place pursuant to subsection (c), section one, article eight,
32 chapter eighteen of this code for the two years immediately
33 preceding application;

34 (C) This subsection does not establish residency require-
35 ments for matriculation or fee payment purposes at state
36 institutions of higher education;

37 (5) To contract for necessary goods and services, to employ
38 necessary personnel and to engage the services of private

39 persons for administrative and technical assistance in
40 carrying out the responsibilities of the scholarship program.
41 Any services provided or secured to implement or administer
42 the provisions of this section remain under the direction and
43 authority of the Vice Chancellor for Administration;

44 (6) To solicit and accept gifts, including bequests or other
45 testamentary gifts made by will, trust or other disposition,
46 grants, loans and other aid from any source and to partici-
47 pate in any federal, state or local governmental programs in
48 carrying out the purposes of this article;

49 (7) To define the terms and conditions under which
50 scholarships are awarded with the minimum requirements
51 being set forth in section six of this article; ~~and~~

52 (8) To approve or reject applications for participation in
53 the PROMISE scholarship program by any public or private
54 regionally accredited institution in this state not listed in
55 section three of this article. The commission has the sole and
56 unilateral authority to grant approval to an institution to
57 participate in the program and approval may not be granted
58 by any other governmental entity nor through amendment of
59 section three of this article; and

60 ~~(8)~~ (9) To establish other policies, procedures and criteria
61 necessary to implement and administer the provisions of this
62 article.

63 (b) *Duties of commission.* — In addition to any duty
64 required by any other provision of this code, the commission
65 has the following responsibilities:

66 (1) To operate the program in a fiscally responsible manner
67 and within the limits of available funds;

68 (2) To operate the program as a merit-based program;

69 (3) To adjust academic eligibility requirements should
70 projections indicate that available funds will not be suffi-
71 cient to cover future costs; and

72 (4) To maintain contact with graduates who have received
73 PROMISE scholarships and to provide a written statement
74 of intent to recipients who are selected to receive a PROM-
75 ISE scholarship notifying them that acceptance of the
76 scholarship entails a responsibility to supply the following:

77 (A) Information requested by the commission to determine
78 the number and percentage of recipients who shall:

79 (i) Continue to live in West Virginia after graduation;

80 (ii) Obtain employment in West Virginia after graduation;

81 and

82 (iii) Enroll in post-graduate education programs;

83 (B) For PROMISE scholars who enroll in post-graduate
84 education programs, the name of the state in which each
85 post-graduate institution is located; and

86 (C) Any other relevant information the commission
87 reasonably requests to implement the provisions of this
88 subdivision;

89 (5) To analyze and use the data collected pursuant to
90 subdivision (4) of this subsection to:

91 (A) Report the findings annually to the Legislative Over-
92 sight Commission on Education Accountability; and

93 (B) Make annual recommendations to the Legislative
94 Oversight Commission on Education Accountability regard-
95 ing any actions the commission considers necessary or
96 expedient to encourage PROMISE recipients to live and
97 work in the state after graduation.