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SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2003*



**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO.** *651*

(By Senator *Prezioso, et al* )



**PASSED** *March 8, 2003*

**In Effect** *90 days from* **Passage**

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SENATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 651

(SENATORS PREZIOSO, UNGER, BOLEY, EDGELL, ROSS,  
ROWE, SHARPE, SMITH AND WEEKS, *original sponsors*)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to repeal article one-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter five-b of said code by adding thereto a new article, designated article two-c, relating to creation of the West Virginia academy of science and technology; declaring legislative purpose; establishing the academy council; defining the qualifications and selection of members; establishing terms of members; providing that members shall not be entitled to compensation; executive director of the council; duties of the council and the executive director; nomination of fellows of the academy and their participation in working groups of the academy; requiring periodic reports; continuation; and providing for confidentiality of trade secrets.

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

That article one-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter five-b of said code be amended by adding thereto a new article, designated article two-c, to read as follows:

**ARTICLE 2C. WEST VIRGINIA ACADEMY OF SCIENCE AND TECHNOLOGY.**

**§5B-2C-1. Legislative purpose.**

1 (a) The Legislature hereby finds that educational and  
2 economic development require an integrated program of  
3 support for research and development, assistance in the  
4 transfer of technological innovations and discoveries to  
5 public and private enterprises and facilitation of the  
6 commercialization of intellectual property. To that end,  
7 the state recognizes the need for:

8 (1) Informed analysis of the status of science and tech-  
9 nology research, development and commercialization  
10 capabilities, infrastructure and activities within West  
11 Virginia and the development of innovative options that  
12 build upon and expand them with the goal of increasing  
13 the gross state product;

14 (2) Coordination of efforts to attract private and federal  
15 assistance for research, development and commercializa-  
16 tion in those fields most likely to maximize the gross state  
17 product;

18 (3) Increased collaboration between all of the federal,  
19 state and private research and development and technol-  
20 ogy commercialization organizations in the state;

21 (4) Strengthening the leadership and support of the West  
22 Virginia experimental program to stimulate competitive  
23 research; and

24 (5) Leadership in science and technology policy.

25 (b) The Legislature therefore declares that creation of a  
26 West Virginia academy of science and technology will  
27 promote and foster the educational and economic develop-  
28 ment of the state.

**§5B-2C-2. West Virginia academy of science and technology;  
composition; creation of council, appointment  
and terms; expenses; selection of chairperson;  
quorum; meetings.**

1 (a) There is hereby created, within the West Virginia  
2 development office, a West Virginia academy of science  
3 and technology. The academy consists of a standing  
4 council of nine members and such ad hoc working groups  
5 as may be necessary to review a particular field of study.  
6 A working group may include both members of the council  
7 and also such individuals having expertise within their  
8 profession or discipline who can be appointed fellows of  
9 the academy.

10 (b) Members of the academy council shall be selected for  
11 their demonstrated ability in innovative thinking, manage-  
12 ment skills, broad technical knowledge and a record of  
13 working to improve the science and technology base of the  
14 state. The objective of the process of selection shall be to  
15 create a council that, in its composition, represents a broad  
16 cross-section of those involved throughout the state's  
17 science and technology enterprises. Members of the council  
18 shall be selected and appointed as follows:

19 (1) The governor shall appoint to the council, with the  
20 advice and consent of the Senate, three members experi-  
21 enced with, or serving in, federal agencies that promote  
22 and utilize research, development and commercialization,  
23 from a list of six persons recommended by a nominating  
24 committee. The nominating committee will be organized  
25 and lead by a representative from the national energy  
26 technology laboratory and may consist of representatives  
27 of United States government agencies, including, but not  
28 limited to, the federal departments of energy, transporta-

29 tion, agriculture, defense and homeland security, the  
30 national science foundation and the national aeronautics  
31 and space administration;

32 (2) The governor shall appoint to the council, with the  
33 advice and consent of the Senate, three members with  
34 experience and expertise in private enterprise, research  
35 and development and commercialization from a list of six  
36 persons recommended by a nominating committee. The  
37 nominating committee will be organized and lead by a  
38 representative from the council for community and  
39 economic development and may consist of representatives  
40 from labor and industry, including, but not limited to, the  
41 economic development authority, the infrastructure  
42 council, the West Virginia high technology consortium and  
43 the West Virginia American federation of labor - congress  
44 of industrial organizations; and

45 (3) The governor shall appoint to the council, with the  
46 advice and consent of the Senate, three members with  
47 experience and expertise in stimulating competitive  
48 research and development from a list of six persons  
49 recommended by a nominating committee. The nominat-  
50 ing committee shall be organized and lead by a representa-  
51 tive of the higher education policy commission and may  
52 consist of representatives from the state institutions of  
53 higher education.

54 (c) The terms of the council members taking office on or  
55 after the effective date of this legislation shall expire as  
56 designated by the governor at the time of their appoint-  
57 ment, with one term in each of the three categories in  
58 subsection (b) of this section expiring at the end of the  
59 second year, one term in each category expiring at the end  
60 of the fourth year and one term in each category expiring  
61 at the end of the sixth year. As the original appointments  
62 expire, each subsequent appointment will be for a full six-  
63 year term. Any member whose term has expired may serve  
64 until a successor has been duly appointed and qualified.  
65 For any vacancy in the office of a member occurring prior

66 to the expiration of that term, the vacancy may be filled by  
67 the governor from a list of three qualified persons recom-  
68 mended by the remaining members of the council. Any  
69 person appointed to fill a vacancy shall serve for only the  
70 unexpired term unless reappointed by the governor for an  
71 additional term. Any member may be appointed to  
72 successive terms not to exceed two full terms.

73 (d) Members of the council are not entitled to compensa-  
74 tion for service on the council but may be reimbursed by  
75 the West Virginia development office for all reasonable  
76 and necessary expenses actually incurred in the perfor-  
77 mance of their duties in a manner consistent with guide-  
78 lines of the travel management office of the department of  
79 administration or its successor.

80 (e) The governor will select and appoint a member of the  
81 council to serve as chairperson for a term of two years to  
82 run concurrently with the term of office of the member  
83 designated as chair.

84 (f) A majority of members constitutes a quorum for the  
85 purpose of conducting business.

86 (g) The council shall meet at least once each quarter of  
87 the year and shall conduct all meetings in accordance with  
88 the open governmental meetings proceedings act pursuant  
89 to article nine-a, chapter six of this code.

**§5B-2C-3. Executive director; powers and duties; compensation;  
expenses.**

1 (a) The governor is authorized and directed to request  
2 and negotiate the loan of a federal executive employee,  
3 pursuant to the provisions of the federal intergovernmen-  
4 tal personnel act, to serve as the initial executive director  
5 of the council. This person is expected to serve as execu-  
6 tive director of the academy for a period of not less than  
7 one year. He or she must have training and experience in  
8 science, technology research, development and commer-  
9 cialization and demonstrable skills in managing new

10 programs. The executive director shall serve at the will  
11 and pleasure of the academy council and is not entitled to  
12 compensation but may be reimbursed by the West Virginia  
13 development office for all reasonable and necessary  
14 expenses actually incurred in the performance of his or her  
15 duties in a manner consistent with guidelines of the travel  
16 management office of the department of administration or  
17 its successor.

18 (b) Subsequent executive directors may be selected by  
19 the council in consultation with the director of the West  
20 Virginia development office.

21 (c) In addition to assisting the council and its working  
22 groups in the exercise of their duties, the executive  
23 director shall:

24 (1) Facilitate and oversee the process for the initial  
25 nomination and appointment of council members;

26 (2) Provide and obtain scientific, technical, economic,  
27 programmatic information and market research to support  
28 the work of the academy;

29 (3) Foster and maintain relationships between agencies  
30 of this state, other states, the federal government, educa-  
31 tional institutions, nonprofit organization and private  
32 enterprises for the advancement of research, development  
33 and commercialization;

34 (4) Organize, prepare and lead presentations on science,  
35 technology research and development and commercializa-  
36 tion for business executives, state legislative leaders and  
37 committees, and federal agencies; and

38 (5) Develop yearly work plans for the academy.

39 (d) The executive director will be available to the  
40 governor, the speaker of the House of Delegates and the  
41 president of the Senate to analyze and comment upon  
42 proposed legislation and rules that relate to or materially  
43 affect state scientific, technical and commercialization  
44 issues.

**§5B-2C-4. Powers and duties of the council of the academy of science and technology.**

1 (a) The council may seek and accept public and private  
2 research grants and contracts, matching funds and pro-  
3 curement arrangements from the state and federal govern-  
4 ment, private industry and other agencies, in furtherance  
5 of and consistent with its mission and programs: *Provided*,  
6 That members of the council may not violate the West  
7 Virginia ethics act, pursuant to the provisions of chapter  
8 six-b of this code.

9 (b) The council may, through the West Virginia develop-  
10 ment office, receive and accept gifts or grants from private  
11 foundations, corporations, individuals, devises and  
12 bequests or from other lawful sources. All moneys col-  
13 lected shall be deposited in a special account in the state  
14 treasury to be known as the "West Virginia academy of  
15 science and technology fund". Expenditures from the fund  
16 shall be made by the West Virginia development office on  
17 the request of the council for the purposes set forth in this  
18 article and are not authorized from collections but are to  
19 be made only in accordance with appropriation by the  
20 Legislature and in accordance with the provisions of  
21 article three, chapter twelve of this code and upon fulfill-  
22 ment of the provisions of article two, chapter five-a of this  
23 code: *Provided*, That for the fiscal year ending the thirtieth  
24 day of June, two thousand four, expenditures are autho-  
25 rized from collections rather than pursuant to appropria-  
26 tion by the Legislature.

27 (c) The council may select and appoint fellows of the  
28 council pursuant to the provision of section five of this  
29 article.

30 (d) The council may make recommendations to the  
31 governor, the speaker of the House of Delegates, the  
32 president of the Senate and the joint commission on  
33 economic development concerning strategic and specific

34 policies to foster research and development within this  
35 state.

36 (e) The council may recommend legislation to facilitate  
37 improved coordination between state agencies, educa-  
38 tional institutions, industries and research laboratories.

39 (f) The council may develop and produce written or  
40 electronic information to assist researchers in educational  
41 institutions or private enterprise in identifying, applying  
42 for and obtaining grants, stipends or other financial  
43 support for research, development, technology transfer or  
44 commercialization of intellectual property.

45 (g) The council may convene public meetings to gather  
46 information or receive public comments regarding the  
47 administration and coordination of research and develop-  
48 ment efforts within this state.

49 (h) The council may, through the West Virginia develop-  
50 ment office, enter into contracts or joint venture agree-  
51 ments with federal and state agencies, corporations,  
52 partnerships and other organizations that conduct re-  
53 search, make grants, improve educational programs and  
54 work for the scientific, educational or economic develop-  
55 ment of this state. The director of the West Virginia  
56 development office and the council must, by majority vote,  
57 approve all contracts and joint venture agreements.

58 (i) The council may enter into contractual agreements for  
59 consideration with entities that are funded from sources  
60 other than the state: *Provided*, That members of the  
61 council may not violate the West Virginia ethics act  
62 pursuant to the provisions of chapter six-b of this code.

63 (j) Members of the academy may be appointed to serve  
64 on boards of directors of any contracting private nonprofit  
65 corporation, foundation or firm: *Provided*, That members  
66 of the council may not violate the West Virginia ethics act  
67 pursuant to the provisions of chapter six-b of this code.

**§5B-2C-5. Fellows of the academy of science and technology.**

1 (a) In order to address the specific opportunities and  
2 needs of any particular field of science and technology, the  
3 council may establish working groups composed of a  
4 member or members of the council with expertise in that  
5 field or discipline and additional individuals, to be known  
6 as fellows of the academy of science and technology. Any  
7 working group so created may conduct business, research  
8 and meetings by telephone, electronic mail or in person  
9 and shall not require a quorum to conduct its business.  
10 The committee or working group shall submit a report or  
11 reports of its findings and recommendations to the council  
12 for incorporation in policy recommendations and the  
13 annual report of the academy.

14 (b) Selection of a fellow of the academy will be made on  
15 the basis of the designated individual's experience and  
16 expertise in the field to be addressed by the working group  
17 and must be by a majority vote of the council. The term of  
18 a fellow of the academy is one year and a term may be  
19 renewed by the council as needed.

**§5B-2C-6. Periodic reports.**

1 (a) The academy will prepare and produce an annual  
2 report on the state of science and technology in West  
3 Virginia and submit it to the governor, the speaker of the  
4 House of Delegates, the president of the Senate and the  
5 joint commission on economic development on or before  
6 the first day of July of each year. The report shall address  
7 all aspects of research, development, and commercializa-  
8 tion that the academy council deems material, including,  
9 but not limited to:

10 (1) Strengths, weaknesses, opportunities and threats to  
11 West Virginia's research, development and commercializa-  
12 tion environment and establishments;

13 (2) Options for actions by the Legislature and the  
14 governor to maximize the ability of the state to attract

15 investment, grants and infrastructure development to  
16 support growth of science and technology research,  
17 development and commercialization in the state;

18 (3) The status of, and options to improve, scientific and  
19 technological entrepreneurship in West Virginia; and

20 (4) The status of, and options to improve, the collabora-  
21 tion of institutions of higher education in obtaining  
22 competitive research awards and grants;

23 (b) In preparing its annual report, the council may utilize  
24 the technical support available to it through the West  
25 Virginia development office, the West Virginia department  
26 for education and arts, the West Virginia experimental  
27 program to stimulate competitive research (EPSCoR), the  
28 West Virginia higher education system, federal and state  
29 agencies and other entities that have an interest in foster-  
30 ing science and technology research, development and  
31 commercialization in this state.

32 (c) Each month, an academy representative shall meet  
33 with legislative and executive leaders to provide updates  
34 and information concerning opportunities, issues and  
35 progress of science, technology and commercialization in  
36 the state.

**§5B-2C-7. Confidentiality of contributed material.**

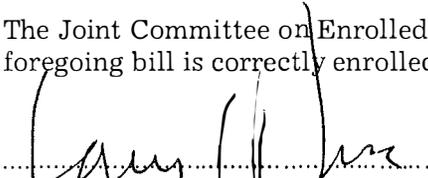
1 Any documentary material, data or other writing made  
2 or received by the West Virginia academy of science and  
3 technology for the purpose of developing state summaries  
4 or policy options concerning the capabilities, performance  
5 or plans of individual businesses or organizations is  
6 deemed to be confidential trade secrets which are exempt  
7 from disclosure under the provisions of section four,  
8 article one, chapter twenty-nine-b of this code and the  
9 provisions of section one, article two of this chapter.

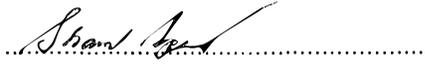
**§5B-2C-8. Continuation of the academy.**

1 The academy of science and technology hereby created  
2 shall continue to exist, pursuant to article ten, chapter  
3 four of this code until the first day of July, two thousand  
4 six, unless sooner terminated, continued or reestablished  
5 pursuant to the provisions of that article.

Enr. Com. Sub. For S. B. No. 651] 12

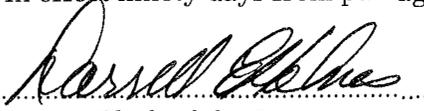
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

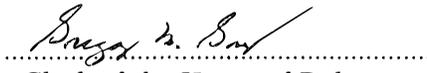
  
.....  
Chairman Senate Committee

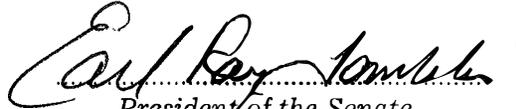
  
.....  
Chairman House Committee

Originated in the Senate.

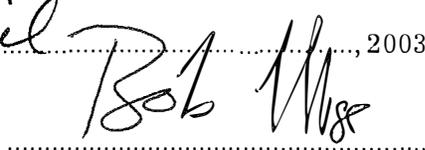
In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 15<sup>th</sup>  
Day of April, 2003.  
  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/27/03

Time 10:10am