

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 484**

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

7 \_\_\_\_\_  
8 [Originating in the Committee on Education;  
9 reported February 28, 2011.]  
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13  
14 A BILL to amend the Code of West Virginia, 1931, as amended, by  
15 adding thereto a new article, designated §18B-1E-1, §18B-1E-2,  
16 §18B-1E-3, §18B-1E-4, §18B-1E-5, §18B-1E-6, §18B-1E-7, §18B-  
17 1E-8 and §18B-1E-9; and to amend and reenact §18C-7-5 of said  
18 code, all relating to powers and duties of the policy  
19 commission; authorizing creation of certain corporations;  
20 authorizing policy commission to enter into certain agreements  
21 and contractual arrangements; terms and conditions;  
22 legislative findings, purpose and intent; providing certain  
23 definitions; setting forth essential criteria for certain  
24 corporations; specifying corporation membership, organization  
25 and financial requirements; providing for appointment of  
26 executive director; specifying qualifications; requiring  
27 annual audit of corporation operations; clarifying issues of  
28 conflicts of interest; prohibiting waiver of sovereign

1 immunity; clarifying issues of debt obligations; requiring  
2 memorandum of agreement on research collaboration and  
3 cooperation; specifying parties to agreement and setting forth  
4 certain conditions; specifying certain deadlines; requiring  
5 reports in certain instances; and clarifying approval process  
6 for participation of certain institutions in PROMISE  
7 scholarship program.

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

9 That the Code of West Virginia, 1931, as amended, be amended  
10 by adding thereto a new article, designated §18B-1E-1, §18B-1E-2,  
11 §18B-1E-3, §18B-1E-4, §18B-1E-5, §18B-1E-6, §18B-1E-7, §18B-1E-8  
12 and §18B-1E-9; and that §18C-7-5 of said code be amended and  
13 reenacted, all to read as follows:

14 **CHAPTER 18B. HIGHER EDUCATION.**

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

17 **§18B-1E-1. Legislative findings and purpose.**

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

25 (b) The Legislature further finds that the transfer of  
26 property to the Commission to establish the West Virginia  
27 Education, Research and Technology Park created a new and  
28 unprecedented opportunity to promote research and development in

1 the state. An efficiently managed Technology Park will encourage  
2 private sector participation in and support for research and  
3 economic development and will facilitate collaboration among the  
4 commission, the doctoral institutions and their research  
5 corporations.

6 (c) It is the responsibility of the commission to ensure that  
7 the day to day operations of the Technology Park are carried out  
8 effectively and efficiently in order to provide the greatest  
9 investment return to the people of West Virginia. To this end the  
10 Legislature finds that a mechanism is needed to simplify and  
11 expedite property management and purchasing of equipment, material,  
12 and personal services.

13 (d) Therefore, the purpose of this article is to provide the  
14 Commission with the authority necessary to carry out its  
15 responsibilities related to the operation of the Technology Park.  
16 The commission is authorized to enter into agreements and other  
17 contractual relationships with an affiliated corporation in order  
18 to achieve maximum efficiency in managing the Technology Park.

19 **§18B-1E-2. Definitions.**

20 The following words used in this article have the meanings  
21 ascribed to them in this section unless the context clearly  
22 indicates a different meaning:

23 "Affiliated corporation" or "corporation" means a corporation  
24 which meets the essential criteria prescribed in section three of  
25 this article and whose purpose is to provide management services to  
26 the commission in carrying out the day to day operations of the  
27 Technology Park.

28 "Agreement" means an agreement or contractual relationship

1 being entered into between the commission and an affiliated  
2 corporation pursuant to the provisions of this article.

3 "Board of directors" means the governing body of the  
4 corporation created pursuant to section three of this article.

5 "Doctoral institution" means Marshall University or West  
6 Virginia University.

7 "Executive director" means the chief executive officer of the  
8 affiliated corporation employed pursuant to section five of this  
9 article.

10 "Potential membership" means the total number of members who  
11 comprise the board of directors when all membership seats are  
12 filled.

13 "Private sector member" means a director of the affiliated  
14 corporation who is not an employee of the commission nor of any  
15 entity bearing a direct or indirect relationship to the commission.

16 "Research corporation" means a corporation established with  
17 respect to Marshall University or West Virginia University pursuant  
18 to section three, article twelve of this chapter.

19 "Technology Park" means the state-owned West Virginia  
20 Education, Research and Technology Park affiliated with the  
21 commission.

22 **§18B-1E-3. Commission authorized to contract with corporation;**  
23 **corporation to meet essential criteria; corporation membership**  
24 **and organization; financial requirements.**

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

28 (b) The affiliated corporation shall meet the following

1 essential criteria:

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

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

8 (A) Members of the board of directors of the affiliated  
9 corporation serve terms as prescribed in the bylaws of the  
10 corporation and are selected by the commission in consultation with  
11 the chancellor. The commission shall make all appointments to the  
12 board of directors by majority vote of its members and shall  
13 include the individual votes as a part of the minute record.

14 (B) Private sector members shall constitute a majority of the  
15 potential membership of the corporate directors. Vacancies shall  
16 be filled in such a way that the majority status of private sector  
17 membership is maintained.

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

20 **§18B-1E-4. Powers and duties of board of directors and corporation.**

21 The primary responsibility of the corporation is to manage the  
22 day to day operations of the Technology Park through collaboration  
23 agreements with the commission. To that end, the board of  
24 directors of the corporation has the following powers and duties:

25 (a) To employ an executive director subject to the provisions  
26 of section five of this article;

27 (b) To approve employment of other staff recommended by the

1 executive director as being necessary and appropriate to carry out  
2 the purposes pursuant to this article and subject to agreements  
3 with the commission;

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

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

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

14 (f) To receive and accept from any public or private agency,  
15 corporation, association, person, partnership, company or any other  
16 organization or entity of any nature whatsoever grants to be  
17 expended in accomplishing the objectives of this article and to  
18 receive and accept from the state, from any municipality, county or  
19 other political subdivision of the state and from any other source,  
20 aid or contributions of either money, property or other things of  
21 value to be held, used and applied only for the purposes for which  
22 the grants and contributions may be made;

23 (g) To accept and expend any gift, grant, contribution,  
24 bequest, endowment or other money for the purposes of this article.  
25 Any transfer of endowment or other assets by the commission to the  
26 corporation or by the corporation to the commission for management  
27 shall be formalized in a memorandum of agreement to assure, at a  
28 minimum, that any restrictions governing the future disposition of

1 funds are preserved. The commission may not transfer ownership of  
2 the Technology Park property to the corporation;

3 (h) To make, amend and repeal bylaws and rules consistent with  
4 the provisions of this article to carry into effect the purpose and  
5 scope of the corporation and, subject to the directions and  
6 limitations contained in its governing documents, to delegate the  
7 exercise of any of its powers to the executive director except for  
8 the power to approve budgets; to make, amend or repeal its  
9 governing documents; or to alter the purpose or scope of the  
10 corporation;

11 (i) In addition to the powers and duties provided for in this  
12 section and any other powers and duties that may be assigned to it  
13 by law or agreement, the corporation has other powers and duties  
14 necessary to accomplish the objectives of this article or as  
15 provided by law.

16 **§18B-1E-5. Appointment of executive director; qualifications.**

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

21 (1) Possesses a broad understanding of the relationship  
22 between public and private sector research and the need for  
23 cooperation and collaboration among the commission and the research  
24 corporations;

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

28 (3) Demonstrates strong communication skills and the ability

1 to work with all types of businesses and industry, government  
2 agencies and higher education institutions; and

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

5 (b) The commission shall select the executive director for the  
6 corporation who may have dual appointment with the commission, but  
7 may not be a corporation director. The commission may not delegate  
8 this duty to the chancellor.

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

12 (2) The executive director shall inform the corporate  
13 directors and the commission annually of his or her employment  
14 status with any other institution, agency or organization.

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

19 **§18B-1E-6. Agreements; required provisions.**

20 (a) The commission is hereby authorized to enter into  
21 agreements or other contractual relationships with a corporation  
22 that meets the conditions set forth in section three of this  
23 article. Any agreement shall specify that the corporation is  
24 accountable to the commission for the efficient operations of the  
25 Technology Park.

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



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

5 (d) If made part of the agreement, the corporation may use  
6 services of both corporation employees and personnel of the  
7 commission. The corporation may pay the costs incurred by the  
8 commission, including personnel funded on grants and contracts,  
9 fringe benefits of personnel funded on grants and contracts,  
10 administrative support costs and other costs which may require  
11 reimbursement. The corporation may include as costs any applicable  
12 overhead and fringe benefit assessments necessary to recover the  
13 costs expended by the commission, pursuant to the terms of the  
14 agreement, and the commission may be reimbursed for expenses  
15 incurred by it pursuant to the agreement.

16 **§18B-1E-7. Audits required; financial reports; conflicts of**  
17 **interest.**

18 (a) The financial statements of the corporation shall be  
19 audited annually by an independent certified public accountant or  
20 firm. Within thirty days of completion, the financial audit report  
21 shall be presented to the corporation's governing board for  
22 approval, after which a copy of the financial audit and required  
23 statements shall be submitted to the commission.

24 (b) Notwithstanding any other provision of this code to the  
25 contrary, officers and employees of the commission may hold  
26 appointments to offices of the corporation and be members of its  
27 board of directors. The board of directors shall make an annual  
28 report of these appointments to the commission.

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

3 (a) Nothing contained in this article waives or abrogates in  
4 any way the sovereign immunity of the state or deprives the  
5 commission or any officer or employee of the commission of  
6 sovereign immunity.

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

10 **§18B-1E-9. Legislative findings and intent; memorandum of agreement**  
11 **required; terms and conditions; reports.**

12 (a) The Legislature finds that the Technology Park is a  
13 diversified, multi-tenant research, development and  
14 commercialization park focused on energy, chemicals and related  
15 technologies for the advancement of education and economic  
16 development in West Virginia. The areas of primary research and  
17 development include energy, chemicals and materials, and  
18 biotechnology. It is the intent of the Legislature to provide the  
19 commission with the tools needed to manage the Technology Park and  
20 facilitate the translation of state investment dollars in higher  
21 education and research into business and economic growth that will  
22 provide tangible benefits for the citizens of the state.

23 (b) To achieve the goals set forth in this section, it is  
24 essential that the commission include in its research and  
25 development efforts the talents and expertise available at the  
26 doctoral institutions and their research corporations. Therefore,  
27 by July 1, 2011, the commission shall enter into a memorandum of  
28 agreement with the research corporations to delineate the role each

1 party will play in furthering the goals of research and economic  
2 development as set forth in this article. The agreement shall  
3 focus on collaboration and cooperation among the commission and the  
4 two research corporations.

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

7 (2) The commission shall file a report, including a copy of  
8 the completed agreement and any relevant documents, with the Joint  
9 Committee on Government and Finance and the Legislative Oversight  
10 Commission on Education Accountability by July 15, 2011.

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

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

16 **ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR**  
17 **MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.**

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

20 (a) *Powers of commission.* -- In addition to the powers granted  
21 by any other provision of this code, the commission has the powers  
22 necessary or convenient to carry out the purposes and provisions of  
23 this article including, but not limited to, the following express  
24 powers:

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

28 (2) To invest any of the funds of the West Virginia PROMISE

1 Scholarship Fund established in section seven of this article with  
2 the West Virginia Investment Management Board in accordance with  
3 the provisions of article six, chapter twelve of this code. Any  
4 investments made pursuant to this article shall be made with the  
5 care, skill, prudence and diligence under the circumstances then  
6 prevailing that a prudent person acting in a like capacity and  
7 familiar with such matters would use in conducting an enterprise of  
8 a like character and with like aims. Fiduciaries shall diversify  
9 plan investments to the extent permitted by law to minimize the  
10 risk of large losses, unless under the circumstances it is clearly  
11 prudent not to do so;

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

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

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

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

24 (C) This subsection does not establish residency requirements  
25 for matriculation or fee payment purposes at state institutions of  
26 higher education;

27 (5) To contract for necessary goods and services, to employ  
28 necessary personnel and to engage the services of private persons

1 for administrative and technical assistance in carrying out the  
2 responsibilities of the scholarship program. Any services provided  
3 or secured to implement or administer the provisions of this  
4 section remain under the direction and authority of the Vice  
5 Chancellor for Administration;

6 (6) To solicit and accept gifts, including bequests or other  
7 testamentary gifts made by will, trust or other disposition,  
8 grants, loans and other aid from any source and to participate in  
9 any federal, state or local governmental programs in carrying out  
10 the purposes of this article;

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

14 (8) To approve or reject applications for participation in the  
15 PROMISE scholarship program by any public or private regionally  
16 accredited institution in this state not listed in section three of  
17 this article. The commission has the sole and unilateral authority  
18 to grant approval to an institution to participate in the program  
19 and approval may not be granted by any other governmental entity  
20 nor through amendment of section three of this article; and

21 ~~(8)~~ (9) To establish other policies, procedures and criteria  
22 necessary to implement and administer the provisions of this  
23 article.

24 (b) *Duties of commission.* -- In addition to any duty required  
25 by any other provision of this code, the commission has the  
26 following responsibilities:

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

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

2 (3) To adjust academic eligibility requirements should  
3 projections indicate that available funds will not be sufficient to  
4 cover future costs; and

5 (4) To maintain contact with graduates who have received  
6 PROMISE scholarships and to provide a written statement of intent  
7 to recipients who are selected to receive a PROMISE scholarship  
8 notifying them that acceptance of the scholarship entails a  
9 responsibility to supply the following:

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

- 12 (i) Continue to live in West Virginia after graduation;
- 13 (ii) Obtain employment in West Virginia after graduation; and
- 14 (iii) Enroll in post-graduate education programs;

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

18 (C) Any other relevant information the commission reasonably  
19 requests to implement the provisions of this subdivision;

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

22 (A) Report the findings annually to the Legislative Oversight  
23 Commission on Education Accountability; and

24 (B) Make annual recommendations to the Legislative Oversight  
25 Commission on Education Accountability regarding any actions the  
26 commission considers necessary or expedient to encourage PROMISE  
27 recipients to live and work in the state after graduation.