

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 484**

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

6 _____
7 [Originating in the Committee on Education;
8 reported February 28, 2011.]
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13 A BILL 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 management agreements of
17 the higher education policy commission, authorizing creation
18 of certain corporations; authorizing policy commission to
19 enter into certain agreements and contractual arrangements;
20 terms and conditions; legislative findings, purpose and
21 intent; providing certain definitions; setting forth essential
22 criteria for certain corporations; specifying corporation
23 membership, organization and financial requirements; providing
24 for appointment of executive director; specifying
25 qualifications; requiring annual audit of corporation
26 operations; clarifying issues of conflicts of interest;
27 prohibiting waiver of sovereign immunity; clarifying issues of
28 debt obligations; requiring memorandum of agreement on

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

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

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

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

27 "Doctoral institution" means Marshall University or West
28 Virginia University.

1 "Executive director" means the chief executive officer of the
2 affiliated corporation employed pursuant to section five of this
3 article.

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

7 "Private sector member" means a director of the 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 "Research corporation" means a corporation established with
11 respect to Marshall University or West Virginia University pursuant
12 to section three, article twelve of this chapter.

13 "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 the 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 corporate directors. Vacancies shall
10 be 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 corporate directors shall elect a chair from among their members.

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

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

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

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

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

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

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

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

25 (h) To make, amend and repeal bylaws and rules consistent with
26 the provisions of this article to carry into effect the purpose and
27 scope of the corporation and, subject to the directions and
28 limitations contained in its governing documents, to delegate the

1 exercise of any of its powers to the executive director except for
2 the power to approve budgets; to make, amend or repeal its
3 governing documents; or to alter the purpose or scope of the
4 corporation;

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

10 **§18B-1E-5. Appointment of executive director; qualifications.**

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

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

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

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

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

27 (b) The commission shall select the executive director for the
28 corporation who may have dual appointment with the commission, but

1 may not be a corporation director. The commission may not delegate
2 this duty to the chancellor.

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

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

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

13 **§18B-1E-6. Agreements; required provisions.**

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

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

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

27 (d) If made part of the agreement, the corporation may use
28 services of both corporation employees and personnel of the

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

10 **§18B-1E-7. Audits required; financial reports; conflicts of**
11 **interest.**

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

18 (b) Notwithstanding any other provision of this code to the
19 contrary, officers and employees of the commission may hold
20 appointments to offices of the corporation and be members of its
21 board of directors. The board of directors shall make an annual
22 report of these appointments to the commission.

23 **§18B-1E-8. No waiver of sovereign immunity; not obligation of the**
24 **state.**

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

1 (b) Obligations of the board of directors or the corporation
2 do not constitute debts or obligations of the commission or the
3 state.

4 **§18B-1E-9. Legislative findings and intent; memorandum of agreement**
5 **required; terms and conditions; reports.**

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

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

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

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

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