

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3273**

By Delegates Keaton, Linville, Phillips, Steele,  
Cannon, Street, Clark, Zatezalo, Maynor, and  
Honaker

[Introduced February 03, 2023; Referred to the  
Committee on Education then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §18B-12B-1, §18B-12B-2, §18B-12B-3, §18B-12B-4, §18B-12B-5; relating to  
 3 establishing the State Tech Transfer Commission.

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

**ARTICLE 12B. STATE TECH TRANSFER COMMISSION.**

**§18B-12B-1. Declaration of policy.**

1 (a) Intellectual property owned by a state institution of higher education is, ultimately, the  
 2 property of the state of West Virginia.

3 (b) The chief fruit of intellectual property owned by the state of West Virginia is  
 4 commercialization of such property for creation of jobs and economic prosperity.

5 (c) The public policy of this state shall be to promote the public interest of commercializing  
 6 intellectual property held by state institutions of higher education at a reasonable amount of  
 7 monetary satisfaction for the institution while abiding by reasonable terms.

**§18B-12B-2. State Tech Transfer Commission established; membership; staffing.**

1 (a) There is created a State Tech Transfer Commission, situated within the Higher  
 2 Education Policy Commission;

3 (b) It shall be composed of five members appointed by the Governor to staggered, three-  
 4 year terms fitting the following qualifications:

5 (1) A member who is an attorney from a list of three qualified nominees furnished by the  
 6 West Virginia State Bar;

7 (2) A member with a professional background in the field of engineering;

8 (3) A member with a professional background in the field of bioscience;

9 (4) A member with a professional background in a venture capital firm or startup company;

10 (5) A member who is retired from administration of a state institution of higher education.

11 (c) The Chancellor of the Higher Education Policy Commission shall be a member;

12 (d) The Executive Director of the Jobs & Investment Trust shall be a member;

13 (e) Ex-Officio, Non-voting members of the Legislature, appointed by the Speaker and  
14 Senate President;

15 (f) Authorized to hire an executive director and staff necessary to effectuate the provisions  
16 of this article at a salary set by the Commission;

17 The Executive Director of the State Tech Transfer Commission serves at the will and  
18 pleasure of the Governor.

**§18B-12B-3. Duties and Powers of the Commission.**

1 (a) An entity seeking to license, acquire, or otherwise utilize intellectual property owned by  
2 a state institution of higher education may petition the State Tech Transfer Commission for a  
3 hearing to ascertain whether:

4 (1) A party to the negotiation is not negotiating in good faith;

5 (2) A party to the negotiation is not putting forth reasonable effort in pursuit of an  
6 agreement;

7 (3) The petitioner's proposed agreement to the state institution of higher education serves,  
8 prima facie, the public interest of commercializing intellectual property held at state institutions of  
9 higher education at a reasonable amount of monetary satisfaction for the institution while abiding  
10 by reasonable terms;

11 (4) The petitioner's proposed agreement certifies that the petitioners will avail themselves  
12 of the provisions of the Impact Fund provided for in §12-6E-1, et seq. of this code

13 (b) The petitioner and the state institution of higher education shall submit their respective  
14 proposed agreement to the Commission for consideration.

15 (c) In the event that the Commission makes a finding consistent with (a)(1) or (a)(2) above,  
16 the Commission may enter an order to do any of the following:

17 (1) Remand negotiations to the two parties with parameters prescribed by the  
18 Commission;

19 (2) Offer a proposed agreement to the petitioner on behalf of the state institution of higher

20 education;

21 (3) Adopt the petitioner's proposed agreement on behalf of the state institution of higher  
22 education.

23 (d) In the event the Commission makes a finding consistent with (a)(3) above, the  
24 Commission may enter an order to do any of the following:

25 (1) Remand negotiations to the two parties with parameters prescribed by the  
26 Commission;

27 (2) Offer a proposed agreement to the petitioner on behalf of the state institution of higher  
28 education;

29 (3) Adopt the petitioner's proposed agreement on behalf of the state institution of higher  
30 education.

31 (e) In the event the Commission makes a finding consistent with (a)(4) above, the  
32 Commission may enter an order to do any of the following:

33 (1) Remand negotiations to the two parties with parameters prescribed by the  
34 Commission;

35 (2) Offer a proposed agreement to the petitioner on behalf of the state institution of higher  
36 education;

37 (3) Adopt the petitioner's proposed agreement on behalf of the state institution of higher  
38 education.

**§18B-12B-4. Construction of Statute; severability.**

1 (a) This article shall be construed in conformity with any applicable federal law.

2 (b) If any provision of this article or the application thereof to any person or circumstance is  
3 held invalid, such invalidity shall not affect other provisions or applications of the article, and to this  
4 end the provisions of this article are severable.

**§18B-12B-5. Effective date.**

1 This article shall take effect on January 1, 2024.

NOTE: The purpose of this bill is to establish the State Tech Transfer Commission for the purpose of oversight for the utilization of intellectual property held by state institutions of higher education.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.