

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Senate Bill 543

By Senators Maynard, Grady, Jeffries, Oliverio,
Woelfel, and Queen

[Passed February 9, 2024; in effect 90 days from
passage]

1 AN ACT to amend and reenact §18B-12-3, §18B-12-4, and §18B-12-10 of the Code of West
2 Virginia, 1931, as amended, all relating to research and economic development
3 agreements for state institutions of higher education; and clarifying that the governing
4 boards of state institutions of higher education are authorized to enter into agreements and
5 contractual relationships with corporations formed with respect to such state institutions of
6 higher education for purposes of fostering economic development efforts.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 12. RESEARCH AND DEVELOPMENT AGREEMENTS FOR STATE
INSTITUTIONS OF HIGHER EDUCATION.**

**§18B-12-3. Boards authorized to contract with corporations; characteristics of
corporations.**

1 Each governing board for a state institution of higher education may enter into agreements
2 and any other contractual relationships with one or more corporations formed with respect to such
3 state institution of higher education, but only if each such corporation meets the following
4 descriptions:

5 (1) The president and the president's appointees from the institution shall constitute a
6 majority of the voting corporate directors.

7 (2) The corporation shall be organized as a nonprofit, nonstock corporation under the
8 general corporation laws of the state exclusively for charitable, educational or scientific purposes
9 within the meaning of section 501(c) of the Internal Revenue Code of 1986, as amended, to foster
10 and support research and economic development efforts at the respective state institution of
11 higher education and to provide evaluation, development, patenting, management and marketing
12 services for inventions of the faculty, staff and students of such state institution of higher
13 education.

14 (3) The meetings of the corporate directors shall be subject to §6-9A-3 of this code.

15 (4) Upon dissolution of the corporation, the assets of the corporation shall be transferred to
16 such entity as the appropriate governing board shall designate for the benefit of the state
17 institution of higher education: *Provided*, That such recipient shall be an organization operated
18 exclusively for charitable, educational, or scientific purposes as shall at such time qualify as an
19 exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

§18B-12-4. Agreement; required provisions.

1 (a) Notwithstanding §12-3-10 of this code or any other provision of law to the contrary,
2 each governing board is hereby authorized to enter into an agreement with one or more private
3 corporations, which agreement shall be for the benefit of the state institution of higher education
4 and contain the following provisions, subject to further specification as is mutually agreed upon by
5 the governing board and the corporation:

6 (1) On the effective date of the agreement, the corporation is charged with the
7 responsibility of serving as fiscal agent for sponsored projects conducted by the faculty, staff and
8 students of the state institution of higher education, and grants shall be accepted by the
9 corporation on behalf of the institution and assigned to the corporation for fiscal management.

10 (2) The corporation shall provide evaluation, development, patenting, licensing,
11 management, and marketing services for inventions, processes, trademarks, except institutional
12 trademarks an institution's governing board elects to retain, copyrights or any other intellectual
13 property developed by faculty, staff, and students of any state institution of higher education.

14 (3) The corporation may determine the application of the proceeds from any invention,
15 process, trademark, except institutional trademarks an institution's governing board elects to
16 retain, copyright or any other intellectual property developed by the faculty, staff, or students of an
17 institution among the corporation, the inventor or developer, and the institution.

18 (4) The corporation may receive, purchase, hold, lease, use, sell, and dispose of real and
19 personal property of all classes subject to the provisions of section ten of this article.

20 (5) The corporation has such additional responsibilities related to the administration of

21 research and development at the institution or the fostering of economic development as are
22 necessary or desirable.

23 (b) Upon termination of the agreement, the funds or grants paid or held by the corporation,
24 and all other property held by the corporation, shall be transferred to the institution or its designee
25 as the governing board directs.

26 (c) A corporation may utilize both corporation employees and personnel of the institution.
27 The corporation may pay the costs incurred by the institution including personnel funded on grants
28 and contracts, fringe benefits of personnel funded on grants and contracts, administrative support
29 costs and other costs which may require reimbursement. The corporation may include as costs
30 any applicable overhead and fringe benefit assessments necessary to recover the costs
31 expended by the institution, pursuant to the terms of the agreement, and that a board may be
32 reimbursed for expenses incurred by it pursuant to the agreement.

§18B-12-10. Assignment or transfer of property to certain corporations.

1 (a) Institutional boards of governors may provide and transfer funding and property, both
2 real and personal, to corporations as defined in section one of this article, and with which the
3 institution under its jurisdiction has contracted pursuant to the provisions of this article. Any deed
4 that transfers real property under the provisions of this section to a corporation, as defined in
5 §18B-12-1 of this code, for either: (i) Research and development; (ii) economic development
6 projects resulting in the creation of employment by the corporation and the state institution of
7 higher education; or (iii) both; under this section shall include provisions requiring that the real
8 property revert to the institution under the following circumstances:

9 (1) For a period of two years, the property is not used for at least one of the purposes for
10 which it may be conveyed;

11 (2) The corporation to which the real property is transferred is dissolved; or

12 (3) The corporation files a petition in bankruptcy.

13 (b) Any corporation, as that term is defined in §18B-12-1 of this code, may provide and

14 transfer funding and property, both real and personal, to another person, firm or corporation for: (i)
15 Research and development; (ii) economic development projects resulting in the creation of
16 employment by the corporation and the state institution of higher education; or (iii) both. Any deed
17 that transfers real property to a person, firm or corporation shall include provisions requiring that
18 the real property revert to the corporation, as defined in §18B-12-1 of this code, under the following
19 circumstances:

20 (1) For a period of six months, the property is not used for at least one of the purposes for
21 which it may be conveyed;

22 (2) The corporation to which the real property is transferred is dissolved; or

23 (3) The corporation files a petition in bankruptcy.

24 (c) The person, firm or corporation that receives real property from the corporation, as
25 defined in §18B-12-1 of this code, may not transfer the property to another party without the written
26 permission of the corporation, as defined in §18B-12-1 of this code. The corporation, as defined in
27 section one of this article, may not grant any such request unless the corporation determines that
28 covenants in the deed or lease agreement provide adequate assurance that the terms of
29 subsections (a) and (b) of this section are preserved.

30 (d) At least 20 days before the transfer of any property pursuant to the provisions of this
31 section, the institutional board of governors or the corporation, as defined in §18B-12-1 of this
32 code, whichever is appropriate, shall give public notice of the transfer through a Class II legal
33 advertisement in accordance with the provisions of §59-3-1 *et seq.* of this code.