WEST VIRGINIA CODE CHAPTER 18B ARTICLE 12

WV Legislature

§18B-12-1. Definitions.

The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:

(1) "Agreement" means any agreement being entered into between a governing board and a corporation pursuant to §18B-12-4 or §18B-12-11 of this code.

(2) "Corporation" means a nonstock, not-for-profit corporation established under the general corporation laws of the state which meets the description presented by §18B-12-3 or §18B-12-11 of this code.

(3) "Corporate directors" means the board of directors of a corporation.

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§18B-12-2. Legislative findings and purpose.

(a) The Legislature finds and determines that the future economic development in the state will depend in part upon research developed at the state institutions of higher education, and enhanced research opportunities for state institutions of higher education will promote the general economic welfare of the citizens of the state. In order to enhance the competitive position of state institutions of higher education in the current environment for research and development, expenditures for equipment and material for research projects must be handled in an expeditious fashion, and the acquisition and utilization of research grants can be simplified and expedited through the utilization of private corporations.

(b) The interest of the citizens of the state will be best met by agreements entered into and carried out by the governing boards and corporations to provide research assistance for state institutions of higher education. Therefore, in order to facilitate research and development grants, economic development, and opportunities for state institutions of higher education, it is appropriate to authorize the governing boards to contract with private corporations organized for the purpose of providing such services to state institutions of higher education or established exclusively for purposes of economic development and job creation.

(c) The Legislature further finds and determines that in order to foster and enhance the operational success and competitive nature of intercollegiate athletics in the current environment, the state institutions of higher education will benefit from utilization of private corporations to conduct operational, economic, fiscal, and educational development activities and services related to intercollegiate athletics' programs.

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

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

(1) The president and the president's appointees from the institution shall constitute a majority of the voting corporate directors: *Provided*, That the voting corporate directors of any entity established to conduct operational, economic, fiscal, and educational development activities and services related to intercollegiate athletics shall consist solely of employees of the institution of higher education or an employee of an affiliate of the institution of higher education.

(2) The corporation shall be organized as a nonprofit, nonstock corporation under the general corporation laws of the state exclusively for charitable, educational or scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to engage in one or more of the following: (a) to foster and support research and economic development efforts at the respective state institution of higher education; (b) to provide evaluation, development, patenting, management and marketing services for inventions of the faculty, staff and students of such state institution of higher education; and (c) to conduct operational economic, fiscal, and educational development activities and services related to intercollegiate athletics' programs at state institutions of higher education.

(3) The meetings of the corporate directors shall be subject to §6-9A-3 of this code: *Provided, however*, that matters relating to the conduct of operational, economic, fiscal and educational development activities and services related to intercollegiate athletics' programs are exempt from §6-9A-3 and §29B-1-1, *et seq*. of this code.

(4) Notwithstanding any other provision of this code to the contrary, institutional boards of governors may assign rights and delegate obligations and provide and transfer funding and property, both real and personal, to corporations as defined in section one of this article, and with which the institution under its jurisdiction has contracted pursuant to the provisions of this article, and any such transfers shall be exempt from the provisions of §18B-19-1 *et seq*. of this code.

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

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

(a) With respect to entities engaged in activities contemplated by the provisions of §18B-12-3(2)(a) and (b) of this code and notwithstanding §12-3-10 of this code or any other provision of law to the contrary, each governing board is hereby authorized to enter into an agreement with one or more private corporations, which agreement shall be for the benefit of the state institution of higher education and contain the following provisions, subject to further specification as is mutually agreed upon by the governing board and the corporation:

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

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

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

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

(5) The corporation has such additional responsibilities related to the administration of research and development at the institution or the fostering of economic development as are necessary or desirable.

(b) With respect to entities engaged in activities contemplated by the provisions of §18B-12-3(2)(c) of this code: Notwithstanding §12-3-10 of this code or any other provision of law to the contrary, each governing board is hereby authorized to enter into an agreement with one or more private corporations, which agreement shall be for the benefit of the state institution of higher education, to conduct operational, economic, fiscal, and educational development activities and services related to intercollegiate athletics' programs and shall contain the following provisions, subject to further specification as is mutually agreed upon by the governing board and the corporation:

(1) On the effective date of the agreement, the corporation is charged with the responsibility of serving as the operational and fiscal agent for the athletics-related endeavors or other educational development activities as specified by the state institution of higher education.

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(2) The corporation shall provide services for the benefit of the state institution of higher education as outlined in the agreement.

(3) The corporation may receive, purchase, hold, lease, use, sell, and dispose of real and personal property of all classes; may own membership or ownership interests in legal entities; and has all powers and authorities to undertake any activities allowable by corporations organized pursuant to §31E-1-101 *et seq*. of this code.

(4) The corporation has such additional responsibilities related to conducting operational, economic, fiscal, and educational development activities and services related to intercollegiate athletics' programs of the state institution of higher education, as are necessary or desirable.

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

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

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§18B-12-5. Audit.

The operations of the corporation shall be subject to an audit by an independent Auditor.

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§18B-12-6. Conflicts of interest.

Notwithstanding any other provision of this code to the contrary, officers and employees of a governing board and the affected state institution of higher education may hold appointments to offices of the corporation and be corporate directors or officers or employees of other entities contracting with either the corporation or a governing board of a state institution of higher education. The executive director of the corporation shall have dual appointment with the state institution of higher education. The governing board of a state institution of higher education and the corporate directors must be informed of such appointments annually.

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§18B-12-7. No waiver of sovereign immunity.

Nothing contained in this article shall be deemed or construed to waive or abrogate in any way the sovereign immunity of the state or to deprive a governing board of a state institution of higher education, a state institution of higher education or any officer or employee thereof of sovereign immunity.

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§18B-12-8. Not obligation of the state.

Obligations of a corporation shall not constitute debts or obligations of a state institution of higher education, the governing board thereof or the state.

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§18B-12-9. Sections and provisions severable.

The sections of this article, and the provisions and parts of said sections, are severable, and it is the intention to enact the whole or any part of the powers provided for in this article, and, if any of said sections, or the provisions or parts of any said sections, or the application thereof to any person or circumstance, are for any reason held unconstitutional or invalid, it is the intention that the remaining sections of this article, and the remaining provisions or parts of any said sections, shall remain in full force and effect.

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

[Repealed.]

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§18B-12-11. Agreements with corporations solely for economic development.

(a) Notwithstanding any other provision of this article to the contrary, any state institution of higher education may enter into an agreement with a nonstock, not-for-profit corporation which qualifies as an exempt organization under section 501(c) of the Internal Revenue Code of 1986, as amended, established under corporation laws of the state exclusively for purposes of economic development and job creation.

(b) Each governing board for a state institution of higher education may enter into agreements and any other contractual relationships with one or more corporations described in subsection (a) of this section under such terms as are mutually agreed upon to foster future economic development in the state. For purposes of this section:

(1) The president and the president's appointees from the institution may, but are not required to, serve as the corporation’s voting corporate directors;

(2) The meetings of the corporate directors are exempt from the provisions of §6-9A-3 of this code;

(3) The assets of the corporation are not subject to the provisions of §18B-12-3 of this code;

(4) The corporation and agreements between the corporation and the state institution of higher education are not subject to the provisions of §18B-12-4 of this code; and

(5) The corporation may be designated as the economic development entity for the state institution of higher education.

WV Legislature