WEST VIRGINIA CODE CHAPTER 18B ARTICLE 12A

WV Legislature

§18B-12A-1. Legislative findings and purpose.

(a) The Legislature finds that economic development in West Virginia depends in part on the effective and efficient management of research grants and opportunities at doctoral institutions of higher education, on collaborations developed between doctoral institutions and businesses and industry and on the advancement and commercialization of new and evolving technologies. It is in the best interests of citizens of the state to develop programs which promote these goals and contribute to the general economic welfare of citizens. In order to enhance the competitive position of doctoral institutions in the current environment for research and economic development, expenditures for equipment and material for research projects must be handled efficiently and effectively and the acquisition and use of grant funds should be simplified and expedited through the use of centers for economic development and technology advancement.

(b) The purpose of this article is to provide a mechanism for doctoral institutions to enter into agreements with centers for economic development and technology advancement to provide research assistance; to provide maximum flexibility as to the form of organization of centers so as to encourage and facilitate private sector participation in and support of research and economic development grants and opportunities in collaboration with doctoral institutions; to expedite the acquisition, administration and management of research and development grants and opportunities; to provide technical assistance in the commercialization of research opportunities; and to authorize doctoral institutions to contract with centers organized for the purpose of providing these services.

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§18B-12A-2. Definitions.

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

(a) "Agreement" means any agreement or contractual relationship being entered into between a doctoral institution and a center pursuant to the provisions of this article.

(b) "Center" means a center for economic development and technology advancement created pursuant to section three of this article.

(c) "Governing body" means the governing body of a center created pursuant to the provisions of this article.

(d) "President" means the chief executive officer of a center employed pursuant to section five of this article.

(e) "Doctoral institution" means a state institution of higher education as defined in subsection (d), section one, article eight of this chapter.

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§18B-12A-3. Establishment of centers for economic development and technology advancement; doctoral institutions authorized to enter into agreements.

There is authorized the establishment of independent entities to be known as centers for economic development and technology advancement. Each center shall be formed with respect to a specific doctoral institution and each center shall meet the following conditions:

(1) Representatives from private sector business and industry constitute a majority of the voting members of the governing body of each center;

(2) The president of the appropriate doctoral institution or a senior member of the doctoral institution's administrative staff is a member of the appropriate governing body.

(3) Each center shall be organized as one of the following:

(A) 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) of the Internal Revenue Code of 1986, as amended; or

(B) A corporation, partnership, limited partnership, limited liability company or other form of entity authorized to be formed under this code.

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§18B-12A-4. Powers and duties of governing bodies and centers.

The primary responsibility of each center is to foster and support economic development and the advancement and commercialization of new and emerging technologies through collaboration agreements between business-industry and the respective doctoral institution. To that end, the governing body of each center has the following powers and duties:

(a) To adopt and amend, from time to time, a statement of purpose and scope of operations. When the governing body amends the purpose or scope of a center, the governing body shall advise the appropriate doctoral institution of the changes;

(b) To employ a president subject to the provisions of section five of this article;

(c) To approve employment of other staff recommended by the president as being necessary and appropriate to carry out the purpose and scope of the center;

(d) To serve as fiscal agent and provide additional services, including, but not limited to, evaluation of technology, verification and assessment of market applications, grant administration and human resource management for any entity associated with the doctoral institution if the entity is engaged in business-industry collaborations, technology advancement and commercialization activities and research into new areas of economic development;

(e) To meet as a governing body: Provided, That centers created under this article are exempt from the provisions of section three, article nine-a, chapter six of this code and from the provisions of article one, chapter twenty-nine-b of this code;

(f) To receive, purchase, hold, lease, use, sell and dispose of real and personal property of all classes, including all kinds of intellectual property, subject to the provisions of section ten of this article;

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

(h) To accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article and to make a maximum effort to encourage external support for the center's programs. Any transfer of endowment or other assets by the doctoral institution to a center or by the center to the doctoral institution for management or investment shall be formalized in a memorandum of agreement to assure, at a minimum, that any restrictions governing the future disposition of funds are preserved;

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(i) To make, amend and repeal bylaws and rules consistent with the provisions of this article to carry into effect the purpose and scope of the center and, subject to such directions and limitations as may be contained in its governing documents, to delegate the exercise of any of its powers to the president except for the power to approve budgets; to make, amend or repeal its governing documents; or to alter the purpose or scope of the center;

(j) In addition to the powers and duties provided for in this section and any other powers and duties that may be assigned to it by law or agreement, each center has such other powers and duties as may be necessary or expedient to accomplish the objectives of this article or as provided by law.

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§18B-12A-5. Appointment of president; qualifications.

(a) The governing body of each center shall employ a president who shall be the chief executive officer of the center and who shall serve at the will and pleasure of the governing body;

(b) The center shall be under the control and supervision of the president who, with the approval of the governing body, may employ staff as is necessary to carry out the center's purpose and scope;

(c) The governing body shall set the qualifications for the position of president and shall conduct a thorough search for qualified candidates. A qualified candidate is one who meets at least the following criteria:

(1) Possesses a broad understanding of the relationship between public and private sector research, the advancement and commercialization of new and emerging technologies and economic development and has significant experience and an established professional reputation in these fields;

(2) Holds, at a minimum, a bachelor's degree in a field related to the duties and responsibilities of the position of president;

(3) Demonstrates specifically that he or she has developed effective and successful grant management skills, as well as skill in fostering collaborations between business-industry and doctoral institutions;

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

(5) Possesses other skills, qualifications or attributes as the governing body may consider appropriate or desirable.

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§18B-12A-6. Agreements; required provisions.

(a) Notwithstanding section ten, article three, chapter twelve of this code or any other provision of law to the contrary, each doctoral institution is hereby authorized to enter into agreements with one or more centers: Provided, That each center is formed with respect to that specific doctoral institution and meets the conditions set forth either in paragraph (A) or paragraph (B), subdivision (2), section three of this article.

(b) Any agreement with a center shall benefit the doctoral institution or one or more of its schools, departments or institutes whose purpose is to further economic development, training, education and technology research and development in its region.

(c) On the effective date of the agreement, the center is charged with the responsibility of serving as fiscal agent for specified sponsored projects conducted by the faculty, staff and students of the doctoral institution pursuant to terms of the agreement and grants shall be accepted by the center on behalf of the doctoral institution and assigned to the center for fiscal management.

(d) If an agreement is terminated, the funds, contributions or grants paid or held by the center and not encumbered or committed prior to termination shall be distributed as provided for in the agreement.

(e) If part of the agreement, a center may utilize both center employees and personnel of the doctoral institution. The center may pay the costs incurred by the doctoral 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 center may include as costs any applicable overhead and fringe benefit assessments necessary to recover the costs expended by the doctoral institution, pursuant to the terms of the agreement, and the doctoral institution may be reimbursed for expenses incurred by it pursuant to the agreement.

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§18B-12A-7. Audit.

The operations of the center are subject to an audit by an independent Auditor.

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§18B-12A-8. Conflicts of interest.

Notwithstanding any other provision of this code to the contrary, officers and employees of a governing board and the affected doctoral institution may hold appointments to offices of the center and be members of its governing body or officers or employees of other entities contracting with either the center or a governing board of a doctoral institution. The governing body shall make an annual report of these appointments to the doctoral institution.

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§18B-12A-9. No waiver of sovereign immunity.

Nothing contained in this article may be construed to waive or abrogate in any way the sovereign immunity of the state or to deprive the governing board of a doctoral institution, a doctoral institution or any officer or employee of a doctoral institution of sovereign immunity.

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§18B-12A-10. Not obligation of the state.

Obligations of a governing body or its center do not constitute debts or obligations of a doctoral institution, the governing board of a doctoral institution or the state.

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