WEST VIRGINIA CODE CHAPTER 18B ARTICLE 1F

WV Legislature

§18B-1F-1. Legislative findings and purpose.

(a) The Legislature finds that economic development in West Virginia depends in part on collaborations developed between higher education and businesses and industry, particularly in the advancement of new and emerging technologies. It is in the best interests of the citizens of the state to implement programs which promote this research and contribute to the general economic welfare.

(b) The Legislature further finds that the transfer of property to the Commission to establish the West Virginia Education, Research and Technology Park created a new and unprecedented opportunity to promote research and development in the state. An efficiently managed Technology Park will encourage private sector participation in and support for research and economic development and will facilitate collaboration among the commission, the doctoral institutions and their research corporations.

(c) It is the responsibility of the commission to ensure that the day to day operations of the Technology Park are carried out effectively and efficiently in order to provide the greatest investment return to the people of West Virginia. To this end the Legislature finds that a mechanism is needed to simplify and expedite property management and purchasing of equipment, material and personal services.

(d) Therefore, the purpose of this article is to provide the commission with the authority necessary to carry out its responsibilities related to the operation of the Technology Park. The commission is authorized to enter into agreements and other contractual relationships with an affiliated corporation in order to achieve maximum efficiency in managing the Technology Park.

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§18B-1F-2. Definitions.

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

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

(b) "Agreement" means an agreement or contractual relationship entered into between the commission and an affiliated corporation pursuant to the provisions of this article;

(c) "Board of directors" means the governing body of a corporation created pursuant to section three of this article;

(d) "Doctoral institution" means Marshall University or West Virginia University;

(e) "Executive director" means the chief executive officer of an affiliated corporation employed pursuant to section five of this article;

(f) "Potential membership" means the total number of members who comprise the board of directors when all membership seats are filled;

(g) "Private sector member" means a director of an affiliated corporation who is not an employee of the commission nor of any entity bearing a direct or indirect relationship to the commission;

(h) "Research corporation" means a corporation established with respect to Marshall University or West Virginia University pursuant to section three, article twelve of this chapter; and

(i) "Technology Park" means the state-owned West Virginia Education, Research and Technology Park affiliated with the commission.

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§18B-1F-3. Commission authorized to contract with corporation; corporation to meet essential criteria; corporation membership and organization; financial requirements.

(a) The commission is authorized to enter into agreements and any other contractual relationships with an affiliated corporation formed as set forth in this article.

(b) The affiliated corporation shall meet the following essential criteria:

(1) Corporation status. -- The corporation is organized as a non-profit, non-stock 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.

(2) Corporation membership, meetings, officers. --

(A) Members of the board of directors of the affiliated corporation serve terms as prescribed in the bylaws of the corporation and are selected by the commission in consultation with the chancellor. The commission shall make all appointments to the board of directors by majority vote of its members and shall include the individual votes as a part of the minute record.

(B) Private sector members shall constitute a majority of the potential membership of the board of directors. Vacancies shall be filled in such a way that the majority status of private sector membership is maintained.

(C) By July 1, 2011, and at least biennially thereafter, the board of directors shall elect a chair from among its members.

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§18B-1F-4. Powers and duties of board of directors and corporation.

(a) The primary responsibility of the corporation is to manage the day-to-day operations of the technology park through collaboration agreements with the commission. To that end, the board of directors has the following powers and duties:

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

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

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

(4) To meet as a governing body. A corporation created under this article is 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;

(5) To receive, purchase, hold, lease, use, sell and dispose of real and personal property of all classes, subject to the provisions of subdivision (8) of this subsection and section eight of this article;

(6) To receive from any source whatsoever grants to be expended in accomplishing the objectives of this article;

(7) To receive from any source whatsoever aid or contributions of money, property or other things of value to be held, used and applied only for the purposes for which the aid or contributions may be made;

(8) To accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article. Any transfer of endowment or other assets by the commission to the corporation or by the corporation to the commission for management shall be formalized in a memorandum of agreement to assure, at a minimum, that any restrictions governing the future disposition of funds are preserved. The commission may not transfer ownership of the technology park property to the corporation;

(9) To make, amend and repeal bylaws, rules and its governing documents consistent with the provisions of this article to effectuate the purpose and scope of the corporation;

(10) To alter the purpose or scope of the corporation; and

(11) To delegate the exercise of any of its powers except for the power to approve budgets to the executive director, subject to the directions and limitations contained in its governing documents.

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(b) 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, the corporation has other powers and duties necessary to accomplish the objectives of this article or as provided by law.

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§18B-1F-5. Appointment of executive director; qualifications.

(a) The commission shall set the qualifications for the position of executive director 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 and the need for cooperation and collaboration among the commission and the research corporations;

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

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

(4) Possesses other skills, qualifications or attributes as the commission considers appropriate or desirable.

(b) The commission shall select the executive director for the corporation and may not delegate this duty to the chancellor. The executive director may have dual appointment with the commission, but may not be a corporation director.

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

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

(c) The day to day operations of the corporation are under the control and supervision of the executive director. With the approval of the board of directors the executive director may employ staff as necessary to carry out the corporation's purposes as set forth in this article.

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§18B-1F-6. Agreements; required provisions.

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

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

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

(d) If made part of the agreement, the corporation may use services of both corporation employees and personnel of the commission. The corporation may pay the costs incurred by the commission, 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 commission, pursuant to the terms of the agreement, and the commission may be reimbursed for expenses incurred by it pursuant to the agreement.

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§18B-1F-7. Audits required; financial reports; conflicts of interest.

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

(b) Notwithstanding any other provision of this code to the contrary, any officer or employee of the commission, who is not the executive director of the corporation, may hold an appointment as a member and as an officer of the corporation board of directors.

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§18B-1F-8. No waiver of sovereign immunity; not obligation of the state.

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

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

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§18B-1F-9. Legislative findings and intent; memorandum of agreement required; terms and conditions; reports.

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

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

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

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

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

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§18B-1F-10. Department of commerce to study and report relating to research and technology parks.

[Repealed].

WV Legislature