WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED
Com. Sub. for
HOUSE BILL No. 1794

(By Mr. Speaker, Mr. Lee)

Passed March 16, 1984
In Effect from Passage
AN ACT to repeal sections four-b, four-c, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two and forty-three, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter by adding thereto a new article, designated article eleven-c, all relating to the West Virginia University medical center; authorizing the West Virginia board of regents to enter into a long-term lease and agreement and to otherwise contract with a nonstock, not-for-profit corporation, to be formed under the general corporation laws of the state; certain requirements with respect to such corporation; the directors of such corporation and their appointment; setting forth required provisions of such agreement, including the date thereof; requiring the payment by the West Virginia board of regents to such corporation of sums on deposit in specified accounts, as reflected on the financial ledgers of West Virginia university, not to exceed three million, four hundred thousand dollars; the assignment to such corporation of other assets of the West Virginia University hospital; the letting of an interest in the existing West Virginia University hospital prior to completion of new facilities by such corporation and a long-term leasehold
interest in a proposed site in Monongalia County, West Virginia for such new facilities; requiring the board to acquire such corporation's agreement to provide space in such new facilities for educational and research purposes, to provide an annual allowance for residents and interns' expenses and an annual clinical teaching subsidy, to provide other property and services to be specified in such agreement and to assume certain liabilities of the West Virginia board of regents relating to the West Virginia University hospital; stating liabilities not to be so assumed; relating to the existing employees of the West Virginia board of regents at the West Virginia University hospital; exempting such agreement and other transactions from bidding, public sale and intra-governmental approvals otherwise required by said code; requiring the audit of certain transactions entered into by the board and the corporation; certain requirements with respect to conflicts of interest; penalties for failure to file required statement of conflict of interest; requiring that the board be informed as to such conflicts; providing that article shall not waive the sovereign immunity of this state; prohibiting the pledging of the credit of the state with respect to any such agreements; and providing for the severability and liberal construction of the provisions of said article.

Be it enacted by the Legislature of West Virginia:

That sections four-b, four-c, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two and forty-three, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be amended by adding thereto a new article, designated article eleven-c, to read as follows:

ARTICLE 11C. LEASE AND AGREEMENT OF WEST VIRGINIA BOARD OF REGENTS RELATING TO WEST VIRGINIA UNIVERSITY HOSPITAL.

§18-11C-1. Definitions.

The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:
“Agreement” means the long-term lease and agreement to be entered into between the board of the corporation pursuant to section four of this article.

“Assets” means all assets of the board constituting tangible and intangible personal property credited to the hospital on the financial ledgers and equipment inventories of the university at the transfer date and as more particularly or additionally identified or supplemented in the agreement, excluding all hospital funds deposited with the state treasurer.

“Board” means the West Virginia board of regents.

“Corporation” means the nonstock, not-for-profit corporation, to be established under the general corporation laws of the state, which meets the description prescribed by section three of this article.

“Corporation employees” means employees of the corporation.

“Directors” means the board of directors of the corporation.

“Existing facilities” means the West Virginia University hospital and clinics, other than those used for student health and family practice, presently existing at the West Virginia University medical center in Morgantown and owned and operated by the board.

“Health science schools” means the schools of medicine, dentistry, pharmacy and nursing and any other schools at the university deemed by the board to be health sciences.

“Hospital” means the in-patient and out-patient health care services of the board, other than those used for student health services and family practice clinics, operated in connection with the university, consisting of the existing facilities and any other health care service components of the West Virginia University medical center at Morgantown rendering patient care services and more particularly identified by the agreement.

“Liabilities” means all liabilities, except those specific-
ally excluded by section four of this article, credited to the hospital on the financial ledgers of the university at the transfer date and as more particularly or additionally identified, supplemented or limited in the agreement.

(k) "Medical personnel" means both university personnel and corporation employees.

(l) "New facilities" means a new hospital facility and outpatient clinics, appurtenant facilities, equipment and necessary services to be acquired, built, operated or contracted for by the corporation on property leased from the board within Monongalia County, West Virginia, pursuant to the agreement.

(m) "Transfer date" means the first day of July, one thousand nine hundred eighty-four, or any later date agreed upon by the board and the corporation and filed with the secretary of state.

(n) "University" means West Virginia University.

(o) "University personnel" means those employees of the board or the university for whose services the corporation contracts with the board or the university, as appropriate.

§18-11C-2. Findings.

It is hereby found and determined that:

(a) The purposes of the existing facilities are to facilitate the clinical education and research of the health science schools and to provide patient care, including specialized services not widely available elsewhere in West Virginia. The eventual termination of such services in lieu of replacement or modernization would create an unreasonable hardship on patients in the area and throughout the state.

(b) These purposes separately and collectively serve the highest public interest and are essential to the public health and welfare, but must be realized in the most efficient manner and at the lowest cost practicable and consistent with these purposes.

(c) The existing facilities require substantial renovation,
and it is necessary and appropriate and in the best interests of the state and the citizens thereof that a replacement facility be built as soon as possible instead of such renovation.

(d) It is unnecessarily costly and administratively cumbersome for the board to finance, manage and carry out the patient care activities of an academic institution within the existing framework of a state agency. Such patient care operations are more efficiently served by contemporary legal, management and procedural structures utilized by similarly situated private entities throughout the nation.

(e) It is fiscally desirable that the state separate the business and service functions of the hospital from the educational functions of the health science schools, that the board cease operation of the existing facilities, that the board transfer such operations to the corporation, that the board pay certain existing sums and assign the assets and certain leasehold interests to the corporation in order to acquire the corporation’s agreement to provide certain space and services and to assume the liabilities, that the agreement and certain other contractual relationships between the board and the corporation be authorized, and that the existing facilities operated by the corporation, and, subsequently, the new facilities owned and operated by the corporation be self-sufficient and will remove the tax burden from the state.

(f) A not-for-profit corporate structure with appropriate governance consistent with the delivery of health care to the patient and academic need of the university shall be the best means of assuring prudent financial management and the future economy of operation under rapidly-changing market conditions, regulation and reimbursement.

(g) The interests of the citizens of the state will be best met by the board’s entering into and carrying out the provisions of the agreement as soon as possible, to provide independence and flexibility of management and funding while enabling the state’s tertiary health care and health science education needs to be better served.
§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

The board is hereby authorized to enter into the agreement and any other contractual relationships authorized by this article with the corporation, but only if the corporation meets the following description:

(a) The directors of the corporation, all of whom shall be voting, shall consist of the president of the university, who shall serve ex officio as chairman of the directors, the president of the board or his designee, the vice chancellor for health affairs of the board, the vice president for health sciences of the university, the vice president for administration and finance of the university, the chief of the medical staff of the hospital, the dean of the school of medicine of the university, the dean of the school of nursing and the chief executive officer of the corporation, as ex officio members of the directors, a representative elected at large by the corporation employees and seven directors to be appointed by the governor, subject to confirmation by the senate of the state legislature, which seven appointed directors shall be selected in conformance with the provisions of section six-a, article five-b, chapter sixteen of this code: Provided, That said seven directors shall be appointed to six year terms, but no more than two such members shall be from the same congressional district: Provided, however, That of the seven directors so appointed by the governor for terms beginning the year one thousand nine hundred eighty-four, three such appointments shall be for a term of two years, two shall be for a term of four years, and two shall be for a term of six years.

(b) The audited records of the corporation shall be reported publicly and to the joint committee on government and finance at least annually.

(c) Upon liquidation of the corporation, the assets of the corporation shall be transferred to the board for the benefit of the university.

§18-11C-4. Agreement; required provisions.

Notwithstanding section three, article twenty-three of this
chapter, or section ten, article three, chapter twelve of this
code, or any other provision of this code to the contrary, the
board is hereby authorized to enter into the agreement with the
corporation, which agreement shall contain the following pro-
visions, subject to further specification as shall be mutually
agreed upon by the board and the corporation.

(a) On the transfer date, the board shall disburse and pay
to the corporation the sums on deposit in the following ac-
counts as reflected on the financial ledgers of the university:

(i) That portion of accounts numbered 928000, 928001,
928002 and 928003 which are made up from hospital revenue;

(ii) The capital reserve account numbered 9285, which
is accumulated through the capital surcharge on patient re-
ceipts;

(iii) The cafeteria account numbered 8612330000;

(iv) The kidney reimbursement account numbered
8610108810;

(v) The general stores account numbered 8610601230;

(vi) The home dialysis account numbered 8610601450;

(vii) The vending income account numbered 8610600180;

(viii) The optical shop account numbered 8610601350;

(ix) The emergency medical education account numbered
8610601460;

(x) The radiation safety account numbered 8610600320;

(xi) The Monongalia General Hospital an account number-
ed 8610106530: Provided, That the aggregate amount so paid
to the corporation shall not exceed three million, four hun-
dred thousand dollars; and shall assign to the corporation all
the assets, a leasehold interest in the existing facilities prior to
completion of the new facilities and a leasehold interest in the
proposed site for the new facilities, which site shall be mutually
agreed upon by the board and the corporation, for a period
not to exceed ninety-nine years, all in order to acquire the
corporation's agreement to provide not less than one hundred
thousand square feet of space in the new facilities for educational and research purposes, to provide an annual allowance of not less than four million dollars for residents and interns' expenses and an annual clinical teaching subsidy of not less than six million dollars, to provide other property or services to be specified in the agreement and to assume the liabilities, including the accounts payable, but excluding liabilities for other than accrued sick leave, accrued annual leave and unemployment compensation benefits relating to corporation employees arising prior to the transfer date and excluding other liabilities of a contingent nature. Effective on the transfer date, the corporation shall assume responsibility for and shall defend, indemnify and hold harmless the university, the board and the state with respect to all liabilities and duties of the university or the board pursuant to contracts and agreements for commodities, services and supplies utilized by the hospital, and all claims for breach of contract resulting from the corporation's action or failure to act after the transfer date. The value and the adequacy of the services by and other agreements of the corporation shall be mutually agreed upon by the board and the corporation. Upon completion of the construction and occupation of the new facility the lease upon the existing facility shall terminate.

(b) On and after the transfer date, the corporation shall lease, manage and operate the existing facilities, subject to the provisions of this article, and shall construct, own and operate the new facilities, and shall have the power to encumber and otherwise deal with the assets, without limitation or regard to their sources: Provided, That the corporation shall have no power to mortgage or otherwise encumber the real property constituting a part of the existing facilities.

(c) The existing facilities and, subsequently, the new facilities will serve as the primary clinical setting for health science school students to receive educational and research experiences. The university faculty shall have exclusive medical and dental staff privileges at the existing facilities and, subsequently, at the new facilities.

(d) The corporation may utilize both corporation employees and university personnel. On or after the transfer date,
each university employee working in the hospital shall elect
to be either a corporation employee or a part of university
personnel. No university employee may be required to become
an employee of the corporation as the condition of employ-
ment or promotion. All university personnel are university
employees in all respects.

(e) If reasonable progress toward construction of new
facilities has not been made by the first day of July, one
thousand nine hundred eighty-five, the agreement shall auto-
matically terminate, and the transfers of operations of the
existing facilities and the assets and liabilities under the agree-
ment shall revert to the board and the university.

(f) After completion of construction of the new facilities
and vacation of the existing facilities by the corporation, the
board and the university may not use the existing facilities or
otherwise provide services competing with the new facilities:
Provided, That the existing facilities may be used for student
health, and family practice clinics and for medical support
services and other appropriate university purposes which will
not compete with the services offered by the new facilities.

(g) The new facilities shall be constructed by the corpora-
tion in a manner so as to provide sufficient space for conduct-
ing clinical education for the health science schools.

§18-11C-5. Exemption from certain requirements; Audit.

In order, as expeditiously as possible, to cease operation of
the existing facilities by the board, to transfer the operations
of the existing facilities and the assets and liabilities to the
corporation, which will construct the new facilities, at the same
time maintaining the educational services of an operating hos-

pital facility, the transactions provided by this article shall be
exempt from the bidding and public sale requirements, from
the approval of contractual agreements by the department of
finance and administration or the attorney general and from
the requirements of chapter five-a of this code. The trans-
actions provided by this article shall be subject to an audit
by an independent auditor mutually agreed upon by the board
and the corporation.
§18-11C-6. Conflicts of interest; statement; penalties.

Notwithstanding any other provisions of this code to the contrary, officers and employees of the board and the university may hold appointments to offices of the corporation and be members of the boards of directors, or officers or employees of other entities contracting with either the corporation or the board or the university. The board and the directors must be informed of such appointments annually, and either the board or the directors may require that an appointment be terminated to avoid an actual or potential conflict of interest as determined by the board: Provided, That every member of the board shall, between January one and January fifteen of each year, file a written statement, which shall be fully available for public disclosure, with the chairman of the board, under oath, setting forth:

1. The name of every person, firm, corporation, association, partnership, sole proprietorship, or other business association in which he, his spouse, or his unemancipated minor child or children, in his or their own name or beneficially, own at least ten percent of such business entity, or of which he or they are an officer, director, agent, attorney, representative, employee, partner or employer, and which to his actual knowledge is then furnishing or within the previous calendar year has furnished to the State, the board of regents, West Virginia University, or the corporation defined in this article, commodities or printing as those terms are defined in section one, article one, chapter five-a of this code.

2. Any other interest or relationship which might reasonably be expected to be affected by action taken by the board of such corporation or which in the public interest should be disclosed.

Those persons to whom the provisions of subdivisions (1) and (2) above are not applicable shall file a written statement to that effect with the chairman of the board at the same time above specified.

Any person who shall fail or refuse to file a written statement under oath as required above shall by operation of law
be automatically removed from such board until such statement is filed.

Any person who shall intentionally file a false statement shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than six months nor more than one year.

§18-11C-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 the board, the university or any officer or employee thereof of sovereign immunity.

§18-11C-8. **Not obligation of the state.**

Obligations of the corporation shall not constitute debts or obligations of the university, the board or the state.

§18-11C-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 confer 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.

§18-11C-10. **Liberal construction.**

This article, being necessary for the health, safety, convenience and welfare of the people of the state, shall be liberally construed to effectuate the purposes hereof.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Donald Anello  
Chairman House Committee

Originating in the House.

Takes effect from passage.

J. C. Hill  
Clerk of the Senate

Donald X. Hopp  
Clerk of the House of Delegates

Warren B. McDaniel  
President of the Senate

W. N. Lee, Jr.  
Speaker House of Delegates

The within is approved this the 27th day of March, 1984.

John D. Dingell  
Governor