

No. 1794

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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

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Com. Sub. for
HOUSE BILL No. 1794

(By Mr. Speaker, Mr. Lee)

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Passed March 6, 1984

In Effect From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1794

(By MR. SPEAKER, MR. SEE)

[Passed March 6, 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 VIR-
GINIA UNIVERSITY HOSPITAL.**

§18-11C-1. Definitions.

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

4 (a) "Agreement" means the long-term lease and agreement
5 to be entered into between the board of the corporation
6 pursuant to section four of this article. *and*

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7 (b) "Assets" means all assets of the board constituting
8 tangible and intangible personal property credited to the
9 hospital on the financial ledgers and equipment inventories
10 of the university at the transfer date and as more particularly
11 or additionally identified or supplemented in the agreement,
12 excluding all hospital funds deposited with the state treasurer.

13 (c) Notwithstanding section one, article one of this chapter,
14 "board" means the West Virginia board of regents.

15 (d) "Corporation" means the nonstock, not-for-profit cor-
16 poration, to be established under the general corporation laws
17 of the state, which meets the description prescribed by section
18 three of this article.

19 (e) "Corporation employees" means employees of the cor-
20 poration.

21 (f) "Directors" means the board of directors of the cor-
22 poration.

23 (g) "Existing facilities" means the West Virginia University
24 hospital and clinics, other than those used for student health
25 and family practice, presently existing at the West Virginia
26 University medical center in Morgantown and owned and
27 operated by the board.

28 (h) "Health science schools" means the schools of medicine,
29 dentistry, pharmacy and nursing and any other schools at
30 the university deemed by the board to be health sciences.

31 (i) "Hospital" means the in-patient and out-patient health
32 care services of the board, other than those used for student
33 health services and family practice clinics, operated in con-
34 nection with the university, consisting of the existing facilities
35 and any other health care service components of the West
36 Virginia University medical center at Morgantown rendering
37 patient care services and more particularly identified by the
38 agreement.

39 (j) "Liabilities" means all liabilities, except those specific-

40 ally excluded by section four of this article, credited to the
41 hospital on the financial ledgers of the university at the trans-
42 fer date and as more particularly or additionally identified,
43 supplemented or limited in the agreement.

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

46 (l) "New facilities" means a new hospital facility and out-
47 patient clinics, appurtenant facilities, equipment and necessary
48 services to be acquired, built, operated or contracted for by
49 the corporation on property leased from the board within
50 Monongalia County, West Virginia, pursuant to the agree-
51 ment.

52 (m) "Transfer date" means the first day of July, one thous-
53 and nine hundred eighty-four, or any later date agreed upon
54 by the board and the corporation and filed with the secre-
55 tary of state.

56 (n) "University" means West Virginia University.

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

§18-11C-2. Findings.

1 It is hereby found and determined that:

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

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

14 (c) The existing facilities require substantial renovation,

15 and it is necessary and appropriate and in the best interests
16 of the state and the citizens thereof that a replacement facility
17 be built as soon as possible instead of such renovation.

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

25 (e) It is fiscally desirable that the state separate the busi-
26 ness and service functions of the hospital from the educa-
27 tional functions of the health science schools, that the board
28 cease operation of the existing facilities, that the board trans-
29 fer such operations to the corporation, that the board pay
30 certain existing sums and assign the assets and certain lease-
31 hold interests to the corporation in order to acquire the
32 corporation's agreement to provide certain space and services
33 and to assume the liabilities, that the agreement and certain
34 other contractual relationships between the board and the
35 corporation be authorized, and that the existing facilities
36 operated by the corporation, and, subsequently, the new facili-
37 ties owned and operated by the corporation be self-sufficient
38 and will remove the tax burden from the state.

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

45 (g) The interests of the citizens of the state will be best
46 met by the board's entering into and carrying out the pro-
47 visions of the agreement as soon as possible, to provide in-
48 dependence and flexibility of management and funding while
49 enabling the state's tertiary health care and health science
50 education needs to be better served.

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

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

5 (a) The directors of the corporation, all of whom shall be
6 voting, shall consist of the president of the university, who
7 shall serve ex officio as chairman of the directors, the presi-
8 dent of the board or his designee, the vice chancellor for health
9 affairs of the board, the vice president for health sciences of
10 the university, the vice president for administration and finance
11 of the university, the chief of the medical staff of the hospital,
12 the dean of the school of medicine of the university, the dean
13 of the school of nursing and the chief executive officer of the
14 corporation, as ex officio members of the directors, a repre-
15 sentative elected at large by the corporation employees and
16 seven directors to be appointed by the governor, subject to
17 confirmation by the senate of the state legislature, which seven
18 appointed directors shall be selected in conformance with the
19 provisions of section six-a, article five-b, chapter sixteen of
20 this code: *Provided*, That said seven directors shall be ap-
21 pointed to six year terms, but no more than two such mem-
22 bers shall be from the same congressional district: *Provided*,
23 *however*, That of the seven directors so appointed by the gov-
24 ernor for terms beginning the year one thousand nine hundred
25 eighty-four, three such appointments shall be for a term of
26 two years, two shall be for a term of four years, and two shall
27 be for a term of six years.

28 (b) The audited records of the corporation shall be re-
29 ported publicly and to the joint committee on government and
30 finance at least annually.

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

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

1 Notwithstanding section three, article twenty-three of this

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

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

11 (i) That portion of accounts numbered 928000, 928001,
12 928002 and 928003 which are made up from hospital revenue;

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

16 (iii) The cafeteria account numbered 8612330000;

17 (iv) The kidney reimbursement account numbered
18 8610108810;

19 (v) The general stores account numbered 8610601230;

20 (vi) The home dialysis account numbered 8610601450;

21 (vii) The vending income account numbered 8610600180;

22 (viii) The optical shop account numbered 8610601350;

23 (ix) The emergency medical education account numbered
24 8610601460;

25 (x) The radiation safety account numbered 8610600320;

26 (xi) The Monongalia General Hospital an account number-
27 ed 8610106530: *Provided*, That the aggregate amount so paid
28 to the corporation shall not exceed three million, four hun-
29 dred thousand dollars; and shall assign to the corporation all
30 the assets, a leasehold interest in the existing facilities prior to
31 completion of the new facilities and a leasehold interest in the
32 proposed site for the new facilities, which site shall be mutually
33 agreed upon by the board and the corporation, for a period
34 not to exceed ninety-nine years, all in order to acquire the
35 corporation's agreement to provide not less than one hundred

36 thousand square feet of space in the new facilities for educa-
37 tional and research purposes, to provide an annual allowance
38 of not less than four million dollars for residents and interns'
39 expenses and an annual clinical teaching subsidy of not less
40 than six million dollars, to provide other property or services
41 to be specified in the agreement and to assume the liabilities,
42 including the accounts payable, but excluding liabilities for
43 other than accrued sick leave, accrued annual leave and unem-
44 ployment compensation benefits relating to corporation em-
45 ployees arising prior to the transfer date and excluding other
46 liabilities of a contingent nature. Effective on the transfer
47 date, the corporation shall assume responsibility for and shall
48 defend, indemnify and hold harmless the university, the board
49 and the state with respect to all liabilities and duties of the
50 university or the board pursuant to contracts and agreements
51 for commodities, services and supplies utilized by the hospital,
52 and all claims for breach of contract resulting from the corp-
53 oration's action or failure to act after the transfer date. The
54 value and the adequacy of the services by and other agree-
55 ments of the corporation shall be mutually agreed upon by
56 the board and the corporation. Upon completion of the con-
57 struction and occupation of the new facility the lease upon the
58 existing facility shall terminate.

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

67 (c) The existing facilities and, subsequently, the new fa-
68 cilities will serve as the primary clinical setting for health
69 science school students to receive educational and research
70 experiences. The university faculty shall have exclusive medi-
71 cal and dental staff privileges at the existing facilities and,
72 subsequently, at the new facilities.

73 (d) The corporation may utilize both corporation em-
74 ployees and university personnel. On or after the transfer date,

75 each university employee working in the hospital shall elect
76 to be either a corporation employee or a part of university
77 personnel. No university employee may be required to become
78 an employee of the corporation as the condition of employ-
79 ment or promotion. All university personnel are university
80 employees in all respects.

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

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

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

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

1 In order, as expeditiously as possible, to cease operation of
2 the existing facilities by the board, to transfer the operations
3 of the existing facilities and the assets and liabilities to the
4 corporation, which will construct the new facilities, at the same
5 time maintaining the educational services of an operating hos-
6 pital facility, the transactions provided by this article shall be
7 exempt from the bidding and public sale requirements, from
8 the approval of contractual agreements by the department of
9 finance and administration or the attorney general and from
10 the requirements of chapter five-a of this code. The trans-
11 actions provided by this article shall be subject to an audit
12 by an independent auditor mutually agreed upon by the board
13 and the corporation.

§18-11C-6. Conflicts of interest; statement; penalties.

1 Notwithstanding any other provisions of this code to the
2 contrary, officers and employees of the board and the univer-
3 sity may hold appointments to offices² of the corporation and
4 be members of the boards of directors, or officers or employees
5 of other entities contracting with either the corporation or the
6 board or the university. The board and the directors must be
7 informed of such appointments annually, and either the board
8 or the directors may require that an appointment be terminated
9 to avoid an actual or potential conflict of interest as determined
10 by the board: *Provided*, That every member of the board
11 shall, between January one and January fifteen of each year,
12 file a written statement, which shall be fully available for pub-
13 lic disclosure, with the chairman of the board, under oath,
14 setting forth:

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15 (1) The name of every person, firm, corporation, associa-
16 tion, partnership, sole proprietorship, or other business asso-
17 ciation in which he, his spouse, or his unemancipated minor
18 child or children, in his or their own name or beneficially,
19 own at least ten percent of such business entity, or of which
20 he or they are an officer, director, agent, attorney, representa-
21 tive, employee, partner or employer, and which to his actual
22 knowledge is then furnishing or within the previous calendar
23 year has furnished to the State, the board of regents, West
24 Virginia University, or the corporation defined in this article,
25 commodities or printing as those terms are defined in section
26 one, article one, chapter five-a of this code.

27 (2) Any other interest or relationship which might reason-
28 ably be expected to be affected by action taken by the board
29 of such corporation or which in the public interest should be
30 disclosed.

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

35 Any person who shall fail or refuse to file a written state-
36 ment under oath as required above shall by operation of law

37 be automatically removed from such board until such state-
38 ment is filed.

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

§18-11C-7. No waiver of sovereign immunity.

1 Nothing contained in this article shall be deemed or con-
2 strued to waive or abrogate in any way the sovereign im-
3 munity of the state or to deprive the board, the university
4 or any officer or employee thereof of sovereign immunity.

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

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

§18-11C-9. Sections and provisions severable.

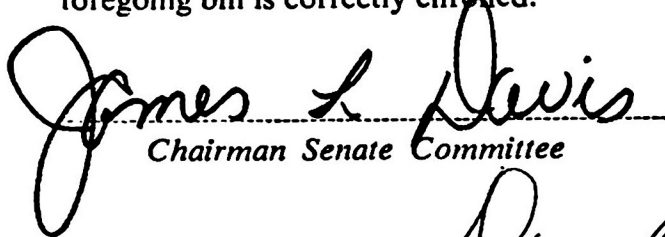
1 The sections of this article, and the provisions and parts
2 of said sections, are severable, and it is the intention to confer
3 the whole or any part of the powers provided for in this
4 article, and, if any of said sections, or the provisions or parts
5 of any said sections, or the application thereof to any person
6 or circumstance, are for any reason held unconstitutional or
7 invalid, it is the intention that the remaining sections of this
8 article, and the remaining provisions or parts of any said
9 sections, shall remain in full force and effect.

§18-11C-10. Liberal construction.

1 This article, being necessary for the health, safety, con-
2 venience and welfare of the people of the state, shall be
3 liberally construed to effectuate the purposes hereof.

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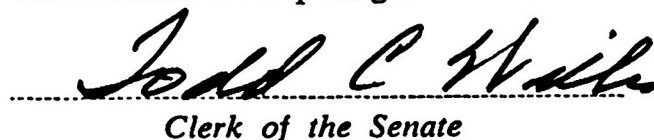
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

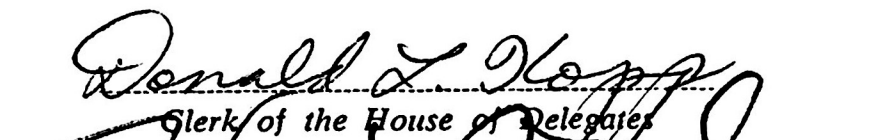


Chairman Senate Committee

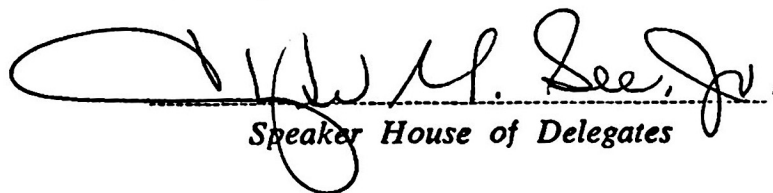

Chairman House Committee

Originating in the House.

Takes effect from passage.


Clerk of the Senate


Clerk of the House of Delegates

President of the Senate


Speaker House of Delegates

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


Governor

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