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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989



ENROLLED

Committee Substitute for
SENATE BILL NO. 553

(By Senator *Jacobs, M. Brinkley, et al*)



PASSED *April 6,* 1989

In Effect *from* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 553

(BY SENATORS TUCKER, MR. PRESIDENT, J. MANCHIN
AND WARNER, *Original Sponsors*)

[Passed April 6, 1989; in effect from passage.]

AN ACT to amend and reenact chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-one, all relating to the governing boards of state institutions of higher education; authorizing the boards to enter into contracts and agreements with corporations created to facilitate research and development activities for such state institutions of higher education; setting forth the terms and conditions of such contracts and agreements; and providing for audits of such corporations.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen be amended by adding thereto a new article, designated article thirty-one, all to read as follows:

**ARTICLE 31. RESEARCH AND DEVELOPMENT AGREEMENTS FOR
STATE INSTITUTIONS OF HIGHER EDUCATION.**

§18-31-1. Definitions.

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

4 (a) "Agreement" means any agreement being
5 entered into between a governing board and a corpo-
6 ration pursuant to section four of this article.

7 (b) "Corporation" means a non-stock, not-for-profit
8 corporation established under the general corporation
9 laws of the state which meets the description pres-
10 ented by section three of this article.

11 (c) "Corporate directors" means the board of direc-
12 tors of a corporation.

§18-31-2. Legislative findings and purpose.

1 (a) The Legislature finds and determines that the
2 future economic development in the state will depend
3 in part upon research developed at the state institu-
4 tions higher education, and enhanced research oppor-
5 tunities for state institutions of higher education will
6 promote the general economic welfare of the citizens
7 of the state. In order to enhance the competitive
8 position of state institutions of higher education in the
9 current environment for research and development,
10 expenditures for equipment and material for research
11 projects must be handled in an expeditious fashion,
12 and the acquisition and utilization of research grants
13 can be simplified and expedited through the utilization
14 of corporations.

15 (b) The interest of the citizens of the state will be
16 best met by agreements entered into and carried out
17 by the governing boards and corporations to provide
18 research assistance for state institutions of higher
19 education. Therefore, in order to facilitate research
20 and development grants and opportunities for state
21 institutions of higher education, it is appropriate to
22 authorize the governing boards to contract with

23 corporations organized for the purpose of providing
24 such services to state institutions of higher education.

**§18-31-3. Boards authorized to contract with corporations;
characteristics of corporations.**

1 (a) Each governing board for a state institution of
2 higher education is hereby authorized to enter into
3 agreements and any other contractual relationships
4 with one or more corporations formed with respect to
5 such state institution of higher education, but only if
6 each such corporation meets the following descriptions:

7 (1) The president and the president's appointees
8 from the institution shall constitute a majority of the
9 voting corporate directors.

10 (b) The corporation must be organized as a non-
11 profit, non-stock corporation under the general corpo-
12 ration laws of the state exclusively for charitable,
13 educational or scientific purposes within the meaning
14 of section 501(c) of the Internal Revenue Code of 1986,
15 as amended, to foster and support research at the
16 respective state institution of higher education and to
17 provide evaluation, development, patenting, manage-
18 ment and marketing services for inventions of the
19 faculty, staff and students of such state institution of
20 higher education.

21 (c) The meetings of the corporate directors shall be
22 subject to the provisions of section three, article nine-
23 a, chapter six of this code.

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

§18-31-4. Agreement; required provisions.

1 (a) Notwithstanding section ten, article three, chap-

2 ter twelve of this code or any other provision of law
3 to the contrary, each governing board is hereby
4 authorized to enter into an agreement with a corpora-
5 tion, which agreement shall be for the benefit of such
6 state institution of higher education and contain the
7 following provisions, subject to further specification as
8 shall be mutually agreed upon by the appropriate
9 governing board and the corporation:

10 (1) On the effective date of the agreement, the
11 corporation shall be charged with the responsibility of
12 serving as fiscal agent for sponsored projects con-
13 ducted by the faculty, staff and students of the state
14 institution of higher education, and grants shall be
15 accepted by the corporation on behalf of the institution
16 and assigned to the corporation for fiscal management.

17 (2) The corporation shall provide evaluation, devel-
18 opment, patenting, licensing, management and mar-
19 keting services for inventions, processes, trademarks,
20 copyrights or any other intellectual property devel-
21 oped by faculty, staff and students of any state
22 institution of higher education.

23 (3) The corporation shall have the right to determine
24 the application of the proceeds from any invention,
25 process, trademark, copyright or any other intellectual
26 property developed by the faculty, staff or students of
27 a state institution of higher education among the
28 corporation, the inventor or developer, and the
29 institution.

30 (4) The corporation shall have such additional
31 responsibilities related to the administration of
32 research and development at the state institution of
33 higher education as are necessary or desirable to
34 facilitate the development of research at the institution.

35 (b) Upon termination of the agreement, the funds or
36 grants paid or held by the corporation shall be paid to
37 the state institution of higher education or its designee
38 as the appropriate governing board shall direct.

39 (c) A corporation may utilize both corporation
40 employees and personnel of the state institution of

41 higher education: *Provided*, That the corporation may
42 pay the costs incurred by the state institution of
43 higher education including personnel funded on grants
44 and contracts, fringe benefits of personnel funded on
45 grants and contracts, administrative support costs and
46 other costs which may require reimbursement and
47 may include as costs any applicable overhead and
48 fringe benefit assessments necessary to recover the
49 costs expended by the state institution of higher
50 education pursuant to the terms of the agreement, it
51 being the intention that a board may be reimbursed
52 for expenses incurred by it pursuant to the agreement.

§18-31-5. Audit.

1 The operations of the corporation shall be subject to
2 an audit by an independent auditor.

§18-31-6. Conflicts of interest.

1 Notwithstanding any other provision of this code to
2 the contrary, officers and employees of a governing
3 board and the affected state institution of higher
4 education may hold appointments to offices of the
5 corporation and be corporate directors or officers or
6 employees of other entities contracting with either the
7 corporation or a governing board of a state institution
8 of higher education. The executive director of the
9 corporation shall have dual appointment with the state
10 institution of higher education. The governing board of
11 a state institution of higher education and the corpo-
12 rate directors must be informed of such appointments
13 annually.

§18-31-7. No waiver of sovereign immunity.

1 Nothing contained in this article shall be deemed or
2 construed to waive or abrogate in any way the sover-
3 eign immunity of the state or to deprive a governing
4 board of a state institution of higher education, a state
5 institution of higher education or any officer or
6 employee thereof of sovereign immunity.

§18-31-8. Not obligation of the state.

1 Obligations of a corporation shall not constitute

2 debts or obligations of a state institution of higher
3 education, the governing board thereof or the state.

§18-31-9. Sections and provisions severable.

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

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

Frederick L. Parker
.....
Chairman Senate Committee

Bennett V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Paul C. Neils
.....
Clerk of the Senate

Donald T. Hoop
.....
Clerk of the House of Delegates

James F. Smith
.....
President of the Senate

Robert C. Mitchell
.....
Speaker House of Delegates

The within is approved this the *20th*
day of *April*, 1989.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/14/89

Time 4:55