WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED
Committee Substitute for
SENATE BILL NO. 553

(By Senator [Signature]

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 govern­
ing 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 the context clearly indicates a different meaning, be construed as follows:

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

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

11 (c) "Corporate directors" means the board of directors of a corporation.

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

1 (a) The Legislature finds and determines that the future economic development in the state will depend in part upon research developed at the state institutions higher education, and enhanced research opportunities for state institutions of higher education will promote the general economic welfare of the citizens of the state. In order to enhance the competitive position of state institutions of higher education in the current environment for research and development, expenditures for equipment and material for research projects must be handled in an expeditious fashion, and the acquisition and utilization of research grants can be simplified and expedited through the utilization of corporations.

15 (b) The interest of the citizens of the state will be best met by agreements entered into and carried out by the governing boards and corporations to provide research assistance for state institutions of higher education. Therefore, in order to facilitate research and development grants and opportunities for state institutions of higher education, it is appropriate to authorize the governing boards to contract with
§18-31-3. Boards authorized to contract with corporations; characteristics of corporations.

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

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

(b) The corporation must be 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, to foster and support research at the respective state institution of higher education and to provide evaluation, development, patenting, management and marketing services for inventions of the faculty, staff and students of such state institution of higher education.

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

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

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

(a) Notwithstanding section ten, article three, chap-
ter twelve of this code or any other provision of law
to the contrary, each governing board is hereby
authorized to enter into an agreement with a corpora-
tion, which agreement shall be for the benefit of such
state institution of higher education and contain the
following provisions, subject to further specification as
shall be mutually agreed upon by the appropriate
governing board and the corporation:

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

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

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

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

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

(c) A corporation may utilize both corporation
employees and personnel of the state institution of
higher education: Provided, That the corporation may pay the costs incurred by the state institution of higher education 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 and may include as costs any applicable overhead and fringe benefit assessments necessary to recover the costs expended by the state institution of higher education pursuant to the terms of the agreement, it being the intention that a board may be reimbursed for expenses incurred by it pursuant to the agreement.

§18-31-5. Audit.

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

§18-31-6. Conflicts of interest.

1 Notwithstanding any other provision of this code to the contrary, officers and employees of a governing board and the affected state institution of higher education may hold appointments to offices of the corporation and be corporate directors or officers or employees of other entities contracting with either the corporation or a governing board of a state institution of higher education. The executive director of the corporation shall have dual appointment with the state institution of higher education. The governing board of a state institution of higher education and the corporate directors must be informed of such appointments annually.

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

1 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 a governing board of a state institution of higher education, a state institution of higher education or any officer or 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
education, the governing board thereof or the state.


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

Bernard V. Kelly
Chairman House Committee

Originated in the Senate.

In effect from passage.

Saul E. Nich
Clerk of the Senate

Donald R. Kopp
Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the day of April 1989.

Governor