WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 1996

ENROLLED

HOUSE BILL No. 203

(By Delegate MR. SPEAKER, MR. CHAMBERS,)
AND DELEGATE ASHLEY
[BY REQUEST OF THE EXECUTIVE]

Passed October 16, 1996

In Effect FROM Passage
ENROLLED
H. B. 203

(By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 1996; in effect from passage.]

AN ACT to amend and reenact sections one, two, three, six and eight, article eleven-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections three-a and eight-a, all relating to the corporation authorized to operate the West Virginia university hospital; authorizing the creation of a parent corporation to be known as the West Virginia health system; setting forth definitions of terms; setting forth legislative findings; amending the method by which the corporation's board is appointed; providing a description of the system and establishing the means by which the West Virginia health system's board of directors is nominated, appointed and confirmed; providing for interim directors of the system; directing that financial audits be open to the public; prohibiting transfer of the system's membership in the corporation; addressing conflicts of interest; and providing disclaimer of liability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11C. WEST VIRGINIA UNIVERSITY HOSPITAL AND WEST VIRGINIA HEALTH SYSTEM.
§18-11C-1. Definitions.

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

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

(b) "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;

(c) For the purposes of this article, "board" means the West Virginia board of trustees;

(d) "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;

(e) "Corporation employees" means employees of the corporation;

(f) "Directors" means the board of directors of the corporation;

(g) "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;

(h) "Health science schools" means the schools of medicine, dentistry, pharmacy and nursing and any other schools at the university considered by the board to be health sciences;

(i) "Hospital" means the inpatient and outpatient 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;

(j) "Liabilities" means all liabilities, except those
specifically 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
out-patient 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; and

(p) "West Virginia health system" or "system" means
the non-stock, not-for-profit corporation to be established
under the general corporation laws of the state, which
meets the description set forth in section three-a of this
article.

§18-11C-2. Findings.

(a) It is hereby found and determined with regard to
the hospital that:
(1) 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 the services in lieu of replacement or modernization would create an unreasonable hardship on patients in the area and throughout the state;

(2) 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;

(3) 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. The patient care operations are more efficiently served by contemporary legal, management and procedural structures utilized by similarly situated private entities throughout the nation;

(4) 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 the 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 serve to remove the tax burden of operating the existing facilities from the state;

(5) 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 is the best means of assuring prudent financial
management and the future economy of operation under rapidly changing market conditions, regulation and reimbursement; and

(6) 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.

(b) It is hereby found and determined with regard to the West Virginia health system that:

(1) The interests of the citizens of the state will be best served by ensuring the continued vitality and viability of the West Virginia based health care institutions which are devoted to addressing the state's tertiary health care and health science education needs and which possess the flexibility and resources to effectively and efficiently compete in a rapidly changing health care environment;

(2) The best interests of the state, and the mission and purposes of the corporation created by this article, will best be met by the authorization and creation of a West Virginia health system as a not-for-profit corporate structure to serve as the parent corporation of the corporation created pursuant to this article and other corporations and institutions;

(3) The citizens of the state are best served by requiring representative governance by the board while maintaining flexibility so that the West Virginia health system may, over time, authorize and stimulate the creation of an integrated health care delivery system which may be comprised of one or more affiliated institutions; and

(4) The citizens of the state are best served by the creation of a coordinated, integrated, efficient and effective health science and health care delivery system which is accountable to the citizens of the state, responsive to the health care and health science education needs of the citizens of the state, and responsive to the financial
§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 or her 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 of the university and the chief executive officer of the corporation, all of whom shall serve as ex officio members of the directors, a representative elected at large by the corporation employees and seven directors to be appointed by the West Virginia health system board. The West Virginia health system board shall select and appoint the seven appointed members in accordance with the provisions of section six-a, article five-b, chapter sixteen of this code: Provided, That the current directors of the corporation shall continue to serve until they resign or their term expires. On and after the effective date of this section, the seven appointed directors shall be appointed by the system board for staggered six-year terms. The system board shall select all of the appointed members in a manner which assures geographic diversity and assures that at least two members are from each congressional district.

(b) The corporation shall report its audited records 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-3a. Description to be met by the West Virginia health system.

(a) The West Virginia health system shall be a non-stock, not-for-profit corporation established pursuant to the provisions of article one, chapter thirty-one of this code, known as the "West Virginia Corporation Act". The system shall have the general powers of a corporation including, but not limited to, the power and authority to affiliate, in any manner, with the corporation and other health care providers to establish an integrated health care delivery system.

(b) The West Virginia health system shall meet the following description:

(1) The board of directors of the system shall initially consist of eleven voting members, all of whom shall represent the university. As the system affiliates with other health care providers, representatives of those providers may be appointed to the board. The West Virginia health system board shall provide for the manner and appointment of nonuniversity representatives.

The voting members representing the university are hereby designated as "university representatives". The university representatives shall include the following ex officio members: the president of the university, who shall serve as chair of the board of directors; the vice president for health sciences of the university; a member or designee of the board of trustees; and a member of the medical staff of the corporation. For each of the seven remaining university representative positions the directors of the corporation shall submit a list of three nominees to the governor for each open university representative position. If there is more than one open university position at any one time, the directors of the corporation may not nominate any person for more than one of the open university positions. The governor may appoint the board member from the list of nominees submitted or he or she may reject the list of nominees for any open university position and request that the directors of the corporation submit a list of three different nominees for that open university position. The board members
appointed by the governor shall be appointed with the advice and consent of the Senate. The directors of the corporation shall select its nominees and the governor shall select all of the appointed members in a manner which assures geographic diversity and assures that at least two members are from each congressional district. The appointed university representatives shall serve six-year terms: Provided, That of the initial members appointed, three members shall serve for a term of two years, two members shall serve for a term of four years, and two members shall serve for a term of six years.

(2) The number of members of the West Virginia health system's board may be increased by the majority vote of the existing system board members. The number of university representative positions on the system's board shall be increased, as a matter of law, upon a passing vote by the board to increase the number of nonuniversity representatives so that the total number of university representatives shall at all times constitute a majority of voting members of the system's board. Any additional system board positions which are created shall be created to provide for representation valuable to the board, including, but not limited to, representation of hospitals or health care providers which may, from time to time, become affiliated with the system. Newly created university representative positions shall be filled in accordance with the provisions of subdivision (3) of this subsection. To the extent possible, persons appointed to newly-created university representative positions shall be appointed to staggered terms so that the terms of approximately one third of the appointed university representatives expire every two years.

(3) Any vacancies in the university representative positions shall be filled with qualified university representatives pursuant to the ex officio designation or nomination and appointment procedure set forth in subdivision (1) of this subsection, so as to maintain the university's required majority of voting members of the system's board. To permit the orderly operation of the system, vacant university representative positions may be filled on an interim basis, as follows: (i) If the vacant
position is one of the ex officio positions, then the
position may be filled by the individual designated by the
university to serve in the position on an acting or interim
basis, or if no individual has been designated, the position
may be filled by a member or designee of the board of
trustees of the university; (ii) if the vacant position is
among the appointed university representatives, then the
position may be filled by an additional member or
designee of the board of trustees of the university until the
vacancy can be filled pursuant to the nomination and
appointment process set forth in subdivision (1) of this
subsection.

(c) The system's board shall make audited records of
the system available to the public and provide those
records to the joint committee on government and finance
at least annually.

(d) The system may not, in any manner, assign,
transfer or divest its rights in or to its membership in the
corporation.

(e) For purposes of organizing, incorporating and
conducting the business of the West Virginia health system
or otherwise implementing the provisions of this article,
the ex officio members of the system's board are
authorized to act on behalf of the system until the
remainder of the system's board members can be
appointed and confirmed.

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

(a) 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 the system and be members of the boards
of directors, or officers or employees of other entities
contracting with the corporation, the system or the board
or the university. The board and the directors of the
corporation and the system, as the case may be, must be
informed of the appointments annually, and either the
board or the directors of the corporation or the system
may require that an appointment be terminated to avoid
an actual or potential conflict of interest as determined by
the appropriate board: *Provided*, That between the first
and fifteenth day of January of each year, every member
of the board of the corporation and the system shall file a
written statement, which shall be fully available for public
disclosure, with the appropriate 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 the member, the member's
spouse or the unemancipated minor child or children of
the member, in their own or the member's 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 trustees, West Virginia
university or the corporation or system defined in this
article, commodities or printing as those terms are defined
in section one, article one, chapter five-a of this code; and

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

Those persons to whom the provisions of subdivisions
(1) and (2) of this subsection are not applicable shall file a
written statement to that effect with the chairman of the
board at the same time the reports specified in
subdivisions (1) and (2) are required to be filed.

(b) Any person who fails or refuses to file a written
statement under oath as required in subsection (a) of this
section shall, by operation of law, be automatically
removed from the board until the statement is filed.

(c) Any person who intentionally files a false
statement under this section is guilty of a misdemeanor
and, upon conviction, shall be confined in jail not less than
six months nor more than one year.

§18-11C-8. Not obligation of the state.
Obligations of the corporation and the system shall not constitute debts or obligations of the university, the board or the state.

§18-11C-8a. Agreements subject to other provisions of law.

Any agreements entered into between the system and any county hospital, municipal hospital or hospital created by special act of the Legislature shall be subject to the provisions of section three-a, article twenty-three, chapter eight of this code. No agreements entered into by the system shall relieve any hospital of any obligation or responsibility imposed upon it by law, except to the extent that actual and timely performance thereof by the system or any of its members may be offered in satisfaction of the obligation or responsibility.
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 of the House of Delegates

The within was approved this the 25th day of October, 1996.

Governor