

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



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SECRETARY OF STATE

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ENROLLED H. B. 203

(BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATE ASHLEY)
[By Request of the Executive]

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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.

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 the long-term lease and
5 agreement to be entered into between the board and the
6 corporation pursuant to section four of this article;

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
10 inventories of the university at the transfer date, and as
11 more particularly or additionally identified or supple-
12 mented in the agreement, excluding all hospital funds
13 deposited with the state treasurer;

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

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

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

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

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

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

33 (i) "Hospital" means the inpatient and outpatient health
34 care services of the board, other than those used for
35 student health services and family practice clinics,

36 operated in connection with the university, consisting of
37 the existing facilities and any other health care service
38 components of the West Virginia university medical center
39 at Morgantown rendering patient care services and more
40 particularly identified by the agreement;

41 (j) "Liabilities" means all liabilities, except those
42 specifically excluded by section four of this article,
43 credited to the hospital on the financial ledgers of the
44 university at the transfer date and as more particularly or
45 additionally identified, supplemented or limited in the
46 agreement;

47 (k) "Medical personnel" means both university
48 personnel and corporation employees;

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

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

59 (n) "University" means West Virginia university;

60 (o) "University personnel" means those employees of
61 the board or the university for whose services the
62 corporation contracts with the board or the university, as
63 appropriate; and

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

§18-11C-2. Findings.

1 (a) It is hereby found and determined with regard to
2 the hospital that:

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

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

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

24 (4) It is fiscally desirable that the state separate the
25 business and service functions of the hospital from the
26 educational functions of the health science schools, that
27 the board cease operation of the existing facilities, that the
28 board transfer the operations to the corporation, that the
29 board pay certain existing sums and assign the assets and
30 certain leasehold interests to the corporation in order to
31 acquire the corporation's agreement to provide certain
32 space and services and to assume the liabilities, that the
33 agreement and certain other contractual relationships
34 between the board and the corporation be authorized, and
35 that the existing facilities operated by the corporation, and
36 subsequently the new facilities owned and operated by the
37 corporation, be self-sufficient and serve to remove the tax
38 burden of operating the existing facilities from the state;

39 (5) A not-for-profit corporate structure with
40 appropriate governance consistent with the delivery of
41 health care to the patient and academic need of the
42 university is the best means of assuring prudent financial

43 management and the future economy of operation under
44 rapidly changing market conditions, regulation and
45 reimbursement; and

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

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

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

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

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

75 (4) The citizens of the state are best served by the
76 creation of a coordinated, integrated, efficient and
77 effective health science and health care delivery system
78 which is accountable to the citizens of the state, responsive
79 to the health care and health science education needs of
80 the citizens of the state, and responsive to the financial

81 pressures of a dynamic health care environment.

**§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
2 agreement and any other contractual relationships
3 authorized by this article with the corporation, but only if
4 the corporation meets the following description:

5 (a) The directors of the corporation, all of whom shall
6 be voting, shall consist of the president of the university,
7 who shall serve ex officio as chairman of the directors, the
8 president of the board or his or her designee, the vice
9 chancellor for health affairs of the board, the vice
10 president for health sciences of the university, the vice
11 president for administration and finance of the university,
12 the chief of the medical staff of the hospital, the dean of
13 the school of medicine of the university, the dean of the
14 school of nursing of the university and the chief executive
15 officer of the corporation, all of whom shall serve as ex
16 officio members of the directors, a representative elected
17 at large by the corporation employees and seven directors
18 to be appointed by the West Virginia health system board.
19 The West Virginia health system board shall select and
20 appoint the seven appointed members in accordance with
21 the provisions of section six-a, article five-b, chapter
22 sixteen of this code: *Provided*, That the current directors
23 of the corporation shall continue to serve until they resign
24 or their term expires. On and after the effective date of
25 this section, the seven appointed directors shall be
26 appointed by the system board for staggered six-year
27 terms. The system board shall select all of the appointed
28 members in a manner which assures geographic diversity
29 and assures that at least two members are from each
30 congressional district.

31 (b) The corporation shall report its audited records
32 publicly and to the joint committee on government and
33 finance at least annually.

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

§18-11C-3a. Description to be met by the West Virginia health system.

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

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

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

19 The voting members representing the university are
20 hereby designated as "university representatives". The
21 university representatives shall include the following ex
22 officio members: the president of the university, who shall
23 serve as chair of the board of directors; the vice president
24 for health sciences of the university; a member or
25 designee of the board of trustees; and a member of the
26 medical staff of the corporation. For each of the seven
27 remaining university representative positions the directors
28 of the corporation shall submit a list of three nominees to
29 the governor for each open university representative
30 position. If there is more than one open university
31 position at any one time, the directors of the corporation
32 may not nominate any person for more than one of the
33 open university positions. The governor may appoint the
34 board member from the list of nominees submitted or he
35 or she may reject the list of nominees for any open
36 university position and request that the directors of the
37 corporation submit a list of three different nominees for
38 that open university position. The board members

39 appointed by the governor shall be appointed with the
40 advice and consent of the Senate. The directors of the
41 corporation shall select its nominees and the governor
42 shall select all of the appointed members in a manner
43 which assures geographic diversity and assures that at least
44 two members are from each congressional district. The
45 appointed university representatives shall serve six-year
46 terms: *Provided*, That of the initial members appointed,
47 three members shall serve for a term of two years, two
48 members shall serve for a term of four years, and two
49 members shall serve for a term of six years.

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

71 (3) Any vacancies in the university representative
72 positions shall be filled with qualified university
73 representatives pursuant to the ex officio designation or
74 nomination and appointment procedure set forth in
75 subdivision (1) of this subsection, so as to maintain the
76 university's required majority of voting members of the
77 system's board. To permit the orderly operation of the
78 system, vacant university representative positions may be
79 filled on an interim basis, as follows: (i) If the vacant

80 position is one of the ex officio positions, then the
81 position may be filled by the individual designated by the
82 university to serve in the position on an acting or interim
83 basis, or if no individual has been designated, the position
84 may be filled by a member or designee of the board of
85 trustees of the university; (ii) if the vacant position is
86 among the appointed university representatives, then the
87 position may be filled by an additional member or
88 designee of the board of trustees of the university until the
89 vacancy can be filled pursuant to the nomination and
90 appointment process set forth in subdivision (1) of this
91 subsection.

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

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

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

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

1 (a) Notwithstanding any other provisions of this code
2 to the contrary, officers and employees of the board and
3 the university may hold appointments to offices of the
4 corporation and the system and be members of the boards
5 of directors, or officers or employees of other entities
6 contracting with the corporation, the system or the board
7 or the university. The board and the directors of the
8 corporation and the system, as the case may be, must be
9 informed of the appointments annually, and either the
10 board or the directors of the corporation or the system
11 may require that an appointment be terminated to avoid
12 an actual or potential conflict of interest as determined by

13 the appropriate board: *Provided*, That between the first
14 and fifteenth day of January of each year, every member
15 of the board of the corporation and the system shall file a
16 written statement, which shall be fully available for public
17 disclosure, with the appropriate chairman of the board,
18 under oath, setting forth:

19 (1) The name of every person, firm, corporation,
20 association, partnership, sole proprietorship or other
21 business association in which the member, the member's
22 spouse or the unemancipated minor child or children of
23 the member, in their own or the member's name, or
24 beneficially, own at least ten percent of such business
25 entity, or of which he or they are an officer, director,
26 agent, attorney, representative, employee, partner or
27 employer, and which to his actual knowledge is then
28 furnishing or within the previous calendar year has
29 furnished to the state, the board of trustees, West Virginia
30 university or the corporation or system defined in this
31 article, commodities or printing as those terms are defined
32 in section one, article one, chapter five-a of this code; and

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

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

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


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

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

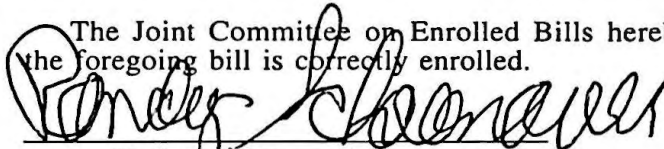
1 Obligations of the corporation and the system shall
2 not constitute debts or obligations of the university, the
3 board or the state.

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

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



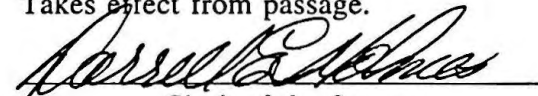
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee

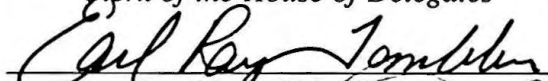

Chairman House Committee


Originating in the House.

Takes effect from passage.

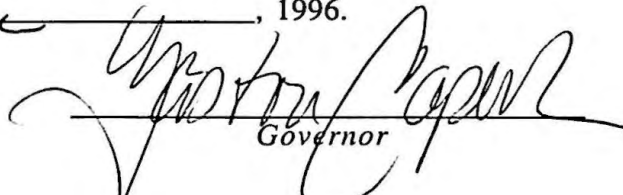

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

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


Governor

PRESENTED TO THE

GOVERNOR

Date 10/22/46

Time 1:06 pm