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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4322**

(By Mr. Speaker, Mr. Kiss, and Delegates Vamer,  
Cann, Kominar, Beach, DeLong and Stalnaker)



Passed March 7, 2002

In Effect from Passage

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## H. B. 4322

(BY MR. SPEAKER, MR. KISS, AND DELEGATES VARNER,  
CANN, KOMINAR, BEACH, DELONG AND STALNAKER)

[Passed March 7, 2002; in effect from passage.]

AN ACT to repeal article thirty-one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article two-a, chapter eighteen-b of said code; to amend and reenact sections two and four, article twelve of said chapter; and to further amend said article by adding thereto a new section, designated section ten, all relating to higher education; research and development agreements; clarifying that institutions may elect to retain certain institutional trademarks; allowing state institutions of higher education to enter into agreements with certain private corporations to provide funding and real or personal property to those corporations; allowing certain corporations to enter into agreements to provide funding and real or personal property to a person, firm or corporation; providing circumstances under which

property reverts to the institution or the corporation; and requiring public notice of transfer.

*Be it enacted by the Legislature of West Virginia:*

That article thirty-one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section four, article two-a, chapter eighteen-b of said code be amended and reenacted; that sections two and four, article twelve of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section ten, all to read as follows:

**ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.**

**§18B-2A-4. Powers and duties of governing boards generally.**

1 Each governing board separately has the following powers  
2 and duties:

3 (a) Determine, control, supervise and manage the financial,  
4 business and education policies and affairs of the state institu-  
5 tions of higher education under its jurisdiction;

6 (b) Develop a master plan for the institutions under its  
7 jurisdiction; except the administratively linked community and  
8 technical colleges shall develop their master plans subject to the  
9 provisions of section one, article six of this chapter. The  
10 ultimate responsibility for developing and updating the master  
11 plans at the institutional level resides with the board of gover-  
12 nors or board of advisors, as applicable, but the ultimate  
13 responsibility for approving the final version of the institutional  
14 master plans, including periodic updates, resides with the  
15 commission. Each master plan shall include, but not be limited  
16 to, the following:

17 (1) A detailed demonstration of how the master plan will be  
18 used to meet the goals and objectives of the institutional  
19 compact;

20 (2) A well-developed set of goals outlining missions,  
21 degree offerings, resource requirements, physical plant needs,  
22 personnel needs, enrollment levels and other planning  
23 determinates and projections necessary in such a plan to assure  
24 that the needs of the institution's area of responsibility for a  
25 quality system of higher education are addressed;

26 (3) Documentation of the involvement of the commission,  
27 institutional constituency groups, clientele of the institution and  
28 the general public in the development of all segments of the  
29 institutional master plan.

30 The plan shall be established for periods of not less than  
31 three nor more than six years and shall be revised periodically  
32 as necessary, including the addition or deletion of degree  
33 programs as, in the discretion of the appropriate governing  
34 board, may be necessary.

35 (c) Prescribe for the institutions under its jurisdiction, in  
36 accordance with its master plan and the compact for each  
37 institution, specific functions and responsibilities to meet the  
38 higher education needs of its area of responsibility and to avoid  
39 unnecessary duplication;

40 (d) Direct the preparation of a budget request for the  
41 institutions under its jurisdiction, such request to relate directly  
42 to missions, goals and projections as found in the institutional  
43 master plans and the institutional compacts;

44 (e) Consider, revise and submit to the commission a budget  
45 request on behalf of the institutions under its jurisdiction;

46 (f) Review, at least every five years, all academic programs  
47 offered at the institutions under its jurisdiction. The review  
48 shall address the viability, adequacy and necessity of the  
49 programs in relation to its institutional master plan, the institu-  
50 tional compact and the education and work force needs of its  
51 responsibility district. As a part of the review, each governing  
52 board shall require the institutions under its jurisdiction to  
53 conduct periodic studies of its graduates and their employers to  
54 determine placement patterns and the effectiveness of the  
55 education experience. Where appropriate, these studies should  
56 coincide with the studies required of many academic disciplines  
57 by their accrediting bodies;

58 (g) The governing boards shall ensure that the sequence and  
59 availability of academic programs and courses offered by the  
60 institutions under their jurisdiction is such that students have  
61 the maximum opportunity to complete programs in the time  
62 frame normally associated with program completion. Each  
63 governing board is responsible to see that the needs of nontradi-  
64 tional college-age students are appropriately addressed and, to  
65 the extent it is possible for the individual governing board to  
66 control, to assure core coursework completed at institutions  
67 under its jurisdiction is transferable to any other state institution  
68 of higher education for credit with the grade earned;

69 (h) Subject to the provisions of article one-b of this chapter,  
70 the appropriate governing board has the exclusive authority to  
71 approve the teacher education programs offered in the institu-  
72 tion under its control. In order to permit graduates of teacher  
73 education programs to receive a degree from a nationally  
74 accredited program and in order to prevent expensive duplica-  
75 tion of program accreditation, the chancellor may select and  
76 utilize one nationally recognized teacher education program

77 accreditation standard as the appropriate standard for program  
78 evaluation;

79 (i) Utilize faculty, students and classified employees in  
80 institutional-level planning and decision making when those  
81 groups are affected;

82 (j) Subject to the provisions of federal law and pursuant to  
83 the provisions of article nine of this chapter and to rules  
84 adopted by the commission, administer a system for the  
85 management of personnel matters, including, but not limited to,  
86 personnel classification, compensation, and discipline for  
87 employees of the institutions under their jurisdiction;

88 (k) Administer a system for hearing employee grievances  
89 and appeals. Notwithstanding any other provisions of this code  
90 to the contrary, the procedure established in article six-a,  
91 chapter twenty-nine of this code is the exclusive mechanism for  
92 hearing prospective employee grievances and appeals. In  
93 construing the application of article six-a, chapter twenty-nine  
94 to grievances of higher education employees, the following  
95 apply:

96 (1) "Chief administrator" means the president of a state  
97 institution of higher education as to those employees employed  
98 by the institution and the chancellor as to those employees  
99 employed by the commission;

100 (2) The state division of personnel may not be a party to nor  
101 have any authority regarding a grievance initiated by a higher  
102 education employee; and

103 (3) The provisions of this section supersede and replace the  
104 grievance procedure set out in article twenty-nine, chapter  
105 eighteen of this code for any grievance initiated by a higher  
106 education employee after the first day of July, two thousand  
107 one.

108 (l) Solicit and utilize or expend voluntary support, including  
109 financial contributions and support services, for the institutions  
110 under its jurisdiction;

111 (m) Appoint a president or other administrative head for the  
112 institutions under its jurisdiction subject to the provisions of  
113 section six, article one-b of this chapter;

114 (n) Conduct written performance evaluations of each  
115 institution's president pursuant to section six, article one-b of  
116 this chapter;

117 (o) Submit to the commission no later than the first day of  
118 November of each year an annual report of the performance of  
119 the institutions under its jurisdiction during the previous fiscal  
120 year as compared to stated goals in its master plan and institu-  
121 tional compact;

122 (p) Enter into contracts or consortium agreements with the  
123 public schools, private schools or private industry to provide  
124 technical, vocational, college preparatory, remedial and  
125 customized training courses at locations either on campuses of  
126 the public institution of higher education or at off-campus  
127 locations in the institution's responsibility district. To accom-  
128 plish this goal, the boards are permitted to share resources  
129 among the various groups in the community;

130 (q) Provide and transfer funding and property to certain  
131 corporations pursuant to section ten, article twelve of this  
132 chapter;

133 (r) Delegate, with prescribed standards and limitations, the  
134 part of its power and control over the business affairs of a  
135 particular institution under its jurisdiction to the president or  
136 other administrative head of the institution in any case where it  
137 considers the delegation necessary and prudent in order to  
138 enable the institution to function in a proper and expeditious

139 manner and to meet the requirements of its institutional  
140 compact. If a governing board elects to delegate any of its  
141 power and control under the provisions of this subsection, it  
142 shall notify the chancellor. Any such delegation of power and  
143 control may be rescinded by the appropriate governing board or  
144 the chancellor at any time, in whole or in part;

145 (s) Unless changed by the chancellor, the governing boards  
146 shall continue to abide by existing rules setting forth standards  
147 for acceptance of advanced placement credit for their respective  
148 institutions. Individual departments at institutions of higher  
149 education may, upon approval of the institutional faculty senate,  
150 require higher scores on the advanced placement test than  
151 scores designated by the appropriate governing board when the  
152 credit is to be used toward meeting a requirement of the core  
153 curriculum for a major in that department;

154 (t) Each governing board, or its designee, shall consult,  
155 cooperate and work with the state treasurer and the state auditor  
156 to update as necessary and maintain an efficient and  
157 cost-effective system for the financial management and  
158 expenditure of special revenue and appropriated state funds at  
159 the institutions under its jurisdiction that ensures that properly  
160 submitted requests for payment be paid on or before due date,  
161 but in any event, within fifteen days of receipt in the state  
162 auditor's office;

163 (u) The governing boards in consultation with the chancel-  
164 lor and the secretary of the department of administration shall  
165 develop, update as necessary and maintain a plan to administer  
166 a consistent method of conducting personnel transactions,  
167 including, but not limited to, hiring, dismissal, promotions and  
168 transfers at the institutions under their jurisdiction. Each such  
169 personnel transaction shall be accompanied by the appropriate  
170 standardized system or forms which will be submitted to the

171 respective governing board and the department of finance and  
172 administration;

173 (v) Notwithstanding any other provision of this code to the  
174 contrary, the governing boards may transfer funds from any  
175 account specifically appropriated for their use to any corre-  
176 sponding line item in a general revenue account at any agency  
177 or institution under their jurisdiction as long as such transferred  
178 funds are used for the purposes appropriated. The governing  
179 boards may transfer funds from appropriated special revenue  
180 accounts for capital improvements under their jurisdiction to  
181 special revenue accounts at agencies or institutions under their  
182 jurisdiction as long as such transferred funds are used for the  
183 purposes appropriated; and

184 (w) Notwithstanding any other provision of this code to the  
185 contrary, the governing boards may acquire legal services as are  
186 considered necessary, including representation of the governing  
187 boards, their institutions, employees and officers before any  
188 court or administrative body. The counsel may be employed  
189 either on a salaried basis or on a reasonable fee basis. In  
190 addition, the governing boards may, but are not required to, call  
191 upon the attorney general for legal assistance and representation  
192 as provided by law.

**ARTICLE 12. RESEARCH AND DEVELOPMENT AGREEMENTS FOR  
STATE INSTITUTIONS OF HIGHER EDUCATION.**

**§18B-12-2. Legislative findings and purpose.**

1 (a) The Legislature finds and determines that the future  
2 economic development in the state will depend in part upon  
3 research developed at the state institutions of higher education,  
4 and enhanced research opportunities for state institutions of  
5 higher education will promote the general economic welfare of  
6 the citizens of the state. In order to enhance the competitive  
7 position of state institutions of higher education in the current

8 environment for research and development, expenditures for  
9 equipment and material for research projects must be handled  
10 in an expeditious fashion, and the acquisition and utilization of  
11 research grants can be simplified and expedited through the  
12 utilization of private corporations.

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

**§18B-12-4. Agreement; required provisions.**

1 (a) Notwithstanding section ten, article three, chapter  
2 twelve of this code or any other provision of law to the con-  
3 trary, each governing board is hereby authorized to enter into an  
4 agreement with a private corporation, which agreement shall be  
5 for the benefit of the state institution of higher education and  
6 contain the following provisions, subject to further specification  
7 as is mutually agreed upon by the governing board and the  
8 corporation:

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

15 (2) The corporation shall provide evaluation, development,  
16 patenting, licensing, management and marketing services for  
17 inventions, processes, trademarks, except institutional trade-

18 marks an institution's governing board elects to retain, copy-  
19 rights or any other intellectual property developed by faculty,  
20 staff and students of any state institution of higher education.

21 (3) The corporation has the right to determine the applica-  
22 tion of the proceeds from any invention, process, trademark,  
23 except institutional trademarks an institution's governing board  
24 elects to retain, copyright or any other intellectual property  
25 developed by the faculty, staff or students of an institution  
26 among the corporation, the inventor or developer, and the  
27 institution.

28 (4) The corporation has the right to receive, purchase, hold,  
29 lease, use, sell and dispose of real and personal property of all  
30 classes subject to the provisions of section ten of this article.

31 (5) The corporation has such additional responsibilities  
32 related to the administration of research and development at the  
33 institution as are necessary or desirable.

34 (b) Upon termination of the agreement, the funds or grants  
35 paid or held by the corporation, and all other property held by  
36 the corporation, shall be transferred to the institution or its  
37 designee as the governing board directs.

38 (c) A corporation may utilize both corporation employees  
39 and personnel of the institution. The corporation may pay the  
40 costs incurred by the institution including personnel funded on  
41 grants and contracts, fringe benefits of personnel funded on  
42 grants and contracts, administrative support costs and other  
43 costs which may require reimbursement. The corporation may  
44 include as costs any applicable overhead and fringe benefit  
45 assessments necessary to recover the costs expended by the  
46 institution, pursuant to the terms of the agreement, and that a  
47 board may be reimbursed for expenses incurred by it pursuant  
48 to the agreement.

**§18B-12-10. Assignment or transfer of property to certain corporations.**

1 (a) Institutional boards of governors may provide and  
2 transfer funding and property, both real and personal, to  
3 corporations as defined in section one of this article, and with  
4 which the institution under its jurisdiction has contracted  
5 pursuant to the provisions of this article. Any deed that transfers  
6 real property under the provisions of this section to a corpora-  
7 tion, as defined in section one of this article, for either: (i)  
8 Research and development; (ii) Economic development projects  
9 resulting in the creation of employment related to the results of  
10 research and development conducted on the property; or (iii)  
11 both; under this section shall include provisions requiring that  
12 the real property revert to the institution under the following  
13 circumstances:

14 (1) For a period of two years, the property is not used for at  
15 least one of the purposes for which it may be conveyed;

16 (2) The corporation to which the real property is transferred  
17 is dissolved; or

18 (3) The corporation files a petition in bankruptcy.

19 (b) Any corporation, as that term is defined in section one  
20 of this article, may provide and transfer funding and property,  
21 both real and personal, to another person, firm or corporation  
22 for: (i) Research and development; (ii) Economic development  
23 projects resulting in the creation of employment related to the  
24 results of research and development conducted on the property;  
25 or (iii) both. Any deed that transfers real property to a person,  
26 firm or corporation shall include provisions requiring that the  
27 real property revert to the corporation, as defined in section one  
28 of this article, under the following circumstances:

29       (1) For a period of six months, the property is not used for  
30 at least one of the purposes for which it may be conveyed;

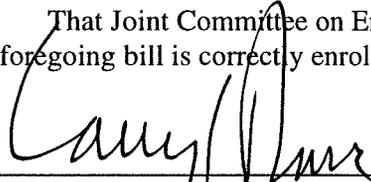
31       (2) The corporation to which the real property is transferred  
32 is dissolved; or

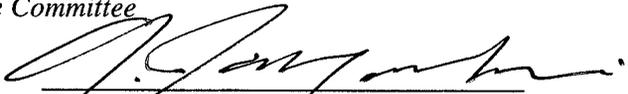
33       (3) The corporation files a petition in bankruptcy.

34       (c) The person, firm or corporation that receives real  
35 property from the corporation, as defined in section one of this  
36 article, may not transfer the property to another party without  
37 the written permission of the corporation, as defined in section  
38 one of this article. The corporation, as defined in section one of  
39 this article, may not grant any such request unless the corpora-  
40 tion determines that covenants in the deed or lease agreement  
41 provide adequate assurance that the terms of subsections (a) and  
42 (b) of this section are preserved.

43       (d) At least twenty days before the transfer of any property  
44 pursuant to the provisions of this section, the institutional board  
45 of governors or the corporation, as defined in section one of this  
46 article, whichever is appropriate, shall give public notice of the  
47 transfer through a Class II legal advertisement in accordance  
48 with the provisions of article three, chapter fifty-nine of this  
49 code.

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

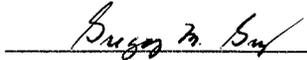
  
\_\_\_\_\_  
Chairman Senate Committee

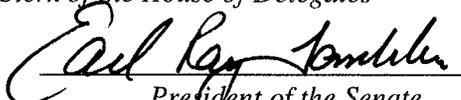
  
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Chairman House Committee

Originating in the House.

In 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 15<sup>th</sup>  
day of March, 2002.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/11/02

Time 4:05 pm