WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2002

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4322

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

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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article thirty-one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section four, article two-a, chapter eighteen-b of said code be amended and reenacted; that sections two and four, article twelve of said chapter be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.


Each governing board separately has the following powers and duties:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institutions of higher education under its jurisdiction;

(b) Develop a master plan for the institutions under its jurisdiction; except the administratively linked community and technical colleges shall develop their master plans subject to the provisions of section one, article six of this chapter. The ultimate responsibility for developing and updating the master plans at the institutional level resides with the board of governors or board of advisors, as applicable, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the commission. Each master plan shall include, but not be limited to, the following:
(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

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

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

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

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

(d) Direct the preparation of a budget request for the institutions under its jurisdiction, such request to relate directly to missions, goals and projections as found in the institutional master plans and the institutional compacts;
(e) Consider, revise and submit to the commission a budget request on behalf of the institutions under its jurisdiction;

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

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

(h) Subject to the provisions of article one-b of this chapter, the appropriate governing board has the exclusive authority to approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the chancellor may select and utilize one nationally recognized teacher education program
accreditation standard as the appropriate standard for program evaluation;

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

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

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

(1) “Chief administrator” means the president of a state institution of higher education as to those employees employed by the institution and the chancellor as to those employees employed by the commission;

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

(3) The provisions of this section supersede and replace the grievance procedure set out in article twenty-nine, chapter eighteen of this code for any grievance initiated by a higher education employee after the first day of July, two thousand one.
(l) Solicit and utilize or expend voluntary support, including financial contributions and support services, for the institutions under its jurisdiction;

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

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

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

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

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

(r) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of a particular institution under its jurisdiction to the president or other administrative head of the institution in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious
manner and to meet the requirements of its institutional compact. If a governing board elects to delegate any of its power and control under the provisions of this subsection, it shall notify the chancellor. Any such delegation of power and control may be rescinded by the appropriate governing board or the chancellor at any time, in whole or in part;

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

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

(u) The governing boards in consultation with the chancellor and the secretary of the department of administration shall develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the institutions under their jurisdiction. Each such personnel transaction shall be accompanied by the appropriate 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
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 private corporations.

(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 private corporations organized for the purpose of providing such services to state institutions of higher education.

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

(a) Notwithstanding section ten, article three, chapter 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 private corporation, which agreement shall be for the benefit of the state institution of higher education and contain the following provisions, subject to further specification as is mutually agreed upon by the governing board and the corporation:

(1) On the effective date of the agreement, the corporation is charged with the responsibility of serving as fiscal agent for sponsored projects conducted 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, development, patenting, licensing, management and marketing services for inventions, processes, trademarks, except institutional trade-
marks an institution's governing board elects to retain, copyrights or any other intellectual property developed by faculty, staff and students of any state institution of higher education.

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

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

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

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

(c) A corporation may utilize both corporation employees and personnel of the institution. The corporation may pay the costs incurred by the institution 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. The corporation may include as costs any applicable overhead and fringe benefit assessments necessary to recover the costs expended by the institution, pursuant to the terms of the agreement, and that a board may be reimbursed for expenses incurred by it pursuant to the agreement.
§18B-12-10. Assignment or transfer of property to certain corporations.

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

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

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

(3) The corporation files a petition in bankruptcy.

(b) Any corporation, as that term is defined in section one of this article, may provide and transfer funding and property, both real and personal, to another person, firm or corporation for: (i) Research and development; (ii) Economic development projects resulting in the creation of employment related to the results of research and development conducted on the property; or (iii) both. Any deed that transfers real property to a person, firm or corporation shall include provisions requiring that the real property revert to the corporation, as defined in section one of this article, under the following circumstances:
(1) For a period of six months, the property is not used for at least one of the purposes for which it may be conveyed;

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

(3) The corporation files a petition in bankruptcy.

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

(d) At least twenty days before the transfer of any property pursuant to the provisions of this section, the institutional board of governors or the corporation, as defined in section one of this article, whichever is appropriate, shall give public notice of the transfer through a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code.
That Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

In effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 15th
day of March, 2002.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR

Date 3/11/02
Time 4:00 pm