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**WEST VIRGINIA LEGISLATURE**

Regular Session, 2003

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**ENROLLED**

**SENATE BILL NO.** 646

(By Senator Caldwell, et al )

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**PASSED** March 16, 2003

**In Effect** from **Passage**

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SENATE

## ENROLLED

### Senate Bill No. 646

(By SENATORS CALDWELL, PLYMALE, EDGELL, WHITE,  
DEMPSEY, SPROUSE, UNGER AND OLIVERIO)

[Passed March 16, 2003; in effect from passage.]

AN ACT to amend chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-a; and to amend and reenact section two, article five, chapter eighteen-c of said code, all relating to higher education; centers for economic development and technology advancement generally; findings and purpose; definitions; authorizing doctoral institutions to enter into agreements with centers; setting forth requirements for governing bodies; powers and duties of governing bodies; providing for appointment of president; qualifications; powers and duties of president; authorizing agreements; terms and conditions; authorizing audit of center operations; clarifying issues of conflicts of interest; prohibiting waiver of sovereign immunity; clarifying issues of debt obligations of centers; student financial aid; and expanding definition of "eligible institution" for purposes of higher education grant program.

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

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

**ARTICLE 12A. CENTERS FOR ECONOMIC DEVELOPMENT AND TECHNOLOGY ADVANCEMENT.**

**§18B-12A-1. Legislative findings and purpose.**

1 (a) The Legislature finds that economic development in  
2 West Virginia depends in part on the effective and efficient  
3 management of research grants and opportunities at  
4 doctoral institutions of higher education, on collaborations  
5 developed between doctoral institutions and businesses  
6 and industry and on the advancement and commercializa-  
7 tion of new and evolving technologies. It is in the best  
8 interests of citizens of the state to develop programs which  
9 promote these goals and contribute to the general eco-  
10 nomic welfare of citizens. In order to enhance the compet-  
11 itive position of doctoral institutions in the current  
12 environment for research and economic development,  
13 expenditures for equipment and material for research  
14 projects must be handled efficiently and effectively and  
15 the acquisition and use of grant funds should be simplified  
16 and expedited through the use of centers for economic  
17 development and technology advancement.

18 (b) The purpose of this article is to provide a mechanism  
19 for doctoral institutions to enter into agreements with  
20 centers for economic development and technology ad-  
21 vancement to provide research assistance; to provide  
22 maximum flexibility as to the form of organization of  
23 centers so as to encourage and facilitate private sector  
24 participation in and support of research and economic  
25 development grants and opportunities in collaboration  
26 with doctoral institutions; to expedite the acquisition,  
27 administration and management of research and develop-

28 ment grants and opportunities; to provide technical  
29 assistance in the commercialization of research opportuni-  
30 ties; and to authorize doctoral institutions to contract with  
31 centers organized for the purpose of providing these  
32 services.

**§18B-12A-2. Definitions.**

1 The following words used in this article have the mean-  
2 ing ascribed to them in this section unless the context  
3 clearly indicates a different meaning:

4 (a) “Agreement” means any agreement or contractual  
5 relationship being entered into between a doctoral institu-  
6 tion and a center pursuant to the provisions of this article.

7 (b) “Center” means a center for economic development  
8 and technology advancement created pursuant to section  
9 three of this article.

10 (c) “Governing body” means the governing body of a  
11 center created pursuant to the provisions of this article.

12 (d) “President” means the chief executive officer of a  
13 center employed pursuant to section five of this article.

14 (e) “Doctoral institution” means a state institution of  
15 higher education as defined in subsection (d), section one,  
16 article eight of this chapter.

**§18B-12A-3. Establishment of centers for economic develop-  
ment and technology advancement; doctoral  
institutions authorized to enter into agree-  
ments.**

1 There is authorized the establishment of independent  
2 entities to be known as centers for economic development  
3 and technology advancement. Each center shall be formed  
4 with respect to a specific doctoral institution and each  
5 center shall meet the following conditions:

6 (1) Representatives from private sector business and  
7 industry constitute a majority of the voting members of  
8 the governing body of each center;

9 (2) The president of the appropriate doctoral institution  
10 or a senior member of the doctoral institution's adminis-  
11 trative staff is a member of the appropriate governing  
12 body.

13 (3) Each center shall be organized as one of the follow-  
14 ing:

15 (A) A nonprofit, nonstock corporation under the general  
16 corporation laws of the state exclusively for charitable,  
17 educational or scientific purposes within the meaning of  
18 section 501(c) of the Internal Revenue Code of 1986, as  
19 amended; or

20 (B) A corporation, partnership, limited partnership,  
21 limited liability company or other form of entity autho-  
22 rized to be formed under this code.

**§18B-12A-4. Powers and duties of governing bodies and centers.**

1 The primary responsibility of each center is to foster and  
2 support economic development and the advancement and  
3 commercialization of new and emerging technologies  
4 through collaboration agreements between business-  
5 industry and the respective doctoral institution. To that  
6 end, the governing body of each center has the following  
7 powers and duties:

8 (a) To adopt and amend, from time to time, a statement  
9 of purpose and scope of operations. When the governing  
10 body amends the purpose or scope of a center, the govern-  
11 ing body shall advise the appropriate doctoral institution  
12 of the changes;

13 (b) To employ a president subject to the provisions of  
14 section five of this article;

15 (c) To approve employment of other staff recommended  
16 by the president as being necessary and appropriate to  
17 carry out the purpose and scope of the center;

18 (d) To serve as fiscal agent and provide additional  
19 services, including, but not limited to, evaluation of  
20 technology, verification and assessment of market applica-  
21 tions, grant administration and human resource manage-  
22 ment for any entity associated with the doctoral institu-  
23 tion if the entity is engaged in business-industry collabo-  
24 rations, technology advancement and commercialization  
25 activities and research into new areas of economic devel-  
26 opment;

27 (e) To meet as a governing body: *Provided*, That centers  
28 created under this article are exempt from the provisions  
29 of section three, article nine-a, chapter six of this code and  
30 from the provisions of article one, chapter twenty-nine-b  
31 of this code;

32 (f) To receive, purchase, hold, lease, use, sell and dispose  
33 of real and personal property of all classes, including all  
34 kinds of intellectual property, subject to the provisions of  
35 section ten of this article;

36 (g) To receive and accept from any public or private  
37 agency, corporation, association, person, partnership,  
38 company or any other organization or entity of any nature  
39 whatsoever grants to be expended in accomplishing the  
40 objectives of this article and to receive and accept from the  
41 state, from any municipality, county or other political  
42 subdivision of the state and from any other source, aid or  
43 contributions of either money, property or other things of  
44 value to be held, used and applied only for the purposes for  
45 which the grants and contributions may be made;

46 (h) To accept and expend any gift, grant, contribution,  
47 bequest, endowment or other money for the purposes of  
48 this article and to make a maximum effort to encourage  
49 external support for the center's programs. Any transfer  
50 of endowment or other assets by the doctoral institution to  
51 a center or by the center to the doctoral institution for  
52 management or investment shall be formalized in a  
53 memorandum of agreement to assure, at a minimum, that

54 any restrictions governing the future disposition of funds  
55 are preserved;

56 (i) To make, amend and repeal bylaws and rules consis-  
57 tent with the provisions of this article to carry into effect  
58 the purpose and scope of the center and, subject to such  
59 directions and limitations as may be contained in its  
60 governing documents, to delegate the exercise of any of its  
61 powers to the president except for the power to approve  
62 budgets; to make, amend or repeal its governing docu-  
63 ments; or to alter the purpose or scope of the center;

64 (j) In addition to the powers and duties provided for in  
65 this section and any other powers and duties that may be  
66 assigned to it by law or agreement, each center has such  
67 other powers and duties as may be necessary or expedient  
68 to accomplish the objectives of this article or as provided  
69 by law.

**§18B-12A-5. Appointment of president; qualifications.**

1 (a) The governing body of each center shall employ a  
2 president who shall be the chief executive officer of the  
3 center and who shall serve at the will and pleasure of the  
4 governing body;

5 (b) The center shall be under the control and supervision  
6 of the president who, with the approval of the governing  
7 body, may employ staff as is necessary to carry out the  
8 center's purpose and scope;

9 (c) The governing body shall set the qualifications for the  
10 position of president and shall conduct a thorough search  
11 for qualified candidates. A qualified candidate is one who  
12 meets at least the following criteria:

13 (1) Possesses a broad understanding of the relationship  
14 between public and private sector research, the advance-  
15 ment and commercialization of new and emerging technol-  
16 ogies and economic development and has significant

17 experience and an established professional reputation in  
18 these fields;

19 (2) Holds, at a minimum, a bachelor's degree in a field  
20 related to the duties and responsibilities of the position of  
21 president;

22 (3) Demonstrates specifically that he or she has devel-  
23 oped effective and successful grant management skills, as  
24 well as skill in fostering collaborations between business-  
25 industry and doctoral institutions;

26 (4) Demonstrates strong communication skills and the  
27 ability to work with all types of businesses and industry,  
28 government agencies and higher education institutions;  
29 and

30 (5) Possesses other skills, qualifications or attributes as  
31 the governing body may consider appropriate or desirable.

**§18B-12A-6. Agreements; required provisions.**

1 (a) Notwithstanding section ten, article three, chapter  
2 twelve of this code or any other provision of law to the  
3 contrary, each doctoral institution is hereby authorized to  
4 enter into agreements with one or more centers: *Provided*,  
5 That each center is formed with respect to that specific  
6 doctoral institution and meets the conditions set forth  
7 either in paragraph (A) or paragraph (B), subdivision (2),  
8 section three of this article.

9 (b) Any agreement with a center shall benefit the doc-  
10 toral institution or one or more of its schools, departments  
11 or institutes whose purpose is to further economic devel-  
12 opment, training, education and technology research and  
13 development in its region.

14 (c) On the effective date of the agreement, the center is  
15 charged with the responsibility of serving as fiscal agent  
16 for specified sponsored projects conducted by the faculty,  
17 staff and students of the doctoral institution pursuant to  
18 terms of the agreement and grants shall be accepted by the



19 center on behalf of the doctoral institution and assigned to  
20 the center for fiscal management.

21 (d) If an agreement is terminated, the funds, contribu-  
22 tions or grants paid or held by the center and not encum-  
23 bered or committed prior to termination shall be distrib-  
24 uted as provided for in the agreement.

25 (e) If part of the agreement, a center may utilize both  
26 center employees and personnel of the doctoral institution.  
27 The center may pay the costs incurred by the doctoral  
28 institution, including personnel funded on grants and  
29 contracts, fringe benefits of personnel funded on grants  
30 and contracts, administrative support costs and other costs  
31 which may require reimbursement. The center may  
32 include as costs any applicable overhead and fringe benefit  
33 assessments necessary to recover the costs expended by the  
34 doctoral institution, pursuant to the terms of the agree-  
35 ment, and the doctoral institution may be reimbursed for  
36 expenses incurred by it pursuant to the agreement.

**§18B-12A-7. Audit.**

1 The operations of the center are subject to an audit by an  
2 independent auditor.

**§18B-12A-8. Conflicts of interest.**

1 Notwithstanding any other provision of this code to the  
2 contrary, officers and employees of a governing board and  
3 the affected doctoral institution may hold appointments to  
4 offices of the center and be members of its governing body  
5 or officers or employees of other entities contracting with  
6 either the center or a governing board of a doctoral  
7 institution. The governing body shall make an annual  
8 report of these appointments to the doctoral institution.

**§18B-12A-9. No waiver of sovereign immunity.**

1 Nothing contained in this article may be construed to  
2 waive or abrogate in any way the sovereign immunity of  
3 the state or to deprive the governing board of a doctoral

4 institution, a doctoral institution or any officer or em-  
5 ployee of a doctoral institution of sovereign immunity.

**§18B-12A-10. Not obligation of the state.**

1 Obligations of a governing body or its center do not  
2 constitute debts or obligations of a doctoral institution,  
3 the governing board of a doctoral institution or the state.

**ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.**

**§18C-5-2. Definitions.**

1 (a) "Approved institution of higher education" means:

2 (1) A state institution of higher education as defined in  
3 section two, article one, chapter eighteen-b of this code;  
4 Alderson-Broadbudd college, Appalachian Bible college,  
5 Bethany college, Mountain State university, Davis and  
6 Elkins college, Ohio Valley college, Salem international  
7 university, the university of Charleston, West Virginia  
8 Wesleyan college and Wheeling Jesuit college, all in West  
9 Virginia; and

10 (2) Any other regionally or nationally accredited institu-  
11 tion of higher education in this state, public or private,  
12 approved by the vice chancellor for administration if the  
13 institution has been licensed for a minimum of fifteen  
14 years subject to the provisions of section five, article three,  
15 chapter eighteen-b of this code and section four, article  
16 one-b of said chapter.

17 (b) "Grant" or "grant program" means a grant or the  
18 grant program authorized and established by the provi-  
19 sions of this article.

20 (c) "Senior administrator" means the vice chancellor for  
21 administration, as provided in section two, article one,  
22 chapter eighteen-b of this code.

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

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *1<sup>st</sup>*  
Day of *April*, 2003.  
*[Handwritten Signature]*

.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/27/03

Time 10:10am