

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 484**

(By Senators McCabe, Unger, Foster, Stollings, Wells,  
Minard, Beach and Kessler (Acting President))

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[Originating in the Committee on Education;  
reported February 28, 2011.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-1E-1, §18B-1E-2, §18B-1E-3, §18B-1E-4, §18B-1E-5, §18B-1E-6, §18B-1E-7, §18B-1E-8 and §18B-1E-9, all relating to management agreements of the Higher Education Policy Commission, authorizing creation of certain corporations; authorizing policy commission to enter into certain agreements and contractual arrangements; terms and conditions; legislative findings, purpose and intent; providing certain definitions; setting forth essential criteria for certain corporations; specifying corporation membership, organization and financial requirements;

providing for appointment of executive director; specifying qualifications; requiring annual audit of corporation operations; clarifying issues of conflicts of interest; prohibiting waiver of sovereign immunity; clarifying issues of debt obligations; requiring memorandum of agreement on research collaboration and cooperation; specifying parties to agreement and setting forth certain conditions; specifying certain deadlines; and requiring reports in certain instances.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18B-1E-1, §18B-1E-2, §18B-1E-3, §18B-1E-4, §18B-1E-5, §18B-1E-6, §18B-1E-7, §18B-1E-8 and §18B-1E-9, all to read as follows:

**ARTICLE 1E. MANAGEMENT AGREEMENTS FOR THE HIGHER  
EDUCATION POLICY COMMISSION.**

**§18B-1E-1. Legislative findings and purpose.**

1 (a) The Legislature finds that economic development in  
2 West Virginia depends in part on collaborations developed  
3 between higher education and businesses and industry,  
4 particularly in the advancement of new and emerging  
5 technologies. It is in the best interests of the citizens of the

6 state to implement programs which promote this research  
7 and contribute to the general economic welfare.

8 (b) The Legislature further finds that the transfer of  
9 property to the Commission to establish the West Virginia  
10 Education, Research and Technology Park created a new and  
11 unprecedented opportunity to promote research and develop-  
12 ment in the state. An efficiently managed Technology Park  
13 will encourage private sector participation in and support for  
14 research and economic development and will facilitate  
15 collaboration among the commission, the doctoral institu-  
16 tions and their research corporations.

17 (c) It is the responsibility of the commission to ensure that  
18 the day to day operations of the Technology Park are carried  
19 out effectively and efficiently in order to provide the greatest  
20 investment return to the people of West Virginia. To this end  
21 the Legislature finds that a mechanism is needed to simplify  
22 and expedite property management and purchasing of  
23 equipment, material, and personal services.

24 (d) Therefore, the purpose of this article is to provide the  
25 Commission with the authority necessary to carry out its  
26 responsibilities related to the operation of the Technology  
27 Park. The commission is authorized to enter into agreements

28 and other contractual relationships with an affiliated  
29 corporation in order to achieve maximum efficiency in  
30 managing the Technology Park.

**§18B-1E-2. Definitions.**

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

4 “Affiliated corporation” or “corporation” means a corpo-  
5 ration which meets the essential criteria prescribed in  
6 section three of this article and whose purpose is to provide  
7 management services to the commission in carrying out the  
8 day to day operations of the Technology Park.

9 “Agreement” means an agreement or contractual relation-  
10 ship being entered into between the commission and an  
11 affiliated corporation pursuant to the provisions of this  
12 article.

13 “Board of directors” means the governing body of the  
14 corporation created pursuant to section three of this article.

15 “Doctoral institution” means Marshall University or West  
16 Virginia University.

17 “Executive director” means the chief executive officer of  
18 the affiliated corporation employed pursuant to section five  
19 of this article.

20 “Potential membership” means the total number of  
21 members who comprise the board of directors when all  
22 membership seats are filled.

23 “Private sector member” means a director of the affiliated  
24 corporation who is not an employee of the commission nor of  
25 any entity bearing a direct or indirect relationship to the  
26 commission.

27 “Research corporation” means a corporation established  
28 with respect to Marshall University or West Virginia Univer-  
29 sity pursuant to section three, article twelve of this chapter.

30 “Technology Park” means the state-owned West Virginia  
31 Education, Research and Technology Park affiliated with the  
32 commission.

**§18B-1E-3. Commission authorized to contract with corporation;  
corporation to meet essential criteria; corporation  
membership and organization; financial require-  
ments.**

1 (a) The commission is authorized to enter into agreements  
2 and any other contractual relationships with the affiliated  
3 corporation formed as set forth in this article.

4 (b) The affiliated corporation shall meet the following  
5 essential criteria:

6 (1) *Corporation status.* — The corporation is organized as  
7 a non-profit, non-stock corporation under the general  
8 corporation laws of the state exclusively for charitable,  
9 educational or scientific purposes within the meaning of  
10 section 501(c) of the Internal Revenue Code of 1986, as  
11 amended.

12 (2) *Corporation membership, meetings, officers.* —

13 (A) Members of the board of directors of the affiliated  
14 corporation serve terms as prescribed in the bylaws of the  
15 corporation and are selected by the commission in consulta-  
16 tion with the chancellor. The commission shall make all  
17 appointments to the board of directors by majority vote of its  
18 members and shall include the individual votes as a part of  
19 the minute record.

20 (B) Private sector members shall constitute a majority of  
21 the potential membership of the corporate directors. Vacan-  
22 cies shall be filled in such a way that the majority status of  
23 private sector membership is maintained.

24 (C) By July 1, 2011, and at least biennially thereafter, the  
25 corporate directors shall elect a chair from among their  
26 members.

**§18B-1E-4. Powers and duties of board of directors and corporation.**

1 The primary responsibility of the corporation is to manage  
2 the day to day operations of the Technology Park through  
3 collaboration agreements with the commission. To that end,  
4 the board of directors of the corporation has the following  
5 powers and duties:

6 (a) To employ an executive director subject to the provi-  
7 sions of section five of this article;

8 (b) To approve employment of other staff recommended by  
9 the executive director as being necessary and appropriate to  
10 carry out the purposes pursuant to this article and subject to  
11 agreements with the commission;

12 (c) To serve as fiscal agent and provide additional services,  
13 including, but not limited to, property management, human  
14 resources management, and purchasing;

15 (d) To meet as a governing body. A corporation created  
16 under this article is exempt from the provisions of section  
17 three, article nine-a, chapter six of this code and from the  
18 provisions of article one, chapter twenty-nine-b of this code;

19 (e) To receive, purchase, hold, lease, use, sell and dispose of  
20 real and personal property of all classes, subject to the  
21 provisions of section eight of this article;

22 (f) To receive and accept from any public or private agency,  
23 corporation, association, person, partnership, company or  
24 any other organization or entity of any nature whatsoever  
25 grants to be expended in accomplishing the objectives of this  
26 article and to receive and accept from the state, from any  
27 municipality, county or other political subdivision of the  
28 state and from any other source, aid or contributions of  
29 either money, property or other things of value to be held,  
30 used and applied only for the purposes for which the grants  
31 and contributions may be made;

32 (g) To accept and expend any gift, grant, contribution,  
33 bequest, endowment or other money for the purposes of this  
34 article. Any transfer of endowment or other assets by the  
35 commission to the corporation or by the corporation to the  
36 commission for management shall be formalized in a memo-  
37 randum of agreement to assure, at a minimum, that any  
38 restrictions governing the future disposition of funds are  
39 preserved. The commission may not transfer ownership of  
40 the Technology Park property to the corporation;

41 (h) To make, amend and repeal bylaws and rules consistent  
42 with the provisions of this article to carry into effect the  
43 purpose and scope of the corporation and, subject to the

44 directions and limitations contained in its governing docu-  
45 ments, to delegate the exercise of any of its powers to the  
46 executive director except for the power to approve budgets;  
47 to make, amend or repeal its governing documents; or to alter  
48 the purpose or scope of the corporation;

49 (i) In addition to the powers and duties provided for in this  
50 section and any other powers and duties that may be as-  
51 signed to it by law or agreement, the corporation has other  
52 powers and duties necessary to accomplish the objectives of  
53 this article or as provided by law.

**§18B-1E-5. Appointment of executive director; qualifications.**

1 (a) The commission shall set the qualifications for the  
2 position of executive director and shall conduct a thorough  
3 search for qualified candidates. A qualified candidate is one  
4 who meets at least the following criteria:

5 (1) Possesses a broad understanding of the relationship  
6 between public and private sector research and the need for  
7 cooperation and collaboration among the commission and  
8 the research corporations;

9 (2) Holds at least a bachelor's degree in a field related to  
10 the duties and responsibilities of the position of executive  
11 director;

12 (3) Demonstrates strong communication skills and the  
13 ability to work with all types of businesses and industry,  
14 government agencies and higher education institutions; and

15 (4) Possesses other skills, qualifications or attributes as the  
16 board of directors may consider appropriate or desirable.

17 (b) The commission shall select the executive director for  
18 the corporation who may have dual appointment with the  
19 commission, but may not be a corporation director. The  
20 commission may not delegate this duty to the chancellor.

21 (1) The commission shall appoint the executive director by  
22 majority vote of its members and shall include the vote as a  
23 part of the minute record.

24 (2) The executive director shall inform the corporate  
25 directors and the commission annually of his or her employ-  
26 ment status with any other institution, agency or organiza-  
27 tion.

28 (c) The corporation is under the control and supervision of  
29 the executive director who, with the approval of the board of  
30 directors, may employ staff as necessary to carry out the  
31 corporation's purposes as set forth in this article.

**§18B-1E-6. Agreements; required provisions.**

1 (a) The commission is hereby authorized to enter into  
2 agreements or other contractual relationships with a corpo-  
3 ration that meets the conditions set forth in section three of  
4 this article. Any agreement shall specify that the corporation  
5 is accountable to the commission for the efficient operations  
6 of the Technology Park.

7 (b) On the effective date of the agreement, the corporation  
8 becomes the fiscal agent for operations of the Technology  
9 Park on behalf of the commission pursuant to terms of the  
10 agreement.

11 (c) If an agreement is terminated, the funds, contributions  
12 or grants paid or held by the corporation and not encum-  
13 bered or committed prior to termination shall be distributed  
14 as provided for in the agreement.

15 (d) If made part of the agreement, the corporation may use  
16 services of both corporation employees and personnel of the  
17 commission. The corporation may pay the costs incurred by  
18 the commission, including personnel funded on grants and  
19 contracts, fringe benefits of personnel funded on grants and  
20 contracts, administrative support costs and other costs which  
21 may require reimbursement. The corporation may include as  
22 costs any applicable overhead and fringe benefit assessments

23 necessary to recover the costs expended by the commission,  
24 pursuant to the terms of the agreement, and the commission  
25 may be reimbursed for expenses incurred by it pursuant to  
26 the agreement.

**§18B-1E-7. Audits required; financial reports; conflicts of interest.**

1 (a) The financial statements of the corporation shall be  
2 audited annually by an independent certified public accoun-  
3 tant or firm. Within thirty days of completion, the financial  
4 audit report shall be presented to the corporation's govern-  
5 ing board for approval, after which a copy of the financial  
6 audit and required statements shall be submitted to the  
7 commission.

8 (b) Notwithstanding any other provision of this code to the  
9 contrary, officers and employees of the commission may hold  
10 appointments to offices of the corporation and be members  
11 of its board of directors. The board of directors shall make an  
12 annual report of these appointments to the commission.

**§18B-1E-8. No waiver of sovereign immunity; not obligation of  
the state.**

1 (a) Nothing contained in this article waives or abrogates in  
2 any way the sovereign immunity of the state or deprives the

3 commission or any officer or employee of the commission of  
4 sovereign immunity.

5 (b) Obligations of the board of directors or the corporation  
6 do not constitute debts or obligations of the commission or  
7 the state.

**§18B-1E-9. Legislative findings and intent; memorandum of  
agreement required; terms and conditions; reports.**

1 (a) The Legislature finds that the Technology Park is a  
2 diversified, multi-tenant research, development and commer-  
3 cialization park focused on energy, chemicals and related  
4 technologies for the advancement of education and economic  
5 development in West Virginia. The areas of primary research  
6 and development include energy, chemicals and materials,  
7 and biotechnology. It is the intent of the Legislature to  
8 provide the commission with the tools needed to manage the  
9 Technology Park and facilitate the translation of state  
10 investment dollars in higher education and research into  
11 business and economic growth that will provide tangible  
12 benefits for the citizens of the state.

13 (b) To achieve the goals set forth in this section, it is  
14 essential that the commission include in its research and  
15 development efforts the talents and expertise available at the

16 doctoral institutions and their research corporations.  
17 Therefore, by July 1, 2011, the commission shall enter into a  
18 memorandum of agreement with the research corporations  
19 to delineate the role each party will play in furthering the  
20 goals of research and economic development as set forth in  
21 this article. The agreement shall focus on collaboration and  
22 cooperation among the commission and the two research  
23 corporations.

24 (1) The agreement is not effective until all parties have  
25 agreed to the included terms and conditions.

26 (2) The commission shall file a report, including a copy of  
27 the completed agreement and any relevant documents, with  
28 the Joint Committee on Government and Finance and the  
29 Legislative Oversight Commission on Education Account-  
30 ability by July 15, 2011.

31 (3) The agreement may be amended by mutual consent of  
32 the parties. Within fifteen days of the date a new agreement  
33 is signed, the commission shall file a report as provided in  
34 subdivision (2) of this subsection.