

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5038

By Delegates Rohrbach, Linville, Lucas, Hornbuckle,

Riley, Ellington, Hornby and Worrell

[Introduced January 23, 2024; Referred
to the Committee on Education]

1 A BILL to amend and reenact §18B-12-3, §18B-12-4, and §18B-12-10 of the Code of West
2 Virginia, 1931, as amended, all relating to research and economic development
3 agreements for state institutions of higher education; and clarifying that the governing
4 boards of state institutions of higher education are authorized to enter into agreements and
5 contractual relationship with corporations formed with respect to such state institutions of
6 higher education for purposes of fostering economic development efforts.

Be it enacted by the Legislature of West Virginia:

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

**§18B-12-3. Boards authorized to contract with corporations; characteristics of
corporations.**

1 Each governing board for a state institution of higher education is ~~hereby authorized to~~
2 may enter into agreements and any other contractual relationships with one or more corporations
3 formed with respect to such state institution of higher education, but only if each such corporation
4 meets the following descriptions:

5 (1) The president and the president's appointees from the institution shall constitute a
6 majority of the voting corporate directors.

7 (2) The corporation ~~must~~ shall be organized as a nonprofit, nonstock corporation under the
8 general corporation laws of the state exclusively for charitable, educational or scientific purposes
9 within the meaning of section 501(c) of the Internal Revenue Code of 1986, as amended, to foster
10 and support research and economic development efforts at the respective state institution of
11 higher education and to provide evaluation, development, patenting, management and marketing
12 services for inventions of the faculty, staff and students of such state institution of higher
13 education.

14 (3) The meetings of the corporate directors shall be subject to ~~the provisions of §6-9A-3 of~~
15 this code.

16 (4) Upon dissolution of the corporation, the assets of the corporation shall be transferred to
17 such entity as the appropriate governing board shall designate for the benefit of the state
18 institution of higher education: *Provided*, That such recipient shall be an organization operated
19 exclusively for charitable, educational or scientific purposes as shall at such time qualify as an
20 exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

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

1 (a) Notwithstanding §12-3-10 of this code or any other provision of law to the contrary,
2 each governing board is hereby authorized to enter into an agreement with a one or more private
3 corporations, which agreement shall be for the benefit of the state institution of higher education
4 and contain the following provisions, subject to further specification as is mutually agreed upon by
5 the governing board and the corporation:

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

10 (2) The corporation shall provide evaluation, development, patenting, licensing,
11 management and marketing services for inventions, processes, trademarks, except institutional
12 trademarks an institution's governing board elects to retain, copyrights or any other intellectual
13 property developed by faculty, staff and students of any state institution of higher education.

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

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

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

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

27 (c) A corporation may utilize both corporation employees and personnel of the institution.
28 The corporation may pay the costs incurred by the institution including personnel funded on grants
29 and contracts, fringe benefits of personnel funded on grants and contracts, administrative support
30 costs and other costs which may require reimbursement. The corporation may include as costs
31 any applicable overhead and fringe benefit assessments necessary to recover the costs
32 expended by the institution, pursuant to the terms of the agreement, and that a board may be
33 reimbursed for expenses incurred by it pursuant to the agreement.

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

1 (a) Institutional boards of Governors may provide and transfer funding and property, both
2 real and personal, to corporations as defined in section one of this article, and with which the
3 institution under its jurisdiction has contracted pursuant to the provisions of this article. Any deed
4 that transfers real property under the provisions of this section to a corporation, as defined in
5 §18B-12-1 of this code, for either: (i) Research and development; (ii) economic development
6 projects resulting in the creation of employment ~~related to the results of research and development~~
7 conducted on the property by the corporation and the state institution of higher education; or (iii)
8 both; under this section shall include provisions requiring that the real property revert to the
9 institution under the following circumstances:

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

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

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

14 (b) Any corporation, as that term is defined in §18B-12-1 of this code, may provide and
15 transfer funding and property, both real and personal, to another person, firm or corporation for: (i)
16 Research and development; (ii) economic development projects resulting in the creation of
17 employment ~~related to the results of research and development conducted on the property by the~~
18 corporation and the state institution of higher education; or (iii) both. Any deed that transfers real
19 property to a person, firm or corporation shall include provisions requiring that the real property
20 revert to the corporation, as defined in §18B-12-1 of this code, under the following circumstances:

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

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

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

25 (c) The person, firm or corporation that receives real property from the corporation, as
26 defined in §18B-12-1 of this code, may not transfer the property to another party without the written
27 permission of the corporation, as defined in §18B-12-1 of this code. The corporation, as defined in
28 section one of this article, may not grant any such request unless the corporation determines that
29 covenants in the deed or lease agreement provide adequate assurance that the terms of
30 subsections (a) and (b) of this section are preserved.

31 (d) At least 20 days before the transfer of any property pursuant to the provisions of this
32 section, the institutional board of Governors or the corporation, as defined in §18B-12-1 of this
33 code, whichever is appropriate, shall give public notice of the transfer through a Class II legal
34 advertisement in accordance with the provisions of §59-3-1 *et seq.* of this code.

NOTE: The purpose of this bill is to clarify the authority of state institutions of higher education to enter into agreements and contractual relationships with one or more corporations formed by the state institution of higher education for purposes of fostering research and economic development efforts.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.