

By: Elkins

H.B. No. 590

A BILL TO BE ENTITLED

AN ACT

relating to the creation of research technology corporations by institutions of higher education; providing for tax exemptions; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle H, Title 3, Education Code, is amended by adding Chapter 157 to read as follows:

CHAPTER 157. UNIVERSITY RESEARCH TECHNOLOGY CORPORATIONS

Sec. 157.001. PURPOSE AND FINDINGS. The legislature finds that the development and commercialization of technology by public and private institutions of higher education are critical components of the educational and research missions of those institutions and key contributors to the economic development and well-being of this state. The activities authorized by this chapter directly support those important public purposes.

Sec. 157.002. DEFINITIONS. In this chapter:

(1) "Contribution" has the meaning assigned by Section 1.002, Business Organizations Code.

(2) "Creating institution" means an institution of higher education or private or independent institution of higher education that creates a corporation under this chapter.

(3) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003.

1 (4) "Technology" means the application of scientific
2 knowledge for practical purposes and includes inventions,
3 discoveries, trade secrets, copyrighted materials, tools,
4 machines, materials, processes to do work, processes to produce
5 goods, processes to perform services, processes to carry out other
6 useful activities, trademarks, and computer software.

7 Sec. 157.003. CREATION OF CORPORATION. (a) An institution
8 of higher education or private or independent institution of higher
9 education may create a special-purpose corporation for the
10 exclusive purpose of developing and commercializing one or more
11 technologies owned wholly or partly by the institution. A
12 corporation created under this chapter that engages in other
13 purposes that are not incidental to that authorized purpose is not
14 entitled to the benefits of this chapter, including any tax
15 exemption authorized by Section 157.008.

16 (b) The certificate of formation of a corporation created
17 under this chapter must state that the corporation is governed by
18 this chapter and state the name and purposes of the corporation and
19 other information required by law. Except as otherwise provided by
20 this chapter, a corporation created under this chapter is governed
21 by Chapters 20 and 21, Business Organizations Code, and Title 1 of
22 that code.

23 Sec. 157.004. MANAGEMENT OF CORPORATION; RIGHTS OF CREATING
24 INSTITUTION. (a) The creating institution shall name the persons
25 constituting the initial board of directors of the corporation.
26 Directors other than the initial directors shall be determined as
27 provided by Chapter 21, Business Organizations Code.

1 (b) The creating institution must at all times be a
2 shareholder in the corporation. The creating institution shall be
3 issued shares in the corporation when the corporation is created as
4 agreed on by the organizers of the corporation according to any
5 contribution of the institution.

6 (c) The creating institution may be issued shares in the
7 corporation in exchange for the contribution of rights in the
8 technology of the institution or of other contractual obligations,
9 as agreed on by the board of directors.

10 Sec. 157.005. TECHNOLOGY LICENSING. The creating
11 institution may license to the corporation any technology owned by
12 the institution.

13 Sec. 157.006. REQUIRED OPERATIONS IN TEXAS. The principal
14 offices of the corporation must be located in this state, and the
15 majority of any goods produced or services performed by the
16 corporation must be produced or performed in this state.

17 Sec. 157.007. DURATION. (a) A corporation created under
18 this chapter is limited in duration to 15 years. At the expiration
19 of that period, the corporation may file a restated and amended
20 certificate of formation under which the corporation continues in
21 existence as a for-profit corporation governed by Chapters 20 and
22 21, Business Organizations Code, and Title 1 of that code. A
23 corporation that files a restated and amended certificate of
24 formation as authorized by this subsection is not governed by the
25 other provisions of this chapter, except that the corporation must
26 comply with Section 157.008 to obtain a tax exemption authorized by
27 that section and is subject to the penalty provided by Section

1 157.009 for noncompliance.

2 (b) Subsection (a) does not limit the time or manner in
3 which the corporation may be terminated as otherwise provided by
4 law.

5 Sec. 157.008. TAX EXEMPT STATUS OF CORPORATION. (a) This
6 section applies only to a corporation created under this chapter,
7 including a corporation that files a restated and amended
8 certificate of formation as authorized by Section 157.007, that:

9 (1) is engaged exclusively in developing and
10 commercializing one or more technologies owned wholly or partly by
11 the creating institution, including activities that are incidental
12 to developing and commercializing those technologies; and

13 (2) complies with Section 157.006.

14 (b) The corporation is entitled to an exemption from ad
15 valorem taxation of:

16 (1) the real and tangible personal property owned by
17 the corporation that is used for a purpose described by Subsection
18 (a)(1); and

19 (2) the real property owned by the corporation that
20 consists of:

21 (A) an incomplete improvement that is under
22 active construction or other physical preparation to make the
23 property suitable to be used for a purpose described by Subsection
24 (a)(1); and

25 (B) the land on which the incomplete improvement
26 is located that will be reasonably necessary for the corporation's
27 use of the improvement.

1 (c) The corporation is exempted from the franchise tax
2 imposed by Chapter 171, Tax Code.

3 (d) The sale, storage, use, or other consumption of a
4 taxable item directly used or consumed by the corporation is
5 exempted from the sales and use taxes imposed by Chapter 151, Tax
6 Code.

7 (e) This section does not limit the eligibility of the
8 corporation for any other available tax benefit, including a tax
9 benefit under Chapter 312 or 313, Tax Code.

10 (f) If the corporation acquires property after January 1 of
11 a tax year, the corporation may receive an exemption authorized by
12 Subsection (b) for the applicable portion of that tax year
13 immediately on qualification for the exemption. Sections 11.43(d)
14 and 26.113, Tax Code, apply to an exemption authorized by
15 Subsection (b) of this section in the same manner as those
16 provisions apply to an exemption covered by Section 11.42(d).

17 (g) The corporation must maintain a complete record of all
18 taxes that the corporation would have been liable for if the
19 corporation had not been entitled to the exemptions authorized by
20 this section. The corporation shall submit the records to the
21 comptroller without delay on request of the comptroller when
22 determining the corporation's liability for any penalty assessed
23 under Section 157.009.

24 Sec. 157.009. PENALTY FOR NONCOMPLIANCE WITH CORPORATE
25 OPERATIONS REQUIREMENTS. (a) A corporation created under this
26 chapter, including a corporation that files a restated and amended
27 certificate of formation as authorized by Section 157.007, that

1 ceases to comply with Section 157.006 is liable to the state for a
2 penalty in an amount equal to any taxes, including ad valorem taxes,
3 for which the corporation received an exemption under Section
4 157.008 for the five calendar years preceding the year in which the
5 noncompliance began. The comptroller shall determine the
6 corporation's liability for the penalty and assess the amount owed.

7 (b) A penalty assessed under this section is due on the date
8 designated by the comptroller, not later than the 90th day after the
9 date assessed, and shall be collected in the same manner as a state
10 tax. A lien exists on any property of the corporation to secure the
11 payment of any amount assessed under this section. The comptroller
12 by rule shall establish the methods of payment and shall adopt other
13 rules necessary to administer and enforce this section.

14 (c) Amounts received under this section shall be deposited
15 in the state treasury to the credit of the general revenue fund.

16 Sec. 157.010. CONFLICT WITH BUSINESS ORGANIZATIONS CODE.
17 To the extent of any conflict between a provision of this chapter
18 and a provision of the Business Organizations Code, the provision
19 of this chapter controls.

20 SECTION 2. (a) Except as provided by Subsection (b) of this
21 section, this Act takes effect January 1, 2016.

22 (b) Sections 157.008(b) and (f), Education Code, as added by
23 this Act, take effect January 1, 2016, but only if the
24 constitutional amendment proposed by the 84th Legislature, Regular
25 Session, 2015, authorizing the legislature to provide for an
26 exemption from ad valorem taxation of certain property owned by
27 research technology corporations created by public or private

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1 institutions of higher education to develop and commercialize
2 technologies owned by the institutions is approved by the voters.
3 If that amendment is not approved by the voters, Sections
4 157.008(b) and (f), Education Code, as added by this Act, have no
5 effect.