

By: Elkins

H.B. No. 590

Substitute the following for H.B. No. 590:

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C.S.H.B. No. 590

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the creation of research technology corporations for
3 the development and commercialization of technologies owned by
4 institutions of higher education or by certain medical centers with
5 members that are institutions of higher education; providing for
6 tax exemptions; providing a penalty.

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

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

10 CHAPTER 157. UNIVERSITY RESEARCH TECHNOLOGY CORPORATIONS

11 Sec. 157.001. PURPOSE AND FINDINGS. The legislature finds
12 that the development and commercialization of technology owned by
13 public and private institutions of higher education and by medical
14 centers associated with those institutions are critical components
15 of the educational and research missions of those institutions and
16 key contributors to the economic development and well-being of this
17 state. The activities authorized by this chapter directly support
18 those important public purposes.

19 Sec. 157.002. DEFINITIONS. In this chapter:

20 (1) "Contribution" has the meaning assigned by Section
21 1.002, Business Organizations Code.

22 (2) "Institution of higher education" means an
23 institution of higher education or a private or independent
24 institution of higher education as those terms are defined by

1 Section 61.003.

2 (3) "Medical center development corporation" means a
3 nonprofit corporation that is eligible to claim an ad valorem tax
4 exemption under Section 11.23(j-1), Tax Code, for all or any part of
5 the corporation's properties.

6 (4) "Qualified medical center," with respect to an
7 institution of higher education, means a medical center development
8 corporation that includes among its member institutions, as
9 described in the corporation's books and records, one or more
10 institutions of higher education, regardless of whether those
11 institutions of higher education have membership status in the
12 qualified medical center for purposes of the Business Organizations
13 Code.

14 (5) "Technology" means the application of scientific
15 knowledge for practical purposes and includes inventions,
16 discoveries, patents, trade secrets, copyrighted materials, tools,
17 machines, materials, processes to do work, processes to produce
18 goods, processes to perform services, processes to carry out other
19 useful activities, trademarks, and computer software.

20 Sec. 157.003. CREATION OF SPECIAL-PURPOSE CORPORATION. (a)
21 Any person having the capacity to be an organizer of a corporation
22 as provided by Section 3.004, Business Organizations Code, may
23 create a special-purpose corporation for the exclusive purpose of
24 developing and commercializing one or more technologies owned
25 wholly or partly by an institution of higher education. To create
26 the special-purpose corporation, an organizer of the corporation
27 must present to the secretary of state written evidence that the

1 organizer has a license to develop and commercialize a specific
2 technology owned wholly or partly by an institution of higher
3 education. The license may be conditioned on the creation of the
4 special-purpose corporation.

5 (b) A person described by Subsection (a) may create a
6 special-purpose corporation for the exclusive purpose of
7 developing and commercializing technology owned wholly or partly by
8 a qualified medical center.

9 (c) A special-purpose corporation created under Subsection
10 (b) may be created in the same form and manner as a special-purpose
11 corporation created under Subsection (a). To that extent, a
12 qualified medical center that owns wholly or partly the technology
13 for which a special-purpose corporation is created under Subsection
14 (b) is governed by the same provisions of this chapter that are
15 applicable to an institution of higher education.

16 (d) A corporation created under this chapter that engages in
17 other purposes that are not incidental to the purposes authorized
18 by this section is not entitled to the benefits of this chapter,
19 including any tax exemption authorized by Section 157.008.

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

27 (f) The organizers of a corporation created under this

1 chapter shall register the corporation with the comptroller.

2 Sec. 157.004. MANAGEMENT OF CORPORATION; RIGHTS OF CREATING
3 INSTITUTION. (a) The organizers of a corporation created under
4 this chapter shall name the persons constituting the initial board
5 of directors of the corporation. Directors other than the initial
6 directors shall be determined as provided by Chapter 21, Business
7 Organizations Code.

8 (b) An institution of higher education that owns wholly or
9 partly the technology for which a corporation is created under this
10 chapter must at all times be a shareholder in the corporation. The
11 institution of higher education shall be issued shares in the
12 corporation when the corporation is created as agreed on by the
13 organizers of the corporation according to any contribution of the
14 institution.

15 (c) The institution of higher education described by
16 Subsection (b) may be issued shares in the corporation in exchange
17 for the contribution of rights in the technology of the institution
18 of higher education or of other contractual obligations, as agreed
19 on by the corporation's board of directors.

20 Sec. 157.005. TECHNOLOGY LICENSING. The institution of
21 higher education that owns wholly or partly the technology for
22 which a corporation is created under this chapter may license to the
23 corporation any technology owned by the institution of higher
24 education.

25 Sec. 157.006. REQUIRED OPERATIONS IN TEXAS. The principal
26 offices of the corporation must be located in this state, and more
27 than 50 percent of any goods produced or services performed by the

1 corporation must be produced or performed in this state.

2 Sec. 157.007. DURATION. (a) A corporation created under
3 this chapter is limited in duration to 15 years. At the expiration
4 of that period, the corporation may file a restated and amended
5 certificate of formation under which the corporation continues in
6 existence as a for-profit corporation governed by Chapters 20 and
7 21, Business Organizations Code, and Title 1 of that code. A
8 corporation that files a restated and amended certificate of
9 formation as authorized by this subsection is not governed by the
10 other provisions of this chapter, except that the corporation must
11 comply with Section 157.008 to obtain a tax exemption authorized by
12 that section and is subject to the penalty provided by Section
13 157.009 for noncompliance.

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

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

21 (1) is engaged exclusively in developing and
22 commercializing one or more technologies owned wholly or partly by
23 an institution of higher education or by a qualified medical
24 center, including activities that are incidental to developing and
25 commercializing those technologies; and

26 (2) complies with Section 157.006.

27 (b) The corporation is entitled to an exemption from ad

1 valorem taxation of real and tangible personal property as provided
2 by Section 11.232, Tax Code.

3 (c) The corporation is exempted from the sales and use tax
4 imposed by Chapter 151, Tax Code, as provided by Section 151.3183 of
5 that code.

6 (d) The corporation is exempted from the franchise tax
7 imposed by Chapter 171, Tax Code, as provided by Section 171.089 of
8 that code.

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

12 (f) The corporation must maintain a complete record of all
13 taxes for which the corporation would have been liable if the
14 corporation had not been entitled to the exemptions authorized by
15 this section. The corporation shall report that information
16 annually to the comptroller in the form and manner required by the
17 comptroller.

18 (g) The comptroller shall adopt rules necessary to
19 implement this section and administer the exemptions under
20 Subsections (c) and (d).

21 Sec. 157.009. PENALTY FOR NONCOMPLIANCE WITH CORPORATE
22 OPERATIONS REQUIREMENTS. (a) A corporation created under this
23 chapter, including a corporation that files a restated and amended
24 certificate of formation as authorized by Section 157.007, that
25 ceases to comply with Section 157.006 is liable to the state for a
26 penalty in an amount equal to any taxes, including ad valorem taxes,
27 for which the corporation received an exemption under Section

1 157.008 for the four calendar years preceding the year in which the
2 noncompliance began. The comptroller shall determine the
3 corporation's liability for the penalty and assess the amount owed.

4 (b) A penalty assessed under this section is due on the date
5 designated by the comptroller, not later than the 90th day after the
6 date assessed, and shall be collected in the same manner as a state
7 tax. A lien exists on any property of the corporation to secure the
8 payment of any amount assessed under this section. The comptroller
9 is entitled to collect interest and penalties on the unpaid amount
10 of a delinquent penalty in the same manner as the manner prescribed
11 for the collection of a delinquent state tax. The comptroller by
12 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. Subchapter B, Chapter 11, Tax Code, is amended by
21 adding Section 11.232 to read as follows:

22 Sec. 11.232. PROPERTY OWNED BY OR LEASED TO UNIVERSITY
23 RESEARCH TECHNOLOGY CORPORATION. (a) In this section,
24 "institution of higher education," "medical center development
25 corporation," "qualified medical center," and "technology" have
26 the meanings assigned by Section 157.002, Education Code.

27 (b) Except as provided by Subsection (c), a corporation that

1 qualifies as a university research technology corporation as
2 provided by Subsection (g) is entitled to an exemption from ad
3 valorem taxation of:

4 (1) the real and tangible personal property owned by
5 the corporation that is used for a purpose described by Subsection
6 (g)(2); and

7 (2) the real property owned by the corporation that
8 consists of:

9 (A) an incomplete improvement that is under
10 active construction or other physical preparation to make the
11 property suitable to be used for a purpose described by Subsection
12 (g)(2); and

13 (B) the land on which the incomplete improvement
14 is located that will be reasonably necessary for the corporation's
15 use of the improvement.

16 (c) A qualified university research technology corporation
17 is not entitled to an exemption from taxation of real or tangible
18 personal property:

19 (1) owned by an organizer or director of the
20 corporation before the creation of the corporation; and

21 (2) subject to taxation in this state before being
22 devoted exclusively to a purpose described by Subsection (g)(2).

23 (d) Notwithstanding Subsection (c), a qualified university
24 research technology corporation is entitled to an exemption from
25 taxation of the value of that portion of an improvement that
26 consists of an expansion of an improvement described by that
27 subsection if the improvement is devoted exclusively to a purpose

1 described by Subsection (g)(2).

2 (e) A medical center development corporation is entitled to
3 an exemption from taxation of the corporation's real and tangible
4 personal property that is leased to or used or occupied primarily by
5 a qualified university research technology corporation and used
6 exclusively for a purpose described by Subsection (g)(2).

7 (f) Notwithstanding Section 25.07, a qualified university
8 research technology corporation is entitled to an exemption from
9 taxation of a possessory interest in property described by
10 Subsection (e).

11 (g) To qualify as a university research technology
12 corporation for purposes of this section, a corporation must:

13 (1) be a corporation created under Chapter 157,
14 Education Code, including a corporation created under that chapter
15 that files a restated and amended certificate of formation as
16 authorized by Section 157.007 of that code;

17 (2) be engaged exclusively in developing and
18 commercializing one or more technologies owned wholly or partly by
19 an institution of higher education or by a qualified medical
20 center, including activities that are incidental to developing and
21 commercializing those technologies; and

22 (3) be in compliance with Section 157.006, Education
23 Code.

24 SECTION 3. Section 11.42(d), Tax Code, is amended to read as
25 follows:

26 (d) A person who acquires property after January 1 of a tax
27 year may receive an exemption authorized by Section 11.17, 11.18,

1 11.19, 11.20, 11.21, 11.23, 11.231, 11.232, or 11.30 for the
2 applicable portion of that tax year immediately on qualification
3 for the exemption.

4 SECTION 4. The heading to Section 26.113, Tax Code, is
5 amended to read as follows:

6 Sec. 26.113. PRORATING TAXES--ACQUISITION BY NONPROFIT
7 ORGANIZATION OR UNIVERSITY RESEARCH TECHNOLOGY CORPORATION.

8 SECTION 5. Subchapter H, Chapter 151, Tax Code, is amended
9 by adding Section 151.3183 to read as follows:

10 Sec. 151.3183. UNIVERSITY RESEARCH TECHNOLOGY CORPORATION.

11 (a) In this section, "university research technology corporation"
12 means a corporation described by Section 157.008(a), Education
13 Code.

14 (b) A taxable item sold, leased, or rented to, or stored,
15 used, or consumed by, a university research technology corporation
16 is exempted from the taxes imposed by this chapter if the item is
17 classified by the corporation as a capital asset. An item is
18 considered to be classified by the corporation as a capital asset if
19 the item is considered to be a capital asset according to generally
20 accepted accounting principles adopted by the Financial Accounting
21 Standards Board and is recognized by the corporation as a capital
22 asset on the corporation's federal income tax returns.

23 (c) The comptroller shall adopt rules necessary to
24 implement this section, including rules to ensure that a taxable
25 item with respect to which an exemption from the taxes imposed by
26 this chapter is granted under this section meets the requirements
27 of Subsection (b).

1 SECTION 6. Subchapter B, Chapter 171, Tax Code, is amended
2 by adding Section 171.089 to read as follows:

3 Sec. 171.089. EXEMPTION--UNIVERSITY RESEARCH TECHNOLOGY
4 CORPORATION. (a) In this section, "university research technology
5 corporation" means a corporation described by Section 157.008(a),
6 Education Code.

7 (b) A university technology research corporation is
8 exempted from the franchise tax.

9 SECTION 7. Section 11.232, Tax Code, as added by this Act,
10 applies only to an ad valorem tax year that begins on or after the
11 effective date of this Act.

12 SECTION 8. Section 151.3183, Tax Code, as added by this Act,
13 does not affect tax liability accruing before the effective date of
14 this Act. That liability continues in effect as if this Act had not
15 been enacted, and the former law is continued in effect for the
16 collection of taxes due and for civil and criminal enforcement of
17 the liability for those taxes.

18 SECTION 9. The change in law made by this Act to Chapter
19 171, Tax Code, applies only to a report originally due on or after
20 the effective date of this Act.

21 SECTION 10. (a) Except as provided by Subsection (b) of
22 this section, this Act takes effect January 1, 2016.

23 (b) Section 157.008(b), Education Code, and Section 11.232,
24 Tax Code, as added by this Act, and Sections 11.42(d) and 26.113,
25 Tax Code, as amended by this Act, take effect January 1, 2016, but
26 only if the constitutional amendment proposed by the 84th
27 Legislature, Regular Session, 2015, authorizing the legislature to

1 provide for an exemption from ad valorem taxation of certain
2 property owned by or leased to or by a university research
3 technology corporation is approved by the voters. If that
4 amendment is not approved by the voters, Section 157.008(b),
5 Education Code, and Section 11.232, Tax Code, as added by this Act,
6 and Sections 11.42(d) and 26.113, Tax Code, as amended by this Act,
7 have no effect.