

By: Elkins

H.B. No. 906

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. 157.0001. 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. 157.0002. 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. 157.0003. CREATION OF SPECIAL-PURPOSE CORPORATION.

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

1 that the organizer has a license to develop and commercialize a
2 specific technology owned wholly or partly by an institution of
3 higher education. The license may be conditioned on the creation of
4 the 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 157.0008.

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. 157.0004. MANAGEMENT OF CORPORATION; RIGHTS OF
3 CREATING INSTITUTION. (a) The organizers of a corporation created
4 under this chapter shall name the persons constituting the initial
5 board of directors of the corporation. Directors other than the
6 initial directors shall be determined as provided by Chapter 21,
7 Business 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. 157.0005. 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. 157.0006. 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. 157.0007. 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 and is not entitled to an exemption
11 authorized by Section 157.0008.

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

15 Sec. 157.0008. TAX-EXEMPT STATUS OF CORPORATION. (a) This
16 section applies only to a corporation created under this chapter,
17 other than a corporation that files a restated and amended
18 certificate of formation as authorized by Section 157.0007, that:

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

24 (2) complies with Section 157.0006.

25 (b) The corporation is entitled to an exemption from ad
26 valorem taxation of real and tangible personal property as provided
27 by Section 11.232, Tax Code.

1 (c) The corporation is exempted from the sales and use tax
2 imposed by Chapter 151, Tax Code, as provided by Section 151.3184 of
3 that code.

4 (d) The corporation is exempted from the franchise tax
5 imposed by Chapter 171, Tax Code, as provided by Section 171.089 of
6 that 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) The corporation must maintain a complete record of all
11 taxes for which the corporation would have been liable if the
12 corporation had not been entitled to the exemptions authorized by
13 this section. The corporation shall report that information
14 annually to the comptroller in the form and manner required by the
15 comptroller.

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

19 Sec. 157.0009. PENALTY FOR NONCOMPLIANCE WITH CORPORATE
20 OPERATIONS REQUIREMENTS. (a) A corporation created under this
21 chapter that ceases to comply with Section 157.0006 is liable to the
22 state for a penalty in an amount equal to any taxes, including ad
23 valorem taxes, for which the corporation received an exemption
24 under Section 157.0008 for the four calendar years preceding the
25 year in which the noncompliance began. The comptroller shall
26 determine the corporation's liability for the penalty and assess
27 the amount owed.

1 (b) A penalty assessed under this section is due on the date
2 designated by the comptroller, not later than the 90th day after the
3 date assessed, and shall be collected in the same manner as a state
4 tax. A lien exists on any property of the corporation to secure the
5 payment of any amount assessed under this section. The comptroller
6 is entitled to collect interest and penalties on the unpaid amount
7 of a delinquent penalty in the same manner as the manner prescribed
8 for the collection of a delinquent state tax. The comptroller by
9 rule shall establish the methods of payment and shall adopt other
10 rules necessary to administer and enforce this section.

11 (c) Amounts received under this section shall be deposited
12 to the credit of the general revenue fund.

13 Sec. 157.0010. CONFLICT WITH BUSINESS ORGANIZATIONS CODE.
14 To the extent of any conflict between a provision of this chapter
15 and a provision of the Business Organizations Code, the provision
16 of this chapter controls.

17 SECTION 2. Subchapter B, Chapter 11, Tax Code, is amended by
18 adding Section 11.232 to read as follows:

19 Sec. 11.232. PROPERTY OWNED BY OR LEASED TO UNIVERSITY
20 RESEARCH TECHNOLOGY CORPORATION. (a) In this section,
21 "institution of higher education," "medical center development
22 corporation," "qualified medical center," and "technology" have
23 the meanings assigned by Section 157.0002, Education Code.

24 (b) Except as provided by Subsection (c), a corporation that
25 qualifies as a university research technology corporation as
26 provided by Subsection (g) is entitled to an exemption from ad
27 valorem taxation of:

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

4 (2) the real property owned by the corporation that
5 consists of:

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

10 (B) the land on which the incomplete improvement
11 is located that will be reasonably necessary for the corporation's
12 use of the improvement.

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

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

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

20 (d) Notwithstanding Subsection (c), a qualified university
21 research technology corporation is entitled to an exemption from
22 taxation of the value of that portion of an improvement that
23 consists of an expansion of an improvement described by that
24 subsection if the improvement is devoted exclusively to a purpose
25 described by Subsection (g)(2).

26 (e) A medical center development corporation is entitled to
27 an exemption from taxation of the corporation's real and tangible

1 personal property that is leased to or used or occupied primarily by
2 a qualified university research technology corporation and used
3 exclusively for a purpose described by Subsection (g)(2).

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

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

10 (1) be a corporation created under Chapter 157,
11 Education Code, other than a corporation created under that chapter
12 that files a restated and amended certificate of formation as
13 authorized by Section 157.0007 of that code;

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

19 (3) be in compliance with Section 157.0006, Education
20 Code.

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

23 (d) A person who acquires property after January 1 of a tax
24 year may receive an exemption authorized by Section 11.17, 11.18,
25 11.19, 11.20, 11.21, 11.23, 11.231, 11.232, or 11.30 for the
26 applicable portion of that tax year immediately on qualification
27 for the exemption.

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

3 Sec. 26.113. PRORATING TAXES--ACQUISITION BY NONPROFIT
4 ORGANIZATION OR UNIVERSITY RESEARCH TECHNOLOGY CORPORATION.

5 SECTION 5. Subchapter H, Chapter 151, Tax Code, is amended
6 by adding Section 151.3184 to read as follows:

7 Sec. 151.3184. UNIVERSITY RESEARCH TECHNOLOGY CORPORATION.

8 (a) In this section, "university research technology corporation"
9 means a corporation to which Section 157.0008, Education Code,
10 applies.

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

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

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

27 Sec. 171.089. EXEMPTION--UNIVERSITY RESEARCH TECHNOLOGY

1 CORPORATION. (a) In this section, "university research technology
2 corporation" means a corporation to which Section 157.0008,
3 Education Code, applies.

4 (b) A university research technology corporation is
5 exempted from the franchise tax.

6 (c) A corporation created as a university research
7 technology corporation that files at the expiration of the period
8 described by Section 157.0007(a), Education Code, a restated and
9 amended certificate of formation as authorized by that section is
10 no longer exempted from the franchise tax by Subsection (b) on the
11 expiration of that period. Unless the corporation is otherwise
12 exempted from the franchise tax, the date of the expiration of that
13 period is considered the corporation's beginning date for purposes
14 of determining the corporation's privilege periods and for all
15 other purposes of this chapter.

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

19 SECTION 8. Section 151.3184, Tax Code, as added by this Act,
20 does not affect tax liability accruing before the effective date of
21 this Act. That liability continues in effect as if this Act had not
22 been enacted, and the former law is continued in effect for the
23 collection of taxes due and for civil and criminal enforcement of
24 the liability for those taxes.

25 SECTION 9. The change in law made by this Act to Chapter
26 171, Tax Code, applies only to a report originally due on or after
27 the effective date of this Act.

1 SECTION 10. (a) Except as provided by Subsection (b) of
2 this section, this Act takes effect January 1, 2018.

3 (b) Section 157.0008(b), Education Code, and Section
4 11.232, Tax Code, as added by this Act, and Sections 11.42(d) and
5 26.113, Tax Code, as amended by this Act, take effect January 1,
6 2018, but only if the constitutional amendment proposed by the 85th
7 Legislature, Regular Session, 2017, authorizing the legislature to
8 provide for an exemption from ad valorem taxation of certain
9 property owned by or leased to or by a university research
10 technology corporation is approved by the voters. If that
11 amendment is not approved by the voters, Section 157.0008(b),
12 Education Code, and Section 11.232, Tax Code, as added by this Act,
13 and Sections 11.42(d) and 26.113, Tax Code, as amended by this Act,
14 have no effect.