

**SUBJECT:** Authorizing centers for technology development and transfer

**COMMITTEE:** Higher Education — favorable, with amendment

**VOTE:** 6 ayes — F. Brown, Farabee, J. Jones, Morrison, E. Reyna, Uher  
0 nays  
3 absent — Rangel, Goolsby, West

**SENATE VOTE:** On final passage, April 11 — voice vote

**WITNESSES:** None

**BACKGROUND:** Education Code, Title 3, Subtitle H sets forth provisions for higher education research, including advanced research and technology programs. Subchapter O requires higher education institutions to develop intellectual property policies to comply with the federal Bayh-Dole Act of 1980, which authorizes institutions to engage in technology development and transfer activities.

The Texas Constitution, Art. 3, sec. 52-a authorizes the Legislature to create programs and make loans and grants of public money for the public purpose of developing and diversifying the state economy and eliminating unemployment or underemployment in Texas.

**DIGEST:** SB 1190, as amended, would authorize a higher education institution, subject to the approval of its governing board, to establish centers to manage, transfer, market, or otherwise commercialize technology owned by the institution or in which the institution owned an interest. The bill would define technology to include inventions, discoveries, trade secrets, copyrighted materials, tools, machines, materials, processes to do work, processes to produce goods, processes to perform services, or to carry out other useful activities, trademarks, and computer software.

Each center would have to be administered within an institution and could provide services to multiple institutions. An institution could contract with a center under the control of a governing board other than its own.

With the approval of its governing board, an institution could accept and administer funds, including state appropriations, gifts, grants, contracts, and donations, to aid in the establishment, maintenance, and operation of a center or to aid in the discovery, development, protection, or commercialization of technology. Institutions could:

- ! solicit and enter into agreements to fund the discovery, development, protection, and commercialization of technology;
- ! make technology available for commercial applications through license agreements, assignments, or other forms of transfer;
- ! acquire interests in and ownerships of technology;
- ! provide services and technical assistance to people engaged in developing, manufacturing, or marketing technology in which the institution owned an interest;
- ! acquire insurance and pay premiums on any kind of insurance necessary to accomplish the center's purposes;
- ! establish and operate corporations and limited liability companies for the development and commercialization of technology; and
- ! engage in other activities required to achieve the center's purposes.

An institution could operate programs through centers to provide monetary and nonmonetary assistance to people commercializing technology owned by the institution or in which the institution owned an interest. Assistance could include the use of premises, equipment and supplies, machinery, custodial services, or utilities.

To support a center's activities, an institution could enter into appropriate business arrangements and agreements establishing compensation for developed technology; use income from the commercialization of technology; and solicit, accept, and administer gifts, grants, and donations to fund the center's activities.

A higher education institution could accept equity interests in organizations that licensed, managed, or otherwise administered rights to technology belonging to it or under its control.

A governing board, institution, university system, technology center, or any employee or member of these entities would not owe a fiduciary duty to any

person claiming an interest in consideration received by a university system or institution in exchange for technology.

Not later than December 1 of each even-numbered year, the Texas Higher Education Coordinating Board (THECB) would have to report to the governor and the Legislature regarding activities related to higher education institutions' technology centers. THECB would have to develop the report in consultation with each institution. The report for each institution would have to include:

- ! revenue received from licenses, royalties, fees, cashed-in equity, and other income;
- ! the number of shares of stock or other equity interest held under agreements created under the bill's provisions;
- ! the fair market value of stock or other equity interests held in publicly traded enterprises created under the bill's provisions;
- ! new invention disclosures received;
- ! the number of new patent applications filed and granted;
- ! the number of new corporations, partnerships, or business entities established to commercialize intellectual property owned by an institution; and
- ! direct expenditures for all activities related to the centers.

The bill would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

SB 1190 is needed to clear up ambiguity in regard to the authority of a higher education institution to create a technology transfer center. It would enhance Texas' economic development and growth and would lay the groundwork for much more comprehensive centers than now exist. Enacting this bill would result in the creation of new companies, more jobs, and improved business opportunities. Higher education institutions play an important role in technology research and development. When their work is transferred into commercial applications, the benefits of academic research and development become available to everyone.

Technology transfer offices already operate within the Texas A&M University, University of Texas, Texas Tech University, and University of Houston systems. However, Texas still lags behind other states in

transferring technology into commercial use. Other states are creating dynamic and innovative processes to encourage public-private partnerships and are pursuing technology transfer aggressively as a means of spurring the growth of business opportunities. Coupled with existing safeguards for licensing agreements and with conflict-of-interest policies already in place to protect universities and faculty, SB 1190 would encourage Texas universities to pursue innovative arrangements with the private sector to transfer technology for public benefit, to be more competitive in attracting the best and brightest faculty members, and to expand the resources that institutions could apply to technology transfer.

SB 1190 would provide greater and more focused opportunities for Texas' higher education institutions to transfer technology to small businesses and startup companies. National statistics demonstrate that startup companies and entrepreneurial small businesses often make the commitments necessary to commercialize early-stage technologies that emerge from universities.

In an interim report to the 77th Legislature, a subcommittee of the Senate Economic Development Committee recommended that Texas encourage greater commercialization of university research through increased efforts to "incubate" new companies created to commercialize new technologies and to package the opportunities for later-stage development and growth. SB 1190 would implement that recommendation.

OPPONENTS  
SAY:

The state should be cautious about turning its universities over to the private sector and allowing industry to dominate higher education activities. Any legislation promoting the commercialization of universities in the name of promoting research should include provisions protecting the universities from becoming beholden to private companies.

NOTES:

The committee amendment to the Senate engrossed version would add the requirement for the THECB to report biennially to the governor and the Legislature on the activities of higher education institutions' technology development and transfer centers.