

## **BILL ANALYSIS**

Senate Research Center

H.B. 590  
By: Elkins et al. (Bettencourt)  
Natural Resources & Economic Development  
5/8/2015  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties assert that the development and commercialization of technology by institutions of higher education are critical components of the educational and research missions of those institutions, including those that are members of certain medical centers, and key contributors to the economic development and well-being of the state. The parties point out a gap in funding between the development of technology and actual commercialization of the technology and believe that Texas has fallen in rank with respect to funding for start-ups, resulting in the relocation of many start-ups to other states. The parties assert that the state could cultivate more start-ups by providing certain incentives. H.B. 590 seeks to create university research technology corporations to provide incentives for the development and commercialization of technologies developed by institutions of higher education and certain medical centers.

H.B. 590 amends current law relating to the creation of research technology corporations for the development and commercialization of technologies owned by institutions of higher education or by certain medical centers with members that are institutions of higher education, provides for tax exemptions, and provides a penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 (Sections 157.008 and 157.009, Education Code) and SECTION 5 (Section 151.3183, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle H, Title 3, Education Code, by adding Chapter 157, as follows:

#### **CHAPTER 157. UNIVERSITY RESEARCH TECHNOLOGY CORPORATIONS**

Sec. 157.001. **PURPOSE AND FINDINGS.** Provides that the legislature finds that the development and commercialization of technology owned by public and private institutions of higher education and by medical centers associated with those institutions 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. Provides that the activities authorized by this chapter directly support those important public purposes.

Sec. 157.002. **DEFINITIONS.** Defines "contribution," "institution of higher education," "medical center development corporation," "qualified medical center," and "technology."

Sec. 157.003. **CREATION OF SPECIAL-PURPOSE CORPORATION.** (a) Authorizes any person having the capacity to be an organizer of a corporation as provided by Section 3.004 (Organizers), Business Organizations Code, to create a special-purpose corporation for the exclusive purpose of developing and commercializing one or more technologies owned wholly or partly by an institution of higher education. Requires an organizer of the corporation, to create the special-purpose corporation, to present to the secretary of state written evidence that the organizer has a license to develop and commercialize a specific

technology owned wholly or partly by an institution of higher education. Authorizes the license to be conditioned on the creation of the special-purpose corporation.

(b) Authorizes a person described by Subsection (a) to create a special-purpose corporation for the exclusive purpose of developing and commercializing technology owned wholly or partly by a qualified medical center.

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

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

(e) Requires that the certificate of formation of a corporation created under this chapter state that the corporation is governed by this chapter and state the name and purposes of the corporation and other information required by law. Provides that, except as otherwise provided by this chapter, a corporation created under this chapter is governed by Chapters 20 (General Provisions) and 21 (For-Profit Corporations), Business Organizations Code, and Title 1 (General Provisions) of that code.

(f) Requires the organizers of a corporation created under this chapter to register the corporation with the comptroller of public accounts of the State of Texas (comptroller).

Sec. 157.004. MANAGEMENT OF CORPORATION; RIGHTS OF CREATING INSTITUTION. (a) Requires the organizers of a corporation created under this chapter to name the persons constituting the initial board of directors of the corporation. Requires directors other than the initial directors to be determined as provided by Chapter 21, Business Organizations Code.

(b) Requires an institution of higher education that owns wholly or partly the technology for which a corporation is created under this chapter to at all times be a shareholder in the corporation. Requires the institution of higher education to be issued shares in the corporation when the corporation is created as agreed on by the organizers of the corporation according to any contribution of the institution.

(c) Authorizes the institution of higher education described by Subsection (b) to be issued shares in the corporation in exchange for the contribution of rights in the technology of the institution of higher education or of other contractual obligations, as agreed on by the corporation's board of directors.

Sec. 157.005. TECHNOLOGY LICENSING. Authorizes the institution of higher education that owns wholly or partly the technology for which a corporation is created under this chapter to license to the corporation any technology owned by the institution of higher education.

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

Sec. 157.007. DURATION. (a) Provides that a corporation created under this chapter is limited in duration to 15 years. Authorizes the corporation, at the expiration of that period, to file a restated and amended certificate of formation under which the corporation continues in existence as a for-profit corporation governed by Chapters 20 and 21, Business Organizations Code, and Title 1 of that code. Provides that a corporation that files a restated and amended certificate of formation as authorized by this subsection is not governed by the other provisions of this chapter and is not entitled to an exemption authorized by Section 157.008.

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

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

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

(2) complies with Section 157.006.

(b) Entitles the corporation to an exemption from ad valorem taxation of real and tangible personal property as provided by Section 11.232, Tax Code.

(c) Provides that the corporation is exempted from the sales and use tax imposed by Chapter 151 (Limited Sales, Excise, and Use Tax), Tax Code, as provided by Section 151.3183 of that code.

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

(e) Provides that this section does not limit the eligibility of the corporation for any other available tax benefit, including a tax benefit under Chapter 312 (Property Redevelopment and Tax Abatement Act) or 313 (Texas Economic Development Act), Tax Code.

(f) Requires the corporation to maintain a complete record of all taxes for which the corporation would have been liable if the corporation had not been entitled to the exemptions authorized by this section. Requires the corporation to report that information annually to the comptroller in the form and manner required by the comptroller.

(g) Requires the comptroller to adopt rules necessary to implement this section and administer the exemptions under Subsections (c) and (d).

Sec. 157.009. PENALTY FOR NONCOMPLIANCE WITH CORPORATE OPERATIONS REQUIREMENTS. (a) Provides that a corporation created under this chapter that ceases to comply with Section 157.006 is liable to the state for a penalty in an amount equal to any taxes, including ad valorem taxes, for which the corporation received an exemption under Section 157.008 for the four calendar years preceding the year in which the noncompliance began. Requires the comptroller to determine the corporation's liability for the penalty and assess the amount owed.

(b) Provides that a penalty assessed under this section is due on the date designated by the comptroller, not later than the 90th day after the date assessed, and is required to be collected in the same manner as a state tax. Provides that a

lien exists on any property of the corporation to secure the payment of any amount assessed under this section. Entitles the comptroller to collect interest and penalties on the unpaid amount of a delinquent penalty in the same manner as the manner prescribed for the collection of a delinquent state tax. Requires the comptroller by rule to establish the methods of payment and to adopt other rules necessary to administer and enforce this section.

(c) Requires amounts received under this section to be deposited in the state treasury to the credit of the general revenue fund.

Sec. 157.010. CONFLICT WITH BUSINESS ORGANIZATIONS CODE. Provides that, to the extent of any conflict between a provision of this chapter and a provision of the Business Organizations Code, the provision of this chapter controls.

SECTION 2. Amends Subchapter B, Chapter 11, Tax Code, by adding Section 11.232, as follows:

Sec. 11.232. PROPERTY OWNED BY OR LEASED TO UNIVERSITY RESEARCH TECHNOLOGY CORPORATION. (a) Defines "institution of higher education," "medical center development corporation," "qualified medical center," and "technology."

(b) Entitles a corporation that qualifies as a university research technology corporation as provided by Subsection (g), except as provided by Subsection (c), to an exemption from ad valorem taxation of:

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

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

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

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

(c) Provides that a qualified university research technology corporation is not entitled to an exemption from taxation of real or tangible personal property:

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

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

(d) Entitles a qualified university research technology corporation, notwithstanding Subsection (c), to an exemption from taxation of the value of that portion of an improvement that consists of an expansion of an improvement described by that subsection if the improvement is devoted exclusively to a purpose described by Subsection (g)(2).

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

(f) Entitles a qualified university research technology corporation, notwithstanding Section 25.07 (Leasehold and Other Possessory Interests in

Exempt Property), to an exemption from taxation of a possessory interest in property described by Subsection (e).

(g) Requires a corporation, to qualify as a university research technology corporation for purposes of this section, to:

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

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

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

SECTION 3. Amends Section 11.42(d), Tax Code, as follows:

(d) Authorizes a person who acquires property after January 1 of a tax year to receive an exemption authorized by Section 11.232 or the sections set forth in this subsection for the applicable portion of that tax year immediately on qualification for the exemption.

SECTION 4. Amends the heading to Section 26.113, Tax Code, to read as follows:

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

SECTION 5. Amends Subchapter H, Chapter 151, Tax Code, by adding Section 151.3183, as follows:

Sec. 151.3183. UNIVERSITY RESEARCH TECHNOLOGY CORPORATION. (a) Defines "university research technology corporation."

(b) Provides that a taxable item sold, leased, or rented to, or stored, used, or consumed by, a university research technology corporation is exempted from the taxes imposed by this chapter if the item is classified by the corporation as a capital asset. Provides that an item is considered to be classified by the corporation as a capital asset if the item is considered to be a capital asset according to generally accepted accounting principles adopted by the Financial Accounting Standards Board and is recognized by the corporation as a capital asset on the corporation's federal income tax returns.

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

SECTION 6. Amends Subchapter B, Chapter 171, Tax Code, by adding Section 171.089, as follows:

Sec. 171.089. EXEMPTION--UNIVERSITY RESEARCH TECHNOLOGY CORPORATION. (a) Defines "university research technology corporation."

(b) Provides that a university research technology corporation is exempted from the franchise tax.

(c) Provides that, a corporation created as a university research technology corporation that files at the expiration of the period described by Section

157.007(a), Education Code, a restated and amended certificate of formation as authorized by that section is no longer exempted from the franchise tax by Subsection (b) on the expiration of that period. Provides that, unless the corporation is otherwise exempted from the franchise tax, the date of the expiration of that period is considered the corporation's beginning date for purposes of determining the corporation's privilege periods and for all other purposes of this chapter.

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

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

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

SECTION 10. (a) Effective date, except as provided by Subsection (b) of this section: January 1, 2016.

(b) Provides that Section 157.008(b), Education Code, and Section 11.232, Tax Code, as added by this Act, and Sections 11.42(d) and 26.113, Tax Code, as amended by this Act, take effect January 1, 2016, but only if the constitutional amendment proposed by the 84th Legislature, Regular Session, 2015, authorizing the legislature to provide for an exemption from ad valorem taxation of certain property owned by or leased to or by a university research technology corporation is approved by the voters. Provides that, if that amendment is not approved by the voters, Section 157.008(b), Education Code, and Section 11.232, Tax Code, as added by this Act, and Sections 11.42(d) and 26.113, Tax Code, as amended by this Act, have no effect.