

CHAPTER 176

EDUCATION - UNIVERSITIES AND COLLEGES

SENATE BILL 93-152

BY SENATORS Schaffer, Blickensderfer, Mutzebaugh, Tebedo, and Traylor;
also REPRESENTATIVES Coffman, Martin, Anderson, Hagedorn, and Sullivan.

AN ACT

CONCERNING THE POWER OF STATE-FUNDED INSTITUTIONS TO INCORPORATE NONPROFIT CORPORATIONS FOR DEVELOPMENT OF DISCOVERIES AND TECHNOLOGIES RESULTING FROM RESEARCH AT SUCH INSTITUTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 23-5-121, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

23-5-121. Governing boards - Colorado advanced technology institute commission - authority to establish nonprofit corporations for developing discoveries and technology. (1) The general assembly recognizes that the transfer of newly created technologies from university research to the private sector and the resulting potential creation and expansion of Colorado companies are essential to the economic growth of this state, promote the public good, and should be encouraged. The general assembly further recognizes that a valid public purpose will be furthered and a commitment to the economic growth of this state demonstrated by empowering the governing boards of the state-supported institutions of higher education AND THE COLORADO ADVANCED TECHNOLOGY INSTITUTE COMMISSION to establish nonprofit corporations to effect such a transfer and development and BY EMPOWERING THE GOVERNING BOARDS OF THE STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION to cooperate with such entities as the Colorado advanced technology institute.

(2) The governing board of any state-supported institution of higher education OR THE COLORADO ADVANCED TECHNOLOGY INSTITUTE COMMISSION, REFERRED TO IN THIS SECTION AS THE "COMMISSION", may incorporate one or more private nonprofit corporations under articles 20 to 29 of title 7, C.R.S., for the purpose of developing discoveries and technology resulting from science and technology research at ~~the~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SUCH STATE-SUPPORTED institution OF HIGHER EDUCATION OR THE COLORADO ADVANCED TECHNOLOGY INSTITUTE, AS APPROPRIATE. Such a corporation shall have all rights and powers of a private nonprofit corporation organized under the laws of this state and shall not be an agency of state government or a department or political subdivision thereof and shall not be subject to any provisions of law affecting only governmental or public entities; except that provisions as provided for in section 23-1-108 (1) (f) regarding affirmative action shall be followed. ANY NONPROFIT CORPORATION INCORPORATED PURSUANT TO THE PROVISIONS OF THIS SUBSECTION (2) BY THE COLORADO ADVANCED TECHNOLOGY INSTITUTE SHALL ANNUALLY FILE WITH THE GENERAL ASSEMBLY A COPY OF THE CORPORATION'S ANNUAL REPORT.

(3) The governing board of any state-supported institution of higher education OR THE COMMISSION may transfer to a corporation incorporated pursuant to subsection (2) of this section all rights to discoveries and technologies resulting from science and technology research at ~~the~~ SUCH STATE-SUPPORTED institution OF HIGHER EDUCATION OR AT THE COLORADO ADVANCED TECHNOLOGY INSTITUTE, AS APPROPRIATE. Such transfer may be made in consideration of the corporation's undertaking to develop the technology for the benefit of the STATE-SUPPORTED institution OF HIGHER EDUCATION OR THE COLORADO ADVANCED TECHNOLOGY INSTITUTE, AS APPROPRIATE, and the state. Any such rights to discoveries and technologies which are transferred to the corporation by a governing board OR BY THE COMMISSION shall not be further transferred by the corporation without adequate consideration being received therefor.

(4) Prior to the transfer to a corporation incorporated pursuant to subsection (2) of this section of all rights to discoveries and technologies resulting from science and technology research at ~~the~~ ANY STATE-SUPPORTED institution OF HIGHER EDUCATION OR THE COLORADO ADVANCED TECHNOLOGY INSTITUTE, the governing board of ~~any~~ SUCH state-supported institution OF HIGHER EDUCATION OR THE COMMISSION, AS APPROPRIATE, shall enter into an agreement with said corporation which shall include the terms of financial remuneration due the institution.

(5) As a means of carrying out the purposes stated in this section, the governing board of any state-supported institution of higher education OR THE COMMISSION may, through one or more corporations incorporated pursuant to subsection (2) of this section:

(a) Own and license rights to products, technology, and scientific information;

(b) Own shares in corporations engaged in the development, manufacture, or marketing of products, technology, or scientific information under a license from the governing board OR THE COMMISSION or a corporation incorporated pursuant to subsection (2) of this section;

(c) Participate as the general partner or as a limited partner, either directly or through a subsidiary corporation formed for that purpose, in limited partnerships, general partnerships, or joint ventures engaged in the development, manufacture, or marketing of products, technology, or scientific information under a license from the board OR THE COMMISSION or a corporation incorporated pursuant to subsection (2) of this section; EXCEPT THAT THE GOVERNING BOARD AND THE COMMISSION SHALL BE SUBJECT TO THE PROVISIONS OF SECTION 24-113-104, C.R.S., REGARDING COMPETITION WITH PRIVATE ENTERPRISE BY INSTITUTIONS OF HIGHER EDUCATION;

(d) Develop economic incentives for faculty members and other employees of the state-supported institution of higher education OR THE COLORADO ADVANCED TECHNOLOGY INSTITUTE in order to encourage development of technology, which may include assignment of a share of the royalty payments, payment of supplemental compensation, or such other economic incentives as will in the judgment of the governing board OR THE COMMISSION best promote the purposes of this section;

(e) IN THE CASE OF A GOVERNING BOARD OF A STATE-SUPPORTED INSTITUTION OF HIGHER EDUCATION, cooperate with the Colorado advanced technology institute and the ~~Colorado advanced technology institute~~ commission in technology transfers pursuant to section 23-11-105;

(f) Carry on such other activities as the governing board OR THE COMMISSION may deem appropriate for achieving the purposes of this section.

(6) At the discretion of the governing board of the state-supported institution of higher education OR THE COMMISSION, research facilities and personnel at ~~the~~ THEIR OWN institutions or campuses ~~governed by the board~~ may be utilized to achieve the purposes of this section.

(7) The state of Colorado or state-supported institution OR THE COLORADO ADVANCED TECHNOLOGY INSTITUTE shall not be held responsible for any debt or liability incurred by the corporation created pursuant to subsection (2) of this section.

SECTION 2. 23-11-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

23-11-104. Powers and duties of the commission. (9) PURSUANT TO THE PROVISIONS OF SECTION 23-5-121, THE COMMISSION MAY INCORPORATE ONE OR MORE PRIVATE NONPROFIT CORPORATIONS UNDER ARTICLES 20 TO 29 OF TITLE 7, C.R.S., FOR THE PURPOSE OF DEVELOPING DISCOVERIES AND TECHNOLOGY RESULTING FROM SCIENCE AND TECHNOLOGY RESEARCH AT THE INSTITUTE.

SECTION 3. 23-11-106 (1), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

23-11-106. Funding of the institute. (1) The institute shall be funded annually in a single line item appropriation in the general appropriation act by the general assembly. Allocation of moneys in this line item shall be the sole prerogative of the commission. ANY MONEYS RECEIVED BY THE INSTITUTE FROM ANY PRIVATE NONPROFIT CORPORATION INCORPORATED BY THE INSTITUTE PURSUANT TO SECTION 23-5-121 SHALL BE USED TO REDUCE THE AMOUNT OF GENERAL FUND MONEYS APPROPRIATED TO THE INSTITUTE BY THE GENERAL ASSEMBLY.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 30, 1993