

CHAPTER 117

EDUCATION - UNIVERSITIES AND COLLEGES

SENATE BILL 00-061

BY SENATORS Anderson, Lamborn, Linkhart, Reeves, Hernandez, and Weddig;
also REPRESENTATIVES Young, Clarke, Leyba, Taylor, Fairbank, Mace, Miller, Scott, Stengel, and Williams, S.

AN ACT

CONCERNING THE AUTHORITY OF THE COLORADO COMMISSION ON HIGHER EDUCATION TO PURSUE
NONPROFIT INCORPORATION FOR THE PURPOSE OF DEVELOPING DISCOVERIES AND TECHNOLOGY.

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

SECTION 1. 23-1-106.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

23-1-106.5. Duties and powers of the commission with regard to advanced technology. (8) PURSUANT TO THE PROVISIONS OF SECTION 23-5-121, THE COMMISSION MAY INCORPORATE ONE OR MORE PRIVATE NONPROFIT CORPORATIONS UNDER ARTICLES 121 TO 137 OF TITLE 7, C.R.S., FOR THE PURPOSE OF DEVELOPING DISCOVERIES AND TECHNOLOGY RESULTING FROM SCIENCE AND TECHNOLOGY RESEARCH.

SECTION 2. 23-1-102 (8), Colorado Revised Statutes, is amended to read:

23-1-102. Commission abolished - commission reestablished - terms of office. (8) (a) Notwithstanding other provisions of this section, on or after July 1, 1999, the governor, with the consent of the senate, shall appoint two additional members to the commission for terms ending on June 30, ~~2002~~ 2003. ~~except that one of the two additional members shall be appointed from the membership of the Colorado advanced technology institute commission as such commission existed prior to its abolition on July 1, 1999.~~ THEREAFTER, MEMBERS APPOINTED PURSUANT TO THIS SUBSECTION (8) SHALL SERVE FOR TERMS OF FOUR YEARS.

(b) ~~This subsection (8) is repealed, effective July 1, 2002.~~

SECTION 3. 23-5-121, Colorado Revised Statutes, is amended to read:

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

23-5-121. Governing boards - 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 COMMISSION ON HIGHER EDUCATION, REFERRED TO IN THIS SECTION AS THE "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 the private sector.

(2) The governing board of any state-supported institution of higher education OR THE COMMISSION may incorporate one or more private nonprofit corporations under articles 121 to 137 of title 7, C.R.S., for the purpose of developing discoveries and technology resulting from science and technology research at such state-supported institution of higher education. 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.

(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 such state-supported institution of higher education. 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 and the state. Any such rights to discoveries and technologies that 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 any state-supported institution of higher education, the governing board of such state-supported institution of higher education OR THE COMMISSION shall enter into an agreement with said corporation that shall include the terms of financial remuneration due the institution OR THE COMMISSION.

(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 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 COMMISSION 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 commission and the office of innovation and technology created in the office of the governor in technology transfers pursuant to section 23-1-106.7;

(e.5) IN THE CASE OF THE COMMISSION, ACCEPT DONATIONS, INCOME OR OTHER REVENUES AND MAKE GRANTS TO SUPPORT COMMISSION PROGRAMS; AND

(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, research facilities and personnel at their own institutions or campuses may be utilized to achieve the purposes of this section.

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

SECTION 4. 24-6-402 (1) (d), Colorado Revised Statutes, is amended to read:

24-6-402. Meetings - open to public. (1) For the purposes of this section:

(d) "State public body" means any board, committee, commission, or other advisory, policy-making, rule-making, decision-making, or formally constituted body of any state agency, state authority, governing board of a state institution of higher education including the regents of the university of Colorado, A NONPROFIT CORPORATION INCORPORATED PURSUANT TO SECTION 23-5-121 (2), C.R.S., or the general assembly, and any public or private entity to which the state, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the state public body.

SECTION 5. 24-6-402 (3) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24-6-402. Meetings - open to public. (3) (a) The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the body after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in paragraph (b) of this subsection (3) or the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall occur at any executive session that is not open to the public:

(VII) WITH RESPECT TO NONPROFIT CORPORATIONS INCORPORATED PURSUANT TO SECTION 23-5-121 (2), C.R.S., MATTERS CONCERNING TRADE SECRETS, PRIVILEGED INFORMATION, AND CONFIDENTIAL COMMERCIAL, FINANCIAL, GEOLOGICAL, OR GEOPHYSICAL DATA FURNISHED BY OR OBTAINED FROM ANY PERSON.

SECTION 6. 24-72-202 (6) (a) (I), Colorado Revised Statutes, is amended to read:

24-72-202. Definitions. As used in this part 2, unless the context otherwise requires:

(6) (a) (I) "Public records" means and includes all writings made, maintained, or kept by the state, any agency, institution, A NONPROFIT CORPORATION INCORPORATED PURSUANT TO SECTION 23-5-121 (2), C.R.S., or political subdivision of the state, or that are described in section 29-1-902, C.R.S., and held by any local government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

SECTION 7. 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 13, 2000