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DATE: February 15, 2002

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS**

BILL #: CS/HB 289

RELATING TO: New Product Transfer Enhancement Act

SPONSOR(S): Council for Competitive Commerce and Representative Andrews

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) ECONOMIC DEVELOPMENT & INTERNATIONAL TRADE YEAS 7 NAYS 0
 - (2) COUNCIL FOR COMPETITIVE COMMERCE YEAS 12 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 289 creates the "New Product Transfer Enhancement Act." It provides a mechanism for a donor company, which has developed or holds a patent on a technology or product, to license that item to a company located in Florida for production and marketing. In lieu of fees or royalties, a donor company may elect to receive payment in the form of a corporate income tax credit; a purchase price refund on machinery, equipment or building materials; or as payment for sponsored research. In any year, the total amount of credits awarded to a donor company cannot exceed 94.5 percent of the amount due the state from a receiving company, or companies.

The Office of Tourism, Trade, and Economic Development (OTTED) is instructed to seek out donor companies and receiving companies and facilitate the formation of product development agreements. The Department of Revenue and the Office of the Comptroller are responsible for administering certain provisions of the bill, and the bill grants rulemaking authority to both agencies.

The bill creates ss. 288.1172, 220.115, and 220.1825, Florida Statutes. It takes effect January 1, 2003.

The Revenue Impact Conference reviewed this bill on December 14, 2001, and estimated the effect in fiscal year 2002-2003 on the General Revenue Fund and other state funds to be indeterminate.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

This bill envisions the state brokering new product or technology commercialization via the Office of Tourism, Trade, and Economic Development (OTTED). The bill also imposes new administrative responsibilities on the Department of Revenue and the Comptroller's Office.

The business-to-business commercialization of technology and products typically is handled in the marketplace. This bill provides for the assumption by state government of that activity.

2. Lower Taxes Yes No N/A
3. Individual Freedom Yes No N/A
4. Personal Responsibility Yes No N/A
5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Section 288.9511(7), Florida Statutes, defines "technology commercialization" as the process of bringing an investment-grade technology out of an enterprise, university, or federal laboratory for first-run application in the marketplace.

Section 240.241, Florida Statutes, authorizes state universities to create divisions of sponsored research to administer and promote research programs. Many state universities have established technology-licensing or technology-transfer offices or units that facilitate the movement of university inventions into the marketplace.¹ The University of Florida, for example, has an Office of Technology Licensing, as well as a direct-support organization, the UF Research Foundation, Inc. (UFRF), to help transfer the discoveries, inventions, processes, and work products of University of Florida faculty, staff and students from the laboratory to the public.² However, the state has no functional economic development program designed to augment technology or product commercialization in the business-to-business arena, the market targeted by this bill.

Current law does not provide credits against corporate income tax liability, purchase price refunds for machinery, equipment or building materials, or payments to sponsor university research for business-to-business product or technology commercialization.

C. EFFECT OF PROPOSED CHANGES:

HB 289 is designed to facilitate commercialization of new products or technologies between corporations via a state-administered program. See Section III.D., Section-by-Section Analysis for more detail.

¹ "Technology Transfer and Commercialization," Interim Project Report 2002-123, Senate Committee on Commerce and Economic Opportunities.

² Web page, University of Florida, Office of Technology Licensing,

D. SECTION-BY-SECTION ANALYSIS:

Section 1 Provides a title: "New Product Transfer Enhancement Act."

Section 2 Creates s. 288.1772, F.S., dealing with the licensing of products or technologies by donor companies to receiving companies and applicable credits and refunds. States that the purpose of the bill is to promote economic growth by providing an incentive for corporations that have developed or patented products and technologies they do not wish to develop further to license those items to Florida companies for production and marketing. Provides definitions for terms used in the bill including "annual statement of fees due," "donor company," "receiving company," and "product development agreement."

Instructs OTTED to seek out donor companies and Florida businesses that may be interested in becoming receiving companies and to facilitate the formation of product development agreements.

Specifies the contents of a product development agreement. Sets forth qualifications including the requirement that at least 75 percent of the jobs created by the production of the new technology or product be located in Florida. Specifies that the product development agreement must state the amount of compensation to be remitted by the receiving company.

Requires receiving companies to submit annual statements of fees to OTTED and the Department of Revenue (DOR). Requires OTTED to produce annual statement of donor credit for each donor company. Establishes the annual donor credit for each donor company at 94.5% of the annual fees derived from all product agreements. Specifies that the annual donor credits may not exceed 94.5 percent of the amount due the state under all annual statements of fees. Requires OTTED to send the annual statement of donor credit to each donor company by March 1. Requires OTTED to submit a statement to DOR, specifying the amount of credit due each donor company, the identities of the receiving companies that originated the credits, and the type of credit the donor company has elected to receive. Specifies that within 90 days of certification, DOR shall distribute reimbursements and sponsored research payments to donor companies. Provides regulation stating that the type of credit, payment, or reimbursement specified in the product development agreement cannot be changed for the initial tax year. Delivers guidelines for donor companies wishing to change their type of credit, payment, or reimbursement in subsequent tax years. Clarifies that a donor company may select only one type of credit, payment, or reimbursement for a tax year.

Authorizes a donor company to receive the credit as a *corporate income tax credit* pursuant to s. 220.1825, F.S.

Authorizes a donor company, which is providing *funding for sponsored research* at a state university in Florida, to use its donor credit to fund such research. Requires donor companies electing to use their donor credits in this manner to make a request to DOR, which, in turn, must ask the Comptroller to transfer the donor credit to the appropriate university's division of sponsored research. Grants the Office of the Comptroller and DOR rulemaking authority.

Authorizes donor companies to receive credit in the form of a *purchase price refund* on machinery and equipment installed in a Florida manufacturing facility or for building materials used in the construction or rehabilitation of a Florida manufacturing facility. Requires donor companies to apply to DOR for reimbursement and to supply applicable documentation. Grants DOR rulemaking authority.

Specifies that the combined benefits may not exceed the amount set out in the annual statement of donor credits.

Section 3 Creates s. 220.115, F.S., relating to fees due the state from receiving companies. Requires a receiving company to remit to the state any fees due a donor company (as indicated by the annual statement of fees) in addition to any corporate income taxes normally due the state under chapter 220, F.S., the Corporate Income Tax Code. Requires a receiving company to file a corporate income tax return with the state even if no taxes are due and a return normally is not required.

Relieves receiving company of payment to the donor providing receiving company meets its payment obligation to the State of Florida. Specifies that no credits, payments, or reimbursements will be awarded to donor if receiving company fails to meet obligation of timely remittance of funds due to DOR.

Requires a receiving company to remit to DOR any moneys due a donor company according to the annual statement of fees and subjects the remittance to all filing requirements, fines, and penalties specified for returns and taxes due under the corporate income tax code.

Grants DOR rulemaking authority to implement the new procedure.

Section 4 Creates s. 220.1825, F.S., adding a category of corporate income tax credit. Establishes a credit against corporate income taxes for a donor company that has entered into a product development agreement and has elected to take its credit in this manner. Limits the credit to 94.5 percent of the amount indicated in the annual statement of fees due. Allows a 5-year carry forward of any unused credit. Grants DOR rulemaking authority relating to the method of reporting and claiming this credit.

Section 5 Amends s. 220.02(8), F.S., stating legislative intent with respect to the order by which credits against either the corporate income tax or the franchise tax are to be awarded.

Section 6 Provides an effective date: January 1, 2003.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Impact Conference reviewed this bill on December 14, 2001, and estimated the effect in fiscal year 2002-2003 on the General Revenue Fund and other state funds to be indeterminate.

2. Expenditures:

The Department of Revenue and the Office of the Comptroller advise there would be no cost to the agency to administer pertinent provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows a donor company to receive a maximum of 94.5 percent of the fees agreed upon in the product development agreement. A donor company, therefore, would receive 5.5 percent less in fees under this commercialization scenario than it would if it chose a direct business-to-business transaction. On the other hand, commercialization of new technologies and products may be facilitated by this mechanism and may provide some financial gain for receiving and donor companies who otherwise would not have entered into an agreement.

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Revenue (DOR) and the Office of the Comptroller to promulgate rules.

C. OTHER COMMENTS:

This bill requires a receiving company to remit to the state the full amount of fees indicated in the product development agreement. The donor company then receives a maximum of 94.5 percent of that amount in credits, either as a corporate income tax credit, a purchase price refund, or as funding for sponsored research.

The Economic Development and International Trade staff stated that while it appears the 5.5 percent that remains is retained by the state as a service charge or administrative fee, the bill does not specify the disposition of this money.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 14, 2002, the Competitive Commerce Council adopted six amendments which are incorporated in this council substitute. The amendments specify the following: Amendment #1 was a technical amendment replacing the word "specifies" with "certifies"; Amendment #2 clarifies that the Office of Tourism, Trade, and Economic Development will make the determination as to the amount of the credit, reimbursement, or payment owed to the donor company, and then will certify that amount to the Department of Revenue; Amendment #3 specifies a time period for the department of Revenue to pay, reimburse, or issue credit to the donor company and clarifies that the donor company may elect to change the type of credit, payment, or reimbursement in subsequent tax years; Amendment #4 clarifies that the reimbursement benefit for building supplies, machinery and equipment applies to all of a particular company's manufacturing facilities located in the state of Florida; Amendment #5 clarifies that payment by a receiving company to the State of Florida satisfies its payment obligation to the donor company for the same amounts. This amendment also clarifies that a donor company will not be entitled to receive one of the three benefits if the receiving company defaults in its payment obligations to the state. Amendment #6 provides that the Department of revenue must distribute payment of the purchase price reimbursement or the cost of sponsored research within 90 days of the Office of Tourism, Trade, and Economic Development notifying it that the money is owed the donor company.

VII. SIGNATURES:

COMMITTEE ON ECONOMIC DEVELOPMENT & INTERNATIONAL TRADE:

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