

1 A bill to be entitled
2 An act relating to economic development; creating the
3 "Micro-Targeted Technology Commercialization Act";
4 providing that the purpose of the act is to promote the
5 commercialization of certain technologies by startup and
6 early stage companies in this state; amending s. 220.13,
7 F.S.; redefining the term "adjusted federal income" to
8 prohibit a seller from deducting from his or her taxable
9 income any net operating loss transferred pursuant to the
10 act; amending s. 220.16, F.S.; providing for allocation of
11 specified nonbusiness income to the state; creating s.
12 220.194, F.S.; creating the Micro-Targeted Technology
13 Commercialization Credit Transfer Program; providing
14 intent, goals, and objectives; providing definitions;
15 requiring that the Institute for the Commercialization of
16 Public Research identify examples of micro-targeted
17 technology and compile a list of the technology for the
18 Office of Tourism, Trade, and Economic Development;
19 requiring the office to certify eligible companies for the
20 transfer of corporate income tax net operating loss
21 amounts; providing qualifications and an application
22 process and requirements; requiring an application fee;
23 providing for an application deadline; requiring the
24 office to grant or deny an application within a specified
25 time after receiving a completed application; providing
26 for calculating the certified credit amount; providing a
27 maximum amount that may be transferred; providing a
28 penalty; requiring each certified company to file an

29 | annual report with the office; requiring the office and
 30 | the Department of Revenue to adopt rules; creating s.
 31 | 220.195, F.S.; creating the Micro-Targeted Technology
 32 | Commercialization Assistance Grant Program; providing
 33 | intent, goals, and objectives of the grant program;
 34 | directing the Office of Tourism, Trade, and Economic
 35 | Development to manage the grant program; directing the
 36 | Institute for the Commercialization of Public Research to
 37 | review grant applications and submit recommendations to
 38 | the Office of Tourism, Trade, and Economic Development;
 39 | specifying eligibility requirements for grants; specifying
 40 | the grant amount; detailing the permissible uses of the
 41 | grant funds; requiring the Office of Tourism, Trade, and
 42 | Economic Development to prepare an annual report;
 43 | providing rulemaking authority; directing the Office of
 44 | Program Policy Analysis and Government Accountability to
 45 | review the program and prepare a report; amending s.
 46 | 213.053, F.S.; authorizing the Department of Revenue to
 47 | share confidential taxpayer information with the Office of
 48 | Tourism, Trade, and Economic Development; providing an
 49 | appropriation; providing for an allocation of the funds;
 50 | providing for future repeal of the credit transfer program
 51 | and the grant program; providing an effective date.

52 |
 53 | Be It Enacted by the Legislature of the State of Florida:
 54 |

55 | Section 1. Short title.--This act may be cited as the
 56 | "Micro-Targeted Technology Commercialization Act."

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57 Section 2. Legislative purpose.--The purpose of this act
58 is to promote the commercialization of certain technologies by
59 startup and early stage Florida companies and to create high-
60 wage jobs in these industry sectors. The act creates two
61 financial mechanisms to promote commercialization efforts: a net
62 operating loss credit transfer program and a commercialization
63 grant program.

64 Section 3. Paragraph (b) of subsection (1) of section
65 220.13, Florida Statutes, is amended to read:

66 220.13 "Adjusted federal income" defined.--

67 (1) The term "adjusted federal income" means an amount
68 equal to the taxpayer's taxable income as defined in subsection
69 (2), or such taxable income of more than one taxpayer as
70 provided in s. 220.131, for the taxable year, adjusted as
71 follows:

72 (b) *Subtractions.--*

73 1. There shall be subtracted from such taxable income:

74 a. The net operating loss deduction allowable for federal
75 income tax purposes under s. 172 of the Internal Revenue Code
76 for the taxable year,

77 b. The net capital loss allowable for federal income tax
78 purposes under s. 1212 of the Internal Revenue Code for the
79 taxable year,

80 c. The excess charitable contribution deduction allowable
81 for federal income tax purposes under s. 170(d)(2) of the
82 Internal Revenue Code for the taxable year, and

83 d. The excess contributions deductions allowable for
84 federal income tax purposes under s. 404 of the Internal Revenue

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85 | Code for the taxable year, except that any net operating loss
86 | transferred pursuant to s. 220.194 may not be deducted by the
87 | seller.

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89 | However, a net operating loss and a capital loss shall never be
90 | carried back as a deduction to a prior taxable year, but all
91 | deductions attributable to such losses shall be deemed net
92 | operating loss carryovers and capital loss carryovers,
93 | respectively, and treated in the same manner, to the same
94 | extent, and for the same time periods as are prescribed for such
95 | carryovers in ss. 172 and 1212, respectively, of the Internal
96 | Revenue Code.

97 | 2. There shall be subtracted from such taxable income any
98 | amount to the extent included therein the following:

99 | a. Dividends treated as received from sources without the
100 | United States, as determined under s. 862 of the Internal
101 | Revenue Code.

102 | b. All amounts included in taxable income under s. 78 or
103 | s. 951 of the Internal Revenue Code.

104

105 | However, as to any amount subtracted under this subparagraph,
106 | there shall be added to such taxable income all expenses
107 | deducted on the taxpayer's return for the taxable year which are
108 | attributable, directly or indirectly, to such subtracted amount.
109 | Further, no amount shall be subtracted with respect to dividends
110 | paid or deemed paid by a Domestic International Sales
111 | Corporation.

112 | 3. In computing "adjusted federal income" for taxable

113 | years beginning after December 31, 1976, there shall be allowed
 114 | as a deduction the amount of wages and salaries paid or incurred
 115 | within this state for the taxable year for which no deduction is
 116 | allowed pursuant to s. 280C(a) of the Internal Revenue Code
 117 | (relating to credit for employment of certain new employees).

118 | 4. There shall be subtracted from such taxable income any
 119 | amount of nonbusiness income included therein, including
 120 | payments received for a certified tax credit amount pursuant to
 121 | s. 220.194.

122 | 5. There shall be subtracted any amount of taxes of
 123 | foreign countries allowable as credits for taxable years
 124 | beginning on or after September 1, 1985, under s. 901 of the
 125 | Internal Revenue Code to any corporation which derived less than
 126 | 20 percent of its gross income or loss for its taxable year
 127 | ended in 1984 from sources within the United States, as
 128 | described in s. 861(a)(2)(A) of the Internal Revenue Code, not
 129 | including credits allowed under ss. 902 and 960 of the Internal
 130 | Revenue Code, withholding taxes on dividends within the meaning
 131 | of sub-subparagraph 2.a., and withholding taxes on royalties,
 132 | interest, technical service fees, and capital gains.

133 | 6. Notwithstanding any other provision of this code,
 134 | except with respect to amounts subtracted pursuant to
 135 | subparagraphs 1. and 3., any increment of any apportionment
 136 | factor which is directly related to an increment of gross
 137 | receipts or income which is deducted, subtracted, or otherwise
 138 | excluded in determining adjusted federal income shall be
 139 | excluded from both the numerator and denominator of such
 140 | apportionment factor. Further, all valuations made for

141 | apportionment factor purposes shall be made on a basis
 142 | consistent with the taxpayer's method of accounting for federal
 143 | income tax purposes.

144 | Section 4. Subsection (5) is added to section 220.16,
 145 | Florida Statutes, to read:

146 | 220.16 Allocation of nonbusiness income.--Nonbusiness
 147 | income shall be allocated as follows:

148 | (5) The amount of financial assistance received in
 149 | exchange for transferring a net operating loss as authorized by
 150 | s. 220.194 is allocable to this state.

151 | Section 5. Section 220.194, Florida Statutes, is created
 152 | to read:

153 | 220.194 Micro-Targeted Technology Commercialization Credit
 154 | Transfer Program; transfer of net loss carryforward as a
 155 | certified credit.--

156 | (1) PURPOSE; GOALS AND OBJECTIVES.--It is the intent of
 157 | the Legislature that the Micro-Targeted Technology
 158 | Commercialization Credit Transfer Program act as a catalyst for
 159 | eligible companies to accelerate their revenue and job growth
 160 | and their market penetration by monetizing their net operating
 161 | losses into transferable credits. The program's objectives
 162 | include:

163 | (a) Accelerating the entry of new technology-based
 164 | products into the marketplace.

165 | (b) Producing additional technology-based jobs for this
 166 | state.

167 | (c) Accelerating commercialization of micro-targeted
 168 | technologies in the biomedical and technical fields.

169 (d) Encouraging the growth of high-quality, high-wage
 170 biomedical and technology firms in this state.

171 (2) DEFINITIONS.--As used in ss. 220.194 and 220.195, the
 172 term:

173 (a) "Certified credit amount" means the product of the net
 174 operating loss in this state multiplied by the corporate income
 175 tax rate imposed during the year it was sought.

176 (b) "Certified micro-targeted technology company" means a
 177 business entity that is registered with the Secretary of State,
 178 is currently operating in this state, and is certified by the
 179 office to trade net operating loss deduction credits pursuant to
 180 this section.

181 (c) "Department" means the Department of Revenue.

182 (d) "Institute" means the Institute for the
 183 Commercialization of Public Research.

184 (e) "Micro-targeted technology" means individual
 185 components, technology, or processes that are crucial to the
 186 development of larger or more complex biomedical or
 187 technological devices, processes, or information systems.

188 (f) "Office" means the Office of Tourism, Trade, and
 189 Economic Development.

190 (3) THE INSTITUTE FOR THE COMMERCIALIZATION OF PUBLIC
 191 RESEARCH.--The Institute for the Commercialization of Public
 192 Research or other Florida research-based consortium shall
 193 identify examples of micro-targeted technology and compile a
 194 list that is updated annually to add new technologies or delete
 195 those technologies that are no longer applicable. The office
 196 shall adopt this list as a rule.

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197 (4) QUALIFICATIONS FOR CERTIFICATION.--A company seeking
198 to transfer a net operating loss shall be certified as a
199 qualified micro-targeted technology company by the office if it
200 timely files a completed application and meets the requirements
201 of this subsection. For purposes of this subsection, all
202 conditions in paragraphs (a) through (g) must be met no later
203 than the date the application is filed with the office. All
204 other requirements in this subsection must be satisfied before
205 any allowed benefits may be transferred to the company. In order
206 to be certified, a micro-targeted technology company shall
207 demonstrate that:

208 (a) It is registered with the Secretary of State to
209 operate in this state.

210 (b) It is primarily engaged in developing, manufacturing,
211 producing, or providing micro-targeted technology for commercial
212 or public purposes.

213 (c) It has fewer than 100 full-time, worldwide employees,
214 including full-time employees leased to the applicant, of which
215 at least 75 percent work full time in this state at the time the
216 net operating loss credit transfer is first allowed.

217 (d) It has been audited by an independent certified public
218 accountant and:

219 1. The company has not had positive net income in any of
220 the 2 previous years of ongoing operations.

221 2. The company has reported a net operating loss in any of
222 the 2 previous years of operation.

223 3. The company is not at least 50 percent owned or
224 controlled, directly or indirectly, by another corporation that

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225 has demonstrated positive net income in any of the 2 previous
226 years of ongoing operations, or is not part of a consolidated
227 group of affiliated corporations, as filed for federal income
228 tax purposes, which in the aggregate demonstrated positive net
229 income in any of the 2 previous years of ongoing operations.

230 (e) The company has at least one active application for a
231 patent under 35 U.S.C. s. 111(a) on file with the United States
232 Patent and Trademark Office.

233 (f) The company has received research grants or other
234 financial assistance from governmental entities, foundations,
235 and other private entities or investors.

236 (g) The company has an established business plan that
237 describes its commercialization strategy, a business-development
238 plan that includes revenue projections and a strategy for
239 becoming profitable, and a timeline for development which
240 addresses revenue growth and job creation in this state.

241 (h) The company can certify that:

242 1. It will not transfer a net operating loss in exchange
243 for private financial assistance in an amount that is less than
244 75 percent of the certified credit amount.

245 2. All proceeds from the transfer will be expended to
246 support the operation or expansion of the company's business
247 activity in this state.

248 3. Upon transfer of a credit, it shall notify the office
249 of the amount within 30 days after each certified credit is
250 transferred, the amount of the financial assistance received,
251 and the identity of the purchaser of the certified credit.

252 (5) APPLICATION FOR CERTIFICATION.--

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253 (a) A completed application must be filed with the office
254 on or after 2 p.m., on the first business day of July commencing
255 in 2009. The office may investigate the qualifications of each
256 company applicant and may require by rule the applicant to
257 provide such evidence of its qualification as is necessary to
258 assure compliance with the requirements of this section,
259 including, but not limited to, the state corporate income tax
260 return supporting the request for certification of a credit
261 transfer, audited financial statements, federal tax returns, and
262 state and federal employment filings.

263 (b) The office shall require a nonrefundable application
264 fee of \$100 per application submitted. The department shall
265 cooperate with the office in its review of the applications.

266 (c) The office shall grant or deny an application in full
267 or in part within 90 days after receiving a completed
268 application containing the necessary information, including
269 payment of the application fee. If the office denies any part of
270 the application, it shall inform the applicant of the grounds
271 for the denial.

272 (d) This section does not create a presumption that a
273 company applicant will be approved by the office to transfer its
274 certified credits. However, the office may issue a nonbinding
275 opinion letter, upon the request of a prospective applicant, as
276 to its eligibility and the potential amount of certified tax
277 credits available.

278 (6) CALCULATION OF CERTIFIED CREDIT TRANSFER AMOUNT AND
279 LIMITATIONS.--When submitting an application for certification,
280 a company shall state the amount of the net operating loss

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281 deduction, including any net operating loss carryover, it
282 requests to be transferred as a certified credit. To the extent
283 allowed as a deduction in this state, a reported net operating
284 loss deduction not otherwise taken may be certified by the
285 office for transfer by a certified micro-targeted technology
286 company in exchange for private financial assistance from a
287 purchaser as follows:

288 (a) The net operating loss shall be transferred as a
289 certified credit amount.

290 (b) The maximum lifetime net operating loss credits that a
291 micro-targeted technology company may be certified to transfer
292 may not exceed \$1 million.

293 (c) Once the office has certified the transfer of total
294 net operating loss credits that may be claimed during a state
295 fiscal year in a cumulative amount of \$3 million, the office may
296 not approve the transfer of any additional credits that may be
297 taken in that state fiscal year.

298 (d) The certified micro-targeted technology company is
299 liable for a penalty if, after a transfer, the net operating
300 loss is disallowed pursuant to an audit by the department. The
301 penalty equals the amount of the credit transferred, reduced in
302 proportion to the amount of the net operating loss certified for
303 transfer over the amount of the certified net operating loss
304 disallowed.

305 (e) The applicant and its successors shall maintain all
306 records necessary to support the reported net operating loss.

307 (7) PURCHASE OF TRANSFERRED CERTIFIED CREDITS.--

308 (a) The certified credit amount must be reported as a

309 credit against tax due by the unaffiliated corporate purchaser
 310 on the next tax return due to be filed by the purchaser, but in
 311 no case may it be reported later than 1 year after the date of
 312 transfer.

313 (b) The purchaser of a certified credit amount may not
 314 further sell, or otherwise transfer, the certified credit.

315 (c) It is the responsibility of the certified micro-
 316 targeted technology company that transferred the certified
 317 credit to notify the office within 30 days after transfer of the
 318 amount of each certified credit transferred, the amount of the
 319 financial assistance received, and the identity of the purchaser
 320 of the certified credit. The office shall certify to the
 321 department the same information within 14 working days.

322 (8) REPORTING REQUIREMENT.--Each company that is certified
 323 to transfer its net operating loss credits must provide the
 324 office with an annual report on its development covering the
 325 year after it has received funds from transferring its credits.
 326 The report must include the company's commercialization
 327 strategy; business development plan; timeline for development;
 328 actual revenue and revenue projections, both total and within
 329 Florida only; and actual employment and employment projections,
 330 both total and within Florida only. The report is due January 3
 331 each applicable year.

332 (9) RULEMAKING AUTHORITY.--

333 (a) The office shall adopt rules pursuant to ss.
 334 120.536(1) and 120.54 to administer this section. The rules must
 335 establish the criteria for qualified technology research and
 336 experimental development, production, or provision of technology

337 for commercial or public purposes; the format of application
 338 forms; and the procedures to implement the program.

339 (b) The department may adopt rules pursuant to ss.
 340 120.536(1) and 120.54 to administer this section.

341 Section 6. Section 220.195, Florida Statutes, is created
 342 to read:

343 220.195 Micro-Targeted Technology Commercialization
 344 Assistance Grant Program.--

345 (1) INTENT; GOALS AND OBJECTIVES; CREATION OF PROGRAM.--

346 (a) It is the intent of the Legislature that the Micro-
 347 Targeted Technology Commercialization Assistance Grant Program
 348 act as a catalyst for eligible startup companies to accelerate
 349 their growth and market penetration using state grant funds to
 350 help pay certain operating expenditures.

351 (b) The grant program's objectives include:

352 1. Accelerating the entry of new technology-based products
 353 into the marketplace.

354 2. Producing additional technology-based jobs for this
 355 state.

356 3. Providing leveraged resources to increase the
 357 effectiveness and success of applicants' projects.

358 4. Accelerating commercialization of micro-targeted
 359 technologies in the biomedical and technical fields.

360 5. Encouraging the establishment and growth of high-
 361 quality, high-wage advanced biomedical and technology firms in
 362 this state.

363 (2) ELIGIBILITY GUIDELINES.--A qualified applicant must:

364 (a) Be a company specializing in micro-targeted technology

365 which is registered with the Secretary of State to operate in
366 this state.

367 (b) Conduct its business activities in this state.

368 (c) Have fewer than 25 full-time, worldwide employees,
369 including full-time employees leased to the applicant, of which
370 at least 75 percent are domiciled in this state.

371 (d) Have at least one active application for a patent
372 under 35 U.S.C. s. 111(a) filed with the United States Patent
373 and Trademark Office.

374 (e) Have received research grants or other financial
375 assistance from governmental entities, foundations, and other
376 private entities or investors, which in total at least equals
377 the amount of the grant being requested through this program.

378 (f) Have been selected to receive state university
379 research commercialization assistance grant funding, pursuant to
380 s. 1004.226, which will be considered for the list of qualified
381 technologies.

382 (g) Have an executed agreement with the licensing
383 institution.

384 (h) Have an established business plan that describes its
385 commercialization strategy, a business development plan that
386 includes revenue projections and a strategy for becoming
387 profitable, and a timeline for development that addresses
388 revenue growth and job creation in this state.

389
390 Each company receiving funding must provide the institute and
391 the office an annual report on its development since being
392 awarded the grant. The report must include the company's

393 commercialization strategy; business development plan; timeline
394 for development; actual revenue and revenue projections, both
395 total and within Florida only; and actual employment and
396 employment projections, both total and within Florida only. The
397 report is due on the anniversary date of when the company
398 received its grant.

399 (3) GRANT SELECTION PROCESS AND ADMINISTRATION.--

400 (a) The office shall provide administrative support to the
401 institute, as needed, for the twice-yearly issuance of an open-
402 call for grant applications, for providing blank application
403 forms, and for receiving and processing the applications for
404 review.

405 (b) The office shall collect and provide to the institute
406 all grant applications within 15 days after the posted submittal
407 deadline date.

408 (c) The board of directors of the institute shall review
409 all grant applications received and, based on the eligibility
410 guidelines in subsection (2), submit a list of recommended grant
411 recipients to the office for its final approval. An application
412 must be recommended for approval or be denied by the institute's
413 board within 45 days after receiving the application. The total
414 amount of grants recommended for disbursement to eligible companies
415 may not exceed \$4.5 million in any one year.

416 (d) The executive director of the office shall review the
417 institute's list of recommended grant recipients, and must
418 approve or deny the individual recommendations. The executive
419 director's decisions must be made within 30 days after receiving
420 the list of recommendations from the institute.

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421 (e) This section does not create a presumption that an
422 applicant will be approved by the office to receive a grant.
423 However, the office may issue a nonbinding opinion letter, upon
424 the request of a prospective applicant, as to its eligibility
425 for a grant and the potential amount of the grant.

426 (f) Grant awards shall be disbursed twice yearly to
427 recipient companies.

428 (4) AWARDS.--The office may make a one-time award of up to
429 \$500,000 to a qualified applicant. Disbursal of grant awards
430 shall be within 45 days after the office's final approval of
431 grant applications.

432 (5) USE OF GRANT FUNDS.--Grant funds shall be used by a
433 recipient to pay only wages, rent, and other operating expenses,
434 and to purchase equipment and supplies necessary to its
435 business. Grant funds may not be used to retire company debt.

436 (6) ANNUAL REPORT.--The office, with assistance from the
437 institute, shall submit an annual report of the grant program's
438 activities to the Governor, the President of the Senate, and the
439 Speaker of the House of Representatives by July 15 of each year,
440 beginning in 2010.

441 (7) RULES.--The office may adopt rules pursuant to ss.
442 120.536(1) and 120.54 to administer this section, including the
443 format and content of grant application forms, and the criteria
444 for qualifying companies engaged in technology research and
445 experimental development, production, or provision of technology
446 for commercial or public purposes.

447 (8) MONITORING.--Before the 2011 Regular Session of the
448 Legislature, the Office of Program Policy Analysis and

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449 Government Accountability shall conduct a review and evaluation
450 of the grant program. The office shall specifically evaluate the
451 grant program's effectiveness in using state funds to sustain
452 and nurture companies developing micro-targeted technologies, to
453 create high-wage jobs, and to attract outside investment in
454 these companies.

455 Section 7. Subsection (19) is added to section 213.053,
456 Florida Statutes, to read:

457 213.053 Confidentiality and information sharing.--

458 (19) Information relative to transfer of net operating
459 losses under s. 220.194 may be disclosed to the Office of
460 Tourism, Trade, and Economic Development or its employees or
461 agents that have been identified in writing by the office to the
462 department for use in the performance of official duties. All
463 information so obtained is subject to the same confidentiality
464 as imposed on the department.

465 Section 8. (1) The sum of \$29 million is transferred from
466 the Florida Opportunity Fund to the Economic Development Trust
467 Fund for the purpose of funding the credit transfer program and
468 grant program created by this act. Notwithstanding s. 216.301,
469 Florida Statutes, and pursuant to s. 216.351, Florida Statutes,
470 the unexpended balance of this appropriation at the end of the
471 fiscal year shall remain in the trust fund and shall be
472 available for carrying out the purposes of the grant program in
473 future years.

474 (2) Of that amount:

475 (a) The sum of \$2 million is appropriated to the Institute
476 for the Commercialization of Public Research for the 2009-2010

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477 fiscal year to support its operations, including its management,
478 operations, tracking, and measurement of outcomes relative to
479 the grant program.

480 (b) The sum of \$18 million shall be retained in the
481 Economic Development Trust Fund and earmarked for the Micro-
482 Targeted Technology Commercialization Assistance Grant Program,
483 to be used consistent with the purposes of s. 220.195, Florida
484 Statutes.

485 (c) The sum of \$9 million shall be retained in the
486 Economic Development Trust Fund to be used to reimburse the
487 General Revenue Fund so as to defray the cost to the state of
488 the net operating loss tax credits created in s. 220.195,
489 Florida Statutes.

490 Section 9. Sections 220.194 and 220.195, Florida Statutes,
491 are repealed effective June 30, 2013, unless reviewed and saved
492 from repeal through reenactment by the Legislature.

493 Section 10. This act shall take effect upon becoming a
494 law.