

By Senator Ring

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

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

56  
57 Be It Enacted by the Legislature of the State of Florida:  
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59           Section 1. Short title.—This act may be cited as the  
60 “Micro-Targeted Technology Commercialization Act.”

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

68           Section 3. Paragraph (b) of subsection (1) of section  
69 220.13, Florida Statutes, is amended to read:

70           220.13 “Adjusted federal income” defined.—

71           (1) The term “adjusted federal income” means an amount  
72 equal to the taxpayer's taxable income as defined in subsection  
73 (2), or such taxable income of more than one taxpayer as  
74 provided in s. 220.131, for the taxable year, adjusted as  
75 follows:

76           (b) *Subtractions.*—

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

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

81           b. The net capital loss allowable for federal income tax  
82 purposes under s. 1212 of the Internal Revenue Code for the  
83 taxable year,

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

87           d. The excess contributions deductions allowable for

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88 federal income tax purposes under s. 404 of the Internal Revenue  
89 Code for the taxable year, except that any net operating loss  
90 transferred pursuant to s. 220.194 may not be deducted by the  
91 seller.

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

101 2. There shall be subtracted from such taxable income any  
102 amount to the extent included therein the following:

103 a. Dividends treated as received from sources without the  
104 United States, as determined under s. 862 of the Internal  
105 Revenue Code.

106 b. All amounts included in taxable income under s. 78 or s.  
107 951 of the Internal Revenue Code.

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

116 3. In computing "adjusted federal income" for taxable years

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

122 4. There shall be subtracted from such taxable income any  
123 amount of nonbusiness income included therein, including  
124 payments received for a certified tax credit amount pursuant to  
125 s. 220.194.

126 5. There shall be subtracted any amount of taxes of foreign  
127 countries allowable as credits for taxable years beginning on or  
128 after September 1, 1985, under s. 901 of the Internal Revenue  
129 Code to any corporation which derived less than 20 percent of  
130 its gross income or loss for its taxable year ended in 1984 from  
131 sources within the United States, as described in s.

132 861(a)(2)(A) of the Internal Revenue Code, not including credits  
133 allowed under ss. 902 and 960 of the Internal Revenue Code,  
134 withholding taxes on dividends within the meaning of sub-  
135 subparagraph 2.a., and withholding taxes on royalties, interest,  
136 technical service fees, and capital gains.

137 6. Notwithstanding any other provision of this code, except  
138 with respect to amounts subtracted pursuant to subparagraphs 1.  
139 and 3., any increment of any apportionment factor which is  
140 directly related to an increment of gross receipts or income  
141 which is deducted, subtracted, or otherwise excluded in  
142 determining adjusted federal income shall be excluded from both  
143 the numerator and denominator of such apportionment factor.  
144 Further, all valuations made for apportionment factor purposes  
145 shall be made on a basis consistent with the taxpayer's method

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146 of accounting for federal income tax purposes.

147 Section 4. Subsection (5) is added to section 220.16,  
148 Florida Statutes, to read:

149 220.16 Allocation of nonbusiness income.—Nonbusiness income  
150 shall be allocated as follows:

151 (5) The amount of financial assistance received in exchange  
152 for transferring a net operating loss as authorized by s.  
153 220.194 is allocable to this state.

154 Section 5. Section 220.194, Florida Statutes, is created to  
155 read:

156 220.194 Micro-Targeted Technology Commercialization Credit  
157 Transfer Program; transfer of net loss carryforward as a  
158 certified credit.—

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

165 (a) Accelerating the entry of new technology-based products  
166 into the marketplace;

167 (b) Producing additional technology-based jobs for this  
168 state;

169 (c) Accelerating commercialization of micro-targeted  
170 technologies in the biomedical and technical fields; and

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

173 (2) DEFINITIONS.—As used in ss. 220.194 and 220.195, the  
174 term:

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

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

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

184 (d) "Institute" means the Institute for the  
185 Commercialization of Public Research.

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

190 (f) "Office" means the Office of Tourism, Trade, and  
191 Economic Development.

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

199 (4) QUALIFICATIONS FOR CERTIFICATION.—A company seeking to  
200 transfer a net operating loss shall be certified as a qualified  
201 micro-targeted technology company by the office if it timely  
202 files a completed application and meets the requirements of this  
203 subsection. For purposes of this subsection, all conditions in

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204 paragraphs (a) through (g) must be met no later than the date  
205 the application is filed with the office. All other requirements  
206 in this subsection must be satisfied before any allowed benefits  
207 may be transferred to the company. In order to be certified, a  
208 micro-targeted technology company shall demonstrate that:

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

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

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

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

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

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

224 3. The company is not at least 50 percent owned or  
225 controlled, directly or indirectly, by another corporation that  
226 has demonstrated positive net income in any of the 2 previous  
227 years of ongoing operations, or is not part of a consolidated  
228 group of affiliated corporations, as filed for federal income  
229 tax purposes, which in the aggregate demonstrated positive net  
230 income in any of the 2 previous years of ongoing operations.

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



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233 Patent and Trademark Office.

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

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

242 (h) The company can certify that:

243 1. It will not transfer a net operating loss in exchange  
244 for private financial assistance in an amount that is less than  
245 75 percent of the certified credit amount;

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

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

253 (5) APPLICATION FOR CERTIFICATION.—

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

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262 transfer, audited financial statements, federal tax returns, and  
263 state and federal employment filings.

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

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

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

279 (6) CALCULATION OF CERTIFIED CREDIT TRANSFER AMOUNT AND  
280 LIMITATIONS.—When submitting an application for certification, a  
281 company shall state the amount of the net operating loss  
282 deduction, including any net operating loss carryover, it  
283 requests to be transferred as a certified credit. To the extent  
284 allowed as a deduction in this state, a reported net operating  
285 loss deduction not otherwise taken may be certified by the  
286 office for transfer by a certified micro-targeted technology  
287 company in exchange for private financial assistance from a  
288 purchaser as follows:

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

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

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

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

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

308 (7) PURCHASE OF TRANSFERRED CERTIFIED CREDITS.—

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

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

316 (c) It is the responsibility of the certified micro-  
317 targeted technology company that transferred the certified  
318 credit to notify the office within 30 days after transfer of the  
319 amount of each certified credit transferred, the amount of the

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320 financial assistance received, and the identity of the purchaser  
321 of the certified credit. The office shall certify to the  
322 department the same information within 14 working days.

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

333 (9) RULEMAKING AUTHORITY.—

334 (a) The office shall adopt rules pursuant to ss. 120.536(1)  
335 and 120.54 to administer this section. The rules must establish  
336 the criteria for qualified technology research and experimental  
337 development, production, or provision of technology for  
338 commercial or public purposes; the format of application forms;  
339 and the procedures to implement the program.

340 (b) The department may adopt rules pursuant to ss.  
341 120.536(1) and 120.54 to administer this section.

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

344 220.195 Micro-Targeted Technology Commercialization  
345 Assistance Grant Program.—

346 (1) INTENT; GOALS AND OBJECTIVES; CREATION OF PROGRAM.—

347 (a) It is the intent of the Legislature that the Micro-  
348 Targeted Technology Commercialization Assistance Grant Program

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349 act as a catalyst for eligible startup companies to accelerate  
350 their growth and market penetration using state grant funds to  
351 help pay certain operating expenditures.

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

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

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

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

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

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

364 (2) ELIGIBILITY GUIDELINES.—A qualified applicant must:

365 (a) Be a company specializing in micro-targeted technology  
366 which is registered with the Secretary of State to operate in  
367 this state;

368 (b) Conduct its business activities in this state;

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

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

375 (e) Have received research grants or other financial  
376 assistance from governmental entities, foundations, and other  
377 private entities or investors, which in total at least equals

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378 the amount of the grant being requested through this program;

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

383 (g) Have an executed agreement with the licensing  
384 institution; and

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

390  
391 Each company receiving funding must provide the institute and  
392 the office an annual report on its development since being  
393 awarded the grant. The report must include the company's  
394 commercialization strategy; business development plan; timeline  
395 for development; actual revenue and revenue projections, both  
396 total and within Florida only; and actual employment and  
397 employment projections, both total and within Florida only. The  
398 report is due on the anniversary date of when the company  
399 received its grant.

400 (3) GRANT SELECTION PROCESS AND ADMINISTRATION.—

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

406 (b) The office shall collect and provide to the institute

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407 all grant applications within 15 days after the posted submittal  
408 deadline date.

409 (c) The board of directors of the institute shall review  
410 all grant applications received and, based on the eligibility  
411 guidelines in subsection (3), submit a list of recommended grant  
412 recipients to the office for its final approval. An application  
413 must be recommended for approval or be denied by the institute's  
414 board within 45 days after receiving the application. The total  
415 amount of grants recommended for disbursement to eligible companies  
416 may not exceed \$4.5 million in any one year.

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

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

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

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

433 (5) USE OF GRANT FUNDS.—Grant funds shall be used by a  
434 recipient to pay only wages, rent, and other operating expenses,  
435 and to purchase equipment and supplies necessary to its

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436 business. Grant funds may not be used to retire company debt.

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

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

448 (8) MONITORING.—Before the 2011 Regular Session of the  
449 Legislature, the Office of Program Policy Analysis and  
450 Government Accountability shall conduct a review and evaluation  
451 of the grant program. The office shall specifically evaluate the  
452 grant program's effectiveness in using state funds to sustain  
453 and nurture companies developing micro-targeted technologies, to  
454 create high-wage jobs, and to attract outside investment in  
455 these companies.

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

458 213.053 Confidentiality and information sharing.—

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



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465 as imposed on the department.

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

475 (2) Of that amount:

476 (a) The sum of \$2 million is appropriated to the Institute  
477 for the Commercialization of Public Research for the 2009-2010  
478 fiscal year to support its operations, including its management,  
479 operations, tracking, and measurement of outcomes relative to  
480 the grant program.

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

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

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

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