

of value to someone somewhere, even if they are of little use in house. Those ideas are increasingly being put up for sale.”² As a result, “vendors are offering systems to manage intellectual property and access to public exchanges to broker the \$1 trillion in intellectual assets that are languishing in United States companies.”³

Several Internet-based services have been developed to facilitate the transfer of unused ideas, products, and technologies between firms. Approximately half of all Fortune 1000 firms currently sponsor or use such services.⁴ Although research indicates that these services are fostering technology transfer among companies, it appears to be too soon to fully assess the services’ impact given the infancy of the industry.

III. Effect of Proposed Changes:

This committee substitute establishes a process by which a “donor” company can transfer an undeveloped product or technology to a “receiving” company to commercialize. Under this process, in lieu of paying fees or royalties to the donor company, the receiving company pays that compensation to the state. Then, as determined by the donor company, the state:

- allows the donor company to apply 94.5 percent of that compensation as a corporate income tax credit;
- remits 94.5 percent of that compensation to the donor company as reimbursement for the purchase of machinery, equipment, or building materials used in a Florida manufacturing facility; or
- if the donor company is sponsoring research at a state university, pays 94.5 percent of that compensation to the university to fund such research.

Because the committee substitute does not preclude two companies from conducting technology-transfer transactions outside of this new process (thus avoiding the transfer of 5.5 percent of the transactional proceeds to the state), it appears that the benefit of using the new process derives from the mechanisms by which transaction benefits are returned to the donor company. The precise nature of these advantages is, however, unclear.

The following is a section-by-section analysis of this committee substitute:

and Justin Pope, *Online exchanges help biotechs, drug companies share unused discoveries*, at <http://detnews.com/2001/technews/0104/29/technology-217901.htm>, April 28, 2001 (last visited March 3, 2002).

² Michael Kenward, *Making a profit from ideas*, at <http://news.ft.com/ft/gx.cgi/ftc?pagename=View&c=Article&cid=FT3Y2A3XPOC&live=true>, July 4, 2001 (last visited March 3, 2002).

³ Heather Harreld, *supra* note 1.

⁴ *See id.*; Justin Pope, *supra* note 1; Julia King, *Corporate secrets up for grabs at new exchanges*, at <http://www.cnn.com/2000/TECH/computing/11/15/secret.exchanges.idg/index.html>, November 15, 2000 (last visited March 3, 2002).

Section 1 provides that this act may be cited as the “New Product Transfer Enhancement Act.”

Section 2 creates s. 288.1172, F.S., to provide for the licensing of products or technologies by donor companies to receiving companies. The provisions include:

- Describing the following terms used in the committee substitute:
 - *Donor company*: an entity subject to the tax imposed by ch. 220, F.S., (relating to corporate income tax) which has developed or holds the patent for a product or technology that it does not wish to develop itself and which has entered into a product development agreement. It should be noted that it appears that a company not doing business in Florida, but sponsoring research at a state university, would be precluded from being a donor, as would a company that owns certain intellectual property rights to a technology that it did not develop or patent.
 - *Receiving company*: a business operating in Florida which has entered into a product development agreement for the purpose of obtaining the right to produce and market a product or technology from a donor company.
 - *Product development agreement*: a contract or series of contracts which provides the receiving company with the right to produce and market a product or technology which was developed or patented by the donor company. An agreement must specify that a minimum of 75 percent of the jobs created by the production of the new product or technology must be located in Florida. An agreement must also specify the amount of compensation to be remitted by the receiving company for the license and the type of credit the donor company has elected to receive. The type of credit, payment, or reimbursement specified in the agreement may not be changed for the initial tax year. A donor company may elect to change the type of credit, payment, or reimbursement in subsequent tax years by filing a written election with the Department of Revenue (DOR) in a format specified by DOR. DOR must receive such election at least 30 days before the due date for the annual statement of fees due for that tax year. A donor company may elect only one type of credit, payment, or reimbursement for a tax year.
 - *Annual statement of donor credit (ASDC)*: the statement produced by DOR for each donor company listing the total amount of credit available to the donor company for all product development agreements it has entered into. This statement must also include any additional information specified in the product development agreement. It should be noted that, because the ASDC must include all information contained in the product development agreement forged by two companies, the scope of DOR’s responsibilities with regard to the development and production of ASDCs is uncertain and could change on a case-by-case basis.
 - *Annual statement of fees due (ASFD)*: the statement submitted by the receiving company to DOR each year which lists the amount of fees and royalties owed by it under the product development agreement to the donor company for the preceding calendar year. This statement must also contain any additional information specified in the product development agreement.

- Prescribing the administrative steps relating to the process established by this committee substitute, including requiring receiving companies to submit ASFDs to DOR; requiring DOR to produce an ASDC for each donor company; establishing the annual donor credit for each donor company at 94.5 percent of the annual fees derived from all product agreements; specifying that the annual donor credits may not exceed 94.5 percent of the amount due the state under all ASFDs; requiring DOR to certify, by March 1 each year, the amount of corporate income tax credit, purchase price reimbursement, or payment of sponsored research due each donor company; requiring DOR to send, within 30 days after such certification, an ASDC to each donor company; and requiring DOR to distribute, within 90 days after such certification, purchase price reimbursements and sponsored research payments pursuant to s. 212.20(6)(d)7.e., F.S., as created by section 6 of this committee substitute. DOR, however, indicates in its analysis of this committee substitute that optimal administration of the provisions of this committee substitute would require certain changes to be made to the terminology and schedule relating to the timing of the various form- and fee-submission processes created by this committee substitute.⁵
- Providing for a donor company to: (1) apply the amount in its ASDC as a corporate income tax credit under s. 220.1825, F.S.; (2) receive the amount in its ASDC as reimbursement for the purchase of machinery, equipment, or building materials used in a Florida manufacturing facility; or (3) if the donor company is sponsoring research at a state university, elect for the state to pay the amount in its ASDC to the university to fund such research.

Section 3 creates s. 220.115, F.S., to require a receiving company to remit to the state any funds due a donor company (as indicated on the ASFD) in addition to any corporate income taxes normally due the state under ch. 220, F.S.

Section 4 creates s. 220.1825, F.S., to establish 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. This section limits the credit to 94.5 percent of the amount indicated in the annual statement of fees due and allows a five-year carry-forward of any unused credit. Although this committee substitute provides for this 94.5-percent credit, the disposition of the remaining 5.5 percent of the funds remitted by the receiving company under section 3 of this committee substitute is unclear.

Section 5 amends s. 220.02(8), F.S., to clarify legislative intent with regard to the order in which the corporate income tax credit created by this committee substitute may be applied against either the corporate income tax or the franchise tax.

Section 6 adds a sub-subparagraph e. to s. 212.20(6)(d)7., F.S., to provide that, within 90 days after certifying the amount of purchase price reimbursement or payment of sponsored research

⁵ See Department of Revenue, *Bill Analysis for SB 562 (Amendment)*, March 13, 2002.

due each donor company pursuant to s. 288.1172, F.S., DOR must distribute such amount using proceeds as provided in this subparagraph.⁶

Section 7 provides that this act takes effect January 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The provisions of this committee substitute might require or result in the dissemination of potentially sensitive commercial information via several different vehicles, including product development agreements, annual statements of fees due, annual statements of donor credit, and summaries of annual statements of donor credit. The Legislature may wish to create a public records exemption for certain types of information required or generated by the provisions of this committee substitute.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates the fiscal impact of this committee substitute to be “indeterminate.”

B. Private Sector Impact:

To the extent the provisions of this committee substitute increase the amount of technology transfer occurring in the state, businesses and individuals might benefit.

C. Government Sector Impact:

This committee substitute requires the Department of Revenue to undertake several new responsibilities. The department estimates that its administration of this committee substitute would require the following resources:⁷

⁶ Section 212.20, F.S., governs the distribution by the Department of Revenue of funds collected under the provisions of ch. 212, F.S.

⁷ See Department of Revenue, *supra* note 5.

	FY 2002-03 <i>(From the General Revenue Fund)</i>	FY 2003-04 <i>(From the General Revenue Fund)</i>
Nonrecurring Resources		
Expenses	\$6,122	
Operating Capital Outlay	3,000	
Subtotal	\$9,122	
Recurring Resources		
FTE	2.00	2.00
Salaries	\$94,113	\$94,113
Expenses	13,708	13,708
Subtotal	\$107,821	\$107,821
Total	\$116,943	\$107,821

It does not appear that this committee substitute would have any significant fiscal impact on the Department of Banking and Finance.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

⁸ See Department of Banking and Finance, *Fiscal Analysis for SB 562*, February 1, 2002; and Interview of Department of Banking and Finance staff by staff of the Senate Committee on Commerce and Economic Opportunities, February 1, 2002.