The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 1644

INTRODUCER: Commerce Committee and Senator Ring

SUBJECT: Economic Development

DATE: March 26, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Fav/CS**
2.	Wilson	Wilson	GO	**Pre-Meeting**
3.			FT	
4.			TA	
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Florida is among several states exploring innovative incentives to support technology-based businesses with the potential to create high-wage, high-skills jobs.

CS/SB 1644 creates the "Micro-Targeted Technology Commercialization Act." It takes a two-pronged approach to infusing operating cash into eligible Florida-based business start-ups and first-stage companies:

- First, it allows certified micro-targeted technology companies to package their net operating losses (NOL) as transferrable corporate tax credits, and to sell them to non-affiliated companies for at least 75 percent of the loss amount. The amount claimed against state corporate income taxes each fiscal year is capped at $3 million.
- Second, it creates a commercialization grant program, where eligible businesses can obtain grants of up to $500,000 for their operating needs. The Institute for Commercialization of Public Research (institute) reviews the grant applications and makes recommendations to the Governor's Office of Tourism, Trade, and Economic Development (OTTED) on which to fund.

CS/SB 1644 funds the new programs over a 4-year period with $22 million from the uninvested portion of the Florida Opportunity Fund, created by the Legislature in 2007 to match private venture-capital investment into Florida-based funds that invest in Florida-based high-tech and life science businesses.

"Micro-targeted technology" is defined in CS/SB 1644 as individual components, technologies, or processes that are crucial to the development of larger or more complex devices, processes, or information systems. Examples of micro-targeted technologies are special bolts and screws for wind turbines, battery components for electric cars, flame-retardant polymers for firefighters' coveralls, and fluorescent particles added to currency to prevent counterfeiting. The institute or any other Florida research-based consortium will assist in identifying qualifying technologies, which will be included in an annually updated list adopted by OTTED through rulemaking.

Both programs expire June 30, 2013, unless reenacted by the Legislature.

CS/SB 1644 takes effect upon becoming a law.

II. Present Situation:

Florida business incentives to promote "innovative economy"
Florida offers at least 16 different business-related incentives and numerous sales-tax exemptions for businesses, designed to keep in-state businesses competitive, and to recruit new or retain existing companies.[1] There is a mix of industry-specific incentives and exemptions, and others which are broader in scope.

Over the last 5 years, the state of Florida has taken steps to diversify its economic base by recruiting established science and technology research institutes and companies, and by creating programs designed to nurture young companies in similar fields. A snapshot of those efforts to build an "innovation economy" includes:

- In 2003, the Legislature and then-Governor Bush used $310 million in federal stimulus funds (to be matched with local funds and in-kind contributions) to persuade California-based The Scripps Research Institute to open a research and development (R&D) laboratory in Palm Beach County.[2] Scripps Florida recently moved into its permanent facilities in Jupiter.
- The Legislature in 2006 created the Innovation Incentive Program,[3] designed to recruit large innovation companies and R&D institutes to Florida to create high-wage, high-skill jobs and to act as catalysts for complementary economic development. In its first two years, the program received $450 million in state appropriations, and spent nearly all of that attracting seven institutes or labs. In 2008, the Legislature added alternative and renewable energy companies to the mix of eligible projects. The program was not funded in FY 2008-2009, and the Governor is not recommending any funding for the upcoming fiscal year.
- In 2007, the Legislature passed the Capital Formation Act,[4] a multi-faceted approach to nurturing Florida entrepreneurs and young Florida companies, with a total appropriation of $35 million. The State University Research Commercialization Assistance Grants Program

[1] 2008 Incentives Report. Prepared by Enterprise Florida, Inc (EFI). Available at www.eflorida.com.
[2] Chapter 2003-420, L.O.F.
[3] Chapter 2006-55, L.O.F.
[4] Chapter 2007-189, L.O.F.

provides $1 in state funds for each $1 in private investment to commercialize university-based research.[5] The Institute for the Commercialization of Public Research (institute) acts as a clearinghouse for university and other public-funded research that is seeking investors to help finance the full commercialization of a product or service. Finally, the Florida Opportunity Fund was created to provide state venture capital, to be matched by private investment, for investment in seed and early-stage venture capital funds focused on Florida companies engaged in life sciences, information technology, aviation and aerospace, and other strategic technologies.[6]

- Economic stimulus legislation passed in 2008[7] directed the State Board of Administration to invest a maximum of 1.5 percent of the net asset value of the Florida Retirement System Trust Fund in technology and growth investments in businesses that are either domiciled in Florida, or whose principal address is in Florida. The investments may be in such areas as space technology, aerospace and aviation engineering, computer technology, renewable energy, and medical and life sciences.
- During a January 2009 special session, the Legislature approved one of Governor Crist's initiatives described as "economic gardening,"[8] a $10 million program that will provide technical assistance and low-interest, short-term loans to small companies within targeted industry groups[9] that have experienced employment and revenue growth in recent years.

A related effort has been the work of the Task Force for Biotech Competitiveness, created in 2007 to "study economic policies necessary for making Florida competitive with other states in attracting and retaining a biotech manufacturing and distribution workforce."[10] The task force recently published an interim report[11] that includes a number of recommendations on how to nurture scientific and technological breakthroughs by Florida researchers and entrepreneurs into products and services produced or marketed by new Florida companies.

Recent efforts by other states to "grow" technology companies

Several states are implementing new types of incentives to reduce business costs of large and small technology companies, and provide access to operating capital. For example:

- Massachusetts offers tax credits, tax exemptions, and tax-increment financing to biotech companies that relocate or expand into specified "Economic Target Areas," and a tax credit equal to 50 percent of the eligible jobs' salaries, multiplied by the applicable state income tax rate, to biotech companies that create at least 10 new jobs in a single fiscal year.[12]
- North Carolina, with its Research Triangle Park, offers a package of incentives to biotech companies. One interesting incentive is the "Job Development Investment Grant," which provides annual grants to new and existing companies based on a percentage of withholding

[5] In the spring of 2008, the Florida Technology, Research, and Scholarship Board awarded 24 grants, totaling $1.92 million.

[6] The Legislature in 2007 appropriated $29.5 million to capitalize the Florida Opportunity Fund. To date, it has entered into $4 million in investment contracts with venture capital funds, and is finalizing at least three more contracts, according to conversations with Louis Laubscher, EFI's senior vice president and chief operating officer, on March 11, 2009. Notes on file with the Senate Commerce Committee.

[7] Chapter 2008-31, L.O.F.

[8] Chapter 2009-13, L.O.F.

[9] Recipients must be eligible for the Qualified Targeted Industry tax refund program, in s. 288.106, F.S.

[10] Chapter 2007-152, L.O.F.

[11] On file with the Senate Commerce Committee.

[12] http://www.areadevelopment.com/Print/specialPub/apr07/biotechincentives.html.

taxes paid by their new employees – so the more employees hired, or at least the more employees hired at higher wages, the larger the grant.[13]

- Pennsylvania's "Life Sciences Greenhouse," created in 2001 as a public-private partnership involving the state, the city of Pittsburgh, three universities, and private foundations, targets pre-commercial seed companies and early-stage companies within the state. So far, it has made 57 direct investments totaling $13.2 million.[14]
- The federal government, and 31 states, already allow biotech and other types of businesses to carry forward their "net operating losses" (NOL) for a period of time as a deduction to income. Last September, California enacted a law allowing biotech and biopharma companies to carry forward their net operating losses up to 20 years.
- Ten years ago, New Jersey created another way for biotech companies to use their NOL monetized as a transferrable tax credit.[15] The "Technology Business Tax Certificate Transfer Program" enables approved, unprofitable technology and biotechnology businesses to sell their unused NOL and state R&D tax credits to unaffiliated, profitable corporate taxpayers for at least 75 percent of their value. This allows unprofitable technology and biotechnology businesses to turn their tax losses and credits into cash to buy equipment or facilities, or for other allowable expenditures. The program is capped at $60 million annually, and since its inception, more than 500 individual eligible companies have taken advantage of the transfer program. [16]

III. Effect of Proposed Changes:

CS/SB 1644 creates two incentives for micro-targeted technology businesses: a one-time transferable tax credit based on monetized net operating losses of eligible companies (Section 7 of the bill) and a grant program (Section 8 of the bill). Both programs are managed by OTTED, with assistance from DOR for the tax credit program and from the institute for the grant program. The incentives are to be funded with an uninvested portion of the Florida Opportunity Fund.

Section 1 names CS/SB 1644 as the "Micro-Targeted Technology Commercialization Act."

Section 2 expresses the legislative purpose of the act.

Section 3 amends s. 213.053, F.S., to allow DOR to disclose to OTTED, its employees, and its contracted agents confidential taxpayer information related to the NOL transferrable tax credit program. The information must remain confidential.

Section 4 amends s. 220.02, F.S., the order in which the NOL tax credits may be applied against corporate tax liability.

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[13] Ibid.
[14] http://www.genomeweb.com/print/912239?page=show.
[15] See: http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=577&menuid=1204&topid=718&levelid=6&midid=1175
[16] Interview with John Rosenfeld, director of program services for the New Jersey Economic Development Agency, on February 26, 2009.

Section 5 amends s. 220.13, F.S., to specify that sellers of NOL tax credits may not deduct the amount of their losses from their taxable income, but may subtract the amount of money they received from buyers for their NOL tax credits.

Section 6 amends s. 220.16, F.S., to require that the money paid for a NOL tax credit must be included in the seller's income for Florida corporate income tax calculations.

Section 7 creates s. 220.194, F.S., the "Micro-Targeted Technology Commercialization Credit Transfer Program," which allows eligible companies to bundle their net operating losses (NOL) into transferrable tax credits that the companies can sell. The proceeds from the sale then can be used for operating and other business-related expenditures.

This section expresses the NOL tax credit program's purpose, goals and objectives, which include accelerating the entry of new technology-based products into the marketplace and encouraging the growth of high-quality, high-wage jobs for Florida.
A number of terms are defined, including:

- "Certified credit" means an eligible company's NOL in a given year as apportioned to its Florida operations, multiplied by the corporate income tax rate imposed during the year the NOL occurred.
- "Certified micro-targeted technology company" means a business entity that is registered with the Florida Secretary of State, is currently operating in Florida, and has been certified by OTTED to package its NOL as transferrable tax credits.
- "Micro-targeted technology" means individual components, technologies, or processes that are crucial to the development of larger or more complex devices, processes, or information systems. The institute or other Florida research-based consortium is directed to identify examples of micro-technology and compile a list, to be updated annually, to add new technologies and delete others that are no longer applicable. OTTED will adopt the list through ch. 120, F.S., rulemaking.

The NOL transferrable tax credit program is not complicated, but involves several steps from certification to actual transfer of credits, and includes annual reporting requirements. To start the process, companies must file completed applications, accompanied by a $100 fee per application, with OTTED. A company must meet numerous criteria before it can be certified by OTTED to participate in the program:

- It must be registered with the Secretary of State's Office to operate in Florida.
- It must be operating its business in Florida.
- It is primarily engaged in developing, manufacturing, producing, or providing micro-targeted technology for commercial or public purposes.
- It has fewer than 100 full-time, worldwide employees, including full-time employees leased to the applicant, of which at least 75 percent work full time in this state at the time the NOL credit transfer is first allowed.
- It has been audited by an independent certified public accountant, whose audit documents that the company:
  - Has not had positive net income in any of the 2 previous years of ongoing operations;
  - Has reported a NOL in at least one of the previous 2 years of operation; and

  - Is not at least 50-percent owned or controlled, directly or indirectly, by another corporation, nor is part of a consolidated group of affiliated corporations, which has demonstrated positive net income in any of the 2 previous years.
- It has at least one active application for a patent under 35 U.S.C. s. 111(a) on file with the United States Patent and Trademark Office.
- It has received research grants from governmental entities, foundations, and other private entities, or received financial assistance from investors.
- It has an established business plan that describes its commercialization strategy, a business-development plan that includes revenue projections and a strategy for becoming profitable, and a timeline for development which addresses revenue growth and job creation in this state.
- It can certify that:
  - It will not transfer a NOL tax credit for less than 75 percent of the certified credit amount;
  - All proceeds from the transfer will be expended to support the operation or expansion of the company's business activity in this state; and
  - It shall notify OTTED of the amount transferred within 30 days after each certified credit is transferred, the amount received for each tax credit, and the identity of the purchaser of the certified credit.

Besides documenting its eligibility for the program, the company must include with the application information about how much of its NOL it requests to be transferred as a certified tax credit. There is a $1 million limit on the amount of NOL tax credits that a qualified company can transfer over its lifetime.

OTTED has 90 days after receiving an application to approve or deny it. During that time OTTED, with assistance from DOR, will review a company’s application and may ask for supplemental documentation, such as state and federal tax returns, to confirm the company’s information. If OTTED denies the application, it shall inform the company of the reasons for denial.

CS/SB 1644 does not create a presumption that an applicant will be approved for the NOL tax credit transfer program. At a prospective applicant’s request, OTTED may issue a nonbinding opinion letter, as to the company’s eligibility and potential amount of NOL tax credits it may be awarded.

Corporations purchasing the transferred NOL tax credits can claim them on their next tax return due, but no later than 1 year after the tax credit transfer was made. Purchasers of the NOL tax credits cannot resell them. No more than $3 million transferrable NOL tax credits can be claimed in a single fiscal year.

It is the responsibility of the certified micro-targeted technology company that transferred the NOL tax credits to notify OTTED within 30 after the transfer of the amount transferred, the amount of money received, and the identity of the purchaser. OTTED must certify the same information to DOR within 14 working days.

Each micro-targeted technology company that transferred NOL tax credits must submit an annual report to OTTED, due each January 3, that summarizes its development in the year since it sold its credits. The annual report must include the company's:

- Commercialization strategy;
- Business development plan;
- Timeline for development;
- Actual revenue and revenue projections, both total and within Florida only; and
- Actual employment and employment projections, both total and within Florida only.

OTTED is authorized to adopt rules to administer the program, including the format for the application forms; criteria for qualified technology research and experimental development, production, or provision of technology for commercial or public purposes; development; and its procedures for implementing the program. Also, DOR is authorized to adopt rules to administer its responsibilities under the new program.

Section 8 creates s. 288.95, F.S., the "Micro-Targeted Technology Commercialization Assistance Grant Program." It has a similar purpose and similar goals, objectives, and definitions to that of the NOL transferrable tax credit program. However, overlap between the two programs is expected to be minimal, since the applicants for the grant program are expected to be start-ups or extreme early-stage companies, with fewer than 25 employees.

These young companies will apply for the grant funds through the institute, which is partnering with OTTED to review applications and provide the recommendations. To be eligible, applicants must:

- Be a company specializing in micro-targeted technology which is registered with the Secretary of State to operate in Florida;
- Conduct its business activities in this state;
- Have fewer than 25 full-time, worldwide employees, including full-time employees leased to the applicant, of which at least 75 percent are domiciled in this state;
- Have at least one active application for a patent under U.S.C. s. 111(a) filed with the United States Patent and Trademark Office;
- Have received research grants or other financial assistance from governmental entities, foundations, and other private entities or investors, which in total at least equals the amount of the grant being requested through this program;
- Have been selected to receive state university research commercialization assistance grant funding, pursuant to s. 1004.226, F.S., and have an executed agreement with the licensing institution; and
- Have an established business plan that describes its commercialization strategy, a business development plan that includes revenue projections and a strategy for becoming profitable, and a timeline for development that addresses revenue growth and job creation in this state.

OTTED and the institute will coordinate an "open call" for applications twice a year, and OTTED will provide administrative support, as needed, to the institute in support of the grant program. If the applications are mailed to OTTED, that entity will forward them to the institute within 15 days after the submittal deadline date.

The institute's board of directors will review the applications based on the previously mentioned eligibility guidelines, and submit a list of recommended grant awardees for OTTED's final approval. Individual grants can total up to $500,000, and the total amount of grants recommended to OTTED may not exceed $4.5 million in any 1 year.

OTTED's executive director will review the list of recommendations, and may approve or reject individual recommendations within 30 days after receiving the list, and awardees should receive the grants within 45 days after the approval. As with the NOL transferrable tax credit program, CS/SB 1644 does not create a presumption that an applicant will receive a grant, although at a prospective applicant's request, OTTED may issue a nonbinding opinion as to the applicant's eligibility and potential grant amount.

The grant funds shall be used by recipients to pay only wages, rent, and other operating expenses, and to purchase equipment and supplies necessary to their operations. <u>Grant funds specifically may not be used to retire company debt.</u>

Each successful applicant must submit to the institute and OTTED an annual report on its development since receiving the funds. The report must include the applicant's commercialization strategy; business development plan; timeline for development; actual revenue and revenue projections, both total and within Florida only; and actual employment and employment projections, both total and within Florida only. The report is due on the anniversary date of when the applicant received the grant.

OTTED, assisted by the institute, must submit an annual report of the grant program's activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives, each July 15, beginning in 2010.

Also, prior to the 2011 Regular Legislative Session, the Office of Program Policy Analysis and Government Accountability must conduct a review and evaluation of the grant program, specifically of whether the grant program has been successful in sustaining and nurturing young micro-targeted technology companies so that they can create high-wage jobs and attract outside investment.

OTTED is authorized to adopt rules to administer the grant program, including establishing the form and content of application forms and the eligibility criteria for applicants.

<u>Section 9</u> specifies appropriations for the two programs. To fund the programs, $22 million is transferred from the Florida Opportunity Fund to the Economic Development Trust Fund within OTTED, and shall be available for carryforward by OTTED. The $22 million is to be distributed this way:

- $2 million is re-appropriated to the institute to support its operations, including its management, operations, tracking, and measurement of outcomes relative to the grant program.
- $14 million shall be retained in the Economic Development Trust Fund and earmarked for the Micro-Targeted Technology Commercialization Assistance Grants.
- $5.8 million shall be retained in the Economic Development Trust Fund to be used to reimburse the state's General Revenue Fund for the cost to the state of the NOL tax credits.

- $200,000 shall be retained in the Economic Development Trust Fund to be used by OTTED to defray its administrative costs in implementing the Micro-targeted Technology Commercialization Act and administrative costs associated with the Innovation Incentive Program.

Section10 repeals ss. 220.194 and 220.195, F.S. (sections 7 and 8 of the bill), effective June 30, 2013, unless earlier reviewed and reenacted by the Legislature.

Section 11 specifies this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/SB 1644 uses previously appropriated state general revenue funds to pay for its transferable tax credit program and grant program. As such, it proposes transferring $22 million of the unexpended balance of the Florida Opportunity Fund to the Economic Development Trust Fund, to pay for the Micro-Targeted Technology Commercialization Act tax-credit and grant programs. The Economic Development Trust Fund would reimburse the state's general revenue fund for any loss of state revenue resulting from the tax credits, which are capped at $3 million a year.

When evaluating the original bill, the Revenue Estimating Conference at its March 21, 2009, meeting, adopted by consensus a $3 million negative cash impact on state revenues over the next 3 fiscal years.

B. Private Sector Impact:

Indeterminate. On the positive side, CS/SB 1644 will provide operating funds to micro-targeted technology businesses, to sustain them as they seek to establish themselves in the marketplace. The operating funds could have positive direct and indirect economic benefits to the company's employees and vendors within Florida.

Conversely, the Florida Opportunity Fund, a private, not-for-profit corporation that is funded with public money and with a sole shareholder (EFI) that is a public-private partnership, would have to scale back its plans to jointly invest with purely private venture-capital firms.

C. Government Sector Impact:

Additionally, CS/SB 1644 creates increased workloads on OTTED, DOR, and the institute. The institute receives a $2 million appropriation that can be used, among other things, to pay its administrative costs incurred to perform its duties related to the Micro-targeted Technology Commercialization grant program. OTTED, meanwhile, receives $200,000 to fund its administrative costs incurred to perform its responsibilities under the bill and to administer the Innovation Incentive Program.

At this time, DOR and OTTED have not indicated the resources they may need to implement this act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that agency rulemaking will determine the list of approved micro-targeted technologies. While rulemaking is the customary method of implementing statutory directives in Executive Branch agencies, the practicalities associated with this approach raise at least three policy considerations. *First*, the rule, as such, may be challenged by any substantially affected party. This challenge may extend also to the repeal of a rule, since the approved technology may be disapproved at some future date. All parties to these transactions need to understand that such a commitment to formalized disclosure is accompanied by a fairly disciplined set of practices associated with the making of public policy among agencies with delegated powers. *Second*, the use of rulemaking, while appropriate for most governmental functions, does have the effect of creating a set of “approved” government technologies which may bear little relationship to the science which is supposed to underpin this program. What may appear consensual in rule may reflect the dictates of the possible among differing participants, statements of public policy, or the agreement of scientific peers. *Three*, it is assumed that the process criteria contained in s. 7 of the bill will have some bearing upon the selection of the micro-commercialization strategy. The nominal agency participants will have to assure that there is some identification of the substance of the technology, not merely that there is a process for the “approval” of that which cannot be articulated.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Commerce Committee on March 25, 2009:

- Makes consistent throughout the legislation all references to the NOL transferable tax credits as a "certified credits."
- Clarifies that the businesses seeking certification for the tax-credit program must be operating in Florida.
- Moves the grant program from ch. 220.195, F.S., to ch. 288.95, F.S., which is a more appropriate location; and
- Reduces the amount transferred from the Florida Opportunity Fund from $29 million to $22 million, to be distributed this way:
  - $14 million for the grant program;
  - $5.8 million for the NOL tax credits;
  - $2 million for the Institute for Commercialization of Public Research (unchanged from original bill); and
  - $200,000 to OTTED to pay its administrative costs associated with the Micro-targeted Technology Commercialization program and the Innovation Incentive Program.

B. Amendments:

None.