

Bill No. CS for CS for SB 2420

Barcode 701998

CHAMBER ACTION

Senate

House

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The Committee on Finance and Tax (Haridopolos) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Sections 288.9621, 288.9622, 288.9623, 288.9624, and 288.9625, Florida Statutes, are created to read:

288.9621 Short title.--Sections 288.9621-288.9625 may be cited as the "SURE Venture Capital Act."

288.9622 Findings and intent.--

(1) The Legislature finds and declares that there is a need to increase the availability of seed capital and early stage venture equity capital for emerging companies in this state which are commercializing university research, technology, or patents, or commercializing any other state-supported research organization's technology, products, or patents, including, without limitation, enterprises in life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and

Bill No. CS for CS for SB 2420

Barcode 701998

1 defense, as well as other strategic technologies.

2 (2) It is the intent of the Legislature that ss.

3 288.9621-288.9625 serve to mobilize investment in a broad

4 variety of Florida-based, new technology companies within

5 diversified industries; retain private-sector-investment

6 criteria focused on rate of return; use the services of a

7 highly qualified manager in the venture capital industry;

8 facilitate the organization of the SURE Venture Capital Fund

9 as a coinvestor in seed and early stage companies; market

10 products developed in universities and publicly funded

11 entities located in this state; and precipitate capital

12 investment and extensions of credit to and in the SURE Venture

13 Capital Fund. It is the further intent of the Legislature that

14 an institute be created to mentor, market, and attract capital

15 to such commercialization ventures throughout the state of

16 Florida.

17 (3) It is the intent of the Legislature to mobilize

18 venture equity capital for investment in a manner that results

19 in a significant potential to create new businesses and jobs

20 throughout this state which are based on high-growth-potential

21 technologies, products, or services and which will further

22 diversify the economy of this state.

23 288.9623 Definitions.--As used in ss.

24 288.9621-288.9625:

25 (1) "Designated investor" means a person, other than

26 the board, who purchases an equity interest in the SURE

27 Venture Capital Fund, or who is a party to a certificate, or

28 who is a lender to the SURE Venture Capital Fund.

29 (2) "SURE Venture Capital Fund" or "fund" means the

30 private, not-for-profit corporation in which a designated

31 investor purchases an equity interest or to which a designated

Bill No. CS for CS for SB 2420

Barcode 701998

1 investor extends credit.

2 (3) "SURE Fund Board" or "directorate" means the board
3 of directors of the SURE Venture Capital Fund.

4 288.9624 SURE Venture Capital Fund.--

5 (1)(a) Enterprise Florida, Inc., shall facilitate the
6 creation of the SURE Venture Capital Fund, a private,
7 not-for-profit corporation organized and operated under
8 chapter 617. Enterprise Florida, Inc., shall be the
9 corporation's sole shareholder or member. The corporation is
10 not a public corporation or instrumentality of the state.

11 (b) The purpose of the SURE Venture Capital Fund is to
12 select an early stage venture capital investment advisor,
13 negotiate for investment capital or loan proceeds from
14 private, institutional, or banking sources, and coinvest
15 capital in companies in this state which are accepted into or
16 promoted by the Institute for the Commercialization of Public
17 Research. The fund shall manage its business affairs and
18 conduct business consistent with its organizational documents
19 and the purposes set forth in this section. Notwithstanding
20 the powers granted under chapter 617, the corporation may not
21 amend, modify, or repeal a bylaw or article of incorporation
22 without the express written consent of Enterprise Florida,
23 Inc.

24 (2)(a) The vice chair of Enterprise Florida, Inc.,
25 shall select from among its sitting board of directors a
26 five-person appointment committee. The appointment committee
27 shall select five initial members of a board of directors for
28 the fund.

29 (b) The persons elected to the initial board of
30 directors by the appointment committee shall include persons
31 who have expertise in the area of the selection and

Bill No. CS for CS for SB 2420

Barcode 701998

1 supervision of early stage investment managers or in the
 2 fiduciary management of investment funds and other areas of
 3 expertise as considered appropriate by the appointment
 4 committee.

5 (c) After election of the initial board of directors,
 6 vacancies on the board shall be filled by vote of the board of
 7 directors of Enterprise Florida, Inc., and board members shall
 8 serve terms as provided in the fund's organizational
 9 documents.

10 (d) Members of the board are subject to any
 11 restrictions on conflicts of interest specified in the
 12 organizational documents and may not have an interest in any
 13 venture capital investment selected by the corporation under
 14 ss. 288.9621-288.9625.

15 (3) The board shall organize the SURE Venture Capital
 16 Fund, select an early stage venture capital investment
 17 manager, negotiate the terms of a contract with the SURE
 18 Venture Capital Fund investment manager, execute the contract
 19 with the selected venture capital investment fund manager on
 20 behalf of the SURE Venture Capital Fund, manage the business
 21 affairs of the SURE Venture Capital Fund, such as accounting,
 22 audit, insurance, and related requirements, solicit and
 23 negotiate the terms, contract for and receive investment
 24 capital and loan proceeds with the assistance of the
 25 investment manager, receive investment returns, pay investors
 26 and debtors, and reinvest the investment returns in the fund
 27 in order to provide additional venture capital investments
 28 designed to result in a significant potential to create new
 29 businesses and jobs in this state and further diversify the
 30 economy of this state.

31 (4) Upon organization, the directorate shall conduct a

Bill No. CS for CS for SB 2420

Barcode 701998

1 national solicitation for investment plan proposals from
2 qualified venture capital investment managers for the raising
3 and investing of capital by the SURE Venture Capital Fund. Any
4 proposed investment plan must address the applicant's level of
5 experience, quality of management, investment philosophy and
6 process, provability of success in fundraising, prior
7 investment fund results, and plan for achieving the purposes
8 of this act. The board shall select only venture capital
9 investment managers having demonstrated expertise in the
10 management of and investment in companies.

11 (5) A member of the board of directors shall receive
12 no compensation for his or her services, but is entitled to
13 receive reimbursement for necessary expenses, including travel
14 and per diem expenses, incurred in the performance of his or
15 her duties.

16 (6) The fund shall have all powers granted under its
17 organizational documents and shall indemnify members to the
18 broadest extent permissible under the laws of this state.

19 (7)(a) The fund may negotiate any and all terms and
20 conditions for its investments.

21 (b) The fund shall invest directly only in companies
22 in this state which are accepted into or promoted by the
23 Institute for the Commercialization of Public Research. The
24 fund shall invest only if additional private capital is
25 invested in an amount equal to or greater than the investment
26 of the fund, only if the fund's reasonable due diligence
27 determines that the company is viable and has prospects for
28 profitable operations, and only if the company has manifested
29 its intent to remain located in this state. Not more than 15
30 percent of the fund's accessible capital may be invested in
31 one company project.

Bill No. CS for CS for SB 2420

Barcode 701998

1 (8) If the fund is liquidated or has returned all
2 capital to designated investors in accordance with contractual
3 agreements, or if the guarantee capacity of the corporation,
4 at the sole discretion of the board, is sufficient for
5 additional certificates, a new funding of the SURE Venture
6 Capital Fund may be implemented for subsequent venture capital
7 investments. If the board takes exception to an additional
8 funding, such additional funding may be implemented only
9 without the benefit of certificates from the board.

10 (9) By December 1 of each year, the directorate shall
11 issue an annual report concerning the activities conducted by
12 the SURE Venture Capital Fund to the Governor, the President
13 of the Senate, and the Speaker of the House of
14 Representatives. The annual report, at a minimum, must
15 include:

16 (a) An accounting of the amount of grants and
17 proposals awarded and disbursed during the preceding fiscal
18 year by project and university.

19 (b) Information concerning the amount and nature of
20 economic activity in this state generated through university
21 and other state-supported research projects receiving funding
22 from the fund.

23 (c) Project summaries of the information reported by
24 grant recipients in paragraph (b).

25 (d) A description of the benefits to this state
26 resulting from the program, including the number of businesses
27 created, associated industries started, and the growth of
28 related research projects.

29 (e) Independently audited financial statements,
30 including statements that show receipts and expenditures
31 during the preceding fiscal year for personnel,

Bill No. CS for CS for SB 2420

Barcode 701998

1 administration, and operational costs of the fund.

2 (f) A description of those projects supported by the
3 fund in which two or more universities are working
4 cooperatively to avoid duplicating activities, programs, and
5 functions and to leverage the expertise offered by other
6 universities.

7 288.9625 Institute for the Commercialization of Public
8 Research.--There is established the Institute for the
9 Commercialization of Public Research.

10 (1) The institute shall be a not-for-profit
11 corporation registered, incorporated, and operated in
12 accordance with chapter 617.

13 (2) The purpose of the institute is to assist in the
14 commercialization of products developed by the research and
15 development activities of universities and colleges, research
16 institutes, and publicly supported organizations within the
17 state. The institute shall operate to fulfill its purpose and
18 in the best interests of the state. The institute:

19 (a) Shall be a corporation primarily acting as an
20 instrumentality of the state, pursuant to s. 768.28(2), for
21 the purposes of sovereign immunity;

22 (b) Is not an agency within the meaning of s.
23 20.03(11);

24 (c) Is subject to the open records and meetings
25 requirements of s. 24, Art. I of the State Constitution,
26 chapter 119, and s. 286.011;

27 (d) Is not subject to the provisions of chapter 287;

28 (e) Shall be governed by the code of ethics for public
29 officers and employees as set forth in part III of chapter
30 112;

31 (f) Is not authorized to create corporate

Bill No. CS for CS for SB 2420

Barcode 701998

1 subsidiaries;

2 (g) Shall support existing commercialization efforts
3 at Florida universities; and

4 (h) May not supplant, replace, or direct existing
5 technology transfer operations or other commercialization
6 programs, including incubators and accelerators.

7 (3) The articles of incorporation of the institute
8 must be approved in a written agreement with Enterprise
9 Florida, Inc. The agreement and the articles of incorporation
10 shall:

11 (a) Provide that the corporation shall provide equal
12 employment opportunities for all persons regardless of race,
13 color, religion, gender, national origin, age, handicap, or
14 marital status;

15 (b) Provide that the corporation is subject to the
16 public records and meeting requirements of s. 24, Art. I of
17 the State Constitution;

18 (c) Provide that all officers, directors, and
19 employees of the corporation shall be governed by the code of
20 ethics for public officers and employees as set forth in part
21 III of chapter 112;

22 (d) Provide that members of the board of directors of
23 the corporation are responsible for the prudent use of all
24 public and private funds and that they will ensure that the
25 use of funds is in accordance with all applicable laws,
26 bylaws, and contractual requirements; and

27 (e) Provide that the fiscal year of the corporation is
28 from July 1 to June 30.

29 (4) The affairs of the corporation shall be managed by
30 a board of directors who shall serve without compensation.
31 Each director shall have only one vote. The chair of the board

Bill No. CS for CS for SB 2420

Barcode 701998

1 of directors shall be selected by a majority vote of the
2 directors, a quorum being present. The board of directors
3 shall consist of the following five members:

4 (a) The chair of Enterprise Florida, Inc., or the
5 chair's designee.

6 (b) The president of the university where the
7 institute is located or the president's designee unless
8 multiple universities jointly sponsor the institute, in which
9 case the presidents of the sponsoring universities shall agree
10 upon a designee.

11 (c) Three directors appointed by the Governor to
12 3-year staggered terms, to which directors may be reappointed.

13 (5) The board shall provide a copy of the institute's
14 annual report to the Governor, the President of the Senate,
15 the Speaker of the House of Representatives, Enterprise
16 Florida, Inc., and the president of the university at which
17 the institute is located.

18 (6) Enterprise Florida, Inc., the president and the
19 board of trustees of the university where the institute is
20 located, the Auditor General, and the Office of Program Policy
21 Analysis and Government Accountability may require and receive
22 from the institute or its independent auditor any detail or
23 supplemental data relative to the operation of the
24 corporation.

25 (7) Enterprise Florida, Inc., shall issue a request
26 for proposals to public universities in Florida requesting
27 proposals to fulfill the purposes of the institute as
28 described in this section and provide for its physical
29 location in a major metropolitan area in the southern part of
30 the state having extensive commercial air service to
31 facilitate access by Venture Capital providers. Enterprise

Bill No. CS for CS for SB 2420

Barcode 701998

1 Florida, Inc., shall review the proposals in a committee
 2 appointed by its board of directors which shall make a
 3 recommendation for final selection. Final approval of the
 4 selected proposal must be by the board of directors of
 5 Enterprise Florida, Inc., at one of its duly noticed meetings.

6 (a) To be eligible for assistance, the company or
 7 organization attempting to commercialize its product must be
 8 accepted by the institute before receiving the institute's
 9 assistance.

10 (b) The institute shall receive recommendations from
 11 any publicly supported organization that a company that is
 12 commercializing the research, technology, or patents from a
 13 qualifying publicly supported organization should be accepted
 14 into the institute.

15 (c) The institute shall thereafter review the business
 16 plans and technology information of each such recommended
 17 company. If accepted, the institute shall mentor the company,
 18 develop marketing information on the company, and use its
 19 resources to attract capital investment into the company, as
 20 well as bring other resources to the company which may foster
 21 its effective management, growth, capitalization, technology
 22 protection, marketing or business success.

23 (8) The institute shall:

24 (a) Maintain a centralized location to showcase
 25 companies and their technologies and products;

26 (b) Develop an efficient process to inventory and
 27 publicize companies and products that have been accepted by
 28 the institute for commercialization;

29 (c) Routinely communicate with private investors and
 30 venture capital organizations regarding the investment
 31 opportunities in its showcased companies;

Bill No. CS for CS for SB 2420

Barcode 701998

1 (d) Facilitate meetings between prospective investors
2 and eligible organizations in the institute;

3 (e) Hire full-time staff who understand relevant
4 technologies needed to market companies to the angel investors
5 and venture capital investment community;

6 (f) Operate within an allocated annual budget of \$1
7 million or less; and

8 (g) Develop cooperative relationships with publicly
9 supported organizations all of which work together to provide
10 resources or special knowledge that is likely to be helpful to
11 institute companies.

12 (9) The institute may not develop or accrue any
13 ownership, royalty, patent, or other such rights over or
14 interest in companies or products in the institute and shall
15 maintain the secrecy of proprietary information.

16 (10) The institute may not charge for services
17 rendered to state universities and affiliated organizations,
18 community colleges, or state agencies.

19 Section 2. The nonrecurring sum of \$700,000 is
20 appropriated from the General Revenue Fund to the SURE Venture
21 Capital Fund for the purpose of initiating activities
22 necessary to implement its responsibilities under this act for
23 the 2007-2008 fiscal year.

24 Section 3. The nonrecurring sum of \$100,000 is
25 appropriated to Enterprise Florida, Inc., and the nonrecurring
26 sum of \$900,000 is appropriated from the General Revenue Fund
27 to the Institute for the Commercialization of Public Research
28 for the purpose of initiating activities necessary to
29 implement its responsibilities under this act for the
30 2007-2008 fiscal year.

31 Section 4. The nonrecurring sum of \$38.3 million is

Bill No. CS for CS for SB 2420

Barcode 701998

1 appropriated from the General Revenue Fund to Enterprise
 2 Florida, Inc., for the SURE Venture Capital Fund for the
 3 purpose of making investments under s. 288.9626, Florida
 4 Statutes, for the 2007-2008 fiscal year.

5 Section 5. This act shall take effect July 1, 2007.

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8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 Delete everything before the enacting clause

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12 and insert:

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A bill to be entitled

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An act relating to venture capital funds;

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creating s. 288.9621, F.S.; providing a short

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title; creating s. 288.9622, F.S.; providing

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legislative findings and intent; creating s.

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288.9623, F.S.; providing definitions; creating

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s. 288.9624, F.S.; requiring Enterprise

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Florida, Inc., to facilitate establishment of

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the SURE Venture Capital Fund; specifying

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criteria of the fund; providing for appointment

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of a board of trustees selection committee;

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providing for selection of a board of directors

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of the fund by Enterprise Florida, Inc.;

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specifying criteria; providing for terms and

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requirements of the directors; providing

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purposes of the fund; providing duties and

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responsibilities of the fund; authorizing the

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fund to charge a management fee for certain

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purposes; providing for reimbursement for

Bill No. CS for CS for SB 2420

Barcode 701998

1 travel and other direct expenses; providing for
2 powers of the fund; providing investment
3 requirements for the fund; requiring the board
4 of directors to issue an annual report on the
5 activities of the fund; providing report
6 requirements; creating s. 288.9625, F.S.;
7 creating the Institute for the
8 Commercialization of Public Research; providing
9 that the institute is a not-for-profit
10 corporation; providing that the purpose of the
11 institute is to commercialize the products of
12 public research; providing for membership of
13 the board of directors; requiring the institute
14 to provide data to certain entities; providing
15 responsibilities of the institute; prohibiting
16 the institute from having any interest in any
17 product supported by the institute; providing
18 appropriations; providing an effective date.

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