

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Finance and Tax Committee

BILL: CS/CS/CS/SB 2420

INTRODUCER: Finance and Tax Committee, Governmental Operations Committee, Commerce Committee and Senator Ring

SUBJECT: SURE Venture Capital Act

DATE: April 13, 2007

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|-----------------|-----------|---------------|
| 1. | <u>Pugh</u> | <u>Cooper</u> | <u>CM</u> | <u>Fav/CS</u> |
| 2. | <u>Rhea</u> | <u>Wilson</u> | <u>GO</u> | <u>Fav/CS</u> |
| 3. | <u>Keating</u> | <u>Johansen</u> | <u>FT</u> | <u>Fav/CS</u> |
| 4. | _____ | _____ | <u>TA</u> | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This bill creates the SURE Venture Capital Act, a program intended to promote investment in seed capital and early stage venture capital equity for emerging Florida companies.

This committee substitute creates a two-tiered structure to manage and implement the program:

- The Sure Venture Capital Fund (fund) and its board of directors are responsible for hiring the investment fund allocation manager, making the actual investments, and attracting other co-investors.
- The Institute for Commercialization of Public Research (institute), operated by a public Florida university and located within a major metropolitan area in the southern part of the state with extensive commercial air service, selects companies that will be eligible to receive the SURE investments, and helps mentor those companies.

This bill creates ss. 288.9621, 288.9622, 288.9623, 288.9624 and 288.9625 of the Florida Statutes.

II. Present Situation:

The Venture Capital Industry¹

¹ The primary source for information in this section is the National Venture Capital Association website, available at <http://www.nvca.org/def.html>. Last visited March 11, 2007.

“Venture capital” is money provided by professionals who invest alongside management in young, rapidly growing companies that have the potential to develop into significant economic contributors. Venture capital is an important source of equity for startup companies.

Venture capital investments typically have several characteristics, including an investment in a start-up or expansion-oriented company that has a higher level of risk than is typically associated with traditional bank lending activities; equity participation in the business by the venture capitalist; long-term investments with a 5- to 10-year time horizon; and an established mechanism for the payout to the venture capitalist at the end of that time period.

Venture capitalists generally:

- Finance new and rapidly growing companies;
- Purchase equity securities;
- Assist in the development of new products or services;
- Add value to the company through active participation;
- Take higher risks with the expectation of higher rewards; and
- Have a long-term orientation.

Venture capitalists actively work with the company’s management by contributing their experience and business savvy gained from helping other companies with similar growth challenges. A venture capitalist may invest before there is a real product or company organized, known as “seed investing,” or may provide capital to a company in its first or second stages of development known as “early stage investing.” Venture capitalists mitigate their risks by developing a portfolio of young companies into a single venture fund.

Over the past decade, a number of states have adopted programs targeting the formal venture capital industry. Programs fall into five basic categories:

- Direct investment by state agencies to individual businesses. This type of program may be problematic, because it is difficult to find state agency staff with appropriate expertise.
- Investment by state agencies or pension funds into privately managed funds that have extensive geographical limitations (such as enterprise zone location requirements).
- Investment by state agencies or pension funds into a portfolio of privately managed funds. Investments are made in several private partnerships along with other investors. This model is effective at diversifying risk and helping focus a variety of experienced investors on legitimate capital needs of businesses.
- Private investment spurred by offering state tax credits for qualifying investments. Programs include: direct tax credits for investment in qualified businesses and direct tax credits for investment in qualified venture capital funds.
- Private investment spurred by offering contingent state tax credits used as a source of value for guaranty of investment. The tax credits are contingent because they are not claimed unless the venture capital investment fails to meet a guaranteed rate of return.

Venture Capital in Florida

Enterprise Florida, Inc. (EFI), reports that in Florida, total venture capital spending was more than \$555 million for 114 deals in 2003 and 2004, and that 27 venture capital firms have headquarters in Florida.

EFI also reports that since the late 1990's, venture capital investment in Florida has fallen sharply both in absolute dollar terms and as a share of the U.S. total. Despite being the fourth-most populous state, Florida ranked 13th in the U.S. in terms of venture capital investment in 2004. In 2004 Florida accounted for only \$300 million, or 1.42 percent of the total venture capital funding in the U.S.

To date, Florida has promoted the investment of state funds in venture capital through two programs: the Cypress Equity Fund and the Certified Capital Company Act (CAPCO).

The Cypress Equity Fund

In 1995, the Enterprise Florida Capital Partnership, Inc., created the Cypress Equity Fund as part of a strategy to help improve Florida businesses' access to venture capital. The Cypress Equity Fund's purpose is to facilitate initial venture capital investments by Florida private financial institutions and institutional investors, and provide a means to encourage national venture capital managers to consider investment opportunities in Florida. This program invests both public and private funds into privately managed venture capital funds.

The Cypress Equity Fund is designed as a "fund of funds" to invest in national private venture capital funds that, in turn, would invest in companies with high growth potential. However, investments may be made in venture capital funds located anywhere in the country and therefore are not required to target in-state companies.

The Cypress Equity Fund began with a total of \$35.5 million in commitments: \$20.5 million from five private financial institutions, and \$15 million from the Florida State Board of Administration. The Cypress Equity Fund Management Corporation, an entity established by the Capital Development Board, is responsible for overall management of the fund. The corporation, in turn, contracts with a private equity manager to invest fund assets with national venture capital firms.

In a 1998 report on the Cypress Equity Fund, OPPAGA concluded that the fund has not contributed to achieving the goal of improving Florida businesses' access to venture capital because its investments were not targeted to in-state companies.²

As of Dec. 31, 2006, the Cypress Equity Fund portfolio is valued at \$10.3 million. Since the program's inception, distributions and realized gains to investors have totaled \$49.5 million, and the net compound internal rate of return is 22.5 percent.³

² "Review of The Enterprise Florida, Inc. Capital Development Board's Cypress Equity Fund," Report No. 98-33. Available at <http://www.oppaga.state.fl.us/monitor/reports/pdf/9832rpt.pdf>

³ Letter from Abbott Capital to Enterprise Florida, Inc., dated Feb. 15, 2007. On file with the Commerce Committee.

CAPCO

The 1998 Florida Legislature enacted the Certified Capital Company Act. This program encourages private investment in venture capital by providing direct tax credits for investment in qualified businesses. The stated purpose of this act is to stimulate a substantial increase in venture capital investments in Florida by providing an incentive for insurance companies to invest in state-certified capital companies (CAPCOs) which, in turn, will invest in new or expanding businesses. Eligible insurance companies are granted insurance premium tax credits in amounts equal to investments in CAPCOs. The increase in investment capital is intended to contribute to employment growth, create high-paying jobs, and expand or diversify Florida's economy.

A 2005 review of the CAPCO program by the Governor's Office of Tourism, Trade and Economic Development (OTTED) indicated that \$3 million was invested in 12 new investee companies, ranging from a business that specializes in transportation of construction materials, to child-care centers, to pool and spa installation.⁴ Another \$1.8 million was invested in existing companies. As of December 31, 2005, a total of \$153.4 million has been made available to the 59 investee companies, which have created 1,028 jobs.

While as many as nine states have created CAPCOs, this type of program is increasingly viewed as the more "problematic" of the Venture Capital Funds (VCF) programs, in terms of:

"...its high cost, poor design and target inefficiency. Unlike any other VCF program, the CAPCO program provides a 100% premium tax credit to insurance company investors. In effect, the government underwrites the entire investment risk."⁵

Other Models for Public Investment in Economic Development

Florida statutes include a variety of state subsidies, tax credits, and tax exemptions targeted for economic development. Most are distributed or administered by OTTED or the Department of Revenue (DOR). However, in some cases the Legislature has established an alternative mechanism for specific purposes. Recent examples include the Innovation Incentive Program, Centers of Excellence, and Scripps Funding Corporation. Briefly:

- Ch. 2006-55, L.O.F., created the Innovation Incentive Program. The purpose of the program is to provide resources for significant economic development projects, including the location or expansion of research and development entities and innovation businesses in Florida. The law appropriated \$200 million for the program for FY 2006-2007. These funds were placed in reserve by the Executive Office of the Governor. Unexpended funds for FY 2006-2007 are subject to annual appropriation.

Section 288.1089, F.S., requires Enterprise Florida, Inc. (EFI), to evaluate applications for innovation incentive funds and to recommend eligible businesses to OTTED. Next,

⁴ "Certified Capital Company Act" (CAPCO) Annual Report, January 1-December 30, 2005. Prepared by OTTED. Copy on file with the Commerce Committee.

⁵ Daniel Sandler, Professor at the Faculty of Law, The University of Western Ontario, London; senior research fellow of the Taxation Law and Policy Research Institute, Melbourne; and associated with Minden Gross Grafstein & Greenstein LLP, Toronto. See Daniel Sandler, *Venture Capital and Tax Incentives: A Comparative Study of Canada and the United States* (Toronto: Canadian Tax Foundation, 2004) ("Sandler VC Study").

OTTED must certify the applicants as qualified businesses, and then recommend qualified businesses to the Governor for approval. The Governor is required to consult with the Legislature and receive approval prior to releasing innovation incentive funds to qualified businesses.

Two recent recipients of funding under this program are the Burnham Institute (Burnham) for Medical Research and the Torrey Pines (Torrey Pines) Institute for Molecular Studies.⁶ Burnham in August 2006 announced plans to open a research facility in Orlando, and has received \$155 million in state innovation incentive funds.⁷ Torrey Pines in September 2006 announced plans to expand its research operations to the city of Port St. Lucie, and has received \$32 million in state innovation incentive funds.⁸

- Ch. 2006-58, L.O.F., created the Centers of Excellence Program, which is designed to foster and promote the research required to develop commercially-promising, advanced, and innovative science and technology and to transfer those discoveries to commercial sectors. The law established the Florida Technology, Research, and Scholarship Board within the Board of Governors of the State University System to recommend to the Board of Governors methods for implementing and administering the Centers of Excellence Program. The Board of Governors was authorized to select the Centers and disburse the \$30 million appropriated for this purpose.

In November 2006, the Board of Governors disbursed the entire amount to five universities to advance various research projects: Florida Atlantic University, Florida State University, the University of Central Florida, the University of Florida (which received two separate grants), and the University of South Florida.

- During Special Session E in 2003, the Legislature provided for the creation of the Scripps Florida Funding Corporation (corporation), which is responsible for contracting with The Scripps Research Institute (TSRI) to establish a state-of-the-art biomedical research institute and campus in this state. The funding for the contract is provided by \$310 million of the \$543.5 million in federal economic stimulus funds provided to Florida under the Jobs and Growth Tax Reconciliation Act of 2003.

OTTED was the initial recipient of the \$310 million appropriation. OTTED disbursed the funds to the corporation pursuant to a funding agreement. The purpose of the corporation was to receive a lump-sum payment of \$310 million guaranteeing that a funding source will be available for period disbursements to TSRI's Florida operation over a seven-year period. Undisbursed funds held by the funding corporation have been invested by the State Board of Administration. The law stipulated that undisbursed funds revert back to the General Revenue Fund only if the contract between the funding corporation and TSRI is terminated. To date, scheduled annual disbursements have been made to TSRI, pursuant to their contract with the corporation.

⁶ "Florida Has Implemented Promising Biotechnology Initiatives, But Faces Challenges," Report No. 06-71, by the Florida Office of Program Policy Analysis & Government Accountability. Published November 2006. Available at <http://www.oppaga.state.fl.us/reports>.

⁷ Ibid.

⁸ Ibid.

These three programs have the potential to improve state universities' role in technology transfer, a process through which an entity that develops a new technology, but does not have the wherewithal or desire to bring it to market, transfers that raw technology to another entity that has the ability to commercialize it. A 2001 report by the Senate Commerce and Economic Opportunities Committee noted that university-to-industry technology transfers can be a key factor in building a high-skill, high-wage state economy. However, the report concluded that, by 2002, Florida universities, in general, did not appear to be performing as many technology transfers as their peer universities.

The report identified the importance of university-to-business transfers, reviewed the statutory and regulatory framework for technology-transfer activities, and identified the impediments to successful university-to-industry collaboration. One of the missing "inputs required to fuel the technology-transfer process" are commercialization resources, including pre-venture "seed" funding, sound business guidance, and administrative support.

III. Effect of Proposed Changes:

The bill creates the SURE Venture Capital Act, a program intended to promote investment in seed capital and early stage venture capital equity for emerging companies in Florida.

The Sure Venture Capital Fund and its board of directors are responsible for hiring the investment fund allocation manager, making the actual investments, and attracting other co-investors. The Institute for Commercialization of Public Research, based at a south Florida public university, selects companies that will be eligible to receive the SURE investments, and helps mentor those companies.

Section 1 creates five new sections of law in ch. 288, F.S., related to the SURE Venture Capital Act.

The new s. 288.9621, F.S., names the act, and s. 288.9622, F.S., expresses legislative findings and intent.

Section 288.9623, F.S., defines terms used in the act:

- "Designated investor" means a person, other than the SURE Trust board, who has purchased an equity interest in the SURE Venture Capital Fund, or who is a party to a certificate, or who is a lender to the SURE Venture Capital Fund.
- "SURE Fund Board" or "director" means the Board of Directors of the SURE Venture Capital Fund.
- "SURE Venture Capital Fund" or "fund" means the private, for-profit limited liability company in which a designated investor purchases an equity interest or to which a designated investor extends credit.

The SURE Venture Capital Fund

Section 288.9624, F.S., requires Enterprise Florida, Inc., (EFI) to facilitate in the creation of the SURE Venture Capital Fund (fund). The fund is a not-for-profit corporation organized and

operated under chapter 617, F.S. EFI is the corporation's sole shareholder or member and the fund may not amend, modify, or repeal a bylaw or article of incorporation without the express written consent of EFI. The responsibilities of the fund are to:

- Select an early stage venture capital investment advisor;
- Negotiate for investment capital or loan proceeds from private, institutional, or banking sources; and
- Co-invest capital in Florida companies that are accepted into or promoted by the Institute of Commercialization of Public Research.

EFI's vice chairperson must select a five-person appointment committee from among EFI's board of directors. The appointment committee must select the five initial members of the fund's directorate, which must include persons who have expertise in selecting and supervising early stage investment managers, in fiduciary management of invested funds, or in other areas considered appropriate by the appointment committee. The directorate members are subject to restrictions on conflicts of interest, as expressed in corporation's organizational documents, and may not have an interest in any venture capital investment, or other investment, selected by the corporation.

The directorate shall:

- Organize the SURE Venture Capital Fund;
- Initiate a national search for an early stage venture capital investment fund allocation manager, select one based on its investment plan proposal, and negotiate and execute the fund's contract with the manager;
- Manage the business affairs of the SURE Venture Capital Fund, such as accounting, audit, insurance, and related requirements;
- Receive investment returns and reinvest the investment returns in the fund in order to provide additional venture capital investments;
- Pay investors or debtors;
- Charge fees to designated investors such that the fund's day-to-day operations after start-up activities may be conducted without subsequent legislative appropriation;
- Be eligible to receive reimbursement for travel and per diem related to the fund's business, but not receive compensation; and
- Be indemnified against liability to the broadest extent permissible under the laws of Florida.

Under the bill, the fund shall invest in, and emphasize investments in, early stage venture capital funds, focusing on investment opportunities in Florida. Not more than 15 percent of the fund's assets may be invested in any one company. The fund shall invest directly only in Florida companies that have been accepted in, or are promoted by, the Institute for Commercialization of Public Research. The following conditions also must be met:

- Additional private capital must be invested in an amount at least equal to the fund's investment;

- The fund has used reasonable due diligence to determine that the company is viable and has prospects for profitable operations; and
- The company has expressed its intent to remain located in Florida.

If the fund is liquidated or returns all capital to designated investors by agreement, or if the guarantee capacity of the fund is determined by its board to be sufficient for additional certificates, then a new funding of the SURE Venture Capital Fund may be implemented for future investments. If the directorate takes exception to an additional funding, this additional funding may be implemented only without the benefit of certificates from the directorate.

Finally, the directorate must submit an annual report to the Governor, President of the Senate, and Speaker of the House by December 1 of each year. The annual report, at a minimum, must include:

- An accounting of the amount of grants and proposals awarded and disbursed during the preceding fiscal year by project and university.
- Information concerning the amount and nature of economic activity in Florida generated through university and other state-supported research projects receiving funding from the fund.
- Grant project summaries.
- A description of the benefits to Florida resulting from the program, including the number of businesses created, associated industries started, and the growth of related research projects.
- Independently audited financial statements for personnel, administration, and operational costs of the fund.
- A description of those projects supported by the fund in which two or more universities are working cooperatively.

The Institute for Commercialization of Public Research, Inc.

Section 288.9625, F.S., establishes the Institute for Commercialization of Public Research, Inc., a not-for-profit corporation registered, incorporated, and operated in accordance with ch. 617, F.S., and provides for many of the same requirements for this institute that are required of the Institute for Human and Machine Cognition, Inc.

The bill provides that the institute be operated by a Florida public university and that the institute be located in south Florida in a major metropolitan area with extensive commercial air service. The actual site will be selected by the EFI Board of Directors after review of proposals submitted by interested public Florida universities.

The purpose of the institute is to assist in the commercialization of products developed by the research and development activities of universities and colleges, research institutes, and other publicly supported organizations within the state. The institute must support existing commercialization efforts at Florida universities and may not supplant, replace, or direct existing technology transfer operations or other commercialization programs, including incubators and accelerators.

To be eligible for assistance, the company or organization attempting to commercialize its product must be accepted by the institute before receiving the institute's assistance. The institute shall receive recommendations from any publicly supported organization for any company that is commercializing the research, technology, or patents from a qualifying publicly supported organization. The next step is that the institute shall review the business plans and technology information of each such recommended company.

For each company that is accepted, the institute shall provide mentoring, develop marketing information, and use its resources to attract capital investment into the company. The institute's other duties are to:

- Maintain a centralized location to showcase companies and their technologies and products;
- Develop an efficient process to inventory and publicize companies and products that have been accepted by the institute for commercialization;
- Routinely communicate with private investors and venture capital organizations regarding the investment opportunities in its showcased companies;
- Facilitate meetings between prospective investors and eligible organizations in the institute;
- Hire full-time staff who understand relevant technologies needed to market companies to the angel investors and venture capital investment community;
- Operate within an allocated annual budget of \$1 million or less; and
- Develop cooperative relationships with publicly supported organizations all of which work together to provide resources or special knowledge that is likely to be helpful to institute companies.

The institute is prohibited from developing or accruing any ownership, royalty, or other such rights over, or interest in, companies or products in the institute and shall maintain the secrecy of proprietary information. It also may not charge for services rendered to state universities and affiliated organizations, community colleges, or state agencies.

Section 2 appropriates the nonrecurring sum of \$700,000 from the General Revenue Fund to the SURE Venture Capital Fund to finance activities necessary to implement its responsibilities in FY 2007-2008.

Section 3 appropriates the nonrecurring sum of \$100,000 to Enterprise Florida, Inc., and the nonrecurring sum of \$900,000 from the General Revenue Fund to the Institute for the Commercialization of Public Research to finance activities necessary to implement their responsibilities in FY 2007-2008.

Section 4 appropriates the nonrecurring sum of \$38.3 million from the General Revenue Fund to Enterprise Florida, Inc., for the SURE Venture Capital Fund for the purpose of making investments under s. 288.9624, F.S., for the 2007-2008 fiscal year.

Section 5 provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the intent of the bill to stimulate greater economic activity in Florida is realized, then the private sector will benefit from the creation of high-paying jobs.

A member of the Board of Directors of the SURE Venture Capital Fund and the Institute for the Commercialization of Public Research is prohibited from receiving compensation; however, they are authorized to receive compensation for travel and per diem expenses as provided in s. 112.061, F.S

The SURE Venture Capital Fund (fund), a private, not-for-profit corporation, is appropriated a nonrecurring sum of \$700,000 from the General Revenue Fund for the purpose of initiating activities necessary to implement its responsibilities under this act for fiscal year 2007-2008. The bill does not specify where any profits of the fund would be directed.

The Institute for the Commercialization of Public Research, a not-for-profit corporation, is appropriated a nonrecurring sum of \$900,000 from the General Revenue Fund for the purpose of initiating activities necessary to implement its responsibilities under this act for fiscal year 2007-2008.

C. Government Sector Impact:

The nonrecurring sum of \$100,000 is appropriated to Enterprise Florida from the General Revenue Fund for the purpose of initiating activities necessary to implement its responsibilities for the 2007-2008 fiscal year.

In addition, Enterprise Florida, Inc., is appropriated the nonrecurring sum of \$38.3 million from the General Revenue Fund for the SURE Venture Capital Fund for the purpose of making investments under s.288.9624, F.S., for the 2007-2008 fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires that the institute be located in the southern part of the state in a large metropolitan area with extensive commercial air services. Geographical specificity regarding where “south” Florida ends and “central” Florida begins is not made expressly in the bill.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
