

By the Committees on Finance and Tax; Governmental Operations;
Commerce; and Senator Ring

593-2441-07

1 A bill to be entitled
2 An act relating to venture capital funds;
3 creating s. 288.9621, F.S.; providing a short
4 title; creating s. 288.9622, F.S.; providing
5 legislative findings and intent; creating s.
6 288.9623, F.S.; providing definitions; creating
7 s. 288.9624, F.S.; requiring Enterprise
8 Florida, Inc., to facilitate establishment of
9 the SURE Venture Capital Fund; specifying
10 criteria of the fund; authorizing the fund to
11 impose certain fees on investors; providing for
12 appointment of a board of trustees selection
13 committee; providing for selection of a board
14 of directors of the fund by Enterprise Florida,
15 Inc.; specifying criteria; providing for terms
16 and requirements of the directors; providing
17 purposes of the fund; providing duties and
18 responsibilities of the fund; authorizing the
19 fund to charge a management fee for certain
20 purposes; providing for reimbursement for
21 travel and other direct expenses; providing for
22 powers of the fund; providing investment
23 requirements for the fund; requiring the board
24 of directors to issue an annual report on the
25 activities of the fund; providing report
26 requirements; creating s. 288.9625, F.S.;
27 creating the Institute for the
28 Commercialization of Public Research; providing
29 that the institute is a not-for-profit
30 corporation; providing that the purpose of the
31 institute is to commercialize the products of

1 public research; providing for membership of
2 the board of directors; requiring the institute
3 to provide data to certain entities; providing
4 responsibilities of the institute; prohibiting
5 the institute from having any interest in any
6 product supported by the institute; providing
7 appropriations; providing an effective date.
8

9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Sections 288.9621, 288.9622, 288.9623,
12 288.9624, and 288.9625, Florida Statutes, are created to read:

13 288.9621 Short title.--Sections 288.9621-288.9625 may
14 be cited as the "SURE Venture Capital Act."

15 288.9622 Findings and intent.--

16 (1) The Legislature finds and declares that there is a
17 need to increase the availability of seed capital and early
18 stage venture equity capital for emerging companies in this
19 state which are commercializing university research,
20 technology, or patents, or commercializing any other
21 state-supported research organization's technology, products,
22 or patents, including, without limitation, enterprises in life
23 sciences, information technology, advanced manufacturing
24 processes, aviation and aerospace, and homeland security and
25 defense, as well as other strategic technologies.

26 (2) It is the intent of the Legislature that ss.
27 288.9621-288.9625 serve to mobilize investment in a broad
28 variety of Florida-based, new technology companies within
29 diversified industries; retain private-sector-investment
30 criteria focused on rate of return; use the services of a
31 highly qualified manager in the venture capital industry;

1 facilitate the organization of the SURE Venture Capital Fund
2 as a coinvestor in seed and early stage companies; market
3 products developed in universities and publicly funded
4 entities located in this state; and precipitate capital
5 investment and extensions of credit to and in the SURE Venture
6 Capital Fund. It is the further intent of the Legislature that
7 an institute be created to mentor, market, and attract capital
8 to such commercialization ventures throughout the state of
9 Florida.

10 (3) It is the intent of the Legislature to mobilize
11 venture equity capital for investment in a manner that results
12 in a significant potential to create new businesses and jobs
13 throughout this state which are based on high-growth-potential
14 technologies, products, or services and which will further
15 diversify the economy of this state.

16 288.9623 Definitions.--As used in ss.

17 288.9621-288.9625:

18 (1) "Designated investor" means a person, other than
19 the board, who purchases an equity interest in the SURE
20 Venture Capital Fund, or who is a party to a certificate, or
21 who is a lender to the SURE Venture Capital Fund.

22 (2) "SURE Venture Capital Fund" or "fund" means the
23 private, not-for-profit corporation in which a designated
24 investor purchases an equity interest or to which a designated
25 investor extends credit.

26 (3) "SURE Fund Board" or "directorship" means the board
27 of directors of the SURE Venture Capital Fund.

28 288.9624 SURE Venture Capital Fund.--

29 (1)(a) Enterprise Florida, Inc., shall facilitate the
30 creation of the SURE Venture Capital Fund, a private,
31 not-for-profit corporation organized and operated under

1 chapter 617. Enterprise Florida, Inc., shall be the
2 corporation's sole shareholder or member. The corporation is
3 not a public corporation or instrumentality of the state.

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

17 (2)(a) The vice chair of Enterprise Florida, Inc.,
18 shall select from among its sitting board of directors a
19 five-person appointment committee. The appointment committee
20 shall select five initial members of a board of directors for
21 the fund.

22 (b) The persons elected to the initial board of
23 directors by the appointment committee shall include persons
24 who have expertise in the area of the selection and
25 supervision of early stage investment managers or in the
26 fiduciary management of investment funds and other areas of
27 expertise as considered appropriate by the appointment
28 committee.

29 (c) After election of the initial board of directors,
30 vacancies on the board shall be filled by vote of the board of
31 directors of Enterprise Florida, Inc., and board members shall

1 serve terms as provided in the fund's organizational
2 documents.

3 (d) Members of the board are subject to any
4 restrictions on conflicts of interest specified in the
5 organizational documents and may not have an interest in any
6 venture capital investment selected by the corporation under
7 ss. 288.9621-288.9625.

8 (3) The board shall organize the SURE Venture Capital
9 Fund, select an early stage venture capital investment
10 manager, negotiate the terms of a contract with the SURE
11 Venture Capital Fund investment manager, execute the contract
12 with the selected venture capital investment fund manager on
13 behalf of the SURE Venture Capital Fund, manage the business
14 affairs of the SURE Venture Capital Fund, such as accounting,
15 audit, insurance, and related requirements, solicit and
16 negotiate the terms, contract for and receive investment
17 capital and loan proceeds with the assistance of the
18 investment manager, receive investment returns, pay investors
19 and debtors, and reinvest the investment returns in the fund
20 in order to provide additional venture capital investments
21 designed to result in a significant potential to create new
22 businesses and jobs in this state and further diversify the
23 economy of this state. The directorate shall charge fees to
24 designated investors such that the fund's day-to-day
25 operations after start-up activities may be conducted without
26 subsequent legislative appropriation.

27 (4) Upon organization, the directorate shall conduct a
28 national solicitation for investment plan proposals from
29 qualified venture capital investment managers for the raising
30 and investing of capital by the SURE Venture Capital Fund. Any
31 proposed investment plan must address the applicant's level of

1 experience, quality of management, investment philosophy and
2 process, provability of success in fundraising, prior
3 investment fund results, and plan for achieving the purposes
4 of this act. The board shall select only venture capital
5 investment managers having demonstrated expertise in the
6 management of and investment in companies.

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

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

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

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

28 (8) If the fund is liquidated or has returned all
29 capital to designated investors in accordance with contractual
30 agreements, or if the guarantee capacity of the corporation,
31 at the sole discretion of the board, is sufficient for

1 additional certificates, a new funding of the SURE Venture
2 Capital Fund may be implemented for subsequent venture capital
3 investments. If the board takes exception to an additional
4 funding, such additional funding may be implemented only
5 without the benefit of certificates from the board.

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

12 (a) An accounting of the amount of grants and
13 proposals awarded and disbursed during the preceding fiscal
14 year by project and university.

15 (b) Information concerning the amount and nature of
16 economic activity in this state generated through university
17 and other state-supported research projects receiving funding
18 from the fund.

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

21 (d) A description of the benefits to this state
22 resulting from the program, including the number of businesses
23 created, associated industries started, and the growth of
24 related research projects.

25 (e) Independently audited financial statements,
26 including statements that show receipts and expenditures
27 during the preceding fiscal year for personnel,
28 administration, and operational costs of the fund.

29 (f) A description of those projects supported by the
30 fund in which two or more universities are working
31 cooperatively to avoid duplicating activities, programs, and

1 functions and to leverage the expertise offered by other
2 universities.

3 288.9625 Institute for the Commercialization of Public
4 Research.--There is established the Institute for the
5 Commercialization of Public Research.

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

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

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

18 (b) Is not an agency within the meaning of s.
19 20.03(11);

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

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

24 (e) Shall be governed by the code of ethics for public
25 officers and employees as set forth in part III of chapter
26 112;

27 (f) Is not authorized to create corporate
28 subsidiaries;

29 (g) Shall support existing commercialization efforts
30 at Florida universities; and

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1 (h) May not supplant, replace, or direct existing
2 technology transfer operations or other commercialization
3 programs, including incubators and accelerators.

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

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

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

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

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

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

26 (4) The affairs of the corporation shall be managed by
27 a board of directors who shall serve without compensation.
28 Each director shall have only one vote. The chair of the board
29 of directors shall be selected by a majority vote of the
30 directors, a quorum being present. The board of directors
31 shall consist of the following five members:

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

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

8 (c) Three directors appointed by the Governor to
9 3-year staggered terms, to which directors may be reappointed.

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

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

22 (7) Enterprise Florida, Inc., shall issue a request
23 for proposals to public universities in Florida requesting
24 proposals to fulfill the purposes of the institute as
25 described in this section and provide for its physical
26 location in a major metropolitan area in the southern part of
27 the state having extensive commercial air service to
28 facilitate access by Venture Capital providers. Enterprise
29 Florida, Inc., shall review the proposals in a committee
30 appointed by its board of directors which shall make a
31 recommendation for final selection. Final approval of the

1 selected proposal must be by the board of directors of
2 Enterprise Florida, Inc., at one of its duly noticed meetings.

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

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

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

20 (8) The institute shall:

21 (a) Maintain a centralized location to showcase
22 companies and their technologies and products;

23 (b) Develop an efficient process to inventory and
24 publicize companies and products that have been accepted by
25 the institute for commercialization;

26 (c) Routinely communicate with private investors and
27 venture capital organizations regarding the investment
28 opportunities in its showcased companies;

29 (d) Facilitate meetings between prospective investors
30 and eligible organizations in the institute;

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

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

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

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

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

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

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

29 Section 4. The nonrecurring sum of \$38.3 million is
30 appropriated from the General Revenue Fund to Enterprise
31 Florida, Inc., for the SURE Venture Capital Fund for the

1 purpose of making investments under s. 288.9624, Florida
2 Statutes, for the 2007-2008 fiscal year.

3 Section 5. This act shall take effect July 1, 2007.
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5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 CS/CS/SB 2420

8 The Committee Substitute made the following changes to
9 CS/CS/SB 2420:

- 10 1) Changed the source of state investment funding from
11 contingent tax credits to a non-recurring cash
12 appropriation of \$38.3 million.
- 13 2) Removed all of the bill's language on the SURE Trust.
14 The Trust is no longer necessary because the reliance on
15 contingent state tax credits has been deleted.
- 16 3) Participation in the university research
17 commercialization program is opened up to all
18 universities and colleges, not just public institutions.
- 19 4) Clarifies that existing economic incubators and
20 technology-transfer programs are not supplanted or
21 redirected by the SURE Venture Capital Act.
- 22 5) Provides that the directorate of the SURE Venture Capital
23 Fund can charge fees to designated investors such that
24 the fund's day-to-day operations after start-up
25 activities may be conducted without subsequent
26 legislative appropriation.
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