

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: Commerce Committee

BILL: SB 2426

INTRODUCER: Senator Ring

SUBJECT: SURE Venture Capital Trust Fund

DATE: March 15, 2007

REVISED: 03/20/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Fav/ 1 amendment
2.			GO	
3.			FT	
4.			TA	
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

SB 2426 creates the SURE Venture Capital Trust Fund, to be comprised of legislative appropriations, grants and donations, and investment earnings, for the purpose of funding the SURE Venture Capital Trust's organizational and operational expenses.

It is a companion bill to CS/SB 2420, which creates the SURE Venture Capital Act, a \$50 million tax credit program intended to promote investment in seed capital and early stage venture capital equity for emerging companies in Florida.

The trust fund will be terminated, unless re-created by the Legislature, on July 1, 2011, pursuant to s. 19(f), Art. III of the State Constitution.

SB 2426 creates section 288.9627 of the Florida Statutes.

II. Present Situation:

Creation and Operation of Trust Funds

A trust fund consists of monies received by the state, which under law or under trust agreement, are segregated for a purpose authorized by law.¹ Section 19(f), Art. III, of the State Constitution, governs the creation of trust funds. This constitutional provision prohibits the creation by law of a trust fund of the state or other public body without a three-fifths vote of the membership of each house of the Legislature. This provision further specifies that a trust fund must be created in a separate bill for that purpose only.

In addition, the Legislature has established criteria governing the establishment of trust funds. Under these criteria, a law creating a trust fund must, at a minimum, specify:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.²

The Chief Financial Officer is directed to invest all the trust funds and all agency funds of each state agency.³ Under current law, any balance of an appropriation for any given fiscal year that is remaining after lawful expenditures have been charged against it reverts to the fund from which the Legislature appropriated it and shall be available for re-appropriation.⁴ Any reversion of appropriations provided from the General Revenue Fund must be transferred to the General Revenue Fund within 15 days after the reversion, unless otherwise provided by federal or state law, including the General Appropriations Act.⁵

State trust funds terminate no more than 4 years after the effective date of the act that created them, unless they are re-created by the Legislature with a three-fifths vote of the House and the Senate.

Venture Capital Legislation

CS/SB 2420, the companion to SB 2426, creates the SURE Venture Capital Act, a \$50 million tax credit program intended to promote investment in seed capital and early stage venture capital equity for emerging companies in Florida.

The tax credits may be applied against the sales and use tax, the corporate income tax, the premium insurance tax, and the wet marine and transportation insurance tax.

The bill creates a three-tiered structure to manage and implement the program:

¹ Section 215.32(2)(b)1., F.S.

² Section 215.3207, F.S.

³ Section 17.61, F.S.

⁴ Section 216.301(1)(b), F.S.

⁵ Section 216.301(1)(c), F.S.

- The SURE Trust and its board of directors receive and manage the tax credits, and are responsible for the overall direction of the program. The trust will receive \$300,000 in non-recurring general revenue in FY 2007-2008 to fund activities necessary to implement its responsibilities under the legislation.
- 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 fund will receive \$700,000 in non-recurring general revenue in FY 2007-2008 to fund its activities necessary to implement its responsibilities.
- 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. The institute will receive \$900,000 in non-recurring general revenue in FY 2007-2008 to fund activities necessary to implement its responsibilities.

The SURE Venture Capital Fund

Pursuant to CS/SB 2420, the fund will be established by Enterprise Florida, Inc. (EFI) at the request of the SURE Trust board. The fund is a private corporation whose responsibilities are to:

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

EFI is the fund's sole shareholder and member. EFI's vice chairperson shall select a five-person appointment committee from among EFI's board of directors. The appointment committee's task is to select the five initial members of the fund's board of directors. The fund's board of directors must be 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 fund's board members are subject to restrictions on conflicts of interest, as expressed in the corporation's organizational documents, and may not have an interest in any venture capital investment, or other investment, selected by the corporation.

The fund's board 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 designed to result in a significant potential to create new businesses and jobs in Florida and further diversify this state's economy;
- 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.

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 has returned 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 board takes exception to an additional funding, this additional funding may be implemented only without the benefit of certification from the board.

Finally, the board must submit an annual report to the SURE Trust no later than November 15 of each year, to be included in the Trust's later report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The board's report must include, at a minimum, the following information:

- A copy of the independent audit of the fund and a valuation of the fund assets;
- The number of investments made or committed during the fiscal year;
- The amount of debt or capital in or committed to the fund for which certificates have been issued by the board; and
- A general description of the companies receiving investment by the fund and their associated industry.

III. Effect of Proposed Changes:

Section 1 creates in s. 288.9627, F.S., the SURE Venture Capital Trust Fund, as a repository of monies for the SURE Venture Capital Fund's organizational and operational expenses.

The monies credited to the trust fund shall be legislative appropriations, grants and donations received by the fund, and investment earnings.

Notwithstanding s. 216.301, F.S., and pursuant to s. 216.351, F.S., any balance remaining in the trust fund at the end of a fiscal year shall remain there and be used to carry out the trust fund's purposes.

The trust fund shall be terminated, in accordance with s. 19(f)(2), Art. III, of the State Constitution, on July 1, 2012, unless the Legislature terminates it sooner. Before its scheduled termination, the Legislature shall review the trust fund as provided in s. 215.3206(1) and (2), F.S.

Section 2 provides an effective date of July 1, 2007, contingent on passage of CS/SB 2420 or similar legislation in the same legislative session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

SB 2426 creates the SURE Venture Capital Trust Fund, and appears to comply with s. 19(f), Art. III of the State Constitution, relating to the creation and termination of trust funds. The bill must pass by a three-fifths vote of the membership of each chamber to become law, pursuant to s. 19(f), Art. III of the State Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that funds within the trust fund are used to generate venture capital investments to support small Florida businesses with commercial potential, SB 2426 will provide a benefit to the private sector.

C. Government Sector Impact:

In FY 2007-2008, non-recurring state general revenue in the amount of \$1 million will be made available to the Sure Venture Capital Fund for start-up and administrative expenses.

The Office of the Chief Financial Officer may incur indeterminate, but likely minimal expenses in maintaining the trust fund.

VI. Technical Deficiencies:

This bill has two technical deficiencies. On page 1, line 30, the trust fund termination date needs to be changed from 2012 to 2011 to accurately reflect state constitutional requirements that trust

funds automatically terminate four years after their creation unless reviewed by the Legislature prior to the termination date. Also, the number of SB 2426's related bill, CS/B 2420, needs to be inserted in the contingent effective date on page 2, line 4.

VII. Related Issues:

None.

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:

Barcode 314562: Changes the trust fund termination date from 2012 to 2011 and adds the number of the related Senate bill, CS/SB 2420, to the contingent effective date.

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