

1                                   **AMENDMENTS TO THE FUND OF FUNDS**

2   2014 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Jim Bird**

5                                   Senate Sponsor: Curtis S. Bramble

6	Cosponsors:	Melvin R. Brown	Curtis Oda
7	Jacob L. Anderegg	James A. Dunnigan	Dixon M. Pitcher
8	Johnny Anderson	Gage Froerer	Larry B. Wiley
9	Stewart Barlow	John Knotwell	

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11 **LONG TITLE**

12 **General Description:**

13           This bill amends Title 63M, Chapter 1, Part 12, the Utah Venture Capital Enhancement  
14 Act.

15 **Highlighted Provisions:**

- 16           This bill:
- 17           ▶ amends the quorum requirements of the Utah Capital Investment Board;
  - 18           ▶ requires that the annual report and the annual audit for the Utah fund of funds be  
19 completed on or before September 1 for the previous calendar year;
  - 20           ▶ describes additional information required in the annual report and audit;
  - 21           ▶ provides that the aggregate outstanding certificates may not exceed a total of  
22 \$150,000,000 for a loan guarantee;
  - 23           ▶ provides that the aggregate outstanding certificates may not exceed a total of  
24 \$75,000,000 for a guarantee of equity investments in the Utah fund of funds; and
  - 25           ▶ makes technical changes.

26 **Money Appropriated in this Bill:**

27           None

28 **Other Special Clauses:**

29 This bill coordinates with S.B. 31, State Agency Reporting Amendments, by providing  
30 superseding substantive and technical amendments.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **63M-1-1203**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and  
34 amended by Laws of Utah 2008, Chapter 382

35 **63M-1-1205**, as last amended by Laws of Utah 2010, Chapter 286

36 **63M-1-1206**, as last amended by Laws of Utah 2012, Chapter 242

37 **63M-1-1214**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and  
38 amended by Laws of Utah 2008, Chapter 382

39 **63M-1-1217**, as renumbered and amended by Laws of Utah 2008, Chapter 382

40 **63M-1-1218**, as last amended by Laws of Utah 2011, Chapter 342

41 **Utah Code Sections Affected by Coordination Clause:**

42 **63M-1-1206**, as last amended by Laws of Utah 2012, Chapter 242



44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **63M-1-1203** is amended to read:

46 **63M-1-1203. Definitions.**

47 As used in this part:

48 (1) "Board" means the Utah Capital Investment Board.

49 (2) "Certificate" means a contract between the board and a designated investor under  
50 which a contingent tax credit is available and issued to the designated investor.

51 (3) (a) Except as provided in Subsection (3)(b), "claimant" means a resident or  
52 nonresident person.

53 (b) "Claimant" does not include an estate or trust.

54 (4) "Commitment" means a written commitment by a designated purchaser to purchase  
55 from the board certificates presented to the board for redemption by a designated investor.

56 Each commitment shall state the dollar amount of contingent tax credits that the designated

57 purchaser has committed to purchase from the board.

58 (5) "Contingent tax credit" means a contingent tax credit issued under this part that is  
59 available against tax liabilities imposed by Title 59, Chapter 7, Corporate Franchise and  
60 Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, if there are insufficient  
61 funds in the redemption reserve and the board has not exercised other options for redemption  
62 under Subsection 63M-1-1220(3)(b).

63 (6) "Corporation" means the Utah Capital Investment Corporation created under  
64 Section 63M-1-1207.

65 (7) "Designated investor" means:

- 66 (a) a person who makes a private investment; or
- 67 (b) a transferee of a certificate or contingent tax credit.

68 (8) "Designated purchaser" means:

- 69 (a) a person who enters into a written undertaking with the board to purchase a  
70 commitment; or

- 71 (b) a transferee who assumes the obligations to make the purchase described in the  
72 commitment.

73 (9) "Estate" means a nonresident estate or a resident estate.

74 (10) "Person" means an individual, partnership, limited liability company, corporation,  
75 association, organization, business trust, estate, trust, or any other legal or commercial entity.

76 (11) "Private investment" means:

- 77 (a) an equity interest in the Utah fund of funds; or
- 78 (b) a loan to ~~[or other debt obligation from the Utah fund of funds]~~ the Utah fund of  
79 funds initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that  
80 was originated before July 1, 2014.

81 (12) "Redemption reserve" means the reserve established by the corporation to  
82 facilitate the cash redemption of certificates.

83 (13) "Taxpayer" means a taxpayer:

- 84 (a) of an investor; and

85 (b) if that taxpayer is a:

86 (i) claimant;

87 (ii) estate; or

88 (iii) trust.

89 (14) "Trust" means a nonresident trust or a resident trust.

90 (15) "Utah fund of funds" means a limited partnership or limited liability company  
91 established under Section 63M-1-1213 in which a designated investor purchases an equity  
92 interest.

93 Section 2. Section 63M-1-1205 is amended to read:

94 **63M-1-1205. Board members -- Meetings -- Expenses.**

95 (1) (a) The board shall consist of [~~five~~] the following five members[~~;~~ (b) ~~Of the five~~  
96 ~~members~~]:

97 (i) [~~one shall be~~] the state treasurer;

98 (ii) [~~one shall be~~] the director or the director's designee; and

99 (iii) three [~~shall be~~] members appointed by the governor and confirmed by the Senate.

100 [~~(c)~~] (b) The three members appointed by the governor shall serve four-year staggered  
101 terms with the initial terms of the first three members to be four years for one member, three  
102 years for one member, and two years for one member.

103 (c) The governor shall appoint members of the board based on demonstrated expertise  
104 and competence in:

105 (i) the supervision of investment managers;

106 (ii) the fiduciary management of investment funds; or

107 (iii) the management and administration of tax credit allocation programs.

108 (2) When a vacancy occurs in the membership of the board for any reason, the vacancy  
109 shall be:

110 (a) filled in the same manner as the appointment of the original member; and

111 (b) for the unexpired term of the board member being replaced.

112 (3) Appointed members of the board may not serve more than two full consecutive

113 terms except ~~[where]~~ when the governor determines that an additional term is in the best  
114 interest of the state.

115 (4) ~~[Three]~~ (a) Four members of the board constitute a quorum for conducting  
116 business and exercising board power~~[, provided that a minimum of three affirmative votes is~~  
117 ~~required for board action and at least one of the affirmative votes is cast by either the director~~  
118 ~~or the director's designee or the state treasurer].~~

119 (b) If a quorum is present, the action of a majority of members present is the action of  
120 the board.

121 (5) A member may not receive compensation or benefits for the member's service, but  
122 may receive per diem and travel expenses in accordance with:

123 (a) Section 63A-3-106;

124 (b) Section 63A-3-107; and

125 (c) rules made by the Division of Finance ~~[pursuant]~~ according to Sections 63A-3-106  
126 and 63A-3-107.

127 ~~[(6) Members of the board shall be selected on the basis of demonstrated expertise and~~  
128 ~~competence in:]~~

129 ~~[(a) the supervision of investment managers;]~~

130 ~~[(b) the fiduciary management of investment funds; or]~~

131 ~~[(c) the management and administration of tax credit allocation programs.]~~

132 ~~[(7)]~~ (6) The board and its members are considered to be a governmental entity with all  
133 of the rights, privileges, and immunities of a governmental entity of the state, including all of  
134 the rights and benefits conferred under Title 63G, Chapter 7, Governmental Immunity Act of  
135 Utah.

136 ~~[(8)]~~ (7) Meetings of the board, except to the extent necessary to protect the  
137 information identified in Subsection 63M-1-1224(3), are subject to Title 52, Chapter 4, Open  
138 and Public Meetings Act.

139 Section 3. Section 63M-1-1206 is amended to read:

140 **63M-1-1206. Board duties and powers.**

- 141 (1) The board shall:
- 142 (a) establish criteria and procedures for the allocation and issuance of contingent tax
- 143 credits to designated investors by means of certificates issued by the board, provided that a
- 144 contingent tax credit may not be issued unless the Utah fund of funds:
- 145 (i) first agrees to treat the amount of the tax credit redeemed by the state as a loan from
- 146 the state to the Utah fund of funds; and
- 147 (ii) agrees to repay the loan upon terms and conditions established by the board;
- 148 (b) establish criteria and procedures for assessing the likelihood of future certificate
- 149 redemptions by designated investors, including:
- 150 (i) criteria and procedures for evaluating the value of investments made by the Utah
- 151 fund of funds; and
- 152 (ii) the returns from the Utah fund of funds;
- 153 (c) establish criteria and procedures for registering and redeeming contingent tax
- 154 credits by designated investors holding certificates issued by the board;
- 155 (d) establish a target rate of return or range of returns [~~on venture capital investments~~]
- 156 for the investment portfolio of the Utah fund of funds;
- 157 (e) establish criteria and procedures governing commitments obtained by the board
- 158 from designated purchasers including:
- 159 (i) entering into commitments with designated purchasers; and
- 160 (ii) drawing on commitments to redeem certificates from designated investors;
- 161 (f) have power to:
- 162 (i) expend funds;
- 163 (ii) invest funds;
- 164 (iii) issue debt and borrow funds;
- 165 (iv) enter into contracts;
- 166 (v) insure against loss; and
- 167 (vi) perform any other act necessary to carry out its purpose; and
- 168 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part

169 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

170 (2) (a) All rules made by the board under Subsection (1)(g) are subject to review by the  
171 Legislative Management Committee:

172 (i) whenever made, modified, or repealed; and

173 (ii) in each even-numbered year.

174 (b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review  
175 Committee from reviewing and taking appropriate action on any rule made, amended, or  
176 repealed by the board.

177 (3) (a) The criteria and procedures established by the board for the allocation and  
178 issuance of contingent tax credits shall:

179 (i) include the contingencies that must be met for a certificate and its related tax credits  
180 to be:

181 (A) issued by the board;

182 (B) transferred by a designated investor; and

183 (C) redeemed by a designated investor in order to receive a contingent tax credit; and

184 (ii) tie the contingencies for redemption of certificates to:

185 (A) the targeted rates of return and scheduled redemptions of equity interests purchased  
186 by designated investors in the Utah fund of funds; and

187 (B) the scheduled principal and interest payments payable to designated investors that  
188 have made loans [~~or other debt obligations~~] initiated before July 1, 2014, including a loan  
189 refinanced on or after July 1, 2014, that was originated before July 1, 2014, to the Utah fund of  
190 funds.

191 (b) The board may not issue contingent tax credits under this part [~~prior to~~] before July  
192 1, 2004.

193 (4) (a) The board may charge a placement fee to the Utah fund of funds for the  
194 issuance of a certificate and related contingent tax credit to a designated investor.

195 (b) The fee shall:

196 (i) be charged only to pay for reasonable and necessary costs of the board; and

- 197 (ii) not exceed .5% of the private investment of the designated investor.
- 198 (5) The board's criteria and procedures for redeeming certificates:
- 199 (a) shall give priority to the redemption amount from the available funds in the  
200 redemption reserve; and
- 201 (b) to the extent there are insufficient funds in the redemption reserve to redeem  
202 certificates, shall grant the board the option to redeem certificates:
- 203 (i) by certifying a contingent tax credit to the designated investor; or
- 204 (ii) by making demand on designated purchasers consistent with the requirements of  
205 Section [63M-1-1221](#).
- 206 (6) (a) The board shall, in consultation with the corporation, publish on or before  
207 September 1 an annual report of the activities conducted by the Utah fund of funds, and submit  
208 the report to the governor [~~and~~]; the Business, Economic Development, and Labor  
209 Appropriations Subcommittee[-]; the Business and Labor Interim Committee; and the  
210 Retirement and Independent Entities Committee.
- 211 (b) The annual report shall:
- 212 (i) be designed to provide clear, accurate, and accessible information to the public, the  
213 governor, and the Legislature;
- 214 [~~(i)~~] (ii) include a copy of the audit of the Utah fund of funds [~~and a valuation of the~~  
215 assets of the Utah fund of funds] described in Section [63M-1-1217](#);
- 216 (iii) include a detailed balance sheet, revenue and expenses statement, and cash flow  
217 statement;
- 218 (iv) include detailed information regarding new fund commitments made during the  
219 year, including the amount of money committed;
- 220 (v) include the net annual rate of return of the Utah fund of funds for the reported year,  
221 and the net rate of return from the inception of the Utah fund of funds, after accounting for all  
222 expenses, including administrative and financing costs;
- 223 (vi) include detailed information regarding:
- 224 (A) realized gains from investments and any realized losses; and



225           (B) unrealized gains and any unrealized losses based on the net present value of  
226 ongoing investments;  
227           (vii) include detailed information regarding all yearly expenditures, including:  
228           (A) administrative, operating, and financing costs;  
229           (B) aggregate compensation information separated by full- and part-time employees,  
230 including benefit and travel expenses; and  
231           (C) expenses related to the allocation manager;  
232           (viii) include detailed information regarding all funding sources for administrative,  
233 operations, and financing expenses, including expenses charged by or to the Utah fund of  
234 funds, including management and placement fees;  
235           [(ii)] (ix) review the progress of the investment fund allocation manager in  
236 implementing its investment plan and provide a general description of the investment plan;  
237 [and]  
238           (x) for each individual fund that the Utah fund of funds is invested in that represents at  
239 least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total  
240 value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and  
241 the percentage of the total value of the fund held by the Utah fund of funds;  
242           (xi) include the number of companies in Utah where an investment was made from a  
243 fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time  
244 employees in the state added by all companies where investments were made by funds that the  
245 Utah fund of funds is invested in;  
246           (xii) include an aggregate total value for all funds the Utah fund of funds is invested in,  
247 and an aggregate total amount of money invested in the state by the funds the Utah fund of  
248 funds is invested in;  
249           [(iii)] (xiii) describe any redemption or transfer of a certificate issued under this part[-];  
250           (xiv) include actual and estimated potential appropriations the Legislature will be  
251 required to provide as a result of redeemed certificates or tax credits during the following five  
252 years;

253 (xv) include an evaluation of the state's progress in accomplishing the purposes stated  
 254 in Section 63M-1-1202; and

255 (xvi) be directly accessible to the public via a link from the main page of the Utah fund  
 256 of fund's website.

257 (c) The annual report may not identify [~~any~~] a specific designated investor who has  
 258 redeemed or transferred a certificate.

259 [~~(d) (i) Beginning July 1, 2006, and thereafter every two years, the board shall publish~~  
 260 ~~a progress report which shall evaluate the progress of the state in accomplishing the purposes~~  
 261 ~~stated in Section 63M-1-1202.]~~

262 [~~(ii) The board shall give a copy of the report to the Legislature.]~~

263 Section 4. Section **63M-1-1214** is amended to read:

264 **63M-1-1214. Compensation from the Utah fund of funds to the corporation --**  
 265 **Redemption reserve.**

266 (1) The corporation shall be compensated for its involvement in the Utah fund of funds  
 267 through the payment of the management fee described in Section 63M-1-1211.

268 (2) Before any returns may be reinvested in the Utah fund of funds:

269 (a) [~~Any~~] any returns shall be paid to designated investors, including the repayment by  
 270 the Utah fund of funds of any outstanding loans;

271 (b) any returns in excess of those payable to designated investors shall be deposited in  
 272 the redemption reserve and held by the corporation as a first priority reserve for the redemption  
 273 of certificates[-];

274 [~~(b) Any~~] (c) any returns received by the corporation from investment of amounts held  
 275 in the redemption reserve shall be added to the redemption reserve until it has reached a total of  
 276 [~~\$300,000,000.~~] \$250,000,000; and

277 [~~(c) If~~] (d) if at the end of a calendar year the redemption reserve exceeds the  
 278 [~~\$300,000,000~~] \$250,000,000 limitation referred to in Subsection (2)[~~(b)~~](c), the corporation  
 279 [~~shall~~] may reinvest the excess in the Utah fund of funds.

280 (3) Funds held by the corporation in the redemption reserve shall be invested in

281 accordance with Title 51, Chapter 7, State Money Management Act.

282 Section 5. Section **63M-1-1217** is amended to read:

283 **63M-1-1217. Annual audits.**

284 (1) Each calendar year, an audit of the activities of the Utah fund of funds shall be  
285 made as described in this section.

286 (2) (a) The audit shall be conducted by:

287 (i) the state auditor; or

288 (ii) an independent auditor engaged by the state auditor.

289 (b) An independent auditor used under Subsection (2)(a)(ii) must have no business,  
290 contractual, or other connection to:

291 (i) the corporation; or

292 (ii) the Utah fund of funds.

293 (3) The corporation shall pay the costs associated with the annual audit.

294 (4) The annual audit report shall:

295 (a) be delivered to:

296 (i) the corporation; and

297 (ii) the board; [~~and~~]

298 (b) include a valuation of the assets owned by the Utah fund of funds as of the end of  
299 the reporting year[~~;~~];

300 (c) include an opinion regarding the accuracy of the information provided in the annual  
301 report described in Subsection 63M-1-1206(6); and

302 (d) be completed on or before September 1 for the previous calendar year so that it may  
303 be included in the annual report described in Section 63M-1-1206.

304 Section 6. Section **63M-1-1218** is amended to read:

305 **63M-1-1218. Certificates and contingent tax credits.**

306 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
307 board, in consultation with the State Tax Commission, shall make rules governing the form,  
308 issuance, transfer, and redemption of certificates.

309 (2) The board's issuance of certificates and related contingent tax credits to designated  
310 investors is subject to the following:

311 (a) the aggregate outstanding certificates may not exceed a total of [~~\$300,000,000~~]:

312 (i) \$150,000,000 of contingent tax credits[;] used as collateral or a guarantee on loans  
313 for the debt-based financing of investments in the Utah fund of funds, including a loan  
314 refinanced using debt- or equity-based financing as described in Subsection (2)(e); and

315 (ii) \$75,000,000 used as a guarantee on equity investments in the Utah fund of funds;

316 (b) the board shall issue a certificate contemporaneously with an investment in the  
317 Utah fund of funds by a designated investor;

318 (c) the board shall issue contingent tax credits in a manner that not more than  
319 \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax  
320 credits may be redeemable in [~~any~~] a fiscal year; [~~and~~]

321 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to  
322 make a cash redemption and the board does not exercise its other options under Subsection  
323 [63M-1-1220\(3\)\(b\)\[;\]](#);

324 (e) the board may not issue additional certificates as collateral or a guarantee on a loan  
325 for the debt-based financing of investments in the Utah fund of funds that is initiated after July  
326 1, 2014, except for a loan refinanced using debt- or equity-based financing on or after July 1,  
327 2014, that was originated before July 1, 2014;

328 (f) after July 1, 2014, and on or before December 31, 2017, the board may issue  
329 certificates that represent a guarantee of no more than 100% of the principal of each equity  
330 investment in the Utah fund of funds; and

331 (g) the board may not issue certificates after December 31, 2017.

332 (3) In determining the [~~\$300,000,000 maximum limit in Subsection~~] maximum limits  
333 in Subsections (2)(a)(i) and (ii) and the \$20,000,000 limitation for each \$100,000,000  
334 increment of contingent tax credits in Subsection (2)(c):

335 (a) the board shall use the cumulative amount of scheduled aggregate returns on  
336 certificates issued by the board to designated investors;

337 (b) certificates and related contingent tax credits [~~which~~] that have expired may not be  
338 included; and

339 (c) certificates and related contingent tax credits [~~which~~] that have been redeemed shall  
340 be included only to the extent of tax credits actually allowed.

341 (4) Contingent tax credits are subject to the following:

342 (a) a contingent tax credit may not be redeemed except by a designated investor in  
343 accordance with the terms of a certificate from the board;

344 (b) a contingent tax credit may not be redeemed prior to the time the Utah fund of  
345 funds receives full payment from the designated investor for the certificate;

346 (c) a contingent tax credit shall be claimed for a tax year that begins during the  
347 calendar year maturity date stated on the certificate;

348 (d) an investor who redeems a certificate and the related contingent tax credit shall  
349 allocate the amount of the contingent tax credit to the taxpayers of the investor based on the  
350 taxpayer's pro rata share of the investor's earnings; and

351 (e) a contingent tax credit shall be claimed as a refundable credit.

352 (5) In calculating the amount of a contingent tax credit:

353 (a) the board shall certify a contingent tax credit only if the actual return, or payment of  
354 principal and interest for a loan initiated before July 1, 2014, including a loan refinanced on or  
355 after July 1, 2014, that was originated before July 1, 2014, to the designated investor is less  
356 than that targeted at the issuance of the certificate;

357 (b) the amount of the contingent tax credit for a designated investor with an equity  
358 interest may not exceed the difference between [~~:(i) the sum of: (A) the initial private~~  
359 ~~investment of the designated investor in the Utah fund of funds; and (B) the scheduled~~  
360 ~~aggregate return to the designated investor at rates of return authorized by the board at the~~  
361 ~~issuance of the certificate; and (ii)] the actual principal investment of the designated investor in  
362 the Utah fund of funds and the aggregate actual return received by the designated investor and  
363 any predecessor in interest of the initial equity investment and interest on the initial equity  
364 investment;~~

365 (c) the rates, whether fixed rates or variable rates, shall be determined by a formula  
366 stipulated in the certificate; and

367 (d) the amount of the contingent tax credit for a designated investor with [~~a loan or~~  
368 ~~other debt obligation from~~] an outstanding loan to the Utah fund of funds initiated before July  
369 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1,  
370 2014, shall be equal to the amount of any principal, interest, or interest equivalent unpaid at the  
371 redemption of the loan or other obligation, as stipulated in the certificate.

372 (6) The board shall clearly indicate on the certificate:

373 (a) the targeted return on the invested capital, if the private investment is an equity  
374 interest;

375 (b) the payment schedule of principal, interest, or interest equivalent, if the private  
376 investment is a loan [~~or other debt obligation~~] initiated before July 1, 2014, including a loan  
377 refinanced on or after July 1, 2014, that was originated before July 1, 2014;

378 (c) the amount of the initial private investment;

379 (d) the calculation formula for determining the scheduled aggregate return on the initial  
380 equity investment, if applicable; and

381 (e) the calculation formula for determining the amount of the contingent tax credit that  
382 may be claimed.

383 (7) Once money is invested by a designated investor, [~~the~~] a certificate:

384 (a) is binding on the board; and

385 (b) may not be modified, terminated, or rescinded.

386 (8) Funds invested by a designated investor for a certificate shall be paid to the  
387 corporation for placement in the Utah fund of funds.

388 (9) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah  
389 Administrative Rulemaking Act, and in consultation with the board, make rules to help  
390 implement this section.

391 Section 7. **Coordinating H.B. 243 with S.B. 31 -- Superseding substantive and**  
392 **technical amendments.**

393           If this H.B. 243 and S.B. 31, State Agency Reporting Amendments, both pass and  
394 become law, it is the intent of the Legislature that the amendments to Section [63M-1-1206](#) in  
395 this bill supersede the amendments to Section [63M-1-1206](#) in S.B. 31, when the Office of  
396 Legislative Research and General Counsel prepares the Utah Code database for publication.