

Representative Jon E. Stanard proposes the following substitute bill:

AMENDMENTS TO THE FUND OF FUNDS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: _____

6	Cosponsors:	Susan Duckworth	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	
	Melvin R. Brown		

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ amends the membership of the Utah Capital Investment Board by adding a member of the Senate and a member of the House of Representatives;
- ▶ amends the quorum requirements of the Utah Capital Investment Board;
- ▶ requires that the annual report and the annual audit for the Utah fund of funds be completed on or before September 1 for the previous calendar year;
- ▶ describes additional information required in the annual report;
- ▶ provides that the aggregate outstanding certificates may not exceed a total of



- 24 \$150,000,000 for a loan guarantee;
- 25 ▶ provides that the aggregate outstanding certificates may not exceed a total of
- 26 \$150,000,000 for a guarantee for equity investments in the Utah fund of funds;
- 27 ▶ provides that tax-credit certificates may only guarantee up to 50% of equity
- 28 investments; and
- 29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **63M-1-1203**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and
37 amended by Laws of Utah 2008, Chapter 382

38 **63M-1-1205**, as last amended by Laws of Utah 2010, Chapter 286

39 **63M-1-1206**, as last amended by Laws of Utah 2012, Chapter 242

40 **63M-1-1214**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and
41 amended by Laws of Utah 2008, Chapter 382

42 **63M-1-1217**, as renumbered and amended by Laws of Utah 2008, Chapter 382

43 **63M-1-1218**, as last amended by Laws of Utah 2011, Chapter 342



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

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

47 **63M-1-1203. Definitions.**

48 As used in this part:

- 49 (1) "Board" means the Utah Capital Investment Board.
- 50 (2) "Certificate" means a contract between the board and a designated investor under
- 51 which a contingent tax credit is available and issued to the designated investor.
- 52 (3) (a) Except as provided in Subsection (3)(b), "claimant" means a resident or
- 53 nonresident person.
- 54 (b) "Claimant" does not include an estate or trust.

55 (4) "Commitment" means a written commitment by a designated purchaser to purchase
56 from the board certificates presented to the board for redemption by a designated investor.
57 Each commitment shall state the dollar amount of contingent tax credits that the designated
58 purchaser has committed to purchase from the board.

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

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

66 (7) "Designated investor" means:

67 (a) a person who makes a private investment; or

68 (b) a transferee of a certificate or contingent tax credit.

69 (8) "Designated purchaser" means:

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

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

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

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

77 (11) "Private investment" means:

78 (a) an equity interest in the Utah fund of funds; or

79 (b) a loan to [~~or other debt obligation from the Utah fund of funds~~] the Utah fund of
80 funds initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that
81 was originated before July 1, 2014.

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

84 (13) "Taxpayer" means a taxpayer:

85 (a) of an investor; and

86 (b) if that taxpayer is a:

87 (i) claimant;

88 (ii) estate; or

89 (iii) trust.

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

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

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

95 **63M-1-1205. Board members -- Meetings -- Expenses.**

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

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

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

100 (iii) three [~~shall be~~] members appointed by the governor and confirmed by the
101 Senate[:];

102 (iv) a member of the Senate appointed by the president of the Senate; and

103 (v) a member of the House of Representatives appointed by the speaker of the House of
104 Representatives.

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

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

110 (i) the supervision of investment managers;

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

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

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

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

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

117 (3) Appointed members of the board may not serve more than two full consecutive
118 terms except ~~[where]~~ when the ~~[governor]~~ appointing authority determines that an additional
119 term is in the best interest of the state.

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

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

126 (5) (a) A member who is not a legislator may not receive compensation or benefits for
127 the member's service, but may receive per diem and travel expenses in accordance with:

128 ~~[(a)]~~ (i) Section [63A-3-106](#);

129 ~~[(b)]~~ (ii) Section [63A-3-107](#); and

130 ~~[(c)]~~ (iii) rules made by the Division of Finance ~~[pursuant]~~ according to Sections
131 [63A-3-106](#) and [63A-3-107](#).

132 (b) Compensation and expenses of a board member who is a legislator are governed by
133 Section [36-2-2](#) and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

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

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

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

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

139 ~~[(7)]~~ (6) The board and its members are considered to be a governmental entity with all
140 of the rights, privileges, and immunities of a governmental entity of the state, including all of
141 the rights and benefits conferred under Title 63G, Chapter 7, Governmental Immunity Act of
142 Utah.

143 ~~[(8)]~~ (7) Meetings of the board, except to the extent necessary to protect the
144 information identified in Subsection [63M-1-1224](#)(3), are subject to Title 52, Chapter 4, Open
145 and Public Meetings Act.

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

147 **63M-1-1206. Board duties and powers.**

- 148 (1) The board shall:
- 149 (a) establish criteria and procedures for the allocation and issuance of contingent tax
- 150 credits to designated investors by means of certificates issued by the board, provided that a
- 151 contingent tax credit may not be issued unless the Utah fund of funds:
- 152 (i) first agrees to treat the amount of the tax credit redeemed by the state as a loan from
- 153 the state to the Utah fund of funds; and
- 154 (ii) agrees to repay the loan upon terms and conditions established by the board;
- 155 (b) establish criteria and procedures for assessing the likelihood of future certificate
- 156 redemptions by designated investors, including:
- 157 (i) criteria and procedures for evaluating the value of investments made by the Utah
- 158 fund of funds; and
- 159 (ii) the returns from the Utah fund of funds;
- 160 (c) establish criteria and procedures for registering and redeeming contingent tax
- 161 credits by designated investors holding certificates issued by the board;
- 162 (d) establish a target rate of return or range of returns on venture capital investments of
- 163 the Utah fund of funds;
- 164 (e) establish criteria and procedures governing commitments obtained by the board
- 165 from designated purchasers including:
- 166 (i) entering into commitments with designated purchasers; and
- 167 (ii) drawing on commitments to redeem certificates from designated investors;
- 168 (f) have power to:
- 169 (i) expend funds;
- 170 (ii) invest funds;
- 171 (iii) issue debt and borrow funds;
- 172 (iv) enter into contracts;
- 173 (v) insure against loss; and
- 174 (vi) perform any other act necessary to carry out its purpose; and
- 175 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part
- 176 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 177 (2) (a) All rules made by the board under Subsection (1)(g) are subject to review by the
- 178 Legislative Management Committee:

- 179 (i) whenever made, modified, or repealed; and
180 (ii) in each even-numbered year.
- 181 (b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review
182 Committee from reviewing and taking appropriate action on any rule made, amended, or
183 repealed by the board.
- 184 (3) (a) The criteria and procedures established by the board for the allocation and
185 issuance of contingent tax credits shall:
- 186 (i) include the contingencies that must be met for a certificate and its related tax credits
187 to be:
- 188 (A) issued by the board;
189 (B) transferred by a designated investor; and
190 (C) redeemed by a designated investor in order to receive a contingent tax credit; and
191 (ii) tie the contingencies for redemption of certificates to:
- 192 (A) the targeted rates of return and scheduled redemptions of equity interests purchased
193 by designated investors in the Utah fund of funds; and
194 (B) the scheduled principal and interest payments payable to designated investors that
195 have made loans [~~or other debt obligations~~] initiated before July 1, 2014, including a loan
196 refinanced on or after July 1, 2014, that was originated before July 1, 2014, to the Utah fund of
197 funds.
- 198 (b) The board may not issue contingent tax credits under this part [~~prior to~~] before July
199 1, 2004.
- 200 (4) (a) The board may charge a placement fee to the Utah fund of funds for the
201 issuance of a certificate and related contingent tax credit to a designated investor.
- 202 (b) The fee shall:
- 203 (i) be charged only to pay for reasonable and necessary costs of the board; and
204 (ii) not exceed .5% of the private investment of the designated investor.
- 205 (5) The board's criteria and procedures for redeeming certificates:
- 206 (a) shall give priority to the redemption amount from the available funds in the
207 redemption reserve; and
208 (b) to the extent there are insufficient funds in the redemption reserve to redeem
209 certificates, shall grant the board the option to redeem certificates:

210 (i) by certifying a contingent tax credit to the designated investor; or
211 (ii) by making demand on designated purchasers consistent with the requirements of
212 Section [63M-1-1221](#).

213 (6) (a) The board shall, in consultation with the corporation, publish an annual report
214 of the activities conducted by the Utah fund of funds on or before September 1, and submit the
215 report to the governor [~~and~~]; the Business, Economic Development, and Labor Appropriations
216 Subcommittee[-]; the Business and Labor Interim Committee; and the Retirement and
217 Independent Entities Committee.

218 (b) The annual report shall:

219 (i) be designed to provide clear, accurate, and accessible information to the public, the
220 governor, and the Legislature;

221 [~~(i)~~] (ii) include a copy of the audit of the Utah fund of funds [~~and a valuation of the~~
222 assets of the Utah fund of funds] described in Section [63M-1-1217](#);

223 (iii) include a detailed balance sheet, revenue and expenses statement, and cash flow
224 statement;

225 (iv) include detailed information regarding new investments acquired during the year,
226 including the amount of money invested;

227 (v) include the net annual rate of return of the Utah fund of funds for the reported year,
228 and each previous year, after accounting for all expenses, including administrative and
229 financing costs;

230 (vi) include detailed information regarding:

231 (A) realized gains from investments and any realized losses; and

232 (B) estimated returns and any estimated losses based on the net present value of
233 ongoing investments;

234 (vii) include detailed information regarding all yearly expenditures, including:

235 (A) administrative, operating, and financing costs;

236 (B) aggregate compensation information separated by full- and part-time employees,
237 including benefit and travel expenses; and

238 (C) expenses related to the allocation manager;

239 (viii) include detailed information regarding all funding sources for administrative,
240 operations, and financing expenses, including expenses charged by or to the Utah fund of

241 funds, including management and placement fees;

242 ~~[(ii)]~~ (ix) review the progress of the investment fund allocation manager in
243 implementing its investment plan and provide a general description of the investment plan;

244 ~~[and]~~

245 (x) for each individual fund that the Utah fund of funds is invested in, include the name
246 of the fund, the total value of the fund, the amount of money the Utah fund of funds has
247 invested in the fund, and the percentage of the total value of the fund held by the Utah fund of
248 funds;

249 (xi) include a list of each company in the state where an investment was made from a
250 fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time
251 employees in the state added by all companies where investments were made by funds that the
252 Utah fund of funds is invested in;

253 (xii) include an aggregate total value for all funds the Utah fund of funds is invested in,
254 and an aggregate total amount of money invested in the state by the funds the Utah fund of
255 funds is invested in;

256 ~~[(iii)]~~ (xiii) describe any redemption or transfer of a certificate issued under this part[-];

257 (xiv) include actual and estimated potential appropriations the Legislature will be
258 required to provide as a result of redeemed certificates or tax credits during the following five
259 years;

260 (xv) include an evaluation of the state's progress in accomplishing the purposes stated
261 in Section [63M-1-1202](#); and

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

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

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

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

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

271 **63M-1-1214. Compensation from the Utah fund of funds to the corporation --**

272 **Redemption reserve.**

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

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

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

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

281 ~~[(b) Any]~~ (c) any returns received by the corporation from investment of amounts held
282 in the redemption reserve shall be added to the redemption reserve until it has reached a total of
283 \$300,000,000[-]; and

284 ~~[(c) If]~~ (d) if at the end of a calendar year the redemption reserve exceeds the
285 \$300,000,000 limitation referred to in Subsection (2)~~[(b)]~~(c), the corporation ~~[shall]~~ may
286 reinvest the excess in the Utah fund of funds.

287 (3) Funds held by the corporation in the redemption reserve shall be invested in
288 accordance with Title 51, Chapter 7, State Money Management Act.

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

290 **63M-1-1217. Annual audits.**

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

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

294 (i) the state auditor; or

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

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

298 (i) the corporation; or

299 (ii) the Utah fund of funds.

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

301 (4) The annual audit report shall:

302 (a) be delivered to:

- 303 (i) the corporation; and
304 (ii) the board; ~~and~~
305 (b) include a valuation of the assets owned by the Utah fund of funds as of the end of
306 the reporting year[-];
307 (c) audit the accuracy of the information provided in the annual report described in
308 Subsection 63M-1-1206(6); and
309 (d) be completed on or before July 1 for the previous calendar year so that it may be
310 included in the annual report described in Section 63M-1-1206.

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

312 **63M-1-1218. Certificates and contingent tax credits.**

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

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

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

319 (i) \$150,000,000 of contingent tax credits[-] used as collateral or a guarantee on loans
320 for the debt-based financing of investments in the Utah fund of funds; and

321 (ii) \$150,000,000 used as a guarantee on equity investments in the Utah fund of funds;

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

324 (c) the board shall issue contingent tax credits in a manner that not more than
325 \$20,000,000 [~~of contingent tax credits for each \$100,000,000 increment~~] of contingent tax
326 credits may be redeemable in [~~any~~] a fiscal year; ~~and~~

327 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
328 make a cash redemption and the board does not exercise its other options under Subsection
329 63M-1-1220(3)(b)[-];

330 (e) the board may not issue additional certificates as collateral or a guarantee on a loan
331 for the debt-based financing of investments in the Utah fund of funds that is initiated after July
332 1, 2014, except for a loan refinanced on or after July 1, 2014, that was originated before July 1,
333 2014;

334 (f) after July 1, 2014, and on or before December 31, 2017, the board may issue
335 certificates that represent a guarantee of no more than 50% of the principal of each equity
336 investment in the Utah fund of funds; and

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

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

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

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

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

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

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

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

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

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

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

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

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

363 (b) the amount of the contingent tax credit for a designated investor with an equity
364 interest may not exceed the difference between[: ~~(i) the sum of: (A) the initial private~~

365 investment of the designated investor in the Utah fund of funds; and (B) the scheduled
366 aggregate return to the designated investor at rates of return authorized by the board at the
367 issuance of the certificate; and (ii) 50% of the initial private investment of the designated
368 investor in the Utah fund of funds and the aggregate actual return received by the designated
369 investor and any predecessor in interest of the initial equity investment and interest on the
370 initial equity investment;

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

373 (d) the amount of the contingent tax credit for a designated investor with [~~a loan or~~
374 ~~other debt obligation from~~] an outstanding loan to the Utah fund of funds initiated before July
375 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1,
376 2014, shall be equal to the amount of any principal, interest, or interest equivalent unpaid at the
377 redemption of the loan or other obligation, as stipulated in the certificate.

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

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

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

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

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

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

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

390 (a) is binding on the board; and

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

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

394 (9) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah
395 Administrative Rulemaking Act, and in consultation with the board, make rules to help

396 implement this section.