

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: Curtis S. Bramble

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 \$100,000,000 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;
- 29 ▶ after July 1, 2014, splits the Utah fund of funds into two funds, one fund for
- 30 debt-based financing and one fund for equity investments; and
- 31 ▶ makes technical changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **63M-1-1203**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and
39 amended by Laws of Utah 2008, Chapter 382

40 **63M-1-1205**, as last amended by Laws of Utah 2010, Chapter 286

41 **63M-1-1206**, as last amended by Laws of Utah 2012, Chapter 242

42 **63M-1-1214**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and
43 amended by Laws of Utah 2008, Chapter 382

44 **63M-1-1217**, as renumbered and amended by Laws of Utah 2008, Chapter 382

45 **63M-1-1218**, as last amended by Laws of Utah 2011, Chapter 342

46 ENACTS:

47 **63M-1-1225**, Utah Code Annotated 1953



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

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

51 **63M-1-1203. Definitions.**

52 As used in this part:

- 53 (1) "Board" means the Utah Capital Investment Board.
- 54 (2) "Certificate" means a contract between the board and a designated investor under

55 which a contingent tax credit is available and issued to the designated investor.

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

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

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

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

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

70 (7) "Designated investor" means:

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

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

73 (8) "Designated purchaser" means:

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

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

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

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

81 (11) "Private investment" means:

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

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

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

88 (13) "Taxpayer" means a taxpayer:

89 (a) of an investor; and

90 (b) if that taxpayer is a:

91 (i) claimant;

92 (ii) estate; or

93 (iii) trust.

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

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

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

99 **63M-1-1205. Board members -- Meetings -- Expenses.**

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

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

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

104 (iii) three [~~shall be~~] members appointed by the governor and confirmed by the
105 Senate[~~;~~];

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

107 (v) a member of the House of Representatives appointed by the speaker of the House of
108 Representatives.

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

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

114 (i) the supervision of investment managers;

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

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

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

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

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

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

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

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

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

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

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

134 ~~[(c)]~~ (iii) rules made by the Division of Finance ~~[pursuant]~~ according to Sections
135 [63A-3-106](#) and [63A-3-107](#).

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

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

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

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

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

143 ~~[(7)]~~ (6) The board and its members are considered to be a governmental entity with all
144 of the rights, privileges, and immunities of a governmental entity of the state, including all of
145 the rights and benefits conferred under Title 63G, Chapter 7, Governmental Immunity Act of
146 Utah.

147 ~~[(8)]~~ (7) Meetings of the board, except to the extent necessary to protect the

148 information identified in Subsection 63M-1-1224(3), are subject to Title 52, Chapter 4, Open
149 and Public Meetings Act.

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

151 **63M-1-1206. Board duties and powers.**

152 (1) The board shall:

153 (a) establish criteria and procedures for the allocation and issuance of contingent tax
154 credits to designated investors by means of certificates issued by the board, provided that a
155 contingent tax credit may not be issued unless the Utah fund of funds:

156 (i) first agrees to treat the amount of the tax credit redeemed by the state as a loan from
157 the state to the Utah fund of funds; and

158 (ii) agrees to repay the loan upon terms and conditions established by the board;

159 (b) establish criteria and procedures for assessing the likelihood of future certificate
160 redemptions by designated investors, including:

161 (i) criteria and procedures for evaluating the value of investments made by the Utah
162 fund of funds; and

163 (ii) the returns from the Utah fund of funds;

164 (c) establish criteria and procedures for registering and redeeming contingent tax
165 credits by designated investors holding certificates issued by the board;

166 (d) establish a target rate of return or range of returns on venture capital investments of
167 the Utah fund of funds;

168 (e) establish criteria and procedures governing commitments obtained by the board
169 from designated purchasers including:

170 (i) entering into commitments with designated purchasers; and

171 (ii) drawing on commitments to redeem certificates from designated investors;

172 (f) have power to:

173 (i) expend funds;

174 (ii) invest funds;

175 (iii) issue debt and borrow funds;

176 (iv) enter into contracts;

177 (v) insure against loss; and

178 (vi) perform any other act necessary to carry out its purpose; and

179 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part
180 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

- 183 (i) whenever made, modified, or repealed; and
- 184 (ii) in each even-numbered year.

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

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

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

- 192 (A) issued by the board;
 - 193 (B) transferred by a designated investor; and
 - 194 (C) redeemed by a designated investor in order to receive a contingent tax credit; and
- 195 (ii) tie the contingencies for redemption of certificates to:

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

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

202 (b) The board may not issue contingent tax credits under this part [~~prior to~~] before July
203 1, 2004.

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

206 (b) The fee shall:

- 207 (i) be charged only to pay for reasonable and necessary costs of the board; and
- 208 (ii) not exceed .5% of the private investment of the designated investor.

209 (5) The board's criteria and procedures for redeeming certificates:

210 (a) shall give priority to the redemption amount from the available funds in the
211 redemption reserve; and

212 (b) to the extent there are insufficient funds in the redemption reserve to redeem
213 certificates, shall grant the board the option to redeem certificates:

214 (i) by certifying a contingent tax credit to the designated investor; or

215 (ii) by making demand on designated purchasers consistent with the requirements of
216 Section [63M-1-1221](#).

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

222 (b) The annual report shall:

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

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

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

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

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

234 (vi) include detailed information regarding:

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

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

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

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

240 (B) aggregate compensation information separated by full- and part-time employees,

241 including benefit and travel expenses; and
242 (C) expenses related to the allocation manager;
243 (viii) include detailed information regarding all funding sources for administrative,
244 operations, and financing expenses, including expenses charged by or to the Utah fund of
245 funds, including management and placement fees;
246 [(ii)] (ix) review the progress of the investment fund allocation manager in
247 implementing its investment plan and provide a general description of the investment plan;
248 [and]
249 (x) for each individual fund that the Utah fund of funds is invested in, include the name
250 of the fund, the total value of the fund, the amount of money the Utah fund of funds has
251 invested in the fund, and the percentage of the total value of the fund held by the Utah fund of
252 funds;
253 (xi) include a list of each company in the state where an investment was made from a
254 fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time
255 employees in the state added by all companies where investments were made by funds that the
256 Utah fund of funds is invested in;
257 (xii) include an aggregate total value for all funds the Utah fund of funds is invested in,
258 and an aggregate total amount of money invested in the state by the funds the Utah fund of
259 funds is invested in;
260 [(iii)] (xiii) describe any redemption or transfer of a certificate issued under this part[-];
261 (xiv) include actual and estimated potential appropriations the Legislature will be
262 required to provide as a result of redeemed certificates or tax credits during the following five
263 years;
264 (xv) include an evaluation of the state's progress in accomplishing the purposes stated
265 in Section [63M-1-1202](#); and
266 (xvi) be directly accessible to the public via a link from the main page of the Utah fund
267 of fund's website.
268 (c) The annual report may not identify [~~any~~] a specific designated investor who has
269 [~~redeemed or~~] transferred a certificate.
270 ~~[(d) (i) Beginning July 1, 2006, and thereafter every two years, the board shall publish~~
271 ~~a progress report which shall evaluate the progress of the state in accomplishing the purposes~~

272 stated in Section ~~63M-1-1202.~~]

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

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

275 **63M-1-1214. Compensation from the Utah fund of funds to the corporation --**
276 **Redemption reserve.**

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

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

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

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

285 [~~(b) Any~~] (c) any returns received by the corporation from investment of amounts held
286 in the redemption reserve shall be added to the redemption reserve until it has reached a total of
287 [\$300,000,000.] \$250,000,000; and

288 [~~(c) If~~] (d) if at the end of a calendar year the redemption reserve exceeds the
289 [\$300,000,000] \$250,000,000 limitation referred to in Subsection (2)[~~(b)~~](c), the corporation
290 [shall] may reinvest the excess in the Utah fund of funds.

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

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

294 **63M-1-1217. Annual audits.**

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

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

298 (i) the state auditor; or

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

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

302 (i) the corporation; or

- 303 (ii) the Utah fund of funds.
- 304 (3) The corporation shall pay the costs associated with the annual audit.
- 305 (4) The annual audit report shall:
- 306 (a) be delivered to:
- 307 (i) the corporation; and
- 308 (ii) the board; ~~and~~
- 309 (b) include a valuation of the assets owned by the Utah fund of funds as of the end of
- 310 the reporting year[-];
- 311 (c) audit the accuracy of the information provided in the annual report described in
- 312 Subsection 63M-1-1206(6); and
- 313 (d) be completed on or before July 1 for the previous calendar year so that it may be
- 314 included in the annual report described in Section 63M-1-1206.
- 315 Section 6. Section **63M-1-1218** is amended to read:
- 316 **63M-1-1218. Certificates and contingent tax credits.**
- 317 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 318 board, in consultation with the State Tax Commission, shall make rules governing the form,
- 319 issuance, transfer, and redemption of certificates.
- 320 (2) The board's issuance of certificates and related contingent tax credits to designated
- 321 investors is subject to the following:
- 322 (a) the aggregate outstanding certificates may not exceed a total of ~~[\$300,000,000]~~;
- 323 (i) \$150,000,000 of contingent tax credits[-]; used as collateral or a guarantee on loans
- 324 for the debt-based financing of investments in the Utah fund of funds; and
- 325 (ii) \$100,000,000 used as a guarantee on equity investments in the Utah fund of funds;
- 326 (b) the board shall issue a certificate contemporaneously with an investment in the
- 327 Utah fund of funds by a designated investor;
- 328 (c) the board shall issue contingent tax credits in a manner that not more than
- 329 \$20,000,000 ~~[of contingent tax credits for each \$100,000,000 increment]~~ of contingent tax
- 330 credits may be redeemable in ~~[any]~~ a fiscal year; ~~and~~
- 331 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
- 332 make a cash redemption and the board does not exercise its other options under Subsection
- 333 63M-1-1220(3)(b)[-];

334 (e) the board may not issue additional certificates as collateral or a guarantee on a loan
335 for the debt-based financing of investments in the Utah fund of funds that is initiated after July
336 1, 2014, except for a loan refinanced on or after July 1, 2014, that was originated before July 1,
337 2014;

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

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

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

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

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

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

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

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

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

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

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

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

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

363 (a) the board shall certify a contingent tax credit only if the actual return, or payment of
364 principal and interest for a loan initiated before July 1, 2014, including a loan refinanced on or

365 after July 1, 2014, that was originated before July 1, 2014, to the designated investor is less
366 than that targeted at the issuance of the certificate;

367 (b) the amount of the contingent tax credit for a designated investor with an equity
368 interest may not exceed the difference between[~~:(i) the sum of: (A) the initial private~~
369 ~~investment of the designated investor in the Utah fund of funds; and (B) the scheduled~~
370 ~~aggregate return to the designated investor at rates of return authorized by the board at the~~
371 ~~issuance of the certificate; and (ii)] 50% of the initial private investment of the designated
372 investor in the Utah fund of funds and the aggregate actual return received by the designated
373 investor and any predecessor in interest of the initial equity investment and interest on the
374 initial equity investment;~~

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

377 (d) the amount of the contingent tax credit for a designated investor with [~~a loan or~~
378 ~~other debt obligation from]~~ an outstanding loan to the Utah fund of funds initiated before July
379 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1,
380 2014, shall be equal to the amount of any principal, interest, or interest equivalent unpaid at the
381 redemption of the loan or other obligation, as stipulated in the certificate.

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

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

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

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

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

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

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

394 (a) is binding on the board; and

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

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

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

401 Section 7. Section **63M-1-1225** is enacted to read:

402 **63M-1-1225. Division into two separate funds.**

403 After July 1, 2014:

404 (1) all investments in the Utah funds of funds acquired from debt-based financing shall
405 be called the Utah fund of funds 1;

406 (2) all investments in the Utah fund of funds from private investors with an equity
407 interest in the Utah fund of funds shall be called the Utah fund of funds 2;

408 (3) no more commitments may be made for the Utah fund of funds 1, and any
409 distributions from the Utah fund of funds 1 shall be used for expenses and paying the principal
410 and interest of any loans, except for funding existing commitments entered into before July 1,
411 2014; and

412 (4) all investments in the Utah fund of funds 2 shall be from private investors with an
413 equity interest in the Utah fund of funds 2.