

VENTURE CAPITAL ENHANCEMENT ACT

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Peggy Wallace

This act enacts the Utah Venture Capital Enhancement Act. The act provides economic stimulus measures for businesses by creating the Utah Capital Investment Board. The act authorizes the organization of the Utah Capital Investment Corporation and a Utah fund of funds. The act provides for the issuance of contingent tax credits to investors in the Utah fund of funds. The act takes effect on July 1, 2003.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

9-2-1205, as last amended by Chapter 242, Laws of Utah 2000

ENACTS:

9-2-1901, Utah Code Annotated 1953

9-2-1902, Utah Code Annotated 1953

9-2-1903, Utah Code Annotated 1953

9-2-1904, Utah Code Annotated 1953

9-2-1905, Utah Code Annotated 1953

9-2-1906, Utah Code Annotated 1953

9-2-1907, Utah Code Annotated 1953

9-2-1908, Utah Code Annotated 1953

9-2-1909, Utah Code Annotated 1953

9-2-1910, Utah Code Annotated 1953

9-2-1911, Utah Code Annotated 1953

9-2-1912, Utah Code Annotated 1953

9-2-1913, Utah Code Annotated 1953

9-2-1914, Utah Code Annotated 1953



- 28 **9-2-1915**, Utah Code Annotated 1953
- 29 **9-2-1916**, Utah Code Annotated 1953
- 30 **9-2-1917**, Utah Code Annotated 1953
- 31 **9-2-1918**, Utah Code Annotated 1953
- 32 **9-2-1919**, Utah Code Annotated 1953
- 33 **9-2-1920**, Utah Code Annotated 1953
- 34 **9-2-1921**, Utah Code Annotated 1953
- 35 **9-2-1922**, Utah Code Annotated 1953
- 36 **9-2-1923**, Utah Code Annotated 1953
- 37 **9-2-1924**, Utah Code Annotated 1953
- 38 **9-2-1925**, Utah Code Annotated 1953

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

40 Section 1. Section **9-2-1205** is amended to read:

41 **9-2-1205. Qualification for assistance.**

42 (1) Except as provided in Section 9-2-1205.5, the administrator shall determine which
43 industries, companies, and individuals qualify to receive monies from the fund. Except as
44 provided by Subsection (2), to qualify for financial assistance from the fund, an applicant shall:

45 (a) demonstrate to the satisfaction of the administrator that the applicant will expend
46 funds in Utah with vendors and subcontractors or other businesses in an amount proportional
47 with monies provided from the fund at a minimum ratio of 5.7 to 1 per year for a minimum
48 period of five years beginning with the date the loan was approved;

49 (b) demonstrate to the satisfaction of the administrator that the applicant will expend at
50 least \$10,000,000 annually in Utah over the base level of an applicant's prior year's
51 expenditures in the state;

52 (c) demonstrate to the satisfaction of the administrator the applicant's ability to sustain
53 economic activity in the state sufficient to repay, by means of cash or appropriate credits, the
54 assistance provided by the fund; and

55 (d) satisfy other criteria the administrator considers appropriate.

56 (2) (a) The administrator may exempt an applicant from either the requirements of
57 Subsection (1)(a) or (1)(b), or both, if:

58 (i) the financial assistance is provided to an applicant for the purpose of locating all or

59 any portion of its operations to an economically disadvantaged rural area;

60 (ii) the applicant is solely owned by or is a cooperative consisting solely of persons
61 who reside in an economically disadvantaged rural area; ~~or~~

62 (iii) the applicant is part of a targeted industry~~[-]; or~~

63 (iv) the applicant is a private, not-for-profit corporation organized under Title 16,
64 Chapter 6a, Utah Revised Nonprofit Corporation Act and its operations, as demonstrated to the
65 satisfaction of the administrator, will provide significant economic stimulus to the growth of
66 commerce and industry in the state.

67 (b) The administrator may not exempt the applicant from the requirement under
68 Subsection 9-2-1204(2) that the loan or financial assistance be structured so that the repayment
69 or return to the state equals at least the amount of the assistance together with an annual
70 interest rate of 10%.

71 (3) The administrator shall:

72 (a) for applicants not described in Subsection (2)(a)(ii):

73 (i) make findings as to whether or not each applicant has satisfied each of the
74 conditions set forth in Subsection (1); and

75 (ii) monitor the continued compliance by each applicant with each of the conditions set
76 forth in Subsection (1);

77 (b) for applicants described in Subsection (2)(a)(ii) who are cooperatives, make
78 findings as to whether the economic activities of each applicant has resulted in a reduction in
79 the federal poverty rate in the economically disadvantaged rural area in which the applicant is
80 located;

81 (c) for applicants described in Subsection (2)(a)(ii) who are not cooperatives, make
82 findings as to whether the economic activities of each applicant has resulted in the creation of
83 new jobs on a per capita basis, instead of a set standard, in the economically disadvantaged
84 rural area in which the applicant is located;

85 (d) monitor the compliance by each applicant with the provisions of any contract or
86 agreement entered into between the applicant and the state as provided in Section 9-2-1206;
87 and

88 (e) make funding decisions based upon appropriate findings and compliance.

89 Section 2. Section **9-2-1901** is enacted to read:

90 **Part 19. Utah Venture Capital Enhancement Act**91 **9-2-1901. Title.**92 This part is known as the "Utah Venture Capital Enhancement Act."93 Section 3. Section **9-2-1902** is enacted to read:94 **9-2-1902. Findings -- Purpose.**95 (1) The Legislature finds that:96 (a) fundamental changes have occurred in national and international financial markets
97 and in the state's financial markets;98 (b) a critical shortage of seed and venture capital resources exists in the state, and that
99 shortage is impairing the growth of commerce in the state;100 (c) a need exists to increase the availability of venture equity capital for emerging,
101 expanding, and restructuring enterprises in Utah, including enterprises in the life sciences,
102 advanced manufacturing, and information technology; and103 (d) increased venture equity capital investments in emerging, expanding, and
104 restructuring enterprises in Utah will:105 (i) create new jobs in the state; and106 (ii) help to diversify the state's economic base.107 (2) This part is enacted to:108 (a) mobilize private investment in a broad variety of venture capital partnerships in
109 diversified industries and locales;110 (b) retain the private-sector culture of focusing on rate of return in the investing
111 process;112 (c) secure the services of the best managers in the venture capital industry, regardless
113 of location;114 (d) facilitate the organization of the Utah fund of funds to seek private investments and
115 to create interest in those investments by offering state incentives for private persons to make
116 investments in the Utah fund of funds;117 (e) enhance the venture capital culture and infrastructure in the state so as to increase
118 venture capital investment within the state and to promote venture capital investing within the
119 state; and120 (f) accomplish the purposes referred to in Subsections (2)(a) through (e) in a manner

121 that would ~~h~~ **[minimize]** **MAXIMIZE THE DIRECT ECONOMIC IMPACT FOR THE STATE WHILE**
 121a **MINIMIZING** ~~h~~ any appropriations by the state.

122 Section 4. Section **9-2-1903** is enacted to read:

123 **9-2-1903. Definitions.**

124 As used in this part:

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

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

128 (3) "Commitment" means a written commitment by a designated purchaser to purchase
 129 from the board certificates presented to the board for redemption by a designated investor.

130 Each commitment shall state the dollar amount of contingent tax credits that the designated
 131 purchaser has committed to purchase from the board.

132 (4) "Contingent tax credit" means a contingent tax credit issued under Section
 133 9-2-1919 that is available against tax liabilities imposed by Title 59, Chapter 7, Corporate
 134 Franchise and Income Taxes, and Chapter 10, Individual Income Tax Act.

135 (5) "Corporation" means the Utah Capital Investment Corporation, a private, nonprofit
 136 corporation created under Section 9-2-1907.

137 (6) "Designated investor" means:

138 (a) a person who purchases an equity interest in the Utah fund of funds; or

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

140 (7) "Designated purchaser" means:

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

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

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

147 (9) "Redemption reserve" means the reserve established by the corporation to facilitate
 148 the cash redemption of certificates.

149 (10) "Utah fund of funds" means a private, for-profit limited partnership or limited
 150 liability company established by the corporation under Section 9-2-1913 in which a designated
 151 investor purchases an equity interest.

152 Section 5. Section **9-2-1904** is enacted to read:

153 **9-2-1904. Utah Capital Investment Board.**

154 (1) There is created within the department the Utah Capital Investment Board to
155 exercise the powers conferred by this part.

156 (2) The purpose of the board is to mobilize venture equity capital for investment in a
157 manner that will result in a significant potential to create jobs and to diversify and stabilize the
158 economy of the state.

159 (3) In the exercise of its powers and duties, the board is considered to be performing an
160 essential public purpose.

161 Section 6. Section **9-2-1905** is enacted to read:

162 **9-2-1905. Board members -- Meetings -- Expenses.**

163 (1) (a) The board shall consist of five members.

164 (b) Of the five members:

165 (i) one shall be the state treasurer;

166 (ii) one shall be the director; and

167 (iii) three shall be appointed by the governor and confirmed by the Senate.

168 (c) The three members appointed by the governor shall serve five-year staggered terms

169 ĥ [that are structured to allow the term of one member to expire each year] , WITH THE INITIAL

169a TERMS OF THE FIRST THREE MEMBERS TO BE FIVE YEARS FOR ONE MEMBER, FOUR YEARS FOR

169b ONE MEMBER, AND THREE YEARS FOR ONE MEMBER ĥ .

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

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

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

174 (3) Appointed members of the board may not serve more than two full consecutive
175 terms except where the governor determines that an additional term is in the best interest of the
176 state.

177 (4) Three members of the board constitute a quorum for conducting business and
178 exercising board power.

179 (5) (a) Members of the board may not receive compensation or benefits for their
180 services, but may receive per diem and expenses incurred in the performance of the members'
181 official duties at rates established by the Division of Finance under Sections 63A-3-106 and
182 63A-3-107.

183 (b) Members of the board may decline to receive per diem and expenses for their
184 services.

185 (6) Members of the board shall be selected on the basis of demonstrated expertise and
186 competence in:

187 (a) the supervision of investment managers;

188 (b) the fiduciary management of investment funds; or

189 (c) the management and administration of tax credit allocation programs.

190 (7) The board and its members are considered to be a governmental entity with all of
191 the rights, privileges, and immunities of a governmental entity of the state, including all of the
192 rights and benefits conferred under Title 63, Chapter 30, Utah Government Immunity Act.

193 (8) Meetings of the board, except to the extent necessary to protect confidential
194 information with respect to investments in the Utah fund of funds, are subject to Title 52,
195 Chapter 4, Open and Public Meetings.

196 Section 7. Section **9-2-1906** is enacted to read:

197 **9-2-1906. Board duties and powers.**

198 (1) The board shall:

199 (a) establish criteria and procedures for the allocation and issuance of contingent tax
200 credits to designated investors by means of certificates issued by the board;

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

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

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

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

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

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

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

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

- 214 (f) have power to:
215 (i) expend funds;
216 (ii) invest funds;
217 (iii) enter into contracts;
218 (iv) bond or insure against loss; and
219 (v) perform any other act necessary to carry out its purpose; and
220 (g) (i) make, amend, and revoke rules for the conduct of its affairs, consistent with this
221 part and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
222 (ii) all rules made by the board under Subsection (1)(g)(i) are subject to:
223 (A) approval by the Legislative Management Committee; and
224 (B) review by the Legislative Management Committee:
225 (I) whenever modified or revoked; and
226 (II) in each even-numbered year; and
227 (iii) Subsection (1)(g)(ii) does not preclude the Legislature's Administrative Rules
228 Committee from reviewing and taking appropriate action on any rule made, amended, or
229 revoked by the board.
- 230 (2) The criteria and procedures established by the board for the allocation and issuance
231 of contingent tax credits shall:
232 (a) include the contingencies that must be met for a certificate and its related tax credits
233 to be:
234 (i) issued by the board;
235 (ii) transferred by a designated investor; and
236 (iii) redeemed by a designated investor in order to receive a contingent tax credit; and
237 (b) tie the contingencies for redemption of certificates to the targeted rates of return
238 and scheduled redemptions of equity interests purchased by designated investors in the Utah
239 fund of funds.
- 240 (3) (a) The board may charge a placement fee to the Utah fund of funds for the
241 issuance of a certificate and related contingent tax credit to a designated investor.
242 (b) The fee shall:
243 (i) be charged only to pay for reasonable and necessary costs of the board; and
244 (ii) not exceed .5% of the equity investment of the designated investor.

- 245 (4) The board's criteria and procedures for redeeming certificates:
246 (a) shall give priority to the redemption amount from the available funds in the
247 redemption reserve; and
248 (b) to the extent there are insufficient funds in the redemption reserve to redeem
249 certificates, shall grant the board the option to redeem certificates:
250 (i) by certifying a contingent tax credit to the designated investor; or
251 (ii) by making demand on designated purchasers consistent with the requirements of
252 Section 9-2-1921.
253 (5) (a) The board shall, in consultation with the corporation, publish an annual report
254 of the activities conducted by the Utah fund of funds, and present the report to the governor and
255 the Legislature.
256 (b) The annual report shall:
257 (i) include a copy of the audit of the Utah fund of funds and a valuation of the assets of
258 the Utah fund of funds;
259 (ii) review the progress of the investment fund allocation manager in implementing its
260 investment plan; and
261 (iii) describe any redemption or transfer of a certificate issued under this part.
262 (c) The annual report may not identify any specific designated investor who has
263 redeemed or transferred a certificate.
264 (d) Every five years, the board shall publish a progress report which shall evaluate the
265 progress of the state in accomplishing the purposes stated in Section 9-2-1902 and make a
266 report to the Legislature on that progress.
267 Section 8. Section **9-2-1907** is enacted to read:
268 **9-2-1907. Utah Capital Investment Corporation -- Powers and purposes.**
269 (1) (a) The corporation shall:
270 (i) be organized as a private, not-for-profit corporation under Title 16, Chapter 6a, Utah
271 Revised Nonprofit Corporation Act; and
272 (ii) have all of the powers listed in Section 16-6a-302.
273 (b) The corporation:
274 (i) is not a public corporation or instrumentality of the state;
275 (ii) may not enjoy any of the privileges of a public corporation or instrumentality of the

276 state; and
277 (iii) is not required to comply with the requirements of a state agency.
278 (c) Except as otherwise provided in this part, this part does not exempt the corporation
279 from the requirements under state law which apply to other corporations organized under Title
280 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
281 (2) The purposes of the corporation are to:
282 (a) organize the Utah fund of funds;
283 (b) select a venture capital investment fund allocation manager to make venture capital
284 fund investments by the Utah fund of funds;
285 (c) negotiate the terms of a contract with the venture capital investment fund allocation
286 manager;
287 (d) execute the contract with the selected venture capital investment fund manager on
288 behalf of the Utah fund of funds;
289 (e) receive funds paid by designated investors for the issuance of certificates by the
290 board for investment in the Utah fund of funds;
291 (f) receive investment returns from the Utah fund of funds; and
292 (g) establish the redemption reserve to be used by the corporation to redeem
293 certificates.
294 (3) The corporation may not:
295 (a) exercise governmental functions;
296 (b) have members;
297 (c) pledge the credit or taxing power of the state or any political subdivision of the
298 state; or
299 (d) make its debts payable out of any moneys except those of the corporation.
300 (4) The obligations of the corporation are not obligations of the state or any political
301 subdivision of the state within the meaning of any constitutional or statutory debt limitations,
302 but are obligations of the corporation payable solely and only from the corporation's funds.
303 (5) The corporation may:
304 (a) engage consultants and legal counsel;
305 (b) expend funds;
306 (c) invest funds;

- 307 (d) enter into contracts;
308 (e) bond or insure against loss;
309 (f) hire employees; and
310 (g) perform any other act necessary to carry out its purposes.

311 Section 9. Section **9-2-1908** is enacted to read:

312 **9-2-1908. Incorporator -- Appointment committee.**

313 (1) To facilitate the organization of the corporation, the director shall serve as the
314 incorporator as provided in Section 16-6a-201.

315 (2) To assist in the organization of the corporation, the Utah Board of Business and
316 Economic Development shall appoint three individuals to serve on an appointment committee.

317 (3) The appointment committee shall:

318 (a) elect the initial board of directors of the corporation;

319 (b) exercise due care to assure that persons elected to the initial board of directors have
320 the requisite financial experience necessary in order to carry out the duties of the corporation as
321 established in this part, including in areas related to:

322 (i) venture capital investment;

323 (ii) investment management; and

324 (iii) supervision of investment managers and investment funds; and

325 (c) terminate its existence upon the election of the initial board of directors of the
326 corporation.

327 (4) The division shall assist the incorporator and the appointment committee in any
328 manner determined necessary and appropriate by the incorporator and appointment committee
329 in order to administer this section.

330 Section 10. Section **9-2-1909** is enacted to read:

331 **9-2-1909. Board of directors.**

332 (1) The initial board of directors of the corporation shall consist of five members.

333 (2) The persons elected to the initial board of directors by the appointment committee
334 shall include persons who have an expertise, as considered appropriate by the appointment
335 committee, in the areas of:

336 (a) the selection and supervision of investment managers;

337 (b) fiduciary management of investment funds; and

338 (c) other areas of expertise as considered appropriate by the appointment committee.

339 (3) After the election of the initial board of directors, vacancies in the board of
340 directors of the corporation shall be filled by election by the remaining directors of the
341 corporation.

342 (4) Members of the board of directors:

343 (a) are subject to any restrictions on conflicts of interest specified in the organizational
344 documents of the corporation; and

345 (b) may have no interest in any:

346 (i) venture capital investment fund allocation manager selected by the corporation
347 under this part; or

348 (ii) investments made by the Utah fund of funds.

349 (5) Directors of the corporation:

350 (a) shall be compensated for direct expenses and mileage; and

351 (b) may not receive a director's fee or salary for service as directors.

352 Section 11. Section **9-2-1910** is enacted to read:

353 **9-2-1910. Investment manager.**

354 (1) After incorporation, the corporation shall conduct a national solicitation for
355 investment plan proposals from qualified venture capital investment fund allocation managers
356 for the raising and investing of capital by the Utah fund of funds in accordance with the
357 requirements of this part.

358 (2) Any proposed investment plan shall address the applicant's:

359 (a) level of:

360 (i) experience; and

361 (ii) quality of management;

362 (b) investment philosophy and process;

363 (c) probability of success in fund-raising;

364 (d) prior investment fund results; and

365 (e) plan for achieving the purposes of this part.

366 (3) The selected venture capital investment fund allocation manager shall have
367 substantial, successful experience in the design, implementation, and management of seed and
368 venture capital investment programs and in capital formation.

369 (4) The corporation shall only select a venture capital investment fund allocation
370 manager:

371 (a) with demonstrated expertise in the management and fund allocation of investments
372 in venture capital funds; and

373 (b) considered best qualified to:

374 (i) invest the capital of the Utah fund of funds; and

375 (ii) generate the amount of capital required by this part.

376 Section 12. Section **9-2-1911** is enacted to read:

377 **9-2-1911. Management fee -- Additional financial assistance.**

378 (1) The corporation may charge a management fee on assets under management in the
379 Utah fund of funds.

380 (2) The fee shall:

381 (a) be in addition to any fee charged to the Utah fund of funds by the venture capital
382 investment fund allocation manager selected by the corporation; and

383 (b) be charged only to pay for reasonable and necessary costs of the corporation.

384 (3) The corporation may apply for and, when qualified, receive financial assistance
385 from the Industrial Assistance Fund under Title 9, Chapter 2, Part 12, Industrial Assistance
386 Fund, and rules made by the Board of Business and Economic Development in accordance
387 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to help establish the program
388 authorized under this part.

389 Section 13. Section **9-2-1912** is enacted to read:

390 **9-2-1912. Dissolution.**

391 (1) Upon the dissolution of the Utah fund of funds, the corporation shall be liquidated
392 and dissolved.

393 (2) Upon dissolution of the corporation, any assets owned by the corporation shall be
394 distributed to the state and deposited in the General Fund.

395 Section 14. Section **9-2-1913** is enacted to read:

396 **9-2-1913. Organization of Utah fund of funds.**

397 (1) The corporation shall organize the Utah fund of funds.

398 (2) The Utah fund of funds shall make investments in private seed and venture capital
399 partnerships or entities in a manner and for the following purposes:

- 400 (a) to encourage the availability of a wide variety of venture capital in the state;
401 (b) to strengthen the economy of the state;
402 (c) to help business in the state gain access to sources of capital;
403 (d) to help build a significant, permanent source of capital available to serve the needs
404 of businesses in the state; and
405 (e) to accomplish all these benefits in a way that minimizes the use of contingent tax
406 credits.

407 (3) The Utah fund of funds shall be organized:

408 (a) as a private, for-profit, limited partnership or limited liability company under Utah
409 law having the corporation as the general partner or manager; and

410 (b) to provide for equity interests for designated investors which provide for a
411 designated scheduled rate of return and a scheduled redemption in accordance with rules made
412 by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

413 Section 15. Section **9-2-1914** is enacted to read:

414 **9-2-1914. Compensation from the Utah fund of funds to the corporation --**
415 **Redemption reserve.**

416 (1) The corporation shall be compensated for its investment in the Utah fund of funds
417 through the payment of the management fee described in Section 9-2-1911.

418 (2) (a) Any returns in excess of those payable to designated investors shall be deposited
419 in the redemption reserve and held by the corporation as a reserve for the redemption of
420 certificates.

421 (b) Any returns received by the corporation from investment of amounts held in the
422 redemption reserve shall be added to the redemption reserve until it has reached a total of
423 \$100,000,000.

424 (c) If at the end of any calendar year the redemption reserve exceeds the \$100,000,000
425 limitation referred to in Subsection (2)(b), the excess shall be deposited in the General Fund no
426 later than April 1, of the following year.

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

429 Section 16. Section **9-2-1915** is enacted to read:

430 **9-2-1915. Investments by Utah fund of funds.**

431 (1) The Utah fund of funds shall invest funds:

432 (a) principally in high-quality venture capital funds managed by investment managers
433 who have:

434 (i) made a commitment to equity investments in businesses located within the state;

435 and

436 (ii) have committed to maintain a physical presence within the state;

437 (b) in private venture capital funds and not in direct investments in individual
438 businesses; and

439 (c) in venture capital funds with experienced managers or management teams with
440 demonstrated expertise and a successful history in the investment of venture capital funds.

441 (2) (a) The Utah fund of funds shall give priority to investments in private seed and
442 venture capital partnerships and entities that have demonstrated a commitment to the state as
443 evidenced by:

444 (i) the investments they have made in Utah-based entities;

445 (ii) the number of office locations they have established in the state;

446 (iii) the correspondent relationships they have established with Utah-based venture
447 capital funds; or

448 (iv) ~~h~~ IF THEY HAVE EXISTING OFFICES IN THE STATE, ~~h~~ the commitment they have made
448a to expand the reach of expertise within the state

449 by ~~h~~ [adding additional] DEMONSTRATING THE TANGIBLE ADDITION OF ~~h~~ investment areas of
449a expertise.

450 (b) The manager of the Utah fund of funds may waive the priorities under Subsection
451 (2)(a) only if necessary to achieve the targeted investment returns required to attract designated
452 investors.

453 (3) The Utah fund of funds may invest funds in a newly created venture capital fund
454 only if the managers or management team of the fund have the experience, expertise, and a
455 successful history in the investment of venture capital funds as described in Subsection (1)(c).

455a ~~h~~ (4)(a) THROUGH JULY 1, 2013, THE FUND MANAGER SHALL GIVE PRIORITY TO INVESTING
455b IN VENTURE CAPITAL ENTITIES THAT DID NOT HAVE OFFICES OR FACILITIES IN THE STATE
455c BEFORE JULY 1, 2002, BUT ARE COMMITTED TO INVESTING IN UTAH COMPANIES, AS EVIDENCED
455d BY THEIR WILLINGNESS TO COMPLY WITH THE PREFERENCES IN SUBSECTIONS (1)(a) AND (2)(a)
455e AFTER RECEIVING INVESTMENTS BY THE UTAH FUND OF FUNDS.

455f (b) AN ENTITY WITH OFFICES OR FACILITIES IN THE STATE BEFORE JULY 1, 2002, MAY NOT
455g RECEIVE MORE THAN \$2,000,000 IN INVESTMENT FUNDS FROM THE UTAH FUND OF FUNDS
455h DURING THE PERIOD FROM JULY 1, 2003 TO JULY 1, 2013. ~~h~~

456 Section 17. Section **9-2-1916** is enacted to read:
457 **9-2-1916. Powers of Utah fund of funds.**
458 (1) The Utah fund of funds may:
459 (a) engage consultants and legal counsel;
460 (b) expend funds;
461 (c) invest funds;

- 462 (d) enter into contracts;
463 (e) bond or insure against loss;
464 (f) hire employees;
465 (g) issue equity interests to designated investors that have purchased certificates from
466 the board; and
467 (h) perform any other act necessary to carry out its purposes.
468 (2) (a) The Utah fund of funds shall engage a venture capital investment fund
469 allocation manager.
470 (b) The compensation paid to the fund manager shall be in addition to the management
471 fee paid to the corporation under Section 9-2-1911.
472 (3) The Utah fund of funds may:
473 (a) issue debt and borrow the funds needed to accomplish its goals;
474 (b) not secure its debt with contingent tax credits issued by the board;
475 (c) open and manage bank and short-term investment accounts as considered necessary
476 by the venture capital investment fund allocation manager; and
477 (d) expend moneys to secure investment ratings for investments by designated
478 investors in the Utah fund of funds.
479 Section 18. Section **9-2-1917** is enacted to read:
480 **9-2-1917. Annual audits.**
481 (1) Each calendar year, an audit of the activities of the Utah fund of funds shall be
482 made as described in this section.
483 (2) (a) The audit shall be conducted by:
484 (i) the state auditor; or
485 (ii) an independent auditor engaged by the state auditor.
486 (b) An independent auditor used under Subsection (2)(a)(ii) must have no business,
487 contractual, or other connection to:
488 (i) the corporation; or
489 (ii) the Utah fund of funds.
490 (3) The corporation shall pay the costs associated with the annual audit.
491 (4) The annual audit report shall:
492 (a) be delivered to:

- 493 (i) the corporation; and
- 494 (ii) the board; and
- 495 (b) include a valuation of the assets owned by the Utah fund of funds as of the end of
- 496 the reporting year.

497 Section 19. Section **9-2-1918** is enacted to read:

498 **9-2-1918. Sunset review -- Dissolution of Utah fund of funds.**

499 (1) The Legislature shall conduct a sunset review of the Utah fund of funds 50 years

500 after its organization.

501 (2) If the Legislature does not reauthorize the Utah fund of funds under the sunset

502 review, the corporation shall cause the Utah fund of funds to be liquidated with all of its assets

503 distributed to its owners in accordance with the provisions of its organizational documents.

504 (3) As a part of the sunset review of the Utah fund of funds, the corporation shall file a

505 report with the Legislature stating how many jobs in this state were created through

506 investments made by the Utah fund of funds.

507 Section 20. Section **9-2-1919** is enacted to read:

508 **9-2-1919. Certificates and contingent tax credits.**

509 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

510 board, in consultation with the State Tax Commission, shall make rules governing the form,

511 issuance, and redemption of certificates.

512 (2) The board's issuance of certificates and related contingent tax credits to designated

513 investors shall be subject to the following:

514 (a) the aggregate outstanding certificates may not exceed a total of \$100,000,000 of

515 contingent tax credits;

516 (b) the certificates shall be issued contemporaneously with an investment in the Utah

517 fund of funds by a designated investor; and

518 (c) contingent tax credits shall be issued in a manner that not more than \$20,000,000 of

519 contingent tax credits may be initially redeemable in any fiscal year.

520 (3) In determining the \$100,000,000 maximum limit in Subsection (2)(a) and the

521 \$20,000,000 limitation in Subsection (2)(c):

522 (a) the board shall use the cumulative amount of scheduled aggregate returns on

523 certificates issued by the board to designated investors;

524 (b) certificates and related contingent tax credits which have expired may not be
 525 included; and

526 (c) certificates and related contingent tax credits which have been redeemed shall be
 527 included only to the extent of tax credits actually allowed.

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

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

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

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

535 (d) an investor who redeems a certificate and the related contingent tax credit shall

536 base the amount claimed by the investor on the pro rata share of the investor's earnings from
 537 the:

538 —— (i) partnership;

539 —— (ii) limited liability company;

540 —— (iii) S corporation;

541 —— (iv) estate; or

542 —— (v) trust; and] **ALLOCATE THE AMOUNT OF THE CONTINGENT TAX CREDIT TO THE**

542a **TAXPAYERS OF THE INVESTOR BASED ON EACH TAXPAYER'S PRO RATA SHARE OF THE**

542b **INVESTOR'S EARNINGS; AND** ^h

543 (e) any contingent tax credit in excess of the taxpayer's tax liability for the tax year may
 544 be credited to the tax liability until the earlier of:

545 (i) the depletion of the contingent tax credit; or

546 (ii) a period not to exceed seven years.

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

548 (a) a contingent tax credit shall be certified by the board only if the actual return to the
 549 designated investor is less than the return that was targeted at the issuance of the certificate;

550 (b) the amount of the contingent tax credit may not exceed the difference between:

551 (i) the sum of:

552 (A) the initial equity investment of the designated investor in the Utah fund of funds;

553 and

554 (B) the scheduled aggregate return to the designated investor at rates of return

555 authorized by the board at the issuance of the certificate; and
556 (ii) the aggregate actual return received by the designated investor and any predecessor
557 in interest of the initial equity investment and interest on the initial equity investment; and
558 (c) the rates, whether fixed rates or variable rates, shall be determined by a formula
559 stipulated in the certificate.

560 (6) The board shall clearly indicate on the certificate:
561 (a) the targeted return on the invested capital;
562 (b) the amount of the initial equity investment;
563 (c) the calculation formula for determining the scheduled aggregate return on the initial
564 equity investment; and
565 (d) the calculation formula for determining the amount of the contingent tax credit that
566 may be claimed.

567 (7) Once moneys are invested by a designated investor, the certificate:
568 (a) shall be binding on the board; and
569 (b) may not be modified, terminated, or rescinded.

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

572 (9) The State Tax Commission may, in consultation with the board, make rules to help
573 implement this section.

574 Section 21. Section **9-2-1920** is enacted to read:
575 **9-2-1920. Transfer and registration of certificates.**

576 (1) A certificate and the related contingent tax credit may be transferred by the
577 designated investor.

578 (2) The board, in conjunction with the State Tax Commission, shall develop:
579 (a) a system for registration of any certificate and related contingent tax credit issued or
580 transferred under this part; and
581 (b) a system that permits verification that:
582 (i) any contingent tax credit claimed upon a tax return is valid; and
583 (ii) any transfers of the certificate and related contingent tax credit are made in
584 accordance with the requirements of this part.

585 (3) A certificate or contingent tax credit issued or transferred under this part may not be

586 considered a security under Title 61, Chapter 1, Utah Uniform Securities Act.

587 Section 22. Section **9-2-1921** is enacted to read:

588 **9-2-1921. Redemption of certificates.**

589 (1) If a designated investor elects to redeem a certificate, the certificate shall be
590 presented to the board for redemption no later than June 30 of the calendar year maturity date
591 stated on the certificate.

592 (2) Upon presentment to the board, it shall determine and certify the amount of the
593 contingent tax credit that may be claimed by the designated investor based on:

594 (a) the limitations in Section 9-1-1919; and

595 (b) rules made by the board in accordance with Title 63, Chapter 46a, Utah
596 Administrative Rulemaking Act.

597 (3) (a) If there are sufficient funds in the redemption reserve, the board shall direct the
598 corporation to make a cash redemption of the certificate.

599 (b) If there are insufficient funds in the redemption reserve, the board may elect to
600 redeem the certificate:

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

602 (ii) by making demand on designated purchasers to purchase certificates in accordance
603 with Section 9-2-1922; or

604 (iii) by borrowing funds.

605 (4) The board shall certify to the State Tax Commission the contingent tax credit which
606 can be claimed by the designated investor with respect to the redemption of the certificate.

607 Section 23. Section **9-2-1922** is enacted to read:

608 **9-2-1922. Use of commitments to redeem certificates.**

609 (1) The board may elect to draw on a commitment to redeem a certificate from a
610 designated investor.

611 (2) If the board makes an election under Subsection (1), it shall:

612 (a) inform the designated purchaser of the amount of the contingent tax credit that must
613 be purchased from the board;

614 (b) specify the date on which the purchase must be consummated; and

615 (c) use the funds delivered to the board by the designated purchaser to redeem the
616 certificate from the designated investor.

617 (3) The board has discretion in determining which commitment or commitments and
618 what portion of those commitments to use to redeem certificates.

619 (4) The contingent tax credits acquired by a designated purchaser under this section are
620 subject to Section 9-2-1919.

621 Section 24. Section **9-2-1923** is enacted to read:

622 **9-2-1923. Powers and effectiveness.**

623 (1) This part may not be construed as a restriction or limitation upon any power which
624 the board might otherwise have under any other law of this state and the provisions of this part
625 are cumulative to those powers.

626 (2) This part shall be construed to provide a complete, additional, and alternative
627 method for performing the duties authorized and shall be regarded as supplemental and
628 additional powers to those conferred by any other laws.

629 (3) The provisions of any contract entered into by the board or the Utah fund of funds
630 may not be compromised, diminished, invalidated, or affected by the:

631 (a) level, timing, or degree of success of the Utah fund of funds or the investment funds
632 in which the Utah fund of funds invests; or

633 (b) extent to which the investment funds are:

634 (i) invested in Utah venture capital projects; or

635 (ii) successful in accomplishing any economic development objectives.

636 Section 25. Section **9-2-1924** is enacted to read:

637 **9-2-1924. Permissible investments.**

638 Investments by designated investors in the Utah fund of funds are permissible
639 investments under applicable laws of the state for:

640 (1) state-chartered banks;

641 (2) state-chartered savings and loan associations;

642 (3) state-chartered credit unions;

643 (4) state-chartered industrial loan corporations; and

644 (5) domestic insurance companies.

645 Section 26. Section **9-2-1925** is enacted to read:

646 **9-2-1925. Enforcement.**

647 The attorney general may enforce the provisions of this part and conduct any

648 investigations necessary for enforcement.

649 Section 27. **Effective date.**

650 This act takes effect on July 1, 2003.

Legislative Review Note

as of 2-14-03 9:48 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

Any fiscal impact would be determined by the board set up in the bill. Any contingent tax credits would be capped at \$100,000,000, resulting in potential losses to state revenue. The Tax Commission would require an appropriation of \$12,400 to administer the provisions of the bill.

| | <u>FY 04 Approp.</u> | <u>FY 05 Approp.</u> | <u>FY 04 Revenue</u> | <u>FY 05 Revenue</u> |
|---------------------|----------------------|----------------------|----------------------|----------------------|
| Uniform School Fund | \$12,400 | \$0 | \$0 | \$0 |
| TOTAL | \$12,400 | \$0 | \$0 | \$0 |

Individual and Business Impact

No initial fiscal impact.
