

VENTURE CAPITAL ENHANCEMENT ACT

2003 GENERAL SESSION

STATE OF UTAH

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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

63-55-209, as last amended by Chapter 159, Laws of Utah 2002

63E-1-102, as last amended by Chapters 159 and 250, Laws of Utah 2002

63E-1-302, as enacted by Chapter 201, Laws of Utah 2001

63E-1-303, as enacted by Chapter 201, Laws of Utah 2001

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
- 9-2-1915, Utah Code Annotated 1953
- 9-2-1916, Utah Code Annotated 1953
- 9-2-1917, Utah Code Annotated 1953
- 9-2-1918, Utah Code Annotated 1953
- 9-2-1919, Utah Code Annotated 1953
- 9-2-1920, Utah Code Annotated 1953
- 9-2-1921, Utah Code Annotated 1953
- 9-2-1922, Utah Code Annotated 1953
- 9-2-1923, Utah Code Annotated 1953
- 9-2-1924, Utah Code Annotated 1953

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

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

9-2-1205. Qualification for assistance.

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

(a) demonstrate to the satisfaction of the administrator that the applicant will expend funds in Utah with vendors and subcontractors or other businesses in an amount proportional with monies provided from the fund at a minimum ratio of 5.7 to 1 per year for a minimum

period of five years beginning with the date the loan was approved;

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

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

(d) satisfy other criteria the administrator considers appropriate.

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

(i) the financial assistance is provided to an applicant for the purpose of locating all or any portion of its operations to an economically disadvantaged rural area;

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

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

(iv) the applicant is a quasi-public corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or Title 63E, Chapter 2, Independent Corporations Act, and its operations, as demonstrated to the satisfaction of the administrator, will provide significant economic stimulus to the growth of commerce and industry in the state.

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

(3) The administrator shall:

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

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

(ii) monitor the continued compliance by each applicant with each of the conditions set

forth in Subsection (1);

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

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

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

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

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

Part 19. Utah Venture Capital Enhancement Act

9-2-1901. Title.

This part is known as the "Utah Venture Capital Enhancement Act."

Section 3. Section **9-2-1902** is enacted to read:

9-2-1902. Findings -- Purpose.

(1) The Legislature finds that:

(a) fundamental changes have occurred in national and international financial markets and in the state's financial markets;

(b) a critical shortage of seed and venture capital resources exists in the state, and that shortage is impairing the growth of commerce in the state;

(c) a need exists to increase the availability of venture equity capital for emerging, expanding, and restructuring enterprises in Utah, including enterprises in the life sciences, advanced manufacturing, and information technology; and

(d) increased venture equity capital investments in emerging, expanding, and restructuring enterprises in Utah will:

(i) create new jobs in the state; and

(ii) help to diversify the state's economic base.

(2) This part is enacted to:

(a) mobilize private investment in a broad variety of venture capital partnerships in diversified industries and locales;

(b) retain the private-sector culture of focusing on rate of return in the investing process;

(c) secure the services of the best managers in the venture capital industry, regardless of location;

(d) facilitate the organization of the Utah fund of funds to seek private investments and to create interest in those investments by offering state incentives for private persons to make investments in the Utah fund of funds;

(e) enhance the venture capital culture and infrastructure in the state so as to increase venture capital investment within the state and to promote venture capital investing within the state; and

(f) accomplish the purposes referred to in Subsections (2)(a) through (e) in a manner that would maximize the direct economic impact for the state while minimizing any appropriations by the state.

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

9-2-1903. Definitions.

As used in this part:

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

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

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

(4) "Contingent tax credit" means a contingent tax credit issued under this part that is available against tax liabilities imposed by Title 59, Chapter 7, Corporate Franchise and Income

Taxes, and Chapter 10, Individual Income Tax Act, if there are insufficient funds in the redemption reserve and the board has not exercised other options for redemption under Subsection 9-2-1920(3)(b).

(5) "Corporation" means the Utah Capital Investment Corporation created under Section 9-2-1907.

(6) "Designated investor" means:

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

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

(7) "Designated purchaser" means:

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

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

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

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

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

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

9-2-1904. Utah Capital Investment Board.

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

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

(3) In the exercise of its powers and duties, the board is considered to be performing an

essential public purpose.

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

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

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

(b) Of the five members:

(i) one shall be the state treasurer;

(ii) one shall be the director; and

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

(c) The three members appointed by the governor shall serve five-year staggered terms with the initial terms of the first three members to be five years for one member, four years for one member, and three years for one member.

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

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

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

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

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

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

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

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

(a) the supervision of investment managers;

(b) the fiduciary management of investment funds; or

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

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

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

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

9-2-1906. Board duties and powers.

(1) The board shall:

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

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

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

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

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

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

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

(i) entering into commitments with designated purchasers; and

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

(f) have power to:

(i) expend funds;

(ii) invest funds;

(iii) enter into contracts;

(iv) insure against loss; and

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

(g) (i) make, amend, and revoke rules for the conduct of its affairs, consistent with this part and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(ii) all rules made by the board under Subsection (1)(g)(i) are subject to review by the Legislative Management Committee:

(A) whenever made, modified, or revoked; and

(B) in each even-numbered year; and

(iii) Subsection (1)(g)(ii) does not preclude the Legislature's Administrative Rules Committee from reviewing and taking appropriate action on any rule made, amended, or revoked by the board.

(2) The criteria and procedures established by the board for the allocation and issuance of contingent tax credits shall:

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

(i) issued by the board;

(ii) transferred by a designated investor; and

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

(b) tie the contingencies for redemption of certificates to the targeted rates of return and scheduled redemptions of equity interests purchased by designated investors in the Utah fund of funds.

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

(b) The fee shall:

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

(ii) not exceed .5% of the equity investment of the designated investor.

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

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

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

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

(ii) by making demand on designated purchasers consistent with the requirements of Section 9-2-1921.

(5) (a) The board shall, in consultation with the corporation, publish an annual report of the activities conducted by the Utah fund of funds, and present the report to the governor and the Executive Appropriations Committee of the Legislature.

(b) The annual report shall:

(i) include a copy of the audit of the Utah fund of funds and a valuation of the assets of the Utah fund of funds;

(ii) review the progress of the investment fund allocation manager in implementing its investment plan; and

(iii) describe any redemption or transfer of a certificate issued under this part.

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

(d) (i) Beginning July 1, 2005, and thereafter every two years, the board shall publish a progress report which shall evaluate the progress of the state in accomplishing the purposes stated in Section 9-2-1902.

(ii) The board shall give a copy of the report to the Legislature.

Section 8. Section **9-2-1907** is enacted to read:

9-2-1907. Utah Capital Investment Corporation -- Powers and purposes.

(1) (a) There is created an independent quasi-public nonprofit corporation known as the Utah Capital Investment Corporation.

(b) The corporation:

(i) may exercise all powers conferred on independent corporations under Section

63E-2-106;

(ii) is subject to the prohibited participation provisions of Section 63E-2-107; and

(iii) is subject to the other provisions of Title 63E, Chapter 2, Independent Corporations Act, except as otherwise provided in this part.

(c) The corporation shall file with the Division of Corporations and Commercial Code:

(i) articles of incorporation; and

(ii) any amendment to its articles of incorporation.

(d) In addition to the articles of incorporation, the corporation may adopt bylaws and operational policies that are consistent with this chapter.

(e) Except as otherwise provided in this part, this part does not exempt the corporation from the requirements under state law which apply to other corporations organized under Title 63E, Chapter 2, Independent Corporations Act.

(2) The purposes of the corporation are to:

(a) organize the Utah fund of funds;

(b) select a venture capital investment fund allocation manager to make venture capital fund investments by the Utah fund of funds;

(c) negotiate the terms of a contract with the venture capital investment fund allocation manager;

(d) execute the contract with the selected venture capital investment fund manager on behalf of the Utah fund of funds;

(e) receive funds paid by designated investors for the issuance of certificates by the board for investment in the Utah fund of funds;

(f) receive investment returns from the Utah fund of funds; and

(g) establish the redemption reserve to be used by the corporation to redeem certificates.

(3) The corporation may not:

(a) exercise governmental functions;

(b) have members;

(c) pledge the credit or taxing power of the state or any political subdivision of the state;

or

(d) make its debts payable out of any moneys except those of the corporation.

(4) The obligations of the corporation are not obligations of the state or any political subdivision of the state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds.

(5) The corporation may:

(a) engage consultants and legal counsel;

(b) expend funds;

(c) invest funds;

(d) enter into contracts;

(e) insure against loss;

(f) hire employees; and

(g) perform any other act necessary to carry out its purposes.

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

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

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

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

(3) The appointment committee shall:

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

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

(i) venture capital investment;

(ii) investment management; and

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

(c) terminate its existence upon the election of the initial board of directors of the

corporation.

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

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

9-2-1909. Board of directors.

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

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

(a) the selection and supervision of investment managers;

(b) fiduciary management of investment funds; and

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

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

(4) (a) Board members shall serve three-year terms, except that of the five initial members:

(i) two shall serve three-year terms;

(ii) two shall serve two-year terms; and

(iii) one shall serve a one-year term.

(b) Board members shall serve until their successors are elected and qualified and may serve successive terms.

(c) A majority of the board members may remove a board member for cause.

(d) (i) The board shall select a chair by majority vote.

(ii) The chair's term is for one year.

(5) Three members of the board are a quorum for the transaction of business.

(6) Members of the board of directors:

(a) are subject to any restrictions on conflicts of interest specified in the organizational

documents of the corporation; and

(b) may have no interest in any:

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

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

(7) Directors of the corporation:

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

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

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

9-2-1910. Investment manager.

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

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

(a) level of:

(i) experience; and

(ii) quality of management;

(b) investment philosophy and process;

(c) probability of success in fund-raising;

(d) prior investment fund results; and

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

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

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

(a) with demonstrated expertise in the management and fund allocation of investments in

venture capital funds; and

(b) considered best qualified to:

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

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

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

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

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

(2) The fee shall:

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

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

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

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

9-2-1912. Dissolution.

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

(2) Upon dissolution or privatization of the corporation, any assets owned by the corporation shall be distributed to the state as provided in Title 63E, Chapter 1, Independent Entities Act.

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

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

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

(2) The Utah fund of funds shall make investments in private seed and venture capital

partnerships or entities in a manner and for the following purposes:

(a) to encourage the availability of a wide variety of venture capital in the state;

(b) to strengthen the economy of the state;

(c) to help business in the state gain access to sources of capital;

(d) to help build a significant, permanent source of capital available to serve the needs of businesses in the state; and

(e) to accomplish all these benefits in a way that minimizes the use of contingent tax credits.

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

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

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

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

9-2-1914. Compensation from the Utah fund of funds to the corporation --

Redemption reserve.

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

(iii) the commitment they have made to expand the reach of expertise within the state by adding additional investment areas of expertise.

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

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

(4) (a) An investment or investments by the fund of funds in any venture capital fund

may comprise no more than 20% of the total committed capital in the venture capital fund.

(b) (i) No more than 50% of the funds invested by the fund of funds may be made with venture capital entities with offices in the state established prior to July 1, 2002.

(ii) The restriction under Subsection (4)(b)(i) shall remain in place until three additional venture capital entities open new offices in the state.

Section 17. Section **9-2-1916** is enacted to read:

9-2-1916. Powers of Utah fund of funds.

(1) The Utah fund of funds may:

(a) engage consultants and legal counsel;

(b) expend funds;

(c) invest funds;

(d) enter into contracts;

(e) insure against loss;

(f) hire employees;

(g) issue equity interests to designated investors that have purchased certificates from the board; and

(h) perform any other act necessary to carry out its purposes.

(2) (a) The Utah fund of funds shall engage a venture capital investment fund allocation manager.

(b) The compensation paid to the fund manager shall be in addition to the management fee paid to the corporation under Section 9-2-1911.

(3) The Utah fund of funds may:

(a) issue debt and borrow the funds needed to accomplish its goals;

(b) not secure its debt with contingent tax credits issued by the board;

(c) open and manage bank and short-term investment accounts as considered necessary by the venture capital investment fund allocation manager; and

(d) expend moneys to secure investment ratings for investments by designated investors in the Utah fund of funds.

Section 18. Section **9-2-1917** is enacted to read:

9-2-1917. Annual audits.

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

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

(i) the state auditor; or

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

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

(i) the corporation; or

(ii) the Utah fund of funds.

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

(4) The annual audit report shall:

(a) be delivered to:

(i) the corporation; and

(ii) the board; and

(b) include a valuation of the assets owned by the Utah fund of funds as of the end of the reporting year.

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

9-2-1918. Certificates and contingent tax credits.

(1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the board, in consultation with the State Tax Commission, shall make rules governing the form, issuance, and redemption of certificates.

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

(a) the aggregate outstanding certificates may not exceed a total of \$100,000,000 of contingent tax credits;

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

fund of funds by a designated investor;

(c) contingent tax credits shall be issued in a manner that not more than \$20,000,000 of contingent tax credits may be initially redeemable in any fiscal year; and

(d) the credits are certifiable if there are insufficient funds in the redemption reserve to make a cash redemption and the board does not exercise its other options under Subsection 9-2-1920(3)(b).

(3) In determining the \$100,000,000 maximum limit in Subsection (2)(a) and the \$20,000,000 limitation in Subsection (2)(c):

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

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

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

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

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

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

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

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

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

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

(ii) a period not to exceed seven years.

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

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

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

(i) the sum of:

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

(B) the scheduled aggregate return to the designated investor at rates of return authorized by the board at the issuance of the certificate; and

(ii) the aggregate actual return received by the designated investor and any predecessor in interest of the initial equity investment and interest on the initial equity investment; and

(c) the rates, whether fixed rates or variable rates, shall be determined by a formula stipulated in the certificate.

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

(a) the targeted return on the invested capital;

(b) the amount of the initial equity investment;

(c) the calculation formula for determining the scheduled aggregate return on the initial equity investment; and

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

(7) Once moneys are invested by a designated investor, the certificate:

(a) shall be binding on the board; and

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

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

(9) The State Tax Commission may, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and in consultation with the board, make rules to help implement this section.

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

9-2-1919. Transfer and registration of certificates.

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

(2) The board, in conjunction with the State Tax Commission, shall develop:

(a) a system for registration of any certificate and related contingent tax credit issued or transferred under this part; and

(b) a system that permits verification that:

(i) any contingent tax credit claimed upon a tax return is valid; and

(ii) any transfers of the certificate and related contingent tax credit are made in accordance with the requirements of this part.

(3) A certificate or contingent tax credit issued or transferred under this part may not be considered a security under Title 61, Chapter 1, Utah Uniform Securities Act.

Section 21. Section **9-2-1920** is enacted to read:

9-2-1920. Redemption of certificates.

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

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

(a) the limitations in Section 9-2-1918; and

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

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

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

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

(ii) by making demand on designated purchasers to purchase certificates in accordance

with Section 9-2-1921.

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

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

9-2-1921. Use of commitments to redeem certificates.

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

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

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

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

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

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

(4) The contingent tax credits acquired by a designated purchaser under this section are subject to Section 9-2-1918.

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

9-2-1922. Powers and effectiveness.

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

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

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

(a) level, timing, or degree of success of the Utah fund of funds or the investment funds

in which the Utah fund of funds invests; or

(b) extent to which the investment funds are:

(i) invested in Utah venture capital projects; or

(ii) successful in accomplishing any economic development objectives.

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

9-2-1923. Permissible investments.

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

(1) state-chartered banks;

(2) state-chartered savings and loan associations;

(3) state-chartered credit unions;

(4) state-chartered industrial loan corporations; and

(5) domestic insurance companies.

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

9-2-1924. Exemption from certain statutes.

(1) Except as otherwise provided in this part, the corporation is exempt from statutes governing state agencies, as provided in Section 63E-2-109.

(2) The corporation shall be subject to:

(a) Title 52, Chapter 4, Open and Public Meetings Act; and

(b) Title 63, Chapter 2, Government Records Access and Management Act.

Section 26. Section **63-55-209** is amended to read:

63-55-209. Repeal dates, Title 9.

(1) Title 9, Chapter 1, Part 8, Commission on National and Community Service Act, is repealed July 1, 2004.

(2) Title 9, Chapter 2, Part 4, Enterprise Zone Act, is repealed July 1, 2008.

(3) (a) Title 9, Chapter 2, Part 16, Recycling Market Development Zone Act, is repealed July 1, 2010.

(b) Sections 59-7-610 and 59-10-108.7, regarding tax credits for certain persons in

recycling market development zones, are repealed for taxable years beginning on or after January 1, 2011.

(c) Notwithstanding Subsection (3)(b), a person may not claim a tax credit under Section 59-7-610 or 59-10-108.7:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-108.7 if the machinery or equipment is purchased on or after July 1, 2010; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-108.7(1)(b), if the expenditure is made on or after July 1, 2010.

(d) Notwithstanding Subsections (3)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-108.7 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-108.7; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-108.7, the machinery or equipment is purchased on or before June 30, 2010; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-108.7(1)(b), the expenditure is made on or before June 30, 2010.

(4) Title 9, Chapter 2, Part 19, Utah Venture Capital Enhancement Act, is repealed July 1, 2008.

~~[(4)]~~ (5) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed July 1, 2009.

~~[(5)]~~ (6) Title 9, Chapter 4, Part 9, Utah Housing Corporation Act, is repealed July 1, 2006.

~~[(6)]~~ (7) Title 9, Chapter 13, Utah Technology and Small Business Finance Act, is repealed July 1, 2002.

Section 27. Section **63E-1-102** is amended to read:

63E-1-102. Definitions.

As used in this title:

(1) "Authorizing statute" means the statute creating an entity as an independent entity.

(2) "Committee" means the Legislative Independent Entities Committee created in

Section 63E-1-201.

(3) "Independent corporation" means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.

(4) (a) "Independent entity" means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:

(i) independent state agency; or

(ii) independent corporation.

(b) "Independent entity" includes the:

(i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

(ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah Technology and Small Business Finance Act;

(iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority;

(iv) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science Center Authority;

(v) Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing Corporation Act;

(vi) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair Corporation Act;

(vii) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers' Compensation Fund;

(viii) Utah State Retirement Office created in Title 49, Chapter 11, Utah State Retirement Systems Administration;

(ix) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration; ~~and~~

(x) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah Communications Agency Network Act[-]; and

(xi) Utah Capital Investment Corporation created in Title 9, Chapter 2, Part 19, Utah Venture Capital Enhancement Act.

- (c) Notwithstanding this Subsection (4), "independent entity" does not include:
 - (i) the Public Service Commission of Utah created in Section 54-1-1;
 - (ii) an institution within the state system of higher education;
 - (iii) a city, county, or town;
 - (iv) a local school district;
 - (v) a special district created under the authority of Title 17A, Special Districts; or
 - (vi) a local district created under the authority of Title 17B, Limited Purpose Local

Government Entities.

(5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control.

(6) "Monies held in trust" means monies maintained for the benefit of:

- (a) one or more private individuals, including public employees;
- (b) one or more public or private entities; or
- (c) the owners of a quasi-public corporation.

(7) "Public corporation" means an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.

(8) "Quasi-public corporation" means an artificial person, private in ownership, individually created as a corporation by the state which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

Section 28. Section **63E-1-302** is amended to read:

63E-1-302. Review by committee required for creating an independent entity.

(1) [H] Except as otherwise provided in Subsection (4), if a government requestor proposes that the Legislature create an independent entity, that government requestor shall request that the committee review the proposal.

(2) After receiving a request for review under Subsection (1), the chairs of the committee:

(a) shall schedule a meeting of the committee to review the proposal; and

(b) may request information from executive and legislative branch entities and officers concerning the proposal including:

(i) whether or not the proposed independent entity should be exempt from any state statute;

(ii) the need for oversight of the proposed independent entity by an executive branch agency;

(iii) the need for and requirements of audits of the proposed independent entity;

(iv) the custody of the proposed independent entity's funds;

(v) the legal representation of the proposed independent entity;

(vi) whether or not the state should receive services from or provide services to the proposed independent entity; and

(vii) the legal liability, if any, to the state if the proposed independent entity is created.

(3) In requesting information from executive and legislative branch entities or officers under Subsection (2), the committee should specifically consider seeking information from:

(a) the state auditor;

(b) the state treasurer;

(c) the attorney general;

(d) the risk manager; and

(e) the executive director of the Department of Administrative Services.

(4) (a) On or before August 1, 2003, the committee shall review the Utah Capital Investment Corporation, a quasi-public corporation created under Title 9, Chapter 2, Part 19, Utah Venture Capital Enhancement Act, in the 2003 General Session of the Legislature.

(b) After this review, the committee shall make a report to the Legislature on any recommended modifications to the statutes that created the corporation.

Section 29. Section **63E-1-303** is amended to read:

63E-1-303. Recommendations of the committee.

[After] Except for the Utah Capital Investment Corporation review under Subsection 63E-1-302(4), after the committee has reviewed a proposal to create an independent entity in accordance with Section 63E-1-302, the committee shall make a report to the Legislature stating whether the committee:

- (1) recommends creation of the proposed independent entity;
- (2) recommends that the proposed independent entity not be created; or
- (3) makes no recommendation regarding the creation of the proposed independent entity.

Section 30. Effective date.

This act takes effect on July 1, 2003.