

Senator Scott K. Jenkins proposes the following substitute bill:

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

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



- 26 **9-2-1909**, Utah Code Annotated 1953
- 27 **9-2-1910**, Utah Code Annotated 1953
- 28 **9-2-1911**, Utah Code Annotated 1953
- 29 **9-2-1912**, Utah Code Annotated 1953
- 30 **9-2-1913**, Utah Code Annotated 1953
- 31 **9-2-1914**, Utah Code Annotated 1953
- 32 **9-2-1915**, Utah Code Annotated 1953
- 33 **9-2-1916**, Utah Code Annotated 1953
- 34 **9-2-1917**, Utah Code Annotated 1953
- 35 **9-2-1918**, Utah Code Annotated 1953
- 36 **9-2-1919**, Utah Code Annotated 1953
- 37 **9-2-1920**, Utah Code Annotated 1953
- 38 **9-2-1921**, Utah Code Annotated 1953
- 39 **9-2-1922**, Utah Code Annotated 1953
- 40 **9-2-1923**, Utah Code Annotated 1953
- 41 **9-2-1924**, Utah Code Annotated 1953

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

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

44 **9-2-1205. Qualification for assistance.**

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

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

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

55 (c) demonstrate to the satisfaction of the administrator the applicant's ability to sustain
56 economic activity in the state sufficient to repay, by means of cash or appropriate credits, the

57 assistance provided by the fund; and

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

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

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

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

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

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

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

74 (3) The administrator shall:

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

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

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

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

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

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

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

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

93 **Part 19. Utah Venture Capital Enhancement Act**

94 **9-2-1901. Title.**

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

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

97 **9-2-1902. Findings -- Purpose.**

98 (1) The Legislature finds that:

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

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

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

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

108 (i) create new jobs in the state; and

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

110 (2) This part is enacted to:

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

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

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

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

119 investments in the Utah fund of funds;

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

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

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

127 **9-2-1903. Definitions.**

128 As used in this part:

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

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

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

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

136 (4) "Contingent tax credit" means a contingent tax credit issued under this part that is
137 available against tax liabilities imposed by Title 59, Chapter 7, Corporate Franchise and
138 Income Taxes, and Chapter 10, Individual Income Tax Act, if there are insufficient funds in the
139 redemption reserve and the board has not exercised other options for redemption under
140 Subsection 9-2-1920(3)(b).

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

143 (6) "Designated investor" means:

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

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

146 (7) "Designated purchaser" means:

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

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

150 commitment.

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

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

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

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

159 **9-2-1904. Utah Capital Investment Board.**

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

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

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

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

168 **9-2-1905. Board members -- Meetings -- Expenses.**

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

170 (b) Of the five members:

171 (i) one shall be the state treasurer;

172 (ii) one shall be the director; and

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

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

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

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

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

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

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

186 (5) (a) Members of the board may not receive compensation or benefits for their
187 services, but may receive per diem and expenses incurred in the performance of the members'
188 official duties at rates established by the Division of Finance under Sections 63A-3-106 and
189 63A-3-107.

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

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

194 (a) the supervision of investment managers;

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

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

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

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

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

204 **9-2-1906. Board duties and powers.**

205 (1) The board shall:

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

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

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

- 212 (ii) the returns from the Utah fund of funds;
- 213 (c) establish criteria and procedures for registering and redeeming contingent tax
- 214 credits by designated investors holding certificates issued by the board;
- 215 (d) establish a target rate of return or range of returns on venture capital investments of
- 216 the Utah fund of funds;
- 217 (e) establish criteria and procedures governing commitments obtained by the board
- 218 from designated purchasers including:
- 219 (i) entering into commitments with designated purchasers; and
- 220 (ii) drawing on commitments to redeem certificates from designated investors;
- 221 (f) have power to:
- 222 (i) expend funds;
- 223 (ii) invest funds;
- 224 (iii) enter into contracts;
- 225 (iv) insure against loss; and
- 226 (v) perform any other act necessary to carry out its purpose; and
- 227 (g) (i) make, amend, and revoke rules for the conduct of its affairs, consistent with this
- 228 part and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
- 229 (ii) all rules made by the board under Subsection (1)(g)(i) are subject to review by the
- 230 Legislative Management Committee:
- 231 (A) whenever made, modified, or revoked; and
- 232 (B) in each even-numbered year; and
- 233 (iii) Subsection (1)(g)(ii) does not preclude the Legislature's Administrative Rules
- 234 Committee from reviewing and taking appropriate action on any rule made, amended, or
- 235 revoked by the board.
- 236 (2) The criteria and procedures established by the board for the allocation and issuance
- 237 of contingent tax credits shall:
- 238 (a) include the contingencies that must be met for a certificate and its related tax credits
- 239 to be:
- 240 (i) issued by the board;
- 241 (ii) transferred by a designated investor; and
- 242 (iii) redeemed by a designated investor in order to receive a contingent tax credit; and

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

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

248 (b) The fee shall:

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

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

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

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

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

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

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

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

262 (b) The annual report shall:

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

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

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

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

270 (d) (i) Beginning July 1, 2008, and thereafter every five years, the board shall publish a
271 progress report which shall evaluate the progress of the state in accomplishing the purposes
272 stated in Section 9-2-1902.

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

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

275 **9-2-1907. Utah Capital Investment Corporation -- Powers and purposes.**

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

278 (b) The corporation:

279 (i) may exercise all powers conferred on independent corporations under Section
280 63E-2-106;

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

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

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

285 (i) articles of incorporation; and

286 (ii) any amendment to its articles of incorporation.

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

289 (e) Except as otherwise provided in this part, this part does not exempt the corporation
290 from the requirements under state law which apply to other corporations organized under Title
291 63E, Chapter 2, Independent Corporations Act.

292 (2) The purposes of the corporation are to:

293 (a) organize the Utah fund of funds;

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

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

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

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

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

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

- 305 (3) The corporation may not:
306 (a) exercise governmental functions;
307 (b) have members;
308 (c) pledge the credit or taxing power of the state or any political subdivision of the
309 state; or
310 (d) make its debts payable out of any moneys except those of the corporation.
311 (4) The obligations of the corporation are not obligations of the state or any political
312 subdivision of the state within the meaning of any constitutional or statutory debt limitations,
313 but are obligations of the corporation payable solely and only from the corporation's funds.
314 (5) The corporation may:
315 (a) engage consultants and legal counsel;
316 (b) expend funds;
317 (c) invest funds;
318 (d) enter into contracts;
319 (e) insure against loss;
320 (f) hire employees; and
321 (g) perform any other act necessary to carry out its purposes.
322 Section 9. Section **9-2-1908** is enacted to read:
323 **9-2-1908. Incorporator -- Appointment committee.**
324 (1) To facilitate the organization of the corporation, the director shall serve as the
325 incorporator as provided in Section 16-6a-201.
326 (2) To assist in the organization of the corporation, the Utah Board of Business and
327 Economic Development shall appoint three individuals to serve on an appointment committee.
328 (3) The appointment committee shall:
329 (a) elect the initial board of directors of the corporation;
330 (b) exercise due care to assure that persons elected to the initial board of directors have
331 the requisite financial experience necessary in order to carry out the duties of the corporation as
332 established in this part, including in areas related to:
333 (i) venture capital investment;
334 (ii) investment management; and
335 (iii) supervision of investment managers and investment funds; and

336 (c) terminate its existence upon the election of the initial board of directors of the
337 corporation.

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

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

342 **9-2-1909. Board of directors.**

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

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

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

348 (b) fiduciary management of investment funds; and

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

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

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

355 (i) two shall serve three-year terms;

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

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

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

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

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

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

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

364 (6) Members of the board of directors:

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

367 (b) may have no interest in any:
368 (i) venture capital investment fund allocation manager selected by the corporation
369 under this part; or

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

371 (7) Directors of the corporation:

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

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

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

375 **9-2-1910. Investment manager.**

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

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

381 (a) level of:

382 (i) experience; and

383 (ii) quality of management;

384 (b) investment philosophy and process;

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

386 (d) prior investment fund results; and

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

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

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

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

395 (b) considered best qualified to:

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

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

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

399 **9-2-1911. Management fee -- Additional financial assistance.**

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

402 (2) The fee shall:

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

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

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

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

412 **9-2-1912. Dissolution.**

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

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

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

419 **9-2-1913. Organization of Utah fund of funds.**

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

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

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

424 (b) to strengthen the economy of the state;

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

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

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

429 credits.

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

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

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

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

437 **9-2-1914. Compensation from the Utah fund of funds to the corporation --**
438 **Redemption reserve.**

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

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

444 (b) Any returns received by the corporation from investment of amounts held in the
445 redemption reserve shall be added to the redemption reserve until it has reached a total of
446 \$100,000,000.

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

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

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

453 **9-2-1915. Investments by Utah fund of funds.**

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

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

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

458 and

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

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

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

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

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

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

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

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

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

478 (4) (a) An investment or investments by the fund of funds in any venture capital fund
479 may comprise no more than 20% of the total committed capital in the venture capital fund.

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

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

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

485 **9-2-1916. Powers of Utah fund of funds.**

486 (1) The Utah fund of funds may:

487 (a) engage consultants and legal counsel;

488 (b) expend funds;

489 (c) invest funds;

490 (d) enter into contracts;

- 491 (e) insure against loss;
492 (f) hire employees;
493 (g) issue equity interests to designated investors that have purchased certificates from
494 the board; and
495 (h) perform any other act necessary to carry out its purposes.
496 (2) (a) The Utah fund of funds shall engage a venture capital investment fund
497 allocation manager.
498 (b) The compensation paid to the fund manager shall be in addition to the management
499 fee paid to the corporation under Section 9-2-1911.
500 (3) The Utah fund of funds may:
501 (a) issue debt and borrow the funds needed to accomplish its goals;
502 (b) not secure its debt with contingent tax credits issued by the board;
503 (c) open and manage bank and short-term investment accounts as considered necessary
504 by the venture capital investment fund allocation manager; and
505 (d) expend moneys to secure investment ratings for investments by designated
506 investors in the Utah fund of funds.
507 Section 18. Section **9-2-1917** is enacted to read:
508 **9-2-1917. Annual audits.**
509 (1) Each calendar year, an audit of the activities of the Utah fund of funds shall be
510 made as described in this section.
511 (2) (a) The audit shall be conducted by:
512 (i) the state auditor; or
513 (ii) an independent auditor engaged by the state auditor.
514 (b) An independent auditor used under Subsection (2)(a)(ii) must have no business,
515 contractual, or other connection to:
516 (i) the corporation; or
517 (ii) the Utah fund of funds.
518 (3) The corporation shall pay the costs associated with the annual audit.
519 (4) The annual audit report shall:
520 (a) be delivered to:
521 (i) the corporation; and

522 (ii) the board; and
523 (b) include a valuation of the assets owned by the Utah fund of funds as of the end of
524 the reporting year.

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

526 **9-2-1918. Certificates and contingent tax credits.**

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

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

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

534 (b) the certificates shall be issued contemporaneously with an investment in the Utah
535 fund of funds by a designated investor;

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

538 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
539 make a cash redemption and the board does not exercise its other options under Subsection
540 9-2-1920(3)(b).

541 (3) In determining the \$100,000,000 maximum limit in Subsection (2)(a) and the
542 \$20,000,000 limitation in Subsection (2)(c):

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

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

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

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

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

552 (b) a contingent tax credit may not be redeemed prior to the time the Utah fund of

553 funds receives full payment from the designated investor for the certificate;

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

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

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

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

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

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

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

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

567 (i) the sum of:

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

569 and

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

571 authorized by the board at the issuance of the certificate; and

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

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

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

577 (a) the targeted return on the invested capital;

578 (b) the amount of the initial equity investment;

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

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

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

584 (a) shall be binding on the board; and

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

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

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

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

592 **9-2-1919. Transfer and registration of certificates.**

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

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

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

598 (b) a system that permits verification that:

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

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

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

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

605 **9-2-1920. Redemption of certificates.**

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

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

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

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

614 (3) (a) If there are sufficient funds in the redemption reserve, the board shall direct the

615 corporation to make a cash redemption of the certificate.

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

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

619 (ii) by making demand on designated purchasers to purchase certificates in accordance
620 with Section 9-2-1921.

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

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

624 **9-2-1921. Use of commitments to redeem certificates.**

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

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

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

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

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

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

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

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

638 **9-2-1922. Powers and effectiveness.**

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

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

645 (3) The provisions of any contract entered into by the board or the Utah fund of funds

646 may not be compromised, diminished, invalidated, or affected by the:

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

648 in which the Utah fund of funds invests; or

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

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

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

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

653 **9-2-1923. Permissible investments.**

654 Investments by designated investors in the Utah fund of funds are permissible

655 investments under applicable laws of the state for:

656 (1) state-chartered banks;

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

658 (3) state-chartered credit unions;

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

660 (5) domestic insurance companies.

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

662 **9-2-1924. Exemption from certain statutes.**

663 (1) Except as otherwise provided in this part, the corporation is exempt from statutes

664 governing state agencies, as provided in Section 63E-2-109.

665 (2) The corporation shall be subject to:

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

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

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

669 **63-55-209. Repeal dates, Title 9.**

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

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

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

675 (b) Sections 59-7-610 and 59-10-108.7, regarding tax credits for certain persons in
676 recycling market development zones, are repealed for taxable years beginning on or after

677 January 1, 2011.

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

680 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
681 59-10-108.7 if the machinery or equipment is purchased on or after July 1, 2010; or

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

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

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

687 (ii) (A) for the purchase price of machinery or equipment described in Section
688 59-7-610 or 59-10-108.7, the machinery or equipment is purchased on or before June 30, 2010;
689 or

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

692 (4) Title 9, Chapter 2, Part 19, Utah Venture Capital Enhancement Act, is repealed July
693 1, 2053.

694 [~~4~~] (5) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is
695 repealed July 1, 2009.

696 [~~5~~] (6) Title 9, Chapter 4, Part 9, Utah Housing Corporation Act, is repealed July 1,
697 2006.

698 [~~6~~] (7) Title 9, Chapter 13, Utah Technology and Small Business Finance Act, is
699 repealed July 1, 2002.

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

701 **63E-1-102. Definitions.**

702 As used in this title:

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

704 (2) "Committee" means the Legislative Independent Entities Committee created in
705 Section 63E-1-201.

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

- 708 (4) (a) "Independent entity" means an entity having a public purpose relating to the
709 state or its citizens that is individually created by the state or is given by the state the right to
710 exist and conduct its affairs as an:
- 711 (i) independent state agency; or
 - 712 (ii) independent corporation.
- 713 (b) "Independent entity" includes the:
- 714 (i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
 - 715 (ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah
716 Technology and Small Business Finance Act;
 - 717 (iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber
718 Valley Historic Railroad Authority;
 - 719 (iv) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science
720 Center Authority;
 - 721 (v) Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing
722 Corporation Act;
 - 723 (vi) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair
724 Corporation Act;
 - 725 (vii) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'
726 Compensation Fund;
 - 727 (viii) Utah State Retirement Office created in Title 49, Chapter 11, Utah State
728 Retirement Systems Administration;
 - 729 (ix) School and Institutional Trust Lands Administration created in Title 53C, Chapter
730 1, Part 2, School and Institutional Trust Lands Administration; [~~and~~]
 - 731 (x) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah
732 Communications Agency Network Act[-]; and
 - 733 (xi) Utah Capital Investment Corporation created in Title 9, Chapter 2, Part 19, Utah
734 Venture Capital Enhancement Act.
- 735 (c) Notwithstanding this Subsection (4), "independent entity" does not include:
- 736 (i) the Public Service Commission of Utah created in Section 54-1-1;
 - 737 (ii) an institution within the state system of higher education;
 - 738 (iii) a city, county, or town;

- 739 (iv) a local school district;
- 740 (v) a special district created under the authority of Title 17A, Special Districts; or
- 741 (vi) a local district created under the authority of Title 17B, Limited Purpose Local
- 742 Government Entities.

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

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

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

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

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

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

757 **63E-1-302. Review by committee required for creating an independent entity.**

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

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

- 763 (a) shall schedule a meeting of the committee to review the proposal; and
- 764 (b) may request information from executive and legislative branch entities and officers
- 765 concerning the proposal including:

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

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

- 770 (iii) the need for and requirements of audits of the proposed independent entity;
- 771 (iv) the custody of the proposed independent entity's funds;
- 772 (v) the legal representation of the proposed independent entity;
- 773 (vi) whether or not the state should receive services from or provide services to the
- 774 proposed independent entity; and
- 775 (vii) the legal liability, if any, to the state if the proposed independent entity is created.

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

- 778 (a) the state auditor;
- 779 (b) the state treasurer;
- 780 (c) the attorney general;
- 781 (d) the risk manager; and
- 782 (e) the executive director of the Department of Administrative Services.

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

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

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

789 **63E-1-303. Recommendations of the committee.**

790 [After] Except for the Utah Capital Investment Corporations review under Subsection
791 63E-1-302(4), after the committee has reviewed a proposal to create an independent entity in
792 accordance with Section 63E-1-302, the committee shall make a report to the Legislature
793 stating whether the committee:

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

798 Section 30. **Effective date.**

799 This act takes effect on July 1, 2003.

800