

1 **UTAH VENTURE CAPITAL ENHANCEMENT**

2 **ACT AMENDMENTS**

3 2003 SECOND SPECIAL SESSION

4 STATE OF UTAH

5 **Sponsor: Peggy Wallace**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Venture Capital Enhancement Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies the definition of the Utah fund of funds;
- 13 ▶ modifies the terms of members on the Utah Capital Investment Board and the board
- 14 members of the Utah Capital Investment Corporation;
- 15 ▶ provides that a contingent tax credit may not be issued unless agreed to be treated as
- 16 a loan;
- 17 ▶ provides that the board may not issue contingent tax credits prior to July 1, 2004;
- 18 ▶ provides that public money may not be invested in the Utah fund of funds;
- 19 ▶ provides that any amount in the redemption reserve in excess of \$100,000,000 shall
- 20 be reinvested in the Utah fund of funds;
- 21 ▶ directs where assets of the corporation shall be distributed upon dissolution; and
- 22 ▶ makes certain technical changes.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides a severability clause.

27 This bill provides an immediate effective date.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **9-2-1902**, as enacted by Chapter 291, Laws of Utah 2003

31 **9-2-1903**, as enacted by Chapter 291, Laws of Utah 2003

32 **9-2-1905**, as enacted by Chapter 291, Laws of Utah 2003

33 **9-2-1906**, as enacted by Chapter 291, Laws of Utah 2003

34 **9-2-1909**, as enacted by Chapter 291, Laws of Utah 2003

35 **9-2-1912**, as enacted by Chapter 291, Laws of Utah 2003

36 **9-2-1913**, as enacted by Chapter 291, Laws of Utah 2003

37 **9-2-1914**, as enacted by Chapter 291, Laws of Utah 2003



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

40 Section 1. Section **9-2-1902** is amended to read:

41 **9-2-1902. Findings -- Purpose.**

42 (1) The Legislature finds that:

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

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

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

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

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

53 (ii) help to diversify the state's economic base[-]; and

54 (e) a well-trained work force is critical for the maintenance and development of Utah's
55 economy.

56 (2) This part is enacted to:

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

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

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

63 (d) facilitate the organization of the Utah fund of funds to seek private investments and
64 to ~~[create interest]~~ serve as a catalyst in those investments by offering state incentives for
65 private persons to make investments in the Utah fund of funds;

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

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

72 Section 2. Section **9-2-1903** is amended to read:

73 **9-2-1903. Definitions.**

74 As used in this part:

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

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

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

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

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

89 (6) "Designated investor" means:

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

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

92 (7) "Designated purchaser" means:

93 (a) a person who enters into a written undertaking with the board to purchase a

94 commitment; or

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

96 commitment.

97 (8) "Person" means an individual, partnership, limited liability company, corporation,

98 association, organization, business trust, estate, trust, or any other legal or commercial entity.

99 (9) "Redemption reserve" means the reserve established by the corporation to facilitate

100 the cash redemption of certificates.

101 (10) "Utah fund of funds" means a [~~private, for-profit~~] limited partnership or limited

102 liability company established under Section 9-2-1913 in which a designated investor purchases

103 an equity interest.

104 Section 3. Section **9-2-1905** is amended to read:

105 **9-2-1905. Board members -- Meetings -- Expenses.**

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

107 (b) Of the five members:

108 (i) one shall be the state treasurer;

109 (ii) one shall be the director; and

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

111 (c) The three members appointed by the governor shall serve [~~five~~] four-year staggered

112 terms with the initial terms of the first three members to be [~~five~~] four years for one member,

113 [~~four~~] three years for one member, and [~~three~~] two years for one member.

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

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

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

118 (3) Appointed members of the board may not serve more than two full consecutive

119 terms except where the governor determines that an additional term is in the best interest of the

120 state.

121 (4) Three members of the board constitute a quorum for conducting business and
122 exercising board power, provided that a minimum of three affirmative votes is required for
123 board action and at least one of the affirmative votes is cast by either the director or the state
124 treasurer.

125 (5) (a) Members of the board may not receive compensation or benefits for their
126 services, but may receive per diem and expenses incurred in the performance of the members'
127 official duties at rates established by the Division of Finance under Sections 63A-3-106 and
128 63A-3-107.

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

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

133 (a) the supervision of investment managers;

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

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

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

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

143 Section 4. Section **9-2-1906** is amended to read:

144 **9-2-1906. Board duties and powers.**

145 (1) The board shall:

146 (a) establish criteria and procedures for the allocation and issuance of contingent tax
147 credits to designated investors by means of certificates issued by the board[;], provided that a
148 contingent tax credit may not be issued unless the Utah fund of funds:

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

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

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

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

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

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

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

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

163 (i) entering into commitments with designated purchasers; and
164 (ii) drawing on commitments to redeem certificates from designated investors;

165 (f) have power to:

166 (i) expend funds;
167 (ii) invest funds;
168 (iii) enter into contracts;
169 (iv) insure against loss; and
170 (v) perform any other act necessary to carry out its purpose; and

171 (g) (i) make, amend, and revoke rules for the conduct of its affairs, consistent with this
172 part and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
173 (ii) all rules made by the board under Subsection (1)(g)(i) are subject to review by the
174 Legislative Management Committee:

175 (A) whenever made, modified, or revoked; and
176 (B) in each even-numbered year; and

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

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

182 [~~(a)~~] (i) include the contingencies that must be met for a certificate and its related tax

183 credits to be:

184 [~~(i)~~] (A) issued by the board;

185 [~~(ii)~~] (B) transferred by a designated investor; and

186 [~~(iii)~~] (C) redeemed by a designated investor in order to receive a contingent tax credit;

187 and

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

191 (b) The board may not issue contingent tax credits under this part prior to July 1, 2004.

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

194 (b) The fee shall:

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

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

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

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

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

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

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

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

208 (b) The annual report shall:

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

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

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

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

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

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

220 Section 5. Section **9-2-1909** is amended to read:

221 **9-2-1909. Board of directors.**

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

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

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

227 (b) fiduciary management of investment funds; and

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

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

232 (4) (a) Board members shall serve [~~three~~] four-year terms, except that of the five initial
233 members:

234 (i) two shall serve [~~three~~]four-year terms;

235 (ii) two shall serve [~~two~~] three-year terms; and

236 (iii) one shall serve a [~~one~~] two-year term.

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

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

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

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

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

243 (6) Members of the board of directors:

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

245 documents of the corporation; and

246 (b) may have no interest in any:

247 (i) venture capital investment fund allocation manager selected by the corporation

248 under this part; or

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

250 (7) Directors of the corporation:

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

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

253 Section 6. Section **9-2-1912** is amended to read:

254 **9-2-1912. Dissolution.**

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

257 (2) Upon dissolution or privatization of the corporation, any assets owned by the
258 corporation shall be distributed to ~~[the state]~~ one or more Utah nonprofit tax exempt
259 organizations to be designated by the Legislature for the purposes listed in Section 9-2-1902 as
260 provided in Title 63E, Chapter 1, Independent Entities Act.

261 Section 7. Section **9-2-1913** is amended to read:

262 **9-2-1913. Organization of Utah fund of funds.**

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

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

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

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

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

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

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

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

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

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

279 (4) Public money may not be invested in the Utah fund of funds.

280 Section 8. Section **9-2-1914** is amended to read:

281 **9-2-1914. Compensation from the Utah fund of funds to the corporation --**
282 **Redemption reserve.**

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

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

288 (b) Any returns received by the corporation from investment of amounts held in the
289 redemption reserve shall be added to the redemption reserve until it has reached a total of
290 \$100,000,000.

291 (c) If at the end of any calendar year the redemption reserve exceeds the \$100,000,000
292 limitation referred to in Subsection (2)(b), the excess shall be [~~deposited in the General Fund~~
293 ~~no later than April 1, of the following year~~] reinvested in the Utah fund of funds.

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

296 Section 9. **Severability clause.**

297 If any provision of this bill, or the application of any provision to any person or
298 circumstance, is held invalid, the remainder of this bill shall be given effect without the invalid
299 provision or application.

300 Section 10. **Effective date.**

301 If approved by two-thirds of all the members elected to each house, this bill takes effect
302 upon approval by the governor, or the day following the constitutional time limit of Utah
303 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
304 the date of veto override.

Legislative Review Note
as of 11-14-03 8:36 AM

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

Office of Legislative Research and General Counsel