

Senator Curtis S. Bramble proposes the following substitute bill:

AMENDMENTS TO THE FUND OF FUNDS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: Curtis S. Bramble

6	Cosponsors:	Melvin R. Brown	Curtis Oda
7	Jacob L. Anderegg	James A. Dunnigan	Dixon M. Pitcher
8	Johnny Anderson	Gage Froerer	Larry B. Wiley
9	Stewart Barlow	John Knotwell	

LONG TITLE

General Description:

This bill amends Title 63M, Chapter 1, Part 12, the Utah Venture Capital Enhancement Act.

Highlighted Provisions:

This bill:

- ▶ ~~Ŝ→ [amends the membership of the Utah Capital Investment Board by adding a member of the Senate and a member of the House of Representatives;]~~ ←Ŝ
- ▶ amends the quorum requirements of the Utah Capital Investment Board;
- ▶ requires that the annual report and the annual audit for the Utah fund of funds be completed on or before September 1 for the previous calendar year;
- ▶ describes additional information required in the annual report and audit;
- ▶ provides that the aggregate outstanding certificates may not exceed a total of \$150,000,000 for a loan guarantee;

3rd Sub. H.B. 243



- 25 ▶ provides that the aggregate outstanding certificates may not exceed a total of
- 26 \$75,000,000 for a guarantee of equity investments in the Utah fund of funds; and
- 27 ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill coordinates with S.B. 31, State Agency Reporting Amendments, by providing
32 superceding substantive and technical amendments.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **63M-1-1203**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and
36 amended by Laws of Utah 2008, Chapter 382

37 **63M-1-1205**, as last amended by Laws of Utah 2010, Chapter 286

38 **63M-1-1206**, as last amended by Laws of Utah 2012, Chapter 242

39 **63M-1-1214**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and
40 amended by Laws of Utah 2008, Chapter 382

41 **63M-1-1217**, as renumbered and amended by Laws of Utah 2008, Chapter 382

42 **63M-1-1218**, as last amended by Laws of Utah 2011, Chapter 342

43 **Utah Code Sections Affected by Coordination Clause:**

44 **63M-1-1206**, as last amended by Laws of Utah 2012, Chapter 242



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

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

48 **63M-1-1203. Definitions.**

49 As used in this part:

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

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

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

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

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

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

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

67 (7) "Designated investor" means:

- 68 (a) a person who makes a private investment; or
69 (b) a transferee of a certificate or contingent tax credit.

70 (8) "Designated purchaser" means:

- 71 (a) a person who enters into a written undertaking with the board to purchase a
72 commitment; or
73 (b) a transferee who assumes the obligations to make the purchase described in the
74 commitment.

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

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

78 (11) "Private investment" means:

- 79 (a) an equity interest in the Utah fund of funds; or
80 (b) a loan to ~~[or other debt obligation from the Utah fund of funds]~~ the Utah fund of
81 funds initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that
82 was originated before July 1, 2014.

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

85 (13) "Taxpayer" means a taxpayer:

- 86 (a) of an investor; and

118 (3) Appointed members of the board may not serve more than two full consecutive
 119 terms except ~~[where]~~ when the ~~Ŝ→~~ ~~[[~~ governor ~~]]~~ ~~[appointing authority]~~ ~~←Ŝ~~ determines that an
 119a additional
 120 term is in the best interest of the state.

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

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

127 (5) ~~Ŝ→~~ ~~[(a)]~~ ~~←Ŝ~~ A member ~~Ŝ→~~ ~~[who is not a legislator]~~ ~~←Ŝ~~ may not receive compensation
 127a or benefits for
 128 the member's service, but may receive per diem and travel expenses in accordance with:

129 ~~Ŝ→~~ ~~[[~~ (a) ~~]]~~ ~~←Ŝ~~ Section [63A-3-106](#);

130 ~~Ŝ→~~ ~~[[~~ (b) ~~]]~~ ~~←Ŝ~~ Section [63A-3-107](#); and

131 ~~Ŝ→~~ ~~[[~~ (c) ~~]]~~ ~~←Ŝ~~ rules made by the Division of Finance ~~[pursuant]~~ according to
 131a Sections
 132 [63A-3-106](#) and [63A-3-107](#).

133 ~~Ŝ→~~ ~~[(b) Compensation and expenses of a board member who is a legislator are governed by~~
 134 ~~Section [36-2-2](#) and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.]~~ ~~←Ŝ~~

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

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

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

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

140 ~~[(7)]~~ (6) The board and its members are considered to be a governmental entity with all
 141 of the rights, privileges, and immunities of a governmental entity of the state, including all of
 142 the rights and benefits conferred under Title 63G, Chapter 7, Governmental Immunity Act of
 143 Utah.

144 ~~[(8)]~~ (7) Meetings of the board, except to the extent necessary to protect the
 145 information identified in Subsection [63M-1-1224](#)(3), are subject to Title 52, Chapter 4, Open
 146 and Public Meetings Act.

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

148 **63M-1-1206. Board duties and powers.**

- 149 (1) The board shall:
- 150 (a) establish criteria and procedures for the allocation and issuance of contingent tax
- 151 credits to designated investors by means of certificates issued by the board, provided that a
- 152 contingent tax credit may not be issued unless the Utah fund of funds:
- 153 (i) first agrees to treat the amount of the tax credit redeemed by the state as a loan from
- 154 the state to the Utah fund of funds; and
- 155 (ii) agrees to repay the loan upon terms and conditions established by the board;
- 156 (b) establish criteria and procedures for assessing the likelihood of future certificate
- 157 redemptions by designated investors, including:
- 158 (i) criteria and procedures for evaluating the value of investments made by the Utah
- 159 fund of funds; and
- 160 (ii) the returns from the Utah fund of funds;
- 161 (c) establish criteria and procedures for registering and redeeming contingent tax
- 162 credits by designated investors holding certificates issued by the board;
- 163 (d) establish a target rate of return or range of returns [~~on venture capital investments~~]
- 164 for the investment portfolio of the Utah fund of funds;
- 165 (e) establish criteria and procedures governing commitments obtained by the board
- 166 from designated purchasers including:
- 167 (i) entering into commitments with designated purchasers; and
- 168 (ii) drawing on commitments to redeem certificates from designated investors;
- 169 (f) have power to:
- 170 (i) expend funds;
- 171 (ii) invest funds;
- 172 (iii) issue debt and borrow funds;
- 173 (iv) enter into contracts;
- 174 (v) insure against loss; and
- 175 (vi) perform any other act necessary to carry out its purpose; and
- 176 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part
- 177 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 178 (2) (a) All rules made by the board under Subsection (1)(g) are subject to review by the
- 179 Legislative Management Committee:

180 (i) whenever made, modified, or repealed; and

181 (ii) in each even-numbered year.

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

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

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

189 (A) issued by the board;

190 (B) transferred by a designated investor; and

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

192 (ii) tie the contingencies for redemption of certificates to:

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

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

199 (b) The board may not issue contingent tax credits under this part [~~prior to~~] before July
200 1, 2004.

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

203 (b) The fee shall:

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

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

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

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

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

211 (i) by certifying a contingent tax credit to the designated investor; or
212 (ii) by making demand on designated purchasers consistent with the requirements of
213 Section [63M-1-1221](#).

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

219 (b) The annual report shall:

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

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

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

226 (iv) include detailed information regarding new fund commitments made during the
227 year, including the amount of money committed;

228 (v) include the net annual rate of return of the Utah fund of funds for the reported year,
229 and the net rate of return from the inception of the Utah fund of funds, after accounting for all
230 expenses, including administrative and financing costs;

231 (vi) include detailed information regarding:

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

233 (B) unrealized gains and any unrealized losses based on the net present value of
234 ongoing investments;

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

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

237 (B) aggregate compensation information separated by full- and part-time employees,
238 including benefit and travel expenses; and

239 (C) expenses related to the allocation manager;

240 (viii) include detailed information regarding all funding sources for administrative,
241 operations, and financing expenses, including expenses charged by or to the Utah fund of

242 funds, including management and placement fees;

243 ~~[(ii)]~~ (ix) review the progress of the investment fund allocation manager in
 244 implementing its investment plan and provide a general description of the investment plan;

245 ~~[and]~~

246 (x) for each individual fund that the Utah fund of funds is invested in that represents at
 247 least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total
 248 value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and
 249 the percentage of the total value of the fund held by the Utah fund of funds;

250 ~~(xi) \hat{S} → [include a list of each company in the state where an investment was made from a~~
 251 ~~fund that the Utah fund of funds is invested in, and] include the number of companies in Utah~~
 251a ~~where an investment was made from a fund that the Utah fund of funds is invested in, and~~ ← \hat{S}
 251b provide an aggregate count of new full-time

252 employees in the state added by all companies where investments were made by funds that the
 253 Utah fund of funds is invested in;

254 (xii) include an aggregate total value for all funds the Utah fund of funds is invested in,
 255 and an aggregate total amount of money invested in the state by the funds the Utah fund of
 256 funds is invested in;

257 ~~[(iii)]~~ (xiii) describe any redemption or transfer of a certificate issued under this part[-];

258 (xiv) include actual and estimated potential appropriations the Legislature will be
 259 required to provide as a result of redeemed certificates or tax credits during the following five
 260 years;

261 (xv) include an evaluation of the state's progress in accomplishing the purposes stated
 262 in Section 63M-1-1202; and

263 (xvi) be directly accessible to the public via a link from the main page of the Utah fund
 264 of fund's website.

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

267 ~~[(d) (i) Beginning July 1, 2006, and thereafter every two years, the board shall publish~~
 268 ~~a progress report which shall evaluate the progress of the state in accomplishing the purposes~~
 269 ~~stated in Section 63M-1-1202.]~~

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

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

272 **63M-1-1214. Compensation from the Utah fund of funds to the corporation --**

273 **Redemption reserve.**

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

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

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

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

282 ~~[(b) Any]~~ (c) any returns received by the corporation from investment of amounts held
283 in the redemption reserve shall be added to the redemption reserve until it has reached a total of
284 ~~[\$300,000,000.]~~ \$250,000,000; and

285 ~~[(c) If]~~ (d) if at the end of a calendar year the redemption reserve exceeds the
286 ~~[\$300,000,000]~~ \$250,000,000 limitation referred to in Subsection (2)~~[(b)]~~(c), the corporation
287 ~~[shall]~~ may reinvest the excess in the Utah fund of funds.

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

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

291 **63M-1-1217. Annual audits.**

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

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

295 (i) the state auditor; or

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

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

299 (i) the corporation; or

300 (ii) the Utah fund of funds.

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

302 (4) The annual audit report shall:

303 (a) be delivered to:

- 304 (i) the corporation; and
305 (ii) the board; ~~and~~
306 (b) include a valuation of the assets owned by the Utah fund of funds as of the end of
307 the reporting year[-];
308 (c) include an opinion regarding the accuracy of the information provided in the annual
309 report described in Subsection 63M-1-1206(6); and
310 (d) be completed on or before September 1 for the previous calendar year so that it may
311 be included in the annual report described in Section 63M-1-1206.

312 Section 6. Section **63M-1-1218** is amended to read:

313 **63M-1-1218. Certificates and contingent tax credits.**

314 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
315 board, in consultation with the State Tax Commission, shall make rules governing the form,
316 issuance, transfer, and redemption of certificates.

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

319 (a) the aggregate outstanding certificates may not exceed a total of [~~\$300,000,000~~];

320 (i) \$150,000,000 of contingent tax credits[-] used as collateral or a guarantee on loans
321 for the debt-based financing of investments in the Utah fund of funds, including a loan
322 refinanced using debt- or equity-based financing as described in Subsection (2)(e); and

323 (ii) \$75,000,000 used as a guarantee on equity investments in the Utah fund of funds;

324 (b) the board shall issue a certificate contemporaneously with an investment in the
325 Utah fund of funds by a designated investor;

326 (c) the board shall issue contingent tax credits in a manner that not more than
327 \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax
328 credits may be redeemable in [~~any~~] a fiscal year; ~~and~~

329 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
330 make a cash redemption and the board does not exercise its other options under Subsection
331 63M-1-1220(3)(b)[-];

332 (e) the board may not issue additional certificates as collateral or a guarantee on a loan
333 for the debt-based financing of investments in the Utah fund of funds that is initiated after July
334 1, 2014, except for a loan refinanced using debt- or equity-based financing on or after July 1,

335 2014, that was originated before July 1, 2014;

336 (f) after July 1, 2014, and on or before December 31, 2017, the board may issue
337 certificates that represent a guarantee of no more than 100% of the principal of each equity
338 investment in the Utah fund of funds; and

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

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

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

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

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

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

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

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

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

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

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

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

361 (a) the board shall certify a contingent tax credit only if the actual return₂ or payment of
362 principal and interest for a loan initiated before July 1, 2014, including a loan refinanced on or
363 after July 1, 2014, that was originated before July 1, 2014, to the designated investor is less
364 than that targeted at the issuance of the certificate;

365 (b) the amount of the contingent tax credit for a designated investor with an equity

366 interest may not exceed the difference between[:(i) the sum of: (A) the initial private
367 investment of the designated investor in the Utah fund of funds; and (B) the scheduled
368 aggregate return to the designated investor at rates of return authorized by the board at the
369 issuance of the certificate; and (ii)] the actual principal investment of the designated investor in
370 the Utah fund of funds and the aggregate actual return received by the designated investor and
371 any predecessor in interest of the initial equity investment and interest on the initial equity
372 investment;

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

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

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

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

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

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

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

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

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

392 (a) is binding on the board; and

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

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

396 (9) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah

397 Administrative Rulemaking Act, and in consultation with the board, make rules to help
398 implement this section.

399 Section 7. **Coordinating H.B. 243 with S.B. 31 -- Superseding substantive and**
400 **technical amendments.**

401 If this H.B. 243 and S.B. 31, State Agency Reporting Amendments, both pass and
402 become law, it is the intent of the Legislature that the amendments to Section [63M-1-1206](#) in
403 this bill supersede the amendments to Section [63M-1-1206](#) in S.B. 31, when the Office of
404 Legislative Research and General Counsel prepares the Utah Code database for publication.