

AMENDMENTS TO THE FUND OF FUNDS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ amends the membership of the Utah Capital Investment Board by adding a member of the Senate and a member of the House of Representatives;
- ▶ 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 July 1 for the previous calendar year;
- ▶ describes additional information required in the annual report;
- ▶ modifies the amount of money required in the redemption reserve before returns may be reinvested in the Utah fund of funds;
- ▶ provides that the aggregate outstanding certificates may not exceed a total of \$125,000,000 of contingent tax credits;
- ▶ provides that additional certificates may not be issued after July 1, 2014;
- ▶ provides that the Utah Capital Investment Corporation is no longer exempt from the requirements of Title 52, Chapter 4, Open and Public Meetings Act, and Title 63G, Chapter 2, Government Records Access and Management Act; and
- ▶ makes technical changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63M-1-1205**, as last amended by Laws of Utah 2010, Chapter 286

35 **63M-1-1206**, as last amended by Laws of Utah 2012, Chapter 242

36 **63M-1-1214**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and
37 amended by Laws of Utah 2008, Chapter 382

38 **63M-1-1217**, as renumbered and amended by Laws of Utah 2008, Chapter 382

39 **63M-1-1218**, as last amended by Laws of Utah 2011, Chapter 342

40 **63M-1-1224**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and
41 amended by Laws of Utah 2008, Chapter 382



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

44 Section 1. Section **63M-1-1205** is amended to read:

45 **63M-1-1205. Board members -- Meetings -- Expenses.**

46 (1) (a) The board shall consist of [five] the following seven members~~[- (b) Of the five~~
47 ~~members]~~:

48 (i) ~~[one shall be]~~ the state treasurer;

49 (ii) ~~[one shall be]~~ the director or the director's designee; ~~[and]~~

50 (iii) three ~~[shall be]~~ members appointed by the governor and confirmed by the
51 Senate~~[-];~~

52 (iv) a member of the Senate appointed by the president of the Senate; and

53 (v) a member of the House of Representatives appointed by the speaker of the House of
54 Representatives.

55 ~~[(c)]~~ (b) The three members appointed by the governor shall serve four-year staggered
56 terms with the initial terms of the first three members to be four years for one member, three
57 years for one member, and two years for one member.

58 (c) The governor shall appoint members of the board based on demonstrated expertise

59 and competence in:

60 (i) the supervision of investment managers;

61 (ii) the fiduciary management of investment funds; or

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

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

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

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

67 (3) Appointed members of the board may not serve more than two full consecutive
68 terms except ~~[where]~~ when the ~~[governor]~~ appointing authority determines that an additional
69 term is in the best interest of the state.

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

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

76 (5) A member may not receive compensation or benefits for the member's service, but
77 a member who is not also a member of the Legislature may receive per diem and travel
78 expenses in accordance with:

79 (a) Section [63A-3-106](#);

80 (b) Section [63A-3-107](#); and

81 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
82 [63A-3-107](#).

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

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

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

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

88 ~~[(7)]~~ (6) The board and its members are considered to be a governmental entity with all
89 of the rights, privileges, and immunities of a governmental entity of the state, including all of

90 the rights and benefits conferred under Title 63G, Chapter 7, Governmental Immunity Act of
91 Utah.

92 [~~(8)~~] (7) Meetings of the board[~~, except to the extent necessary to protect the~~
93 ~~information identified in Subsection 63M-1-1224(3),~~] are subject to Title 52, Chapter 4, Open
94 and Public Meetings Act.

95 Section 2. Section **63M-1-1206** is amended to read:

96 **63M-1-1206. Board duties and powers.**

97 (1) The board shall:

98 (a) establish criteria and procedures for the allocation and issuance of contingent tax
99 credits to designated investors by means of certificates issued by the board, provided that a
100 contingent tax credit may not be issued unless the Utah fund of funds:

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

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

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

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

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

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

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

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

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

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

117 (f) have power to:

118 (i) expend funds;

119 (ii) invest funds;

120 (iii) issue debt and borrow funds;

- 121 (iv) enter into contracts;
- 122 (v) insure against loss; and
- 123 (vi) perform any other act necessary to carry out its purpose; and
- 124 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part
125 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 126 (2) (a) All rules made by the board under Subsection (1)(g) are subject to review by the
127 Legislative Management Committee:
- 128 (i) whenever made, modified, or repealed; and
- 129 (ii) in each even-numbered year.
- 130 (b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review
131 Committee from reviewing and taking appropriate action on any rule made, amended, or
132 repealed by the board.
- 133 (3) (a) The criteria and procedures established by the board for the allocation and
134 issuance of contingent tax credits shall:
- 135 (i) include the contingencies that must be met for a certificate and its related tax credits
136 to be:
- 137 (A) issued by the board;
- 138 (B) transferred by a designated investor; and
- 139 (C) redeemed by a designated investor in order to receive a contingent tax credit; and
- 140 (ii) tie the contingencies for redemption of certificates to:
- 141 (A) the targeted rates of return and scheduled redemptions of equity interests purchased
142 by designated investors in the Utah fund of funds; and
- 143 (B) the scheduled principal and interest payments payable to designated investors that
144 have made loans or other debt obligations to the Utah fund of funds.
- 145 (b) The board may not issue contingent tax credits under this part [~~prior to~~] before July
146 1, 2004.
- 147 (4) (a) The board may charge a placement fee to the Utah fund of funds for the
148 issuance of a certificate and related contingent tax credit to a designated investor.
- 149 (b) The fee shall:
- 150 (i) be charged only to pay for reasonable and necessary costs of the board; and
- 151 (ii) not exceed .5% of the private investment of the designated investor.

- 152 (5) The board's criteria and procedures for redeeming certificates:
- 153 (a) shall give priority to the redemption amount from the available funds in the
- 154 redemption reserve; and
- 155 (b) to the extent there are insufficient funds in the redemption reserve to redeem
- 156 certificates, shall grant the board the option to redeem certificates:
- 157 (i) by certifying a contingent tax credit to the designated investor; or
- 158 (ii) by making demand on designated purchasers consistent with the requirements of
- 159 Section [63M-1-1221](#).
- 160 (6) (a) The board shall, in consultation with the corporation, publish an annual written
- 161 report of the activities conducted by the Utah fund of funds on or before July 1[-]; and submit
- 162 the report to the governor [~~and~~]; the Business, Economic Development, and Labor
- 163 Appropriations Subcommittee; the Business and Labor Interim Committee; and the Retirement
- 164 and Independent Entities Committee.
- 165 (b) The annual report shall:
- 166 (i) include a copy of the audit of the Utah fund of funds described in Section
- 167 [63M-1-1217](#) and a valuation of the assets of the Utah fund of funds;
- 168 (ii) include the annual rate of return of the Utah fund of funds, inclusive of
- 169 administrative and financing costs, for the reported year and each previous year;
- 170 [~~(ii)~~] (iii) review the progress of the investment fund allocation manager in
- 171 implementing its investment plan; [~~and~~]
- 172 [~~(iii)~~] (iv) describe any redemption or transfer of a certificate issued under this part[-];
- 173 (v) include an evaluation of the state's progress in accomplishing the purposes stated in
- 174 Section [63M-1-1202](#); and
- 175 (vi) be directly accessible to the public via a link from the main page of the Utah fund
- 176 of fund's website.
- 177 (c) The annual report may not identify any specific designated investor who has
- 178 redeemed or transferred a certificate.
- 179 [~~(d) (i) Beginning July 1, 2006, and thereafter every two years, the board shall publish~~
- 180 ~~a progress report which shall evaluate the progress of the state in accomplishing the purposes~~
- 181 ~~stated in Section [63M-1-1202](#).]~~
- 182 [~~(ii) The board shall give a copy of the report to the Legislature.]~~

183 Section 3. Section **63M-1-1214** is amended to read:

184 **63M-1-1214. Compensation from the Utah fund of funds to the corporation --**
185 **Redemption reserve.**

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

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

191 (b) Any returns received by the corporation from investment of amounts held in the
192 redemption reserve shall be added to the redemption reserve until it has reached a total of
193 [~~\$300,000,000~~] \$125,000,000.

194 (c) If at the end of a calendar year the redemption reserve exceeds the [~~\$300,000,000~~]
195 \$125,000,000 limitation referred to in Subsection (2)(b), the corporation shall reinvest the
196 excess in the Utah fund of funds.

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

199 Section 4. Section **63M-1-1217** is amended to read:

200 **63M-1-1217. Annual audits.**

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

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

204 (i) the state auditor; or

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

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

208 (i) the corporation; or

209 (ii) the Utah fund of funds.

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

211 (4) The annual audit report shall:

212 (a) be delivered to:

213 (i) the corporation; and

214 (ii) the board; ~~and~~
215 (b) include a valuation of the assets owned by the Utah fund of funds as of the end of
216 the reporting year[-]; and

217 (c) be completed on or before July 1 for the previous calendar year so that it may be
218 included in the annual report described in Section [63M-1-1206](#).

219 Section 5. Section **63M-1-1218** is amended to read:

220 **63M-1-1218. Certificates and contingent tax credits.**

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

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

226 (a) the aggregate outstanding certificates may not exceed a total of ~~[\$300,000,000]~~
227 \$125,000,000 of contingent tax credits;

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

230 (c) the board shall issue contingent tax credits in a manner that not more than
231 \$20,000,000 ~~[of contingent tax credits for each \$100,000,000 increment]~~ of contingent tax
232 credits may be redeemable in any fiscal year; ~~and~~

233 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
234 make a cash redemption and the board does not exercise its other options under Subsection
235 [63M-1-1220\(3\)\(b\)](#)[-]; and

236 (e) the board may not issue additional certificates after July 1, 2014.

237 (3) In determining the ~~[\$300,000,000]~~ \$125,000,000 maximum limit in Subsection
238 (2)(a) and the \$20,000,000 limitation ~~[for each \$100,000,000 increment of contingent tax~~
239 ~~credits]~~ in Subsection (2)(c):

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

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

244 (c) certificates and related contingent tax credits ~~[which]~~ that have been redeemed shall

245 be included only to the extent of tax credits actually allowed.

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

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

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

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

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

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

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

258 (a) the board shall certify a contingent tax credit only if the actual return or payment of
259 principal and interest to the designated investor is less than that targeted at the issuance of the
260 certificate;

261 (b) the amount of the contingent tax credit for a designated investor with an equity
262 interest may not exceed the difference between:

263 (i) the sum of:

264 (A) the initial private investment of the designated investor in the Utah fund of funds;

265 and

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

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

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

272 (d) the amount of the contingent tax credit for a designated investor with a loan or
273 other debt obligation from the Utah fund of funds shall be equal to the amount of any principal,
274 interest, or interest equivalent unpaid at the redemption of the loan or other obligation, as
275 stipulated in the certificate.

- 276 (6) The board shall clearly indicate on the certificate:
- 277 (a) the targeted return on the invested capital, if the private investment is an equity
- 278 interest;
- 279 (b) the payment schedule of principal, interest, or interest equivalent, if the private
- 280 investment is a loan or other debt obligation;
- 281 (c) the amount of the initial private investment;
- 282 (d) the calculation formula for determining the scheduled aggregate return on the initial
- 283 equity investment, if applicable; and
- 284 (e) the calculation formula for determining the amount of the contingent tax credit that
- 285 may be claimed.

286 (7) Once money is invested by a designated investor, ~~[the]~~ a certificate issued before
 287 July 1, 2014:

- 288 (a) is binding on the board; and
- 289 (b) may not be modified, terminated, or rescinded.
- 290 (8) Funds invested by a designated investor for a certificate shall be paid to the
- 291 corporation for placement in the Utah fund of funds.

292 (9) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah
 293 Administrative Rulemaking Act, and in consultation with the board, make rules to help
 294 implement this section.

295 Section 6. Section **63M-1-1224** is amended to read:

296 **63M-1-1224. Exemption from certain statutes.**

297 ~~[(1)]~~ Except as otherwise provided in this part, the corporation is exempt from statutes
 298 governing state agencies~~;~~ as provided in Section [63E-2-109](#).

299 ~~[(2) The corporation is exempt from:]~~

300 ~~[(a) Title 52, Chapter 4, Open and Public Meetings Act, and]~~

301 ~~[(b) Title 63G, Chapter 2, Government Records Access and Management Act.]~~

302 ~~[(3) The board is exempt from the requirement to report fund performance of venture~~
 303 ~~firms and private equity firms set forth in Title 63G, Chapter 2, Government Records Access~~
 304 ~~and Management Act.]~~

Legislative Review Note
as of 12-4-13 1:48 PM

Office of Legislative Research and General Counsel