

Representative Brad R. Wilson proposes the following substitute bill:

VENTURE CAPITAL ENHANCEMENT AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions of the Utah Venture Capital Enhancement Act.

Highlighted Provisions:

This bill:

▶ modifies the criteria and procedures for allocating and issuing contingent tax credits to an investor in the Utah fund of funds;

▶ modifies the criteria and qualifications for redeeming contingent tax credits for an investor in the Utah fund of funds;

▶ amends reporting requirements of the Utah Capital Investment Board and the Utah Capital Investment Corporation;

▶ modifies conflict of interest provisions of the Utah Capital Investment Corporation's board of directors;

▶ modifies the organization of the Utah Capital Investment Corporation;

▶ increases the aggregate amount of outstanding contingent tax credits that may be issued by the Utah Capital Investment Board related to investments entered into by the Utah fund of funds on or after July 1, 2014;

▶ decreases the aggregate amount of outstanding contingent tax credits that may be issued by the Utah Capital Investment Board related to investments entered into by



26 the Utah fund of funds before July 1, 2014; and

27 ▶ 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-1-1202**, as renumbered and amended by Laws of Utah 2008, Chapter 382

35 **63M-1-1203**, as last amended by Laws of Utah 2014, Chapter 334

36 **63M-1-1206**, as last amended by Laws of Utah 2014, Chapters 334, 371 and last
37 amended by Coordination Clause, Laws of Utah 2014, Chapter 334

38 **63M-1-1207**, as last amended by Laws of Utah 2011, Chapter 342

39 **63M-1-1209**, as renumbered and amended by Laws of Utah 2008, Chapter 382

40 **63M-1-1213**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and
41 amended by Laws of Utah 2008, Chapter 382

42 **63M-1-1217**, as last amended by Laws of Utah 2014, Chapter 334

43 **63M-1-1218**, as last amended by Laws of Utah 2014, Chapter 334

44 **63M-1-1222**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

47 Section 1. Section **63M-1-1202** is amended to read:

48 **63M-1-1202. Findings -- Purpose.**

49 (1) The Legislature finds that:

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

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

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

57 (d) increased venture equity capital investments in emerging, expanding, and
58 restructuring enterprises in Utah will:
59 (i) create new jobs in the state; and
60 (ii) help to diversify the state's economic base; and
61 (e) a well-trained work force is critical for the maintenance and development of Utah's
62 economy.

63 (2) This part is enacted to:

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

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

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

70 (d) facilitate the organization of the Utah fund of funds to seek private investments and
71 to serve as a catalyst in those investments by offering state incentives for private persons to
72 make investments in the Utah fund of funds;

73 (e) enhance the ~~[venture capital]~~ culture and infrastructure in the state ~~[so as]~~ to
74 increase venture capital and private equity investment within the state ~~[and to promote venture~~
75 ~~capital investing within the state];~~

76 (f) accomplish the purposes referred to in Subsections (2)(a) through (e) in a manner
77 that would maximize the direct economic impact for the state; and

78 (g) authorize the issuance and use of contingent tax credits to accomplish the purposes
79 referred to in Subsections (2)(a) through (e) while protecting the interests of the state by
80 limiting the manner in which contingent tax credits are issued, registered, transferred, claimed
81 as an offset to the payment of state income tax, and redeemed.

82 Section 2. Section **63M-1-1203** is amended to read:

83 **63M-1-1203. Definitions.**

84 As used in this part:

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

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

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

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

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

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

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

102 (7) "Designated investor" means:

103 (a) a person who makes a private investment; or

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

105 (8) "Designated purchaser" means:

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

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

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

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

113 (11) "Private investment" means:

114 (a) an equity interest in the Utah fund of funds; or

115 (b) a loan to the Utah fund of funds initiated before July 1, 2014, including a loan
116 [~~refinanced on or after July 1, 2014,~~] that was originated before July 1, 2014, and that is
117 refinanced on or after July 1, 2014.

118 (12) "Redemption reserve" means the reserve established by the corporation to

119 facilitate the cash redemption of certificates.

120 (13) "Taxpayer" means a taxpayer:

121 (a) of an investor; and

122 (b) if that taxpayer is a:

123 (i) claimant;

124 (ii) estate; or

125 (iii) trust.

126 (14) "Trust" means a nonresident trust or a resident trust.

127 (15) "Utah fund of funds" means a limited partnership or limited liability company
128 established under Section [63M-1-1213](#) in which a designated investor purchases an equity
129 interest.

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

131 **63M-1-1206. Board duties and powers.**

132 (1) The board shall, by rule:

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

136 [~~(i) first agrees to treat the amount of the tax credit redeemed by the state as a loan~~
137 ~~from the state to the Utah fund of funds; and]~~

138 [~~(ii) agrees to repay the loan upon terms and conditions established by the board;~~]

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

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

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

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

146 (d) establish a target rate of return or range of returns for the investment portfolio of
147 the Utah fund of funds;

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

150 (i) entering into commitments with designated purchasers; and
151 (ii) drawing on commitments to redeem certificates from designated investors;
152 (f) have power to:
153 (i) expend funds;
154 (ii) invest funds;
155 (iii) issue debt and borrow funds;
156 (iv) enter into contracts;
157 (v) insure against loss; and
158 (vi) perform any other act necessary to carry out its purpose; and
159 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part
160 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

161 (2) (a) All rules made by the board under Subsection (1)(g) are subject to review by the
162 Legislative Management Committee:

163 (i) whenever made, modified, or repealed; and
164 (ii) in each even-numbered year.

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

168 (3) (a) The criteria and procedures established by the board for the allocation and
169 issuance of contingent tax credits shall~~[(i)]~~ include the contingencies that must be met for a
170 certificate and its related tax credits to be:

171 ~~[(A)]~~ (i) issued by the board;
172 ~~[(B)]~~ (ii) transferred by a designated investor; and
173 ~~[(C)]~~ (iii) redeemed by a designated investor in order to receive a contingent tax
174 credit~~[-and]~~.

175 ~~[(ii)]~~ (b) The board shall tie the contingencies for redemption of certificates to:

176 (i) for a fund initiated before July 1, 2015:

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

179 (B) the scheduled principal and interest payments payable to designated investors that
180 have made loans initiated before July 1, 2014, including a loan refinanced on or after July 1,

181 2014, that was originated before July 1, 2014, to the Utah fund of funds[-]; or
182 ~~[(b) The board may not issue contingent tax credits under this part before July 1, 2004.]~~
183 (ii) for a fund initiated on or after July 1, 2015, the positive impact on economic
184 development in the state that is related to the fund's investments or the success of the
185 corporation's economic development plan in the state, including:
186 (A) encouraging the availability of a wide variety of venture capital in the state;
187 (B) strengthening the state's economy;
188 (C) helping business in the state gain access to sources of capital;
189 (D) helping build a significant, permanent source of capital available for businesses in
190 the state; and
191 (E) creating benefits for the state while minimizing the use of contingent tax credits.
192 (4) (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 private investment of the designated investor.
197 (5) 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 [63M-1-1221](#).
205 ~~[(6) (a) The board shall, in consultation with the corporation, publish on or before~~
206 ~~September 1 an annual report of the activities conducted by the Utah fund of funds, and submit~~
207 ~~the report to the governor; the Business, Economic Development, and Labor Appropriations~~
208 ~~Subcommittee; the Business and Labor Interim Committee; and the Retirement and~~
209 ~~Independent Entities Committee.]~~
210 ~~[(b) The annual report shall:]~~
211 ~~[(i) be designed to provide clear, accurate, and accessible information to the public, the~~

212 governor, and the Legislature;]

213 [~~(ii) include a copy of the audit of the Utah fund of funds described in Section~~
214 ~~63M-1-1217;~~]

215 [~~(iii) include a detailed balance sheet, revenue and expenses statement, and cash flow~~
216 ~~statement;~~]

217 [~~(iv) include detailed information regarding new fund commitments made during the~~
218 ~~year, including the amount of money committed;~~]

219 [~~(v) include the net annual rate of return of the Utah fund of funds for the reported~~
220 ~~year, and the net rate of return from the inception of the Utah fund of funds, after accounting~~
221 ~~for all expenses, including administrative and financing costs;~~]

222 [~~(vi) include detailed information regarding:~~]

223 [~~(A) realized gains from investments and any realized losses; and]~~

224 [~~(B) unrealized gains and any unrealized losses based on the net present value of~~
225 ~~ongoing investments;~~]

226 [~~(vii) include detailed information regarding all yearly expenditures, including:~~]

227 [~~(A) administrative, operating, and financing costs;~~]

228 [~~(B) aggregate compensation information separated by full- and part-time employees,~~
229 ~~including benefit and travel expenses; and]~~

230 [~~(C) expenses related to the allocation manager;~~]

231 [~~(viii) include detailed information regarding all funding sources for administrative,~~
232 ~~operations, and financing expenses, including expenses charged by or to the Utah fund of~~
233 ~~funds, including management and placement fees;~~]

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

236 [~~(x) for each individual fund that the Utah fund of funds is invested in that represents at~~
237 ~~least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total~~
238 ~~value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and~~
239 ~~the percentage of the total value of the fund held by the Utah fund of funds;~~]

240 [~~(xi) include the number of companies in Utah where an investment was made from a~~
241 ~~fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time~~
242 ~~employees in the state added by all companies where investments were made by funds that the~~

243 ~~Utah fund of funds is invested in;]~~

244 ~~[(xii) include an aggregate total value for all funds the Utah fund of funds is invested~~
245 ~~in, and an aggregate total amount of money invested in the state by the funds the Utah fund of~~
246 ~~funds is invested in;]~~

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

248 ~~[(xiv) include actual and estimated potential appropriations the Legislature will be~~
249 ~~required to provide as a result of redeemed certificates or tax credits during the following five~~
250 ~~years;]~~

251 ~~[(xv) include an evaluation of the state's progress in accomplishing the purposes stated~~
252 ~~in Section [63M-1-1202](#); and]~~

253 ~~[(xvi) be directly accessible to the public via a link from the main page of the Utah~~
254 ~~fund of fund's website.]~~

255 ~~[(c) The annual report may not identify a specific designated investor who has~~
256 ~~redeemed or transferred a certificate.]~~

257 Section 4. Section **63M-1-1207** is amended to read:

258 **63M-1-1207. Utah Capital Investment Corporation -- Powers and purposes.**

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

261 (b) The corporation:

262 (i) may exercise all powers conferred on independent corporations under Section
263 [63E-2-106](#);

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

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

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

268 (i) articles of incorporation; and

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

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

272 (e) Except as otherwise provided in this part, this part does not exempt the corporation
273 from the requirements under state law which apply to other corporations organized under Title

274 63E, Chapter 2, Independent Corporations Act.

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

276 (a) organize the Utah fund of funds;

277 (b) select [~~a venture capital~~] an investment fund allocation manager to make venture

278 capital and private equity fund investments by the Utah fund of funds;

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

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

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

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

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

288 (3) The corporation may not:

289 (a) exercise governmental functions;

290 (b) have members;

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

293 (d) make its debts payable out of any money except money of the corporation.

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

297 (5) The corporation may:

298 (a) engage consultants and legal counsel;

299 (b) expend funds;

300 (c) invest funds;

301 (d) issue debt and equity, and borrow funds;

302 (e) enter into contracts;

303 (f) insure against loss;

304 (g) hire employees; and

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

306 (6) (a) The corporation shall, in consultation with the board, publish on or before
307 September 1 an annual report of the activities conducted by the Utah fund of funds and submit
308 the report to the governor; the Business, Economic Development, and Labor Appropriations
309 Subcommittee; the Business and Labor Interim Committee; and the Retirement and
310 Independent Entities Interim Committee.

311 (b) The annual report shall:

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

314 (ii) include a copy of the audit of the Utah fund of funds described in Section
315 [63M-1-1217](#);

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

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

320 (v) include the net rate of return of the Utah fund of funds from the inception of the
321 Utah fund of funds, after accounting for all expenses, including administrative and financing
322 costs;

323 (vi) include detailed information regarding:

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

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

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

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

329 (B) aggregate compensation information for full- and part-time employees, including
330 benefit and travel expenses; and

331 (C) expenses related to the allocation manager;

332 (viii) include detailed information regarding all funding sources for administrative,
333 operations, and financing expenses, including expenses charged by or to the Utah fund of
334 funds, including management and placement fees;

335 (ix) review the progress of the investment fund allocation manager in implementing its

336 investment plan and provide a general description of the investment plan;

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

341 (xi) include the number of companies in Utah where an investment was made from a
342 fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time
343 employees in the state added by all companies where investments were made by funds that the
344 Utah fund of funds is invested in;

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

348 (xiii) describe any redemption or transfer of a certificate issued under this part;

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

352 (xv) include an evaluation of the state's progress in accomplishing the purposes stated
353 in Section [63M-1-1202](#); and

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

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

358 Section 5. Section **63M-1-1209** is amended to read:

359 **63M-1-1209. Board of directors.**

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

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

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

365 (b) fiduciary management of investment funds; and

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

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

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

372 (i) two shall serve four-year terms;

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

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

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

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

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

379 (ii) The chair's term is for one year, which may be extended annually by a majority vote
380 of the members of the board of directors.

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

382 (6) Members of the board of directors:

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

385 ~~[(b) may have no interest in any:]~~

386 ~~[(i) venture capital investment fund allocation manager selected by the corporation~~
387 ~~under this part; or]~~

388 ~~[(ii) investments made by the Utah fund of funds:]~~

389 (b) shall annually disclose any venture capital and private equity interests to the
390 corporation; and

391 (c) may not participate in a vote by the board of directors related to an investment by
392 the Utah fund of funds, if the member has an interest in the investment.

393 (7) Directors of the corporation:

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

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

396 Section 6. Section **63M-1-1213** is amended to read:

397 **63M-1-1213. Organization of Utah fund of funds.**

- 398 (1) The corporation shall organize the Utah fund of funds.
- 399 (2) The Utah fund of funds shall make investments in [~~private seed and~~] venture capital
400 and private equity partnerships or entities in a manner and for the following purposes:
- 401 (a) to encourage the availability of a wide variety of venture capital in the state;
- 402 (b) to strengthen the economy of the state;
- 403 (c) to help business in the state gain access to sources of capital;
- 404 (d) to help build a significant, permanent source of capital available to serve the needs
405 of businesses in the state; and
- 406 (e) to accomplish all these benefits in a way that minimizes the use of contingent tax
407 credits.
- 408 (3) The Utah fund of funds shall be organized:
- 409 (a) as a limited partnership or limited liability company under Utah law having the
410 corporation and qualified investment professionals as the general partner or manager;
- 411 (b) to provide for equity interests for designated investors₂, which provide for a
412 designated scheduled [~~rate of~~] return and a scheduled redemption in accordance with rules
413 made by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 414 (c) to provide for loans by or the issuance of debt obligations to designated investors
415 [~~which~~] that provide for designated payments of principal, interest, or interest equivalent in
416 accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah
417 Administrative Rulemaking Act.
- 418 (4) Public money may not be invested in the Utah fund of funds.
- 419 Section 7. Section **63M-1-1217** is amended to read:
- 420 **63M-1-1217. Annual audits.**
- 421 (1) Each calendar year, an audit of the activities of the Utah fund of funds shall be
422 made as described in this section.
- 423 (2) (a) The audit shall be conducted by:
- 424 (i) the state auditor; or
- 425 (ii) an independent auditor engaged by the state auditor.
- 426 (b) An independent auditor used under Subsection (2)(a)(ii) must have no business,
427 contractual, or other connection to:
- 428 (i) the corporation; or

- 429 (ii) the Utah fund of funds.
- 430 (3) The corporation shall pay the costs associated with the annual audit.
- 431 (4) The annual audit report shall:
- 432 (a) be delivered to:
- 433 (i) the corporation; and
- 434 (ii) the board;
- 435 (b) include a valuation of the assets owned by the Utah fund of funds as of the end of
- 436 the reporting year;
- 437 (c) include an opinion regarding the accuracy of the information provided in the annual
- 438 report described in Subsection [~~63M-1-1206~~] 63M-1-1207(6); [~~and~~]
- 439 (d) include an opinion regarding the accuracy of the information that supports the
- 440 economic development impact in the state of the Utah fund of funds as described in Sections
- 441 63M-1-1206(3)(b)(ii) and 63M-1-1218(3); and
- 442 [~~(d)~~] (e) be completed on or before September 1 for the previous calendar year so that
- 443 it may be included in the annual report described in [~~Section 63M-1-1206~~] Subsection
- 444 63M-1-1207(6).
- 445 Section 8. Section **63M-1-1218** is amended to read:
- 446 **63M-1-1218. Certificates and contingent tax credits.**
- 447 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 448 board, in consultation with the State Tax Commission, shall make rules governing the
- 449 application for, form, issuance, transfer, and redemption of certificates.
- 450 (2) The board's issuance of certificates and related contingent tax credits to designated
- 451 investors is subject to the following:
- 452 (a) the aggregate outstanding certificates may not exceed a total of:
- 453 (i) [~~\$150,000,000~~] \$120,000,000 of contingent tax credits used as collateral or a
- 454 guarantee on loans for the debt-based financing of investments in the Utah fund of funds,
- 455 including a loan refinanced using debt- or equity-based financing as described in Subsection
- 456 (2)(e); and
- 457 (ii) [~~\$75,000,000~~] \$100,000,000 used as a guarantee on equity investments in the Utah
- 458 fund of funds;
- 459 [~~(b) the board shall issue a certificate contemporaneously with an investment in the~~]

460 Utah fund of funds by a designated investor;]

461 ~~[(e)]~~ (b) the board shall issue contingent tax credits in a manner that not more than
462 \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax
463 credits may be redeemable in a fiscal year;

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

467 ~~[(e)]~~ (d) the board may not issue additional certificates as collateral or a guarantee on a
468 loan for the debt-based financing of investments in the Utah fund of funds that is initiated after
469 July 1, 2014, except for a loan refinanced using debt- or equity-based financing on or after July
470 1, 2014, that was originated before July 1, 2014; and

471 ~~[(f)]~~ (e) after July 1, 2014, ~~[and on or before December 31, 2017,]~~ the board may issue
472 certificates that represent ~~[a guarantee of]~~ no more than 100% of the principal of each equity
473 investment in the Utah fund of funds~~[-and]~~.

474 ~~[(g) the board may not issue certificates after December 31, 2017.]~~

475 (3) For a fund initiated on or after July 1, 2015, a designated investor may apply for a
476 tax credit if the following criteria are met:

477 (a) the fund has received payment from the designated investor as set forth in the
478 investor's agreement with the fund;

479 (b) the designated investor has not received a return of the initial equity investment in
480 the time established in the investor's agreement with the fund;

481 (c) there are insufficient funds in the redemption reserve to make a cash redemption
482 and the board does not exercise its other options under Subsection [63M-1-1220\(3\)\(b\)](#); and

483 (d) there is a demonstrated positive impact on economic development in the state
484 related to the fund's investments or the success of the corporation's economic development plan
485 in the state, which shall be measured by:

486 (i) a method to calculate the impact on economic development in the state, established
487 by rule; and

488 (ii) the corporation, with approval of the board, engaging an independent third party to
489 evaluate the fund and determine the economic impact of the fund and the activities of the
490 corporation as further described in Section [63M-1-1206](#) and board rules.

491 ~~[(3)]~~ (4) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the
492 \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection
493 (2)(c):

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

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

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

500 ~~[(4)]~~ (5) Contingent tax credits are subject to the following:

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

503 (b) a contingent tax credit may not be redeemed prior to the time the Utah fund of
504 funds receives full payment from the designated investor for the certificate as established in the
505 agreement with the fund;

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

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

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

512 ~~[(5)]~~ (6) In calculating the amount of a contingent tax credit:

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

517 (b) the amount of the contingent tax credit for a designated investor with an equity
518 interest may not exceed the difference between the actual principal investment of the
519 designated investor in the Utah fund of funds and the aggregate actual return received by the
520 designated investor and any predecessor in interest of the initial equity investment and interest
521 on the initial equity investment;

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

524 (d) the amount of the contingent tax credit for a designated investor with an
525 outstanding loan to the Utah fund of funds initiated before July 1, 2014, including a loan
526 refinanced on or after July 1, 2014, that was originated before July 1, 2014, ~~shall~~ may be
527 equal to no more than the amount of any principal, interest, or interest equivalent unpaid at the
528 redemption of the loan or other obligation, as stipulated in the certificate.

529 ~~[(6)]~~ (7) The board shall clearly indicate on the certificate:

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

532 (b) the payment schedule of principal, interest, or interest equivalent, if the private
533 investment is a loan initiated before July 1, 2014, including a loan refinanced on or after July 1,
534 2014, that was originated before July 1, 2014;

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

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

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

540 ~~[(7)]~~ (8) Once ~~[money is invested by a designated investor,]~~ a certificate is issued, a
541 certificate:

542 (a) is binding on the board; and

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

544 ~~[(8)]~~ (9) Funds invested by a designated investor for a certificate shall be paid to the
545 corporation for placement in the Utah fund of funds.

546 ~~[(9)]~~ (10) The State Tax Commission may, in accordance with Title 63G, Chapter 3,
547 Utah Administrative Rulemaking Act, and in consultation with the board, make rules to help
548 implement this section.

549 Section 9. Section **63M-1-1222** is amended to read:

550 **63M-1-1222. Powers and effectiveness.**

551 (1) This part may not be construed as a restriction or limitation upon any power which
552 the board might otherwise have under any other law of this state and the provisions of this part

553 are cumulative to those powers.

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

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

559 ~~[(a) level, timing, or degree of success of the Utah fund of funds or the investment~~
560 ~~funds in which the Utah fund of funds invests; or]~~

561 ~~[(b) extent to which the investment funds are:]~~

562 ~~[(i) invested in Utah venture capital projects; or]~~

563 ~~[(ii) successful in accomplishing any economic development objectives.]~~