

Senator Curtis S. Bramble 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

6	Cosponsors:	Sophia M. DiCaro	Bradley G. Last
7	Jacob L. Anderegg	Eric K. Hutchings	
8	Stewart Barlow	Don L. Ipson	

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



25 issued by the Utah Capital Investment Board related to investments entered into by the Utah
26 fund of funds on or after July 1, 2014;

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

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

30 ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **63M-1-1202**, as renumbered and amended by Laws of Utah 2008, Chapter 382

38 **63M-1-1203**, as last amended by Laws of Utah 2014, Chapter 334

39 **63M-1-1206**, as last amended by Laws of Utah 2014, Chapters 334, 371 and last
40 amended by Coordination Clause, Laws of Utah 2014, Chapter 334

41 **63M-1-1207**, as last amended by Laws of Utah 2011, Chapter 342

42 **63M-1-1209**, as renumbered and amended by Laws of Utah 2008, Chapter 382

43 **63M-1-1213**, as last amended by Laws of Utah 2008, Chapter 18 and renumbered and
44 amended by Laws of Utah 2008, Chapter 382

45 **63M-1-1217**, as last amended by Laws of Utah 2014, Chapter 334

46 **63M-1-1218**, as last amended by Laws of Utah 2014, Chapter 334

47 **63M-1-1222**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

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

51 **63M-1-1202. Findings -- Purpose.**

52 (1) The Legislature finds that:

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

55 (b) a critical shortage of seed ~~[and]~~, venture capital, and private equity resources exists

56 in the state, and that shortage is impairing the growth of commerce in the state;

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

60 (d) increased venture and private equity capital investments in emerging, expanding,
61 and restructuring enterprises in Utah will:

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

63 (ii) help to diversify the state's economic base; and

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

66 (2) This part is enacted to:

67 (a) mobilize private investment in a broad variety of venture capital and private equity
68 partnerships in diversified industries and locales;

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

71 (c) secure the services of the best managers in the venture capital ~~[industry]~~ and private
72 equity industries, regardless of location;

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

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

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

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

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

86 **63M-1-1203. Definitions.**

87 As used in this part:

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

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

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

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

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

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

103 (6) "Corporation" means the Utah Capital Investment Corporation created under
104 Section [63M-1-1207](#).

105 (7) "Designated investor" means:

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

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

108 (8) "Designated purchaser" means:

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

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

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

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

116 (11) "Private investment" means:

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

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

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

123 (13) "Taxpayer" means a taxpayer:

124 (a) of an investor; and

125 (b) if that taxpayer is a:

126 (i) claimant;

127 (ii) estate; or

128 (iii) trust.

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

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

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

134 **63M-1-1206. Board duties and powers.**

135 (1) The board shall, by rule:

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

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

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

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

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

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

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

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

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

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

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

155 (f) have power to:

156 (i) expend funds;

157 (ii) invest funds;

158 (iii) issue debt and borrow funds;

159 (iv) enter into contracts;

160 (v) insure against loss; and

161 (vi) perform any other act necessary to carry out its purpose; and

162 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part
163 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

167 (ii) in each even-numbered year.

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

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

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

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

176 ~~[(C)]~~ (iii) redeemed by a designated investor in order to receive a contingent tax
177 credit~~[-and]~~.

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

179 (i) for a private investment initiated before July 1, 2015:

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

182 (B) the scheduled principal and interest payments payable to designated investors that
183 have made loans initiated before July 1, 2014, including a loan refinanced on or after July 1,
184 2014, that was originated before July 1, 2014, to the Utah fund of funds[-]; or

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

186 (ii) for an equity-based private investment initiated on or after July 1, 2015, the
187 positive impact on economic development in the state that is related to the fund's investments
188 or the success of the corporation's economic development plan in the state, including:

189 (A) encouraging the availability of a wide variety of venture capital in the state;

190 (B) strengthening the state's economy;

191 (C) helping business in the state gain access to sources of capital;

192 (D) helping build a significant, permanent source of capital available for businesses in
193 the state; and

194 (E) creating benefits for the state while minimizing the use of contingent tax credits.

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

197 (b) The fee shall:

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

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

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

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

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

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

206 (ii) by making demand on designated purchasers consistent with the requirements of
207 Section 63M-1-1221.

208 ~~[(6) (a) The board shall, in consultation with the corporation, publish on or before~~
209 ~~September 1 an annual report of the activities conducted by the Utah fund of funds, and submit~~
210 ~~the report to the governor; the Business, Economic Development, and Labor Appropriations~~

211 ~~Subcommittee; the Business and Labor Interim Committee; and the Retirement and~~
212 ~~Independent Entities Committee;]~~

213 ~~[(b) The annual report shall:]~~

214 ~~[(i) be designed to provide clear, accurate, and accessible information to the public, the~~
215 ~~governor, and the Legislature;]~~

216 ~~[(ii) include a copy of the audit of the Utah fund of funds described in Section~~
217 ~~63M-1-1217;]~~

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

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

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

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

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

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

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

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

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

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

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

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

239 ~~[(x) for each individual fund that the Utah fund of funds is invested in that represents at~~
240 ~~least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total~~
241 ~~value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and~~

242 the percentage of the total value of the fund held by the Utah fund of funds;]

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

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

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

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

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

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

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

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

261 **63M-1-1207. Utah Capital Investment Corporation -- Powers and purposes.**

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

264 (b) The corporation:

265 (i) may exercise all powers conferred on independent corporations under Section
266 [63E-2-106](#);

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

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

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

271 (i) articles of incorporation; and

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

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

275 (e) Except as otherwise provided in this part, this part does not exempt the corporation
276 from the requirements under state law which apply to other corporations organized under Title
277 63E, Chapter 2, Independent Corporations Act.

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

279 (a) organize the Utah fund of funds;

280 (b) select [~~a venture capital~~] an investment fund allocation manager to make venture
281 capital and private equity fund investments by the Utah fund of funds;

282 (c) negotiate the terms of a contract with the [~~venture capital~~] investment fund
283 allocation manager;

284 (d) execute the contract with the selected [~~venture capital~~] investment fund manager on
285 behalf of the Utah fund of funds;

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

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

289 (g) establish the redemption reserve to be used by the corporation to redeem
290 certificates.

291 (3) The corporation may not:

292 (a) exercise governmental functions;

293 (b) have members;

294 (c) pledge the credit or taxing power of the state or any political subdivision of the
295 state; or

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

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

300 (5) The corporation may:

301 (a) engage consultants and legal counsel;

302 (b) expend funds;

303 (c) invest funds;

- 304 (d) issue debt and equity, and borrow funds;
- 305 (e) enter into contracts;
- 306 (f) insure against loss;
- 307 (g) hire employees; and
- 308 (h) perform any other act necessary to carry out its purposes.
- 309 (6) (a) The corporation shall, in consultation with the board, publish on or before
- 310 September 1 an annual report of the activities conducted by the Utah fund of funds and submit
- 311 the report to the governor; the Business, Economic Development, and Labor Appropriations
- 312 Subcommittee; the Business and Labor Interim Committee; and the Retirement and
- 313 Independent Entities Interim Committee.
- 314 (b) The annual report shall:
- 315 (i) be designed to provide clear, accurate, and accessible information to the public, the
- 316 governor, and the Legislature;
- 317 (ii) include a copy of the audit of the Utah fund of funds described in Section
- 318 [63M-1-1217](#);
- 319 (iii) include a detailed balance sheet, revenue and expenses statement, and cash flow
- 320 statement;
- 321 (iv) include detailed information regarding new fund commitments made during the
- 322 year, including the amount of money committed;
- 323 (v) include the net rate of return of the Utah fund of funds from the inception of the
- 324 Utah fund of funds, after accounting for all expenses, including administrative and financing
- 325 costs;
- 326 (vi) include detailed information regarding:
- 327 (A) realized gains from investments and any realized losses; and
- 328 (B) unrealized gains and any unrealized losses based on the net present value of
- 329 ongoing investments;
- 330 (vii) include detailed information regarding all yearly expenditures, including:
- 331 (A) administrative, operating, and financing costs;
- 332 (B) aggregate compensation information for full- and part-time employees, including
- 333 benefit and travel expenses; and
- 334 (C) expenses related to the allocation manager;

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

338 (ix) review the progress of the investment fund allocation manager in implementing its
339 investment plan and provide a general description of the investment plan;

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

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

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

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

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

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

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

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

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

362 **63M-1-1209. Board of directors.**

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

364 (2) The persons elected to the initial board of directors by the appointment committee
365 shall include persons who have an expertise, as considered appropriate by the appointment

366 committee, in the areas of:

- 367 (a) the selection and supervision of investment managers;
368 (b) fiduciary management of investment funds; and
369 (c) other areas of expertise as considered appropriate by the appointment committee.

370 (3) After the election of the initial board of directors, vacancies in the board of
371 directors of the corporation shall be filled by election by the remaining directors of the
372 corporation.

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

- 375 (i) two shall serve four-year terms;
376 (ii) two shall serve three-year terms; and
377 (iii) one shall serve a two-year term.

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

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

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

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

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

385 (6) Members of the board of directors:

386 (a) are subject to any restrictions on conflicts of interest specified in the organizational
387 documents of the corporation; [~~and~~]

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

389 [~~(i) venture capital investment fund allocation manager selected by the corporation~~
390 ~~under this part, or~~]

391 [~~(ii) investments made by the Utah fund of funds.~~]

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

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

396 (7) Directors of the corporation:

- 397 (a) shall be compensated for direct expenses and mileage; and
- 398 (b) may not receive a director's fee or salary for service as directors.

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

400 **63M-1-1213. Organization of Utah fund of funds.**

- 401 (1) The corporation shall organize the Utah fund of funds.
- 402 (2) The Utah fund of funds shall make investments in [~~private seed and~~ venture capital
- 403 and private equity partnerships or entities in a manner and for the following purposes:
 - 404 (a) to encourage the availability of a wide variety of venture capital in the state;
 - 405 (b) to strengthen the economy of the state;
 - 406 (c) to help business in the state gain access to sources of capital;
 - 407 (d) to help build a significant, permanent source of capital available to serve the needs
 - 408 of businesses in the state; and
 - 409 (e) to accomplish all these benefits in a way that minimizes the use of contingent tax
 - 410 credits.

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

- 412 (a) as a limited partnership or limited liability company under Utah law having the
- 413 corporation and qualified investment professionals as the general partner or manager;
- 414 (b) to provide for equity interests for designated investors, which provide for a
- 415 designated scheduled [~~rate of~~] return and a scheduled redemption in accordance with rules
- 416 made by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 417 (c) to provide for loans by or the issuance of debt obligations to designated investors
- 418 [~~which~~] that provide for designated payments of principal, interest, or interest equivalent in
- 419 accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah
- 420 Administrative Rulemaking Act.

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

422 Section 7. Section **63M-1-1217** is amended to read:

423 **63M-1-1217. Annual audits.**

- 424 (1) Each calendar year, an audit of the activities of the Utah fund of funds shall be
- 425 made as described in this section.
- 426 (2) (a) The audit shall be conducted by:
 - 427 (i) the state auditor; or

- 428 (ii) an independent auditor engaged by the state auditor.
- 429 (b) An independent auditor used under Subsection (2)(a)(ii) must have no business,
430 contractual, or other connection to:
- 431 (i) the corporation; or
- 432 (ii) the Utah fund of funds.
- 433 (3) The corporation shall pay the costs associated with the annual audit.
- 434 (4) The annual audit report shall:
- 435 (a) be delivered to:
- 436 (i) the corporation; and
- 437 (ii) the board;
- 438 (b) include a valuation of the assets owned by the Utah fund of funds as of the end of
439 the reporting year;
- 440 (c) include an opinion regarding the accuracy of the information provided in the annual
441 report described in Subsection [~~63M-1-1206~~] 63M-1-1207(6); [~~and~~]
- 442 (d) include an opinion regarding the accuracy of the information that supports the
443 economic development impact in the state of the Utah fund of funds as described in
444 Subsections ~~63M-1-1206(3)(b)(ii)~~ and ~~63M-1-1218(3)~~; and
- 445 [~~(d)~~] (e) be completed on or before September 1 for the previous calendar year so that
446 it may be included in the annual report described in [~~Section ~~63M-1-1206~~~~] Subsection
447 63M-1-1207(6).
- 448 Section 8. Section **63M-1-1218** is amended to read:
- 449 **63M-1-1218. Certificates and contingent tax credits.**
- 450 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
451 board, in consultation with the State Tax Commission, shall make rules governing the
452 application for, form, issuance, transfer, and redemption of certificates.
- 453 (2) The board's issuance of certificates and related contingent tax credits to designated
454 investors is subject to the following:
- 455 (a) the aggregate outstanding certificates may not exceed a total of:
- 456 (i) [~~\$150,000,000~~] \$130,000,000 of contingent tax credits used as collateral or a
457 guarantee on loans for the debt-based financing of investments in the Utah fund of funds;
458 including initiated before July 1, 2014, or \$120,000,000 of contingent tax credits for a loan

459 refinanced using debt- or equity-based financing as described in Subsection (2)(e); and
460 (ii) ~~[\$75,000,000]~~ \$100,000,000 used as ~~[a guarantee on]~~ an incentive for equity
461 investments in the Utah fund of funds;

462 (b) the board shall issue a certificate contemporaneously with ~~[an]~~ a debt-based
463 investment in the Utah fund of funds by a designated investor, including a refinanced loan as
464 described in Subsection (2)(e);

465 (c) the board shall issue contingent tax credits in a manner that not more than
466 \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax
467 credits may be redeemable in a fiscal year;

468 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
469 make a cash redemption and the board does not exercise its other options under Subsection
470 63M-1-1220(3)(b);

471 (e) the board may not issue additional certificates as collateral or a guarantee on a loan
472 for the debt-based financing of investments in the Utah fund of funds that is initiated after July
473 1, 2014, except for a loan refinanced using debt- or equity-based financing on or after July 1,
474 2014, that was originated before July 1, 2014; and

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

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

479 (3) For an equity-based private investment initiated on or after July 1, 2015, the
480 applicable designated investor may apply for a tax credit if the following criteria are met:

481 (a) the Utah fund of funds has received payment from the designated investor as set
482 forth in the investor's agreement with the Utah fund of funds;

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

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

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

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

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

496 [~~3~~] (4) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the
497 \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection
498 (2)[~~c~~](b):

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

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

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

505 [~~4~~] (5) Contingent tax credits are subject to the following:

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

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

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

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

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

517 [~~5~~] (6) In calculating the amount of a contingent tax credit:

518 (a) the board shall certify a contingent tax credit only if the actual return, or payment of
519 principal and interest for a loan initiated before July 1, 2014, including a loan refinanced on or
520 after July 1, 2014, that was originated before July 1, 2014, to the designated investor is less

521 than that targeted at the issuance of the certificate;

522 (b) the amount of the contingent tax credit for a designated investor with an equity
523 interest may not exceed the difference between the actual principal investment of the
524 designated investor in the Utah fund of funds and the aggregate actual return received by the
525 designated investor and any predecessor in interest of the initial equity investment and interest
526 on the initial equity investment;

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

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

534 ~~[(6)]~~ (7) The board shall clearly indicate on the certificate:

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

537 (b) the payment schedule of principal, interest, or interest equivalent, if the private
538 investment is a loan initiated before July 1, 2014, including a loan refinanced on or after July 1,
539 2014, that was originated before July 1, 2014;

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

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

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

545 ~~[(7)]~~ (8) Once ~~[money is invested by a designated investor,]~~ a certificate is issued, a
546 certificate:

547 (a) is binding on the board; and

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

549 ~~[(8)]~~ (9) Funds invested by a designated investor for a certificate shall be paid to the
550 corporation for placement in the Utah fund of funds.

551 ~~[(9)]~~ (10) The State Tax Commission may, in accordance with Title 63G, Chapter 3,

552 Utah Administrative Rulemaking Act, and in consultation with the board, make rules to help
553 implement this section.

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

555 **63M-1-1222. Powers and effectiveness.**

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

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

562 (3) [~~The~~] With respect to a debt-based private investment only, the provisions of any
563 contract entered into by the board or the Utah fund of funds may not be compromised,
564 diminished, invalidated, or affected by the:

565 (a) level, timing, or degree of success of the Utah fund of funds or the investment funds
566 in which the Utah fund of funds invests; or

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

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

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