

FUND OF FUNDS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Waldrip

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions related to the Utah Capital Investment Corporation.

Highlighted Provisions:

This bill:

▶ amends the definition of "independent entity," which has the effect of exempting the Utah Capital Investment Corporation from providing information to the Utah Public Finance Website; and

▶ modifies provisions related to the refinancing of loans to the Utah Capital Investment Corporation.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-3-401, as last amended by Laws of Utah 2018, Chapter 173

63N-6-103, as last amended by Laws of Utah 2015, Chapter 420 and renumbered and amended by Laws of Utah 2015, Chapter 283

63N-6-203, as last amended by Laws of Utah 2015, Chapter 420 and renumbered and amended by Laws of Utah 2015, Chapter 283



28 **63N-6-406**, as last amended by Laws of Utah 2015, Chapter 420 and renumbered and
29 amended by Laws of Utah 2015, Chapter 283

30

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

32 Section 1. Section **63A-3-401** is amended to read:

33 **63A-3-401. Definitions.**

34 As used in this part:

35 (1) "Board" means the Utah Transparency Advisory Board created under Section
36 **63A-3-403**.

37 (2) "Division" means the Division of Finance of the Department of Administrative
38 Services.

39 (3) (a) "Independent entity," except as provided in Subsection (3)(c), means the same
40 as that term is defined in Section **63E-1-102**.

41 (b) "Independent entity" includes an entity that is part of an independent entity
42 described in this Subsection (3), if the entity is considered a component unit of the independent
43 entity under the governmental accounting standards issued by the Governmental Accounting
44 Standards Board.

45 (c) "Independent entity" does not include:

46 (i) the Utah State Retirement Office created in Section **49-11-201**~~[-];~~ or

47 (ii) the Utah Capital Investment Corporation created in Section **63N-6-301**.

48 (4) "Participating local entity" means each of the following local entities:

49 (a) a county;

50 (b) a municipality;

51 (c) a local district under Title 17B, Limited Purpose Local Government Entities - Local
52 Districts;

53 (d) a special service district under Title 17D, Chapter 1, Special Service District Act;

54 (e) a housing authority under Title 35A, Chapter 8, Part 4, Housing Authorities;

55 (f) a school district;

56 (g) a charter school;

57 (h) except for a taxed interlocal entity as defined in Section **11-13-602**;

58 (i) an interlocal entity as defined in Section **11-13-103**;

59 (ii) a joint or cooperative undertaking as defined in Section 11-13-103; and
60 (iii) any project, program, or undertaking entered into by interlocal agreement in
61 accordance with Title 11, Chapter 13, Interlocal Cooperation Act;

62 (i) except for a taxed interlocal entity as defined in Section 11-13-602, an entity that is
63 part of an entity described in Subsections (4)(a) through (h), if the entity is considered a
64 component unit of the entity described in Subsections (4)(a) through (h) under the
65 governmental accounting standards issued by the Governmental Accounting Standards Board;
66 and

67 (j) a conservation district under Title 17D, Chapter 3, Conservation District Act.

68 (5) (a) "Participating state entity" means the state of Utah, including its executive,
69 legislative, and judicial branches, its departments, divisions, agencies, boards, commissions,
70 councils, committees, and institutions.

71 (b) "Participating state entity" includes an entity that is part of an entity described in
72 Subsection (5)(a), if the entity is considered a component unit of the entity described in
73 Subsection (5)(a) under the governmental accounting standards issued by the Governmental
74 Accounting Standards Board.

75 (6) "Public financial information" means records that are required to be made available
76 on the Utah Public Finance Website, a participating local entity's website, or an independent
77 entity's website as required by this part, and as the term "public financial information" is
78 defined by rule under Section 63A-3-404.

79 Section 2. Section 63N-6-103 is amended to read:

80 **63N-6-103. Definitions.**

81 As used in this part:

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

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

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

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

88 (4) "Commitment" means a written commitment by a designated purchaser to purchase
89 from the board certificates presented to the board for redemption by a designated investor.

90 Each commitment shall state the dollar amount of contingent tax credits that the designated
91 purchaser has committed to purchase from the board.

92 (5) "Contingent tax credit" means a contingent tax credit issued under this part that is
93 available against tax liabilities imposed by Title 59, Chapter 7, Corporate Franchise and
94 Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, if there are insufficient
95 funds in the redemption reserve and the board has not exercised other options for redemption
96 under Subsection 63N-6-408(3)(b).

97 (6) "Corporation" means the Utah Capital Investment Corporation created under
98 Section 63N-6-301.

99 (7) "Designated investor" means:

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

102 (8) "Designated purchaser" means:

- 103 (a) a person who enters into a written undertaking with the board to purchase a
104 commitment; or

- 105 (b) a transferee who assumes the obligations to make the purchase described in the
106 commitment.

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

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

110 (11) "Private investment" means:

- 111 (a) an equity interest in the Utah fund of funds; or
- 112 (b) a loan to the Utah fund of funds initiated before July 1, 2014, including a loan that
113 was originated before July 1, 2014, and that is refinanced one or more times on or after July 1,
114 2014.

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

117 (13) "Taxpayer" means a taxpayer:

- 118 (a) of an investor; and
- 119 (b) if that taxpayer is a:
 - 120 (i) claimant;

121 (ii) estate; or

122 (iii) trust.

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

124 (15) "Utah fund of funds" means a limited partnership or limited liability company
125 established under Section 63N-6-401 in which a designated investor purchases an equity
126 interest.

127 Section 3. Section 63N-6-203 is amended to read:

128 **63N-6-203. Board duties and powers.**

129 (1) The board shall, by rule:

130 (a) establish criteria and procedures for the allocation and issuance of contingent tax
131 credits to designated investors by means of certificates issued by the board;

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

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

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

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

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

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

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

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

145 (f) have power to:

146 (i) expend funds;

147 (ii) invest funds;

148 (iii) issue debt and borrow funds;

149 (iv) enter into contracts;

150 (v) insure against loss; and

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

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

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

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

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

161 (3) (a) The criteria and procedures established by the board for the allocation and
162 issuance of contingent tax credits shall include the contingencies that must be met for a
163 certificate and its related tax credits to be:

- 164 (i) issued by the board;
- 165 (ii) transferred by a designated investor; and
- 166 (iii) redeemed by a designated investor in order to receive a contingent tax credit.

167 (b) The board shall tie the contingencies for redemption of certificates to:

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

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

171 (B) the scheduled principal and interest payments payable to designated investors that
172 have made loans initiated before July 1, 2014, including a loan refinanced one or more times
173 on or after July 1, 2014, that was originated before July 1, 2014, to the Utah fund of funds; or

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

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

178 (B) strengthening the state's economy;

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

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

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

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

185 (b) The fee shall:

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

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

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

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

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

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

194 (ii) by making demand on designated purchasers consistent with the requirements of

195 Section [63N-6-409](#).

196 Section 4. Section **63N-6-406** is amended to read:

197 **63N-6-406. Certificates and contingent tax credits.**

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

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

203 (a) the aggregate outstanding certificates may not exceed a total of:

204 (i) \$130,000,000 of contingent tax credits used as collateral or a guarantee on loans for
205 the debt-based financing of investments in the Utah fund of funds initiated before July 1, 2014,
206 or \$120,000,000 of contingent tax credits for a loan refinanced using debt- or equity-based
207 financing as described in Subsection (2)(e); and

208 (ii) \$100,000,000 used as an incentive for equity investments in the Utah fund of funds;

209 (b) the board shall issue a certificate contemporaneously with a debt-based investment
210 in the Utah fund of funds by a designated investor, including a refinanced loan as described in
211 Subsection (2)(e);

212 (c) the board shall issue contingent tax credits in a manner that not more than
213 \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax

214 credits may be redeemable in a fiscal year;

215 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
216 make a cash redemption and the board does not exercise its other options under Subsection
217 63N-6-408(3)(b);

218 (e) the board may not issue additional certificates as collateral or a guarantee on a loan
219 for the debt-based financing of investments in the Utah fund of funds that is initiated after July
220 1, 2014, except for a loan refinanced one or more times using debt- or equity-based financing
221 on or after July 1, 2014, that was originated before July 1, 2014; and

222 (f) after July 1, 2014, the board may issue certificates that represent no more than
223 100% of the principal of each equity investment in the Utah fund of funds.

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

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

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

230 (c) there are insufficient funds in the redemption reserve to make a cash redemption
231 and the board does not exercise its other options under Subsection 63N-6-408(3)(b); and

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

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

237 (ii) the corporation, with approval of the board, engaging an independent third party to
238 evaluate the Utah fund of funds and determine the economic impact of the Utah fund of funds
239 and the activities of the corporation as further described in Section 63N-6-203 and board rules.

240 (4) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the
241 \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection
242 (2)(b):

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

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

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

249 (5) Contingent tax credits are subject to the following:

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

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

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

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

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

261 (6) In calculating the amount of a contingent tax credit:

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

266 (b) the amount of the contingent tax credit for a designated investor with an equity
267 interest may not exceed the difference between the actual principal investment of the
268 designated investor in the Utah fund of funds and the aggregate actual return received by the
269 designated investor and any predecessor in interest of the initial equity investment and interest
270 on the initial equity investment;

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

273 (d) the amount of the contingent tax credit for a designated investor with an
274 outstanding loan to the Utah fund of funds initiated before July 1, 2014, including a loan
275 refinanced one or more times on or after July 1, 2014, that was originated before July 1, 2014,

276 may be equal to no more than the amount of any principal, interest, or interest equivalent
277 unpaid at the redemption of the loan or other obligation, as stipulated in the certificate.

278 (7) The board shall clearly indicate on the certificate:

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

281 (b) the payment schedule of principal, interest, or interest equivalent, if the private
282 investment is a loan initiated before July 1, 2014, including a loan refinanced one or more
283 times on or after July 1, 2014, that was originated before July 1, 2014;

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

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

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

289 (8) Once a certificate is issued, a certificate:

290 (a) is binding on the board; and

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

292 (9) Funds invested by a designated investor for a certificate shall be paid to the
293 corporation for placement in the Utah fund of funds.

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