

UTAH VENTURE CAPITAL ENHANCEMENT

ACT AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: David Clark

Cosponsors:

Dan R. Eastman

Patricia W. Jones

Allen M. Christensen

Fred J. Fife

LONG TITLE

Committee Note:

The Workforce Services and Community and Economic Development Interim Committee recommended this bill.

General Description:

This bill modifies provisions of the Utah Venture Capital Enhancement Act related to the amount of aggregate outstanding contingent tax credit certificates that can be issued by the Utah Capital Investment Board.

Highlighted Provisions:

This bill:

- ▶ increases the ceiling on the amount of aggregate outstanding contingent tax credit certificates that can be issued by the Utah Capital Investment Board from \$100,000,000 to \$300,000,000;
 - ▶ increases the ceiling on the redemption reserve from \$100,000,000 to \$300,000,000;
- and
- ▶ makes certain technical changes.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63-38f-1214**, as renumbered and amended by Laws of Utah 2005, Chapter 148

33 **63-38f-1218**, as last amended by Laws of Utah 2005, Chapter 14 and renumbered and
34 amended by Laws of Utah 2005, Chapter 148

35

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

37 Section 1. Section **63-38f-1214** is amended to read:

38 **63-38f-1214. Compensation from the Utah fund of funds to the corporation --**
39 **Redemption reserve.**

40 (1) The corporation shall be compensated for its involvement in the Utah fund of funds
41 through the payment of the management fee described in Section 63-38f-1211.

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

45 (b) Any returns received by the corporation from investment of amounts held in the
46 redemption reserve shall be added to the redemption reserve until it has reached a total of
47 [~~\$100,000,000~~] \$300,000,000.

48 (c) If at the end of [~~any~~] a calendar year the redemption reserve exceeds the
49 [~~\$100,000,000~~] \$300,000,000 limitation referred to in Subsection (2)(b), the corporation shall
50 reinvest the excess [~~shall be reinvested~~] in the Utah fund of funds.

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

53 Section 2. Section **63-38f-1218** is amended to read:

54 **63-38f-1218. Certificates and contingent tax credits.**

55 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
56 board, in consultation with the State Tax Commission, shall make rules governing the form,
57 issuance, transfer, and redemption of certificates.

58 (2) The board's issuance of certificates and related contingent tax credits to designated

59 investors ~~[shall be]~~ is subject to the following:

60 (a) the aggregate outstanding certificates may not exceed a total of ~~[\$100,000,000]~~
61 \$300,000,000 of contingent tax credits;

62 (b) the ~~[certificates shall be issued]~~ board shall issue a certificate contemporaneously
63 with an investment in the Utah fund of funds by a designated investor;

64 (c) the board shall issue contingent tax credits ~~[shall be issued]~~ in a manner that not
65 more than \$20,000,000 of contingent tax credits may be initially redeemable in any fiscal year;
66 and

67 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
68 make a cash redemption and the board does not exercise its other options under Subsection
69 63-38f-1220(3)(b).

70 (3) In determining the ~~[\$100,000,000]~~ \$300,000,000 maximum limit in Subsection
71 (2)(a) and the \$20,000,000 limitation in Subsection (2)(c):

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

74 (b) certificates and related contingent tax credits which have expired may not be
75 included; and

76 (c) certificates and related contingent tax credits which have been redeemed shall be
77 included only to the extent of tax credits actually allowed.

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

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

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

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

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

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

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

90 (a) a contingent tax credit shall be certified by the board only if the actual return to the
91 designated investor is less than the return that was targeted at the issuance of the certificate;

92 (b) the amount of the contingent tax credit may not exceed the difference between:

93 (i) the sum of:

94 (A) the initial equity investment of the designated investor in the Utah fund of funds;

95 and

96 (B) the scheduled aggregate return to the designated investor at rates of return

97 authorized by the board at the issuance of the certificate; and

98 (ii) the aggregate actual return received by the designated investor and any predecessor

99 in interest of the initial equity investment and interest on the initial equity investment; and

100 (c) the rates, whether fixed rates or variable rates, shall be determined by a formula
101 stipulated in the certificate.

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

103 (a) the targeted return on the invested capital;

104 (b) the amount of the initial equity investment;

105 (c) the calculation formula for determining the scheduled aggregate return on the initial
106 equity investment; and

107 (d) the calculation formula for determining the amount of the contingent tax credit that
108 may be claimed.

109 (7) Once moneys are invested by a designated investor, the certificate:

110 (a) ~~shall be~~ is binding on the board; and

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

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

114 (9) The State Tax Commission may, in accordance with Title 63, Chapter 46a, Utah
115 Administrative Rulemaking Act, and in consultation with the board, make rules to help
116 implement this section.

Legislative Review Note
as of 9-20-07 9:14 AM

Office of Legislative Research and General Counsel

S.B. 11 - Utah Venture Capital Enhancement Act Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill would increase contingent tax credits authorization to \$300,000,000. The fiscal impact would depend upon tax credits authorized in a given year but could cost the state as much as \$20,000,000 annually.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
