

HB0411S01 compared with HB0411

~~deleted text~~ shows text that was in HB0411 but was deleted in HB0411S01.

inserted text shows text that was not in HB0411 but was inserted into HB0411S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

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;

HB0411S01 compared with HB0411

- ▶ 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 the Utah fund of funds before July 1, 2014; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

(1) The Legislature finds that:

(a) fundamental changes have occurred in national and international financial markets

HB0411S01 compared with HB0411

and in the state's financial markets;

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

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

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

(i) create new jobs in the state; and

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

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

(2) This part is enacted to:

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

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

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

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

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

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

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

HB0411S01 compared with HB0411

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

63M-1-1203. Definitions.

As used in this part:

- (1) "Board" means the Utah Capital Investment Board.
- (2) "Certificate" means a contract between the board and a designated investor under which a contingent tax credit is available and issued to the designated investor.
- (3) (a) Except as provided in Subsection (3)(b), "claimant" means a resident or nonresident person.
 - (b) "Claimant" does not include an estate or trust.
- (4) "Commitment" means a written commitment by a designated purchaser to purchase from the board certificates presented to the board for redemption by a designated investor. Each commitment shall state the dollar amount of contingent tax credits that the designated purchaser has committed to purchase from the board.
- (5) "Contingent tax credit" means a contingent tax credit issued under this part that is available against tax liabilities imposed by Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, if there are insufficient funds in the redemption reserve and the board has not exercised other options for redemption under Subsection 63M-1-1220(3)(b).
- (6) "Corporation" means the Utah Capital Investment Corporation created under Section 63M-1-1207.
- (7) "Designated investor" means:
 - (a) a person who makes a private investment; or
 - (b) a transferee of a certificate or contingent tax credit.
- (8) "Designated purchaser" means:
 - (a) a person who enters into a written undertaking with the board to purchase a commitment; or
 - (b) a transferee who assumes the obligations to make the purchase described in the commitment.
- (9) "Estate" means a nonresident estate or a resident estate.
- (10) "Person" means an individual, partnership, limited liability company, corporation, association, organization, business trust, estate, trust, or any other legal or commercial entity.

HB0411S01 compared with HB0411

(11) "Private investment" means:

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

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

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

(13) "Taxpayer" means a taxpayer:

(a) of an investor; and

(b) if that taxpayer is a:

(i) claimant;

(ii) estate; or

(iii) trust.

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

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

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

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

(1) The board shall by rule:

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

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

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

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

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

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

HB0411S01 compared with HB0411

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

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

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

(i) entering into commitments with designated purchasers; and

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

(f) have power to:

(i) expend funds;

(ii) invest funds;

(iii) issue debt and borrow funds;

(iv) enter into contracts;

(v) insure against loss; and

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

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

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

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

(ii) in each even-numbered year.

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

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

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

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

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

HB0411S01 compared with HB0411

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

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

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

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

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

(ii) for a fund initiated on or after July 1, 2015, the positive impact on economic development in the state that is related to the fund's investments or the success of the corporation's economic development plan in the state, including:

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

(B) strengthening the state's economy;

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

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

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

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

(b) The fee shall:

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

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

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

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

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

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

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

~~[(6)(a) The board shall, in consultation with the corporation, publish on or before~~

HB0411S01 compared with HB0411

~~September 1 an annual report of the activities conducted by the Utah fund of funds, and submit the report to the governor, the Business, Economic Development, and Labor Appropriations Subcommittee, the Business and Labor Interim Committee, and the Retirement and Independent Entities Committee.]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(x) for each individual fund that the Utah fund of funds is invested in that represents at~~

HB0411S01 compared with HB0411

~~least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and the percentage of the total value of the fund held by the Utah fund of funds;~~

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

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

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

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

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

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

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

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

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

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

(b) The corporation:

(i) may exercise all powers conferred on independent corporations under Section 63E-2-106;

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

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

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

HB0411S01 compared with HB0411

- (i) articles of incorporation; and
- (ii) any amendment to its articles of incorporation.

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

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

(2) The purposes of the corporation are to:

(a) organize the Utah fund of funds;

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

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

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

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

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

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

(3) The corporation may not:

(a) exercise governmental functions;

(b) have members;

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

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

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

(5) The corporation may:

(a) engage consultants and legal counsel;

HB0411S01 compared with HB0411

- (b) expend funds;
- (c) invest funds;
- (d) issue debt and equity, and borrow funds;
- (e) enter into contracts;
- (f) insure against loss;
- (g) hire employees; and
- (h) perform any other act necessary to carry out its purposes.

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

(b) The annual report shall:

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

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

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

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

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

(vi) include detailed information regarding:

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

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

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

(A) administrative, operating, and financing costs;

(B) aggregate compensation information for full- and part-time employees, including

HB0411S01 compared with HB0411

benefit and travel expenses; and

(C) expenses related to the allocation manager;

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

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

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

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

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

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

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

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

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

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

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

63M-1-1209. Board of directors.

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

HB0411S01 compared with HB0411

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

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

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

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

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

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

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

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

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

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

(6) Members of the board of directors:

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

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

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

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

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

(c) may not participate in a vote by the board of directors related to an investment by

HB0411S01 compared with HB0411

the Utah fund of funds, if the member has an interest in the investment.

(7) Directors of the corporation:

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

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

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

(1) The corporation shall organize the Utah fund of funds.

(2) The Utah fund of funds shall make investments in [~~private seed and~~] venture capital and private equity partnerships or entities in a manner and for the following purposes:

- (a) to encourage the availability of a wide variety of venture capital in the state;
- (b) to strengthen the economy of the state;
- (c) to help business in the state gain access to sources of capital;
- (d) to help build a significant, permanent source of capital available to serve the needs

of businesses in the state; and

(e) to accomplish all these benefits in a way that minimizes the use of contingent tax credits.

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

(a) as a limited partnership or limited liability company under Utah law having the corporation and qualified investment professionals as the general partner or manager;

(b) to provide for equity interests for designated investors, which provide for a designated scheduled [~~rate of~~] return and a scheduled redemption in accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(c) to provide for loans by or the issuance of debt obligations to designated investors [~~which~~] that provide for designated payments of principal, interest, or interest equivalent in accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

63M-1-1217. Annual audits.

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

HB0411S01 compared with HB0411

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

(i) the state auditor; or

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

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

(i) the corporation; or

(ii) the Utah fund of funds.

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

(4) The annual audit report shall:

(a) be delivered to:

(i) the corporation; and

(ii) the board;

(b) include a valuation of the assets owned by the Utah fund of funds as of the end of the reporting year;

(c) include an opinion regarding the accuracy of the information provided in the annual report described in Subsection ~~[63M-1-1206(6); and~~

~~(d)]~~ 63M-1-1207(6); [and]

(d) include an opinion regarding the accuracy of the information that supports the economic development impact in the state of the Utah fund of funds as described in Sections 63M-1-1206(3)(b)(ii) and 63M-1-1218(3); and

~~(d)]~~ (e) be completed on or before September 1 for the previous calendar year so that it may be included in the annual report described in ~~[Section 63M-1-1206]~~ Subsection 63M-1-1207(6).

Section ~~(7)~~8. Section **63M-1-1218** is amended to read:

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

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

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

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

HB0411S01 compared with HB0411

(i) [~~\$150,000,000~~] \$120,000,000 of contingent tax credits used as collateral or a guarantee on loans for the debt-based financing of investments in the Utah fund of funds, including a loan refinanced using debt- or equity-based financing as described in Subsection (2)(e); and

(ii) [~~\$75,000,000~~] \$100,000,000 used as a guarantee on equity investments in the Utah fund of funds;

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

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

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

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

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

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

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

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

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

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

(d) there is a demonstrated positive impact on economic development in the state

HB0411S01 compared with HB0411

related to the fund's investments or the success of the corporation's economic development plan in the state, which shall be measured by:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the board shall certify a contingent tax credit only if the actual return, or payment of principal and interest for a loan initiated before July 1, 2014, including a loan refinanced on or

HB0411S01 compared with HB0411

after July 1, 2014, that was originated before July 1, 2014, to the designated investor is less than that targeted at the issuance of the certificate;

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

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

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

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

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

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

(c) the amount of the initial private investment;

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

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

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

(a) is binding on the board; and

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

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

HB0411S01 compared with HB0411

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

Section ~~{8}~~9. Section **63M-1-1222** is amended to read:

63M-1-1222. Powers and effectiveness.

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

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

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

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

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

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

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

†

Legislative Review Note

~~as of 2-25-15 9:59 AM~~

~~Office of Legislative Research and General Counsel~~