

FUND OF FUNDS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to the refinancing of loans to the Utah fund of funds.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

Section 1. Section **63N-6-103** is amended to read:



28 **63N-6-103. Definitions.**

29 As used in this part:

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

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

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

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

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

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

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

47 (7) "Designated investor" means:

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

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

50 (8) "Designated purchaser" means:

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

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

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

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

58 (11) "Private investment" means:

59 (a) an equity interest in the Utah fund of funds; or
60 (b) a loan to the Utah fund of funds initiated before July 1, 2014, including a loan that
61 was originated before July 1, 2014, and that is refinanced one or more times on or after July 1,
62 2014.

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

65 (13) "Taxpayer" means a taxpayer:

- 66 (a) of an investor; and
- 67 (b) if that taxpayer is a:
 - 68 (i) claimant;
 - 69 (ii) estate; or
 - 70 (iii) trust.

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

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

75 Section 2. Section 63N-6-203 is amended to read:

76 **63N-6-203. Board duties and powers.**

77 (1) The board shall, by rule:

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

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

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

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

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

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

89 (e) establish criteria and procedures governing commitments obtained by the board

90 from designated purchasers including:

- 91 (i) entering into commitments with designated purchasers; and
- 92 (ii) drawing on commitments to redeem certificates from designated investors;
- 93 (f) have power to:
- 94 (i) expend funds;
- 95 (ii) invest funds;
- 96 (iii) issue debt and borrow funds;
- 97 (iv) enter into contracts;
- 98 (v) insure against loss; and
- 99 (vi) perform any other act necessary to carry out its purpose; and
- 100 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part
- 101 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

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

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

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

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

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

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

119 (B) the scheduled principal and interest payments payable to designated investors that
120 have made loans initiated before July 1, 2014, including a loan refinanced one or more times

121 on or after July 1, 2014, that was originated before July 1, 2014, to the Utah fund of funds; or

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

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

126 (B) strengthening the state's economy;

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

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

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

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

133 (b) The fee shall:

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

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

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

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

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

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

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

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

144 Section 3. Section **63N-6-406** is amended to read:

145 **63N-6-406. Certificates and contingent tax credits.**

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

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

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

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

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

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

160 (c) the board shall issue contingent tax credits in a manner that not more than
161 \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax
162 credits may be redeemable in a fiscal year;

163 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
164 make a cash redemption and the board does not exercise its other options under Subsection
165 63N-6-408(3)(b);

166 (e) the board may not issue additional certificates as collateral or a guarantee on a loan
167 for the debt-based financing of investments in the Utah fund of funds that is initiated after July
168 1, 2014, except for a loan refinanced one or more times using debt- or equity-based financing
169 on or after July 1, 2014, that was originated before July 1, 2014; and

170 (f) after July 1, 2014, the board may issue certificates that represent no more than
171 100% of the principal of each equity investment in the Utah fund of funds.

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

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

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

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

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

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

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

188 (4) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the
189 \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection
190 (2)(b):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

238 (a) is binding on the board; and

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel