

HB0177S02 compared with HB0177S01

~~deleted text~~ shows text that was in HB0177S01 but was deleted in HB0177S02.

Inserted text shows text that was not in HB0177S01 but was inserted into HB0177S02.

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Senator Curtis S. Bramble proposes the following substitute bill:

~~PUBLIC FINANCE WEBSITE~~ 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 information the Utah Capital Investment Corporation must provide 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

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Utah Code Sections Affected:

AMENDS:

63A-3-402, as last amended by Laws of Utah 2018, Chapter 415

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 **63A-3-402** is amended to read:

63A-3-402. Utah Public Finance Website -- Establishment and administration --

Records disclosure -- Exceptions.

(1) There is created the Utah Public Finance Website to be administered by the Division of Finance with the technical assistance of the Department of Technology Services.

(2) The Utah Public Finance Website shall:

(a) permit Utah taxpayers to:

(i) view, understand, and track the use of taxpayer dollars by making public financial information available on the Internet for participating state entities, independent entities, and participating local entities, using the Utah Public Finance Website; and

(ii) link to websites administered by participating local entities or independent entities that do not use the Utah Public Finance Website for the purpose of providing participating local entities' or independent entities' public financial information as required by this part and by rule under Section 63A-3-404;

(b) allow a person who has Internet access to use the website without paying a fee;

(c) allow the public to search public financial information on the Utah Public Finance Website using criteria established by the board;

(d) provide access to financial reports, financial audits, budgets, or other financial documents that are used to allocate, appropriate, spend, and account for government funds, as may be established by rule under Section 63A-3-404;

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(e) have a unique and simplified website address;

(f) be directly accessible via a link from the main page of the official state website;

(g) include other links, features, or functionality that will assist the public in obtaining and reviewing public financial information, as may be established by rule under Section 63A-3-404; and

(h) include a link to school report cards published on the State Board of Education's website under Section 53E-5-211.

(3) The division shall:

(a) establish and maintain the website, including the provision of equipment, resources, and personnel as necessary;

(b) maintain an archive of all information posted to the website;

(c) coordinate and process the receipt and posting of public financial information from participating state entities;

(d) coordinate and regulate the posting of public financial information by participating local entities and independent entities; and

(e) provide staff support for the advisory committee.

(4) (a) A participating state entity and each independent entity shall permit the public to view the entity's public financial information via the website, beginning with information that is generated not later than the fiscal year that begins July 1, 2008, except that public financial information for an:

(i) institution of higher education shall be provided beginning with information generated for the fiscal year beginning July 1, 2009; and

(ii) independent entity shall be provided beginning with information generated for the entity's fiscal year beginning in 2014.

(b) No later than May 15, 2009, the website shall:

(i) be operational; and

(ii) permit public access to participating state entities' public financial information, except as provided in Subsections (4)(c) and (d).

(c) An institution of higher education that is a participating state entity shall submit the entity's public financial information at a time allowing for inclusion on the website no later than May 15, 2010.

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(d) No later than the first full quarter after July 1, 2014, an independent entity shall submit the entity's public financial information for inclusion on the Utah Public Finance Website or via a link to its own website on the Utah Public Finance Website.

(5) (a) The Utah Educational Savings Plan, created in Section 53B-8a-103, shall provide the following financial information to the division for posting on the Utah Public Finance Website:

(i) administrative fund expense transactions from its general ledger accounting system; and

(ii) employee compensation information.

(b) The plan is not required to submit other financial information to the division, including:

(i) revenue transactions;

(ii) account owner transactions; and

(iii) fiduciary or commercial information, as defined in Section 53B-12-102.

(6) (a) The following independent entities shall each provide administrative expense transactions from its general ledger accounting system and employee compensation information to the division for posting on the Utah Public Finance Website or via a link to a website administered by the independent entity:

~~[(i) the Utah Capital Investment Corporation, created in Section 63N-6-301;]~~

~~[(ii)]~~ (i) the Utah Housing Corporation, created in Section 63H-8-201; and

~~[(iii)]~~ (ii) the School and Institutional Trust Lands Administration, created in Section 53C-1-201.

(b) The Utah Capital Investment Corporation, an independent entity created in Section 63N-6-301, shall provide the following information to the division for posting on the Utah Public Finance Website or via a link to a website administered by the independent entity for each fiscal year ending on or after June 30, 2015:

(i) aggregate compensation information for full-time and part-time employees, including benefit information;

(ii) aggregate business travel expenses;

(iii) aggregate expenses related to the Utah Capital Investment Corporation's allocation manager; and

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(iv) aggregate administrative, operating, and finance costs.

~~[(b)]~~ (c) For purposes of this part, an independent entity described in ~~[Subsection (6)(a)]~~ Subsection (6)(a) or (b) is not required to submit to the division, or provide a link to, other financial information, including:

- (i) revenue transactions of a fund or account created in its enabling statute;
- (ii) fiduciary or commercial information related to any subject if the disclosure of the

information:

- (A) would conflict with fiduciary obligations; or
- (B) is prohibited by insider trading provisions;
- (iii) information of a commercial nature, including information related to:
 - (A) account owners, borrowers, and dependents;
 - (B) demographic data;
 - (C) contracts and related payments;
 - (D) negotiations;
 - (E) proposals or bids;
 - (F) investments;
 - (G) the investment and management of funds;
 - (H) fees and charges;
 - (I) plan and program design;
 - (J) investment options and underlying investments offered to account owners;
 - (K) marketing and outreach efforts;
 - (L) lending criteria;
 - (M) the structure and terms of bonding; and
 - (N) financial plans or strategies; and
- (iv) information protected from public disclosure by federal law.

(7) (a) As used in this Subsection (7):

(i) "Local education agency" means a school district or a charter school.

(ii) "New school building project" means:

(A) the construction of a school or school facility that did not previously exist in a local education agency; or

(B) the lease or purchase of an existing building, by a local education agency, to be

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used as a school or school facility.

(iii) "School facility" means a facility, including a pool, theater, stadium, or maintenance building, that is built, leased, acquired, or remodeled by a local education agency regardless of whether the facility is open to the public.

(iv) "Significant school remodel" means a construction project undertaken by a local education agency with a project cost equal to or greater than \$2,000,000, including:

(A) the upgrading, changing, alteration, refurbishment, modification, or complete substitution of an existing school or school facility in a local education agency; or

(B) the addition of a school facility.

(b) For each new school building project or significant school remodel, the local education agency shall:

(i) prepare an annual school plant capital outlay report; and

(ii) submit the report:

(A) to the division for publication on the Utah Public Finance Website; and

(B) in a format, including any raw data or electronic formatting, prescribed by applicable division policy.

(c) The local education agency shall include in the capital outlay report described in Subsection (7)(b)(i) the following information as applicable to each new school building project or significant school remodel:

(i) the name and location of the new school building project or significant school remodel;

(ii) construction and design costs, including:

(A) the purchase price or lease terms of any real property acquired or leased for the project or remodel;

(B) facility construction;

(C) facility and landscape design;

(D) applicable impact fees; and

(E) furnishings and equipment;

(iii) the gross square footage of the project or remodel;

(iv) the year construction was completed; and

(v) the final student capacity of the new school building project or, for a significant

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school remodel, the increase or decrease in student capacity created by the remodel.

(d) (i) For a cost, fee, or other expense required to be reported under Subsection (7)(c), the local education agency shall report the actual cost, fee, or other expense.

(ii) The division may require that a local education agency provide further itemized data on information listed in Subsection (7)(c).

(e) (i) No later than May 15, 2015, a local education agency shall provide the division a school plant capital outlay report for each new school building project and significant school remodel completed on or after July 1, 2004, and before May 13, 2014.

(ii) For a new school building project or significant school remodel completed after May 13, 2014, the local education agency shall provide the school plant capital outlay report described in this Subsection (7) to the division annually by a date designated by the division.

(8) A person who negligently discloses a record that is classified as private, protected, or controlled by Title 63G, Chapter 2, Government Records Access and Management Act, is not criminally or civilly liable for an improper disclosure of the record if the record is disclosed solely as a result of the preparation or publication of the Utah Public Finance Website.

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

63N-6-103. 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

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funds in the redemption reserve and the board has not exercised other options for redemption under Subsection 63N-6-408(3)(b).

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

(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.

(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 that was originated before July 1, 2014, and that is refinanced one or more times 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 63N-6-401 in which a designated investor purchases an equity

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interest.

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

63N-6-203. 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;

(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;

(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

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(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 include the contingencies that must be met for a certificate and its related tax credits to be:

(i) issued by the board;

(ii) transferred by a designated investor; and

(iii) redeemed by a designated investor in order to receive a contingent tax credit.

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

(i) for a private investment 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 one or more times on or after July 1, 2014, that was originated before July 1, 2014, to the Utah fund of funds; or

(ii) for an equity-based private investment 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.

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(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 63N-6-409.

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

63N-6-406. 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:

(i) \$130,000,000 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 initiated before July 1, 2014, or \$120,000,000 of contingent tax credits for a loan refinanced using debt- or equity-based financing as described in Subsection (2)(e); and

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

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

(c) 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) 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 63N-6-408(3)(b);

(e) the board may not issue additional certificates as collateral or a guarantee on a loan

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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 one or more times using debt- or equity-based financing on or after July 1, 2014, that was originated before July 1, 2014; and

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

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

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

(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 Utah fund of funds;

(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 63N-6-408(3)(b); and

(d) there is a demonstrated positive impact on economic development in the state related to the Utah fund of funds' 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 Utah fund of funds and determine the economic impact of the Utah fund of funds and the activities of the corporation as further described in Section 63N-6-203 and board rules.

(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)(b):

(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.

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

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(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 Utah fund of funds;

(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.

(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 one or more times on or 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 one or more times on or after July 1, 2014, that was originated before July 1, 2014, 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.

(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;

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(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 one or more times 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.

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

(a) is binding on the board; and

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

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

(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.