

FUND OF FUNDS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

House Sponsor: Steve Waldrip

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the authorized uses of redemption reserves by the Utah Capital Investment Corporation (corporation);
- ▶ creates the Utah Capital Investment Restricted Account;
- ▶ directs the corporation to transfer \$20,000,000 to the state treasurer for deposit into the Utah Capital Investment Restricted Account;
- ▶ modifies the authority of the corporation to issue certificates for contingent tax credits;
- ▶ requires the corporation to provide a written report making recommendations regarding the future of the corporation;
- ▶ modifies provisions related to the corporation's board of directors; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2022:

- ▶ to the Division of Parks -- Capital Budget -- Renovation and Development, as a one-time appropriation:
 - from the General Fund Restricted -- Utah Capital Investment Restricted

29 Account, \$10,000,000.

30 **Other Special Clauses:**

31 This bill provides retrospective operation.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63J-1-602.1**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4

35 **63N-6-103**, as last amended by Laws of Utah 2019, Chapter 214

36 **63N-6-301**, as last amended by Laws of Utah 2017, Chapter 18

37 **63N-6-303**, as last amended by Laws of Utah 2015, Chapter 420 and renumbered and
38 amended by Laws of Utah 2015, Chapter 283

39 **63N-6-402**, as renumbered and amended by Laws of Utah 2015, Chapter 283

40 **63N-6-406**, as last amended by Laws of Utah 2019, Chapter 214

41 ENACTS:

42 **63N-6-204**, Utah Code Annotated 1953



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

45 Section 1. Section **63J-1-602.1** is amended to read:

46 **63J-1-602.1. List of nonlapsing appropriations from accounts and funds.**

47 Appropriations made from the following accounts or funds are nonlapsing:

48 (1) The Utah Intracurricular Student Organization Support for Agricultural Education
49 and Leadership Restricted Account created in Section **4-42-102**.

50 (2) The Native American Repatriation Restricted Account created in Section **9-9-407**.

51 (3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in
52 Section **9-18-102**.

53 (4) The National Professional Men's Soccer Team Support of Building Communities
54 Restricted Account created in Section **9-19-102**.

55 (5) Funds collected for directing and administering the C-PACE district created in

- 56 Section [11-42a-106](#).
- 57 (6) Money received by the Utah Inland Port Authority, as provided in Section
- 58 [11-58-105](#).
- 59 (7) The "Latino Community Support Restricted Account" created in Section [13-1-16](#).
- 60 (8) The Clean Air Support Restricted Account created in Section [19-1-109](#).
- 61 (9) The "Support for State-Owned Shooting Ranges Restricted Account" created in
- 62 Section [23-14-13.5](#).
- 63 (10) Award money under the State Asset Forfeiture Grant Program, as provided under
- 64 Section [24-4-117](#).
- 65 (11) Funds collected from the program fund for local health department expenses
- 66 incurred in responding to a local health emergency under Section [26-1-38](#).
- 67 (12) The Children with Cancer Support Restricted Account created in Section
- 68 [26-21a-304](#).
- 69 (13) State funds for matching federal funds in the Children's Health Insurance Program
- 70 as provided in Section [26-40-108](#).
- 71 (14) The Children with Heart Disease Support Restricted Account created in Section
- 72 [26-58-102](#).
- 73 (15) The Nurse Home Visiting Restricted Account created in Section [26-63-601](#).
- 74 (16) The Technology Development Restricted Account created in Section [31A-3-104](#).
- 75 (17) The Criminal Background Check Restricted Account created in Section
- 76 [31A-3-105](#).
- 77 (18) The Captive Insurance Restricted Account created in Section [31A-3-304](#), except
- 78 to the extent that Section [31A-3-304](#) makes the money received under that section free revenue.
- 79 (19) The Title Licensee Enforcement Restricted Account created in Section
- 80 [31A-23a-415](#).
- 81 (20) The Health Insurance Actuarial Review Restricted Account created in Section
- 82 [31A-30-115](#).

- 83 (21) The Insurance Fraud Investigation Restricted Account created in Section
84 [31A-31-108](#).
- 85 (22) The Underage Drinking Prevention Media and Education Campaign Restricted
86 Account created in Section [32B-2-306](#).
- 87 (23) The School Readiness Restricted Account created in Section [35A-15-203](#).
- 88 (24) Money received by the Utah State Office of Rehabilitation for the sale of certain
89 products or services, as provided in Section [35A-13-202](#).
- 90 (25) The Oil and Gas Administrative Penalties Account created in Section [40-6-11](#).
- 91 (26) The Oil and Gas Conservation Account created in Section [40-6-14.5](#).
- 92 (27) The Electronic Payment Fee Restricted Account created by Section [41-1a-121](#) to
93 the Motor Vehicle Division.
- 94 (28) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account
95 created by Section [41-3-110](#) to the State Tax Commission.
- 96 (29) The Utah Law Enforcement Memorial Support Restricted Account created in
97 Section [53-1-120](#).
- 98 (30) The State Disaster Recovery Restricted Account to the Division of Emergency
99 Management, as provided in Section [53-2a-603](#).
- 100 (31) The Department of Public Safety Restricted Account to the Department of Public
101 Safety, as provided in Section [53-3-106](#).
- 102 (32) The Utah Highway Patrol Aero Bureau Restricted Account created in Section
103 [53-8-303](#).
- 104 (33) The DNA Specimen Restricted Account created in Section [53-10-407](#).
- 105 (34) The Canine Body Armor Restricted Account created in Section [53-16-201](#).
- 106 (35) The Technical Colleges Capital Projects Fund created in Section [53B-2a-118](#).
- 107 (36) The Higher Education Capital Projects Fund created in Section [53B-22-202](#).
- 108 (37) A certain portion of money collected for administrative costs under the School
109 Institutional Trust Lands Management Act, as provided under Section [53C-3-202](#).

110 (38) The Public Utility Regulatory Restricted Account created in Section 54-5-1.5,
111 subject to Subsection 54-5-1.5(4)(d).

112 (39) Funds collected from a surcharge fee to provide certain licensees with access to an
113 electronic reference library, as provided in Section 58-3a-105.

114 (40) Certain fines collected by the Division of Occupational and Professional Licensing
115 for violation of unlawful or unprofessional conduct that are used for education and enforcement
116 purposes, as provided in Section 58-17b-505.

117 (41) Funds collected from a surcharge fee to provide certain licensees with access to an
118 electronic reference library, as provided in Section 58-22-104.

119 (42) Funds collected from a surcharge fee to provide certain licensees with access to an
120 electronic reference library, as provided in Section 58-55-106.

121 (43) Funds collected from a surcharge fee to provide certain licensees with access to an
122 electronic reference library, as provided in Section 58-56-3.5.

123 (44) Certain fines collected by the Division of Occupational and Professional Licensing
124 for use in education and enforcement of the Security Personnel Licensing Act, as provided in
125 Section 58-63-103.

126 (45) The Relative Value Study Restricted Account created in Section 59-9-105.

127 (46) The Cigarette Tax Restricted Account created in Section 59-14-204.

128 (47) Funds paid to the Division of Real Estate for the cost of a criminal background
129 check for a mortgage loan license, as provided in Section 61-2c-202.

130 (48) Funds paid to the Division of Real Estate for the cost of a criminal background
131 check for principal broker, associate broker, and sales agent licenses, as provided in Section
132 61-2f-204.

133 (49) Certain funds donated to the Department of Human Services, as provided in
134 Section 62A-1-111.

135 (50) The National Professional Men's Basketball Team Support of Women and
136 Children Issues Restricted Account created in Section 62A-1-202.

137 (51) Certain funds donated to the Division of Child and Family Services, as provided
138 in Section [62A-4a-110](#).

139 (52) The Choose Life Adoption Support Restricted Account created in Section
140 [62A-4a-608](#).

141 (53) Funds collected by the Office of Administrative Rules for publishing, as provided
142 in Section [63G-3-402](#).

143 (54) The Immigration Act Restricted Account created in Section [63G-12-103](#).

144 (55) Money received by the military installation development authority, as provided in
145 Section [63H-1-504](#).

146 (56) The Computer Aided Dispatch Restricted Account created in Section [63H-7a-303](#).

147 (57) The Unified Statewide 911 Emergency Service Account created in Section
148 [63H-7a-304](#).

149 (58) The Utah Statewide Radio System Restricted Account created in Section
150 [63H-7a-403](#).

151 (59) The Employability to Careers Program Restricted Account created in Section
152 [63J-4-703](#).

153 (60) The Utah Capital Investment Restricted Account created in Section [63N-6-204](#).

154 [~~(60)~~] (61) The Motion Picture Incentive Account created in Section [63N-8-103](#).

155 [~~(61)~~] (62) Certain money payable for expenses of the Pete Suazo Utah Athletic
156 Commission, as provided under Section [63N-10-301](#).

157 [~~(62)~~] (63) Funds collected by the housing of state probationary inmates or state parole
158 inmates, as provided in Subsection [64-13e-104\(2\)](#).

159 [~~(63)~~] (64) Certain forestry and fire control funds utilized by the Division of Forestry,
160 Fire, and State Lands, as provided in Section [65A-8-103](#).

161 [~~(64)~~] (65) The Transportation of Veterans to Memorials Support Restricted Account
162 created in Section [71-14-102](#).

163 [~~(65)~~] (66) The Amusement Ride Safety Restricted Account, as provided in Section

164 72-16-204.

165 [~~66~~] (67) Certain funds received by the Office of the State Engineer for well drilling
166 fines or bonds, as provided in Section 73-3-25.

167 [~~67~~] (68) The Water Resources Conservation and Development Fund, as provided in
168 Section 73-23-2.

169 [~~68~~] (69) Funds donated or paid to a juvenile court by private sources, as provided in
170 Subsection 78A-6-203(1)(c).

171 [~~69~~] (70) Fees for certificate of admission created under Section 78A-9-102.

172 [~~70~~] (71) Funds collected for adoption document access as provided in Sections
173 78B-6-141, 78B-6-144, and 78B-6-144.5.

174 [~~71~~] (72) Funds collected for indigent defense as provided in Title 78B, Chapter 22,
175 Part 4, Utah Indigent Defense Commission.

176 [~~72~~] (73) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades
177 State Park, Jordan River State Park, and Green River State Park, as provided under Section
178 79-4-403.

179 [~~73~~] (74) Certain funds received by the Division of Parks and Recreation from the
180 sale or disposal of buffalo, as provided under Section 79-4-1001.

181 [~~74~~] (75) The Drinking While Pregnant Prevention Media and Education Campaign
182 Restricted Account created in Section 32B-2-308.

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

184 **63N-6-103. Definitions.**

185 As used in this part:

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

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

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

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

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

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

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

203 (7) "Designated investor" means:

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

206 (8) "Designated purchaser" means:

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

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

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

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

214 (11) "Private investment" means:

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

- 216 (b) a loan to the Utah fund of funds initiated before July 1, 2014, including a loan that
217 was originated before July 1, 2014, and that is refinanced one or more times on or after July 1,

218 2014.

219 (12) "Redemption reserve" means the reserve established by the corporation to:

220 (a) facilitate the cash redemption of certificates[-]; and

221 (b) provide money for the state as directed by statute.

222 (13) "Restricted account" means the Utah Capital Investment Restricted Account
223 created in Section [63N-6-204](#).

224 [~~(13)~~] (14) "Taxpayer" means a taxpayer:

225 (a) of an investor; and

226 (b) if that taxpayer is a:

227 (i) claimant;

228 (ii) estate; or

229 (iii) trust.

230 [~~(14)~~] (15) "Trust" means a nonresident trust or a resident trust.

231 [~~(15)~~] (16) "Utah fund of funds" means a limited partnership or limited liability
232 company established under Section [63N-6-401](#) in which a designated investor purchases an
233 equity interest.

234 Section 3. Section **63N-6-204** is enacted to read:

235 **Part 2. Utah Capital Investment Board and Restricted Account**

236 **63N-6-204. Utah Capital Investment Restricted Account.**

237 (1) There is created a restricted account within the General Fund known as the Utah
238 Capital Investment Restricted Account.

239 (2) The restricted account shall be funded by:

240 (a) redemption reserve money and other money from the corporation as directed by
241 statute; and

242 (b) appropriations made to the account by the Legislature.

243 (3) The state treasurer shall:

244 (a) invest money in the restricted account in accordance with Title 51, Chapter 7, State

245 Money Management Act; and

246 (b) deposit interest or other earnings derived from investment of restricted account
247 money into the restricted account.

248 (4) Subject to appropriations by the Legislature, the restricted account shall be
249 administered by the Governor's Office of Economic Development for economic development,
250 infrastructure, state parks, recreation, education innovation, or other purposes as directed by the
251 Legislature.

252 (5) An appropriation from the restricted account is nonlapsing.

253 Section 4. Section **63N-6-301** is amended to read:

254 **63N-6-301. Utah Capital Investment Corporation -- Powers and purposes --**

255 **Reporting requirements.**

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

258 (b) The corporation:

259 (i) may exercise all powers conferred on independent corporations under Section
260 [63E-2-106](#);

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

262 (iii) is subject to the other provisions of Title 63E, Chapter 2, Independent

263 Corporations Act, except as otherwise provided in this part.

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

265 (i) articles of incorporation; and

266 (ii) any amendment to its articles of incorporation.

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

269 (e) Except as otherwise provided in this part, this part does not exempt the corporation
270 from the requirements under state law which apply to other corporations organized under Title
271 63E, Chapter 2, Independent Corporations Act.

- 272 (2) The purposes of the corporation are to:
- 273 (a) organize the Utah fund of funds;
- 274 (b) select an investment fund allocation manager to make venture capital and private
275 equity fund investments by the Utah fund of funds;
- 276 (c) negotiate the terms of a contract with the investment fund allocation manager;
- 277 (d) execute the contract with the selected investment fund manager on behalf of the
278 Utah fund of funds;
- 279 (e) receive funds paid by designated investors for the issuance of certificates by the
280 board for private investment in the Utah fund of funds;
- 281 (f) receive investment returns from the Utah fund of funds; and
- 282 (g) establish the redemption reserve to be used by the corporation to:
- 283 (i) redeem certificates[-]; and
- 284 (ii) provide money for the state as directed by statute.
- 285 (3) The corporation may not:
- 286 (a) exercise governmental functions;
- 287 (b) have members;
- 288 (c) pledge the credit or taxing power of the state or any political subdivision of the
289 state; or
- 290 (d) make its debts payable out of any money except money of the corporation.
- 291 (4) The obligations of the corporation are not obligations of the state or any political
292 subdivision of the state within the meaning of any constitutional or statutory debt limitations,
293 but are obligations of the corporation payable solely and only from the corporation's funds.
- 294 (5) The corporation may:
- 295 (a) engage consultants and legal counsel;
- 296 (b) expend funds;
- 297 (c) invest funds;
- 298 (d) issue debt and equity, and borrow funds;

- 299 (e) enter into contracts;
- 300 (f) insure against loss;
- 301 (g) hire employees; and
- 302 (h) perform any other act necessary to carry out its purposes.
- 303 (6) (a) The corporation shall, in consultation with the board, publish on or before
- 304 September 1 an annual report of the activities conducted by the Utah fund of funds and submit,
- 305 in accordance with Section 68-3-14, the written report to:
- 306 (i) the governor;
- 307 (ii) the Business, Economic Development, and Labor Appropriations Subcommittee;
- 308 (iii) the Business and Labor Interim Committee; and
- 309 (iv) the Retirement and Independent Entities Interim Committee.
- 310 (b) The annual report shall:
- 311 (i) be designed to provide clear, accurate, and accessible information to the public, the
- 312 governor, and the Legislature;
- 313 (ii) include a copy of the audit of the Utah fund of funds described in Section
- 314 63N-6-405;
- 315 (iii) include a detailed balance sheet, revenue and expenses statement, and cash flow
- 316 statement;
- 317 (iv) include detailed information regarding new fund commitments made during the
- 318 year, including the amount of money committed;
- 319 (v) include the net rate of return of the Utah fund of funds from the inception of the
- 320 Utah fund of funds, after accounting for all expenses, including administrative and financing
- 321 costs;
- 322 (vi) include detailed information regarding:
- 323 (A) realized gains from investments and any realized losses; and
- 324 (B) unrealized gains and any unrealized losses based on the net present value of
- 325 ongoing investments;

- 326 (vii) include detailed information regarding all yearly expenditures, including:
- 327 (A) administrative, operating, and financing costs;
- 328 (B) aggregate compensation information for full- and part-time employees, including
- 329 benefit and travel expenses; and
- 330 (C) expenses related to the allocation manager;
- 331 (viii) include detailed information regarding all funding sources for administrative,
- 332 operations, and financing expenses, including expenses charged by or to the Utah fund of
- 333 funds, including management and placement fees;
- 334 (ix) review the progress of the investment fund allocation manager in implementing its
- 335 investment plan and provide a general description of the investment plan;
- 336 (x) for each individual fund that the Utah fund of funds is invested in that represents at
- 337 least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total
- 338 value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and
- 339 the percentage of the total value of the fund held by the Utah fund of funds;
- 340 (xi) include the number of companies in Utah where an investment was made from a
- 341 fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time
- 342 employees in the state added by all companies where investments were made by funds that the
- 343 Utah fund of funds is invested in;
- 344 (xii) include an aggregate total value for all funds the Utah fund of funds is invested in,
- 345 and an aggregate total amount of money invested in the state by the funds the Utah fund of
- 346 funds is invested in;
- 347 (xiii) describe any redemption or transfer of a certificate issued under this part;
- 348 (xiv) include actual and estimated potential appropriations the Legislature will be
- 349 required to provide as a result of redeemed certificates or tax credits during the following five
- 350 years;
- 351 (xv) include an evaluation of the state's progress in accomplishing the purposes stated
- 352 in Section [63N-6-102](#); and

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

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

357 (7) (a) On or before December 1, 2021, the corporation shall provide a written report to
358 the president of the Senate and the speaker of the House of Representatives that includes a
359 detailed plan, time line, and recommendations for the future of the corporation.

360 (b) The plan shall include recommendations describing:

361 (i) the divestment of the state from any future liability of the corporation and a time
362 line for realizing gains and winding down all investments from the current Utah fund of funds;

363 (ii) any plans that the corporation has to raise capital for a fund similar to the current
364 Utah fund of funds that does not require certificates, contingent tax credits, or other guarantees
365 from the state to be provided to equity investors;

366 (iii) whether the corporation should continue as an independent quasi-public nonprofit
367 corporation under Title 63E, Chapter 2, Independent Corporations Act;

368 (iv) if the corporation recommends continuing as an independent quasi-public
369 nonprofit corporation, why the corporation should continue, and what benefits the corporation
370 will provide to the state in terms of economic development, job growth, or other benefits;

371 (v) whether the corporation should be liquidated or dissolved under Section
372 [63N-3-306](#);

373 (vi) if the corporation recommends that the corporation be liquidated or dissolved, a
374 detailed plan and time line for dissolution that includes recommendations regarding how assets
375 and realized gains of the corporation should be distributed;

376 (vii) whether the corporation should be privatized in accordance with Title 63E,
377 Chapter 1, Part 4, Privatization of Independent Entities; and

378 (viii) if the corporation recommends that the corporation be privatized, a detailed plan
379 and time line for privatization that includes recommendations regarding the distribution of

380 assets and realized gains of the corporation.

381 (8) In relation to the written report described in Subsection (7), the corporation:

382 (a) may seek potential commitments through letters of intent or other means to
383 demonstrate the viability of raising capital for a new fund as described in Subsection (7)(b)(ii);
384 and

385 (b) may not enter into any binding commitments related to a new fund as described in
386 Subsection (7)(b)(ii), unless the corporation receives specific authorization through legislation
387 passed by the Legislature after the report described in Subsection (7) is provided.

388 Section 5. Section **63N-6-303** is amended to read:

389 **63N-6-303. Board of directors.**

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

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

394 (a) the selection and supervision of investment managers;

395 (b) fiduciary management of investment funds; and

396 (c) other areas of expertise as considered appropriate by the appointment committee.

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

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

402 (i) two shall serve four-year terms;

403 (ii) two shall serve three-year terms; and

404 (iii) one shall serve a two-year term.

405 (b) Board members shall serve until their successors are elected and qualified and may
406 serve up to a maximum of two successive terms.

- 407 (c) A majority of the board members may remove a board member for cause.
- 408 (d) (i) The board shall select a chair by majority vote.
- 409 (ii) The chair's term is for one year, which may be extended annually by a majority vote
- 410 of the members of the board of directors.
- 411 (5) Three members of the board are a quorum for the transaction of business.
- 412 (6) Members of the board of directors:
- 413 (a) are subject to any restrictions on conflicts of interest specified in the organizational
- 414 documents of the corporation;
- 415 (b) shall annually disclose any venture capital and private equity interests to the
- 416 corporation; and
- 417 (c) may not participate in a vote by the board of directors related to an investment by
- 418 the Utah fund of funds, if the member has an interest in the investment.
- 419 (7) Directors of the corporation:
- 420 (a) shall be compensated for direct expenses and mileage; and
- 421 (b) may not receive a director's fee or salary for service as directors.
- 422 Section 6. Section **63N-6-402** is amended to read:
- 423 **63N-6-402. Compensation from the Utah fund of funds to the corporation --**
- 424 **Redemption reserve.**
- 425 (1) The corporation shall be compensated for its involvement in the Utah fund of funds
- 426 through the payment of the management fee described in Section [63N-6-305](#).
- 427 (2) Before any returns may be reinvested in the Utah fund of funds:
- 428 (a) any returns shall be paid to designated investors, including the repayment by the
- 429 Utah fund of funds of any outstanding loans;
- 430 (b) any returns in excess of those payable to designated investors shall be deposited in
- 431 the redemption reserve and shall be:
- 432 (i) held by the corporation as a first priority reserve for the redemption of certificates;
- 433 and

434 (ii) used by the corporation to provide money for the state as directed by statute;
435 (c) any returns received by the corporation from investment of amounts held in the
436 redemption reserve that are not used to provide money for the state as directed by statute shall
437 be added to the redemption reserve until ~~[it]~~ the redemption reserve has reached a total of
438 \$250,000,000; and

439 (d) if at the end of a calendar year the redemption reserve exceeds the \$250,000,000
440 limitation referred to in Subsection (2)(c), the corporation may reinvest the excess in the Utah
441 fund of funds.

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

444 (4) (a) By June 30, 2021, the corporation shall transfer \$20,000,000 from the
445 redemption reserve or other assets of the corporation to the state treasurer.

446 (b) The state treasurer shall deposit the money described in Subsection (4)(a) into the
447 restricted account.

448 Section 7. Section **63N-6-406** is amended to read:

449 **63N-6-406. Certificates and contingent tax credits.**

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

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

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

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

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

461 funds;

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

465 (c) the board shall issue contingent tax credits in a manner that not more than
466 \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax
467 credits may be redeemable in a fiscal year;

468 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
469 make a cash redemption and the board does not exercise its other options under Subsection
470 63N-6-408(3)(b);

471 (e) the board may not issue additional certificates as collateral or a guarantee on a loan
472 for the debt-based financing of investments in the Utah fund of funds that is initiated after July
473 1, 2014, except for a loan that was originated before July 1, 2014, and that is refinanced one or
474 more times using debt- or equity-based financing [on or after July 1, 2014, that was originated
475 before July 1, 2014, and];

476 (i) on or after July 1, 2014; and

477 (ii) before January 1, 2021;

478 (f) after July 1, 2014, the board may issue certificates that represent no more than
479 100% of the principal of each equity investment in the Utah fund of funds[-]; and

480 (g) after January 1, 2021, the board may no longer issue certificates:

481 (i) as collateral or a guarantee on a loan for debt-based financing on investments in the
482 Utah fund of funds; or

483 (ii) related to equity-based private investments in the Utah fund of funds.

484 (3) For an equity-based private investment initiated on or after July 1, 2015, and before
485 January 1, 2021, the applicable designated investor may apply for a tax credit if the following
486 criteria are met:

487 (a) the Utah fund of funds has received payment from the designated investor as set

488 forth in the investor's agreement with the Utah fund of funds;

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

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

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

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

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

501 (4) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the
502 \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection
503 (2)(~~(b)~~)(c):

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

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

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

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

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

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

515 agreement with the Utah fund of funds;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

551 (a) is binding on the board; and

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

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

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

558 Section 8. **Appropriation.**

559 The following sums of money are appropriated for the fiscal year beginning July 1,
560 2021, and ending June 30, 2022. These are additions to amounts previously appropriated for
561 fiscal year 2022. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
562 Act, the Legislature appropriates the following sums of money from the funds or accounts
563 indicated for the use and support of the government of the state of Utah.

564 ITEM 1

565 To Division of Parks -- Capital Budget

566 From General Fund Restricted -- Utah Capital Investment

567 Restricted Account, One-time

\$10,000,000

568 Schedule of Programs:

569 Renovation and Development \$10,000,000
570 The Legislature intends that the appropriation described in ITEM 1:
571 (1) not lapse at the close of fiscal year 2022 under Section [63J-1-603](#); and
572 (2) be used by the Division of Parks for the Utahraptor State Park and the Lost Creek
573 State Park.
574 Section 9. **Retrospective operation.**
575 The changes to Section [63N-6-406](#) in this bill have retrospective operation for a taxable
576 year beginning on or after January 1, 2021.