

1 **FUND OF FUNDS AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Scott D. Sandall**

5 House Sponsor: \_\_\_\_\_

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7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies the definition of "redemption reserves";
- 13 ▶ modifies the authorized uses of redemption reserves by the Utah Capital Investment Corporation (corporation);
- 14 ▶ modifies the authority of the corporation to issue certificates for contingent tax credits; and
- 15 ▶ make technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill provides retrospective operation.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **63N-6-103**, as last amended by Laws of Utah 2019, Chapter 214

25 **63N-6-301**, as last amended by Laws of Utah 2017, Chapter 18

26 **63N-6-402**, as renumbered and amended by Laws of Utah 2015, Chapter 283

27 **63N-6-406**, as last amended by Laws of Utah 2019, Chapter 214



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

Section 1. 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 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.

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

61 (11) "Private investment" means:

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

63 (b) a loan to the Utah fund of funds initiated before July 1, 2014, including a loan that  
64 was originated before July 1, 2014, and that is refinanced one or more times on or after July 1,  
65 2014.

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

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

68 (b) provide money for state programs as directed by the Legislature.

69 (13) "Taxpayer" means a taxpayer:

70 (a) of an investor; and

71 (b) if that taxpayer is a:

72 (i) claimant;

73 (ii) estate; or

74 (iii) trust.

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

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

79 Section 2. Section 63N-6-301 is amended to read:

80 **63N-6-301. Utah Capital Investment Corporation -- Powers and purposes.**

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

83 (b) The corporation:

84 (i) may exercise all powers conferred on independent corporations under Section  
85 63E-2-106;

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

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

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

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

- 90 (i) articles of incorporation; and
- 91 (ii) any amendment to its articles of incorporation.
- 92 (d) In addition to the articles of incorporation, the corporation may adopt bylaws and
- 93 operational policies that are consistent with this chapter.
- 94 (e) Except as otherwise provided in this part, this part does not exempt the corporation
- 95 from the requirements under state law which apply to other corporations organized under Title
- 96 63E, Chapter 2, Independent Corporations Act.
- 97 (2) The purposes of the corporation are to:
- 98 (a) organize the Utah fund of funds;
- 99 (b) select an investment fund allocation manager to make venture capital and private
- 100 equity fund investments by the Utah fund of funds;
- 101 (c) negotiate the terms of a contract with the investment fund allocation manager;
- 102 (d) execute the contract with the selected investment fund manager on behalf of the
- 103 Utah fund of funds;
- 104 (e) receive funds paid by designated investors for the issuance of certificates by the
- 105 board for private investment in the Utah fund of funds;
- 106 (f) receive investment returns from the Utah fund of funds; and
- 107 (g) establish the redemption reserve to be used by the corporation to:
- 108 (i) redeem certificates[-]; and
- 109 (ii) provide money for state programs as authorized by the Legislature through
- 110 appropriations.
- 111 (3) The corporation may not:
- 112 (a) exercise governmental functions;
- 113 (b) have members;
- 114 (c) pledge the credit or taxing power of the state or any political subdivision of the
- 115 state; or
- 116 (d) make its debts payable out of any money except money of the corporation.
- 117 (4) The obligations of the corporation are not obligations of the state or any political
- 118 subdivision of the state within the meaning of any constitutional or statutory debt limitations,
- 119 but are obligations of the corporation payable solely and only from the corporation's funds.
- 120 (5) The corporation may:

- 121 (a) engage consultants and legal counsel;
- 122 (b) expend funds;
- 123 (c) invest funds;
- 124 (d) issue debt and equity, and borrow funds;
- 125 (e) enter into contracts;
- 126 (f) insure against loss;
- 127 (g) hire employees; and
- 128 (h) perform any other act necessary to carry out its purposes.
- 129 (6) (a) The corporation shall, in consultation with the board, publish on or before
- 130 September 1 an annual report of the activities conducted by the Utah fund of funds and submit,
- 131 in accordance with Section 68-3-14, the written report to:
  - 132 (i) the governor;
  - 133 (ii) the Business, Economic Development, and Labor Appropriations Subcommittee;
  - 134 (iii) the Business and Labor Interim Committee; and
  - 135 (iv) the Retirement and Independent Entities Interim Committee.
- 136 (b) The annual report shall:
  - 137 (i) be designed to provide clear, accurate, and accessible information to the public, the
  - 138 governor, and the Legislature;
  - 139 (ii) include a copy of the audit of the Utah fund of funds described in Section
  - 140 63N-6-405;
  - 141 (iii) include a detailed balance sheet, revenue and expenses statement, and cash flow
  - 142 statement;
  - 143 (iv) include detailed information regarding new fund commitments made during the
  - 144 year, including the amount of money committed;
  - 145 (v) include the net rate of return of the Utah fund of funds from the inception of the
  - 146 Utah fund of funds, after accounting for all expenses, including administrative and financing
  - 147 costs;
  - 148 (vi) include detailed information regarding:
    - 149 (A) realized gains from investments and any realized losses; and
    - 150 (B) unrealized gains and any unrealized losses based on the net present value of
    - 151 ongoing investments;

- 152 (vii) include detailed information regarding all yearly expenditures, including:
- 153 (A) administrative, operating, and financing costs;
- 154 (B) aggregate compensation information for full- and part-time employees, including
- 155 benefit and travel expenses; and
- 156 (C) expenses related to the allocation manager;
- 157 (viii) include detailed information regarding all funding sources for administrative,
- 158 operations, and financing expenses, including expenses charged by or to the Utah fund of
- 159 funds, including management and placement fees;
- 160 (ix) review the progress of the investment fund allocation manager in implementing its
- 161 investment plan and provide a general description of the investment plan;
- 162 (x) for each individual fund that the Utah fund of funds is invested in that represents at
- 163 least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total
- 164 value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and
- 165 the percentage of the total value of the fund held by the Utah fund of funds;
- 166 (xi) include the number of companies in Utah where an investment was made from a
- 167 fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time
- 168 employees in the state added by all companies where investments were made by funds that the
- 169 Utah fund of funds is invested in;
- 170 (xii) include an aggregate total value for all funds the Utah fund of funds is invested in,
- 171 and an aggregate total amount of money invested in the state by the funds the Utah fund of
- 172 funds is invested in;
- 173 (xiii) describe any redemption or transfer of a certificate issued under this part;
- 174 (xiv) include actual and estimated potential appropriations the Legislature will be
- 175 required to provide as a result of redeemed certificates or tax credits during the following five
- 176 years;
- 177 (xv) include an evaluation of the state's progress in accomplishing the purposes stated
- 178 in Section [63N-6-102](#); and
- 179 (xvi) be directly accessible to the public via a link from the main page of the Utah fund
- 180 of fund's website.
- 181 (c) The annual report may not identify a specific designated investor who has redeemed
- 182 or transferred a certificate.

183 Section 3. Section **63N-6-402** is amended to read:

184 **63N-6-402. Compensation from the Utah fund of funds to the corporation --**  
185 **Redemption reserve.**

186 (1) The corporation shall be compensated for its involvement in the Utah fund of funds  
187 through the payment of the management fee described in Section **63N-6-305**.

188 (2) Before any returns may be reinvested in the Utah fund of funds:

189 (a) any returns shall be paid to designated investors, including the repayment by the  
190 Utah fund of funds of any outstanding loans;

191 (b) any returns in excess of those payable to designated investors shall be deposited in  
192 the redemption reserve and held by the corporation [~~as a first priority reserve for the~~  
193 ~~redemption of certificates~~] for uses authorized by appropriations by the Legislature;

194 (c) any returns received by the corporation from investment of amounts held in the  
195 redemption reserve and not appropriated for other uses by the Legislature shall be added to the  
196 redemption reserve until it has reached a total of \$250,000,000; and

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

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

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

203 **63N-6-406. Certificates and contingent tax credits.**

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

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

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

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

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

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

219 (c) the board shall issue contingent tax credits in a manner that not more than  
220 \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax  
221 credits may be redeemable in a fiscal year;

222 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to  
223 make a cash redemption and the board does not exercise its other options under Subsection  
224 [63N-6-408\(3\)\(b\)](#);

225 (e) the board may not issue additional certificates as collateral or a guarantee on a loan  
226 for the debt-based financing of investments in the Utah fund of funds that is initiated after July  
227 1, 2014, except for a loan that was originated before July 1, 2014, and that is refinanced one or  
228 more times using debt- or equity-based financing [~~on or after July 1, 2014, that was originated~~  
229 ~~before July 1, 2014; and~~];

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

231 (ii) before January 1, 2021;

232 (f) after July 1, 2014, the board may issue certificates that represent no more than  
233 100% of the principal of each equity investment in the Utah fund of funds[-]; and

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

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

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

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

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

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



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

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

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

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

255 (4) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the  
256 \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection  
257 (2)(~~b~~)(c):

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

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

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

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

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

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

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

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

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

- 276 (6) In calculating the amount of a contingent tax credit:
- 277 (a) the board shall certify a contingent tax credit only if the actual return, or payment of
- 278 principal and interest for a loan initiated before July 1, 2014, including a loan refinanced one or
- 279 more times on or after July 1, 2014, that was originated before July 1, 2014, to the designated
- 280 investor is less than that targeted at the issuance of the certificate;
- 281 (b) the amount of the contingent tax credit for a designated investor with an equity
- 282 interest may not exceed the difference between the actual principal investment of the
- 283 designated investor in the Utah fund of funds and the aggregate actual return received by the
- 284 designated investor and any predecessor in interest of the initial equity investment and interest
- 285 on the initial equity investment;
- 286 (c) the rates, whether fixed rates or variable rates, shall be determined by a formula
- 287 stipulated in the certificate; and
- 288 (d) the amount of the contingent tax credit for a designated investor with an
- 289 outstanding loan to the Utah fund of funds initiated before July 1, 2014, including a loan
- 290 refinanced one or more times on or after July 1, 2014, that was originated before July 1, 2014,
- 291 may be equal to no more than the amount of any principal, interest, or interest equivalent
- 292 unpaid at the redemption of the loan or other obligation, as stipulated in the certificate.
- 293 (7) The board shall clearly indicate on the certificate:
- 294 (a) the targeted return on the invested capital, if the private investment is an equity
- 295 interest;
- 296 (b) the payment schedule of principal, interest, or interest equivalent, if the private
- 297 investment is a loan initiated before July 1, 2014, including a loan refinanced one or more
- 298 times on or after July 1, 2014, that was originated before July 1, 2014;
- 299 (c) the amount of the initial private investment;
- 300 (d) the calculation formula for determining the scheduled aggregate return on the initial
- 301 equity investment, if applicable; and
- 302 (e) the calculation formula for determining the amount of the contingent tax credit that
- 303 may be claimed.
- 304 (8) Once a certificate is issued, a certificate:
- 305 (a) is binding on the board; and
- 306 (b) may not be modified, terminated, or rescinded.

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

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

312 Section 5. **Retrospective operation.**

313 The changes to Section [63N-6-404](#) in this bill have retrospective operation for a taxable  
314 year beginning on or after January 1, 2021.