

Senator Scott D. Sandall proposes the following substitute bill:

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:

- ▶ modifies the definition of "redemption reserve";
- ▶ creates the Utah Capital Investment Restricted Account;
- ▶ modifies the authorized uses of redemption reserves by the Utah Capital Investment

Corporation (corporation);

- ▶ directs the corporation to transfer \$20,000,000 to the Utah Capital Investment

Restricted Account;

▶ modifies the authority of the corporation to issue certificates for contingent tax credits; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:



26 AMENDS:

27 [63N-6-103](#), as last amended by Laws of Utah 2019, Chapter 214

28 [63N-6-301](#), as last amended by Laws of Utah 2017, Chapter 18

29 [63N-6-402](#), as renumbered and amended by Laws of Utah 2015, Chapter 283

30 [63N-6-406](#), as last amended by Laws of Utah 2019, Chapter 214

31 ENACTS:

32 [63N-6-204](#), Utah Code Annotated 1953

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

35 Section 1. Section [63N-6-103](#) is amended to read:

36 **[63N-6-103](#). Definitions.**

37 As used in this part:

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

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

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

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

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

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

53 (6) "Corporation" means the Utah Capital Investment Corporation created under
54 Section [63N-6-301](#).

55 (7) "Designated investor" means:

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

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

58 (8) "Designated purchaser" means:

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

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

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

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

66 (11) "Private investment" means:

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

68 (b) a loan to the Utah fund of funds initiated before July 1, 2014, including a loan that
69 was originated before July 1, 2014, and that is refinanced one or more times on or after July 1,
70 2014.

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

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

73 (b) provide money for the restricted account as directed by statute.

74 (13) "Restricted account" means the Utah Capital Investment Restricted Account
75 created in Section 63N-6-204.

76 [~~13~~] (14) "Taxpayer" means a taxpayer:

77 (a) of an investor; and

78 (b) if that taxpayer is a:

79 (i) claimant;

80 (ii) estate; or

81 (iii) trust.

82 [~~14~~] (15) "Trust" means a nonresident trust or a resident trust.

83 [~~15~~] (16) "Utah fund of funds" means a limited partnership or limited liability
84 company established under Section 63N-6-401 in which a designated investor purchases an
85 equity interest.

86 Section 2. Section 63N-6-204 is enacted to read:

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

88 **63N-6-204. Utah Capital Investment Restricted Account.**

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

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

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

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

95 (3) (a) The state treasurer shall invest money in the restricted account in accordance
96 with Title 51, Chapter 7, State Money Management Act.

97 (b) The Division of Finance shall deposit interest or other earnings derived from
98 investment of restricted account money into the restricted account.

99 (4) Subject to appropriations by the Legislature, the restricted account shall be
100 administered by the Governor's Office of Economic Development for economic development
101 purposes or other purposes as directed by the Legislature.

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

103 Section 3. Section **63N-6-301** is amended to read:

104 **63N-6-301. Utah Capital Investment Corporation -- Powers and purposes.**

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

107 (b) The corporation:

108 (i) may exercise all powers conferred on independent corporations under Section
109 [63E-2-106](#);

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

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

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

114 (i) articles of incorporation; and

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

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

118 (e) Except as otherwise provided in this part, this part does not exempt the corporation

119 from the requirements under state law which apply to other corporations organized under Title
120 63E, Chapter 2, Independent Corporations Act.

121 (2) The purposes of the corporation are to:

122 (a) organize the Utah fund of funds;

123 (b) select an investment fund allocation manager to make venture capital and private
124 equity fund investments by the Utah fund of funds;

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

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

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

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

131 (g) establish the redemption reserve to be used by the corporation to:

132 (i) redeem certificates[-]; and

133 (ii) provide money for the restricted account as directed by statute.

134 (3) The corporation may not:

135 (a) exercise governmental functions;

136 (b) have members;

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

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

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

143 (5) The corporation may:

144 (a) engage consultants and legal counsel;

145 (b) expend funds;

146 (c) invest funds;

147 (d) issue debt and equity, and borrow funds;

148 (e) enter into contracts;

149 (f) insure against loss;

- 150 (g) hire employees; and
- 151 (h) perform any other act necessary to carry out its purposes.
- 152 (6) (a) The corporation shall, in consultation with the board, publish on or before
- 153 September 1 an annual report of the activities conducted by the Utah fund of funds and submit,
- 154 in accordance with Section 68-3-14, the written report to:
 - 155 (i) the governor;
 - 156 (ii) the Business, Economic Development, and Labor Appropriations Subcommittee;
 - 157 (iii) the Business and Labor Interim Committee; and
 - 158 (iv) the Retirement and Independent Entities Interim Committee.
- 159 (b) The annual report shall:
 - 160 (i) be designed to provide clear, accurate, and accessible information to the public, the
 - 161 governor, and the Legislature;
 - 162 (ii) include a copy of the audit of the Utah fund of funds described in Section
 - 163 63N-6-405;
 - 164 (iii) include a detailed balance sheet, revenue and expenses statement, and cash flow
 - 165 statement;
 - 166 (iv) include detailed information regarding new fund commitments made during the
 - 167 year, including the amount of money committed;
 - 168 (v) include the net rate of return of the Utah fund of funds from the inception of the
 - 169 Utah fund of funds, after accounting for all expenses, including administrative and financing
 - 170 costs;
 - 171 (vi) include detailed information regarding:
 - 172 (A) realized gains from investments and any realized losses; and
 - 173 (B) unrealized gains and any unrealized losses based on the net present value of
 - 174 ongoing investments;
 - 175 (vii) include detailed information regarding all yearly expenditures, including:
 - 176 (A) administrative, operating, and financing costs;
 - 177 (B) aggregate compensation information for full- and part-time employees, including
 - 178 benefit and travel expenses; and
 - 179 (C) expenses related to the allocation manager;
 - 180 (viii) include detailed information regarding all funding sources for administrative,

181 operations, and financing expenses, including expenses charged by or to the Utah fund of
182 funds, including management and placement fees;

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

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

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

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

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

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

200 (xv) include an evaluation of the state's progress in accomplishing the purposes stated
201 in Section [63N-6-102](#); and

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

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

206 Section 4. Section **63N-6-402** is amended to read:

207 **63N-6-402. Compensation from the Utah fund of funds to the corporation --**
208 **Redemption reserve.**

209 (1) The corporation shall be compensated for its involvement in the Utah fund of funds
210 through the payment of the management fee described in Section [63N-6-305](#).

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

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

214 (b) any returns in excess of those payable to designated investors shall be deposited in
215 the redemption reserve and shall be:

216 (i) held by the corporation as a first priority reserve for the redemption of certificates;
217 and

218 (ii) used by the corporation to provide money for the restricted account as directed by
219 statute.

220 (c) any returns received by the corporation from investment of amounts held in the
221 redemption reserve that are not used to provide money for the restricted account shall be added
222 to the redemption reserve until [it] the redemption reserve has reached a total of \$250,000,000;
223 and

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

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

229 (4) (a) By July 1, 2021, the corporation shall transfer \$20,000,000 from the redemption
230 reserve or other assets of the corporation to the office.

231 (b) The office shall deposit the money described in Subsection (4)(a) into the restricted
232 account.

233 Section 5. Section **63N-6-406** is amended to read:

234 **63N-6-406. Certificates and contingent tax credits.**

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

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

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

241 (i) \$130,000,000 of contingent tax credits used as collateral or a guarantee on loans for
242 the debt-based financing of investments in the Utah fund of funds initiated before July 1, 2014,

243 or \$120,000,000 of contingent tax credits for a loan refinanced using debt- or equity-based
244 financing as described in Subsection (2)(e); and

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

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

250 (c) the board shall issue contingent tax credits in a manner that not more than
251 \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax
252 credits may be redeemable in a fiscal year;

253 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
254 make a cash redemption and the board does not exercise its other options under Subsection
255 [63N-6-408\(3\)\(b\)](#);

256 (e) the board may not issue additional certificates as collateral or a guarantee on a loan
257 for the debt-based financing of investments in the Utah fund of funds that is initiated after July
258 1, 2014, except for a loan that was originated before July 1, 2014, and that is refinanced one or
259 more times using debt- or equity-based financing [~~on or after July 1, 2014, that was originated~~
260 ~~before July 1, 2014, and~~];

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

262 (ii) before January 1, 2021;

263 (f) after July 1, 2014, the board may issue certificates that represent no more than
264 100% of the principal of each equity investment in the Utah fund of funds[-]; and

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

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

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

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

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

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

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

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

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

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

286 (4) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the
287 \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection
288 (2)(~~b~~)(c):

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

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

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

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

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

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

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

303 (d) an investor who redeems a certificate and the related contingent tax credit shall
304 allocate the amount of the contingent tax credit to the taxpayers of the investor based on the

305 taxpayer's pro rata share of the investor's earnings; and

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

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

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

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

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

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

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

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

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

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

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

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

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

336 (a) is binding on the board; and

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

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

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

343 **Section 6. Retrospective operation.**

344 The changes to Section [63N-6-406](#) in this bill have retrospective operation for a taxable
345 year beginning on or after January 1, 2021.