

## SB0224S01 compared with SB0224

~~text~~ shows text that was in SB0224 but was deleted in SB0224S01.

text shows text that was not in SB0224 but was inserted into SB0224S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: \_\_\_\_\_

---

#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ modifies the definition of "redemption ~~reserves~~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

## SB0224S01 compared with SB0224

- ▶ ~~{make}~~makes technical changes.~~{}~~

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides retrospective operation.

### Utah Code Sections Affected:

#### AMENDS:

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

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

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

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

#### ENACTS:

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

---

*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

## SB0224S01 compared with SB0224

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:

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

(b) provide money for ~~state programs~~ the restricted account as directed by ~~the Legislature.~~

~~(13)~~ statute.

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

~~(13)~~ (14) "Taxpayer" means a taxpayer:

- (a) of an investor; and
- (b) if that taxpayer is a:
  - (i) claimant;

## SB0224S01 compared with SB0224

(ii) estate; or

(iii) trust.

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

~~[(15)]~~ (16) "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 interest.

Section 2. Section ~~{63N-6-301}~~ 63N-6-204 is ~~{amended}~~ enacted to read:

### Part 2. Utah Capital Investment Board and Restricted Account

#### 63N-6-204. Utah Capital Investment Restricted Account.

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

(2) The restricted account shall be funded by:

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

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

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

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

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

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

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

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

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

(b) The corporation:

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

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

## SB0224S01 compared with SB0224

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

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

(i) articles of incorporation; and

(ii) any amendment to its articles of incorporation.

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

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

(2) The purposes of the corporation are to:

(a) organize the Utah fund of funds;

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

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

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

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

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

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

(i) redeem certificates[-]; and

(ii) provide money for ~~state programs~~ the restricted account as ~~authorized~~ directed by ~~the Legislature through appropriations~~ statute.

(3) The corporation may not:

(a) exercise governmental functions;

(b) have members;

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

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

(4) The obligations of the corporation are not obligations of the state or any political

## **SB0224S01 compared with SB0224**

subdivision of the state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds.

(5) The corporation may:

- (a) engage consultants and legal counsel;
- (b) expend funds;
- (c) invest funds;
- (d) issue debt and equity, and borrow funds;
- (e) enter into contracts;
- (f) insure against loss;
- (g) hire employees; and
- (h) perform any other act necessary to carry out its purposes.

(6) (a) The corporation shall, in consultation with the board, publish on or before September 1 an annual report of the activities conducted by the Utah fund of funds and submit, in accordance with Section 68-3-14, the written report to:

- (i) the governor;
- (ii) the Business, Economic Development, and Labor Appropriations Subcommittee;
- (iii) the Business and Labor Interim Committee; and
- (iv) the Retirement and Independent Entities Interim Committee.

(b) The annual report shall:

(i) be designed to provide clear, accurate, and accessible information to the public, the governor, and the Legislature;

(ii) include a copy of the audit of the Utah fund of funds described in Section 63N-6-405;

(iii) include a detailed balance sheet, revenue and expenses statement, and cash flow statement;

(iv) include detailed information regarding new fund commitments made during the year, including the amount of money committed;

(v) include the net rate of return of the Utah fund of funds from the inception of the Utah fund of funds, after accounting for all expenses, including administrative and financing costs;

(vi) include detailed information regarding:

## SB0224S01 compared with SB0224

- (A) realized gains from investments and any realized losses; and
- (B) unrealized gains and any unrealized losses based on the net present value of ongoing investments;
- (vii) include detailed information regarding all yearly expenditures, including:
  - (A) administrative, operating, and financing costs;
  - (B) aggregate compensation information for full- and part-time employees, including benefit and travel expenses; and
  - (C) expenses related to the allocation manager;
- (viii) include detailed information regarding all funding sources for administrative, operations, and financing expenses, including expenses charged by or to the Utah fund of funds, including management and placement fees;
- (ix) review the progress of the investment fund allocation manager in implementing its investment plan and provide a general description of the investment plan;
- (x) for each individual fund that the Utah fund of funds is invested in that represents at least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and the percentage of the total value of the fund held by the Utah fund of funds;
- (xi) include the number of companies in Utah where an investment was made from a fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time employees in the state added by all companies where investments were made by funds that the Utah fund of funds is invested in;
- (xii) include an aggregate total value for all funds the Utah fund of funds is invested in, and an aggregate total amount of money invested in the state by the funds the Utah fund of funds is invested in;
- (xiii) describe any redemption or transfer of a certificate issued under this part;
- (xiv) include actual and estimated potential appropriations the Legislature will be required to provide as a result of redeemed certificates or tax credits during the following five years;
- (xv) include an evaluation of the state's progress in accomplishing the purposes stated in Section 63N-6-102; and
- (xvi) be directly accessible to the public via a link from the main page of the Utah fund

## SB0224S01 compared with SB0224

of fund's website.

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

Section ~~{3}~~4. Section 63N-6-402 is amended to read:

### **63N-6-402. Compensation from the Utah fund of funds to the corporation --**

#### **Redemption reserve.**

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

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

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

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

(i) held by the corporation ~~{f}~~ as a first priority reserve for the redemption of certificates ~~{f} for uses authorized by appropriations by the Legislature;~~; and

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

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

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

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

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

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

Section ~~{4}~~5. Section 63N-6-406 is amended to read:



## SB0224S01 compared with SB0224

### 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 for the debt-based financing of investments in the Utah fund of funds that is initiated after July 1, 2014, except for a loan that was originated before July 1, 2014, and that is 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~~];

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

(ii) before January 1, 2021;

(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~~[-];~~ and

## SB0224S01 compared with SB0224

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

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

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

(3) For an equity-based private investment initiated on or after July 1, 2015, and before January 1, 2021, 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)~~(c):

(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:

## **SB0224S01 compared with SB0224**

(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;

## SB0224S01 compared with SB0224

(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.

Section ~~5~~6. **Retrospective operation.**

The changes to Section ~~63N-6-404~~63N-6-406 in this bill have retrospective operation for a taxable year beginning on or after January 1, 2021.