

SB0224S02 compared with SB0224S01

~~{deleted text}~~ shows text that was in SB0224S01 but was deleted in SB0224S02.

inserted text shows text that was not in SB0224S01 but was inserted into SB0224S02.

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~~{Senator Scott D. Sandall}~~ Representative Steve Waldrip 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:

- ▶ defines terms;
- ▶ modifies the ~~{definition}~~ authorized uses of ~~{“”}~~ redemption ~~{reserve“”}~~ reserves by the Utah Capital Investment Corporation (corporation);
- ▶ 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}~~ to the state treasurer for deposit

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- 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:

~~{None}~~ 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 Account, \$10,000,000.

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

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

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-6-303, as last amended by Laws of Utah 2015, Chapter 420 and renumbered and amended by Laws of Utah 2015, Chapter 283

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 63J-1-602.1 is amended to read:

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

Appropriations made from the following accounts or funds are nonlapsing:

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- (1) The Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account created in Section 4-42-102.
- (2) The Native American Repatriation Restricted Account created in Section 9-9-407.
- (3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102.
- (4) The National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102.
- (5) Funds collected for directing and administering the C-PACE district created in Section 11-42a-106.
- (6) Money received by the Utah Inland Port Authority, as provided in Section 11-58-105.
- (7) The "Latino Community Support Restricted Account" created in Section 13-1-16.
- (8) The Clean Air Support Restricted Account created in Section 19-1-109.
- (9) The "Support for State-Owned Shooting Ranges Restricted Account" created in Section 23-14-13.5.
- (10) Award money under the State Asset Forfeiture Grant Program, as provided under Section 24-4-117.
- (11) Funds collected from the program fund for local health department expenses incurred in responding to a local health emergency under Section 26-1-38.
- (12) The Children with Cancer Support Restricted Account created in Section 26-21a-304.
- (13) State funds for matching federal funds in the Children's Health Insurance Program as provided in Section 26-40-108.
- (14) The Children with Heart Disease Support Restricted Account created in Section 26-58-102.
- (15) The Nurse Home Visiting Restricted Account created in Section 26-63-601.
- (16) The Technology Development Restricted Account created in Section 31A-3-104.
- (17) The Criminal Background Check Restricted Account created in Section 31A-3-105.
- (18) The Captive Insurance Restricted Account created in Section 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that section free revenue.

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- (19) The Title Licensee Enforcement Restricted Account created in Section 31A-23a-415.
- (20) The Health Insurance Actuarial Review Restricted Account created in Section 31A-30-115.
- (21) The Insurance Fraud Investigation Restricted Account created in Section 31A-31-108.
- (22) The Underage Drinking Prevention Media and Education Campaign Restricted Account created in Section 32B-2-306.
- (23) The School Readiness Restricted Account created in Section 35A-15-203.
- (24) Money received by the Utah State Office of Rehabilitation for the sale of certain products or services, as provided in Section 35A-13-202.
- (25) The Oil and Gas Administrative Penalties Account created in Section 40-6-11.
- (26) The Oil and Gas Conservation Account created in Section 40-6-14.5.
- (27) The Electronic Payment Fee Restricted Account created by Section 41-1a-121 to the Motor Vehicle Division.
- (28) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account created by Section 41-3-110 to the State Tax Commission.
- (29) The Utah Law Enforcement Memorial Support Restricted Account created in Section 53-1-120.
- (30) The State Disaster Recovery Restricted Account to the Division of Emergency Management, as provided in Section 53-2a-603.
- (31) The Department of Public Safety Restricted Account to the Department of Public Safety, as provided in Section 53-3-106.
- (32) The Utah Highway Patrol Aero Bureau Restricted Account created in Section 53-8-303.
- (33) The DNA Specimen Restricted Account created in Section 53-10-407.
- (34) The Canine Body Armor Restricted Account created in Section 53-16-201.
- (35) The Technical Colleges Capital Projects Fund created in Section 53B-2a-118.
- (36) The Higher Education Capital Projects Fund created in Section 53B-22-202.
- (37) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(59) The Employability to Careers Program Restricted Account created in Section 63J-4-703.

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

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

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

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

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

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

~~[(65)]~~ (66) The Amusement Ride Safety Restricted Account, as provided in Section 72-16-204.

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

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

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

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

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

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

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

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

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

Section ~~{1}~~2. Section **63N-6-103** is amended to read:

63N-6-103. Definitions.

As used in this part:

- (1) "Board" means the Utah Capital Investment Board.
- (2) "Certificate" means a contract between the board and a designated investor under which a contingent tax credit is available and issued to the designated investor.
- (3) (a) Except as provided in Subsection (3)(b), "claimant" means a resident or nonresident person.
 - (b) "Claimant" does not include an estate or trust.
- (4) "Commitment" means a written commitment by a designated purchaser to purchase from the board certificates presented to the board for redemption by a designated investor. Each commitment shall state the dollar amount of contingent tax credits that the designated purchaser has committed to purchase from the board.
- (5) "Contingent tax credit" means a contingent tax credit issued under this part that is available against tax liabilities imposed by Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, if there are insufficient 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.

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(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 the ~~restricted account~~state as directed by statute.

(13) ~~ff~~"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;
 - (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.

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Section ~~{2}~~3. Section 63N-6-204 is 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:

(a) invest money in the restricted account in accordance with Title 51, Chapter 7, State Money Management Act~~{.}~~; and

(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}~~, infrastructure, state parks, recreation, education innovation, or other purposes as directed by the Legislature.

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

Section ~~{3}~~4. Section 63N-6-301 is amended to read:

63N-6-301. Utah Capital Investment Corporation -- Powers and purposes - Reporting requirements.

(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

(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:

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- (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 the ~~restricted account~~ state as directed by 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 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;

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- (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:

(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:

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- (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 of fund's website.
- (c) The annual report may not identify a specific designated investor who has redeemed or transferred a certificate.

(7) (a) On or before December 1, 2021, the corporation shall provide a written report to

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the president of the Senate and the speaker of the House of Representatives that includes a detailed plan, time line, and recommendations for the future of the corporation.

(b) The plan shall include recommendations describing:

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

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

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

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

(v) whether the corporation should be liquidated or dissolved under Section 63N-3-306;

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

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

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

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

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

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

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

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63N-6-303. Board of directors.

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

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

- (a) the selection and supervision of investment managers;
- (b) fiduciary management of investment funds; and
- (c) other areas of expertise as considered appropriate by the appointment committee.

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

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

- (i) two shall serve four-year terms;
- (ii) two shall serve three-year terms; and
- (iii) one shall serve a two-year term.

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

(c) A majority of the board members may remove a board member for cause.

(d) (i) The board shall select a chair by majority vote.

(ii) The chair's term is for one year, which may be extended annually by a majority vote of the members of the board of directors.

(5) Three members of the board are a quorum for the transaction of business.

(6) Members of the board of directors:

(a) are subject to any restrictions on conflicts of interest specified in the organizational documents of the corporation;

(b) shall annually disclose any venture capital and private equity interests to the corporation; and

(c) may not participate in a vote by the board of directors related to an investment by the Utah fund of funds, if the member has an interest in the investment.

(7) Directors of the corporation:

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- (a) shall be compensated for direct expenses and mileage; and
- (b) may not receive a director's fee or salary for service as directors.

Section ~~{4}~~6. 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 as a first priority reserve for the redemption of certificates; and

(ii) used by the corporation to provide money for the ~~{restricted account}~~state as directed by statute ~~{.i}~~;

(c) any returns received by the corporation from investment of amounts held in the redemption reserve that are not used to provide money for the ~~{restricted account}~~state as directed by statute 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}~~June 30, 2021, the corporation shall transfer \$20,000,000 from the redemption reserve or other assets of the corporation to the ~~{office}~~state treasurer.

(b) The ~~{office}~~state treasurer shall deposit the money described in Subsection (4)(a) into the restricted account.

Section ~~{5}~~7. Section 63N-6-406 is amended to read:

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

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(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

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

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(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:

(a) a contingent tax credit may not be redeemed except by a designated investor in

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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;

(b) the payment schedule of principal, interest, or interest equivalent, if the private

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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 8. Appropriation.

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

ITEM 1

To Division of Parks -- Capital Budget

From General Fund Restricted -- Utah Capital Investment

Restricted Account, One-time \$10,000,000

Schedule of Programs:

Renovation and Development \$10,000,000

The Legislature intends that the appropriation described in ITEM 1:

(1) not lapse at the close of fiscal year 2022 under Section 63J-1-603; and

(2) be used by the Division of Parks for the Utah Raptor State Park and the Lost Creek State Park.

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Section ~~6~~9. **Retrospective operation.**

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