

FUND OF FUNDS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Waldrip

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions related to the Utah Capital Investment Corporation.

Highlighted Provisions:

This bill:

- ▶ amends the information the Utah Capital Investment Corporation must provide to the Utah Public Finance Website; and
- ▶ modifies provisions related to the refinancing of loans to the Utah Capital Investment Corporation.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-3-402, as last amended by Laws of Utah 2018, Chapter 415

63N-6-103, as last amended by Laws of Utah 2015, Chapter 420 and renumbered and amended by Laws of Utah 2015, Chapter 283

63N-6-203, as last amended by Laws of Utah 2015, Chapter 420 and renumbered and amended by Laws of Utah 2015, Chapter 283

63N-6-406, as last amended by Laws of Utah 2015, Chapter 420 and renumbered and amended by Laws of Utah 2015, Chapter 283

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

Section 1. Section **63A-3-402** is amended to read:

**63A-3-402. Utah Public Finance Website -- Establishment and administration --
Records disclosure -- Exceptions.**

(1) There is created the Utah Public Finance Website to be administered by the Division of Finance with the technical assistance of the Department of Technology Services.

(2) The Utah Public Finance Website shall:

(a) permit Utah taxpayers to:

(i) view, understand, and track the use of taxpayer dollars by making public financial information available on the Internet for participating state entities, independent entities, and participating local entities, using the Utah Public Finance Website; and

(ii) link to websites administered by participating local entities or independent entities that do not use the Utah Public Finance Website for the purpose of providing participating local entities' or independent entities' public financial information as required by this part and by rule under Section [63A-3-404](#);

(b) allow a person who has Internet access to use the website without paying a fee;

(c) allow the public to search public financial information on the Utah Public Finance Website using criteria established by the board;

(d) provide access to financial reports, financial audits, budgets, or other financial documents that are used to allocate, appropriate, spend, and account for government funds, as may be established by rule under Section [63A-3-404](#);

(e) have a unique and simplified website address;

(f) be directly accessible via a link from the main page of the official state website;

(g) include other links, features, or functionality that will assist the public in obtaining and reviewing public financial information, as may be established by rule under Section [63A-3-404](#); and

56 (h) include a link to school report cards published on the State Board of Education's
57 website under Section [53E-5-211](#).

58 (3) The division shall:

59 (a) establish and maintain the website, including the provision of equipment, resources,
60 and personnel as necessary;

61 (b) maintain an archive of all information posted to the website;

62 (c) coordinate and process the receipt and posting of public financial information from
63 participating state entities;

64 (d) coordinate and regulate the posting of public financial information by participating
65 local entities and independent entities; and

66 (e) provide staff support for the advisory committee.

67 (4) (a) A participating state entity and each independent entity shall permit the public
68 to view the entity's public financial information via the website, beginning with information
69 that is generated not later than the fiscal year that begins July 1, 2008, except that public
70 financial information for an:

71 (i) institution of higher education shall be provided beginning with information
72 generated for the fiscal year beginning July 1, 2009; and

73 (ii) independent entity shall be provided beginning with information generated for the
74 entity's fiscal year beginning in 2014.

75 (b) No later than May 15, 2009, the website shall:

76 (i) be operational; and

77 (ii) permit public access to participating state entities' public financial information,
78 except as provided in Subsections (4)(c) and (d).

79 (c) An institution of higher education that is a participating state entity shall submit the
80 entity's public financial information at a time allowing for inclusion on the website no later
81 than May 15, 2010.

82 (d) No later than the first full quarter after July 1, 2014, an independent entity shall

83 submit the entity's public financial information for inclusion on the Utah Public Finance
84 Website or via a link to its own website on the Utah Public Finance Website.

85 (5) (a) The Utah Educational Savings Plan, created in Section [53B-8a-103](#), shall
86 provide the following financial information to the division for posting on the Utah Public
87 Finance Website:

88 (i) administrative fund expense transactions from its general ledger accounting system;
89 and

90 (ii) employee compensation information.

91 (b) The plan is not required to submit other financial information to the division,
92 including:

93 (i) revenue transactions;

94 (ii) account owner transactions; and

95 (iii) fiduciary or commercial information, as defined in Section [53B-12-102](#).

96 (6) (a) The following independent entities shall each provide administrative expense
97 transactions from its general ledger accounting system and employee compensation
98 information to the division for posting on the Utah Public Finance Website or via a link to a
99 website administered by the independent entity:

100 [~~(i) the Utah Capital Investment Corporation, created in Section [63N-6-301](#);~~]

101 [~~(ii)~~] (i) the Utah Housing Corporation, created in Section [63H-8-201](#); and

102 [~~(iii)~~] (ii) the School and Institutional Trust Lands Administration, created in Section
103 [53C-1-201](#).

104 (b) The Utah Capital Investment Corporation, an independent entity created in Section
105 [63N-6-301](#), shall provide the following information to the division for posting on the Utah
106 Public Finance Website or via a link to a website administered by the independent entity for
107 each fiscal year ending on or after June 30, 2015:

108 (i) aggregate compensation information for full-time and part-time employees,
109 including benefit information;

- 110 (ii) aggregate business travel expenses;
- 111 (iii) aggregate expenses related to the Utah Capital Investment Corporation's allocation
- 112 manager; and
- 113 (iv) aggregate administrative, operating, and finance costs.
- 114 ~~[(b)]~~ (c) For purposes of this part, an independent entity described in [Subsection
- 115 ~~(6)(a)]~~ Subsection (6)(a) or (b) is not required to submit to the division, or provide a link to,
- 116 other financial information, including:
 - 117 (i) revenue transactions of a fund or account created in its enabling statute;
 - 118 (ii) fiduciary or commercial information related to any subject if the disclosure of the
 - 119 information:
 - 120 (A) would conflict with fiduciary obligations; or
 - 121 (B) is prohibited by insider trading provisions;
 - 122 (iii) information of a commercial nature, including information related to:
 - 123 (A) account owners, borrowers, and dependents;
 - 124 (B) demographic data;
 - 125 (C) contracts and related payments;
 - 126 (D) negotiations;
 - 127 (E) proposals or bids;
 - 128 (F) investments;
 - 129 (G) the investment and management of funds;
 - 130 (H) fees and charges;
 - 131 (I) plan and program design;
 - 132 (J) investment options and underlying investments offered to account owners;
 - 133 (K) marketing and outreach efforts;
 - 134 (L) lending criteria;
 - 135 (M) the structure and terms of bonding; and
 - 136 (N) financial plans or strategies; and

- 137 (iv) information protected from public disclosure by federal law.
- 138 (7) (a) As used in this Subsection (7):
- 139 (i) "Local education agency" means a school district or a charter school.
- 140 (ii) "New school building project" means:
- 141 (A) the construction of a school or school facility that did not previously exist in a local
- 142 education agency; or
- 143 (B) the lease or purchase of an existing building, by a local education agency, to be
- 144 used as a school or school facility.
- 145 (iii) "School facility" means a facility, including a pool, theater, stadium, or
- 146 maintenance building, that is built, leased, acquired, or remodeled by a local education agency
- 147 regardless of whether the facility is open to the public.
- 148 (iv) "Significant school remodel" means a construction project undertaken by a local
- 149 education agency with a project cost equal to or greater than \$2,000,000, including:
- 150 (A) the upgrading, changing, alteration, refurbishment, modification, or complete
- 151 substitution of an existing school or school facility in a local education agency; or
- 152 (B) the addition of a school facility.
- 153 (b) For each new school building project or significant school remodel, the local
- 154 education agency shall:
- 155 (i) prepare an annual school plant capital outlay report; and
- 156 (ii) submit the report:
- 157 (A) to the division for publication on the Utah Public Finance Website; and
- 158 (B) in a format, including any raw data or electronic formatting, prescribed by
- 159 applicable division policy.
- 160 (c) The local education agency shall include in the capital outlay report described in
- 161 Subsection (7)(b)(i) the following information as applicable to each new school building
- 162 project or significant school remodel:
- 163 (i) the name and location of the new school building project or significant school

164 remodel;

165 (ii) construction and design costs, including:

166 (A) the purchase price or lease terms of any real property acquired or leased for the
167 project or remodel;

168 (B) facility construction;

169 (C) facility and landscape design;

170 (D) applicable impact fees; and

171 (E) furnishings and equipment;

172 (iii) the gross square footage of the project or remodel;

173 (iv) the year construction was completed; and

174 (v) the final student capacity of the new school building project or, for a significant
175 school remodel, the increase or decrease in student capacity created by the remodel.

176 (d) (i) For a cost, fee, or other expense required to be reported under Subsection (7)(c),
177 the local education agency shall report the actual cost, fee, or other expense.

178 (ii) The division may require that a local education agency provide further itemized
179 data on information listed in Subsection (7)(c).

180 (e) (i) No later than May 15, 2015, a local education agency shall provide the division a
181 school plant capital outlay report for each new school building project and significant school
182 remodel completed on or after July 1, 2004, and before May 13, 2014.

183 (ii) For a new school building project or significant school remodel completed after
184 May 13, 2014, the local education agency shall provide the school plant capital outlay report
185 described in this Subsection (7) to the division annually by a date designated by the division.

186 (8) A person who negligently discloses a record that is classified as private, protected,
187 or controlled by Title 63G, Chapter 2, Government Records Access and Management Act, is
188 not criminally or civilly liable for an improper disclosure of the record if the record is disclosed
189 solely as a result of the preparation or publication of the Utah Public Finance Website.

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

191 **63N-6-103. Definitions.**

192 As used in this part:

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

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

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

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

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

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

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

210 (7) "Designated investor" means:

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

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

213 (8) "Designated purchaser" means:

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

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

- 218 (9) "Estate" means a nonresident estate or a resident estate.
- 219 (10) "Person" means an individual, partnership, limited liability company, corporation,
220 association, organization, business trust, estate, trust, or any other legal or commercial entity.
- 221 (11) "Private investment" means:
 - 222 (a) an equity interest in the Utah fund of funds; or
 - 223 (b) a loan to the Utah fund of funds initiated before July 1, 2014, including a loan that
224 was originated before July 1, 2014, and that is refinanced one or more times on or after July 1,
225 2014.
- 226 (12) "Redemption reserve" means the reserve established by the corporation to
227 facilitate the cash redemption of certificates.
- 228 (13) "Taxpayer" means a taxpayer:
 - 229 (a) of an investor; and
 - 230 (b) if that taxpayer is a:
 - 231 (i) claimant;
 - 232 (ii) estate; or
 - 233 (iii) trust.
- 234 (14) "Trust" means a nonresident trust or a resident trust.
- 235 (15) "Utah fund of funds" means a limited partnership or limited liability company
236 established under Section [63N-6-401](#) in which a designated investor purchases an equity
237 interest.

238 Section 3. Section **63N-6-203** is amended to read:

239 **63N-6-203. Board duties and powers.**

- 240 (1) The board shall, by rule:
 - 241 (a) establish criteria and procedures for the allocation and issuance of contingent tax
242 credits to designated investors by means of certificates issued by the board;
 - 243 (b) establish criteria and procedures for assessing the likelihood of future certificate
244 redemptions by designated investors, including:

- 245 (i) criteria and procedures for evaluating the value of investments made by the Utah
246 fund of funds; and
- 247 (ii) the returns from the Utah fund of funds;
- 248 (c) establish criteria and procedures for issuing, calculating, registering, and redeeming
249 contingent tax credits by designated investors holding certificates issued by the board;
- 250 (d) establish a target rate of return or range of returns for the investment portfolio of
251 the Utah fund of funds;
- 252 (e) establish criteria and procedures governing commitments obtained by the board
253 from designated purchasers including:
- 254 (i) entering into commitments with designated purchasers; and
255 (ii) drawing on commitments to redeem certificates from designated investors;
- 256 (f) have power to:
- 257 (i) expend funds;
258 (ii) invest funds;
259 (iii) issue debt and borrow funds;
260 (iv) enter into contracts;
261 (v) insure against loss; and
262 (vi) perform any other act necessary to carry out its purpose; and
- 263 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part
264 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 265 (2) (a) All rules made by the board under Subsection (1)(g) are subject to review by the
266 Legislative Management Committee:
- 267 (i) whenever made, modified, or repealed; and
268 (ii) in each even-numbered year.
- 269 (b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review
270 Committee from reviewing and taking appropriate action on any rule made, amended, or
271 repealed by the board.

272 (3) (a) The criteria and procedures established by the board for the allocation and
273 issuance of contingent tax credits shall include the contingencies that must be met for a
274 certificate and its related tax credits to be:

- 275 (i) issued by the board;
- 276 (ii) transferred by a designated investor; and
- 277 (iii) redeemed by a designated investor in order to receive a contingent tax credit.

278 (b) The board shall tie the contingencies for redemption of certificates to:

279 (i) for a private investment initiated before July 1, 2015:

280 (A) the targeted rates of return and scheduled redemptions of equity interests purchased
281 by designated investors in the Utah fund of funds; and

282 (B) the scheduled principal and interest payments payable to designated investors that
283 have made loans initiated before July 1, 2014, including a loan refinanced one or more times
284 on or after July 1, 2014, that was originated before July 1, 2014, to the Utah fund of funds; or

285 (ii) for an equity-based private investment initiated on or after July 1, 2015, the
286 positive impact on economic development in the state that is related to the fund's investments
287 or the success of the corporation's economic development plan in the state, including:

288 (A) encouraging the availability of a wide variety of venture capital in the state;

289 (B) strengthening the state's economy;

290 (C) helping business in the state gain access to sources of capital;

291 (D) helping build a significant, permanent source of capital available for businesses in
292 the state; and

293 (E) creating benefits for the state while minimizing the use of contingent tax credits.

294 (4) (a) The board may charge a placement fee to the Utah fund of funds for the
295 issuance of a certificate and related contingent tax credit to a designated investor.

296 (b) The fee shall:

297 (i) be charged only to pay for reasonable and necessary costs of the board; and

298 (ii) not exceed .5% of the private investment of the designated investor.

299 (5) The board's criteria and procedures for redeeming certificates:
300 (a) shall give priority to the redemption amount from the available funds in the
301 redemption reserve; and
302 (b) to the extent there are insufficient funds in the redemption reserve to redeem
303 certificates, shall grant the board the option to redeem certificates:
304 (i) by certifying a contingent tax credit to the designated investor; or
305 (ii) by making demand on designated purchasers consistent with the requirements of
306 Section [63N-6-409](#).
307 Section 4. Section **63N-6-406** is amended to read:
308 **63N-6-406. Certificates and contingent tax credits.**
309 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
310 board, in consultation with the State Tax Commission, shall make rules governing the
311 application for, form, issuance, transfer, and redemption of certificates.
312 (2) The board's issuance of certificates and related contingent tax credits to designated
313 investors is subject to the following:
314 (a) the aggregate outstanding certificates may not exceed a total of:
315 (i) \$130,000,000 of contingent tax credits used as collateral or a guarantee on loans for
316 the debt-based financing of investments in the Utah fund of funds initiated before July 1, 2014,
317 or \$120,000,000 of contingent tax credits for a loan refinanced using debt- or equity-based
318 financing as described in Subsection (2)(e); and
319 (ii) \$100,000,000 used as an incentive for equity investments in the Utah fund of funds;
320 (b) the board shall issue a certificate contemporaneously with a debt-based investment
321 in the Utah fund of funds by a designated investor, including a refinanced loan as described in
322 Subsection (2)(e);
323 (c) the board shall issue contingent tax credits in a manner that not more than
324 \$20,000,000 of contingent tax credits for each \$100,000,000 increment of contingent tax
325 credits may be redeemable in a fiscal year;

326 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
327 make a cash redemption and the board does not exercise its other options under Subsection
328 63N-6-408(3)(b);

329 (e) the board may not issue additional certificates as collateral or a guarantee on a loan
330 for the debt-based financing of investments in the Utah fund of funds that is initiated after July
331 1, 2014, except for a loan refinanced one or more times using debt- or equity-based financing
332 on or after July 1, 2014, that was originated before July 1, 2014; and

333 (f) after July 1, 2014, the board may issue certificates that represent no more than
334 100% of the principal of each equity investment in the Utah fund of funds.

335 (3) For an equity-based private investment initiated on or after July 1, 2015, the
336 applicable designated investor may apply for a tax credit if the following criteria are met:

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

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

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

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

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

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

351 (4) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the
352 \$20,000,000 limitation for each \$100,000,000 increment of contingent tax credits in Subsection

353 (2)(b):

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

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

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

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

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

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

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

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

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

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

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

377 (b) the amount of the contingent tax credit for a designated investor with an equity
378 interest may not exceed the difference between the actual principal investment of the
379 designated investor in the Utah fund of funds and the aggregate actual return received by the

380 designated investor and any predecessor in interest of the initial equity investment and interest
381 on the initial equity investment;

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

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

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

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

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

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

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

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

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

401 (a) is binding on the board; and

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

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

405 (10) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah
406 Administrative Rulemaking Act, and in consultation with the board, make rules to help

407 implement this section.