

1 **WATER COMPANIES AND ASSOCIATIONS**

2 **VOTING RIGHTS**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Mike Dmitrich**

6 **This act modifies the Utah Revised Nonprofit Corporation Act by defining the term state**
7 **agency and providing that state agencies shall not be voting members of nonprofit**
8 **corporations that have the primary purpose of providing water to that agency and its other**
9 **members.**

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12 **16-6a-102 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000

13 **16-6a-711 (Effective 04/30/01)**, as enacted by Chapter 300, Laws of Utah 2000

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

15 Section 1. Section **16-6a-102 (Effective 04/30/01)** is amended to read:

16 **16-6a-102 (Effective 04/30/01). Definitions.**

17 As used in this chapter:

18 (1) (a) "Address" means a location where mail can be delivered by the United States Postal
19 Service.

20 (b) "Address" includes:

- 21 (i) a post office box number;
- 22 (ii) a rural free delivery route number; and
- 23 (iii) a street name and number.

24 (2) "Affiliate" means a person that directly or indirectly through one or more
25 intermediaries controls, or is controlled by, or is under common control with, the person specified.

26 (3) "Assumed corporate name" means the name assumed for use in this state:

27 (a) by a:



28 (i) foreign corporation pursuant to Section 16-10a-1506; or
29 (ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and
30 (b) because the corporate name of the foreign corporation described in Subsection (3)(a)
31 is not available for use in this state.

32 (4) "Articles of incorporation" include:
33 (a) amended articles of incorporation;
34 (b) restated articles of incorporation;
35 (c) articles of merger; and
36 (d) a document of a similar import to the documents described in Subsection (4)(a) or (b).

37 (5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body
38 authorized to manage the affairs of the domestic or foreign nonprofit corporation.

39 (b) Notwithstanding Subsection (5)(a), a person may not be considered the board of
40 directors because of powers delegated to that person pursuant to Subsection 16-6a-801(2).

41 (6) (a) "Bylaws" means the one or more codes of rules, other than the articles of
42 incorporation, adopted pursuant to this chapter for the regulation or management of the affairs of
43 the domestic or foreign nonprofit corporation irrespective of the name or names by which the
44 codes of rules are designated.

45 (b) "Bylaws" includes:
46 (i) amended bylaws; and
47 (ii) restated bylaws.

48 (7) (a) "Cash" or "money" means:
49 (i) legal tender;
50 (ii) a negotiable instrument; or
51 (iii) other cash equivalent readily convertible into legal tender.

52 (b) "Cash" and "money" are used interchangeably in this chapter.

53 (8) (a) "Class" refers to a group of memberships that have the same rights with respect to
54 voting, dissolution, redemption, transfer, or other characteristics.

55 (b) For purposes of Subsection (8)(a), rights are considered the same if they are determined
56 by a formula applied uniformly to a group of memberships.

57 (9) (a) "Conspicuous" means so written that a reasonable person against whom the writing
58 is to operate should have noticed it.

59 (b) "Conspicuous" includes printing or typing in:

60 (i) italics;

61 (ii) boldface;

62 (iii) contrasting color;

63 (iv) capitals; or

64 (v) underlining.

65 (10) "Control" or a "controlling interest" means the direct or indirect possession of the
66 power to direct or cause the direction of the management and policies of an entity by:

67 (a) the ownership of voting shares;

68 (b) contract; or

69 (c) means other than those specified in Subsection (10)(a) or (b).

70 (11) "Cooperative nonprofit corporation" or "cooperative" means a nonprofit corporation
71 organized or existing under this chapter subject to Section 16-6a-207.

72 (12) "Corporate name" means:

73 (a) the name of a domestic corporation as stated in the domestic corporation's articles of
74 incorporation;

75 (b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit
76 corporation's articles of incorporation;

77 (c) the name of a foreign corporation as stated in the foreign corporation's:

78 (i) articles of incorporation; or

79 (ii) document of similar import to articles of incorporation; or

80 (d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit
81 corporation's:

82 (i) articles of incorporation; or

83 (ii) document of similar import to articles of incorporation.

84 (13) "Corporation" or "domestic corporation" means a corporation for profit, which is not
85 a foreign corporation, incorporated under or subject to Chapter 10a, Utah Revised Business
86 Corporation Act.

87 (14) "Delegate" means any person elected or appointed to vote in a representative
88 assembly:

89 (a) for the election of a director; or

90 (b) on matters other than the election of a director.

91 (15) "Deliver" includes delivery by mail and any other means of transmission authorized
92 by Section 16-6a-103, except that delivery to the division means actual receipt by the division.

93 (16) "Director" means a member of the board of directors.

94 (17) (a) "Distribution" means the payment of a dividend or any part of the income or profit
95 of a nonprofit corporation to the nonprofit corporation's:

96 (i) members;

97 (ii) directors; or

98 (iii) officers.

99 (b) "Distribution" does not include fair-value payments for:

100 (i) goods sold; or

101 (ii) services received.

102 (18) "Division" means the Division of Corporations and Commercial Code.

103 (19) "Effective date," when referring to a document filed by the division, means the time
104 and date determined in accordance with Section 16-6a-108.

105 (20) "Effective date of notice" means the date notice is effective as provided in Section
106 16-6a-103.

107 (21) (a) "Employee" includes an officer but not a director of a nonprofit corporation.

108 (b) Notwithstanding Subsection (21)(a), a director may accept duties that make that
109 director an employee of a nonprofit corporation.

110 (22) "Executive director" means the executive director of the Department of Commerce.

111 (23) "Entity" includes:

112 (a) a domestic or foreign corporation;

113 (b) a domestic or foreign nonprofit corporation;

114 (c) a limited liability company;

115 (d) a profit or nonprofit unincorporated association;

116 (e) a business trust;

117 (f) an estate;

118 (g) a partnership;

119 (h) a trust;

120 (i) two or more persons having a joint or common economic interest;

- 121 (j) a state;
- 122 (k) the United States; or
- 123 (l) a foreign government.
- 124 (24) "Foreign corporation" means a corporation for profit incorporated under a law other
- 125 than the laws of this state.
- 126 (25) "Foreign nonprofit corporation" means an entity:
- 127 (a) incorporated under a law other than the laws of this state; and
- 128 (b) that would be a nonprofit corporation if formed under the laws of this state.
- 129 (26) "Governmental subdivision" means:
- 130 (a) a county;
- 131 (b) a city;
- 132 (c) a town; or
- 133 (d) any other type of governmental subdivision authorized by the laws of this state.
- 134 (27) "Individual" means:
- 135 (a) a natural person;
- 136 (b) the estate of an incompetent individual; or
- 137 (c) the estate of a deceased individual.
- 138 (28) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as
- 139 amended from time to time, or to corresponding provisions of subsequent internal revenue laws
- 140 of the United States of America.
- 141 (29) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the
- 142 United States mail, properly addressed, first-class postage prepaid.
- 143 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the proper
- 144 fee has been paid.
- 145 (30) (a) "Member" means one or more persons identified as a member of a domestic or
- 146 foreign nonprofit corporation in the articles of incorporation or bylaws of the nonprofit corporation
- 147 pursuant to a procedure set forth:
- 148 (i) in the articles of incorporation;
- 149 (ii) in the bylaws; or
- 150 (iii) by a resolution of the board of directors.
- 151 (b) "Member" includes "voting member."

152 (31) "Membership" refers to the rights and obligations of a member or members.

153 (32) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity, which
154 is not a foreign nonprofit corporation, incorporated under or subject to the provisions of this
155 chapter.

156 (33) "Notice" is as provided in Section 16-6a-103.

157 (34) "Person" means an:

158 (a) individual; or

159 (b) entity.

160 (35) "Principal office" means:

161 (a) the office, in or out of this state, designated by a domestic or foreign nonprofit
162 corporation as its principal office in the most recent document on file with the division providing
163 that information, including:

164 (i) an annual report;

165 (ii) an application for a certificate of authority; or

166 (iii) a notice of change of principal office; or

167 (b) if no principal office can be determined, a domestic or foreign nonprofit corporation's
168 registered office.

169 (36) "Proceeding" includes:

170 (a) a civil suit;

171 (b) arbitration;

172 (c) mediation;

173 (d) a criminal action;

174 (e) an administrative action; or

175 (f) an investigatory action.

176 (37) "Receive," when used in reference to receipt of a writing or other document by a
177 domestic or foreign nonprofit corporation, means the writing or other document is actually
178 received:

179 (a) by the domestic or foreign nonprofit corporation at:

180 (i) its registered office in this state; or

181 (ii) its principal office;

182 (b) by the secretary of the domestic or foreign nonprofit corporation, wherever the

183 secretary is found; or

184 (c) by any other person authorized by the bylaws or the board of directors to receive the
185 writing or other document, wherever that person is found.

186 (38) (a) "Record date" means the date established under Part 6 or 7 on which a nonprofit
187 corporation determines the identity of its members.

188 (b) The determination described in Subsection (38)(a) shall be made as of the close of
189 business on the record date unless another time for doing so is specified when the record date is
190 fixed.

191 (39) "Registered agent" means the registered agent of:

192 (a) a domestic nonprofit corporation required to be maintained pursuant to Subsection
193 16-6a-501(1)(b); or

194 (b) a foreign nonprofit corporation required to be maintained pursuant to Subsection
195 16-6a-1508(1)(b).

196 (40) "Registered office" means the office within this state designated by a domestic or
197 foreign nonprofit corporation as its registered office in the most recent document on file with the
198 division providing that information, including:

199 (a) articles of incorporation;

200 (b) an application for a certificate of authority; or

201 (c) a notice of change of registered office.

202 (41) "Related party to a director" means:

203 (a) the spouse of the director;

204 (b) a child of the director;

205 (c) a grandchild of the director;

206 (d) a sibling of the director;

207 (e) a parent of the director;

208 (f) the spouse of an individual described in Subsections (41)(b) through (e);

209 (g) an individual having the same home as the director;

210 (h) a trust or estate of which the director or any other individual specified in this

211 Subsection (41) is a substantial beneficiary; or

212 (i) any of the following of which the director is a fiduciary:

213 (i) a trust;

- 214 (ii) an estate;
- 215 (iii) an incompetent;
- 216 (iv) a conservatee; or
- 217 (v) a minor.
- 218 (42) "Secretary" means the corporate officer to whom the bylaws or the board of directors
- 219 has delegated responsibility under Subsection 16-6a-818(3) for:
 - 220 (a) the preparation and maintenance of:
 - 221 (i) minutes of the meetings of:
 - 222 (A) the board of directors; or
 - 223 (B) the members; and
 - 224 (ii) the other records and information required to be kept by the nonprofit corporation
 - 225 pursuant to Section 16-6a-1601; and
 - 226 (b) authenticating records of the nonprofit corporation.
 - 227 (43) "State," when referring to a part of the United States, includes:
 - 228 (a) a state;
 - 229 (b) a commonwealth;
 - 230 (c) the District of Columbia;
 - 231 (d) an agency or governmental and political subdivision of a state, commonwealth, or
 - 232 District of Columbia;
 - 233 (e) territory or insular possession of the United States; or
 - 234 (f) an agency or governmental and political subdivision of a territory or insular possession
 - 235 of the United States.
 - 236 (44) "State agency" means any of the following of the state:
 - 237 (a) a department;
 - 238 (b) a commission;
 - 239 (c) a board;
 - 240 (d) a council;
 - 241 (e) an agency;
 - 242 (f) an institution;
 - 243 (g) an officer;
 - 244 (h) a corporation;

245 (i) a fund;

246 (j) a division;

247 (k) an office;

248 (l) a committee;

249 (m) an authority;

250 (n) a laboratory;

251 (o) a library;

252 (p) a unit;

253 (q) a bureau;

254 (r) a panel; or

255 (s) an administrative unit.

256 [~~(44)~~] (45) "Street address" means:

257 (a) (i) street name and number;

258 (ii) city or town; and

259 (iii) United States post office zip code designation; or

260 (b) if, by reason of rural location or otherwise, a street name, number, city, or town does

261 not exist, an appropriate description other than that described in Subsection [~~(44)~~] (45)(a) fixing

262 as nearly as possible the actual physical location but only if the information includes:

263 (i) the rural free delivery route;

264 (ii) the county; and

265 (iii) the United States post office zip code designation.

266 [~~(45)~~] (46) "United States" includes any district, authority, office, bureau, commission,

267 department, and any other agency of the United States of America.

268 [~~(46)~~] (47) "Vote" includes authorization by:

269 (a) written ballot; and

270 (b) written consent.

271 [~~(47)~~] (48) (a) "Voting group" means all the members of one or more classes of members

272 or directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to vote

273 and be counted together collectively on a matter.

274 (b) All members or directors entitled by this chapter, the articles of incorporation, or the

275 bylaws to vote generally on a matter are for that purpose a single voting group.

276 [~~(48)~~] (49) (a) "Voting member" means one or more persons who are entitled to vote for
277 all matters required or permitted under this chapter to be submitted to a vote of the members,
278 except as otherwise provided in the articles of incorporation or bylaws.

279 (b) A person is not a voting member solely because of:

280 (i) a right the person has as a delegate;

281 (ii) a right the person has to designate a director; or

282 (iii) a right the person has as a director.

283 Section 2. Section **16-6a-711 (Effective 04/30/01)** is amended to read:

284 **16-6a-711 (Effective 04/30/01). Voting entitlement generally.**

285 (1) Unless otherwise provided by the bylaws:

286 (a) only voting members shall be entitled to vote with respect to any matter required or
287 permitted under this chapter to be submitted to a vote of the members;

288 (b) all references in this chapter to votes of or voting by the members shall be considered
289 to permit voting only by the voting members; and

290 (c) voting members shall be entitled to vote with respect to all matters required or
291 permitted under this chapter to be submitted to a vote of the members.

292 (2) Unless otherwise provided by the bylaws, each member entitled to vote shall be
293 entitled to one vote on each matter submitted to a vote of members.

294 (3) Unless otherwise provided by the bylaws, if a membership stands of record in the
295 names of two or more persons, the membership's acts with respect to voting shall have the
296 following effect:

297 (a) if only one votes, the act binds all; and

298 (b) if more than one votes, the vote shall be divided on a pro-rata basis.

299 (4) Unless otherwise specifically provided by the bylaws, if a state agency is a member of
300 a nonprofit corporation that has as one of its primary purposes the delivery of water to its members,
301 the state agency shall not be a voting member.

Legislative Review Note

as of 2-2-01 10:43 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel