

**NONPROFIT CORPORATION AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: Patrick Painter

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**LONG TITLE**

**General Description:**

This bill amends provisions concerning nonprofit corporations.

**Highlighted Provisions:**

This bill:

- ▶ addresses voting requirements for nonprofit corporations;
- ▶ authorizes distributions from one nonprofit corporation to another upon dissolution;
- ▶ prevents the transfer of title in water rights upon dissolution of a nonprofit corporation;
- ▶ exempts nonprofit corporations from the effects of Title 61, Chapter 6, Control Shares Acquisition Act; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**16-6a-711**, as enacted by Chapter 300, Laws of Utah 2000

**16-6a-1302**, as last amended by Chapter 228, Laws of Utah 2006

**16-6a-1405**, as last amended by Chapter 228, Laws of Utah 2006



28 **61-6-5**, as last amended by Chapter 71, Laws of Utah 2005



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

31 Section 1. Section **16-6a-711** is amended to read:

32 **16-6a-711. Voting entitlement generally.**

33 (1) Unless otherwise provided by the bylaws:

34 (a) only voting members [~~shall be entitled to~~] may vote with respect to any matter  
35 required or permitted under this chapter to be submitted to a vote of the members;

36 (b) all references in this chapter to votes of or voting by the members [~~shall be~~  
37 ~~considered to~~] permit voting only by the voting members; and

38 (c) voting members [~~shall be entitled to~~] may vote with respect to all matters required  
39 or permitted under this chapter to be submitted to a vote of the members.

40 (2) Unless otherwise provided by the [~~bylaws~~] articles of incorporation, each member  
41 entitled to vote [~~shall be entitled to~~] may cast:

42 (a) one vote on each matter submitted to a vote of members[-] for nonprofit  
43 corporations other than those in Subsection (2)(b); and

44 (b) one vote for each share held by the member on each matter submitted for a vote of  
45 members if the nonprofit corporation issues shares to its members.

46 (3) Unless otherwise provided by the bylaws, if a membership stands of record in the  
47 names of two or more persons, the membership's acts with respect to voting [~~shall~~] have the  
48 following effect:

49 (a) [~~if~~] If only one votes, the act binds all[~~;~~ ~~and~~] of the persons whose membership is  
50 jointly held.

51 (b) [~~if~~] If more than one votes, the vote [~~shall be~~] is divided on a pro-rata basis.

52 Section 2. Section **16-6a-1302** is amended to read:

53 **16-6a-1302. Authorized distributions.**

54 (1) A nonprofit corporation may:

55 (a) make distributions or distribute the nonprofit corporation's assets to a member that  
56 is a domestic or foreign nonprofit corporation;

57 (b) pay compensation in a reasonable amount to its members, directors, or officers for  
58 services rendered;

59 (c) if a cooperative nonprofit corporation, make distributions consistent with its  
60 purposes; and

61 (d) confer benefits upon its members in conformity with its purposes.

62 (2) A nonprofit corporation may make distributions upon dissolution as follows:

63 (a) to a member that is a domestic or foreign nonprofit corporation;

64 (b) to its members if it is a mutual benefit corporation; [~~and~~]

65 (c) to another nonprofit corporation organized to receive the assets of and function in  
66 place of the dissolved nonprofit corporation; and

67 [~~(c)~~] (d) otherwise in conformity to this chapter.

68 (3) A mutual benefit corporation may purchase a member's membership in conformity  
69 with Section 16-6a-610 if, after the purchase is completed:

70 (a) the mutual benefit corporation would be able to pay its debts as they become due in  
71 the usual course of its activities; and

72 (b) the mutual benefit corporation's total assets would at least equal the sum of its total  
73 liabilities.

74 (4) Authorized distributions by a dissolved nonprofit corporation may be made by  
75 authorized officers or directors, including those elected, hired, or otherwise selected after  
76 dissolution if the election, hiring, or other selection after dissolution is done in accordance with  
77 the articles of incorporation and bylaws existing at the time of dissolution.

78 Section 3. Section **16-6a-1405** is amended to read:

79 **16-6a-1405. Effect of dissolution.**

80 (1) A dissolved nonprofit corporation continues its corporate existence but may not  
81 carry on any activities except as is appropriate to wind up and liquidate its affairs, including:

82 (a) collecting its assets;

83 (b) returning, transferring, or conveying assets held by the nonprofit corporation upon a  
84 condition requiring return, transfer, or conveyance, which condition occurs by reason of the  
85 dissolution, in accordance with the condition;

86 (c) transferring, subject to any contractual or legal requirements, its assets as provided  
87 in or authorized by its articles of incorporation or bylaws;

88 (d) discharging or making provision for discharging its liabilities; and

89 (e) doing every other act necessary to wind up and liquidate its assets and affairs.

90 (2) Notwithstanding any other provision of this chapter, the distribution of assets of a  
91 nonprofit corporation upon its dissolution shall be consistent with all applicable requirements  
92 and limitations set forth in the Internal Revenue Code.

93 (3) Dissolution of a nonprofit corporation does not:

94 (a) transfer title to the nonprofit corporation's property including title to water rights,  
95 water conveyance facilities, or other assets of a nonprofit corporation organized to divert or  
96 distribute water to its members;

97 (b) subject its directors or officers to standards of conduct different from those  
98 prescribed in this chapter;

99 (c) change quorum or voting requirements for its board of directors or members;

100 (d) change provisions for selection, resignation, or removal of its directors or officers,  
101 or both;

102 (e) change provisions for amending its bylaws or its articles of incorporation;

103 (f) prevent commencement of a proceeding by or against the nonprofit corporation in  
104 its corporate name; or

105 (g) abate or suspend a proceeding pending by or against the nonprofit corporation on  
106 the effective date of dissolution.

107 (4) Nothing in this section may be applied in a manner inconsistent with a court's  
108 power of judicial dissolution exercised in accordance with Section 16-6a-1414 or 16-6a-1415.

109 Section 4. Section **61-6-5** is amended to read:

110 **61-6-5. Issuing public corporation defined.**

111 (1) As used in this chapter, "issuing public corporation" means a corporation, other  
112 than a depository institution, that is organized under the laws of this state and that has:

113 (a) 100 or more shareholders;

114 (b) its principal place of business, its principal office, or substantial assets within the  
115 state; and

116 (c) (i) more than 10% of its shareholders resident in the state;

117 (ii) more than 10% of its shares owned by Utah residents; or

118 (iii) 10,000 shareholders resident in the state.

119 (2) The residence of a shareholder is presumed to be the address appearing in the  
120 records of the corporation.

121 (3) Shares held by banks or other depository institutions (except as trustee or guardian),  
122 brokers, or nominees shall be disregarded for purposes of calculating the percentages or  
123 numbers described in this section.

124 (4) As used in this chapter, "depository institution" means a depository institution or a  
125 depository institution holding company as defined in Section 7-1-103.

126 (5) A nonprofit corporation as defined in Section 16-6a-102 is not considered to be a  
127 public corporation for purposes of this chapter.

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**Legislative Review Note**  
as of 11-15-06 6:34 PM

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
as of 12-12-06 10:42 AM

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

**Legislative Committee Note**  
as of 12-12-06 10:42 AM

The Water Issues Task Force recommended this bill.

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**S.B. 9 - Nonprofit Corporation Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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*12/20/2006, 1:41:09 PM, Lead Analyst: Eckersley, S.*

**Office of the Legislative Fiscal Analyst**