

Representative Patrick Painter proposes the following substitute bill:

NONPROFIT CORPORATION AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Patrick Painter

LONG TITLE

General Description:

This bill amends provisions concerning nonprofit corporations.

Highlighted Provisions:

This bill:

- ▶ defines the term "mutual benefit corporation";
- ▶ addresses property rights of members of a nonprofit corporation;
- ▶ addresses voting requirements for nonprofit corporations;
- ▶ addresses the time required for allowing members to vote;
- ▶ authorizes distributions from one nonprofit corporation to another upon dissolution;
- ▶ addresses transactions where an officer or director has a conflict of interest;
- ▶ 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:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **16-6a-102**, as last amended by Chapter 228, Laws of Utah 2006

30 **16-6a-611**, as enacted by Chapter 300, Laws of Utah 2000

31 **16-6a-709**, as last amended by Chapter 13, Laws of Utah 2001, First Special Session

32 **16-6a-711**, as enacted by Chapter 300, Laws of Utah 2000

33 **16-6a-825**, as last amended by Chapter 197, Laws of Utah 2002

34 **16-6a-1302**, as last amended by Chapter 228, Laws of Utah 2006

35 **16-6a-1405**, as last amended by Chapter 228, Laws of Utah 2006

36 **61-6-5**, as last amended by Chapter 71, Laws of Utah 2005

37

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

39 Section 1. Section **16-6a-102** is amended to read:

40 **16-6a-102. Definitions.**

41 As used in this chapter:

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

44 (b) "Address" includes:

- 45 (i) a post office box number;
- 46 (ii) a rural free delivery route number; and
- 47 (iii) a street name and number.

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

51 (3) "Articles of incorporation" include:

- 52 (a) amended articles of incorporation;
- 53 (b) restated articles of incorporation;
- 54 (c) articles of merger; and
- 55 (d) a document of a similar import to the documents described in Subsections (3)(a)
56 through (c).

57 (4) "Assumed corporate name" means the name assumed for use in this state:

58 (a) by a:

59 (i) foreign corporation pursuant to Section 16-10a-1506; or

60 (ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and

61 (b) because the corporate name of the foreign corporation described in Subsection

62 (4)(a) is not available for use in this state.

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

65 (b) Notwithstanding Subsection (5)(a), a person may not be considered a member of
66 the board of directors because of powers delegated to that person pursuant to Subsection
67 16-6a-801(2).

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

72 (b) "Bylaws" includes:

73 (i) amended bylaws; and

74 (ii) restated bylaws.

75 (7) (a) "Cash" or "money" means:

76 (i) legal tender;

77 (ii) a negotiable instrument; or

78 (iii) other cash equivalent readily convertible into legal tender.

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

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

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

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

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

87 (i) italics;

- 88 (ii) boldface;
- 89 (iii) contrasting color;
- 90 (iv) capitals; or
- 91 (v) underlining.
- 92 (10) "Control" or a "controlling interest" means the direct or indirect possession of the
- 93 power to direct or cause the direction of the management and policies of an entity by:
- 94 (a) the ownership of voting shares;
- 95 (b) contract; or
- 96 (c) means other than those specified in Subsection (10)(a) or (b).
- 97 (11) Subject to Section 16-6a-207, "cooperative nonprofit corporation" or "cooperative"
- 98 means a nonprofit corporation organized or existing under this chapter.
- 99 (12) "Corporate name" means:
- 100 (a) the name of a domestic corporation as stated in the domestic corporation's articles
- 101 of incorporation;
- 102 (b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit
- 103 corporation's articles of incorporation;
- 104 (c) the name of a foreign corporation as stated in the foreign corporation's:
- 105 (i) articles of incorporation; or
- 106 (ii) document of similar import to articles of incorporation; or
- 107 (d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit
- 108 corporation's:
- 109 (i) articles of incorporation; or
- 110 (ii) document of similar import to articles of incorporation.
- 111 (13) "Corporation" or "domestic corporation" means a corporation for profit, which is
- 112 not a foreign corporation, incorporated under or subject to Chapter 10a, Utah Revised Business
- 113 Corporation Act.
- 114 (14) "Delegate" means any person elected or appointed to vote in a representative
- 115 assembly:
- 116 (a) for the election of a director; or
- 117 (b) on matters other than the election of a director.
- 118 (15) "Deliver" includes delivery by mail and any other means of transmission

119 authorized by Section 16-6a-103, except that delivery to the division means actual receipt by
120 the division.

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

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

124 (i) members;

125 (ii) directors; or

126 (iii) officers.

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

128 (i) goods sold; or

129 (ii) services received.

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

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

133 (20) "Effective date of notice" means the date notice is effective as provided in Section
134 16-6a-103.

135 (21) (a) "Employee" includes an officer of a nonprofit corporation.

136 (b) (i) Except as provided in Subsection (21)(b)(ii), "employee" does not include a
137 director of a nonprofit corporation.

138 (ii) Notwithstanding Subsection (21)(b)(i), a director may accept duties that make that
139 director an employee of a nonprofit corporation.

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

142 (23) "Entity" includes:

143 (a) a domestic or foreign corporation;

144 (b) a domestic or foreign nonprofit corporation;

145 (c) a limited liability company;

146 (d) a profit or nonprofit unincorporated association;

147 (e) a business trust;

148 (f) an estate;

149 (g) a partnership;

- 150 (h) a trust;
- 151 (i) two or more persons having a joint or common economic interest;
- 152 (j) a state;
- 153 (k) the United States; or
- 154 (l) a foreign government.
- 155 (24) "Foreign corporation" means a corporation for profit incorporated under a law
- 156 other than the laws of this state.
- 157 (25) "Foreign nonprofit corporation" means an entity:
- 158 (a) incorporated under a law other than the laws of this state; and
- 159 (b) that would be a nonprofit corporation if formed under the laws of this state.
- 160 (26) "Governmental subdivision" means:
- 161 (a) a county;
- 162 (b) a city;
- 163 (c) a town; or
- 164 (d) any other type of governmental subdivision authorized by the laws of this state.
- 165 (27) "Individual" means:
- 166 (a) a natural person;
- 167 (b) the estate of an incompetent individual; or
- 168 (c) the estate of a deceased individual.
- 169 (28) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as
- 170 amended from time to time, or to corresponding provisions of subsequent internal revenue laws
- 171 of the United States of America.
- 172 (29) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the
- 173 United States mail, properly addressed, first-class postage prepaid.
- 174 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the
- 175 proper fee has been paid.
- 176 (30) (a) "Member" means one or more persons identified or otherwise appointed as a
- 177 member of a domestic or foreign nonprofit corporation as provided:
- 178 (i) in the articles of incorporation;
- 179 (ii) in the bylaws;
- 180 (iii) by a resolution of the board of directors; or

- 181 (iv) by a resolution of the members of the nonprofit corporation.
- 182 (b) "Member" includes "voting member."
- 183 (31) "Membership" refers to the rights and obligations of a member or members.
- 184 (32) "Mutual benefit corporation" means a nonprofit corporation;
- 185 (a) that issues shares of stock to its members evidencing a right to receive distribution
- 186 of water or otherwise representing property rights; or
- 187 (b) all of whose assets are contributed or [earned] acquired by or for the members of
- 188 the nonprofit corporation or their predecessors in interest to serve the mutual purposes of the
- 189 members.
- 190 (33) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity,
- 191 which is not a foreign nonprofit corporation, incorporated under or subject to the provisions of
- 192 this chapter.
- 193 (34) "Notice" is as provided in Section 16-6a-103.
- 194 (35) "Party related to a director" means:
- 195 (a) the spouse of the director;
- 196 (b) a child of the director;
- 197 (c) a grandchild of the director;
- 198 (d) a sibling of the director;
- 199 (e) a parent of the director;
- 200 (f) the spouse of an individual described in Subsections (35)(b) through (e);
- 201 (g) an individual having the same home as the director;
- 202 (h) a trust or estate of which the director or any other individual specified in this
- 203 Subsection (35) is a substantial beneficiary; or
- 204 (i) any of the following of which the director is a fiduciary:
- 205 (i) a trust;
- 206 (ii) an estate;
- 207 (iii) an incompetent;
- 208 (iv) a conservatee; or
- 209 (v) a minor.
- 210 (36) "Person" means an:
- 211 (a) individual; or

212 (b) entity.

213 (37) "Principal office" means:

214 (a) the office, in or out of this state, designated by a domestic or foreign nonprofit

215 corporation as its principal office in the most recent document on file with the division

216 providing that information, including:

217 (i) an annual report;

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

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

220 (b) if no principal office can be determined, a domestic or foreign nonprofit

221 corporation's registered office.

222 (38) "Proceeding" includes:

223 (a) a civil suit;

224 (b) arbitration;

225 (c) mediation;

226 (d) a criminal action;

227 (e) an administrative action; or

228 (f) an investigatory action.

229 (39) "Receive," when used in reference to receipt of a writing or other document by a

230 domestic or foreign nonprofit corporation, means the writing or other document is actually

231 received:

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

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

234 (ii) its principal office;

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

236 secretary is found; or

237 (c) by any other person authorized by the bylaws or the board of directors to receive the

238 writing or other document, wherever that person is found.

239 (40) (a) "Record date" means the date established under Part 6, Members or 7, Member

240 Meetings and Voting on which a nonprofit corporation determines the identity of the nonprofit

241 corporation's members.

242 (b) The determination described in Subsection (40)(a) shall be made as of the close of

243 business on the record date unless another time for doing so is specified when the record date is
244 fixed.

245 (41) "Registered agent" means the registered agent of:

246 (a) a domestic nonprofit corporation required to be maintained pursuant to Subsection
247 16-6a-501(1)(b); or

248 (b) a foreign nonprofit corporation required to be maintained pursuant to Subsection
249 16-6a-1508(1)(b).

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

253 (a) articles of incorporation;

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

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

256 (43) "Secretary" means the corporate officer to whom the bylaws or the board of
257 directors has delegated responsibility under Subsection 16-6a-818(3) for:

258 (a) the preparation and maintenance of:

259 (i) minutes of the meetings of:

260 (A) the board of directors; or

261 (B) the members; and

262 (ii) the other records and information required to be kept by the nonprofit corporation
263 pursuant to Section 16-6a-1601; and

264 (b) authenticating records of the nonprofit corporation.

265 (44) "Shareholder" means the person in whose name a share is registered in the records
266 of a nonprofit corporation.

267 (45) "Share" means a unit of interest in a nonprofit corporation.

268 (46) "State," when referring to a part of the United States, includes:

269 (a) a state;

270 (b) a commonwealth;

271 (c) the District of Columbia;

272 (d) an agency or governmental and political subdivision of a state, commonwealth, or
273 District of Columbia;

- 274 (e) territory or insular possession of the United States; or
275 (f) an agency or governmental and political subdivision of a territory or insular
276 possession of the United States.
- 277 (47) "Street address" means:
278 (a) (i) street name and number;
279 (ii) city or town; and
280 (iii) United States post office zip code designation; or
281 (b) if, by reason of rural location or otherwise, a street name, number, city, or town
282 does not exist, an appropriate description other than that described in Subsection (47)(a) fixing
283 as nearly as possible the actual physical location but only if the information includes:
284 (i) the rural free delivery route;
285 (ii) the county; and
286 (iii) the United States post office zip code designation.
- 287 (48) "United States" includes any district, authority, office, bureau, commission,
288 department, and any other agency of the United States of America.
- 289 (49) "Vote" includes authorization by:
290 (a) written ballot; and
291 (b) written consent.
- 292 (50) (a) "Voting group" means all the members of one or more classes of members or
293 directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to
294 vote and be counted together collectively on a matter.
295 (b) All members or directors entitled by this chapter, the articles of incorporation, or
296 the bylaws to vote generally on a matter are for that purpose a single voting group.
- 297 (51) (a) "Voting member" means a person entitled to vote for all matters required or
298 permitted under this chapter to be submitted to a vote of the members, except as otherwise
299 provided in the articles of incorporation or bylaws.
300 (b) A person is not a voting member solely because of:
301 (i) a right the person has as a delegate;
302 (ii) a right the person has to designate a director; or
303 (iii) a right the person has as a director.
304 (c) Except as the bylaws may otherwise provide, "voting member" includes a

305 "shareholder" if the nonprofit corporation has shareholders.

306 Section 2. Section **16-6a-611** is amended to read:

307 **16-6a-611. No property right.**

308 A member does not have [a] any vested property right [~~resulting from any provision in~~
309 ~~the articles of incorporation or the bylaws;~~] including any [provision] right relating to
310 management, control, purpose, or duration of the nonprofit corporation[-], except as provided
311 by:

312 (1) the bylaws of a mutual benefit corporation; or

313 (2) other law.

314 Section 3. Section **16-6a-709** is amended to read:

315 **16-6a-709. Action by written ballot.**

316 (1) Unless otherwise provided by the bylaws, any action that may be taken at any
317 annual, regular, or special meeting of members may be taken without a meeting if the nonprofit
318 corporation delivers a written ballot to every member entitled to vote on the matter.

319 (2) A written ballot described in Subsection (1) shall:

320 (a) set forth each proposed action; and

321 (b) provide an opportunity to vote for or against each proposed action.

322 (3) (a) Approval by written ballot pursuant to this section shall be valid only when:

323 (i) the time, as determined under Subsection (8), by which all ballots must be received
324 by the nonprofit corporation has passed so that a quorum can be determined; and

325 (ii) the number of approvals equals or exceeds the number of votes that would be
326 required to approve the matter at a meeting at which the total number of votes cast was the
327 same as the number of votes cast by ballot.

328 (b) Unless otherwise provided in this chapter or in accordance with Section 16-6a-716,
329 for purposes of taking action by written ballot the number of votes cast by written ballot
330 pursuant to this section constitute a quorum for action on the matter.

331 (4) All solicitations for votes by written ballot shall:

332 (a) indicate the number of responses needed to meet the quorum requirements;

333 (b) state the percentage of approvals necessary to approve each matter other than
334 election of directors;

335 (c) specify the time by which a ballot must be received by the nonprofit corporation in

336 order to be counted; and

337 (d) be accompanied by written information sufficient to permit each person casting the
338 ballot to reach an informed decision on the matter.

339 (5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.

340 (6) Action taken under this section has the same effect as action taken at a meeting of
341 members and may be described as such in any document.

342 (7) Unless otherwise provided by the bylaws, a written ballot delivered to every
343 member entitled to vote on the matter or matters therein, as described in this section, may also
344 be used in connection with any annual, regular, or special meeting of members, thereby
345 allowing members the choice of either voting in person or by written ballot delivered by a
346 member to the nonprofit corporation in lieu of attendance at such meeting. Any written ballot
347 shall comply with the requirements of Subsection (2) and shall be counted equally with the
348 votes of members in attendance at any meeting for every purpose, including satisfaction of a
349 quorum requirement.

350 (8) (a) Members must be provided a fair and reasonable amount of time before the day
351 on which the nonprofit corporation must receive ballots.

352 (b) An amount of time is considered to be fair and reasonable if:

353 (i) members are given at least 15 days from the day on which the notice is mailed, if
354 the notice is mailed by first-class or registered mail;

355 (ii) members are given at least 30 days from the day on which the notice is mailed, if
356 the notice is mailed by other than first-class or registered mail; or

357 (iii) considering all the circumstances, the amount of time is otherwise reasonable.

358 Section 4. Section **16-6a-711** is amended to read:

359 **16-6a-711. Voting entitlement generally.**

360 (1) Unless otherwise provided by the bylaws:

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

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

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

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

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

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

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

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

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

379 Section 5. Section **16-6a-825** is amended to read:

380 **16-6a-825. Conflicting interest transaction.**

381 (1) As used in this section, "conflicting interest transaction" means a contract,
382 transaction, or other financial relationship between a nonprofit corporation and:

383 (a) a director of the nonprofit corporation;

384 (b) a party related to a director; or

385 (c) an entity in which a director of the nonprofit corporation:

386 (i) is a director or officer; or

387 (ii) has a financial interest.

388 (2) Except as otherwise provided in this section, upon the finding of a conflicting
389 interest transaction, in an action properly brought before it, a court may:

390 (a) rule that the conflicting interest transaction is void or voidable;

391 (b) enjoin or set aside the conflict of interest transaction; or

392 (c) determine that the conflicting interest transaction gives rise to an award of damages
393 or other sanctions.

394 (3) (a) A loan may not be made by a nonprofit corporation to ~~[its directors or officers.];~~

395 (i) a director or officer of the nonprofit corporation; or

396 (ii) a natural person related to a director or officer.

397 (b) A director or officer who assents to or participates in the making of a loan in

398 violation of Subsection (3)(a) shall be liable to the nonprofit corporation for the amount of the
399 loan until the repayment of the loan.

400 (4) (a) If the conditions of Subsection (4)(b) are met, a conflicting interest transaction
401 may not be void or voidable or be enjoined, set aside, or give rise to an award of damages or
402 other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation,
403 solely because:

404 (i) the conflicting interest transaction involves:

405 (A) a director of the nonprofit corporation;

406 (B) a party related to a director; or

407 (C) an entity in which a director of the nonprofit corporation is a director or officer or
408 has a financial interest;

409 (ii) the director is present at or participates in the meeting of the nonprofit corporation's
410 board of directors or of the committee of the board of directors that authorizes, approves, or
411 ratifies the conflicting interest transaction; or

412 (iii) the director's vote is counted for the purpose described in Subsection (4)(a)(ii).

413 (b) Subsection (4)(a) applies if:

414 (i) (A) the material facts as to the director's relationship or interest and as to the
415 conflicting interest transaction are disclosed or are known to the board of directors or the
416 committee; and

417 (B) the board of directors or committee in good faith authorizes, approves, or ratifies
418 the conflicting interest transaction by the affirmative vote of a majority of the disinterested
419 directors, even though the disinterested directors are less than a quorum;

420 (ii) (A) the material facts as to the director's relationship or interest and as to the
421 conflicting interest transaction are disclosed or are known to the members entitled to vote on
422 the conflicting interest transaction; and

423 (B) the conflicting interest transaction is specifically authorized, approved, or ratified
424 in good faith by a vote of the members entitled to vote thereon;

425 (iii) the conflicting interest transaction is consistent with a provision in the articles of
426 incorporation or bylaws which:

427 (A) commits the nonprofit corporation to support one or more other nonprofit
428 corporations, charitable trusts, or charitable entities; or

429 (B) authorizes one or more directors to exercise discretion in making gifts or
430 contributions to one or more other nonprofit corporations, charitable trusts, or charitable
431 entities; or

432 (iv) the conflicting interest transaction is fair as to the nonprofit corporation.

433 (5) Common or interested directors may be counted in determining the presence of a
434 quorum at a meeting of the board of directors or of a committee that authorizes, approves, or
435 ratifies the conflicting interest transaction.

436 (6) For purposes of this section, "a natural person related to a director or officer" means
437 any natural person whose familial, financial, professional, or employment relationship with the
438 director or officer would, under the circumstances, reasonably be expected to exert an influence
439 on the director's or officer's judgment when voting on a transaction.

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

441 **16-6a-1302. Authorized distributions.**

442 (1) A nonprofit corporation may:

443 (a) make distributions or distribute the nonprofit corporation's assets to a member;

444 (i) that is a domestic or foreign nonprofit corporation; or

445 (ii) of a mutual benefit corporation, not inconsistent with its bylaws;

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

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

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

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

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

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

454 (c) to another nonprofit corporation, including a nonprofit corporation organized to
455 receive the assets of and function in place of the dissolved nonprofit corporation; and

456 [~~(e)~~] (d) otherwise in conformity to this chapter.

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

459 (a) the mutual benefit corporation would be able to pay its debts as they become due in

460 the usual course of its activities; and

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

463 (4) Authorized distributions by a dissolved nonprofit corporation may be made by
464 authorized officers or directors, including those elected, hired, or otherwise selected after
465 dissolution if the election, hiring, or other selection after dissolution is not inconsistent with the
466 articles of incorporation and bylaws existing at the time of dissolution.

467 Section 7. Section **16-6a-1405** is amended to read:

468 **16-6a-1405. Effect of dissolution.**

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

471 (a) collecting its assets;

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

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

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

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

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

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

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

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

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

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

491 (e) change provisions for amending its bylaws or its articles of incorporation;
492 (f) prevent commencement of a proceeding by or against the nonprofit corporation in
493 its corporate name; or

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

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

498 Section 8. Section **61-6-5** is amended to read:

499 **61-6-5. Issuing public corporation defined.**

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

502 (a) 100 or more shareholders;

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

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

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

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

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

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

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

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

S.B. 9 1st Sub. (Green) - Nonprofit Corporation Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
