

1 **NONPROFIT ENTITY RECEIPT OF GOVERNMENT MONEY**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ronda Rudd Menlove**

5 Senate Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses nonprofit entity receipt of state money.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ addresses state auditor oversight of nonprofit entities;
- 13 ▶ requires written agreements for grants to nonprofit entities;
- 14 ▶ requires certain actions related to annual financial reports of nonprofit corporations;
- 15 ▶ enacts the Nonprofit Entity Receipt of State Money Act, including:
 - 16 • defining terms;
 - 17 • imposing requirements on a nonprofit entity's receipt of state money; and
 - 18 • authorizing a state entity to seek return of state money if the nonprofit entity

19 fails to comply with the requirements; and

- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **51-2a-102**, as last amended by Laws of Utah 2007, Chapter 170



28 ENACTS:

29 **51-2a-204**, Utah Code Annotated 1953

30 **63J-9-101**, Utah Code Annotated 1953

31 **63J-9-102**, Utah Code Annotated 1953

32 **63J-9-201**, Utah Code Annotated 1953

33 **63J-9-202**, Utah Code Annotated 1953

34

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

36 Section 1. Section **51-2a-102** is amended to read:

37 **51-2a-102. Definitions.**

38 As used in this chapter:

39 (1) "Accounting reports" means an audit, a review, a compilation, or a fiscal report.

40 (2) "Audit" means an examination that:

41 (a) analyzes the accounts of all officers of the entity having responsibility for the care,
42 management, collection, or disbursement of money belonging to it or appropriated by law or
43 otherwise acquired for its use or benefit;

44 (b) is performed in accordance with generally accepted government auditing standards;
45 and

46 (c) conforms to the uniform classification of accounts established or approved by the
47 state auditor or any other classification of accounts established by any federal government
48 agency.

49 (3) "Audit report" means:

50 (a) the financial statements presented in conformity with generally accepted accounting
51 principles;

52 (b) the auditor's opinion on the financial statements;

53 (c) a statement by the auditor expressing positive assurance of compliance with state
54 fiscal laws identified by the state auditor;

55 (d) a copy of the auditor's letter to management that identifies any material weakness in
56 internal controls discovered by the auditor and other financial issues related to the expenditure
57 of funds received from federal, state, or local governments to be considered by management;
58 and

59 (e) management's response to the specific recommendations.

60 (4) "Compilation" means information presented in the form of financial statements
61 presented in conformity with generally accepted accounting principles that are the
62 representation of management without the accountant undertaking to express any assurances on
63 the statements.

64 (5) "Fiscal report" means providing information detailing revenues and expenditures of
65 all funds using forms provided by the state auditor.

66 (6) "Governing board" means:

67 (a) the governing board of each political subdivision;

68 (b) the governing board of each interlocal organization having the power to tax or to
69 expend public funds;

70 (c) the governing board of any local mental health authority established under the
71 authority of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

72 (d) the governing board of any substance abuse authority established under the
73 authority of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

74 (e) the governing board of any area agency established under the authority of Title
75 62A, Chapter 3, Aging and Adult Services;

76 (f) the governing board of any nonprofit corporation that receives:

77 (i) at least 50% of its funds from federal, state, and local government entities through
78 contracts; or

79 (ii) an amount from federal, state, and local government entities that is equal to or
80 exceeds the amount specified in Subsection 51-2a-201(1) that would require an audit to be
81 made;

82 (g) the governing board of any other entity established by a local governmental unit
83 that receives tax exempt status for bonding or taxing purposes; and

84 (h) in municipalities organized under an optional form of municipal government, the
85 municipal legislative body.

86 (7) "Review" means performing inquiry and analytical procedures that provide the
87 accountant with a reasonable basis for expressing limited assurance that there are no material
88 modifications that should be made to the financial statements for them to be in conformity with
89 generally accepted accounting principles.

90 (8) (a) "State entity" means a department, commission, board, council, agency,
91 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
92 unit, bureau, panel, or other administrative unit of the state.

93 (b) "State entity" includes an independent state agency or a public corporation.

94 Section 2. Section **51-2a-204** is enacted to read:

95 **51-2a-204. Contracts with nonprofit corporations -- Reporting to the state**
96 **auditor.**

97 (1) A state entity that grants money to a nonprofit corporation shall enter into a written
98 agreement with the nonprofit corporation that requires the nonprofit corporation to:

99 (a) disclose whether:

100 (i) it met or exceeded the requirements listed in Subsection [51-2a-201\(6\)\(f\)](#) in the
101 previous fiscal year of the nonprofit corporation; and

102 (ii) it anticipates meeting or exceeding the requirements listed in Subsection
103 [51-2a-201\(6\)\(f\)](#) in the fiscal year the grant is issued;

104 (b) if an annual report is required by this chapter, require the chief executive officer
105 and chief financial officer at the nonprofit corporation to include with the annual financial
106 report a statement under penalty of perjury that the chief executive officer and chief financial
107 officer certify that the annual financial report fairly presents in all material respects the
108 financial condition and results of operations of the nonprofit corporation; and

109 (c) comply with the requirements of Title 63J, Chapter 9, Nonprofit Entity Receipt of
110 State Money Act.

111 (2) If the nonprofit corporation discloses to the state entity that it meets or exceeds the
112 requirements listed in Subsection [51-2a-204\(6\)\(f\)](#) as described in Subsection (1), the state
113 entity shall notify the state auditor.

114 Section 3. Section **63J-9-101** is enacted to read:

115 **CHAPTER 9. NONPROFIT ENTITY RECEIPT OF STATE MONEY ACT**

116 **Part 1. General Provisions**

117 **63J-9-101. Title.**

118 This chapter is known as the "Nonprofit Entity Receipt of State Money Act."

119 Section 4. Section **63J-9-102** is enacted to read:

120 **63J-9-102. Definitions.**

121 As used in this chapter:

122 (1) "Bylaws" means the one or more codes of rules, other than the articles of
123 incorporation, adopted for the regulation or management of the affairs of a nonprofit entity
124 irrespective of the one or more names by which the codes of rules are designated.

125 (2) "Nonprofit entity" means an entity that:

126 (a) is operated primarily for a scientific purpose, educational purpose, religious
127 purpose, charitable purpose, or similar purpose in the public interest;

128 (b) is not organized primarily for profit; and

129 (c) no part of the net earnings of which inures to the benefit of any private shareholder
130 or individual holding an interest in the entity.

131 (3) (a) "State entity" means a department, commission, board, council, agency,
132 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
133 unit, bureau, panel, or other administrative unit of the state.

134 (b) "State entity" includes an independent state agency or a public corporation.

135 (4) (a) "State money" means money that is owned, held, or administered by a state
136 entity immediately before being received by a nonprofit entity, regardless of the source of the
137 money.

138 (b) "State money" does not include money held by the Utah State Retirement Board or
139 the Workers' Compensation Fund.

140 Section 5. Section **63J-9-201** is enacted to read:

141 **Part 2. Provision of State Money**

142 **63J-9-201. Conditions for providing state money to a nonprofit entity.**

143 A state entity may not provide a nonprofit entity state money through a grant unless:

144 (1) the state entity enters into a written agreement with the nonprofit entity;

145 (2) the written agreement described in Subsection (1) requires the nonprofit entity to
146 provide the state entity an itemized report at least annually detailing the expenditure of the state
147 money; and

148 (3) at the time of receipt of the state money the nonprofit entity has:

149 (a) bylaws that provide for:

150 (i) the financial oversight of the state money; and

151 (ii) compliance with state laws related to the state money;

152 (b) procedures for the governing board of the nonprofit entity to designate an
153 administrator who manages the state money; and
154 (c) procedures for the governing board to dismiss the administrator described by
155 Subsection (3)(b).

156 Section 6. Section **63J-9-202** is enacted to read:

157 **63J-9-202. Nonprofit entity's return of state money.**

158 The state entity that provides a nonprofit entity state money in accordance with Section
159 63J-9-201 may require the nonprofit entity to return the state money to the state entity if the
160 nonprofit entity fails to comply with the written agreement, bylaws, and procedures required by
161 Section 63J-9-201 during the time period that the nonprofit entity holds or expends the state
162 money.

Legislative Review Note
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Office of Legislative Research and General Counsel