

Representative Ronda Rudd Menlove proposes the following substitute bill:

NONPROFIT ENTITY RECEIPT OF GOVERNMENT MONEY

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: Luz Robles

LONG TITLE

General Description:

This bill addresses nonprofit entity receipt of state money.

Highlighted Provisions:

This bill:

- ▶ addresses audits of nonprofit entities;
- ▶ requires written agreements for grants to nonprofit entities;
- ▶ enacts the Nonprofit Entity Receipt of State Money Act, including:
 - defining terms;
 - imposing requirements on a nonprofit entity's receipt of state money;
 - requiring reporting to the Utah Public Finance website; and
 - authorizing a state entity to seek return of state money if the nonprofit entity fails to comply with the requirements; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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 **63J-9-203**, Utah Code Annotated 1953

35

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

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

38 **51-2a-102. Definitions.**

39 As used in this chapter:

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

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

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

45 (b) is performed in accordance with generally accepted government auditing standards,
46 or for nonprofit corporations described in Subsection (6)(f) in accordance with generally
47 accepted accounting principles and the Unified Chart of Accounts; and

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

51 (3) "Audit report" means:

52 (a) the financial statements presented in conformity with generally accepted accounting
53 principles;

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

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

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

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

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

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

68 (6) "Governing board" means:

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

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

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

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

76 (e) the governing board of any area agency established under the authority of Title
77 62A, Chapter 3, Aging and Adult Services;

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

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

81 (ii) an amount from state entities that is equal to or exceeds the amount specified in
82 Subsection 51-2a-201(1) that would require an audit to be made by a competent certified public
83 accountant;

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

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

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

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

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

96 **51-2a-204. Grants to nonprofit corporations -- Reporting to the state 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-102(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-102(6)(f) in the fiscal year the grant is issued; and

104 (b) comply with the requirements of Title 63J, Chapter 9, Nonprofit Entity Receipt of
105 State Money Act.

106 (2) If the nonprofit corporation discloses to the state entity that it meets or exceeds the
107 requirements listed in Subsection 51-2a-102(6)(f) as described in Subsection (1), the state
108 entity shall notify the state auditor.

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

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

111 **Part 1. General Provisions**

112 **63J-9-101. Title.**

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

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

115 **63J-9-102. Definitions.**

116 As used in this chapter:

117 (1) "Bylaws" means the one or more codes of rules, other than the articles of
118 incorporation, adopted for the regulation or management of the affairs of a nonprofit entity

119 irrespective of the one or more names by which the codes of rules are designated.

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

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

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

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

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

129 (4) "State money" means money that is owned, held, or administered by a state entity
130 and derived from state fee or tax revenues.

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

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

133 **63J-9-201. Conditions for providing state grant money to a nonprofit entity.**

134 A state entity may not provide a nonprofit entity state money through a grant, including
135 a pass through funding grant, unless:

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

137 (2) the written agreement described in Subsection (1) requires the nonprofit entity to
138 provide the state entity an itemized report at least annually detailing the expenditure of the state
139 money;

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

141 (a) bylaws that provide for:

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

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

144 (b) procedures for the governing board of the nonprofit entity to designate an
145 administrator who manages the state money; and

146 (c) procedures for the governing board to dismiss the administrator described by
147 Subsection (3)(b);

148 (4) before the state money is released to the nonprofit entity, the nonprofit entity
149 submits to the state entity:

150 (a) a form signed by the board members that certifies that the board members:
151 (i) have read and understand the nonprofit entity's bylaws; and
152 (ii) have had explained to them the benefit of insurance covering the activities of the
153 board; and

154 (b) (i) a form signed by the chief executive officer, executive director, or board
155 president that certifies that the board understands basic board responsibilities, including:

- 156 (A) determining the mission of the nonprofit entity;
 - 157 (B) hiring and, if needed, dismissing the chief executive officer or executive director;
 - 158 (C) planning and evaluating;
 - 159 (D) recruiting and orienting new board members;
 - 160 (E) assessing board performance;
 - 161 (F) providing financial oversight;
 - 162 (G) ensuring integrity and accountability; or
 - 163 (H) ensuring adequate resources; or
- 164 (ii) a standard of ethics document adopted by the nonprofit entity.

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

166 **63J-9-202. Utah Public Finance Website reporting.**

167 In accordance with [63A-3-402](#), a state entity shall report on the Utah Public Finance
168 Website the state money provided to a nonprofit entity in accordance with this part.

169 Section 7. Section **63J-9-203** is enacted to read:

170 **63J-9-203. Nonprofit entity's return of state money.**

171 The state entity that provides a nonprofit entity state money in accordance with Section
172 [63J-9-201](#) may require the nonprofit entity to return to the state entity an amount of money that
173 is equal to the state money that is expended in violation of Section [63J-9-201](#) if the nonprofit
174 entity fails to comply with the written agreement, bylaws, and procedures required by Section
175 [63J-9-201](#) during the time period that the nonprofit entity holds or expends the state money.