

Senator Margaret Dayton proposes the following substitute bill:

NONPROFIT CORPORATION AMENDMENTS - WATER COMPANIES

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Michael E. Noel

LONG TITLE

General Description:

This bill modifies the Utah Revised Nonprofit Corporation Act to permit the transfer of water shares, in certain circumstances, and clarifies the rights of a shareholder in a water company.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ states that ownership of shares in a water company is transferrable, unless otherwise provided in the articles of incorporation or bylaws;
- ▶ authorizes a water company to purchase the shares of a shareholder who is delinquent in payment of shareholder assessments;
- ▶ states that a shareholder in a water company has an equitable, beneficial interest in the use of the water supply of the water company, proportionate to the shareholder's shares, which is a real property interest;
- ▶ clarifies the process for distribution to a shareholder of a water company; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **16-6a-102**, as last amended by Laws of Utah 2015, Chapter 240

31 **16-6a-606**, as enacted by Laws of Utah 2000, Chapter 300

32 **16-6a-610**, as last amended by Laws of Utah 2015, Chapter 240

33 **16-6a-611**, as last amended by Laws of Utah 2015, Chapter 240

34 **16-6a-1302**, as last amended by Laws of Utah 2015, Chapter 240

35

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

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

38 **16-6a-102. Definitions.**

39 As used in this chapter:

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

42 (b) "Address" includes:

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

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

49 (3) "Articles of incorporation" include:

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

55 (4) "Assumed corporate name" means a name assumed for use in this state:

56 (a) by a:

57 (i) foreign corporation pursuant to Section 16-10a-1506; or
58 (ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and
59 (b) because the corporate name of the foreign corporation described in Subsection
60 (4)(a) is not available for use in this state.

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

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

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

70 (b) "Bylaws" includes:

- 71 (i) amended bylaws; and
- 72 (ii) restated bylaws.

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

- 74 (i) legal tender;
- 75 (ii) a negotiable instrument; or
- 76 (iii) other cash equivalent readily convertible into legal tender.

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

78 (8) (a) "Class" means a group of memberships that has the same right with respect to
79 voting, dissolution, redemption, transfer, or other characteristics.

80 (b) For purposes of Subsection (8)(a), a right is considered the same if it is determined
81 by a formula applied uniformly to a group of memberships.

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

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

- 85 (i) italics;
- 86 (ii) boldface;
- 87 (iii) contrasting color;

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

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

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

122 (i) members;

123 (ii) directors; or

124 (iii) officers.

125 (b) "Distribution" does not include a fair-value payment for:

126 (i) a good sold; or

127 (ii) a service received.

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

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

131 (20) "Effective date of notice" means the date notice is effective as provided in Section
132 16-6a-103.

133 (21) "Electronic transmission" or "electronically transmitted" means a process of
134 communication not directly involving the physical transfer of paper that is suitable for the
135 receipt, retention, retrieval, and reproduction of information by the recipient, whether by email,
136 texting, facsimile, or otherwise.

137 (22) (a) "Employee" includes an officer of a nonprofit corporation.

138 (b) (i) Except as provided in Subsection (22)(b)(ii), "employee" does not include a
139 director of a nonprofit corporation.

140 (ii) Notwithstanding Subsection (22)(b)(i), a director may accept one or more duties
141 that make that director an employee of a nonprofit corporation.

142 [~~(24)~~] (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 [~~(23)~~] (24) "Executive director" means the executive director of the Department of
- 156 Commerce.
- 157 (25) "Foreign corporation" means a corporation for profit incorporated under a law
- 158 other than the laws of this state.
- 159 (26) "Foreign nonprofit corporation" means an entity:
- 160 (a) incorporated under a law other than the laws of this state; and
- 161 (b) that would be a nonprofit corporation if formed under the laws of this state.
- 162 (27) "Governmental entity" means:
- 163 (a) (i) the executive branch of the state;
- 164 (ii) the judicial branch of the state;
- 165 (iii) the legislative branch of the state;
- 166 (iv) an independent entity, as defined in Section [63E-1-102](#);
- 167 (v) a political subdivision of the state;
- 168 (vi) a state institution of higher education, as defined in Section [53B-3-102](#);
- 169 (vii) an entity within the state system of public education; or
- 170 (viii) the National Guard; or
- 171 (b) any of the following that is established or controlled by a governmental entity listed
- 172 in Subsection (27)(a) to carry out the public's business:
- 173 (i) an office;
- 174 (ii) a division;
- 175 (iii) an agency;
- 176 (iv) a board;
- 177 (v) a bureau;
- 178 (vi) a committee;
- 179 (vii) a department;
- 180 (viii) an advisory board;

- 181 (ix) an administrative unit; or
182 (x) a commission.
183 (28) "Governmental subdivision" means:
184 (a) a county;
185 (b) a city;
186 (c) a town; or
187 (d) another type of governmental subdivision authorized by the laws of this state.
188 (29) "Individual" means:
189 (a) a natural person;
190 (b) the estate of an incompetent individual; or
191 (c) the estate of a deceased individual.
192 (30) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as
193 amended from time to time, or to corresponding provisions of subsequent internal revenue laws
194 of the United States of America.
195 (31) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the
196 United States mail, properly addressed, first-class postage prepaid.
197 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the
198 proper fee is paid.
199 (32) (a) "Member" means one or more persons identified or otherwise appointed as a
200 member of a domestic or foreign nonprofit corporation as provided:
201 (i) in the articles of incorporation;
202 (ii) in the bylaws;
203 (iii) by a resolution of the board of directors; or
204 (iv) by a resolution of the members of the nonprofit corporation.
205 (b) "Member" includes:
206 (i) "voting member[.]" and
207 (ii) a shareholder in a water company.
208 (33) "Membership" refers to the rights and obligations of a member or members.
209 (34) "Mutual benefit corporation" means a nonprofit corporation:
210 (a) that issues shares of stock to its members evidencing a right to receive distribution
211 of water or otherwise representing property rights; or

212 (b) all of whose assets are contributed or acquired by or for the members of the
213 nonprofit corporation or their predecessors in interest to serve the mutual purposes of the
214 members.

215 (35) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity that:

216 (a) is not a foreign nonprofit corporation; and

217 (b) is incorporated under or subject to this chapter.

218 (36) "Notice" means the same as that term is defined in Section [16-6a-103](#).

219 (37) "Party related to a director" means:

220 (a) the spouse of the director;

221 (b) a child of the director;

222 (c) a grandchild of the director;

223 (d) a sibling of the director;

224 (e) a parent of the director;

225 (f) the spouse of an individual described in Subsections (37)(b) through (e);

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

227 (h) a trust or estate of which the director or another individual specified in this

228 Subsection (37) is a substantial beneficiary; or

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

230 (i) a trust;

231 (ii) an estate;

232 (iii) an incompetent;

233 (iv) a conservatee; or

234 (v) a minor.

235 (38) "Person" means an:

236 (a) individual; or

237 (b) entity.

238 (39) "Principal office" means:

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

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

241 providing that information, including:

242 (i) an annual report;

- 243 (ii) an application for a certificate of authority; or
244 (iii) a notice of change of principal office; or
245 (b) if no principal office can be determined, a domestic or foreign nonprofit
246 corporation's registered office.
- 247 (40) "Proceeding" includes:
248 (a) a civil suit;
249 (b) arbitration;
250 (c) mediation;
251 (d) a criminal action;
252 (e) an administrative action; or
253 (f) an investigatory action.
- 254 (41) "Receive," when used in reference to receipt of a writing or other document by a
255 domestic or foreign nonprofit corporation, means the writing or other document is actually
256 received:
257 (a) by the domestic or foreign nonprofit corporation at:
258 (i) its registered office in this state; or
259 (ii) its principal office;
260 (b) by the secretary of the domestic or foreign nonprofit corporation, wherever the
261 secretary is found; or
262 (c) by another person authorized by the bylaws or the board of directors to receive the
263 writing or other document, wherever that person is found.
- 264 (42) (a) "Record date" means the date established under Part 6, Members, or Part 7,
265 Member Meetings and Voting, on which a nonprofit corporation determines the identity of the
266 nonprofit corporation's members.
267 (b) The determination described in Subsection (42)(a) shall be made as of the close of
268 business on the record date unless another time for doing so is specified when the record date is
269 fixed.
- 270 (43) "Registered agent" means the registered agent of:
271 (a) a domestic nonprofit corporation; or
272 (b) a foreign nonprofit corporation.
- 273 (44) "Registered office" means the office within this state designated by a domestic or

274 foreign nonprofit corporation as its registered office in the most recent document on file with
275 the division providing that information, including:

- 276 (a) articles of incorporation;
- 277 (b) an application for a certificate of authority; or
- 278 (c) a notice of change of registered office.

279 (45) "Secretary" means the corporate officer to whom the bylaws or the board of
280 directors delegates responsibility under Subsection 16-6a-818(3) for:

- 281 (a) the preparation and maintenance of:
 - 282 (i) minutes of the meetings of:
 - 283 (A) the board of directors; or
 - 284 (B) the members; and
 - 285 (ii) the other records and information required to be kept by the nonprofit corporation
286 pursuant to Section 16-6a-1601; and
- 287 (b) authenticating records of the nonprofit corporation.

288 (46) "Share" means a unit of interest in a nonprofit corporation.

289 (47) "Shareholder" means a person in whose name a share is registered in the records
290 of a nonprofit corporation.

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

- 292 (a) a state;
- 293 (b) a commonwealth;
- 294 (c) the District of Columbia;
- 295 (d) an agency or governmental and political subdivision of a state, commonwealth, or
296 District of Columbia;
- 297 (e) territory or insular possession of the United States; or
- 298 (f) an agency or governmental and political subdivision of a territory or insular
299 possession of the United States.

300 (49) "Street address" means:

- 301 (a) (i) street name and number;
- 302 (ii) city or town; and
- 303 (iii) United States post office zip code designation; or
- 304 (b) if, by reason of rural location or otherwise, a street name, number, city, or town

305 does not exist, an appropriate description other than that described in Subsection (49)(a) fixing
306 as nearly as possible the actual physical location, but only if the information includes:

- 307 (i) the rural free delivery route;
- 308 (ii) the county; and
- 309 (iii) the United States post office zip code designation.

310 [~~(51)~~] (50) "Tribal nonprofit corporation" means a nonprofit corporation:

- 311 (a) incorporated under the law of a tribe; and
- 312 (b) that is at least 51% owned or controlled by the tribe.

313 [~~(50)~~] (51) "Tribe" means a tribe, band, nation, pueblo, or other organized group or
314 community of Indians, including an Alaska Native village, that is legally recognized as eligible
315 for and is consistent with a special program, service, or entitlement provided by the United
316 States to Indians because of their status as Indians.

317 (52) "United States" includes a district, authority, office, bureau, commission,
318 department, and another agency of the United States of America.

319 (53) "Vote" includes authorization by:

- 320 (a) written ballot; and
- 321 (b) written consent.

322 (54) (a) "Voting group" means all the members of one or more classes of members or
323 directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to
324 vote and be counted together collectively on a matter.

325 (b) All members or directors entitled by this chapter, the articles of incorporation, or
326 the bylaws to vote generally on a matter are for that purpose a single voting group.

327 (55) (a) "Voting member" means a person entitled to vote for all matters required or
328 permitted under this chapter to be submitted to a vote of the members, except as otherwise
329 provided in the articles of incorporation or bylaws.

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

- 331 (i) a right the person has as a delegate;
- 332 (ii) a right the person has to designate a director; or
- 333 (iii) a right the person has as a director.

334 (c) Except as the bylaws may otherwise provide, "voting member" includes a
335 "shareholder" if the nonprofit corporation has shareholders.

336 (56) "Water company" means:

337 (a) the same as that term is defined in Subsection 16-4-102(5); or

338 (b) a mutual benefit corporation, when the stock in the mutual benefit corporation
339 represents a right to receive a distribution of water for beneficial use.

340 Section 2. Section **16-6a-606** is amended to read:

341 **16-6a-606. Transfers.**

342 (1) [~~Unless~~] Except as provided in Subsection (3), and unless otherwise provided [by]
343 in the articles of incorporation or the bylaws, a member of a nonprofit corporation may not
344 transfer:

345 (a) a membership; or

346 (b) any right arising from a membership.

347 (2) [~~Where~~] Except as provided in Subsection (3), where transfer rights have been
348 provided in the articles of incorporation or the bylaws of a nonprofit corporation, a restriction
349 on transfer rights may not be binding with respect to a member holding a membership issued
350 [~~prior to~~] before the adoption of the restriction, unless the restriction is approved by the
351 affected member.

352 (3) (a) For a water company, unless otherwise provided by the articles of incorporation
353 or bylaws, ownership of shares is transferrable.

354 (b) Any restriction on the transfer of ownership under Subsection (3)(a):

355 (i) shall be reasonable;

356 (ii) shall be adopted in good faith and for a legitimate purpose;

357 (iii) shall be adopted in the best interest of the water company and its shareholders; and

358 (iv) may not discriminate against any individual shareholder or class of shareholders,

359 but in a company where there are classes or divisions of stock, restrictions may differ between
360 the classes or divisions.

361 (c) Nothing in this section is intended to alter any right or remedy a shareholder may
362 have under Sections 16-6a-612, 16-6a-808, 16-6a-809, 16-6a-822, 16-6a-824, and 16-6a-825,
363 or any other applicable law.

364 Section 3. Section **16-6a-610** is amended to read:

365 **16-6a-610. Purchase of memberships.**

366 (1) Unless otherwise provided [by] in the articles of incorporation or the bylaws, a

367 nonprofit corporation may not purchase the membership of a member:

368 (a) who resigns; or

369 (b) whose membership is terminated.

370 (2) (a) If so authorized, a nonprofit corporation may purchase the membership of a
371 member who resigns or whose membership is terminated for the amount and pursuant to the
372 conditions set forth in or authorized by:

373 (i) its articles of incorporation or its bylaws; or

374 (ii) agreement with the affected member.

375 (b) A payment permitted under Subsection (2)(a) may not violate:

376 (i) Section [16-6a-1301](#); or

377 (ii) any other provision of this chapter.

378 (3) A mutual benefit corporation may purchase a member's membership if, after the
379 purchase is completed:

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

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

384 (4) A water company may purchase the shares of a shareholder who is delinquent in
385 payment of shareholder assessments, in accordance with Chapter 4, Share Assessment Act.

386 Section 4. Section **16-6a-611** is amended to read:

387 **16-6a-611. Property rights.**

388 (1) A member [~~does not have any vested property right including any~~] has no right
389 relating to management, control, purpose, or duration of the nonprofit corporation, except as
390 provided by:

391 [(+)] (a) the articles of incorporation or the bylaws of a mutual benefit corporation; or

392 [(2)] (b) other applicable law.

393 (2) Unless otherwise provided by agreement, articles of incorporation, or the bylaws of
394 a water company, and subject to the general liabilities and obligations of the water company, a
395 shareholder in a water company has:

396 (a) an equitable, beneficial interest in the use of the water supply of the water company,
397 proportionate to the shareholder's shares in the water company, which is an interest in real

398 property; and

399 (b) the right to have the shareholder's proportionate share of the water delivered
400 through a diversion structure, ditch, canal, storage and distribution facility, or other
401 appurtenance of the water company, in accordance with:

402 (i) the distribution method of the water company; or

403 (ii) an approved change application under Section [73-3-3.5](#).

404 Section 5. Section **16-6a-1302** is amended to read:

405 **16-6a-1302. Authorized distributions.**

406 (1) A nonprofit corporation may:

407 (a) make distributions or distribute the nonprofit corporation's assets to a [member]:

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

409 (ii) member of a mutual benefit corporation, not inconsistent with its bylaws; [~~or~~]

410 (iii) shareholder of a water company in a manner consistent with its articles of

411 incorporation, bylaws, and the provisions of this chapter; or

412 [~~(iii) that is a]~~

413 (iv) governmental entity;

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

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

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

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

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

421 (b) to its members if it is a mutual benefit corporation;

422 (c) to a shareholder of a water company in proportion to the shareholder's interest in
423 the water company, consistent with the water company's articles of incorporation and bylaws;

424 [~~(c)~~] (d) to another nonprofit corporation, including a nonprofit corporation organized
425 to receive the assets of and function in place of the dissolved nonprofit corporation; and

426 [~~(d)~~] (e) otherwise in conformity with Part 14, Dissolution.

427 (3) Authorized distributions by a dissolved nonprofit corporation may be made by
428 authorized officers or directors, including those elected, hired, or otherwise selected after

429 dissolution if the election, hiring, or other selection after dissolution is not inconsistent with the
430 articles of incorporation and bylaws existing at the time of dissolution.