

# Governmental Nonprofits

Political Subdivisions Interim Committee – July 2018



# June Interim Meeting

- Discussed audit report on governmental nonprofits.
- Opened two bill files to address:
  - the ability of governmental nonprofits to close an open meeting;
  - the definition of governmental nonprofit and clarify “financial support” and “government control”; and
  - governmental nonprofit compliance with best practices for financial controls and board governance.

# Governmental Nonprofit Meetings



**Problem:** a governmental nonprofit may not close an open meeting to discuss trade secrets and business strategies.

**Potential solution:** allow governmental nonprofits to close an open meeting to discuss a record that is private, protected, or controlled under the Government Records Access Management Act (GRAMA).

# Definition of Governmental Nonprofit



Currently defined in two ways:

1. Nonprofits *wholly controlled* by one or more government entities (meaning one or more government entities represents a majority of the board's voting power) AND receiving any *financial support* from the government.
2. Nonprofits where the government entity exercises a *controlling interest* AND the nonprofit exercises taxing authority, imposes a mandatory fee where participation is mandatory, or receives a majority of its operating funding from the government, not including voluntary fees, dues, or assessments.

# Definition of Government Nonprofit

## Problem:

- It is unclear what “financial support” means and whether some form of financial support falls within the statute when it is offset by the nonprofit.
- It is unclear whether a nonprofit board, filled entirely by government officials by virtue of their government position, constitutes “government control” when they were not placed on the board by their respective government entities.

# Financial Support

## Policy questions:

- Should the “financial support” element of the definition be removed?
- Should “financial support” be further defined to include other contributions that have monetary value?
- Is the ambiguity acceptable and no change is necessary?

# Government Control

## Policy questions:

- Should a nonprofit board comprised of government officials constitute government control, regardless of how those officials obtained their board position?
- Is clarification necessary to state that a nonprofit is only considered “governmental” when a government entity places its officials on the board?
- Is the ambiguity acceptable and no change is necessary?

# Best practices

**Problem:** the audit revealed weak adherence to best practices for financial control and board governance.

**Potential solution:** require government entities to require their affiliated nonprofits, via contract or other mechanism, to adhere to best practices as a condition of the nonprofit's affiliation.