

1 **WATER COMPANIES AND ASSOCIATIONS -**
2 **ASSESSMENT AND VOTING RIGHTS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Mike Dmitrich**

6 AN ACT RELATING TO CORPORATIONS; DEFINING TERMS; AMENDING
7 ASSESSMENT PROVISIONS FOR CERTAIN COMPANIES AND ASSOCIATIONS;
8 ADDRESSING VOTING RIGHTS; AND MAKING TECHNICAL CHANGES.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **16-4-7**, as last amended by Chapter 29, Laws of Utah 1961

12 **16-4-24**, Utah Code Annotated 1953

13 **16-6-19**, as last amended by Chapter 108, Laws of Utah 1990

14 **16-6-30**, as enacted by Chapter 17, Laws of Utah 1963

15 **31A-5-101**, as last amended by Chapter 6, Laws of Utah 1992, Third Special Session

16 **31A-9-101**, as last amended by Chapter 108, Laws of Utah 1990

17 ENACTS:

18 **16-4-1.5**, Utah Code Annotated 1953

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

20 Section 1. Section **16-4-1.5** is enacted to read:

21 **16-4-1.5. Definitions.**

22 For purposes of this chapter:

23 (1) "Articles of incorporation" is as defined in Section 16-6-19.

24 (2) "Bylaws" is as defined in Section 16-6-19.

25 Section 2. Section **16-4-7** is amended to read:

26 **16-4-7. Equal assessments required.**

27 ~~[In the case of full-paid stock,]~~ Except as provided in Section 16-4-24, all fully-paid stock

28 subject to assessment [~~must~~] shall be assessed equally.

29 Section 3. Section **16-4-24** is amended to read:

30 **16-4-24. Certain water companies and associations -- Assessments -- Other than pro**
31 **rata basis.**

32 [~~Any~~] (1) If the conditions of Subsection (2) are met, an irrigation company, canal
33 company, ditch company, reservoir company, or water users' association [hereafter] organized
34 under the laws of this state [shall have the power to] may make assessments against its shares of
35 stock on other than a pro rata basis;

36 (a) for the purpose of raising funds to accomplish the [purpose or] one or more purposes
37 for which the company or association is organized; or

38 (b) to pay [its] the company's or association's debts or obligations [when].

39 (2) A company or association described in Subsection (1) may make assessments against
40 its shares of stock on other than a pro rata basis if:

41 (a) at the time of the assessments, the articles of incorporation [so] permit[-] assessments
42 on other than a pro rata basis;

43 (b) [~~The provisions of this section shall also apply to any irrigation company, canal~~
44 ~~company, ditch company, reservoir company or water users' association heretofore organized the~~
45 ~~articles of incorporation of which now expressly so permit assessments to be made on other than~~
46 ~~a pro rata basis or to any irrigation company, canal company, ditch company, reservoir company,~~
47 ~~or water users' association heretofore or hereafter organized when] the company or association is
48 required to make assessments on other than a pro rata basis under [existing or future] a contract
49 [or contracts] between;~~

50 (i) (A) the United States; and [~~any such~~]

51 (B) the company or [water users'] association [or between];

52 (ii) (A) the United States; and

53 (B) the stockholders of [any such] the company or [water users'] association; or [~~between~~
54 ~~any such~~]

55 (iii) (A) the company or [water users'] association; and [~~its~~]

56 (B) the stockholders [or when] of the company or association;

57 (c) required by [any] a contract of subscription for shares of stock to [any such] the

58 company or [water users'] association [so] contracting with the United States; or [~~under present~~

59 or future]

60 (d) required by the laws or regulations of the United States.

61 Section 4. Section **16-6-19** is amended to read:

62 **16-6-19. Definitions.**

63 As used in this chapter:

64 (1) "Articles of incorporation" means the original articles of incorporation and all
65 amendments to them, including any articles of merger.

66 (2) "Bylaws" means the rules adopted for the regulation or management of the affairs of
67 the corporation irrespective of the names by which the rules are designated.

68 (3) "Cooperative association" means a corporation organized or existing under this chapter
69 subject to Section 16-6-108.

70 (4) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the
71 provisions of this chapter, except a foreign corporation.

72 (5) "Division" means the Division of Corporations and Commercial Code.

73 (6) "Filed" means the division has received and approved as to form a document submitted
74 under the provisions of this chapter, and has marked on the face of the document a stamp or seal
75 indicating the time of day and date of approval, the name of the division, the division director's
76 signature and division seal, or facsimiles of the signature or seal.

77 (7) "Foreign corporation" means a nonprofit corporation organized under the laws of a
78 state, territory, or country other than Utah.

79 (8) "Governing board" means the group of persons vested with the management of the
80 affairs of the corporation irrespective of the name by which the group is designated.

81 (9) "Insolvent" means inability of a corporation to pay its debts as they become due in the
82 usual course of its affairs.

83 (10) "Member" means one having membership rights in a corporation in accordance with
84 its articles of incorporation or bylaws.

85 (11) "Nonprofit corporation" means a corporation which does not distribute any part of its
86 income to its members, trustees, or officers, and includes a nonprofit cooperative association.

87 (12) "State agency" means any of the following of the state:

88 (a) a department;

89 (b) a commission;

- 90 (c) a board;
- 91 (d) a council;
- 92 (e) an agency;
- 93 (f) an institution;
- 94 (g) an officer;
- 95 (h) a corporation;
- 96 (i) a fund;
- 97 (j) a division;
- 98 (k) an office;
- 99 (l) a committee;
- 100 (m) an authority;
- 101 (n) a laboratory;
- 102 (o) a library;
- 103 (p) a unit;
- 104 (q) a bureau;
- 105 (r) a panel; or
- 106 (s) an administrative unit.

107 [(12)] (13) "Trustee" means one of the group of persons on the governing board
 108 irrespective of the name by which the person is designated.

109 Section 5. Section **16-6-30** is amended to read:

110 **16-6-30. Voting -- Rights of members.**

111 (1) (a) The right of the members, or any class or classes of members, to vote may be
 112 limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws.

113 (b) Unless [sø] limited, enlarged, or denied in accordance with Subsection (1)(a), each
 114 member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of
 115 members.

116 (c) Notwithstanding Subsection (1)(a) or (b), if a state agency is a member of a nonprofit
 117 corporation that has as one of its primary purposes the delivery of water to its members, the state
 118 agency shall have no voting rights unless the articles of incorporation or the bylaws of the
 119 nonprofit corporation specifically provide that the state agency has voting rights.

120 (2) (a) A member may vote;

121 (i) in person; or[;]
122 (ii) unless the articles of incorporation or the bylaws otherwise provide, [may vote] by
123 proxy executed in writing by the member or by [his] the member's duly authorized attorney in fact.
124 [Where]

125 (b) If trustees or officers are to be elected by members, the governing board by resolution
126 or the bylaws may provide that such elections may be conducted by mail.

127 Section 6. Section **31A-5-101** is amended to read:

128 **31A-5-101. Definitions.**

129 In this chapter, unless the context requires otherwise:

- 130 (1) The definitions applicable to the Utah Revised Business Corporation Act in
131 Subsections 16-10a-102(2), (22), and (23) apply to stock corporations.
132 (2) The definitions applicable to nonprofit corporations in Subsections 16-6-19(1), (2), (8),
133 (10), and [~~(12)~~] (13) apply to mutuals.
134 (3) "Promoter securities" are securities issued by a stock insurer to the incorporators,
135 directors, officers, or their families or nominees at any time prior to, and up to one year following,
136 the issuance of a certificate of authority to the stock insurer.

137 Section 7. Section **31A-9-101** is amended to read:

138 **31A-9-101. Definitions.**

- 139 (1) As used in this chapter:
140 (a) "Fraternal" or "fraternal benefit society" means a corporation organized or operating
141 under this chapter that:
142 (i) has no capital stock;
143 (ii) exists solely for:
144 (A) the benefit of its members and their beneficiaries; and
145 (B) any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,
146 patriotic, or religious purpose for the benefit of its members or the public, carried on through
147 voluntary activity of its members in their local lodges or through institutional programs of the
148 fraternal or its local lodges;
149 (iii) has a lodge system;
150 (iv) has a representative form of government; and
151 (v) provides insurance benefits authorized under this chapter.

152 (b) "Laws of a fraternal" include its articles of incorporation and bylaws, however
153 designated.

154 (c) "Lodge system" means one in which:

155 (i) there is a supreme governing body;

156 (ii) subordinate to the supreme governing body are local lodges, however designated, into
157 which natural persons are admitted as members in accordance with the laws of the fraternal;

158 (iii) the local lodges are required by the laws of the fraternal to hold regular meetings at
159 least monthly; and

160 (iv) the local lodges regularly engage in programs involving member participation to
161 implement the purposes of Subsection (1)(a)(ii).

162 (d) "Representative form of government" means the fraternal complies with Section
163 31A-9-403.

164 (2) In any provisions of law made applicable to fraternal by this chapter, the technical
165 terms used in those provisions are applicable to fraternal despite the use of other parallel terms
166 by fraternal.

167 (3) The definitions provided in Subsections 16-6-19 (1), (2), (8), (10), and [~~12~~] (13), and
168 Section 31A-1-301 apply to fraternal.

Legislative Review Note
as of 1-3-00 2:05 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel