

## HB0283S01 compared with HB0283

~~{deleted text}~~ shows text that was in HB0283 but was deleted in HB0283S01.

inserted text shows text that was not in HB0283 but was inserted into HB0283S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill addresses nonprofit entity receipt of state money.

##### Highlighted Provisions:

This bill:

- ▶ addresses ~~{state auditor oversight}~~ audits of nonprofit entities;
- ▶ requires written agreements for grants to nonprofit entities;
- ~~{requires certain actions related to annual financial reports of nonprofit corporations;~~
- ▶ 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

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fails to comply with the requirements; and

- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

ENACTS:

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

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

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

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

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

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

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

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

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

As used in this chapter:

- (1) "Accounting reports" means an audit, a review, a compilation, or a fiscal report.
- (2) "Audit" means an examination that:
  - (a) analyzes the accounts of all officers of the entity having responsibility for the care, management, collection, or disbursement of money belonging to it or appropriated by law or otherwise acquired for its use or benefit;
  - (b) is performed in accordance with generally accepted government auditing standards, or for nonprofit corporations described in Subsection (6)(f) in accordance with generally accepted accounting principles and the Unified Chart of Accounts; and
  - (c) conforms to the uniform classification of accounts established or approved by the state auditor or any other classification of accounts established by any federal government

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agency.

(3) "Audit report" means:

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

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

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

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

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

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

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

(6) "Governing board" means:

(a) the governing board of each political subdivision;

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

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

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

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

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

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

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(ii) an amount from ~~{federal,} state, and local government} entities that is equal to or exceeds the amount specified in Subsection 51-2a-201(1) that would require an audit to be made **by a competent certified public accountant;**~~

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

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

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

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

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

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

**51-2a-204. ~~{ Contracts with} Grants to~~ nonprofit corporations -- Reporting to the state auditor.**

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

(a) disclose whether:

(i) it met or exceeded the requirements listed in Subsection ~~{51-2a-201}~~ **51-2a-102**(6)(f) in the previous fiscal year of the nonprofit corporation; and

(ii) it anticipates meeting or exceeding the requirements listed in Subsection ~~{51-2a-201}~~ **51-2a-102**(6)(f) in the fiscal year the grant is issued;

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

~~{(c)}~~ **b** comply with the requirements of Title 63J, Chapter 9, Nonprofit Entity Receipt

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of State Money Act.

(2) If the nonprofit corporation discloses to the state entity that it meets or exceeds the requirements listed in Subsection ~~51-2a-204~~ 51-2a-102(6)(f) as described in Subsection (1), the state entity shall notify the state auditor.

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

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

#### **Part 1. General Provisions**

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

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

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

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

As used in this chapter:

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

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

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

(b) is not organized primarily for profit; and

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

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

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

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

~~— (b) "State money" does not include money held by the Utah State Retirement Board or the Workers' Compensation Fund~~ and derived from state fee or tax revenues.

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

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## Part 2. Provision of State Money

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

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

(1) the state entity enters into a written agreement with the nonprofit entity;  
(2) the written agreement described in Subsection (1) requires the nonprofit entity to provide the state entity an itemized report at least annually detailing the expenditure of the state money; ~~and~~

(3) at the time of receipt of the state money the nonprofit entity has:  
(a) bylaws that provide for:  
(i) the financial oversight of the state money; and  
(ii) compliance with state laws related to the state money;  
(b) procedures for the governing board of the nonprofit entity to designate an administrator who manages the state money; and  
(c) procedures for the governing board to dismiss the administrator described by Subsection (3)(b);

~~;~~

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

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

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

- (A) determining the mission of the nonprofit entity;
- (B) hiring and, if needed, dismissing the chief executive officer or executive director;
- (C) planning and evaluating;
- (D) recruiting and orienting new board members;
- (E) assessing board performance;
- (F) providing financial oversight;

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(G) ensuring integrity and accountability; or

(H) ensuring adequate resources; or

(ii) a standard of ethics document adopted by the nonprofit entity.

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

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

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

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

~~{63J-9-202}~~ **63J-9-203. Nonprofit entity's return of state money.**

The state entity that provides a nonprofit entity state money in accordance with Section 63J-9-201 may require the nonprofit entity to return ~~{the state money}~~ to the state entity an amount of money that is equal to the state money that is expended in violation of Section 63J-9-201 if the nonprofit entity fails to comply with the written agreement, bylaws, and procedures required by Section 63J-9-201 during the time period that the nonprofit entity holds or expends the state money.

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**Legislative Review Note**

~~as of 1-22-14 12:15 PM~~

~~Office of Legislative Research and General Counsel}~~