

Senator Curtis S. Bramble proposes the following substitute bill:

FISCAL REQUIREMENTS FOR LOCAL GOVERNMENTS AND

NONPROFITS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to fiscal requirements for local governments and nonprofits.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ repeals a requirement of writing for grants to nonprofit entities;
- ▶ requires different levels of review for certain nonprofit corporations' financial information;
- ▶ requires reporting under certain circumstances;
- ▶ repeals requirements related to nonprofit entities receipt of state money by way of a grant, including a state agency's ability to seek return of state money if the nonprofit entity did not comply with certain requirements;
- ▶ provides exceptions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **51-2a-102**, as last amended by Laws of Utah 2014, Chapter 341

31 **51-2a-301**, as last amended by Laws of Utah 2008, Chapter 382

32 **53A-1a-511**, as last amended by Laws of Utah 2012, Chapter 347

33 ENACTS:

34 **51-2a-201.5**, Utah Code Annotated 1953

35 REPEALS:

36 **51-2a-204**, as enacted by Laws of Utah 2014, Chapter 341

37 **63J-9-101**, as enacted by Laws of Utah 2014, Chapter 341

38 **63J-9-102**, as enacted by Laws of Utah 2014, Chapter 341

39 **63J-9-201**, as enacted by Laws of Utah 2014, Chapter 341

40 **63J-9-202**, as enacted by Laws of Utah 2014, Chapter 341



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

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

44 **51-2a-102. Definitions.**

45 As used in this chapter:

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

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

48 [~~(a) analyzes the accounts of all officers of the entity having responsibility for the care;~~
49 ~~management, collection, or disbursement of money belonging to it or appropriated by law or~~
50 ~~otherwise acquired for its use or benefit;]~~

51 [(~~b~~)] (a) is performed in accordance with generally accepted government auditing
52 standards, or for nonprofit corporations described in Subsection (6)(f), in accordance with
53 generally accepted auditing standards; and

54 [(~~e~~)] (b) conforms to the uniform classification of accounts established or approved by
55 the state auditor or any other classification of accounts established by any federal government
56 agency.

- 57 (3) "Audit report" means:
- 58 (a) the financial statements presented in conformity with generally accepted accounting
- 59 principles;
- 60 (b) the auditor's opinion on the financial statements;
- 61 (c) a statement by the auditor expressing positive assurance of compliance with state
- 62 fiscal laws identified by the state auditor;
- 63 (d) a copy of the auditor's letter to management that identifies any material weakness in
- 64 internal controls discovered by the auditor and other financial issues related to the expenditure
- 65 of funds received from federal, state, or local governments to be considered by management;
- 66 and
- 67 (e) management's response to the specific recommendations.
- 68 (4) "Compilation" means information presented in the form of financial statements
- 69 presented in conformity with generally accepted accounting principles that are the
- 70 representation of management without the accountant undertaking to express any assurances on
- 71 the statements.
- 72 (5) "Fiscal report" means providing information detailing revenues and expenditures of
- 73 all funds ~~[using forms provided]~~ in a format prescribed by the state auditor.
- 74 (6) "Governing board" means:
- 75 (a) the governing board of each political subdivision;
- 76 (b) the governing board of each interlocal organization having the power to tax or to
- 77 expend public funds;
- 78 (c) the governing board of any local mental health authority established under the
- 79 authority of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;
- 80 (d) the governing board of any substance abuse authority established under the
- 81 authority of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;
- 82 (e) the governing board of any area agency established under the authority of Title
- 83 62A, Chapter 3, Aging and Adult Services;
- 84 (f) the governing board of any nonprofit corporation that receives[:]
85 an amount of money requiring an accounting report under Section 51-2a-201.5;
- 86 ~~[(i) at least 50% of its funds from federal, state, and local government entities through~~
- 87 ~~contracts; or]~~

88 ~~[(ii) an amount from state entities that is equal to or exceeds the amount specified in~~
89 ~~Subsection 51-2a-201(1) that would require an audit to be made by a competent certified public~~
90 ~~accountant;]~~

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

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

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

99 ~~[(8) "State entity" means a department, commission, board, council, agency, institution,~~
100 ~~officer, corporation, fund, division, office, committee, authority, laboratory, library, unit,~~
101 ~~bureau, panel, or other administrative unit of the state;]~~

102 Section 2. Section **51-2a-201.5** is enacted to read:

103 **51-2a-201.5. Accounting reports required -- Reporting to state auditor.**

104 (1) As used in this section:

105 (a) (i) "Federal pass through money" means federal money received by a recipient
106 government to transfer or spend on behalf of a nonprofit corporation.

107 (ii) "Federal pass through money" does not include money used to buy goods or
108 services from a vendor.

109 (b) (i) "Local money" means money that is owned, held, or administered by a political
110 subdivision of the state that is derived from fee or tax revenues.

111 (ii) "Local money" does not include:

112 (A) money used to buy goods or services from a vendor; or

113 (B) contributions or donations received by the political subdivision.

114 (c) (i) "State money" means money that is owned, held, or administered by a state
115 agency and derived from state fee or tax revenues.

116 (ii) "State money" does not include:

117 (A) money used to buy goods or services from a vendor; or

118 (B) contributions or donations received by the state agency.

119 (2) (a) The governing board of a nonprofit corporation whose revenues or expenditures
120 of federal pass through money, state money, and local money is \$750,000 or more shall cause
121 an audit to be made of its accounts by an independent certified public accountant.

122 (b) The governing board of a nonprofit corporation whose revenues or expenditures of
123 federal pass through money, state money, and local money is at least \$350,000 but less than
124 \$750,000 shall cause a review to be made of its accounts by an independent certified public
125 accountant.

126 (c) The governing board of a nonprofit corporation whose revenues or expenditures of
127 federal pass through money, state money, and local money is at least \$100,000 but less than
128 \$350,000 shall cause a compilation to be made of its accounts by an independent certified
129 public accountant.

130 (d) The governing board of a nonprofit corporation whose revenues or expenditures of
131 federal pass through money, state money, and local money is less than \$100,000 but greater
132 than \$25,000 shall cause a fiscal report to be made in a format prescribed by the state auditor.

133 (3) A nonprofit corporation described in Subsection [51-2a-102](#)(6)(f) shall provide the
134 state auditor a copy of an accounting report prepared under this section within six months of
135 the end of the nonprofit corporation's fiscal year.

136 (4) (a) A state agency that disburses federal pass through money or state money to a
137 nonprofit corporation shall enter into a written agreement with the nonprofit corporation that
138 requires the nonprofit corporation to annually disclose whether:

139 (i) the nonprofit corporation met or exceeded the dollar amounts listed in Subsection
140 (2) in the previous fiscal year of the nonprofit corporation; or

141 (ii) the nonprofit corporation anticipates meeting or exceeding the dollar amounts listed
142 in Subsection (2) in the fiscal year the money is disbursed.

143 (b) If the nonprofit corporation discloses to the state agency that the nonprofit
144 corporation meets or exceeds the dollar amounts as described in Subsection (4)(a), the state
145 agency shall notify the state auditor.

146 (5) This section does not apply to a nonprofit corporation that is a charter school
147 created under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act.

148 Section 3. Section **51-2a-301** is amended to read:

149 **51-2a-301. State auditor responsibilities.**

150 (1) Except for political subdivisions that do not receive or expend public funds, the
151 state auditor shall adopt guidelines, qualifications criteria, and procurement procedures for use
152 in the procurement of audit services for all entities that are required by Section 51-2a-201 to
153 cause an accounting report to be made.

154 (2) The state auditor shall follow the notice, hearing, and publication requirements of
155 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

156 (3) The state auditor shall:

157 (a) review the accounting report submitted to [him] the state auditor under Section
158 51-2a-201; and

159 (b) if necessary, conduct additional inquiries or examinations of financial statements of
160 the entity submitting that information.

161 (4) The governing board of each entity required by Section 51-2a-201 to submit an
162 accounting report to the state auditor's office shall comply with the guidelines, criteria, and
163 procedures established by the state auditor.

164 (5) Each fifth year, the state auditor shall:

165 (a) review the dollar criteria established in Section 51-2a-201 to determine if they need
166 to be increased or decreased; and

167 (b) if the state auditor determines that they need to be increased or decreased, notify the
168 Legislature of that need.

169 (6) (a) The state auditor may require a higher level of accounting report than is required
170 under Section 51-2a-201.

171 (b) The state auditor shall:

172 (i) develop criteria under which a higher level of accounting report may be required;
173 and

174 (ii) provide copies of those criteria to entities required to analyze and report under
175 Section 51-2a-201.

176 (7) This section does not apply to a nonprofit corporation that submits an accounting
177 report under Section 51-2a-201.5.

178 Section 4. Section 53A-1a-511 is amended to read:

179 **53A-1a-511. Waivers from state board rules -- Application of statutes and rules**
180 **to charter schools.**

181 (1) A charter school shall operate in accordance with its charter and is subject to Title
182 53A, State System of Public Education, and other state laws applicable to public schools,
183 except as otherwise provided in this part.

184 (2) (a) A charter school or any other public school or school district may apply to the
185 State Board of Education for a waiver of any state board rule that inhibits or hinders the school
186 or the school district from accomplishing its mission or educational goals set out in its strategic
187 plan or charter.

188 (b) The state board may grant the waiver, unless:

189 (i) the waiver would cause the school district or the school to be in violation of state or
190 federal law; or

191 (ii) the waiver would threaten the health, safety, or welfare of students in the district or
192 at the school.

193 (c) If the State Board of Education denies the waiver, the reason for the denial shall be
194 provided in writing to the waiver applicant.

195 (3) (a) Except as provided in Subsection (3)(b), State Board of Education rules
196 governing the following do not apply to a charter school:

197 (i) school libraries;

198 (ii) required school administrative and supervisory services; and

199 (iii) required expenditures for instructional supplies.

200 (b) A charter school shall comply with rules implementing statutes that prescribe how
201 state appropriations may be spent.

202 (4) The following provisions of Title 53A, State System of Public Education, and rules
203 adopted under those provisions, do not apply to a charter school:

204 (a) Sections [53A-1a-108](#) and [53A-1a-108.5](#), requiring the establishment of a school
205 community council and school improvement plan;

206 (b) Sections [53A-3-413](#) and [53A-3-414](#), pertaining to the use of school buildings as
207 civic centers;

208 (c) Section [53A-3-420](#), requiring the use of activity disclosure statements;

209 (d) Section [53A-12-207](#), requiring notification of intent to dispose of textbooks;

210 (e) Section [53A-13-107](#), requiring annual presentations on adoption;

211 (f) Chapter 19, Part 1, Fiscal Procedures, pertaining to fiscal procedures of school

212 districts and local school boards; and

213 (g) Section 53A-14-107, requiring an independent evaluation of instructional materials.

214 (5) For the purposes of Title 63G, Chapter 6a, Utah Procurement Code, a charter
215 school shall be considered a local public procurement unit.

216 (6) Each charter school shall be subject to:

217 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

218 (b) Title 63G, Chapter 2, Government Records Access and Management Act.

219 (7) A charter school is exempt from Section 51-2a-201.5, requiring accounting reports
220 of certain nonprofit corporations.

221 [~~7~~] (8) (a) The State Charter School Board shall, in concert with the charter schools,
222 study existing state law and administrative rules for the purpose of determining from which
223 laws and rules charter schools should be exempt.

224 (b) (i) The State Charter School Board shall present recommendations for exemption to
225 the State Board of Education for consideration.

226 (ii) The State Board of Education shall consider the recommendations of the State
227 Charter School Board and respond within 60 days.

228 Section 5. **Repealer.**

229 This bill repeals:

230 Section 51-2a-204, **Grants to nonprofit corporations -- Reporting to the state**
231 **auditor.**

232 Section 63J-9-101, **Title.**

233 Section 63J-9-102, **Definitions.**

234 Section 63J-9-201, **Conditions for providing state grant money to a nonprofit**
235 **entity.**

236 Section 63J-9-202, **Nonprofit entity's return of state money.**