

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 nonprofit
106 corporation through a subaward or contract from the state or a political subdivision.

107 (ii) "Federal pass through money" does not include federal money received by a
108 nonprofit corporation as payment for goods or services purchased by the state or political
109 subdivision from the nonprofit corporation.

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

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

113 (A) money received by a nonprofit corporation as payment for goods or services
114 purchased from the nonprofit corporation; or

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

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

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

119 (A) money received by a nonprofit corporation as payment for goods or services
120 purchased from the nonprofit corporation; or

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

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

125 (b) The governing board of a nonprofit corporation whose revenues or expenditures of
126 federal pass through money, state money, and local money is at least \$350,000 but less than
127 \$750,000 shall cause a review to be made of its accounts by an independent certified public
128 accountant.

129 (c) The governing board of a nonprofit corporation whose revenues or expenditures of
130 federal pass through money, state money, and local money is at least \$100,000 but less than
131 \$350,000 shall cause a compilation to be made of its accounts by an independent certified
132 public accountant.

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

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

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

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

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

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

149 (5) This section does not apply to a nonprofit corporation that is a charter school

150 created under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act. A charter school is
151 subject to the requirements of Section 53A-1a-507.

152 (6) A nonprofit corporation is exempt from Section 51-2a-201.

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

154 **51-2a-301. State auditor responsibilities.**

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

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

161 (3) The state auditor shall:

162 (a) review the accounting report submitted to ~~him~~ the state auditor under Section
163 51-2a-201; and

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

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

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

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

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

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

176 (b) The state auditor shall:

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

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

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

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

184 **53A-1a-511. Waivers from state board rules -- Application of statutes and rules**
185 **to charter schools.**

186 (1) A charter school shall operate in accordance with its charter and is subject to Title
187 53A, State System of Public Education, and other state laws applicable to public schools,
188 except as otherwise provided in this part.

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

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

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

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

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

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

202 (i) school libraries;

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

204 (iii) required expenditures for instructional supplies.

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

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

209 (a) Sections **53A-1a-108** and **53A-1a-108.5**, requiring the establishment of a school
210 community council and school improvement plan;

211 (b) Sections **53A-3-413** and **53A-3-414**, pertaining to the use of school buildings as

212 civic centers;

213 (c) Section 53A-3-420, requiring the use of activity disclosure statements;

214 (d) Section 53A-12-207, requiring notification of intent to dispose of textbooks;

215 (e) Section 53A-13-107, requiring annual presentations on adoption;

216 (f) Chapter 19, Part 1, Fiscal Procedures, pertaining to fiscal procedures of school
217 districts and local school boards; and

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

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

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

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

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

224 (7) A charter school is exempt from Section 51-2a-201.5, requiring accounting reports
225 of certain nonprofit corporations. A charter school is subject to the requirements of Section
226 53A-1a-507.

227 [~~7~~] (8) (a) The State Charter School Board shall, in concert with the charter schools,
228 study existing state law and administrative rules for the purpose of determining from which
229 laws and rules charter schools should be exempt.

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

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

234 **Section 5. Repealer.**

235 This bill repeals:

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

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

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

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

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