

SB0132S02 compared with SB0132S01

~~deleted text~~ shows text that was in SB0132S01 but was deleted in SB0132S02.

inserted text shows text that was not in SB0132S01 but was inserted into SB0132S02.

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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;

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- ▶ 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

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

ENACTS:

51-2a-201.5, Utah Code Annotated 1953

REPEALS:

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

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

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

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

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

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~~

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~~otherwise acquired for its use or benefit;]~~

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

~~[(c)]~~ (b) 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 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]~~ in a format prescribed 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

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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~~[-]~~ an amount of money requiring an accounting report under Section 51-2a-201.5;

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

~~[(ii) an amount from state 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) "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.]~~

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

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

(1) As used in this section:

(a) (i) "Federal pass through money" means federal money received by a recipient government to transfer or spend on behalf of a } nonprofit corporation through a subaward or contract from the state or a political subdivision.

(ii) "Federal pass through money" does not include federal money }used to buy} received by a nonprofit corporation as payment for goods or services purchased by the state or political subdivision from }a vendor}the nonprofit corporation.

(b) (i) "Local money" means money that is owned, held, or administered by a political

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subdivision of the state that is derived from fee or tax revenues.

(ii) "Local money" does not include:

(A) money ~~used to buy~~ received by a nonprofit corporation as payment for goods or services purchased from ~~a vendor~~ the nonprofit corporation; or

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

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

(ii) "State money" does not include:

(A) money ~~used to buy~~ received by a nonprofit corporation as payment for goods or services purchased from ~~a vendor~~ the nonprofit corporation; or

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

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

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

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

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

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

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

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

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

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

(5) This section does not apply to a nonprofit corporation that is a charter school created under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act. [A charter school is subject to the requirements of Section 53A-1a-507.](#)

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

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

51-2a-301. State auditor responsibilities.

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

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

(3) The state auditor shall:

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

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

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

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

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

(b) if the state auditor determines that they need to be increased or decreased, notify the

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Legislature of that need.

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

(b) The state auditor shall:

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

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

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

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

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

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

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

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

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

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

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

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

(i) school libraries;

(ii) required school administrative and supervisory services; and

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(iii) required expenditures for instructional supplies.

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

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

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

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

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

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

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

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

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

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

(6) Each charter school shall be subject to:

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

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

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

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

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

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

Section 5. **Repealer.**

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This bill repeals:

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

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

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

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

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