

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: Sophia M. DiCaro

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ amends the threshold for certain accounting reports;
- ▶ 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:



26 None

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 This bill provides retrospective operation.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **51-2a-102**, as last amended by Laws of Utah 2014, Chapter 341

33 **51-2a-201**, as last amended by Laws of Utah 2013, Chapter 162

34 **51-2a-301**, as last amended by Laws of Utah 2008, Chapter 382

35 **53A-1a-511**, as last amended by Laws of Utah 2012, Chapter 347

36 ENACTS:

37 **51-2a-201.5**, Utah Code Annotated 1953

38 REPEALS:

39 **51-2a-204**, as enacted by Laws of Utah 2014, Chapter 341

40 **63J-9-101**, as enacted by Laws of Utah 2014, Chapter 341

41 **63J-9-102**, as enacted by Laws of Utah 2014, Chapter 341

42 **63J-9-201**, as enacted by Laws of Utah 2014, Chapter 341

43 **63J-9-202**, as enacted by Laws of Utah 2014, Chapter 341



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

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

47 **51-2a-102. Definitions.**

48 As used in this chapter:

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

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

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

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

57 [(e)] (b) conforms to the uniform classification of accounts established or approved by
58 the state auditor or any other classification of accounts established by any federal government
59 agency.

60 (3) "Audit report" means:

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

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

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

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

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

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

75 (5) "Fiscal report" means providing information detailing revenues and expenditures of
76 all funds [~~using forms provided~~] in a format prescribed by the state auditor.

77 (6) "Governing board" means:

78 (a) the governing board of each political subdivision;

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

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

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

85 (e) the governing board of any area agency established under the authority of Title
86 62A, Chapter 3, Aging and Adult Services;

87 (f) the governing board of any nonprofit corporation that receives[?] an amount of

88 money requiring an accounting report under Section [51-2a-201.5](#);

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

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

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

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

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

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

105 Section 2. Section **51-2a-201** is amended to read:

106 **51-2a-201. Accounting reports required.**

107 (1) The governing board of an entity whose revenues or expenditures of all funds is
108 ~~[\$500,000] \$750,000~~ or more shall cause an audit to be made of its accounts by a competent
109 certified public accountant.

110 (2) The governing board of an entity whose revenues or expenditures of all funds is
111 less than ~~[\$500,000] \$750,000~~ shall cause a financial report to be made in the manner
112 prescribed by the state auditor.

113 Section 3. Section **51-2a-201.5** is enacted to read:

114 **51-2a-201.5. Accounting reports required -- Reporting to state auditor.**

115 (1) As used in this section:

116 (a) (i) "Federal pass through money" means federal money received by a nonprofit
117 corporation through a subaward or contract from the state or a political subdivision.

118 (ii) "Federal pass through money" does not include federal money received by a

119 nonprofit corporation as payment for goods or services purchased by the state or political
120 subdivision from the nonprofit corporation.

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

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

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

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

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

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

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

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

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

136 (b) The governing board of a nonprofit corporation whose revenues or expenditures of
137 federal pass through money, state money, and local money is at least \$350,000 but less than
138 \$750,000 shall cause a review to be made of its accounts by an independent certified public
139 accountant.

140 (c) The governing board of a nonprofit corporation whose revenues or expenditures of
141 federal pass through money, state money, and local money is at least \$100,000 but less than
142 \$350,000 shall cause a compilation to be made of its accounts by an independent certified
143 public accountant.

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

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

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

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

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

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

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

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

164 Section 4. Section **51-2a-301** is amended to read:

165 **51-2a-301. State auditor responsibilities.**

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

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

172 (3) The state auditor shall:

173 (a) review the accounting report submitted to ~~[him]~~ the state auditor under Section
174 [51-2a-201](#); and

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

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

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

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

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

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

187 (b) The state auditor shall:

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

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

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

194 Section 5. Section 53A-1a-511 is amended to read:

195 **53A-1a-511. Waivers from state board rules -- Application of statutes and rules**
196 **to charter schools.**

197 (1) A charter school shall operate in accordance with its charter and is subject to Title
198 53A, State System of Public Education, and other state laws applicable to public schools,
199 except as otherwise provided in this part.

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

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

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

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

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

211 (3) (a) Except as provided in Subsection (3)(b), State Board of Education rules

212 governing the following do not apply to a charter school:

- 213 (i) school libraries;
- 214 (ii) required school administrative and supervisory services; and
- 215 (iii) required expenditures for instructional supplies.

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

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

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

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

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

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

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

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

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

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

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

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

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

235 (7) A charter school is exempt from Section 51-2a-201.5, requiring accounting reports
236 of certain nonprofit corporations. A charter school is subject to the requirements of Section
237 53A-1a-507.

238 [~~7~~] (8) (a) The State Charter School Board shall, in concert with the charter schools,
239 study existing state law and administrative rules for the purpose of determining from which
240 laws and rules charter schools should be exempt.

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

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

245 Section 6. **Repealer.**

246 This bill repeals:

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

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

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

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

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

254 Section 7. **Effective date -- Retrospective operation.**

255 (1) If approved by two-thirds of all the members elected to each house, this bill takes
256 effect upon approval by the governor, or the day following the constitutional time limit of Utah
257 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
258 the date of veto override.

259 (2) This bill has retrospective operation to January 1, 2015.