

1 **GOVERNMENTAL NONPROFIT ENTITY COMPLIANCE**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Kim F. Coleman**

6 Senate Sponsor: _____

7

LONG TITLE

8 **General Description:**

9 This bill enacts provisions relating to governmental nonprofit corporations.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms; and
- 13 ▶ provides that the Open and Public Meetings Act, the Government Records Access
- 14 and Management Act, and the Accounting Reports from Political Subdivisions,
- 15 Interlocal Organizations, and Other Local Entities Act apply to a governmental
- 16 nonprofit corporation.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **51-2a-102**, as last amended by Laws of Utah 2015, Chapters 138 and 407

24 **51-2a-403**, as enacted by Laws of Utah 2004, Chapter 206

25 ENACTS:

26 **16-6a-1801**, Utah Code Annotated 1953



28 16-6a-1802, Utah Code Annotated 1953



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

31 Section 1. Section **16-6a-1801** is enacted to read:

32 **Part 18. Governmental Nonprofit Corporations**

33 **16-6a-1801. Definitions.**

34 As used in this part:

35 (1) "Controlling interest" means a majority of the voting power on the board of
36 directors of the nonprofit corporation.

37 (2) "Governmental nonprofit corporation" means a nonprofit corporation in which one
38 or more governmental entities have a controlling interest.

39 (3) "Government entity" means the state, a county, a municipality, a local district, a
40 special service district, a school district, a state institution of higher education, or any other
41 political subdivision or administrative unit of the state.

42 (4) "Municipality" means a city, town, or metro township.

43 Section 2. Section **16-6a-1802** is enacted to read:

44 **16-6a-1802. Applicability of certain acts -- State auditor authority.**

45 A governmental nonprofit corporation shall comply with:

46 (1) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal
47 Organizations, and Other Local Entities Act;

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

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

50 Section 3. Section **51-2a-102** is amended to read:

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

52 As used in this chapter:

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

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

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

58 (b) conforms to the uniform classification of accounts established or approved by the

59 state auditor or any other classification of accounts established by any federal government
60 agency.

61 (3) "Audit report" means:

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

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

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

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

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

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

76 (5) "Fiscal report" means providing information detailing revenues and expenditures of
77 all funds in a format prescribed by the state auditor.

78 (6) "Governing board" means:

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

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

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

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

86 (e) the governing board of any area agency established under the authority of Title
87 62A, Chapter 3, Aging and Adult Services;

88 (f) the ~~governing~~ board of directors of any nonprofit corporation that receives an
89 amount of money requiring an accounting report under Section [51-2a-201.5](#);

90 (g) the board of directors of a governmental nonprofit corporation;

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

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

95 (7) "Governmental nonprofit corporation" means the same as that term is defined in
96 Section 16-6a-1801.

97 (8) "Nonprofit corporation" does not include a governmental nonprofit corporation.

98 [~~(7)~~] (9) "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 Section 4. Section **51-2a-403** is amended to read:

103 **51-2a-403. General Fund reimbursed for accounting report of nonappropriated**
104 **activities -- Amount of reimbursement.**

105 (1) The General Fund shall be reimbursed by the entity for which an audit, review, or
106 compilation are in whole or in part performed, whenever the state auditor or legislative auditor
107 general is required by law or constitutional provision to perform that audit, review, or
108 compilation or cause that audit, review, or compilation to be made for any office, department,
109 division, board, agency, commission, council, authority, institution, hospital, school, college,
110 university, or other instrumentality of the state or any of its political subdivisions for
111 nonappropriated activities, including associated students' accounts, auxiliary enterprise funds,
112 nonprofit corporations, governmental nonprofit corporations, contracts with the federal
113 government, federal grants-in-aid, and federal assistance programs.

114 (2) (a) The reimbursement amount shall be a pro rata share of that auditor's total cost,
115 based upon a time-spent factor.

116 (b) An audit includes an audit of state-appropriated funds.

117 (i) If state-appropriated funds are not involved in the accounting report, the
118 reimbursement may not be less than the average hourly cost of the operations of that auditor's
119 office nor more than the average rate attainable from certified public accounting firms
120 performing similar services for this state.

121 (ii) Reimbursement charges may be negotiated with that auditor's office within these
122 limitations.

Legislative Review Note
Office of Legislative Research and General Counsel