

## SB0063S01 compared with SB0063

~~deleted text~~ shows text that was in SB0063 but was deleted in SB0063S01.

Inserted text shows text that was not in SB0063 but was inserted into SB0063S01.

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Senator Margaret Dayton proposes the following substitute bill:

### NONPROFIT CORPORATION AMENDMENTS ~~WATER~~

### ~~COMPANIES~~

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Margaret Dayton**

House Sponsor: ~~\_\_\_\_\_~~ Mike K. McKell

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#### LONG TITLE

##### General Description:

This bill modifies the Utah Revised Nonprofit Corporation Act to permit the transfer of water shares, in certain circumstances, and clarifies the rights of a shareholder in a water company.

##### Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ states that ownership of shares in a water company is transferrable, unless otherwise provided in the articles of incorporation or bylaws;
- ▶ authorizes a water company to purchase the shares of a shareholder who is

## SB0063S01 compared with SB0063

delinquent in payment of shareholder assessments;

- ▶ states that a shareholder in a water company has an equitable, beneficial interest in the use of the water supply of the water company, proportionate to the shareholder's shares, which ~~{interest }~~ is ~~{in the nature of}~~ a real property interest;
- ▶ clarifies the process for distribution to a shareholder of a water company; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**16-6a-102**, as last amended by Laws of Utah 2015, Chapter 240

**16-6a-606**, as enacted by Laws of Utah 2000, Chapter 300

**16-6a-610**, as last amended by Laws of Utah 2015, Chapter 240

**16-6a-611**, as last amended by Laws of Utah 2015, Chapter 240

**16-6a-1302**, as last amended by Laws of Utah 2015, Chapter 240

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

Section 1. Section **16-6a-102** is amended to read:

**16-6a-102. Definitions.**

As used in this chapter:

(1) (a) "Address" means a location where mail can be delivered by the United States

Postal Service.

(b) "Address" includes:

- (i) a post office box number;
- (ii) a rural free delivery route number; and
- (iii) a street name and number.

(2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

## SB0063S01 compared with SB0063

(3) "Articles of incorporation" include:

- (a) amended articles of incorporation;
- (b) restated articles of incorporation;
- (c) articles of merger; and
- (d) a document of a similar import to the documents described in Subsections (3)(a)

through (c).

(4) "Assumed corporate name" means a name assumed for use in this state:

- (a) by a:
  - (i) foreign corporation pursuant to Section 16-10a-1506; or
  - (ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and
- (b) because the corporate name of the foreign corporation described in Subsection

(4)(a) is not available for use in this state.

(5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body authorized to manage the affairs of a domestic or foreign nonprofit corporation.

(b) Notwithstanding Subsection (5)(a), a person may not be considered a member of the board of directors because of a power delegated to that person pursuant to Subsection 16-6a-801(2).

(6) (a) "Bylaws" means the one or more codes of rules, other than the articles of incorporation, adopted pursuant to this chapter for the regulation or management of the affairs of a domestic or foreign nonprofit corporation irrespective of the one or more names by which the codes of rules are designated.

(b) "Bylaws" includes:

- (i) amended bylaws; and
- (ii) restated bylaws.

(7) (a) "Cash" or "money" means:

- (i) legal tender;
- (ii) a negotiable instrument; or
- (iii) other cash equivalent readily convertible into legal tender.

(b) "Cash" and "money" are used interchangeably in this chapter.

(8) (a) "Class" means a group of memberships that has the same right with respect to voting, dissolution, redemption, transfer, or other characteristics.

## **SB0063S01 compared with SB0063**

(b) For purposes of Subsection (8)(a), a right is considered the same if it is determined by a formula applied uniformly to a group of memberships.

(9) (a) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed the writing.

(b) "Conspicuous" includes printing or typing in:

(i) italics;

(ii) boldface;

(iii) contrasting color;

(iv) capitals; or

(v) underlining.

(10) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity by:

(a) the ownership of voting shares;

(b) contract; or

(c) a means other than those specified in Subsection (10)(a) or (b).

(11) Subject to Section 16-6a-207, "cooperative nonprofit corporation" or "cooperative" means a nonprofit corporation organized or existing under this chapter.

(12) "Corporate name" means:

(a) the name of a domestic corporation as stated in the domestic corporation's articles of incorporation;

(b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit corporation's articles of incorporation;

(c) the name of a foreign corporation as stated in the foreign corporation's:

(i) articles of incorporation; or

(ii) document of similar import to articles of incorporation; or

(d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit corporation's:

(i) articles of incorporation; or

(ii) document of similar import to articles of incorporation.

(13) "Corporation" or "domestic corporation" means a corporation for profit that:

(a) is not a foreign corporation; and

## **SB0063S01 compared with SB0063**

(b) is incorporated under or subject to Chapter 10a, Utah Revised Business Corporation Act.

(14) "Delegate" means a person elected or appointed to vote in a representative assembly:

- (a) for the election of a director; or
- (b) on matters other than the election of a director.

(15) "Deliver" includes delivery by mail or another means of transmission authorized by Section 16-6a-103, except that delivery to the division means actual receipt by the division.

(16) "Director" means a member of the board of directors.

(17) (a) "Distribution" means the payment of a dividend or any part of the income or profit of a nonprofit corporation to the nonprofit corporation's:

- (i) members;
- (ii) directors; or
- (iii) officers.

(b) "Distribution" does not include a fair-value payment for:

- (i) a good sold; or
- (ii) a service received.

(18) "Division" means the Division of Corporations and Commercial Code.

(19) "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-6a-108.

(20) "Effective date of notice" means the date notice is effective as provided in Section 16-6a-103.

(21) "Electronic transmission" or "electronically transmitted" means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.

(22) (a) "Employee" includes an officer of a nonprofit corporation.

(b) (i) Except as provided in Subsection (22)(b)(ii), "employee" does not include a director of a nonprofit corporation.

(ii) Notwithstanding Subsection (22)(b)(i), a director may accept one or more duties that make that director an employee of a nonprofit corporation.

## SB0063S01 compared with SB0063

~~[(24)]~~ (23) "Entity" includes:

- (a) a domestic or foreign corporation;
- (b) a domestic or foreign nonprofit corporation;
- (c) a limited liability company;
- (d) a profit or nonprofit unincorporated association;
- (e) a business trust;
- (f) an estate;
- (g) a partnership;
- (h) a trust;
- (i) two or more persons having a joint or common economic interest;
- (j) a state;
- (k) the United States; or
- (l) a foreign government.

~~[(23)]~~ (24) "Executive director" means the executive director of the Department of Commerce.

(25) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.

(26) "Foreign nonprofit corporation" means an entity:

- (a) incorporated under a law other than the laws of this state; and
- (b) that would be a nonprofit corporation if formed under the laws of this state.

(27) "Governmental entity" means:

- (a) (i) the executive branch of the state;
- (ii) the judicial branch of the state;
- (iii) the legislative branch of the state;
- (iv) an independent entity, as defined in Section 63E-1-102;
- (v) a political subdivision of the state;
- (vi) a state institution of higher education, as defined in Section 53B-3-102;
- (vii) an entity within the state system of public education; or
- (viii) the National Guard; or
- (b) any of the following that is established or controlled by a governmental entity listed

in Subsection (27)(a) to carry out the public's business:

## SB0063S01 compared with SB0063

- (i) an office;
- (ii) a division;
- (iii) an agency;
- (iv) a board;
- (v) a bureau;
- (vi) a committee;
- (vii) a department;
- (viii) an advisory board;
- (ix) an administrative unit; or
- (x) a commission.

(28) "Governmental subdivision" means:

- (a) a county;
- (b) a city;
- (c) a town; or
- (d) another type of governmental subdivision authorized by the laws of this state.

(29) "Individual" means:

- (a) a natural person;
- (b) the estate of an incompetent individual; or
- (c) the estate of a deceased individual.

(30) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States of America.

(31) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first-class postage prepaid.

(b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the proper fee is paid.

(32) (a) "Member" means one or more persons identified or otherwise appointed as a member of a domestic or foreign nonprofit corporation as provided:

- (i) in the articles of incorporation;
- (ii) in the bylaws;
- (iii) by a resolution of the board of directors; or

## SB0063S01 compared with SB0063

(iv) by a resolution of the members of the nonprofit corporation.

(b) "Member" includes:

(i) "voting member[-s]"; and

(ii) a shareholder in a water company.

(33) "Membership" refers to the rights and obligations of a member or members.

(34) "Mutual benefit corporation" means a nonprofit corporation:

(a) that issues shares of stock to its members evidencing a right to receive distribution of water or otherwise representing property rights; or

(b) all of whose assets are contributed or acquired by or for the members of the nonprofit corporation or their predecessors in interest to serve the mutual purposes of the members.

(35) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity that:

(a) is not a foreign nonprofit corporation; and

(b) is incorporated under or subject to this chapter.

(36) "Notice" means the same as that term is defined in Section 16-6a-103.

(37) "Party related to a director" means:

(a) the spouse of the director;

(b) a child of the director;

(c) a grandchild of the director;

(d) a sibling of the director;

(e) a parent of the director;

(f) the spouse of an individual described in Subsections (37)(b) through (e);

(g) an individual having the same home as the director;

(h) a trust or estate of which the director or another individual specified in this

Subsection (37) is a substantial beneficiary; or

(i) any of the following of which the director is a fiduciary:

(i) a trust;

(ii) an estate;

(iii) an incompetent;

(iv) a conservatee; or

(v) a minor.



## SB0063S01 compared with SB0063

(38) "Person" means an:

- (a) individual; or
- (b) entity.

(39) "Principal office" means:

(a) the office, in or out of this state, designated by a domestic or foreign nonprofit corporation as its principal office in the most recent document on file with the division providing that information, including:

- (i) an annual report;
- (ii) an application for a certificate of authority; or
- (iii) a notice of change of principal office; or

(b) if no principal office can be determined, a domestic or foreign nonprofit corporation's registered office.

(40) "Proceeding" includes:

- (a) a civil suit;
- (b) arbitration;
- (c) mediation;
- (d) a criminal action;
- (e) an administrative action; or
- (f) an investigatory action.

(41) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign nonprofit corporation, means the writing or other document is actually received:

(a) by the domestic or foreign nonprofit corporation at:

- (i) its registered office in this state; or
- (ii) its principal office;

(b) by the secretary of the domestic or foreign nonprofit corporation, wherever the secretary is found; or

(c) by another person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.

(42) (a) "Record date" means the date established under Part 6, Members, or Part 7, Member Meetings and Voting, on which a nonprofit corporation determines the identity of the

## SB0063S01 compared with SB0063

nonprofit corporation's members.

(b) The determination described in Subsection (42)(a) shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(43) "Registered agent" means the registered agent of:

- (a) a domestic nonprofit corporation; or
- (b) a foreign nonprofit corporation.

(44) "Registered office" means the office within this state designated by a domestic or foreign nonprofit corporation as its registered office in the most recent document on file with the division providing that information, including:

- (a) articles of incorporation;
- (b) an application for a certificate of authority; or
- (c) a notice of change of registered office.

(45) "Secretary" means the corporate officer to whom the bylaws or the board of directors delegates responsibility under Subsection 16-6a-818(3) for:

- (a) the preparation and maintenance of:
  - (i) minutes of the meetings of:
    - (A) the board of directors; or
    - (B) the members; and
  - (ii) the other records and information required to be kept by the nonprofit corporation pursuant to Section 16-6a-1601; and

(b) authenticating records of the nonprofit corporation.

(46) "Share" means a unit of interest in a nonprofit corporation.

(47) "Shareholder" means a person in whose name a share is registered in the records of a nonprofit corporation.

(48) "State," when referring to a part of the United States, includes:

- (a) a state;
- (b) a commonwealth;
- (c) the District of Columbia;
- (d) an agency or governmental and political subdivision of a state, commonwealth, or

District of Columbia;

## SB0063S01 compared with SB0063

(e) territory or insular possession of the United States; or

(f) an agency or governmental and political subdivision of a territory or insular possession of the United States.

(49) "Street address" means:

(a) (i) street name and number;

(ii) city or town; and

(iii) United States post office zip code designation; or

(b) if, by reason of rural location or otherwise, a street name, number, city, or town does not exist, an appropriate description other than that described in Subsection (49)(a) fixing as nearly as possible the actual physical location, but only if the information includes:

(i) the rural free delivery route;

(ii) the county; and

(iii) the United States post office zip code designation.

~~[(51)]~~ (50) "Tribal nonprofit corporation" means a nonprofit corporation:

(a) incorporated under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe.

~~[(50)]~~ (51) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

(52) "United States" includes a district, authority, office, bureau, commission, department, and another agency of the United States of America.

(53) "Vote" includes authorization by:

(a) written ballot; and

(b) written consent.

(54) (a) "Voting group" means all the members of one or more classes of members or directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to vote and be counted together collectively on a matter.

(b) All members or directors entitled by this chapter, the articles of incorporation, or the bylaws to vote generally on a matter are for that purpose a single voting group.

(55) (a) "Voting member" means a person entitled to vote for all matters required or

## SB0063S01 compared with SB0063

permitted under this chapter to be submitted to a vote of the members, except as otherwise provided in the articles of incorporation or bylaws.

(b) A person is not a voting member solely because of:

- (i) a right the person has as a delegate;
- (ii) a right the person has to designate a director; or
- (iii) a right the person has as a director.

(c) Except as the bylaws may otherwise provide, "voting member" includes a "shareholder" if the nonprofit corporation has shareholders.

(56) "Water company" means:

(a) the same as that term is defined in Subsection 16-4-102(5); or

(b) a mutual benefit corporation, when the stock in the mutual benefit corporation represents a right to receive a distribution of water for beneficial use.

Section 2. Section **16-6a-606** is amended to read:

### **16-6a-606. Transfers.**

(1) [~~Unless~~] Except as provided in Subsection (3), and unless otherwise provided [~~by~~] in the articles of incorporation or the bylaws, a member of a nonprofit corporation may not transfer:

- (a) a membership; or
- (b) any right arising from a membership.

(2) [~~Where~~] Except as provided in Subsection (3), where transfer rights have been provided in the articles of incorporation or the bylaws of a nonprofit corporation, a restriction on transfer rights may not be binding with respect to a member holding a membership issued [~~prior to~~] before the adoption of the restriction, unless the restriction is approved by the affected member.

(3) (a) For a water company, unless otherwise provided by the articles of incorporation or bylaws, ownership of shares is transferrable.

(b) Any restriction on the transfer of ownership under Subsection (3)(a):

(i) shall be reasonable;

(ii) shall be adopted in good faith and for a legitimate purpose;

(iii) shall be adopted in the best interest of the water company and its shareholders; and

(iv) may not discriminate against any individual shareholder or class of shareholders.

## SB0063S01 compared with SB0063

but in a company where there are classes or divisions of stock, restrictions may differ between the classes or divisions.

(c) Nothing in this section is intended to alter any right or remedy a shareholder may have under Sections 16-6a-612, 16-6a-808, 16-6a-809, 16-6a-822, 16-6a-824, and 16-6a-825, or any other applicable law.

Section 3. Section **16-6a-610** is amended to read:

### **16-6a-610. Purchase of memberships.**

(1) Unless otherwise provided [~~by~~] in the articles of incorporation or the bylaws, a nonprofit corporation may not purchase the membership of a member:

- (a) who resigns; or
- (b) whose membership is terminated.

(2) (a) If so authorized, a nonprofit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by:

- (i) its articles of incorporation or its bylaws; or
- (ii) agreement with the affected member.

(b) A payment permitted under Subsection (2)(a) may not violate:

- (i) Section 16-6a-1301; or
- (ii) any other provision of this chapter.

(3) A mutual benefit corporation may purchase a member's membership if, after the purchase is completed:

(a) the mutual benefit corporation would be able to pay its debts as they become due in the usual course of its activities; and

(b) the mutual benefit corporation's total assets would at least equal the sum of its total liabilities.

(4) A water company may purchase the shares of a shareholder who is delinquent in payment of shareholder assessments, in accordance with Chapter 4, Share Assessment Act.

Section 4. Section **16-6a-611** is amended to read:

### **16-6a-611. Property rights.**

(1) A member [~~does not have any vested property right including any~~] has no right relating to management, control, purpose, or duration of the nonprofit corporation, except as

## SB0063S01 compared with SB0063

provided by:

- ~~[(1)]~~ (a) the articles of incorporation or the bylaws of a mutual benefit corporation; or
- ~~[(2)]~~ (b) other applicable law.

(2) Unless otherwise provided by agreement, articles of incorporation, or the bylaws of a water company, and subject to the general liabilities and obligations of the water company, a shareholder in a water company has:

(a) an equitable, beneficial interest in the use of the water supply of the water company, proportionate to the shareholder's shares in the water company, which ~~is an~~ interest ~~is~~ in ~~the nature of~~ real property; and

(b) the right to have the shareholder's proportionate share of the water delivered through a diversion structure, ditch, canal, storage and distribution facility, or other appurtenance of the water company, in accordance with:

- (i) the distribution method of the water company; or
- (ii) an approved change application under Section 73-3-3.5.

Section 5. Section **16-6a-1302** is amended to read:

### **16-6a-1302. Authorized distributions.**

(1) A nonprofit corporation may:

(a) make distributions or distribute the nonprofit corporation's assets to a [member]:

- (i) member that is a domestic or foreign nonprofit corporation;
- (ii) member of a mutual benefit corporation, not inconsistent with its bylaws; ~~[or]~~
- (iii) shareholder of a water company in a manner consistent with its articles of

incorporation, bylaws, ~~for~~ and the provisions of this chapter; or

~~[(iii) that is a]~~

(iv) governmental entity;

(b) pay compensation in a reasonable amount to its members, directors, or officers for services rendered;

(c) if a cooperative nonprofit corporation, make distributions consistent with its purposes; and

(d) confer benefits upon its members in conformity with its purposes.

(2) A nonprofit corporation may make distributions upon dissolution as follows:

(a) to a member that is a domestic or foreign nonprofit corporation;

## SB0063S01 compared with SB0063

(b) to its members if it is a mutual benefit corporation;

(c) to a shareholder of a water company in proportion to the shareholder's interest in the water company, consistent with the water company's articles of incorporation and bylaws;

~~[(c)]~~ (d) to another nonprofit corporation, including a nonprofit corporation organized to receive the assets of and function in place of the dissolved nonprofit corporation; and

~~[(d)]~~ (e) otherwise in conformity with Part 14, Dissolution.

(3) Authorized distributions by a dissolved nonprofit corporation may be made by authorized officers or directors, including those elected, hired, or otherwise selected after dissolution if the election, hiring, or other selection after dissolution is not inconsistent with the articles of incorporation and bylaws existing at the time of dissolution.

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**Legislative Review Note**

**~~Office of Legislative Research and General Counsel~~**