

1 **GOVERNMENTAL NONPROFIT CORPORATION ACT**

2 **AMENDMENTS**

3 2019 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Deidre M. Henderson**

6 House Sponsor: Craig Hall

8 **LONG TITLE**

9 **General Description:**

10 This bill amends definitions and provides for certain training relating to governmental
11 nonprofit corporations.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ requires the state auditor to:
 - 15 • develop a training or other informational resource regarding best practices for
 - 16 financial controls and board governance;
 - 17 • distribute the training or other informational resource to certain state and local
 - 18 entities and governmental nonprofit corporations; and
 - 19 • issue notices of noncompliance to certain boards of directors of governmental
 - 20 nonprofit corporations and board members;
- 21 ▶ requires each member of a board of directors of a governmental nonprofit
- 22 corporation to complete the training that the state auditor provides regarding best
- 23 practices for financial controls and board governance;
- 24 ▶ provides for the disqualification of a board member who fails to complete the
- 25 required training within certain time periods;
- 26 ▶ amends an informational requirement for the local government and limited purpose
- 27 entity registry; and
- 28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **67-1a-15**, as enacted by Laws of Utah 2018, Chapter 256

36 ENACTS:

37 **11-13a-106**, Utah Code Annotated 1953



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

40 Section 1. Section **11-13a-106** is enacted to read:

41 **11-13a-106. Training for board members.**

42 (1) (a) (i) Each member of a board of directors of a governmental nonprofit corporation
43 shall complete the training described in Subsection (2)(a):

44 (A) within six months after the day on which the member becomes a board member; or

45 (B) for a member already in the position of board member on May 14, 2019, before
46 November 14, 2019.

47 (ii) If a board member fails to complete the training described in Subsection (2)(a)
48 within the time period specified in Subsection (1)(a)(i):

49 (A) the state auditor shall issue a notice of noncompliance to the board member and the
50 relevant board of directors; and

51 (B) if the board member fails to complete the training described in Subsection (2)(a)
52 within 30 calendar days after the date of the auditor's notice of noncompliance, the board
53 member is disqualified and may not act as a board member.

54 (b) For the purposes of Subsection (1)(a), a member of a board of directors of a
55 governmental nonprofit corporation takes office each time the member is elected or appointed
56 to a new term.

57 (2) The state auditor shall:

58 (a) develop a training or other informational resource to aid a governmental nonprofit
59 corporation in implementing best practices for financial controls and board governance;

60 (b) provide the training or other informational resource described in Subsection (2)(a)
61 to each of the following entities that provides any required budgeting, expenditure, or financial
62 report to the state auditor:

63 (i) a governmental nonprofit corporation; and

64 (ii) a state agency or political subdivision of the state that wholly controls or has a
65 controlling interest in a governmental nonprofit corporation, as described in Section
66 [11-13a-102](#);

67 (c) ensure that the training described in Subsection (2)(a) complies with Title 63G,
68 Chapter 22, State Training and Certification Requirements; and

69 (d) issue a certificate of completion to each board member that completes the training
70 described in Subsection (2)(a).

71 Section 2. Section **67-1a-15** is amended to read:

72 **67-1a-15. Local government and limited purpose entity registry.**

73 (1) As used in this section:

74 (a) "Entity" means a limited purpose entity or a local government entity.

75 (b) (i) "Limited purpose entity" means a legal entity that:

76 (A) performs a single governmental function or limited governmental functions; and

77 (B) is not a state executive branch agency, a state legislative office, or within the
78 judicial branch.

79 (ii) "Limited purpose entity" includes:

80 (A) area agencies, area agencies on aging, and area agencies on high risk adults, as
81 those terms are defined in Section [62A-3-101](#);

82 (B) charter schools created under Title 53G, Chapter 5, Charter Schools;

83 (C) community reinvestment agencies, as that term is defined in Section [17C-1-102](#);

84 (D) conservation districts, as that term is defined in Section [17D-3-102](#);

85 (E) governmental nonprofit corporations, as that term is defined in Section [11-13a-102](#);

- 86 (F) housing authorities, as that term is defined in Section 35A-8-401;
- 87 (G) independent entities and independent state agencies, as those terms are defined in
- 88 Section 63E-1-102;
- 89 (H) interlocal entities, as that term is defined in Section 11-13-103;
- 90 (I) local building authorities, as that term is defined in Section 17D-2-102;
- 91 (J) local districts, as that term is defined in Section 17B-1-102;
- 92 (K) local health departments, as that term is defined in Section 26A-1-102;
- 93 (L) local mental health authorities, as that term is defined in Section 62A-15-102;
- 94 (M) nonprofit corporations that receive an amount of money requiring an accounting
- 95 report under Section 51-2a-201.5;
- 96 (N) school districts under Title 53G, Chapter 3, School District Creation and Change;
- 97 (O) special service districts, as that term is defined in Section 17D-1-102; and
- 98 (P) substance abuse authorities, as that term is defined in Section 62A-15-102.
- 99 (c) "Local government and limited purpose entity registry" or "registry" means the
- 100 registry of local government entities and limited purpose entities created under this section.
- 101 (d) "Local government entity" means:
- 102 (i) a county, as that term is defined in Section 17-50-101; and
- 103 (ii) a municipality, as that term is defined in Section 10-1-104.
- 104 (e) "Notice of failure to register" means the notice the lieutenant governor sends, in
- 105 accordance with Subsection (7)(a), to an entity that does not register.
- 106 (f) "Notice of failure to renew" means the notice the lieutenant governor sends to a
- 107 registered entity, in accordance with Subsection (7)(b).
- 108 (g) "Notice of noncompliance" means the notice the lieutenant governor sends to a
- 109 registered entity, in accordance with Subsection (6)(c).
- 110 (h) "Notice of non-registration" means the notice the lieutenant governor sends to an
- 111 entity and the state auditor, in accordance with Subsection (9).
- 112 (i) "Notice of registration or renewal" means the notice the lieutenant governor sends,
- 113 in accordance with Subsection (6)(b)(i).

114 (j) "Registered entity" means an entity with a valid registration as described in
115 Subsection (8).

116 (2) The lieutenant governor shall:

117 (a) create a registry of each local government entity and limited purpose entity within
118 the state that:

119 (i) contains the information described in Subsection (4); and
120 (ii) is accessible on the lieutenant governor's website or otherwise publicly available;
121 and

122 (b) establish fees for registration and renewal, in accordance with Section 63J-1-504,
123 based on and to directly offset the cost of creating, administering, and maintaining the registry.

124 (3) Each local government entity and limited purpose entity shall:

125 (a) on or before July 1, 2019, register with the lieutenant governor as described in
126 Subsection (4);

127 (b) on or before one year after the day on which the lieutenant governor issues the
128 notice of registration or renewal, annually renew the entity's registration in accordance with
129 Subsection (5); and

130 (c) within 30 days after the day on which any of the information described in
131 Subsection (4) changes, send notice of the changes to the lieutenant governor.

132 (4) Each entity shall include the following information in the entity's registration
133 submission:

134 (a) the resolution or other legal or formal document creating the entity or, if the
135 resolution or other legal or formal document creating the entity cannot be located, conclusive
136 proof of the entity's lawful creation;

137 (b) if the entity has geographic boundaries, a map or plat establishing the geographic
138 boundaries of the entity, or if it is impossible or unreasonably expensive to create a map or plat,
139 a metes and bounds description, or another legal description that identifies the boundaries of
140 the entity, [~~conclusive~~] reasonable proof of the entity's geographic boundaries;

141 (c) the entity's name;

142 (d) the entity's type of local government entity or limited purpose entity;
143 (e) the entity's governmental function;
144 (f) the entity's website, physical address, and phone number, including the name and
145 contact information of an individual whom the entity designates as the primary contact for the
146 entity;

147 (g) names of the members of the entity's governing board or commission, managing
148 officers, or other similar managers and the method by which the members or officers are
149 appointed, elected, or otherwise designated;

150 (h) the entity's sources of revenue; and

151 (i) if the entity has created an assessment area, as that term is defined in Section
152 [11-42-102](#), information regarding the creation, purpose, and boundaries of the assessment area.

153 (5) Each entity shall include the following information in the entity's renewal
154 submission:

155 (a) identify and update any incorrect or outdated information the entity previously
156 submitted during registration under Subsection (4); or

157 (b) certify that the information the entity previously submitted during registration under
158 Subsection (4) is correct without change.

159 (6) Within 30 days of receiving an entity's registration or renewal submission, the
160 lieutenant governor shall:

161 (a) review the submission to determine compliance with Subsection (4) or (5);

162 (b) if the lieutenant governor determines that the entity's submission complies with
163 Subsection (4) or (5):

164 (i) send a notice of registration or renewal that includes the information that the entity
165 submitted under Subsection (4) or (5) to:

166 (A) the registering or renewing entity;

167 (B) each county in which the entity operates, either in whole or in part, or where the
168 entity's geographic boundaries overlap or are contained within the boundaries of the county;

169 (C) the Division of Archives and Records Service; and

170 (D) the Office of the Utah State Auditor; and
171 (ii) publish the information from the submission on the registry; and
172 (c) if the lieutenant governor determines that the entity's submission does not comply
173 with Subsection (4) or (5) or is otherwise inaccurate or deficient, send a notice of
174 noncompliance to the registering or renewing entity that:

175 (i) identifies each deficiency in the entity's submission with the corresponding statutory
176 requirement;

177 (ii) establishes a deadline to cure the entity's noncompliance that is the first business
178 day that is at least 30 calendar days after the day on which the lieutenant governor sends the
179 notice of noncompliance; and

180 (iii) states that failure to comply by the deadline the lieutenant governor establishes
181 under Subsection (6)(c)(ii) will result in the lieutenant governor sending a notice of
182 non-registration to the Office of the Utah State Auditor, in accordance with Subsection (9).

183 (7) (a) If the lieutenant governor identifies an entity that does not make a registration
184 submission in accordance with Subsection (4) by the deadline described in Subsection (3), the
185 lieutenant governor shall send a notice of failure to register to the registered entity that:

186 (i) identifies the statutorily required registration deadline described in Subsection (3)
187 that the entity did not meet;

188 (ii) establishes a deadline to cure the entity's failure to register that is the first business
189 day that is at least 10 calendar days after the day on which the lieutenant governor sends the
190 notice of failure to register; and

191 (iii) states that failure to comply by the deadline the lieutenant governor establishes
192 under Subsection (7)(a)(ii) will result in the lieutenant governor sending a notice of
193 non-registration to the Office of the Utah State Auditor, in accordance with Subsection (9).

194 (b) If a registered entity does not make a renewal submission in accordance with
195 Subsection (5) by the deadline described in Subsection (3), the lieutenant governor shall send a
196 notice of failure to renew to the registered entity that:

197 (i) identifies the renewal deadline described in Subsection (3) that the entity did not

198 meet;

199 (ii) establishes a deadline to cure the entity's failure to renew that is the first business
200 day that is at least 30 calendar days after the day on which the lieutenant governor sends the
201 notice of failure to renew; and

202 (iii) states that failure to comply by the deadline the lieutenant governor establishes
203 under Subsection (7)(b)(ii) will result in the lieutenant governor sending a notice of
204 non-registration to the Office of the Utah State Auditor, in accordance with Subsection (9).

205 (8) An entity's registration is valid:

206 (a) if the entity makes a registration or renewal submission in accordance with the
207 deadlines described in Subsection (3);

208 (b) during the period the lieutenant governor establishes in the notice of
209 noncompliance or notice of failure to renew during which the entity may cure the identified
210 registration deficiencies; and

211 (c) for one year beginning on the day the lieutenant governor issues the notice of
212 registration or renewal.

213 (9) (a) The lieutenant governor shall send a notice of non-registration to the Office of
214 the Utah State Auditor if an entity fails to:

215 (i) cure the entity's noncompliance by the deadline the lieutenant governor establishes
216 in the notice of noncompliance;

217 (ii) register by the deadline the lieutenant governor establishes in the notice of failure
218 to register; or

219 (iii) cure the entity's failure to renew by the deadline the lieutenant governor establishes
220 in the notice of failure to renew.

221 (b) The lieutenant governor shall ensure that the notice of non-registration:

222 (i) includes a copy of the notice of noncompliance, the notice of failure to register, or
223 the notice of failure to renew; and

224 (ii) requests that the state auditor withhold state allocated funds or the disbursement of
225 property taxes and prohibit the entity from accessing money held by the state or money held in

226 an account of a financial institution, in accordance with Subsections 67-3-1(7)(i) and
227 67-3-1(10).

228 (10) The lieutenant governor may extend a deadline under this section if an entity
229 notifies the lieutenant governor, before the deadline to be extended, of the existence of an
230 extenuating circumstance that is outside the control of the entity.