

GOVERNMENTAL NONPROFIT CORPORATION ACT

AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Deidre M. Henderson

House Sponsor: _____

LONG TITLE

Committee Note:

The Political Subdivisions Interim Committee recommended this bill.

General Description:

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

Highlighted Provisions:

This bill:

- ▶ amends definitions used to identify a governmental nonprofit corporation;
- ▶ requires the state auditor to:
 - develop a training or other informational resource regarding best practices for financial controls and board governance; and
 - distribute the training or other informational resource to certain state and local entities and governmental nonprofit corporations; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **11-13a-102**, as enacted by Laws of Utah 2017, Chapter 441

30 **67-3-1**, as last amended by Laws of Utah 2018, Chapters 200 and 256

31

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

33 Section 1. Section **11-13a-102** is amended to read:

34 **11-13a-102. Definitions.**

35 As used in this chapter:

36 (1) "Controlling interest" means that one or more governmental entities collectively
37 represent a majority of the governing board's voting power as ~~[outlined]~~ described in the
38 nonprofit corporation's governing documents[-]:

39 (a) by directly controlling one or more board members actions on the board; or

40 (b) by virtue of one or more board members holding elected offices within the
41 governmental entity, regardless of whether the governmental entity placed the member on the
42 board or controls the board member's actions on the board.

43 (2) (a) "Governing board" means the body that governs a governmental nonprofit
44 corporation.

45 (b) "Governing board" includes a board of directors.

46 (3) "Governmental entity" means the state, a county, a municipality, a local district, a
47 special service district, a school district, a state institution of higher education, or any other
48 political subdivision or administrative unit of the state.

49 (4) (a) "Governmental nonprofit corporation" means:

50 (i) a nonprofit corporation that is wholly owned or wholly controlled by one or more
51 governmental entities~~[-, unless the nonprofit corporation receives no operating funding or other~~
52 ~~financial support from any governmental entity]; or~~

53 (ii) a nonprofit corporation in which one or more governmental entities exercise a
54 controlling interest and:

55 (A) that exercises taxing authority;

56 (B) that imposes a mandatory fee for association or participation with the nonprofit
57 corporation where that association or participation is mandated by law; or

58 (C) that receives a majority of the nonprofit corporation's operating funding from one

59 or more governmental entities under the nonprofit corporation's governing documents, except
60 where voluntary membership fees, dues, or assessments compose the operating funding.

61 (b) "Governmental nonprofit corporation" does not include a water company, as that
62 term is defined in Section 16-4-102, unless the water company is wholly owned by one or more
63 governmental entities.

64 (5) "Municipality" means a city, town, or metro township.

65 Section 2. Section 67-3-1 is amended to read:

66 **67-3-1. Functions and duties.**

67 (1) (a) The state auditor is the auditor of public accounts and is independent of any
68 executive or administrative officers of the state.

69 (b) The state auditor is not limited in the selection of personnel or in the determination
70 of the reasonable and necessary expenses of the state auditor's office.

71 (2) The state auditor shall examine and certify annually in respect to each fiscal year,
72 financial statements showing:

73 (a) the condition of the state's finances;

74 (b) the revenues received or accrued;

75 (c) expenditures paid or accrued;

76 (d) the amount of unexpended or unencumbered balances of the appropriations to the
77 agencies, departments, divisions, commissions, and institutions; and

78 (e) the cash balances of the funds in the custody of the state treasurer.

79 (3) (a) The state auditor shall:

80 (i) audit each permanent fund, each special fund, the General Fund, and the accounts of
81 any department of state government or any independent agency or public corporation as the law
82 requires, as the auditor determines is necessary, or upon request of the governor or the
83 Legislature;

84 (ii) perform the audits in accordance with generally accepted auditing standards and
85 other auditing procedures as promulgated by recognized authoritative bodies;

86 (iii) as the auditor determines is necessary, conduct the audits to determine:

87 (A) honesty and integrity in fiscal affairs;

88 (B) accuracy and reliability of financial statements;

89 (C) effectiveness and adequacy of financial controls; and

90 (D) compliance with the law.

91 (b) If any state entity receives federal funding, the state auditor shall ensure that the
92 audit is performed in accordance with federal audit requirements.

93 (c) (i) The costs of the federal compliance portion of the audit may be paid from an
94 appropriation to the state auditor from the General Fund.

95 (ii) If an appropriation is not provided, or if the federal government does not
96 specifically provide for payment of audit costs, the costs of the federal compliance portions of
97 the audit shall be allocated on the basis of the percentage that each state entity's federal funding
98 bears to the total federal funds received by the state.

99 (iii) The allocation shall be adjusted to reflect any reduced audit time required to audit
100 funds passed through the state to local governments and to reflect any reduction in audit time
101 obtained through the use of internal auditors working under the direction of the state auditor.

102 (4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to
103 financial audits, and as the auditor determines is necessary, conduct performance and special
104 purpose audits, examinations, and reviews of any entity that receives public funds, including a
105 determination of any or all of the following:

106 (i) the honesty and integrity of all its fiscal affairs;

107 (ii) whether or not its administrators have faithfully complied with legislative intent;

108 (iii) whether or not its operations have been conducted in an efficient, effective, and
109 cost-efficient manner;

110 (iv) whether or not its programs have been effective in accomplishing the intended
111 objectives; and

112 (v) whether or not its management, control, and information systems are adequate,
113 effective, and secure.

114 (b) The auditor may not conduct performance and special purpose audits,
115 examinations, and reviews of any entity that receives public funds if the entity:

116 (i) has an elected auditor; and

117 (ii) has, within the entity's last budget year, had its financial statements or performance
118 formally reviewed by another outside auditor.

119 (5) The state auditor shall administer any oath or affirmation necessary to the
120 performance of the duties of the auditor's office, and may subpoena witnesses and documents,

121 whether electronic or otherwise, and examine into any matter that the auditor considers
122 necessary.

123 (6) The state auditor may require all persons who have had the disposition or
124 management of any property of this state or its political subdivisions to submit statements
125 regarding it at the time and in the form that the auditor requires.

126 (7) The state auditor shall:

127 (a) except where otherwise provided by law, institute suits in Salt Lake County in
128 relation to the assessment, collection, and payment of its revenues against:

129 (i) persons who by any means have become entrusted with public money or property
130 and have failed to pay over or deliver the money or property; and

131 (ii) all debtors of the state;

132 (b) collect and pay into the state treasury all fees received by the state auditor;

133 (c) perform the duties of a member of all boards of which the state auditor is a member
134 by the constitution or laws of the state, and any other duties that are prescribed by the
135 constitution and by law;

136 (d) stop the payment of the salary of any state official or state employee who:

137 (i) refuses to settle accounts or provide required statements about the custody and
138 disposition of public funds or other state property;

139 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling
140 board or department head with respect to the manner of keeping prescribed accounts or funds;
141 or

142 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the
143 official's or employee's attention;

144 (e) establish accounting systems, methods, and forms for public accounts in all taxing
145 or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

146 (f) superintend the contractual auditing of all state accounts;

147 (g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of
148 property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that
149 officials and employees in those taxing units comply with state laws and procedures in the
150 budgeting, expenditures, and financial reporting of public funds;

151 (h) subject to Subsection (9), withhold the disbursement of tax money from any county,

152 if necessary, to ensure that officials and employees in the county comply with Section
153 59-2-303.1; and

154 (i) withhold state allocated funds or the disbursement of property taxes from a local
155 government entity or a limited purpose entity, as those terms are defined in Section 67-1a-15 if
156 the state auditor finds the withholding necessary to ensure that the entity registers and
157 maintains the entity's registration with the lieutenant governor, in accordance with Section
158 67-1a-15.

159 (8) (a) Except as otherwise provided by law, the state auditor may not withhold funds
160 under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal
161 written notice of noncompliance from the auditor and has been given 60 days to make the
162 specified corrections.

163 (b) If, after receiving notice under Subsection (8)(a), a state or independent local
164 fee-assessing unit that exclusively assesses fees has not made corrections to comply with state
165 laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the
166 state auditor:

167 (i) shall provide a recommended timeline for corrective actions; ~~and~~

168 (ii) may prohibit the state or local fee-assessing unit from accessing money held by the
169 state; and

170 (iii) may prohibit a state or local fee-assessing unit from accessing money held in an
171 account of a financial institution by filing an action in district court requesting an order of the
172 court to prohibit a financial institution from providing the fee-assessing unit access to an
173 account.

174 (c) The state auditor shall remove a limitation on accessing funds under Subsection
175 (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and
176 financial reporting of public funds.

177 (d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with
178 state law, the state auditor:

179 (i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to
180 comply;

181 (ii) may prohibit the taxing or fee-assessing unit from accessing money held by the
182 state; and

183 (iii) may prohibit a taxing or fee-assessing unit from accessing money held in an
184 account of a financial institution by:

185 (A) contacting the taxing or fee-assessing unit's financial institution and requesting that
186 the institution prohibit access to the account; or

187 (B) filing an action in district court requesting an order of the court to prohibit a
188 financial institution from providing the taxing or fee-assessing unit access to an account.

189 (e) If the local taxing or fee-assessing unit adopts a budget in compliance with state
190 law, the state auditor shall eliminate a limitation on accessing funds described in Subsection
191 (8)(d).

192 (9) The state auditor may not withhold funds under Subsection (7)(h) until a county has
193 received formal written notice of noncompliance from the auditor and has been given 60 days
194 to make the specified corrections.

195 (10) (a) The state auditor may not withhold funds under Subsection (7)(i) until the state
196 auditor receives a notice of non-registration, as that term is defined in Section 67-1a-15.

197 (b) If the state auditor receives a notice of non-registration, the state auditor may
198 prohibit the local government entity or limited purpose entity, as those terms are defined in
199 Section 67-1a-15, from accessing:

200 (i) money held by the state; and

201 (ii) money held in an account of a financial institution by:

202 (A) contacting the entity's financial institution and requesting that the institution
203 prohibit access to the account; or

204 (B) filing an action in district court requesting an order of the court to prohibit a
205 financial institution from providing the entity access to an account.

206 (c) The state auditor shall remove the prohibition on accessing funds described in
207 Subsection (10)(b) if the state auditor received a notice of registration, as that term is defined in
208 Section 67-1a-15, from the lieutenant governor.

209 (11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the
210 state auditor:

211 (a) shall authorize a disbursement by a local government entity or limited purpose
212 entity, as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing
213 unit if the disbursement is necessary to:

214 (i) avoid a major disruption in the operations of the local government entity, limited
215 purpose entity, or state or local taxing or fee-assessing unit; or

216 (ii) meet debt service obligations; and

217 (b) may authorize a disbursement by a local government entity, limited purpose entity,
218 or state or local taxing or fee-assessing unit as the state auditor determines is appropriate.

219 (12) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to
220 take temporary custody of public funds if an action is necessary to protect public funds from
221 being improperly diverted from their intended public purpose.

222 (b) If the state auditor seeks relief under Subsection (12)(a):

223 (i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8);
224 and

225 (ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a
226 court orders the public funds to be protected from improper diversion from their public
227 purpose.

228 (13) The state auditor shall:

229 (a) establish audit guidelines and procedures for audits of local mental health and
230 substance abuse authorities and their contract providers, conducted pursuant to Title 17,
231 Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local
232 Mental Health Authorities, Title 51, Chapter 2a, Accounting Reports from Political
233 Subdivisions, Interlocal Organizations, and Other Local Entities Act, and Title 62A, Chapter
234 15, Substance Abuse and Mental Health Act; and

235 (b) ensure that those guidelines and procedures provide assurances to the state that:

236 (i) state and federal funds appropriated to local mental health authorities are used for
237 mental health purposes;

238 (ii) a private provider under an annual or otherwise ongoing contract to provide
239 comprehensive mental health programs or services for a local mental health authority is in
240 compliance with state and local contract requirements, and state and federal law;

241 (iii) state and federal funds appropriated to local substance abuse authorities are used
242 for substance abuse programs and services; and

243 (iv) a private provider under an annual or otherwise ongoing contract to provide
244 comprehensive substance abuse programs or services for a local substance abuse authority is in

245 compliance with state and local contract requirements, and state and federal law.

246 (14) The state auditor may, in accordance with the auditor's responsibilities for political
247 subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from Political
248 Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or
249 investigations of any political subdivision that are necessary to determine honesty and integrity
250 in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of
251 financial controls and compliance with the law.

252 (15) (a) The state auditor may not audit work that the state auditor performed before
253 becoming state auditor.

254 (b) If the state auditor has previously been a responsible official in state government
255 whose work has not yet been audited, the Legislature shall:

256 (i) designate how that work shall be audited; and

257 (ii) provide additional funding for those audits, if necessary.

258 (16) The state auditor shall:

259 (a) with the assistance, advice, and recommendations of an advisory committee
260 appointed by the state auditor from among local district boards of trustees, officers, and
261 employees and special service district boards, officers, and employees:

262 (i) prepare a Uniform Accounting Manual for Local Districts that:

263 (A) prescribes a uniform system of accounting and uniform budgeting and reporting
264 procedures for local districts under Title 17B, Limited Purpose Local Government Entities -
265 Local Districts, and special service districts under Title 17D, Chapter 1, Special Service
266 District Act;

267 (B) conforms with generally accepted accounting principles; and

268 (C) prescribes reasonable exceptions and modifications for smaller districts to the
269 uniform system of accounting, budgeting, and reporting;

270 (ii) maintain the manual under this Subsection [~~(15)~~] (16)(a) so that it continues to
271 reflect generally accepted accounting principles;

272 (iii) conduct a continuing review and modification of procedures in order to improve
273 them;

274 (iv) prepare and supply each district with suitable budget and reporting forms; and

275 (v) (A) prepare instructional materials, conduct training programs, and render other

276 services considered necessary to assist local districts and special service districts in
277 implementing the uniform accounting, budgeting, and reporting procedures; and

278 (B) ensure that any training described in Subsection [~~(15)~~] (16)(a)(v)(A) complies with
279 Title 63G, Chapter 22, State Training and Certification Requirements; and

280 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices
281 and experiences of specific local districts and special service districts selected by the state
282 auditor and make the information available to all districts.

283 (17) (a) The following records in the custody or control of the state auditor are
284 protected records under Title 63G, Chapter 2, Government Records Access and Management
285 Act:

286 (i) records that would disclose information relating to allegations of personal
287 misconduct, gross mismanagement, or illegal activity of a past or present governmental
288 employee if the information or allegation cannot be corroborated by the state auditor through
289 other documents or evidence, and the records relating to the allegation are not relied upon by
290 the state auditor in preparing a final audit report;

291 (ii) records and audit workpapers to the extent they would disclose the identity of a
292 person who during the course of an audit, communicated the existence of any waste of public
293 funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation
294 adopted under the laws of this state, a political subdivision of the state, or any recognized entity
295 of the United States, if the information was disclosed on the condition that the identity of the
296 person be protected;

297 (iii) before an audit is completed and the final audit report is released, records or drafts
298 circulated to a person who is not an employee or head of a governmental entity for their
299 response or information;

300 (iv) records that would disclose an outline or part of any audit survey plans or audit
301 program; and

302 (v) requests for audits, if disclosure would risk circumvention of an audit.

303 (b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure
304 of records or information that relate to a violation of the law by a governmental entity or
305 employee to a government prosecutor or peace officer.

306 (c) The provisions of this Subsection (17) do not limit the authority otherwise given to

307 the state auditor to classify a document as public, private, controlled, or protected under Title
308 63G, Chapter 2, Government Records Access and Management Act.

309 (d) (i) As used in this Subsection (17)(d), "record dispute" means a dispute between the
310 state auditor and the subject of an audit performed by the state auditor as to whether the state
311 auditor may release a record, as defined in Section [63G-2-103](#), to the public that the state
312 auditor gained access to in the course of the state auditor's audit but which the subject of the
313 audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records
314 Access and Management Act.

315 (ii) The state auditor may submit a record dispute to the State Records Committee,
316 created in Section [63G-2-501](#), for a determination of whether the state auditor may, in
317 conjunction with the state auditor's release of an audit report, release to the public the record
318 that is the subject of the record dispute.

319 (iii) The state auditor or the subject of the audit may seek judicial review of a State
320 Records Committee determination under Subsection (17)(d)(ii), as provided in Section
321 [63G-2-404](#).

322 (18) If the state auditor conducts an audit of an entity that the state auditor has
323 previously audited and finds that the entity has not implemented a recommendation made by
324 the state auditor in a previous audit, the state auditor shall notify the Legislative Management
325 Committee through its audit subcommittee that the entity has not implemented that
326 recommendation.

327 (19) (a) As used in this subsection, "governmental nonprofit corporation" means the
328 same as that term is defined in Section [11-13a-102](#).

329 (b) The state auditor shall:

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

332 (ii) provide the training or other informational resource described in Subsection
333 (19)(b)(i) to each of the following entities that provides any required budgeting, expenditure, or
334 financial report to the state auditor:

335 (A) a governmental nonprofit corporation;

336 (B) a state agency or political subdivision of the state that wholly controls or has a
337 controlling interest in a governmental nonprofit corporation, as described in Section

338 [11-13a-102](#); and

339 (C) any other entity that, in the opinion of the state auditor, could benefit from the

340 resource.