

UNA opposes HB283

Thursday, January 30, 2014

The nonprofit community recognizes that mission-driven nonprofits can be successful only by earning and maintaining public trust through appropriate transparency, which can be guided by reasonable regulation that recognizes the unique role of these organizations in communities.

Utah Nonprofits Association supports reasonable and non-burdensome regulations and policies that already make the nonprofit community the most transparent sector of the U.S economy. An appropriate balance must be struck that recognizes and respects the independent activities of nonprofits as public- spirited yet still private organizations.

HB283 does not strike the proper balance. The legislation appears to be triggered from a single nonprofit that did not utilize public funding for its intended purpose and its board members did not fully understand their responsibilities. UNA believes that allegations of isolated problems should be addressed individually and not by imposing costly and excessive burdens on the entire nonprofit community.

- This bill directly impacts nonprofits receiving funding from the state over \$500,000 but, as currently written, could also have ramifications for nonprofits that receive federal flow-through funding through a state department.
- As we understand it, the legislation adds additional requirements for nonprofits that receive \$500,000 or above no matter what percentage of the budget is received from the state instead of the 51% rule that is currently in place. It does not take into consideration the total nonprofit budget amount for the capacity of a nonprofit to perform more expensive and extensive audits. Specifically, HB283 would require certain nonprofits to contract for an independent audit of its finances by certified public accountants. It would also create redundant bureaucratic burdens by requiring the nonprofit to file its audit with the Utah State Auditor as well as the department through which funds are received. The state is not required to rely on the findings from the independent audit of a CPA and could conduct its own audit, thus rendering the newly mandated independent audit irrelevant and useless for enforcement purposes. This is a key point since most nonprofits are already audited annually from the state department they are contracted with.
- The legislation is premature. Currently the Utah State Auditor's office is collecting contract, grant, and flow-through funding from each state department through the State Division of Finance. This is estimated to take one year to complete.

UNA feels strongly that the state should not move forward on this issue. There are too many unknowns at this time for the Legislature to proceed with HB283. Rather, UNA proposes that policymakers reach out to nonprofit partners in order to develop a better understanding of the contracting relationship and regulatory framework as they currently exist in Utah. In this informational exchange, it is essential that all state departments weigh in, and total financial impact be assessed both for nonprofits and state departments.

Instead of this bill UNA would support:

- A certification signed by the CEO/ED and Board President of nonprofit and for-profit organizations, certifying that the Board understands basic board fiduciary responsibilities relating to management of funds. This could be required before funding is released from the relevant state department. This would be part of the procedure within each state department.

What we agree on:

- We agree that transparency is essential for maintaining public trust in charitable nonprofits and governmental institutions.
- We agree that funds should be used for the intended purpose.

Research:

- There are currently a plethora of policies and procedures to protect state funding already in place.
- There are currently sufficient fines and criminal prosecution available to the state for a “bad actor” who received state funding.

Details:

- a. The State Auditor agrees that each state department already has the ability to trigger an audit. They don't think an independent CPA audit would be recognized by the state so the nonprofit could be subjected to two audits
 - b. State departments that we have contacted feel they currently have adequate resources already in place for contracts, grants, and flow-through funding.
 - c. IRS Form 990 informational tax returns filed annually by charitable nonprofits already provide extensive information on nonprofit finances. Most Form 990s are accessible by the public through www.GuideStar.org.
 - d. The Utah Charitable Solicitation Department is a third line of defense for state government and could be involved if it is allowed by their statute.
- This bill singles out nonprofits and not all entities that contracts with the state, thereby imposing discriminatory burdens on charitable nonprofits that are not applied equally to for-profit contractors.

Line by Line concerns with HB 283 submitted to Rep. Menlove- Jan. 29, 2014

1-Why are only nonprofits targeted for the burdens and costs imposed by this bill and not every organization, nonprofit and for-profit alike, that contracts with the state?

2- Line 41-Board wording- creates liability for all board members. This could create a mass resignation of all board members from nonprofit boards if this is interpreted that board members and CEO's personal accounts are included in the audit. This is not an isolated concern; in recent years the same challenge was raised when Ohio tried to require a copy of every nonprofit board members' life insurance policy to be reviewed as part of the state audit.

3- Line 44- should include GAAP for nonprofits. The legislation should also consider adding Unified Chart of Accounts (UCOA) for consistency.

4- Line 77 – This should read only state funds. As it is defined now, the legislation would submit nonprofits to state audits even if they only receive federal funds which have very stringent regulations already in place. This would give the state power to open nonprofit books even though they don't receive direct state funding. Also – is this for contracts only or also for grants and flow-through funding?

5- Line 81- This dollar amount referenced \$500,000, which will be below federal standards as of December 26, 2014. New OMB guidelines set the audit standard at \$750,000. The legislation should adopt the same threshold or state that the amount is equal to the single audit threshold determined by OMB.

6- Line 93- Confused with the addition of public corporation on this line. Is the intent to apply this law to business? Or just to governments and independent nonprofits performing services under contracts/grants with the state?

7- Line 95- Contracts- Does this word exist in current law? The title says Contracts but all of the legislative text addresses grants.

8- Line 103- 51-2a-201 (6) (f)- We could not find this reference under current Utah law. We show it ending with 51-2a-201 (2). Is there other pending legislation that exists utilizing these numbers?

9- Line 104- annual report- Is this the same as an audit? Typically the CEO and CFO do sign a statement attesting accuracy of the reports. As a result, the provisions of the legislation are redundant.

10- Line 106- penalty of perjury- is very strong language that could be seen by those who read this bill that nonprofits are on the whole not trustworthy. This language worries me. By signing a statement of accuracy for the audit when you know they are not true, already constitutes fraud.

11- Line 112- Again- couldn't find reference to 51-2a-201 (6) (f)

12- Lines 125-130 – This looks like the creation of a new legal term for nonprofits. Recommend the restatement be replaced with a citation to the UT code section which defines nonprofits.

13- Lines 131-134- Same problem as above, the legislation repeats the definition included in lines 90-93.

14- Lines 135-137- The scope should be narrowed to state-controlled taxpayer funds. This language is also concerning because federal pass-through money that goes to a nonprofit may trigger a state audit even if no state money is directly received. Federal funding already has very tight regulations; this language imposes redundant regulatory burdens on nonprofits and state departments. We don't think this is the point of this bill.

15- Lines 149-154- The text imposes a new and unacceptable set of criteria for nonprofit bylaws that do not currently exist in law or practice in Utah or elsewhere in the country. Nonprofit bylaws already include information about financial oversight and responsibilities that include all funding. Bylaws do not include procedures by which these things are decided, rather what the decisions are and procedures for making changes if necessary. Bylaws are an unlikely place to find procedures for dismissing the CEO and simply state that the board has the authority to hire and fire the CEO. The termination of any other employee is a management decision, not one of governance and therefore done at the CEO's discretion.

16- Lines 159-160- This should include a limitation preventing the state from requiring the return of funds that have been appropriately expended.