

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 643

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO CORPORATIONS; AMENDING SECTION 30-501, IDAHO CODE, TO PROVIDE
2 CERTAIN PROHIBITIONS ON THE INCORPORATION OF A CORPORATION BY THE STATE
3 AND TO PROVIDE AN EXCEPTION FOR INDEPENDENT PUBLIC BODIES POLITIC AND
4 CORPORATE; AMENDING CHAPTER 5, TITLE 30, IDAHO CODE, BY THE ADDITION OF
5 A NEW SECTION 30-502, IDAHO CODE, TO PROVIDE FOR CERTAIN REPORTING AND
6 TO PROVIDE FOR THE OPPORTUNITY OF CERTAIN CORPORATIONS TO BE REFORMED AS
7 INDEPENDENT PUBLIC BODIES POLITIC AND CORPORATE OR TO DISASSOCIATE FROM
8 THE STATE OF IDAHO; AND DECLARING AN EMERGENCY.
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 30-501, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 30-501. CORPORATIONS -- CONSTITUTION OF THE STATE OF IDAHO. (1) Every
14 corporation organized for any lawful purpose or purposes, whether a general
15 business corporation or a designated class of corporation, shall, by the act
16 of filing incorporation documents with the state of Idaho, acknowledge and
17 accept the provisions of the constitution of the state of Idaho and the pro-
18 visions of this chapter as binding upon that corporation.

19 (2) The state shall not create a corporation or act as the incorpora-
20 tor of any corporation that is provided for in subsection (1) of this sec-
21 tion. Except as authorized by the legislature through the enactment of gen-
22 eral laws, the state shall not authorize the creation of a corporation. For
23 purposes of this section, "state" means the state of Idaho, a state officer
24 acting in an official capacity, a state employee acting within the scope of
25 employment, or a state agency, department, division, bureau, board, commis-
26 sion, or institution.

27 (3) A corporation shall not be incorporated to carry out a purpose or
28 function of the state or to receive or expend moneys of the state in further-
29 ance of such purpose or function.

30 (4) It is not a violation of the provisions of this section for the state
31 to create or to authorize the creation of an independent public body politic
32 and corporate. For the purposes of this section, "independent public body
33 politic and corporate" means an entity that is:

34 (a) Created in statute to carry out a public purpose;

35 (b) Devoid of any private party with the right to control the entity or
36 to manage it; and

37 (c) Lacking any potential for private parties to change the fundamental
38 structure or public purpose of the entity as provided for in the statute
39 that created it.

1 SECTION 2. That Chapter 5, Title 30, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 30-502, Idaho Code, and to read as follows:

4 30-502. IMPROPER STATE CORPORATIONS -- REPORTING -- OPPORTUNITY TO
5 REFORM. (1) The provisions of this section shall apply to a corporation that:

- 6 (a) Was incorporated prior to the effective date of this section;
7 (b) Has assets or liabilities as of the effective date of this section
8 or has valid contractual obligations that could be enforced against it;
9 and
10 (c) Was created by the state, incorporated by the state, or authorized
11 to be created by the state through some vote or action other than a
12 general law enacted by the legislature. For purposes of this section,
13 "state" shall have the same meaning as provided in section 30-501, Idaho
14 Code.

15 (2) A corporation shall have an opportunity to reform or, if a nonprofit
16 corporation, to disassociate from the state of Idaho pursuant to the provi-
17 sions of this section.

18 (3) By January 1, 2025, a corporation shall submit a report to the of-
19 fice of the state treasurer that includes:

- 20 (a) The name and mailing address of the corporation;
21 (b) The names of the directors of the corporation;
22 (c) Whether any of the directors are officials, employees, or agents of
23 the state of Idaho or represent the interests of the state of Idaho on
24 the board of directors;
25 (d) The date that the corporation was established;
26 (e) Whether the corporation is in good standing with the Idaho secre-
27 tary of state;
28 (f) A description of the corporation's purpose;
29 (g) Whether the corporation continues to fulfill the purpose for which
30 it was created and is necessary;
31 (h) Whether the corporation was established pursuant to approval by the
32 legislature and, if so, evidence of such approval;
33 (i) A financial report that shows the assets and liabilities of the cor-
34 poration for the most recent fiscal year; and
35 (j) Internet links to the organization's website, if any, and, if ap-
36 plicable, to information about the nonprofit corporation on the Idaho
37 secretary of state's website.

38 (4) A corporation that self-reports pursuant to subsection (3) of this
39 section may, by statute, be reformed by the legislature as an independent
40 public body politic and corporate.

41 (5) As an alternative to reformation as an independent public body
42 politic and corporate pursuant to subsection (4) of this section, a non-
43 profit corporation that was incorporated in violation of the provisions
44 of section 30-501, Idaho Code, may cure such violation by voluntarily dis-
45 associating from the state of Idaho by January 1, 2025. Such a nonprofit
46 corporation shall complete each of the following steps, as applicable:

- 47 (a) Replace any board members who are state officers acting in their of-
48 ficial capacity or who are state employees acting within their scope of
49 employment with board members who do not possess either of those charac-

1 teristics and who are not acting on behalf of the state of Idaho in any
2 capacity;

3 (b) Account for and return any moneys, assets, or property of the state
4 to the office of the state treasurer and agree to relinquish any further
5 state support, including but not limited to moneys, assets, property,
6 staffing or staff support, office space or office supplies, or informa-
7 tion technology equipment or support; and

8 (c) By January 1, 2025, submit the report required pursuant to subsec-
9 tion (3) of this section and, in such report, provide evidence that the
10 nonprofit corporation has disassociated from the state by taking the
11 steps provided for in this subsection. A copy of such report shall also
12 be provided to the secretary of state.

13 (6) By July 1, 2025, the office of the state treasurer shall deliver
14 to the governor, the president pro tempore of the senate, and the speaker of
15 the house of representatives a list of corporations that have self-reported
16 pursuant to subsection (3) of this section along with a recommendation as to
17 whether such corporations should be reformed by the legislature to indepen-
18 dent public bodies politic and corporate. The report shall also include a
19 list of nonprofit corporations that have voluntarily disassociated from the
20 state of Idaho pursuant to the provisions of this section.

21 (7) A corporation that does not self-report pursuant to the provisions
22 of subsection (3) of this section or that frustrates the reform or disasso-
23 ciation procedures provided for in this section shall be considered to be in
24 violation of the provisions of section 30-501, Idaho Code, and shall not be
25 recognized as a corporation under Idaho law.

26 (8) A corporation that undergoes or has undergone the reformation or
27 disassociation procedures provided for in this section shall be subject to
28 auditing by the state of Idaho, including on a follow-up basis, to verify
29 compliance with the provisions of this section.

30 SECTION 3. An emergency existing therefor, which emergency is hereby
31 declared to exist, this act shall be in full force and effect on and after its
32 passage and approval.