

***Effective 5/13/2014***

***Superseded 5/10/2016***

**631-4a-203 Free Market Protection and Privatization Board -- Duties.**

- (1) The board shall:
  - (a) determine whether an activity provided by an agency could be privatized to provide the same types and quality of a good or service that would result in cost savings;
  - (b) review privatization of an activity at the request of:
    - (i) an agency; or
    - (ii) a private enterprise;
  - (c) review issues concerning agency competition with one or more private enterprises to determine:
    - (i) whether privatization:
      - (A) would be feasible;
      - (B) would result in cost savings; and
      - (C) would result in equal or better quality of a good or service; and
    - (ii) ways to eliminate any unfair competition with a private enterprise;
  - (d) recommend privatization to an agency if a proposed privatization is demonstrated to provide a more cost efficient and effective manner of providing a good or service, taking into account:
    - (i) the scope of providing the good or service;
    - (ii) whether cost savings will be realized;
    - (iii) whether quality will be improved;
    - (iv) the impact on risk management;
    - (v) the impact on timeliness;
    - (vi) the ability to accommodate fluctuating demand;
    - (vii) the ability to access outside expertise;
    - (viii) the impact on oversight;
    - (ix) the ability to develop sound policy and implement best practices; and
    - (x) legal and practical impediments to privatization;
  - (e) comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in making rules establishing privatization standards, procedures, and requirements;
  - (f) in fulfilling the duties described in this Subsection (1), consult with, maintain communication with, and access information from:
    - (i) other entities promoting privatization; and
    - (ii) managers and employees in the public sector;
  - (g) comply with Part 3, Commercial Activities Inventory and Review; and
  - (h)
    - (i) prepare an annual report for each calendar year that contains:
      - (A) information about the board's activities;
      - (B) recommendations on privatizing an activity provided by an agency; and
      - (C) the status of the inventory created under Part 3, Commercial Activities Inventory and Review;
    - (ii) submit the annual report to the Legislature and the governor by no later than January 15 immediately following the calendar year for which the report is made; and
    - (iii) submit, before November 1, an annual written report to the Government Operations Interim Committee.
- (2) The board may, using the criteria described in Subsection (1), consider whether to recommend privatization of an activity provided by an agency, a county, or a special district:
  - (a) on the board's own initiative;

- (b) upon request by an agency, a county, or a special district;
  - (c) in response to a complaint that an agency, a county, or a special district is engaging in unfair competition with a private enterprise; or
  - (d) in light of a proposal made by any person, regardless of whether the proposal was solicited.
- (3) In addition to filing a copy of recommendations for privatization with an agency head, the board shall file a copy of its recommendations for privatization with:
- (a) the governor's office; and
  - (b) the Office of Legislative Fiscal Analyst for submission to the relevant legislative appropriation subcommittee.
- (4)
- (a) The board may appoint advisory groups to conduct studies, research, or analyses, and make reports and recommendations with respect to a matter within the jurisdiction of the board.
  - (b) At least one member of the board shall serve on each advisory group.
- (5)
- (a) Subject to Subsection (5)(b), this chapter does not preclude an agency from privatizing the provision of a good or service independent of the board.
  - (b) If an agency privatizes the provision of a good or service, the agency shall include as part of the contract that privatizes the provision of the good or service that any contractor assumes all liability to provide the good or service.