

**Representative Craig A. Frank** proposes the following substitute bill:

**INVENTORY AND REVIEW OF COMMERCIAL**

**ACTIVITIES**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig A. Frank**

Senate Sponsor: Howard A. Stephenson

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to the Privatization Policy Board.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ addresses the membership of the board;
- ▶ addresses the duties of the board, including:
  - creating an inventory of activities of state agencies; and
  - conducting public hearings;
- ▶ requires the governor to review certain commercial activities;
- ▶ creates conforming processes;
- ▶ clarifies application of government immunity; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill coordinates with H.B. 63, Recodification of Title 63 State Affairs in General,



26 to address technical renumbering.

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **63-55d-101**, Utah Code Annotated 1953

30 **63-55d-203**, Utah Code Annotated 1953

31 **63-55d-301**, Utah Code Annotated 1953

32 **63-55d-302**, Utah Code Annotated 1953

33 **63-55d-303**, Utah Code Annotated 1953

34 **63-55d-304**, Utah Code Annotated 1953

35 RENUMBERS AND AMENDS:

36 **63-55d-102**, (Renumbered from 63-55a-1, as last amended by Laws of Utah 2003,  
37 Chapter 193)

38 **63-55d-201**, (Renumbered from 63-55a-2, as last amended by Laws of Utah 2003,  
39 Chapter 193)

40 **63-55d-202**, (Renumbered from 63-55a-3, as last amended by Laws of Utah 2003,  
41 Chapter 193)



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

44 Section 1. Section **63-55d-101** is enacted to read:

45 **CHAPTER 55d. PRIVATIZATION POLICY BOARD**

46 **Part 1. General Provisions**

47 **63-55d-101. Title.**

48 This chapter is known as the "Privatization Policy Board Act."

49 Section 2. Section **63-55d-102**, which is renumbered from Section 63-55a-1 is  
50 renumbered and amended to read:

51 **[63-55a-1]. 63-55d-102. Definitions.**

52 (1) (a) "Activity" means to provide a good or service:

53 (b) "Activity" includes to:

54 (i) manufacture a good or service;

55 (ii) process a good or service;

56 (iii) sell a good or service;

57 (iv) offer for sale a good or service;

58 (v) rent a good or service;

59 (vi) lease a good or service;

60 (vii) deliver a good or service;

61 (viii) distribute a good or service; or

62 (ix) advertise a good or service.

63 ~~[(1) (a) "Agency" means a department, division, office, bureau, board, commission, or~~  
64 ~~other administrative unit of the state.]~~

65 ~~[(b) "Agency" includes departments, divisions, offices, bureaus, boards, commissions,~~  
66 ~~and other administrative units of the state's counties and municipalities.]~~

67 (2) (a) Except as provided in Subsection (2)(b), "agency" means:

68 (i) the state; or

69 (ii) an entity of the state including a department, office, division, authority,  
70 commission, or board.

71 (b) "Agency" does not include:

72 (i) the Legislature;

73 (ii) an entity or agency of the Legislature;

74 (iii) the state auditor;

75 (iv) the state treasurer;

76 (v) the Office of the Attorney General;

77 (vi) the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

78 (vii) the Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber  
79 Valley Historic Railroad Authority;

80 (viii) the Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah  
81 Science Center Authority;

82 (ix) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing  
83 Corporation Act;

84 (x) the Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State  
85 Fair Corporation Act;

86 (xi) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'  
87 Compensation Fund;

88 (xii) the Utah State Retirement Office created in Title 49, Chapter 11, Utah State  
89 Retirement Systems Administration;

90 (xiii) the School and Institutional Trust Lands Administration created in Title 53C,  
91 Chapter 1, Part 2, School and Institutional Trust Lands Administration;

92 (xiv) the Utah Communications Agency Network created in Title 63C, Chapter 7, Utah  
93 Communications Agency Network Act;

94 (xv) the Utah Capital Investment Corporation created in Title 63, Chapter 38f, Part 12,  
95 Utah Venture Capital Enhancement Act;

96 (xvi) an institution of higher education as defined in Section 53B-3-102;

97 (xvii) a school established under Title 53A, Chapter 25, Schools for the Deaf and  
98 Blind; or

99 (xviii) a charter school chartered by the State Charter School Board under Title 53A,  
100 Chapter 1a, Part 5, The Utah Charter Schools Act.

101 ~~[(2)]~~ (3) "Agency head" means the chief administrative officer of an agency.

102 ~~[(3) "Privatization" means action by a state agency to contract with the private sector or~~  
103 ~~with another state agency to perform functions or services currently being performed by it.]~~

104 (4) "Board" means the Privatization Policy Board created in Section 63-55d-201.

105 (5) "Commercial activity" means to engage in an activity that can be obtained in whole  
106 or in part from a private enterprise.

107 (6) "Local entity" means:

108 (a) a political subdivision of the state, including a:

109 (i) county;

110 (ii) city;

111 (iii) town;

112 (iv) local school district;

113 (v) local district; or

114 (vi) special service district;

115 (b) an agency of an entity described in this Subsection (6), including a department,  
116 office, division, authority, commission, or board; and

117 (c) an entity created by an interlocal cooperative agreement under Title 11, Chapter 13,  
118 Interlocal Cooperation Act, between two or more entities described in this Subsection (6).

119 (7) "Private enterprise" means a person that for profit:

120 (a) manufactures a good or service;

121 (b) processes a good or service;

122 (c) sells a good or service;

123 (d) offers for sale a good or service;

124 (e) rents a good or service;

125 (f) leases a good or service;

126 (g) delivers a good or service;

127 (h) distributes a good or service; or

128 (i) advertises a good or service.

129 (8) "Privatize" means that an activity engaged in by an agency is transferred so that a  
130 private enterprise engages in the activity including a transfer by:

131 (a) contract;

132 (b) transfer of property; or

133 (c) another arrangement.

134 Section 3. Section **63-55d-201**, which is renumbered from Section 63-55a-2 is  
135 renumbered and amended to read:

136 **Part 2. Privatization Policy Board**

137 **~~[63-55a-2]. 63-55d-201. Privatization Policy Board -- Created -- Membership --~~**  
138 **Operations -- Expenses.**

139 (1) (a) There is created a Privatization Policy Board composed of 15 members.

140 (b) The governor shall appoint board members as follows:

141 (i) two senators, one each from the majority and minority political parties, from names  
142 recommended by the president of the Senate;

143 (ii) two representatives, one each from the majority and minority political parties, from  
144 names recommended by the speaker of the House of Representatives;

145 [~~(iii) two members]~~

146 (iii) one member representing public employees, from names recommended by the  
147 largest public employees' association;

148 (iv) one member from state management;

149 (v) [~~five~~] seven members from the private business community;

150 ~~[(vi) one member representing education;]~~  
151 ~~[(vii)]~~ (vi) one member representing the Utah League of Cities and Towns from names  
152 recommended by the ~~[league]~~ Utah League of Cities and Towns; and  
153 ~~[(viii)]~~ (vii) one member representing the Utah Association of Counties from names  
154 recommended by the ~~[association]~~ Utah Association of Counties.  
155 (2) (a) Except as required by Subsection (2)(b), ~~[board members]~~ a board member:  
156 (i) appointed under Subsection (1)(b)(i) or (ii) shall serve a two-year term; and  
157 (ii) appointed under Subsections (1)(b)(iii) through (vii) shall serve a four-year ~~[terms]~~  
158 term.  
159 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the  
160 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
161 board members are staggered so that approximately half of the board is appointed every two  
162 years.  
163 (c) The governor shall on or before July 1, 2008 change the appointments to the board  
164 to reflect the membership requirements of Subsection (1)(b).  
165 (3) (a) ~~[Each]~~ A board member shall hold office until ~~[his]~~ the board member's  
166 successor ~~[has been]~~ is appointed and qualified.  
167 (b) When a vacancy occurs in the membership for any reason, ~~[the]~~ a replacement shall  
168 be appointed for the unexpired term.  
169 (c) Eight members of the board ~~[are]~~ constitute a quorum ~~[for the purpose of~~  
170 ~~organizing the board and conducting the business of the board]~~.  
171 (d) The vote of a majority of board members voting when a quorum is present is  
172 necessary for the board to ~~[take action]~~ act.  
173 (4) (a) ~~[At the initial meeting of the board, the]~~ The board shall select one of ~~[their~~  
174 ~~number]~~ the members to serve as chair of the board.  
175 (b) A chair shall serve as chair for a term of one-year, and may be selected as chair for  
176 more than one term.  
177 ~~[(b)]~~ (5) The chief procurement officer or ~~[his designee is the nonvoting secretary to~~  
178 ~~the board and is responsible for scheduling quarterly meetings]~~ the chief procurement officer's  
179 designee shall staff the board.  
180 ~~[(e)]~~ (6) The board shall meet;

181 (a) at least quarterly; and ~~[at the call of]~~

182 (b) as necessary to conduct its business, as called by the chair.

183 (5) (a) (i) ~~[Members who are not government employees shall receive no]~~ A member  
 184 who is not a government employee may not receive compensation or benefits for ~~[their]~~ the  
 185 member's services, but may receive per diem and expenses incurred in the performance of the  
 186 member's official duties at the rates established by the Division of Finance under Sections  
 187 63A-3-106 and 63A-3-107.

188 (ii) ~~[Members]~~ A member who is not a government employee may decline to receive  
 189 per diem and expenses for ~~[their]~~ the member's service.

190 (b) (i) ~~[State]~~ A state government officer and employee ~~[members]~~ member who ~~[do]~~  
 191 does not receive salary, per diem, or expenses from ~~[their]~~ the member's agency for ~~[their]~~ the  
 192 member's service may receive per diem and expenses incurred in the performance of ~~[their]~~ the  
 193 member's official duties from the board at the rates established by the Division of Finance  
 194 under Sections 63A-3-106 and 63A-3-107.

195 (ii) ~~[State]~~ A government officer and employee ~~[members]~~ member may decline to  
 196 receive per diem and expenses for ~~[their]~~ the member's service.

197 (c) (i) A local government member who does not receive salary, per diem, or expenses  
 198 from the entity that the member represents for the member's service may receive per diem and  
 199 expenses incurred in the performance of the member's official duties at the rates established by  
 200 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

201 (ii) A local government member may decline to receive per diem and expenses for the  
 202 member's service.

203 ~~[(c)]~~ (d) Legislators on the ~~[committee]~~ board shall receive compensation and expenses  
 204 as provided by law and legislative rule.

205 Section 4. Section **63-55d-202**, which is renumbered from Section 63-55a-3 is  
 206 renumbered and amended to read:

207 ~~[63-55a-3].~~ **63-55d-202. Privatization Policy Board -- Duties.**

208 (1) ~~[Except as otherwise provided in Subsection (5), the]~~ The board shall:

209 (a) review whether or not ~~[certain services performed by existing state agencies]~~ a good  
 210 or service provided by an agency could be privatized to provide the same types and quality of  
 211 ~~[services]~~ a good or service that would result in cost savings;

212 (b) review [~~particular requests for~~] privatization of [~~services and~~] a good or service at  
213 the request of:

214 (i) an agency; or

215 (ii) a private enterprise;

216 (c) review issues concerning agency competition with [~~the~~] one or more private [sector  
217 and] enterprises to determine;

218 (i) whether privatization;

219 (A) would be feasible [~~and~~];

220 (B) would result in cost savings; and

221 (C) would result in equal or better quality of a good or service; and

222 (ii) ways to eliminate any unfair competition with a private enterprise;

223 [~~(e)~~] (d) recommend privatization to [~~the~~] an agency [~~head when the~~] if a proposed  
224 privatization is demonstrated to provide a more cost efficient and effective manner of  
225 providing [~~existing governmental services~~] a good or service;

226 [~~(d)~~] (e) comply with [~~the provisions of~~] Title 63, Chapter 46a, [~~the~~] Utah  
227 Administrative Rulemaking Act, in making rules establishing privatization standards,  
228 procedures, and requirements;

229 [~~(e)~~] (f) maintain communication with and access information from, other entities  
230 promoting privatization;

231 (g) comply with Part 3, Commercial Activities Inventory and Review; and

232 [~~(f)~~] (h) (i) prepare an annual report for each calendar year that contains:

233 [~~(i)~~] (A) information about the board's activities; [~~and~~]

234 [~~(ii)~~] (B) recommendations on privatizing [~~government services~~] a good or service  
235 provided by an agency; and

236 (C) the status of the inventory created under Part 3, Commercial Activities Inventory  
237 and Review;

238 [~~(g)~~] (ii) submit the annual report to the Legislature and the governor[-] by no later than  
239 January 15 immediately following the calendar year for which the report is made; and

240 (iii) provide each interim an oral report to the Government Operations Interim  
241 Committee.

242 (2) In addition to filing [~~copies~~] a copy of [~~its~~] recommendations for privatization with

243 ~~[the relevant]~~ an agency head, the board shall file ~~[copies]~~ a copy of its recommendations for  
 244 privatization with:

245 (a) the governor's office; and

246 (b) the Office of Legislative Fiscal Analyst for submission to the relevant legislative  
 247 appropriation subcommittee.

248 (3) (a) The board may appoint advisory groups to conduct studies, research, or  
 249 analyses, and make reports and recommendations with respect to ~~[subjects or matters]~~ a matter  
 250 within the jurisdiction of the board.

251 (b) At least one member of the board shall serve on each advisory group.

252 (4) ~~[This]~~ (a) Subject to Subsection (4)(b), this chapter does not preclude ~~[any]~~ an  
 253 agency from privatizing ~~[any]~~ the provision of a good or service ~~[or function independently]~~  
 254 independent of the board ~~[if;]~~.

255 (b) If an agency privatizes the provision of a good or service, the agency shall include  
 256 as part of the contract that privatizes the ~~[function, the]~~ provision of the good or service that  
 257 any contractor assumes all liability to ~~[perform the privatized function]~~ provide the good or  
 258 service.

259 (5) The board may ~~[not exercise its authority under Subsection (1) over an agency~~  
 260 ~~referred to in Subsection 63-55a-1(b), unless requested by the agency:]~~ review upon the request  
 261 of a local entity a matter relevant to:

262 (a) (i) privatization; or

263 (ii) unfair competition with one or more private enterprises; and

264 (b) an activity or proposed activity of the local entity.

265 Section 5. Section **63-55d-203** is enacted to read:

266 **63-55d-203. Board accounting method.**

267 The board by rule made in accordance with Title 63, Chapter 46a, Utah Administrative  
 268 Rulemaking Act, shall establish an accounting method that:

269 (1) is similar to generally accepted accounting principles used by a private enterprise;

270 (2) allows an agency to identify the total actual cost of engaging in a commercial  
 271 activity in a manner similar to how a private enterprise identifies the total actual cost to the  
 272 private enterprise, including the following:

273 (a) a labor expense, such as:

- 274 (i) compensation and benefits;
- 275 (ii) a cost of training;
- 276 (iii) a cost of paying overtime;
- 277 (iv) a cost of supervising labor; or
- 278 (v) another personnel expense;
- 279 (b) an operating cost, such as:
- 280 (i) vehicle maintenance and repair;
- 281 (ii) a marketing, advertising, or other sales expense;
- 282 (iii) an office expense;
- 283 (iv) a cost of an accounting operation, such as billing;
- 284 (v) an insurance expense;
- 285 (vi) a real estate or equipment cost;
- 286 (vii) a debt service cost; or
- 287 (viii) a proportionate amount of other overhead or of a capital expense, such as vehicle
- 288 depreciation and depreciation of other fixed assets;
- 289 (c) a contract management cost; and
- 290 (d) another cost particular to a person supplying the good or service; and
- 291 (3) provides a process to estimate the taxes an agency would pay related to engaging in
- 292 a commercial activity if the agency were required to pay federal, state, and local taxes to the
- 293 same extent as a private enterprise engaging in the commercial activity.

294 Section 6. Section **63-55d-301** is enacted to read:

295 **Part 3. Commercial Activities Inventory and Review**

296 **63-55d-301. Board to create inventory.**

- 297 (1) By no later than June 30, 2009, the board shall create an inventory of activities of
- 298 the agencies in this state to classify whether each activity is:
- 299 (a) a commercial activity; or
- 300 (b) an inherently governmental activity.
- 301 (2) The board shall update the inventory created under this section at least every two
- 302 years.
- 303 (3) The board shall make the inventory available to the public through electronic
- 304 means.

305 Section 7. Section **63-55d-302** is enacted to read:

306 **63-55d-302. Governor to require review of commercial activities.**

307 Beginning with fiscal year 2009-10, the governor shall at least once every two fiscal  
308 years:

309 (1) select at least three commercial activities that are being performed by an agency for  
310 examination; and

311 (2) require the Governor's Office of Planning and Budget to conduct the examination.

312 Section 8. Section **63-55d-303** is enacted to read:

313 **63-55d-303. Duties of the Governor's Office of Planning and Budget.**

314 (1) The Governor's Office of Planning and Budget shall:

315 (a) determine the amount of an appropriation that is no longer needed by an executive  
316 branch agency because all or a portion of the agency's provision of a good or service is  
317 privatized; and

318 (b) adjust the governor's budget recommendations to reflect the amount determined  
319 under Subsection (1)(a).

320 (2) The Governor's Office of Planning and Budget shall report its findings to the  
321 Legislature.

322 (3) This section does not prevent the governor from recommending in a budget  
323 recommendation the restoration of a portion of the appropriation to an agency that is reduced  
324 under this section.

325 Section 9. Section **63-55d-304** is enacted to read:

326 **63-55d-304. Government immunity.**

327 (1) This chapter or the inclusion of an activity on an inventory made under this chapter  
328 may not be construed as a waiver of any right, claim, or defense of immunity that an agency  
329 may have under Title 63, Chapter 30d, Governmental Immunity Act of Utah, or other law.

330 (2) The inclusion in an inventory of an activity as a commercial activity for purposes of  
331 this chapter may not be construed to find that the activity does not constitute an exercise of a  
332 governmental function.

333 Section 10. **Coordinating H.B. 75 with H.B. 63 -- Technical numbering.**

334 If this H.B. 75 and H.B. 63, Recodification of Title 63 State Affairs in General, both  
335 pass it is the intent of the Legislature that the Office of Legislative Research and General

336 Counsel in preparing the Utah Code database for publication:  
337 (1) treat the amendments in this bill as superseding the renumbering and amending in  
338 H.B. 63 to Sections 63-55a-1, 63-55a-2, and 63-55a-3;  
339 (2) not enact Section 63I-4-101 enacted in H.B. 63;  
340 (3) renumber Sections 63-55d-101 through 63-55d-102 in this bill as Sections  
341 63I-4-101 through 63I-4-102;  
342 (4) renumber Sections 63-55d-201 through 63-55d-203 in this bill as Sections  
343 63I-4-201 through 63I-4-203;  
344 (5) renumber Sections 63-55d-301 through 63-55d-304 in this bill as Sections  
345 63I-4-301 through 63I-4-304;  
346 (6) replace internal references in this bill to the sections listed in Subsections (3)  
347 through (5) with the appropriate corresponding renumbered sections; and  
348 (7) replace the citations to provisions renumbered by H.B. 63 other than Sections  
349 63-55a-1, 63-55a-2, and 63-55a-3 with the appropriate corresponding renumbered sections  
350 under H.B. 63.

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**H.B. 75 2nd Sub. (Gray) - Inventory and Review of Commercial Activities**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Implementation of this bill will require \$72,000 for a Research Analyst IV for the Division of Purchasing; and \$55,000 for a Research Analyst I for the Governor's Office of Planning and Budget.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$127,000	\$127,000	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$127,000</b>	<b>\$127,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.