

HB0094S01 compared with HB0094

~~{deleted text}~~ shows text that was in HB0094 but was deleted in HB0094S01.

inserted text shows text that was not in HB0094 but was inserted into HB0094S01.

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Representative Keven J. Stratton proposes the following substitute bill:

FREE MARKET PROTECTION AND PRIVATIZATION

BOARD ACT AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill recodifies and amends the Privatization Policy Board Act, changes the membership on the board, and renames the board.

Highlighted Provisions:

This bill:

- ▶ recodifies the Privatization Policy Board Act;
- ▶ changes the name of the board to the Free Market Protection and Privatization Board;
- ▶ changes the membership and terms of members of the board;
- ▶ provides that the ~~{State Auditor's}~~ Governor's Office of Planning and Budget shall

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staff the board and permits the board to contract with a private entity for additional staff;

- ▶ revises the duties and powers of the board;
- ▶ provides a sunset date for the board; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-1-119, as enacted by Laws of Utah 2008, Chapter 23

17-50-107, as enacted by Laws of Utah 2008, Chapter 23

26-18-3.3, as enacted by Laws of Utah 2011, Chapter 162

63I-1-263 (Effective 05/01/13), as last amended by Laws of Utah 2012, Chapters 126, 206, 347, 369, and 395

ENACTS:

63I-4a-201, Utah Code Annotated 1953

63I-4a-204, Utah Code Annotated 1953

63I-4a-301, Utah Code Annotated 1953

63I-4a-401, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

63I-4a-101, (Renumbered from 63I-4-101, as enacted by Laws of Utah 2008, Chapter 147)

63I-4a-102, (Renumbered from 63I-4-102, as last amended by Laws of Utah 2012, Chapter 212)

63I-4a-202, (Renumbered from 63I-4-201, as last amended by Laws of Utah 2010, Chapter 286)

63I-4a-203, (Renumbered from 63I-4-202, as renumbered and amended by Laws of Utah 2008, Chapter 147)

63I-4a-205, (Renumbered from 63I-4-203, as enacted by Laws of Utah 2008, Chapter

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147)

63I-4a-302, (Renumbered from 63I-4-301, as enacted by Laws of Utah 2008, Chapter 147)

63I-4a-303, (Renumbered from 63I-4-302, as enacted by Laws of Utah 2008, Chapter 147)

63I-4a-304, (Renumbered from 63I-4-303, as enacted by Laws of Utah 2008, Chapter 147)

63I-4a-402, (Renumbered from 63I-4-304, as enacted by Laws of Utah 2008, Chapter 147)

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section **10-1-119** is amended to read:

10-1-119. Inventory of competitive activities.

(1) As used in this section:

(a) "Applicable city" means:

(i) on and after July 1, 2009, a city of the first class; and

(ii) on and after July 1, 2010, a city of the first or second class.

(b) "Competitive activity" means an activity engaged in by a city or an entity created by the city by which the city or an entity created by the city provides a good or service that is substantially similar to a good or service that is provided by a person:

(i) who is not an entity of the federal government, state government, or a political subdivision of the state; and

(ii) within the boundary of the county in which the city is located.

(c) (i) Subject to Subsection (1)(c)(ii), "entity created by the city" includes:

(A) an entity created by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, in which the city participates; and

(B) a special service district created under Title 17D, Chapter 1, Special Service District Act.

(ii) "Entity created by the city" does not include a local district created by a city under

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Title 17B, Limited Purpose Local Government Entities - Local Districts.

(2) (a) The governing body of an applicable city shall create an inventory of activities of the city or an entity created by the city to:

- (i) classify whether an activity is a competitive activity; and
- (ii) identify efforts that have been made to privatize aspects of the activity.

(b) An applicable city shall comply with this section by no later than:

- (i) June 30, 2010, if the applicable city is a city of the first class; and
- (ii) June 30, 2011, if the applicable city is a city of the second class.

(3) The governing body of an applicable city shall update the inventory created under this section at least every two years.

(4) An applicable city shall:

(a) provide a copy of the inventory and an update to the inventory to the Free Market Protection and Privatization [Policy] Board created in Title 63I, Chapter [4,] 4a, Free Market Protection and Privatization [Policy] Board Act; and

(b) make the inventory available to the public through electronic means.

Section 2. Section **17-50-107** is amended to read:

17-50-107. Inventory of competitive activities.

(1) As used in this section:

(a) "Applicable county" means:

- (i) on and after July 1, 2009, a county of the first class; and
- (ii) on and after July 1, 2010, a county of the first or second class.

(b) "Competitive activity" means an activity engaged in by a county or an entity created by the county by which the county or an entity created by the county provides a good or service that is substantially similar to a good or service that is provided by a person:

(i) who is not an entity of the federal government, state government, or a political subdivision of the state; and

(ii) within the boundary of the county.

(c) (i) Subject to Subsection (1)(c)(ii), "entity created by the county" includes:

(A) an entity created by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, in which the county participates; and

(B) a special service district created under Title 17D, Chapter 1, Special Service

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District Act.

(ii) "Entity created by the county" does not include a local district created by a county under Title 17B, Limited Purpose Local Government Entities - Local Districts.

(2) (a) The governing body of an applicable county shall create an inventory of activities of the county or an entity created by the county to:

(i) classify whether an activity is a competitive activity; and

(ii) identify efforts that have been made to privatize aspects of the activity.

(b) An applicable county shall comply with this section by no later than:

(i) June 30, 2010, if the applicable county is a county of the first class; and

(ii) June 30, 2011, if the applicable county is a county of the second class.

(3) The governing body of an applicable county shall update the inventory created under this section at least every two years.

(4) An applicable county shall:

(a) provide a copy of the inventory and an update to the inventory to the Free Market Protection and Privatization [Policy] Board created in Title 63I, Chapter [4,] 4a, Free Market Protection and Privatization [Policy] Board Act; and

(b) make the inventory available to the public through electronic means.

Section 3. Section **26-18-3.3** is amended to read:

26-18-3.3. Study of privatization of eligibility determination.

(1) The department shall work with the Department of Workforce Services, the Department of Human Services, and the Free Market Protection and Privatization [Policy] Board created in Section [~~63I-4-201~~] 63I-4a-202 to study the state's eligibility determination system for the state Medicaid program in accordance with this section.

(2) (a) The study shall include the state's eligibility determination system for the following programs:

(i) the state Medicaid program;

(ii) the Utah Children's Health Insurance Program created under Chapter 40, Utah Children's Health Insurance Act;

(iii) the Primary Care Network;

(iv) the Utah Premium Partnership; and

(v) other eligibility systems administered by the Department of Workforce Services.

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(b) The study shall include:

(i) the workflow and operations of the eligibility determination systems for the programs described in Subsection (2)(a); and

(ii) efficiencies that may be obtained through:

(A) consolidation of the eligibility determination systems;

(B) privatization of the eligibility determination systems; and

(C) other technology or organizational solutions for the eligibility determination systems.

(3) The department, the Department of Workforce Services, and the Free Market Protection and Privatization [Policy] Board shall, prior to October 20, 2011, report to the Legislature's Health and Human Services Interim Committee and to the Social Services Appropriations Subcommittee regarding the findings of the study and any recommendations and options regarding the advantages and disadvantages to the state in privatizing the eligibility determination system.

Section 4. Section 63I-1-263 (Effective 05/01/13) is amended to read:

63I-1-263 (Effective 05/01/13). Repeal dates, Titles 63A to 63M.

(1) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage to any public school district which chooses to participate, is repealed July 1, 2016.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2016.

(3) Section 63C-8-106, rural residency training program, is repealed July 1, 2015.

(4) Title 63C, Chapter 13, Prison Relocation and Development Authority Act, is repealed July 1, 2014.

(5) Subsection 63G-6a-1402(7) authorizing certain transportation agencies to award a contract for a design-build transportation project in certain circumstances, is repealed July 1, 2015.

(6) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.

(7) Title 63I, Chapter 4a, Free Market Protection and Privatization Board, is repealed July 1, 2018.

[~~(7)~~] (8) The Resource Development Coordinating Committee, created in Section 63J-4-501, is repealed July 1, 2015.

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~~[(8)]~~ (9) Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is repealed July 1, 2018.

~~[(9)]~~ (10) (a) Title 63M, Chapter 1, Part 11, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection ~~[(9)]~~ (10)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.

(d) Notwithstanding Subsections ~~[(9)]~~ (10)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.

~~[(10)]~~ (11) (a) Section 63M-1-2507, Health Care Compact is repealed on July 1, 2014.

(b) (i) The Legislature shall, before reauthorizing the Health Care Compact:

(A) direct the Health System Reform Task Force to evaluate the issues listed in Subsection ~~[(10)]~~ (11)(b)(ii), and by January 1, 2013 develop and recommend criteria for the Legislature to use to negotiate the terms of the Health Care Compact; and

(B) prior to July 1, 2014, seek amendments to the Health Care Compact among the member states that the Legislature determines are appropriate after considering the recommendations of the Health System Reform Task Force.

(ii) The Health System Reform Task Force shall evaluate and develop criteria for the Legislature regarding:

(A) the impact of the Supreme Court ruling on the Affordable Care Act;

(B) whether Utah is likely to be required to implement any part of the Affordable Care

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Act prior to negotiating the compact with the federal government, such as Medicaid expansion in 2014:

(C) whether the compact's current funding formula, based on adjusted 2010 state expenditures, is the best formula for Utah and other state compact members to use for establishing the block grants from the federal government;

(D) whether the compact's calculation of current year inflation adjustment factor, without consideration of the regional medical inflation rate in the current year, is adequate to protect the state from increased costs associated with administering a state based Medicaid and a state based Medicare program;

(E) whether the state has the flexibility it needs under the compact to implement and fund state based initiatives, or whether the compact requires uniformity across member states that does not benefit Utah;

(F) whether the state has the option under the compact to refuse to take over the federal Medicare program;

(G) whether a state based Medicare program would provide better benefits to the elderly and disabled citizens of the state than a federally run Medicare program;

(H) whether the state has the infrastructure necessary to implement and administer a better state based Medicare program;

(I) whether the compact appropriately delegates policy decisions between the legislative and executive branches of government regarding the development and implementation of the compact with other states and the federal government; and

(J) the impact on public health activities, including communicable disease surveillance and epidemiology.

[(11)] (12) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

[(12)] (13) Title 63M, Chapter 9, Families, Agencies, and Communities Together for Children and Youth At Risk Act, is repealed July 1, 2016.

[(13)] (14) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2017.

Section 5. Section **63I-4a-101**, which is renumbered from Section 63I-4-101 is renumbered and amended to read:

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CHAPTER 4a. FREE MARKET PROTECTION AND PRIVATIZATION BOARD ACT

Part 1. General Provisions

~~[63I-4-101]~~. 63I-4a-101. Title.

(1) This chapter is known as the "Free Market Protection and Privatization [~~Policy~~]
Board Act."

(2) This part is known as "General Provisions."

Section ~~63I-4-102~~. Section 63I-4a-102, which is renumbered from Section 63I-4-102 is
renumbered and amended to read:

~~[63I-4-102]~~. 63I-4a-102. Definitions.

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

(b) "Activity" includes to:

(i) manufacture a good or service;

(ii) process a good or service;

(iii) sell a good or service;

(iv) offer for sale a good or service;

(v) rent a good or service;

(vi) lease a good or service;

(vii) deliver a good or service;

(viii) distribute a good or service; or

(ix) advertise a good or service.

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

(i) the state; or

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

(b) "Agency" does not include:

(i) the Legislature;

(ii) an entity or agency of the Legislature;

(iii) the state auditor;

(iv) the state treasurer;

(v) the Office of the Attorney General;

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- (vi) the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
 - (vii) the Utah Science Center Authority created in Title 63H, Chapter 3, Utah Science Center Authority;
 - (viii) the Heber Valley Railroad Authority created in Title 63H, Chapter 4, Heber Valley Historic Railroad Authority;
 - (ix) the Utah State Railroad Museum Authority created in Title 63H, Chapter 5, Utah State Railroad Museum Authority;
 - (x) the Utah Housing Corporation created in Title 35A, Chapter 8, Part 7, Utah Housing Corporation Act;
 - (xi) the Utah State Fair Corporation created in Title 63H, Chapter 6, Utah State Fair Corporation Act;
 - (xii) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers' Compensation Fund;
 - (xiii) the Utah State Retirement Office created in Title 49, Chapter 11, Utah State Retirement Systems Administration;
 - (xiv) a charter school chartered by the State Charter School Board or a board of trustees of a higher education institution under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act;
 - (xv) the Utah Schools for the Deaf and the Blind created in Title 53A, Chapter 25b, Utah Schools for the Deaf and the Blind;
 - (xvi) an institution of higher education as defined in Section 53B-3-102;
 - (xvii) the School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration;
 - (xviii) the Utah Communications Agency Network created in Title 63C, Chapter 7, Utah Communications Agency Network Act; or
 - (xix) the Utah Capital Investment Corporation created in Title 63M, Chapter 1, Part 12, Utah Venture Capital Enhancement Act.
- (3) "Agency head" means the chief administrative officer of an agency.
- (4) "Board" means the Free Market Protection and Privatization [Policy] Board created in Section [~~63I-4-201~~] 63I-4a-202.
- (5) "Commercial activity" means to engage in an activity that can be obtained in whole

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or in part from a private enterprise.

(6) "Local entity" means:

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

(i) county;

(ii) city;

(iii) town;

(iv) local school district;

(v) local district; or

(vi) special service district;

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

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

(7) "Private enterprise" means a person that engages in an activity for profit~~[:]~~.

~~[(a) manufactures a good or service;]~~

~~[(b) processes a good or service;]~~

~~[(c) sells a good or service;]~~

~~[(d) offers for sale a good or service;]~~

~~[(e) rents a good or service;]~~

~~[(f) leases a good or service;]~~

~~[(g) delivers a good or service;]~~

~~[(h) distributes a good or service; or]~~

~~[(i) advertises a good or service.]~~

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

(a) contract;

(b) transfer of property; or

(c) another arrangement.

Section ~~63I-4a-201~~ 63I-4a-201 is enacted to read:

Part 2. Free Market Protection and Privatization Board

63I-4a-201. Title.

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This part is known as "Free Market Protection and Privatization Board."

Section ~~{7}~~8. Section **63I-4a-202**, which is renumbered from Section 63I-4-201 is renumbered and amended to read:

~~[63I-4-201].~~ **63I-4a-202. Free Market Protection and Privatization Board -- Created -- Membership -- Operations -- Expenses.**

~~[(1) (a) There is created a Privatization Policy Board composed of 17 members.]~~

~~[(b) The governor shall appoint board members as follows:]~~

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

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

~~[(iii) two members representing public employees, from names recommended by the largest public employees' association;]~~

~~[(iv) one member from state management;]~~

~~[(v) eight members from the private business community;]~~

~~[(vi) one member representing the Utah League of Cities and Towns from names recommended by the Utah League of Cities and Towns; and]~~

~~[(vii) one member representing the Utah Association of Counties from names recommended by the Utah Association of Counties.]~~

(1) There is created the Free Market Protection and Privatization Board, comprised of the following 11 members appointed by the governor :

(a) ~~{two members, who are not legislators}~~ one senator, ~~{appointed}~~ from names recommended by the president of the Senate;

(b) ~~{two members}~~ one member of the House, ~~{who are not legislators, appointed}~~ from names recommended by the speaker of the House;

(c) one member representing the Utah League of Cities and Towns from names recommended by the Utah League of Cities and Towns;

(d) one member representing the Utah Association of Counties from names recommended by the Utah Association of Counties;

(e) one member representing public employees, from names recommended by the largest Utah public employees' association; and

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(f) the following members appointed by from the governor private sector:

(i) one member representing small business;

(ii) one member representing sellers of retail goods;

(iii) one member representing providers of services;

(iv) one member representing nonprofit organizations the technology sector; and

(v) one member representing business generally; and

(d) the following members appointed by the state auditor:

(i) one member representing small business; and

(ii)vi) one member representing financial service providers.

~~{ (2) The state auditor is a nonvoting member of the board.~~

~~{ (2) (3) (a) Except as [required by] provided in Subsection (2) (3) (b), a board member [(i) appointed under Subsection (1)(b)(i) or (ii) shall serve a two-year term; and (ii) appointed under Subsections (1)(b)(iii) through (vii)] shall serve a four-year [four] two-year term.~~

~~(b) Notwithstanding the requirements of Subsection (2) (3) (a), the first term served by the first members of the board appointed by the governor under Subsection (1)(c) (2) (a), the governor shall [; at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every [be] two years].~~ at the time the governor appoints the first members of the board, appoint five members of the board to one year terms to ensure that approximately half of the board is appointed or reappointed every year.

~~(c) The governor shall on or before July 1, 2008 change the appointments to the board to reflect the membership requirements of Subsection (1)(b).]~~

~~(3) (4) (a) A board member shall hold office until the board member's successor is appointed and qualified.~~

~~(b) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the unexpired term.~~

~~(c) [Nine] A majority of the voting Six members of the board constitute a quorum.~~

~~(d) The vote of a majority of board members voting when a quorum is present is necessary for the board to act.~~

~~(4) (5) (a) The board shall select one of the voting members to serve as chair~~

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of the board.

(b) A chair shall serve as chair for a term of one-year, and may be selected as chair for more than one term.

~~[(5) The chief procurement officer or the chief procurement officer's designee shall staff the board.]~~

~~[(6)5]~~ The ~~State Auditor's~~ Governor's Office of Planning and Budget shall staff the board. The board may contract for additional staff from the private sector under Section 63I-4a-204.

~~[(6)]~~ ~~[(7)6]~~ The board shall meet:

- (a) at least quarterly; and
- (b) as necessary to conduct its business, as called by the chair.

~~[(7)]~~ ~~[(8)]~~ A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

63A-3-107.

Section ~~[(8)9]~~. Section **63I-4a-203**, which is renumbered from Section 63I-4-202 is renumbered and amended to read:

~~[63I-4-202]~~. **63I-4a-203**. **Free Market Protection and Privatization Board -- Duties.**

(1) The board shall:

(a) ~~[review]~~ determine whether ~~[or not a good or service]~~ 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 ~~[a good or service]~~ 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:

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(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 [~~a good or service~~] 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

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January 15 immediately following the calendar year for which the report is made; and

(iii) provide ~~[each interim]~~ an oral report to the Government Operations Interim Committee each interim.

(2) The board may, using the criteria described in Subsection (1), consider whether to recommend privatization of an activity provided by an agency, a local entity, or a state institution of higher education:

(a) on the board's own initiative;

(b) upon request by an agency, a local entity, or a state institution of higher education;

(c) in response to a complaint that an agency, a local entity, or a state institution of higher education 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.

~~[(2)]~~ (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.

~~[(3)]~~ (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.

~~[(4)]~~ (5) (a) Subject to Subsection ~~[(4)]~~ (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.

~~[(5) The board may review upon the request of a local entity a matter relevant to:]~~

~~[(a) (i) privatization; or]~~

~~[(ii) unfair competition with one or more private enterprises; and]~~

~~[(b) an activity or proposed activity of the local entity:]~~

Section ~~9~~10. Section **63I-4a-204** is enacted to read:

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63I-4a-204. Staff support -- Assistance to an agency, local entity, or state institution of higher education.

The board may, within funds appropriated by the Legislature for this purpose, issue a request for proposals to contract with a private sector person or entity to:

(1) provide staff support to the board;

(2) assist the board in conducting its duties, including completing the inventory described in Part 3, Commercial Activities Inventory and Review; and

(3) at the board's direction, assist an agency, a local entity, or a state institution of higher education to:

(a) develop a business case for potential privatization of an activity, using the criteria described in Subsection 63I-4a-203(1);

(b) draft, issue, or evaluate a request for proposals to privatize an activity; or

(c) award a contract to privatize an activity.

Section ~~10~~11. Section **63I-4a-205**, which is renumbered from Section 63I-4-203 is renumbered and amended to read:

~~63I-4-203~~. 63I-4a-205. Board accounting method.

The board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall establish an accounting method that:

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

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

(a) a labor expense, [~~such as~~] including:

(i) compensation and benefits;

(ii) a cost of training;

(iii) a cost of paying overtime;

(iv) a cost of supervising labor; or

(v) another personnel expense;

(b) an operating cost, [~~such as~~] including:

(i) vehicle maintenance and repair;

(ii) a marketing, advertising, or other sales expense;

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- (iii) an office expense;
 - (iv) a cost of an accounting operation, [~~such as~~] including billing;
 - (v) an insurance expense;
 - (vi) a real estate or equipment cost;
 - (vii) a debt service cost; or
 - (viii) a proportionate amount of other overhead or of a capital expense, such as vehicle depreciation and depreciation of other fixed assets;
- (c) a contract management cost; and
 - (d) another cost particular to a person supplying the good or service; and
- (3) provides a process to estimate the taxes an agency would pay related to engaging in a commercial activity if the agency were required to pay federal, state, and local taxes to the same extent as a private enterprise engaging in the commercial activity.

Section ~~{11}~~12. Section **63I-4a-301** is enacted to read:

Part 3. Commercial Activities Inventory and Review.

63I-4a-301. Title.

This part is known as "Commercial Activities Inventory and Review."

Section ~~{12}~~13. Section **63I-4a-302**, which is renumbered from Section 63I-4-301 is renumbered and amended to read:

[63I-4-301]. 63I-4a-302. Board to create inventory.

~~[(1) By no later than June 30, 2009]~~ At least every two years, the board shall ~~[create]~~ compile and make available to the public, by electronic means, an updated inventory of activities of the agencies in ~~[this]~~ the state to classify whether each activity is:

- ~~[(a)]~~ (1) a commercial activity; or
- ~~[(b)]~~ (2) an inherently governmental activity.

~~[(2) The board shall update the inventory created under this section at least every two years.]~~

~~[(3) The board shall make the inventory available to the public through electronic means.]~~

Section ~~{13}~~14. Section **63I-4a-303**, which is renumbered from Section 63I-4-302 is renumbered and amended to read:

[63I-4-302]. 63I-4a-303. Governor to require review of commercial activities.

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[Beginning with fiscal year 2009-10, the] The governor [shall at least once every two fiscal years] may:

(1) select [~~at least three~~] one or more commercial activities that are being performed by an agency for examination; and

(2) require the Governor's Office of Planning and Budget to conduct the examination and make the determinations and recommendations described in Subsections 63I-4a-203(1)(a), (c), and (d).

Section ~~{14}~~15. Section **63I-4a-304**, which is renumbered from Section 63I-4-303 is renumbered and amended to read:

~~[63I-4-303].~~ **63I-4a-304. Duties of the Governor's Office of Planning and Budget.**

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

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

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

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

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

Section ~~{15}~~16. Section **63I-4a-401** is enacted to read:

Part 4. Miscellaneous Provisions

63I-4a-401. Title.

This part is known as "Miscellaneous Provisions."

Section ~~{16}~~17. Section **63I-4a-402**, which is renumbered from Section 63I-4-304 is renumbered and amended to read:

~~[63I-4-304].~~ **63I-4a-402. Government immunity.**

(1) This chapter or the inclusion of an activity on an inventory made under this chapter may not be construed as a waiver of any right, claim, or defense of immunity that an agency

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may have under Title 63G, Chapter 7, Governmental Immunity Act of Utah, or other law.

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

Section ~~{17}~~18. **Transition clause.**

(1) All appointments made to the Privatization Policy Board before the effective date of this bill are terminated on the effective date of this bill.

(2) This Section 17 of this bill is repealed on December 31, 2013.

†

Legislative Review Note

~~as of 1-8-13 3:03 PM~~

~~Office of Legislative Research and General Counsel~~