

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 Governor's Office of Planning and Budget shall staff the board and permits the board to contract with a private entity for additional staff;
- ▶ revises the duties and powers of the board; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **10-1-119**, as enacted by Laws of Utah 2008, Chapter 23

29 **17-50-107**, as enacted by Laws of Utah 2008, Chapter 23

30 **26-18-3.3**, as enacted by Laws of Utah 2011, Chapter 162

31 ENACTS:

32 **63I-4a-201**, Utah Code Annotated 1953

33 **63I-4a-204**, Utah Code Annotated 1953

34 **63I-4a-301**, Utah Code Annotated 1953

35 **63I-4a-401**, Utah Code Annotated 1953

36 RENUMBERS AND AMENDS:

37 **63I-4a-101**, (Renumbered from 63I-4-101, as enacted by Laws of Utah 2008, Chapter
38 147)

39 **63I-4a-102**, (Renumbered from 63I-4-102, as last amended by Laws of Utah 2012,
40 Chapter 212)

41 **63I-4a-202**, (Renumbered from 63I-4-201, as last amended by Laws of Utah 2010,
42 Chapter 286)

43 **63I-4a-203**, (Renumbered from 63I-4-202, as renumbered and amended by Laws of
44 Utah 2008, Chapter 147)

45 **63I-4a-205**, (Renumbered from 63I-4-203, as enacted by Laws of Utah 2008, Chapter
46 147)

47 **63I-4a-302**, (Renumbered from 63I-4-301, as enacted by Laws of Utah 2008, Chapter
48 147)

49 **63I-4a-303**, (Renumbered from 63I-4-302, as enacted by Laws of Utah 2008, Chapter
50 147)

51 **63I-4a-304**, (Renumbered from 63I-4-303, as enacted by Laws of Utah 2008, Chapter
52 147)

53 **63I-4a-402**, (Renumbered from 63I-4-304, as enacted by Laws of Utah 2008, Chapter
54 147)

55 **Uncodified Material Affected:**

56 ENACTS UNCODIFIED MATERIAL

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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 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:

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

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

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

93 **17-50-107. Inventory of competitive activities.**

94 (1) As used in this section:

95 (a) "Applicable county" means:

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

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

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

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

103 (ii) within the boundary of the county.

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

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

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

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

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

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

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

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

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

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

118 (3) The governing body of an applicable county shall update the inventory created

119 under this section at least every two years.

120 (4) An applicable county shall:

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

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

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

126 **26-18-3.3. Study of privatization of eligibility determination.**

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

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

133 (i) the state Medicaid program;

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

136 (iii) the Primary Care Network;

137 (iv) the Utah Premium Partnership; and

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

139 (b) The study shall include:

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

142 (ii) efficiencies that may be obtained through:

143 (A) consolidation of the eligibility determination systems;

144 (B) privatization of the eligibility determination systems; and

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

147 (3) The department, the Department of Workforce Services, and the Free Market
148 Protection and Privatization [Policy] Board shall, prior to October 20, 2011, report to the
149 Legislature's Health and Human Services Interim Committee and to the Social Services

150 Appropriations Subcommittee regarding the findings of the study and any recommendations
151 and options regarding the advantages and disadvantages to the state in privatizing the eligibility
152 determination system.

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

155 **CHAPTER 4a. FREE MARKET PROTECTION AND**
156 **PRIVATIZATION BOARD ACT**

157 **Part 1. General Provisions**

158 **~~[63I-4-101].~~ 63I-4a-101. Title.**

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

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

162 Section 5. Section **63I-4a-102**, which is renumbered from Section 63I-4-102 is
163 renumbered and amended to read:

164 **~~[63I-4-102].~~ 63I-4a-102. Definitions.**

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

166 (b) "Activity" includes to:

167 (i) manufacture a good or service;

168 (ii) process a good or service;

169 (iii) sell a good or service;

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

171 (v) rent a good or service;

172 (vi) lease a good or service;

173 (vii) deliver a good or service;

174 (viii) distribute a good or service; or

175 (ix) advertise a good or service.

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

177 (i) the state; or

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

180 (b) "Agency" does not include:

- 181 (i) the Legislature;
- 182 (ii) an entity or agency of the Legislature;
- 183 (iii) the state auditor;
- 184 (iv) the state treasurer;
- 185 (v) the Office of the Attorney General;
- 186 (vi) the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- 187 (vii) the Utah Science Center Authority created in Title 63H, Chapter 3, Utah Science
188 Center Authority;
- 189 (viii) the Heber Valley Railroad Authority created in Title 63H, Chapter 4, Heber
190 Valley Historic Railroad Authority;
- 191 (ix) the Utah State Railroad Museum Authority created in Title 63H, Chapter 5, Utah
192 State Railroad Museum Authority;
- 193 (x) the Utah Housing Corporation created in Title 35A, Chapter 8, Part 7, Utah
194 Housing Corporation Act;
- 195 (xi) the Utah State Fair Corporation created in Title 63H, Chapter 6, Utah State Fair
196 Corporation Act;
- 197 (xii) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'
198 Compensation Fund;
- 199 (xiii) the Utah State Retirement Office created in Title 49, Chapter 11, Utah State
200 Retirement Systems Administration;
- 201 (xiv) a charter school chartered by the State Charter School Board or a board of
202 trustees of a higher education institution under Title 53A, Chapter 1a, Part 5, The Utah Charter
203 Schools Act;
- 204 (xv) the Utah Schools for the Deaf and the Blind created in Title 53A, Chapter 25b,
205 Utah Schools for the Deaf and the Blind;
- 206 (xvi) an institution of higher education as defined in Section 53B-3-102;
- 207 (xvii) the School and Institutional Trust Lands Administration created in Title 53C,
208 Chapter 1, Part 2, School and Institutional Trust Lands Administration;
- 209 (xviii) the Utah Communications Agency Network created in Title 63C, Chapter 7,
210 Utah Communications Agency Network Act; or
- 211 (xix) the Utah Capital Investment Corporation created in Title 63M, Chapter 1, Part 12,

212 Utah Venture Capital Enhancement Act.

213 (3) "Agency head" means the chief administrative officer of an agency.

214 (4) "Board" means the Free Market Protection and Privatization [Policy] Board created
215 in Section [~~63I-4-201~~] 63I-4a-202.

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

218 (6) "Local entity" means:

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

220 (i) county;

221 (ii) city;

222 (iii) town;

223 (iv) local school district;

224 (v) local district; or

225 (vi) special service district;

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

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

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

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

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

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

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

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

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

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

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

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

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

242 (a) contract;

243 (b) transfer of property; or

244 (c) another arrangement.

245 (9) "Special district" means:

246 (a) a local district, as defined in Section 17B-1-102;

247 (b) a special service district, as defined in Section 17D-1-102; or

248 (c) a conservation district, as defined in Section 17D-3-102.

249 Section 6. Section **63I-4a-201** is enacted to read:

250 **Part 2. Free Market Protection and Privatization Board**

251 **63I-4a-201. Title.**

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

253 Section 7. Section **63I-4a-202**, which is renumbered from Section 63I-4-201 is
254 renumbered and amended to read:

255 **[63I-4-201]. 63I-4a-202. Free Market Protection and Privatization Board --**
256 **Created -- Membership -- Operations -- Expenses.**

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

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

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

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

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

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

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

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

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

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

273 (a) one senator, from names recommended by the president of the Senate;

274 (b) one member of the House, from names recommended by the speaker of the House,
275 who may not be a member of the same political party as the member appointed under
276 Subsection (1)(a);

277 (c) one member representing the Utah Association of Special Districts from names
278 recommended by the Utah Association of Special Districts;

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

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

283 (f) the following members from the private sector:

284 (i) one member representing small business;

285 (ii) one member representing sellers of retail goods;

286 (iii) one member representing providers of services;

287 (iv) one member representing the technology sector;

288 (v) one member representing business generally; and

289 (vi) one member representing financial service providers.

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

293 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall~~[-at the~~
294 ~~time of appointment or reappointment, adjust the length of terms to ensure that the terms of~~
295 ~~board members are staggered so that approximately half of the board is appointed every two~~
296 ~~years], at the time the governor appoints the first members of the board, appoint five members
297 of the board to one year terms to ensure that approximately half of the board is appointed or
298 reappointed every year.~~

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

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

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

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

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

308 (4) (a) The board shall select one of the members to serve as chair of the board.

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

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

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

315 [~~(6)~~] (6) The board shall meet:

316 (a) at least quarterly; and

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

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

320 (a) Section 63A-3-106;

321 (b) Section 63A-3-107; and

322 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
323 63A-3-107.

324 Section 8. Section **63I-4a-203**, which is renumbered from Section 63I-4-202 is
325 renumbered and amended to read:

326 [~~63I-4-202~~]. **63I-4a-203**. **Free Market Protection and Privatization Board --**
327 **Duties.**

328 (1) The board shall:

329 (a) [~~review~~] determine whether [~~or not a good or service~~] an activity provided by an
330 agency could be privatized to provide the same types and quality of a good or service that
331 would result in cost savings;

332 (b) review privatization of [~~a good or service~~] an activity at the request of:

333 (i) an agency; or

334 (ii) a private enterprise;

335 (c) review issues concerning agency competition with one or more private enterprises

336 to determine:

337 (i) whether privatization:

338 (A) would be feasible;

339 (B) would result in cost savings; and

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

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

342 (d) recommend privatization to an agency if a proposed privatization is demonstrated

343 to provide a more cost efficient and effective manner of providing a good or service[?], taking

344 into account:

345 (i) the scope of providing the good or service;

346 (ii) whether cost savings will be realized;

347 (iii) whether quality will be improved;

348 (iv) the impact on risk management;

349 (v) the impact on timeliness;

350 (vi) the ability to accommodate fluctuating demand;

351 (vii) the ability to access outside expertise;

352 (viii) the impact on oversight;

353 (ix) the ability to develop sound policy and implement best practices; and

354 (x) legal and practical impediments to privatization;

355 (e) comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in making

356 rules establishing privatization standards, procedures, and requirements;

357 (f) in fulfilling the duties described in this Subsection (1), consult with, maintain

358 communication with, and access information from[?];

359 (i) other entities promoting privatization; and

360 (ii) managers and employees in the public sector;

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

362 (h) (i) prepare an annual report for each calendar year that contains:

363 (A) information about the board's activities;

364 (B) recommendations on privatizing [~~a good or service~~] an activity provided by an

365 agency; and

366 (C) the status of the inventory created under Part 3, Commercial Activities Inventory

367 and Review;

368 (ii) submit the annual report to the Legislature and the governor by no later than
369 January 15 immediately following the calendar year for which the report is made; and

370 (iii) ~~provide~~ each interim, provide an oral report to the Government Operations
371 Interim Committee and the Economic Development and Workforce Services Interim
372 Committee.

373 (2) The board may, using the criteria described in Subsection (1), consider whether to
374 recommend privatization of an activity provided by an agency, a county, or a special district:

375 (a) on the board's own initiative;

376 (b) upon request by an agency, a county, or a special district;

377 (c) in response to a complaint that an agency, a county, or a special district is engaging
378 in unfair competition with a private enterprise; or

379 (d) in light of a proposal made by any person, regardless of whether the proposal was
380 solicited.

381 ~~[(2)]~~ (3) In addition to filing a copy of recommendations for privatization with an
382 agency head, the board shall file a copy of its recommendations for privatization with:

383 (a) the governor's office; and

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

386 ~~[(3)]~~ (4) (a) The board may appoint advisory groups to conduct studies, research, or
387 analyses, and make reports and recommendations with respect to a matter within the
388 jurisdiction of the board.

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

390 ~~[(4)]~~ (5) (a) Subject to Subsection ~~[(4)]~~ (5)(b), this chapter does not preclude an agency
391 from privatizing the provision of a good or service independent of the board.

392 (b) If an agency privatizes the provision of a good or service, the agency shall include
393 as part of the contract that privatizes the provision of the good or service that any contractor
394 assumes all liability to provide the good or service.

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

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

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

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

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

400 **63I-4a-204. Staff support -- Assistance to an agency or local entity.**

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

403 (a) provide staff support to the board;

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

406 (c) at the board's direction, assist an agency or a local entity to:

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

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

410 (iii) award a contract to privatize an activity.

411 (2) The private sector person described in Subsection (1):

412 (a) may not be an advocate for or against privatization; and

413 (b) shall be neutral on the issue of privatization.

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

416 **[63I-4-203]. 63I-4a-205. Board accounting method.**

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

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

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

422 private enterprise, including the following:

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

424 (i) compensation and benefits;

425 (ii) a cost of training;

426 (iii) a cost of paying overtime;

427 (iv) a cost of supervising labor; or

428 (v) another personnel expense;

- 429 (b) an operating cost, [~~such as~~] including:
- 430 (i) vehicle maintenance and repair;
- 431 (ii) a marketing, advertising, or other sales expense;
- 432 (iii) an office expense;
- 433 (iv) a cost of an accounting operation, [~~such as~~] including billing;
- 434 (v) an insurance expense;
- 435 (vi) a real estate or equipment cost;
- 436 (vii) a debt service cost; or
- 437 (viii) a proportionate amount of other overhead or of a capital expense, such as vehicle
- 438 depreciation and depreciation of other fixed assets;
- 439 (c) a contract management cost; and
- 440 (d) another cost particular to a person supplying the good or service; and
- 441 (3) provides a process to estimate the taxes an agency would pay related to engaging in
- 442 a commercial activity if the agency were required to pay federal, state, and local taxes to the
- 443 same extent as a private enterprise engaging in the commercial activity.

444 Section 11. Section **63I-4a-301** is enacted to read:

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

446 **63I-4a-301. Title.**

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

448 Section 12. Section **63I-4a-302**, which is renumbered from Section 63I-4-301 is
449 renumbered and amended to read:

450 ~~[63I-4-301].~~ **63I-4a-302. Board to create inventory.**

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

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

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

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

460 Section 13. Section **63I-4a-303**, which is renumbered from Section 63I-4-302 is
461 renumbered and amended to read:

462 ~~[63I-4-302].~~ **63I-4a-303. Governor to require review of commercial activities.**

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

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

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

470 Section 14. Section **63I-4a-304**, which is renumbered from Section 63I-4-303 is
471 renumbered and amended to read:

472 ~~[63I-4-303].~~ **63I-4a-304. Duties of the Governor's Office of Planning and**
473 **Budget.**

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

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

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

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

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

485 Section 15. Section **63I-4a-401** is enacted to read:

486 **Part 4. Miscellaneous Provisions**

487 **63I-4a-401. Title.**

488 This part is known as "Miscellaneous Provisions."

489 Section 16. Section **63I-4a-402**, which is renumbered from Section 63I-4-304 is
490 renumbered and amended to read:

491 ~~[63I-4-304].~~ 63I-4a-402. **Government immunity.**

492 (1) This chapter or the inclusion of an activity on an inventory made under this chapter
493 may not be construed as a waiver of any right, claim, or defense of immunity that an agency
494 may have under Title 63G, Chapter 7, Governmental Immunity Act of Utah, or other law.

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

498 Section 17. **Transition clause.**

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

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