

Part 4 Privatization of Independent Entities

63E-1-401 Definitions.

As used in this part:

- (1) "Asset" means property of all kinds, real and personal, tangible and intangible, and includes:
 - (a) cash, except reasonable compensation or salary for services rendered;
 - (b) stock or other investments;
 - (c) goodwill;
 - (d) real property;
 - (e) an ownership interest;
 - (f) a license;
 - (g) a cause of action; and
 - (h) any similar property.
- (2) "Business interest" means:
 - (a) holding the position of trustee, director, officer, or other similar position with a business entity;
or
 - (b) the ownership, either legally or equitably, of at least 10% of the outstanding shares of a corporation or 10% interest in any other business entity, being held by:
 - (i) an individual;
 - (ii) the individual's spouse;
 - (iii) a minor child of the individual; or
 - (iv) any combination of Subsections (2)(b)(i) through (iii).
- (3) "Interested party" means a person that held or holds the position of trustee, director, officer, or other similar position with an independent entity within:
 - (a) five years prior to the date of an action described in Subsection (5); or
 - (b) during the privatization of an independent entity.
- (4) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in Section 36-11-102, within:
 - (a) five years prior to the date of an action described in Subsection (5); or
 - (b) during the privatization of an independent entity.
- (5)
 - (a) "Privatized" means an action described in Subsection (5)(b) taken under circumstances in which the operations of the independent entity are continued by a successor entity that:
 - (i) is privately owned;
 - (ii) is unaffiliated to the state; and
 - (iii) receives any asset of the independent entity.
 - (b) An action referred to in Subsection (5)(a) includes:
 - (i) the repeal of the authorizing statute of an independent entity and the revision to state laws to terminate the relationship between the state and the independent entity;
 - (ii) the dissolution of the independent entity;
 - (iii) the merger or consolidation of the independent entity with another entity; or
 - (iv) the sale of all or substantially all of the assets of the independent entity.

Enacted by Chapter 201, 2001 General Session

63E-1-402 Benefits to interested parties of an independent entity.

- (1) If an independent entity is privatized, the following may not receive any benefit prohibited under Subsection (2):
 - (a) an interested party of the independent entity;
 - (b) an entity in which an interested party holds a business interest;
 - (c) a lobbyist of the independent entity; or
 - (d) an entity in which a lobbyist of the independent entity holds a business interest.
- (2) If an independent entity is privatized:
 - (a) a person described in Subsection (1)(a) or (b) may not receive:
 - (i) compensation from an independent entity that is conditioned in whole or in part on:
 - (A) the passage, defeat, or amendment of legislative action related to privatization; or
 - (B) the approval, modification, or denial of an executive action related to privatization; or
 - (ii) any asset of the independent entity or its successor; and
 - (b) a person described in Subsection (1)(c) or (d) may not receive any:
 - (i) compensation that if received by the lobbyist would be in violation of Section 36-11-301; or
 - (ii) asset of the independent entity or its successor.
- (3) Subsection (2)(a)(ii) does not apply to funds in a loan program administered by an independent entity if:
 - (a) the funds were provided by an entity other than the state or were derived from those funds, including loan payments, interest, and other charges paid by borrowers;
 - (b) the person described in Subsection (1)(a) or (b) who receives the funds assumes all duties and obligations of the independent entity:
 - (i) under the contract with the entity that provided the initial funding; and
 - (ii) relating to the loan program;
 - (c) separate records have been maintained regarding the use of the funds;
 - (d) the funds may only be used for purposes specified in an agreement with the entity that provided the initial funding; and
 - (e) the funds may only be transferred to a person described in Subsection (1)(a) or (b) if the transfer is approved by the entity that provided the initial funding.

Amended by Chapter 262, 2002 General Session

63E-1-403 Privatization process -- Audit.

- (1) If an independent entity seeks to privatize the independent entity, it shall:
 - (a) submit to the Legislature recommended legislation to:
 - (i) repeal the authorizing statute and revise state law as necessary to terminate its relationship to the state; and
 - (ii) address the value of any interests the state holds in the independent entity and whether the state should receive compensation for those interests as part of privatization; and
 - (b) be audited by the state auditor:
 - (i) within one year prior to the effective date of legislation that repeals the authorizing statute to terminate the relationship between the independent entity and the state; and
 - (ii) to determine the amount, nature, and source of revenues and assets of the independent entity.
- (2) The relationship between the state and an independent entity may not be terminated except by the repeal of the authorizing statute of the independent entity.

Enacted by Chapter 201, 2001 General Session

63E-1-404 Penalties for violation.

- (1) A person who knowingly violates this part:
 - (a) is guilty of a third degree felony if the combined value of any compensation or assets received by the person as a result of the violation is equal to or greater than \$10,000; or
 - (b) is guilty of a class A misdemeanor if the combined value of any compensation or assets received by the person as a result of the violation is less than \$10,000.
- (2)
 - (a) In addition to any penalty imposed under Subsection (1), a person that violates this part shall return to the successor of the independent entity any compensation or assets received in violation of this part.
 - (b) If the assets received by the person in violation of this part are no longer in the possession of the person, the person shall pay the successor of the independent entity an amount equal to the fair market value of the asset at the time the person received the asset.
- (3) Notwithstanding Subsection 36-11-401(3), if a lobbyist violates Subsection 63E-1-402(2)(b)(i), the lobbyist is guilty of the crime outlined in Subsection (1), which crime shall be determined by the value of compensation or assets received by the lobbyist.

Enacted by Chapter 201, 2001 General Session