

**PRIVATIZATION OF QUASI -
GOVERNMENTAL ENTITIES**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Gerry A. Adair

AN ACT RELATING TO STATE AFFAIRS; ADDRESSING PRIVATIZATION OF QUASI-GOVERNMENTAL ENTITIES; PROHIBITING BENEFITS FROM PRIVATIZATION TO CERTAIN PERSONS; AND PROVIDING PENALTIES.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

63-95-101, Utah Code Annotated 1953

63-95-102, Utah Code Annotated 1953

63-95-103, Utah Code Annotated 1953

63-95-104, Utah Code Annotated 1953

63-95-105, Utah Code Annotated 1953

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

Section 1. Section **63-95-101** is enacted to read:

CHAPTER 95. PRIVATIZATION OF QUASI-GOVERNMENTAL ENTITIES

Part 1. General Provisions

63-95-101. Title.

This chapter shall be known as the "Privatization of Quasi-Governmental Entities Act."

Section 2. Section **63-95-102** is enacted to read:

63-95-102. Definitions.

For purposes of this chapter:

(1) "Asset" means property of all kind, 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) "Authorizing statutes" means the statutes creating an entity as a quasi-governmental entity.

(3) "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 Subsection (3)(b)(i) through (iii).

(4) "Interested party" means a person that held or holds the position of trustee, director, officer, or other similar position with a quasi-governmental entity within:

(a) five years prior to the date of an action described in Subsection (6); or

(b) during the privatization of a quasi-governmental entity.

(5) "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 (6); or

(b) during the privatization of a quasi-governmental entity.

(6) (a) "Privatized" means an action described in Subsection (6)(b) taken under circumstances in which the operations of the quasi-governmental 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 quasi-governmental entity.
- (b) An action referred to in Subsection (6)(a) includes:
 - (i) the repeal of the authorizing statute of a quasi-governmental entity and the revision to state laws to terminate the relationship between the state and the quasi-governmental entity;
 - (ii) the dissolution of the quasi-governmental entity;
 - (iii) the merger or consolidation of the quasi-governmental entity with another entity; or
 - (iv) the sale of all or substantially all of the assets of the quasi-governmental entity.
- (7) "Quasi-governmental entity" means the:
 - (a) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
 - (b) Utah Technology Finance Corporation created in Title 9, Chapter 2, Part 7, Utah Technology Finance Corporation Act;
 - (c) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority;
 - (d) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science Center Authority;
 - (e) Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9, Utah Housing Finance Agency;
 - (f) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair Corporation Act;
 - (g) Workers' Compensation Fund of Utah created in Title 31A, Chapter 33, Workers' Compensation Fund of Utah;
 - (h) Utah State Retirement Office created in Title 49, Chapter 1, Part 2, Retirement Office and Board;
 - (i) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration;
 - (j) Crime Victims' Reparations Office created in Title 63, Chapter 25a, Part 4, Crime Victims' Reparations Act; and

(k) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah Communications Agency Network Act.

Section 3. Section **63-95-103** is enacted to read:

63-95-103. Benefits to interested parties of a quasi-governmental entity.

(1) If a quasi-governmental entity is privatized, the following may not receive any benefit prohibited under Subsection (2):

- (a) an interested party of the quasi-governmental entity;
- (b) an entity in which an interested party holds a business interest;
- (c) a lobbyist of the quasi-governmental entity; or
- (d) an entity in which a lobbyist of the quasi-governmental entity holds a business interest.

(2) If a quasi-governmental entity is privatized:

(a) a person described in Subsection (1)(a) or (b) may not receive:

(i) compensation from a quasi-governmental 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 quasi-governmental 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 quasi-governmental entity or its successor.

Section 4. Section **63-95-104** is enacted to read:

63-95-104. Privatization process -- Audit.

(1) If a quasi-governmental entity seeks to privatize the quasi-governmental 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 quasi-governmental 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 quasi-governmental entity and the state; and

(ii) to determine the amount, nature, and source of revenues and assets of the quasi-governmental entity.

(2) The relationship between the state and a quasi-governmental entity may not be terminated except by the repeal of the authorizing statute of the quasi-governmental entity.

Section 5. Section **63-95-105** is enacted to read:

63-95-105. Penalties for violation.

(1) A person who knowingly violates this chapter:

(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 chapter shall return to the successor of the quasi-governmental entity any compensation or assets received in violation of this chapter.

(b) If the assets received by the person in violation of this chapter are no longer in the possession of the person, the person shall pay the successor of the quasi-governmental 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)(a), if a lobbyist violates Subsection 63-95-103(2)(b)(i), the lobbyist is guilty the crime outlined in Subsection (1), which crime shall be determined by the value of compensation or assets received by the lobbyist.