

1 **PRIVATIZATION POLICY BOARD**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: John E. Swallow**

5 AN ACT RELATING TO THE PRIVATIZATION POLICY BOARD; EXPANDING THE
6 DUTIES OF THE BOARD; CHANGING THE MEMBERSHIP OF THE BOARD; REQUIRING
7 PUBLIC HEARINGS AND RECOMMENDATIONS ON GOVERNMENT COMPETITION
8 WITH PRIVATE ENTERPRISE; STATING THE INTENT OF THE LEGISLATURE WITH
9 RESPECT TO PUBLIC-PRIVATE COMPETITION; AND MAKING TECHNICAL CHANGES.

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

11 AMENDS:

12 **63-55a-1**, as enacted by Chapter 221, Laws of Utah 1989

13 **63-55a-2**, as last amended by Chapters 18, 194 and 243, Laws of Utah 1996

14 **63-55a-3**, as last amended by Chapter 18, Laws of Utah 1996

15 ENACTS:

16 **63-55a-4**, Utah Code Annotated 1953

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

18 Section 1. Section **63-55a-1** is amended to read:

19 **63-55a-1. Definitions.**

20 As used in this chapter:

21 (1) "Agency" or "government agency" means a department, division, office, bureau, board,
22 commission, or other [~~administrative unit of the state~~] agency of government, or any other
23 governmental unit or political subdivision existing in the state or any other creation of the state or
24 political subdivision of the state, regardless of whether funds are appropriated to such agency.

25 (2) "Agency head" means the chief administrative officer of an agency.

26 (3) "Institution of higher education" or "institution" means a college, university, or
27 community college supported by the state.

28 (4) "Private enterprise" means an individual, firm, partnership, joint venture, corporation,
29 association, or any other legal entity engaging in the manufacturing, processing, sale, offering for
30 sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services for profit.

31 ~~(3)~~ (5) "Privatization" means action by a state agency to contract with the private sector
32 or with another state agency to perform functions or services currently being performed by it.

33 Section 2. Section **63-55a-2** is amended to read:

34 **63-55a-2. Privatization Policy Board -- Created -- Membership -- Operations --**
35 **Expenses.**

36 (1) (a) There is created a Privatization Policy Board composed of ~~[13]~~ 15 members.

37 (b) The governor shall appoint:

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

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

42 (iii) two administrative officers or executive directors from government agencies;

43 ~~(iii)~~ (iv) two members representing public employees, from names recommended by the
44 largest public employees' association;

45 ~~(iv)~~ (v) one ~~[member from state management]~~ representative from a political subdivision
46 of the state;

47 ~~(v)~~ (vi) five members from the private business community; and

48 ~~(vi)~~ (vii) one ~~[member representing education]~~ representative from an institution of
49 higher education.

50 (2) (a) Except as required by Subsection (2)(b), board members shall serve four-year terms.

51 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time
52 of appointment or reappointment, adjust the length of terms to ensure that the terms of board
53 members are staggered so that approximately half of the board is appointed every two years.

54 (3) (a) Each board member shall hold office until his successor has been appointed and
55 qualified.

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

58 (c) ~~[Seven]~~ Eight members of the board are a quorum for the purpose of organizing the

59 board and conducting the business of the board.

60 (d) The vote of a majority of members voting when a quorum is present is necessary for
61 the board to take action.

62 (4) (a) At the initial meeting of the board, the board shall select one of their number to
63 serve as chair of the board.

64 (b) The chief procurement officer or his designee is the nonvoting secretary to the board
65 and is responsible for scheduling quarterly meetings.

66 (c) The board shall meet at least quarterly and at the call of the chair.

67 (d) The Division of Purchasing and General Services shall provide staff support to the
68 board.

69 (5) (a) (i) Members who are not government employees shall receive no compensation or
70 benefits for their services, but may receive per diem and expenses incurred in the performance of
71 the member's official duties at the rates established by the Division of Finance under Sections
72 63A-3-106 and 63A-3-107.

73 (ii) Members may decline to receive per diem and expenses for their service.

74 (b) (i) State government officer and employee members who do not receive salary, per
75 diem, or expenses from their agency for their service may receive per diem and expenses incurred
76 in the performance of their official duties from the board at the rates established by the Division
77 of Finance under Sections 63A-3-106 and 63A-3-107.

78 (ii) State government officer and employee members may decline to receive per diem and
79 expenses for their service.

80 (c) Legislators on the committee shall receive compensation and expenses as provided by
81 law and legislative rule.

82 Section 3. Section **63-55a-3** is amended to read:

83 **63-55a-3. Privatization Policy Board -- Duties.**

84 (1) The board shall:

85 (a) review whether or not certain services performed by existing state agencies could be
86 privatized to provide the same types and quality of services [~~that would result in cost savings~~];

87 (b) review particular requests for privatization of services and issues concerning agency
88 competition with the private sector and determine whether privatization would be feasible and
89 would result in [~~cost savings and~~] ways to eliminate [~~any unfair competition~~] or limit unjustified

90 competition with private enterprise;

91 (c) recommend privatization to the agency head when the proposed privatization is
92 demonstrated to provide a more cost efficient and effective manner of providing existing
93 governmental services;

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

97 [~~(e)~~] (d) maintain communication with and access information from, other entities
98 promoting privatization;

99 (e) hold public hearings on government competition or proposed government competition
100 with private enterprise;

101 (f) prepare an annual report that contains:

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

103 (ii) recommendations on privatizing government services; and

104 (iii) recommendations regarding proposed legislation relating to the prohibition or
105 limitation of government competition or proposed government competition with private enterprise;

106 (g) submit the annual report to the Legislature and the governor[~~;~~] no later than September
107 30 of each year; and

108 [~~(2) In addition to filing copies of its recommendations for privatization with the relevant~~
109 ~~agency head, the board shall file copies of its recommendations for privatization with:]~~

110 [~~(a) the governor's office; and (b)]~~

111 (h) file copies of its recommendations with:

112 (i) the relevant agency head; and

113 (ii) the Office of Legislative Fiscal Analyst for submission to the relevant Legislative
114 Appropriation Subcommittee.

115 [~~(3)~~] (2) (a) The board may appoint advisory groups to conduct studies, research, analyses,
116 and make reports and recommendations with respect to subjects or matters within the jurisdiction
117 of the board.

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

119 [~~(4)~~] (3) This chapter does not preclude any agency from privatizing any service or
120 function independently of the board if:

- 121 (a) the contract is expending less than \$2,000,000 of the agency budget in a fiscal year;
- 122 (b) as part of the contract that privatizes the function, the contractor assumes all liability
- 123 to perform the privatized function; and
- 124 (c) the agency notifies the board at least 120 days before the privatization occurs of their
- 125 intent to privatize the function.

126 Section 4. Section **63-55a-4** is enacted to read:

127 **63-55a-4. General policy statement regarding public-private competition.**

128 While performing its duties, the board shall consider the fundamental principle that a
129 government agency or institution of higher education is charged with the duty to protect the public
130 safety, health, and welfare and to provide educational opportunities to the public. Government
131 agencies and institutions of higher education should not be involved in private enterprise functions
132 unless a legitimate need can be demonstrated. In those cases where a legitimate need is
133 demonstrated, government agencies and institutions of higher education should not exploit a
134 competitive advantage over private enterprise as a result of their status as a government agency or
135 institution of higher education.

Legislative Review Note
as of 2-10-00 4:14 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel