

1 **INVENTORY AND REVIEW OF COMMERCIAL**
2 **ACTIVITIES**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Craig A. Frank**

6 Senate Sponsor: Howard A. Stephenson

7	Cosponsors:	Christopher N. Herrod	Kenneth W. Sumsion
8	Douglas C. Aagard	Gregory H. Hughes	Aaron Tilton
9	Bradley M. Daw	Michael T. Morley	Mark W. Walker
10	Glenn A. Donnelson	Michael E. Noel	Carl Wimmer
11	John Dougall	Curtis Oda	Bradley A. Winn
12	Keith Grover	Stephen E. Sandstrom	

13

14 **LONG TITLE**

15 **General Description:**

16 This bill modifies provisions related to the Privatization Policy Board.

17 **Highlighted Provisions:**

18 This bill:

- 19 ▶ defines terms;
- 20 ▶ addresses the membership of the board;
- 21 ▶ addresses the duties of the board, including:
 - 22 • creating an inventory of activities of state agencies; and
 - 23 • creating an accounting method;
- 24 ▶ requires the governor to review certain commercial activities;
- 25 ▶ creates conforming processes;
- 26 ▶ clarifies application of government immunity; and
- 27 ▶ makes technical corrections.

28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill coordinates with H.B. 63, Recodification of Title 63 State Affairs in General, to
32 address technical renumbering.

33 **Utah Code Sections Affected:**

34 ENACTS:

35 **63-55d-101**, Utah Code Annotated 1953

36 **63-55d-203**, Utah Code Annotated 1953

37 **63-55d-301**, Utah Code Annotated 1953

38 **63-55d-302**, Utah Code Annotated 1953

39 **63-55d-303**, Utah Code Annotated 1953

40 **63-55d-304**, Utah Code Annotated 1953

41 RENUMBERS AND AMENDS:

42 **63-55d-102**, (Renumbered from 63-55a-1, as last amended by Laws of Utah 2003,
43 Chapter 193)

44 **63-55d-201**, (Renumbered from 63-55a-2, as last amended by Laws of Utah 2003,
45 Chapter 193)

46 **63-55d-202**, (Renumbered from 63-55a-3, as last amended by Laws of Utah 2003,
47 Chapter 193)



48
49 *Be it enacted by the Legislature of the state of Utah:*

50 Section 1. Section **63-55d-101** is enacted to read:

51 **CHAPTER 55d. PRIVATIZATION POLICY BOARD ACT**

52 **Part 1. General Provisions**

53 **63-55d-101. Title.**

54 This chapter is known as the "Privatization Policy Board Act."

55 Section 2. Section **63-55d-102**, which is renumbered from Section 63-55a-1 is
56 renumbered and amended to read:

57 **[63-55a-1]. 63-55d-102. Definitions.**

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

- 59 (b) "Activity" includes to:
- 60 (i) manufacture a good or service;
- 61 (ii) process a good or service;
- 62 (iii) sell a good or service;
- 63 (iv) offer for sale a good or service;
- 64 (v) rent a good or service;
- 65 (vi) lease a good or service;
- 66 (vii) deliver a good or service;
- 67 (viii) distribute a good or service; or
- 68 (ix) advertise a good or service.
- 69 ~~[(1) (a) "Agency" means a department, division, office, bureau, board, commission, or~~
- 70 ~~other administrative unit of the state.]~~
- 71 ~~[(b) "Agency" includes departments, divisions, offices, bureaus, boards, commissions,~~
- 72 ~~and other administrative units of the state's counties and municipalities.]~~
- 73 (2) (a) Except as provided in Subsection (2)(b), "agency" means:
- 74 (i) the state; or
- 75 (ii) an entity of the state including a department, office, division, authority, commission,
- 76 or board.
- 77 (b) "Agency" does not include:
- 78 (i) the Legislature;
- 79 (ii) an entity or agency of the Legislature;
- 80 (iii) the state auditor;
- 81 (iv) the state treasurer;
- 82 (v) the Office of the Attorney General;
- 83 (vi) the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- 84 (vii) the Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber
- 85 Valley Historic Railroad Authority;
- 86 (viii) the Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah

87 Science Center Authority;

88 (ix) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing
89 Corporation Act;

90 (x) the Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State
91 Fair Corporation Act;

92 (xi) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'
93 Compensation Fund;

94 (xii) the Utah State Retirement Office created in Title 49, Chapter 11, Utah State
95 Retirement Systems Administration;

96 (xiii) the School and Institutional Trust Lands Administration created in Title 53C,
97 Chapter 1, Part 2, School and Institutional Trust Lands Administration;

98 (xiv) the Utah Communications Agency Network created in Title 63C, Chapter 7, Utah
99 Communications Agency Network Act;

100 (xv) the Utah Capital Investment Corporation created in Title 63, Chapter 38f, Part 12,
101 Utah Venture Capital Enhancement Act;

102 (xvi) an institution of higher education as defined in Section 53B-3-102;

103 (xvii) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

104 or

105 (xviii) a charter school chartered by the State Charter School Board under Title 53A,
106 Chapter 1a, Part 5, The Utah Charter Schools Act.

107 [~~2~~] (3) "Agency head" means the chief administrative officer of an agency.

108 [~~3~~] "~~Privatization~~" means ~~action by a state agency to contract with the private sector or~~
109 ~~with another state agency to perform functions or services currently being performed by it.]~~

110 (4) "Board" means the Privatization Policy Board created in Section 63-55d-201.

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

113 (6) "Local entity" means:

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

143 ~~[63-55a-2].~~ **63-55d-201. Privatization Policy Board -- Created -- Membership --**
144 **Operations -- Expenses.**

145 (1) (a) There is created a Privatization Policy Board composed of ~~[15]~~ 17 members.

146 (b) The governor shall appoint board members as follows:

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

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

151 (iii) two members representing public employees, from names recommended by the
152 largest public employees' association;

153 (iv) one member from state management;

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

155 ~~[(vi) one member representing education;]~~

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

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

160 (2) (a) Except as required by Subsection (2)(b), ~~[board members]~~ a board member:

161 (i) appointed under Subsection (1)(b)(i) or (ii) shall serve a two-year term; and

162 (ii) appointed under Subsections (1)(b)(iii) through (vii) shall serve a four-year [terms]
163 term.

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

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

170 (3) (a) ~~[Each]~~ A board member shall hold office until ~~[his]~~ the board member's

171 successor ~~[has been]~~ is appointed and qualified.

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

174 (c) ~~[Eight]~~ Nine members of the board ~~[are]~~ constitute a quorum ~~[for the purpose of~~
175 ~~organizing the board and conducting the business of the board]~~.

176 (d) The vote of a majority of board members voting when a quorum is present is
177 necessary for the board to ~~[take action]~~ act.

178 (4) (a) ~~[At the initial meeting of the board, the]~~ The board shall select one of ~~[their~~
179 ~~number]~~ the members to serve as chair of the board.

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

182 ~~[(b)]~~ (5) The chief procurement officer or ~~[his designee is the nonvoting secretary to the~~
183 ~~board and is responsible for scheduling quarterly meetings]~~ the chief procurement officer's
184 designee shall staff the board.

185 ~~[(c)]~~ (6) The board shall meet;

186 (a) at least quarterly; and ~~[at the call of]~~

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

188 (5) (a) (i) ~~[Members who are not government employees shall receive no]~~ A member
189 who is not a government employee may not receive compensation or benefits for ~~[their]~~ the
190 member's services, but may receive per diem and expenses incurred in the performance of the
191 member's official duties at the rates established by the Division of Finance under Sections
192 63A-3-106 and 63A-3-107.

193 (ii) ~~[Members]~~ A member who is not a government employee may decline to receive
194 per diem and expenses for ~~[their]~~ the member's service.

195 (b) (i) ~~[State]~~ A state government officer and employee ~~[members]~~ member who ~~[do]~~
196 does not receive salary, per diem, or expenses from ~~[their]~~ the member's agency for ~~[their]~~ the
197 member's service may receive per diem and expenses incurred in the performance of ~~[their]~~ the
198 member's official duties from the board at the rates established by the Division of Finance under

199 Sections 63A-3-106 and 63A-3-107.

200 (ii) ~~[State]~~ A government officer and employee ~~[members]~~ member may decline to
201 receive per diem and expenses for ~~[their]~~ the member's service.

202 (c) (i) A local government member who does not receive salary, per diem, or expenses
203 from the entity that the member represents for the member's service may receive per diem and
204 expenses incurred in the performance of the member's official duties at the rates established by
205 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

206 (ii) A local government member may decline to receive per diem and expenses for the
207 member's service.

208 ~~[(e)]~~ (d) Legislators on the ~~[committee]~~ board shall receive compensation and expenses
209 as provided by law and legislative rule.

210 Section 4. Section **63-55d-202**, which is renumbered from Section 63-55a-3 is
211 renumbered and amended to read:

212 **[63-55a-3]. 63-55d-202. Privatization Policy Board -- Duties.**

213 (1) ~~[Except as otherwise provided in Subsection (5), the]~~ The board shall:

214 (a) review whether or not ~~[certain services performed by existing state agencies]~~ a good
215 or service provided by an agency could be privatized to provide the same types and quality of
216 ~~[services]~~ a good or service that would result in cost savings;

217 (b) review ~~[particular requests for]~~ privatization of ~~[services and]~~ a good or service at
218 the request of:

219 (i) an agency; or

220 (ii) a private enterprise;

221 (c) review issues concerning agency competition with ~~[the]~~ one or more private ~~[sector~~
222 ~~and]~~ enterprises to determine;

223 (i) whether privatization;

224 (A) would be feasible [and];

225 (B) would result in cost savings; and

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

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

228 ~~[(e)]~~ (d) recommend privatization to ~~[the]~~ an agency ~~[head when the]~~ if a proposed

229 privatization is demonstrated to provide a more cost efficient and effective manner of providing

230 ~~[existing governmental services]~~ a good or service;

231 ~~[(d)]~~ (e) comply with ~~[the provisions of]~~ Title 63, Chapter 46a, ~~[the]~~ Utah

232 Administrative Rulemaking Act, in making rules establishing privatization standards,

233 procedures, and requirements;

234 ~~[(e)]~~ (f) maintain communication with and access information from, other entities

235 promoting privatization;

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

237 ~~[(f)]~~ (h) (i) prepare an annual report for each calendar year that contains:

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

239 ~~[(ii)]~~ (B) recommendations on privatizing ~~[government services]~~ a good or service

240 provided by an agency; and

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

242 and Review;

243 ~~[(g)]~~ (ii) submit the annual report to the Legislature and the governor~~[-]~~ by no later than

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

245 (iii) provide each interim an oral report to the Government Operations Interim

246 Committee.

247 (2) In addition to filing ~~[copies]~~ a copy of ~~[its]~~ recommendations for privatization with

248 ~~[the relevant]~~ an agency head, the board shall file ~~[copies]~~ a copy of its recommendations for

249 privatization with:

250 (a) the governor's office; and

251 (b) the Office of Legislative Fiscal Analyst for submission to the relevant legislative

252 appropriation subcommittee.

253 (3) (a) The board may appoint advisory groups to conduct studies, research, or

254 analyses, and make reports and recommendations with respect to ~~[subjects or matters]~~ a matter

255 within the jurisdiction of the board.

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

257 (4) ~~[This] (a) Subject to Subsection (4)(b), this~~ chapter does not preclude ~~[any] an~~
258 agency from privatizing ~~[any] the provision of a good or service [or function independently]~~
259 independent of the board ~~[if,]~~.

260 (b) If an agency privatizes the provision of a good or service, the agency shall include as
261 part of the contract that privatizes the [function, the] provision of the good or service that any
262 contractor assumes all liability to [perform the privatized function] provide the good or
263 service.

264 (5) The board may ~~[not exercise its authority under Subsection (1) over an agency~~
265 ~~referred to in Subsection 63-55a-1(b), unless requested by the agency.]~~ review upon the request
266 of a local entity a matter relevant to:

- 267 (a) (i) privatization; or
- 268 (ii) unfair competition with one or more private enterprises; and
- 269 (b) an activity or proposed activity of the local entity.

270 Section 5. Section **63-55d-203** is enacted to read:

271 **63-55d-203. Board accounting method.**

272 The board by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
273 Rulemaking Act, shall establish an accounting method that:

- 274 (1) is similar to generally accepted accounting principles used by a private enterprise;
- 275 (2) allows an agency to identify the total actual cost of engaging in a commercial
276 activity in a manner similar to how a private enterprise identifies the total actual cost to the
277 private enterprise, including the following:

- 278 (a) a labor expense, such as:
 - 279 (i) compensation and benefits;
 - 280 (ii) a cost of training;
 - 281 (iii) a cost of paying overtime;
 - 282 (iv) a cost of supervising labor; or

- 283 (v) another personnel expense;
- 284 (b) an operating cost, such as:
- 285 (i) vehicle maintenance and repair;
- 286 (ii) a marketing, advertising, or other sales expense;
- 287 (iii) an office expense;
- 288 (iv) a cost of an accounting operation, such as billing;
- 289 (v) an insurance expense;
- 290 (vi) a real estate or equipment cost;
- 291 (vii) a debt service cost; or
- 292 (viii) a proportionate amount of other overhead or of a capital expense, such as vehicle
- 293 depreciation and depreciation of other fixed assets;
- 294 (c) a contract management cost; and
- 295 (d) another cost particular to a person supplying the good or service; and
- 296 (3) provides a process to estimate the taxes an agency would pay related to engaging in
- 297 a commercial activity if the agency were required to pay federal, state, and local taxes to the
- 298 same extent as a private enterprise engaging in the commercial activity.

299 Section 6. Section **63-55d-301** is enacted to read:

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

301 **63-55d-301. Board to create inventory.**

302 (1) By no later than June 30, 2009, the board shall create an inventory of activities of

303 the agencies in this state to classify whether each activity is:

- 304 (a) a commercial activity; or
- 305 (b) an inherently governmental activity.

306 (2) The board shall update the inventory created under this section at least every two

307 years.

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

309 Section 7. Section **63-55d-302** is enacted to read:

310 **63-55d-302. Governor to require review of commercial activities.**

311 Beginning with fiscal year 2009-10, the governor shall at least once every two fiscal
312 years:

313 (1) select at least three commercial activities that are being performed by an agency for
314 examination; and

315 (2) require the Governor's Office of Planning and Budget to conduct the examination.

316 Section 8. Section **63-55d-303** is enacted to read:

317 **63-55d-303. Duties of the Governor's Office of Planning and Budget.**

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

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

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

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

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

329 Section 9. Section **63-55d-304** is enacted to read:

330 **63-55d-304. Government immunity.**

331 (1) This chapter or the inclusion of an activity on an inventory made under this chapter
332 may not be construed as a waiver of any right, claim, or defense of immunity that an agency
333 may have under Title 63, Chapter 30d, Governmental Immunity Act of Utah, or other law.

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

337 Section 10. **Coordinating H.B. 75 with H.B. 63 -- Technical numbering.**

338 If this H.B. 75 and H.B. 63, Recodification of Title 63 State Affairs in General, both

339 pass it is the intent of the Legislature that the Office of Legislative Research and General
340 Counsel in preparing the Utah Code database for publication:
341 (1) treat the amendments in this bill as superseding the renumbering and amending in
342 H.B. 63 to Sections 63-55a-1, 63-55a-2, and 63-55a-3;
343 (2) not enact Section 63I-4-101 enacted in H.B. 63;
344 (3) renumber Sections 63-55d-101 through 63-55d-102 in this bill as Sections
345 63I-4-101 through 63I-4-102;
346 (4) renumber Sections 63-55d-201 through 63-55d-203 in this bill as Sections
347 63I-4-201 through 63I-4-203;
348 (5) renumber Sections 63-55d-301 through 63-55d-304 in this bill as Sections
349 63I-4-301 through 63I-4-304;
350 (6) replace internal references in this bill to the sections listed in Subsections (3)
351 through (5) with the appropriate corresponding renumbered sections; and
352 (7) replace the citations to provisions renumbered by H.B. 63 other than Sections
353 63-55a-1, 63-55a-2, and 63-55a-3 with the appropriate corresponding renumbered sections
354 under H.B. 63.