

**GOVERNMENT COMPETITION AND
PRIVATIZATION ACT**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig A. Frank

Senate Sponsor: _____

LONG TITLE

Committee Note:

The Government Competition and Privatization Subcommittee recommended this bill.

General Description:

This bill repeals the existing Privatization Policy Board and enacts the Government Competition and Privatization Act, including creating the State Government Competition and Privatization Commission and the requirement that local governments create a local government competition and privatization commission.

Highlighted Provisions:

This bill:

- ▶ repeals provisions related to the Privatization Policy Board;
- ▶ defines terms;
- ▶ creates the State Government Competition and Privatization Commission;
- ▶ requires the creation of one or more local government competition and privatization commissions;
- ▶ establishes the duties of the state and local commissions, including granting rulemaking authority to the state commission;
- ▶ imposes requirements for when a government entity may compete with a private enterprise;
- ▶ addresses issues specific to an institution of higher education;



- 28 ▶ addresses privatization; and
- 29 ▶ provides for enforcement including:
 - 30 • exempting administrative actions from the Administrative Procedures Act;
 - 31 • providing a complaint process;
 - 32 • providing for injunctions; and
 - 33 • providing for enforcement.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 This bill takes effect on July 1, 2008.

38 **Utah Code Sections Affected:**

39 ENACTS:

- 40 **63-55d-101**, Utah Code Annotated 1953
- 41 **63-55d-102**, Utah Code Annotated 1953
- 42 **63-55d-201**, Utah Code Annotated 1953
- 43 **63-55d-202**, Utah Code Annotated 1953
- 44 **63-55d-203**, Utah Code Annotated 1953
- 45 **63-55d-301**, Utah Code Annotated 1953
- 46 **63-55d-302**, Utah Code Annotated 1953
- 47 **63-55d-303**, Utah Code Annotated 1953
- 48 **63-55d-401**, Utah Code Annotated 1953
- 49 **63-55d-402**, Utah Code Annotated 1953
- 50 **63-55d-403**, Utah Code Annotated 1953
- 51 **63-55d-501**, Utah Code Annotated 1953
- 52 **63-55d-502**, Utah Code Annotated 1953
- 53 **63-55d-601**, Utah Code Annotated 1953
- 54 **63-55d-602**, Utah Code Annotated 1953
- 55 **63-55d-603**, Utah Code Annotated 1953
- 56 **63-55d-604**, Utah Code Annotated 1953
- 57 **63-55d-605**, Utah Code Annotated 1953

58 REPEALS:

- 59 **63-55a-1**, as last amended by Laws of Utah 2003, Chapter 193
- 60 **63-55a-2**, as last amended by Laws of Utah 2003, Chapter 193
- 61 **63-55a-3**, as last amended by Laws of Utah 2003, Chapter 193



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

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

65 **CHAPTER 55d. GOVERNMENT COMPETITION AND PRIVATIZATION ACT**

66 **Part 1. General Provisions**

67 **63-55d-101. Title.**

68 This chapter is known as the "Government Competition and Privatization Act."

69 Section 2. Section **63-55d-102** is enacted to read:

70 **63-55d-102. Definitions.**

71 As used in this chapter:

- 72 (1) (a) "Activity" means to:
- 73 (i) perform a service; or
- 74 (ii) provide a good.
- 75 (b) "Activity" includes to:
- 76 (i) manufacture a good or service;
- 77 (ii) process a good or service;
- 78 (iii) sell a good or service;
- 79 (iv) offer for sale a good or service;
- 80 (v) rent a good or service;
- 81 (vi) lease a good or service;
- 82 (vii) deliver a good or service;
- 83 (viii) distribute a good or service; or
- 84 (ix) advertise a good or service.
- 85 (2) "By-product of a commercial activity" is as defined by the commission by rule
- 86 made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- 87 (3) "Commercial activity" means to engage in an activity that can be obtained in whole
- 88 or in part from a private enterprise.
- 89 (4) "Commission accounting method" means one or more accounting rules made by the

90 commission in accordance with:

91 (a) Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

92 (b) Section 63-55d-203.

93 (5) "Competitive impact statement" means a statement that complies with Section

94 63-55d-402.

95 (6) "Department" means the Department of Administrative Services.

96 (7) "Faculty member" means a person treated as a faculty member by an institution of
97 higher education for a purpose other than this chapter.

98 (8) "Government entity" means:

99 (a) a state entity; or

100 (b) a local entity.

101 (9) "Invited guest" means a person who enters onto a campus of an institution of higher
102 education:

103 (a) for an act that is:

104 (i) educational;

105 (ii) related to research; or

106 (iii) (A) normally associated with an institution of higher education; and

107 (B) for a purpose or has a result that does not result in the institution of higher
108 education competing with a private enterprise; and

109 (b) not primarily to purchase a good or service not related to an act described in

110 Subsection (9)(a).

111 (10) "Local commission" means a local government competition and privatization
112 commission created in accordance with Section 63-55d-301.

113 (11) "Local entity" means:

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

115 (i) county;

116 (ii) city;

117 (iii) town;

118 (iv) local school district;

119 (v) local district; or

120 (vi) special service district;

121 (b) an agency of an entity described in this Subsection (11), including a department,
122 office, division, authority, commission, or board; and

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

125 (12) "Ordinary business channel" is as defined by the state commission by rule made in
126 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

127 (13) "Private enterprise" means a person that for profit:

128 (a) manufactures a good or service;

129 (b) processes a good or service;

130 (c) sells a good or service;

131 (d) offers for sale a good or service;

132 (e) rents a good or service;

133 (f) leases a good or service;

134 (g) delivers a good or service;

135 (h) distributes a good or service; or

136 (i) advertises a good or service.

137 (14) "Privatize" means that an activity engaged in by a government entity is transferred
138 so that a private enterprise engages in the activity including a transfer by:

139 (a) contract;

140 (b) transfer of property; or

141 (c) another arrangement.

142 (15) "Staff member" means an individual who an institution of higher education treats
143 as staff to the institution of higher education for a purpose other than this chapter.

144 (16) "State commission" means the State Government Competition and Privatization
145 Commission created in Section 63-55d-201.

146 (17) (a) Except as provided in Subsection (17)(b), "state entity" means:

147 (i) the state;

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

149 (iii) an agency of an entity described in this Subsection (17), including a department,
150 office, division, authority, commission, or board; and

151 (iv) an entity created by an interlocal cooperative agreement under Title 11, Chapter

152 13, Interlocal Cooperation Act, between two or more entities described in this Subsection (17)
153 or a local entity.

154 (b) "State entity" does not include the Legislature or an entity or agency of the
155 Legislature.

156 (18) "Student" means an individual who, under rules made by the Board of Regents, is:

157 (a) enrolled or accepted for enrollment at an institution of higher education; and

158 (b) making suitable progress in the individual's education toward obtaining a degree or
159 other appropriate certification in accordance with standards acceptable to the Board of Regents.

160 (19) "Total actual cost" means the costs incurred, directly or indirectly, when engaging
161 in an activity by the person who engages in the activity.

162 Section 3. Section **63-55d-201** is enacted to read:

163 **Part 2. State Government Competition and Privatization Commission**

164 **63-55d-201. State Government Competition and Privatization Commission**

165 **created.**

166 (1) (a) There is created in the department the Government Competition and
167 Privatization Commission consisting of seven members appointed by the governor.

168 (b) The governor shall appoint as members of the state commission:

169 (i) four individuals:

170 (A) each of whom is an owner or officer of a private enterprise that has a location in
171 the state;

172 (B) one of whom is chosen from at least two names recommended by the speaker of
173 the House of Representatives; and

174 (C) one of whom is chosen from at least two names recommended by the president of
175 the Senate;

176 (ii) one chief administrative officer of a state entity;

177 (iii) one representative of employees of a state entity; and

178 (iv) one representative who is chosen from at least four names:

179 (A) at least two names being recommended from the State Board of Education; and

180 (B) at least two names being recommended from the Board of Regents.

181 (c) A person described in Subsection (1)(b) as recommending names to the governor
182 shall submit the recommended names to the governor no later than 30 days from the day on

183 which the person receives notice from the governor that the governor is in need of the
184 recommendations.

185 (2) (a) Except as required by Subsection (2)(b), a state commission member shall serve
186 until the sooner of:

187 (i) the expiration of a four-year term; or

188 (ii) the day on which the state commission member no longer holds the position
189 required under Subsection (1) to be appointed by the governor.

190 (b) The governor shall, at the time of appointment or reappointment, adjust the length
191 of terms to ensure that the terms of the state commission members are staggered so that
192 approximately half of the state commission is appointed every two years.

193 (c) A state commission member shall serve until a successor is appointed.

194 (d) When a vacancy occurs in the membership for any reason, the governor shall
195 appoint a replacement to the unexpired term in a manner consistent with Subsection (1)(b).

196 (3) By no later than July 31 of each year the state commission shall select one of its
197 members to serve as chair of the state commission for a one-year term.

198 (4) The state commission shall meet as scheduled by the chair, except that the chair
199 shall schedule a meeting at least quarterly.

200 (5) (a) Five members of the state commission constitute a quorum of the state
201 commission.

202 (b) An action of the state commission requires that:

203 (i) a quorum be present; and

204 (ii) a majority of the state commission members that are present vote for the action.

205 (6) (a) (i) A state commission member who is not a government employee may not
206 receive compensation or benefits for the state commission member's service, but may receive
207 per diem and expenses incurred in the performance of the state commission member's official
208 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
209 63A-3-107.

210 (ii) A state commission member who is not a government employee may decline to
211 receive per diem and expenses for the state commission member's service.

212 (b) (i) A state government officer or employee state commission member who does not
213 receive salary, per diem, or expenses from the state commission member's agency for the state

214 commission member's service may receive per diem and expenses incurred in the performance
215 of the state commission member's official duties from the state commission at the rates
216 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

217 (ii) A state government officer or employee state commission member may decline to
218 receive per diem and expenses for the state commission member's service.

219 (c) (i) A higher education state commission member who does not receive salary, per
220 diem, or expenses from the entity that the state commission member represents for the state
221 commission member's service may receive per diem and expenses incurred in the performance
222 of the state commission member's official duties from the state commission at the rates
223 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

224 (ii) A higher education state commission member may decline to receive per diem and
225 expenses for the state commission member's service.

226 (7) The department shall staff the state commission.

227 (8) (a) The state commission may appoint one or more advisory groups that may with
228 respect to an issue within the jurisdiction of the state commission:

229 (i) conduct a study, research, or analyses; and

230 (ii) make a report, including a recommendation, to the state commission.

231 (b) An advisory group shall include at least one member of the state commission.

232 Section 4. Section **63-55d-202** is enacted to read:

233 **63-55d-202. State commission duties.**

234 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
235 state commission shall make rules to:

236 (a) define:

237 (i) "byproduct of a commercial activity"; and

238 (ii) "ordinary business channel";

239 (b) establish a commission accounting method in accordance with Section 63-55d-203;

240 (c) establish a procedure for preparing competitive impact statements that is:

241 (i) consistent with Section 63-55d-402; and

242 (ii) provides a process for issuing a request for proposals:

243 (A) to ensure that the request for proposals is distributed widely; and

244 (B) that is consistent with Title 63, Chapter 55, Utah Procurement Act;

245 (d) establish a procedure for an institution of higher education requesting an approval
246 of the state commission under Section 63-55d-403;

247 (e) establish one or more standards to recommend privatization of an activity of a
248 government entity in accordance with Part 5, Privatization Requirements; and

249 (f) establish a procedure for a person to file a complaint that is consistent with Part 6,
250 Enforcement.

251 (2) The state commission shall comply with Part 4, Government Competition
252 Requirements:

253 (a) to review or approve a commercial activity of a state entity; and

254 (b) to review or approve a commercial activity of an institutional of higher education,
255 including a charge for the sale of a byproduct of a commercial activity.

256 (3) The state commission shall comply with Part 5, Privatization Requirements, to
257 review privatization of an activity of a government entity.

258 (4) The state commission shall comply with Part 6, Enforcement, if a complaint is filed
259 with the state commission in accordance with Section 63-55d-602.

260 (5) The state commission shall communicate with private or public entities that address
261 government competition with a private enterprise or privatization.

262 (6) The state commission shall:

263 (a) prepare an annual report that:

264 (i) describes the state commission's activities, including the state commission's actions
265 with respect to a complaint filed under Section 63-55d-602;

266 (ii) makes recommendations, including the need for legislation, if any, to address an
267 activity of a government entity that the state commission finds:

268 (A) is in competition with a private enterprise; or

269 (B) should be privatized; and

270 (iii) reports on the activities of the one or more local commissions created under Part 3,
271 Local Government Competition and Privatization Commissions;

272 (b) submit the annual report by no later than December 1 to the Legislature and the
273 governor; and

274 (c) if the annual report includes a recommendation described in Subsection (6)(a)(ii)
275 regarding a government entity, file a copy of the recommendation with:

276 (i) the chief administrative officer of the government entity that is the subject of the
277 recommendation; and

278 (ii) the Office of Legislative Fiscal Analyst, for submission to the legislative
279 appropriation subcommittee that has responsibility related to that government entity.

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

281 **63-55d-203. Commission accounting method.**

282 The state commission by rule made in accordance with Title 63, Chapter 46a, Utah
283 Administrative Rulemaking Act, shall establish an accounting method that:

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

285 (2) allows a government entity to identify the total actual cost of engaging in a
286 commercial activity in a manner similar to how a private enterprise identifies the total actual
287 cost to the private enterprise, including the following:

288 (a) a labor expense, such as:

289 (i) compensation and benefits;

290 (ii) a cost of training;

291 (iii) a cost of paying overtime;

292 (iv) a cost of supervising labor; or

293 (v) another personnel expense;

294 (b) an operating cost, such as:

295 (i) vehicle maintenance and repair;

296 (ii) a marketing, advertising, or other sales expense;

297 (iii) an office expense;

298 (iv) a cost of an accounting operation, such as billing;

299 (v) an insurance expense;

300 (vi) a real estate or equipment cost;

301 (vii) a debt service cost; or

302 (viii) a proportionate amount of other overhead or of a capital expense, such as vehicle
303 depreciation and depreciation of other fixed assets;

304 (c) a contract management cost; and

305 (d) another cost particular to a person supplying the good or service;

306 (3) provides a process to estimate the taxes a government entity would pay related to

307 engaging in a commercial activity if the government entity were required to pay federal, state,
308 and local taxes to the same extent as a private enterprise engaging in the commercial activity;
309 and

310 (4) allows an institution of higher education to calculate the market price of the sale of
311 a byproduct of a commercial activity as described in Subsection 63-55d-403(4).

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

313 **Part 3. Local Government Competition and Privatization Commissions**

314 **63-55d-301. Creation of local government competition and privatization**

315 **commission.**

316 (1) By no later than December 31, 2008, a local entity shall:

317 (a) create a local government competition and privatization commission for that local
318 entity; or

319 (b) enter into an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, to
320 create a local government competition and privatization commission.

321 (2) A local commission shall:

322 (a) consist of at least seven members; and

323 (b) have as a majority of its members, individuals who are each an owner or officer of
324 a private enterprise that has a location in a local entity creating the local government
325 competition and privatization commission.

326 (3) (a) A local commission member shall serve a four-year term.

327 (b) The local entity or interlocal agreement creating the local commission shall provide
328 for the staggering of terms so that approximately half of the local commission is appointed
329 every two years.

330 (c) A local commission member shall serve until a successor is appointed.

331 (d) When a vacancy occurs in the membership for any reason, the appointing authority
332 shall appoint a replacement to the unexpired term in a manner consistent with the original
333 appointment.

334 (4) By no later than July 31 of each year a local commission shall select one of its
335 members to serve as chair of the local commission for a one-year term.

336 (5) A local commission shall meet as scheduled by the chair of the local commission,
337 except that the chair shall schedule a meeting at least quarterly.

338 (6) (a) A majority of a local commission constitutes a quorum of the local commission.

339 (b) An action of a local state commission requires that:

340 (i) a quorum be present; and

341 (ii) a majority of the local commission members that are present vote for the action.

342 (7) (a) The local commission may appoint one or more advisory groups that may with
343 respect to an issue within the jurisdiction of the local commission:

344 (i) conduct a study, research, or analyses; and

345 (ii) make a report, including a recommendation, to the local commission.

346 (b) An advisory group shall include at least one member of the local commission.

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

348 **63-55d-302. Local commission duties.**

349 (1) A local commission shall follow a procedure substantially similar to:

350 (a) Part 4, Government Competition Requirements, to review or approve a commercial
351 activity of a local entity;

352 (b) Part 5, Privatization Requirements, to review privatization of an activity of a local
353 entity; and

354 (c) Part 6, Enforcement, if a complaint is filed with the local commission in a manner
355 substantially similar to Section 63-55d-602.

356 (2) A local commission shall communicate with:

357 (a) the state commission concerning government competition and privatization; and

358 (b) other private or public entities that address government competition with a private
359 enterprise or privatization.

360 (3) A local commission shall:

361 (a) prepare an annual report that:

362 (i) describes the local commission's activities, including the local commission's actions
363 with respect to a complaint filed with the local commission; and

364 (ii) makes recommendations to address an activity of a local entity that the local
365 commission finds:

366 (A) is in competition with a private enterprise; or

367 (B) should be privatized; and

368 (b) submit the annual report by no later than December 1 to the state commission.

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

370 **63-55d-303. Local entity and commercial activities.**

371 A local entity is subject to the same requirements as a state entity under Part 4,
372 Government Competition Requirements, except that the local commission created by the local
373 entity or by an interlocal agreement in which the local entity participates grants approval in the
374 same manner as the state commission for a state entity.

375 Section 9. Section **63-55d-401** is enacted to read:

376 **Part 4. Government Competition Requirements**

377 **63-55d-401. Government competition with private enterprise prohibited.**

378 (1) Except as provided in Subsection (2) or (3) or, for purposes of an institution of
379 higher education, except as provided in Section 63-55d-403, a state entity may not engage in a
380 commercial activity:

381 (a) to provide a good or service for:

382 (i) its own use;

383 (ii) the use of another government entity; or

384 (iii) use by the public; and

385 (b) if a good or service with respect to the commercial activity can be obtained from a
386 private enterprise through the use of an ordinary business channel.

387 (2) A state entity may engage in a commercial activity that is not described in
388 Subsection (3) if:

389 (a) the commercial activity is expressly authorized by statute; or

390 (b) (i) the state entity requests approval of the commercial activity before the day on
391 which the state entity engages in the commercial activity; and

392 (ii) the state commission finds that:

393 (A) a private enterprise is not able to provide a good or service with respect to the
394 commercial activity;

395 (B) use of a private enterprise causes an unacceptable delay or disruption of an activity
396 that is essential;

397 (C) the commercial activity is inherently related to the defense of the state or the state
398 entity; or

399 (D) the state entity provides the good or service with respect to that commercial

400 activity:

401 (I) to a government entity on a continuing basis; and

402 (II) at an amount included in a competitive impact statement that is less than the cost to
403 the government entity receiving the good or service if the good or service were obtained from a
404 private enterprise as determined relating to the specific good or service; and

405 (III) the good or service with respect to that commercial activity is of at least equal
406 quality to the good or service that could be obtained from a private enterprise at a reasonably
407 comparable cost to the government entity receiving the good or service.

408 (3) (a) If a state entity is engaging in a commercial activity on July 1, 2008, the state
409 entity may continue to engage in the commercial activity until June 30, 2009 without
410 complying with Subsection (2).

411 (b) To engage in a commercial activity on or after July 1, 2009, a state entity described
412 in Subsection (3)(a) shall comply with Subsection (2) as if the commercial activity is a new
413 commercial activity.

414 Section 10. Section **63-55d-402** is enacted to read:

415 **63-55d-402. Competitive impact statement.**

416 (1) (a) If a state entity seeks approval of the state commission to engage in a
417 commercial activity under Subsection 63-55d-401(2)(b)(ii)(D), the state entity shall file with its
418 request for approval a competitive impact statement prepared in accordance with this section.

419 (b) A state entity shall include in a competitive impact statement in writing:

420 (i) the information described in Subsections (2), (3), and (4); and

421 (ii) any other information the state commission requires by rule.

422 (2) A state entity shall calculate the sum of the following determined in accordance
423 with the commission accounting method:

424 (a) the total actual cost of the commercial activity to the state entity determined no later
425 than six months before the day on which the state entity files the competitive impact statement
426 with the state commission; and

427 (b) the estimate of taxes a state entity would pay related to a commercial activity:

428 (i) if the state entity were required to pay federal, state, and local taxes to the same
429 extent as a private enterprise engaging in the commercial activity; and

430 (ii) determined in accordance with the commission accounting method no later than six

431 months before the day on which the state entity files the competitive impact statement with the
432 state commission.

433 (3) (a) No earlier than six months before the day on which a state entity files a
434 competitive impact statement with the state commission, the state entity shall obtain at least
435 one bid or proposal for the commercial activity on the basis of a request for proposals for the
436 commercial activity that is issued in accordance with:

437 (i) Title 63, Chapter 55, Utah Procurement Act; and

438 (ii) rules of the state commission.

439 (b) A state entity shall determine a cost figure for a private enterprise engaging in a
440 commercial activity:

441 (i) by using the one or more bids or proposals described in Subsection (3)(a); and

442 (ii) that includes a cost to the state entity to administer a bid or proposal.

443 (4) A state entity shall compare the amounts calculated under Subsection (2) with the
444 cost figure calculated under Subsection (3).

445 Section 11. Section **63-55d-403** is enacted to read:

446 **63-55d-403. Institution of higher education.**

447 (1) An institution of higher education is considered to engage in a commercial activity
448 as described in Subsection 63-55d-401(1) as if it engages in the commercial activity for its own
449 use if it engages in the commercial activity for:

450 (a) a student;

451 (b) a faculty member of the institution of higher education;

452 (c) a staff member of the institution of higher education; or

453 (d) an invited guest of the institution of higher education.

454 (2) (a) In addition to when an institution of higher education is allowed to engage in a
455 commercial activity under Section 63-55d-401, an institution of higher education may engage
456 in a commercial activity if:

457 (i) the institution of higher education requests approval from the state commission of
458 the commercial activity before the day on which the institution of higher education engages in
459 the commercial activity; and

460 (ii) the state commission finds that the commercial activity:

461 (A) is necessary because a student needs to participate in the commercial activity to

462 obtain a degree or other appropriate certification in accordance with standards acceptable to the
463 Board of Regents;

464 (B) is a recognized and integral part of a teaching, educational, or research program
465 that leads to a degree or other appropriate certification in accordance with standards acceptable
466 to the Board of Regents; or

467 (C) consists of on-campus activity, including:

468 (I) food service;

469 (II) student housing;

470 (III) sponsorship of a cultural or athletic event;

471 (IV) providing a facility for recreation to a student, faculty member, or staff member;

472 (V) selling a course book or course-related supplies; or

473 (VI) selling one or more personal items bearing the institution of higher education's
474 insignia;

475 (Aa) in a limited and reasonable quantity; and

476 (Bb) if the sale is incidental to the sale of a course book or another item permitted in

477 Subsection (2)(a)(ii)(C)(V).

478 (b) An institution of higher education may not engage in a commercial activity through
479 another government entity unless the institution of higher education can directly engage in the
480 commercial activity under this Subsection (2).

481 (c) An institution of higher education may not engage in a commercial activity for
482 another government entity unless:

483 (i) the institution of higher education can engage in the commercial activity under this
484 Subsection (2); and

485 (ii) the other government entity can engage in the commercial activity under Section
486 63-55d-401.

487 (d) (i) If an institution of higher education is engaging in a commercial activity on July
488 1, 2008, the institution of higher education may continue to engage in the commercial activity
489 until June 30, 2009 without complying with this Subsection (2).

490 (ii) To engage in a commercial activity on or after July 1, 2009, an institution of higher
491 education described in Subsection (2)(d)(i) shall comply with this Subsection (2) as if the
492 commercial activity is a new commercial activity.

493 (3) An institution of higher education may not enter a competitive bidding for an
494 activity unless:

495 (a) the institution of higher education requests approval from the state commission to
496 enter into competitive bidding for the activity before the day on which the institution of higher
497 education enters the competitive bid; and

498 (b) the state commission finds that the activity:

499 (i) is to be performed by one or more students; and

500 (ii) is a recognized and integral part of a teaching, educational, or research program
501 that leads to a degree or other appropriate certification in accordance with standards acceptable
502 to the Board of Regents.

503 (4) An institution of higher education may not dispose by sale of a by-product of a
504 commercial activity notwithstanding whether the commercial activity is a recognized and
505 integral part of teaching, educational, or research program that leads to a degree or other
506 appropriate certification in accordance with standards acceptable to the Board of Regents
507 unless:

508 (a) the sale is a recognized and integral part of the teaching, educational, or research
509 program; or

510 (b) (i) before the sale of the by-product, the state commission determines that there is
511 no other practical way of disposing of the by-product; and

512 (ii) the by-product is sold at its market value as determined under the state commission
513 accounting method.

514 (5) In determining for purposes of this section whether a commercial activity is a
515 recognized and integral part of a teaching, educational, or research program that leads to a
516 degree or other appropriate certification in accordance with standards acceptable to the Board
517 of Regents, the state commission shall consider:

518 (a) whether commercial activity is necessary for:

519 (i) a student to obtain a degree or other appropriate certification in accordance with
520 standards acceptable to the Board of Regents; or

521 (ii) a faculty member or staff member to engage in research or teaching;

522 (b) whether the commercial activity is a specialty good or service not generally
523 available to the public;

524 (c) whether a charge for a good or service related to the commercial activity:
 525 (i) is sufficient to pay for the total actual costs to the institution of higher education of
 526 engaging in the commercial activity; and

527 (ii) is similar to a charge for that good or service if provided by a private enterprise;
 528 and

529 (d) whether the institution of higher education ensures that a commercial activity is:

530 (i) only for:

531 (A) a student;

532 (B) a faculty member;

533 (C) a staff member; or

534 (D) an invited guest; and

535 (ii) not for the general public.

536 Section 12. Section **63-55d-501** is enacted to read:

537 **Part 5. Privatization Requirements**

538 **63-55d-501. Review of privatization.**

539 (1) Notwithstanding whether a complaint is filed under Section 63-55d-602, the state
 540 commission may review whether or not an activity of a government entity should be privatized,
 541 including determining whether or not if the activity is privatized:

542 (a) at least the same type and quality of service or good would be provided; and

543 (b) the government entity would receive a cost saving.

544 (2) If the state commission finds that an activity of a government entity should be
 545 privatized, the state commission shall comply with Subsection 63-55d-202(6) in completing its
 546 annual report.

547 Section 13. Section **63-55d-502** is enacted to read:

548 **63-55d-502. Notification of privatization.**

549 (1) A government entity shall notify the state commission at least 30 days after the day
 550 on which a private enterprise begins to engage in the activity that the government entity
 551 privatizes.

552 (2) As part of the notice required by this section, a government entity shall describe:

553 (a) the method of privatization;

554 (b) the private enterprise that is engaging in the activity that is privatized;

555 (c) the cost to the government entity's budget of the activity before and after
556 privatization;

557 (d) the manner by which the private enterprise assumes the liability to engage in the
558 activity; and

559 (e) whether or not any change to statute was required to privatize the activity.

560 Section 14. Section **63-55d-601** is enacted to read:

561 **Part 6. Enforcement**

562 **63-55d-601. Exemption from Administrative Procedures Act.**

563 An action taken under this section by the state commission is exempt from Title 63,
564 Chapter 46b, Administrative Procedures Act.

565 Section 15. Section **63-55d-602** is enacted to read:

566 **63-55d-602. Initial process for a complaint.**

567 (1) (a) A person who believes that a state entity is violating or has violated this chapter
568 may file a written complaint with the state commission.

569 (b) The complainant shall state in the written complaint:

570 (i) the violation of the chapter; and

571 (ii) the basis for which the person believes the state entity is violating or has violated
572 this chapter.

573 (2) After receiving a complaint filed in accordance with Subsection (1), the state
574 commission shall review the complaint at its next regularly scheduled meeting to determine
575 whether the complaint is made in good faith.

576 (3) If the state commission determines that the complaint is made in good faith, the
577 state commission shall:

578 (a) notify the following in writing that the state entity is required to respond to the
579 complaint:

580 (i) the complainant; and

581 (ii) the state entity against which the complaint is filed; and

582 (b) require the state entity against which the complaint is filed to respond to the
583 complaint.

584 (4) (a) Upon receipt of the notice described in Subsection (3), a state entity shall
585 respond to the state commission in writing within 30 days of the day on which the state entity

586 receives the notice.

587 (b) In the response required by this Subsection (4), the state entity shall:

588 (i) admit or deny that the state entity is or has violated this chapter as stated in the
589 complaint;

590 (ii) state whether or not the state entity will take action to remedy a violation of this
591 chapter as stated in the complaint; and

592 (iii) if the state entity is taking remedial action, what remedial action the state entity is
593 taking.

594 (5) (a) If a state entity admits to a violation of this chapter and states that it will take
595 remedial action in accordance with Subsection (4), the state commission may:

596 (i) monitor the remedial action of the state entity;

597 (ii) require additional action to remedy the violation;

598 (iii) impose time periods by which the state entity shall take an action; or

599 (iv) take a combination of actions described in Subsections (5)(a)(i) through (iii).

600 (b) If a state entity fails to cooperate with the state commission under this Subsection
601 (5), the state commission may conduct a hearing in accordance with Section 63-55d-603.

602 Section 16. Section **63-55d-603** is enacted to read:

603 **63-55d-603. Hearing -- Costs -- Termination of commercial activities.**

604 (1) (a) The state commission shall hold a hearing on the complaint filed under Section
605 63-55d-602 if the state entity against which the complaint is filed:

606 (i) denies that it is or has violated this chapter; or

607 (ii) is determined by the state commission to have failed to cooperate as required by
608 Subsection 63-55d-602(5).

609 (b) The state commission shall hold a hearing required under this Subsection (1) within
610 60 days of the day on which:

611 (i) the state commission receives the written denial of the complaint; or

612 (ii) the state commission determines the state entity fails to cooperate as required by
613 Subsection 63-55d-602(5).

614 (c) A hearing conducted under this section is open to the public, unless the state
615 commission closes the hearing in accordance with Title 52, Chapter 4, Open and Public
616 Meetings Act.

- 617 (2) At a hearing conducted under this section, the state commission shall provide an
618 opportunity to present evidence to:
- 619 (a) the complainant; and
620 (b) the state entity against which the complaint is filed.
- 621 (3) (a) Within 30 days after the hearing, the state commission shall:
- 622 (i) issue an order; and
623 (ii) provide a copy of the order to:
- 624 (A) the complainant; and
625 (B) the state entity against which the complaint is filed.
- 626 (b) An order required by this section shall be in writing and state:
- 627 (i) whether or not the state entity is or has violated this chapter;
628 (ii) what action, if any, the state entity is required to take to remedy a violation of this
629 chapter;
- 630 (iii) if the complaint is made on the basis of the state entity engaging in a commercial
631 activity, whether or not the state entity is required to stop engaging in the commercial activity;
- 632 (iv) the time by which a state entity shall take an action required by the order; and
633 (v) any other finding the state commission determines is appropriate.
- 634 (c) The state commission may, in an order required by this Subsection (3), require a
635 state entity to privatize a commercial activity that is the basis of the complaint.
- 636 (4) If the state commission determines that a state entity against which a complaint is
637 filed does not or has not violated this chapter, the state commission may require the
638 complainant to pay the lesser of:
- 639 (a) the costs incurred by the state commission in reviewing the complaint and
640 conducting the hearing; and
- 641 (b) \$1,000.
- 642 (5) A complainant or state entity may appeal an action by the state commission to a
643 district court in the same manner that an informal adjudicative proceeding is appealed under
644 Sections 63-46b-14, 63-46b-15, 63-46b-17, and 63-46b-18.
- 645 Section 17. Section **63-55d-604** is enacted to read:
- 646 **63-55d-604. Injunction.**
- 647 (1) If a state entity fails to comply with an order of the state commission issued under

648 Section 63-55d-603, the state commission may file an action in district court to enjoin the state
649 entity from engaging in a commercial activity that is the basis of a finding by the state
650 commission in the order.

651 (2) The Office of the Attorney General shall provide legal support to the state
652 commission for an action filed under Subsection (1).

653 Section 18. Section **63-55d-605** is enacted to read:

654 **63-55d-605. Monitoring of compliance.**

655 (1) The state commission may monitor a state entity's compliance with this chapter in
656 accordance with rules made by the state commission.

657 (2) A government entity shall have written procedures implemented by the state entity
658 to monitor its own compliance with this chapter.

659 Section 19. **Repealer.**

660 This bill repeals:

661 Section **63-55a-1, Definitions.**

662 Section **63-55a-2, Privatization Policy Board -- Created -- Membership --**
663 **Operations -- Expenses.**

664 Section **63-55a-3, Privatization Policy Board -- Duties.**

665 Section 20. **Effective date.**

666 This bill takes effect on July 1, 2008.

Legislative Review Note
as of 11-27-07 12:39 PM

Office of Legislative Research and General Counsel

H.B. 76 - Government Competition and Privatization Act

Fiscal Note

2008 General Session
State of Utah

State Impact

Implementation of this bill will require \$117,300 for a Research Analyst IV and an Office Specialist I and related current expenses. Resources required for this bill are also included in HB 75 - Inventory and Review of Commercial Activities.

| | <u>FY 2008</u> <u>Approp.</u> | <u>FY 2009</u> <u>Approp.</u> | <u>FY 2010</u> <u>Approp.</u> | <u>FY 2008</u> <u>Revenue</u> | <u>FY 2009</u> <u>Revenue</u> | <u>FY 2010</u> <u>Revenue</u> |
|--------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| General Fund | \$0 | \$117,300 | \$110,300 | \$0 | \$0 | \$0 |
| Total | \$0 | \$117,300 | \$110,300 | \$0 | \$0 | \$0 |

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs for individuals or businesses, however, businesses and individuals may benefit from increased opportunities from the privatization of governmental business. Enactment of this bill may require additional resources of local governments.