

Representative Craig A. Frank proposes the following substitute bill:

**INVENTORY AND REVIEW OF COMMERCIAL
ACTIVITIES**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig A. Frank

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to the Privatization Policy Board.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the membership of the board;
- ▶ addresses the duties of the board, including:
 - creating an inventory of activities of state agencies; and
 - conducting public hearings;
- ▶ requires the governor to review certain commercial activities;
- ▶ creates conforming processes; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

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



26 **Utah Code Sections Affected:**

27 ENACTS:

28 **63-55d-101**, Utah Code Annotated 1953

29 **63-55d-103**, Utah Code Annotated 1953

30 **63-55d-203**, Utah Code Annotated 1953

31 **63-55d-301**, Utah Code Annotated 1953

32 **63-55d-302**, Utah Code Annotated 1953

33 **63-55d-303**, Utah Code Annotated 1953

34 RENUMBERS AND AMENDS:

35 **63-55d-102**, (Renumbered from 63-55a-1, as last amended by Laws of Utah 2003,
36 Chapter 193)

37 **63-55d-201**, (Renumbered from 63-55a-2, as last amended by Laws of Utah 2003,
38 Chapter 193)

39 **63-55d-202**, (Renumbered from 63-55a-3, as last amended by Laws of Utah 2003,
40 Chapter 193)



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

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

44 **CHAPTER 55d. PRIVATIZATION POLICY BOARD**

45 **Part 1. General Provisions**

46 **63-55d-101. Title.**

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

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

50 **[63-55a-1]. 63-55d-102. Definitions.**

51 (1) (a) "Activity" means to provide a good or service:

52 (b) "Activity" includes to:

53 (i) manufacture a good or service;

54 (ii) process a good or service;

55 (iii) sell a good or service;

56 (iv) offer for sale a good or service;

- 57 (v) rent a good or service;
- 58 (vi) lease a good or service;
- 59 (vii) deliver a good or service;
- 60 (viii) distribute a good or service; or
- 61 (ix) advertise a good or service.
- 62 ~~[(1) (a) "Agency" means a department, division, office, bureau, board, commission, or~~
- 63 ~~other administrative unit of the state.]~~
- 64 ~~[(b) "Agency" includes departments, divisions, offices, bureaus, boards, commissions,~~
- 65 ~~and other administrative units of the state's counties and municipalities.]~~
- 66 (2) (a) Except as provided in Subsection (2)(b), "agency" means:
- 67 (i) the state;
- 68 (ii) an institution of higher education, as defined in Section 53B-3-102;
- 69 (iii) an entity of an agency described in this Subsection (2), including a department,
- 70 ~~office, division, authority, commission, or board; and~~
- 71 (iv) an entity created by an interlocal cooperative agreement under Title 11, Chapter
- 72 ~~13, Interlocal Cooperation Act, between two or more entities described in this Subsection (2) or~~
- 73 ~~a local entity.~~
- 74 (b) "Agency" does not include:
- 75 (i) the Legislature;
- 76 (ii) an entity or agency of the Legislature;
- 77 (iii) the state auditor;
- 78 (iv) the state treasurer;
- 79 (v) the Office of the Attorney General;
- 80 (vi) the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- 81 (vii) the Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber
- 82 ~~Valley Historic Railroad Authority;~~
- 83 (viii) the Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah
- 84 ~~Science Center Authority;~~
- 85 (ix) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing
- 86 ~~Corporation Act;~~
- 87 (x) the Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State

88 Fair Corporation Act;

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

90 Compensation Fund;

91 (xii) the Utah State Retirement Office created in Title 49, Chapter 11, Utah State

92 Retirement Systems Administration;

93 (xiii) the School and Institutional Trust Lands Administration created in Title 53C,

94 Chapter 1, Part 2, School and Institutional Trust Lands Administration;

95 (xiv) the Utah Communications Agency Network created in Title 63C, Chapter 7, Utah

96 Communications Agency Network Act; or

97 (xv) the Utah Capital Investment Corporation created in Title 63, Chapter 38f, Part 12,

98 Utah Venture Capital Enhancement Act.

99 ~~[(2)]~~ (3) "Agency head" means the chief administrative officer of an agency.

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

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

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

105 (6) "Local entity" means:

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

107 (i) county;

108 (ii) city;

109 (iii) town;

110 (iv) local school district;

111 (v) local district; or

112 (vi) special service district;

113 (b) an agency of an entity described in this Subsection (6), including a department,
114 office, division, authority, commission, or board; and

115 (c) an entity created by an interlocal cooperative agreement under Title 11, Chapter 13,
116 Interlocal Cooperation Act, between two or more entities described in this Subsection (6).

117 (7) "Private enterprise" means a person that for profit:

118 (a) manufactures a good or service;

119 (b) processes a good or service;

120 (c) sells a good or service;

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

122 (e) rents a good or service;

123 (f) leases a good or service;

124 (g) delivers a good or service;

125 (h) distributes a good or service; or

126 (i) advertises a good or service.

127 (8) "Privatize" means that an activity engaged in by an agency is transferred so that a
 128 private enterprise engages in the activity including a transfer by:

129 (a) contract;

130 (b) transfer of property; or

131 (c) another arrangement.

132 Section 3. Section **63-55d-103** is enacted to read:

133 **63-55d-103. Exemptions.**

134 This chapter does not apply to a transportation related project initiated pursuant to Title
 135 72, Transportation Code.

136 Section 4. Section **63-55d-201**, which is renumbered from Section 63-55a-2 is
 137 renumbered and amended to read:

138 **Part 2. Privatization Policy Board**

139 **[~~63-55a-2~~]. 63-55d-201. Privatization Policy Board -- Created -- Membership --**
 140 **Operations -- Expenses.**

141 (1) (a) There is created a Privatization Policy Board composed of 15 members.

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

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

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

147 [~~(iii) two members]~~

148 (iii) one member representing public employees, from names recommended by the
 149 largest public employees' association;

150 (iv) one member from state management;

151 (v) ~~[five]~~ seven members from the private business community;

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

153 ~~[(vii)]~~ (vi) one member representing the Utah League of Cities and Towns from names

154 recommended by the ~~[league]~~ Utah League of Cities or Towns; and

155 ~~[(viii)]~~ (vii) one member representing the Utah Association of Counties from names

156 recommended by the ~~[association]~~ Utah Association of Counties.

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

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

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

160 term.

161 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the

162 time of appointment or reappointment, adjust the length of terms to ensure that the terms of

163 board members are staggered so that approximately half of the board is appointed every two

164 years.

165 (c) The governor shall on or before July 1, 2008 change the appointments to the board

166 to reflect the membership requirements of Subsection (1)(b).

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

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

169 (b) When a vacancy occurs in the membership for any reason, ~~[the]~~ a replacement shall

170 be appointed for the unexpired term.

171 (c) Eight members of the board ~~[are]~~ constitute a quorum ~~[for the purpose of~~

172 ~~organizing the board and conducting the business of the board].~~

173 (d) The vote of a majority of board members voting when a quorum is present is

174 necessary for the board to ~~[take action]~~ act.

175 (4) (a) ~~[At the initial meeting of the board, the]~~ The board shall select one of ~~[their~~

176 ~~number]~~ the members to serve as chair of the board.

177 (b) A chair shall serve as chair for a term of one-year, and may be selected as chair for

178 more than one term.

179 ~~[(b)]~~ (5) The chief procurement officer or ~~[his designee is the nonvoting secretary to~~

180 ~~the board and is responsible for scheduling quarterly meetings]~~ the chief procurement officer's

181 designee shall staff the board.

182 [~~☞~~] (6) The board shall meet;

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

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

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

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

192 (b) (i) [~~State~~] A state government officer and employee [~~members~~] member who [~~do~~]
 193 does not receive salary, per diem, or expenses from [~~their~~] the member's agency for [~~their~~] the
 194 member's service may receive per diem and expenses incurred in the performance of [~~their~~] the
 195 member's official duties from the board at the rates established by the Division of Finance
 196 under Sections 63A-3-106 and 63A-3-107.

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

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

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

205 [~~☞~~] (d) Legislators on the [~~committee~~] board shall receive compensation and expenses
 206 as provided by law and legislative rule.

207 Section 5. Section **63-55d-202**, which is renumbered from Section 63-55a-3 is
 208 renumbered and amended to read:

209 [~~63-55a-3~~]. **63-55d-202. Privatization Policy Board -- Duties.**

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

211 (a) may review whether or not [~~certain services performed by existing state agencies~~] a

212 good or service provided by an agency could be privatized to provide the same types and
213 quality of ~~[services]~~ good or service that would result in cost savings;

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

216 (i) an agency; or

217 (ii) a private enterprise;

218 (c) may review issues concerning agency competition with ~~[the]~~ one or more private
219 ~~[sector and]~~ enterprises to determine:

220 (i) whether privatization;

221 (A) would be feasible; and

222 (B) would result in cost savings; and

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

224 ~~[(c)]~~ (d) shall recommend privatization to ~~[the]~~ an agency ~~[head when the]~~ if a
225 proposed privatization is demonstrated to provide a more cost efficient and effective manner of
226 providing ~~[existing governmental services]~~ a good or service;

227 ~~[(d)]~~ (e) shall comply with ~~[the provisions of]~~ Title 63, Chapter 46a, ~~[the]~~ Utah
228 Administrative Rulemaking Act, in making rules establishing privatization standards,
229 procedures, and requirements;

230 ~~[(e)]~~ (f) shall maintain communication with and access information from, other entities
231 promoting privatization;

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

233 (h) shall:

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

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

236 ~~[(ii)]~~ (B) recommendations on privatizing ~~[government services]~~ a good or service
237 provided by an agency; and

238 (C) the status of the inventory created under Part 3, Commercial Activities Inventory
239 and Review;

240 ~~[(g)]~~ (ii) submit the annual report to the Legislature and the governor~~[-]~~ by no later than
241 January 15 immediately following the calendar year for which the report is made; and

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

243 Committee.

244 (2) In addition to filing [~~copies~~] a copy of [its] recommendations for privatization with
245 [~~the relevant~~] an agency head, the board shall file [~~copies~~] a copy of its recommendations for
246 privatization with:

247 (a) the governor's office; and

248 (b) the Office of Legislative Fiscal Analyst for submission to the relevant legislative
249 appropriation subcommittee.

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

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

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

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

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

264 (a) privatization; or

265 (b) unfair competition with one or more private enterprises.

266 Section 6. Section **63-55d-203** is enacted to read:

267 **63-55d-203. Board accounting method.**

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

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

271 (2) allows an agency to identify the total actual cost of engaging in a commercial
272 activity in a manner similar to how a private enterprise identifies the total actual cost to the
273 private enterprise, including the following:

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

295 Section 7. Section **63-55d-301** is enacted to read:

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

297 **63-55d-301. Board to create inventory.**

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

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

300 (a) a commercial activity; or

301 (b) an inherently governmental activity.

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

303 years.

304 (3) The board shall make the inventory available to the public through electronic

305 means.

306 Section 8. Section **63-55d-302** is enacted to read:

307 **63-55d-302. Governor to require review of commercial activities.**

308 Beginning with fiscal year 2009-2010, the governor shall at least once every two fiscal
309 years:

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

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

313 Section 9. Section **63-55d-303** is enacted to read:

314 **63-55d-303. Duties of the Governor's Office of Planning and Budget.**

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

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

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

321 (2) The Governor's Office of Planning and Budget shall report its finding to the
322 Legislature.

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

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

327 If this H.B. 75 and H.B. 63, Recodification of Title 63 State Affairs in General, both
328 pass it is the intent of the Legislature that the Office of Legislative Research and General
329 Counsel in preparing the Utah Code database for publication:

330 (1) treat the amendments in this bill as superseding the renumbering and amending in
331 H.B. 63 to Sections 63-55a-1, 61-55a-2, and 61-55a-3;

332 (2) not enact Section 63I-4-101 enacted in H.B. 63;

333 (3) renumber Sections 63-55d-101 through 63-55d-103 in this bill as Sections
334 63I-4-101 through 63I-4-103;

335 (4) renumber Sections 63-55d-201 through 63-55d-203 in this bill as Sections

336 63I-4-201 through 63I-4-203;

337 (5) renumber Sections 63-55d-301 through 63-55d-303 in this bill as Sections

338 63I-4-301 through 63I-4-303;

339 (6) replace internal references in this bill to the sections listed in Subsections (3)

340 through (5) with the appropriate corresponding renumbered sections; and

341 (7) replace the citations to provisions renumbered by H.B. 63 other than Sections

342 63-55a-1, 61-55a-2, and 61-55a-3 with the appropriate corresponding renumbered sections

343 under H.B. 63.

H.B. 75 1st Sub. (Buff) - Inventory and Review of Commercial Activities

Fiscal Note

2008 General Session

State of Utah

State Impact

Implementation of this bill will require \$72,000 for a Research Analyst IV for the Division of Purchasing; and \$55,000 for a Research Analyst I for the Governor's Office of Planning and Budget.

	<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	\$127,000	\$127,000	\$0	\$0	\$0
Total	\$0	\$127,000	\$127,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.