

1                   **FREE MARKET PROTECTION AND PRIVATIZATION**

2                                   **BOARD ACT AMENDMENTS**

3   2013 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Keven J. Stratton**

6                                   Senate Sponsor: Curtis S. Bramble

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8   **LONG TITLE**

9   **General Description:**

10           This bill recodifies and amends the Privatization Policy Board Act, changes the  
11 membership on the board, and renames the board.

12   **Highlighted Provisions:**

13           This bill:

- 14           ▶ recodifies the Privatization Policy Board Act;  
15           ▶ changes the name of the board to the Free Market Protection and Privatization

16 Board;

- 17           ▶ changes the membership and terms of members of the board;  
18           ▶ provides that the Governor's Office of Planning and Budget shall staff the board and

19 permits the board to contract with a private entity for additional staff;

- 20           ▶ revises the duties and powers of the board; and

- 21           ▶ makes technical changes.

22   **Money Appropriated in this Bill:**

23           None

24   **Other Special Clauses:**

25           None

26   **Utah Code Sections Affected:**

27 AMENDS:

28           **10-1-119**, as enacted by Laws of Utah 2008, Chapter 23

29           **17-50-107**, as enacted by Laws of Utah 2008, Chapter 23

30           **26-18-3.3**, as enacted by Laws of Utah 2011, Chapter 162

31 ENACTS:

32           **63I-4a-201**, Utah Code Annotated 1953

33           **63I-4a-204**, Utah Code Annotated 1953

34           **63I-4a-301**, Utah Code Annotated 1953

35           **63I-4a-401**, Utah Code Annotated 1953

36 RENUMBERS AND AMENDS:

37           **63I-4a-101**, (Renumbered from 63I-4-101, as enacted by Laws of Utah 2008, Chapter  
38 147)

39           **63I-4a-102**, (Renumbered from 63I-4-102, as last amended by Laws of Utah 2012,  
40 Chapter 212)

41           **63I-4a-202**, (Renumbered from 63I-4-201, as last amended by Laws of Utah 2010,  
42 Chapter 286)

43           **63I-4a-203**, (Renumbered from 63I-4-202, as renumbered and amended by Laws of  
44 Utah 2008, Chapter 147)

45           **63I-4a-205**, (Renumbered from 63I-4-203, as enacted by Laws of Utah 2008, Chapter  
46 147)

47           **63I-4a-302**, (Renumbered from 63I-4-301, as enacted by Laws of Utah 2008, Chapter  
48 147)

49           **63I-4a-303**, (Renumbered from 63I-4-302, as enacted by Laws of Utah 2008, Chapter  
50 147)

51           **63I-4a-304**, (Renumbered from 63I-4-303, as enacted by Laws of Utah 2008, Chapter  
52 147)

53           **63I-4a-402**, (Renumbered from 63I-4-304, as enacted by Laws of Utah 2008, Chapter  
54 147)

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

57           Section 1. Section **10-1-119** is amended to read:

58           **10-1-119. Inventory of competitive activities.**

59           (1) As used in this section:

60           (a) "Applicable city" means:

61           (i) on and after July 1, 2009, a city of the first class; and

62           (ii) on and after July 1, 2010, a city of the first or second class.

63           (b) "Competitive activity" means an activity engaged in by a city or an entity created by

64 the city by which the city or an entity created by the city provides a good or service that is

65 substantially similar to a good or service that is provided by a person:

66           (i) who is not an entity of the federal government, state government, or a political

67 subdivision of the state; and

68           (ii) within the boundary of the county in which the city is located.

69           (c) (i) Subject to Subsection (1)(c)(ii), "entity created by the city" includes:

70           (A) an entity created by an interlocal agreement under Title 11, Chapter 13, Interlocal

71 Cooperation Act, in which the city participates; and

72           (B) a special service district created under Title 17D, Chapter 1, Special Service

73 District Act.

74           (ii) "Entity created by the city" does not include a local district created by a city under

75 Title 17B, Limited Purpose Local Government Entities - Local Districts.

76           (2) (a) The governing body of an applicable city shall create an inventory of activities

77 of the city or an entity created by the city to:

78           (i) classify whether an activity is a competitive activity; and

79           (ii) identify efforts that have been made to privatize aspects of the activity.

80           (b) An applicable city shall comply with this section by no later than:

81           (i) June 30, 2010, if the applicable city is a city of the first class; and

82           (ii) June 30, 2011, if the applicable city is a city of the second class.

83           (3) The governing body of an applicable city shall update the inventory created under

84 this section at least every two years.

85           (4) An applicable city shall:

86 (a) provide a copy of the inventory and an update to the inventory to the Free Market  
87 Protection and Privatization [Policy] Board created in Title 63I, Chapter [4,] 4a, Free Market  
88 Protection and Privatization [Policy] Board Act; and

89 (b) make the inventory available to the public through electronic means.

90 Section 2. Section **17-50-107** is amended to read:

91 **17-50-107. Inventory of competitive activities.**

92 (1) As used in this section:

93 (a) "Applicable county" means:

94 (i) on and after July 1, 2009, a county of the first class; and

95 (ii) on and after July 1, 2010, a county of the first or second class.

96 (b) "Competitive activity" means an activity engaged in by a county or an entity created  
97 by the county by which the county or an entity created by the county provides a good or service  
98 that is substantially similar to a good or service that is provided by a person:

99 (i) who is not an entity of the federal government, state government, or a political  
100 subdivision of the state; and

101 (ii) within the boundary of the county.

102 (c) (i) Subject to Subsection (1)(c)(ii), "entity created by the county" includes:

103 (A) an entity created by an interlocal agreement under Title 11, Chapter 13, Interlocal  
104 Cooperation Act, in which the county participates; and

105 (B) a special service district created under Title 17D, Chapter 1, Special Service  
106 District Act.

107 (ii) "Entity created by the county" does not include a local district created by a county  
108 under Title 17B, Limited Purpose Local Government Entities - Local Districts.

109 (2) (a) The governing body of an applicable county shall create an inventory of  
110 activities of the county or an entity created by the county to:

111 (i) classify whether an activity is a competitive activity; and

112 (ii) identify efforts that have been made to privatize aspects of the activity.

113 (b) An applicable county shall comply with this section by no later than:

- 114 (i) June 30, 2010, if the applicable county is a county of the first class; and
- 115 (ii) June 30, 2011, if the applicable county is a county of the second class.
- 116 (3) The governing body of an applicable county shall update the inventory created
- 117 under this section at least every two years.

- 118 (4) An applicable county shall:
- 119 (a) provide a copy of the inventory and an update to the inventory to the Free Market
- 120 Protection and Privatization [Policy] Board created in Title 63I, Chapter [~~4;~~] 4a, Free Market
- 121 Protection and Privatization [Policy] Board Act; and

- 122 (b) make the inventory available to the public through electronic means.

123 Section 3. Section **26-18-3.3** is amended to read:

124 **26-18-3.3. Study of privatization of eligibility determination.**

- 125 (1) The department shall work with the Department of Workforce Services, the
- 126 Department of Human Services, and the Free Market Protection and Privatization [Policy]
- 127 Board created in Section [~~63I-4-201~~] 63I-4a-202 to study the state's eligibility determination
- 128 system for the state Medicaid program in accordance with this section.

- 129 (2) (a) The study shall include the state's eligibility determination system for the
- 130 following programs:

- 131 (i) the state Medicaid program;
- 132 (ii) the Utah Children's Health Insurance Program created under Chapter 40, Utah
- 133 Children's Health Insurance Act;
- 134 (iii) the Primary Care Network;
- 135 (iv) the Utah Premium Partnership; and
- 136 (v) other eligibility systems administered by the Department of Workforce Services.

- 137 (b) The study shall include:

- 138 (i) the workflow and operations of the eligibility determination systems for the
- 139 programs described in Subsection (2)(a); and
- 140 (ii) efficiencies that may be obtained through:
- 141 (A) consolidation of the eligibility determination systems;

142 (B) privatization of the eligibility determination systems; and  
 143 (C) other technology or organizational solutions for the eligibility determination  
 144 systems.

145 (3) The department, the Department of Workforce Services, and the Free Market  
 146 Protection and Privatization [Policy] Board shall, prior to October 20, 2011, report to the  
 147 Legislature's Health and Human Services Interim Committee and to the Social Services  
 148 Appropriations Subcommittee regarding the findings of the study and any recommendations  
 149 and options regarding the advantages and disadvantages to the state in privatizing the eligibility  
 150 determination system.

151 Section 4. Section **63I-4a-101**, which is renumbered from Section 63I-4-101 is  
 152 renumbered and amended to read:

153 **CHAPTER 4a. FREE MARKET PROTECTION AND**  
 154 **PRIVATIZATION BOARD ACT**

155 **Part 1. General Provisions**

156 **~~[63I-4-101].~~ 63I-4a-101. Title.**

157 (1) This chapter is known as the "Free Market Protection and Privatization [Policy]  
 158 Board Act."

159 (2) This part is known as "General Provisions."

160 Section 5. Section **63I-4a-102**, which is renumbered from Section 63I-4-102 is  
 161 renumbered and amended to read:

162 **~~[63I-4-102].~~ 63I-4a-102. Definitions.**

- 163 (1) (a) "Activity" means to provide a good or service.
- 164 (b) "Activity" includes to:
  - 165 (i) manufacture a good or service;
  - 166 (ii) process a good or service;
  - 167 (iii) sell a good or service;
  - 168 (iv) offer for sale a good or service;
  - 169 (v) rent a good or service;

- 170 (vi) lease a good or service;
- 171 (vii) deliver a good or service;
- 172 (viii) distribute a good or service; or
- 173 (ix) advertise a good or service.
- 174 (2) (a) Except as provided in Subsection (2)(b), "agency" means:
- 175 (i) the state; or
- 176 (ii) an entity of the state including a department, office, division, authority,
- 177 commission, or board.
- 178 (b) "Agency" does not include:
- 179 (i) the Legislature;
- 180 (ii) an entity or agency of the Legislature;
- 181 (iii) the state auditor;
- 182 (iv) the state treasurer;
- 183 (v) the Office of the Attorney General;
- 184 (vi) the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;
- 185 (vii) the Utah Science Center Authority created in Title 63H, Chapter 3, Utah Science
- 186 Center Authority;
- 187 (viii) the Heber Valley Railroad Authority created in Title 63H, Chapter 4, Heber
- 188 Valley Historic Railroad Authority;
- 189 (ix) the Utah State Railroad Museum Authority created in Title 63H, Chapter 5, Utah
- 190 State Railroad Museum Authority;
- 191 (x) the Utah Housing Corporation created in Title 35A, Chapter 8, Part 7, Utah
- 192 Housing Corporation Act;
- 193 (xi) the Utah State Fair Corporation created in Title 63H, Chapter 6, Utah State Fair
- 194 Corporation Act;
- 195 (xii) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'
- 196 Compensation Fund;
- 197 (xiii) the Utah State Retirement Office created in Title 49, Chapter 11, Utah State

198 Retirement Systems Administration;

199           (xiv) a charter school chartered by the State Charter School Board or a board of

200 trustees of a higher education institution under Title 53A, Chapter 1a, Part 5, The Utah Charter

201 Schools Act;

202           (xv) the Utah Schools for the Deaf and the Blind created in Title 53A, Chapter 25b,

203 Utah Schools for the Deaf and the Blind;

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

205           (xvii) the School and Institutional Trust Lands Administration created in Title 53C,

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

207           (xviii) the Utah Communications Agency Network created in Title 63C, Chapter 7,

208 Utah Communications Agency Network Act; or

209           (xix) the Utah Capital Investment Corporation created in Title 63M, Chapter 1, Part 12,

210 Utah Venture Capital Enhancement Act.

211           (3) "Agency head" means the chief administrative officer of an agency.

212           (4) "Board" means the Free Market Protection and Privatization [Policy] Board created

213 in Section [~~63I-4-201~~] 63I-4a-202.

214           (5) "Commercial activity" means to engage in an activity that can be obtained in whole

215 or in part from a private enterprise.

216           (6) "Local entity" means:

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

218           (i) county;

219           (ii) city;

220           (iii) town;

221           (iv) local school district;

222           (v) local district; or

223           (vi) special service district;

224           (b) an agency of an entity described in this Subsection (6), including a department,

225 office, division, authority, commission, or board; [~~and~~] or



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

228 (7) "Private enterprise" means a person that engages in an activity for profit[:].

229 [~~(a) manufactures a good or service;~~]

230 [~~(b) processes a good or service;~~]

231 [~~(c) sells a good or service;~~]

232 [~~(d) offers for sale a good or service;~~]

233 [~~(e) rents a good or service;~~]

234 [~~(f) leases a good or service;~~]

235 [~~(g) delivers a good or service;~~]

236 [~~(h) distributes a good or service; or~~]

237 [~~(i) advertises a good or service.~~]

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

240 (a) contract;

241 (b) transfer of property; or

242 (c) another arrangement.

243 (9) "Special district" means:

244 (a) a local district, as defined in Section 17B-1-102;

245 (b) a special service district, as defined in Section 17D-1-102; or

246 (c) a conservation district, as defined in Section 17D-3-102.

247 Section 6. Section **63I-4a-201** is enacted to read:

248 **Part 2. Free Market Protection and Privatization Board**

249 **63I-4a-201. Title.**

250 This part is known as "Free Market Protection and Privatization Board."

251 Section 7. Section **63I-4a-202**, which is renumbered from Section 63I-4-201 is  
252 renumbered and amended to read:

253 [~~**63I-4-201.**~~ **63I-4a-202. Free Market Protection and Privatization Board --**

254 **Created -- Membership -- Operations -- Expenses.**

255 (1) (a) There is created a Privatization Policy Board composed of 17 members.

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

257 (i) two senators, one each from the majority and minority political parties, from names  
258 recommended by the president of the Senate;259 (ii) two representatives, one each from the majority and minority political parties, from  
260 names recommended by the speaker of the House of Representatives;261 (iii) two members representing public employees, from names recommended by the  
262 largest public employees' association;

263 (iv) one member from state management;

264 (v) ~~eight~~ seven members from the private business community;265 (vi) one member representing the Utah League of Cities and Towns from names  
266 recommended by the Utah League of Cities and Towns; ~~and~~267 (vii) one member representing the Utah Association of Counties from names  
268 recommended by the Utah Association of Counties~~[-]; and~~269 (viii) one member representing the Utah Association of Special Districts, from names  
270 recommended by the Utah Association of Special Districts.271 (2) (a) Except as ~~required by~~ provided in Subsection (2)(b), a board member~~[-(i)-~~  
272 ~~appointed under Subsection (1)(b)(i) or (ii) shall serve a two-year term; and (ii) appointed~~  
273 ~~under Subsections (1)(b)(iii) through (vii)] shall serve a [four] two-year term.~~274 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the  
275 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
276 board members are staggered so that approximately half of the board is appointed every two  
277 years.278 ~~[(c) The governor shall on or before July 1, 2008 change the appointments to the board~~  
279 ~~to reflect the membership requirements of Subsection (1)(b).]~~280 (3) (a) A board member shall hold office until the board member's successor is  
281 appointed and qualified.

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

284 (c) Nine members of the board constitute a quorum.

285 (d) The vote of a majority of board members voting when a quorum is present is  
286 necessary for the board to act.

287 (4) (a) The board shall select one of the members to serve as chair of the board.

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

290 [~~5) The chief procurement officer or the chief procurement officer's designee shall~~  
291 ~~staff the board.~~]

292 (5) The Governor's Office of Planning and Budget shall staff the board. The board  
293 may contract for additional staff from the private sector under Section 63I-4a-204.

294 (6) The board shall meet:

295 (a) at least quarterly; and

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

297 (7) A member may not receive compensation or benefits for the member's service, but  
298 may receive per diem and travel expenses in accordance with:

299 (a) Section 63A-3-106;

300 (b) Section 63A-3-107; and

301 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
302 63A-3-107.

303 Section 8. Section **63I-4a-203**, which is renumbered from Section 63I-4-202 is  
304 renumbered and amended to read:

305 [~~63I-4-202~~]. **63I-4a-203. Free Market Protection and Privatization Board --**  
306 **Duties.**

307 (1) The board shall:

308 (a) [~~review~~] determine whether [~~or not a good or service~~] an activity provided by an  
309 agency could be privatized to provide the same types and quality of a good or service that

310 would result in cost savings;

311 (b) review privatization of ~~[a good or service]~~ an activity at the request of:

312 (i) an agency; or

313 (ii) a private enterprise;

314 (c) review issues concerning agency competition with one or more private enterprises

315 to determine:

316 (i) whether privatization:

317 (A) would be feasible;

318 (B) would result in cost savings; and

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

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

321 (d) recommend privatization to an agency if a proposed privatization is demonstrated

322 to provide a more cost efficient and effective manner of providing a good or service[;], taking

323 into account:

324 (i) the scope of providing the good or service;

325 (ii) whether cost savings will be realized;

326 (iii) whether quality will be improved;

327 (iv) the impact on risk management;

328 (v) the impact on timeliness;

329 (vi) the ability to accommodate fluctuating demand;

330 (vii) the ability to access outside expertise;

331 (viii) the impact on oversight;

332 (ix) the ability to develop sound policy and implement best practices; and

333 (x) legal and practical impediments to privatization;

334 (e) comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in making

335 rules establishing privatization standards, procedures, and requirements;

336 (f) in fulfilling the duties described in this Subsection (1), consult with, maintain

337 communication with, and access information from[;];

- 338 (i) other entities promoting privatization; and
- 339 (ii) managers and employees in the public sector;
- 340 (g) comply with Part 3, Commercial Activities Inventory and Review; and
- 341 (h) (i) prepare an annual report for each calendar year that contains:
- 342 (A) information about the board's activities;
- 343 (B) recommendations on privatizing [~~a good or service~~] an activity provided by an
- 344 agency; and
- 345 (C) the status of the inventory created under Part 3, Commercial Activities Inventory
- 346 and Review;
- 347 (ii) submit the annual report to the Legislature and the governor by no later than
- 348 January 15 immediately following the calendar year for which the report is made; and
- 349 (iii) [~~provide~~] provide an oral report to the Government Operations
- 350 Interim Committee and the Economic Development and Workforce Services Interim
- 351 Committee.
- 352 (2) The board may, using the criteria described in Subsection (1), consider whether to
- 353 recommend privatization of an activity provided by an agency, a county, or a special district:
- 354 (a) on the board's own initiative;
- 355 (b) upon request by an agency, a county, or a special district;
- 356 (c) in response to a complaint that an agency, a county, or a special district is engaging
- 357 in unfair competition with a private enterprise; or
- 358 (d) in light of a proposal made by any person, regardless of whether the proposal was
- 359 solicited.
- 360 [~~(2)~~] (3) In addition to filing a copy of recommendations for privatization with an
- 361 agency head, the board shall file a copy of its recommendations for privatization with:
- 362 (a) the governor's office; and
- 363 (b) the Office of Legislative Fiscal Analyst for submission to the relevant legislative
- 364 appropriation subcommittee.
- 365 [~~(3)~~] (4) (a) The board may appoint advisory groups to conduct studies, research, or

366 analyses, and make reports and recommendations with respect to a matter within the  
367 jurisdiction of the board.

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

369 ~~[(4)]~~ (5) (a) Subject to Subsection ~~[(4)]~~ (5)(b), this chapter does not preclude an agency  
370 from privatizing the provision of a good or service independent of the board.

371 (b) If an agency privatizes the provision of a good or service, the agency shall include  
372 as part of the contract that privatizes the provision of the good or service that any contractor  
373 assumes all liability to provide the good or service.

374 ~~[(5) The board may review upon the request of a local entity a matter relevant to:]~~

375 ~~[(a) (i) privatization; or]~~

376 ~~[(ii) unfair competition with one or more private enterprises; and]~~

377 ~~[(b) an activity or proposed activity of the local entity.]~~

378 Section 9. Section **63I-4a-204** is enacted to read:

379 **63I-4a-204. Staff support -- Assistance to an agency or local entity.**

380 (1) The board may, within funds appropriated by the Legislature for this purpose, issue  
381 a request for proposals to contract with a private sector person or entity to:

382 (a) provide staff support to the board;

383 (b) assist the board in conducting its duties, including completing the inventory  
384 described in Part 3, Commercial Activities Inventory and Review; and

385 (c) at the board's direction, assist an agency or a local entity to:

386 (i) develop a business case for potential privatization of an activity, using the criteria  
387 described in Subsection 63I-4a-203(1);

388 (ii) draft, issue, or evaluate a request for proposals to privatize an activity; or

389 (iii) award a contract to privatize an activity.

390 (2) The private sector person described in Subsection (1):

391 (a) may not be an advocate for or against privatization; and

392 (b) shall be neutral on the issue of privatization.

393 Section 10. Section **63I-4a-205**, which is renumbered from Section 63I-4-203 is

394 renumbered and amended to read:

395 ~~[63I-4-203]~~. **63I-4a-205. Board accounting method.**

396 The board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
397 Rulemaking Act, shall establish an accounting method that:

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

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

402 (a) a labor expense, ~~[such as]~~ including:

403 (i) compensation and benefits;

404 (ii) a cost of training;

405 (iii) a cost of paying overtime;

406 (iv) a cost of supervising labor; or

407 (v) another personnel expense;

408 (b) an operating cost, ~~[such as]~~ including:

409 (i) vehicle maintenance and repair;

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

411 (iii) an office expense;

412 (iv) a cost of an accounting operation, ~~[such as]~~ including billing;

413 (v) an insurance expense;

414 (vi) a real estate or equipment cost;

415 (vii) a debt service cost; or

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

418 (c) a contract management cost; and

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

420 (3) provides a process to estimate the taxes an agency would pay related to engaging in  
421 a commercial activity if the agency were required to pay federal, state, and local taxes to the

422 same extent as a private enterprise engaging in the commercial activity.

423 Section 11. Section **63I-4a-301** is enacted to read:

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

425 **63I-4a-301. Title.**

426 This part is known as "Commercial Activities Inventory and Review."

427 Section 12. Section **63I-4a-302**, which is renumbered from Section 63I-4-301 is  
428 renumbered and amended to read:

429 **~~63I-4-301.~~ 63I-4a-302. Board to create inventory.**

430 ~~[(1) By no later than June 30, 2009] At least every two years,~~ the board shall ~~[create]~~  
431 compile and make available to the public, by electronic means, an updated inventory of  
432 activities of the agencies in ~~[this] the~~ state to classify whether each activity is:

433 ~~[(a)]~~ (1) a commercial activity; or

434 ~~[(b)]~~ (2) an inherently governmental activity.

435 ~~[(2) The board shall update the inventory created under this section at least every two~~  
436 ~~years.]~~

437 ~~[(3) The board shall make the inventory available to the public through electronic~~  
438 ~~means.]~~

439 Section 13. Section **63I-4a-303**, which is renumbered from Section 63I-4-302 is  
440 renumbered and amended to read:

441 **~~63I-4-302.~~ 63I-4a-303. Governor to require review of commercial activities.**

442 ~~[Beginning with fiscal year 2009-10, the]~~ The governor ~~[shall at least once every two~~  
443 ~~fiscal years] may:~~

444 (1) ~~select [at least three]~~ one or more commercial activities that are being performed by  
445 an agency for examination; and

446 (2) require the Governor's Office of Planning and Budget to conduct the examination  
447 and make the determinations and recommendations described in Subsections 63I-4a-203(1)(a),  
448 (c), and (d).

449 Section 14. Section **63I-4a-304**, which is renumbered from Section 63I-4-303 is



450 renumbered and amended to read:

451 ~~[63I-4-303].~~ **63I-4a-304.** **Duties of the Governor's Office of Planning and**  
452 **Budget.**

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

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

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

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

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

464 Section 15. Section **63I-4a-401** is enacted to read:

465 **Part 4. Miscellaneous Provisions**

466 **63I-4a-401.** **Title.**

467 This part is known as "Miscellaneous Provisions."

468 Section 16. Section **63I-4a-402**, which is renumbered from Section 63I-4-304 is  
469 renumbered and amended to read:

470 ~~[63I-4-304].~~ **63I-4a-402.** **Government immunity.**

471 (1) This chapter or the inclusion of an activity on an inventory made under this chapter  
472 may not be construed as a waiver of any right, claim, or defense of immunity that an agency  
473 may have under Title 63G, Chapter 7, Governmental Immunity Act of Utah, or other law.

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