

1 **FREE MARKET PROTECTION AND PRIVATIZATION**

2 **BOARD ACT AMENDMENTS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Howard A. Stephenson**

6 House Sponsor: Johnny Anderson

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies ~~the~~ **provisions related to** ~~the~~ the Free Market Protection and
10a Privatization Board Act ~~to~~ **[by expanding**
11 ~~the agencies that are subject to review for privatization of activities]~~ ~~the~~ .

12 **Highlighted Provisions:**

13 This bill:
14 ~~to~~ **[**~~to~~ ~~expands the agencies that are subject to review by the Free Market Protection and~~
15 ~~Privatization Board to include an institution of higher education and the School and~~
16 ~~Institutional Trust Lands Administration;]~~ ~~the~~

17 ▶ authorizes the Free Market Protection and Privatization Board to review
18 privatization of an activity of an exempted state entity if the entity requests that the
19 board review privatization of the activity provided by the entity; and

20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **63I-4a-102**, as last amended by Laws of Utah 2015, Chapters 223, 226, 283, and 411



28 **63I-4a-203**, as last amended by Laws of Utah 2014, Chapter 371



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

31 Section 1. Section **63I-4a-102** is amended to read:

32 **63I-4a-102. Definitions.**

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

34 (b) "Activity" includes to:

35 (i) manufacture a good or service;

36 (ii) process a good or service;

37 (iii) sell a good or service;

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

39 (v) rent a good or service;

40 (vi) lease a good or service;

41 (vii) deliver a good or service;

42 (viii) distribute a good or service; or

43 (ix) advertise a good or service.

44 (2) (a) Except as provided in Subsection (2)(b), "agency" means:

45 (i) the state; or

46 (ii) an entity of the state including a department, office, division, authority,
47 commission, or board.

48 (b) "Agency" does not include:

49 (i) the Legislature;

50 (ii) an entity or agency of the Legislature;

51 (iii) the state auditor;

52 (iv) the state treasurer;

53 (v) the Office of the Attorney General;

54 (vi) the Utah Dairy Commission created in Section [4-22-2](#);

55 (vii) the Heber Valley Historic Railroad Authority created in Section [63H-4-102](#);

56 (viii) the Utah State Railroad Museum Authority created in Section [63H-5-102](#);

57 (ix) the Utah Housing Corporation created in Section [63H-8-201](#);

58 (x) the Utah State Fair Corporation created in Section [63H-6-103](#);

- 59 (xi) the Workers' Compensation Fund created in Section 31A-33-102;
- 60 (xii) the Utah State Retirement Office created in Section 49-11-201;
- 61 (xiii) a charter school chartered by the State Charter School Board or a board of
- 62 trustees of a higher education institution under Title 53A, Chapter 1a, Part 5, The Utah Charter
- 63 Schools Act;
- 64 (xiv) the Utah Schools for the Deaf and the Blind created in Title 53A, Chapter 25b,
- 65 Utah Schools for the Deaf and the Blind;
- 66 ~~§~~→ [H] (xv) **an institution of higher education as defined in Section 53B-3-102;** [H]
- 67 [H] (xvi) **the School and Institutional Trust Lands Administration created in Section**
- 68 **53C-1-201;** [H]
- 69 [H] (xvii) [H] ~~[(xv)]~~ ←~~§~~ the Utah Communications Authority created in
- 69a Section 63H-7a-201; or
- 70 ~~§~~→ [H] (xviii) [H] ~~[(xvi)]~~ ←~~§~~ the Utah Capital Investment Corporation created in Section
- 70a 63N-6-301.
- 71 (3) "Agency head" means the chief administrative officer of an agency.
- 72 (4) "Board" means the Free Market Protection and Privatization Board created in
- 73 Section 63I-4a-202.
- 74 (5) "Commercial activity" means to engage in an activity that can be obtained in whole
- 75 or in part from a private enterprise.
- 76 (6) "Local entity" means:
- 77 (a) a political subdivision of the state, including a:
- 78 (i) county;
- 79 (ii) city;
- 80 (iii) town;
- 81 (iv) local school district;
- 82 (v) local district; or
- 83 (vi) special service district;
- 84 (b) an agency of an entity described in this Subsection (6), including a department,
- 85 office, division, authority, commission, or board; or
- 86 (c) an entity created by an interlocal cooperative agreement under Title 11, Chapter 13,
- 87 Interlocal Cooperation Act, between two or more entities described in this Subsection (6).
- 88 (7) "Private enterprise" means a person that engages in an activity for profit.
- 89 (8) "Privatize" means that an activity engaged in by an agency is transferred so that a

90 private enterprise engages in the activity, including a transfer by:

- 91 (a) contract;
- 92 (b) transfer of property; or
- 93 (c) another arrangement.

94 (9) "Special district" means:

- 95 (a) a local district, as defined in Section 17B-1-102;
- 96 (b) a special service district, as defined in Section 17D-1-102; or
- 97 (c) a conservation district, as defined in Section 17D-3-102.

98 Section 2. Section 63I-4a-203 is amended to read:

99 **63I-4a-203. Free Market Protection and Privatization Board -- Duties.**

100 (1) The board shall:

101 (a) determine whether an activity provided by an agency could be privatized to provide
102 the same types and quality of a good or service that would result in cost savings;

103 (b) review privatization of an activity at the request of:

- 104 (i) an agency; or
- 105 (ii) a private enterprise;

106 (c) review issues concerning agency competition with one or more private enterprises
107 to determine:

108 (i) whether privatization:

- 109 (A) would be feasible;
- 110 (B) would result in cost savings; and
- 111 (C) would result in equal or better quality of a good or service; and
- 112 (ii) ways to eliminate any unfair competition with a private enterprise;
- 113 (d) recommend privatization to an agency if a proposed privatization is demonstrated

114 to provide a more cost efficient and effective manner of providing a good or service, taking
115 into account:

- 116 (i) the scope of providing the good or service;
- 117 (ii) whether cost savings will be realized;
- 118 (iii) whether quality will be improved;
- 119 (iv) the impact on risk management;
- 120 (v) the impact on timeliness;

- 121 (vi) the ability to accommodate fluctuating demand;
- 122 (vii) the ability to access outside expertise;
- 123 (viii) the impact on oversight;
- 124 (ix) the ability to develop sound policy and implement best practices; and
- 125 (x) legal and practical impediments to privatization;
- 126 (e) comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in making
- 127 rules establishing privatization standards, procedures, and requirements;
- 128 (f) in fulfilling the duties described in this Subsection (1), consult with, maintain
- 129 communication with, and access information from:
- 130 (i) other entities promoting privatization; and
- 131 (ii) managers and employees in the public sector;
- 132 (g) comply with Part 3, Commercial Activities Inventory and Review; and
- 133 (h) (i) prepare an annual report for each calendar year that contains:
- 134 (A) information about the board's activities;
- 135 (B) recommendations on privatizing an activity provided by an agency; and
- 136 (C) the status of the inventory created under Part 3, Commercial Activities Inventory
- 137 and Review;
- 138 (ii) submit the annual report to the Legislature and the governor by no later than
- 139 January 15 immediately following the calendar year for which the report is made; and
- 140 (iii) submit, before November 1, an annual written report to the Government Operations
- 141 Interim Committee.
- 142 (2) (a) The board may, using the criteria described in Subsection (1), consider whether
- 143 to recommend privatization of an activity provided by an agency~~[-a county,]~~ or a ~~[special~~
- 144 ~~district]~~ local entity:
- 145 ~~[(a)]~~ (i) on the board's own initiative;
- 146 ~~[(b)]~~ (ii) upon request by an agency~~[-a county,]~~ or a ~~[special district]~~ local entity;
- 147 ~~[(c)]~~ (iii) in response to a complaint that an agency~~[-a county,]~~ or a ~~[special district]~~
- 148 local entity is engaging in unfair competition with a private enterprise; or
- 149 ~~[(d)]~~ (iv) in light of a proposal made by any person, regardless of whether the proposal
- 150 was solicited.
- 151 (b) The board may, using the criteria described in Subsection (1), consider whether to

152 recommend privatization of an activity provided by an entity that is an exempted agency under
153 Subsection 63I-4a-102(2)(b) if the entity requests that the board review privatization of the
154 activity provided by the entity.

155 (3) In addition to filing a copy of recommendations for privatization with an agency
156 head, the board shall file a copy of its recommendations for privatization with:

157 (a) the governor's office; and

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

160 (4) (a) The board may appoint advisory groups to conduct studies, research, or
161 analyses, and make reports and recommendations with respect to a matter within the
162 jurisdiction of the board.

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

164 (5) (a) Subject to Subsection (5)(b), this chapter does not preclude an agency from
165 privatizing the provision of a good or service independent of the board.

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

Legislative Review Note
Office of Legislative Research and General Counsel