

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

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to the Free Market Protection and Privatization
11 Board Act.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ authorizes the Free Market Protection and Privatization Board to review
- 15 privatization of an activity of an exempted state entity if the entity requests that the
- 16 board review privatization of the activity provided by the entity; and
- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **63I-4a-203**, as last amended by Laws of Utah 2014, Chapter 371

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

27 Section 1. Section **63I-4a-203** is amended to read:

28 **63I-4a-203. Free Market Protection and Privatization Board -- Duties.**

29 (1) The board shall:

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

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

33 (i) an agency; or

34 (ii) a private enterprise;

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

37 (i) whether privatization:

38 (A) would be feasible;

39 (B) would result in cost savings; and

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

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

42 (d) recommend privatization to an agency if a proposed privatization is demonstrated
43 to provide a more cost efficient and effective manner of providing a good or service, taking
44 into account:

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

46 (ii) whether cost savings will be realized;

47 (iii) whether quality will be improved;

48 (iv) the impact on risk management;

49 (v) the impact on timeliness;

50 (vi) the ability to accommodate fluctuating demand;

51 (vii) the ability to access outside expertise;

52 (viii) the impact on oversight;

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

54 (x) legal and practical impediments to privatization;

55 (e) comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in making
56 rules establishing privatization standards, procedures, and requirements;

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

58 communication with, and access information from:

59 (i) other entities promoting privatization; and

60 (ii) managers and employees in the public sector;

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

62 (h) (i) prepare an annual report for each calendar year that contains:

63 (A) information about the board's activities;

64 (B) recommendations on privatizing an activity provided by an agency; and

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

66 and Review;

67 (ii) submit the annual report to the Legislature and the governor by no later than

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

69 (iii) submit, before November 1, an annual written report to the Government Operations

70 Interim Committee.

71 (2) (a) The board may, using the criteria described in Subsection (1), consider whether

72 to recommend privatization of an activity provided by an agency~~[, a county,]~~ or a ~~[special~~

73 ~~district]~~ local entity:

74 ~~[(a)]~~ (i) on the board's own initiative;

75 ~~[(b)]~~ (ii) upon request by an agency~~[, a county,]~~ or a ~~[special district]~~ local entity;

76 ~~[(c)]~~ (iii) in response to a complaint that an agency~~[, a county,]~~ or a ~~[special district]~~

77 local entity is engaging in unfair competition with a private enterprise; or

78 ~~[(d)]~~ (iv) in light of a proposal made by any person, regardless of whether the proposal

79 was solicited.

80 (b) The board may, using the criteria described in Subsection (1), consider whether to

81 recommend privatization of an activity provided by an entity that is an exempted agency under

82 Subsection 63I-4a-102(2)(b) if the entity requests that the board review privatization of the

83 activity provided by the entity.

84 (3) In addition to filing a copy of recommendations for privatization with an agency

85 head, the board shall file a copy of its recommendations for privatization with:

86 (a) the governor's office; and

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

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

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

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

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