

# **AGENDA**

## **FREE MARKET PROTECTION AND PRIVATIZATION BOARD**

### **MEETING**

***Thursday, September 12, 2013, 2:00 PM***

**Room 20 House Building**

**State Capitol Complex**

**Salt Lake City, Utah**

1. Welcome and Introductions – Kimberley Jones, Chair
2. Board Business/Minutes
  - a. Minutes from July 10, 2013 – *for consideration*
  - b. Electronic meetings
  - c. Budget
3. Follow up from Orientation – Cliff Strachan, Governor's Office of Management and Budget
  - a. *Free Market Protection and Privatization Board Act*
    - i. Mission statement – *for consideration*
    - ii. Board accounting method – Request for Information – *discussion*
    - iii. Commercial Services Inventory - *discussion*
4. Presentations
  - a. Fleet Operations – Rich Amon, Department of Administrative Services
  - b. State Parks Operations – Scott Strong, Department of Natural Resources
  - c. UDOT: Outsourced – Carlos Braceras, Department of Transportation
5. Other/Adjourn
  - a. Privatization studies
  - b. Adjourn

Next meeting: October 10, 2013



Minutes of the  
Free Market Protection and Privatization Board  
Wednesday, July 10, 2013 - 2:00 p.m.  
Room 20, House Building  
State Capitol Complex

Members present:

Senator Howard Stephenson, Senator Karen Mayne, Representative Johnny Anderson, Representative Lynn Hemingway, Thomas Bielen, Brian Gough, Commissioner Sherrie Hayashi, Randy Simmons, Kerry Casaday, Kimberley Jones, Manuel Torres, Al Manbeian, Commissioner Louenda Downs, and LeGrand Bitter

Members absent:

Katina Curtis

Staff present:

Cliff Strachan, Program Specialist/Secretary

Note: Additional information including related materials and an audio recording of the meeting can be found at [governor.utah.gov/privatization](http://governor.utah.gov/privatization).

1. Welcome and Introductions

Cliff Strachan, Governor's Office of Management and Budget, called the meeting to order and noted a quorum was present. The governor has appointed 15 of 17 members to date. Two more recommendations are pending Governor Herbert's approval in August. Katina Curtis sent was excused from the meeting.

All members in attendance and one of the recommended appointees introduced themselves.

Mr. Strachan noted that the presentation from Kristen Cox will be delivered out of the agenda order when she arrives. (It is found at item 6a of these minutes).

2. Orientation

a. Open and Public Meetings Act (annual training)

The board reviewed requirements of the Act with the Board in accordance with Utah Code Annotated (UCA) 52-4-104.

b. Free Market Protection and Privatization Board Act

The board reviewed changes to the Act per House Bill 94 (2013 General Session) and addressed specific aspects arising from the Act.

i. Mission Statement

The board received a revised mission statement consistent with the duties set forth in UCA 63I-4a.

Submitted for consideration until next meeting.

Randy Simmons asked whether the board can look at local government. The board can look at allegations of unfair competition and make recommendations. Also, principles of privatization can be shared.

Rep. Hemingway asked what recommendations have been made previously. Mr. Simmons noted that past recommendations addressed golf courses, DABC retail facilities and others, and staffing.

ii. Board Accounting Method

The board reviewed the requirements per UCA 63I-4a-205 and referred the board to the Privatization Assessment Workbook. The Act requires a method be established by rule (meaning the board needs to work through the rule making process).

Sen. Stephenson asked whether such rules are available elsewhere we can use. He suggested that the State Auditor be invited to share expertise re GASB and the rule making. Staff is researching and has found some possible models in some cities and the federal FAIR Act.

iii. Commercial Activities Inventory

The board reviewed the requirements per UCA 63I-4a-302, the board's history in compiling it and considered the draft inventory prepared by staff. The list is to be reviewed going forward and is a starting point.

Commissioner Downs asked if this is only state government and can the board look at other governments. The inventory is required only for the state agencies but a broad read of the Act suggests the board could look at other local governments, generally in response to complaints of unfair competition.

Motion: Commissioner Downs moved to adopt and post the inventory on the board's website. CARRIED

iv. Staff Support and the Governor's Office of Management and Budget

The board reviewed and discussed the requirements per UCA 63I-4a-204 and 304. Mr. Strachan noted that any private sector person hired is required to be neutral on privatization. As GOMB staff, he has been directed to be neutral as well.

v. Board Process Flow Chart

The board reviewed a flowchart illustrating the process to be followed by the board in reviewing privatization, unfair competition, and other matters pertinent to the board.

A question was asked about the budget for the board. The budget is \$200,000 and includes staff costs. More details will be made available.

3. Organization

a. Selection of a Chair/Vice Chair

UCA 63I-4a-202(4) requires the selection of a chair of the board for a one-year term.

Motion: Sen. Stephenson nominated Kimberley Jones to serve as chair. No other members were nominated. Ms. Jones is acclaimed.

Motion: Thomas Bielen nominated Brian Gough to serve as vice-chair in the absence of the chair. No other members were nominated. Mr. Gough is acclaimed.

Ms. Jones, Chair, directed Mr. Strachan to conduct the remainder of the meeting.

b. Meeting Schedule

UCA 63I-4a-202(6) requires the board shall meet at least quarterly and as necessary to conduct its business, as called by the chair. The board discussed the results of the availability survey conducted by staff prior to the meeting. Board consensus is to hold meetings on the second Thursday of the month.

Next meeting is set for September 12, 2013 at 2:00 p.m.

4. Minutes

a. Meeting summary

The board received in its packet a summary of meeting topics dating back to 1997. This summary is informational only.

b. Minutes from November 13, 2012

Motion: Sen. Mayne moved to approve the minutes of the November 13, 2012 meeting. CARRIED

5. Annual Report

UCA 63I-4a-203(1)(c) requires the preparation of an annual written report and reports to two interim committees. Mr. Strachan presented a draft for consideration. Government Operations Interim Committee has requested that the board report at its July 17, 2013 meeting. In discussion, suggested to include a bullet asking for use of the legislative branch's audio, calendaring, and resources.

Motion: Commissioner Downs to approve the report with the suggested changes. CARRIED

6. Presentations

a. Operational Excellence

Kristen Cox, Executive Director, Governor's Office of Management and Budget (GOMB), presented the SUCCESS framework - a comprehensive set of operational excellence tools and principles - and related it to the Governor's goal of improving operations by 25% over four years. Noted in passing that outsourcing may be an obvious fit for some activities. GOMB is looking at all agencies and developing a baseline.

Sen. Mayne referring to outsourcing commented that "just because we can, doesn't mean we should".

Sen. Stephenson lauded how UDOT uses scarce resources to get more for the buck through outsourcing engineering and touted the advantages of removing selection of road projects from the legislature.

Randy Simmons asked how the board can help GOMB with its work. Ms. Cox stated that the board needs to “focus”, “don’t get too broadly spread”, “elevate the plausible ideas”, and work with staff.

Another discussion item raised by Senators Stephenson and Mayne was to have the legislative and executive branches work together to use the resources of both to notice, broadcast, record, and calendarize these meetings.

b. Fleet Operations

i. Senator Todd Weiler, and James Crowder, Enterprise Rent-A-Car

Sen. Weiler talked about state fleet pools, noting there are two parts to his inquiry:

1. Can the state reduce the size of the fleet pool and save money by using a private vendor?
2. Can the state better utilize what vehicles that it has?

He spoke of one situation where a number of cars were assigned to a division but employees were typically using only the newer cars meaning that older cars were not getting used enough to rotate out of the fleet.

Sen. Mayne said some departments have cars where they are needed but suggested that cars get checked in and out and mileage tracked to better establish accountability on when and where cars are being used.

Representative Hemingway suggest the order of inquiry should be used and added that the state has been pushing for the use of natural gas vehicles and wondered if Enterprise would offer such. Mr. Crowder noted not at this time but Enterprise is looking at it.

Sen. Weiler noted also that he has a interim study item that the board may wish to consider: the use of law enforcement officers competing with private security firms for security work.

Mr. Crowder gave a presentation titled State of Utah Fleet Discussion in which he discussed areas of opportunity, potential solutions, benefits to the state, and gave examples of what is being done in other states.

Areas of opportunity start with mileage reimbursement, rightsizing the fleet, and fleet disposal. Potential solutions include tools to determine cost effectiveness, car sharing, supplemental car rentals, privatizing disposal of surplus vehicles, leasing options, with a view to reducing fleet size and lower mileage costs. He touted benefits as cost savings.

Tom Bielen asked for a copy of the presentation.

Al Manbeian asked if insurance is an issue. Mr. Crowder said that insurance is included in rates negotiated under the state contract.

Commissioner Downs asked if the car share program is being run in Salt Lake City. Mr. Crowder noted that the RFP is available now. Wants to see the program run statewide.

ii. Kim Hood and Rich Amon, Department of Administrative Services

Kim Hood, Executive Director, noted that the agency has spoken with Sen. Weiler and is working with Kristen Cox on the baseline under the SUCCESS program. Sen. Weiler's concerns are their concerns.

Rich Amon, Deputy Director, provided a handout and presentation on Fleet Management and Surplus Property. He gave an overview of vehicle ownership in the state fleet. Discussed role of the Division of Fleet Operations, noting that it collects and provides tracking and utilization data. Vehicles are a tool for agencies and Fleet works to help departments and employees use that tool effectively. Notes that there are many unique needs and situations in the state system and they must accommodate these. He discussed the current reservation system using Enterprise Rent-A-Car to address temporary or excess needs and POV (privately owned vehicles) mileage reimbursement. Talked about the process initiated by GOMB respecting utilization.

Mr. Amon noted that they are working on a study of surplus vehicle sales and can report to the board in September.

Commissioner Downs asked if September was too late to meet next. Staff will share information as it is available.

LeGrand Bitter asked about analysis of capacity and utilization and was told that the model takes into account FY 2012. FY 2013 information should be available by September.

7. Other Business/Adjourn

Motion: LeGrand Bitter moved to adjourn. CARRIED





## PROCEDURES FOR ELECTRONIC MEETINGS.

A. These provisions govern any meeting at which one or more members of the Free Market Protection and Privatization Board may appear telephonically or electronically pursuant to Utah Code § 52-4-207.

B. If one or more members of the Free Market Protection and Privatization Board may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Free Market Protection and Privatization Board not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

C. Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided in accordance with Section 52-4-202(3). These notices shall be provided at least 24 hours before the meetings.

D. Notice of the possibility of an electronic meeting shall be given to the members of the Free Market Protection and Privatization Board that may be allowed to appear electronically at least 24 hours before the meeting. In addition, the notice shall describe how the members of the Free Market Protection and Privatization Board authorized to participate electronically may participate in the meeting electronically or telephonically.

E. When notice is given of the possibility of a member of the Free Market Protection and Privatization Board appearing electronically or telephonically, any member of the Free Market Protection and Privatization Board may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Free Market Protection and Privatization Board. At the commencement of the meeting, or at such time as any member of the Free Market Protection and Privatization Board initially appears electronically or telephonically, the Chair shall identify for the record all those who

are appearing telephonically or electronically. Votes by members of the Free Market Protection and Privatization Board who are not at the physical location of the meeting shall be confirmed by the Chair.

F. The anchor location shall be designated in the notice. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location has space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

Adopted by the Free Market Protection and Privatization Board on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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Chair

Free Market Protection and Privatization Board

Budgets for Free Market Protection and Privatization Board

FY 2013 Governor's Office of Management and Budget

\$ 7,700	General Fund (ongoing)	Transferred from Administrative Services
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Generally for per diems and travel expense, current expense

FY 2014 Governor's Office of Management and Budget

\$ 7,700	General Fund (ongoing)
<u>\$200,000</u>	General Fund (one-time)
<b>\$207,000</b>	<b>Total</b>

\$ 96,000	Personnel costs
<u>\$111,700</u>	Current expense
<b>\$207,700</b>	<b>Total</b>

FY 2015 Request made for \$200,000 General Fund to continue work of Board



# FREE MARKET PROTECTION AND PRIVATIZATION BOARD

## Mission Statement

The mission<sup>1</sup> of the **Free Market Protection and Privatization Board** is to:

- **Study and consider privatization issues related to state agencies and local entities.** The board may review activities to determine (1) whether privatization of an activity, in whole or in part, would be feasible, result in cost savings, and result in equal or better quality of goods or services provided, and (2) ways to eliminate unfair competition with private enterprise.
- **Make recommendations concerning privatization or findings of unfair competition.** The board shall recommend privatization to an agency if privatization would be a more cost efficient and effective way to perform or provide an activity.

The **Free Market Protection and Privatization Board** will focus its attention on issues relating to privatization that involve agencies of state government, but may also study and make recommendations concerning local entities. To accomplish its statutory responsibilities, the board will:

- **Compile and maintain a *Commercial Activities Inventory*<sup>2</sup> to study.** The list will classify state agency activities as either commercial or inherently governmental in nature. The list will be available to the public.
- **Consider requests<sup>3</sup> from interested parties.** The board may study an issue at its own initiative, by request of an agency, local entity, or private enterprise, in response to a complaint of unfair competition, or in consideration of a proposal made by any person. The board will consult, communicate with, and access information from agencies, other entities promoting privatization, managers and employees in the public sector, and other stakeholders.
- **Establish an accounting method<sup>4</sup> that enables reasonable comparison.** The board is required to establish an accounting method that is similar to generally accepted accounting rules used by private enterprise and which allows an agency to identify the total actual cost of engaging in a commercial activity.

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<sup>1</sup> See Utah Code Annotated 63I-4a-203 for a description of duties.

<sup>2</sup> UCA 63I-4a-302

<sup>3</sup> UCA 63I-4a-203(1)(b)

<sup>4</sup> UCA 63I-4a-205

- **Consider the relevant qualitative and quantitative factors<sup>5</sup> pertaining to an agency activity.** The board will recommend privatization if it demonstrated to provide an activity in a more cost efficient and effective manner, once all factors (scope, cost, quality, risk, timeliness, demand, expertise, oversight, policy and best practices, and legal and practical impediments) are considered. The following general criteria are helpful in determining the merits of privatization:

Privatization is desirable when:

1. It is likely to reduce cost(s) to taxpayers or customers.
2. It is likely to improve the quality, timeliness, effectiveness and efficiency in the performance or provision of an activity.
3. Private sector entities are readily available and willing to provide the good or service, and there is sufficient competition to do so.
4. Sufficient controls are in place to protect the public from incompetence, misuse of funds, and to ensure the integrity of the contracting and procurement process to provide for fair competition in securing government contract(s).
5. It eliminates or reduces unfair competition with the private sector and state agencies or local entities can continue to meet their statutory requirements.

Privatization is Undesirable When:

1. It is likely to increase cost(s) to the taxpayers or customers.
  2. It is likely to diminish the quality, timeliness, effectiveness and efficiency in the performance or provision of an activity.
  3. Private sector entities are not readily available or willing to provide the good or service, or privatization would create a reliance on a single source.
  4. Sufficient controls cannot be established to ensure protection of the public interest, the use of funds, etc.
  5. It impedes the ability of state agencies or local entities to perform their statutory requirements.
- **Provide public reports<sup>6</sup>.** The board is required to report annually its activities, recommendations, and status of the inventory to the Governor, the Legislature, the Legislative Fiscal Analyst and specific interim committees. It is also required to report its recommendations to studied agencies and local entities.

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<sup>5</sup> UCA 63I-4a-203(1)(d)

<sup>6</sup> UCA 63I-4a-203(1)(h)

# **Request for Information: Privatization Review Process**

State of Utah

Free Market Protection and Privatization Board

Date issued: [TBD]

RFI number: [TBD]

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## Confidentiality

All information submitted to or by a governmental entity in response to this Request for Information (RFI) is protected under Section 63G-2-305 of the Utah Code. No information submitted by any respondents to it may be disclosed to any other party.

## Introduction

Utah's *Free Market Protection and Privatization Board Act* directs the Free Market Protection and Privatization Board (appointed by the governor) to "determine whether an activity provided by an agency could be privatized to provide the same types and quality of a good or service that would result in cost savings" and goes on to list the factors implicit in such a determination. The board is also required to establish an accounting method, similar to generally accounted accounting principles, that provides for determining the actual cost of engaging in a commercial activity; actual as in how a private enterprise identifies the cost. This method shall be developed into a rule to be adopted pursuant to the *Utah Administrative Rulemaking Act*.

Information on the board and its mission can be found at: <http://governor.utah.gov/privatization>.

The board seeks assistance designing and implementing a privatization review process, particularly with creating the required accounting method, as part of an analytical framework that includes quantitative and qualitative factors. The process requires definition, structure, rigor, and oversight/control.

Additionally, the board will be compiling a list of consultants capable of assisting the board develop a business case for potential privatization of an activity; draft, issue, or evaluate a request for proposals to privatize an activity; or award a contract to privatize an activity.

## Purpose

The purpose of a request for information is to:

1. obtain information, comments, or suggestions from potential bidders or offerors before issuing an invitation for bids or request for proposals;
2. determine the best practices, industry standards, performance standards, accounting practices, and innovations relative the designing and implementing a privatization review process;
3. determine the market availability of a private sector person or entity before deciding whether to issue an invitation for bids or a request for proposals; and
4. generate interest in a potential invitation for bids or a request for proposals.

## Scope

The scope of work to be defined in an RFP is based on board duties and requirements outlined in the *Free Market Protection and Privatization Board Act* (Utah Code Annotated 63I-4a). Relevant excerpts of the *Free Market Protection and Privatization Board Act* and the *Utah Administrative Rulemaking Act* (UCA 63G-3) are included in this document beginning on page 6.

1. Design and implement a privatization review process to expand on the inventory required by UCA 63I-3a-402; process should:
  - a. outline ways and means to identify potential opportunities and to value (at least preliminarily) them; and
  - b. identify qualitative factors to be considered in evaluating potential opportunities or reviewing complaints of unfair government competition.
2. Design and implement an accounting method as required by UCA 63I-4a-205.
3. Draft privatization standards, procedures and requirements per UCA 63I-4a-203(1)(e) to be used in privatizing government services; include evaluation methodologies, approval processes, and controls.
4. Draft an administrative rule, consistent with the rule making procedure outlined in UCA 63G-3-301, to:
  - a. implement the accounting method as required by UCA 63I-4a-205; and
  - b. establish privatization standards, procedures, and requirements per UCA 63I-4a-203(1)(e).
5. Test and evaluate the process designed above by preparing a business case study of an activity selected by the board from opportunities identified by the process.

## RFI Procedure

To answer this RFI please fill in the cover form. Respondents may disregard any of the Instructions and General Provisions on the cover form that are in contradiction to any information contained in this RFI.

1. SUBMITTING THE RESPONSE:
  - a. The board prefers that requested information to be submitted electronically. Electronic responses may be submitted through a secure mailbox at BidSync ([www.bidsync.com](http://www.bidsync.com))

until the date and time as indicated in this document. It is the sole responsibility of the supplier to ensure their response reaches BidSync before the closing date and time. There is no cost to the supplier to submit Utah's electronic responses via BidSync.

- b. Electronic response may require the uploading of electronic attachments. The submission of attachments containing embedded documents is prohibited. All documents should be attached as separate files.
  - c. If the respondent chooses to submit the response directly to the board in writing: The response must be delivered to the undersigned at Governor's Office Management and Budget, Utah State Capitol - Suite 150 - P.O. Box 132210, Salt Lake City, UT 84114-2210 or faxed to (801) 538-1547 by the due date and time. The "RFI Number" and "Due Date" must appear on the outside of the envelope or on the fax cover page.
  - d. The board will consider faxed responses. Faxed responses are submitted at the sole option and risk of the supplier.
2. RESPONSE NONBINDING: A RFI is not a procurement process and may not be used to enter into a contract. This RFI will not result in a contract award; a response to a RFO is not an offer and may not be accepted to form a binding contract. The purpose of this request is to gather information that may, or may not, be used in a future Request for Proposals.
  3. RESPONSE CONTENTS: The board requests that all materials, including publically available marketing literature, business processes, and general information be pertinent to the information provided in the Scope section of this RFI to assist the board in determining the best practices, industry standards, performance standards, accounting practices, and innovations available. Pricing should not be included in the RFI but held for response in the Request for Proposal (RFP) process.
  4. **RESPONSE DUE DATE AND TIME**: Monday, October 7, 2013 at 5:00 PM MDT.

## Contact

Inquiries concerning this RFI may be made to:

Cliff Strachan, Program Specialist  
Governor's Office Management and Budget  
Utah State Capitol - Suite 150 - P.O. Box 132210  
Salt Lake City, UT 84114-2210

Telephone: (801) 538-1861 | Fax: (801) 538-1547  
Email: cstrachan@utah.gov

## Relevant excerpts from Utah Code Annotated

### Free Market Protection and Privatization Board Act

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

- (1) The board shall:
  - (a) determine whether an activity provided by an agency could be privatized to provide the same types and quality of a good or service that would result in cost savings;
  - (b) review privatization of an activity at the request of:
    - (i) an agency; or
    - (ii) a private enterprise;
  - (c) review issues concerning agency competition with one or more private enterprises to determine:
    - (i) whether privatization:
      - (A) would be feasible;
      - (B) would result in cost savings; and
      - (C) would result in equal or better quality of a good or service; and
    - (ii) ways to eliminate any unfair competition with a private enterprise;
  - (d) recommend privatization to an agency if a proposed privatization is demonstrated to provide a more cost efficient and effective manner of providing a good or service, taking into account:
    - (i) the scope of providing the good or service;
    - (ii) whether cost savings will be realized;
    - (iii) whether quality will be improved;
    - (iv) the impact on risk management;
    - (v) the impact on timeliness;
    - (vi) the ability to accommodate fluctuating demand;
    - (vii) the ability to access outside expertise;
    - (viii) the impact on oversight;
    - (ix) the ability to develop sound policy and implement best practices; and
    - (x) legal and practical impediments to privatization;
  - (e) comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in making rules establishing privatization standards, procedures, and requirements;
  - (f) in fulfilling the duties described in this Subsection (1), consult with, maintain communication with, and access information from:
    - (i) other entities promoting privatization; and
    - (ii) managers and employees in the public sector;
  - (g) comply with Part 3, Commercial Activities Inventory and Review; and
  - (h) (i) prepare an annual report for each calendar year that contains:
    - (A) information about the board's activities;
    - (B) recommendations on privatizing an activity provided by an agency; and

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

(ii) submit the annual report to the Legislature and the governor by no later than January 15 immediately following the calendar year for which the report is made; and

(iii) each interim, provide an oral report to the Government Operations Interim Committee and the Economic Development and Workforce Services Interim Committee.

(2) The board may, using the criteria described in Subsection (1), consider whether to recommend privatization of an activity provided by an agency, a county, or a special district:

- (a) on the board's own initiative;
- (b) upon request by an agency, a county, or a special district;
- (c) in response to a complaint that an agency, a county, or a special district is engaging in unfair competition with a private enterprise; or
- (d) in light of a proposal made by any person, regardless of whether the proposal was solicited.

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

- (a) the governor's office; and
- (b) the Office of Legislative Fiscal Analyst for submission to the relevant legislative appropriation subcommittee.

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

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

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

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

#### 63I-4a-205 Board accounting method

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

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

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

(a) a labor expense, including:

(i) compensation and benefits;

(ii) a cost of training;

(iii) a cost of paying overtime;

(iv) a cost of supervising labor; or

(v) another personnel expense;

(b) an operating cost, including:

(i) vehicle maintenance and repair;

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

(iii) an office expense;

(iv) a cost of an accounting operation, including billing;

(v) an insurance expense;

(vi) a real estate or equipment cost;

(vii) a debt service cost; or

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

(c) a contract management cost; and

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

(3) provides a process to estimate the taxes an agency would pay related to engaging in a commercial activity if the agency were required to pay federal, state, and local taxes to the same extent as a private enterprise engaging in the commercial activity.

#### 63I-4a-302 Board to create inventory

At least every two years, the board shall compile and make available to the public, by electronic means, an updated inventory of activities of the agencies in the state to classify whether each activity is:

(1) a commercial activity; or

(2) an inherently governmental activity.

Utah Administrative Rulemaking Act

63G-3-301 Rulemaking procedure

- (1) An agency authorized to make rules is also authorized to amend or repeal those rules.
  
- (2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making, amending, or repealing a rule agencies shall comply with:
  - (a) the requirements of this section;
  - (b) consistent procedures required by other statutes;
  - (c) applicable federal mandates; and
  - (d) rules made by the division to implement this chapter.
  
- (3) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.
  
- (4)
  - (a) Each agency shall file its proposed rule and rule analysis with the division.
  - (b) Rule amendments shall be marked with new language underlined and deleted language struck out.
  - (c)
    - (i) The division shall publish the information required under Subsection (8) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.
    - (ii) For rule amendments, only the section or subsection of the rule being amended need be printed.
    - (iii) If the director determines that the rule is too long to publish, the director shall publish the rule analysis and shall publish the rule by reference to a copy on file with the division.
  
- (5) Prior to filing a rule with the division, the department head shall consider and comment on the fiscal impact a rule may have on businesses.
  
- (6) If the agency reasonably expects that a proposed rule will have a measurable negative fiscal impact on small businesses, the agency shall consider, as allowed by federal law, each of the following methods of reducing the impact of the rule on small businesses:
  - (a) establishing less stringent compliance or reporting requirements for small businesses;
  - (b) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
  - (c) consolidating or simplifying compliance or reporting requirements for small businesses;
  - (d) establishing performance standards for small businesses to replace design or operational standards required in the proposed rule; and
  - (e) exempting small businesses from all or any part of the requirements contained in the proposed rule.

(7) If during the public comment period an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts, and the agency had not previously performed the analysis in Subsection (6), the agency shall perform the analysis described in Subsection (6).

(8) The rule analysis shall contain:

- (a) a summary of the rule or change;
- (b) the purpose of the rule or reason for the change;
- (c) the statutory authority or federal requirement for the rule;
- (d) the anticipated cost or savings to:
  - (i) the state budget;
  - (ii) local governments;
  - (iii) small businesses; and
  - (iv) persons other than small businesses, businesses, or local governmental entities;
- (e) the compliance cost for affected persons;
- (f) how interested persons may review the full text of the rule;
- (g) how interested persons may present their views on the rule;
- (h) the time and place of any scheduled public hearing;
- (i) the name and telephone number of an agency employee who may be contacted about the rule;
- (j) the name of the agency head or designee who authorized the rule;
- (k) the date on which the rule may become effective following the public comment period; and
- (l) comments by the department head on the fiscal impact the rule may have on businesses.

(9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:

- (i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and
  - (ii) a summary of new substantive provisions appearing only in the enacted rule.
- (b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

(10) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(11) (a) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.

(b) The agency shall review and evaluate all public comments submitted in writing within the time period under Subsection (11)(a) or presented at public hearings conducted by the agency within the time period under Subsection (11)(a).



(12) (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period under Subsection (11), nor more than 120 days after the publication date.

(b) The agency shall provide notice of the rule's effective date to the division in the form required by the division.

(c) The notice of effective date may not provide for an effective date prior to the date it is received by the division.

(d) The division shall publish notice of the effective date of the rule in the next issue of the bulletin.

(e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the division within 120 days of publication.

(13) (a) As used in this Subsection (13), "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection (4), of an agency's proposed rule that is required by state statute.

(b) A state agency shall initiate rulemaking proceedings no later than 180 days after the effective date of the statutory provision that specifically requires the rulemaking, except under Subsection (13)(c).

(c) When a statute is enacted that requires agency rulemaking and the affected agency already has rules in place that meet the statutory requirement, the agency shall submit the rules to the Administrative Rules Review Committee for review within 60 days after the statute requiring the rulemaking takes effect.

(d) If a state agency does not initiate rulemaking proceedings in accordance with the time requirements in Subsection (13)(b), the state agency shall appear before the legislative Administrative Rules Review Committee and provide the reasons for the delay.



## Case study: Parks Reservations

### Recommendation

The Division of State Parks and Recreation should proceed with its proposal to outsource its telephone call center reservations service.

### Overview

The Division of State Parks and Recreation is analyzing business segments to identify cost savings opportunities and efficiencies. The division is focused on core operations and creating private partnerships where feasible.

The division has, since November 2011, a contract with ReserveAmerica for a reservation software and POS (point of sale) system that is used at all Utah state parks. As a part of the original RFP that ultimately resulted in the current contract, the division asked for proposals to add a vendor-operated call center. At that time division management determined that a vendor-operated call center would cost more than a call center operated by the division based on reservation estimates and anticipated costs.

With three fiscal years of call center data available, the division management felt that now was a good time to revisit the cost-effectiveness of operating an in-house call center or transferring the call center operations to a private vendor. After performing a careful and detailed study, the reservation call center was found to be a business unit that could be replaced with a private partnership. The division welcomes the board's input regarding the analysis.

### Division of State Parks and Recreation

A division of the Department of Natural Resources, State Parks and Recreation operates 43 state parks, administers off-highway vehicle, boating and trails programs, provides access to waterways and trails, and promotes education, safety, and resource protection. In fulfilling its mission is "to enhance the quality of life by preserving and providing natural, cultural, and recreational resources for the enjoyment, education, and inspiration of this and future generations," the division manages the state park system, including operations, planning, and protection of 43 heritage, scenic and recreation parks. It guides short and long-term site management for each park to protect and interpret each park's natural and cultural resource base, ensure safe, enjoyable visitor experiences, provide for new visitor opportunities, and develop and enhance facilities to meet visitor needs.

### Economic Benefits of State Parks<sup>i</sup>

Utah's state parks are more than great places to visit. State parks and museum provide tremendous economic benefits to our state and local communities through increased revenue and tourism by:

- Generating \$9.85 in local economic impact for every \$1 of general fund appropriation
- Generating \$67 million in state economic benefit through day-use, camping and golf

- Paying \$11.2 million to individual counties in 2010 property tax for off-highway vehicles and boats
- Collecting and paying more than \$1 million in state and local taxes to counties and communities

State parks receive approximately 5 million visits per year. According to data supplied by the division, for the first six months of 2013, visits to state parks were up more than 11 percent over the same period in 2012.

2012	5,081,558
2011	4,803,770
2010	4,842,918

### Activities

State parks offer many different recreational activities: camping, fishing, golf, group visits, boating, trails, and water sports, winter sports, off highway vehicle (OHV) riding, nature watching, museums and other fun activities. There are over 2,000 individual and group camp sites available in the parks.

### Reservations

Visitors can secure a campsite, cabin, yurt, pavilion or boat slip by showing up in person, or by reserving over the telephone or online. An \$8 non-refundable reservation fee is charged for each individual site reserved. The reservation fee for group sites is \$10.25, but there are variations depending on the site. Changing reservations costs \$5 per site. Reservation fees are transactional and are additional to site rental charges.

Telephone – Utah State Parks Reservation Call Center operates a toll-free number and a local-Salt Lake City number from 8 am to 5 pm Monday to Friday but is closed all state and federal holidays.

Online – The state contracts with ReserveAmerica to provide an online reservation system.

The table below indicates that the proportionate share of reservations made by telephone has been declining over time as online registrations increase.

<u>Fiscal Year</u>	<u>Call Center</u>	<u>Online</u>	<u>Cancellations</u>	<u>Call Center %</u>	<u>Online %</u>
FY 2011	16,349	29,734	4,119	<b>35%</b>	65%
FY 2012	14,903	36,334	4,507	<b>29%</b>	71%
FY 2013	13,196	38,331	4,858	<b>26%</b>	74%

### Revenue

Revenue from reservations is restricted funds for special purposes or programs, (in this case, for state parks) and the monies have no impact on the state's General Fund.

**ReserveAmerica**<sup>ii</sup>

According to its website, “ReserveAmerica is the largest provider of campsite reservations in North America, facilitating more than 3 million transactions at more than 100,000 campsites in 48 states.” It offers “comprehensive reservation systems including: website development, dedicated call-center services, database management tools, local campground management software, and marketing services.”

Utah’s contract with ReserveAmerica runs through March 2014 and is renewable for five years.

ReserveAmerica is the reservations business part of Active Network, which recently acquired ReserveAmerica. Active Network has offices in 15 states and 7 countries including 13 employees in Utah.

**Privatization Proposal**

The division has analyzed the telephone reservation system and concluded that it can save considerable funds by eliminating the state-run telephone call center and contracting instead with ReserveAmerica to add State Parks’ reservations to its operations. Effectively, the reservation program will be entirely outsourced with all reservation fees payable to ReserveAmerica and ReserveAmerica assuming all costs and risks attributable to the reservation system. Site reservation rental income still flows to the state. Effectively, the division will no longer run a deficit for operating its reservation system.

After considering the proposal’s impact on revenues and expenses, benefits of making the change include decreased costs, easier budgeting, POS savings, and increased call center hours (will close on weekends and only three federal holidays). Drawbacks include increasing the cancellation fee to match ReserveAmerica’s rates, and a fee increase should credit card fees increase. Fees charged are within the approved fee schedule set by the legislature.

The following table details recent revenue and cost history:

<b>Revenue</b>	<b>Total Revenue</b>	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>
		<b>\$393,054</b>	<b>\$379,671</b>	<b>\$256,242</b>
<b>Expenses</b>	ReserveAmerica reservation fees	(\$188,145)	(\$189,062)	(\$163,900)
	Reserve America retail fee	(\$ 23,250)	(\$ 23,250)	(\$ 23,250)
	Call Center employees (2+)	(\$131,005)	(\$128,533)	(\$142,889)
	Call Center current expense	(\$ 1,132)	(\$ 3,188)	(\$ 6,176)
	DTS fees	(\$ 23,934)	(\$ 27,219)	(\$ 52,540)
	Credit Card fees	(\$175,781)	(\$193,793)	(\$134,102)
	<b>Total Expenses</b>	<b>(\$543,247)</b>	<b>(\$565,045)</b>	<b>(\$522,857)</b>
	<b>Net surplus or (deficit)</b>	<b>(\$150,193)</b>	<b>(\$185,374)</b>	<b>(\$266,615)</b>

The following table shows two options with ReserveAmerica – one increases fees to the user to \$8 for telephone reservations, online reservations, and cancellations; the other was a proposal of \$7 for telephone reservations, \$5 for online reservations, and \$7 for cancellations with the state still responsible for credit card fees.

		<b>\$8, \$8, \$8 + credit card fees</b>	<b>\$7, \$5, \$7</b>
<b>Revenue</b>	<b>FY 2014 Projected Revenue</b>	<b>\$436,506</b>	<b>\$436,506</b>
Expenses	ReserveAmerica reservation fees	( <b>\$436,506</b> )	( <b>\$318,033</b> )
	Reserve America retail fee	( <b>\$0</b> )	( <b>\$0</b> )
	Call Center employees (0)	( <b>\$0</b> )	( <b>\$0</b> )
	Call Center current expense	( <b>\$0</b> )	( <b>\$0</b> )
	DTS fees	( <b>\$0</b> )	( <b>\$0</b> )
	Credit Card fees	( <b>\$0</b> )	( <b>\$175,781</b> )
	<b>Total Expenses</b>	<b>(<b>\$436,506</b>)</b>	<b>(<b>\$493,814</b>)</b>
	<b>Net surplus or (deficit)</b>	<b>\$0</b>	<b>(<b>\$ 57,308</b>)</b>

As the Division intends to implement the change October 1, 2013, projected savings (elimination of a deficit) will not fully hit until FY 2015. Even so, FY 2014 savings are estimated at \$99,700. Since reservation fees are restricted funds, no impact is anticipated on the state's General Fund for budget purposes.

While the division will no longer operate a call center, ReserveAmerica will employ home-based operators within the state and consideration will be given to current call center operators.

The division will continue to monitor customer satisfaction through surveys and will have access ReserveAmerica databases to manage inventories, workflows, and to access financial and statistical data to provide transparency and oversight.

<sup>i</sup> Source: <http://www.stateparks.utah.gov/resources/about/economic-benefits-state-parks>, copied August 15, 2013.

<sup>ii</sup> Source: <http://www.reserveamerica.com/marketing.do?goto=/marketingHTML/partners.html>, copied September 4, 2013.