

AGENDA

FREE MARKET PROTECTION AND PRIVATIZATION BOARD

Thursday, August 14, 2014, 2:00 PM
Room 20 House Building
State Capitol Complex
Salt Lake City, Utah

1. Call to Order
 - a. Introduction of new Board members

2. Public Input (10 minutes)
 - a. Persons may make statements or comments for up to two minutes each on matters pertinent to the board.

3. Board Business/Minutes
 - a. Selection of Chair/Vice Chair *page 3*
 - b. *Open and Public Meetings Act* (annual training) *page 5*
 - c. Minutes from June 12, 2014 – *for consideration* *page 7*
 - d. Privatization Process Review Advisory Committee

4. Commercial Activities Inventory

5. Review Privatization of an Activity

6. Review Issues Concerning Agency Competition with the Private Sector
 - a. Utah Science Technology and Research – presentation

7. Other/Adjourn

Next board meeting: September 11, 2014, 2:00 PM, Room 20, House Building

Other meetings (advisory committees):

Competition Review – TBD

Technology Services Review – TBD

Privatization Process – August 19, 2014, 2:30 PM, Room 240, Capitol Building

Meeting Packet Contents

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5	Summary of Key Provisions of Open and Public Meetings Act	OLRGC
7	Minutes (draft) from June 12, 2014 Board meeting	GOMB

63I-4a-202. Free Market Protection and Privatization Board -- Created -- Membership -- Operations -- Expenses.

(1) (a) There is created the Free Market Protection and Privatization Board composed of 17 members.

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

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

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

(iii) two members representing public employees, from names recommended by the largest public employees' association;

(iv) one member from state management;

(v) seven members from the private business community;

(vi) one member representing the Utah League of Cities and Towns from names recommended by the Utah League of Cities and Towns;

(vii) one member representing the Utah Association of Counties from names recommended by the Utah Association of Counties; and

(viii) one member representing the Utah Association of Special Districts, from names recommended by the Utah Association of Special Districts.

(2) (a) Except as provided in Subsection (2)(b), a board member shall serve a two-year term.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every year.

(3) (a) A board member shall hold office until the board member's successor is appointed and qualified.

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

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

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

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

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

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

(6) The board shall meet:

(a) at least quarterly; and

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

(7) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and

63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 189, 2014 General Session

Amended by Chapter 387, 2014 General Session



Summary of Key Provisions of the Open and Public Meetings Act

Purpose (Section 52-4-102)

The Open and Public Meetings Act was enacted upon the premise that the state, its agencies, and its political subdivisions exist to aid in the conduct of the people's business. As such, a public body should deliberate and take action openly.

Definitions (Section 52-4-103)

- **Meeting** means a convening of a public body or a specified body with a quorum present to discuss, receive comment on, or act upon a matter over which the public body or the specified body has jurisdiction or advisory power.
- **Meeting** does not mean a chance or social gathering, a convening of a public body that has both legislative and executive responsibilities in certain circumstances, or a convening of the State Tax Commission to consider a confidential tax matter.
- **Public Body** is any administrative, advisory, executive, or legislative body of the state or its political subdivisions that
 - is created by constitution, statute, rule, ordinance, or resolution;
 - expends, disburses, or is supported by tax revenue; and
 - is vested with the authority to make decisions regarding the public's business.
- **Specified Body** is an administrative, advisory, executive, or legislative body that is not a public body and has at least one member who is a legislator appointed by the president, speaker, or governor.

2014 Amendments to the Open and Public Meetings Act

S.B. 113 – Public Meetings Amendments requires a specified body to provide public notice of meetings the body holds on the capitol hill complex.

S.B. 169 – Public Meetings Materials Requirements requires certain public bodies (including state and municipal legislative bodies) to require an individual who publicly presents or provides electronic information at an open meeting of the public body to provide an electronic or hard copy of the electronic information.

S.B. 179 – Procurement Revisions allows a public body to close a public meeting to discuss and deliberate on certain procurement issues.

Public Notice (Section 52-4-202)

- A public body, or specified body meeting at the capitol hill complex, shall give notice at least 24 hours before each meeting. The public notice shall
 - include the date, time, and place of the meeting;
 - include an agenda that lists specific topics to be considered;
 - be posted in specified places, including the Utah Public Notice Website; and
 - be provided to a newspaper or local media correspondent.
- A public body may discuss a topic raised by the public that is not listed on the agenda, but may not take final action on the topic.

Minutes and Recordings (Section 52-4-203)

- A public body shall keep written minutes and a recording of all meetings. A recording is not required for a site visit if no vote or action is taken by the public body.
- Pending minutes shall
 - indicate that the public body has not yet approved the minutes, and
 - be available to the public within 30 days.
- Within three business days after holding a public meeting, a recording of an open meeting shall be posted on the Utah Public Notice Website.
- Within three business days after approving written minutes, the approved minutes and any public materials distributed at the meeting shall be
 - posted on the Utah Public Notice Website, and
 - made available at the public body's primary office.

Closed Meetings (*Sections 54-4-204, and 52-4-205*)

- A meeting is open to the public unless it is closed by a two-thirds vote with a quorum present at the open meeting.
- The public body shall announce the reasons for the closed meeting and enter the reasons into the minutes of the open meeting.
- The public body may only hold a closed meeting for certain reasons, including the discussion of
 - a person's character, competence, or health;
 - strategy for collective bargaining;
 - pending or imminent litigation;
 - an acquisition or sale of real property, including water rights or shares;
 - the deployment of security personnel, devices, or systems;
 - the investigation of criminal conduct;
 - specified commercial information discussed by a county legislative body;
 - certain legislative or political subdivision ethics complaint matters;
 - fiduciary or commercial information being discussed by the Utah Higher Education Assistance Authority;
 - certain deliberations and decision making involved in the procurement process.
- A public body may not close a meeting to discuss filling a midterm vacancy or temporary absence or to discuss a person whose name was submitted for consideration to fill a midterm vacancy or temporary absence.

Closed Meeting Exceptions (*Section 52-4-204*)

- No vote is required to close a meeting for the Independent Legislative Ethics Commission to review an ethics complaint.
- If a public body is required to hold a closed meeting, it may do so by a simple majority vote instead of a two-thirds majority vote.

Emergency Meetings (*Section 52-4-202*)

A public body or a specified body may hold an emergency meeting and bypass some public notice requirements if unforeseen circumstances arise that require urgent consideration. A public body may not hold an emergency meeting unless it makes an attempt to notify all members and a majority of its members approve the meeting. A public body need not give a 24-hour notice if unforeseen circumstances require an emergency meeting and the public body gives the best practical notice possible.

Electronic Meetings (*Sections 52-4-207 and 52-4-209*)

A public body may not convene or conduct a meeting by electronic communications unless it has adopted procedures to govern electronic meetings.

Penalties (*Sections 52-4-302 and 52-4-305*)

- **Open Meetings**—Any final action taken in violation of the Open and Public Meetings Act is voidable by a court.
- **Closed Meetings**—It is a class B misdemeanor to knowingly or intentionally violate closed meeting provisions of the Open and Public Meetings Act.

**A public body shall provide annual training to its members on the requirements of the Open & Public Meetings Act (Section 52-4-104). This summary is intended for a state legislative audience and should not be construed as exhaustively addressing requirements of the act for other public bodies.*

**Minutes of the
Free Market Protection and Privatization Board**
Thursday, June 12, 2014 - 2:00 p.m.
Room 20, House Building
State Capitol Complex

Members present:

Kimberley Jones (Chair), Brian Gough (Vice Chair), Sen. Karen Mayne, Rep. Lynn Hemingway, Thomas Bielen, Bob Myrick, Steve Fairbanks, and LeGrand Bitter

Al Manbeian participated via telephone.

Members absent:

Sen. Howard Stephenson, Rep. Johnny Anderson, Sherrie Hayashi, Randy Simmons, Kerry Casaday, Manuel Torres, Russell Anderson, and Louenda Downs

Staff present:

Cliff Strachan, Governor's Office of Management and Budget (GOMB)

Note: Additional information including related materials provided at the meeting and an audio recording of the meeting can be found at <http://gomb.utah.gov/operational-excellence/privatization-board/> and the Utah Public Meeting Notice Website (<http://www.utah.gov/pmn>).

1. Welcome and Introductions

Brian Gough chaired the meeting. He acknowledged the contributions of Sherrie Hayashi, Kerry Casaday, and Randy Simmons, each of whose appointments expire at the end of this month.

Sen. Howard Stephenson, Rep. Johnny Anderson, Randy Simmons, Kerry Casaday, Manuel Torres, and Louenda Downs previously indicated they would not be here today and are excused.

2. Public Comment (10 minutes)

3. Board Business/Minutes

a. Minutes from May 8, 2014

Motion: Bob Myrick moved to approve the minutes of the May 8, 2014 meeting. CARRIED

b. Privatization Process Advisory Committee

Cliff Strachan reported on the May 27 meeting of the committee, which met with the consultants to discuss the board accounting method and Rep. Hemingway's request that the process define "unfair" as in "unfair competition". Minutes from the meeting and cost assessment materials were included in today's meeting packet. The next meeting of the committee is July 8 and the consultants will be presenting the process. All board members are invited to attend.

3. Commercial Activities Inventory (CAI)

4. Review Privatization of an Activity

a. Technology Services Review Advisory Committee

The committee met on May 13 with representatives of the Department of Technology Services. Minutes from the meeting were included in the agenda packet. The committee is interested in the SUCCESS Framework project respecting business cases and the decision making process for insourcing versus outsourcing.

b. Other Initiatives

Cliff Strachan indicated that a the third party liability working group, made up of state management, is preparing a request for information from industry. It has asked Rep. Anderson to open a bill file for the next legislative session to consider alternative fee structures for those services. He also indicated that a GOMB initiative to do a total cost of ownership study of human resources and payroll services is proceeding. It is anticipated that all surveys will be complete by June 27. Those results may be available in July.

5. Review Issues Concerning Agency Competition with the Private Sector

a. Utah Correctional Industries (UCI)

UCI's programs have been mentioned in numerous conversations pertaining to this board and it was invited to make a presentation to the board. Alan James presented an overview of UCI programs and its intent to reduce recidivism. UCI's programs have contributed to an 11% reduction in recidivism in the past 36 months. Revenues in the program are about \$25 million across 20-plus cost centers. There are 700 inmate participants.

During the discussion, questions and answers, the board learned that:

- UCI participates in the federal Prison Industry Enhancement Certification Program (PIE) and has been certified since 1987 and must recertify every three years.
- UCI engages in partnerships with the private sector (cited Bullfrog Spas production, BLM horse training, and MidWest Office Supply manufacturing as examples).
- State agencies are the primary customers for UCI products.
- The apprenticeship and skills certification programs need improvement and the agency is working to develop employment relationships with private companies.
- Some former inmates are being victimized by employers taking advantage of their felon status.
- Some skillsets are soft skills and UCI seeks to provide higher skills; notes that former convicts find it hard to find work in finance or computer industries.
- Department of Administrative Services is going ahead with moving print services to UCI as the state contract with Xerox expires; this will create opportunities for 16 female prisoners to work.
- UCI's largest programs are Commissary, Furniture, Printing and Construction; and UCI purchases \$9-12 million per year in materials from the private sector.
- Some private sector companies criticize UCI but UCI tries to meet with these and address specific concerns.
- UCI's real product is the inmate, the return is reduced recidivism.
- Income from UCI activities help cover UCI expenses and funds go into programs like the Crime Victim Reparation Fund.

b. Utah Department of Transportation (UDOT) re UCI Sign Shop

Sen. Stephenson requested, at last month's meeting, that UDOT and UCI be invited to meet with the board to discuss the sign program and issues related.

Shane Marshall, UDOT, advised the board that UDOT spent about \$7 million on signs last year, mostly in the private sector. UDOT purchases about \$800,000 worth of signs from UCI annually; mostly what he called routine signs (standard road signs such as STOP signs). The giant green highway signs are generally procured through the private market.

He indicated that when UCI started its sign program, UDOT had issues with quality, timeliness and cost; issues he believes are mostly resolved after UDOT retrained its staff re procurement requirements and better communicated with UCI on quality concerns, timeliness, and specifications. UDOT leadership is satisfied with the products and services provided and communication is ongoing.

c. Competition Review Advisory Committee

Mr. Strachan advised staff have begun to go through costs data received from USOE.

6. Other Business/Adjourn

Motion: Kim Jones moved to adjourn. CARRIED

Scheduled Board meetings:

- Thursday, July 8, 2014 at 2 pm in 20 House Building

Advisory Committees:

- Competition Review - TBD
- Privatization Process - July 8, 2014 at 2:30 PM, Room 240, Capitol Building
- DTS Review - TBD