AGENDA
FREE MARKET PROTECTION AND PRIVATIZATION BOARD

Thursday, December 11, 2014, 2:00 PM
Room 215 Senate Building
State Capitol Complex
Salt Lake City, Utah

1. Call to Order

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. Minutes from November 13, 2014 – *for consideration*

4. Commercial Activities Inventory
    a. Division of Risk Management

5. Review Privatization of an Activity
    a. Property Damage Subrogation

6. Review Issues Concerning Agency Competition with the Private Sector
    a. State Office of Education – Student Information System

7. Other/Adjourn

Other upcoming meetings:

Competition Review Advisory Board – December 11, 2014, 9:30 AM, Spruce Room, Senate Building

Privatization Board – January 8, 2014, 2:00 PM, Room 215, Senate Building

Meeting Packet Contents

Minutes of the
Free Market Protection and Privatization Board:
Competition Review Advisory Committee
Wednesday, March 27, 2014, 10:00 AM
Seagull Room, Senate Building
State Capitol Complex

Members present:
LeGrand Bitter (Chair), Rep. Johnny Anderson, Kim Jones, Manuel Torres, and Louenda Downs

Members absent:
None

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

Note: Additional information including related materials 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://w w w .utah.gov/pmn).

1. Welcome and Introductions

LeGrand Bitter called the meeting to order.

2. Board Business/Minutes

a. Minutes of the February 19, 2014 meeting

Motion: Manuel Torres moved approve the minutes of the February 19, 2014 meeting. CARRIED

3. Review Issues Concerning Agency Competition with the Private Sector

a. Kelly Francis, Aero-Graphics re UGS and LASSI

Mr. Francis described his business and concern over competition by the LASSI Service Center at Utah State University for aerial geographic photography and mapping type services. He commented that such service is unfair because university enterprises have access to state and federal funding, can get sole source contracts more easily, do not pay the same taxes and insurance requirements as do private sector firms. He said he has a good relationship with LASSI, does not object to the research component but does not think it fair to have to compete with them on non-research jobs.

Referenced a project proposed by the Utah Geologic Survey (UGS), the Utah Automated Geographic Reference Center (AGRC), where both entities and four others competed for a project mapping hundreds of square miles for the state. Neither won the bid, it was awarded to an Oregon firm.

Did not know what share of market LASSI has but noted they have done a number of projects for UGS [a division of the Utah Department of Natural Resources] and the National Parks Service. Says he has documents showing that LASSI markets its services.

In discussion board was informed that LASSI started as a USTAR (Utah Science Technology and Research) program. USTAR is an incubator program with a goal to put university-developed technology into the private sector.

b. Bob Pack, LASSI Service Center

Mr. Pack is an engineer, formerly a formal part of the LASSI Service Center and a professor at Utah State University. As a key part of the LiDAR imagery program at LASSI, having obtained USTAR funding for the program and operating the program for several years, he was knowledgeable about the program.

He noted that two universities (USU and UT-Houston) run LiDAR technology making it a rare research topic. The objective is to develop technology and spin it off to the private sector. It has resulted in multiple patents for the university. To keep the program running, LASSI uses contracts to generate funds. Says many of the contracts come because entities approach LASSI. Jobs like the National Parks Service include aspects that result in the development of better capability over other technology and includes applied research into other areas such as ecology. Says multiple research projects tag to other research projects (for example, multi-spectral camera technology). Says UGS came to LASSI to do work for it on the Great Salt Lake water systems.

LASSI built its own LiDAR system which has resulted in two papers presented at three conferences; the technology and the work done to develop it can accrue to the benefit of the public. Noted some small firms have asked for help and they did it but noted that the projects were non-competitive. The big project in Utah is UGS-work, they were approached and did not solicit it.

Noted the UGS project they bid on was originally going to be sole sourced but UGS went to bid.

Noted Aero-Graphics uses a different platform - OpTech.

Commercial enterprises have made inquiries into turning the technology in a marketable turn-key project. USTAR funding is limited and patents go through the Technology Commercialization Office at USU.

LASSI seeks research contracts over commercial contracts. People come to LASSI to do work which supports their own research mandates.

Asked if there can be collaboration with other firms, Mr. Pack noted that data is not the focus but building the technology. Noted LASSI has not been under USTAR for some time. Revenue supports the students in the program.

The advisory committee's discussion became free flowing involving all the parties.

Staff will invite the current head of LASSI and someone from USTAR to a future meeting. The committee wants to know about costs and revenues for the LASSI program as well as patent information. A presentation from USTAR will help the board members understand how USTAR works and its expectations. Noted one member, this will not likely be the last time a USTAR program attracts the board's attention.

A suggested follow-up is to understand if there is a difference between public universities and private universities competing in the marketplace.

c. Utah State Office of Education

Mr. Strachan distributed financial information received from USOE and noted there is much work to be done to evaluate it.

Data supplied by USOE indicates that about 24 percent of the state's LEAs use Aspire (aka SIS2000) with the rest using private sector applications or applications custom made by or for a LEA. 20 percent of Utah school districts use Aspire while 70 percent of charter schools do.

He also advised that a survey has been sent to all LEAs (Local Education Authorities) in Utah seeking information as to costs for running private sector applications for those who do and why do they spend the funds when Aspire is free. Survey asks Aspire-using LEAs if they would use private sector applications if the state's student information system were not free. Noting a 20 percent response rate so far, anecdotal evidence suggests the non-Aspire users either pre-date the state's development of SIS2000, the LEA's student populations is too large for Aspire, or Aspire is not as good as other options. Some charter schools opine they had no choice either by policy or by cost considerations. There are some LEAs that would not switch no matter the cost, others that would like to see what is available in the market. Staff will prepare a summary when the survey period is complete and more surveys have been received.

Acknowledging that Judy Parks and Jerry Winkler from USOE were present and Mr. Andelin, too, Mr. Strachan indicated he would like to see first hand the USOE IT operation up close.

4. Other/Adjourn

Mr. Strachan provided an update on the activity of the Privatization Process Advisory Committee and the consultants. He noted that the process being developed should be available to use in working on this review. Members want to see guiding principles and best practices state clearly.

Members scheduled the next committee meeting for 10:00 AM on Thursday, April 24, 2014; staff will arrange for a meeting room.

Motion: Rep. Anderson moved to adjourn. CARRIED

Scheduled meetings:

- Competition Review Advisory Committee, 10 AM on Thursday, April 24, 2014 [location to be determined].

Commercial Activities Inventory Survey (Tier 1)

Agency: **DAS: Division of Risk Management**

Tier 1 Questions		Insurance Responses	MAXIMUM SCORING Yes	No	SCORE
T1	Describe the service/function so there is a clear understanding of the service and how it operates.	State Risk procures insurance coverage through private brokers and insurers and manages the self-insurance Risk Fund for all state agencies, all higher education entities, all 41 school districts and 62+ charter schools. State Risk selects a broker through a competitive bid process every five years. This broker bids out the property to the entire marketplace each year to ensure that the State's coverage and pricing are the most competitive available in the marketplace. State Risk also contracts with private insurers for aircraft insurance, workers' compensation insurance, excess property claims adjusting services; domestic/foreign travel insurance; special events insurance; cyber liability insurance; school district auto claims adjusting and loss control services; conflict of interest claims adjusting; annual independent claims audits; annual actuary analyses and reports; risk management information systems; claim-related/litigation experts; take-home vehicle coverage for law enforcement and elected officials.			
T2	What is the budget for this service/function?	FY2014 Excess Property Premium: $8,964,262 FY2014 Excess Liability Premium: $719,377			
GE2	Do other alternatives exist for providing the service?	Yes; however, it is unlikely that private insurers would be able to match the premiums charged by State Risk for property insurance, e.g., auto premium: $125 - $175/yr.; school bus premium: $200/yr.; whereas, the premium from the commercial market for an elected official's vehicle is $1100/yr. State Risk's rates are substantially lower than the private sector, because the costs of insurance and consequences of losses are shared by all of the Risk Fund Pool participants and State Risk has no profit motive. Moreover, half of State Risk's customers (school districts and charter schools) are allowed by statute to purchase their insurance directly from the private sector, but all 41 school districts and 62+ charter schools have chosen to participate in the State Risk Fund ("Risk Fund"). State Risk has always engaged in a competitive RFP process to select private sector brokers, who have placed insurance with private insurance companies for coverage above the State Risk's self-insured retentions (deductibles) of $1MM/liability and $3.5MM/property. Additionally, State Risk also contracts with private insurers for aircraft insurance, workers' compensation insurance; domestic/foreign travel insurance; special events insurance; cyber liability insurance; annual actuarial analyses and reports; and take-home vehicle coverage for law enforcement and elected officials.	25	0	25
GE6	Are there any known legal barriers to privatization?	Yes. UCA 63A-4-103 provides that an agency or public institution of higher education may not acquire insurance for itself except as authorized by statute; however, section 63A-4-204 and 63A-4-204.5 make participation in the Risk Fund voluntary for charter schools and school districts. To date, all 41 school districts and 62+ charter schools have elected to be covered by the Risk Fund.	0	25	0
GE7	Are there any obvious risks to be considered with the privatization of this service?	Yes. State Risk's involvement, analysis, and experience in selecting the broker, in addition to its long-term relationships with the property insurance carriers, have been instrumental in facilitating significantly lower rates and broader coverage than would otherwise be available on standard property forms found in the commercial market. Some examples of the broader coverage that would likely be lost through privatization are summarized below: a. Coverage of all property of an insurable nature worldwide (most forms limit this to real property and defined personal property within 100 feet of an insured location); b. Coverage against "all risk of physical loss" from any cause (most forms limit coverage to defined perils only); c. Fewer exclusions than the standard property form; d. The deductible for major perils (windstorm, riot, flood, earthquake) is expanded to capture all losses within 72 hours of an event, thus eliminating an insurer imposing multiple deductions for interrelated losses, as would be typical in the commercial market; e. No time/hourly deductibles for the Business Interruption, Spoilage, or Service Interruption coverage and an extended period of indemnity up to two years (typical hourly deductible is 24 hours and 30 day period of indemnity); f. Coverage provides full flood limits inclusive of coverage for sewer backup; and g. Primary coverage also provides earthquake limits inclusive of coverage for earth movement (landslide, rockslide,	0	25	0
PE3	Would there be a high level of risk if a privatized service did not meet required performance requirements?	Yes, see GE7 above.	0	25	0
GE5	Has this service been successfully privatized by other state or local governments? By the Federal government?	Yes and No. Most state and local governments, like State Risk, utilize commercial brokers to outsource their primary and/or excess insurance from the private commercial market and self-insure for the "deductible" or self-insured retention. To the best of our knowledge and information, the Federal government is completely self-insured.	15	0	15
PE1	Does this service currently utilize quantifiable and measureable performance measures?	Yes. In the procurement process, all eligible insurance companies, except the Lloyds Market, used on any line must be rated in the superior or excellent categories, meaning A++, A+, A or A-, and be in a size category of IX or larger in the most recent edition of Best's rating guide. See attached RFP Solicitation PG14021, Excess Property and Excess Liability Insurance, p. 15.	15	0	15
GE1	Is the service being reviewed considered a mission critical service of Utah State Government?	Yes. If insurance procurement is not centralized, each state entity, school district, and institution of higher education would be required to bear the expense of an individualized RFP for each type of insurance coverage, thereby increasing the cost of procurement to the taxpayer. Also, UCA 63A-4-101(2) requires the Risk Manager to acquire and administer all property, casualty insurance and workers' compensation insurance. UCA 63A-4-201(1)(b) provides that the Risk Fund shall cover property, liability, fidelity, and other risks as determined by the Risk Manager.	0	5	0
CE11	Does the current State service have excess capacity that could be sold due to a privatization arrangement?	This question is vague, but we believe the answer is "No". State law allows school districts and charter schools to procure their own insurance; however, all 41 school districts and 62+ charter schools have, nonetheless, elected to participate in the Risk Fund, because our rates are comparatively lower for significantly broader coverage, as compared to the private market.	5	0	0
GE8	Does a vendor need access to confidential information?	Yes. Insurance underwriters routinely require the disclosure of claims records, many of which contain confidential information.	0	5	0
GE4	Is there a significant level of political opposition to privatization of this service?	Yes. State Risk anticipates considerable political opposition to additional privatization or outsourcing from Risk Fund participants.	0	20	0
	Tier 1			165	55
				33%	

Tier 1 Questions	Loss Control Services Responses	MAXIMUM SCORING Yes	No	SCORE
T1	State Risk provides loss control programs and services for all of its covered entities to mitigate existing claims and to prevent future claims from occurring. Among the services provided are site inspections, training, engineering services, ergonomic and disability prevention evaluations, and consultations on all coverage related losses and potential losses.			
T2	FY2014: $1,134,418.98			
GE2	Yes and No. Some insurance providers have loss prevention programs, but those programs usually result in additional costs. Those of our insureds that have the option of purchasing insurance services from the private market opt instead to participate in the Risk Fund, in part, because all loss prevention services are included in their base premiums. Additionally, Perlinski & Company found that State Risk's Loss Prevention average hourly costs are 30% - 45% under market rates provided by TPAs. See Perlinski report pp. 5 & 21. Perlinski & Company believes that the current State Risk model "represents the most cost-efficient and high-value add to the state" and believes that moving to "a fully outsourced model at this time represents a low-value, high-risk and potentially higher cost option". Perlinski report, p. 25.	25	0	25
GE6	Yes. UCA 63A-4-101(2)(c) requires that a risk management and loss prevention program be implemented.	0	25	0
GE7	Yes. "Relationships between [State Risk's] Loss Prevention personnel and its customers are excellent and it is a value-add of the division. This would be difficult to replace in an outsourced model as incentives and compensation models shift to an hourly basis," Perlinski Report, p. 30. All of State Risk's loss control services are provided without any additional costs to its insureds; whereas, other insurers generally charge their insureds for offerings beyond minimal loss prevention services. Consequently, State Risk's insureds could pay more to a private insurer for the loss prevention services they are currently receiving. See Perlinski Report, pp. 5 & 21.	0	25	0
PE3	Yes. The likely consequences would be an increase in claims resulting in increased costs and reputational harm to the State.	0	25	0
GE5	This cannot be answered with a simple "Yes" or "No", because the answer to this question depends on how "success" is defined. To our knowledge only the State of Louisiana has outsourced claims and loss control services. While Lousiana projects $22 million in savings over 5 years as a result of outsourcing, Perlinski & Company found that, prior to outsourcing, Lousiana employed 175 FTEs in its risk management office and, after outsourcing, still retained 35 FTEs to provide risk management services to approximately the same number of covered employees and vehicles as the State of Utah, which only employs 28 FTEs. Additionally, Perlinski reviewed an analysis conducted by the State of Arizona relative to Louisiana's risk management outsourcing, which determined that Louisiana is still paying twice the costs of the organization's operating expenses in outsourcing costs. See Perlinski Report, p. 11. It is unknown whether this service has been privatized by the Federal Government.	15	0	15
PE1	Yes. Effective insurance loss control services include site inspections, training, and consultation relative to all lines of coverage and potential losses. State Risk's loss control professionals are expected to meet monthly benchmarks relative to those services. Those expectations are included in each employee's performance plan.	15	0	15
GE1	Yes. Perlinski & Company determined that "no insuring entity or Risk Management organization or TPA with prudent operations will provide insurance without a loss control function." Perlinski Report, p. 30. Additionally, UCA 63A-4-101(2) requires State Risk to implement a risk management and loss prevention program for the purpose of reducing risks, accidents, and losses . . . and requires State Risk to coordinate and cooperate with any state agency having responsibility to manage and protect state properties, including: (i) the State Fire Marshall; (ii) the director of the Division of Facilities Construction and Management; (iii) the Department of Public Safety; and (iv) institutions of higher education.	0	5	0
CE11	This question is vague; however, we hope the following information is responsive. State Risk has already outsourced some loss control inspection services related to the school districts and has engaged other private sector consultants (engineers, industrial hygienists, and other subject matter experts), as needed.	5	0	0
GE8	Yes, when providing disability/workers' comp loss prevention and employment liability prevention services, loss control professionals generally obtain personal health information, which is highly confidential. Additionally, loss control professionals are required to access to confidential information in order to conduct claims analyses.	0	5	0
GE4	Yes. State Risk anticipates considerable political opposition to additional privatization or outsourcing from Risk Fund participants.	0	20	0
Tier 1			165	55
			33%	

Tier 1 Questions	Claims Services Responses	MAXIMUM SCORING Yes	No	SCORE
T1	State Risk investigates, adjusts, and oversees payments in connection with all reported claims. Claims adjusters also work hand-in-hand with the Attorney General's office to coordinate and manage all litigation activity related to reported claims.			
T2	FY2014: $748,232.99			
GE2	Yes; however, those of our insureds that have the option of purchasing third party adjusting services from the market opt instead to participate in the Risk Fund. State Risk's claims adjusters are paid 25% below comparable adjusters in the private sector. See 2013 Benchmark Market Comparability Study, p. 1. Additionally, Perlinski & Company found that the current State Risk's model "represents the most cost-efficient and high-value add to the state" and believes that moving to "a fully outsourced model at this time represents a low-value, high-risk and potentially higher cost option". Perlinski report, p. 25. Most private insurance adjusters only handle one line of coverage, i.e., auto, property, employment, etc.; whereas, State Risk's adjusters have expertise across all lines of coverage, which enables them to adjust any type of claim for all of our insureds. This arrangement helps State Risk maximize efficiency by having a lean claims staff to manage a diverse and complex portfolio. Additionally, this arrangement allows claims staff to become extremely familiar with the operations and critical personnel of our insureds, while outsourcing would likely require state entities to interact with multiple adjusters on different types of claims involving their entity. Moreover, the outsourcing of claims administration would likely result in contracting with adjusters who have limited knowledge of Utah's governmental immunity protections and defenses, and would result in competing/conflicting priorities with other customers, which would likely reduce service levels to state	25	0	25
GE6	Yes. The Utah Constitution requires the Attorney General to defend the State in all claims made against it or to give permission for that defense to be outsourced. The hourly rates paid by State Risk to the Attorney General's Office range from $107 - $126 per hour—significantly lower than the private sector. Additionally, the Attorney General's Office may be prohibited from representing private insurers. Private insurers would likely pass their higher legal rates on to state entities via higher premiums. UCA 63A-4-101(2)(b)(iv) recommends procedures for making claims, proof of loss, and handling disputes. Moreover, UCA 63A-4-102(1)(c) gives authority to the Risk Manager to adjust, settle, and pay claims. Lastly, UCA 63G-7-602(2) gives the Risk Manager authority to settle any claim for which the Risk Fund may be liable with specified levels of authority.	0	25	0
GE7	Yes. Claims adjustment quality will likely be diminished as it will be difficult to exceed State Risk's Claims Section's performance ratings, which have consistently exceeded industry standards. "We find overall performance this year at 98%, again exceeding the target for meeting industry standards at a superior performance level of 95% . . . [State Risk] has achieved performance ratings between 97% and 99% for the past seven years." See Bickmore 2014 Liability and Property Claims Audit (Bickmore Report), p. 1. "Risk Control/Loss Prevention staff members with medical and engineering expertise are a valuable resource, often reviewing medical records or inspecting accident sites and documenting their professional opinions in the claim file. This type of activity would not be seen in an organization that does not encourage the synergy and communication seen here. The State benefits by saving litigation costs because: the cost of external resources to provide these services could exceed several hundred thousand dollars per year; and ready access and open discussion often lead to earlier liability determination and fewer law suits." Bickmore also praised the co-location of an Assistant Attorney General within State Risk to promote the cost-effective resolution of law suits; to evaluate questionable liability or high-exposure claims; to guide the adjusting staff on complex coverage issues; and to insure compliance with federal requirements. See Bickmore Report, p. 2. Based upon the Perlinski & Company study, State Risk's costs of operation, including claims adjusting,	0	25	0
PE3	Yes. Besides losing the benefits outlined in GE7 above, there would likely be increased costs to the state if claims management is not conducted in a timely and high-quality manner in close consultation with the Attorney General's Office.	0	25	0
GE5	This cannot be answered with a simple "Yes" or "No", because the answer to this question depends on how "success" is defined. To our knowledge only the State of Louisiana has outsourced claims and loss control services. While Lousiana projects $22 million savings over 5 years for outsourcing claims processing and loss prevention services, Perlinski & Company found that, prior to outsourcing, Lousiana employed 175 FTEs in its risk management office and, after outsourcing, still retained 35 FTEs to provide risk management services to approximately the same number of employees and vehicles as the State of Utah, which only employs 28 FTEs. Additionally, Perlinski reviewed an analysis conducted by the State of Arizona relative to Louisiana's risk management outsourcing, which determined that Louisiana is still paying twice the costs of the organization's operating expenses in outsourcing costs. See Perlinski Report, p. 11. It is unknown whether the Federal government has privatized these services.	15	0	
PE1	Yes. State Risk's claims adjusting services are measured annually by an independent auditor against industry standard best practices. Meeting the audit quality standards of industry best practices is required in each adjuster's performance plan. For example, the industry standard for initial claim investigation and reserve setting is 14 days. State Risk "exceeds industry best practices by requiring the adjuster to review facts and set reserve within 7 days of assignment of the claim." Bickmore Report, p. 11. Additionally, "[q]uarterly supervisory claim reviews and annual management reserve reviews promote reserve accuracy." Bickmore Report, pp. 12-13. "We find overall performance this year at 98%, again exceeding the target for meeting industry standards at a superior performance level of 95% . . . [State Risk] has achieved performance ratings between 97% and 99% for the past seven years." See Bickmore Report, p. 1.	15	0	15
GE1	Yes. UCA 63A-4-102(1)(c) gives the Risk Manager authority to adjust, settle, and pay claims. The adjustment of claims against governmental entities requires an in-depth understanding of the nature of government functions and the application of the Governmental Immunity Act; otherwise, claims might be paid for losses for which the State is immune.	0	5	0
CE11	This question is vague; however, we hope the following information is responsive. State Risk has already outsourced claims adjusting services for excess property; excess liability; aviation; workers' compensation; special events; domestic/foreign travel; data breach/cyber; conflict of interest; law enforcement/elected official vehicle property; and routine, lower-value auto, property, and liability claims. Additionally, State Risk engages claim-related/litigation experts, as needed.	5	0	0
GE8	Yes. State Risk Management's claims adjusters frequently gather personally identifiable and confidential health information while adjusting claims.	0	5	0
GE4	Yes. State Risk anticipates considerable political opposition to additional privatization or outsourcing from Risk Fund participants.	0	20	0
Tier 1			165	40
			24%	

Solicitation PG14021

Excess Property and Excess Liability Insurance

Bid designation: Public

State of Utah

State of Utah

Solicitation Number PG14021

Attachment B

State of Utah Property, Equipment Breakdown, and Bond Bid Specifications

I. General requirements

A. Company Rating: All companies, except the Lloyds Market, used on any line must be rated in the superior or excellent categories, meaning A++, A+, A or A-, and be in a size category of IX or larger in the most recent edition of Best's rating guide.

B. In the Step Two bid request, each bid must include copies of the actual forms and endorsements which will comprise coverage if it is selected. Failure to comply with this requirement will seriously compromise any bid and can be the basis for rejecting it.

C. All three lines of coverage: property, boiler, and bond will be awarded to a single broker and bids will be evaluated as a package of coverages.

D. In accordance with Division of Purchasing Rules, the following factors will be considered in awarding the bid:

1. Financial resources,

2. Quality of prior services,

3. Facilities available in state,

4. Reputation,

5. Experience and expertise,

6. Coverages and services, and

7. Any other reasonable factors

E. The State reserves the right to negotiate final terms with the selected brokers and carriers.

F. Period: Beginning July 1, 2014, and running for one year, with the option of up to four additional years.

G. Name of insured:

MORETON
& COMPANY
TRUSTED SINCE 1910

December 8, 2014

Free Market Protection and Privatization Board

To Whom It May Concern:

The State of Utah selects a broker through a competitive bid process every five years. Moreton bids out the property to the entire marketplace each year to ensure that the State's coverage and pricing are the most competitive available in the marketplace. State Risk's involvement, analysis, and experience in selecting the broker in addition to the long-term relationships with the property insurance carriers have been key to the property program's competitive pricing and broader coverage than is available on standard ISO property forms. A few examples of the State's uniquely manuscripted property coverage include:

- The policy covers all property of an insurable nature, worldwide (most forms limit this to real property and defined personal property within 1,000 ft. of an insured location)
- The policy insures against "all risk of physical loss" from any cause (most forms limit coverage to defined perils only)
- The State's form has fewer exclusions than a typical property form. For example, there is no exclusion for voluntary parting of property or destruction of electronic data
- The deductible for major perils (i.e. windstorm, riot, flood, earthquake) is expanded to capture all losses within 72 hours of an event. This eliminates an insurer imposing multiple deductibles for interrelated losses.
- There are no time/hourly deductibles for the Business Interruption, Spoilage, or Service Interruption coverage and an extended period of indemnity of up to 2 years (typical hourly deductible is 24 hours and 30 day period of indemnity)
- The primary coverage provides full flood limits inclusive of coverage for sewer backup. The primary coverage also provides earthquake limits inclusive of coverage for earth movement (landslide, rockslide, mudflow, etc)

State Risk developed this broad manuscript coverage years ago. In partnership with the State's broker, State Risk has been able to keep these broad provisions in the policy even when the general insurance marketplace has narrowed property coverage across all industries. Every time we renew the coverage our excess insurers push to narrow the State's policies to keep it more in line with other public entity and private industry programs. It takes significant negotiating effort and leverage of our relationships to keep these property terms and conditions broad, year over year.

Privatization of State Risk will not lead to any more competitive property insurance rates or coverage than is already in effect. In fact, it may create valuation reporting inconsistencies and/or confusion about loss reporting which could delay or jeopardize insurance coverage for property losses. Those insurers which have been involved in the State's program over time are willing, in part, to provide the broad manuscripted forms, because of a trust in the State Risk Management personnel and their mission to prevent and/or control losses and loss exposures.

Regards,

R. Callister

Robert Callister, CPCU
Senior Vice President
Moreton & Company

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Value Report
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Comparative Analysis

- Preliminary analysis of DRM Cost-Versus-Market indicates that:
  - DRM is clearly the overall best value provider for insurance other than Workers Comp (WC)
  - On a per claim basis, DRM is consistently lower overall than Third Party Administrators (TPAs) surveyed
  - Loss Prevention average hourly costs provided by DRM are 30%-45% under market rates as provided by TPAs

Comparison Table

			2013 DRM Values		Cost				Staffing			
			Claims #	Hours	DRM	COMP-1	COMP-2	COMP-3	DRM	COMP-1	COMP-2	COMP-3
Workers Comp	Claims Administration	Medical Case Management	217		$ 232,319.00	$36,347.50	$137,209.11	$34,720.00		1	2	
		Indemnity Case Management	34			$41,565.00	$21,498.20	$40,290.00				
	Rehabilitation / Voc	WCF Did Not Provide			$26,330.00	$10,000.00					1	
	Billing	WCF Did Not Provide			$1,912.00						1	
	PPO	WCF Did Not Provide			$-							
	Loss Prevention			2,071	$126,029.41	$227,782.65	$180,843.21	$207,075.14	1	1	1	1
TOTAL					$386,590.41	$315,695.15	$339,550.52	$282,085.14	1	2	5	1
Insurance	Auto Liability	AL Bodily Injury	101		$42,830.89	$62,872.50		$130,492.00	9			
		AL Property Damage	476		$201,856.48	$296,310.00		$209,916.00				
	Auto	Auto Property Damage	628		$71,338.05	$171,130.00		$148,208.00		4		
	General Liability	GL Bodily Injury	546		$231,541.25	$339,885.00		$560,196.00		4		
		GL Property Damage	248		$105,168.92	$154,380.00		$206,832.00				
	Property		320		$310,822.56	$126,400.00		$204,160.00		4		10
	Loss Prevention			19,929	$1,212,927.61	$2,192,217.35		$1,992,924.86	10	10		10
TOTAL					$2,176,485.76	$3,343,194.85	$-	$3,452,728.86	19	22		20

States' Observations & Challenges – Summary

Observations and Recommendations are based on Perlinski & Company's perspective and observations from phone interviews conducted with the state's risk managers.

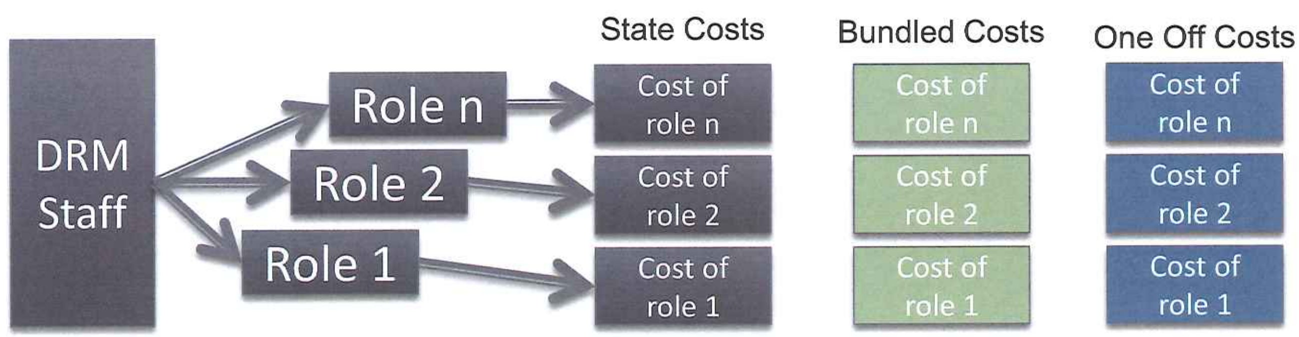
- AZ analysis of LA outsourcing:
  - AZ Risk Manager was intrigued by the opportunity to outsource; however, after analysis, the financials do not make sense. Considerations for years 2008-2009 were as follows:

Category	Arizona	Louisiana
State Employees	167,000	155,000
Auto	15,000	13,500
RM FTEs	79	175
Operating Budget	$17M	$15M
Claims- Total	$150M	$50M

  - LA costs were 3X of AZ, maybe it was a good thing for them to outsource, but it did not make sense for AZ
  - Based on AZ Risk Manager's research the outsourcing costs for LA have gone from $5.7M to $7.1M to $12M. These costs are in addition to the 35 FTEs still remaining in the organization
  - As per AZ Risk Manager, LA is paying twice the organization's operating expenses in outsourcing costs
- LA Cost-Benefit calculations for the privatization effort are dictated to RM and seem to artificially conclude value creation

Findings & Recommendations
Organizational Performance

- The Privatization Board is likely to require further metrics and reporting in the future
  - For any query regarding the value of people, start your response from the perspective of the current staff. When considering DRM costs compared to other alternatives, consider that DRM staff performs various services and roles and thus a "bundled" cost approach should be developed, not a "one-off" costing (O8)
    - Current staff provides great value at minimal cost. By using actual costing examples that we have developed, a comparable cost could be worked up with one or more private implementation options (i.e. options that are stand alone or bundled with other services). For example, a one-off inspection may run $200 per hour but when bundled with other services may run only $100 per hour. The state is still cheaper. P&C findings conclude that in either scenario, current state staff outperform from a cost and incentive perspective



- DRM staff demonstrate a high level of experience, professionalism, competence and commitment to their division's goals and its customers
- DRM management has achieved improved transparency and greater accountability (e.g. removed artificial caps on premiums of 20%. This will start next year and should generate a more appropriate premium allocation)

Findings & Recommendations
Financial Performance

Financial Performance refers to how efficiently DRM is delivering its services

- Utah DRM has already adopted a matrix outsourcing and shared-processing business model
  - Preliminary financial analysis indicates that workman's comp processing costs could be lower in an insourced or alternative outsourced model; further analysis is recommended (F1)
- DRM has the flexibility to handle workload changes cost-effectively without sacrificing quality
  - Based upon anecdotal evidence, P&C believes that implementation of technology recommendations can result in a capacity increase in the claims staff by 15%-20%; therefore it seems that capacity and efficiency for claims processing need not be reexamined until or unless claims volumes increase by over 20% if technology recommendations are implemented (F2)
- Utah costs are in-line with or below most other states with similar risk profiles
- Regardless of outsource status, all states must keep some RM staff; and based upon independent research conducted with TPAs, other States and DRM staff, P&C believes that the current model represents the most cost/efficient and high value add to the state
  - P&C believes that moving Utah DRM to a fully outsourced model at this time represents a low-value, high-risk and potentially higher cost option (F3)

Findings & Recommendations
Loss Control

Loss Control performance refers to how effectively loss prevention activities influence claims trends

- No insuring entity or Risk Management organization or TPA with prudent operations will provide insurance without a loss control function – it is the cost of doing business. Loss Prevention Services are usually quoted separately on an hourly rate basis by TPAs
- Relationships between DRM Loss Prevention personnel and its customers are excellent and it is a value add of the division. This would be difficult to replace in an outsourced model as incentives and compensation models shift to an hourly basis
- You can centralize or decentralize or outsource for similar costs but you need it. All states, TPAs and other third parties interviewed agreed that Loss Prevention functionality combined with robust business intelligence is key for managing cost and risks
  - Increase effectiveness of the Loss Prevention personnel by:
    - Ensure access to business intelligence that would allow for better understanding of claims trends, costs and where best to allocate resources, develop training or conduct consultative sessions (part of V4)
    - Develop a methodology for structuring LC activities every year and measuring them (e.g., focus 80% of resources on reducing top 5 claimants, quarterly joint structured reviews 4 hours each with the top 40 customers, etc.) See LC Analysis (L2)
    - Create a leading practice that reflects more collaborative integration between claims processing and loss control activities using existing information systems and a standardized identification of customers and activities (part of O4)

Bickmore

2014 Liability and Property Claims Audit

State of Utah

June 30, 2014

Bickmore

June 30, 2014

Ms. Tani Pack Downing
Director - Division of Risk Management
Department of Administrative Services
State of Utah
5120 State Office Building
Salt Lake City, Utah 84114

RE: 2014 Liability and Property Claims Audit

Dear Ms. Downing:

This report summarizes the findings and recommendations of our claims audit on behalf of the State of Utah, Division of Risk Management (RM). This audit examines the claims handling practices of RM's claims administrative staff.

We present an overview of our findings in Chapter I and discuss our findings in Chapter II. We look forward to discussing this report.

Bickmore's contacts for this project are:

Mr. Dennis Mitchell, CPCU, SCLA, ARM
Senior Claims Consultant
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and

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Manager, Claims Consulting Services
Direct Phone: (714) 426-8509
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We appreciate the opportunity to provide claims auditing services to the State of Utah and hope to provide additional services in the future.

Respectfully submitted,

Dennis Mitchell, CPCU, SCLA, ARM
Senior Claims Consultant

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I. Executive Summary

The State of Utah (State) provides the Division of Risk Management (RM) with funding to self-insure its agencies, institutions of higher education, selected charter schools, and all school districts in the State (participating agencies). RM administers claims presented to the State.

Written documents detail coverage designed to protect participating entities from financial loss resulting from:

- Loss or damage to state-owned property;
- Liability to third parties arising out of negligence, contract, or statute; and
- Employment practices and certain intentional torts such as libel, slander, and wrongful invasion of privacy.

Coverage documents detail protection provided to participating agencies, are reviewed regularly, and updated as required. There are no revisions noted this year.

The purpose of this audit is to assist RM in evaluating the effectiveness of its claims administration services.

RM continues to accomplish its purpose of protecting State assets by:

- Efficiently reviewing, inspecting, evaluating, and paying covered claims involving state-owned property of its participating agencies; and
- Resolving its obligations with third parties presenting tort claims against the State, its participating agencies, and covered employees.

We find overall performance this year at 98%, again exceeding the target for meeting industry standards at a superior performance level of 95%, as shown in Exhibit I-1. Exhibit I-2 graphically represents RM's consistently high performance. While these Exhibits demonstrate performance ratings for a three-year period, RM has achieved performance ratings between 97% and 99% for the past seven years.

RM's Division structure has not changed since the last audit.

The Claims Administration structure continues stable with no turnover. Staff includes:

- One Claims Manager providing day-to-day oversight and supervision of staff;
- Eight adjusters who administer tort and liability claims with assignments based on their expertise;
- One adjuster who administers school district liability claims and operates remotely, separate from the core adjusting staff; and

- One adjuster/appraiser who handles property damage claims, provides support for evaluating damage claims and oversees the collection and disposition of salvage in addition to adjusting bodily injury claims.

RM's Director and Assistant Director oversee Claims Administration and Risk Control staff, encouraging communication, teamwork, and finding ways to increase synergy throughout the organization. Implementation of *Riskonnect©* over the past three years has provided an opportunity to efficiently share more information. Risk Control staff have access to claim files, as well as the ability to add their notes and documentation helpful to the adjuster in determining liability.

A Risk Control staff member has gained an intimate knowledge of the claims administration function through his role as RM's internal *Riskonnect©* support staff.

Risk Control/Loss Prevention staff members with medical and engineering expertise are a valuable resource, often reviewing medical records or inspecting accident sites and documenting their professional opinions in the claim file. This type of activity would not be seen in an organization that does not encourage the synergy and communication seen here. The State benefits by saving litigation costs because:

- The cost of external resources to provide these services could exceed several hundred thousand dollars per year; and
- Ready access and open discussions often lead to earlier liability determination and fewer law suits.

A representative from the Utah Attorney General's (AG) office is located within RM and serves as a liaison between the AG and RM by providing:

- Guidance to the adjusting staff on complex coverage issues and crafting reservation of rights (ROR) letters when coverage may not apply;
- Assistance in evaluating questionable liability or high exposure claims; and
- Oversight to ensure compliance with the Medicare, Medicaid, and SCHIP Extension Act Section 111 of 2007 (MMSEA).

This co-location is a symbol of the cooperation between these two departments, which is necessary to promote cost-effective resolution of lawsuits.

A certified public accountant (CPA) oversees RM's financial accounting, which includes claim payments of almost $20 million in 2014, and the allocation of AG costs to lawsuits.

Additional support staff provides services necessary for RM to provide quality service to its participating agencies.

To arrive at our findings we completed work steps that included:

- Reviewing Policies and Procedures relating to claims administration, which have not changed from last year;

A. Case Reserves

Superior Performance – Score: 99%

Best practices require:

- Setting initial reserves within 14 days of claim receipt, based on the initial report information;
- Documenting analysis of each reserve component (indemnity and expense);
- Reevaluating reserves a minimum of semi-annually for accuracy based upon development of investigation, liability, and damages;
- Maintaining reserves at the estimate of most probable ultimate outcome; and
- Recognizing changes that support a reserve revision and making adjustments within 30 days.

A nominal reserve (for example, $100) is acceptable on a claim evaluated at doubtful liability upon receipt of the notice of claim. In many cases, the claimant takes no further action and the claim is closed when the statute of limitations expires. If the claimant takes action to pursue, the nominal reserve must be reassessed.

We grade this component based on the average of the claims reviewed according to the following scale.

4	Reserve is documented, requires no adjustment, and is reviewed regularly. When a change is required, it is initiated within 30 days of recognition.
3	Reserve is documented and accurate to within $25,000.
2	Reserve change required $25,000 to $50,000, or documented review of reserve occasionally exceeds six-month interval by more than 30 days.
1	Either reserve change is required in excess of $50,000, or documented review of reserve frequently exceeds six-month intervals by more than 30 days.

RM exceeds industry best practices by requiring the adjuster to review facts and set an initial reserve within seven days of assignment of the claim.

We find:

- RM Adjusters meet the seven-day requirement in 93% of the audit sample;
- Six Adjusters were 100% timely for the audit sample;
- Reserve adjustments are usually timely, made within thirty days of receipt of information suggesting an adjustment;
- The Adjuster's reserve rationale is documented in the electronic file notes or on a separate evaluation form; and

- Quarterly supervisory claim reviews and annual management reserve reviews promote reserve accuracy.

We recommend one reserve increase in Appendix B, "Recommended Reserve Changes." The net increase of $20,000 represents 2% of the audit sample, as shown in Appendix A. Our actuaries advise an adjustment of less than 10% has no impact on actuarial projections.

B. Payment Reconciliation

Superior Performance – Score: 100%

Best practices require:

- Documenting support for payments with approved invoices in the claims file; and
- Reconciling checks issued per system check register with monthly bank statements.

We grade this component based on the average of all claims reviewed according to the following scale.

4	Payment data in the system matches the data found in the claims file. Procedures are in place and followed to reconcile payment data per system check register with and monthly bank statements.
1	System data does not match claims data due to ineffective or nonexistent reconciliation procedures.

Payments are requested in *Riskonnect*© by the adjuster, coding is verified by RM Accounting, and the Finance Division issues payment. The process usually takes one to two days, providing good service to check recipients.

Payments issued by the Finance Division are recorded in *Riskonnect*©. Third party claimants receive checks, while participating entities receive internal vouchers.

RM continues to use few vendors and none were noted in this audit. The AG bills electronically, recording hours spent on tasks performed on litigated claims. These bills are approved by the adjuster and recorded in *Riskonnect*©, enhancing accuracy in recording the State's legal expenses. Individual attorney bill rates are established by the AG and are far below what would be charged by outside counsel.

We find payments are documented and supported with no exceptions.

C. Allocated Expenses

Superior Performance – Score: 99%

Best practices require the following:

- Avoiding litigation where possible;

- Controlling litigation expense by frequently communicating with defense counsel to develop:
    - A strategy to move case toward resolution; and
    - A budget to promote continued cost benefit analysis.
- Considering alternative dispute resolution where settlement may be advantageous to the State; and
- Controlling the use of outside investigators and experts where possible.

We grade this component based on the average of the claims reviewed according to the following scale.

4	All factors above exist.
3	Elements of best practices are missing.
2	Missing elements are likely to result in increased cost absent immediate corrective steps.
1	Missing elements have resulted in increased cost.

Seven claims in this year's sample were litigated, which is 9% of the liability claims in the audit sample.

RM staff continues to employ practices effective in avoiding litigation such as:

- Contacting claimants promptly on claims where the State may have some liability and maintaining frequent communication;
- Treating claimants fairly and clearly explaining rationale for payment decisions;
- Advancing minor "out-of-pocket" medical expenses to maintain control of the claim, and eventually resolving these claims for the total "out-of-pocket" expenses;
- Developing an early evaluation of liability, sometimes involving Loss Prevention, to promote early resolution;
- Relying on school district staff who have relationships with families of claimants to communicate with the claimant, keeping the adjuster informed; and
- Resolving claims of minors for out-of-pocket medical expense without requiring a release.

OUTLINE FOR A PROPERTY DAMAGE SUBROGATION PILOT PROJECT

Recommendation(s)

1. That GOMB coordinate with interested state and other interested agencies to develop and issue one or more test use contract(s) for property damage subrogation.

2. That GOMB and any participating agencies evaluate the performance of any test use contract(s) after twelve months and report to the agencies, GOMB, the Office of the Legislative Fiscal Analyst, Division of Purchasing and this board the results of that evaluation.

3. That the legislature in its 2015 general session introduce and pass amendments to State Code as suggested by this project outline.

Objectives and Proposal

The primary objectives of this pilot project are to:

- increase the percentage and amount of third party damages recovered for state and local agencies;
- position the state and its political subdivisions to effectively and efficiently collect third party damages in the future;
- obtain insight on negotiating future cooperative contracts and service level agreements for recovery services; and
- outsource a service readily provided in the private sector.

It is proposed that a pilot project, also known as a trial use procurement (permissible per UCA 63G-6a-802 and UAC R33-8-201), be conducted for an 18-month period beginning July 1, 2015. The pilot project as conceived would contract one or more vendors for third party property damage subrogation services with UDOT. The same or a different vendor may contract for similar but separately proscribed services for Salt Lake County as a test for local government entities.

After 12 months, these agencies would evaluate performance. If the results are satisfactory, the state would consider issuing a request for proposals for a longer term approach. If the test for Salt Lake County proves profitable, consideration would be given to developing a state-wide cooperative contract that political subdivisions could use.

Background

Early in 2014, a vendor approached various State of Utah agencies offering services that would essentially outsource the state’s property damage claims system. These agencies, and other non-state agencies, met to discuss the potential and identify obstacles. On their behalf, the Governor's Office of Management and Budget (GOMB) and the Division of Purchasing issued a Request for Information, to which four vendors responded.

The initiating vendor offers these services on the promise of increased state recoveries of third party damages. The vendor's expertise begins with utilities and transportation infrastructure but also works for other types of property damages. It claims impressive results for the cities and states it currently services. In one state mentioned, recovered dollars increased by 72% and increased discovered claims/damages increased by 93%. In one city mentioned, the number of claims recovered rose from 34 over three years to 718 in two years and a net increase of nearly $1 million in that period.

Currently, the Division of Risk Management (Risk), insures and protects State assets, promotes safety and prevents losses. It employs a team of claims adjusters to investigate, evaluate and resolve claims. Risk indicated it does not wish to outsource the claims adjustment process but is willing to outsource the recovery of costs or expenses related to property damage caused by third parties. That subrogation would not include certain properties covered by the state's self insurance property policy (i.e., buildings, contents, and vehicles). Risk engages OSDC as its agent for its third party subrogation and collections activities.

The Office of State Debt Collection (OSDC) collects and manages state receivables, and oversees state agency receivables programs. Currently, it has multiple state cooperative contracts with collections agencies to collect receivables above a certain age.

UDOT receivables are due within 30 calendar days after billing. After that 30-day period, UDOT is authorized to pursue collection efforts on their past due receivables for an additional 90 calendar days. During that time period they may use any collection techniques, tools or contracts available to them. After the receivable is 120 days old (30 days + 90 days), UDOT is required to send their past due receivables to the Office of State Debt Collection (OSDC) for all subsequent collection efforts. OSDC then uses multiple tools and process to collect the receivables; including using their existing statewide contracts with private collection vendors.

The Department of Transportation (UDOT), Office of State Debt Collection (OSDC), and Division of Risk Management were specifically invited to participate in this process. Recognizing the potential for statewide contracts, we invited Salt Lake County to participate as a partner representative of political subdivisions. A pilot project could still be opened to other agencies if engaged early enough in the process.

Defining a Scope of Work

There are some issues to be addressed for a pilot project to move forward.

1. Because Risk wishes to maintain its claims management functions and because OSDC already has collections contracts in place, this pilot project requires some limitations to the scope of work. Outsourcing of property damage subrogation services herein discussed would be for collections activities (before submission to OSDC). For UDOT, it would apply to claims up to 120 days in age. After those periods expire, existing state cooperative contracts apply.

2. The vendors who engage in this work rely on speed and standardization of their processes to effect timely recoveries. That standardization includes fees management and how costs are calculated. Costs to be recovered from damages are based on schedules and standards. Fees are assessed.

   Per state statute, UDOT collects based on actual costs and no fees are assessed until the debt is transferred to OSDC. In practice, they advise, insurance agencies refuse to pay fees.

   To effect this pilot, certain state code amendments are needed. A suggestion has already been made that a bill file be created. That bill would authorize the collection of costs based on a scale or industry standard, rather than waiting for actual costs of repairs to be determined. And it would authorize fees for the services provided by the subrogation vendor(s).

<u>Participating Agencies</u>

- Utah Department of Transportation (UDOT)
- Salt Lake County (SLCO) – may participate at a later stage

<u>Other interested parties</u>

- Office of State Debt Collection (OSDC)
- Division of Risk Management
- Division of Purchasing
- Governor’s Office of Management and Budget

<u>Potential Vendors</u>

The following firms responded to the request for information completed in November.

- National Subrogation Services
- Praxis Consulting
- United Subrogation Associates
- Claims Management Resources

<u>Pilot Project Period</u>

18 months beginning July 1, 2015

Authorization for a Trial Use Procurement

UCA 63G-6a-802, “Award of contract without competition – Notice – Extension of contract without engaging in standard procurement process” permits a procurement unit to enter into trial use contract(s) with a vendor “to determine whether the procurement item will benefit the procurement unit.” “The period of trial use … may not exceed 18 months…”

R33-8-201, “Trial Use or Testing of a Procurement Item, Including New Technology” says that “the trial use or testing of a procurement item …shall be conducted as set forth in Section 63G-6a-802.”

Recommended Code Changes

OSDC’s statute **UCA 63A-3-502, “Office of State Debt Collection created – Duties”** provides at Subsection 4(g) for the collection of interest and fees for the collections of receivables.

UDOT has identified two particular code issues to be changed:

1. **UCA 41-6a-409, "Prohibition of flat response fee for motor vehicle accident"**, was adopted in the 2012 General Session. This section of code imposes certain restrictions on UDOT and the UHP in terms of costs that may be collected associated with a motor vehicle crash, including a provision that the agencies may only collect "actual costs" associated with repair to damaged public property. Without changes, outsourcing subrogation services as we are proposing would allow collection of actual costs only, and will not allow for collection of damages based on insurance industry standards.

2. Since potential damage claim services would likely include charging a percentage-based "fee" for services that are over and above the amount of funding received by the state for the damage, UDOT’s attorney opined that this "fee" would have to go through the normal fee approval process as required for state agencies in 63J-1-504. She believes that the fee approval process is still required for agents acting under contract on the state's behalf.

Discussion Points on USOE Student Information Systems

1. Board Duties

2. Background

3. History of Student Information Systems (SIS) in Utah

4. Comparative Features/Functions

5. Issue #1: Unfair Competition

6. Issue #2: Privatization

7. Costs

8. Comparative costs

9. Options

10. Recommendations

11. Next/Other