

**Minutes of the
Free Market Protection and Privatization Board**

Thursday, October 10, 2013 - 2:00 p.m.

Room 20, House Building

State Capitol Complex

Members present:

Kimberley Jones (Chair), Brian Gough (Vice Chair), Senator Karen Mayne, Representative Johnny Anderson, Representative Lynn Hemingway, Thomas Bielen, Commissioner Sherrie Hayashi, Randy Simmons, Manuel Torres, Councillor Steve Fairbanks, and Commissioner Louenda Downs

Members absent:

Senator Howard Stephenson, Kerry Casaday, Al Manbeian, Katina Curtis, Bob Myrick, and LeGrand Bitter

Staff present:

Cliff Strachan, Governor's Office of Management and Budget

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://www.utah.gov/pmn>).

1. Welcome and Introductions

Kimberley Jones chaired the meeting. Al Manbeian, Bob Myrick, and LeGrand Bitter were excused from the meeting.

To accommodate presenters from Departments of Environmental Quality and Transportation, reports on the Commercial Activities Inventory were heard before Board Business/Minutes.

2. Board Business/Minutes

a. Minutes from September 12, 2013

Added Bob Myrick to list of attendees.

Motion: Rep. Anderson moved to amend and approve the minutes of the September 12, 2013 meeting.
CARRIED

b. Request for Information Responses

Staff reported on the responses to the request for information concerning board processes and accounting methodology. The board discussed next steps. The board's consensus was to prepare an request for proposals (RFP) and to provide drafts (for comment) to the board prior to the next meeting and to bring the matter to the next meeting. Staff should also meet with Purchasing to go over RFP options and to invite someone from Purchasing to attend the next meeting to answer questions.

c. Strategic Planning

Mr. Strachan reported that he and the chairs met with Rep. Kay Christofferson last week. In that meeting it was suggested that the board do some strategic planning to determine its goals, performance measures, and other relevant matters. A draft work plan was handed out as a starter.

From the discussion, board members:

- like agencies coming in to talk about what they do but follow up is important,
- noted privatization reviews can be accomplished by staff, by the agency, by the board and by subcommittees of the board,
- considered objectives and outcome and want clarity as to what the board wants to accomplish,
- are open to private sector entities coming to the board to present,
- are reminded to consider the free market protection aspect of the board's duties, including addressing complaints of unfair competition by government with the private sector,
- noted there are multiple aspects to privatization and free market protection,
- want to know how to quantify unfair competition,
- want clarity around the rule making authority,
- want to know what happens with the board's recommendations, including how privatization gets implemented,
- need to figure out how to sift through many possible reviews and complaints, and
- noted that the process will get clearer after the RFP process is concluded, which effort includes developing the accounting method.

The board will continue the dialogue.

3. Commercial Activities Inventory

a. Department of Environmental Quality (DEQ)

Mr. Strachan noted the areas currently undergoing Operational Excellence reviews by the Governor's Office of Management and Budget. An updated summary for the Commercial Activities Inventory was provided with the comment that five of six divisions have completed their reviews. The intent is to accept the inventory updates and post them to the web as each agency updates its section of the inventory.

Brad Johnson, Deputy Director, gave an overview of the work done by DEQ calling it a regulatory agency involved in rule development, and the implementation of federal and state environmental rules and regulations. Also responsible for enforcement in the state. Bryce Bird from the Division of Air Quality (DAQ) also appeared with him.

All divisions' work falls into five basic categories:

- write rules and develop laws/statutes necessary to implement programs,
- conduct plan reviews to ensure plans and applications submitted meet certain standards,
- write permits - an entity submits applications and the agency checks that it meets requirements,
- conduct inspections and maintain oversight - some rules don't require permits but compliance to standards is still required, and

- enforcement - general philosophy that compliance is preferred over enforcement but sometimes agency must take necessary actions.

He noted that there is some legal work that is outsourced, an example is the work done by administrative law judges which work is infrequent and specialized. Agency also relies on private sector for certification training but retains responsibility for rules and regulations training and testing.

Much of DEQ responsibilities are delegated by the federal Environmental Protection Agency (EPA).

On the subject of retaining the private sector to write permits as has been suggested, DAQ has looked at it in the past and concluded that it would not save money. Noted that if contractors wrote the permits, DAQ would still need in-house expertise to review.

During questioning, board members heard in response that:

- it is rare for EPA standards to be less stringent than Utah's,
- environmental impact statements are federal responsibility but DEQ has some involvement,
- the effort to contract out permitting 15-20 years ago was based on eliminating a backlog and making use of expertise that had gone into private practice,
- to contract out some permitting, DEQ would have to look at the limitations and requirements of agreements with the EPA,
- agency hasn't identified other areas to privatize but general ethic is to let stuff that can be contracted out be contracted out,
- backlog is more likely to drive need for outside help but agency doesn't generally look outside due to being "cheap and poor" meaning being frugal and low on budgeted resources,
- environmental cleanup is already done by private sector with DEQ retaining oversight,
- federal requirements are prescriptive on DEQ as well as cities and counties, and
- Division of Drinking Water's review will not change substantially from the 2010 submission.

During questioning, the agency was asked to report back as to what percentage of its work is contracted out.

b. Department of Transportation (UDOT)

Mr. Strachan noted the areas currently undergoing Operational Excellence reviews by the Governor's Office of Management and Budget. UDOT presented its best practices last month. An updated summary for the Commercial Activities Inventory was provided with the comment that some of the divisions have yet to complete their reviews. The inventories submitted indicated UDOT is taking a look at its safety programs and asset management for outsourcing potential.

As senior staffers are in Moab attending meetings of the Transportation Commission, Jason Davis, Director of Operations, and Tim Rodriguez, representing Risk Management, attended to answer questions. They commented that UDOT never stops looking for opportunities to privatize or outsource its work, particularly as road miles and number of structures increase. Risk managers are assigned to all parts of the state and agency. UDOT is looking outside for behavior based safety programs to see how to improve safety. Currently finalizing its RFP.

During questioning, board members heard in response that:

- behavior based programs question employees about management promotes safety and how employees can buy in,
- that profiling of employees is not in the mix for safety issues,
- has reached out to private sector and Workers' Compensation Fund for safety training options and noted that training could include a "training the trainers" approach,
- UDOT has a safety award program and is looking at incentive programs but is limited by ability to financially incentivise employees,
- UDOT is a member of the Utah Safety Council,
- approximately 75 percent of engineering activities are privately provided as the agency manages for peaks and valleys,
- snow plowing was cited as an area where outsourcing was not practical due to the unpredictability of weather, the capital outlay for snow plowing is expensive,
- asset management is identifying the condition of structures and roads, and
- UDOT recently awarded its first road striping performance specifications for maintenance.

The agency was asked to report back as to what percentage of its work is contracted out and to report back on its safety programs request for proposals, and progress on the asset management review.

4. Other Business/Adjourn

a. Privatization Studies

Mr. Simmons wants to look at golf courses.

b. Adjourn

Motion: Rep. Anderson moved to adjourn. CARRIED

Next meeting: Thursday, November 14, 2013 at 2 pm in 20 House Building

Meetings are scheduled for second Thursdays of each month through January 9, 2014.