

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

Thursday, January 9, 2014 - 2:00 p.m.

Room 20, House Building
State Capitol Complex

Members present:

Kimberley Jones (Chair), Brian Gough (Vice Chair), Sen. Howard Stephenson, Sen. Karen Mayne, Rep. Johnny Anderson, Manuel Torres, Randy Simmons, Bob Myrick, Louenda Downs, and LeGrand Bitter; Thomas Bielen and Al Manbeian participated via telephone.

Members absent:

Rep. Lynn Hemingway, Sherrie Hayashi, Kerry Casaday, Steve Fairbanks

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

1. Welcome and Introductions

Kimberley Jones chaired the meeting. She noted that Randy Simmons was going to arrive late and Sen. Mayne would be leaving early. Tom Bielen and Al Manbeian are participating via telephone.

Sen. Mayne distributed a resolution she has prepared for the legislature. Entitled "Privatization of Government Services Joint Resolution", the resolution recognizes there are appropriate circumstances for privatizing a government service but urges it be done after all other possible delivery options are explored, the public good be identified and outcomes measured, and done transparently. She is seeking comment from board members who may contact her about it. The board did not discuss the resolution.

2. Public Comment (10 minutes)

Chairwoman Jones invited members of public to comment.

a. Nate Andelin, President, Relational Data Corporation, again addressed his complaint against the Utah State Office of Education (USOE) respecting student information systems. He reminded the board that he was asked when he presented in November if USOE had erected barriers against competition. He said the USOE board had effectively done that. Noted the dynamics between that board and its staff makes it difficult. He acknowledged that the board intends to review his complaint via advisory committee.

3. Board Business/Minutes

a. Minutes from December 12, 2013

Motion: Manuel Torres moved to approve the minutes of the December 12, 2013 meeting. CARRIED

b. Advisory Groups or Committees

Chairwoman Jones noted three advisory committees have been formed and appointed the following persons to them:

- **Privatization Process Advisory Committee:** Brian Gough (chair), Kimberley Jones, Randy Simmons, Rep. Lynn Hemingway, and Chad Whitlock (GOMB). This committee will work to develop the privatization review process, accounting method, and standards, rules, etc. required by state law.
- **Competition Review Advisory Committee:** LeGrand Bitter (chair), Rep. Johnny Anderson, Manuel Torres, and Louenda Downs. This committee will investigate complaints of unfair competition. To date, a review of student information systems at the Utah State Office of Education has been referred by the board.
- **Technology Services Review Advisory Committee:** Thomas Bielen (chair), Sen. Karen Mayne, Sherrie Hayashi, and Steve Fairbanks. This committee will look at the privatization opportunities at the Department of Technology Services, beginning with Application Development. This was previously moved by the board.

Unassigned board members were invited to serve on these or other advisory committees. Staff will contact the chairs to set up meetings.

c. Request for Proposals (RFP)

Bob Myrick reported on the results of the RFP issued on behalf of GOMB and the board. On December 17, 2013 four bids were received. After review by an advisory committee of GOMB staff, board members and one Division of Purchasing staffer, a request was made for a best and final offer (BAFO) from the offerors. Evaluation of the proposals is ongoing and the advisory committee has identified a leading candidate it wishes to interview.

Motion: Louenda Downs moved to authorize the advisory committee to recommend, pending satisfactory results of an interview, that GOMB award the bid. CARRIED

d. Annual Report - due January 15, 2014

The board reviewed the final draft prepared by staff. An earlier draft was previously distributed to the board for review and comment.

Motion: Bob Myrick moved to approve and issue the annual report. CARRIED

3. Commercial Activities Inventory

a. Department of Agriculture and Food (UDAF)

Kyle Stephens, Robert Hougaard, and Rob Larsen were present to address the board. Deputy Commissioner Stephens advised that the LuAnn Adams was recently appointed as the new Commissioner.

UDAF's eight divisions, 200-plus employees, and \$29 million budget exists to promote healthy growth in and protection of Utah's food supply. The department is guided by 78 administrative rules. They shared an Organic Program case study concerning inspections. Noted the program had been reviewed

for privatization years ago but the industry came to the legislature to keep it in state via UDAF. The case study provided data on the various costs to certify agricultural products as organic. Utah's costs are in line with one private organization and lower than another's. It certifies 61 of the 99 Utah producers.

During questioning, board members heard in response that:

- fees charged by UDAF cover most of the cost for the service but probably not training costs (about \$3,000 each training times three trainings); the state's inspectors have other duties;
- Utah agricultural businesses wanted the state to keep the program here because it trusted UDAF, costs were spent here, and inspectors were local; timeliness was similar to the outside certifiers.

b. Department of Natural Resources (DNR)

Dennis Carver, Finance Director, provided an overview of the department. DNR has a \$180 million budget, approximately 1,300 FTEs (which includes a large seasonal workforce), and several divisions. DNR, in practice, looks to see if the private sector does it better or cheaper than it can be done internally. By way of example, DNR noted that the tree nursery in Forestry, Fire and State Lands (FFSL) was privatized many years ago. Mr. Carver added that the Division of Wildlife Resources issues hunting tags and licenses through the private sector and the internet. Watershed Programs (pre-fire suppression projects) rely on private contractors to complete projects. There are concessionaires in every state park. Biological studies of wildlife are done with private partners. Mine closings are done with private contractors.

Fred Hayes, Division of State Parks and Recreation, discussed golf courses. Last year, the division did a request for information that had only one golf course management company respond. Billy Casper Golf's study showed a net loss to the state to have the private sector manage all four of its courses. Wasatch Mountain Golf Course is the only course to stand on its own. The division is trying to negotiate a modified management agreement for the courses that would split net fees. No private sector manager will want to cover debt services for state-owned golf courses.

To a question about private management of all state parks, Mr. Hayes stated that a trial study of two parks resulted in a loss. Commented that Park Rangers also manage OHV (Off Highway Vehicle) programs and perform law enforcement functions. Also noted that the division manages some parks for the US Bureau of Land Management (BLM) and some local entities. Another difficulty arises with a suggestion to sell parks lands (or golf courses) to the private sector in that some properties are encumbered by terms of property grants. Some require the state to operate a site in perpetuity; there is a legal problem created when changing the intended use of a property.

Board members requested a copy of the golf study.

Mr. Hayes noted also that in the OHV program all training is done by private sector.

c. Department of Public Safety (DPS)

Jeff Carr, Deputy Commissioner, with Amy Lightfoot and Alice Moffatt, discussed DPS' 11 divisions and 100 services, calling most inherently governmental and mostly of a law enforcement focus.

There have been limited privatization efforts in the department, most successfully where outsourcing was

appropriate: Commercial Drivers' Licenses (CDLs), the Motorcycle Safety Program, and Concealed Weapons Permits were mentioned. There are over 200 private CDL examiners in the state, 65 motorcycle safety instructors, and the bulk of CWP holders are trained privately.

Of the six items in the Commercial Activities Inventory submitted that were questioned by the analyst, some fingerprinting functions can and are done privately but those are limited by an inability to access databases with high privacy standards, such as the Utah Criminal History Database. Such limitations leave operators able only to access court records.

d. Department of Veterans' and Military Affairs (DVA)

Todd Hansen, Director, talked about the three core services provided by the agency; veterans outreach, nursing homes, and the cemetery. The agency has 15 employees and a \$2.2 million budget. The programs are guided financially by the federal Veterans' Administration (VA). There are private sector competitors for all these services but the VA will pay costs only at state facilities. The state does not have the ability to designate more nursing homes and cemeteries as the VA sets limits based on state population.

4. Review Privatization of an Activity

None

5. Review Issues Concerning Agency Competition with the Private Sector

a. Utah System of Higher Education (USHE)

Commissioner Dave Buhler addressed the board concerning higher education encroaching on the private sector as discussed in Report 2013-05, A Performance Audit of Higher Education's Competition with the Private Sector, from the Office of the Legislative Auditor General.

The Board of Regents oversees eight public universities at low cost to the taxpayer and students. Those institutions actively implement privatization or outsourcing opportunities. He noted that there is a duty to fund the schools, and sometimes that brings competition with the private sector. Commented that there is irony in audit findings: in 2011, USHE was criticized for not raising enough money [see Report 2011-08: A Performance Audit of Higher Education Operating and Maintenance Funding]. USHE has addressed its policies R550 and R555 identified in the audit and will be taking recommendations to the Board of Regents.

During questioning, board members heard in response that:

- USHE policies do result in the creation of monopolies (e.g., food services) on campus but it is a balancing act to seek revenues (e.g., licensing fees) that fund universities' operations;
- Red Zone stores are not in compliance with policies; proposals will satisfy the audit, provide better private sector grievance procedures and encourage competition.

Rep. Anderson encouraged enterprises such as Red Zone to contract with private retailers to accomplish its mission off-campus.

Sen. Stephenson wondered about the culture of higher education, noting "degrees to nowhere" are

universities' profit centers which cover the specialized degrees. Noted premium fees for STEM-related (science, technology, engineering and math) degrees and suggested perhaps funding should focus there.

Discussion also touched on Western Governors' University (WGU) which is accepted by other states but not included in Utah's System of Higher Education. Commissioner Buhler noted that WGU does not receive state dollars but students can access PELL Grants.

6. Other Business/Adjourn

Motion: Bob Myrick moved to adjourn. CARRIED

Scheduled Board meetings:

- Thursday, April 10, 2014 at 2 pm in 20 House Building
- Advisory Committees will be scheduled as needed.