



**State of Utah**

**GARY R. HERBERT**  
*Governor*

**SPENCER J. COX**  
*Lieutenant Governor*

## **FREE MARKET PROTECTION & PRIVATIZATION BOARD**

**KIMBERLEY JONES**  
*Chair*

January 14, 2016

Governor Gary R. Herbert  
Office of the Governor

President Wayne L. Niederhauser  
Utah State Senate

Speaker Greg H. Hughes  
Utah State House of Representatives

Members of the Utah State Legislature

### **2015 Annual Report of the Free Market Protection and Privatization Board**

The Free Market Protection and Privatization Board (“the Board”) was established by the legislature (see UCA 63I-4a-203(1)) to:

(a) determine whether an activity provided by an agency could be privatized to provide the same types and quality of a good or service that would result in cost savings; (b) review privatization of an activity...; (c) review issues concerning agency competition with one or more private enterprises...; [and] (d) recommend privatization of an agency if a proposed privatization is demonstrated to provide a more cost efficient and effective manner of providing a good or service.

The *Free Market Protection and Privatization Board Act* further directs the Board to:

(h)(i) prepare an annual report for each calendar year that contains: (A) information about the board's activities; (B) recommendations on privatizing an activity provided by an agency; and (C) the status of the inventory created under Part 3, Commercial Activities Inventory and Review; (ii) submit the annual report to the Legislature and the governor by no later than January 15 immediately following the calendar year for which the report is made; and (iii) submit, before November 1, an annual written report to the Government Operations Interim Committee.

The Governor’s Office of Management and Budget (GOMB) staffs the Board (see UCA 63I-4a-202(5)).

## Update on Prior Recommendations to Privatize an Activity

In January 2015, the board issued its annual report for 2014 and included recommendations to develop a property damage subrogation pilot project and to eliminate unfair competition and privatize the state's student information system.

### **1. Property Damage Subrogation Pilot – Department of Transportation**

The property damage subrogation pilot would have outsourced on a trial procurement basis property damage claims management involving state highway infrastructure. However, certain legislative changes were needed and the proposed bill (HB 370) failed in committee. There has been no further action on this recommendation.

### **2. Student Information Systems – State Office of Education (USOE)**

The board recommended five changes to eliminate unfair competition in student information systems (SIS) and made two recommendations concerning the privatization of Aspire, the state-developed, owned, and operated SIS.

During the Legislature's General Session, the State Superintendent of Public Instruction indicated a willingness to work on the proposals during the interim and the Public Education Appropriations Subcommittee moved that the State Office of Education implement the board's recommendations. However, the Executive Appropriations Committee took no action on these recommendations.

On November 24, 2015, the Public Education Appropriations Subcommittee heard testimony on the matter. The subcommittee heard that USOE has proposed to establish a fee for the use of Aspire, that a public hearing was held, but no direct action has been taken by the State Board of Education (SBOE), which has requested more information from staff as to costs to non-Aspire local education agencies (LEAs). A request for a Legislative Audit was made.

At our December 10, 2015 board meeting, USOE discussed the fee, noted opposition at the public hearing, and the SBOE's request for more information. It does not surprise us that some LEAs oppose the fee as USOE's plan to return funding to all LEAs on a per student basis will not cover the full costs for Aspire for those LEAs that do use it. While the fee does accomplish our recommendation about transparency, no effort appears to have been made with regard to consideration for those LEAs for whom the change will pose a burden (temporary for most, permanent perhaps for necessarily existent schools).

Our original recommendations included a call for a Legislative Audit. We agree that *there is need for an external audit*. We further recommend that the legislature provide temporary support (perhaps on a phased basis) for LEAs using Aspire. In this matter, we believe that the privatization (partial or otherwise) of Aspire will occur only if the legislature requires and facilitates it.

## Information about the Board's Activities

Last year, we noted that the Board needed a workable process for the identification and evaluation of potential privatization opportunities. With the assistance of Sequoia Consulting Group, we developed a set of principles, assessment tools, strategies, and approaches consistent with its duties.

In April, the Board approved a monograph entitled **Process for Evaluation of Alternative Service Delivery Strategies**. The process includes two surveys that help identify and evaluate the various elements pertinent to a privatization recommendation. The process also outlines a recommended cost analysis and performance contracting guidelines.

Staff relies on the first of two surveys to inform and update the Commercial Activities Inventory.

It is noteworthy to point out that while the most common privatization activities are contracting out, selling assets, or some form of public-private partnerships, the process identifies 14 alternative service delivery strategies, hence we have omitted privatization from the name of the monograph.

Still, we recognize that more work needs to be done to help agencies see the process of evaluation as a helpful tool not a threat to people and programs in state agencies. That will be a priority in 2016.

Some agency highlights are below. The board is continuing to review agencies and has started some preliminary work on specific functions.

### **1. Health**

The board's evaluation process initially identified State Labs as a possible study. The public policy benefits outweighed any potential savings. Health indicated that they were working on a privatization effort regarding pharmacy rebates which has been confirmed as moving forward in January. A future decision on Medicaid Management Information System (MMIS) support outsourcing is at least two years into the future. Even so, MMIS is being developed with private sector partners already.

### **2. Alcoholic Beverage Control**

Prior to the process now underway at the Governor's direction, DABC met with the board to discuss its programs. The Washington State experience with privatization was discussed. While there is some interest in looking at DABC further, the board declined any specific direction.

### **3. Transportation**

UDOT staff has been looking at the feasibility of expanding contracting of certain maintenance activities. *We support that effort.* What makes UDOT's efforts unique is that it sees outsourcing as a means to do more with what they have without adding or decreasing staff resources.

#### 4. **Administrative Services: Fleet Operations**

In March 2015, Fleet Operations began a multi-agency pilot with Enterprise Car Rental to provide fleet vehicles. Based on initial results, the division is expanding the pilot.

The division is now evaluating responses to a request for proposals to provide purchase and acquisition, sales of surplus, and maintenance of vehicles. If satisfactory, the division hopes to award and implement later this year.

*The Board recommends* to the legislature the removal of “statutory exemptions” for institutions of higher learning, the Schools and Institutional Trust Lands Administration, and any other exempted agency the legislature deems fit. The issue is that some agencies are statutorily exempted at UCA 63I-4a-102(b) from review by the board.

#### Status of the Commercial Activities Inventory

Section 302 of the *Free Market Protection and Privatization Board Act* requires the compiling and posting of an updated inventory of activities of the agencies, classified as to whether the activity is commercial or governmental in nature. Work on the inventory is ongoing.

#### Acknowledgements

We wish to acknowledge and thank for their service Tom Bielen, Brian Gough, and Louenda Downs whose terms ended in 2015.

Respectfully submitted,

### ***Free Market Protection and Privatization Board***

Kimberley Jones, Chair  
Jacquie Nielsen, Vice-Chair  
Sen. Howard Stephenson  
Sen. Karen Mayne  
Rep. Johnny Anderson

Travis Dimick  
Dean Drew  
Randy Park  
Manuel Torres  
Al Manbeian  
Robert Myrick

Russell Anderson  
Rick Jones  
Steve Fairbanks  
Shawn Milne  
LeGrand

*For copies of this report, past reports, minutes, the Commercial Activities Inventory, or other Board materials, please go to <http://gomb.utah.gov/operational-excellence/privatization-board/>, or contact Clifford Strachan, Program Specialist, Governor’s Office of Management and Budget, at 801-538-1861. Information on meetings is posted on the Utah Public Notice Website at <http://www.utah.gov/pmn/index.html>.*