



FREE MARKET PROTECTION & PRIVATIZATION BOARD

KIMBERLEY JONES
Chair

State of Utah

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Governor

SPENCER J. COX
Lieutenant Governor

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Office of the Governor

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Utah State Senate

Speaker Greg H. Hughes
Utah State House of Representatives

Members of the Utah State Legislature

2014 Annual Report of the Free Market Protection and Privatization Board

Highlights

This report by the Free Market Protection and Privatization Board (“the Board”) includes information on the Board’s activities for 2014. Three advisory committees began work in 2014 one of which is improving the process for evaluating privatization potential. Three projects were completed since the last annual report:

- a total cost of ownership study of human resources and payroll activities (no recommendation);
- a staff level working group proposed a property damage subrogation pilot project (the board recommends the project along with needed legislative changes); and
- a review of a complaint of unfair competition regarding student information systems (the board recommends changes to funding and privatizing the activity).

Here is our report for 2014.

Authority

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)).

Information about the Board’s Activities

In last year’s annual report, the Board advised that it had reworked its mission based on legislatively required duties, commenced work on the processes to follow in fulfilling its mission, and has created advisory committees to focus its efforts. That work continues.

Privatization Process Advisory Committee

The Board determined that it needed a workable process for the identification and evaluation of potential privatization opportunities. It hired a consultant to develop a set of principles, assessment tools, strategies, and approaches consistent with its duties. For several months we have been using a new survey to evaluate an activity’s potential for privatization. Work continues as we evaluate the new process. The Board expects to produce a workbook for use by staff and agencies.

Competition Review Advisory Committee

This advisory committee exists to review issues concerning state agency competition. It has considered two issues this year. A complaint that a state university competes with the private sector for aerial surveying services was not pursued. The other, a complaint that the Utah State Office of

Education's Information Technology Division competes with the private sector in the development and operation of student information systems was recently concluded. The Board found that the agency does appear to compete unfairly with private sector vendors and issued recommendations to eliminate the unfair competition and pursue privatization of the Aspire application.

Technology Services Review Advisory Committee

The Board intended to review application development services in the Department of Technology Services but found its review conflicted with operational excellence initiatives by the Governor's Office of Management and Budget. The review is currently on hold until GOMB completes its work.

Recommendations on Privatizing an Activity

The Board considered a variety of projects this past year and we wish to report on three of these. With respect to any Board recommendations, the applicable agency, the legislature, or the governor (for executive branch agencies) may initiate any implementation(s) of these recommendations.

1. Total Cost of Ownership Study – Human Resource Management and Payroll

The Department of Human Resource Management, the Payroll office in the Division of Finance at Department of Administrative Services, and GOMB participated in a cost study to determine the statewide costs of providing these human resource and payroll services. Costs were evaluated in the following areas: payroll, time and labor, human resources administration, recruiting and on-boarding, compensation, performance management and learning management; these costs were benchmarked against similar data collected by Sourcing Analytics from 794 companies or organizations. The study found that the State of Utah spends at total of \$23 million per year or \$1,442 per employee per year (PEPY) for these activities. Specific comparisons for payroll, time and labor, and human resource administration costs has our state government spending \$472 PEPY compared to \$510 for employers with more than 10,000 employees, \$719 for government employers, and \$779 for a peer group of 466 companies in the database.

While the board makes no recommendations respecting privatization of these services, the state's biggest costs are in field labor and that the likeliest cost improvements are to be made there. The consultant noted that improvements to self services (such as the creation of the Employee Resource Information Center or ERIC and current proposals to improve managerial self services through the HRIS project) will provide the best results, even if some of those results are only found as productivity gains. He suggested that if a broad system redo is in the works that the state should consider combining all HR and payroll functions and see what the market can provide.

The Department of Human Resource Management recognizes the need to replace its current core human resource information systems (HRIS) and is considering options for that project.

2. Property Damage Subrogation Pilot Project

A private enterprise approached various State of Utah agencies offering to outsource the state's property damage claims system. Board staff worked with agencies (Division of Risk Management and Office of State Debt Collection in the Department of Administrative Services, Department of Transportation, and Salt Lake County) to discuss the potential and identify obstacles and presented the Board with an outline for a property damage subrogation pilot project.

The primary objectives of this pilot project are to i) increase the percentage and amount of third party damages recovered for state and local agencies; ii) position the state and its political subdivisions to effectively and efficiently collect third party damages in the future; iii) obtain insight on negotiating future cooperative contracts and service level agreements for recovery services; and iv) outsource a service readily provided in the private sector.

To establish this pilot project, certain state code amendments are needed: i) amend UCA 41-6a-409 to authorize the collection of costs based on a scale or industry standard, rather than waiting for actual costs of repairs to be determined; and ii) amend or create a work around for the normal fee process to enable the vendor to charge a percentage-based "fee" for services that are over and above the amount of funding received by the state for the damage.

The Board made three recommendations:

- That GOMB coordinate with interested state and other agencies to develop and issue one or more test use contract(s) for property damage subrogation.
- 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.
- That the legislature in its 2015 general session introduce and pass amendments to State Code as suggested [in the] project outline.

Without legislative changes, the pilot cannot proceed.

3. Privatization of USOE's Aspire Application

As noted earlier in this report, the Board's Competition Review Advisory Committee reviewed a complaint that the Utah State Office of Education unfairly competes with the private sector in the development and operation of student information systems (SIS). Among other remedies sought, the petitioner asked that the Aspire software application be privatized.

The Board found that while USOE has the authority in statute and the appropriations to support its activity the agency does appear to compete unfairly and privatization is an option.

We found that USOE's provision of Aspire (the state's SIS) at no charge to local education agencies (LEAs) is a significant factor in the procurement process. That funding for SIS is provided at USOE rather than at the LEAs is a prohibitive factor for LEAs seeking to select an SIS. It is no wonder that Aspire is the most widely used SIS in Utah in terms of the number of LEAs served (though when measured as a percentage of students). LEAs pay no fees to USOE for Aspire – not for licenses, implementation, upgrades, or operation.

The agency also promotes the application exclusively in its meetings and communications with LEAs' information technology personnel and there is an apparent conflict of interest in that the same division responsible for the Aspire application is also responsible for approving other SIS applications used by some LEAs. We learned also that the agency previously included, at public expense, some private vendors in the creation of a standardized connection (called an SIF agent) while not making it available to all private vendors after the fact.

In considering privatization of Aspire as an option, we found that based on current costs when calculated against the number of students for whom the application is used, Aspire is in the range for costs as charged by private vendors, generally \$4 to \$5 per student.

While our recommendations below include steps toward privatization, we also found some cautions to be considered. USOE does need and has capacity for support of any SIS reporting to the state. USOE has valid concerns as to data security and should be able to approve student information systems connecting to its systems. Whatever privatization option is to be implemented, LEAs should continue to be able to keep Aspire post privatization.

The Board issued a report with the following recommendations:

1. Recommendations to eliminate unfair competition:
 - a. That the legislature review the agency's vendor selection and approval process with a view to eliminating conflict of interest;
 - b. That the agency fairly promote all SIS options approved in the state, not just Aspire;
 - c. Whereas the agency established an appropriate SIF agent in collaboration with other SIS vendors at state expense, the SIF agent should be made available to all potential SIS vendors seeking to compete in the market.

- d. In the promotion of transparency and interest of local control by LEAs, that funding for USOE IT be reduced by most of Aspire's non-allocated costs and those funds be shifted to all LEAs on a per student basis and that Aspire be funded by charge to its users, including a fair and reasonable assessment for licenses.
- e. That consideration should be given to LEAs who have subscribed to an uncharged service and should be given funding consideration on a short term basis as needed.

2. Recommendations to privatize:

- a. That careful consideration be given to reviewing the pros, cons, and costs of privatizing Aspire by sale, licensing, or some form of managed competition and that the legislature independently assess via audit, evaluation, or market study the viability and marketability of Aspire.
- b. That the legislature independently assess and determine the minimum data and security needs to be maintained by the agency should all SIS systems be available only in the private sector.

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. The reviews commenced last year and continued this year with reviews of 10 agencies. The list is posted at <http://gomb.utah.gov>.

The Board is working to revise the assessment of agencies to be consistent with the new process. Going forward, the inventory will continue to be updated agency by agency.

Acknowledgements

The Board wishes to acknowledge and thank for their service the following members whose terms ended in 2014:

- Kerry Casaday
- Sherrie Hayashi
- Rep. Lynn Hemingway
- Randy Simmons (past chair)

Respectfully submitted,

Free Market Protection and Privatization Board

Kimberley Jones, Chair
Brian Gough, Vice-Chair
Sen. Howard Stephenson
Sen. Karen Mayne
Rep. Johnny Anderson
Rep. Lynn Hemingway (term ended December 2014)
Thomas Bielen
Randy Park
Manuel Torres
Al Manbeian
Robert Myrick
Russell Anderson
Rick Jones
Jacquie Nielsen
Steve Fairbanks
Louenda Downs
LeGrand Bitter

Staff: Clifford Strachan, Governor's Office of Management and Budget

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>.