

Chapter 10d Utah Privatization Act

73-10d-1 Public policy.

The Legislature declares that the policy of this state is to assure its citizens adequate public services, including drinking water, water, and wastewater collection, treatment and disposal at reasonable cost. Adequate public services are essential to the maintenance and general welfare of the citizens of this state and to the continued expansion of the state's economy, job market, and industrial base.

The cost of constructing, owning, and operating capital facilities to meet the anticipated growth in the demand for those public services is becoming increasingly burdensome to political subdivisions, particularly to the smaller communities of the state.

It is desirable that innovative financing mechanisms be made available to assist the communities of this state to develop capital facilities to provide adequate public services at reasonable cost. Private sector ownership and operation of capital facilities providing public services together with industrial development revenue bond financing of those facilities, can result in cost savings to communities contracting for those public services.

It is in the best public interest of the state and its citizens that political subdivisions be authorized to provide public services by access to facilities owned and operated by private persons and financed through the issuance of industrial development revenue bonds, and to contract with private persons for the long-term provision of the services of those facilities.

Amended by Chapter 245, 1985 General Session

73-10d-2 Citation of chapter.

This act shall be known and may be cited as the "Utah Privatization Act."

Enacted by Chapter 19, 1984 Special Session 2

Enacted by Chapter 19, 1984 Special Session 2

73-10d-3 Definitions.

As used in this chapter:

- (1) "Agreement" means a short-term agreement or a long-term agreement.
- (2) "Bonds" means obligations issued by a municipality or a county under Title 11, Chapter 17, Utah Industrial Facilities and Development Act, and the provisions of this chapter.
- (3) "Cost" means, with respect to any privatization project or facility related thereto, without limitation:
 - (a) all costs of designing, planning, acquiring, constructing, reconstructing, modifying, improving, maintaining, equipping, extending, furnishing, and placing in service any privatization project, including architectural, planning, engineering, legal, and fiscal advisors' fees or costs, and any costs incident to the acquisition of any necessary property, easement, or right-of-way;
 - (b) any costs incurred for preliminary planning to determine the economic or engineering feasibility of a proposed privatization project, including, without limitation, costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications, and inspection and supervision of the construction of any facility;
 - (c) all costs incident to the purchase, installation, or financing of equipment, machinery, and other personal property required by a privatization project;

- (d) all costs incident to the authorization and issuance of bonds, including accountants' fees, attorneys' fees, financial advisors' fees, underwriting fees, including bond discount, and other professional services and printing costs;
 - (e) all costs incident to the establishment and funding of appropriate reserve funds; and
 - (f) interest estimated to accrue on any bonds issued to finance a privatization project for a reasonable period of time prior to construction, during construction, and for a reasonable period of time after construction.
- (4) "Drinking water project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses which has at least 15 service connections or serves an average of 25 individuals daily for at least 60 days of the year and includes collection, treatment, storage, and distribution facilities under the control of the private owner/operator and used primarily with the work or facility, and collection, pretreatment, or storage facilities used primarily in connection with the work or facility but not under the control of the private owner/operator, and any related structures and facilities.
 - (5) "Facility" means any structure, building, machinery, system, land, water right, or other property necessary or desirable to provide the services contemplated by a privatization project, including, without limitation, all related and appurtenant easements and rights-of-way, improvements, utilities, landscaping, sidewalks, roads, curbs and gutters, and equipment and furnishings.
 - (6) "Governing authority" means the persons, board, body, or entity in which the legislative powers of a political subdivision are vested.
 - (7) "Governing body" means the body in which the general legislative powers of a municipality or county are vested.
 - (8) "Long-term agreement" means an agreement or contract having a term of more than five years and less than 50 years.
 - (9) "Municipality" means any incorporated city or town in the state, including cities or towns operating under home rule charters.
 - (10) "Political subdivision" means the state or any municipality, county improvement district, water conservancy district, special service district, drainage district, metropolitan water district, irrigation district, separate legal or administrative entity created under the Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of the state.
 - (11) "Private owner/operator" means a person that is not a political subdivision and which owns and operates a privatization project.
 - (12) "Privatization project" means all or part of any drinking water, water, or wastewater project which is owned or operated by a private owner/operator, and provides the related services to political subdivisions.
 - (13) "Short-term agreement" means any contract or agreement having a term of five years or less.
 - (14) "Supervising agency" means the Water Development Coordinating Council created in Section 73-10c-3.
 - (15) "Wastewater project" means any sewer, sewage system, sewage treatment facility, lagoon, sewage collection facility and system and related pipelines, and all similar systems, works, and facilities necessary or desirable to collect, hold, cleanse, or purify any sewage or other polluted waters of this state, and related structures and facilities.
 - (16) "Water project" means any work or facility necessary or desirable to conserve, develop, protect, or treat the waters of this state including, without limitation, any reservoir, diversion dam, electrical generation system, irrigation dam and system, culinary water system, water work, water treatment facility, canal, ditch, artesian well, aqueduct, pipeline, conduit, drain, tunnel, and related structures and facilities.

- (17) "Waters of this state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, irrigation system, drainage system, or other body or accumulation of water, whether surface, underground, natural, artificial, public or private, or other water resource of the state, which is contained within or flows in or through the state.

Amended by Chapter 93, 1990 General Session

73-10d-4 Notice of intention to enter privatization project -- Petition for election -- Election procedures -- Powers of political subdivision -- Public bidding laws not to apply.

- (1) The governing authority of any political subdivision considering entering into a privatization project agreement shall issue a notice of intention setting forth a brief summary of the agreement provisions and the time within which and place at which petitions may be filed requesting the calling of an election in the political subdivision to determine whether the agreement should be approved. The notice of intention shall specify the form of the petitions. If, within 30 days after the publication of the notice of intention, petitions are filed with the clerk, recorder, or similar officer of the political subdivision, signed by at least 5% of the qualified electors of the political subdivision (as certified by the county clerks of the respective counties within which the political subdivision is located) requesting an election be held to authorize the agreement, then the governing authority shall proceed to call and hold an election. If an adequate petition is not filed within 30 days, the governing authority may adopt a resolution so finding and may proceed to enter into the agreement.
- (2) If, under Subsection (1), the governing authority of a political subdivision is required to call an election to authorize an agreement, the governing authority shall adopt a resolution directing that an election be held in the political subdivision for the purpose of determining whether the political subdivision may enter into the agreement. The resolution calling the election shall be adopted, notice of the election shall be given, voting precincts shall be established, the election shall be held, voters' qualifications shall be determined, and the results shall be canvassed in the manner and subject to the conditions provided for in Title 11, Chapter 14, Local Government Bonding Act.
- (3) A political subdivision may, upon approval of an agreement as provided by Subsections (1) and (2) and subject to the powers and rules of the supervising agency:
- (a) supervise and regulate the construction, maintenance, ownership, and operation of all privatization projects within its jurisdiction or in which it has a contractual interest;
 - (b) contract, by entry into agreements with private owner/operators for the provision within its jurisdiction of the services of privatization projects;
 - (c) levy and collect taxes, as otherwise provided by law, and impose and collect assessments, fees, or charges for services provided by privatization projects, as appropriate, and, subject to any limitation imposed by the constitution, pledge, assign, or otherwise convey as security for the payment of its obligations under any agreements any revenues and receipts derived from any assessments, fees, or charges for services provided by privatization projects;
 - (d) require the private owner/operator to obtain any and all licenses as appropriate under federal, state, and local law and impose other requirements which are necessary or desirable to discharge the responsibility of the political subdivision to supervise and regulate the construction, maintenance, ownership, and operation of any privatization project;
 - (e) control the right to contract, maintain, own, and operate any privatization project and the services provided in connection with that project within its jurisdiction;
 - (f) purchase, lease, or otherwise acquire all or any part of a privatization project;

- (g) with respect to the services of any privatization project, control the right to establish or regulate the rates paid by the users of the services within the jurisdiction of the political subdivision;
 - (h) agree that the sole and exclusive right to provide the services within its jurisdiction related to privatization projects be assumed by any private owner/operator;
 - (i) contract for the lease or purchase of land, facilities, equipment, and vehicles for the operation of privatization projects;
 - (j) lease, sell, or otherwise convey, as permitted by state and local law, but without any requirement of competitive public bidding, land, facilities, equipment, and vehicles, previously used in connection with privatization projects, to private owner/operators; and
 - (k) establish policies for the operation of any privatization project within its jurisdiction or with respect to which it has a contractual interest, including hours of operation, the character and kinds of services, and other rules necessary for the safety of operating personnel.
- (4) Any political subdivision may enter into agreements with respect to privatization projects. Agreements may contain provisions relating to, without limitation, any matter provided for in this section or consistent with the purposes of this chapter.
- (5) Any agreement entered into between a political subdivision and a private owner/operator for the provision of the services of a privatization project is considered an exercise of that political subdivision's business or proprietary power binding upon its succeeding governing authorities. Any agreement made by a political subdivision with a private owner/operator for payment for services provided or to be provided may not be construed to be an indebtedness or a lending of credit of the political subdivision within the meaning of any constitutional or statutory restriction.
- (6) The provisions of the various laws of the state and the rules or ordinances of a political subdivision which would otherwise require public bidding in respect to any matter provided for in this chapter shall have no application to that matter.

Amended by Chapter 105, 2005 General Session

73-10d-5 Bond issues -- Debt not authorized -- Project not a public utility -- Financing as an industrial facility.

- (1) The governing body of any municipality or county may, under Title 11, Chapter 17, Utah Industrial Facilities and Development Act, and this chapter, issue bonds to finance the costs of privatization projects within or partially within its own jurisdiction, on behalf of private owner/operators, all pursuant to contracts and other arrangements provided for in the proceedings under which the bonds are issued. Privatization projects shall provide services to one or more political subdivisions, which may include the municipality or county issuing bonds.
- (2) All bonds issued under this chapter shall be limited obligations of the municipality or county issuing the bonds. Bonds issued under this chapter or interest on them do not constitute nor give rise to a general obligation of the state, the issuer of the bonds, or any other political subdivision, nor are they a charge against the general credit or taxing powers of the state, the issuer, or any other political subdivision. This limitation shall be plainly stated on the face of the bonds. The bonds are not payable from any funds other than those of the municipality or county that shall be specifically pledged for that purpose in accordance with this chapter and Title 11, Chapter 17, Utah Industrial Facilities and Development Act.
- (3) All expenses incurred in carrying out any provision of this chapter with respect to a privatization project are payable solely as provided under this chapter, and nothing in this chapter shall be construed to authorize the issuer of bonds to incur indebtedness or liability on behalf of or payable by the state or any political subdivision.

- (4) A privatization project or its private owner/operator is not a "public utility" for any purpose of Title 54, Chapter 2, General Provisions, with respect to any privatization project or the services provided thereby.
- (5) For purposes of Title 11, Chapter 17, Utah Industrial Facilities and Development Act, a privatization project is a "project" as defined in Section 11-17-2.

Amended by Chapter 93, 1990 General Session

73-10d-6 Contents of agreements and reports required where bonds are issued that mature more than 10 years after project begins operation.

- (1) If a municipality or county issues bonds to finance the cost of a privatization project and the bonds mature more than 10 years after the privatization project begins operation, the political subdivision contracting with a private owner/operator for the services of the privatization project shall assure that the minimum level of services under contract, payment for the services, and the supply of drinking water, water, or wastewater required in connection with the provision of those services will be sufficient to generate enough income, after payment of operating expenses, to fund reserves for repair and replacement, and to discharge any other obligation of the political subdivision to the private owner/operator under any agreement, and together with all other sources of revenue pledged for payment of the bonds, to pay all principal and interest on the bonds during the term of the bonded indebtedness. The assurance may take the form of:
 - (a) long-term agreements, at least equal to the period of the bonded indebtedness, with other political subdivisions or other persons; or
 - (b) ordinances, franchises, or other forms of regulation requiring sufficient quantities of drinking water, water, or wastewater.
- (2) The supervising agency shall establish rules for periodic reporting by any political subdivision that establishes ordinances, franchises, or other forms of regulation under Subsection (1) and Subsection 73-10d-4(3). The reports shall include information about the services being provided by the privatization project and whether the charges made for those services together with all other sources of revenue pledged for the payment of principal and interest on the bonds, are sufficient to meet the debt service on the bonds.

Amended by Chapter 245, 1985 General Session

73-10d-7 Agreements by political subdivisions for privatization projects -- Joint interests.

- (1) Any one or more political subdivisions, or the United States or any of its agencies, may enter into long-term agreements with any person for joint or cooperative action related to the acquisition, construction, maintenance, ownership, operation, and improvement of privatization projects in accordance with the terms, conditions, and consideration provided in any long-term agreements. Any payments made by a political subdivision under a long-term agreement for joint or cooperative action may not be construed to be an indebtedness of or a lending of the credit of the political subdivision within the meaning of any constitutional or statutory restriction, and, except as required by this chapter and the constitution, no election is necessary for the authorization of any long-term agreement for joint or cooperative action.
- (2) Any one or more political subdivisions may construct, purchase, or otherwise acquire joint interests in any privatization project or any part of a privatization project, for common use with any private entity or other political subdivision, or may sell or lease to any other political subdivision or person a partial interest in a privatization project. Political subdivisions may

finance their joint interests in privatization projects in the manner provided for and subject to Title 11, Chapter 14, Local Government Bonding Act, if otherwise eligible thereunder to finance capital improvement.

Amended by Chapter 105, 2005 General Session