



BPSU REPORT: PUBLIC BODIES REFORM ACT

This report paper was developed by Bro. Jason Hayward, President and Bro. Edward Ball Jr., General Secretary of the BPSU. This report seeks to build on information provided in the BPSU's position paper and is specifically aimed to provide information on the Public Bodies Reform Act.

Report on the Public
Bodies Reform Act,
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Report Highlights

1. The Government's principal methodology for reform will include Public Service Mutuals, Outsourcing, Privatization and merging of bodies and offices.
2. It is evident that the Government is forcefully driving its agenda of neo-liberalism, an agenda that can be described as shifting control of economic factors from the public sector to the private sector.
3. The Union implores all public officers to consider this legislation a threat to their current terms and conditions of employment.
4. If the Bill was tabled in July 2014 'For Information Only', then the Government should have meaningful consultation with all key stakeholders, so that all are clear on Government's intent.
5. The BPSU is of the opinion that the establishment of the SAGE Commission and the Efficiency and Reform Authority is less about true reform of the public service but designed to carry out the Government's principal methodology of reform, privatization.
6. The UK legislation makes known which bodies can be merged, which will be reviewed for modified constitutional arrangements, funding arrangements and transfer of function. The UK legislation is far more transparent than the proposed Bermuda Legislation.
7. The BPSU believes that the Civil Service Executive, which includes the Cabinet Secretary, Head of Civil Service, Financial Secretary and Permanent Secretaries possess the knowledge and skill sets to drive true reform in the public service.
8. The pros and cons of privatization can be debated but research generally supports that privatization is accompanied with:
 - Increased fees to the public
 - Reduction in wages/salaries and benefits of staff
 - Reduction in the workforce
 - Increased senior management salaries
 - Lack of accountability and flexibility
 - Transfer of public assets
9. The Bermuda Bill provides for the creation of a Reform Authority and gives that Authority, together with a Minister, sweeping and almost unlimited powers in relation to privatizing government services, and changing the functions of other organizations receiving Government funding.

10. Unlike Bermuda, the UK provides that when making an Order, the Order must ensure the accountability of the Minister in formulating laws. There is no right of appeal or the ability to scrutinize the Authority or a Government Minister in the Bermuda Draft Bill, reducing accountability.
11. While on the face of it, the Draft Bermuda Bill 2014 follows the spirit of the UK Act, however, wording from the sections of the UK Act have been omitted, namely areas surrounding Consultation.
12. The BPSU calls on all public servants and members of the public to 'Say No' to the Government's reform agenda.

Public Service Reform

In June 2014, The Hon. Michael H. Dunkley, JP, MP, Premier and Minister of National Security updated the public on the Government's Public Service Reform Initiative, stating:

"In 2013, the SAGE Commission was established to evaluate and analyze operations of Government in line with international best practice.

The Commission sought to determine the best means of structuring Government, streamlining Government processes, improving delivery of services, and introducing cost saving measures coupled with greater transparency.

The SAGE Commission Report (dated 31 October, 2013) identified a number of challenges relating to Government operations and recommended a number of transformative measures.

The SAGE Report contained more than 200 recommendations and many more observations. The Government has already commenced work to address critical areas including:

- structure and accountability within the public service;
- reduction in the size and cost of the public service through disposal of non-core functions; and
- advancement of work that considers the implications of the structure of pension funds.

The SAGE Report, and the recommendations contained therein, combined with the many reviews and reports conducted by internal resources, as well as external consultants, serves as the foundation for Public Service Reform.

The Public Service Reform Initiative objectives are directly aligned with those set out for the SAGE Commission work.

It is expected that there will be seamless integration between the research and recommendation phase – The SAGE Commission era; and the implementation phase – the Public Service Reform initiative era. This alignment is critical if we are to achieve our overall aim.

A Public Service Reform Strategic Framework has now been completed and adopted by the service with a view for the implementation of meaningful actions that will result in substantial and sustainable change. To this end, several working groups have been established. These include:

- The Human Resources Working Group;
- The Asset Rationalization Working Group;
- The Digital Services Working Group; and
- The Pension and Benefits Working Group.

Honourable colleagues will already be aware of the proposed Efficiency and Reform Authority that will be established as a result of the proposed Public Bodies Reform Act.

This too represents, though with statutory authority and with a different structure, a working group charged with implementation.

Draft terms of reference for each of the working groups have been produced and preliminary short and medium term action plans are in the development stages. The action plans set out the steps to be taken to implement those SAGE Recommendations and other recommendations that the Government will determine that it supports.”

BTUC Questions on the Public Service Reform Initiative

The Bermuda Trade Union Congress (BTUC) drafted and submitted a number of questions to the Government for response. Below are some of the questions (relevant to topic) and Government’s responses.

1. What is the Public Service Reform Initiative and who heads it up?

The Head of the Civil Service, Mrs. Cherie Whitter, is in charge of the Public Service Reform Initiative and the sub-committees are charged with research and formulating recommendations for submission to the Cabinet.

The goals of the Public Service Reform are as follows:

- To streamline Government processes;
- To improve delivery of services;
- To make Government more efficient;
- To make Government more cost-effective;
- To make Government more transparent;
- To make Government more user-friendly; and

- To effectively manage the public finances.

2. What are the implications for all unions?

Cabinet is in the early stages of Public Service Reform. The Unions will be invited to participate in the process.

3. Will this reform be driven by the Civil Service?

The Public Service Reform Initiative will be driven by the Civil Service. It should be clear however, that the Premier will serve as the Champion of Public Service Reform and further, Public Service Reform is complex and embraces a number of elements that will include the Reform Authority. You will already be aware that the Reform Authority will include public and private sector representatives as well as Union representatives.

4. Will privatization be considered as a separate entity to the reform?

As noted above, Public Service Reform has many elements and the Reform Authority's remit is considered one of many components.

5. It has been reported that legislation will be tabled before the end of the current session, will there be consultation with the stakeholders before this happens?

The legislative process for the Reform Authority is being managed by the Ministry of Finance.

6. What is the make-up of the committee?

The Financial Secretary will release at a future date.

7. What is the timeline for implementation?

It is anticipated that the legislation will be tabled during the summer session.

8. Who is ultimately responsible for presentation?

The Minister of Finance has been charged with moving the legislative initiative forward.

- Human Resources Working Group
- Digital Services Working Group
- Asset Rationalization Working Group
- Pensions/Benefits Working Group (BTUC representative already identified)

That is an overview of the Reform Initiative.

Public Bodies Reform Act 2014

In March 2014, the Minister of Finance, E.T Bob Richards stated in the House of Assembly:

“I rise today to provide Honourable Members with an update on the status of the Public Bodies Reform Act. Honourable Members will recall that it was announced in the Budget Statement that in order to introduce reforms to Government's public bodies and related agencies so as to achieve financial savings and efficiencies in the delivery of public services, I intend to lay legislation entitled the "Public Bodies Reform Act" before Parliament before the end of this Budget session.

I can advise that significant progress has been made on this initiative. I have also decided that as part of the consultative process, a "for discussion" draft of this Bill will be provided to key stakeholders such as the unions, before it is tabled in the Legislature.

We anticipate that the discussion draft will be completed early April and the Ministry looks forward to any comments that the unions may have on this important Bill.

Honourable Members are advised that the Public Bodies Reform Act will provide for, amongst other things, the following:

- Establish the legal authority for the relevant Minister charged with the responsibility of the effected entity under the Bermuda Constitution, in consultation with the Minister of Finance to make various reforms to government departments, quangos, government funds, government boards & committees (i.e. abolish, merge, modify, transfer) and related legislation;
- Establish the Efficiency & Reform Authority reporting to the Minister of Finance and provide for its various powers, functions, responsibilities, operations and related provisions;
- Provide the requirement to consult before reforms are made;
- Provide the relevant Minister, in consultation with the Minister of Finance, with the discretionary power, upon making a reform order, to transfer property, rights and liabilities to an eligible person; and
- Enable the Minister of Finance to vary any applicable taxes related to such transfers.

It is important to note that any reforms to Government departments, quangos, Government funds, Government boards & committees will be provided for by the making of a Reform Order. Given the potential extent and implications of Reform Orders and the fact that Reform Orders will necessarily amend primary and subordinate

legislation, these orders will be subject to the affirmative resolution procedure. These Orders will only be made after a mandatory consultative period which will be embedded in the Act.

The Public Bodies Reform Act is an important piece of legislation, as it will allow Government to make the cost savings required as we seek to reduce the deficit. We recognize and understand people's concerns about this matter and will work carefully to ensure that the proposed reforms work in a manner that is responsible and fair to both the workers of the Government and Bermuda taxpayers."

In July 2014, The Hon. Michael H. Dunkley, JP, MP, Premier and Minister of National Security tabled the "For Information" Public Bodies Reform Bill. A Government spokesperson reported:

"The tabling of the Bill signals Government's commitment to the people of Bermuda to actualize certain reforms to Government's public bodies and related agencies to achieve financial savings and efficiencies in the delivery of public services."

"The draft Bill seeks to establish the Efficiency and Reform Authority. It also makes provision for a Mutual Support Fund and empowers Ministers to make various Public Bodies Reform Orders."

"The primary function of the Authority is to evaluate and analyze operations of the many departments, quangos and other Government entities in line with best practice to determine the most efficient structure for the delivery of services. The Authority will make recommendations to the Premier and the Minister of Finance jointly."

"The Government's principal methodology for reform will include Public Service Mutuals, Outsourcing, Privatization and merging of bodies and offices."

"The public should be aware that an earlier version of the draft Bill was circulated to the Bermuda Trade Union Congress (BTUC) and the Civil Service hierarchy in May and June of this year. Submissions have now been received from both groups. The BTUC replied with their comments on 9th July, 2014, and suggested that the Bill be tabled in the House on 18th July."

"Some amendments to the Bill based on the submissions received to date have already been undertaken and are reflected in the "For Information" Bill tabled in the House of Assembly earlier today. Others are still being analyzed and further amendments are anticipated."

BPSU's Position on Public Bodies Reform Act

It is evident that the Government is forcefully driving its agenda of neo-liberalism, an agenda that can be described as shifting control of economic factors from the public sector to the private sector. The Government has made clear their intentions to reduce the public service through the formulation of the SAGE Commission and adopting their recommendations. At the moment, the main method Government is using to push their agenda is the promotion of privatizing, outsourcing and mutualisation using the language of public service reform. The Public Bodies Reform Bill will be the vehicle in which these changes will become a reality.

The Union implores all public officers to consider this legislation a threat to their current terms and conditions of employment.

The BPSU and Bermuda Trade Union Congress sent a submission of objections, questions and concerns to the initial Draft Bill that was circulated to stakeholders in May 2014, which revealed a number of matters surrounding:

- The balance of the Constitution;
- Union representation on the Board;
- Usage of tax payer funds;
- The independence of key bodies from ministerial interference;
- Meaningful consultation with all stakeholders prior to the making of ministerial orders;
- The sale of Government property;
- The constitutional principle that primary legislation is amended or repealed only by Parliament and that as a democratic necessity, decisions of any ruling party remain subject to effective parliamentary scrutiny.

The Government drafters did incorporate some changes to the Bill tabled in July 2014, but the Bill is still worrisome and to date, the Unions have not received a response to our submission or consultation on the matter.

In August 2014, the BTUC drafted a letter to the Premier indicating that we continue to have grave concerns regarding the contents of the Public Bodies Reform Act 2014. We highlighted that we made a submission to Government that contained our concerns; in that submission, there were questions posed and there has been no reply to those questions. The Premier did respond to the letter but we have still not received answers to the original questions posed or any further consolation on the Bill.

If the Bill was tabled in July 2014 ‘For Information Only’, then the Government should have meaningful consultation with all key stakeholders, so that all are clear on Government’s intent. In addition, this will allow the Union, employees and members of the public to voice whatever questions, queries or concerns that they may have in relation to the Bill.

The BPSU has a number of concerns with the Bill that surround:

- **Reform vs Privatization;**
- **UK’s Public Bodies Act 2011 vs Bermuda’s Public Bodies Reform Act 2014;**
- **Consultation; and**
- **Parliamentary Scrutiny.**

Reform vs Privatization

The Government is slated to retable the Bill when the House reopens in November 2014 for debate and a vote. The Bill is proposing to grant the “Efficiency and Reform Authority” sweeping powers to reduce the number of public bodies and bring greater accountability, transparency and efficiency to the public sector. The Bill states in its Explanatory Memorandum that Government’s principal methodology for reform of the delivery of public services will include:

- Public Service Mutuals;
- Outsourcing;
- Privatization; and
- Merging of bodies and offices.

The BPSU finds the whole exercise of Public Service Reform to be a façade. The Act states, “the objective of the Authority shall be to review, evaluate and analyze the operations of public authorities to determine the best structure for streamlining public authorities to achieve the most efficient and cost-effective organizational structure and governing process for the delivery of public services.” This is the exact same exercise tasked to the SAGE Commission. **The BPSU are of the opinion that the establishment of the SAGE Commission and the Efficiency and Reform Authority is less about true reform of the public service but designed to carry out the Government’s principal methodology of reform, privatization.**

The BPSU believes that the Civil Service Executive, which includes the Cabinet Secretary, Head of Civil Service, Financial Secretary and Permanent Secretaries possess the knowledge and skill sets to drive true reform in the public service. The BPSU does not support reform being driven by the private sector in the form of a SAGE Commission or Efficiency and Reform Authority.

So why not attempt to honestly reform the civil and public services? Because the political will is more inclined to believe that the private sector does it better. Politicians in Bermuda generally believe that

senior civil servants are limited or incapable to implement policies in a timely and cost efficient manner and question if the expertise is within the service to deliver Government policies.

The BPSU, on behalf of its members, has always endorsed an effective, efficient and productive civil service through measured outcomes for service users. We wholeheartedly support:

- Modernizing the public service;
- Improving customer experience;
- Getting greater openness, transparency and accountability;
- Affirming skills of leadership, capability and human resource management reforms; and
- The need to build a world-class, 21st century Public Service to recruit and retain the best public servants.

Those objectives are elements of true public service reform not the introduction of privatization, outsourcing out and mutualisation. We embrace the notion that public services have a unique position and role to play as part of our society. They are not discretionary commodities, and provide benefits not only to service users but to the wider society. The founding principles of public services, namely universal access, delivery according to need, services free at point of use and services delivered for the public good rather than for profit should be at the heart of any model of public service.

The BPSU supports the belief that the public sector is the best place to provide public services that meet the above mentioned criteria and we will continue to advocate for publicly owned and democratically accountable public services.

We are concerned that the Government may attempt to pass off privatization as something beneficial when in fact, that may not be the case. The BPSU asks members to consider the following:

- Why would Government privatize public services or Departments that make a profit?
- How does the private sector make a non-profitable public service profitable?
- If the private sector is better at efficiency, productivity and innovation, why does the Chamber of Commerce continually advocate for tax concession for its members, namely the hotel, construction and retail sectors?

The pros and cons of privatization can be debated but research generally supports that privatization is accompanied with:

- **Increased fees to the public**
- **Reduction in wages/salaries and benefits of staff**
- **Reduction in the workforce**
- **Increased senior management salaries**
- **Lack of accountability and flexibility**
- **Transfer of public assets**

UK's Public Bodies Act 2011 vs Bermuda's Public Bodies Reform Act 2014

The Public Bodies Reform Act 2014 emanates from the UK's Public Bodies Act 2011. However, the UK Public Bodies Act 2011 was drafted to review and affect a specific, predetermined group of public bodies and offices (outlined in Schedules 1 of the legislation) which consisted of councils, committees, boards, tribunals, panels and commissions, not traditional government departments. **The UK legislation makes known which bodies can be merged, which will be reviewed for modified constitutional arrangements, funding arrangements and transfer of function. The UK legislation is far more transparent than the proposed Bermuda Legislation.**

Efficiency and Reform Authority

The Bermuda Bill provides for the creation of a Reform Authority and gives that Authority, together with a Minister, sweeping and almost unlimited powers in relation to privatizing government services, and changing the functions of other organizations receiving Government funding. No such Authority exists in the UK. The BPSU offers the following questions in relation to the Authority:

- Why is there a need to establish an Authority?
- How will the Authority Board and the CEO's salary be funded and what will be the remunerated amount?
- Why does the Authority have the exact same mandate of the SAGE Commission?
- Why can't the Civil Service Executive be used to carry out the proposed objectives of the Authority?
- How can we ensure that there is no conflict of interest or Ministerial interference in the Authority operations?
- Is the Union representation on the Authority Board symbolic appeasement?

Restrictions

We also note that the UK Public Bodies Act 2011 cannot be used to:

- create a new public body (except as a result of a merger under Section 2),
- make changes to non-statutory bodies, such as executive agencies,
- make changes to a body which is not listed in the relevant schedule of the Act,
- make an order which does not relate to public bodies; it does not provide general order making powers along the lines of the Legislative and Regulatory Reform Act 2006.

There are no clear indications from the wording of the Bermuda Bill what the proposed 2014 Act cannot do.

Other Noticeable Omissions

The UK 2011 Act states that a Public Bodies Order can only be made if the Minister considers that:

- the Order serves the purpose of improving the exercise of public functions, having regard to securing appropriate accountability to ministers;
- the Order does not remove any necessary protections;
- the Order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

Mutual Support Fund

Clause 16 of the Bermuda Bill 2014 provides for the Authority to establish a Mutual Support Fund. This Fund will be provided through the Authority's operating funds. The Mutual Fund will be used to make arrangements for provision of administrative, professional and technical services to those who wish to set up a public service mutual. There is no such fund established in the UK Legislation.

*******Please read the BPSU's Full Report on Mutualisation*******

Consultation

While on the face of it, the Draft Bermuda Bill 2014 follows the spirit of the UK Act, however, wording from the sections of the UK Act have been omitted, namely areas surrounding Consultation.

Since an Order can only be made in regards to a listed entity in Schedule 1 of the UK Act, the research and work to produce those schedules were completed and consulted upon prior to the affected bodies being listed in those schedules. The preliminary consultation that is evident in the UK legislation is absent for the Bermuda Legislation.

There still appears to be vagueness and uneasiness on meaningful consultation, a requirement which is paramount to the UK 2011 Act. The UK legislation Section 10 (2) reads:

If, as a result of consultation under subsection (1), it appears to the Minister appropriate to change the whole or part of the proposal, the Minister must carry out such further consultation with respect to changes as seems appropriate.

The UK legislation Section 11 (3) reads:

The Minister may not act under subsection (1) before the end of the period of twelve weeks beginning with the day on which consultation began.

The Bermuda Draft Section 2 reads:

The Minister shall also be satisfied that all appropriate consultation has been carried out with any Union representing employees to whom the Public Bodies Reform Order relates.

The BPSU feels there should be wording in the Bermuda Bill 2014 that specifies a period between initial consultations and when Orders are tabled in the House. Judging by the past, it seems that the Union and the Government have two separate interpretations of what is deemed to be considered as meaningful consultation. As a result, we believe that consultation principles should be communicated in the Bill's Explanatory Notes so that all parties are clear on expectations.

Consultation is extremely important because the Bermuda Bill 2014 lacks any right of appeal or proper parliamentary scrutiny.

Parliamentary Scrutiny

Unlike Bermuda, the UK provides that when making an Order, the Order must ensure the accountability of the Minister in formulating laws. There is no right of appeal or the ability to scrutinize the Authority of a Government Minister in the Bermuda Draft Bill, reducing accountability.

In the UK, all Orders will be considered by three committees; the Joint Committee on Statutory Instruments, the Secondary Legislation Scrutiny Committee in the House of Lords and the relevant departmental select committee in the House of Commons. All of which have defined periods of time to appropriately scrutinize and report on Orders. Also, where an order changes funding arrangements of a body or group of bodies, departments need to seek the formal consent of the HM Treasury, as part of HM Treasury's remit to protect financial propriety.

Additionally, in the UK, all draft Orders that are laid must be accompanied with full impact assessments that require clearance from both the Regulatory Policy Committee and the Reducing Regulation Committee.

In reading the Bermuda Bill 2014, we are unable to determine how or if the Government intends to ensure Parliamentary Scrutiny and that impact assessment will take place.

In closing, it is extremely important for our members and the public to understand the full implication of this proposed legislation. We consider it to be a direct threat to the current terms and conditions of public service employees. We are displeased with the lack of public consultation surrounding this Bill.

The BPSU calls on all public servants and members of the public to 'Say No' to the Government's current reform agenda.