

ALEC's Corporate Board

--in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at www.SourceWatch.org.

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda--underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

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Efficiency in Government Act

Summary

This bill establishes a framework for promoting bidding and streamlining government activities at the State level. It allows State officials to consider government priorities by determining what activities are inherently governmental and which could be more efficiency provided by a private source. The process described in this bill should bring a decrease in the number of goods and services delivered by the government while ensuring that those goods and services are still available. If done prudently, privatization has the potential to increase efficiency, effectiveness, and reduce the tax burden.

Working groups are established to evaluate current activities, coordinate make or buy analyses and implement recommendations for greater efficiency. Task forces shall consider the issues relating to employee adjustments resulting from the implementation of this bill. A process is set up to evaluate current activities, call for petitions of interest and implement make or buy analyses. The State Comptroller is authorized, as an element of the regular audits, to include an assessment of an agency or municipality's implementation of this article. (An example of this bill is New York SB #8774, 1992).

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Short Title.}

This Act may be cited as the Efficiency In Government Act

Section 2. {Legislative Intent.}

(A) It is the public policy of the state to provide the highest quality services at the lowest possible cost to taxpayers. Efficiency cannot be achieved, however, if government is permitted to act as a monopoly, with no competitive incentive to reduce costs or improve services. In order to achieve competition and efficiency, decisions about how services should be provided must be governed by three fundamental principles:

- (1) The government should not be in the business to compete with private sector services. Government should look first to the private sector to provide the goods and services that the public needs.
- (2) Certain functions are inherently governmental. These activities are intimately related to the public interest.
- (3) When activities are not clearly governmental functions, the government should conduct a rigorous comparison of private sector costs and in-house costs.

Section 3. {Definitions.}

(A) "Agency" shall mean any department, board, bureau, commission, division, office council, committee or officer of the state, public benefit corporation or public authority at least one of those members is appointed by the governor.

(B) "Commercial source" shall mean any not-for-profit or private sector entity.

(C) "Conversion" shall mean the transfer of work from a government commercial or industrial activity to performance by a private commercial source under contract.

(D) "Expansion" shall mean the modernization, replacement, upgrade, or involving additional capital investment of one hundred thousand dollars or more, or increasing operating annual costs by two hundred thousand dollars or more; provided, however, the increase exceeds twenty percent of total investment or annual operating costs. Consolidation of two or more activities is not an "expansion" unless the proposed total capital investment or operating cost exceeds the total from the individual activities by the amount of the threshold. An expansion which increases either capital investment or annual operating cost by one hundred percent or ore is a new start.

(E) "Government Commercial or Industrial Activity" shall mean an activity that is operated and managed by a state agency and which provides a product or a service that could be obtained from a private source.

(F) "Governmental Function" shall mean a function which must be performed in-house due to a special relationship in executing governmental responsibilities, such as functions involving the discretionary application of governmental authority. Such functions include, but are not limited to, investigation, prosecution and other judicial functions, the overall management and direction of government programs, selection of program priorities, and regulatory activities.

(G) "In-House Activity" shall mean a good or service provided by an agency.

(H) "Make or Buy Analysis" shall mean a good or service provided by an agency.

(I) "New Start" shall mean a newly-established government commercial or industrial activity, including a transfer of work from contract to in-house performance. Also included is any expansion which would increase capital investment or annual operating

Did you know that the Evergreen Freedom Foundation --which is connected to the Kochs-- was the corporate co-chair in 2011?"

cost by one hundred percent or more.

Section 4. {Organization.}

(A) No agency shall perform or engage in a contract for government commercial or industrial activities, except in accordance with the provisions of this article, or as otherwise provided by law.

(B) Each agency shall retain full control of service quantities, service specifications, standards and any other matter demonstrably related to the delivery of a particular public good or service in a manner consistent with the public interest.

(C) Each agency shall designate one official, an assistant commissioner or the equal, who shall, with the working groups established pursuant to subdivision four of this act

- (1) coordinate the process of evaluating current activities, expansions and new start proposals

- (2) implement the required make or buy analyses; and

- (3) implement the recommendations of the working groups, established pursuant to this act, concerning whether the good or service shall be delivered by in-house or commercial sources.

(D) Agency employees shall be encouraged to participate in the activities required by this article, each agency shall create a working group chaired by the designated official. In addition to such official, the group shall consist of an equal number of members representing management and an equal number representing all collective bargaining units which represent agency employees, to develop and implement the process.

(E) An interagency task force, to consist of the commissioner of civil service, the director of employee relations, the director of the budget two commissioners of department selected by the governor, and three representatives of collective bargaining units representing state employees shall review issues relating to employee adjustments resulting from the implementation of this article, and shall develop procedures to minimize employee dislocations.

(F) Each agency shall create a working group consisting of equal numbers representing management and all collective bargaining units representing employees, to address employee concerns relating to the impact of conversions of government commercial or industrial activities from in-house to commercial providers. Groups shall develop policies to minimize worker dislocations resulting from such conversions through such approaches as the use of reassignment, retraining, and attrition, and shall consider such other employee concerns as are brought before them.

(G) The division of the budget shall provide technical assistance to agencies in implementing the provision of this article. Functions of the division shall include, but not limited to:

- (1) Preparing a non-exclusive list of activities which are commercial or industrial, to be made available to all agencies; and

- (2) Advising agencies on cost analysis issues.

Section 5. {Inventory of in-house activities.}

(A) Each agency shall prepare an inventory of all in-house government commercial or industrial activities.

(B) Every year, at least five percent of an agency's in-house government commercial and industrial activities shall be reviewed.

- (1) Each Agency shall determine goals and standards for activities under review.

- (2) Each Agency shall consider alternative methods for performing in-house activities with effectiveness and cost-efficiency as primary concerns.

- (3) Each Agency shall determine, for each in-house activity, whether these are known commercial sources.

(C) If the agency determines that there is potential that a private commercial source can perform the activity the agency shall pursue a request for petitions of interest.

(D) If the agency finds that there are no known private commercial sources which can perform an activity, it shall initiate a petition of interest process.

(E) Such inventory shall be available for review by the office of the comptroller and the division for the budget.

Section 6. {Petitions of interest.}

(A) For each in-house government commercial, or industrial activity of an agency, other than an activity exempted by this article, a commercial source may submit a petition of interest at any time. Upon receipt of an unsolicited petition of interest, an agency shall schedule such an activity for review, as is provided by this article, within twelve months of receipt, an agency may decline a petition where a petition regarding the same services has been considered during the past twelve months of receipt. An agency may decline a petition where a petition regarding the same service has been considered during the past twelve months. A make or buy analysis is not required for any public good or service for any period during which such public good or service is to be provided under an existing competitive contract.

(B) Each agency shall solicit petitions of interest for any proposed expansions or new start activities for which there is no known commercial source.

(C) At a minimum the agency shall solicit petitions through:

- (1) The procurement opportunities newsletter of the department of economic development; and

- (2) A relevant trade or service journal

(D) Each petition of interest submitted by a commercial entity shall include:

- (1) A description of the good or service the entity offers to provide;

- (2) A description of the entity's financial capacity to undertake this activity; and

- (3) A description of the entity's technical ability to provide the good or service with references to identical, similar, or relevant goods or services presently provided by the entity.

(E) Within sixty days of receipt, the agency shall determine whether there is sufficient reason to believe that an entity has the financial and technical ability to provide the public good or service.

(F) The agency may make one of two findings:

- (1) Where the agency determines that the entity has insufficient financial and technical ability to provide the good or service, it shall issue a written denial of the petition and state its justification for such finding; or

- (2) Where the agency determines that there are commercial sources with sufficient

financial and technical ability to provide a good or service, the agency shall proceed to conduct a make or buy analysis. Such analysis shall be subject to the requirements of this chapter.

Section 7. {Make or buy analysis.}

(A) Where an agency is aware of commercial sources for a government commercial or industrial activity, a make or buy analysis shall be performed whenever an agency considers an expansion of an in-house activity or performance of a new start activity in-house.

(B) A make or buy analysis shall be performed through evaluation of bids or proposals which are solicited through a competitive procedure from commercial sources and state agencies in accordance with articles nine and eleven of this chapter.

(C) An agency may request the division of the budget to authorize in-house performance of a new commercial or industrial activity or an expansion of an existing in-house government commercial or industrial activity without a make or buy analysis where it demonstrates that:

(1) There is no commercial source capable of providing the product or service that is needed and that it has solicited a petition of interest, as required by this article; or

(2) Use of a commercial source would cause an unacceptable delay or disruption of essential programs.

(D) The division of the budget shall make a decision within thirty days of receiving a documented explanation from the relevant agency where such agency seeks to perform a commercial or industrial activity in-house. Such documentation shall include:

(1) Delay or disruption explained specifically in terms of cost, time, and performance measures;

(2) Disruption shown to be of a lasting or unacceptable nature. Transitory disruption caused by a change shall not be sufficient cause.

Section 8. {Ground rules for cost analysis.}

(A) Both agency and commercial source cost analysis shall be based on the same scope of work and the same level of performance. A precise work statement with standards that can be monitored shall be required.

(B) The division of the budget shall be required to determine standard cost factors, which shall be applied by agencies performing analysis pursuant to this article.

(C) Cost comparisons shall be done by using fully allocated costs.

(1) All significant costs, including but not limited to fixed costs, variable costs, overhead costs, direct and indirect costs shall be considered both for in-house and non-governmental sources.

(2) The division of the budget shall review agency cost comparisons and shall determine whether costing was done using full cost comparisons.

(D) In the solicitation for bids from commercial sources for workloads of a continuing nature, unless otherwise inappropriate, solicitations shall provide for pre-priced options for out-years.

(E) The division of the budget shall compute a rate to be applied by agencies for the opportunity cost of capital investments and of the net proceeds from the potential sale of capital assets, utilizing the best available date for comparable commercial and industrial activities.

(F) Agencies shall not be required to conduct cost comparisons for goods or services estimated for which annual operation costs are estimated to be less than one hundred dollars.

(1) Activities below such threshold should be performed by contract unless otherwise exempted by this article.

(2) Where there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable. A cost comparison may be conducted. However, reasonable effort shall first be conducted to obtain satisfactory prices from existing commercial sources.

Section 9. {Contract Provisions.}

(A) Any public good or service provided through a competitive bidding process shall be subject to a new competitive bidding process at least every five years. No change in contract or renewal option payment amounts to a private contractor or agency shall be made except as provided in the contract executed at the start of service. Payment charges in contracts shall be limited to indices, escalators, deflators, changes in service level and other expressly stated or calculable amounts, consistent with the proposal of the private contractor or agency awarded the contract.

(B) In no case shall a good or service which has been procured through a competitive process be procured from an external source or returned to in-house performance without conducting the make or buy analysis required by this article.

(C) For any positions made available as a result of a conversion from an in-house activity to one provided by a commercial source, the commercial sources shall first consider persons who were laid off from public employment because of such conversion.

(D) An agency may not establish any requirement relating to conditions of employment of contracted employees other than those required by applicable state and federal laws.

(E) Under no circumstances shall an agency increase payment to an in-house or private provider of services except as is explicitly stated in the terms of the contract.

Section 10. {Audits.}

(A) The state comptroller, as an element of the regular audits of agency activities, shall include an assessment of:

(1) Progress on implementation of this article;

(2) Compliance with the competitive proposal requirement;

(3) Compliance with fully allocated cost requirement;

(4) Level of contract compliance by private contractors;

(5) Cost of such compliance;

(6) Whether such costs will be recurring or reduced; and

(7) The costs and benefits of further efforts to privatize.

Section 11. {Appeals.}

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(A) The Director of the budget shall establish a procedure for administrative review of determinations in accordance with the requirements of the state administrative procedure act. This procedure will only be used to resolve questions of determinations between in-house and contract performance, and shall not apply to questions concerning award to on contractor in preference to another contractor. Upon written request from a directly affected party raising a specific objection, the appeals procedure will provide for:

(1) An independent, objective review of the initial determination and the rationale upon which the decision was based; and

(2) An expeditious determination, within thirty days.

(B) The appeals procedure is intended to provide an administrative safeguard to assure that agency decisions are fair, equitable, and in accordance with established policy.

(C) Since the appeal procedure is intended to protect the rights of all affected parties (state employees, and their representative organizations, contractors, and contract employees and their representatives) the procedure and agency determinations may not be subject to negotiation, arbitration, or agreements with any one of those parties.

(D) Any decision of the director of the budget shall be final and shall be subject to judicial review.

Section 12. {Severability clause.}

Section 13. {Repeals.}

← **Were your laws repealed?**

Section 14. {Effective date.}

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