

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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COUNCIL ON EFFICIENT GOVERNMENT ACT

Summary

This legislation is designed to create a council on efficient government whose purpose is to ensure that each state agency focuses on its core mission and delivers goods and services effectively and efficiently by leveraging resources and contracting with private sector vendors if those vendors can more effectively and efficiently provide goods and services and reduce the cost of government. Additionally, the council is to evaluate for feasibility, cost effectiveness, and efficiency business cases to be outsourced before a state agency proceeds with any outsourcing of goods or services.

Model Legislation

Section 1. {Title.}

This Act shall be known and may be cited as the Council on Efficient Government Act.

Section 2. {Council on Efficient Government; members; terms; vacancies.}

(A) The Council on Efficient Government is established consisting of the following members:

- (1) The chief executive or administrative officer of a state agency who is appointed by the Governor.
- (2) Two members who are engaged in private enterprise and who are appointed by the Governor.
- (3) Two members who are engaged in private enterprise and who are appointed by the President of the Senate.
- (4) Two members who are engaged in private enterprise and who are appointed by the Speaker of the House of Representatives.

(B) The terms of appointment to the council are for two years unless the chief executive or administrative officer of a state agency ceases to hold office. The Governor shall appoint a replacement member for the remainder of the unexpired term.

(C) A member of the Council who is engaged in private enterprise is not eligible to receive compensation but is eligible for reimbursement of expenses, pursuant to state statute.

(D) A member of the Council may not participate in a council review of a business case to outsource if the state agency is conducting the proposed outsourcing or, in the case of a member engaged in private enterprise, if the member has a business relationship with an entity that is involved or potentially could be involved in the proposed outsourcing.

(E) A member of the Council who is engaged in private enterprise may not delegate the membership to a designee.

(F) A quorum shall consist of at least three members of the council.

(G) Any vacancy on the Council shall be filled in the same manner as the original appointment, and any member appointed to fill a vacancy occurring for a reason other than the expiration of a term serves only for the unexpired term of the member's predecessor.

(H) The Council shall select a chairperson from among its members.

Section 3. {Powers and duties of the council; annual report.}

(A) The Council shall:

- (1) Review whether or not a good or service provided by a state agency could be

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--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.

privatized to provide the same type and quality of good or service that would result in cost savings or best value. The Council may hold public hearings as part of its evaluation process and shall report its recommendations to the Governor, the President of the Senate and the Speaker of the House of Representatives.

(2) Review privatization of a good or service at the request of a state agency or a private enterprise.

(3) Review issues concerning agency competition with one or more private enterprises to determine ways to eliminate any unfair competition with a private enterprise.

(4) Recommend privatization to a state agency if a proposed privatization is demonstrated to provide a more cost efficient or more effective manner of providing a good or service.

(5) Comply with Sections 4 and 5 of this bill.

(6) Employ a standard process for reviewing business cases to outsource.

(7) Review and evaluate business cases to outsource as requested by the Governor or the state agency head whose agency is proposing to outsource.

(8) No later than thirty days before a state agency's issuance of a solicitation of ten million dollars or more, provide to the state agency conducting the procurement, the Governor, the President of the Senate and the Speaker of the House of Representatives, an advisory report for each business case reviewed and evaluated by the Council. The report must contain all versions of the business case, an evaluation of the business case, any relevant recommendations and sufficient information to assist the state agency proposing to outsource in determining whether the business case to outsource should be included with the legislative budget request.

(9) Recommend and implement standard processes for state agency and council review and evaluate state agency business cases to outsource, including templates for use by state agencies in submitting business cases to the council.

(10) Recommend standards, processes and guidelines for use by state agencies in developing business cases to outsource.

(11) Incorporate any lessons learned from outsourcing services and activities into council standards, procedures and guidelines, as appropriate, and identify and disseminate to agencies information regarding best practices in outsourcing efforts.

(12) Develop guidelines for assisting state employees whose jobs are eliminated as a result of outsourcing.

(13) Receive complaints of violations of this article.

(14) Transmit complaints received under this section to the state agency alleged to be in violation.

(15) Hold public hearings on complaints and determine whether the agency is in violation of this article.

(16) Issue a written report of its findings to the complainant within ninety days after receiving the state agency's response.

(17) Transmit to the Governor, the President of the Senate and the Speaker of the House of Representatives a complete report of each meeting, including recommendations to correct violations of prohibitions on competition with private enterprise and findings on necessary exceptions to the prohibitions.

(18) Solicit petitions of interest from private sector service providers as the council considers appropriate. The council may evaluate and review the petitions and may hold public hearings as part of the evaluation process. The Council may recommend some or all of the petitions to the Governor's office for further review pursuant to state statute. A person does not have a cause of action based on the failure of the council to consider a petition of interest or make a recommendation.

(B) The Council may evaluate and review all state agency exemptions and exemptions to the restrictions on competition with private enterprise in this article and may determine that any function or functions of state agency are in violation of this article. The council shall report its findings and recommendations to the Governor, the President of the Senate and the Speaker of the House of Representatives.

(C) The council shall prepare an annual report on:

(1) Recommendations on innovative methods of delivering government services that would improve the efficiency, effectiveness or competition in the delivery of government services, including enterprise-wide proposals.

(2) Outsourcing efforts of each state agency, including the number of outsourcing business cases and solicitations, the number and dollar value of outsourcing

contracts, descriptions of performance results as applicable, any contract violations or project slippages and the status of extensions, renewals and amendments of outsourcing contracts.

(3) Information about the council's activities.

(4) The status of the inventory created under Section 4 of this bill.

(D) The Council shall submit the annual report prescribed by Subsection C of this section to the Governor, the President of the Senate and the Speaker of the House of Representatives no later than January 15 immediately following the calendar year for which the report is made. The council shall provide an oral report to the Joint Legislative Budget Committee and the Governor's Office of Strategic Planning and Budgeting when the legislature is not in session.

(E) The Auditor General shall employ an adequate number of staff who collectively possess significant expertise and experience as required to carry out the responsibilities of this article.

(F) Each state agency shall submit to the council all information, documents and other materials required by the council pursuant to this article.

(G) At the request of the Council and on approval of the Joint Legislative Audit Committee, the Auditor General shall provide performance audit and other required information relating to state agency budgets and functions. The Auditor General may assist in the development and review of the agency inventory of commercial activities prescribed in Section 4.

(H) In addition to filing a copy of recommendations for privatization with an agency head, the council shall file a copy of its recommendations for privatization with the Governor's office, the Joint Legislative Budget Committee and the Governor's Office of Strategic Planning and Budgeting for submission to the relevant legislative appropriation subcommittee.

(I) The council may appoint advisory groups to conduct studies, research or analyses and make reports and recommendations with respect to a matter within the jurisdiction of the council. At least one member of the council shall serve on each advisory group.

(J) Subject to Section 5, subsection B, this article does not preclude a state agency from privatizing the provision of a good or service independent of the council.

(K) Except as provided by section state statute, any aggrieved person may elect to directly seek judicial relief.

Section 4. {Commercial activities inventory and review.}

(A) On or before a date selected by the legislature, the council shall create an inventory of activities of state agencies to classify whether each activity or elements of the activity are:

(1) A commercial activity that can be obtained in whole or in part from a private enterprise.

(2) An inherently governmental activity.

(B) The Council shall update the inventory created under this section at least every two years.

(C) The Council shall make the inventory available to the public through electronic means.

(D) State agencies shall cooperate with inventory requests made by the Council.

Section 5. {Business cases to outsource; review and analysis; requirements.}

(A) A proposal to outsource having a projected cost of more than ten million dollars in any fiscal year shall require:

(1) An initial business case analysis conducted by the state agency and submitted to the Council, the Governor, the President of the Senate and the Speaker of the House of Representatives at least sixty days before a solicitation is issued. The Council shall evaluate the business case analysis and submit an advisory report to the state agency, the Governor, the President of the Senate and the Speaker of the House of Representatives when the advisory report is completed, but at least thirty days before the agency issues the solicitation.

(2) A final business case analysis conducted by the state agency and submitted after the conclusion of any negotiations, at least thirty days before execution of a contract, to the council, the Governor, the President of the Senate and the Speaker of the House of Representatives.

(B) A proposal to outsource having a projected cost of at least one million dollars but not more than ten million dollars in any fiscal year shall require:

(1) An initial business case analysis conducted by the state agency and

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submission of the business case, at least thirty days before issuing a solicitation, to the Council, the Governor, the President of the Senate and the Speaker of the House of Representatives.

(2) A final business case analysis conducted by the state agency and submitted after the conclusion of any negotiations, at least thirty days before execution of a contract, to the Council, the Governor, the President of the Senate and the Speaker of the House of Representatives.

(C) A business case to outsource having a projected cost of less than one million dollars in any fiscal year shall require a final business case analysis conducted by the state agency after the conclusion of any negotiations and provided to the council at least thirty days before execution of a contract. The Council shall provide the business cases in its annual report to the President of the Senate and the Speaker of the House of Representatives.

(D) For any proposed outsourcing, the state agency shall develop a business case that justifies the proposal to outsource. The business case is not subject to challenge or protest. The business case must include:

(1) A detailed description of the service or activity for which the outsourcing is proposed.

(2) A description and analysis of the state agency's current performance based on existing performance measures if the state agency is currently performing the service or activity.

(3) The goals desired to be achieved through the proposed outsourcing and the rationale for the goals.

(4) A citation to the existing or proposed legal authority for outsourcing the service or activity.

(5) A description of available options for achieving the goals. If state employees are currently performing the service or activity, at least one option involving maintaining state provision of the service or activity shall be included.

(6) An analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks.

(7) A description of the current market for the contractual services that are under consideration for outsourcing.

(8) A cost benefit analysis documenting the direct and indirect specific baseline costs, savings and qualitative and quantitative benefits involved in or resulting from the implementation of the recommended option or options. The analysis must specify the schedule that, at a minimum, must be adhered to in order to achieve the estimated savings. All elements of cost must be clearly identified in the cost benefit analysis, described in the business case and supported by applicable records and reports. The state agency head shall attest that based on the data and information underlying the business case and to the best of the state agency head's knowledge all projected costs, savings and benefits are valid and achievable. For the purposes of this paragraph:

(a) "Cost" means the reasonable, relevant and verifiable cost, which may include elements such as personnel, materials and supplies, services, equipment, capital depreciation, rent, maintenance and repairs, utilities, insurance, personnel travel, overhead and interim and final payments. The appropriate elements shall depend on the nature of the specific initiative.

(b) "Savings" means the difference between the direct and indirect actual annual baseline costs compared to the projected annual cost for the contracted functions or responsibilities in any succeeding state fiscal year during the term of the contract.

(9) A description of differences among current state agency policies and processes and, as appropriate, a discussion of options for or a plan to standardize, consolidate or revise current policies and processes, if any, to reduce the customization of any proposed solution that would otherwise be required.

(10) A description of the specific performance standards that must, at a minimum, be met to ensure adequate performance.

(11) The projected time frame for key events from the beginning of the procurement process through the expiration of a contract.

(12) A plan to ensure compliance with the public records law.

(13) A specific and feasible contingency plan addressing contractor nonperformance and a description of the tasks involved in and costs required for its implementation.

(14) A state agency's transition plan for addressing changes in the number of agency personnel, affected business processes, employee transition issues and communication with affected stakeholders, such as agency clients and the public. The transition plan must contain a reemployment and retraining assistance plan for employees who are not retained by the state agency or

employed by the contractor.

(15) A plan for ensuring access by persons with disabilities in compliance with applicable state and federal law.

(16) A description of legislative and budgetary actions necessary to accomplish the proposed outsourcing.

(E) Each contract for a proposed outsourcing pursuant to this section shall include the following:

(1) A scope-of-work provision that clearly specifies each service or deliverable to be provided, including a description of each deliverable or activity that is quantifiable, measurable and verifiable. This provision must include a clause stating that if a particular service or deliverable is inadvertently omitted or not clearly specified but determined to be operationally necessary and verified to have been performed by the agency within the twelve months before the execution of the contract, the service or deliverable will be provided by the contractor through the identified contract amendment process.

(2) A service level agreement provision describing all services to be provided under the terms of the agreement, the state agency's service requirements and performance objectives, specific responsibilities of the state agency and the contractor and the process for amending any portion of the service level agreement. Each service level agreement must contain an exclusivity clause that allows the state agency to retain the right to perform the service or activity, directly or with another contractor, if service levels are not being achieved.

(3) A provision that identifies all associated costs, specific payment terms and payment schedules, including provisions governing incentives and financial disincentives and criteria governing payment.

(4) A provision that identifies a clear and specific transition plan that will be implemented in order to complete all required activities needed to transfer the service or activity from the state agency to the contractor and operate the service or activity successfully.

(5) A performance standards provision that identifies all required performance standards, which must include at a minimum:

(a) Detailed and measurable acceptance criteria for each deliverable and service to be provided to the state agency under the terms of the contract that document the required performance level.

(b) A method for monitoring and reporting progress in achieving specified performance standards and levels.

(c) The sanctions or disincentives that will be imposed for nonperformance by the contractor or state agency.

(6) A provision that requires the contractor and its subcontractors to maintain adequate accounting records that comply with all applicable federal and state laws and generally accepted accounting principles.

(7) A provision that authorizes the state agency to have access to and audit all records related to the contract and subcontracts, or any responsibilities or functions under the contract and subcontracts, for purposes of legislative oversight and a requirement for audits by a service organization pursuant to professional auditing standards, if appropriate.

(8) A provision that requires the contractor to interview and consider for employment with the contractor each displaced state employee who is interested in such employment.

(9) A contingency plan provision that describes the mechanism for continuing the operation of the service or activity, including transferring the service or activity back to the state agency or successor contractor, if the contractor fails to perform and comply with the performance standards and levels of the contract and the contract is terminated.

(10) A provision that requires the contractor and its subcontractors to comply with public records laws specifically to:

(a) Keep and maintain the public records that ordinarily and necessarily would be required by the state agency in order to perform the service or activity.

(b) Provide the public with access to the public records on the same terms and conditions that the state agency would provide the records.

(c) Ensure that records that are exempt or records that are confidential and exempt are not disclosed except as authorized by law.

(d) Meet all requirements for retaining records and transfer to the state agency, at no cost, all public records in possession of the contractor on termination of the contract and destroy any duplicate public records that are exempt or confidential. All records stored electronically must be provided to the state agency in a format that is compatible with the information technology systems

of the state agency.

(11) A provision that addresses ownership of intellectual property. This paragraph does not provide the specific authority needed by a state agency to obtain a copyright or trademark.

(12) If applicable, a provision that allows the state agency to purchase from the contractor, at its depreciated value, assets used by the contractor in the performance of the contract. If assets have not depreciated, the state agency shall retain the right to negotiate to purchase at an agreed on cost.

Section 6. {Council accounting method.}

The council, by rule, shall establish an accounting method that:

(1) Is similar to generally accepted accounting principles used by a private enterprise.

(2) Allows an agency to identify the total actual cost of engaging in a commercial activity in a manner similar to how a private enterprise identifies the total actual cost to the private enterprise, including the following:

(a) Labor expenses, such as compensation and benefits, costs of training, costs of paying overtime, costs of supervising labor or other personnel expenses.

(b) Operating costs, such as vehicle maintenance and repair, marketing, advertising or other sales expenses, office expenses, costs of an accounting operation such as billing, insurance expenses, real estate or equipment costs, debt service costs or a proportionate amount of other overhead or capital expenses, such as vehicle depreciation and depreciation of other fixed assets.

(c) Contract management costs.

(d) Other costs particular to a person supplying the good or service.

(3) Provides a process to estimate the taxes a state agency would pay related to engaging in a commercial activity if the state agency were required to pay federal, state and local taxes to the same extent as a private enterprise engaging in the commercial activity.

Section 7. {Governor; required review of commercial activities.}

Beginning with a fiscal year the legislature designates, the Governor, at least once every two fiscal years, shall select at least three commercial activities that are being performed by a state agency to be examined by the Governor's Office of Strategic Planning and Budgeting.

Section 8. {Duties of the Governor's Office of Strategic Planning and Budgeting.}

(A) The Governor's Office of Strategic Planning and Budgeting shall:

(1) Determine the amount of an appropriation that is no longer needed by an executive branch agency because all or a portion of the agency's provision of a good or service is privatized.

(2) Adjust the Governor's budget recommendations to reflect the amount that is determined under paragraph 1.

(3) Report its findings to the President of the Senate and the Speaker of the House of Representatives.

(B) This section does not prevent the Governor from making a budget recommendation regarding the restoration of a portion of the appropriation to a state agency that is reduced under this section.

Section 9. {Applicability.}

This article does not apply to contracts in support of the planning, development, implementation, operation or maintenance of the road, bridge and public transportation construction program of the Department of Transportation.

Section 10. {Initial terms of members of the Council on Efficient Government.}

Notwithstanding Section 2 of this bill, the initial members of the Council on Efficient Government who are engaged in private enterprise shall assign themselves by lot to terms of one or two years in office. The appointing authority shall make all subsequent appointments as prescribed by statute.

Section 11. {Severability Clause.}

Section 12. {Repealer Clause.}

Section 13. {Effective Date.}

Were your laws repealed?

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Center for Media and Democracy's quick summary

This bill encourages privatization of public services by establishing a council that will consider whether a private outside vendor can provide a good or service at lower cost than the public entity. It builds an accounting framework and a set of institutions that make it easier for private entities to pursue and win contracts to provide services. It will promote greater outsourcing of services traditionally provided by public workers, which will have the effect of weakening or dismantling public employee unions. Consideration may be driven by economic concerns rather than what is in the public interest.

Similar legislation has been passed in the following states:

Arizona (SB 1466, 2009)

Illinois (HB4161, 2009)

Kansas (HB2194, 2011)

South Carolina (SB984, 2009)

See also "Competitive Contracting of Public Services Act," "Public-Private Fair Competition Act."