

**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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**TAXPAYER PRIVATIZATION DIVIDEND ACT**

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

**Summary**

This bill establishes a commission on privatization to promote methods of providing a portion or all of formerly government-provided and government-produced programs or services through the private sector. Such methods may include awarding ownership and control of a public service to the private sector, awarding rights for provision of public service to the private sector while retaining public responsibility, or eliminating regulations. It also creates a taxpayers dividend fund into which a certain amount of saving derived as a result of privatization is deposited. (An example of this bill is Mississippi SB #2495, 1993.)

**Model Legislation**

{Title, enacting clause, etc}

**Section 1. {Short Title.}**

This Act may be cited as the Taxpayer Privatization Dividend Act.

**Section 2. {Purpose.}**

An Act to create the [state] commission on privatization; To provide for the membership and duties of such commission; To establish a sequence of actions that the commission must follow in order to study the potential for privatization under certain conditions; To require certain actions by the commission after the conduct of cost benefit analyses of agencies being considered for privatization; To provide a procedure to contract for services necessary as a result of privatization; To create the taxpayer's dividend from good government fund privatization dividend fund into which a certain amount of the saving derived as a result of privatization shall be deposited; To provide that money in such fund shall be distributed in the form of: [Language to be supplied. Examples include tax rebates and reductions and motor vehicle registration fee rebates] ; To create the technology and productivity procurement revolving fund to be used for loans to state entities to improve technology; To require the legislature to appropriate the amounts it determines will be saved as a result of privatization in a certain manner; and for related purposes.

**Section 3. {Definitions.}**

For the purposes of this act, the following terms shall have the following definitions ascribed to them:

(A) "Commission" means the [state] Commission on Privatization created under this act.

(B) "State entity" means any board, commission, authority, department, agency or

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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](http://www.SourceWatch.org).

institution which employs state or non-state service personnel as defined by [applicable state code].

(C) "Privatization" means a method of providing a portion or all of a formerly government-provided and government-produced program and/or its services through the private sector using one or more or a combination of the three following categories of activity:

- (1) Divestment;
- (2) Delegation; or
- (3) Deregulation.

(D) Divestment means that the state through a competitive process turns over the ownership, control, financial responsibility, and delivery of a public service to the private sector. Such may be given effect through sale of the assets necessary to produce the service to a provider of services, or through liquidation of assets wherein the purchaser of assets will not provide the service.

(E) Delegation means that the state assigns the provision of all or part of a function or service through a make or buy analysis, to the private sector, while retaining the responsibility of overseeing its production and/or delivery to its citizens and or governmental entities.

(F) Deregulation means the passive process by which the government is gradually displaced by the private sector through elimination of regulation.

(G) Attributable fully allocated cost means the operating and capital cost of a public service including direct, indirect and allocated cost minus the cost of any function not to be competitively contracted.

(H) Make or buy analysis means a periodic analysis in which the costs of internal production of a good or service are compared to the costs of production by outside vendors. The process requires the comparison of the true costs of public and private production methods that result in comparable public goods or services.

#### **Section 4. (Commission on Privatization.)**

(A) There is hereby created the [state] Commission on Privatization to consist of the Governor, Lieutenant Governor, State Treasurer, the attorney General and the State Auditor of Public Accounts. The Governor shall be chairman of the commission, the Lieutenant Governor shall be vice-chairman, and the State Auditor shall be secretary thereof.

(B) The Lieutenant Governor shall designate three (3) Senators and the Speaker of the House of Representatives shall designate three (3) Representatives to attend any meeting of the commission. The appointing authorities may designate alternate members from their respective houses to serve when a regular designee is unable to attend such meetings of the commission. Such legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the commission, For attending meetings of the commission, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the commission will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the commission without prior approval of the proper committee in their respective houses proposals from both public and private sector.

(C) The Governor, Lieutenant Governor, State Treasurer, Attorney General and State Auditor of Public Accounts shall each appoint to the commission one (1) non-voting associate member from the private sector.

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(D) The Office of State Audit shall provide staff support to the commission.

### **Section 5. (Commission Duties and Responsibilities)**

(A) The commission shall have the following duties and responsibilities:

(1) To advocate, develop and accelerate a privatization program for state entities which ensures private sector competition for provision and/or production of state government services. Such authority shall extend to issuing requests for information and proposals from both public and private sector entities.

(2) To develop an overall state privatization policy including necessary goals and objectives for privatizing the programs and services of state government.

(3) To establish all analytical, approving, planning and reporting processes required to carry out the functions of the commission, and to promulgate all rules essential to carry out the commission's mission, including deadlines for state entity, reports, timetables for commission action, standards and criteria governing reports made to the commission, standards for requests for proposals, and rules of order.

(4) To determine, in conjunction with other state entities, the pool of potential program or service candidates for privatization; provided, however, that the commission shall not issue any privatization recommendation regarding any program which:

(a) Directly and significantly consists of planning and proposing public policy, making public policy, or consists in whole or part of activities which regulate the business, occupation, or profession, or any person, firm, partnership, corporation, or association which is doing business in [state] or is domiciled in this state;

(b) Directly and significantly affects the investigation or prosecution of criminal acts, the operations of the courts of law, the preservation of peace and order, or the prevention of epidemics; or

(c) Makes judgements or recommendation relative to the fiscal policy of the state, or judgements pertaining to the making of rules and regulations by which entitlements are granted.

(5) To require information to insure that all state entities whose programs are included in the pool of candidates for privatization assist the commission in performing the managerial, operational, or administrative analysis relative to:

(a) Determining the privatization potential of a program or activity;

(b) Performing cost/benefit analysis;

(c) Performing make or buy analysis; and

(d) Certifying the profits and savings from privatization projects.

(B) The commission shall, with the assistance of state entities devise evaluation criteria to be used in conducting reviews of any program or activity which is the subject of a privatization recommendation.

(C) To the extent practicable and to the extent resources are available, the commission shall make available its services for a fair compensation to any local entity. The Legislature encourages local government entities to utilize the services

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of the commission.

## **Section 6. {Privatization Candidates.}**

In carrying out the duties described in this act, the commission shall follow the sequence of activities described in this act. The commission shall, through the use of state entity input, prepare a pool of program or activity candidates for privatization prior to performing any other analytical function. Such pool shall include not less than (10) state entity projects. Subsequent to developing a pool of candidates, the commission shall conduct cost/ benefit studies of all candidates in the pool. Recommendations of privatization may only be issued subsequent to the preparation and commission review of cost/benefit studies. Each year the commission shall complete cost/ benefit studies covering goods or services representing at least five percent of the state operating budget. The annual make or buy analysis shall be limited to public goods or services not currently provided through make or buy analysis under this Act.

## **Section 7. {Cost Benefit Analysis.}**

(A) In conducting a cost/benefit analysis of candidates from the pool, the commission shall consider the use of delegation, divestment, or deregulation as means of privatizing programs or activities. In developing a plan for conducting cost/benefit analysis, the commission shall consider the following:

- (1) The potential annual revenue generating or recurring savings from privatization;
- (2) Potential market for the programs or activities;
- (3) Potential one-time revenues and/or savings from elimination of a program or activity;
- (4) Relative strengths and weaknesses of governmental customer service mechanisms and private sector customer service mechanisms;
- (5) The impact of reduced services on the citizens of the state;
- (6) The private sector's capacity to engage in voluntary self-regulation; and
- (7) Barriers to privatization created by laws, market structure, user expectations, and imperfections in the dissemination and assimilation of information.

(B) The commission shall set appropriate deadlines for reporting of costs and benefits, as well as any other matter germane to privatization. The commission shall also determine the criteria for judging successful privatization, and publish such criteria for evaluation purposes.

(C) The commission shall, upon privatizing a program or service, annually review such privatization project and certify the savings and profits generated by such project.

(D) Subsequent to the preparation of cost/benefit analysis, the commission shall review such cost /benefit analysis to determine the accuracy of the analyst provided. In performing this function, the commission may contract with consultants and other experts for assistance. The commission may refer questions or proposals to the state entities or other experts for assistance. The commission may refer questions or proposals to the state entities or the experts referred to in this act regarding the analysis of the program or activity or the delivery of services.

(E) In the event that the commission finds that the cost/benefit analysis prepared by the state entity or expert fails to address the criteria or regulation promulgated

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by the commission with respect to cost/benefit analysis, the commission shall direct the state entity or expert to resubmit a revised cost/benefit analysis.

(F) Subsequent to the cost/benefit analysis, the commission shall:

(1) In the case of divestment or deregulation deemed to be in the public interest, transmit its recommendation to the state entity, the Governor and the Legislature and shall make its recommendation available to the public.

(2) In the case of delegation anticipated to produce any one-time or annual savings of either the previous year's expenditures for a program or activity, or the proposed aggregate charge for rendering the same program or activity, require the state entity to perform a "make or buy" analysis at the earliest feasible date.

#### **Section 9. (Petition of interest.)**

(A) In addition to make or buy analysis required by the commission, the commission shall perform or require the state entity or expert to perform a make or buy analysis covering any service for which the commission has received a qualifying petition of interest from a private company consistent with the process provided for in this act. No more than one (1) make or buy analysis shall be required for a particular good or service within a one-year period.

(B) Private companies interested in providing services for state entities through delegation, may file petitions of interest with the commission.

(C) Petitions of interest shall include:

(1) A description of the service that the private company would like to provide for the state entity.

(2) A statement that the private company believes that it can provide the same service, under contract to the state entity, for a lower cost than the present cost with at least comparable quality, efficiency and effectiveness.

(3) A description of the company's financial capacity to provide the service.

(4) A request for proposals shall clearly specify the goods or services to be procured and include a draft contract.

(5) Any state entity may submit its own proposal in response to the request for proposal, subject to the terms and conditions later specified.

(C) The commission shall employ a two-step review process, involving the concurrent submittal of two (2) packages, as follows:

(1) The first step shall be an evaluation of a package of the financial qualifications and technical proposals from the responders. The commission shall determine whether each such submittal represents a responsive and responsible proposal.

(2) The second step shall be an evaluation of the cost proposals packages of the responsive and responsible proposers.

(D) With respect to each request for proposals, the state entity shall award the contract based on the above evaluation.

(E) Any service operated under competitive proposals on the effective date of this act or thereafter shall be subject to a new competitive proposal at least every five (5) years. Renewal options that extend a contract beyond five (5) years shall be

prohibited.

(F) In no case shall a service operated under competitive proposal be returned to operation not subject to competitive proposal.

(G) A state entity shall not establish or impose any requirement to salaries, wages, benefits or labor union representation, staffing levels, work rules or other conditions of employment of private contractor employees. All contractors shall comply with applicable federal and state labor laws.

(H) Each state entity shall make capital facilities and equipment available for operation under competitive proposals by private contractors to the maximum extent feasible, subject to supervision of the state entity. Capital facilities and equipment should be denied use by private contractors only if they would similarly be denied to use by the state entity itself if it were awarded the contract.

(I) All contract prices shall be competitively determined through a request for proposal. No change in contract payment amount to a private contractor or state entity shall be made except as specified in the contract. Payment changes in a contract shall be limited to indices, escalators, deflators, changes in service level and other expressly stated or calculable amounts, consistent with the request for proposal and proposal of the private contractor or state entity awarded the contract.

(J) A state entity may execute interim standby competitive contracts with one or more private contractors to provide any service on an interim basis in the event that the state entity is required to do so by the public welfare. Any services operated under a standby contract shall be subject to competitive proposal within six (6) months of standby contract service award.

(K) No state entity shall make or be bound by any contract, agreement or assurance that restricts its ability to comply with this act in any respect.

#### **Section 10. {Make or buy analysis.}**

(A) The make or buy analysis shall be performed through the issuance and evaluation of requests for information and proposals from private companies.

(B) The make or buy analysis shall be conducted as follows:

(1) The commission shall seek the widest reasonable distribution of each request for proposals to each organization on the interested proposer's list and to each additional organization which requests the specific request proposal.

(2) The commission shall begin advertising each request for proposals within ten (10) days of issuance. Requests for proposals shall be advertised in each daily newspaper published in the state once a week for three (3) consecutive weeks.

(3) Submission of proposals shall be required no sooner than forty-five (45) days after the request for proposal advertisement date.

(4) A request for proposals shall clearly specify the goods or services to be procured and include a draft contract.

(5) Any state entity may submit its own proposal in response to the request for proposal, subject to the terms and conditions later specified.

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(F) In no case shall a service operated under competitive proposal be returned to operation not subject to competitive proposal.

(G) A state entity shall not establish or impose any requirement to salaries, wages, benefits or labor union representation, staffing levels, work rules or other conditions of employment of private contractor employees. All contractors shall comply with applicable federal and state labor laws.

(H) Each state entity shall make capital facilities and equipment available for operation under competitive proposals by private contractors to the maximum extent feasible, subject to supervision of the state entity. Capital facilities and equipment should be denied use by private contractors only if they would similarly be denied to use by the state entity itself if it were awarded the contract.

(I) All contract prices shall be competitively determined through a request for proposal. No change in contract payment amount to a private contractor or state entity shall be made except as specified in the contract. Payment changes in a contract shall be limited to indices, escalators, deflators, changes in service level and other expressly stated or calculable amounts, consistent with the request for proposal and proposal of the private contractor or state entity awarded the contract.

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(K) No state entity shall make or be bound by any contract, agreement or assurance that restricts its ability to comply with this act in any respect.

#### **Section 11. {Proposal guidelines for state entities.}**

Any state entity may compete to provide the public service subjected to make or buy analysis by submitting its own proposal, subject to the following conditions:

(a) That it submit a sealed proposal before the advertised deadline for such proposals, that the proposal not be altered after that deadline and that the proposal be publicly opened and made public at such deadline.

(b) That any labor provision assumed in the proposal shall have been financially executed and binding on the state entity with respect to the public good or service subjected to make or buy analysis.

(c) That it take reasonable steps to ensure an objective and fair evaluation

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process, including prohibition of proposal evaluation participation by personnel or departments which were involved in preparing the state entity's proposal.

(d) That its proposal price be not less than its attributable fully allocated cost for service, and that its proposal price not be based on part-time labor provisions or other less costly labor provisions to a greater percentage than such provisions are employed in comparable positions within the state entity, and that its proposal price be consistent with currently adopted budgets and financial plans.

(e) That it shall make or be bound by no contract, agreement or assurance which creates or extends any form of obligation for continued employment or employee compensation, except for pension, beyond the contract expiration date under the provisions of the request for proposal for employees assigned to the service.

(f) That it shall be bound by the same terms, conditions and performance and other standards as would have applied to a private provider awarded the contract under the request proposal.

(g) That its costs shall not, at any point during the contract period, rise by an amount greater than that specified for the corresponding period in the state entity's proposal. If the state entity's cost performance is not in compliance with this provision, the state entity shall issue a new request for proposal for the service within ninety (90) days.

#### **Section 12. {Cost savings statement.}**

(A) The state entity privatizing a service shall prepare a statement estimating the cost savings and profits from privatization and submit such estimate to the commission for review.

(B) The commission shall review all cost savings and profit statements submitted by a state, entity. If the commission has reason to believe that the savings and profits estimates contained in the statement are incorrect, the commission shall arrange for one or more independent audits of the cost before and after the make or buy analysis.

(C) The commission shall certify to the Legislature and public actual cost savings and profits from privatization and shall identify which portions of the savings and profits that are recurring, and which are one-time, with the total amount of recurring and one-time savings equaling the amount certified.

#### **Section 13. {Commission report.}**

(A) On or before October 1 of each year, the commission shall issue a report to the Legislature and the Governor which shall:

- (1) Describe each program or activity in the pool of candidates for privatization;
- (2) Summarize the cost/benefit analysis prepared on each candidate;
- (3) Provide a detailed summary of any all privatization recommendations issued by the commission;
- (4) Evaluate any privatization activity which was recommended by the commission which become effective the first day of the previous fiscal year;
- (5) Prepare a review of the effectiveness and efficiency of any privatization recommended by the commission which has become effective since the commission came into existence;

(6) Compare the savings that the commission had projected to the savings that were certified, detailing the implications of both the projected and actual savings with respect to taxpayer dividends; and

(7) Certify the savings and profits achieved through new make or buy analysis in the year ending the previous June 30 and the total recurring savings from previous years and shall recommend that such certified amount be appropriated as provided in this act. Based upon the total savings and profits certified, the commission shall estimate and provide the amount of each dividend as specified by the Taxpayer Dividend From Good Government Fund under this act. This information shall be conveyed to the public and media.

(B) The Legislative Budget Office shall cooperate with the commission in the completion of any report or reporting activity required by this section.

(C) The commission shall report to the Legislature, in conjunction with the above-required report, an analysis of any legal impediments to future privatization. Such report shall also include proposed remedies, including, where appropriate, change to rules and regulations, draft legislation or constitutional amendments.

(D) All reports required under this act shall be provided quarterly to [applicable government evaluation body] for its review.

#### **Section 14. {Taxpayer dividend.}**

(A) There is hereby created a special fund in the State Treasury to be known as the "Taxpayer's Dividend From Good Government Fund," into which shall be deposited such amounts that are derived from saving and profits realized as a result of privatization state government activities as may be appropriated to such fund by the Legislature. Money in such fund at the end of any fiscal year shall not lapse into the General Fund. Interest earned on amounts deposited into such fund shall remain in such fund.

(B) Money in the Taxpayer's Dividend From Good Government Fund shall be distributed biennially beginning July 1, with the first distribution to be as close to July 1, 1995 as practicable. The [applicable government finance body] shall make such distributions as provided in this act to natural persons through: [Language to be supplied. Examples include tax rebates and reductions and motor vehicle registration fee rebates.]

#### **Section 15. {Technology and productivity fund.}**

(A) There is hereby created a special fund in the State Treasury to be known as the "Technology and Productivity Procurement Revolving Fund," into which shall be deposited such amounts that are derived from savings realized as a result of privatization of state government activities as may be appropriated to such fund by the Legislature until the sums distributions to such fund reach One Million Dollars (\$1,000,000). Money in such fund at the end of the fiscal year shall not lapse into the General Fund. Interest earned on amounts deposited into such fund shall remain in such fund.

(B) Money in such fund shall be made available through loans to state agencies to improve technology and productivity under such rules and regulations as may be established by the commission.

#### **Section 16. {Savings appropriation.}**

(A) Each fiscal year the legislature shall appropriate the amount it determines to have been saved as a result of privatization of state government activities in the immediately previous fiscal year, both through privatization instituted in such fiscal year and recurring savings from privatization in previous years, based upon the amounts certified by the commission in the report required by this act, as follows:

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(1) Sixty percent (60%) to the Taxpayers Dividend From Good Government Fund created pursuant to this act.

(2) Fifteen percent (15%) to the Technology and Productivity Procurement Revolving Fund created pursuant to this act, until the sum of all distribution to such fund reaches One Million Dollars (\$1,000,000). After the maximum amount of distributions have been made to the Technology and Productivity Procurement Revolving Fund such appropriation shall be made to the Taxpayer's Dividend From Good Government Fund.

(3) Ten percent (10%) or Three Hundred Thousand Dollars (\$300,000), whichever is the lesser amount, to the [state] Commission on Privatization created pursuant to this act, to support the operation of the [state] Commission on Privatization.

**Section 17. {Severability clause.}**

**Section 18. {Repeals.}** ← **Were your laws repealed?**

**Section 19. {Effective date.}**

*Adopted by ALEC's Tax and Fiscal Policy Task Force and*

*Approved by full ALEC Board of Directors January 1995.*

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