

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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Competitive Contracting of the Department of Motor Vehicles Act

Summary

The purpose of the bill is to require that the state's department of motor vehicles develop a competitive environment for the production of goods and services. This would be accomplished by an annual consideration of competitive contracts based upon a percentage of the DMV's budget. The DMV would also be required to institute a make or buy analysis when presented with a good faith petition by a private company indicating an interest in providing the service under contract to the DMV and for less than the internal cost of operation.

A make or buy analysis would include the issuance of a request for proposal for the specified good or service, and the award of a contract to the lowest responsive and responsible proposer. The DMV would be required to observe proposal requirements as if it is a private company, submitting sealed proposals and employing true costing provisions (unless it chose not to compete for the good or service). Contracts would be limited to five years, including options, after which time any such service would be subjected to make or buy analysis again.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Legislative Declarations.}

The legislature hereby finds and declares that:

- (A) Public services should be provided at the **lowest possible cost** consistent with service and safety standards.
- (C) Obtaining cost-effective public services requires a competitive environment and a mechanism for competitive contracting of such services.
- (B) Private companies have been used under competitive contracts to provide public services at lower costs and with lower annual cost increases.

Section 2. {Definitions.}

- (A) "Attributable fully allocated cost:" means the operating and capital cost of a public service including direct, indirect and allocated minus the cost of any function not to be competitively contracted.
- (B) "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 assumes the comparison of the true costs of public and private production methods that result in comparable public goods or services.
- (C) "Public goods and services:" means any product or service produced by the DMV and any product or service supportive of or ancillary to the functions of the DMV.

Section 3. {Scope of the Act.}

- (A) *Application:* This act shall apply to all aspects of the DMV
- (B) *Routine make or buy analysis requirement:* On an annual basis, the DMV shall perform make or buy analysis covering goods or services representing at least five percent of its operating budget.
- (C) *Petitions of interest:* In addition to the routine make or buy analysis requirement above, the DMV shall perform make or buy analysis covering any good or service for which it has received a qualifying petition of interest from a private company (consistent with the process below). No more than one make or buy analysis shall be required for a particular good or service within a one-year period.
- (D) *Public control of specifications:* The DMV shall retain full control of service quantities, service specifications, standards and any other matter demonstrably related to the delivery of the particular public good or service in a manner consistent with the public interest.
- (E) *Requirement for speedy compliance:* The DMV shall fully comply with this Act as soon as practicable, but shall in any case be in full compliance with its provisions within one year of enactment.

Section 4. {Free enterprise participation process.}

- (A) *Establishment of free enterprise participation process:* The DMV shall establish a free

Did you know that global corporation Kraft Foods was the corporate co-chair in 2011?

enterprise participation process, including:

- (1) Maintenance of a list of interested proposers, which shall include all organizations that have requested inclusion on such list. The DMV shall advertise for additions to the interested proposers list at least annually.
 - (2) Distribution to companies on the mailing list of a calendar specifying:
 - (a) Dates and deadlines with respect to the routine make or buy analysis (the five percent requirement)
 - (b) Annual deadlines for submittal of petitions of interest from private companies (based upon fiscal year).
 - (3) DMV appeal process covering petitions of interest and requests for proposals.
- (B) *Wide participation to be sought:* The free enterprise participation process shall seek the widest possible participation of interested private companies in the production of DMV services.

Section 5. {Petitions of Interest.}

(A) *Companies may file petitions of interest:* Private companies interested in producing goods or services for government entities may file petitions of interest subject to the free enterprise participation process of the DMV.

(B) *Petition of interest requirements:* Petitions of interest shall include:

- (1) A description of the public good or service that the private company would like to provide for the DMV;
- (2) A statement that the private company believes that it can provide the same service, under contract, for a lower cost than the present cost;
- (3) A description of the company's financial capacity to provide the service;
- (4) A description of the company's technical ability to produce the public good or service, especially evidenced by identical, similar, or relevant goods or services provided by the company, whether under public sponsorship or not;

(C) *Timely action on petitions of interest:* Within 90 days the DMV shall determine whether there is sufficient reason to believe that the private company has the financial and technical ability to provide the public good or service.

(D) *Findings with respect to petitions of interest:* The DMV shall make one of two findings with respect to the petition of interest:

- (1) Certification of petition: that the company has sufficient financial and technical ability to provide the good or service;
- (2) Denial of petition: that the company has insufficient financial and/or technical ability to provide the good or service. The DMV shall state its justification for such a finding. Note: If the DMV has scheduled an immediate make or buy analysis for substantially the same public good or service specified in the petition of interest, it shall notify the petitioner that such an analysis has been scheduled, without making a finding on the petition.

(E) *Make or buy analysis requirement where petition of interest is certified:* If the DMV certifies the petition, the DMV shall undertake a make or buy analysis with respect to the public good or service specified in the petition, at the first possible opportunity within its schedule adopted under its free enterprise participation process.

Section 6. {Make or Buy Analysis And Contracts.}

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

(B) *Request for proposal process:*

- (1) The DMV shall seek the widest reasonable distribution of each request for proposals, and at a minimum shall send each request for proposals to each organization on the interested proposers list and to each additional organization that requests the specific request for proposal.
- (2) The DMV shall advertise each request for proposals within 10 days of issuance, and in accordance with its general procurement policy.
- (3) Proposals submission shall be required no sooner than 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) The DMV may submit its own proposal in response to the request for proposal, subject to the terms and conditions later specified.

(C) *Evaluation of proposals:*

- (1) The DMV shall employ a two-step review process, involving the concurrent submittal of two packages: first, the financial qualifications and technical proposal, and second, the cost proposal.
 - (a) The first step shall be an evaluation of the financial qualifications and technical proposals. The DMV shall determine whether each such submittal represents a responsive

and responsible proposal.

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

(2) with respect to each request for proposals, the DMV shall award the contract to the private provider or DMV whose responsible and responsive proposal offers the lowest cost.

(D) *Limitation on contract length:* Any public good or service operated under competitive proposals on the effective date of this Act or thereafter shall be subject a new competitive proposal at least every five years. Renewal options that extend a contract beyond five years shall be prohibited.

(E) *No reversion to non-competitive operation:* In no case shall a good or service operated under competitive proposal be returned to operation not subject to competitive proposal.

(F) *No labor restrictions:* A DMV shall not establish or impose any requirement relating 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.

(G) *Capital facilities and equipment:* Each DMV 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 DMV. Capital facilities and equipment should be denied use by private contractors only if they would similarly be denied to use by the DMV itself if it were awarded the contract.

(H) *Competitive determination of contract prices required:* All contract prices shall be competitively determined through a request for proposal. No change in contract payment amount to a private contractor or DMV 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 the proposal of the private contractor or DMV awarded the contract.

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

(J) *No restrictive agreements:* No DMV shall make or be bound by any contract, agreement, or assurance that restricts its ability to comply with this Act in any respect.

Section 7. {Internal DMV Proposals.}

The DMV may compete to provide the public good or service subjected to make or buy analysis by submitting its own proposal, subject to the following conditions:

(A) *Sealed proposal requirement:* 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) *Fair labor competition:* That any labor provision assumed in the proposal either be specified in currently effective labor contracts or be executed before the proposal deadline in a written and binding agreement between the DMV and the appropriate labor organization.

(C) *Objective evaluation:* That it take reasonable steps to ensure an objective and fair evaluation process including prohibition of proposal evaluation participation by personnel or departments that were involved in preparing the DMV's proposal.

(D) *Fair cost competition:* That its proposal price be not less than its attributable fully allocated cost for the 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 DMV, and that its proposal price be consistent with currently adopted budgets and financial plans.

(E) *No restrictive labor agreements:* 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) *Equal contract administration:* 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 for proposal.

(G) *Cost control required:* 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 DMV's proposal. If the DMV's cost performance is not in compliance with this provision, the DMV shall issue a new request for proposal for the good or service within 90 days.

Section 8. {Privacy clause.}

Any agency either publicly or privately operated that performs any function of the DMV is prohibited from selling, buying or distributing any information that the agency requires from the a citizen subject to its regulation unless the citizen gives the agency written consent expressly authorizing the distribution of this information. This clause in know way restricts an agency from distributing this required information once written authorization is received from the citizen.

Section 9. {Severability clause.}

Section 10. {Repealer clause.}

Were your laws repealed?

Section 11. {Effective date.}

Adopted by ALEC's Trade & Transportation Task Force at the Annual Meeting August 21, 1998. Approved by full ALEC Board of Directors September, 1998.

Center for Media and Democracy's quick summary

This ALEC-proposed bill mandates that the provision of some public service be opened to bidding by private contractors, and that the contract be awarded on a "lowest cost" basis. While competition is generally beneficial, competition without standards is not. "Lowest cost" requirements for procurement contracts tend to lower labor compensation among providers. They are also associated with even worse performance on health and safety, environmental, and reporting requirements than public agencies.

An early and, for that reason only, important effort to privatize provision of a particular department of state government, through competitive contracting for provision of some service, and "lowest cost" or "least cost" instructions on awards to bidding contractors.

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