

## 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?**

Home → [Model Legislation](#) → Commerce, Insurance, and Economic Development

### Public Transportation Consumer Protection Act

#### Summary

ALEC's model Public Transportation Consumer Protection Act is designed to provide the lowest possible cost of public transportation, consistent with service quality and safety standards by creating a competitive environment in which both public transit agencies and private transportation providers are fairly considered for operation of services.

#### Model Legislation

(Title, enacting clause, etc.)

**Section 1. {Short Title.}** This Act shall be known and may be cited as the Public Transportation Consumer Protection Act.

**Section 2. {Legislative Findings and declarations.}** The legislature finds and declares that:

(A) Public transportation services are provided to assist the transit dependent and the poor, to provide travel options for all, to relieve congestion, and to minimize automobile pollution.

(B) Protection of consumers, the public transit riders and tax-payers, requires that public transportation service be provided **at the lowest possible cost** consistent with service quality and safety standards.

(C) Private transportation providers have been used under competitive contracts to provide public transportation services at lower costs and with lower annual cost increases.

(D) Decisions on whether a public transportation service should be operated by a public agency or a private company should be made on economic and service quality considerations rather than on institutional considerations.

(E) Obtaining cost effective public transportation services requires a competitive environment and a mechanism for competitive contracting of such services.

(F) Facilities and vehicles purchased for public transportation service are public assets which are held in the public trust for service to public transit riders and the taxpayers.

**Section 3. {Definitions.}** The following words and phrases when used in this act shall have the meanings given in this section unless the context clearly indicates otherwise.

(A) "Attributable fully allocated cost." Operating and capital cost of a public transportation service including the direct costs of driver labor and benefits based upon actual driver work assignments for the service, and a reasonable allocation of costs for replacement and spare drivers and all other costs of providing and administering transportation and maintenance for the service, minus the cost of any function not to be competitively contracted.

(B) "Public transit operator." Any public agency that provides or sponsors public transportation service and receives public subsidy.

#### Section 4. {Competitive proposal requirement.}

(A) On an annual basis, each public transit operator shall seek competitive proposals on at least ten percent of its fixed route bus service. The annual competitive proposal requirement shall be met only by the requests for proposal for services not currently operated under competitive proposals. The annual competitive proposal requirement shall be based upon the annual vehicle miles for the latest fiscal year for which information is available.

(B) Notwithstanding the requirement of section (A), the competitive contracting required under this Act shall be accomplished through attrition of the public transit operator's full-time drivers and mechanics in the employ of the public transit operator on the effective date of this Act. A public transit operator may hire new permanent drivers and mechanics only to the extent necessary to operate services that the public transit operator has been awarded through competitive proposals.

(C) Any fixed route bus services 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 years. In no case shall a service operated under competitive proposal be returned to operation not subject to competitive proposal. Renewal options that extend a contract beyond five years shall be prohibited.

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

## 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.
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- Peabody Energy
- Intuit, Inc.
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- 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).

(D) The public transit operator shall determine the routes, schedules, and fares to be included in any request for proposal.

(E) Savings obtained through competitive service provisions shall be used only for the benefit of consumers, including increased service levels, reduced passenger fares, new capital facilities and reduction of public transportation subsidies.

(F) Each public transit operator shall make all buses purchased through use of public transportation subsidy available for operation under nominal leases.

(G) Each public transit operator shall maintain a list of interested proposers, which shall include all organizations that have requested inclusion on such lists. The public transit operator shall advertise for additions to the interested proposers list at least annually in accordance with its general procurement policy.

(H) A public transit operator may replace service with alternative service provision methods to be in the public interest.

(I) A public transit operator may execute standby competitive contracts with one or more private transportation providers to operate any service on an interim basis in the event that the public transit operator determines such operation to be required for the public welfare. Any service operated under a standby contract shall be subject to competitive proposal within six months of standby contract service commencement.

### **Section 5. {Standards and requirements.}**

(A) Within six months of the effective date of this Act, each public transit operator shall promulgate reasonable standards with respect to experience, safety records, and financial responsibility by which private transportation providers can be qualified to provide bus services pursuant to this Act. Such standards shall be clearly defined in each request for proposals issued by each public transit operator and shall not be designed to restrict the number of eligible participants in the competitive proposal process.

(B) Within six months of the effective date of this Act, each public transit operator shall prepare a standard form of agreement to provide bus services. Such contract shall include:

(1) Reasonable passenger comfort, safety, and vehicle maintenance standards;

(2) Standards for access to bus services for persons with disabilities, which shall be as specified in the public transit operator's plan for such services;

(3) Standards for training and safety records to be required of any driver;

(4) Requirements for reasonable insurance protecting the public transit operator from liability for the acts, negligence, or omission of private transportation providers, their agents, and their employees;

(5) Reasonable penalties for inadequate performance, including the public transit operator's right to cancel contracts.

(C) Each public transit operator shall develop reasonable standards for reliability, on-time performance, and other appropriate service quality considerations for each service parcel for which competitive proposals are sought. Such standards shall be clearly defined in each request for proposals issued by each public transit operator.

(D) A public transit operator may not establish any requirement relating to the wages, benefits, or union organization of contractor employees. All contractors shall comply with and give adequate certification of compliance with all applicable federal and state labor laws.

(E) No change in contract payment amount to a private transportation provider 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 transportation provider awarded the contract.

(F) Contract expiration dates shall be rotated to the maximum extent feasible to minimize the number of contract awards under consideration at any particular time.

### **Section 6. {Requests for proposals.}**

(A) Each request for proposals shall specify the route, service frequency, fares, and exact service level in terms of annual revenue service hours and miles to be assumed in the cost proposal as determined by the public transit operator.

(B) The public transit agency 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 which requests the specific request for proposal.

(C) The public transit operator shall advertise each request for proposals within 10 days of issuance, and in accordance with its general procurement policy.

(D) Proposals shall be required not less than 60 days from the advertisement date, except in emergency circumstances.

(E) Services shall commence under any request for proposal as soon as reasonably practical within the parameters of the service requirements.

(F) Each request for proposals shall be limited to the least amount of service as may be

commercially practicable so that the largest possible number of private transportation providers may respond.

(G) Any private transportation provider may respond to any request for proposals. Each public transit operator shall ensure that disadvantaged business enterprises, as defined in part 23 of title 49 of the Code of Federal Regulations, as amended, have the greatest possible opportunity to respond.

(H) With respect to each request for proposals, the public transit operator shall award the contract to the private transportation provider or public transit operator whose responsible and responsive proposal offers the lowest cost.

(I) No company, subsidiary of a company, parent of a company, or company related to a company holding a contract to manage the public transit operator shall be qualified to submit a proposal or be awarded any contract to operate public transportation services for the public transit operator.

#### **Section 7. {Public transit operator proposals.}**

A public transit operator, including a public transit operator issuing the competitive procurement, may submit a proposal, and be awarded any such service, 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 either be specified in currently effective labor contracts or be executed before the proposal deadline in a written and binding agreement between the public transit operator and the appropriate labor organization.

(C) That it define in advance and implement procedures to ensure an objective and fair evaluation process, including prohibition of proposal evaluation participation by personnel or departments that were involved in preparing the public transit operator's proposal.

(D) 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 the public transit operator's fixed route bus services which have not been subjected to competitive proposals, 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 that creates or extends any form of obligation for continued employment or employee compensation with respect to employees assigned to the service, beyond the expiration date of the competitively contracted service.

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

(G) That its costs per vehicle mile, exclusive of capital costs, for fixed route bus services that have not been subject to competitive proposals shall not at any point during the contract rise by a percentage greater than the cost per vehicle mile, exclusive of capital costs, for the competitive service in the public transit operator's proposal for the corresponding period.

(1) Each adopted budget or budget revision and each United States Department of Transportation Urban Mass Transportation Administration Section 15 annual report shall be reviewed by the public transit operator to determine compliance with this provision;

(2) If the public transit operator's cost performance is not in compliance with this provision, the public transit operator shall relinquish the contract and a new request for proposal for the service shall be issued within 90 days.

#### **Section 8. {Performance audit.}**

Each public transit operator shall contract with an independent certified accounting firm, other than the public transit operator's regular auditor, for a neutral and unbiased performance audit to be completed and reported to the legislature within two years after the effective date of this Act. Such performance shall analyze, in a fair and equitable fashion, the implementation of this Act including, but not limited to, compliance with the competitive proposal process, compliance with fully allocated costing requirements, the level of contract compliance by private transportation providers, the cost of such compliance and whether such costs will be recurring or may be reduced, the application of savings to consumer benefit, and taxes paid by private transportation providers.

#### **Section 9. {Facilities and vehicles.}**

(A) The planning of all maintenance facilities, operations facilities, and garages shall include a thorough review of competitive alternatives available for efficient development, management, and or operations for such facilities. The planning process shall include private transportation providers, and any application for funding assistance shall include a full description of such alternatives reviewed.

(B) No public transit vehicle, maintenance, or operating facility purchased or leased after the effective date of this Act shall be encumbered by any contract, agreement, or assurance that limits its use by private transportation providers in the operation of public transportation service under contract, subject to the policy control of the public transit operator.

**Section 10. {Restrictive agreements.}** No public transit operator 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. {Severability clause.}**

**Section 12. {Repealer clause.}**

**Section 13. {Effective date.}**

Were your laws repealed?

*ALEC's Sourcebook of American State Legislation 1995*

Center for Media and Democracy's quick summary

This ALEC-proposed bill mandates that the provision of some public s be awarded on a "lowest cost" basis. While competition is can be 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. This particular model legislation is an early, and for that reason important, effort to privatize provision of public transportation, through competitive contracting for provision of some service, and "lowest cost" or "least cost" instructions on awards to bidding contractors. It purports to better serve customers of public transportation, not taxpayers.

**About Us and ALEC EXPOSED.** The Center for Media and Democracy reports on corporate spin and government propaganda. We are located in Madison, Wisconsin, and publish [www.PRWatch.org](http://www.PRWatch.org), [www.SourceWatch.org](http://www.SourceWatch.org), and now [www.ALECexposed.org](http://www.ALECexposed.org). For more information contact: [editor@prwatch.org](mailto:editor@prwatch.org) or 608-260-9713.