

## 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.

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

**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](#) → Energy, Environment, and Agriculture

### Environmental Services Public-Private Partnership Act

#### Summary

Provides an arrangement through which government utilizes the private sector to produce goods and services that would otherwise be provided or funded completely by government.

#### Model Legislation

**Section 1. {Title}** This Act may be cited as the Environmental Services Public-Private Partnership Act.

**Section 2. {Definitions}** As used in this Act:

(A) "Call for competition" means a request for proposals, invitation for bids or request for competitive negotiations.  
(B) "Cost" means with respect to any public-private partnership project of facility related thereto:

- (1) All costs of designing, planning, acquiring, constructing, reconstructing, modifying, furnishing and placing in service any project, including architectural, planning, engineering, legal and fiscal advisors' fees or costs and any costs incident to the acquisition of any necessary property, easement or right-of-way.
- (2) Any costs incurred for preliminary planning to determine the economic or engineering feasibility of a proposed project, including, without limitation, costs of economic investigation and studies, surveys, preparation of designs, plans, working drawings, specifications and inspection and supervisions of the construction of any facility;
- (3) All costs incident to the purchase, installation, or financing of equipment, machinery, and other personal property required by project;
- (4) All costs incident to the authorization and issuance of bonds, including accountants' fees, attorneys' fees, financial advisors' fees, underwriting fees (including bond discount) and other professional services and printing costs;
- (5) All costs incident to the establishment and funding of appropriate reserve funds; and
- (6) Interest estimated to accrue on any bonds issued for temporary initial financing for any project for a reasonable time prior to construction, during and for a reasonable period of time after construction.

(C) "Infrastructure projects" are projects for the acquisition, development, design, construction, expansion and/or improvement of facilities to provide wastewater treatment, drinking water treatment and solid waste management systems, and all improvements related to any of the foregoing.

(D) "Infrastructure services" is the provisions of wastewater, drinking water, and solid waste management systems or services which shall include, but are not limited to, financing, design, construction, operation, maintenance, supply and distribution services or any and all components thereof.

(E) "Inherent public prerogative" is the authority of a political subdivision to determine whether infrastructure projects or infrastructure services should be produced by the employees of the political subdivision, or otherwise made, leased, contracted for, or purchased through a competitive process on either a temporary or permanent basis.

(F) "Political subdivision" is a city, county, town, special district or water or sewer authority, or any agency or authority of any of the foregoing constituting a political subdivision under state law, or any or all of the aforementioned acting jointly or by agreement. (As an alternative or an adjunct to this list, a special political subdivision could be authorized, solely to undertake transactions authorized under this act.)

(G) "Private contractor" means any natural person, corporation, partnership, trust, etc.

(H) "Proposal" means the response of a proposer to a call for competition.  
(I) "Public-Private partnership" means the competitive procurement if infrastructure projects or infrastructure facilities.

#### Section 3. {Authority}

(A) All political subdivisions shall have the authority to singly or in concert with other political subdivisions procure and/or provide any one or more infrastructure services for any infrastructure project by means of contracting with a private contractor pursuant to this act.

(B) A political subdivision shall have the authority to bargain collectively with regard to any matter of inherent public prerogative and shall have no authority to execute or renew any collective bargaining agreement that contains provisions.

(C) No arbitrator or arbitration panel shall have the authority to impose any labor contract, labor contract provisions to any other order concerning any matter of inherent public prerogative.

(D) A political subdivision which intends to enter into a contract with a private

Did you know the trade group for the gas industry was a corporate co-chair in 2011?

from CMD: another ALEC attack on unions

contractor for the provision of an infrastructure project or infrastructure service pursuant to the provisions of this act shall publish notice of its intention in at least one newspaper of general circulation in the subdivision which would be served under the terms of the proposed contract.

(E) A political subdivision shall have the authority to sell capital facilities and capital equipment to private persons for use in infrastructure projects and infrastructure services, consistent with the public interest.

#### Section 4. {Planning}

(A) A political subdivision shall routinely and objectively consider public-private partnership for infrastructure projects or infrastructure services where:

- (1) An infrastructure facility is to be developed or improved.
- (2) A new or expanded infrastructure service is to be provided.

(B) A political subdivision shall objectively consider unsolicited proposals from private contractors for provision of infrastructure services. Upon completion of such consideration, a political subdivision shall issue a finding as to whether procurement of such infrastructure services is in the public interest, which finding shall be available for public inspection.

(1) The political subdivision shall commence a competitive procurement where consistency with the public interest is found.

(2) A political subdivision may establish reasonable schedules, standards and procedures for such consideration.

#### Section 5. {Procurement}

(A) A political subdivision shall procure any and all infrastructure services.

(B) A political subdivision that procures an infrastructure project or infrastructure services shall use a competitive procurement which includes a call for competition for that procurement.

(C) A political subdivision may amend a call for competition, subject to the same requirements as apply to the original call for competition.

(D) A political subdivision that procures an infrastructure project or infrastructure service shall limit each procurement to the minimum size economically and practically feasible consistent with the public interest.

(E) All calls for competition for any infrastructure services in connection with any infrastructure project shall state that a private contractor may offer, as an alternative response, a proposal providing for additional infrastructure services or for utilization of new technologies for the project which will provide economic or environmental benefits to the political subdivision.

(F) Any law which prohibits a private contractor from offering two or more infrastructure services for any single infrastructure project is inapplicable to infrastructure services procured under this act.

(G) All calls for competition shall state the standards required for qualification and the criteria to be used in evaluation of proposals. Such standards and criteria shall not include any matters which are not permitted under either Section 7(D) or Section 7(E) of this act.

(H) Evaluation of competitive proposals shall be on the basis of the standards required for qualification and evaluation criteria as stated in the call for competition.

(I) All calls for competition that combine procurement of infrastructure facilities and infrastructure services shall require that proposers separately specify the costs of infrastructure facilities and infrastructure services.

(J) A political subdivision shall have the authority to reject all proposals and either:

- (1) Issue a new call for competition; or
- (2) If required by the public interest, not issue a new call for competition. The basis of such finding shall be documented and available for public inspection.

(K) In the event that a political subdivision decides to award a contract, it shall accept the qualifying proposal with the lowest price or a qualifying proposal that provides more than correspondingly greater public benefit in return for its higher price. Nothing in this section shall preclude a political subdivision from equitably negotiating with one or more private contractors that have submitted qualifying proposals under the terms of the call for competition.

(L) In the event that fewer than two qualifying proposals are received, a political subdivision shall conduct a cost analysis to determine the reasonableness of the proposed contract price, and shall submit the cost analysis, call for competition, any amendments and the competitive proposal to the (appropriate state agency), which shall determine whether the competitive process was consistent with Section 5 of this act. (A threshold contract amount for this review could be defined by the law or by administrative procedure).

(1) A political subdivision shall not be authorized to award a contract until either the (appropriate state agency) certifies compliance with Section 5 or 60 days have elapsed since submittal to the (appropriate state agency) and the (appropriate state agency) has not made a finding of non-compliance with Section 5.

(2) The (appropriate state agency) shall have no authority to issue a finding of non-compliance under this section except as regards Section 5.

(M) A political subdivision may participate in its competitive procurement for infrastructure services, subject to the following conditions:

- (1) That it shall 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.
- (2) That it shall be bound by the same terms and conditions as apply to private proposers under the competitive process.
- (3) That before submitting its sealed proposal, the political subdivision shall legally execute any labor provision assumed in its sealed proposal and that such execution shall be in the form consistent with the procedure of the political subdivision. This shall

include a written and binding agreement between the political subdivision and any appropriate labor organization.

(4) That it shall take reasonable steps to ensure an objective and fair evaluation process including, but not limited to, prohibition of proposal evaluation participation by personnel or departments which were either involved in preparing the political subdivisions proposal or are employed in or directly manage operation of the infrastructure service subjected to the call for competition.

(5) 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 special labor provisions to a greater percentage than such provisions are employed in comparable positions within the political subdivision, and that its proposal price be consistent with currently adopted budgets and financial plans.

(6) 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 specified proposed contract expiration date for individual employees assigned to the service.

(7) That, in the event the political subdivision is awarded the contract:

(a) That it shall be bound by the same terms, conditions and performance and other standards as would have applied to a private contractor awarded the contract under the call for competition.

(b) That its attributable fully allocated costs shall not at any point during the duration of the contract or any renewal option period be greater than the amount specified in the contract or calculated under the terms of the contract for the corresponding period. Contravention of this requirement shall represent material default under the contract, and such contract shall be immediately terminated.

(c) That a new competitive process shall be commenced under any circumstance that a new competitive process would have been required if the contract had been awarded to a private contractor.

**Section 6. {Utilities Regulation}** A private party who contracts to provide infrastructure services pursuant to this act shall be exempt from regulation as a public utility. Any regulated utility which chooses to comply with the provisions of this act shall, upon execution of the contract to provide infrastructure services, be exempt from regulation as a public utility in regard to the services provided under this act.

### **Section 7. {Contracts}**

(A) The governing body of any political subdivision is hereby authorized to enter into contracts or infrastructure services of such duration as the political subdivision deems to be in the best interests of the public but not longer than the following:

(1) With regard to privately-owned infrastructure projects and infrastructure services, 5 years, inclusive of renewal options, and any such contracts shall be binding upon its successors.

(B) At the termination of any service contract entered into in accordance with this act, or in sufficient time before expiration of any existing service contract, the political subdivision body shall issue a call for competition for a new service contract.

(C) All contract prices for infrastructure projects and infrastructure services shall be determined through a competitive process:

(1) The original contract shall specify all contract prices, based upon the results of the competitive process, in actual amounts or in a base amount to be periodically adjusted in relation to the change in an index or indexation system specified in the original contract.

(2) Contract prices for renewal option periods shall be specified in the original contract in the manner required by Section (7)(C) 1.

(3) A price adjustment may be negotiated by the public jurisdiction and the private contractor to equitably account for unanticipated increases or decreases in costs attributable to new environmental requirements or project specific taxes imposed by federal or state laws or regulation. The public jurisdiction shall hold a public hearing in which the proposed adjustment shall be described and public testimony shall be accepted.

(4) The following conditions shall apply to indexation of contract prices:

(a) Adjustment to contract price may be a percentage of, but no more than 100 percent of the change in the index or indexation system as specified in the original contract.

(b) A single index may be used to calculate the change in contract price from the base period. Such index shall be a broad state or regional index that reliably reflects the change in cost of the factors of commercial production, including taxation, in competitive markets.

(c) An indexation system comprised of more than one index may be used to calculate the change in contract price from the base period. The percentage weighting of each component index of the indexation system shall be specified in the original contract. Such indexation system shall be comprised of:

(i) With regard to any labor cost index, specific state or regional indices that reliably reflect the change in competitive labor market costs for employees with the general skill level and educational requirements of the employees working for the private contractor under contract with the political subdivision.

(ii) Such other specific state or regional indices as reliably reflect the change in competitive market costs for corresponding factors of production, including taxation.

(d) Any index shall be beyond the capability of either contract party to manipulate.

(D) No state or local prevailing wage law, ordinance, or other such prevailing wage requirement shall be applied to any infrastructure project or infrastructure service.

(E) A political subdivision shall not execute any contract or otherwise impose any requirement relating to the salaries, wages, benefits, labor union representation, staffing levels, work rules, or other conditions of employment of private contractor employees.

**Section 8. {Public Hearings}** Any political subdivision choosing to provide

environmental infrastructure services or infrastructure projects under the provisions of this act shall conduct at least one public hearing at or near the location of the project facility. Such hearing shall address such issues as the actual costs involved in engaging in the activity, including the costs and value of labor, real estate, equipment, overhead, and other related expenses insofar as appropriate or deemed expedient in order to serve the public interest, including fees or prices charged for public use of the services. The hearing shall also address the benefits the political subdivision will receive, environmentally and economically, from a public-private partnership.

### **Section 9. {Financing}**

- (A) A political subdivision may enter into a binding contract to pay for a guaranteed quality of infrastructure services.
- (B) A political subdivision shall be authorized to pledge the anticipated revenues from and/or to mortgage any facilities indebtedness or other obligation incurred in connection with the physical construction of any such infrastructure project.
- (C) A political subdivision is hereby authorized to covenant that it will maintain rates, fees, or other charges for the use by the public of infrastructure projects at a sufficient level to pay the debt incurred to develop and finance such projects and to pay for all costs of operation and maintenance thereof.
- (D) A political subdivision which has awarded a contract for the provision of infrastructure services to a proposer pursuant to this act may lease to the proposer, the property to be used as a site or facility for providing this service.
- (E) Interest payable in connection with any debt issued by a political subdivision in connection with an infrastructure project may be exempt from all state and local income taxes.
- (F) Any state or local funding for infrastructure projects or infrastructure services shall be equally available to political subdivisions for support of such purposes without regard to whether such facilities or services are competitively procured or provided directly by the political subdivision.

**Section 10. {Preemption}** Any act or parts of acts inconsistent with this act are repealed to the extent of the inconsistency.

**Section 11. {Severability clause}**

**Section 12. {Repealer clause}**

**Section 13. {Effective date}**

*ALEC's Sourcebook of American State Legislation 1995*

**Center for Media and Democracy's quick summary**

Were your laws repealed?

This legislation privatizes public water and sewage services and would prohibit local governments from requiring that contractors meet labor and wage standards. Most efforts at privatizing water/sewage have resulted in increased rates, poor customer service, and environmental damage. This bill also prohibits local governments from requiring the use of union labor or that contractors pay the prevailing wage.

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