

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 PUBLIC SERVICES ACT

Summary

The purpose of the bill is to require that each government entity (the state and any public bodies organized under the laws of the state) develop a competitive environment for the production of goods and services. This would be accomplished by an annual "make or buy" analysis requirement (consideration of competitive contraction) based upon a percentage of the government entity's budget. Government entities 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 government entity and for less than the internal cost of operation. In preparation for implementation, government entities would be required to establish a free enterprise participation process.

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 government entity 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. The government entity could issue a new RFP in a shorter period of time. (Examples of this bill are Colorado SB #201, 1989 and Arizona HB #2507, 1990)

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Legislative Declarations.}

The legislature hereby finds and declares that.

1. Protection of taxpayers requires that public services be provided at the lowest possible cost consistent with service and safety standards.
1. Private companies have been used under competitive contracts to provide public services at lower costs and with lower annual cost increases.
1. Decisions on whether a public service should be operated by a public agency or a private company should be made on economic considerations rather than on institutional considerations.
1. Obtaining cost effective public services requires a competitive environment and a mechanism for competitive contracting of such services.

Section 2. {Definitions.}

1. "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.
1. "Government entity:" means includes any of the following: The state, a local government, a special district or any other public body authorized or established under the laws or authority of the state (such as counties, cities, towns, townships, villages, special districts, government enterprises, publicly owned utilities, school districts, transit districts, etc.).

(C) "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.

(D) "Public goods and services:" means any product or service produced by a covered government entity under its public authority and any product or service supportive of or ancillary to the functions of the government entity.

Section 3. {Scope of the Act.}

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.
- 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.

(A) *Application:* This act shall apply to all departments of state governments and all municipalities, counties, public agencies, publicly controlled districts, and government-owned corporations constituted under the laws of the state (hereinafter referred to as government entities).

(B) *Routine make or buy analysis requirement:* On an annual basis, each government entity shall perform or buy analysis covering goods or services representing at least five percent of its 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.

(C) *Petitions of interest:* In addition to the routine make or buy analysis requirement above, each government entity 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:* Each government entity 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:* Government entities 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. {Exclusions.}

The following public goods and services shall not be subject to this act:

- (A) Police
- (B) Regulatory functions
- (C) Public school or public university instruction
- (D) Judicial functions
- (E) Executive (governor) and legislative direct staff.

Section 5. {Free enterprise participation process.}

(A) *Establishment of free enterprise participation process:* Each government entity shall establish a free 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 government entity shall advertise for additions to the interested proposers list at least annually.

(2) Distribution to companies on the mailing list of a calendar specifying:

- 1. requirement)
- 1. fiscal year).

(3) Government entity 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 public goods and services.

Section 6. {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 government entity

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

- 1. government entity;
 - 1. the government entity, for a lower cost than the present cost;
 - 1. A description of the company's financial capacity to provide the service;
 - A. 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 government entity 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 government entity shall make one of two findings with respect to the petition of interest:

- 1. provide the good or service;
- 1. provide the good or service. The government entity shall state its justification for such a finding.

Note: If the government entity 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 government entity certifies the petition, the government entity 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 7. {Make or Buy Analysis And Contracts.}

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

Request for proposal process:

(1) The government entity 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.

1. accordance with its general procurement policy.
1. Proposals submission shall be required no sooner than 45 days after the RFP advertisement date.
1. contract.
2. The government entity may submit its own proposal in response to the RFP, subject to the terms and conditions later specified.

(C) Evaluation of proposals:

(1) The government entity 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.

1. government entity shall determine whether each such submittal represents a responsive and responsible proposal.
1. proposers.

(2) with respect to each request for proposals, the government entity shall award the contract to the private provider or government entity whose responsive 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.

- *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.

1. A government entity 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.
1. Each government entity shall snake capital facilities and equipment available for operation under competitive proposals by private contractors to the maximum extent feasible, subject to supervision of the government entity. Capital facilities and equipment should be denied use by private contractors only if they would similarly be denied to use by the government entity itself .if it were awarded the contract.
1. All contract prices shall he competitively determined through a request for proposal. No change in contract payment amount to a private contractor or government 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 the proposal of the private contractor or government entity awarded the contract.
1. A government entity 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 government entity 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.
2. *No restrictive agreements:* No government 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 8. {Internal Government Entity Proposals.}

The government entity 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:

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1. 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.
 2. *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 government entity and the appropriate labor organization.
 3. *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 government entity's proposal.
 4. *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 government entity, and that its proposal price be consistent with currently adopted budgets and financial plans.
 5. *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.
 6. *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 government entity's proposal. If the government entity's cost performance is not in compliance with this provision, the government entity shall issue a new request for proposal for the good or service within 90 days.

Section 9. {Severability clause}
Section 10. {Repealer clause.}
Section 11. {Effective date.}

Were your laws repealed?

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, www.SourceWatch.org, and now www.ALECexposed.org. For more information contact: editor@prwatch.org or 608-260-9713.

Center for Media and Democracy's quick summary

This bill encourages privatization by requiring systematic application of "make or buy" analysis, where government entities are required to analyze whether a private outside vendor can provide a good or service at a lower cost. It will promote greater outsourcing of services traditionally provided by public workers. While exceptions exist for police, public schools, regulators, the judiciary, and gubernatorial and legislative staff, all other forms of public service would be eligible for privatization (for example, firefighters, transportation employees, maintenance workers, or others). Private entities can petition for "make or buy" analysis for specific areas of work the entity is interested in providing, and consideration will be driven by economic concerns rather than what is in the public interest. Privatizing services currently provided by public employees would weaken the public employee unions. Contracts would be granted for five years under this bill and unions would likely not be able to function in this environment. This bill is undated, but it is mentioned in the ALEC State Budget Toolkit so it is something the organization is still promoting.

See also "Council on Efficient Government Act," "Public-Private Fair Competition Act"