

## 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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### PUBLIC-PRIVATE FAIR COMPETITION ACT

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

#### Summary

This act prohibits government from engaging in any commercial activity of any goods or services to or for government agencies or for public use which are also offered by private enterprise. It establishes a Private Enterprise Advisory Committee to act in conjunction with the state auditor to review and make determinations concerning state agencies engaged in or proposed to be engaged in activities which unfairly compete with the private sector. It also establishes a system to resolve complaints from the private sector regarding unlawful government activity established in this Act. (An example of this bill is Oregon BB #2778, 1993.)

#### Model Legislation

{Title, enacting clause, etc}

#### Section 1.

This Act shall be known and may be cited as the Public-Private Fair Competition Act.

#### Section 2. {Statement of purpose}

The Legislative Assembly finds and declares that the growth of private enterprise is essential to the health, welfare, and prosperity of this state and that government competes with the private sector when it provides goods and services to the public. It is the intent of the Legislative Assembly and the purpose of this Act to protect economic opportunities for private industry against unfair competition by government agencies and enhance the efficient provision of public goods and services. It is also the intent of the Legislative Assembly that issues and complaints regarding competition between government and the private sector be addressed by the state auditor, with advise from the Public Enterprise Advisory Committee created by this Act.

#### Section 3. {Definitions}

- (A) "Commercial Activity" means performing services or providing goods which can normally be obtained from private enterprise.
- (B) "Committee" means the Private Enterprise Advisory Committee.
- (C) "Competitive impact statement" means a cost analysis using uniform accounting standards accepted by private enterprise to determine the total cost of commercial activity. The cost analysis shall include a comparison of impact of commercial activity on state and local tax revenues. The private enterprise cost figures in the cost analysis shall be determined by obtaining one or more bids for performing or providing commercial activity.
- (D) "Government agency" means the state, any unit of state government and any local government or other subdivision or district of the state, and shall not be construed to exclude any entity which is not majority owned as private property and which established under the Constitution, statutes, ordinances or any other order or action by any such entity or its officers.
- (E) "Private enterprise" means an individual, firm, partnership, joint venture, corporation, association or any other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services for profit.
- (F) "Uniform accounting standards" means an accounting method which allows government agencies to identify the true and total cost to supply goods and services in the same manner as private enterprise would identify true and total cost, including but not limited to the following:
  - (1) Labor expenses, including direct wage and salary costs, training costs, overtime and supervisory overhead;
  - (2) Total employee fringe and other personnel expenses;

- (3) Operating costs including vehicle maintenance and repair, marketing, advertising, and other sales expenses, office expenses, billing and insurance expenses;
  - (4) Real estate and equipment costs, debt service costs and a proportionate amount of other agency overhead and capital expenses including vehicle depreciation and depreciation of other fixed assets such as buildings and equipment;
  - (5) Contract management costs;
  - (6) The imputed tax impact of the activity if such entity were required to pay federal state and local taxes; and
  - (7) Any other cost particular to the business or industry supplying the goods or services.
- (G) "Government agency" means the state, any unit of state government and any local government or other subdivision or district of the state, and shall not be construed to exclude any entity which is not majority owned as private property and which established under the Constitution, statutes, ordinances or any other order or action by any such entity or its officers.

#### **Section 4. (Government activity prohibitions and exceptions)**

- (A) Except as provided in this act, a government shall not engage in any commercial activity, including, but not limited to, the manufacturing, processing, managing, sale, offering for sale, rental, leasing, delivering, dispensing, distributing, or advertising, in whole or part, of any goods or services to or for government agencies or for public use which are also offered by private enterprise.
- (B) Notwithstanding any other provision of law, a government agency is authorized to perform or provide a commercial activity only when:
  - (1) The activity is authorized by state law.
  - (2) Use of a private enterprise source would cause unacceptable delay or disruption of an essential program.
  - (3) The agency can provide or is providing goods or services to government agencies or the public on a continuing basis at a lower cost than if such goods or services were obtained from private enterprise as determined by cost comparison as outlined in the competitive impact statement relating to the specific good or service.

#### **Section 5 (Competitive Impact Statement)**

- (A) A government agency shall not be required to perform more than one competitive impact statement within one year for the same good or service as specified in a complaint under this act.

#### **Section 6 (Committee governance)}**

- (A) The state auditor in consultation with the Public Enterprise Advisory Committee, shall review and make determinations concerning state statutes, state rules and practices of state agencies relating to activities engaged in or proposed to be engaged in by government agencies which may be affected by this act and shall enforce the provisions of this act.
- (B) The state auditor, in consultation with the committee, shall determine final uniform accounting standards to be used for cost analysis in this Act in at least as strict a form as the definition of uniform accounting standards in this Act.
- (C) The state auditor, in consultation with the committee, shall adopt rules:
  - (1) Necessary to govern the public bidding process by private enterprise.
  - (2) Establishing procedures for hearing and resolving complaints filed under this Act.
- (D) The state auditor shall report activities and determinations made under this Act to the Governor and Legislative Assembly not later than [deadline].
- (E) The Private Enterprise Advisory Committee is created in the Department of Insurance and Finance. The committee shall advise the state auditor in the implementation and enforcement of this Act. The committee shall consist of nine unpaid members who shall be appointed as follows:
  - (1) The Governor, Speaker of the House of Representatives and President of the Senate shall each appoint two members from private enterprise who are business owners or officers.
  - (2) Two members who shall be chief executive or administrative officers of a government agency and who shall be appointed by the Governor.
  - (3) One member of the Legislative Assembly who shall be appointed by the Speaker of the House of Representatives.

(4) The chairperson of the committee shall be appointed by the Governor from the members representing private enterprise.

(F) All initial appointments to the committee shall be made no later than January 1 of the year following enactment. Terms of office for all members of the committee shall be two years and members may be reappointed up to an additional four terms. Each member who is a state agency employee shall remain on the committee until the end of the member's term of office, but only so long as the person remains a state agency employee. A vacancy on the committee shall be filled within 60 days of the date the vacancy occurred in the same manner as the original appointment. Any member appointment to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the term. Each member shall continue in office until a successor is appointed and qualified.

(G) Five members of the committee shall constitute a quorum. No action shall be taken by the committee without the concurrence of at least three members.

(H) The state auditor shall adopt rules necessary to govern proceedings of the committee. Members of the committee shall serve without compensation but shall be entitled to expenses.

### **Section 7 {Complaints}**

(A) Any person who believes that a government agency has engaged in or is proposing to engage in commercial activity in violation of this Act may file a written complaint with the state auditor stating the grounds for the complaint. Upon receipt of the complaint the state auditor shall immediately transmit a copy of the complaint to the head of the government agency which is the subject of the alleged violation and to the committee.

(B) The head of the government agency named in the complaint shall respond to the state auditor in writing within 30 days after receipt of a complaint. The state auditor shall transmit a copy of the response to the committee. The government agency shall either admit or deny the allegations made in the complaint and indicate whether remedial action will be taken.

(C) If a government agency denies the allegations made in the complaint, the government agency shall:

(1) Prepare and submit to the state auditor a competitive impact statement concerning the commercial activity that is the subject of the complaint; and

(2) Prepare a detailed request for proposal which will be widely disseminated within segments of private enterprise which normally engages in the commercial activity that is the subject of the complaint in order to obtain firm bids or proposal for the activity requested. All bidding processes shall be a matter of public record. A reasonable time period shall be given to private enterprise to submit bids or proposals. Bids received from the request for proposal shall be made available upon request of the state auditor. Bids received from request for proposal shall be used in the preparation of the competitive impact statement.

(D) The state auditor shall establish a deadline for submission of the competitive impact statement by the government agency.

(E) The state auditor shall hold a public hearing on the complaint where all parties are afforded an opportunity to present evidence. The hearing shall be held:

(1) Within 30 days after receipt of the agency's response under this section, if the agency admits the allegations in the complaint but does not indicate whether remedial action will be taken; or

(2) Within 30 days after the state auditor receives the competitive impact statement prepared under this section.

(F) After considering the competitive impact statement, bids received from private enterprise under this Act and other evidence presented, the state auditor, after consulting with committee, shall determine whether the government agency is in violation of the provisions of this Act. If a government agency is found to be in violation of this Act, the state auditor shall take the necessary steps to terminate the commercial activity.

(G) Within 30 days after the public hearing, the state auditor shall issue a report of its findings to the complainant and the government agency.

(H) If the government agency's commercial activity is to be terminated, the termination shall take place within three months of the state auditor's report or under a schedule set by the state auditor.

(I) The state auditor shall establish by rule fees for filing complaints which will supply the operating funds of the committee. The fee shall not be less than \$2,000 per complaint. In the case where the state auditor finds in favor of the complainant, the government agency shall pay the filing fee, and the complainant shall be reimbursed by the state auditor.

(J) If the government agency fails to comply with the state auditor's order, the

state auditor may file an action to restrain and enjoin the government agency from engaging in the activity.

(K) A private enterprise that suffers economic loss as a result of a government agency violating this Act has a cause of action for injunctive relief or damages, or both, in the county where the government agency is located. Any damages awarded in a cause of action brought under this Act shall be assessed against the specific government agency and specifically assessed against its budget. Court costs shall be awarded to any private enterprise prevailing under this section. A private enterprise shall not have standing to seek injunctive relief or damages or to challenge violations of this Act in the courts of this state until the private enterprise has first made a complaint to the state auditor and has received the decision of the state auditor.

**Section 8. {Severability clause.}**

Were your laws repealed?

**Section 9. {Repeals.}**

**Section 10. {Effective date.}**

*Adopted by ALEC's Tax and Fiscal Policy Task Force and  
Approved by full ALEC Board of Directors January 1995.*

**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.

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

This bill pushes a radical privatization agenda. It prohibits government from offering any service that could be provided by the private sector, which could include education, police services, and fire fighting. It allows private persons or businesses to challenge a public service, and establishes a committee that will review those challenges and determine whether the public service should be privatized. It also gives a private business the right to sue when it believes it has experienced economic loss by competition from a government agency's services.

See also "Competitive Contracting of Public Services Act," "Council on Efficient Government Act."