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Privatization: How Much Is Too Much?

This month's challenge is to get on top of the very important issue of the shifting under way to private enterprises of a variety of previously governmental functions. The argument that has led many governmental activities on both federal and state levels to be moved to the private sector is that private enterprise will handle these functions more efficiently and less expensively. But is this true? Your national level League was tasked with taking a hard look at this question during the last national convention. Covering the many aspects involved was a daunting task, but the results, only partially reproduced here, are impressive. Please make every effort to read the entire study on the LWVUS website, but reading what is inside will give you a solid background. If you cannot make it to a unit meeting this month, please send in your comments anyway on the enclosed form.

Calendar

March

- 2 NCA Board meeting
- 2 April *VOTER* deadline
- 3 **Briefing/At Large meeting**
- 6 Primary Republican Presidential elections
- 8-14 **Unit Meetings**
- 11 Daylight Savings Time begins
- 11-17 Sunshine Week (open government)
- 17-18 LWV-VA Board meeting
- 21 **LWVFA Board meeting**

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Presidents' Message



If you haven't noticed already, 99 percent of this month's *VOTER* is the LWVUS Privatization study and consensus. And, this is not all of the study, so if you are interested in reading more go to the LWVUS website <http://www.lwv.org/search/content/privatization> to read the rest.

Also, one quick plea! When someone from the Nominating Committee calls you, please **stop** and **think** before you say no. What are your interests – voting and elections, environment, domestic violence, healthcare, affordable housing, transportation? There is either a committee or an observer's job waiting just for you.

Thanks, Janey

Summary of Local Program Planning

The Board received excellent feedback from units about programs they would like in the next two years, but no new study emerged that would require a consensus and create a new position. These are the programs of interest that need committees (in alphabetical order):

1. Affordable Housing: Three units want to see an update of the affordable housing position. A committee could review the existing position and provide information on the status of affordable housing in Fairfax County. Our September 2007 study could be a starting point.

2. Fracking and Uranium Mining: Members have many questions about these two energy-related activities. How will they impact our communities and our environment? The committee can decide if the depth of information warrants separate programs.

3. Land Use Planning: Help take a look at development issues in Fairfax County, e.g., Tysons Corner; the Dulles Rail Corridor; BRAC, the Mark Center, and Ft. Belvoir. The Fairfax Day/Vienna unit is preparing a program for June on Tysons Corner. Join them to get a feel for how it is done and consider creating a standing committee to look at this continuing and vital issue.

4. School Board: Elect or Appoint? We currently elect our School Board, but two units questioned whether an appointed board would be more effective. This is an opportunity to go back to 1996 and look at the study written when we changed from appointed to elected school board members! Did the analysis hold true? Has the change been beneficial?

5. Schools: We have a standing committee that is always looking for new members! Suggestions from the units for programs this year include the status of online only textbooks and school discipline policies.

6. Social Media: What is it? How does it work? When should you use email, Facebook or Twitter? We need a committee to create an informational program for our members that may also serve to uncover the League's needed first social media czar!

7. Transportation: What would be the effect of transferring the responsibility for roads from the state (VDOT) to Fairfax County? This could be a great informational program, and LVWFA already has a transportation position under which we could take action.

8. Water: Four units expressed concern about the water supply. Did you know that we have national, state, NCA, and local positions under which we can take action? We

(Cont. "Program Planning" P. 6, Col. 1)

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Privatization: How Much Is Too Much?

[Ed. Note: As long as it is, even what is reproduced below does not cover all the material. We urge you to find your way to the LWVUS website <http://www.lwv.org/search/content/privatization> for additional information. Endnotes for all the studies can be viewed on this website as well. These studies were produced by the Privatization of Government Services, Assets and Functions Study, 2011 © League of Women Voters.]

Surveying State Laws Addressing Privatization

EXECUTIVE SUMMARY

Over the past few decades, state legislatures throughout the country have enacted state laws addressing privatization activities. By the early 1990s, several state legislatures, seeking to realize the promised benefits of cost savings and efficiency gains, had designed and enacted comprehensive, systematic privatization programs for their states. A decade later, however, no consensus had developed as to the effectiveness of privatization (outsourcing or contracting out), due, in part, to the lack of empirical data as well as the complexity of the issue. Consequently, the topic of privatization re-emerged as a controversial management issue for state policymakers. In fact, based upon its national survey, the Council of State Governments concluded in a 2003 report that many state agency directors had no clear idea of how much money privatization had actually saved.

Across the 50 states, legislative approaches to privatization differ widely, and while some states have enacted laws that promote and facilitate privatization, others have enacted laws seeking to regulate and curtail such activity. Moreover, such legislative approaches differ in scope. Some states have enacted broad-based privatization laws that apply to all such activity within the state (*general privatization laws*), such as the Massachusetts Pacheco law that tends to restrict and regulate such activities. Other states have passed laws that relate only to one or more sectors (*sector-specific privatization laws*), such as the Tennessee private prison contracting act, which, according to some commentators, has led to the rise of the national private prison industry. *Issue-specific privatization laws* also have been enacted and typically reflect policy concerns regarding such matters as nondiscrimination or public employee job security with respect to the outsourcing of services by public agencies.

The paper concludes with a few suggestions as to how to research the reader's own state's privatization laws. Included is an Appendix, providing a direct website link to the online general laws of the 50 states.

Diane Dilanni

For End Notes go to <http://www.lwv.org/content/surveying-state-laws-addressing-privatization>

Privatization: The Public Policy Debate

The purpose of this article is to provide a description of the evolution of the public policy known as "Privatization." Privatization is a movement to deregulate private industry and transfer many government services, assets and functions to the private sector.

Claims and Concerns

Those promoting privatization claim that:

- the private sector can provide increased efficiency, better quality and more innovation in services than the government;
- a smaller government will reduce costs to the taxpayer; and
- less regulation will provide a better environment for business, thus creating more jobs.

Those concerned about privatization suggest the following.

- Profits: The mandate to make a profit will endanger public safety and reduce services available to the general public.
- Costs: There will be increased costs to consumers.
- Transparency and Accountability: Private companies will lack transparency, adequate oversight and accountability.
- Corruption: There will be increased corruption between government and for-profit, private companies.
- National Defense: Privatizing sectors such as ports, utilities and defense can result in foreign control and will put the country at risk in the event of war.
- Inequality: The scale of privatized programs will result in chronic high unemployment, low wages and abusive labor practices, leading to growing inequality between the wealthy and poor. Larger than the United States The privatization movement is an international movement. Outside the United States, prominent divestitures of government assets have included Russia's natural gas (Gazprom), Bolivia's municipal water system in Cochabamba and the United Kingdom's British Rail. Inside the United States, privatization has taken the form of deregulation, e.g., the deregulation of the financial services industry; redistribution of the taxes "burden," e.g., efforts to reduce individual taxes on capital gains and inheritances, and reductions of corporate taxes; and privatization, the shifting of government programs to the private sector, e.g., the prisons and highways.

History

In the 1970s, disillusioned with the Progressive Era vision, leadership in the increasingly global private sector became more active, asserting that burgeoning tax rates and government regulations of industry were inhibiting free trade. Efforts were launched to dismantle many Progressive programs such as restrictions on financial lending, elimination of worker's compensation, elimination of control over food and environmental safety, and a revamping of the tax system by eliminating progressive taxes and replacing it with a flat tax.

Competing Theories

Milton Friedman: The intellectual inspiration behind the public policies to privatize in the United States has come from the Public Choice and Property Rights schools of thought. Prominent leaders advocating these theories include Milton Friedman, the Chicago School of Economics, and Fredrick Von Hayek whose book, *Road to Serfdom*, warned of the growing welfare state. The basic assumptions include:

- Democratic political systems have inherent tendencies toward government growth and excessive budgets.
- Expenditure growth is due to self-interested coalitions of voters, politicians, and bureaucrats.
- Public enterprises necessarily perform less efficiently than private enterprises.
- The more individuals stand to gain from tending to their property, the better it will be tended. John Maynard Keynes: The dominant economic theory after WWII was that of John Maynard Keynes. Keynes believed that to break a depression, the government needed to stimulate demand. It was necessary to get money into the hands of consumers to jumpstart growth. Businesses would not borrow and build if no demand was in sight, no matter how low the interest rates might go. Keynesian theories were later refuted by economist Milton Friedman and this dispute is at the core of the ongoing debate regarding how to break the current recession/depression. Privatization in Practice The key strategies as to how to downsize government and transfer programs to the private sector are described as:
 - Privatization by attrition Cessation of public programs and disengagement of government from specific kinds of responsibilities. Example might be the U.S. postal system.
 - Transfer of assets Direct sale or lease of public land, infrastructure, and enterprises. Examples might be federal and state parks, state-owned liquor stores and the proposed privatization of public libraries.
 - Contracting out (public/private partnerships) or vouchers Instead of directly producing some service, the government may finance private services, for example through contracting out or vouchers. Examples might be charter schools, prisons.
 - Deregulation Deregulation of entry into activities previously treated as public monopolies. Examples might be utilities, water, waste management, air traffic control and ports. Role

of Government The public agenda of privatization requires a close examination of the proper relationship between government, business and civil society. What should the role of government be in protecting the environment, helping the poor, defending the nation, providing justice, ensuring democracy, protecting public health, ensuring public safety, providing education, promoting a thriving economy, and ensuring safe work environments and a living wage? Our country must seek a pragmatic balance between social and economic returns.

Nora Leech

Public Library Privatization - A Case Study

By Muriel Strand

Public libraries are caught in the wake of budget meltdowns at all levels of government. Previously, relatively few libraries have privatized certain functions, whether temporarily or permanently. But with revenues declining, more jurisdictions have recently considered subcontracting certain, usually limited, library tasks to the private sector, notably Library Systems & Services, LLC (LSSI).¹ Library Associates Companies (LAC Group), Informational International Associates, and Book Wholesalers, Inc. (BWI) are other possible vendors,² but public libraries seem less aware of them.³

LSSI got their start in 1981, with the Library of Congress and other government agencies. "Founded by library professionals," it is nonetheless a privately-held, for-profit limited liability corporation. Islington Capital Partners is the private equity investor that offers them access to additional capital, allowing LSSI to grow their operations quickly, and to keep up with the information technology that appears to be one of their strong points.⁴

Over the decades, LSSI has contracted with a number of local libraries across the nation, with results that seem to have been generally agreeable and convenient. Of the handful of libraries which have terminated contracts with LSSI, one library director said it was a combination of LSSI accounts-payable tardiness and the local library board feeling sufficiently recovered from an ineffective library director who was the reason for LSSI's presence in the first place. Another system's library director said LSSI had been brought in to help a branch of the Los Angeles County Library become an independent city library, and after the new library was stable the city took over. The long-term LSSI staff, who had been working there, was able to become city staff and acquired pension benefits.⁵

However, California State legislative staff refers to several instances when local governments (in Linden, NJ, Fargo, ND, and Hemet, CA) decided it would be cheaper to bring the work back in house. Decisions about fines and fees, handling cash and

acquisitions all require more responsibility and accountability, no matter who performs them.⁶

Public libraries in Jackson County, Oregon, which had been closed due to budget constraints were reopened recently under LSSI contracts. The city of Santa Clarita, with three libraries, decided to subcontract various operations to LSSI rather than continuing to participate in the LA county library system, and by some accounts is now offering more to readers.⁷ At the time of the actual changeover, their contract with LSSI was publicly posted on their website: www.santaclaritalibrary.com. According to California legislative staff, Santa Clarita has budgeted \$8 million to \$12 million for transition costs.

Riverside County, CA, Library decided to contract with LSSI to operate the library, while reserving the right to set policies, rather than continue as a subset of the Riverside City Library.⁸

Recent tentative proposals to bring in LSSI as a way to buffer budget cuts have caused concerns and have been rebuffed in several places, including Stockton, CA.⁹ However, the issue of public pensions and unions, while very important, is not the same issue as the independence and accountability of local libraries, and the protection of free speech. Grappling with the former issue is more difficult when people believe the latter may be threatened thereby, so calmness and clarity are crucial.

In California, legislation that would raise the bar for local cities and counties wishing to contract with companies like LSSI is in a state senate committee as of June 2011.¹⁰ Libraries which decide to privatize would be responsible for financial audits. Previous legislation allowed existing California local library systems to retain the per-capita library revenues from property taxes when a portion of the system seceded, rather than requiring the per-capita money to go with the seceding population. The requirements in Assembly Bill (AB) 438 would apply to non-profits, mostly because many for-profits have non-profit associates.¹¹

Muriel Strand (LWVCA) is a member of the LWVEF Education Study Committee on Privatization of Government Services, Assets and Functions.

ENDNOTES are available at: <http://www.lwv.org/content/public-library-privatization-case-study>

Privatization of a Publicly Owned Waste Water Treatment Plant

By Ted Volskay

BACKGROUND

Since 1972, the U.S. Environmental Protection Agency (EPA) Construction Grants Program has invested more than \$67 billion in federal funds into publicly owned (wastewater) treatment works (POTW) throughout the country. Congress initiated the phase out of the Construction Grants Program in 1987 and replaced it with the Clean Water State Revolving Fund (SRF) program which provides low-interest loans to communities for the construction of infrastructure projects involving water pollution control. On April 30, 1992, President George H.W. Bush signed Executive Order 12803, directing federal agencies to remove regulatory or procedural barriers to privatizing wastewater POTWs under their control. In addition, Executive Order 12803 required that privatized federally funded POTWs continue to serve their original purposes.¹

The first privatization agreement of a POTW under Executive Order 12803 was approved on July 21, 1995, when a private contractor purchased the Franklin, Ohio, POTW for \$6.85 million. The Miami Conservancy District owned and operated the wastewater treatment plant that served the residents of the cities of Franklin (Warren Co.), Germantown and Carlisle (Montgomery Co.), Ohio. The combined population of the three cities was approximately 22,000.² The contractor that had operated the Franklin Plant under contract since 1987 offered to purchase the POTW in 1992. The transaction took two years of negotiation between the Miami Conservancy District, which owned the POTW, and the private contractor. Subsequent to the negotiations was an eight-month state approval process, followed by a four-month federal (EPA and Office of Management and Budget) approval process. The Office of Management and Budget had to agree to the negotiated transfer price since the sale of assets was not competitively bid.³ When agreement was reached on the terms, the City of Franklin, Ohio, became the first municipality in the nation to sell the public asset of a POTW that had been constructed with federal grant funds and enter into a public/private partnership agreement with the new owner.

Privatization Mechanism: Asset Purchase and Operation

The Franklin POTW was accepted by the EPA as a privatization pilot project. Planning and negotiations between Franklin officials and the prospective buyer began in the summer of 1994. On July 14, 1995, the City of Franklin received word that the EPA had completed its final review and authorized sale of the POTW. The transaction was completed within two weeks and the contractor that operated the plant since 1987 purchased the POTW in July 1995 for \$6.8 million.⁴

Key to the success of this privatization initiative was 16 months of extensive planning and negotiations. A 20-year service agreement was signed that addresses the following key provisions:⁵

- ☐ Unit rates the city will pay for sewage treatment;
- ☐ Acceptable conditions for rate increases;
- ☐ Operation and maintenance standards;
- ☐ Allocation of environmental liability;
- ☐ Protocol for prompt conflict resolution; and
- ☐ Renewal of the 20-year contract.

□

The three most pertinent fiscal considerations were the:⁶

- Initial sale price of the plant;
- Annual rate and the amount and timing of any increases to the rate; and
- Repurchase price of the plant at the end of the 20-year contract or, as a contingency, repurchase of the plant prior to that date.

A consultant with privatization experience was hired to advise and work with the three city managers during the evaluation and negotiation phase. An advisory board was established to represent the interest of the three cities and two counties, and to provide one voice for the buyer to negotiate with.⁷

A matrix was devised that compared economic and noneconomic impacts of three alternatives:⁸

- Alternative 1 - maintaining public ownership of the plant;
- Alternative 2 - creating a regional sewer district; and
- Alternative 3 - privatization.

The Miami Conservancy District retained ownership of the wastewater collection system that directs sewage to the POTW and a small part of the treatment process so that the treatment system could maintain the *publicly owned treatment works* classification and avoid the more stringent and costly requirements that would otherwise be invoked under the *Resource Conservation and Recovery Act* (RCRA). Similarly, the Ohio Environmental Protection Agency listed both the contractor and the Miami Conservancy District as being responsible for meeting POTW discharge requirements.⁹

A 20-year agreement was signed that made the private contractor responsible for:¹⁰

- Financing all plant upgrades and expansions;
- Operation and maintenance of the Wastewater Treatment Plant (WWTP);
- Administration of the municipal industrial pretreatment program

The agreement gave the Miami Conservancy District the option to repurchase the POTW at the end of the 20-year term.¹¹ In addition, all plant personnel were retained under the contract.¹²

The city of Franklin's rates for wastewater disposal were reduced by 23 percent during the first year of the contract and, with the exception of energy and chemical costs, future rate increases were limited to increases in the rate of inflation.¹³

The pace of economic development in the area increased after sale of the treatment plant. Stabilized wastewater treatment fees were reportedly a primary incentive for expanding operations of three area paper industries and a subsequent increase in jobs. Increased economic development was closely followed by an expansion of the water distribution system from approximately 4 million gallons per day (gpd) to 10 million gpd.¹⁴

The City of Franklin, Ohio, entered into its second public/private partnership on November 1, 1997, when it opened a new 5-million-gallon-per-day water supply treatment plant that was designed, built and financed, and is now operated by a private contractor.¹⁵

THINGS TO CONSIDER

- The EPA must review and approve all proposals to sell POTW assets when Federal grants have been used to construct the treatment works.¹⁶
- In addition to the EPA, the Office of Management and Budget (OMB) must also review and approve the sale of POTW assets constructed using Federal grants if the transaction price is not established using a full and open competitive bidding process.¹⁷
- POTWs constructed solely using state revolving loans or local funding may be sold without EPA review or approval.¹⁸
- EPA review and approval is not required when POTW operations are privatized (subcontracted to a private entity), even if the POTW was constructed using Federal construction grants.¹⁹

Ted Volskay (LWVNC) is a member of the LWVEF Education Study Committee on Privatization of Government Services, Assets and Functions

ENDNOTES can be found at </content/privatization-publicly-owned-waste-water-treatment-plant>

Privatization of Prisons

By Ted Volskay

BACKGROUND

Many states have turned to private prisons to address the issues of prison overcrowding and the capital expense of building new prisons, and to reduce the cost of prison operations. In 2011, the corrections services market (including federal and state prisons, but excluding jails) in the United States was valued at approximately \$70 billion. The portion of corrections services market that is outsourced to private corporations is approximately 10 percent or \$7 billion.¹

Advocates of privatizing correctional services state that private prisons can achieve savings over public prisons by purchasing in bulk, eliminating overtime and employee benefits, and reducing the red tape. Opponents of privatizing prison services argue that a true and accurate comparison between public and private costs and services is difficult and complex, and does not provide a compelling argument for privatizing prison services.²

On February 18, 2011, a federal jury convicted former Luzerne County Common Pleas Juvenile Court Judge Mark A. Ciavarella, Jr., on 12 of 39 counts of racketeering, money laundering and conspiracy in connection with the infamous "Kids for cash"

scheme.³ Ciavarella and former Judge Michael T. Conahan reportedly received \$2.6 million in kickbacks for sending thousands of juveniles to two private detention centers.⁴

The scheme began when Robert J. Powell, a wealthy personal-injury lawyer from Hazelton (PA) contacted Judge Michael T. Conahan, Ciavarella's colleague, to learn how he might get a contract to build a private detention center. When Judge Conahan became the "president" judge in January 2002, he obtained control over the county courthouse budget. Judge Conahan subsequently signed a secret deal with Powell, whereby the court would pay \$1.3 million dollars annually to rent Powell's private juvenile detention center, in addition to the tens of millions of dollars that the county and state would pay to house delinquent juveniles.⁵ Two detention centers, Western Pennsylvania Child Care and Pennsylvania Child Care, were eventually constructed in Pittston, Luzerne County.⁶

Conahan and Ciavarella systematically shut down the public juvenile detention center that was owned and operated by Luzerne County. First, the judges refused to send delinquent juveniles to the public detention center and, then, cut off funds for its operation.⁷ Although county commissioners were the only ones authorized to sign contracts for detention centers, Judge Conahan left them with little alternative but to sign a contract with the privately owned and operated detention centers because Conahan had eliminated funding for the Luzerne County juvenile detention facility.

A state audit of the private detention center was conducted that described the lease of the facility as a "bad deal." The center's owner filed a "trade secrets" lawsuit against the Luzerne County controller who leaked the findings of the audit, and Judge Conahan subsequently sealed the suit to limit the release of other documents. During a separate audit, state auditors determined that the detention center was systematically overbilling the county and was receiving shutoff notices from utilities because they had fallen behind in paying their bills.⁸

The "Kids for cash" scheme began to unravel when Ciavarella sentenced a 15-year-old college-bound high school student to three months in juvenile detention after she made fun of an assistant principal on MySpace and was cited for harassment. The girl's mother took her daughter's case to the Juvenile Law Center (JLC), a nonprofit advocacy group that promotes juvenile justice and child welfare reform in Pennsylvania. The JLC determined that their client's case was not exceptional.⁹ In 2002, Judge Ciavarella sentenced twice as many juveniles to detention compared to the prior year and sentenced juveniles to detention at a rate that was twice the state average over a subsequent five-year period.¹⁰ One of the cases involved a 12-year-old boy who went joyriding with his mother's car and ran over a barrier. Although there were no injuries, the car was damaged, and the boy was cited after his mother filed a police report so that insurance would cover the damage. The boy, who was not represented by an attorney, pleaded guilty and spent two years in the detention center.¹¹

The JLC asked the Pennsylvania Supreme Court to assume jurisdiction over all the cases of juveniles adjudicated delinquent

in Luzerne County since 2005. The Luzerne County District Attorney opposed it and the Pennsylvania Supreme Court denied the JLC petition without comment. Subsequently, after the FBI began an independent investigation into Ciavarella and Conahan for accepting money from certain detention center developers, the Pennsylvania Supreme Court reconsidered and granted the JLC petition. One of the developers, who has not been accused of criminal wrongdoing but is a defendant in a class action lawsuit, is the Allegheny County District Attorney's brother and a former Pennsylvania Supreme Court Justice's son.¹²

THINGS TO CONSIDER

- This case illustrates the need for stringent state oversight procedures to be firmly in place when transitioning from public sector to private sector detention centers. Furthermore, it is important to monitor changes in patterns of incarceration when for-profit incentives are involved.¹³
- One of the benefits argued by proponents of privatization is that free market competition is ultimately good for the taxpayer. In the case of the "Kids for cash" scheme, defunding the existing county juvenile detention center achieved the goal of privatizing juvenile detention services, while eliminating any meaningful competition that would have existed had the public detention center remained operational.
- Although parents and local child advocates accused the former judge of harsh sentencing, many in the community, including the local schools, supported him. When Judge Ciavarella decided upon a policy to incarcerate juveniles arrested at school, local schools were more than happy to send trouble makers out of town by calling the police for just about any incident that they preferred not to address. Ciavarella himself pointed to the low recidivism rate as justification for his tough judgments.¹⁴
- Two of the largest private prison corporations, Corrections Corporation of America and Geo Group are publicly traded on the New York Stock Exchange; NYSE Symbols (CXW) and (GGO), respectively. In fact, consistent with their for-profit culture, private prison corporations include as part of their business plan finding alternative means of filling their facilities.¹⁵ According to Corrections Corporation of America, "Utilization Drives Earnings."¹⁶
- During the 2008 election cycle, the three largest publicly traded prison management companies contributed approximately \$679,000 to political groups and politicians from states where they are courting new business. The boards of directors for Corrections Corporation of America and Geo Group include formerly elected representatives and government officials from former Republican and Democratic administrations.¹⁷
- In a free market, the consumer chooses between companies that provide a service. The for-profit prison market is different because prisoners cannot choose where or how long they will be incarcerated. Furthermore, prisoners typically do not have a strong representative voice. They are vulnerable to efforts by privately owned/operated detention facilities to increase profitability by reducing or

eliminating any prison expense that might not be required but substantially affects prisoner welfare.

Ted Volskay (LWVNC) is a member of the LWVEF Education Study Committee on Privatization of Government Services, Assets and Functions.

ENDNOTES may be found at <http://www.lwv.org/content/privatization-prisons>

The Legal Framework of Transparency and Accountability Within the Context of Privatization

Executive Summary

The legal frameworks within which public and private sector entities operate differ. One difference is that, unlike private entities, government entities are statutorily required to conduct their business through open, transparent processes to ensure that they are accountable to the citizenry. This modern practice of open government is viewed as both a key feature and a necessary condition of a contemporary democratic state. It is based upon the conviction that the people can only effectively exercise their constitutional role as overseers of government action where their unfettered rights of access to information about government operations are secure.

Public transparency laws thus have been enacted throughout the United States at both the federal and state level for the purpose of maintaining free and open access to the government's proceedings, deliberations, decision-making and records. Such laws include sunshine or open meeting laws, which seek to ensure that the public may observe the meetings and deliberations of government bodies, and freedom of information or public record acts, which seek to ensure public access to the documents and records of government. Privatization raises particular issues with respect to transparency, however, because as a general matter, such transparency laws apply exclusively to public bodies, and not to private entities. Where the provision of government services are transferred into private hands, what then becomes of the public's right of access to information regarding the provision of those services?

Judicial and legislative efforts to address concerns regarding public transparency within the context of privatization have emerged over several years. Some state courts, for instance, have adopted a judicial doctrine that subjects a private contractor to the applicable transparency law when the contractor is performing

a government function in such a manner that it may be deemed the "functional equivalent of the public body." In addition, state legislatures have been modifying their public accountability statutes over the years in order to make such laws applicable to certain private entities carrying out government functions. Public accountability advocates nonetheless are concerned that public access to information in the hands of private contractors often is frustrated when statutory language does not adequately cover the private entity or a court ruling is not obtained. Moreover, even when private contractors are subject to such laws, they often dispute it or are not aware of such requirements, and, thus, refuse to provide the information.

A recent example involves one of the nation's largest not-for-profit providers of community-based supervision and treatment services to individuals within the criminal justice systems. The company is 97 percent publicly funded from sources such as state departments of corrections and the federal prison bureau. Following revelations of certain unusual and high profile expenditures by the private contractor in Kentucky (including hundreds of thousands of dollars in stadium suites, sponsorship of a university basketball team and extravagant social events), the Kentucky state auditor sought to examine how its tax dollars were being spent. The private contractor, however, refused to provide the state auditor with the requested financial information, and neither the state public records law nor any decision by a state court required the contractor to provide the information. This case illustrates the importance of yet another approach to ensuring public accessibility of information and records in the hands of a private contractor: that is, using the bidding or contract negotiation process of the privatization deal itself to require agreement on the part of the private contractor to make all pertinent information available to the government agency with which it is contracting before any privatization of services is put in place.

Finally, this paper concludes with a call by accountability advocates for special transparency requirements to apply to any privatization proposal. The notion, here, is that government action to privatize is of such import and consequence that special (super) public accountability procedures should apply with respect to the initial privatization decision itself in order to ensure the proper constitutional role of the people as overseers of government action.

Diane Dilanni

ENDNOTES may be found at <http://www.lwv.org/content/legal-framework-transparency-and-accountability-within-context-privatization>

Subcontracting Public Education

By Ted Volskay

BACKGROUND

An education management organization (EMO) is a private entity that is subcontracted to manage one or more traditional public schools charter schools, or an entire school district. The EMO objective is to achieve efficiencies that translate into improvements in academic performance, cost savings for the school districts or profits in the case of for-profit EMOs. As a result, EMOs operate schools with the same or fewer financial resources than had been provided to the schools by the public sector. In 2007, it was estimated that for-profit EMOs operated approximately 20 percent of all charter schools.¹

Education Alternatives, Inc., (EAI) was a publicly traded, for-profit EMO that was headquartered in Minneapolis, Minnesota. Established in 1986, EAI stock was traded in the over-the-counter market and quoted on the NASDAQ Exchange.² An EAI's ability to make a profit for stockholders is directly tied to EAI's success in cutting the operating costs of the schools that it is managing.³

In 1992, the Baltimore City Public Schools entered into a \$133 million, five-year contract with EAI to oversee the management and instruction at nine of the 182 schools within the district. The schools to be managed by EAI included eight elementary schools and one middle school. The contract was later modified to include three additional schools. The contract called for yearly reviews and a provision for the Baltimore City Public Schools to terminate the contract at any time following a 90-day notice.⁴

Under terms of the contract, EAI responsibilities included facilities management, financial management and some staff development. Under the contract, EAI had the autonomy to determine which services it would provide directly and which services it would subcontract with the school system to deliver where it did not wish to provide such services directly. EAI also had partial discretion to select staff, curriculum delivery, instructional methodology, training and other areas supporting instruction. The contract provided for a periodic transfer of funds based upon a negotiated per-pupil allocation for educational and most non-instructional services.⁵

EAI management expected a 25 percent reduction in operating and administration expenses. Of these savings, 20 percent would be reinvested back into the classroom and the remaining 5 percent of savings would be profit for EAI stockholders. In turn, the Baltimore City Public Schools would not incur any additional cost beyond what already was allocated for public education or approximately \$5,500 in average annual per-pupil cost.⁶

EAI and school system staff agreed to appoint a school district employee to serve as a liaison to represent the superintendent. The liaison was responsible for staffing decisions and disciplinary measures, and for adhering to the policies and procedures of the Baltimore City Public Schools.⁷

In November 1995, the Baltimore City Board of School Commissioners agreed to serve EAI with a 90-day notice to terminate the contract, and the contract was terminated in the spring of 1996, one year prior to completion of the original five-

year contract.⁸

EAI proposed to operate the schools for the average annual per-pupil cost of approximately \$5,500. One criticism of the annual per-pupil cost approach was that the contract called for the district to provide EAI the average cost per pupil for the district as a whole. However, all but one of the schools managed by EAI were elementary schools, which are less costly to operate than high schools on a per pupil basis. Furthermore, on a per pupil basis, the cost to teach special needs students is much higher than the cost to teach students without special needs. This is an important cost consideration because the schools managed by EAI served proportionally fewer special needs students than the other schools served by the Baltimore City Public School District.⁹

According to the Superintendent of Baltimore City Public Schools, during the time EAI was managing the schools, EAI had the autonomy to determine whether it would provide the services directly or whether it would contract back to the school system for delivering those services. However, EAI had partial discretion with respect to selecting staff, curriculum delivery, instructional methodology, training and other areas supporting instruction, although the contract language on this point was ambiguous.¹⁰

Critics have argued that as a result, EAI inappropriately exercised its discretion and transferred all counselors and specialists (art, music, physical education and special education teachers) out of the schools managed by EAI.¹¹ For example, EAI eliminated all special education programs in favor of complete inclusion in the classroom. Since the student to teacher ratio is lower for special education classes than for traditional classrooms, this decision eliminated the more costly special education programs in favor of an increase in the number of less costly traditional classrooms. Students in need of special education services were simply moved into traditional instructional programs. These moves effectively lowered the student to teacher ratio for the majority of students. Integrating special education students into a traditional classroom setting helped a majority of students but came at the expense of students with special needs.¹²

EAI reportedly guaranteed improvement in student test scores after the first year. When compared to a control group (non-EAI students), reading and mathematics scores of EAI students dropped after the first and second years, but the test scores of the control group increased. The EAI student test scores caught up with those students in the control group after the third year.¹³

The University of Maryland Baltimore County (UMBC) evaluated and compared EAI managed schools with schools managed by Baltimore City Public Schools. Here are some of the conclusions cited by the study:

- ☐ Schools managed by EAI cost 11 percent *more* to operate than district run schools;
- ☐ Parent involvement levels in EAI and district run schools was approximately the same; and
- ☐ Overall effectiveness of teaching was the same among EAI and district run schools.

The UMBC study concluded that “the promise that EAI could improve instruction without spending more than Baltimore City was spending on schools has been discredited.”¹⁴

The superintendent of the Baltimore City Public Schools at that time cited the following lessons learned:¹⁵

- Anticipate conflict – some in the education community embraced the EAI partnership while others were distrustful;
- Secure the support of all constituencies beforehand – school leaders cannot *impose* innovations on school communities;
- Establish specific performance objectives at the outset with milestones to monitor progress and accountability mechanisms linked to funding;
- Establish a reasonable time frame for changes to occur and inform the public about realistic expectations;
- Agree to terms of severance – when preparing the contract, be very specific about the disposition of leases, equipment, materials and supplies when the contract is terminated;
- Anticipate the need to reopen the contract and of the agreement as needed – when implementing innovative changes, flexibility is needed to resolve unexpected issues.

THINGS TO CONSIDER

- The first school managed by EAI was South Pointe Elementary School in Dade County (Miami) Florida in 1990. The contract to manage South Pointe Elementary School was not renewed by the school district.¹⁶
- In November 1994, EAI signed a 5-year contract with the Hartford, Connecticut, Board of Education to manage the school district. EAI was given the responsibility of operating 32 schools in the district while the Board of Education retained authority for policymaking. Controversy began when EAI’s proposed budget for the 1995-96 school year included cuts in teaching positions. Most school board members would not support the reduction in teachers. The school board terminated the contract with EAI in January 1996, reportedly because EAI would not operate under the contract as written. EAI countered, saying that it ceased services because the school district failed to pay for services rendered in accordance with the contract.¹⁷
- Maryland became the first state to exercise its authority to seize control of failing schools under the No Child Left Behind Act of 2001. The Maryland State Board of Education ordered new management of the schools, but the legislature immediately passed legislation to delay the takeover. The Governor subsequently vetoed the bill but the Governor’s veto was overridden.¹⁸
- EAI was specifically mentioned as being less successful than privatization advocates predicted in a study comparing privatization of public schools in the United States and Great Britain. The study notes that the relatively low level of per capita funding for public education has made it difficult to make a profit and has contributed to a recent lull in public education privatization initiatives in the United States.¹⁹
- During the first year of the contract with Baltimore City Public Schools, EAI was paid \$26.7 million and reported a gross profit of \$1.9 million or 7.1 percent; however, EAI’s

refusal to produce a public budget aroused suspicions about the company’s reported profits and losses.²⁰

- One criticism of the EAI - Baltimore City Public Schools experience was that the administrators didn’t give teachers time to develop an open attitude toward the program.²¹
- EAI changed its name to the Tesseract Group, Inc. The Tesseract Group filed for bankruptcy in October 2000.²²

Ted Volskay (LWVNC) is a member of the LWVEF Education Study Committee on Privatization of Government Services, Assets and Functions.

ENDNOTES may be found at <http://www.lwv.org/content/subcontracting-public-education>

Deregulation of Railroads

By Ted Volskay

BACKGROUND

In 1870, a practice referred to as “pooling” occurred on a large scale among competing railroads as a means to enforce rate and fare agreements. Competing railroads agreed to the division of rail traffic and receipts at stipulated ratios. Arrangements for the division of rail traffic and receipts were referred to as “traffic pools” and “money pools,” respectively. By the late 1880s, strong public opposition to pooling and other monopolistic practices by industry led to passage of the Interstate Commerce Act of 1887.¹ Section 5 of the Interstate Commerce Act states:²

*That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freight of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof?*³

In addition, the Act required that railroad rates be “reasonable and just” and that railroads publicize shipping rates, prohibited short/long haul fare discrimination, and created the Interstate Commerce Commission to hear complaints against the railroads and enforced laws against unfair practices.

By the 1920s, railroads faced significant financial challenges that could be attributed to federal regulations. Regulations at that time required railroads to service low density, unprofitable lines and to set minimum rates.⁴ Transport of high volume products on major routes was effectively subsidizing unprofitable transport of low volume products on less traveled routes. Consequently, regulatory mandates, forcing railroads into inflexible rate structures and to maintain excess rail capacity, prevented firms from responding to external disturbances such as a recession, a change in interest rates, or large and unanticipated changes in prices.⁵ In addition, regulatory inflexibility rendered the rail industry vulnerable to competitors, including barge transport

and the developing truck freight industry.

Direct and indirect consequences of regulations at that time resulted in railroad companies having little incentive to invest in innovative technologies to improve operational efficiency. For example, large railroad companies would benefit from the use of cars with significantly higher hauling capacities. To offset the increased cost of specialized freight cars, the railroad would need to lower rates for the intended customer to induce a higher volume of rail traffic. However, the Interstate Commerce Commission usually opposed the new rate, presumably to protect smaller rail carriers that could not or would not invest in the new and more expensive high-capacity rail cars.⁴

The cost of union labor also contributed to the financial stress on railroads. An unintended consequence of regulations during this period was the strengthening rail industry labor unions. Industries, like the railroad industry, were dominated by a few large companies, and regulations limited the entry of potential railroad competitors. This benefitted railroad labor unions because the unit cost (per worker) to organize employees was low, and the bargaining power of labor is leveraged when a large proportion of an industry workforce is unionized. In addition, union labor benefitted from regulations that allowed rail carriers to pass wage increases to the consumer.⁵

Labor unions also contributed to railroad industry inefficiencies. Railroad unions negotiated work rules that defined appropriate crew sizes, which typically included a conductor, two or more brakemen and, sometimes, a fireman. Labor inefficiencies occurred when rail carriers made the conversion from steam-powered to diesel-powered locomotives. That change required fewer crew members, but railroads were bound by union work rules to maintain the crew size. Similarly, the union and the rail industry agreed that the “work day” would be based upon mileage covered. Investments in improvements to increase train speed did not result in the anticipated profit potential for the rail industry because faster trains allowed union employees to work multiple shifts. This increased earnings without markedly increasing the number of hours worked each week.⁶

Almost a century of regulating the railroad industry produced shipping rates that were incapable of responding to market changes, such as the emergence of the interstate highway system during the Eisenhower administration and growing competition from the trucking industry. Passage of the Railroad Revitalization and Regulatory Reform Act in 1976 and the Staggers Rail Act in 1980 provided the flexibility to allow rail pricing to respond to the marketplace, abandon unprofitable routes, and consolidate operations.⁷ More importantly, deregulation has put the U.S. rail freight industry on a more secure financial footing.

Since deregulation, rail carriers have been given the latitude to negotiate rates.⁸ Railroads are now able to negotiate rates directly with shippers, and the rail companies can tailor their capacity and services to the customer’s production and inventory policies.⁹ In addition, railroads are now able to abandon unprofitable routes

and consolidate their operations.¹⁰ One result of this has been a substantial increase in the number of smaller low-cost, non-union, railroads that bought less profitable railroad tracks from the larger railroads. Surprisingly, the actual competition generated by the market has become more intense compared to level of competition prior to deregulation.¹¹

Deregulation of the rail industry also allowed the railroads to adopt labor-saving information technologies, which made it possible to automate traffic control such as signaling, car management, dispatching and tracking.¹² Use of labor-saving technologies led to the elimination of the caboose (last car on a freight train that had a kitchen and sleeping facilities for crew members) and associated crew members.¹³ This resulted in an overall decline in the railroad workforce of approximately 52 percent from 1973 (pre-deregulation) to 1996. Despite the loss of railroad jobs and the introduction of smaller, nonunionized railroad companies, overall union membership in the rail industry workforce declined by only 9 percent, and the adjusted weekly earnings of rail workers remained about the same over the same 23-year period.¹⁴ External shocks to the economy, such as a change in interest rates, or fluctuations in the price of petroleum as well as deregulation of the trucking industry, have prompted the deregulated rail freight industry to improve customer service and operational efficiency, and rely heavily on innovation. The expanded use of intermodal operations, double stack rail cars, and computerized systems to track trains and manage railroad capacity has led to lower costs for shippers and higher profitability for rail interests.¹⁵

Things to Consider

- ☐ Although there was competition among railroads, the rail freight business was a virtual monopoly in certain parts of the United States prior to passage of the Interstate Commerce Act in 1887.
- ☐ Prior to passage of the Interstate Commerce Act in 1887, barge traffic along major river routes provided the only meaningful competition for bulk transport of freight outside the rail industry.
- ☐ Development of bulk transport by truck since the 1930s has provided more competition in the freight transport industry.
- ☐ The Interstate Commerce Commission initially was tasked with the authority to regulate railroads and was given the authority to regulate the trucking industry in 1935 following passage of the Motor Carrier Act.
- ☐ Competition between the rail and trucking industries became more significant after passage of the Federal-Aid Highway Act in 1956 and development of the interstate highway system by the Eisenhower administration.
- ☐ Rail and truck freight transport industries were both “deregulated” by 1980. However, passenger rail traffic is dominated by Amtrak, a government owned corporation.
- ☐ Railroad unions have remained relatively strong compared to the trucking and airline industries since they were deregulated. This is attributed to the oligopolistic nature of the rail freight business.¹⁶

Ted Volskay (LWVNC) is a member of the LWVEF Education

Study Committee on Privatization of Government Services, Assets and Functions.

ENDNOTES may be found at <http://www.lwv.org/content/deregulation-railroads>

State Level Privatization 2011

By Ann Henkener

State governments have relied on the private sector for goods and services for many years. However, states have more fully embraced privatization since the 1980s. In the past year or two, states have accelerated their movement toward privatization, partially because of the economic crisis and the need for states to take more extreme measures to balance their budgets, and partially because of shifts in ideology.

In recent years, a number of states have established commissions and/or issued reports on privatization:

Ohio – Ohio Budget Advisory Task Force Issue Paper, “Privatization in Ohio Government,” The Ohio Society of CPAs, September 2010¹

New Jersey – New Jersey Privatization Task Force Report, 2010²

Virginia – Virginia Commonwealth Competition Council³

Illinois – “Government Privatization: History, Examples, and Issues,” Illinois Commission on Government Forecasting and Accountability 2006⁴

Some states have tried to set parameters on the types of activities which could be performed by entities other than the state. For example, Virginia defined an “inherently governmental” activity as:

- the act of governing,
- authority to collect and spend public revenues, and
- entitlements (from the Constitution of Virginia).

The Virginia list also included these examples of inherently governmental activities:

- an effective system of education throughout the Commonwealth;
- free elections;
- transportation system;
- defense from enemy attack on the soil of Virginia;
- intercourse with other and foreign states;
- taxation and assessments at fair market value;
- ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the Commonwealth, including the collection, control or disbursement of appropriated and other state funds; and

- natural resources for the benefit, enjoyment and general welfare of the people of the Commonwealth.

The state also recognized that the greater the amount of discretion involved in performing the activity, the more it is inherently governmental. In addition, it looked at the effect of activities that committed the government and viewed those activities as inherently governmental.

The Ohio Society of CPAs proposed a much simpler test, the “Yellow Pages test.” In essence, if multiple vendors of the services or goods appeared in the Yellow Pages, it should be considered for privatization. Ohio’s Governor Kasich, while campaigning for governor, stated: “If we don’t need it, get rid of it. If it’s in the yellow pages, outsource it.”⁵

Presented below are some areas of privatization proposed in one or more states in 2011.

Education: Charter Universities

About 20 years ago, St. Mary’s College, a public college in Maryland, obtained a charter arrangement with the state. One purpose of the arrangement was for the state to limit its funding to St. Mary’s. The college received a yearly block grant that rose only by the rate of inflation. It also received more flexibility. In exchange, the college won more control over its own management, including setting its tuition level.⁶

In 2002, the Colorado School of Mines signed a “performance contract” with the state. Under the terms of the contract, the school promised to meet certain performance goals – 55 percent five-year graduation rate, 80 percent freshman retention rate, and 90 percent placement of all graduates in a relevant job or graduate program within one year. In exchange, it received more freedom to manage its own affairs and set its own tuition levels.⁷

In 2005, Virginia’s public system of higher education was restructured, giving the University of Virginia, the College of William and Mary, and Virginia Tech more financial and administrative autonomy.⁸

In August 2011, pursuant to direction given in the Ohio budget bill, the Chancellor of the Ohio Board of Regents proposed that top tier public universities in Ohio be offered the opportunity to become Enterprise Universities.⁹ Ohio’s state funded universities would be given more autonomy and regulatory relief in such areas as construction, procurement and employment. Prevailing enrollment limits would be lifted. In exchange, the colleges would agree to meet certain academic, financial and research benchmarks and would divert 10 to 20 percent of its per-student state funding to scholarships. Critics claim that public oversight would be reduced, tuition could increase and workers would have fewer rights.¹⁰

Also in 2011, the Wisconsin legislature proposed the New Badger Partnership which would permit the University of Wisconsin to have more autonomy in light of the budget cuts it would be sustaining.¹¹

Education: Charter Schools

In Ohio, charter schools began in the 1990s. Cleveland began a program that provided money, or “vouchers,” to families to send their children to independent, non-public schools. Charter schools receive formal government incorporation, or “charters,” along with state funding, and retain a greater degree of autonomy than conventional public schools. Ohio’s 1997 charter school legislation allowed charter schools in the eight largest city districts. A 1999 statute permitted charter schools in the 21 largest urban districts, and, by 2000, any district designated by the state as being in an academic emergency could create a charter school.

A large percentage of the Ohio charter schools are affiliated with Whitehat Management, an education corporation owned by Akron industrialist David Brennan.¹²

As a part of the budget bill for the next biennium, the Ohio Senate added provisions lessening control and accountability for charter schools. The provisions would:

- Give for-profit companies the ability to use tax dollars to open unlimited numbers of schools without disclosing how public funds are spent and without oversight from sponsors as now required.
- Exempt the school, if an operator is running it without a sponsor, from current law that allows it to be suspended or put on probation for failing to meet student performance requirements, fiscal mismanagement, a violation of law or other good cause.
- Allow a governing board, if it contracts with an operator, to delegate all rights to the operator; specify that funds paid to the operator are not public and that property purchased by the operator belongs to the operator; and require the school to offer the operator the chance to renew its contract before seeking another operator.
- Require a charter school board to give an operator 180-day notice before terminating a contract, up from the current 90 days. It also gives the operator final say over the renewal of a contract between a school and its sponsor.¹³

Lobbyists for David Brennan proposed a number of these changes. Throughout the first part of 2011 these lobbyists worked with legislators and directly with the Ohio Legislative Services Commission to draft language for the bill.¹⁴ The proposed changes passed in the Ohio House, but not in the Senate, and did not appear in the final budget.

Ohio was not alone in further privatizing education. Indiana expanded the availability of vouchers. The new law, based on a sliding income scale, allows parents who meet certain income and other guidelines to use state dollars to help pay tuition at parochial and private schools. For example, a family of four earning less than \$41,000 a year is entitled to a \$4,500 voucher for a student in grades one through eight and \$4,964 for a high school student. The voucher law also includes a tax deduction of \$1,000 for each child currently enrolled in a private school or home school. The new charter school law expands the number of universities and colleges in the state that are eligible to sponsor a charter school.

It also increases funding for online virtual charter schools and allows charter schools to take over unused buildings owned by a public school district.¹⁵

Medicaid

Medicaid is a health care program funded by both individual states and the federal government. It pays for health care benefits for a variety of low income and disabled individuals. The federal government pays approximately 57 percent of the cost of the program, with states paying the balance.¹⁶

The federal government has determined the minimum types of benefits that must be offered but states can choose to offer additional benefits. For the most part, payments are made on a fee-for-service basis, with the state directly paying the provider of the services.

Many states require that beneficiaries (other than long-term care) obtain part of their services from HMOs. In 2006, Florida initiated a pilot program: It put Medicaid recipients in five counties into a private managed care program run by for-profit HMOs. Critics of the program claim that vital services are delayed or denied by the HMO and providers are scarce. Many doctors would not take individuals with Medicaid HMO coverage because it paid providers virtually as much as Medicare paid.¹⁷ In May 2011, the state of Florida expanded the program to the entire state. The expansion needs to be approved by the federal government.

Lottery

In 2010 Illinois became the first state to privatize the operations of its lottery.¹⁸

In 2011, Ohio’s Governor Kasich recommended privatizing the Ohio Lottery if it will cut the state’s expenses. The legislature considered ordering the state budget director to study ways to convert the lottery to a private enterprise. Legislation was drafted by GTECH, a private entity which once ran the Ohio Lottery’s back office operations. GTECH’s draft was added to the Senate’s version of the bill, and the bill was passed. It spells out the qualifications a company must meet to operate the lottery and includes authority to conduct additional games that are not “subject to the state lottery commission’s rule-making authority.”¹⁹ The proposal was not included in the final budget.

Sale/Lease of Infrastructure

Buildings

In January 2010, Arizona sold its archives building, the tower that houses the Governor’s office and six prison buildings. The state received \$735.4M by going to the public bond market and selling certificates of participation. The certificates mature in three to 30 years and carry a 4.57 percent interest rate. The state will lease the building back from investors. Previously the state sold a state hospital, the state legislative offices and its Veterans Memorial Coliseum.²⁰

In California, then Governor Schwarzenegger planned to sell state-

owned properties, such as the California Supreme Court Building and the attorney general's office in Sacramento. The state would then lease the buildings from the private buyers. The Governor hoped to gain about a billion dollars for 11 buildings. In 2011, current Governor Brown cancelled that plan.²¹

In 2011, Ohio authorized the sale of five of its prisons with plans to contract with private operators to provide prison services to the state at those locations. It also allowed local governments to privatize their parking facilities and meters through leases up to 30 years, and permits state higher-education institutions to privatize assets such as student housing.²²

The common theme in these transactions: selling buildings the state is still using and receiving a large one time infusion of money in exchange for paying to lease the same buildings for many years into the future.

Turnpike

Ohio is discussing leasing the Ohio Turnpike. The budget bill permits the Ohio Department of Transportation to enter into a turnpike lease with a private operator with the approval of the Controlling Board. Ohio will continue to own the toll road. While other states have signed 75- to 99-year leases, Ohio is considering a 30- to 50-year lease. One requirement will be a substantial one-time up-front payment, probably several billion dollars. The state says that revenues would go to improvements such as highway construction and harbor dredging, mainly in northern Ohio where the turnpike is located.

Supporters point to the new projects the up-front lease payment could fund. Supporters say the turnpike could be run more efficiently. For example, it would be likely that a private operator would install automated fare collection machines, eliminating jobs of current unionized employees. Critics fear increases in tolls, which in turn would push more traffic onto routes running parallel to the turnpike. Critics also fear that maintenance will deteriorate.²³ The budget bill recently passed in Ohio lets the Governor explore leasing options, but the final contract must be approved by the General Assembly.²⁴

Ohio is not the first to consider leasing a toll road. The Chicago Skyway and Indiana Toll Road have been leased to private operators in exchange for sizable upfront payments. The Chicago Skyway was leased in 2005 on a 99-year lease. Chicago received a \$1.83 billion upfront payment. Toll increases were capped. The Indiana toll road was leased in 2006 on a 75-year lease. The upfront payment was \$3.8 billion. In both cases some of the up-front money was used to pay off debt, improving the Chicago's and Indiana's credit ratings.²⁵

The common theme in all three of these examples is shifting a stream of revenue that would continue over many years to a large infusion of funds in one year.

Development Department

A number of states have turned to public private partnerships to

perform economic development functions formerly performed by departments of development or departments of commerce. The earliest is Enterprise Florida, which began in 1992. Since then, other states have followed: Rhode Island Economic Development Corporation in 1995, Virginia Economic Development Partnership in 1996, Wyoming Business Council in 1998, Michigan Economic Development Corporation in 1999, Indiana Economic Development Corporation in 2003 and Economic Development Corporation of Utah in 2005. In 2011, the concept was proposed by governors in Arizona, Wisconsin, Iowa and Ohio.²⁶

Ohio created JobsOhio in February 2011. It is a non-profit corporation formed for the purpose of promoting economic development, business recruitment, job creation, job retention and job training. Directors and employees of JobsOhio are not covered by Ohio's ethics laws for public employees, and financial disclosure requirements are less than those required of public employees. Ohio's open meetings law does not apply to JobsOhio, but it must open its in-person meetings to the public. Also, Ohio's public records law does not apply. The program is funded by an appropriation from the General Assembly, and Ohio's current stream of income from liquor sales may be diverted to fund profits of JobsOhio.

Similarly in 2011, Iowa Gov. Terry Branstad proposed to privatize economic development by replacing the current state Department of Economic Development with the Iowa Partnership for Economic Progress. It will include a newly formed state authority and a separate nonprofit corporation that will be able to raise money from private-sector interests, industrial revenue bonds and other sources to instigate and help finance job-creation projects.²⁷

Ann Henkener (LWVOH) is a member of the LWVEF Education Study Committee on Privatization of Government Services, Assets and Functions.

ENDNOTES may be found at <http://www.lwv.org/content/state-level-privatization-2011>

Strategies for Best Practice

EXECUTIVE SUMMARY

A decision to privatize a government service requires thorough analysis of the advantages and disadvantages of privatization to determine whether the public is better served by government or the private sector. The process of privatizing a service has three phases:

- Determining if it is appropriate to privatize a service,
- Determining the level of service desired from a contractor and conducting an open, competitive contractor selection process, and
- Negotiating the contract with the selected contractor and monitoring performance over the

term of the service agreement.

In all phases, best practices call for transparency, open communication with stakeholders, impartial and unbiased analyses, and the development quantifiable expectations and measures for service delivery.

The decision-making process should ask: What are the problems with the existing service? What will be gained by turning to the private sector? Are there alternatives to privatization?

Privatization can be successful for services with competitive markets, with clear service delivery goals and performance criteria, and where the services involve transactions that are not irrevocable. It requires decision-makers open to the idea of privatization, a government with established privatization policies, a transparent public review process, comprehensive service transition plans, active contract management and a "recovery" plan to take over service if the contractor fails to perform.

When services such as utilities, transportation systems or parks are privatized it should be clear who owns and main-

tains the public facilities, infrastructure and assets. If "human services" such as child protective services or welfare services are privatized, sensitive client information must be protected and cost savings should not be achieved in ways that are detrimental to vulnerable clients. There must be contractual procedures to assure that the financial statements of the contractor are audited and reviewed on a regular basis and become part of the public record. In all cases, the public must have a way to lodge complaints about the service to the government agency overseeing the private contractor.

The Best Practices paper identifies these and other broad questions and strategies to ensure principles of good governance are followed and to enable stakeholders to participate in a meaningful way.

Cathy Lazarus and Ted Volskay

ENDNOTES may be found at <http://www.lwv.org/content/strategies-best-practice>

Volunteers Are Needed for National LWV Convention

Every Day: (June 8-12) *Registration, Credentials, Information, Personnel,*

Friday – Sunday: (June 8-10) *Hospitality and Dine Around*

Saturday – Tuesday: (June 9-12) *Doorkeepers, Ushers, Microphone monitors, and Tellers*

Questions? Diane Hibino, trihib@verizon.net or Anne Kanter, akanter@cox.net

Detach and return to: Diane Hibino, 5051 Waukesha Rd., Bethesda, MD 20816. We'll contact you soon.

=====

Name _____ **Phone** _____

Email _____ **League** _____

Address _____

Area(s) of Interest: (Please mark in order of your preferences – **1, 2, 3, etc.**)

Floor Committee: Doorkeepers ____ Ushers ____ Timekeepers ____ Microphone Monitors ____

Other: Registration ____ Credentials ____ Information ____ Personnel ____ Teller/Elections ____

Dine Around ____ Hospitality ____ Whatever You Need Me to Do ____

Dates: Please choose times and days you are available to work and indicate AM, PM or all day. The number of hours you will be asked to work will depend on the number of volunteers and their areas of interest. Friday, June 8 (PM and/or Eve) _____ Saturday, June 9 _____ Sunday, June 10 _____ Monday, June 11 _____ Tuesday, June 12 (AM only) _____

If you are willing to work more than one day, please indicate here _____.

PRIVATIZATION CONSENSUS QUESTIONS

Please sent your responses to: K. D. McKalip, 6009 Denton Court, Springfield, VA 22154-1208

Consensus questions 1 and 2 should be presented to the group at the outset of the meeting and then repeated after the other questions have been answered.

1. As a general matter, the extent to which government functions, services and assets have been privatized in the past decade is: ☐ Much too much ☐ Too much ☐ About right ☐ Too little ☐ Much too little ☐ No consensus

2. Core government services and functions important to well-being of the people should remain with government and not be transferred to the private sector. ☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ No consensus

3. As a matter of good government policy, which of the following criteria should be applied when making decisions to transfer government services, assets and functions to the private sector?

a. Transparency and Accountability: All government contracts with private companies for services must ensure public access to relevant records and information regarding contracted services, functions and assets and provide for adequate government oversight and control.

☐ High priority ☐ Lower priority ☐ Not a priority ☐ No consensus

b. Public Well-being: Provisions are in place to assure that, in the event any public services are to be privatized, there will be no increased risks to public well-being, especially to vulnerable populations.

☐ High priority ☐ Lower priority ☐ Not a priority ☐ No consensus

c. Cost and Quality: Privatized services should not appreciably increase the costs or decrease the quality of services to the public.

☐ High priority ☐ Lower priority ☐ Not a priority ☐ No consensus

d. Environmental and Natural Resources: Defined parameters should be in place to assure that environmental and natural resources are not compromised. ☐ High priority ☐ Lower priority ☐ Not a priority ☐ No consensus

e. Contracts and Sales of Public Assets: All government contracts and privatized public assets should be subject to competitive bidding and comply with all laws regarding awarding contracts.

☐ High priority ☐ Lower priority ☐ Not a priority ☐ No consensus

f. Economic Impact: Privatization should not result in a negative economic impact on the communities in which the services are provided.

☐ High priority ☐ Lower priority ☐ Not a priority ☐ No consensus

g. Government Recovery of Services and Assets: Provisions should be in place to recover key services, assets and functions should the private sector fail to safeguard them.

☐ High priority ☐ Lower priority ☐ Not a priority ☐ No consensus

4. Privatization is not appropriate:

a. When the government lacks the will, ability or resources to adequately oversee contracts with the private entity and any successor thereto.

☐ Agree ☐ Disagree ☐ No Consensus

b. When there is no private entity able or willing to provide the service for the short and long term.

☐ Agree ☐ Disagree ☐ No Consensus

c. When it poses a potential threat to national security.

☐ Agree ☐ Disagree ☐ No Consensus

d. When it poses a risk to personal or security data.

☐ Agree ☐ Disagree ☐ No Consensus

e. When there has been evidence of potential corruption.

☐ Agree ☐ Disagree ☐ No Consensus

f. When the private entity's goals and purposes are not compatible with public well-being.

☐ Agree ☐ Disagree ☐ No Consensus

g. When the private entity has not complied with existing government requirements for public records, open meetings or publication of reports and audits.

☐ Agree ☐ Disagree ☐ No Consensus

h. When a loss of revenue decreases government support for mandated or critical services.

☐ Agree ☐ Disagree ☐ No Consensus

5. Some states have developed laws and regulations to control the process of privatization within their jurisdictions. As a general matter, should privatization be regulated?

☐ a. Yes, all privatization efforts should be regulated.

☐ b. Yes, some types of privatization efforts should be regulated.

☐ c. No, privatization efforts should never be regulated

☐ d. No consensus

6. Which of the following should be included in the regulatory process when privatizing public assets, services and functions?

a. Timely public announcements regarding intentions to privatize and the clear and measurable expected benefits to the public

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ No consensus

b. Public and stakeholder (investors, shareholders, experts) input into the decision and terms of the contract.

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ No consensus

c. Feasibility study regarding performance, costs and benefits.

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ No consensus

d. Adherence to all laws regarding public contracts..

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ No consensus

e. Transition plans for displaced employees.

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ No consensus

f. Accountability and transparency provisions in all contracts.

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ No consensus

g. Regular performance evaluations including meaningful opportunity for public comment.

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ No consensus

h. Provisions for transferring services and assets back to the government or another contractor in the event of inadequate performance.

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ No consensus

i. Adequate resources for enforcement.

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ No consensus



~ You are cordially invited to attend ~



LWVFA Annual Meeting
on
Saturday, April 21, 2012
at
Hilton Springfield
6550 Loisdale Rd, Springfield, VA

Meeting Agenda

9:300 a.m.	Registration & Coffee
10:00 a.m.	Business Meeting
11:00 a.m.	Speaker: To Be Announced
12:00 noon.	Luncheon
2:00 p.m.	Conclusion of Business Meeting

Menu: *Herb Roasted Chicken Breast with Shitake Mushroom Risotto; Seared Salmon with Asparagus Risotto and Mustard Cream Sauce; Tuscan Vegetable Penne Pasta with fresh Buffalo Mozzarella Cheese*

Directions: From I-95/395 going south , exit onto Franconia Road going east. Keep right and turn right onto Loisdale Road. From I-95/395 going north , exit onto Franconia Road going east. Keep left and turn left onto Loisdale Road. The Hilton is one-half mile ahead on the left. From Van Dorn Street, turn left onto Loisdale and the Hilton is on the right.

Deadline for Reservations: April 13

Please choose – Salmon _____ Chicken _____ Vegetable Pasta _____

Program is free; Luncheon, \$35 per person.

Make checks payable to LWVFA and mail with reservation form to:

2011 Annual Meeting, 11020 Burywood Lane, Reston, VA 20194

Name _____ Lunch @\$35 ea. _____

Phone Number & E-mail _____

Guest Name(s) _____ Lunch @\$35ea. _____

Total \$ enclosed _____

For special dietary needs or questions, call Viveka at 703-404-0498

(Program Planning, Cont from Page 2)

need a committee to review those positions and recommend action to our members.

The Board would like to thank our members for providing this excellent input. We received responses from all 11 units and two unaffiliated members. With your help, we can look forward to some amazing programs during the next two years!

Think Green . . .

Each of us uses approximately one 100-foot-tall Douglas fir tree in paper and wood products per year. (EPA, 2008)

This Month's Unit Meeting Locations

Topic: Privatization: How Much Is Too Much?

Members and visitors are encouraged to attend any meeting convenient for them, including the "At Large Meeting" and briefing on Saturdays when a briefing is listed. As of February 1, 2012, the locations were correct; please use phone numbers to verify sites and advise of your intent to attend. Some meetings at restaurants may need reservations.

Saturday, March 3

10 a.m. At-Large Unit and Briefing

Packard Center
4026 Hummer Rd.
Annandale 22003
Contact: Lois, 703-690-0908

Monday, March 12

1:30 p.m. Greenspring (GSP)

Hunters Crossing Classroom
Spring Village Drive
Springfield 22150
Contact: Kay, 703-644-2670

Tuesday, March 13

10:00 a.m. Centreville-Chantilly (CC)

Sully District Gov. Center
4900 Stonecroft Blvd.
Chantilly, 20151
Contact: Olga, 703-815-1897

Wednesday, March 14

9:30 a.m. Mt. Vernon Day (MVD)

Mt. Vernon Dist. Government Center
2511 Parkers Lane
Alexandria 22300
Contact: Louise, 703-960-0073

10 a.m. McLean (MCL)

Star Nut Gourmet
1445 Laughlin Ave.
McLean 22101
Contact: Peggy, 703-532-4417 or
Sharone, 703-734-1048

10 a.m. Fairfax Station (FXS)

7902 Bracksford Ct.
Fairfax Station 22039
Springfield 22153
Contact: Lois, 703-690-0908

6:15 p.m. Dinner Unit (DU)

Yen Cheng Restaurant
Main Street Center
9992 Main Street 22030
Contact: Tin, 703-207-4669

7:30 p.m. Reston Evening (RE)

Reston Art Gallery at Heron House
Lake Anne Village Center,
Reston 20190
Contact: Lucy, 703-757-5893

Thursday, March 15

9 a.m. Reston Day (RD)

11037 Saffold Way
Reston 20190
Contact: Barbara, 703-437-0795

9:30 a.m. Springfield (SPF)

7914 Carrleigh Pkwy.
Springfield 22151
Contact: Nancy, 703-256-6570 or
Peg, 703-256-9420

1 p.m. Fairfax City/Vienna (FX-V)

Oakton Regional Library
10304 Lynnhaven Pl.
Oakton 22124
Contact: Anne, 703-938-7304 or
Liz, 703-281-3380

7:45 p.m. Mt. Vernon Evening (MVE)

Paul Spring Retirement Community
Mt. Vernon Room
7116 Fort Hunt Road
Alexandria 22307
Contact: Jane, 703-960-6820

April Annual Meeting:

Speaker on Healthcare Legislation



The League of Women Voters of the Fairfax Area (LWVFA)
4026 Hummer Road, Annandale, VA 22003-2403
703-658-9150. Web address: www.lwv-fairfax.org

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**The LWVFA Fairfax VOTER ©
March, 2012**

**Jane E. George, Co-President
Julie Jones, Co-President
Ron Page, Editor
Liz Brooke, Coordinator**

The League of Women Voters is a nonpartisan political organization that encourages the public to play an informed and active role in government. At the local, state, regional and national levels, the League works to influence public policy through education and advocacy. Any citizen of voting age, male or female, may become a member.

The League of Women Voters never supports or opposes candidates for office, or political parties, and any use of the League of Women Voters name in campaign advertising or literature has not been authorized by the League.

LWVFA MEMBERSHIP APPLICATION

(Dues year is July 1 through June 30. Current dues year ends June 30, 2013.)

Membership Category: Individual \$65 ____; Household (2 persons—1 *VOTER*) \$90 ____; Donation \$ ____
Student \$32.50 ____; (Coll. Attending _____)

Membership is: New ____; Renewal ____; Reinstate ____; Subsidy Requested ____

We value membership. A subsidy fund is available, check block above and include whatever you can afford.

Dues are not tax deductible. Tax-deductible donations must be written on a separate check payable to LWVFA Ed. Fund.

Please Print Clearly!

Name _____ **Unit** _____

Address _____

City _____ **State** _____ **Zip + 4** _____

Phone (H) _____ **(M)** _____ **E-Mail** _____

Please mail your check and completed application to: LWVFA 4026 Hummer Rd. Suite 214, Annandale, VA 22003

Thank you for checking off your interests:

<input type="checkbox"/> County Govt	<input type="checkbox"/> Voting Procedures	<input type="checkbox"/> Health Care	<input type="checkbox"/> Schools
<input type="checkbox"/> Fiscal	<input type="checkbox"/> Environmental Quality	<input type="checkbox"/> Human Services	<input type="checkbox"/> Other (Specify)
<input type="checkbox"/> Public Libraries	<input type="checkbox"/> Land Use Planning	<input type="checkbox"/> Judicial Systems	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Water	<input type="checkbox"/> Juvenile Problems	