

# The Voter

A Publication of the League of Women Voters of Seattle-King County

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## PRIVATIZATION - A NATIONAL ISSUE

By Nora Leech, National Study Committee Member

**W**e're back! Privatization. At the National League's 2010 Atlanta Convention, delegates heard a one-minute presentation from the Seattle League proposing the topic of Privatization as a National study. And there was an unexpected response from the more than 700 delegates: YES! It was the right topic and the right time.

Leagues across the nation are being besieged with proposals to privatize government services, assets, and functions. Everything from public schools, prisons, highways, bridges, military, Social Security, air traffic control, natural resources, national parks, tax collection to pension funds, voting machines, liquor sales, lotteries, worker's compensation, welfare, and parks. And with very mixed results.

The present study from the National League is asking the Seattle League to once again read, listen, discuss, and provide input for the creation of National positions. These positions will guide political activities across the United States.

If our goal is the **common good**, what good government policies should be in place before decisions to privatize are made? The current study has an overview of the forces at play, case studies, extensive bibliographies, and ideas to guide local communities as they grapple with the fast pace of change.

At our forum on February 2 we will have three speakers to provide some perspective. Don Comstock, core faculty with Antioch University, specializes in political economics. Don will provide us with a greater context in which to understand the global forces at play. Jim Sawyer, a political economist at Seattle University, will describe the

dynamics of why things are different today. And Nora Leech, member of the National League study committee on Privatization, will talk about the impact of what is happening nationwide, in other states, and at the local level.

We have current positions in Seattle and Washington State on privatization; you'll want to refer to those. The readings for this topic are 1. The Legal Framework of Transparency and Accountability, 2. State Level Laws, 3. Privatization: Public Policy Debate, 4. Strategies for Best Practices, and 5. Five Case Studies: Education, Prisons, Waste Water, Railroads, and Libraries. Please note: The readings have been truncated (we dropped all footnotes and the case studies) in order to fit into our *Voter* format. We encourage you to download and read each in its entirety at National League website [www.lwv.org/member-resources/privatization](http://www.lwv.org/member-resources/privatization).

The world we live in is going through remarkable change. I would not miss this one!

### LEAGUE DAY IN OLYMPIA!

9:00 am, February 17

Hear about the current session, have lunch with leaguers from around the state and lobby your legislators! — RSVP to the State office (206-622-8961)

Cost including lunch is \$25

For more information:

[www.lwvwa.org](http://www.lwvwa.org)

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## Connecting with Judy

Is there an issue that you are passionate about? Are you looking for a new interest to pursue? Would you like to meet with like-minded people to hear speakers or discuss an issue in-depth? Do you have an interest in keeping the League effective and robust?

Let me suggest that you visit our issue committees. I have gotten acquainted with a few lately and can highly recommend them. You can find them listed on the calendar on page 4, the committees page has some additional information on page 7, and the committee chairs are listed on the last page of the *Voter*.

As we develop our program for next year and think about how we can take effective action, these committees come to the forefront. We need them as a source of expertise, whether to write or assemble information for a *Voter* article or for discussions, to participate in setting up a forum, to propose action based on our positions, or just to inform other members on important issues.

We have a variety of committees. The Transportation Committee (Janet Winans, Chair) and the Land Use/Waterfront Committee (Jan O'Connor and Karen Kane, Co-chairs) have been hosting excellent speakers. We were honored to have Fred Jarrett, Deputy County Executive, spend a couple of hours sharing his views with us recently, for instance. The Waterfront committee is preparing a forum and *Voter* articles for our April program.

The Education Committee (Lucy Gaskill-Gaddis, Chair) has contributed a major forum on the National Role in Education and is now finalizing work on the topic of what makes an effective teacher (no easy answers, here) for our March forum. From the Economics and Taxation Committee (chaired by Nora Leech), we are getting a national study on what is becoming a significant national trend, privatization. This group reads and discusses current books that deal with the significant problems facing our economy.



Judy Bevington

Committee member Vicky Downs provides reviews for the *Voter*.

I'm looking forward to attending the International Relations Committee (Rebecca Castilleja, Chair) and Immigration Committee (co-chaired by Barbara Reid and Barbara Yasui). The All Mail Voting Study Committee is getting started (Julie Anne Kempf, Chair), the Social Justice Committee (Jayne Freitag, Chair) is being reorganized, there is discussion about forming a new Civics Education Committee, and we could certainly use a Natural Resource

Committee, if a leader would step forth. All these committees would welcome new members.

Whether you are just interested in learning or have expertise to share, I can assure you that there is a huge opportunity to develop personally and to help the League become more robust. Our program and action in the coming year will depend to a great extent on these committees. Our goal is to streamline our efforts and develop formats that minimize the work that must be done. Fewer major studies, more use of existing sources of information, more hot topics, more focus and relevance. We want the committee experience to be one that enriches both you and the League.

Judy Bevington, President  
League of Women Voters of Seattle-King County

**P.S. Late Breaking News! As we were going to press TRY 2012 was delivered. Come by the office and pick some up or plan to get some when you come to the forum.**

# February/March

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2 Forum: National Privatization Study 7:30 p.m.	3 Nominating Committee 10:00a.m.	4 Board Meeting 9:00 a.m.
5	6 Voter Deadline International Relations Committee 12:45 p.m.	7	8	9	10	11 Nominating Committee 1:00p.m.
12	13	14 Land Use/Waterfront Committee 10:00 a.m.	15	16	17 Office Closed for League Lobby Day in Olympia	18
19	20	21 Transportation Committee 10:00a.m.	22 Immigration Committee 10:00 a.m.	23	24	25 Economics and Taxation Committee 9:00 a.m.
26	27	28 Land Use/Waterfront Committee 10:00 a.m.	29	1 Forum: Fostering Teacher Effectiveness 7:30 p.m.	2	3 Board Meeting 9:00 a.m.
4	5 Voter Deadline International Relations Committee 12:45 p.m.	6	7	8	9	10

(Units are meeting during shaded period)

## FEBRUARY

Forum: National Privatization Study  
Thursday, February 2  
7:30 p.m.  
Seattle First Baptist Church

Nominating Committee  
Friday, February 3  
10:00a.m. - noon  
League Office

Board Meeting  
Saturday, February 4  
9:00 a.m. - noon  
League Office

Voter deadline  
Monday, February 6

International Relations Committee  
Monday, February 6  
12:45 - 2:45 p.m.  
League Office

Nominating Committee  
Saturday, February 11  
1:00p.m. - 3:00p.m.  
League Office

Land Use/Waterfront Committee  
Tuesday, February 14 & 28  
10:00 a.m. - noon  
League Office

Office Closed  
Friday, February 17

Transportation Committee  
Tuesday, February 21st  
10:00a.m. - noon  
League Office

Immigration Committee  
Wednesday, February 22  
10:00 a.m. - noon  
League Office

Economics and Taxation Committee  
Saturday, February 25  
9:00 a.m.  
909 E. Newton, #D9

Land Use/Waterfront Committee  
Tuesday, February 14 & 28  
10:00 a.m. - noon  
League Office

## MARCH

Forum: Fostering Teacher Effectiveness  
Thursday, March 1  
7:30 p.m.  
Seattle First Baptist Church

Board Meeting  
Saturday, March 3  
9:00 a.m. - noon  
League Office

Voter deadline  
Monday, March 5

## Forum Schedule

**February 2** - National Privatization Study

**March 1** - Local Teachers Study: Fostering Teacher Effectiveness—No Easy Answers

**April 5** - The Seattle Central Waterfront Plan

**May 3** - no forum; Annual Meeting  
on May 24th

**June 7** - Iran

The League of Women Voters of Seattle-King County (LWVS-KC) presents a public forum each month (except December) between August and May, generally on the first Thursday of the month at 7:30 p.m. The expert speakers at each forum focus on a topic chosen by the Board with advice from the members. We also provide information on the topic in the *Voter*. Those topics are then discussed at unit meetings during the following weeks; unit meetings are open to all. See the list of units at the end of this *Voter* for a discussion in your neighborhood.

Most forums are held at the Seattle First Baptist Church, but occasionally they are scheduled in other locations and times. The schedule of upcoming forums for 2011-2012 appears above; check your *Voter* or the LWVS-KC website ([seattlelwv.org](http://seattlelwv.org)) each month for up-to-date information. **Changes this month:** The All Mail Voting study has been postponed to the fall, so there will be no forum in May. We have added a hot topic presentation in June: Iran. This will not include unit discussion; unit meetings in June are optional.

## Board Briefs by Joanna Cullen, Secretary

*The League of Women Voters of Seattle met on Saturday, January 7, 2012. This is a summary of their work.*

*LWVS-KC welcomed Allison Feher as our new office administrator. As former President of the LWVS-KC she has a wealth of experience to offer the office.*

### Presentations to the Board

Nora Leech presented the plan for the upcoming February forum, which is a part of the important LWVUS study on Privatization, which originated in the Seattle-King County League. The Economics and Taxation Committee has taken on the responsibility for the forum and has created a very exciting program around this timely topic.

Nancy Bagley attended the February board meeting and reported on the needs and progress of the Education Committee, which is working on the upcoming forum for the local teacher study. The LWVS-KC Board will approve the final consensus at the February board meeting. The list of presenters is

almost finalized and the plans for the forum are going very smoothly.

LWVWA President Linnea Hirst presented information about a new Member and Leadership Development Program (MDL), a cooperative effort among the three levels of the League to address the challenges of declining membership and a need for new leadership. LWVUS will help set up a state coaching team to work with the national and local leagues. LWVWA has experienced a generally declining membership since 2006, with a slight increase in 2011, and is excited to become a part of this new program. A webinar describing the program may be found on the LWVUS website. The LWVWA is also joining the Vote411 effort to provide accurate information on all races throughout the United States and is seeking committee members.

LWVWA Lobby day is February 17, 2012. Ellen Barton is organizing the Seattle-King County participation.

### Programs

Action Chair Ellen Barton and Program Chair Jeanette Johnson are compiling the unit responses from the January Program Planning forum.

Julie Anne Kempf reported that the All-Mail-Voting local study forum will be held at a later date this year, which leaves an open forum date in May. All League members are invited to join the committee and to consider chairing it. The study will consider the real and imagined benefits of all mail voting and the costs.

Joanna Cullen and Janet Winans will serve on the compilation committee for the LWVUS Privatization Study.

### Development

Development Chair Ginna Owens' proposal to move forward with a plan for a spring luncheon fundraiser in late April or early May was approved. The new

LWVS-KC pledge program has raised \$52,000 over a three-year period, and she is hoping to eventually introduce an additional level for pledged giving. The hot topics after hours group promises to become an excellent means of introducing the League of Women Voters to those who might otherwise not consider joining or participating in League events.

### Nominating Committee

Jean Carlson and Shari Lundberg were appointed as the board members to the nominating committee.

### Personnel

The Board approved an amendment to the Personnel Policies and Practices to change the LWVS-KC staff paydays to the 5th and 20th of every month rather than the current 15th and last working day of the month. This will facilitate the work of the treasurer so that the payday occurs well in advance of when monthly statements are prepared.

## Call for Nominations

The Nominating Committee of the LWVS-KC has begun the search for members who are willing to serve our organization. Each year the committee provides a list of nominees for upcoming vacancies on the Board of Directors. Members elect new board members at the annual meeting in May.

The board is the administrative and policy-making team for the League. It provides the direction and leadership for carrying out member decisions and is ultimately responsible for all the League's plans and activities. By serving on the board, members enhance the organization by contributing their time, experience, and knowledge in a variety of areas. Board service also provides many opportunities for personal growth and learning new skills.

The committee encourages any League member to suggest names of possible candidates for officers, directors, and nominating committee members. Please nominate yourself or other members by contacting any member of the nominating committee (contact information is listed on the inside back cover of the Voter) or by leaving a message at the League office.

Karen Adair  
Astrid Berg

Jean Carlson  
Jeanette Kahlenberg

Shari Lundberg  
Boots Winterstein

## Committees

### **ECONOMICS AND TAXATION COMMITTEE**

DATE: SATURDAY, FEBRUARY 25

TIME: 9 A.M.

PLACE: 909 E. NEWTON, #D9

RSVP: LWVSEATTLE.NORA@YAHOO.COM

### **EDUCATION COMMITTEE**

The Education Committee is currently completing work on the study "Fostering Teacher Effectiveness: No Easy Answers." It is not holding regularly scheduled meetings at this time. Upon completion of the study, the Education Committee will resume its regular mission and announce a monthly meeting time.

### **IMMIGRATION COMMITTEE**

DATE: WEDNESDAY, FEBRUARY 22

TIME: NOON - 2:00P.M.

PLACE: LEAGUE OFFICE

Speaker: Luis Ortega

Luis Ortega is the founder and director of the INSPIRA Initiative, an organization dedicated to student leadership, entrepreneurship, and civic engagement. Luis graduated in 2010 from the University of Washington with a bachelor's degree in political science. He was recognized as a Mary Gates Scholar, a Zesbaugh Scholar, and the winner of the prestigious Edward E. Carlson Student Leadership Award. Luis is known as an advocate for the rights of undocumented youth and has done presentations on the topic of immigration and the DREAM Act at various colleges and conferences. Luis is currently writing his first book, *Constructing Citizenship: Undocumented Youth, Higher Education and Politics*.

### **INTERNATIONAL RELATIONS COMMITTEE**

DATE: MONDAY, FEBRUARY 6

TIME: 12:45-2:45 P.M.

PLACE: LEAGUE OFFICE

All are welcome to attend. We are currently developing plans for an informative event in May concerning the "hot topic": Iran

### **LAND USE/WATERFRONT COMMITTEE**

DATE: TUESDAY, FEBRUARY 14 & FEBRUARY 28

TIME: 10:00 A.M. – NOON

PLACE: LEAGUE OFFICE

Work continues on our Waterfront Information article. We have had interesting presentations on planning for the Central Waterfront, focusing on the overall plan, the Seawall, the Port, traffic patterns, and financing alternatives. Presentations are planned on design considerations and governance. All are welcome.

### **TRANSPORTATION COMMITTEE**

DATE: TUESDAY, FEBRUARY 21

TIME: 10:00 A.M. - NOON

PLACE: LEAGUE OFFICE

Our speakers will be Sarah Nicolic and Grace Choi from the Puget Sound Regional Council who will discuss planning for Transit Oriented Development.

**We encourage participation by all in our issue committees. Often there are excellent speakers who provide informative presentations.**



#### Mission Statement

The League of Women Voters of Seattle-King County, a nonpartisan political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues and influences public policy through education and advocacy.

## King County Connects

### SPREAD THE WORD ---- SAVE THE DATE

Saturday, April 28, 2012 11:30 a.m. – 2:00 p.m.

TOWN HALL SEATTLE

### LWV Hot Topic Series: Immigration at the Crossroads

Spring Fundraising Luncheon supporting voter services in King County

Inspiring Keynote by:

**Jorge L. Barón, Executive Director Northwest Immigrant Rights Project**

*Premier national organization providing justice through the law to immigrant populations*

### GREAT CITIES

BY JAN O'CONNOR, LAND USE/WATERFRONT COMMITTEE CO-CHAIR

Saturday University at SAAM is an outstanding educational opportunity. The upcoming series, **The Future of Asia's Cities: Design, Environment, Health**, is certainly relevant to League interests. The lectures are from 9:30-11:00 a.m. and will be held from February 18 through April 7. Costs for non-members are \$75 for the series and \$10 for individual lectures. Costs for SAM members are \$38 and \$5. The lectures are presented in the auditorium of the Volunteer Park Museum (Seattle Asian Art Museum).

These lectures are excellent and often sell out.

### WATERFRONT WORKSHOPS

More news just in from Jan O'Connor:

The City of Seattle is sponsoring Waterfront Workshops on several upcoming dates; the location is lower Town Hall. The dates are Tuesday, Jan. 31 at 5:30 p.m., Wednesday, Feb. 8 at 5:30 p.m., Wednesday, Feb. 15 at 5:30 p.m., and Monday, Feb. 27 at 5:30 p.m. These workshops are either free or cost \$5.

On Tuesday, April 10, the Architectural Forum is sponsoring a panel at 7:00 p.m. that costs from \$10-\$20.



### Our famous Nora to talk to the Clallam County League:

Saturday, February 11, 2012 12:00 noon at Sunland Country Club

Nora Leech will be speaking on privatization of governmental services: advantages and disadvantages. This important issue could affect us all so please bring a friend or neighbor!

Tickets are \$30.00 and may be purchased by sending a check to LWVCLA to P.O. Box 982, Port Angeles 98362. They may also be purchased at Pacific Mist Books in Sequim or Port Book and News in Port Angeles.



## “NATION-WISE, WE’RE IN A PICKLE.”

BY ELLEN Z. BERG

That’s the caption on my favorite cartoon, which shows a woman talking to her cat. More than once I have remarked to my cat on the timeliness of the sentiment as the recession drags on, confidence in Congress spirals down, and simplistic slogans gain currency. At the January program planning meeting, the question bubbled up: What can the League do before the election to educate ourselves and others on the major policy issues before us?

As we began to discuss some of the proposed issues for next year, Anita Warmflash pointed out that some – such as the debate over slashing the debt vs. stimulating the economy – really need to be analyzed before November. She and I and Janet Winans would like to invite you to join us as an **Ad Hoc Election Issues Committee** to explore what we might do to sort through the issues. From least to most ambitious we might put together lists of good websites and

articles, sponsor topical discussions for which everyone reads something, write up non-partisan assessments of issues for the *Voter*, invite speakers for hot topics meetings – or something else you have in mind! Also that night, Vicky Downs shared with us that she will be summarizing several diverse articles on inequality in up-coming *Voters*...so, thanks to her, our work is underway before our committee is!

If you would like to join this already productive committee please contact me at ellenzberg@msn.com or 206- 324-3133. We will find a meeting time agreeable to all. Please join us; as Janet said to me, it will be fun to talk about!

## VOTER SERVICE VOLUNTEER OPPORTUNITY

BY CYNDI WOODS, VOTER SERVICE CO-CHAIR

One of the most visible ways the League encourages active citizen participation in government is through our Voter Registration (VR) program. We set up tables at farmers’ markets, street fairs, schools, the July 4th naturalization ceremony, and pretty much anywhere else we’re asked to help register voters. We have a dependable cadre of volunteers we call upon to staff these VR tables.

We also hold annual training events to ensure our volunteers are current on the state and local rules governing registration matters. In 2011 we collaborated with the Outreach group in the King County Elections office to provide even more opportunities for voters to register.

In 2012 we’d like to establish a Voter Registration committee to help train and organize our volunteers in order to optimize our VR effectiveness. If you’d like to help with this fun and valuable effort, please call the office at 206-329-4848 or email us at info@seattlelwv.org.

## GREAT DECISIONS 2012

The League of Women Voters of Seattle-King County is sponsoring three Great Decisions discussion groups beginning in February.

The Seattle group will meet at the home of Vicky Downs on **Capitol Hill** at 909 East Newton beginning February 14 and continuing on alternate Tuesdays through May 24. Meetings begin at 7:15 p.m. Call Vicky at 206-328-3926.

A **Mercer Island** group will meet at the home of Susie Anschell. Susie is looking for new participants. Call Susie at 206-232-2640 to learn the date and time of meetings.

In **Issaquah**, Denise Smith will lead a group. Call her at 425-392-9339 for details.

A fourth group in **West Seattle** began meeting in January but they welcome latecomers. For meeting information call Adele Reynolds at 206-937-9757.

All participants need to order the briefing book from the Foreign Policy Association. Call 800-477-5836 or email [www.fpa.org](http://www.fpa.org).

## Preparing for Climate Change Impacts

Ellen Kritzman, from our Vashon Island group, has brought to our attention the upcoming sessions offered as part of the **King County Brownbag Seminar Series**. Thanks to Mary Ehlers, for passing it along.

The Department of Natural Resources and Parks Climate Team is inviting you to a series of case studies related to how DNRP agencies are planning for climate change impacts. Coordinating this brownbag seminar series is part of the education and engagement mission of the team and is a follow up to the “Climate Change Science and Solutions” trainings that were held over the last 8 months in all DNRP divisions. These sessions are open to all King County agencies. The primary audience is King County staff, but **other external stakeholders and interested parties are welcome to participate**.

Each session will cover technical information but also why and how agencies are working to plan and prepare for particular impacts, and successes and challenges in moving this type of work forward. Each session will include significant time for discussion after an initial presentation.

There will be a monthly brownbag seminar at **King Street Center, 201 S. Jackson St.**

**Tuesday, February 7, noon-1:00pm** (King Street Center, 8th Floor Conference Center): Vashon Island Sea Level Rise Mapping

**Tuesday, March 6, noon-1:00pm** (King Street Center, 8th Floor Conference Center): Stormwater and Climate Change - Water Resource Area 9

For more information on upcoming events and select past event materials go to <http://www.kingcounty.gov/environment/climate/Events.aspx>

Don't forget your lunch!

Please RSVP to [brin.manning@kingcounty.gov](mailto:brin.manning@kingcounty.gov) in order to receive additional details and reminders about the events. Note, however, that you do not need to RSVP to participate.

## LETTER TO THE EDITOR

Dear Editor,

I have two suggestions for members who are looking forward to our March Unit Meetings regarding “Fostering Teacher Effectiveness.” One is a movie which most of my League friends seemed to have missed. The other is a book which has just been published. Both are available, free, at Seattle's Public Library.

“Waiting for Superman” is a thought provoking documentary which many thought deserved an Academy Award. Many copies of the DVD are available through the Library and when I last checked, there was no one on the waiting list. Plan a DVD party with members of your unit as the Ballard/Magnolia/Queen Anne Saturday Unit is going to do between now and March. If that doesn't work out for you, give me a call and I'll invite you to mine!

The 2011 book which is hot off the press and available at the Library but with a waiting list is “Class Warfare: Inside the Fight to Fix America's Schools” by Steven Brill. I don't have time to write a personal review, but couldn't do better than this summary by Chris Christie, Governor of New Jersey: “An extraordinarily well-researched and compelling account of the tectonic shifts in school politics over the past several years. This is a masterpiece, both as history and as a catalyst for continued change. Far from the usual one-sided account the subject typically engenders, Brill's work is balanced, sophisticated—and amazingly, a real page-turner.”

Sincerely,

Janet Anderson

206-285-2460

[JanetRAnderson@msn.com](mailto:JanetRAnderson@msn.com)

## Getting Connected Membership News

### MORE TALENT ARRIVES

**G**ift memberships were a hit over the holiday season. Susan Barton, Erin Gray, Michael Ogden, and Samanthe Sheffer have been given an introduction to the League by enthusiastic members. We also welcome Carol Burton and Webster Hutchins who decided to give us a try. Please give our newest members a warm welcome and show them all that the League has to offer.

### A CLOSER LOOK

A wish to be informed with “solid, well researched information on the issues and opportunities and support of advocacy efforts” brought **Shelley Kloba** to the League. She is a massage therapist with very active hobbies of running, biking, and swimming to balance her grassroots advocacy for Washington State PTA, Washington Massage Alliance for Health, Kirkland Park Board, and Lake Washington Schools Foundation, with leadership roles in each! (Did I mention she is an ACTIVE person?) Her Kirkland unit has invited her to participate, and we do too!

**Judith Hance**, now retired, worked first as a stay-at-home mom and then as a personnel specialist for several years. She came to Seattle in 1991. Judith’s interests are in music (choral singing), reading, gardening, and hiking. She also has public speaking and data entry skills. She is a member of the University Unitarian Church, has been active as Lay Pastor for 5 years, serves on various committees including CRONE of Puget Sound, but has “avoided other elective office.” She joins many new members who come to League “to learn about the issues, to have discussions with intelligent people and to meet people.”

We hope League will be able to offer these opportunities. Welcome to Judith and Shelley.

Submitted by Karen McFadden

### GENEROUS SPIRITS!

The end of the year brought in contributions from members Nancy Alvord, Marcia Brown, Nancy Eitreim, Paneen Gordon Davidson, Carol Gown,

Margaret Hall, Piper Henry-Keller, Sarah Johnson, Nancy Maizels, Kathie Moritis, Sue Mozer, Barbara Reid, and Ruthe Ridder. We thank them for their faith in the League.

We also are happy to report that we received a number of booster memberships. A big thank you is extended to Ruthanna Bayless, Marivic Borromeo, Karen Brunner, Sue Papcun, Judy Pigott, Nick L. Smith, Ellyn Swanson, Ann Thornton, Tjitske van der Meulen, and Anita Warmflash. Thank you for going the extra mile for us.

### VOLUNTEERING

We’re a month into the new year. Are you following up on your volunteer goals? There are many opportunities to help. Not sure what to do? Call the office at 206- 329-4848 for some ideas.

### THE WAY WE WERE....STORIES OF KING COUNTY SOUTH, PART I

The League of Women Voters has a long history in South King County (our national LWV number was WA001). At one time there were three Leagues in South King County, with around 100 members each. After they all merged into King County South, the membership was maintained at 100+ for several years thereafter. After 40 years, the merged LWV of King County South has merged even further to form the Seattle-King County LWV.

We want to take this opportunity to introduce ourselves with a few remembrances and some tributes to folks that we think you should know about in a series of articles over the next months.

King County South had willing volunteers to gather petition signatures for the redistricting initiative and the public disclosure commission initiative. There was no pay! We weren’t shy about engaging groups on issues such as the third airport runway, Maury Island Aquatic Preserve, a heron rookery (see below). KC South used the new Shoreline Management Act

to challenge in court development plans for Seahurst Park. We won.

#### Introducing JANE SHAFER

Jane was enticed to attend a League meeting by her college roommate. It was program go-around and she found it incredibly boring. But she kept going to unit meetings and found herself immersed in all sorts of issues.

One of her memories was organizing a dinner at which Henry “Scoop” Jackson was to be the featured speaker. Her co-organizer, Carol Selander, had “connections” and was able to get him to speak. At the very last minute they found out the restaurant did not use union labor and the unions planned to picket the dinner. New plans were quickly laid.

Jane was the second president of the newly formed LWV of King County South. She has been on the local board in various capacities, served as state president and treasurer, has moderated a bazillion forums, including one for 20 ballot issues, has been parliamentarian for Leagues in Tacoma-Pierce, Seattle, and King County South, and was an active part of the Observer Corps, watching Renton City Council. Finally, Jane spearheaded the League’s involvement in a lawsuit to protect a Blue Heron rookery on a hill in Kent. This effort took weeks and weeks, pro-bono lawyers, meetings and more meetings. The judge ruled against the rookery (and the League). Sigh. She hasn’t been able to go see what happened to the rookery.

#### Introducing CAROL SELANDER

Carol was a stay-at-home mom of 5! As the kids entered school, she decided she needed something else in her life. She needed to THINK! Enter the LWV!

Carol worked on studies, including “Highline, Your Community.” A copy is now at the Highline Historical Society for safekeeping. She was a LWV poll observer, worked on the LWV redistricting initiative campaign, was a unit chair and served on the local Board. She was president and then treasurer of our state’s one and only ILO (Inter-League Organization) called the Puget Sound LWV. The members were Snohomish,

King, and Kitsap Counties. If you have read about Jane Shafer, you will recall that Carol had a large amount of political capital to be able to snare a US senator as a speaker for a League event! Carol is a tireless membership recruiter and promoter of the League.

#### Introducing BARBARA NORBY

Barbara came into her own in the League after the death of Dorothy Roberts. [Roberts’ “introduction” will follow in a later installment.] Absolutely determined not to let League die, she gently encouraged our members to take leadership roles, often filled vacancies at the local and KCS Board level when needed, and was always on the lookout for possible new members. You knew League business was on Barbara’s mind as she frequently appeared with related news clippings on various topics. Barbara moved away from Enumclaw about two years ago to live near her son Eric on the family property near Gig Harbor.

Submitted by Mary Ehlers

## *In Memoriam*

### **BOB HAYMAN —1952 TO 2011**

Bob Hayman, a valued and beloved member of the Immigration Committee, died Tuesday, December 20, 2011. As a committee member, Bob participated in the Local Immigration Study of August, 2008, reported on the Tacoma Detention Center, and contributed to the immigration myth series. Bob had a passion for justice as well as a love of sports and a sense of humor that often enlivened committee discussions and reports. Who but Bob, in writing an article about whether immigration takes jobs from American workers, would have brought in Ichiro? We will miss him enormously, as a fellow League member and as a friend, and we send our deepest condolences to his wife Barbara Yasui (also a member of the Immigration Committee) and their children Mari and Danny.

## Features

### THE BROKEN CONTRACT A Summary by Vicky Downs

*On December 22, 2011, David Brooks, the newspaper columnist and familiar conservative commentator on the PBS NewsHour, published a column in The New York Times entitled "The Sidney Awards, Part II." In it he named some of the "best public-policy essays of the year." These essays, he said, "tackled the interconnected subjects of inequality, wage stagnation and the loss of economic dynamism." Vicky Downs, of the Economics and Taxation committee, has undertaken to review four of the articles Brooks cited in order to help us better understand our economic situation. Here is her first review.*

What follows is a summary of an article by George Packer in the Nov/Dec 2011 issue of *Foreign Affairs* entitled "The Broken Contract: Inequality and American Decline."

Packer says the Iraq war acted like a stress test on America, and every major system in the country failed, including the government, military, intelligence organizations, media, and corporations--both for-profit and non-profit. The country appears not to be in good shape, as shown by the debt-ceiling debacle, ideological rigidity, an indifference to facts, the prevalence of partisan advantage rather than national interest, and "an inability to think beyond the short term."

This started in 1978 when an ordinary middle class person still used typewriters and saw trash on the sidewalk and graffiti everywhere; compared to today things seemed badly made. Regulated industries such as airlines were costly and offered few choices. Today, "dazzling technological change" has made a big difference, but really important problems such as failing education, deteriorating infrastructure, income inequality, and climate change are barely dealt with at all. Today "we can upgrade our iPhones but can't fix our roads and bridges" and our political system is "more polarized ... than at any time since the Civil War."

How did this happen? Packer says that around 1978 the country reacted to a sense of decline by moving away from the "social arrangement that had been in place since the 1930s and 1940s." Back then we had a "middle class democracy" which helped everyone to survive and even to succeed. In the 1970s corporate executives earned "about 40 times as much as the lowest

paid worker [but] by 2007 the ratio was 400 to 1." Meanwhile the regulatory agencies could or would no longer prevent speculative bubbles, while Congress's eviscerating the Glass-Steagall Act made it possible for ordinary banks to take big risks. In addition, the country's leaders and elites used to see themselves "as custodians of national institutions and interests" whereas in recent decades they act on behalf of the rich.

In the 1960s, there was a backlash to the social network and a search for "personal liberation" sometimes seen in the anti-establishment culture and in the desire to pay less tax on things like personal property. In the 1970s "stagflation" (persistent high inflation combined with high unemployment and stagnant demand) eroded not only personal paychecks but also confidence in the federal government. This alarmed the business leaders who began to believe that corporations should stand up for their own needs. Lobbying became important to them. In 1971 there were only 145 businesses represented by registered lobbyists in Washington DC; by 1984 there were 3,371. There were other lobbyists, but the corporations had more money and they "got results."

Liberals as well as conservatives brought about these changes. The parties seemed to lose "their coherence and authority" and were overtaken by "direct mail [and tv], beholden to special interest groups and funded by lobbyists." The electorate was no longer a group of voting blocks such as farmers or small business, but "atomized... television watchers." No longer did the head of the United Auto Workers sit with the head of Citicorp to keep society in balance. Now it was a question of lobbyists paying for special interests

in Congress.

1978 was a turning point, as three good bills were put before Congress: one to establish an office of consumer representation, one to modestly increase the capital gains tax and get rid of the three-martini lunch, and a third to make it harder for employers to block union organizing. Though all had bipartisan backing in Congress, one by one they “went down to defeat.”

Both Liberals and Conservatives used organized money. For example, in 2007, New York’s Charles Schumer made sure Congress did not close a loophole that allowed hedge fund managers to pay only 15% of their earnings, in contrast to their secretaries who paid a higher percentage on their salaries.

“This inequality is the ill that underlies all the others.” “It pervades every corner of the United States and saps the strength of the country’s democracy.” Between 1979 and 2006 the poorest saw their incomes rise about 11% while the richest saw theirs rise by 256%. Most economists say this increasing diversity is due almost entirely to our leaders and institutions, which have been heavily influenced by money of the corporations and the rich.

“Inequality creates a lopsided economy, which leaves the rich with so much money that they can binge on speculation, and leaves the middle class without enough money to buy the things they think they deserve, which leads them to borrow and go into debt.” In addition inequality “hardens society into a class system,” makes it likely that over 14 million Americans are essentially permanently unemployed, corrodes trust among citizens, provokes a generalized anger that finds targets such as immigrants or foreign religions, “rewards demagogues while discrediting reformers,” “saps the will to conceive of ambitious solutions to large collective problems,” and “undermines democracy”.

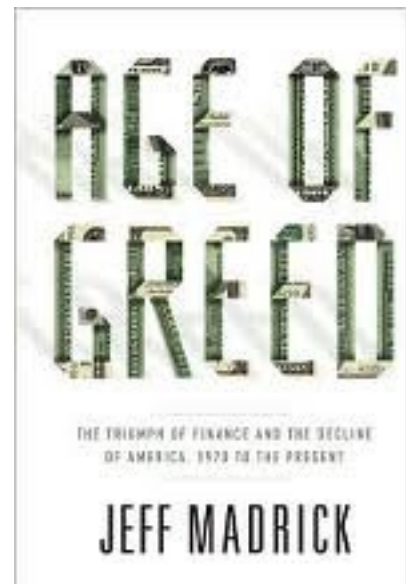
**BOOK REVIEW** by Vicky Downs

***The Age of Greed: The Triumph of Finance and The Decline of America: 1970 to the Present*** by Jeff Madrick

I agree with Betty Sullivan, a past co-president of the League of Women Voters of Seattle, that we enjoyed this book because it put a human face on America’s economic system of the past forty years. Each chapter focuses on one or more specific people who brought changes to our ways of doing business during those decades. Madrick shows how upbringing may have had a role, and so too did the times.

One early example describes the economist and thinker Milton Friedman. “Money was always a concern,” he said of his childhood. Madrick writes, “He was attracted to rule-based systems, and even as a youth demanded intellectual consistency in himself.” Becoming an economist, Friedman argued against government regulation and for an unrestricted market economy, and seemed to see what he wanted to see when he “argued, no one will take advantage of others.” He was the intellectual leader who helped turn people against government in general and for tax cuts of all kinds.

I had not heard of Walter Wriston, who joined National City Bank (now Citicorp) in 1946. Regulations had been imposed in the 1930s to prevent the excesses in finance that led to the Depression. However, the New Deal regulations infuriated Wriston. His goal to “undo one



regulation after another became a personal crusade, driven less by the desire for profit than by an almost inchoate anger against government intrusion.”

Some of his efforts were helpful innovations. For example, early in his years as a banker, he learned from shipping magnate Aristotle Onassis that “the growth of energy [petroleum] demand was inevitable.” Onassis wanted a large loan to buy ships. Bankers normally used houses, cars, or huge machines as collateral, but the Greek shipping magnate told Wriston “he was willing to pledge the income from the charter he was awarded to deliver oil for Texaco as collateral rather than [a ship]. Wriston was convinced and soon made an enormous amount of money for his bank. Before long “shipping loans based on income rather than asset value became a model for loans to finance trucks, railroads and office buildings.”

Madrack shows us how each of the more than twenty men he describes became a leader in his field. Sam Walton became a leader in sales, mostly by controlling labor costs and by lowering the price of the goods he sold. He insisted on buying wholesale straight from the manufacturer, thereby cutting out the cost of the middleman. He demanded frugality and dedication from his employees, but he created group activities for them to make up for paying them poorly.

His early successes were also built on the rapid expansion of the American economy. In the early 1970s he acquired variety stores and later whole retail chains, and people moved from their farms to the towns where he put his stores, eventually named Wal-Mart. In 1978 Walton decided to “invest aggressively in computerized inventory and distribution methods.” By 1988 Wal-Mart used bar scanning to keep track of sales and “minimized the use of warehouses by arranging that trucks merely meet on schedule at depots and goods be shifted from one to the other rather than stored in [expensive buildings].”

With these efficiencies, enforced discipline, and “often stern labor practices” [he expected his sick laborers to receive Medicaid], he produced a much higher sales volume per employee than his competitors.

As we read about each of the men described in this book, it becomes clear that once a man became a “leader” in a particular practice, he became invested in his own power, which soon seemed to push him to go further and further down an ever-more-unstable path. Wriston bought up risky assets and faced a likely huge loss when the Pennsylvania Rail Road defaulted. However, Wriston called the Federal Reserve and asked that its lending window stay open over the weekend. The Fed did just that, thereby easing Wriston’s losses. Wriston, however, never acknowledged that the US government helped him when he was in trouble. It seems he preferred to continue to believe in the efficiency of an unfettered market.

The “unstable path” brought about a wide variety of results. A man named Joe Flom learned how to make money through hostile takeovers of unsuspecting companies. He then sold off much of the firm’s assets (including buildings and property of all sorts) to make himself rich. This practice soon changed corporate values, usually by focusing on short-term profits or by buying other entities the company didn’t really want so as to use up idle cash in the bank, cash which might attract hostile acquirers. Often the best-run companies were takeover targets.

Flom claimed he was just “doing the bidding of the marketplace,” but Madrack reports, “[He] was like all [hostile takeover people] motivated by high fees.” These men were making “the market place, not merely obeying the signals it sent out in the efficient way Martin Friedman and others suggested such markets worked.”

This is an easy read if you focus on the lives of the men represented in *Age of Greed*. I find it requires more dedicated reading to focus on the widely varied methods used to make big money. Most members of the League’s Economics and Taxation Committee are finding the book interesting, helpful, and decidedly relevant to the American economy today.

*The opinions in this review are personal and do not represent those of the LWV.*

## TRANSPORTATION COMMITTEE REPORT

BY JANET WINANS, CHAIR

Fred Jarrett, Deputy King County Executive, was the speaker at the December 2011 Transportation Committee. Because Mr. Jarrett is an amazing encyclopedia of information about the events and political processes in Washington State transportation, our ninety minutes with him were information packed. He began with some detailed history, starting with the Interstate Highway Act (IHA) of the 1950s and extending to the current Connecting Washington Task Force (CWTF). The crisis we are facing now with transportation funding did not just erupt out of the blue. As with the rest of the current economic crisis, it is the product of very particular political choices.

The IHA was designed to build “freeways.” The federal gasoline tax, set up in the Federal Highway Trust Fund, provided 90% of the financing for the interstate highway system. We are arguing now about how to control the traffic avoiding the toll on the 520 bridge because that law, passed in the 1950s, disallowed tolling as a means of funding the interstate highway system. By the mid 1970s the interstate project was complete except for I-90 and the Trust Fund was almost depleted. From that time on the Federal gasoline tax has not been enough to fund even necessary maintenance of the system. The gas tax, collected with the purchase of every gallon of gasoline, is an invisible tax until there is talk of raising it. When the I-90 construction began in 1976, the powers-that-were did not raise that tax. They chose another kind of invisible way to fund it: government bonds. For the first time debt was used for highway construction. (Of course we know that tolling has been used to build many a bridge.) In 1976, the gasoline tax was not providing enough money in the present to fund highway construction but bonds, sold to provide the necessary funding at the time of construction, pledged future gasoline tax revenue for repayment. The interstate system provided “free” ways.

There is the same resistance to increasing the state gasoline tax. The last substantial increase in the

Washington State gas tax was in 1980. It was increased again by two cents in 1989. In the mid 1990s, the Motor Vehicle Excise Tax (MVET) was legislated to fund transportation, public safety, and public health. “Transportation” included ferries and road improvements. That fee was too visible. In 1999 resistance came, in the form of Initiative 695, which killed the MVET.

Governor Locke set up a Blue Ribbon Commission in 1999-2000 to confront the very visible problems looming. In 2001, the legislature tried, and failed, to implement the recommended contract reforms and accountability and invent new sources of funding. In 2003, the “Nickle Funding Tax” was passed, and the projects using the tax were immediately launched, selling bonds to fund them in the present and pledging the gas tax into the future. In 2005, the tax was increased to 35 cents, allowing 15 cents of the tax to pay for all state and local highway projects not included in the 2003 projects. That commits the funds from the gas tax until 2035. That is what it meant when the State Treasurer says that all the “full faith and credit of Washington State” is committed. And the commitments to building these projects were made with no planning for funding their maintenance.

The Legislature invented Regional Transportation Districts to allow local governments to levy local sales tax to provide for transit and other local transportation projects but there is no funding to complete the SR 167-I405 interchange, SR 509, the SR 520 bridge or the Columbia River Bridge project. (The north bound bridge at Vancouver/Portland was built in 1900.)

Mr. Jarrett said that he tried, in 2003, to convince his colleagues in the legislature that they were heading the future off the cliff. That does define the present. It arrived much too soon. There was certainly no idea in 2003 that a “Great Recession” would be that cliff.

In 2011, Governor Gregoire commissioned the Connecting Washington Task Force to address the current crisis. The Task Force



includes 30 citizens from eastern and western Washington, transportation officials, business, local governments, and labor. They got off to a quiet start with a survey of 5000 people because they did not want to provide any publicity, that is “visibility,” that would influence the vote on the November Eyman initiative. Significant majorities from all counties in the state agreed that state transportation priorities should include transit and the maintenance of current facilities as well as the much larger projects listed above.

The issues are huge. I-5 is reaching its “natural life” because it has not been systematically maintained. The unfunded projects now underway are essential to keeping commerce going in the state. Public transit must be maintained and extended into new areas. Congestion, greenhouse gas pollution and the growing cost of gasoline – without any increase in gas taxes – mean more people want to use transit. There is no longer any such thing as a “free” way, not that there ever was.

It is up to the legislature and to the public to confront the demand for new sources of revenue for transportation. This means that the costs of transportation must be included when planning for any new development. There must be a flow of funding to maintain all existing facilities and such funding must be included in the planning of any new facilities. Tolling, weight fees, vehicle miles traveled fees, and other kinds of user fees must be implemented; new development must pay for the increased demand for services it brings. All of the proposed solutions require that the public see and recognize the true costs of the transportation they need, use, and choose.

Of course the mantra of doing much more with much less for any public service has driven the conversation of the last few years and King County government has responded. Mr. Jarrett and Dow Constantine have implemented a new management system borrowed from Toyota, which copied Henry Ford. They call it “Lean Management.” It begins on “the factory floor” because it is the on-line workers who understand where inefficiencies accumulate and it focuses on the “product” that the organization “sells.”

Working backward with the idea that the county’s product is the service it provides the public, teams of employees have met to break down the silos of routine operation, map the tasks that flow through the system, and discover and change the many clogs that duplicate and interfere. King County employees have welcomed the process and many of their services are functioning more efficiently. Mr. Jarrett said that that has not translated into cost savings, but perhaps that is because the cost savings had already come with layoffs of employees. Those who remained were doing all the work that many more had been doing. That made the incentives of working more efficiently very valuable to them. It is very fair that the public expect that the effort that King County government has made be extended to the Legislature and to all future contracts that build and maintain all of our necessary services.

The Ride Free Zone in downtown Seattle, of course, is not free, either. When it was instituted, the downtown business community believed that it would help them in their competition with the suburban malls where parking was free. The service makes for much more efficient travel along the downtown streets because no time has to be given to collecting fees. Now there is controversy. When the County passed the \$20 congestion reduction fee in August, 2011, they included a \$200,000 charge to the city for continuing the Zone. As things stand now, the Ride Free Zone will be eliminated.

The Ride Free Zone became a good place for social service agencies that provide resources to the poor to set up offices. Because no neighborhood wants a large gathering place for the people using the services to congregate, the agencies are distributed throughout the Zone. It will be a severe handicap for their clients to take the cost of the bus from their meager resources and those agencies are working with the city and county to deal with the problem. Ideas include providing script to the social service agencies and creating mechanisms to give “wrap around” services that will allow case managers to provide full service to clients.

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# February Program - LWWUS National Study: Privatization of Government Services, Assets and Functions

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## Consensus Questions - Introduction

December 28, 2011 | by Gretchen Knell

Federal, state and local governments own extensive assets and are major employers. Governments often consider selling assets, and outsourcing some functions and services to the private sector, including “core” government services such as providing for the safety, security and general welfare (public well-being) of citizens, the economy, and our country. Privatization of these government assets, services and functions has been occurring for decades at all levels of government. The consequences of “privatizing” a government service or function, in particular, may enhance the function or service. Alternatively, it may reduce or alter functions and services. Government revenues may be reduced or lost and jobs may be cut. In some instances, this may have a detrimental effect on the “common good” or public well-being.

One state, for instance, has declared as a matter of state law and policy that “using private contractors to provide public services formerly provided by state employees does not always promote the public interest. To ensure that citizens..... receive high quality public services at low cost, with due regard for tax payers..... and the needs of public and private workers, the (legislature) finds it necessary to regulate such privatization contracts throughout the state.”

The purpose of this study is to identify policies and parameters that should be considered when any governmental entity is planning to undertake some type of privatization process.

## PRIVATIZATION CONSENSUS QUESTIONS

Consensus questions one and two 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

Comments:

*Editor's note: All the articles that follow are the property of the League of Women Voters and are subject to copyright. The authors are members of the LWVEF Education Study Committee on Privatization of Government Services, Assets and Functions. Due to space considerations, only the body of the article has been printed. The full articles, including endnotes and executive summaries, may be viewed at either the national website, [www.lwv.org](http://www.lwv.org) or our local website, [www.seattlelwv.org](http://www.seattlelwv.org).*

## **The Legal Framework of Transparency and Accountability within the Context of Privatization**

October 11, 2011 | by Diane DiIanni (League of Women Voters of Tennessee)

### **Introduction**

The legal frameworks within which public and private sector entities operate differ. One difference is that government entities are statutorily required by transparency laws such as sunshine (open meeting) laws and public record acts to conduct their business through open, transparent processes to ensure that they are accountable to the citizenry.<sup>1</sup> But what happens when services and functions are transferred into private hands? This paper discusses both successes and challenges with regard to efforts to address transparency concerns and public accountability in the context of privatization.

### **The Concepts of Public and Private**

The concepts of “public” and “private” permeate our everyday discourse, and most people have a general notion of what is meant by the terms. Today, the term “public entity” generally refers to a government body at the federal, state or local level that makes the rules of society that bind those members of the public within its jurisdictional boundaries, and which acts on behalf of the whole of a society in its external relations (such as in the case of interstate or international affairs)<sup>2</sup> In contrast, a “private entity” is considered to be an entity that lies outside the realm of the government and, to some extent, is beyond its reach and control, such as those entities within the private domain of the marketplace.<sup>3</sup> Simply put, the public sector may be viewed as part of the State and the private sector as part of the economy.<sup>4</sup>

The idea of “private” and “public” as two separate spheres with discrete boundaries appears as early as the 4th Century B.C. in the writings of Aristotle. The Aristotelian concept of *oikos* indicated the realm of the household in which decisions were based on individual judgment and discretion, while *polis* referred to the public political realm where decisions were reached through collective deliberations upon the affairs of state.<sup>5</sup> John Stuart Mill described the distinction as between that part of a person’s life that must be left to the free will of the individual as it concerns only the self (the private), and that part of life that falls within the realm of the collective such that the state may intervene and regulate the individual’s action and behaviors (the public).<sup>6</sup>

Many modern scholars have challenged the popular notion that public and private are two distinct realms with rigid boundaries.<sup>7</sup> Such distinctions, it is argued, could only exist in a hierarchical society, such as the Rome Republic or the city-state of Athens, where the polity was organized upon the belief in a privileged class of citizens with natural superiority. These privileged individuals, considered to be masters over women, children and slaves, had complete dominion over their private realms (the domestic or household sphere), unencumbered by State regulation or control.<sup>8</sup> With the emergence, however, of the modern, centralized state and its liberal notions that all people are created equal, free and autonomous, the State takes on the role of protector of all its people in order to secure for them, as our Declaration of Independence proclaimed,

certain unalienable rights, among them life, liberty and the pursuit of happiness.<sup>9</sup> In this role, the State, through the instruments of law, has not only the authority but the responsibility to regulate actions and behaviors within the private realm to ensure that such fundamental rights of its people (including the disenfranchised) are actualized and secure.

The modern State obtains authority to regulate and control private acts (through its public bodies), of course, only “by deriving [its] just Powers from the Consent of the Governed.”<sup>10</sup> Nor is the authority of the State absolute or enduring; rather, it is expressly limited to certain enumerated powers,<sup>11</sup> and in the event that it fails to secure such unalienable rights, the people may petition the government for redress of grievances<sup>12</sup> or “alter or abolish [the government] ... and institute a new Government ... that ... shall seem most likely to effect their Safety and Happiness.”<sup>13</sup> Thus, the people may be considered to have sovereignty (supreme authority) over the government. Accordingly, the government must be and remain accountable to the people, all of whom, as members of the ultimate sovereign, are equal in relationship to the State. For these reasons, the processes and functions of the State and its public bodies must be open and transparent in order for the sovereign people to exercise their inherent constitutional authority over the government.<sup>14</sup>

In limiting the powers of the State, of course, the drafters of the U.S. Constitution also recognized and provided a constitutional framework for the emergence of a robust private sector. The protection of private ownership of assets and property, for instance, is secured by the Fifth Amendment (“no person shall be deprived of property without due process of law, nor shall private property be taken for public use, without just compensation”), while the Fourth Amendment establishes the right of the people to be secure in their persons, houses, papers and effects (against unreasonable searches and seizures by the government).<sup>15</sup> Private actions and endeavors also are recognized and protected, perhaps most explicitly in the Tenth Amendment, which provides that those “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”<sup>16</sup> Thus, in the modern democratic context, the guiding principles of the public realm include, among others, equality, security, collective deliberation and public accountability, while the operative principle of the private domain may be considered to be the preservation of individual freedoms and free will.<sup>17</sup> As one commentator noted, “the law [of the State] lays down the boundaries within which individuals are free to make choices...[and] provides a general framework of rights that cannot...be violated. The delineation of inviolable conditions, at the same time, creates space within which individuals are free to choose and pursue their own private goals, as long as they do not violate the rights of others.”<sup>18</sup> In this way, the scope of the private is defined by the public, and the two realms operate in conjunction rather than opposition.<sup>19</sup>

Commentators often have noted that, in light of this conceptual divergence, the two sectors reflect different means to different ends, and that these differences are relevant to policy considerations regarding privatization. For instance, the mission and purpose of public sector entities, which are formed in order to carry out governmental functions,<sup>20</sup> is commonly viewed as that of promoting the general welfare.<sup>21</sup> The means of achieving such ends are through provision and regulation. In other words, the State provides goods, services, resources and information to members of the public within its jurisdictional boundaries, and regulates private sector entities and actors within its jurisdiction to ensure certain standards of fairness and equity, and health, safety and well-being of the people. Thus, the primary beneficiary of the public sector entity is intended to be the public.

In contrast, the private sector may be viewed as that part of the economy that derives from private actors' use of privately held assets, properties and information, usually as a means of enterprise for the accumulation or preservation of private wealth. Such activities, while not immune from regulation,<sup>22</sup> are essentially controlled and operated by individuals or groups of individuals through the exercise of their own free will, discretion and judgment, rather than by the State or any of its subdivisions. The private sector entity's primary purpose thus is commonly understood to be to benefit and financially enrich one or more specific individuals (the owners, investors or shareholders), through operating the entity in such a manner as to enhance the value of the privately held assets (usually by maximizing profits or return on investments). For this reason, it may be said that the intended, primary beneficiaries of the private entity are its individual owners rather than the public.<sup>23</sup>

The geographic commitment of public and private entities also differs. The dominion of public sector or government entities is, by definition, intrinsically bound to a specific jurisdiction established by precise geographic boundaries that define and limit the entity's reach in exercising authority. This is not true for private sector entities. Although the legal form that a private or business sector entity may take (i.e., a sole proprietorship, partnership, corporation, cooperative, limited liability company),<sup>24</sup> is largely defined by the law of the relevant jurisdiction, private sector entities do not have any particular geographic constraints or commitments. And, at their sole discretion, they may relocate across jurisdictional lines and set up shop in a different state or country, taking the corpus of such entity (assets, jobs and taxable revenue streams) with them to the new location.

### **Statutory Transparency and Public Accountability**

James Madison wrote that the people are "the only legitimate fountain of power [from which] the constitutional charter, under which the several branches of government hold their power, is derived."<sup>25</sup> Yet, how might the People exercise their sovereignty over the government if they do not know what their government is doing? How can government be fully accountable to the People for the actions it takes on their behalf if it conducts itself in secrecy or behind closed doors?

The modern practice of open government in which government conducts its business in a transparent fashion in order to allow for public scrutiny and public participation is widely 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 and documents about government operations are secure.<sup>26</sup> Public transparency laws thus have been enacted throughout the United States at both the federal and state levels for the purpose of maintaining free and open public access to the government's proceedings, deliberations, decision-making and records.<sup>27</sup> Sunshine or open meeting laws seek to ensure access to certain meetings and deliberations of such bodies, while freedom of information or public record laws seek to ensure access to the documents, materials and records of government.

### **Federal and State Transparency Laws**

Most people are generally familiar with federal transparency laws. The federal Sunshine Act<sup>28</sup> requires not only that every portion of every meeting of an agency be open to public observation, but that there be advance public notice of each meeting in order to facilitate public attendance.<sup>29</sup> It expressly prohibits agency heads from conducting or disposing of any agency business other than in accordance with the Act.<sup>30</sup>

Although the Sunshine Act's reach is limited by the specific statutory definitions of the terms "agency" and "meeting," the federal definitions of these terms are broad. For instance, "agency" is defined essentially to mean any executive branch agency headed by a collegial body of two or more individual members, a majority of whom are appointed by the President with the advice and consent of the Senate and any subdivision thereof authorized to act on behalf of such agency.<sup>31</sup> "Meeting" is broadly defined to mean the deliberations of at least the number of individual agency members that are required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business.<sup>32</sup> Although there are certain statutory exceptions to the federal requirement of open meetings,<sup>33</sup> when an agency determines that it may close a meeting, in whole or in part, based on the applicability of one or more such exemptions, it must follow certain strict procedural requirements set forth in the Act. For instance, even when the meeting or portions of the meeting are closed to the public, a full transcript of the meeting is made and retained to ensure a full record of the government's deliberations and actions.<sup>34</sup> Finally, the federal Act treats these rights of the people to open government as important enough to make them specifically enforceable by the federal courts. As the federal sunshine law does not apply at the state or local level, state legislatures throughout the country have enacted open meeting laws to ensure the transparent operation of state, county and local government and to prohibit private or secret deliberations and/or voting on matters falling within the public body's jurisdiction.<sup>35</sup> In general, such laws require that public sector meetings be open and accessible to the public. State statutes commonly define the term "meeting" with language similar to the following: a convening of a governing body of a public entity for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. Such laws also require that advance public notice of such meetings be given and that a proper and complete record of the proceeding (electronic recordings, transcripts and/or minutes), be created, maintained and made accessible to the public. In many states, the law also provides that any action taken at a meeting of a public body in violation of the state's open meeting law is void and of no effect.

Although the general provisions of such laws are of similar effect throughout the fifty states, the scope of such acts varies widely from state to state. For instance, the way in which a state defines such terms as "meeting" (e.g., whether a conference call or email communication would be sufficient for the law to apply),<sup>36</sup> and "governing body"<sup>37</sup> may either broaden or narrow the practical applicability of the law. Statutory exemptions to the open meeting rule also vary significantly from state to state.<sup>38</sup>

Another key federal transparency law is The Freedom of Information Act (FOIA).<sup>39</sup> It is designed to ensure public access to records regarding the operations of the federal government. As with the federal Sunshine Act, FOIA's mandate is broad: it requires that each agency within the executive branch of government<sup>40</sup> make its records promptly available to any person upon request as long as (1) the request reasonably describes such records and (2) the request is in accordance with published procedures.<sup>41</sup> The records subject to the Act include those tangible records (in any format, including electronic) created or obtained by the agency, and within its control as a result of conducting its official duties.<sup>42</sup> Agencies also are required, under the Act, to make certain specially enumerated documents available for public inspection and copying (including such items as the agency's final opinions, orders and votes as well as policy statements and staff manuals, among others).

Although the Act authorizes the charging of fees under certain circumstances in connection with a public record request (for document search, duplication and review), it specifically provides



that there will be no charge (or a reduced charge) in the event that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”<sup>43</sup> In addition, agencies must facilitate citizen oversight by publishing descriptions of their central and field organization; the process by which the public may obtain information or make requests; statements of the course, methods and procedures by which the agency’s functions are determined; and instructions as to the scope and contents of all its papers and reports.<sup>44</sup>

Although certain categories of records are statutorily exempt from production,<sup>45</sup> the Act requires agencies claiming such exceptions to adhere to strict timelines for asserting the exemption, and it provides the person making the request with a right to administratively appeal the agency’s decision to assert such exemption.<sup>46</sup> As is the case with the federal Sunshine Act, these rights of access to government records are enforceable in the federal courts. Moreover, the burden of proof is on the agency to sustain its action in the event it claims an exemption applies, and a court may award fees and litigation costs to a prevailing requester.<sup>47</sup>

As FOIA applies only to federal agencies, the states have enacted public records laws of their own, sometimes referred to as the “little FOIAs.” As with state open meeting laws, state public records acts vary in scope, largely dependent upon the particular law’s definition of “agency,”<sup>48</sup> which serves to limit or broaden the categories of public bodies to which the act applies.

Although there is some variation in definition of the term “records,” such term is commonly defined to include any records made or received in connection with the transaction of official business by a governmental agency. Statutory exemptions within state public record laws also vary, reflecting jurisdictional differences in policy and priorities.

Over the past several years, open government agencies and advocacy organizations have proliferated. As a result, there are many useful tools now on the Internet for easy access to detailed information about both federal and state transparency laws, including user-friendly indices, guides and compilations of open meeting and public record laws of the 50 states. One or more of such websites allow for easy comparison across jurisdictions of the several features of transparency laws, and provide information on important federal and state court cases in the area of government transparency litigation. Among such sites are the Whitehouse’s Open Government Initiative, at [www.whitehouse.gov/open](http://www.whitehouse.gov/open); The Citizens Media Law Project (hosted by the Berkman Center for Internet and Society) at [www.citmedialaw.org/legal-guide/access-government-records](http://www.citmedialaw.org/legal-guide/access-government-records); The Reporters’ Committee for Freedom of the Press at [www.rcfp.org/ogg](http://www.rcfp.org/ogg); and the Sunshine Review at <http://sunshinereview.org/>. There are numerous other online sites.

### **Transparency in the Context of Privatization**

Privatization raises particular issues with respect to transparency. When the provision of government services is transferred into private hands, what becomes of the public’s right of access to information regarding the provision of those services? In other words, to what extent is a private entity required to make accessible to the public the information and records relating to its provision of services previously provided by the government?

Legislators apparently had not foreseen the challenges to accountability caused by government privatization as transparency laws, as originally enacted, applied exclusively to government agencies and not to private sector entities. For this reason, certain commentators have raised concerns over the years that an anti-democratic consequence of transferring the performance of government services to private entities might well be the “cloaking” of previously accessible information and records. One commentator draws a playful metaphor, arguing that by privatizing, government is using a “cloaking device” that keeps some of its functions and

expenditures from public view just as Star Trek's evil Klingon Empire used such a device to make its starship invisible.<sup>49</sup>

Courts throughout the country have taken steps to address this cloaking concern over the years as members of the press and the public have brought public access litigation to enforce statutory rights of access against private contractors performing services previously provided by government. Such courts have had to consider the applicability of open government laws to private contractors (both for-profit and not-for-profit), on a case-by-case basis in light of the legislative intent of the laws and the oft-heard arguments of private contractors that information kept in the performance of their contractual duties is proprietary. As a result, a judicial doctrine known as the functional equivalency test has developed. It provides that in cases where a private contractor is performing a government function in such a manner that the contractor may be deemed the "functional equivalent of a public body," the public records laws (and sometimes other transparency laws), apply to that private entity in the same manner as if it were a public body.

To illustrate, the Tennessee Court of Appeals recently applied the "functional equivalency" test in a case involving Corrections Corporation of America (CCA), the nation's largest for-profit private prison firm.<sup>50</sup> The case arose after CCA denied a prison advocate's request for records relating to such matters as lawsuits filed against the company and state reports and audits showing contract violations by CCA. The firm argued that such records were proprietary and that, in any event, it was not the functional equivalent of a state agency.<sup>51</sup> The court disagreed, however, holding that because operating a state prison is a task traditionally performed by the government, CCA's public functions outweigh its private identity for purposes of the public records act.<sup>52</sup> The court required that CCA produce the records, based on an earlier Tennessee Supreme Court decision<sup>53</sup> that had interpreted the state's public record act<sup>54</sup> broadly to include records made and received in connection with the transaction of official business in the hands of any private entity where its relationship with the government is so extensive that the entity serves as the functional equivalent of a governmental agency, such that the accountability created by public oversight should be preserved.<sup>55</sup>

Numerous other cases throughout the country have addressed the applicability of public records acts to both for-profit and nonprofit private entities. In determining whether the private entity was either a "public body" or the functional equivalent, and thus subject to the state's transparency law, courts have tended to look at such factors as whether the entity performs a governmental function, the level of government funding, the extent of government involvement or regulation, whether the entity was created by a government body, and whether it has the authority to make decisions binding upon a government body. Considering such factors, courts have found, for example, that a New Hampshire housing finance authority, a corporate entity with a distinct legal existence separate from the state, was a public body subject to the public records act as it dispensed public funds for elderly and low-income residents' housing, a public function.<sup>56</sup> So, too, was the City of Baltimore Development Corporation, a private, nonprofit entity whose members were appointed by the mayor and which, the court determined, had no essentially private functions, but rather served in place of the city.<sup>57</sup> A private, for-profit, limited liability firm managing a public arena under a government contract with the Sports Authority of Metro Nashville also was subject to the public record laws under the functional equivalency test where the court found it had the ability to make decisions binding the government, such as entering into contracts and fixing and collecting fees, and received public funding.<sup>58</sup> Courts, of course, also have declined to find private entities subject to transparency laws from time to time. Two such

cases are: a private architectural firm, which although performing services for a Florida school board and receiving compensation for such services, had not been delegated any governmental or legislative functions;<sup>59</sup> and the Connecticut Humane Society, a private entity that the court determined was neither performing a public function nor controlled by a government body.<sup>60</sup> In recent years, state legislatures have sought statutory solutions to the issue of transparency and privatization as well. State legislatures have been expanding the scope of their transparency laws in order to make private contractors and other privatizer-entities subject to such laws.<sup>61</sup> State legislature are reworking statutory definitions of the type of entity subject to the law and are including such elements as whether the private entity receives or dispenses public funds, was created or controlled by a public agency or performs an essential government function.<sup>62</sup> Minnesota, on the other hand, took a direct approach. It amended its public records law, the Minnesota Data Practices Act, in 1999 to address the issue of privatization and transparency head on by adding a new subdivision, which provides in pertinent part as follows:

*Subd. 11. [PRIVATIZATION.] (a) If a government entity enters into a contract with a private person to perform any of its functions, the government entity shall include in the contract terms that make it clear that all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this [public record act] . . . and that the private person must comply with those requirements as if it were a government entity. Minnesota Statutes, 2010, Section 13.05, Subdivision 11.*

Despite both judicial and statutory efforts to address issues of transparency in the context of privatization, public accountability advocates still are concerned that public access to information and records in the hands of private contractors often is frustrated when statutory language does not adequately cover the private sector entity or a court ruling has not been obtained. Moreover, even when it is clear that private contractors are subject to such laws, they often are not aware of such requirements or they dispute their applicability, and, as a result, refuse to provide the information and records.

One recent example of the challenges of ensuring public accountability within the context of privatization involves Dismas Charities, Inc., one of the nation's largest not-for-profit providers of community-based supervision and treatment services to individuals within the federal, state and local criminal justice systems. The Louisville-based company operates 28 halfway houses in 12 states. It operates 7 halfway houses in Kentucky and received a total of \$23 million over the last three years from the Kentucky Department of Corrections. In 2009 alone, Dismas received another \$27 million in U.S. Bureau of Prison funds. Altogether, its funding is about 97 percent public dollars.

Nonetheless, Dismas refused the Kentucky State Auditor's request for certain financial information on how the state money – tax dollars – was being spent after certain high profile expenditures by Dismas came to light.<sup>63</sup> Such expenditures included \$155,000 for suites at the KFC Yum! Center and at Papa John's Cardinal Stadium; spending \$15,000 to \$20,000 annually for a hospitality train car for University of Louisville football games; financially sponsoring the basketball team of Bellarmine University (the alma mater of the company's President/CEO); and hosting extravagant social events such as an annual derby gala and exclusive golf outings. Excessive and disproportionate salaries (in 2009, its president's total compensation was \$602,000 and its executive vice president's total compensation was \$469,955) also were of concern to the State Auditor, who questioned whether such salaries were perhaps not a proper use of public funds in light of Dismas Charities' mission of providing transitional services for inmates being released into the community from prison and outpatient substance abuse treatment programs.<sup>64</sup>

The trouble for the State Auditor, however, was that not only was Dismas refusing (through its attorney) to provide the requested financial information,<sup>65</sup> but the then current state contract with Dismas for transitional services did not contain the standard language authorizing the Auditor's Office or any other Kentucky state agency to review the Dismas's records of. As a result, the State Auditor's examination and resulting report (issued April 2011) was limited as the Auditor was not able to determine fully either the expenditure of state funds by Dismas or the amount of excessive or unusual expenditures of public money.

The Louisville case illustrates the importance of yet another option for furthering the transparent operations of privatizer-entities. Irrespective of any particular court decisions or state statute, government officials may ensure public access to certain information and records of the private sector entity through the privatization agreement itself. In other words, the requirement that certain information and documents in the hands of the private contractor be available to the government agency with which it is contracting (or directly to the public itself) may be included in the public bidding process or contract negotiations before any privatization contract is put into place. Moreover, such provisions may include strict contractual remedies for any failure to comply by the contractor (including termination of the contract or reversion of any assets transferred). Although such provisions might not be favored by the private entity, particularly where it perceives such information to be proprietary, such considerations simply speak to the broader issue of relative bargaining power of the government entity and the private entity when negotiating a privatization deal.

Contractual solutions to privatization transparency have their own challenges, however, as illustrated by a recent dispute between the Kentucky Department of Corrections and Aramark Corporation, a private firm providing all food services to the entire state prison system. Although, in this case, there is a contract term requiring Aramark to make available to the contracting agency "all records pertinent to the contract," Aramark has refused to provide certain documents, arguing that (in its view) the requested records are "not pertinent to the contract." Thus, the continuing challenge for public entities is to ensure that any contract terms addressing transparency in privatization agreements are carefully conceptualized and drafted in order to best avoid protracted battles over contract interpretation.

Finally, there is yet another way in which issues of public accountability and transparency are relevant to considerations of privatization. Government transparency advocates have lamented the often abbreviated public processes by which government officials consider and approve privatization transactions. USPIRG, the federation of state Public Interest Research Groups, for instance, recently issued a report on Chicago's ambitious privatization efforts since 2004, which included privatizing the Chicago Skyway toll road, four downtown parking garages and the city's system of 36,000 parking meters.<sup>66</sup> According to USPIRG, the decision process regarding privatization of the city's parking meters – a \$1.16 billion transaction – itself lacked adequate transparency and was, "originally conceived of behind closed doors and months of preparatory work took place before the idea became public. The lead consultant to the deal received a no-bid contract. The City Council, which had already included expected revenues from privatization in the city budget, took only two days to approve the plan, and had minimal time to review the key documents." These efforts, moreover, have resulted in public anger due to sharp rate hikes, repeated equipment malfunctions and questions about whether the city received fair value.<sup>67</sup> The USPIRG report concludes by calling for the adoption of special rules and procedures<sup>68</sup> going forward to ensure that privatization proposals themselves receive thorough public vetting in advance of any transaction in order to prevent bad privatization deals in the future.

## Conclusion

The privatization of government function is of such weight and import that special attention must be given to ensuring full transparency both in advance of the consideration and approval of any such proposal, and with respect to the subsequent operations of the private entity performing such government services or functions in the event a privatization proposal is adopted. Mechanisms to ensure such transparency may be legislative, judicial or contractual in nature, and may include a hyper-transparency of the initial public process by which a privatization plan is vetted. Only through a jurisdiction's heightened attention and commitment to the essential democratic principles of true public transparency, may the People's constitutional role as sovereign and overseer of government be assured.

## Surveying State Laws Addressing Privatization

December 28, 2011 | by Diane DiLanni (League of Women Voters of Tennessee)

State legislatures throughout the country have enacted statutes addressing privatization over the past few decades. By the early 1990s several state legislatures, seeking to realize the promised benefits of cost savings and efficiency gains, designed and enacted comprehensive, systematic privatization programs, rather than adopting piecemeal approaches. In these states uniform processes and procedures for privatization activities were established through state law, giving the full weight of the governor and/or legislature to the privatization effort.<sup>1</sup>

Ten years later, however, the Council of State Governments (CSG) conducted a national survey of selected agency directors in the 50 state governments and found that the topic of privatization (outsourcing or contracting) was re-emerging as a controversial management issue for state policymakers. The CSG survey, the results of which were reported in Fall 2003, found that "governors, agency directors and legislators in many states [were]...asking for either further promotion or curtailment of such [programs as]...[t]here appears to be no consensus as to the effectiveness of privatization in part due to the lack of empirical data as well as the complexity of the issue."<sup>2</sup>

The CSG survey results<sup>3</sup> provide an excellent overview of state activity in the area of privatization. Fifteen states reported passage of legislation relating to privatization in the five year period of 1997-2002: Alaska, Arizona, Connecticut, Illinois, Kentucky, Massachusetts, Nevada, New Jersey, North Carolina, Oklahoma, Oregon, Vermont, Virginia, Washington and Wisconsin. In response to a question regarding the amount of privatization that has occurred within a particular state, 12 budget directors replied that their state has privatized on average at least 6 percent of their services (Arizona, Connecticut, Indiana, Massachusetts, Minnesota, Missouri, North Carolina, Oklahoma, Virginia, Washington, Wisconsin and Wyoming).<sup>4</sup> With respect to personnel services, two states (Connecticut and Florida), reported that they had privatized more than 10 percent of their personnel services, while 10 responders replied that their state had not privatized more than 1 percent of personnel services (Arizona, California, Idaho, Illinois, New Hampshire, South Dakota, North Dakota, Oregon, South Carolina and Washington).<sup>5</sup>

The CSG survey also inquired into the most popular services being privatized within the 50 states. They are:

- i) *corrections programs and services* (including medical/health care services, food services, substance abuse treatment, mental health services, private prisons, inmate housing);

- (ii) *education programs and services* (including information technology, professional development/training, statewide student assessment, product/program development, special education);
- (iii) *health & human services programs* (including mental health services, child welfare services, substance abuse treatment/prevention, child support administration, medical services/staff);
- (iv) *personnel programs and services* (including states training program staff/development, information technology, workers' compensation claims/processing, health insurance claims/processing, general program administration/support, consultants, collective bargaining negotiations); and
- (v) *transportation programs and services* (including general, design/engineering, general construction, maintenance, information technology, inspections, grass mowing, rest area operation and highway construction/maintenance).<sup>6</sup>

Based upon its national survey, the CSG report concluded that the main reasons for privatization were a lack of personnel or expertise and cost savings. According to the report, in most cases privatized services account for less than 5 percent of agency services, while reported costs savings range from none to less than 5 percent. In addition, the survey found that many state agency directors had no clear idea of how much money privatization actually had saved.<sup>7</sup>

Legislative approaches to privatization across the 50 states differ widely. Some states have enacted broad-based privatization laws that apply to all such activity within the state (*general privatization laws*), while other states have passed laws that relate only to one or more sectors (*sector-specific privatization laws*). Laws relating to privatization, but which deal only with a specific issue or policy concern (*issue-specific privatization law*), also have been enacted in many states.<sup>8</sup>

Moreover, while some states have enacted laws that promote and facilitate privatization, others have enacted laws seeking to regulate and curtail such activity. In fact, at times, privatization policies have changed dramatically from one year to the next even within a state, due to such factors as political or economic shifts, civic engagement (pro or con), or on-the-ground experience with prior privatization deals. (See, for example, the discussion below regarding the Commonwealth of Massachusetts.) Examples of general, sector-specific, and issue-specific privatization laws are provided below.

### **General Privatization Laws**

The privatization laws in Massachusetts and Utah are examples of two broad-based privatization statutes with differing legislative approaches.

**Massachusetts.** In the first few years of Governor Weld's administration (1990-1992), 36 government services were contracted out, according to the Pioneer Institute, and such contracts were reported to have saved roughly \$273 million.<sup>9</sup> The Weld administration was hailed as seeking to improve the business climate in Massachusetts by reducing taxes and state regulations of the private sector. However, in 1993, the state legislature, realizing the need to regulate privatization contracts, passed the Taxpayer Protection Act. The Taxpayer Protection Act, more commonly referred to as the "Pacheo law," established strict requirements for detailed prior review of all privatization proposals. By 2002, the Pioneer Institute was referring to Massachusetts as "home to the most restrictive state privatization law in the nation." It noted that since the Pacheo law was enacted, "only six state services have been contracted out to private

service providers, while similar efforts have dramatically expanded in other jurisdictions.”<sup>10</sup> On these facts, both proponents and opponents of aggressive state privatization programs might well agree that the Massachusetts law has been effective in impacting the course of state privatization. Thus, a closer look at the Massachusetts law is warranted.

The intent of the Massachusetts privatization law, M.G.L. chapter 7, §§52-55, is perhaps best described by its legislative preamble:

**Section 52 Privatization contracts;** need to regulate. The general court hereby finds and declares that using private contractors to provide public services formerly provided by state employees does not always promote the public interest. To ensure that citizens of the commonwealth receive high quality public services at low cost, with due regard for the taxpayers of the commonwealth and the needs of public and private workers, the general court finds it necessary to regulate such privatization contracts in accordance with [this act]...

The law goes on to define “privatization contract” as “an agreement or combination or series of agreements by which a non-governmental person or entity agrees with an agency to provide services, valued at \$500,000<sup>11</sup> ... which are substantially similar to and in lieu of, services theretofore provided, in whole or in part, by regular employees of an agency...”<sup>12</sup> The essence of the law, however, is in the specific, rigorous procedures that must be followed prior to acceptance of any privatization deal. Under the law, an agency must prepare a detailed statement of services to be privatized, a document that becomes a public record and is transmitted to the state auditor for review. A competitive sealed bid process then is conducted based upon the statement. The state agency proposing privatization also must prepare a detailed analysis of the costs it would incur in providing such services (such analysis becomes a public record on the final day to receive sealed bids), and must provide resources to encourage and assist present agency employees to organize and submit a bid to provide the subject services.

The term of any such privatization contract, by law, is limited to five years (although there may be renewals). In addition, where a bidder will employ a person whose duties are substantially similar to those performed by a regular agency employee, the law establishes a minimum wage and certain minimum employer-paid health insurance requirements for each position. Compliance is monitored closely as contractors must submit detailed quarterly payroll records to the agency and failure to comply with the employee-related provisions may result in the attorney general bringing a civil enforcement action against the contractor in state court.

The law further provides that every privatization contract must require the contractor to offer available employee positions pursuant to the contract to qualified regular employees of the agency whose state employment is terminated because of the privatization contract, and such offers must be made on a nondiscriminatory basis in order to ensure equal opportunity for all.

Upon awarding the bid, the agency then must prepare a comprehensive written analysis of the contract cost based upon the designated bid, which specifically includes the costs of transition from public to private operation, of additional unemployment and retirement benefits, if any, and of monitoring and otherwise administering contract performance. If the designated bidder proposes to perform any or all of the contract work outside the boundaries of the Commonwealth, the contract cost shall be increased by the amount of income tax revenue, if any, which will be lost to the Commonwealth by the corresponding elimination of agency employees.

The agency head and the state administration commissioner each then must certify in writing to the state auditor that the services so contracted are likely to equal or exceed the quality of services that could have been provided by the agency; that the contract costs will be less than the

estimated cost taking into account all comparable types of costs; and that due diligence has been conducted regarding the successful bidder. The state auditor then conducts an independent review of all the relevant facts (and may summon the attendance and testimony under oath of witnesses and the production of books, papers and other records relating to such review). If, within 30 days, the state auditor objects to the deal in writing (due to failure to comply or incorrect facts), then the privatization contract is not legally valid. The objection of the state auditor, moreover, is final and binding on the agency.<sup>13</sup>

**Utah.** To the extent that the Massachusetts law may be viewed as tending to curtail privatization activity, the Utah law may be viewed as more encouraging of privatization arrangements.

In its general privatization law enacted in 2008, known as the “Privatization Policy Board Act,”<sup>14</sup> Utah established a statewide privatization policy board, a 17-member body appointed by the governor and made up of representatives of the state legislature, public employees, local government entities, and private businesses.<sup>15</sup> The Board’s mission is oversight of *for-profit* privatization activities throughout the state.<sup>16</sup> As such, its statutory duties include the review of privatization proposals at the request of a state agency, a local government entity or a private enterprise to determine whether a good or service provided by an agency could be privatized (while ensuring the same types and quality of services and cost savings). In addition to determining feasibility of privatization, the Board is charged with addressing concerns from the private sector regarding unfair competition and, where appropriate, identifying ways to eliminate any unfair competition of an agency with a private enterprise. In connection with its reviews, the Board may be assisted by an advisory group to conduct studies, research, or analyses, and afterwards, may recommend privatization to an agency where it has been demonstrated that it would provide a more cost efficient, effective manner of providing goods or services.<sup>17</sup> In addition, the Board is charged with creating and updating (every two years), an inventory of activities of state agencies<sup>18</sup> and classifying each such activity as either a commercial activity (that ordinarily may be obtained by a private enterprise)<sup>19</sup> or an inherently governmental activity (functions that must be done by government).<sup>20</sup>

Other states have similarly classified government activities for purposes of their privatization laws.<sup>21</sup> The Commonwealth of Virginia, which in 1995 enacted a law establishing a Commonwealth Competition Council to monitor and promote privatization and “managed competition” efforts statewide,<sup>22</sup> is one such example.<sup>23</sup> The Council’s statutory duties include, for example, “promot[ing] methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector by a competitive contracting program,” and reviewing “the practices of government agencies and nonprofit organizations that may constitute inappropriate competition with private enterprise. The Council shall develop proposals for (i) preserving the traditional role of private enterprise; (ii) encouraging the expansion of existing, and the creation of new, private enterprise; and (iii) monitoring inappropriate competition by nonprofit organizations.”<sup>24</sup>

Parenthetically, the U.S. Congress passed a law providing for classification of government activities in 1998. The Federal Activities Inventory Reform (FAIR) Act<sup>25</sup> requires federal agencies to annually issue inventories identifying their activities as either “inherently governmental “ (i.e., one “that is so intimately related to the public interest as to require performance by Federal Government employees”)” or “commercial” (not inherently governmental.) Such inventories are then transmitted to the U.S. Office of Management and Budget and Congress, and made public. A limited administrative challenge and appeals process under which an interested party may challenge the omission or the inclusion of a particular



activity on the inventory as a commercial activity also is established through the federal act.<sup>26</sup>

### Sector-Specific Privatization Laws

**The private prison industry.** Tennessee enacted a broad, sweeping sector-specific privatization law a few decades ago.<sup>27</sup> As a result, the state has been credited with establishing the modern-day private prison industry.<sup>28</sup> The Tennessee Private Prison Contracting Act of 1986<sup>29</sup> authorizes the commissioner of corrections to enter into contracts with private entities to provide a vast array of correctional services, and makes any inmate sentenced to confinement (including those with special needs), legally eligible to be incarcerated in a private prison facility. The law defines “correctional services” as those functions, services and activities that may be provided within a prison and that concern, among others, education, training and jobs programs; recreational, religious and other activities; food services, commissary, medical services, transportation, sanitation or other ancillary services; counseling, special treatment programs or other programs for special needs; and facility operations such as management, custody of inmates, security. Certain duties, however, may not be delegated to the private contractor under the law. Such duties include developing and implementing procedures for calculating inmate release, parole eligibility and sentence credits; approving inmates for furlough and work release, the type of work inmates may perform and the wages or sentence credits that may be given,<sup>30</sup> and placing an inmate under less or more restrictive custody or taking disciplinary actions.<sup>31</sup>

The law sets forth certain performance and cost criteria to be used as a basis of comparison between the state and private firms and it requires proposals (from private prison firms seeking state contracts), to offer cost savings (including the monitoring costs of the state) of at least a 5 percent for “essentially the same quality of services.” The phrase “essentially the same,” however, is defined as a difference that is no greater than 5 percent.<sup>32</sup>

**Transportation.** Another recent growth area in sector-specific state privatization legislation is transportation, perhaps due to the rising popularity of Public-Private Partnerships (PPPs or simply P3s). But what are transportation PPPs?

According to the National Conference of State Legislatures (NCSL):

*PPPs are agreements that allow private companies to take on traditionally public roles in infrastructure projects, while keeping the public sector ultimately accountable for a project and the overall service to the public. In PPPs, a government agency typically contracts with a private company to renovate, build, operate, maintain, manage or finance a facility. PPPs cover as many as a dozen types of innovative contracting, project delivery and financing arrangements between public and private sector partners . . . Though PPPs are not optimal for many transportation projects, they have been shown to reduce upfront public costs . . . PPPs don't create new money but instead leverage private sector financial and other resources to develop infrastructure. In the end, a source of revenue such as tolls or other public revenue still is required to pay back the private investment. In this era of fewer viable choices for moving ahead with critical infrastructure development, PPPs are an option many states are contemplating.*<sup>33</sup>

The NCSL has prepared a “tool kit” to assist legislators in promoting good governance and “to navigate the controversies” when considering transportation PPPs.<sup>34</sup> Efforts at promoting transportation PPPs legislatively are having some success according to the NCSL, which reported as of December 2010 that 29 states and Puerto Rico had legislated an authorization framework for transportation PPPs, with more than \$46 billion being invested in these projects over the last 20 years.<sup>35</sup> Moreover, NCSL reports, in 2010 alone, 21 states and the District of Columbia

considered 52 legislative measures concerning transportation PPPs.

U.S. PIRG, the federation of state Public Interest Research Groups (PIRGs), has a more cautionary take on transportation PPPs. It recently issued a national report on toll road privatization, an increasing prevalent form of PPPs in the United States, as politicians and transportation officials grapple with budget shortfalls.<sup>36</sup> According to U.S. PIRG, “between 1994 and early 2006, \$21 billion was paid for 43 highway facilities in the United States using various “public-private partnership” models. By the end of 2008, 15 roads had been privatized in 10 different states – either through long-term highway lease agreements on existing highways or the construction of new private toll roads.”<sup>37</sup> As of 2009, approximately 79 roads in 25 states were under consideration for some form of privatization.<sup>38</sup> According to the U.S. PIRG report, toll road privatization takes two forms: the lease of existing toll roads to private operators and the construction of new roads by private entities. In both cases, private investors are granted the right to raise and collect toll revenue, which can amount to billions of dollars in shareholder profits over the life of the deal. Although such arrangements might provide a “quick fix” to budgetary shortfalls, U.S. PIRG cautions that there might be long-term threats to the public interest insofar as significant control over regional transportation policy is transferred to individuals who are accountable to their shareholders rather than the public.<sup>39,40</sup>

### **Issue-Specific Privatization Laws**

Issue-specific privatization laws show up in state statutes throughout the country. Such provisions typically reflect a policy concern regarding such matters as nondiscrimination or public employee job security with respect to the outsourcing of services by public agencies. For example, a legislative concern for job security of public employees is reflected in a provision of the Minnesota state law relating to procurement/ privatization within the area of personnel management.<sup>41</sup> The law requires executive agencies, including the state college and university systems, to demonstrate that they cannot use available staff before hiring outside consultants or services. If the use of consultants is necessary, agencies are encouraged to negotiate contracts that will involve permanent staff in order to upgrade and maximize training of state employees. The law further provides that if agencies reduce operating budgets, they must give priority to reducing spending on professional and technical service contracts before laying off permanent employees.

A bill with similar goals was introduced in the Tennessee legislature in 2011.<sup>42</sup> If enacted, the bill would require agency heads to certify in connection with any contract for services with an outside agency that “no state employee...is capable of accomplishing the tasks sought to be contracted; and [that]... no vacant positions...exist that can be filled by hiring an employee to perform the services in lieu of contracting” to an outside entity.

A final example is Florida, which enacted a state law<sup>43</sup> requiring that a particular state agency (the Department of Children and Family Services) privatize a particular state mental health hospital (the South Florida State Hospital). The law set forth certain details of the privatization deal, including that current South Florida State Hospital employees affected by the privatization be given first preference for continued employment by the contractor and that any savings resulting from the privatization be directed to the department’s delivery of community mental health services in certain districts.

### **Researching Your Own State’s Privatization Laws**

Knowing what the law says in your home state is a good starting place in understanding the

privatization experience in your community. There are several ways to go about researching your state law. The Appendix (see link to the pdf at the bottom of this webpage) provides a direct website link to the online general laws of the fifty states. This Appendix also includes some citations to privatization laws by state that were identified using “privatization” as a search term. However, laws relevant to privatization activities in your state may be found in numerous other sections of your state statutes (including those areas dealing with contracted services, public procurement, public finances, personnel services and various sectors (prisons, education, social services, healthcare, corrections and transportation, among others.) The websites <http://statutes.laws.com/> and [www.findlaw.com](http://www.findlaw.com) also are possible resources, as they include a free online searchable database of the laws in the 50 states.

Another approach to identifying privatization laws in your area might be to contact your state auditor’s office, the governor’s office or the administrative offices of your state legislature for further assistance.

Finally, there are many Internet-based resources that provide updates on privatization activities across the country at both the state and local level. Two such resources include the Privatization Watch<sup>44</sup> website, [www.privatizationwatch.org](http://www.privatizationwatch.org), which posts news, developments, and updates regarding privatization activities throughout the 50 states and the The Reason Foundation,<sup>45</sup> which issues annual privatization reports on developments across the United States and Puerto Rico, [www.reason.org/publications/annualprivatizationreport/](http://www.reason.org/publications/annualprivatizationreport/).

## **State Level Privatization 2011**

December 22, 2011 | by Ann Henkener (League of Women Voters of Ohio)

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 2010<sup>1</sup>

New Jersey – New Jersey Privatization Task Force Report, 2010<sup>2</sup>

Virginia – Virginia Commonwealth Competition Council<sup>3</sup>

Illinois – “Government Privatization: History, Examples, and Issues,” Illinois Commission on Government Forecasting and Accountability 2006<sup>4</sup>

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.”<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

### **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.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

**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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

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."<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup> The budget bill recently passed in Ohio lets the Governor explore leasing options, but the final contract must be approved by the General Assembly.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup>

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.<sup>27</sup>

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## **Privatization: The Public Policy Debate**

December 22, 2011 | by Nora Leech (League of Women Voters of Washington)

### **What Is the Role of Government?**

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. We, as citizens of the United States, have been experiencing the growing effects of the privatization movement since the 1980s. Privatization efforts have been tried (with varying degrees of success) on federal, state and local levels. Federal efforts include Social Security/Medicare, student loans, military services and interstate highways. On the state and local level, agencies responsible for social services, transportation, mental health and public health care, corrections, and education have all seen remarkable increases in privatization activities since 1988.<sup>1</sup> On a local city and neighborhood level, efforts are prominent to privatize public libraries, parks, court services and roads/bridges.

The pace of the movement to privatize has escalated since 2008. The current economic recession and the trend in government over the years to reduce taxes have increased government budget deficits. The current recession (the largest since the Great Depression) is resulting in business failures, high unemployment, and a loss of tax revenues for federal, state and local governments. Whether the current financial situation is directly related to the deregulation of the financial services sector is the subject of great debate. Regardless of the causes, the revenue losses have added to the drive to downsize government by privatizing functions, services and assets. Although saving money through greater efficiencies may appear to be the primary reason for such a push to downsize government at this moment, there are other forces and philosophies behind the move to privatize that have been active since the early 1970s and have gained significant momentum since the 1980s.

This is a good time to take measure of privatization’s impact on our citizenry: what is working and what is not. The United States has more than 30 years of privatization efforts to evaluate. It is important to think about the lessons learned within the greater framework of this public policy debate.

### **The Idea**

Milton Friedman, the Chicago School of Economics, stated the goals of privatization as a public policy agenda to reduce the size of government, deregulate business and reduce taxes.<sup>2</sup>

### **Claims and Concerns**

Those promoting privatization of government services, assets and functions claim that the private sector will provide increased efficiency, better quality and innovation in services. Proponents claim privatized services will provide a cost savings to those being served (public consumers of the services) as well as to the government no longer responsible for providing the services or maintaining the assets. Many suggest that the government has overextended itself into sectors that could well be covered by private, for-profit companies. Some claim that privatizing government programs like interstate highways, trains or the postal service will mean that large expenses will be taken off the government books, thus providing relief to taxpayers. Advocates believe that private firms have better incentives to control costs and respond more effectively to competition.



Those concerned with the public policy of privatization say that the private sector mandate to make a profit can endanger public safety and reduce services available to the general public (particularly in poor and rural areas). They are concerned that there will be increased costs to consumers through fees and tolls and increased costs to government through poorly written contracts. They are concerned that the private sector will increase profit margins and include expenses like high executive salaries and corporate debt loads (interest on debt) that consumers and tax payers will have to pick up. There is also a concern that private companies will lack transparency, adequate oversight and accountability. How do individuals complain to a corporation if they feel abused by high prices when there are no or limited alternatives? There is a fear of increased corruption between government and for-profit private companies as the lines between government and business professionals become blurred. There also is a concern that privatizing strategic sectors such as ports, utilities and defense to foreign-controlled multinational corporations will put the country at risk in the event of war. There is concern that the strategy to privatize large sectors of government services and functions will result in chronic high unemployment, low wages and abusive labor practices, especially during economic downturns. There is also a concern that the privatization policies will result in growing inequality between the wealthy and poor, thereby losing the revered American middleclass.

### **Larger than the United States**

The privatization movement is an international movement. David Linowes, chair of the 1987 President's Commission on Privatization, explains that outside the United States, it is known as the privatization movement and involves outright divestiture of government properties. In the United States, it has meant deregulation and tax reduction.<sup>3</sup>

### Outside the United States

Countries with significant state corporations are encouraged to divest these businesses to the private sector. Prominent divestitures in the news have included Russia's natural gas (Gazprom), Bolivia's municipal water system in Cochabamba and the United Kingdom's British Rail. As an incentive, lenders have been known to require that governments reduce the size of the public sector through privatization and deregulate industries engaged in international trade as conditions for loans.<sup>4</sup>

### In the United States

The deregulation of the financial services industry would be a notable example in the news<sup>4</sup> and examples of tax reductions would be the significant reductions in corporate taxes over the last 20 years, as well as efforts to reduce individual taxes on capital gains and inheritances. Linowes states that the tax reductions of the 1980s were intended to reduce the government influence over private sector activity.

However with today's financial downturn, the focus in the United States is increasingly on downsizing government by privatization of assets, services and functions. The loss of taxes from the economic downturn and from tax cuts are jointly adding to the deficit imbalance which is creating a political crisis. Current recommendations under consideration for privatization include roads, bridges, prisons, schools, parks, health, tax collections, postal service, Amtrak, social welfare services, public health services and Worker's Compensation, to name a few. In the United States, pressure is coming from international lenders, most recently via bond rating companies threatening to downgrade U.S. bonds. A lower bond rating generally requires paying higher interest rates to lenders. This, in turn, should increase the government deficit unless taxes can be raised or cuts can be made in other areas.

## History

The Chair of President Reagan's Privatization Commission provides some background. "The Privatization movement was developed mainly in reaction to the Progressive movement of the early Twentieth Century. In the Progressive Era, while other nations were most likely to nationalize an industry, the United States was more likely to subject the industry to systematic government regulations."<sup>5</sup>

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. Leaders expressed their skepticism about a "planned market" where the government plays a prominent role regulating businesses. They agreed with economist Milton Friedman's broader philosophical view, that free markets were the solution to many problems – health care, product safety, banking failures and financial speculation. Linowes reminds us that the Progressive movement policies were themselves a reaction against the Social Darwinism (survival of the fittest) and *laissez-faire*, free market theories prevalent in the late 19th century.

Though many large corporations and leading financial institutions may advocate a return to *laissez-faire*, free market policies, there are other perspectives on the unregulated boom/bust economies of the late 1800s. It was a time of great instability. There were multiple economic depressions including the panic of 1893, where millions of Americans lost their life savings and homes due to bank failures and foreclosures. These were times of corruption in government witnessed by the railroad scandals and banking failures. These were times of unacceptable labor conditions where men in the steel mills worked 12 hours a day, seven days a week, 363 days a year; where workers maimed at work were dismissed with no compensation for themselves or their families; and where children put in 12-hour days in textile factories and coal mines under appalling work conditions. These were times when diseases – malaria, cholera and TB – were common due to government inaction, and times of unsafe food due to unregulated food industries. And these were times of massive business failures and unemployment.<sup>6</sup>

These unstable times were followed by the catastrophic events of World War I, the Great Depression and World War II.

At the onset of these troubled times, those advocating progressive policies began to create a much stronger role for government in the well-being of its citizens by regulating business and the economy. To protect the aged, Social Security was initiated. To protect the public health, businesses were regulated (a prime example was the meatpacking industry that disgorged offal upstream of major cities). Public education was strengthened to provide an informed citizenry and a productive workforce. Programs were established to protect labor, such as workers' compensation, and laws were passed to limit the workday and provide a minimum wage. Additionally, programs were created to help the unemployed in economic downturns.

High inflation and the banking failures in the late 1800s and early 1900s led to the creation of the Federal Reserve in 1913. Although called the Federal Reserve, the new central bank (not a government bank) was an association of private bankers with limited government input. It had the power to minimize inflation by managing the amount of currency in circulation. But banks continued to fail as depositors withdrew their savings and the country fell into the Great Depression. In 1933, President Franklin Delano Roosevelt created the Federal Deposit Insurance Commission (FDIC) to encourage depositors to trust banks. Along with the ability to control inflation, the Federal Reserve was challenged by the U.S. government to maintain "full

employment,” aware that policies to limit inflation carried the risk of high unemployment.<sup>7</sup>

In the 1980s, however, advocates for *laissez faire*, free market policies were growing increasingly influential. In September 1987, the President’s Commission on Privatization was created. The Commission’s purpose was “to review the appropriate division of responsibilities between the federal government and the private sector and to identify those government programs that are not ‘properly’ the responsibility of the federal government or that can be performed more efficiently by the private sector.” The Commission in 1988 recommended a broad spectrum of government activities that could be transferred to the private sector. These included low-income housing, housing finance (Fannie Mae and Freddie Mac), federal loan programs, air traffic control, educational choice (voucher programs and charter schools), U.S. Postal service, military commissaries, prisons, federal asset sales such as Amtrak and the Naval Petroleum Reserves, Medicare, international development programs, and urban mass transit.<sup>8</sup>

### THEORIES SUPPORTING PRIVATIZATION

Yale Law Professor Paul Starr explains that the normative theories, justifying privatization as a direction for public policy, have drawn their inspiration from several different schools of thought on what constitutes a “good society.”<sup>9</sup>

#### “Property Rights” and “Public Choice”

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

Starr’s 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 broader philosophical view is that government social programs and regulations, inflationary spending aside, were almost always detrimental to the efficient workings of an economy. In 1962, Milton Friedman, in his book, *Capitalism and Freedom*, provided an intellectual map for a reversal of the progressive policies of the nation. Friedman urged the U.S. government to eliminate Social Security, progressive income taxes, free public high schools, the minimum wage, housing and highway subsidies, and health care, even for the elderly, noting that an unregulated market place would take care of these problems. Friedman believed that if individuals were given the choice, free of government rules and regulations, of where to work, where to invest their retirement funds, where to send their children to school, where to buy their healthcare and where to rent or buy their homes, competition to supply the best goods or services would result in a greater number of cheaper and higher-quality options. He postulated that with reduced government and lower taxes, the poor would be better off, inequality would be minimized, and discrimination eliminated.

Friedman sought as well to discredit the Keynesian economic theories advocating government intervention to manage the economy during financial crises. Keynes had suggested that even if interest rates and prices fall, business may not invest because of lack of demand for their goods. Thus, he advocated for government spending to kickstart the process and stated that, with an expanding economy, the deficit resulting from the spending would quickly be replaced.<sup>10</sup>

## **Privatization in Practice**

Professor Starr describes four types of government policies intended to bring a shift from the public sector to the private sector: attrition, transfer of assets, contracting out, and deregulation.

- Attrition

Attrition results from cessation of public programs and disengagement of government from specific kinds of responsibilities. Restriction of publicly produced services in availability or quality may lead to a shift by consumers toward privately-produced substitutes. Or, government may let the service run down by drastically reducing their budgets. An example might be the U.S. Postal Service.

- Transfer of assets

Such transfer may occur with the 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 or prisons.

- Deregulation

Deregulation may be the result of deregulating entry into activities previously treated as public monopolies. Examples might include utilities, water, waste management, air traffic control and ports.

These four policies vary in the degree to which they move ownership, finance and accountability out of the public sector. The spectrum runs from total privatization (as in government disengagement from some policy domain) to partial privatization (public/private partnerships or vouchers, such as for school or housing). In the case of partial privatization, the government may continue to finance but not operate services, or it may continue to own but not manage assets. Partial privatization may dilute government control and accountability without eliminating them. Examples might be detention centers for juveniles or welfare services.

## **What is the Role of Government?**

In rethinking the proper relationship of government, business and civil society, fundamental political and economic questions arise. 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, ensuring safe work environments and a living wage. Our country must seek a pragmatic balance between social and economic returns.

## **Strategies for Best Practice**

December 21, 2011 | by Cathy Lazarus (League of Women Voters of California) and Ted Volskay (League of Women Voters of South Carolina)

### **INTRODUCTION**

In an era of shrinking resources, federal, state and local governments will continue to view privatization as a potentially viable strategy to sustain services traditionally provided by the public sector. Best practices suggest that the decision to privatize public services should be made after comprehensive review of the advantages, disadvantages and alternatives to privatization,

and only after broad based community/stakeholder outreach and comment. The decision to privatize must be based on factual information, principles of good governance, and careful planning for contractor selection and oversight.

This paper is a review of the essential factors to consider in deciding whether or not to privatize a government service. It outlines key questions to ask policy makers and important policy areas to evaluate before and after making a decision to transfer a public service to the private sector. Pdf attachments to this paper, found after the endnotes, include two tables highlighting the potential advantages and disadvantages of privatization, and a recommended checklist of questions to ask decision-makers throughout a privatization initiative (Appendices 1-4).

## **MAKING THE DECISION TO PRIVATIZE**

### **Can Any Public Service or Public Asset be Privatized?**

One of the first questions to ask when considering privatization is whether the public interest is protected and served by the privatization of a service or a public asset such as land, buildings, equipment and information. “Economists and others conclude that certain services can only be provided effectively by government; for example, where continuity of service is essential, where no profits are generated, and where no competition exists or can exist.”<sup>1</sup>

#### Conditions for Successful Privatization

Research suggests that, absent extreme circumstances such as default or non-performance by a contractor, there is no definitive way to evaluate whether or not a privatization initiative is a success or a failure. For example, privatization may be viewed as a success by some stakeholders if it reduces service cost; other stakeholders may view the initiative as a failure if it results in a loss of public accountability or a loss of public control. A privatization process may also be considered successful if government self-review leads to improvement without actually transferring services to the private sector. There are, however, private market and government agency characteristics that, when in place, increase the potential for successful privatization. Privatization typically works best for services that have the following characteristics:

- The services are in growing and competitive markets;
- Information associated with the delivery of the service is abundant and public accountability (transparency) is not a limiting issue;
- The service involves transactions that are not irrevocable;
- Externalities that can affect the profitability of a service are limited; and
- Service efficiency can be achieved in ways that are not contrary to the public interest. In addition, privatization works best for services that are limited in scope and complexity and the contracting government agency has:
  - o Officials open to the idea of privatization;
  - o Clearly defined goals and criteria;
  - o Established privatization policies;
  - o Conducted an open public review process;
  - o Worked closely with affected employees and developed employee transition plans;
  - o Reliable cost data to accurately compare public service costs to private service costs; and the pricing of public assets to the pricing of private assets;
  - o A contract monitoring and management system; and

- o Performance-based criteria against which the private contractor will be regularly evaluated.<sup>2,3</sup>

### **Accounting for Public Property, Assets and Information**

Privatization often requires private contractors to use public assets (land, buildings, equipment) and information (police records, utility billing information, child welfare files). Whether and how the public agency is compensated for the use of public assets (especially those that generate income) as well as how confidential information is used and protected are major considerations. Also, when service contracts are terminated, thought needs to be given to how the assets will be returned to the public agency. Transactions involving the return of tangible assets are relatively straightforward; however, the return of confidential electronic data and assuring that copies of sensitive electronic files are not retained and used in the future by the contractor are more problematic.<sup>4</sup>

### **Comparing Government and Private Contractor Cost**

Cost savings is a common justification for privatizing government services. Consequently, it is important to accurately compare the total cost of services provided by the government to the projected total costs to the public if a private contractor provides the same service. In comparing the cost of government service to a privatized service, decision-makers must consider not just the cost of the contract but also the cost to transition the service from a public to private provider. The transition costs should include the costs associated with displaced public employees, the cost of contract negotiations and the cost of performance oversight by the government.<sup>5</sup>

### **Is Privatization the Only Option?**

Finally, in making a decision to privatize, decision-makers should be certain that privatization is the best way to provide lower cost services. Sometimes government service delivery can be made more efficient with investment in technology or new delivery methods. Or a “managed competition” process, where the public agency submits a bid to compete with private bidder, can be a good way to determine the most cost effective method of service delivery. As noted in a U.S. Government Accountability Office (GAO) report: “According to Indianapolis officials, competition in the marketplace rather than privatization per se produces the most value for the taxpayer. This view was shared by most state officials we spoke with . . . the primary advantages of managed competition were reduced costs, improved services, improved employee morale and increased innovation.”<sup>6</sup>

### **AFTER THE DECISION TO PRIVATIZE**

What happens **after** the decision to privatize is critically important to the success or failure of the initiative. To maximize the probability of success, it is important for decision-makers and stakeholders to remain vigilant throughout the contractor selection process, contract negotiations and approval phase. Once privatization has occurred, it is important for decision-makers and stakeholders to monitor contractor performance throughout the term of the agreement.

There should be open meetings and public hearings about the key terms of all agreements, the selected contractor and the ultimate service contract.

### **Managing the Contractor Selection Process**

Most public agencies have guidelines and procedures regarding the selection of contractors and standard contract language for liability, insurance coverage requirements, payment and other technicalities. Commonly, the public agency will issue a Request for Proposals (RFP), Request for Qualifications (RFQ) or other documents outlining the contractor selection process, the scope

of services desired and minimum standards expected of the contractor. It is important to decide contractor selection criteria in advance. Will selection be based on the lowest cost proposal or on proposed service quality, or on a combination of the two? Will potential contractors undergo a thorough screening to verify they have accurately represented themselves, and are reputable and financially stable? Will criminal background checks be conducted on all private contractors?<sup>7</sup>

*Patronage* is a potential problem that involves the assignment of jobs or the offer of favors to public officials.<sup>8</sup> For example, it is alleged that Interior Department personnel responsible for overseeing deep-water drilling in the Gulf of Mexico routinely accepted gifts from private oil companies and conducted negotiations for future employment prior to the Deepwater Horizon oil spill.<sup>9</sup> Policies should be in place to minimize the potential for abuse by public officials and contractors.

A common method to avoid patronage and assure an open selection process is to have an independent panel screen, interview and rank proposers for the contracting agency. The policies and procedures of the City of Mountain View, California, for example, go further by explicitly stipulating that low-bid pricing is not the primary award criteria in a Request for Proposals.<sup>10</sup> Cost proposals are not opened until after the proposals are reviewed, the interview process is complete and prospective contractors have been ranked by an independent selection committee.

### **Negotiating the Contract**

Government agencies face significant legal risks when a private contractor does not fully honor the contract, declares bankruptcy, or commits fraud or other criminal activity. The governing agency may be liable for the misdeeds of private contractors and is often responsible for making up contractor shortfalls. It is important that protections and remedies for contractor non-performance or illegal activity be addressed before any contract is signed.

One contractual protection is to require contractors to post a surety bond and/or secure insurance payable to the government agency in the event the contractor is unable to meet the conditions of the contract. This provides an incentive for the contractor to meet the conditions of the contract and also provides financial resources for the agency to intervene quickly and ensure continuity of services if the contractor cannot fulfill the contract.<sup>11</sup>

A second potential remedy is to include in the contract language that establishes the non-performance criteria or conditions that give the government agency the right to immediately terminate the contract and take responsibility from the contractor.

In the case of a renewable, long-term contract, various fees may need to be renegotiated periodically. Specifying key aspects of this procedure, such as the frequency of audits or allowable profit will assure the initial intent of the contractual relationship is not changed over time. Open meetings requirements as well as the accessibility of public records and government documents must not be compromised over the term of the agreement.

Enforcement options and backup plans also should be thought through before the contract is finalized: Who will enforce penalties, and how will they be paid? Are there written legal protections for whistleblowers? When should mediation or arbitration be prescribed? Should these be open meetings?

### **Employee Considerations**

Private contractors often reduce the cost of a service by offering lower wages and fewer benefits than their public counterparts. Private contractors may rely on part time employees who are not offered benefits. “Low waged work is the type of work most prone to frequent turnover, but

many public services need long-term workers with historical knowledge of clients, methods and services. Wage levels affect and reflect the quality of worker an employer can attract.”<sup>12</sup> To provide a level of protection, some government agencies require contractors to provide employees with competitive wages and to comply with all federal and state equal employment and anti-discrimination laws.

Conversely, as services are privatized, protections need to be in place for displaced public workers. Sometimes displaced employees are provided other positions, if available, or are offered training for new professions. The public agency may require the contractor to initially hire the existing public employees but at private sector wage and benefit levels.

### **Managing the Contract and Overseeing Performance**

“Oversight must take place on a regular and frequent basis to ensure work is done, quality is maintained, and an early warning system is in place in order to prevent a subcontractor’s absconding or engaging in financial improprieties. If oversight is not frequent and regular, problems that could have been prevented may become serious and even irreparable. The oversight process must give the public easy access to lodge complaints, ask questions and get responses. If the public cannot find someone to whom problems can be reported, then no one can be held accountable . . .”<sup>13</sup> The GAO report found that in all but one agency surveyed, officials reported that monitoring was the weakest link in the privatization process.<sup>14</sup>

“There are areas of government services where measures of success can be easily stipulated and efficiently monitored.”<sup>15</sup> Maintenance services with clearly defined operational procedures and maintenance cycles are perhaps the easiest examples. Are the traffic signals working? Have the trash cans downtown been emptied? What percent of the police vehicles were serviced on schedule? Have the water mains been flushed on schedule?

More difficult to measure are human services where achieving standardized performance measures of success or failure is more challenging. “It is especially difficult to identify and measure desired results for social services. This is because the objectives of many social services, including improved family and child well-being, are often difficult to define simply and clearly.”<sup>16</sup> In addition, many social service programs involve goals other than pure cost efficiency and require long timeframes to measure success.<sup>17</sup> An example would be a job training program where it could take years to determine whether clients become successful, long-term members of the workforce.

Despite the difficulties, it is essential to establish metrics in the contract that reflect industry best practices as well as local goals and objectives. It is also imperative that public agencies provide experienced staff to conduct meaningful oversight to assure that goals and objectives are achieved and the public interest is served. Auditors and inspectors may need specialized financial, legal or technical expertise.

### **SUMMARY**

Privatizing a government service is a complex undertaking that requires a major commitment of resources. It involves careful definition of the goals to be achieved, assurance that all efficiencies have been implemented with the existing service model, evaluation of the service “market place” to assure a competitive bidding environment, expert contract negotiation and a thorough understanding of the potential impacts to service customers. Most importantly, the process requires transparency, oversight and ongoing communication with stakeholders to understand their concerns about privatization, because, in the end, the public bears the success or failure of privatization.



# Unit Meetings

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## FEBRUARY UNIT INFORMATION

Email	Phone	Time	Location
<b>Monday, February 6</b>			
<b>SOUTHEND — Marian Wolfe/Susan Jones</b>			
hedgwolfe@aol.com	206-763-9430	7:30 p.m.	Vivian Montoya, 206-693-2620
susan@monckjones.com	206-725-2902		4932 42nd Ave. S., Seattle
<b>Tuesday, February 7</b>			
<b>BELLEVUE – Bonnie Rimawi</b>			
bonnierim@aol.com	425-820-7127	12:15 p.m.	Lake Hills Public Library 15590 Lake Hills Blvd., Bellevue
<b>Wednesday, February 8</b>			
<b>VIEW RIDGE – Gail Winberg</b>			
winbergeng@q.com	206-524-7801	12:45 p.m.	Gail Winberg 6004 NE 60th St., Seattle
<b>QUEEN ANNE/MAGNOLIA/BALLARD EVENING – Karen Adair/Elsie Simon</b>			
adairk303@gmail.com	206-283-3242	7:30 p.m.	Nancy Debaste, 206-282-4097
elsiesimon@comcast.net	206-283-6297		800 4th Ave. N, Seattle
<b>Thursday, February 9</b>			
<b>UNIVERSITY HOUSE/WALLINGFORD</b>			
	206-860-8758	10:00 a.m.	University House, Auditorium 4400 Stone Way N., Seattle
<b>ISSAQUAH DAY – Margaret Austin</b>			
margaret.austin@comcast.net	425-392-5760	11:30 a.m.	Issaquah City Hall, Coho Room Upstairs 130 E. Sunset Way, Issaquah
<b>NORTH END NOON – Jo Dawson</b>			
warrenandjo@comcast.net	206-363-1798	12:00 noon	Sybil Knudson, 206-362-1954 1745 N 128th St., Seattle
<b>SHORELINE – Juliet Beard</b>			
juliet@windermere.com	206-715-5531	4:30 p.m.	Richmond Beach Congregational Church NW 195th St & 15th Ave. NW, Shoreline
<b>KIRKLAND/REDMOND – Sheila Hoff</b>			
srhoff123@yahoo.com	425-861-6748	7:00 p.m.	Hjordis Foy, 425-822-0729 11016 NE 47th Place, Kirkland
<b>NORTH CENTRAL – Jan Orlando</b>			
orlanre@aol.com	206-524-0936	7:30 p.m.	Gail Shurgot, 206-522-8265 6536 31st Ave. NE, Seattle

Email	Phone	Time	Location
<b>Monday, February 13</b>			
<b>FIRST HILL — Jeannette Kahlenberg</b>			
kahlenb@gmail.com	206-922-2641	10:00 a.m.	Horizon House, Sky Lounge 900 University St., Seattle Ann Dittmar, hostess awdittmar@gmail.com, 206-382-5453
<b>CAPITOL HILL/MONTLAKE – Vicky Downs/Zita Cook</b>			
downsvdowns@aol.com	206-328-3926	7:15 p.m.	Linnea Hirst, 206-322-3076
zzitamcook@comcast.net	206-374-0369		1602 E. McGraw, Seattle
<b>Tuesday, February 14</b>			
<b>WEST SEATTLE – Ethel Williams/Amanda Berry</b>			
etheljw1@q.com	206-932-7887	12:30 p.m.	The Kenney
amandamberry@earthlink.net	206-724-7518		7125 Fauntleroy Way SW, Seattle
<b>SOUTHEAST KING COUNTY – Cathy Dormaier</b>			
clcathy@foxinternet.com	360-802-6799	1:00 p.m.	High Point Village
dkdenny@skynetbb.com			1777 High Point Street, Enumclaw
<b>Wednesday, February 15</b>			
<b>NORTH KING COUNTY - Natalie Pascale Boisseau/Samanthe Sheffer</b>			
npboisseau@gmail.com	206-417-0573	9:30 a.m.	Third Place Commons Meeting Room, Upper Level
singingphoenix@yahoo.com	425-776-4513		17171 Bothell Way NE, Lake Forest Park
<b>BAYVIEW – Peg Williams</b>			
pwilliams@brc-res.com	206-301-4438	11:00 a.m.	Bayview Retirement Community 4th Floor Solarium, 11 W. Aloha St., Seattle
<b>SOUTHWEST KING COUNTY – Cindy Piennett/Kathy Jorgensen</b>			
cindypiennett@gmail.com	253-839-2883	7:00 p.m.	Foundation House
kjorgensen@juno.com	253-859-8349		32290 1st Avenue South Federal Way
<b>Saturday, February 18</b>			
<b>BALLARD/MAGNOLIA/QUEEN ANNE DAY – Judy Ostrow</b>			
2jostrow@comcast.net	206-783-7108	10:00 a.m.	Alice and Jack Peterson 206-524-5530 5245 Pullman Ave. NE, Seattle

# Board & Committee Contacts

Term	Executive Committee			
2011–2013	<i>President</i>	Judy Bevington	206-329-4848	president@seattlelww.org
2011–2013	<i>1st V.P. Voter Service</i>	Cyndi Woods	206-329-4848	cyndiwoods@comcast.net
2011–2012	<i>3rd V.P. Public Relations</i>	Jean Carlson	206-329-4848	jean.carlson@att.net
2011–2013	<i>Treasurer</i>	Kati Ortiz	206-329-4848	ortiz.kati@gmail.com
2010–2012	<i>Secretary</i>	Joanna Cullen	206-329-4848	jfoxcullen@gmail.com
Term	Directors			
2011–2013	<i>Action</i>	Ellen Barton	206-329-4848	eeb0825@yahoo.com
2011-2012	<i>King County South</i>	Mary Ehlers	206-329-4848	maryehlers@comcast.net
2010-2012	<i>Voter Service</i>	Julie Anne Kempf		julie@kempf.com
2011-2012	<i>Membership</i>	Shari Lundberg	206-329-4848	shari.c.lundberg@gmail.com
2011-2012	<i>King County South</i>	Pat McCann	206-329-4848	thomaspa@nwlinc.com
2011-2012	<i>Development</i>	Ginna Owens	206-329-4848	ginnao@earthlink.net
2011-2013	<i>Transportation</i>	Janet Winans	206-329-4848	janetwinans@earthlink.net
Term	Education Fund Board			
2011-2013	<i>President</i>	Nancy Eitreim	206-329-4848	nancye@speakeasy.net
2011-2013	<i>Secretary</i>	Laraine Volkman	206-329-4848	laraine.volkman@att.net
2010-2012	<i>Director</i>	Ruth Schroeder	206-329-4848	schrdrcl@comcast.net
2010-2012	<i>Director</i>	Ellyn Swanson	206-329-4848	gusellyn@comcast.net
Term	Nominating Committee			
2011-2012		Karen Adair	206-329-4848	adairk303@gmail.com
2011-2012		Astrid Berg	206-329-4848	
2011-2012		Jeanette Kahlenberg	206-329-4848	kahlenb@gmail.com
2011-2012		Boots Winterstein	206-329-4848	paulwinterstein@q.com
Off-Board Positions				
	<i>Unit Coordinator</i>	Linette Bixby	206-329-4848	linettebixby@gmail.com
	<i>CIS Coordinator</i>	Cynthia Howe	206-329-4848	howe.john@comcast.net
	<i>Program Chair</i>	Jeanette Johnson	206-329-4848	jeanettejohnson10@msn.com
	<i>Voter Editor</i>	Nan Moore	206-329-4848	nanvoter@comcast.net
Committees				
	<i>Economics &amp; Taxation</i>	Nora Leech	206-329-4848	LWVseattlenora@yahoo.com
	<i>Education, incl. Teacher Study</i>	Lucy Gaskill-Gaddis	206-329-4848	terrylucy2u@comcast.net
	<i>Immigration</i>	Barbara Reid	206-329-4848	barbereid@yahoo.com
		Barbara Yasui	206-329-4848	daruma52@msn.com
	<i>International Relations</i>	Rebecca Castilleja		telbalto@yahoo.com
	<i>Land Use/Waterfront</i>	Karen Kane	206-329-4848	kanek@iopener.net
		Jan O'Connor	206-329-4848	oconnor.js@gmail.com
	<i>Privatization</i>	Nora Leech	206-329-4848	LWVseattlenora@yahoo.com
	<i>Social Justice</i>	Jayne Freitag	206-329-4848	mjafreitag@comcast.net
	<i>Transportation</i>	Janet Winans	206-329-4848	janetwinans@earthlink.net
	<i>Vote by Mail Study</i>	Julie Anne Kempf	206-329-4848	julie@kempf.com

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## **LWV SEATTLE: FEBRUARY FORUM**

### Privatization: The National Study

**Seattle First Baptist Church**  
1111 Harvard Ave., Seattle WA  
(Corner of Harvard and Seneca)

**Thursday, February 2**

**6:00 p.m. - Discussion Leaders'  
Briefing (\*\*Note early start time)**

**7:30 p.m. - Forum**

All forums are open to the public.

*Speakers include:*

- **Don Comstock, Ph.D.**, core faculty,  
Antioch University
- **Nora Leech**, member, National Study  
Committee on Privatization
- **Jim Sawyer**, political economist,  
Seattle University

*Moderator:*

- **Eleanor Licata**