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SURVEYING STATE LAWS ADDRESSING PRIVATIZATION: EXECUTIVE SUMMARY

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

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

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

Diane DiIanni

SURVEYING STATE LAWS ADDRESSING PRIVATIZATION

By Diane DiIanni

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.[1]

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."[2]

The CSG survey results[3] 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).[4] 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).[5]

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).[6]

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.[7]

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.[8] 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.[9] 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."[10] 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.chapter7, §§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[11]... which are substantially similar to and in lieu of, services theretofore provided, in whole or in part, by regular employees of an agency..."[12] 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.[13]

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,"[14] 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.[15] The Board's mission is oversight of *for-profit* privatization activities throughout the state.[16] 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.[17] In addition, the Board is charged with creating and updating (every two years), an inventory of activities of state agencies[18] and classifying each such activity as either a commercial activity (that ordinarily may be obtained by a private enterprise)[19] or an inherently governmental activity (functions that must be done by government).[20]

Other states have similarly classified government activities for purposes of their privatization laws.[21] 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, [22] is one such example.[23] 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."[24]

Parenthetically, the U.S. Congress passed a law providing for classification of government activities in 1998. The Federal Activities Inventory Reform (FAIR) Act [25] 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.[26]

Sector-Specific Privatization Laws

The private prison industry. Tennessee enacted a broad, sweeping sector-specific privatization law a few decades ago. [27] As a result, the state has been credited with establishing the modern-day private prison industry.[28] The Tennessee Private Prison Contracting Act of 1986 [29] 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,[30] and placing an inmate under less or more restrictive custody or taking disciplinary actions.[31]

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.[32]

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.*[33]

The NCSL has prepared a "tool kit" to assist legislators in promoting good governance and "to navigate the controversies" when considering transportation PPPs.[34] Efforts at promoting transportation PPPs legislatively are having some success according to the NCLS, 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.[35] 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.[36] 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."[37] As of 2009, approximately 79 roads in 25 states were under consideration for some form of privatization.[38] 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.[39, 40]

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. [41] 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.[42] 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[43] 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 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[44] website, www.privatizationwatch.org, which posts news, developments, and updates regarding privatization activities throughout the 50 states and the The Reason Foundation,[45] which issues annual privatization reports on developments across the United States and Puerto Rico, www.reason.org/publications/annualprivatizationreport/.

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For the Appendix, put together by Ted Volskay (LWVSC), see pdf attachment on webpage below.

ENDNOTES

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[1] William D. Eggers, Designing a Comprehensive State-Level Privatization Program, Reason Foundation, January 1993, http://reason.org/files/5c32035105255bc9b74deb47348aeaf3.pdf.

[2] Keon S. Chi, Kelley A. Arnold and Heather M. Perkins, Privatization in State Government: Trends and Issues, Spectrum: The Journal Of State Government, The Council of State Governments, Fall 2003, page 12, www.csg.org/knowledgecenter/docs/spec_fa03Privatization.pdf.

[3] See endnote 2, p. 13.

[4] See endnote 3.

[5] See endnote 2, p. 14.

[6] CSG Survey of directors from five executive agencies, December 2002. Keon S. Chi, et al, Privatization in State Government: Trends and Issues, page 16, www.csg.org/knowledgecenter/docs/spec_fa03Privatization.pdf.

[7] CSG national survey of state officials to identify recent privatization trends was conducted between October 2002 and December 2002,and was sent to 450 state budget and legislative service agency directors and heads of five executive branch agencies: personnel, education, health and human services, corrections and transportation. The survey had a almost 77% response rate. Keon S. Chi, et al, Privatization in State Government: Trends and Issues, page 13, www.csg.org/knowledgecenter/docs/spec_fa03Privatization.pdf

[8] Some states, of course, have enacted laws falling into more than one of these categories.

[9] Pioneer Institute, "Massachusetts' Privatization Law, Necessary Guardrail or Roadblock to Competition?" Policy Dialog No. 51, December 2002, www.pioneerinstitute.org/pdf/pdialg_51.pdf (The article attributes the savings figure to the Massachusetts Office of Administration and Finance.)

[10] See endnote 9.

[11] This figure was increased from $200,000, as originally enacted.

[12] The definition expressly excludes any subsequent agreement, including any agreement resulting from a rebidding of previously privatized service, or any agreement renewing or extending a privatization contract, as well as any agreements solely to provide legal, management consulting, planning, engineering or design services. M.G.L.ch.7, §53.

[13] M.G.L. chapter7, §55.

[14] UTAH 63I-4-101, et seq.

[15] By statute, the board members must include two state senators and two state representatives, evenly divided between the majority and minority political parties; two public employees; one state manager; eight members from the private business community; one member representing the Utah League of Cities and Towns; and one member representing the Utah Association of Counties. UTAH Code, 63I-4-201.

[16] The state law defines privatization to include activities of a *for-profit* private enterprise. Utah 63I-4-102 (7) and (8).

[17] Utah 63I-4-202 (Privatization Policy Board – Duties). Although the law does not preclude an agency from privatizing the provision of a good or service independent of the board, if it does, the agency must include as part of the privatization contract that the contractor assumes all liability for provision of any such good or service.

[18] Such inventory in Utah is to be made public through electronic means. Utah 63I-4-301 (Board to create inventory.)

[19] "Commercial activity" is defined by the law as engaging in an activity that can be obtained in whole or in part from a private enterprise. Utah 63I-4-102.

[20] The law makes clear, however, that inclusion of an activity on the inventory does not waive any right, claim, or defense of immunity that an agency may have under the state's governmental immunity act and may not be construed to find that the activity does not constitute a government function. Utah 63I-4-304 (Government immunity).

[21] The Virginia Code defines "commercial activity" to mean an activity performed by or state government that is not an inherently governmental activity and that may feasibly be obtained from a commercial source at lower cost than the activity being performed by state employees. Section 2.2-5512.

[22] See Sections 2.2-2620 through 2.2-2625 of the Code of Virginia.

[23] In Virginia, "managed competition" is statutorily defined as "a competitive process between a state agency and the private sector in which (i) the state agency submits its own proposal after completing the fully allocated cost of the commercial activity and (ii) the proposal is based on its most efficient proposed organization to compete with a private sector bid or proposal for the provision of the commercial activity." Code of Virginia§2.2-2620 (Definitions).

[24] Section 2.2-2622 of the Code of Virginia.

[25] P.L. 105-270 (1998).

[26] For additional information about the FAIR Act, see www.whitehouse.gov/omb/procurement_fair_guidance/.

[27] Although California and other states authorized private prisons in the mid-1800s (see Vanderbilt Law Review, Vol. 40, Issue 4, May 1987, pp. 851-865), the emergence of the modern private prison industry is attributed to an early 1980s contract between Hamilton County, Tennessee and Nashville-based Corrections Corporation of America, currently the largest for-profit private prison firm in the country. McFarland, S., McGowan, C., O'Toole, T., Prisons, Privatization, And Public Values, December 2002, government.cce.cornell.edu/doc/html/PrisonsPrivatization.htm.

[28] The modern prison industry has been called one of the fast-growing industries in the United States and some commentators are concerned that the dramatic rise over the past two decades in the U.S. prison population (the U.S. has 5% of the world population, but 25% of the world's incarcerated population), may be associated with the introduction of the profit-motive into the sector through both contracting out prison services to large, publicly traded private corporations and the use of cheap prisoner labor. Pelaez, V**.,** *The prison industry in the United States: big business or a new form of slavery?*, Global Research, El Diario- La Prensa, March 10, 2008, www.globalresearch.ca/index.php?context=va&aid=8289.

[29] T.C.A. 41-24-101 et seq.

[30] Approximately 36 states have laws authorizing the contracting of prison labor by private corporations that set up operations within state prison facilities. The rate of pay for prison labor among the states, according to one commentator, varies substantially from $2

per hour in Colorado to as little as 17 cents per hour in some privately run prisons. It has been reported that the highest paying private prison is CCA in Tennessee, where prisoners receive 50 cents per hour for "highly skilled positions." Pelaez, V**.,** *The prison industry in the United States: big business or a new form of slavery?*, Global Research, El Diario- La Prensa, March 10, 2008, www.globalresearch.ca/index.php?context=va&aid=8289

[31] T.C.A. 41-24-110 (Powers and duties not delegable to contractor.)

[32] T.C.A. 41-24-105 (Performance criteria for contracts -- Contract term and renewal -- Comparison of performance -- Reporting.)

[33] National Conference of State Legislatures, NCSL News Driving Money Home for Transportation Project, Dec. 9, 2010. www.ncsl.org/?tabid=21831.

[34] See endnote 33.

[35] See endnote 33.

[36] Baxandall, P. Wohlschlegel, K., Dutzik, T, "Private Roads, Public Costs, The Facts About Toll Road Privatization and How to Protect the Public" US PIRG Education Fund, Spring 2009, www.uspirg.org and www.cdn.publicinterestnetwork.org/assets/H5Ql0NcoPVeVJwymwlURRw/Private-Roads-Public-Costs.pdf.

[37] See endnote 36. The U.S. PIRG report cites a few examples of privatized roads as follows: the Indiana East-West Toll Road, which carries Interstate 90 approximately 150 miles across northern Indiana and is a critical link between Chicago and the eastern United States; the Chicago Skyway, which links downtown Chicago with the Indiana Toll Road; and California's SR 91 Express Lanes, which were originally built by a private entity to provide a speedier connection between Orange and Riverside counties.

[38] See endnote 36.

[39] See endnote 36.

[40] *See also* the recently issued U.S. PIRG report assessing the prospects, promise, and pitfalls of high-speed rail PPPs, "High-Speed Rail: Public Private or Both?" July 18, 2011, www.uspirg.org/home/reports/report-archives/transportation/transportation2/high-speed-rail-public-private-or-both.

[41] 2010 Minnesota Statutes, 43A.047 (Contracted Services).

[42] House Bill 478, 107th Session of the Tennessee General Assembly.

[43] Florida Statutes 394.47865 South Florida State Hospital; privatization.

[44] According to its website, Privatization Watch is a joint project of the Center for Study of Responsive Law and Essential Information, a nonprofit organization founded in 1982 by Ralph Nader.

[45] According to its website, Reason Foundation's mission is to advance a free society by developing, applying and promoting libertarian principles, including individual liberty, free markets and the rule of law.