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Publicopoly: ALEC and the Bid to Make Private All That is Public

Submitted by Anonymous on August 22, 2011 - 12:16pm

Guest Contributor corporations democracy politics ALEC Exposed

by **Beau Hodai** -- The Center for Media and Democracy is reposting Beau Hodai's examination of the privatization schemes advanced by the [American Legislative Exchange Council \(ALEC\)](#), as part of CMD's effort to report on, and gather reporting about this organization through our [ALECexposed.org](#) work. This story was originally published by [DBA Press](#) (pdf) and is also available for download [through this link](#). (pdf) You can also jump to the article's source materials directory [here](#).

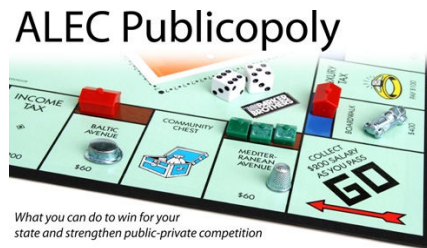
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Intro: "danged ornery critters"

November 2, 2010 saw an influx of public officials swept into officialdom on an unremitting wave of fevered rhetoric. Serving as the core of such rhetoric, with its attendant swirl of McCarthy-esque innuendos, was the promise to cut 'pork barrel' spending and to eliminate the special interest back room dealings that have come to typify the American governmental landscape.

And, surely enough, with the outset of legislative sessions in January of this year, the American news-consuming public was both shocked and awed by the tenacity with which this new breed of Grand Old Partier (Montana Governor Brian Schweitzer (D) going so far as to label his own contingent of legislative combatants a rash of "danged ornery critters") set to their tasks of dismantling state government, seeking out deregulation in all its forms and pushing for unprecedented privatization of governmental functions. Key to this agenda-- as evidenced by the synchronous appearance of numerous bills seeking to accomplish this aim-- appears to have been the weakening of public employee unions.



Source: <http://www.alec.org/AM/Template.cfm?Section=publicopoly>

While typically lax, the mainstream media sphere's attention peaked and came into brief focus with the culmination of the fight over collective bargaining rights in the Wisconsin legislature during February and March. During that time, the streets surrounding the capitol buildings of Madison played host to a sea of thousands of protesters, demanding that the collective bargaining ability and political viability of public employee unions be spared the corrosive/deleterious influence of newly-elected Governor Scott Walker's budget repair bill, AB 11.

AB 11, along with Ohio's SB 5, were by far the most drastic examples of legislation aimed at restricting the collective bargaining rights, the political efficacy of unions and the restructuring of public employee pensions/benefits.

And, on March 9, the Wisconsin Senate, seemingly acting in violation of state open meetings law, pushed through a version of AB 11-- stripped of fiscal material, rendering moot the fact that all of the Senate's Democrats had fled to neighboring states to avoid a quorum. (The law was subsequently enjoined by Dane County Circuit Court Judge Maryann Sumi, who ruled that lawmakers had indeed violated state open meetings law. In June, the Wisconsin Supreme Court overturned the injunction, reversing the lower court's decision).

While the actions of the legislative backers of AB 11 appeared to have been contrary to the system of democracy supposedly embraced in this nation, the spirit of the same anti-public employee union (or flat-out anti-union) agenda was felt simultaneously across the nation-- with similar legislation introduced in such states as: Ohio, Florida, Oklahoma, Kansas, Arizona, Michigan and Indiana.

A core feature of this nationwide movement has been the stated purpose of reducing state spending through cuts to both public employee positions and public employee pension and health care systems. Often accompanying such bills in state legislatures are bills or provisions aimed at limiting the political viability of public employee unions-- whether through "paycheck protection" measures designed to limit campaign and/or lobbying expenditures, or through other agency restrictions on the use of state funds in lobbying.

And, as surely as these measures are touted by proponents as being effective ways of lessening state

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demands on taxpayers, these measures also effectively serve to weaken the ability of public employee unions to resist the swell of privatization measures which have accompanied these bills throughout the year.

An exhaustive DBA Press analysis of thousands of pages of documents obtained through public records requests over the past several months has revealed the source of many of these suddenly-wildly-popular bills to be 'model legislation' disseminated primarily through one entity.

Ironically, as these bills have been batted around as the fulfillment of GOP promises to cut excessive government spending, 'pork barrel' handouts and back room dealings, the group which has advanced much of this legislation, the American Legislative Exchange Council (ALEC), is comprised of corporations (often with vested interests in privatization), special interest 'think tanks,' and member lawmakers (overwhelmingly Republican). As such, ALEC may be the ultimate portal for special interests to the "back rooms" of state government.

It is worth noting that ALEC is the very same organization which promulgated the state-level GOP agenda throughout 2010, with the dissemination of pieces of model legislation which served as the basis of state challenges to 'Obamacare,' and of [mimic legislation based on Arizona's SB 1070](#).

And, this extensive survey shows that this year's GOP/corporate agenda, as set forth through ALEC, is aimed predominately at two points: public employees/privatization (with public employees and agencies branded the gluttonous villains behind states flailing in budgetary crises) and state-level opposition to federal Environmental Protection Agency (EPA) greenhouse gas regulations.

What follows is a distillation of that pudding in which the proof was found. It should be stated at the outset, for the record, that ALEC refused to comment on any aspect of the material covered here.

(Listen to audio of ALEC Senior Director of Public Affairs Raegan Weber refusing to comment on any aspect of ALEC operations. Weber hotly accuses Hodai of being unfair and unbalanced- and of working with National Public Radio. Note: Hodai has never worked for NPR, but NPR did release a story on ALEC in late 2010, based on an article Hodai had previously written for In These Times. Hodai was subsequently invited to speak on the issue on an NPR news program- hence Weber's accusations).

The Roach Motel: ALEC Defined

At 2:14 p.m., Wednesday, March 9, 2011, Wisconsin Senate Majority Leader [Scott Fitzgerald](#) (R-Juneau) requested that the Senate, then in special session, recess until 11:00 a.m., Thursday, March 10.

Unanimous consent of senators present concluded the business of the day. Those conspicuously absent were 14 Democratic senators who had fled the state in order to assure no quorum could be reached for a vote on Governor Scott Walker's Budget Repair Bill, AB 11.

At 4:03 p.m., March 9, 2011, the Wisconsin Senate suddenly reconvened.

Senator Fitzgerald addressed the 19 Republican senators present, stating that the Senate had been blocked from passing AB 11 due to the actions of those missing senators. "It is time to move this process forward," concluded Fitzgerald.

A committee of conference, consisting of Sen. Fitzgerald, House Speaker [Jeff Fitzgerald](#) (R-Horicon), Senate President Michael Ellis (R-Neenah) and Representative [Scott Suder](#) (R-Abbotsford), then presented a draft of Conference Substitute Amendment 1 to AB 11. The amendment had been stripped of fiscal material requiring a quorum for vote.

A vote was taken-- without prior public notice, and without a finalized draft of the amendment having been prepared by the Wisconsin Legislative Reference Bureau (LRB).

It should be noted that LRB had not even received a drafting request for the amendment until 3:50 p.m., March 9-- only moments before the senate reconvened to vote on the amendment. LRB records show that Conference Substitute Amendment 1 had actually been roughly carved out of AB 11 in February by the Joint Finance Committee-- so, while there was no official or publicly-available version of the amendment extant at the time of the vote, the Senate did have a marked-up version of AB 11 at their disposal.


18 of the 19 senators present voted for passage of the amendment. The amendment effectively limited much of the collective bargaining rights for most of the state's public employees (barring 'public safety' employees) and prohibited public employers from deducting union dues from employee pay.

Of those 18 senators who voted for passage of the amendment, 12 are members of the American Legislative Exchange Council (ALEC). Additionally, of those four lawmakers who comprised the conference committee, three (Sen. Fitzgerald, Rep. Fitzgerald and Rep. Suder) are ALEC members. Furthermore, Rep. Suder is one of the state's three ALEC 'public sector chairs'-- the other two being Rep. [Robin Vos](#) (R-Burlington, Assembly chair of the Joint Finance Committee and major proponent of AB 11), and Sen. [Leah Vukmir](#) (R-Wauwatosa, present at the March 9 Senate vote, voted for passage). ([View full list of Wisconsin ALEC legislative members here](#)).

Rep. Vos' Senate counterpart on the Joint Finance Committee, the committee that called for and roughly drafted Conference Substitute Amendment 1, is Sen. [Alberta Darling](#) (R-River Hills), also an ALEC member.

Along with public sector leadership, ALEC's operations in Wisconsin are directed by a 'private sector chair.' According to materials obtained through public records requests, Amy Boyer, a lobbyist employed by the Madison lobby firm, The Hamilton Consulting Group, is likely the present Wisconsin private sector ALEC chair (ALEC records from the organization's State Chairs Meeting in December of 2008 show Boyer acting in this







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role). Boyer could not be reached for comment. (Further public records requests for communications between Boyer and the office of Rep. Vos are pending at this time).

Boyer's client list includes several corporations active in ALEC, such as [Wal-Mart](#) and Koch Companies Public Sector ([Koch Industries](#)). And, just as Koch's proprietors, energy/chemical manufacturing billionaires David and [Charles Koch](#), reportedly backed Gov. Walker to the tune of \$43,000 through the 2010 election cycle (via a donation from the corporation), AB 11 contained a no-bids provision to sell off, or contract out, state-run power plants (this provision was removed from the conference amendment). (Editor's note: The Center for Media and Democracy/PRWatch.org has also documented how David Koch, Rupert Murdoch and other right-wing billionaires each gave a million dollar donation to the Republican Governors Association, which spent heavily in Wisconsin to get Walker into office [here](#).)

ALEC is a 501 (c) (3) not-for-profit organization (reporting about \$6.5 million in annual revenue in recent years) which claims more than 2,000 (roughly one third) of the nation's state-level lawmakers as members. ([View ALEC IRS forms 990, 2002-2009, as well as articles of incorporation, here](#)).

According to the group's promotional material, ALEC's mission is to "advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty, through a nonpartisan public-private partnership of America's state legislators, members of the private sector, the federal government, and general public."

ALEC currently claims over 250 corporations and special interest groups as private sector members.

While the organization refuses to make any complete list of these corporate members available to the public, some known members include (and have included): [ExxonMobil](#), the [American Bail Coalition](#), [Blue Cross Blue Shield](#), [Corrections Corporation of America](#) (CCA), [AT&T](#), [Pfizer Pharmaceuticals](#), [PhRMA](#), [TimeWarner Cable](#), [Comcast](#), [Verizon](#), [Wal-Mart](#), the National Rifle Association, [Koch Industries](#), the Heritage Foundation (co-founded by ALEC founder Paul Weyrich), the Cato Institute (an offshoot of the Charles Koch Foundation), [GlaxoSmithKline](#), [Philip Morris International](#), the National Federation of Independent Businesses (NFIB), and a slew of lobby firms representing scores of other corporate/special interests—to name a few.

ALEC is comprised of nine "task forces:" 1.) Public Safety and Elections, 2.) Civil Justice, 3.) Education, 4.) Energy, Environment and Agriculture, 5.) Commerce, Insurance and Economic Development, 6.) Telecommunications and Information Technology, 7.) Health and Human Services, 8.) Tax and Fiscal Policy, and 9.) International Relations.

Each task force is comprised of both public and private sector members—the public sector members being elected lawmakers, the private sector members being corporate/'think tank' representatives.

These task forces serve as the core of ALEC's operations, generating "model legislation," which is then passed on to member lawmakers for introduction in their home assemblies.

According to ALEC promotional material, each year member lawmakers introduce an average of 1,000 of these pieces of legislation nationwide, 17 percent of which are enacted. For 2009, ALEC claimed a total of 826 pieces of introduced legislation nationwide, 115 of which were passed into law—slightly below the average at 14 percent.

And, it is important to note that ALEC, as a 501 (c) (3) not-for-profit entity, is strictly prohibited by federal tax code from taking part in the formation of legislation. But, as ALEC has vociferously insisted over the past year (since falling under increased scrutiny as a result of an [In These Times](#) article documenting the organization's role in disseminating "model legislation" based on Arizona's SB 1070), the group simply passes "model" legislation along to help lawmakers. As such, the group claims it is not engaged in the crafting of actual legislation, nor is it engaged in lobbying.

If one were to follow a very narrow interpretation of what lobbying constitutes and close their eyes to the sheer number of pieces of "model" legislation popping up in real legislatures, this would be an accurate assessment.

ALEC itself, with a staff of less than 30 full-time employees, is in reality little more than a host organization that provides all-expenses-paid trips (funded by member corporations) for the nation's state-level lawmakers to meet with-- and be lobbied by-- the very same corporate/special interest lobbyists who pay for these so-called "scholarships," and who often contribute to the campaigns of member candidates.

By way of illustration, ALEC annually holds and disburses over \$1 million in corporate/special interest "scholarship funds" for the travel of member lawmakers to and from sessions, or "summits," at topnotch resorts. These funds are listed on ALEC tax returns as being a "liability" (since a 501 (c) (3) cannot expend funds for the purpose of wine and dining of lawmakers). ([For more information on the mechanics of ALEC scholarship fund activities, see companion report, "Legislative Laundry."](#))

And, in many states, these ALEC scholarship funds are exempt from gifting/lobbying reporting or restrictions, as they are purported-- by the lawmakers who have carved out this legal niche-- to be used for legitimate legislative purposes. Nevertheless, according to material obtained through public records requests, ALEC, along with Ohio ALEC private sector chair, Time Warner Cable, co-sponsored a Cincinnati Reds/Florida Marlins baseball game during a "task force summit" held in Cincinnati in late April-- with tickets reserved and disbursed to ALEC member lawmakers free of charge. What the legitimate legislative purpose of this event was remains unknown.

According to ALEC Communications Director Raegan Weber, the principal employed by ALEC which allows the organization to hold these scholarship funds aloft as a "liability" is Financial Accounting Standards Board (FASB) Generally Accepted Accounting Principal (GAAP) statement 136. FASB GAAP 136 essentially states

that in order for ALEC, as a 501 (c) (3), to hold and disburse these funds in such a way, the organization must be considered to be controlled by the donor parties (read: corporate/special interest members). (This information was divulged by Weber in November, 2010-- shortly before she refused to make any further comment to DBA Press).

And, at the end of the day, that is all ALEC truly is: a conduit, an intermediary between corporate America and our "public servants"-- or, simply put, a legislative roach motel controlled by corporate/special interests, through which lazy, incompetent, and/or corrupt lawmakers gather legislation authored, or otherwise influenced, by corporate special interests for introduction in their home legislatures.

Q.E.D.: ALEC, Koch and the GOP

While ALEC claims to be a non-partisan public-private legislative partnership, free of loyalties to any single party or interest, the reality of the organization is similar to that of an aspen grove. Ostensibly, an aspen grove is comprised of many densely clustered individual trees. However, an inspection below the soil reveals that each tree is in fact an offshoot of one large root network-- each tree a manifestation of the same organism. Such is the relationship between ALEC and much of its think tank/"public policy foundation" membership.

(View archived documents pertaining to the Koch Brothers, [[Koch Industries], Americans for Prosperity, Reason Foundation, Cato Institute, and other organizations discussed in this section, here].)

ALEC, as an organization, has received significant funding from the [Charles G. Koch Foundation](#) and one of its member (and therefore "donor") organizations is the Cato Institute. According to Cato incorporation documents, the organization was initially incorporated as an offshoot of the Charles Koch Foundation in 1974. David Koch is currently a director of Cato.

A prominent ALEC member think tank, the Reason Foundation (a "libertarian" public policy institute devoted to promoting privatization of governmental functions) is funded in part by the Charles Koch Foundation. David Koch is also a Reason director. Michael Flynn, Reason's current director of government affairs, served as ALEC director of policy and legislative activities/strategic initiatives for several years, ending in 2003.

The [Americans for Prosperity](#) Foundation (AFPF, a prominent contributor to the ALEC/Koch public policy network-- initially incorporated as Citizens for a Sound Economy Educational Foundation), is funded largely by the Charles Koch Foundation and Koch Industries (whose capital is derived primarily from chemical manufacturing and energy production, as well as from diversified holdings in a number of other corporations).

David Koch is the chairman of AFPF, serving on the board alongside Koch Industries Executive Vice President Richard Fink. Fink also serves as president of the Charles Koch Foundation and is executive vice president of the Mercatus Center, yet another Koch-funded right-wing ALEC public policy member.

In 2003, AFPF spawned two more right-wing public policy foundations: [Americans for Prosperity](#) (AFP) and [FreedomWorks](#).

From the AFPF/[Citizens for a Sound Economy](#) (CSE) rib which formed FreedomWorks was cut AFPF Chief Economist Wayne Brough (who today is FreedomWorks vice president of research and chief economist), and former AFPF/CSE Vice President Matt Kibbe (currently president of both FreedomWorks and the FreedomWorks Foundation).

As noted in AFPF 2003 tax records, the group paid \$429,583 in "consulting" fees to former U.S. House Majority Leader [Dick Arme](#)y (R-TX) through FreedomWorks. Arme)y had left the House in January of that year. This AFPF expenditure was essentially Arme)y's first year salary as chairman of FreedomWorks.

From January, 2009 through the November, 2010 midterm elections, FreedomWorks and AFP were instrumental in creating the false populist "Tea Party" movement. Through the orchestration of scores of national tax day protests, conventions and constant mainstream media coverage, FreedomWorks, AFP and other Koch-funded ALEC-member public policy groups (such as the National Taxpayers Union, currently headed by former ALEC executive director Duane Parde) were largely instrumental in ushering in unprecedented Republican legislative majorities nationwide.

And this track record is just what makes ALEC's constant assertions of non-partisanship so laughable.

To illustrate: according to District of Columbia incorporation papers filed for what is today [FreedomWorks](#), the organization had undergone a series of name changes and mergers prior to reaching its current incarnation-- initially being incorporated as "Foundation for Freedom and Capitalism" (FFC) in 1987. The last stage of the organization's growth prior to becoming FreedomWorks was "Citizens for the Environment," (formerly "Taxpayer Action League") incorporated in 1995 by former AFPF/CSE president Paul Beckner.

According to these documents, one of FFC's founding directors was influential GOP strategist/lobbyist extraordinaire [Ed Gillespie](#).

Gillespie served as an aide to House Majority Leader Arme)y (1995-2003) following the "Republican Revolution" of 1994. As Communications and Policy Director of the House Republican Conference of 1994, Gillespie, along with such notables as Arme)y, former House Speaker [Newt Gingrich](#) (R-GA, also very active in ALEC in recent years) and [Grover Norquist](#) (head of [Americans for Tax Reform](#), also active in ALEC), is credited as being one of the authors of the 1994 GOP "Contract with America."

Following his time in House leadership, Gillespie served as press secretary to the failed presidential bid (1999) of current Ohio Governor [John Kasich](#) (R). Kasich, during his time in the Ohio Senate (1978-1982) is

credited by ALEC as being one of the more active public sector members during the organization's "formative years" (ALEC was founded in 1973).

It should be noted that one of Kasich's first actions as governor of Ohio in 2011 was the unveiling of a plan to sell off and privatize a significant portion of Ohio's correctional infrastructure-- a course of action near and dear to both ALEC and its private prison industry donors. Significantly, Ohio's SB 5, sponsored by ALEC member Sen. Shannon Jones (R-Springboro), eliminated public employee collective bargaining rights as they pertained to issues of privatization.

Following his time with Kasich, Gillespie went on to found, along with former Vice President Al Gore (D) chief of staff John M. Quinn, the lobby firm of Quinn, Gillespie & Associates. The firm opened their doors in time to lobby for Enron (a former ALEC member corporation) in 2001 on issues of energy industry deregulation (another subject close to the hearts of the Koch network and ALEC).

Shortly thereafter, Gillespie announced he would launch an organization dubbed "21st Century Energy Project"-- to include support from AFPF and CSE.

To be fair, Gillespie's lobbying activities on behalf of Enron/Koch energy interests were fairly limited (most likely curtailed by the demise of Enron) compared to lobbying performed on behalf of other clients such as the U.S. Chamber of Commerce, Diageo (a prominent ALEC member corporation) and AT&T (longtime chair of the ALEC Private Enterprise Board).

Following a stint in 2003 as Republican National Committee chairman, Gillespie went on, in 2007, to serve as an advisor to President George W. Bush, replacing Karl Rove in the twilight of that administration.

At the outset of 2011, Gillespie served as chairman of an RNC transitional team appointed to usher in the sweeping Republican majorities nationwide-- made possible to such a large degree by AFP and FreedomWorks.

Quod erat demonstratum.

"Paycheck Protection:" to defang and denature the opposition

On February 25, 2011, Florida State Representative Chris Dorworth (R-Lake Mary) introduced HB 1021.

HB 1021 sought to prohibit public employers (state, county, municipal and special district) from withholding any amount from public employee wages for the payment of union dues, other union assessments, or other contributions for the purpose of political activity (including contributions to individual candidates, political parties, political action committees, committees of continuous existence, 501 (c) (4) organizations, or for the purpose of electioneering communications).

As such, public employee unions would be forced to raise dues and funds for political purposes independently of the governmental agencies which employ their members.

Furthermore, HB 1021 stated that should a public employee union seek to use any funds collected from members for any form of political activity, the union must first have received a written authorization for such use from each individual member. Under HB 1021, these written authorizations must be submitted by union members annually and must be accompanied by a detailed account-- to be provided by the union-- of all the contributions and political expenditures made by the union within the past 24 months.

HB 1021 also provided that a union member may revoke their authorization at any time. Should a member revoke their authorization, the union would be compelled to issue a refund to that member for the portion of their dues expended for political activity within the fiscal year for which the authorization was issued.

HB 1021 stated that unions could not require such authorizations as a condition of membership and the bill laid out stiff penalties for unions found to have violated its provisions-- ranging from union decertification to a fine of \$20,000 per day of violation.

In short, if a union member disagreed with a campaign contribution made on their behalf by the union, they could demand a refund; if a union failed to meet any of the reporting/collections/refund criteria laid out under HB 1021, it would face dire consequences.

As such, HB 1021 seemingly sought to fragment the political cohesion of public employee unions in Florida. And, it should be noted that Florida is a "right-to-work" state, meaning that no employee-- public or private-- can be forced to join a union as a condition of employment. So, HB 1021 targeted public employee unions comprised entirely of members who had joined wholly of their own volition.

On March 30, 2011, noting striking similarities between HB 1021 and a rash of similar bills aimed at public employee unions cropping up nationwide, DBA Press submitted a public records request to the office of Rep. Dorworth seeking copies of all documents in possession of the representative's office pertaining to the formation of HB 1021, as well as copies of any and all pieces of "model legislation" (from either ALEC or any other source) which may have served as a basis for HB 1021.

Within an hour of submitting this request, DBA Press received a response from Dorworth's office through Florida House Speaker Dean Cannon (R-Winter Park) Communications Director Katherine Betta.

"We received a note from Representative Dorworth's office regarding your request for records relating to the American Legislative Exchange Council and HB 1021," said Betta. "Please note that Mr. Dorworth's legislative offices did not receive any materials from ALEC relating to this bill or any 'model legislation' from other states."

Nevertheless, rather than taking our hats in our hands and going home, DBA Press persisted in this request. Two weeks later Dorworth's office delivered 87 pages of documents, mostly bill drafts and emails detailing the evolution of what was to become HB 1021.

Buried at the bottom of this stack was an 11-page bundle of neatly typed material, labeled "Paycheck Protection." This consisted of three pieces of model legislation, at the end of each were the words: "Copyright, ALEC."

Dorworth Legislative Aide Carolyn Johnson claims that, although Dorworth is an ALEC member ([View full list of Florida ALEC member lawmakers here](#)), neither she, nor the Representative, have any idea how the ALEC model legislation found its way into Dorworth's office. Dorworth could not be reached for comment.

The three pieces of model legislation contained in the ALEC "Paycheck Protection" bundle were entitled: "Employee Rights Reform Act," "Labor Organization Deductions Act" and "Political Funding Reform Act." ([View "Paycheck Protection" model legislation here.](#))

"Paycheck Protection" model legislation 1: Employee Rights Reform Act

The Employee Rights Reform Act (ERRA), in a nutshell, establishes limitations on fees which may be charged to non-union public employees who are part of a collective bargaining unit represented by a union, or by any other "exclusive representative" of public employees engaged in collective bargaining.

As such, ERRA states that no non-union public employee ("agency fee payer") may have more than a proportionate (pro rata) share of collective bargaining union costs withheld from their pay by a public employer.

To ensure the enforceability of this measure, ERRA lays out criteria for both "chargeable" and "nonchargeable" activities which an exclusive representative may be engaged in.

Essentially, chargeable activities are defined as follows: expenditures for purposes of collective bargaining, contract administration and grievance adjustment undertaken by the exclusive representative on behalf of the agency fee payer. All other activities are deemed to be non-chargeable.

ERRA is somewhat open-ended as to whether or not an agency fee payer may be charged for political activity undertaken on their behalf by unions-- while this type of activity is not included in the definition of chargeable activity, the model bill does contain a clause which states that whether or not political activity is chargeable is in the hands of "controlling court decisions."

"Paycheck Protection" model legislation 2: Labor Organizations Deductions Act

The Labor Organization Deductions Act (LODA) is the only piece of the "Paycheck Protection" trilogy which is not aimed specifically at public employee unions (though it is worth noting that the bill does specifically name both the National Education Association and the American Federation of Teachers as entities which must comply with restrictions). Rather, LODA, in a nutshell, seeks to establish an amazingly stringent set of criteria governing the means through which any labor organization may collect and use funds for political activity.

As set forth under LODA, unions may not expend any funds for lobbying, electoral, and political activities, including contributions to any candidate, party, voter registration campaign, "or any other political cause" unless said funds are kept in a segregated account-- which must be administered as a political action committee (PAC)-- by the labor organization.

LODA further establishes criteria for the collection and disbursement of these segregated funds, stating:

A.) all contributions to the fund must be solicited separately and independently from other union fees collected, such as dues or other fees associated with collective bargaining; B.) no dues or other fees collected by a labor organization, or monies obtained by a union through any "commercial transaction," may be used for political purposes, transferred to the segregated fund, or "intertingled in any way with fund monies;" C.) that the cost of administering the segregated fund must not be paid with any dues or other fees collected as part of union membership.

Under LODA, union members may only have fees withheld from pay if each individual employee submits a signed authorization directing their employer to withhold a set sum for payment to a specific labor organization, union, or other "organization of employees." However, as stated by LODA, no employee may direct an employer to deduct funds for payment to: A.) a PAC, B.) any other "segregated fund," or C.) any intermediary that contributes to a PAC or segregated fund.

Furthermore, LODA establishes criminal penalties for any violation of its provisions. As such, LODA creates a misdemeanor offense for any labor organization, or representative thereof, found to have made a political contribution of any type if that contribution was found to have been obtained through any threat of reprisal, force, or discrimination.

Similarly, LODA creates a misdemeanor criminal offense for any labor organization, or representative thereof, found to have made a political contribution derived from dues or any other fee paid by members as a condition of representation/membership, or as a condition of employment-- or found to have been obtained through any commercial transaction.

Furthermore, LODA states that no labor organization may solicit funds for political use from any individual outside of members and their immediate family members.

And, lastly, LODA creates a misdemeanor criminal offense for any labor organization, or representative thereof, found to have compensated any member-- through any means-- in exchange for a written authorization of withholding for political purposes.

"Paycheck Protection" model legislation 3: Political Funding Reform Act

While ERRA and LODA seek to significantly limit the amount and type of funds which may be deducted from employee pay-- particularly as those funds may apply to union political activity-- the Political Funding Reform Act (PFRA) is designed to eliminate all withholding of public employee pay for use in any political activity.

Simply put, under PFRA public employers are strictly prohibited from collecting, deducting, or transmitting political funds derived from public employee pay.

As defined by PFRA, "political funds" are defined as any monies expended upon, or commingled with funds used for political activity, including: electioneering communications; participation in any candidate or ballot campaign; contributions (or operation expenses) to any PAC; involvement or contributions to any other organization which devotes a substantial amount of activity to "carrying on propaganda, or otherwise attempting to influence voters, legislation or ballot issues."

PFRA also provides penalties for any public employer found to have violated this total ban on political funds deductions from public employee pay.

Under PFRA, any public employer found to have violated any section of the prohibitions outlined therein will not be permitted, for a period of two years, to withhold any funds from employee pay for any purpose-- including union dues or any other fees used in labor organization activity, such as collective bargaining.

Additionally, PFRA provides that any public employee found to have had funds withheld for "political activity" may bring suit against their employer for damages, injunctive relief and litigation costs.

"The backbone and heartbeat:" the ALEC public resources double standard and "Right to Work" model legislation

Ironically, as PFRA states so succinctly, "necessary governmental functions do not include using government resources to confer a political benefit or advantage on any private individual or organization, including, but not limited to, public employee unions and their members," it should be noted that documents obtained by DBA Press through public records requests submitted to the offices of ALEC public sector chairs in numerous states (primarily Wisconsin, Ohio, Arizona and Florida) demonstrate that ALEC, a private organization, relies heavily on public employees (legislative staff and lawmakers) to carry out their work in states with active membership, primarily through the task of raising state ALEC 'scholarship' funds from private corporations, think tanks and their lobbyists.

These funds are then used to pay the travel and lodging expenses incurred through lawmaker attendance at ALEC events, hosted at resorts around the nation. During these events, lawmakers are 'educated,' wined (figuratively; ALEC scholarship funds are not used for the reimbursement of alcoholic beverages-- though private sector lobbyist do often pay for entire dinner parties of lawmakers at these events), dined, and otherwise honeymooned, often by the same lobbyists footing the bill.

Similarly, emails obtained from the offices of ALEC's Florida public sector chair Rep. Jimmy Patronis (R-Panama City), as well as from Ohio public sector chair Rep. John Adams (R-Sidney), and Wisconsin public sector chair Rep. Robin Vos, reflect a considerable amount of state time and resources expended in the recruitment and retention of member lawmakers.

And, as the so-called "Paycheck Protection" pieces of model legislation seek to limit the lobbying ability of public employee unions, records obtained through states surveyed demonstrate a clear tradition of ALEC model legislation (often in the form of packages containing several pieces of bundled model legislation) being passed from ALEC-member corporate/special interests lobbyists, or ALEC employees at the behest of task force members, through the offices of ALEC public sector chairs, and on to other lawmakers-- whether or not those other lawmakers are ALEC members.

In essence, ALEC has created a network of lawmakers and public employees who act on their behalf, and on the behalf of their corporate/special interest members.

Furthermore, in 2009, former ALEC Wisconsin public sector chair Rep. Phil Montgomery (R-Green Bay) worked with ALEC staff and representatives of longtime ALEC Private Enterprise Advisory Board Chair, AT&T, in developing and implementing a "pilot media project."

According to meeting minutes from the July 15, 2009 ALEC State Chairs Meeting, cooperation on this project was cause for AT&T Senior Vice President for Strategic Communications Jim Epperson to laud ALEC public sector state chairs as being the "backbone and heartbeat" of the organization.

According to these meeting minutes and other ALEC documents obtained by DBA Press, the aim of the pilot media project was to "help develop ALEC issue leaders in the states, and identify key state media outlets." At the 2009 meeting then-ALEC executive director Alan Smith stated that this pilot media program had performed so well in Wisconsin that it would be implemented nationwide.

As illustrated by materials obtained through public records requests in Ohio, Florida and Wisconsin, the ALEC media program now consists of items such as model press releases disbursed to ALEC members (complete with canned quotes attributable to lawmakers, praising ALEC initiatives), state lists of ALEC-friendly media outlets, media advisories to lawmakers on the activities of "hostile media" (including scripted

answers to questions regarding ALEC/Koch activity as may be posed by critical media and/or constituents), as well as coaching (in the form of "media training workshops") provided through public/media relations consultants (Vox Global, a subsidiary of Omnicom Group, Inc.-- one of the largest advertising conglomerates in the world, reporting \$12.5 billion in global operations revenue in 2010) employed by AT&T.

Such training is advertised, and offered free of charge, to member lawmakers as coaching on "how to deal with both friendly and hostile reporters, stay in control of an interview, and communicate the ALEC message effectively."

And, in one state, Indiana, the line between the public work of legislative offices and the private work of ALEC has become so blurred that the state's legislative counsel is no longer able to differentiate between the two.

On January 5, Indiana Representatives Eric Turner (R-District 32), Jerry Torr (R-District 39), Wes Culver (R-District 49) and Rebecca Kubacki (R-District 22) introduced HB 1043, a bill which bore a striking resemblance to yet another piece of ALEC anti-union model legislation, the "Right to Work Act" (RWA).

Both HB 1043 and RWA aimed to create a "right to work" provision in state law which would prohibit (public or private) employers from requiring employees join or retain membership in labor organizations (or pay any dues/fees to labor organizations) as a condition of employment. Additionally, RWA-- like ERRA and LODA-- requires union employees to submit written authorization for any deductions (union dues, assessments, etc.) to employers prior to withholding. This written authorization language did not appear in the Indiana bill.

Furthermore, both RWA and HB 1043 establish a misdemeanor criminal offense for any employer found to be in violation of these union restrictions.

On April 6, DBA Press submitted a public records requests to the offices of Reps. Culver, Kubacki, Torr, Turner and David Wolkins (one of two ALEC public sector chairs in the state; Wolkins co-chairs with Senator Jim Buck), seeking copies of: A.) documents (emails, drafting materials, etc.) pertaining to the formation of HB 1043, B.) any and all pieces of ALEC model legislation in possession of the representative's offices, and C.) any and all documents pertaining to ALEC in any way.

In a [letter](#) dated April 8, Indiana House Republican Caucus Chief Counsel Lesley Crane responded to these requests, stating:

"[Indiana Access to Public Records Law (APRA)] gives an agency the discretion to withhold certain records from public access. Among those records are, 'The work product of individual members and the partisan staffs of the general assembly [sic].'"

"Clearly, your requests fall squarely in the nature of the work product of the members of the General Assembly, as the least two of your requests specifically contemplate legislation," continued Crane.

"Your third request also would fall into this category as it targets the American Legislative Exchange Council ("ALEC"), which entity's mission (which can be viewed at <http://www.alec.org/AM/Template.cfm?Section=About>) discusses the development of policies around the country with like-minded legislators. This is simply another way of getting at a legislator's work product as they develop policies through ALEC with other legislators that they may or may not choose to implement through legislation in Indiana [sic]."

As such, based on this interpretation of ALEC "model legislation" and other materials as the actual "work product" of lawmakers, Crane went on to flatly refuse to produce any documents respondent to requests submitted, either as they pertained to HB 1043 or ALEC.

Similarly, Indiana Senate Chief of Staff (and chief legal counsel) Jeff Papa, refused to return any records respondent to a public records request submitted to the office of ALEC state co-chair Sen. Buck (R-District 21), seeking copies of any and all documents relating to the Senator's role as the state's ALEC public sector chair (such records typically include ALEC model legislation, ALEC "issue alerts," information on corporate donors, correspondence with member lobbyists, correspondence with ALEC personnel, as well as legislative membership lists and scholarship fund disbursement information). ([View Papa Senate letter here.](#))

Though Indiana may have been the most extreme example of a state legislature denying access to public records originating from ALEC, or denying access to public records that illustrate the formation of a public law, legislative counsel and lawmakers in Ohio (SB 5 sought to reinforce existing sections of state law conspicuously similar to LODA) and Kansas (HB 2130 contained language identical to that contained in PFRA) similarly refused to return records pertaining to ALEC and the formation of legislation obviously based on ALEC "model legislation".

And, to illustrate the further blurring of lines between the private legislative services offered through ALEC and the role of public lawmakers, records obtained from the office of Florida ALEC state chair, Rep. Patronis, show that ALEC's private legal counsel is also active in fielding public records requests.

On January 10, then-Florida House of Representatives Office of Public Information Program Manager Melanie Phister notified the office of Rep. Patronis that the House had received a public records request (dated November 19, 2010) from ACLU Foundation of Florida attorney Benjamin Stevenson.

The Stevenson request sought records identifying state ALEC legislative members, as well as records indicating how much those lawmakers had received in ALEC scholarship fund reimbursements during 2009 and 2010.

Rather than immediately compiling the records sought by Stevenson, Patronis Legislative Assistant Patti

Butchikas then, on January 12, forwarded the ACLU records request to ALEC Senior Director of Policy and Strategic Initiatives Michael Bowman.

According to emails obtained from the office of Rep. Patronis, Bowman then dispatched an unnamed ALEC attorney to advise Florida House General Counsel George Levesque in the processing of the request.

Though it is unclear what counsel the ALEC attorney offered, Levesque went on to advise Butchikas not to request any list of legislative members from ALEC if one did not already exist-- presumably due to the fact that any such list in possession of the House would become a matter of public record.

Florida as an illustrative example of special interests behind "Paycheck Protection:" the face of Corporate America in miniature

In the case of Florida's HB 1021 "paycheck protection" law, records obtained from the office of Rep. Dorworth reflect that the initial version of the bill (evidently based on ALEC "paycheck protection" model legislation, as well as similar legislation previously introduced in Florida-- also closely mirroring the ALEC model laws) had been drafted by then-Florida Chamber of Commerce (FCoC) Vice President of Government Affairs Adam Babington. (Babington withdrew as a lobbyist representing FCoC on June 16, 2011). ([View the Babington/Dorworth emails here](#)).

As for Johnson's assertion that it is a total mystery as to how the ALEC "paycheck protection" model legislation arrived in Rep. Dorworth's office, it should also be noted that the gap between FCoC and ALEC is an especially short one; Florida ALEC private sector chair, Cindy Marsiglio, senior manager of public affairs and government relations in Florida for Wal-Mart Stores, Inc., is a FCoC Foundation board of trustees member.

Following Babington's initial draft submission to Dorworth's office in January, the bill underwent a series of drafts and revisions. The most notable of these revisions were made by Florida State Senate staff working in concert with Babington to create a Senate companion version of the bill.

This companion bill, SB 830, was sponsored by Sen. John Thrasher (R-Jacksonville).

It is worth noting that Thrasher, prior to joining the Senate, served as general counsel to the Jacksonville Chamber of Commerce in 2009. What's more, upon disembarking from public service as speaker of the Florida House (1998-2000), Thrasher commenced work (in 2002) for the the influential Tallahassee lobby firm of Southern Strategy Group, Inc. From 2002 through to his election to the Florida Senate in 2009, Thrasher lobbied on behalf of several FCoC member corporations, as well as corporations active in ALEC (such as AT&T)-- many of which have current interests in the privatization of governmental functions (particularly in mental health/health care service contracting).

The primary actor on the Senate end of HB 1021's formation was Andy Bardos, special counsel to Senate President Mike Haridopolos. Records obtained from Dorworth's office reflect that Bardos' primary contributions to the bill were stringent union dues collection provisions which sought to prohibit public employers from withholding any union dues or other union fees from employee pay, as well sections dealing with penalties and enforcement.

Of this more aggressive tack under Bardos (which Babington referred to as paycheck protection "on steroids"), Babington went on to tell Dorworth and Johnson, "I think it's perfect, so I suppose y'all should pull the language over and roll."

Not surprisingly, there are few degrees of separation between the special counsel to the Florida Senate President and FCoC.

Bardos, prior to joining the office of Senate President Hardidopolos in early 2011, had been employed (since 2005) for the Florida law firm of GrayRobinson as an attorney specializing in governmental affairs.

GrayRobinson is currently represented as a member of the board of directors of FCoC by former Bardos GrayRobinson colleague, Fred Leonhardt.

In addition to being a past chair of FCoC himself, Leonhardt is a member of Enterprise Florida, Inc., a "public-private partnership" which works as the economic development arm of the state. (It should also be noted that Leonhardt is also a prolific lobbyist, representing dozens of public and private principals throughout the state).

Another director of Enterprise Florida, alongside Leonhardt and Florida Governor Rick Scott (R), is former Florida House Speaker Allan Bense. Bense is the present chairman of FCoC. What's more, Bense is chairman of the Florida-based, Koch-funded and ALEC-member public policy foundation, the [James Madison Institute](#) (JMI).

Leonhardt, serves on the JMI board of directors alongside Bense.

Dr. Barry Poulson, a professor of economics at the University of Colorado, also works through JMI with Bense and Leonhardt as a JMI "research fellow" on the institute's "research advisory board."

Poulson also serves as a "distinguished scholar"/"research fellow" with [Americans for Prosperity](#) (Americans for Prosperity Foundation tax records indicate that Poulson received \$269,730 from the foundation from 2005, through 2007), and has been active as a prominent ALEC speaker in recent years, appearing before gatherings of member lawmakers to expound on the need to cut state spending/relieve tax burdens through cuts to public employee benefits.

Nevertheless, as deep as the manifold rabbit holes of Floridian political intrigue go, it is important to note

that neither JMI nor FCoC have any public agencies, nor public employee unions, as members.

When asked why FCoC was so deeply concerned with protecting the paychecks of public employees from political expenditures made on their behalf (to the point where FCoC's top lobbyists was drafting legislation to such effect), FCoC Director of Public Affairs Edie Ousley declined to comment. Neither Babbington nor Bardos responded to requests for comment.

It should be noted here that both HB 1021 and SB 830 died in their respective chambers following pressure exerted on FCoC by public employee union members who had begun pulling their money out of FCoC member banks in protest.

According to materials returned through a public records request to the office of Rep. Dorworth, news of the opposition action had made it back to the representative. The news came in the form of one solitary, terse, press release (from an unidentified source) emailed by Ousley to Babbington, forwarded on to Dorworth:

"Here's the issue," Ousley headed the email. "For immediate release...Wednesday, April 20...Workers respond to attacks from the Chamber of Commerce... Labor organizations and members withdrew close to \$10 million in funds from the Chamber's largest banks..."

The press release went on to indicate that "Floridians outraged at the Chamber of Commerce's attack on workers" were prepared to issue further "wave(s) of withdrawals" if the FCoC campaign was not abandoned. (View the Ousley email, as well as other letters/emails to the office of Dorworth regarding HB 1021, here).

Subsequently, both bills were quietly withdrawn from legislative hearings calendars by their sponsors on May 7.

Privatization and the State Agency Lobbying Reform Act.

A clue to FCoC and FCoC member corporations' possible motives in their zeal to eliminate the political efficacy of public employee unions may be found in the form in which the ALEC "Paycheck Protection" model legislation was delivered to the office of Rep. Dorworth.

The bundled "Paycheck Protection" package containing ERRA, LODA and PFRA was derived from a collection of ALEC model legislation distributed by Associated Builders and Contractors, Inc. (ABC), as that organization's 2010 "Legislative Handbook." Also present in this 182-page field guide for the anti-worker lawmaker are such ALEC favorites as RWA.

ABC is a private association of non-union builders and contractors, and a leading proponent of "meritshop" (independent of labor union affiliation) contract awards. Perhaps more importantly, ABC bills itself as being the non-union "construction industry's voice within the legislative, executive and judicial branches" of government. ABC, as evidenced by their wholesale distribution of ALEC model legislation, is also active in ALEC initiatives.

And, as a lobby organization with such a large interest in "free-enterprise" contract awards, it comes as no surprise that ABC of Florida, Inc. lobbyist, Richard Watson, is also the sole lobbyist in Florida representing GOP operative Grover Norquist's Americans for Tax Reform (an organization which is currently very active in ALEC criminal justice legislative initiatives, among others).

More interesting, however, is the fact that Bense derives the bulk of his annual income from two entities, Bense Enterprises, Inc. and GAC Contractors, Inc. (GAC)-- both of which he owns and operates with prominent Florida businessman (and prominent GOP donor) L. Charles Hilton, Jr.

Hilton also serves on the board of JMI alongside Bense and Leonhardt.

As reported in his latest available statement of financial interests (filed for 2009, pursuant to his quasi-public stature with Enterprise Florida) Bense held nearly \$5 million in assets in GAC that year-- much of which was derived from state and federal road rehabilitation contracts (worth nearly of \$10 million in public revenue) awarded through the Florida Department of Transportation.

And, GAC is a prominent member of ABC, which, through its legislative efforts with ALEC, seeks to encourage the free flow of public sector cash to non-union private sector companies.

Several pieces of ALEC model legislation circulated in tandem with "paycheck protection" and other bills aimed at public employees over the past few years clearly outline this intent to purge and outsource public employee positions wherever possible and replace them with for-profit actors.

It is worth noting that several of these pieces of model legislation have been jointly circulated to lawmakers as a budget reform packages through National Taxpayers Union and ALEC, and that many of these bills have been widely touted or introduced (if not authored) through ALEC by Reason Foundation Director of Government Reform Leonard Gilroy.

It is also worth noting that the sudden popularity of these pieces of model legislation has also occurred in tandem with the introduction of new pieces of ALEC model legislation aimed at further weakening the ability of public employees to resist the impending wave of privatization. The piece of model legislation which most clearly seeks to accomplish this goal is the State Agency Lobbying Reform Act (SALRA), introduced to ALEC member lawmakers in April at the Cincinnati Spring Task Force Summit by Evergreen Freedom Foundation (EFF) Economic Policy Center Director Amber Gunn. (View model legislation here).

Washington state-based EFF-- both as an ALEC-member think tank and independently-- has a long history of opposition to the political activity of public employee unions.

In 1992, following the passage of the first known version of "paycheck protection" in Washington state (though a ballot initiative funded in large part by state Republican Party PACs and corporate donors), EFF engaged several prominent state teacher's unions in a lengthy legal battle over the use of union dues in political activity.

Furthermore, EFF President Bob Williams introduced the Defined Contribution Pension Reform Act (DCPRA) model legislation to ALEC lawmakers during the organization's December, 2010 States and Nation Policy Summit in Washington, D.C..

DCPRA, along with another piece of ALEC model legislation aimed at curbing state spending on public employee benefits, the Unfunded Pension Liabilities Act (UPLA)-- introduced as a piece of model legislation to ALEC members by Williams in April, were common features of legislative skirmishes throughout 2011 sessions. ([View model legislation here](#)).

It should also be noted that Williams, Gunn and Gilroy were all contributing authors to ALEC's "State Budget Reform Toolkit" (Gilroy also served as a managing editor of the publication), released and distributed to lawmakers in early 2011, and which called for many of the actions taken against public employees and towards privatization in the first quarter of the year. It is also worth noting that Gunn, prior to joining EFF, was a Charles Koch fellowship recipient for work conducted in partnership with the State Policy Network (another ALEC member public policy foundation).

SALRA essentially bars state agencies (and any employees thereof) from lobbying their own state governments in virtually any form. Additionally, SALRA bars state agencies from contracting out lobbying work and prohibits state agencies from payment of "dues for membership in any organization, public or private, that engages in lobbying activities"-- effectively severing state agency employees from unions engaged in political activity.

The only exemption for state agency lobbying activities provided under SALRA is that the director and deputy director of a state agency may engage in "lobbying"-- given the tight definition of "lobbying" provided in SALRA, agency directors and deputy directors would be unable to perform the duties of their office (such as recommendations to the governor and legislature) without this exemption.

Compulsory privatization: efficient and competitive councils on outsourcing the public sector

With meddlesome state agency lobbying eliminated, other pieces of ALEC model legislation currently circulated to member lawmakers aim to compel the wholesale privatization of state functions. Three of these bills-- the Council on Efficient Government Act (CEGA), State Council on Competitive Government Act (SCCGA) and the Public-Private Fair Competition Act (PPFCA)-- call for the creation of state 'councils' or 'committees' tasked with streamlining state agency performance and identifying services to be outsourced to the private sector. ([View model legislation here](#)).

Perhaps the most interesting of these pieces of model legislation is PPFCA. This "model" act calls for the broadest scope of privatization by seeking to prohibit state governments from "engaging in any commercial activity of any goods or services to or for government agencies or for public use which are also offered by private enterprise." In addition, PPFCA calls for the creation of a "Private Enterprise Advisory Committee" (PEAC) which is to work in conjunction with the office of the state auditor in order to "review and make determinations concerning state agencies engaged in or proposed to be engaged in activities which unfairly compete with the private sector."

As such, under PPFCA, governments will only be allowed to provide goods or services to their constituents or to governmental agencies if: 1.) such provision is otherwise "authorized by state law," 2.) the use of private sources/vendors would cause "unacceptable delay or disruption of an essential program," or 3.) if an agency can prove, through a "competitive impact statement," that it can provide a specific set of goods or services on a continuing basis more cost effectively than can be provided by a private vendor.

Such determinations, as laid out under PPFCA, will be made by the state PEAC, working in conjunction with the state auditor. As defined by PPFCA, each PEAC will be comprised of nine non-paid members, as follows: six members will be either private business owners or directors (corporate officers), appointed by the governor, the speaker of the house and the speaker of the senate (each being granted two appointments); two officers will be "chief executive or administrative officers" of state agencies, to be appointed by the governor; one member of the legislature, to be appointed by the speaker of the house; and the chairperson will be a gubernatorial appointee from the members representing private enterprise.

An example of a state PEAC is that of the Arizona Private Enterprise Review Board (PERB), created in 1983 and retired in 1999 for lack of need/activity. The reason for this lack of activity, according to a 1998 PERB report was due to the fact that, for some reason or another, few vendors in the private sector were taking issue with the performance of government functions and requesting mediation from the board.

While Arizona's PERB may have been a failure, documents and correspondence obtained by DBA Press from the offices of state ALEC public sector chairs in Florida, Ohio and Wisconsin show that the ALEC Commerce, Insurance and Economic Development Task Force again began touting PPFCA (beginning in February, 2011), at the behest of an unnamed task force member.

Nevertheless, such efficiency and privatization councils as created through SCCGA (introduced to the ALEC Tax and Fiscal Policy Task Force by Gilroy at the 2011 Spring Task Force Summit in Cincinnati) and CEGA (bouncing around state legislatures as model legislation since at least 2009), take a more aggressive tack in identifying and outsourcing state functions and services to private vendors.

In short, CEGA creates a "council on efficient government," comprised of seven members: one administrative officer of a state agency, to be appointed by the governor; two "private enterprise" members, to be appointed by the governor; two "private enterprise" members, to be appointed by the senate president; and two "private enterprise" members, to be appointed by the speaker of the house of representatives.

While the functions of these councils under CEGA are numerous (including the creation of privatization inventories of state functions for the legislature, annual privatization recommendation reports for the governor, and the vetting of bid proposals submitted by prospective vendors), their primary directive is to determine whether goods or services provided by a state agency could be privatized, and to "recommend privatization to a state agency if a proposed privatization is demonstrated to provide a more cost efficient or more effective manner of providing a good or service."

SCCGA calls for the creation of essentially the same council as CEGA, but for one outstanding difference: once a SCCGA council has determined a state agency must contract out with a private vendor, the council is statutorily empowered to compel such privatization.

Additionally, SCCGA contains a clause (hidden way back at the end of the act) which states that contracts with vendors entered into by the council, or contracts with vendors entered into by state agencies being forced to privatize by the council, are to be exempted from state law governing state purchasing and contract bidding processes.

To illustrate how such arrangements may play out upon implementation, consider the Arizona Commission on Privatization and Efficiency (COPE) created by Arizona Governor Jan Brewer (R) in January, 2010. (While COPE's function is identical to those called for through this ALEC model legislation, it is important to note that COPE does not mirror in composition councils called for through PPFCA, SCCGA, or CEGA, but rather resembles an amalgam of all three).

COPE, as initially created by Brewer consisted of 11 members, including Chairman and Chief Executive Officer of the Arizona Chamber of Commerce and Industry Glenn Hammer, as well as then Arizona Senate President Robert Burns and Arizona House Speaker Kirk Adams. Both Burns and Adams were ALEC members at the time of COPE's inception-- with Burns serving as the state ALEC public sector chair until he termed out of office in 2011. Adams remained an ALEC member until he vacated his seat in the House on April 28.

Brewer appointed Arizona Department of Gaming Director Mark Brnovich as chairman of COPE. Brnovich is former senior director of state relations for CCA. Brnovich left the employ of the nation's largest for-profit jailer in 2007—at which time he was replaced by former Arizona House of Representatives director of fiscal policy, Brad Regens.

Other members of COPE include Gilroy and Chad Kirkpatrick, director of the Arizona Government Information Technology Agency.

Kirkpatrick is the former chair of the Arizona chapter of Americans for Prosperity and remained a registered lobbyist for the organization until January 18, 2011.

Per Gilroy's involvement in COPE, it should be noted that Reason has received funding from ALEC member corporations, such as CCA, toward the furtherance of privatization initiatives.

It is also worth noting that CCA hired the Phoenix lobby firm, Highground Public Affairs Consultants, on January 22, 2010-- the day after Brewer issued the executive order creating COPE. Highground founder and principal, Charles "Chuck" Coughlin is Brewer's campaign manager and a senior advisor to the governor.

Strikingly similar councils on privatization have been established in recent years by New Jersey Governor Chris Christie (R) and Louisiana Governor Bobby Jindal (R).

The creation of Louisiana's Commission on Streamlining Government (established in 2009), the New Jersey Privatization Task Force (established in 2010) and COPE have to date resulted in recommendations for the privatization of state foster and child protective care agencies, state psychiatric hospitals, state health care services (including state-run hospitals, hospital bill collection services and long-term care for the disabled), services offered by departments of motor vehicles, the operation and maintenance of state parks and rest areas, and the privatization of prison health care and food services-- to name a few.

And, not being ones to miss an opportunity to tow the ALEC party line, Arizona lawmakers introduced SB 1365-- a bill bearing a striking resemblance to "paycheck protection" offered through LODA. 10 of the 16 sponsors of SB 1365 are known ALEC members ([View lists of Arizona ALEC member lawmakers here](#)). All of the bill's sponsors are Republicans.

The bill was signed into law by Gov. Brewer on April 26.

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