RECOMMENDATIONS

of the

JOINT LEGISLATIVE COMMITTEE ON PRIVATIZATION

January 10, 1990

Arizona State Legislature
1700 West Washington
Phoenix, Arizona 85007

January 11, 1990

The Honorable Jane Dee Hull
Speaker of the House
Arizona House of Representatives
1700 West Washington
Phoenix, Arizona 85007

Dear Speaker Hull:

The attached report by the Joint Legislative Committee on Privatization provides background on the Committee's work, as well as recommendations put forth by the Committee at its last meeting on January 3, 1990.

If you have any questions regarding this report, please contact our offices.

Sincerely,

Representative Robert L. Burns

Senator Tom Patterson

KH/ar
attachment

Arizona State Legislature
1700 West Washington
Phoenix, Arizona 85007

January 11, 1990

The Honorable Robert B. Usdane
President of the Senate
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Dear President Usdane:

The attached report by the Joint Legislative Committee on Privatization provides background on the Committee's work, as well as recommendations put forth by the Committee at its last meeting on January 3, 1990.

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JOINT LEGISLATIVE COMMITTEE ON PRIVATIZATION

I. BACKGROUND

The Joint Legislative Committee on Privatization was established with the permission of House Speaker Jane Dee Hull and Senate President Robert Usdane. The Committee, consisting of five members from each house, has no reference in statute. The co-chairmen, Representative Robert "Bob" Burns and Senator Tom Patterson, requested that such a committee be established to:

* Review and recommend possible solutions to invasions by government into areas which have or are presently served by private enterprise.

* Identify goods and services which at present are being provided by government, which could be provided more efficiently by private enterprise.

* Design and document potential methods for transferring present government functions to the private sector.

II. COMMITTEE PROCEDURE

The Committee held five meetings at which the members heard from several privatization experts and other concerned parties both public and private. Listed below are the meeting dates along with the subjects addressed on those dates.

October 17, 1989 — Overview of privatization

Robert Poole, President of the Reason Foundation, introduced the concept of privatization with his presentation on the three types of privatization ("the sale of government enterprises and assets", "build, operate, and transfer", and "contracting services").

Jim Schmitz, Director of the Arizona Federation of State, County and Municipal Employees (AFSCME), presented an opposing view on privatization.

Wendell Cox, Principal of Wendell Cox Transportation Consultancy, discussed the principle of "competitive contracting".

November 8, 1989 — Problems of annexation in the solid waste management industry

Joe Abate, an attorney representing the Arizona Chapter of the National Solid Waste Management Association, outlined for the Committee the problems that private waste haulers face when annexation occurs.

Philip MacDonnell, an attorney representing Waste Management, Inc., supported Abate's testimony.

Several people in the solid waste industry were on hand to support the testimony and to answer questions.

Contract maintenance in the Arizona Department of Transportation (ADOT)

Tom Bryant, State Engineer for ADOT, discussed many areas for which ADOT currently lets contracts.

November 28, 1989 — Privatization of prisons

Richard Carr, Principal of Westrends Environmental Group, introduced the idea of a private/public partnership with a proposed prison to be located in Cochise County, near Willcox.

Wayne Calabrese, Vice President of Business Development for Wackenhut Corporation, gave an overview of prison privatization, and Wackenhut's experience in the field. He outlined certain issues of which the legislature must be mindful when considering the private prisons issue.

Dave Horwitz, Legislative Director of AFSCME, disagreed with the idea that prisons could be privatized successfully.

December 19, 1989 — Overview of privatization in British Columbia

Peter Clark, Assistant Deputy Minister of Privatization, Communication, and Support Services within B.C.'s Ministry of Government

Management Services, discussed privatization and employee ownership in British Columbia.

John G. Fraser, a management consultant for Peat, Marwick, Stevenson & Kellogg of Vancouver, B.C., offered technical information on the transition from the public sector to the private.

School bus privatization

Gary Witledge, Senior Operations Manager for Mayflower Contract Services, provided an update on school bus privatization in Arizona.

Michael Kennedy, Vice President of Operations for National School Bus Service Inc., discussed the advantages of contracting for student transportation.

January 3, 1990 — Review and Committee recommendations

Co-chairman Burns offered an overview of the Committee's work, and the Committee adopted motions for recommendations.

III. COMMITTEE RECOMMENDATIONS

Based upon the weight of testimony received by the members during the hearing process, the Committee made the following recommendations:

that the petition of interest concept be pursued by the Legislature;

that when annexation occurs, any private companies who are providing services in the area to be annexed, either be continued or appropriately compensated;

that the Department of Corrections be mandated to utilize the private sector where possible, concentrating on new facilities and private financing of construction;

that further study of the "British Columbia Privatization Action Plan", or similar plans, be carried on;

that recommendation be made to the Speaker of the House and the President of the Senate that the Joint Legislative Committee on Privatization be continued indefinitely.

IV. ATTACHMENTS

Attachment A -- Letter from Representative Robert Burns to Speaker Jane Dee Hull requesting the establishment of a Joint Legislative Committee on Privatization

Attachment B -- Minutes from the Committee meetings

ATTACHMENT A

DISTRICT 17

Arizona House of Representatives

Phoenix, Arizona 85007

May 25, 1989

The Honorable Jane Dee Hull
Speaker
Arizona House of Representatives
1700 West Washington
Phoenix, Arizona 85007

RE: Privatization Committee

Dear Madam Speaker:

Please accept this as my formal request to establish an "off-session" privatization committee. As we have discussed previously, this request is for a joint legislative committee with Senator Patterson and myself as co-chairs. The number of members preferred is five from each chamber.

Goals of this committee would be, but not be limited to, the following:

* Review and recommend possible solutions to invasions by government into areas which have or are presently served by private enterprise.

* Identify goods and services which at present are being provided by government, which could be provided more efficiently by private enterprise.

* Design and document potential methods for transferring present government functions to the private sector.

House members I have contacted who have expressed an interest in serving are as follows:

Representatives - Leslie Johnson, Bill Mundell, Henry Evans, Herb Guenther, Brenda Burns, Stan Barnes, Don Aldridge, Candice Nagel, and Mike Palmer

I have been in contact with the following organizations which have provided or pledge varying levels of support:

The Privatization Council, Inc. 1101 Connecticut Ave., N.W. Suite 700 Washington, D.C. 20036 (202) 857-1142	Local Representative - Joseph P. McDonald (602) 275-0601
Reason Foundation 2716 Ocean Park Boulevard Suite 1062 Santa Monica, CA 90405	
Barry Goldwater Institute 1109 S. Plaza Way Suite 375 Flagstaff, AZ 86001	Local Representative - Michael Sanera (602) 523-6528
American Legislative Exchange Council 214 Massachusetts Ave., N.E. Suite 400 Washington, D.C. 20002 (202) 547-4646	Local Representative - Russell Smoldon (602) 236-2834

It is my understanding that your office schedules off-session committee meetings. I am available at your convenience to discuss scheduling if necessary.

The following is a partial list of possibilities for the committee to address:

* Review possible protections for services by providers which have been, or may be, eliminated or handicapped by annexations.

* Possible sale of the maintenance division of ADOT.

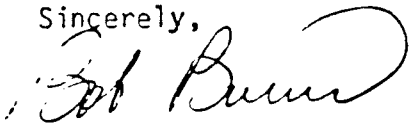
* Possible sale of the Grand Canyon Airport.

* Privatization of prisons and jails.

* Review contracting limitations with intent of streamlining same.

If there is anything I can do to help expedite the formation of this committee, please let me know.

Sincerely,



ROBERT "BOB" BURNS
State Representative
District 17

RB/ar
cc: Senator Tom Patterson
Joseph P. McDonald
Michael Sanera
Russell Smoldon
Joseph Abate

MINUTES OF
JOINT LEGISLATIVE OVERSIGHT COMMITTEE
ON PRIVATIZATION
October 17, 1989

Co-Chairman Robert Burns called the meeting to order at 9:15 a.m. in House Hearing Room 1.

Committee Members Present:

Mr. Williams
Mrs. Updike
Senator Arzberger
Senator Hardt
Senator Patterson, Co-Chairman
Mr. R. Burns, Co-Chairman

Committee Members Absent:

Mr. McLendon
Mr. Ortega
Senator Corbet
Senator Wright

Speakers

Robert W. Poole, Jr., President, Reason Foundation
Jim Schmitz, Director, Arizona Public Employees Association/AFSCME
Wendell Cox, Principal, Wendell Cox Transportation Consultancy, St. Louis, Missouri

Guest List (Attachment 1)

PRESENTATION

Mr. Robert Poole, Jr., President of the Reason Foundation explained that the Reason Foundation is a California-based policy research institute. He further stated that it is a non-profit organization which was founded in 1978 to look at questions that relate to the efficient operation of government. He said that privatization has been one of their major research themes for the eleven years that they have been in business. They have looked at how privatization operates at local, state, and national level governments, not only in the United States but around the world. He stated that privatization is a worldwide trend today.

Mr. Poole presented the latest edition of an annual report produced by the Reason Foundation on the status of privatization around the world, titled Privatization 1989 (Attachment 2). He stated that in over 65 countries government enterprises that have been sold to private entities in the last five years has not reached $160 billion. Last year alone, $43 billion of state-owned enterprises were sold and Mr. Poole indicated there will probably be an equal number when this year's figures are in.

Mr. Poole described three types of privatization activities which may have an application in Arizona:

1. The sale of government enterprises or assets. For example, nationalized industries in Europe, public utility operations, British and Mexican governments telephone systems, British airports, and other forms of transportation and utilities which are being sold or considered for sale in dozens of countries around the world and in some cities in the United States.

2. "Build, Operate, Transfer" (BOT). Relatively new in the United States but has been operating in Europe for about twenty-five years. Such projects as wastewater treatment plants (Chandler, Arizona), solid waste disposal plants, highways, bridges, tunnels, and other large, complex public infrastructures are examples of facilities which lend themselves to the BOT process. Under long-term government contracts or franchise, private companies finance, build and operate facilities, then eventually transfer the operation to the state. Cost is defrayed by direct users, as toll charges for highways, per diem payments by governments under contract to send prisoners to the facility, etc. This helps governments who have difficulty with bond issues in affording costly infrastructures.

3. Contracting services. Most common in Arizona. The City of Phoenix is known nationwide for success in this program. Many states contract for maintenance and food services, etc.

Mr. Poole explained that money is the number one reason governments are turning to privatization, and the private sector is able to produce and deliver the same or better services for significantly less money. For example, in selling a municipal airport, he said two main financial benefits would result, a one-time major inflow of revenue and the long-term property tax payments. Contracting services proves successful, he added, because a different set of incentives exists in private business and, also, the competitive factor enters into the bidding process.

Competition leads to innovations in the way services are provided, such as different uses of equipment, different mixes of supervisors and staff, different skill levels, and the redesigning and rethinking of work to be done more cost effectively. Mr. Poole stated that this is not just theory, that this has been measured over the last decade for many different services in many parts of the country in controlled experiments.

Mr. Poole summarized results from a few of these scientifically valid studies which indicate the public sector is more costly by the following percentages: street maintenance, 16 percent; bus service, 20-50 percent; garbage collection, 28-50 percent; street tree maintenance, 37 percent; turf maintenance, 40 percent; street cleaning, 43 percent; firefighting, 40-50 percent; wastewater treatment plant operations, 20-50 percent; traffic signal maintenance, 56 percent; janitorial services as much as 73 percent; and asphalt paving, according to one study in southern California, 96 percent more costly when done by city crews in-house than when done by competitively bid outside contractors. Mr. Poole emphasized that those are represented numbers not from a single case, but from statistically valid studies of large numbers of cases.

Mr. Poole stated that the Reason Foundation believes that one of the most promising areas for privatization in the 90's is going to be the area of infrastructure. He said that prison privatization is one of the fastest growing areas of privatization in the United States, and exists in nine or ten states according to the latest count. Mr. Poole explained that there are two types of prison privatization. One is operating contracts, where the management of an existing facility is turned over on a competitive bidding bases to a private sector firm. In such situations, there is a savings of approximately 10 percent in operating costs. The bigger potential savings is in the provision of new

facilities, where a facility can be designed from the outset for efficient operation by the firm that is going to be operating it. Mr. Poole contended that in such cases, a 25-30 percent or more cost savings is realized.

As an example, he stated that in 1986, Bay County, Florida contracted out the operation and expansion of the Bay County Jail. A 20-year contract was signed with Corrections Corporation of America. On a comparative cost basis, the savings were going to be 23 percent compared to what the cost would be if the Sheriff's Department, which had been operating the jail, did the same expansion and then continued to operate it. In an article from The Palm Beach Post, written by the Bay County Director of Emergency Services, it is stated, "The company offered to hire all the employees who were currently employed in the jail, and provided them with 40 hours of training, a 7 percent pay raise, annual cost of living increases, more personal leave time, more sick leave, and five more paid holidays than offered by the Sheriff's Department. Additionally, employees may buy the company stock at reduced cost. Of the 79 jail employees who were at the Sheriff's Office at the time of the transition, 78 were employed by the company, and one was reassigned within county government." Mr. Poole said that the article stated that the performance has met all the requirements of the contract in the three years since then. Not only has it successfully passed each inspection by the Florida State Department of Corrections, but it has not sustained a single major discrepancy. In December of 1988, the jail won accreditation from the American Correctional Association and received a 99.4 percent score from the American Correctional Association.

Mr. Poole went on to say that the other area of privatization that is particularly exciting, and which is being pioneered in California today, is private toll roads. He stated that the California legislature passed a bill in June to authorize four private toll projects in California on the "build, operate transfer" model. The winning bidders for these four contracts, which can be anywhere in the state, will have 35 year franchises from the state. They will finance, design, build and operate these toll facilities, which can be bridges, highways, or tunnels. Mr. Poole pointed out that this is part of a growing trend across the country, the first such project will be breaking ground in Virginia in December of this year. He further stated that a major federally funded feasibility study is underway on a proposed 400 mile private toll road from Chicago to Kansas City. This road would be exempt from federal speed limits because its private, would offer very substantial time savings to trucks and automobile passengers, and would also be a rail, pipeline, and utility corridor, with all sorts of revenue sources other than tolls because a right-of-way is a very valuable and important thing.

Mr. Poole added that this year the Illinois legislature enacted a measure that amends the state public utilities law to create a new category of public utility, namely highway utility companies. These utility companies will be regulated just like electric utilities, telephone utilities or railroads, will be private business in the highway and especially in the right-of-way business, because they will have the ability to do all sorts of projects within those rights-of-way.

Mr. Poole concluded by saying that what he hoped he had conveyed in his comments is that privatization is not one single technique. It is at least three relatively new ways of harnessing the skills, drive, and bottom-line orientation of the private sector to bring about benefits for the public and the public

sector in a way that is less costly and more effective than the traditional ways of doing business. He emphasized that privatization is not the answer to every problem, but it is something that a majority of the world's national governments and a great many state and local governments throughout the United States are embracing very enthusiastically, primarily because they know that public resources are limited, and it's their responsibility as public servants to make those taxpayer dollars go as far as possible. He stressed that the empirical record of privatization is that it does indeed do that and that accounts for its tremendous growth in the last ten years.

Mr. Poole thanked the committee, and offered to answer any questions.

Senator Arzberger asked if the savings he had mentioned come from labor, better management, or other areas.

Mr. Poole answered that in most types of privatization, the savings come from better management in terms of redesigning how the work gets done, bringing about a better mix of supervisors to staff, better use of equipment and technology, and so forth. He stated that in a few isolated cases, there is a situation where public sector pay scales are way out of line with the private sector, public transit being one of those areas. He maintained that the exception is in service areas, where recruiting comes from the same general labor market, and the pay scale is competitive. Mr. Poole further stated that the private sector generally does not provide quite as attractive a package of fringe benefits to the employees, compared to what public employees have been able to negotiate over the years. Mr. Poole said that this may be due in part to the fact that the public employees have been negotiating from some sort of a monopoly position, there hasn't been the competitive discipline there, which may account for the difference. Mr. Poole further emphasized that the savings in privatization do not usually come from major differences in wages.

Senator Arzberger asked Mr. Poole to clarify his statements regarding employees of the private prison in Bay County, Florida being paid substantially more and government entities having fringe benefits. Senator Arzberger asked if these were part of the wage package.

Mr. Poole answered that the total compensation package has to be looked at because that is what is ultimately emerging. For example, one of the fringe benefits that the private sector often can and does offer that the public sector cannot is stock ownership, which public employees are not used to at this point. Mr. Poole contended that due to this fact, public employees may not seriously look at the package offered by the public sector versus the private sector. He added that when stock benefits are factored in the private sector package it is more attractive, even if its pension program and health care benefits may not be quite as generous as the public sector typically offers.

Senator Arzberger asked Mr. Poole whether the taxes on the privatized facilities were taken into consideration in his figures and percentages of savings.

Mr. Poole answered that most of the figures he gave were from competitive contracting situations, not a major real estate facility going from the public sector to the private sector, but labor intensive operations such as refuse collection or street sweeping. He stated that when dealing with the transfer

of property to the private sector and putting it on the tax rolls, those tax figures have to be taken into account, but there are two ways to look at that. He explained that on the one hand, to the private company that's having to decide what it can afford to bid, property taxes have to be included as one of its costs; but on the other hand, from the public sector standpoint, they will now be deriving a stream of property tax revenue from that property that helps to offset what they are paying for the service. Mr. Poole noted that there are legitimate questions as to how you look at those numbers; there is the savings of the cost of the contract with in-house, versus the outside contract, and there is an offsetting new revenue stream from putting the facility on the property tax rolls. He emphasized that both factors should be taken into account - the savings in the contract costs, and the additional revenue that comes from the new property taxes.

Senator Arzberger asked Mr. Poole who assumes the liability in the case of private prisons, the private firm or the government entity. Mr. Poole responded by stating that the private firm does assume the primary liability and has to insure against that. The size and amount of liability coverage that the private company must assume in order to be eligible for the contract can be made a part of the contract. He further stated that legal opinion is divided on this question in terms of whether the state can shirk the ultimate responsibility, and generally the answer is no. He said that, standing behind the private company, the state still bears some ultimate liability, but the first line of defense in any kind of lawsuit is the private company and its insurance carrier.

Senator Arzberger asked Mr. Poole who hired the Reason Foundation to have the presentation today.

Mr. Poole answered that no one had hired them, he was being paid only his normal salary by the Reason Foundation, which is a non-profit, tax-exempt organization. Mr. Poole stated that the Reason Foundation has testified before the President's Commission on Privatization, the California Department of Transportation, and has also served as consultant to the White House on this subject.

Senator Arzberger asked Mr. Poole for further clarification as to who pays his salary.

Mr. Poole answered that about 4,000 individual donors, and a large number of private foundation and corporate contributions, such as many of the Fortune 500 companies including Shell, Mobil, and Security Pacific National Bank, pay his salary.

Senator Patterson asked Mr. Poole what the criteria would be of a government service or agency to make it a good candidate for privatization.

Mr. Poole answered that the easiest, in terms of service contracting, are services for which there are lots of private firms in the market. He said that when a municipal or state government begins privatizing by contracting out, they typically start with a variety of maintenance types of services from which there are lots of private sector firms to choose. He stated fire protection as an example of an area in which there are not many companies in that business, so it is not that easy to get a number of competitive bids if a government wants to go into that area. He noted that Rural Metro Fire Department in Scottsdale

is a private company. He commented that consideration must be given to what kind of opposition there might be from those who prefer the status quo, and the decision be based on whether it is worth dealing with that degree of opposition.

Mr. Poole stated there are certain functions that are inherently governmental, and therefore, not good candidates for privatization. He related that the police force and the operation of the municipal court are examples of functions that do not lend themselves to privatization. He said that the care of inmates at the county or state level has been demonstrated to be something that private sector firms can do skillfully and effectively. Mr. Poole added that criminal justice and public safety functions, organizations such as Emergency Ambulance Service, have a good track record across the United States for performing these services efficiently and effectively. He emphasized that the new trend in privatization is infrastructure, partly because the dollar needs are so great and the resources are inherently quite limited.

Representative Williams asked Mr. Poole whether experience has shown a need to limit any particular length of time.

Mr. Poole answered that generally two to four-year service provision contracts (five-year maximum) such as maintenance or public delivery services like garbage collection, are the kind that experience has shown make the most sense. He emphasized the need to have the periodic rebidding and genuine competition in order to keep bad relationships from developing, and to keep private firms from taking advantage of the situation. He stated that there is an inherent problem with large, capital investment projects, since a five-year contract is not realistic. He said that in these cases, such as highways and bridges, it is necessary to have a lifetime contract sufficient to have the cost of the investment recovered by the investors. Mr. Poole explained that a lot more care is needed in structuring the contract arrangement and selecting the contractors to be sure that the public interest is protected in these inherently long-term situations. He reemphasized that service delivery contracts should be three to five years, and big infrastructure contracts, twenty to thirty years.

Representative Updike asked Mr. Poole if he is aware of any circumstances where a contract had been established, and then the contractor walked away from the project because the profit wasn't there; and how this type of situation is handled.

Mr. Poole answered that there are some cases like that, where a company wins a bid and is not able financially to handle it, or where the contract is badly written and the contractor bids on a particular project which is much bigger and more costly than first thought. He explained that the best way to protect against that is by use of large performance bonds that will indemnify the city in the event of some problem or failure of the contractor. He stated that if a company cannot get such a bond, it is a poor risk. The performance bond screens out contractors who are not financially qualified or have enough experience to be reliable. He said that if a company has been given such a performance bond and does get into trouble, at least the state or city is protected by having the cash available to quickly hire replacement service.

Senator Hardt asked Mr. Poole whether there is a problem with long-term bids, since once a contractor has equipment and employees he has a big advantage,

making it almost impossible for someone to outbid him. This causes prices to rise to where even the city could find it hard to retake one of these services.

Mr. Poole answered that this has been the case in a few selected areas, but that people in city management and the contract services business have learned a lot about this in the last decade. He said that the International City Management Association has handbooks and sample contracts; the Council on Municipal Performance, likewise. He explained that in most cases there is genuine competitive bidding and a fair amount of replacement when contracts come up for renewal. He pointed out that in the City of Phoenix there are many examples in which public sector employee units have reacquired the responsibility to provide certain public works services from private contractors who let their costs get too high. He added that in Hall County, Georgia, one of the private companies that had been contracting to provide fire service recently lost the bid to the county because the private company had let their costs get out of line.

Senator Hardt asked Mr. Poole for examples of services in the City of Phoenix that had been returned to the public sector.

Mr. Poole answered that garbage collection is one example, and that there are other examples within the public works area in the City of Phoenix. He suggested that Ron Jensen from the City of Phoenix be invited to testify at a subsequent hearing to provide other examples of this.

Representative Bob Burns asked Mr. Poole whether he is aware of any privatization in the area of the data processing services of the government.

Mr. Poole responded by stating that there are a great many cities and counties which have contracted out some or all of the data processing operations with good success, particularly where there is a large, central data processing system serving many different government departments. He noted that there seems to have been a greater ability on the part of computer service organizations to keep current with the state-of-the-art in both hardware and software, and to develop ways of motivating and keeping good programmers and software systems analysts. He said that those private firms are able to provide career paths for people that are broader than staying with, for example, the State of Arizona for twenty-five years, thus developing a more enriched work experience for computer professionals by having more options and different types of contracts and projects on which they can work.

Representative Williams asked Mr. Poole what the experience has been in other states with privatizing low and medium-risk prisons and if this has injected competition or not.

Mr. Poole answered that it is too early to tell since there are very few cases of jail or prison privatization that have been in operation more than two or three years. He stated that it is a good prediction, however, that a competitive environment will be created when some facilities are run by private firms trying different ways of motivating personnel, different systems for security, and different designs of facilities. He added that eight or ten years ago, Peter Greenwood, a long-time criminal justice researcher, said at a conference and in some published writings that he, after studying various types of corrections programs for more than a decade, he was unable to find anything that worked.

Mr. Poole related that Mr. Greenwood said at that time that the only hope that he saw for getting some innovative programs that might make a difference would be to encourage competition and get the private sector in to try new ways of running prisons. Mr. Poole emphasized that it is too early to see whether that is proving correct, but that it is another good reason for trying privatization in the corrections system.

Mr. Jim Schmitz, Director of AFSCME, opined that some of the committee members were sold on privatization from the outset, but he hoped to plant some seeds of doubt and encourage looking beneath the hype of privatization. He said his presentation will deal with contracting out, rather than with asset sales.

Mr. Schmitz stated that he wonders whether some public managers and private entrepreneurs have forgotten the fundamental notion of public goods covered in Economics 101. He stated that with increased competition for the consumer dollar, corporate America has set its sights on a huge source of potential profits, and that is taxpayers' dollars. He said that the trends in privatization that Mr. Poole discussed are mainly overseas, in terms of asset sales - selling off government entities in Great Britain, and privatization of production in communist societies. Mr. Schmitz further stated that historically, American government has provided many public services directly, although there has always been some degree of privatization. He added that in the early years of this century, cities and towns around the country turned to private companies to run local street car systems, to collect garbage, to provide fire protection, and to perform other basic public services, often because their communities lacked the needed public resources. He maintained that then, as now, there were problems, i.e. contractors frequently overcharged municipalities, under-the-table payoffs by contractors were common, and contracts were often of poor quality. He further stated that municipal contracts became a favored way of lining pockets and rewarding political cronies. He explained that because of those abuses, the reform movement of the 1920's tried to professionalize the delivery of quality public services by making them part of municipal government. Mr. Schmitz said that, prodded by reformers, many municipalities decreased their dependence on contractors, delivering more services by using the public work force. He said that now, however, the pendulum does seem to be swinging back, in large part due to a convincing market strategy by private companies and the need to expand sales. He alleged that many in the public sector have bought privatization as a "quick fix" for strained budgets.

Mr. Schmitz stated that AFSCME's contention is that privatization is not a panacea, there are solid reasons to keep public services public. He said that in addition to being concerned about saving their members' jobs, AFSCME contends that there are other policy questions that deserve scrutiny. He cited four examples:

Mr. Schmitz stated that privatization may actually lead to higher costs. He said that contracting out can result in higher costs, especially when all the true costs of contracting are considered. He maintained that good, efficient public managers should be able to provide services at the same or lower costs than private providers, because there is not a profit margin tacked on to the price in the public sector. He stated that, at the urging of his organization, New York City's Human Resources Administration undertook a review of its contracts with private vendors. The City found that a number of custodial and printing

contracts were costing it in excess of half a million dollars more than with using its own employees. Mr. Schmitz explained that frequently a contract which was originally awarded at an attractive cost becomes more expensive, a practice called "buying in" or "low balling". He said that, contrary to the notion of bidding competition, a firm often offers a very low price to perform a particular service, in order to get a foot in the door. He added that, as contract performance continues, however, the jurisdiction may find itself dependent on that particular contract, to such an extent that it cannot change contractors or take back the service. He maintained that in such situations the jurisdiction is, in effect, held hostage, and often has stripped itself of the capital equipment necessary to take back the service. Mr. Schmitz explained that additionally, when contracting out is considered, some public managers forget the hidden costs, such as contract preparation, contract administration, monitoring the contractors performance, and the free use of public facilities, equipment, staff time, and legal fees. He maintained that there is convincing evidence that when these hidden costs are accounted for, supposed savings can vanish. He cited an example in the State of Tennessee recently, where the state legislature was the object of a "hard sell" by private contractors seeking to take over the prison system. Mr. Schmitz stated that when the legislature passed a law to require the inclusion of costs for contract monitoring and administration, none of the private companies could compete, and no contracts were awarded.

Mr. Schmitz stated that the City of Phoenix has no idea of the true cost of its private contracts. He said that a member of AFSCME who works for the City of Phoenix recently won an award from the City Council for her suggestion to accurately account for contractor costs. He said she realized that much of the City's costs for routine maintenance was actually work to repair or bring contractor's work into specifications. He cited an example of the time when City maintenance crews had to go to Sky Harbor Airport to fix ventilation dampers that were installed backwards by a private contractor. Mr. Schmitz contended that this is a cost that should certainly be charged to the contractor, and not to the City.

Mr. Schmitz suggested that it is very difficult to make cost comparisons in the area of prison privatization because of the technology requirements. He said that public sector corrections systems notoriously are saddled with very old prisons, old capital structures that have the cell blocks which require a very labor-intensive effort to monitor. He explained that new prison design involves the use of a central observatory location, with cell blocks emanating out as spokes from a wheel. He stated that it is much cheaper to operate a prison designed with the latest technology than to staff and operate a prison that was built at the turn of the century. Mr. Schmitz further stated that the only valid study of cost comparison in the area of private prisons was done by the National Institute of Corrections, a nonpartisan, independent board appointed by the U.S. Justice Department. He said that they examined a juvenile facility in Florida, and there was no recommendation for the use of the private sector in providing that kind of service.

Mr. Schmitz stated that privatization inevitably leads to diminished or poor services. He explained that contractors looking for ways to reduce costs and maximize their profit margins frequently hire inexperienced personnel at low wages, cut corners on contract requirements, or provide inadequate supervision.

He emphasized that governments may discover that it is extremely difficult to write a contract which insures that the government gets what it wants for the agreed upon price; or they learn that the work tasks performed as a matter of course by public employees turn out not to be covered under the agreement with the contractor. Mr. Schmitz alleged that public managers directing a public work force have a large degree of flexibility to respond to unforeseen circumstances and emergencies. He said that, on the other hand, a contractor has the clear right to refuse to do anything that is not in black and white in the contract.

Mr. Schmitz cited an example in Maricopa County, when the Board of Supervisors entered into a computer contract with Systems and Computer Technology Corporation (SCT). Mr. Schmitz explained that SCT was initially hired by the County Board to do a study of the County's computer office. The results predictably concluded that the office was inefficient and losing millions of dollars. Mr. Schmitz said that, based on that report, the County awarded SCT the contract to run the County's computer system. He maintained that problems soon developed, such as criticism of some expenses billed to the County, numerous programming errors which produced errors in delinquent tax notices, and also caused the shredding of County employees' paychecks on at least three occasions. He said that independent auditors chastised SCT and County officials for permitting the company to write its own contract and for not developing long-range plans. Mr. Schmitz said that as problems mounted, the County Board of Supervisors became increasingly concerned, and in February, 1985 voted unanimously to terminate the contract, one year ahead of schedule. County Supervisor George Campbell estimated that the county government could save at least a million dollars a year by bringing computer operations back in-house.

Mr. Schmitz stated that the possibility of corrupt or questionable activities such as bribery or kickbacks needs to be considered. He alleged that contracts have been a tool of political patronage. He cited a recent example, when the Justice Department began a nationwide investigation of highway contract bid-rigging. Mr. Schmitz stated that by late 1982, this had burgeoned into the largest price-fixing case in U.S. history. He said that investigators estimated illegal profits in price-fixing on the state and local government highway contracts to be in the hundreds of millions of dollars. Mr. Schmitz added that another recent example took place in New York City, involving a 1986 federal investigation of payoffs to public officials on behalf of companies seeking city contracts to track down parking ticket violators. He added that federal probes are also under way in Chicago and Washington D.C., and that due to these probes it is no coincidence that Mayor Koch did not survive in his primary battle to be reelected.

Mr. Schmitz said that contracting out can lead to a loss of public control, i.e. less accountability by the government to the citizens, and that citizens can often do little more than complain to the contractor or enter into costly contract renegotiations or termination proceedings. He emphasized that state and local managers should be able to effect the same kinds of efficiencies that good private managers achieve, and without the added problems that contracting out brings. He stressed that if there is dissatisfaction with the performance of a given service, public managers should not automatically assume that privatization is the answer to the problem. Public managers should be willing to explore the alternatives to contracting out, because much can be done in-house to improve cost and quality of services.

Mr. Schmitz concluded by emphasizing that responsible public policy requires improving the quality of management in public services and promoting excellence within the system. He suggested that good management skills, the source of alleged cost savings, can be transferred into the public sector.

Mr. Schmitz thanked the committee, and offered to answer any questions.

Senator Patterson asked Mr. Schmitz whether he felt that there is ever any circumstance in which privatization of government services may be advisable.

Mr. Schmitz answered that construction is a good area for privatization, since building capital structures is not an ongoing need. He said that AFSCME is not taking the position that any expenditure by a governmental entity must always be performed by public employees, but that there are too many instances where dissatisfaction with a certain service results in the immediate assumption to contract out.

Senator Patterson asked Mr. Schmitz about his statements with regard to hidden costs. He said that free legal services, free buildings, etc. which private sector companies would have the advantage of, would also be free to the public or governmental agency that is using those services. He asked Mr. Schmitz whether that advantage evaporates when put on an equal basis.

Mr. Schmitz answered that this was only one of many hidden costs, and his point was that if all of the costs of an operation are taken into account, cost for space would be one of them. He said it is his understanding that governmental agencies routinely have an item in their budget for space.

Senator Patterson asked Mr. Schmitz whether he thought that in the normal contract for private services there would be no comparable accounting made.

Mr. Schmitz answered that in those instances, it would depend on what the cost comparison is. He said that if a governmental agency requires that a cost for space be included, whether or not it is charged as a cost of doing business, the comparison must be consistent or there is that hidden cost.

Senator Patterson asked for clarification from Mr. Schmitz with regard to his implications that the statistics cited by Mr. Poole were based on a series of fallacies.

Mr. Schmitz stated that there are many cases where an adequate comparison is not made. He explained that if comparing the costs of a certain governmental jurisdiction providing a service as opposed to what is being bid by a private contractor, part of the cost of providing that service is not only the cost of the contract, but the additional tasks that the agency will continue to have to provide to monitor the contract, i.e. the time and effort to prepare the contract specifications, to enter into negotiations, and the monitoring and administration costs.

Senator Patterson asked Mr. Schmitz what the solution is when a person is unhappy with the service provided by a government agency, since the contract cannot be canceled as in the case of the private sector.

Mr. Schmitz answered that there are no easy solutions. He suggested that if the supposed cost savings are derived from better management skills, those kinds of skills are applicable in both the private and public sectors. He said that if savings through better management practices are achieved, those practices should be tried in the public sector.

Senator Arzberger stated he believes that certain things should be handled by the government rather than the private sector, and the government should run prisons. He suggested that if infrastructure is what the big cost is, prisons should possibly be built by private industry, and leased and run by a government entity. Mr. Schmitz stated that he had no objection to that.

Representative Williams commented that there are no ideal solutions on either side. It is the duty of the state to search for ways to perform certain functions more cheaply, and that a mixture of the two solutions may well be the answer. He stated that prisons are one of the state's most disastrous costs, so that is an area that needs to be considered and it is an area that can be returned to government if privatization is not working.

Senator Arzberger asked Mr. Poole whether private industry offers any rehabilitation programs for prisoners.

Mr. Poole answered that there are a few cases of work programs being started, but using private firms to operate prisons is new so there has not been very much time to do this. He stated that private contractors have been asked mainly to provide custodial care to prisons at a lower cost, and to meet the growing shortage of spaces for inmates. He suggested that Arizona break some new ground in making rehabilitation programs a major emphasis of a prison privatization program.

Senator Arzberger asked Mr. Poole whether there were any cases where a private industry has built the infrastructure and leased it to a government entity; and if so, how that works.

Mr. Poole answered that he is not aware of any, although that is certainly a possible way to go. He emphasized that when the same firm is going to be responsible for the operation of a facility designs it and builds it, they have an even stronger incentive to make sure that it is designed using the new technologies and design techniques to make it all work together for low-cost operation.

Mr. Wendell Cox, Principal, Wendell Cox Transportation Consultancy, stated that he is a consultant headquartered in the St. Louis area. He explained that in 1977, Mayor Bradley of Los Angeles appointed him to the Los Angeles County Transportation Commission. He said that he was appointed twice more to the Commission, which oversees the development of the transit and highway program throughout Los Angeles County. He explained that in 1985, he went into private consulting to work in the field of designing competitive contracting systems and for the last four years has worked with public agencies and private companies in the United States, Canada, New Zealand and Australia. Mr. Cox affirmed Mr. Williams' previous statement that it is sometimes appropriate to competitively contract and sometimes it is not. He stated that he believes the record suggests

it works more often than not, but in no case should it ever be used if it is going to be more expensive or if public service is going to decline. He emphasized that the purpose of privatization is public service, not private gain.

Mr. Cox explained that there were problems with monopolistic contracting in corrupt environments in the 20's and before in the United States, and that the basic problem was that they were not competitive contracts. He stated that the movement since then has been from noncompetitive or monopolistic contracting to competitive contracting.

Mr. Cox stated the basic reason that in some cases the cost of competitive contracting is less than the cost of public provision of the same services is that competition provides better results than monopoly. He stated that management techniques are not the issue; managers in a noncompetitive environment are not able to manage as well as in a competitive environment, where there is incentive to control costs and where costs tend to rise lower than inflation.

Mr. Cox explained that competitive contracting provides a "middle ground" which permits the infusion of competition into government services and at the same time meets the needs of the people.

Mr. Cox stated that competitive contracting is a fundamental philosophical issue, which comes down to a single question, "Shall we pay more for a public service than is necessary?". He said he believes that the answer to that is "no". He further suggested that lower taxes are better than higher taxes, since people have more ability to do what they want with their money, and the state is in a better position to entice businesses to come from other states. He said that because competitive contracting is not a panacea, it is important to set up a system whereby an analysis is done that tells when to do it and when not to. Mr. Cox stated that, in the private sector, the term for this is "make or buy analysis". He emphasized that economics should be the determining factor as to whether to use the private sector or the public sector for services. He stated that, through competitive contracting, a competitive environment is established wherein public agencies begin to perform better economically.

Mr. Cox stated that, in public transit, in every case where a third party is buying service from a private company under competitive contracting that used to buy service from a public agency service, quality is at least as good if not better, control over the service is higher, and there is more flexibility. He stated some other areas in which services are currently being provided publicly, but which could be provided by private contractors at substantial savings. These areas include school bus service, trash collection, fleet maintenance, street lighting, as well as a number of other areas.

Mr. Cox stated that from 1970 to 1986 in the United States, public transit costs per mile went up 65 percent after adjustment for inflation. He said that over the same period of time in the private sector, the private bus industry's cost declined 10 percent relative to the inflation rate. Mr. Cox said that if public transit had gone competitive, the 65 percent increase would have been a decline rather than an increase. He stated that the increase was due to the non-competitive environment.

Mr. Cox stated that average cost savings from privatization in public transit are 30 percent, even after deducting the 2-5 percent monitoring costs. He said that Price Waterhouse has just issued a report in Los Angeles which states that on their privatized bus services they are saving 41 percent and that virtually all of the quality indicators have been improved under private operation.

Mr. Cox added that in San Diego, 20 percent of the public transit system is contracted out. He said that their costs have gone down 20 percent after adjustment for inflation, and that not a single employee has been laid off. He pointed out that the biggest cost savings was not from lowering the cost of the privatized services 50 percent, but was from cost reductions occurring at the public agency that was now involved in a competitive situation.

Mr. Cox explained that the answer to the problem of "low-ball bidding" is solved by fixed-price contracts. He stated that problems of flexibility can be solved by good contract development.

Mr. Cox stated that corruption is a problem that is not related to contracting.

Mr. Cox explained two basic principles on the subject of competitive contracting. The first is that the public agency always retains control by defining the service setting the specifications, and monitoring the contract.

Mr. Cox explained that the second, and just as important, principle is that it all depends on a competitive market - private monopoly is no better than public monopoly. He said that in order to foster a competitive market, requests for proposals are widely distributed to all potential providers, the size of contracts is limited, contracts are rotated so that the contracts are coming up at different times, the work is spread out for the public agency, and the ability of private companies to compete on the smaller contracts is increased. He affirmed Mr. Poole's statement that contracts should never be for more than five years and re-bidding is a must in the competitive market. He stressed that contracts are awarded to the lowest bidder who is responsible and responsive. Mr. Cox emphasized that subsequent price negotiations are never held with the contractor.

Mr. Cox addressed the subject of hidden costs. He said that worldwide, the biggest problem many public agencies have faced has not been hidden costs, but "low-ball bidding". He stressed the importance of having the cost proposal prepared by people other than those evaluating it, such as has been done in the City of Phoenix.

Mr. Cox said that with regard to capital facilities, an option for government is to provide them to either the public agency or the private company winning the bid. He said that this is a very simple and successful method being used in a number of applications to solve that problem.

Mr. Cox presented The Local Government Act of 1988 of the British Parliament (Attachment 3), which requires all municipalities within the United Kingdom to competitively contract six specific services.

Mr. Cox presented the draft of Senate Bill 201 from Colorado (Attachment 4), a general services competitive contracting bill, which passed out of the Government

Committee but failed on the Floor. He explained the bill which state that every branch of the state, city, county, or other public agency has an obligation to keep private service providers aware of what is going on at the agency through the use of a mailing list. This would allow a private company to challenge the public agency with respect to the provision of services, by filing a petition of interest with the public agency. He added that the public agency can have a make-or-buy analysis once a year, opening up competitive bidding on services where private companies have indicated an interest in providing services, seeking proposals, and comparing the costs of those proposals to the internal cost of operations.

Mr. Cox urged the committee members to require that any expansion of bus or other transit service in Phoenix be subject to competitive bidding. He referred to a book that he wrote with a colleague for the American Legislative Exchange Council, which outlines the principles of competitive contracting Moving America Competitively, (Attachment 5).

Mr. Cox concluded by emphasizing that government should not pay more for a public service than is necessary. He said that through a mechanism which fairly compares public and private costs routinely, the cost of government will row more slowly. Mr. Cox thanked the committee for the opportunity to speak, and said that he would be happy to answer any questions.

Representative Updike asked about the privatization of school transportation in other areas, stating that her district had looked at doing that and determined it would be more cost effective, but were reluctant to give up their fleet of buses since it would cost $600,000 to get them back if the service was unsatisfactory.

Mr. Cox suggested the district retain ownership of the fleet, lease it to the winning contractor and require them to maintain it. He stated that this has been done successfully around the country.

Representative Burns thanked Mr. Cox and asked for closing comments from the committee members. Senator Patterson invited committee members to suggest specific directions and topics for future speakers.

Senator Arzberger requested that Ron Jensen (City of Phoenix) be present at the next meeting, and suggested that some of the cost savings be detailed. He said that he does not see how money can be saved in the area of school bus transportation for schools, and that those people will be contacted to address a future meeting.

Without objection, the meeting adjourned at 11:30 a.m.

Annette Reiley

Annette Reiley, Secretary

(Attachments are on file in the Office of the Chief Clerk.)

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12/29/89

MINUTES OF

JOINT LEGISLATIVE COMMITTEE ON PRIVATIZATION

DATE: Wednesday, November 8, 1989

TIME: 9:00 a.m.

PLACE: House Hearing Room 4

SUBJECT: Presentation by Arizona Chapter of the National Solid Waste Management Association - Problems of Annexation in Solid Waste Management Industry

Presentation by Tom Bryant, State Engineer, Arizona Department of Transportation (ADOT) - Contract Maintenance

Co-Chairman R. Burns called the meeting to order at 9:10 a.m. and roll call was taken:

MEMBERS PRESENT:

Representative R. Burns, Co-Chairman
Representative Ortega
Representative Updike
Representative Williams
Senator Patterson, Co-Chairman
Senator Arzberger
Senator Corbet
Senator Hardt
Senator Wright

MEMBERS ABSENT:

Representative McLendon

SOLID WASTE MANAGEMENT PRESENTATION

JOE ABATE, an attorney representing the Arizona Chapter of the National Solid Waste Management Association, explained when annexation occurs, private waste industries become unintentional casualties because contracts are canceled and equipment must be sold at a loss. He concluded they were in the process of drafting legislation based on North Carolina and Georgia statutes that provide for just compensation if cities do take over private concerns.

JAMES S. TURPIN, JR., Manager of State Government Affairs for the National Solid Waste Management Association, stated his organization represents 2,200 members nationwide. He explained that as municipal budgets continue to decrease, many cities have turned to private waste service companies and, according to a Columbia University study, have decreased their costs by more than 40%. He stated that in contrast, those cities using their own systems incur expenses 29%

higher than those using private collection.

Mr. Turpin explained over 80% of this Country's garbage is collected by private firms using one of the following forms of privatization:

Contracts - Qualified contractors are selected, usually through competitive bidding, and are paid directly by the local government.

Franchises - Private companies bill and collect from each household.

Private Subscription - Each household hires a collection company and pays directly.

Mr. Turpin stated public officials privatize their residential collection services because of its efficiency, effectiveness and equity. He explained that private companies, in general, provide greater efficiency because they use smaller pick-up crews; they have lower absenteeism; higher productivity; better morale; and experience less downtime with their equipment.

Mr. Turpin explained another national trend that will pose problems for local governments is curbside recycling programs like those required in Oregon, Connecticut, New Jersey, Florida, North Carolina, Virginia and Rhode Island. He said private refuse haulers have already demonstrated their effectiveness in meeting the complex demands of these type of programs.

In regard to problems the waste industry is facing in Arizona, Mr. Turpin explained that when annexation occurs, private companies find their investment jeopardized and equipment purchased to honor contracts becomes surplus, with its market value often less than its indebted worth. He stressed that because of this, the burden of servicing unincorporated areas falls upon the governments if these private sectors find it financially unrewarding to provide service.

Mr. Turpin said California, Montana, Oregon, Washington and North Carolina have "just compensation" statutes and his Association will be presenting proposed legislation at a later date regarding this area.

Mr. Turpin concluded that as local governments look for additional ways to trim operating costs, the advantages of private contracts for waste collection and disposal will grow.

In response to Senator Wright and Representative Burns, Mr. Turpin stated the proposed legislation would be based on the North Carolina statutes which were passed in 1985 and address the problem best.

In response to Senator Arzberger, Mr. Turpin explained there's a distinction that can be made between an annexation which is unplanned for and a thought-out policy decision by a local government, where the government has the opportunity to do a cost-benefit analysis. Senator Arzberger questioned whether the loss of funds on the sale of equipment by the cities was taken into consideration when

considering cost savings. Mr. Turpin said he would research that information and let him know.

Representative Ortega asked how private industry salary and benefit packages compare to local government. Mr. Turpin answered that they are competitive, but do vary among the markets.

In response to Representative Ortega, Mr. Turpin stated he would research and provide him more information regarding recycling.

JOHN GARDNER, President of Suburban Sanitation Service of Yuma, Arizona, explained he is one of the companies impacted severely by annexation. He stated in the last two years the City of Yuma has annexed 20% of his actual work which represents almost $600,000 per year. He added this resulted in the loss of five employees and $500,000 worth of equipment.

Mr. Gardner explained, in answer to Senator Arzberger, that a private company normally keeps a piece of equipment in operation for seven years, as opposed to four to five years with a municipality.

Mr. Gardner stated his company pays its employees an average of $22,000 per year, with a full benefit package of vacations, insurance and uniforms, which is 5% higher than the City of Yuma pays.

With regard to annexation, Mr. Gardner stated because of encroachment by the City of Yuma, he will be forced to park another $700,000 worth of equipment and eliminate five jobs. He said that will probably break his company.

Mr. Gardner stated a county resident pays his company an average of $7.00 per month, while the City budget for 12,000 residential units is $1,800,000.

In response to Senator Patterson, Mr. Gardner said usually 30 days notice is given before annexation and they are not given an opportunity to bid to keep their business. Mr. Gardner explained that he has been expanding his company into the State of California, which has a "just compensation" law to keep his business alive.

ROBERT PARKS, Manager of PSI Waste Systems of Page, Arizona, explained that his family managed a company in the Phoenix area in 1966 through 1968 with residential and commercial routes throughout the Valley. He said they were annexed by Peoria, Phoenix, Scottsdale and Mesa and were given notice sometimes the day before and lost several thousand customers.

LEE SCHOON, Director of Environmental Affairs for BFI, explained because his company is large they are not affected as drastically as smaller companies but they do support the concept of compensation for annexation for smaller firms. In addition to agreeing with the other speakers, he said customers on the outskirts of the communities are also affected.

In response to Senator Wright, Mr. Schoon stated BFI Arizona has not been affected by annexation to a point of bringing litigation and they steer away from that type of collection because it is an unstable market. Mr. Abate state there is currently a case which has been pending for over a year on this subject, and legislation is needed in this area regardless of how the court rules.

In response to Senator Patterson, Mr. Gardner explained that California Statutes provide the private contractor with an opportunity for a five-year phase out, which at least gives them a chance to bring their equipment down to a marketable level and the private company has to provide the same comparable service for the same dollar the municipality does. To that point, Mr. Turpin explained that around the Country it depends on the contract, the particular state statutes and the local government. He noted that North Carolina simply pays off the value of the contract.

Representative Ortega asked what BFI's position would be regarding a mandatory or voluntary recycling program. Mr. Schoon stated they would be in favor of one and explained they did not usually make money on such a program, but rather broke even.

In response to Senator Arzberger, Mr. Schoon explained that their landfills charge on a tonnage basis like governmental bodies do and it varies with different localities. He also responded he thought presently Arizona does not prohibit private landfill owners from accepting contracts from other states, but he said he would research it and report back.

PHILIP MACDONNELL, Attorney representing Waste Management, Inc., stated they support the testimony heard by the Committee today and the proposed legislation similar to North Carolina's.

Mr. MacDonnell, regarding how to combat unfair governmentalization, explained there was legislation proposed in Colorado to establish a Comparative Contracting Commission, whose job is to oversee the process of free enterprise relating to government. He said this legislation would initiate a free enterprise participation process to allow companies who want to bid on a service to file a petition of interest. After that the municipality would have 90 days to analyze the company, and if they concluded the company was okay, then they would perform a make or buy analysis where they would decide if the government could do it cheaper or the company wanting to contract. If they decided for private enterprise, then it would go out for bid. Representative Burns stated they were looking into that piece of legislation and if it fits with Arizona statutes it would hopefully be brought up at a later point.

In response to Representative Updike, Mr. MacDonnell stated he thought Arizona had not gone along with the national trend for privatization because of rapid growth over the past twenty years and because of annexation, the cities saw an opportunity to expand from a business point of view.

In response to Representative Williams whether the ability of a private firm to

challenge a government agency had been tried in other states, Mr. MacDonnell explained other than the proposed Colorado legislation, he was not aware of any other state trying it.

Mr. MacDonnell said he wanted to warn the Committee members of Subtitle D which is new federal requirements which go into effect in March of 1990 requiring landfills to increase regulation and control and consequently the vast majority of landfills in Arizona open now won't be open in a few years. He explained the crisis has already been felt in Eastern states, and there is a coming landfill crisis for this State.

ADOT PRESENTATION

TOM BRYANT, the State Engineer with the Arizona Department of Transportation (ADOT), stated in 1981 the Arizona Legislature passed S.B. 1001 requiring the Director of ADOT to appoint a technical advisory committee to review and recommend the use of private contractors to perform highway maintenance activities. He said eight activities were selected for a pilot program to test the feasibility of contracting with the private sector: patching with pre-mix, crack sealing, swath machine mowing, litter pickup, urban curb sweeping, landscape maintenance, guardrail maintenance, and rest area maintenance.

Mr. Bryant explained that of the eight activities, only guardrail maintenance and landscape maintenance were unsuccessful. He stated the problem with landscape maintenance was with the wording of contracts which has since been resolved, however, guardrail maintenance still is having problems, one of which is response time.

In response to Senator Patterson, Mr. Bryant said he thought contracts could be made today that could make guardrail successful and what he was reporting was from a 1982 report when he was not working for the State.

Representative Burns asked if any effort was being made for a current task force report to take another look at problems that presently exist. Mr. Bryant said the charge of the Committee was to go ahead and continue to expand and they now have twenty-five activities within contract maintenance.

In response to Senator Corbet, Mr. Bryant stated prisoners have been used for quite some time for litter pickup, gauge channel cleaning and brush cutting. He explained that presently there are no prisoners working because the Department of Corrections has run out of money to pay their guards for this program. He said the prisoner program is a break-even situation for ADOT.

Mr. Bryant explained that ADOT's current budget only allows them to complete 90% of work needed to keep the road system completely up-to-date.

Senator Corbet asked if consideration was given to privatizing Sunset Point and places such as that. Mr. Bryant stated he believed all the rest areas were under private contract at the present time.

In response to Representative Burns, Mr. Bryant stated federal law prohibits asset sales of rest areas.

Mr. Bryant presented a slide show which included an indication of ADOT total expenditures, new types of maintenance contracts, and developments in contract maintenance for 1989-90.

Mr. Bryant explained an interstate logo sign program brought about by legislation where the erection of signs is allowed bearing the logo of businesses offering food, gas, lodging or camping near an interchange. He stated these businesses have to meet certain standards concerning their location and services offered. In response to Representative Ortega, Mr. Bryant stated the decision on who obtains the logo signs is made by the contractor the State has hired for that program, which he bases on a set of rules compiled by ADOT. He added that the legislation is written very well and consequently has not proven to be unfair to local "mom and pop" businesses. Mr. Bryant stated he would report back to Representative Ortega on the details of the program.

In response to Senator Wright, Mr. Bryant explained logo sign contracts are similar to engineering contracts, rather than low bidder contracts.

Mr. Bryant summarized his slide show by stating they are increasing the amount of work accomplished through maintenance contracts and the number of maintenance activities they contract for and are proud of the logo sign program as an example of a successful privatization contract.

Senator Arzberger, in questioning the logo program, asked if ADOT made some of those signs for the Highway Department. Mr. Bryant stated the Department of Corrections has in the past made some signs for ADOT, however they have had difficulty with quality and they are working on improving the quality of their signs.

Representative Williams questioned, since the number of employees has not decreased since private contracts were started in ADOT, how that would represent a cost savings for ADOT. Mr. Bryant explained that in 1981 there was one ADOT employee per 1,000 of the population; presently there is 1 employee for 1,388 of the population, which represents a savings of 160 employees who were not hired to meet the increase in population. To that point, Senator Corbet questioned how savings would be calculated. Mr. Bryant explained that he had prepared a report on contract maintenance last January and he would like permission to prepare another report detailing what it would cost to do these activities with State employees.

Senator Wright asked if there had been situations where a private contractor was in actuality responsible for an accident that the State was ultimately held liable for. Mr. Bryant explained that the problem of a contractor not building a project according to specifications is non-existent because an ADOT engineer must go out personally and inspect the roadway and confirm that it was built according to State specifications and he then accepts it from the contractor,

thus accepting maintenance responsibility and liability.

Senator Hardt stated he hoped a careful watch was being kept on the private contracts for maintenance because they are so costly. Mr. Bryant explained foremen are responsible for contract work in their area and State employees who work under the foremen would complain if the work was not done right because if the contractor doesn't do a good job, then the State employee would be able to do it and get an increase in money. He added it results in a system of checks and balances that works very well.

Representative Burns stated in England they have tried stock ownership programs where they sell assets back to employees, and questioned what would prevent the State of Arizona from setting up an employee stock ownership program for the Grand Canyon Airport, for example. Mr. Bryant explained that was not his area but would have someone contact him regarding that subject.

Representative Burns questioned whether vehicle maintenance is contracted out. Mr. Bryant explained after the warranty period, very few items are contracted out. He added they were having problems with the supply of parts because of purchasing requirement problems.

In response to Senator Corbet, Mr. Bryant stated ADOT does lease equipment occasionally, which they rent through a State approved vendor, and it has resulted in substantial savings.

Representative Burns adjourned the meeting at 11:19 a.m.

Respectfully submitted,

Rosetta B. Cutty
Committee Secretary

MEETING OF COMMITTEE ON

Privatization

Hearing Room No. 4

Date 11/7/87 9:00 AM

NAME	REPRESENTING	BILL NO.
Tom Bryant	ADOT	INA
Karen Holloway	ADOT	
Joe Wrate	NSWMA	
Virginia J. Stetter	DOA	
Betty Langulen	DOA/RMD	
Kent Fairbairn	League of Cities & Towns	
Jim Schmitz	AFSCME	

MINUTES OF

JOINT LEGISLATIVE COMMITTEE ON PRIVATIZATION

DATE: Tuesday, November 28, 1989

TIME; 1:00 p.m.

PLACE; House Hearing Room 2

SUBJECT: Presentation by Richard Carr, Westrends Environmental Group

Presentation by Wayne Calabrese, Wackenhut Correction Corporation

Co-Chairman R. Burns called the meeting to order at 1:15 p.m. and roll call was taken:

MEMBERS PRESENT:

Representative R. Burns, Co-Chairman
Representative Williams
Representative Updike
Senator Patterson, Co-Chairman
Senator Wright
Senator Corbet
Senator Hardt

MEMBERS ABSENT:

Representative McLendon
Representative Ortega
Senator Arzberger

Richard Carr, Principal in Westrends Environmental Group, presented the idea of a private/public partnership with a proposed prison to be located in Cochise County near Wilcox. Westrends would build and lease a facility to Cochise County who, in turn, would offer use of the facility to the state at a rate that is less than the state currently pays to house its prisoners. The concept being that Westrends Environmental Group, a private company, would build and Cochise County Sheriff's Department would operate the facility. He explained that the advantages are that this would assist the state in a partial resolution of the prison overcrowding problem and reduce the costs in development and operation of this facility. Mr. Carr pointed out that this does not require changes in existing legislation. This facility would benefit Cochise County in stimulating economic growth and allow the county to obtain revenues which would partially offset its cost of operating the facility. He stated that this preliminary proposal has been

reviewed and approved in general by the Board of Supervisors and staff of Cochise County, subject to the interest level of the state of Arizona. Mr. Carr asked the Committee to refer to Figure 1, Section III of the Preliminary Feasibility Report supplied by Westrends (see Attachment A), for a transaction summary as he explained the figures. Accordingly, it would cost the state approximately $10 less per day than it currently costs to maintain the level of facility that the state is currently planning for their 400 bed facility.

In response to a question from Mr. Burns, Mr. Carr stated that ownership of the building at the end of a 30-year lease is subject to agreement at the time the contract is negotiated.

Senator Patterson observed that there is really nothing integral about the counties role to the Westrends proposal. He suggested that the legislature could elect to lease directly from Westrends and arrange for operation in whatever manner they wished. Mr. Carr replied that is technically correct, but noted the advantage of decentralizing the running of prisons and that it also appears less expensive for the counties to run the prisons as compared to the state.

Mr. Wayne Calabrese, Vice President of Business Development for Wackenhut Corporation, discussed the Wackenhut story, privatization in general and legislative issues (see Attachment B). Their corporation provides professional facility management at nine facilities in seven states. He stated that the cost for a 500 bed prison, on average in the U.S., to construct and operate over a 30 year period, exceeds $350 million, not including interest on bonds. He stated that the record on privitization is replete with examples of cost savings. Money is saved through financing, speed in construction, design in facility, reducing the number of staff to manage and operate and efficient personnel practices. The legislature must set the population, level of security, minimum, medium or maximum facility and what standards they expect to be met. Also needed is specific language which allows tax exempt financing. The legislature should require specific cost savings and put administrative type of service in charge rather than Department of Corrections. They need to incorporate specific insurance requirements and a performance bond, and there should be a rating system for the contract award.

In response to a question from Mr. Burns, Mr. Calabrese stated that Wackenhut does not have a testing model in any of their facilities for longer than a year as it regards to education/rehabilitational programs. As to how much freedom Wackenhut has in design, Mr. Calabrese responded that the private sector performs best when it can be creative and bring new solutions to old problems.

In response to questions from Senator Wright, Mr. Calabrese stated that Wackenhut has no experience managing a correctional industry at this point. Also there have been no escapes in the 4-5 years they have been in business.

In response to a question from Senator Corbet, the normal required cost savings for the state by Wackenhut is 10%.

Dave Horowitz, Legislative Director for AFSCME, disagrees with the premise of the state abrogating its authority to incarcerate prisoners, in an institution other than state run, and to use deadly force. He quoted several reports that supported his objections to successful privatized operations as well as cost savings for the states involved.

In response to a question from Rep. Burns, Mr. Horowitz stated that they would like to be involved in formulating the concept of the state competing with the private sector in a contract to provide operational services.

In answer to a question from Mrs. Updike, Mr. Calabrese stated that private facilities, at this point, probably house less than 1% of all adult offenders. He also noted that the majority of open juvenile facilities are run by the private sector.

Representative Burns adjourned the meeting at 3:45 p.m.

Respectfully submitted,

Lee Brown

Lee Brown
Committee Secretary

MINUTES OF

JOINT LEGISLATIVE COMMITTEE ON PRIVATIZATION

DATE: Tuesday, December 19, 1989

TIME: 9:00 a.m.

PLACE: House Hearing Room 3

SUBJECT: Presentation by Peter Clark, Assistant Deputy Minister, Privatization, Communication and Support Services, Ministry of Government Management Services, British Columbia

Presentation by Michael Kennedy, Vice President, Operations, National School Bus Service Inc.

Presentation by Gary Witledge, Senior Operations Manager, Mayflower Contract Services

Co-Chairman R. Burns called the meeting to order at 9:10 a.m.

MEMBERS PRESENT:

Representative Margaret Updike
Representative Robert Burns, Co-Chairman
Senator Gus Arzberger
Senator A. V. "Bill" Hardt
Senator Pat Wright
Senator Tom Patterson, Co-Chairman

MEMBERS ABSENT:

Representative Ruben Ortega
Representative Robert McLendon
Representative Robert Williams
Senator Leo Corbet

Peter Clark, Assistant Deputy Minister, Government of British Columbia, introduced **John Frazer** a colleague of his from Vancouver, Canada who traveled with him. Mr. Frazer is in the private sector and a partner with the firm of **Peat, Marwick, Stevenson & Kellogg**. He had worked extensively with Mr. Clark in the development of the work and the material on highways privatization/highways maintenance.

Mr. Clark presented a brief overview of the magnitude of the program. In 1987 the Premier of the Province announced a privatization, a massive program that affected approximately 5,000 public service employees. Since that time approximately 5,500 public sector employees have been moved to the private sector with asset sales totaling over 800 million dollars. The program in British Columbia focused to a large degree on employees. Government wanted to encourage employee participation and ownership in whatever new firms were established in the privatization process.

Programs were established that gave advantages to employees; namely, they were trained, given one weeks free consulting with a large accounting firm for business advice and a preference was given to employees regarding negotiations to buy the business. Negotiations were made with the private sector only after employee groups were not able to be obtained, and a proposal call was used rather than a tender call. This afforded flexibility in dealing with companies and the terms and conditions that were established to sign a contract. One of the terms and conditions being that all of the employees who were presently with the government were to be offered jobs with the new employer. Over 90 percent of the employees that were in the highways maintenance program prior to privatization went with the new employer. A contract would not have been negotiated with a company that would not have taken the government employees.

Senator Wright asked Mr. Clark if there had been any buyouts of employee formed companies? Mr. Clark responded "no". The contract contained a provision that ownership cannot be changed during the term of the contract without government approval.

Questions followed regarding the cost factor in privatization. Mr. Clark responded that contracts were not signed unless cost was reduced. In the highways area direct cost savings were 25 million dollars.

The question was posed regarding the length of a typical contract. Most contracts were for at least three years and some five years. In the highway maintenance area all contracts were issued for three year periods. No contracts were written for more than five years.

Senator Hardt questioned Mr. Clark regarding the disposition of equipment when they were privatized. Light equipment; trucks, vans, etc. were put up for sale. Heavy equipment and specialized road equipment was leased. That enabled the employee groups and the private sector the benefit of not having to come up with large amounts of capital to buy heavy equipment. It also allowed government, if the company did go bankrupt, the benefit of having the specialized equipment available to keep the roads clear.

Senator Hardt wanted to know what happens when an employee-owned company fails. Mr. Clark responded that they would then go to a public proposal call for bidding.

Senator Patterson questioned whether or not contracting with the employee groups versus the private sector, had developed a pattern with regard to one group being in any way superior to the other. Mr. Clark responded that there had not been any significant difference in terms of the actual operation, recalling that basically all the employees that were with the government went to the new contractor. Therefore, you do have the same people maintaining the highways except one works for an employee-owned firm and one works for a private sector.

Senator Patterson asked Mr. Clark what kind of controls are in the contracts for quality. Mr. Clark responded that the proposal call was an eight volume document. One of those volumes contains the standards for all the work to be done. These specifications were worked out with the technical people from the Ministry of Highways, with them establishing the standards to be used. Highway inspectors are also used for quality control, to insure that the work is being done to contract specifications. A three million dollar performance bond is put up by each company and a ten million dollar liability bond. The key issue is contract management, therefore inspection is of utmost importance.

Senator Patterson asked for information regarding how the termination clause of the contracts works. **John Fraser, of Peat, Marwick, Stevenson & Kellogg** responded to this point. Small penalties and remedy periods were used to correct the problems of performance.

Senator Arzberger voiced his concern regarding employee benefits, namely medical and retirement plans. Can employees negotiate their own plans with the employer based on what they want? Mr. Clark stated that it was his understanding that they had all moved to a self-administered pension fund where if the employer goes broke that does not mean that the pension plan goes down as well. The employees that had been government employees for ten or fifteen years were told that they could leave their money in the government pension plan if they wished. It would be frozen and they could draw it later, or they were offered the full value of both the employer and employee contributions to achieve the same type of pension through the private sector. They could, therefore, put that in the locked-in pension plan in the private sector and it would be a protected pension plan. It was strictly an employee choice as to what decision they made.

John Fraser, of Peat, Marwick, Stevenson & Kellogg spoke briefly concerning points that had made the privatization of highway maintenance a success.

1) Went to employee groups first, they were given preferential treatment.

   Private sector was ready to come in through the proposal bidding process, and this enabled them to achieve the savings that they did achieve.

2) There was a political concern for government to do something.

3) Low capital was critical. Genuine effort by the Premier to give the employees first choice at forming employee-owned businesses. Contracts were purposely structured so that they didn't require excessive amounts of working capital to begin. This was also achieved by leasing and renting of equipment. The government went out of its way to give the employees first chance in privatizing.

Peter Clark had one final comment that he felt was a critical factor in the success of privatizing. The private sector needed to be involved in terms of business valuators, people who are used to neogotiating contracts and selling things. It was not something public servants were used to doing.

Michael J. Kennedy, Vice President Operations, National School Bus Service, Inc. spoke on the advantages of contracting with the private sector for student transportation. A handout outlining his Company's services was given to each Committee member (attached to original minutes). Mr. Kennedy also gave a slide presentation along with his comments regarding student transportation.

The measure of success as to whether the taxpayer dollars are buying the highest possible level of service is in management control, that is producing the maximum benefit. The transportation system must be efficient and cost effective. Mr. Kennedy felt that the private sector school bus contractors were best qualified to deliver safe, dependable service while controlling cost.

Two fundamental differences between the private sector contractors and their public sector counterparts were:

1) Structure of incentives.

2) Specialized expertise.

National's approach to school busing:

1) System support matching your needs.

2) Coordination by top-notch management.

3) Skilled driving teams.

4) Highest quality fleet.

5) Superior maintenance.

6) Efficient facilities.

Questions were asked specifically regarding contracting with rural school districts. Mr. Kennedy responded that they do contract with rural and suburban school districts. The average bus run across the country is between 50 - 60 miles. Some of National's buses travel over 100 miles during the course of one day.

In regard to questions regarding liability insurance, Mr. Kennedy maintained that his company, in most of the city school districts they serve, posts a 100 percent performance bond. Meaning that the bond is equal in face value to the total amount of the contract for one year. Also in the area of insurance, National carries 21 million dollars insurance per vehicle. This protects the company as

well as the school district. The school district is always a named co-insured on the policy, which is a very attractive feature for the schools served.

Senator Patterson asked whether Mr. Kennedy had any experience with servicing more than one client at a time with the same bus? Mr. Kennedy responded that over the years as busing has become more of a way of life the schools themselves have become more efficient in writing routes and they better utilize the equipment. Generally the equipment is tied up for that window in which the school transportation has to take place by one district, and there is very little opportunity to reuse the same fleet. The one area in which there is increased utilization out of the buses is in extracurricular activities, but other than that the buses are generally dedicated to the district it services.

Representative Updike asked what the school district would do with their fleet of buses should they decide to privatize their transportation services. Mr. Kennedy stated that it depends on how the district specifies that the incoming contractor would deal with it. They could be bought from the district. The company would then provide the district with a full-service contract where they would be providing the buses, drivers, mechanics and facilities. Representative Updike asked what would happen if suddenly the school district could no longer afford the service and then the district would no longer have a fleet of buses to meet their transportation needs. Mr. Kennedy stated that if the contract prices were to creep up, that would only attract new competition during the bidding process. The district could also specify in their contract that there be some cancellation procedure whereby the district could re-purchase the vehicles with a depreciated value if the contract didn't work out. There are all kinds of options that could be included in the contract.

Gary Witledge, Senior Operations Manager, Mayflower Contract Services currently a school bus transportation contractor within the state of Arizona, presented a progress report of the services they are providing in the state at the present time.

Mr. Witledge outlined some things that consistently occur in the conversion process from public sector to private sector.

1) Cost.

2) Fleet age, specifically removing the pre-1977 model vehicles.

3) Disposition of employees.

These are addressed differently depending on the needs of the specific district.

Mr. Witledge itemized the school districts that Mayflower is currently servicing in the state of Arizona as follows:

Phoenix Union - 3 year contract - 1986-89
Rebid this year and now has a 5 year contract

Showlow School District - 1987

Wilson School District - 1988

Horse Mesa Accommodation School - 1988

Miami Public Schools - 1988

Payson Public Schools - 1988

Snowflake School District - 1989

Cottonwood - Oak Creek School District - 1989

Mayflower currently has within the State in excess of 130 school buses, of which no model is older than 1978. The following has occurred in most instances with the inception of the contracts:

1) Upgraded the age of the fleet significantly.

2) Mandatory drug screening for all employees.

3) For rural facilities, Mayflower leases the existing physical facilities; parking area, garage, shop, etc. (This has not been done in Maricopa County.)

4) Offered employment to every previous employee.

5) Mayflower does the contracted mechanical maintenance work.

6) Costs have been at or below what the districts had projected their costs would be.

7) Offered a buy-back option at a fair market value.

8) Extensive driver training offered.

9) Offered 10 million dollars liability, with the board and its officers and the school district named as additional insured.

Senator Hardt questioned how the State enters into the privatization of school transportation? Representative Updike responded to Senator Hardt's question. Since the State pays for the transportation costs of school children, responsible school board members should be concerned in the most efficient ways to use our tax dollars. Senator Hardt stated that he felt a letter could be sent to each school board telling them that we have been listening to presentations on privatization of school transportation and that it is in our opinion a more cost effective method, but that the Legislature really does not have any control over what procedure the school district follows.

Senator Arzberger asked Mr. Witledge if his company has experienced anything in the Arizona Revised Statutes that has given difficulty in negotiating contracts with the local school districts? Mr. Witledge's response was "no".

Co-Chairman Burns announced that this Committee has one more meeting scheduled for the purpose of reviewing what has been done to date, and to make any recommendations they felt needed to be made to the Legislature. Representative Burns has spoken with Speaker Hull, and she is willing to continue the Committee in order to look into other areas of privatization. He also stated that Senator Patterson will undoubtedly be talking to the President to see how he feels about continuing this Committee. There will apparently be no meetings held by this Committee during the regular legislative session.

The meeting was adjourned at 11:05 a.m.

Respectfully submitted,

Jo Ann Gollihare

Jo Ann Gollihare

MEETING OF COMMITTEE ON

PRIVATIZATION

Hearing Room No. 3

Date 12/19/97

NAME	REPRESENTING	BILL NO.
Dave Schmitt	ADOT	--
August Hamdt	ADOT	--
Joe McDonald		
Dave Horwitz	AFSCME	-

MINUTES OF

JOINT LEGISLATIVE COMMITTEE ON PRIVATIZATION

DATE: Wednesday, January 3, 1990

TIME: 9:00 a.m.

PLACE: House Hearing Room 2

SUBJECT: Final Review and Committee Recommendations

Co-Chairman R. Burns called the meeting to order at 9:10 a.m. and roll call was taken.

MEMBERS PRESENT:

Representative R. Burns, Co-Chairman
Representative Williams
Representative Updike
Representative Ortega
Senator Patterson, Co-Chairman
Senator Wright
Senator Corbet
Senator Hardt
Senator Arzberger

MEMBERS ABSENT:

Representative McLendon

Co-Chairman Burns reviewed and summarized the previous meetings of the committee and stated that he would hope that this would not be the final meeting of the committee, since he feels there is some real benefits to the state through privatization and there are other areas to be studied.

REVIEW OF PREVIOUS MEETINGS

The first meeting had the following speakers:

1. Robert Poole, Jr., president of the Reason Foundation, explained three types of privatization:

   a. The sale of government enterprises or assets
   b. The BOT (build, operate and transfer) concept
   c. Contracting out

Mr. Pool's presentation dealt primarily with the contracting concept.

2. Tim Schmitz, AFSCME, presented the downside of privatization and gave

some examples of areas where it doesn't work.

3. Wendall Cox, private consultant, gave a philosophical view of the benefits of privatization and presented a proposal which he called a "petition of interest." Mr. Cox emphasized the importance of competitive contracting with government and private enterprise competing, for the benefit of the citizens of the state.

At the second meeting representatives of the solid waste industry outlined problems they have had with cities annexing areas that private companies were servicing and the adverse effect this has on private companies.

Representatives from ADOT gave an overview of the different areas where they are using private contracting at the present time.

At the third meeting representatives from companies involved in privatization in prisons spoke and one proposal presented was the county/private partnership - where the private industry would build the facility and then have the county operate it in contract with the state.

Representatives from British Columbia Canada, explained their experience in contracting and turning over certain functions of government to the employees and also to private companies, at the fourth meeting.

Representatives of private school busing companies explained the benefits that could be realized in contracting with private companies to run school bus routes.

Senator Hardt commended Co-Chairman Burns on the report and Senator Patterson stated that the key point of all they had heard was that philosophically it is unconscionable for government to pay more for services than is necessary to provide the same level of services. He stated that he is very interested in this committee recommending further investigation of the "petition of interest" concept. He said he feels it is important that there not be monopolies where they are not needed and that anyone who could provide the same services at less money should be allowed to do so.

Senator Patterson then moved:

"That the Committee recommend to leadership that the "petition of interest" concept is one that should be pursued by the Legislature."

Representative Williams seconded the motion.

Senator Wright asked if the "petition of interest" concept could be explained in written form, for those who had missed that meeting. Co-Chairman Burns said nothing was available today but promised to have it for future meetings. He explained briefly that the "petition of interest" is a petition by private individuals or companies to the government stating that they can perform a service of equal quality at a lower cost. The governing body is then placed in

the position of responding to that petition, either negatively or affirmatively and if affirmatively it is then put out for bids. There would be an appeals process if the petitioner feels the negative ruling was unjustifiable.

Senator Wright commented that she feels there should be some expansion in the discussion regarding how private industry is to become aware of what the government does and how private industry would be solicited to petition, when they do not know what services are being performed.

At this point Co-Chairman Burns had distributed a "Flow Chart" of the British Columbia Privatization Action Plan. (Filed with original minutes)

Senator Arzberger agreed that certain areas of government could be privatized very well, i.e. waste management, school bus transportation systems, etc., but he feels there are certain areas that the state is responsible for and should continue to be responsible for, and that prisons is one of these areas. He stated that he had no problem with private industry building the prisons and then leasing them to some government entity to operate. He further stated that he feels the schools, financed by the taxpayers, should be run by the government. He emphasized that he is not in favor of a blanket proposal.

Co-Chairman Burns responded by saying that the main point is "competitive contracting." He explained that it was not proposed that private industry come in and take over everything.

Senator Arzberger commented that there is probably more private contracting than even these committee members are aware of and that there is competitive contracting in state government, but he reiterated his position that there are certain areas that should only be run by government.

Senator Hardt asked what the "petition of interest" would accomplish and Co-Chairman Patterson explained the Committee would be recommending that private industry be given a chance to show they could do the job cheaper and with that assumption in place they should be given a chance to prove that and if they cannot, then there is no other reason to contract with them. He agreed with Senator Arzberger that there are some areas of government that are not suitable for privatization, but that he doesn't feel prisons is one of those areas. He summarized that if private industry can provide a service for less there should be no artificial barriers (government rules and regulations) to prevent them from bidding for that service.

Senator Hardt remarked that most instances would require legislation, so Senator Patterson's motion reflects the thinking of the Committee and that he had no problem with that. He stated he is quite interested in the proposal of Cochise County (he said he didn't know whether this was privatization or not) where they claimed they could perform the services 10% cheaper than the cost at the present time.

Co-Chairman Patterson pointed out that special legislation would not be needed for each instance. He explained that comprehensive enabling legislation could

be enacted to allow this type of contracting to take place if all the conditions are met. He said there was a bill in Colorado which was used as a model for the legislation presented to this Committee that said that each situation did not have to pass the legislature separately.

Representative Williams remarked that one of the principal comments of the cost efficiency study made several years ago was lack of productivity in government. He pointed out that there is a tendency to "go to sleep" when there is no challenge and this concept would allow private enterprise to challenge the government and this will keep government people "on their toes." He continued that there is an enormous psychological benefit here that hasn't been mentioned before. He stated that he believed this was a healthy working of the market place.

Senator Wright commented that she would like to see recommendations come out of this Committee that areas where government has successfully privatized certain functions be "looked at" very closely - areas where there has been no displacement of employees, areas where it would not be necessary to defend the action to AFSCME, assuring them that employees would not be put out of jobs. She stated that it would be her hope that the enabling legislation would be something dealing with the British Columbia model. She said she is currently having a study done of the state motor pool and the print shops. She stated there are five print shops in the capitol mall, and she is amazed that she hasn't had more calls from printers objecting to the government owning rooms full of expensive equipment for work that could be done by the private printers. She repeated that she feels that private industry doesn't always know what the government is doing.

Senator Wright continued by commenting regarding the motor pool, that Lou Grubb, or many others, would be glad to take over the fleet, and manage it, and do it a lot cheaper than is being done by government right now.

Co-Chairman Burns said he agrees with Senator Wright but he feels that a lot of the folks in the private sector do know about government activities, and if they had an opportunity to come forward they would do so. He stated he had heard of printers in the past who had come forward only to be turned away and therefore did not keep trying.

In response to concerns about employees being displaced, Co-Chairman Burns referred to the British Columbia Plan Flow Chart and said the people there made every effort to make sure this didn't happen to their employees; that employees were given a 5% preference on contracts and were given an opportunity to participate in the system. He stated he felt Arizona could learn some good things from what has been done in British Columbia.

After further discussion Senator Wright called for the question on Senator Patterson's motion and the motion carried by a vote of 8-0-2:

Voting Aye: Representatives Burns, Williams, Updike and Ortega
Senators Patterson, Wright, Corbet and Arzberger

Absent: Representative McLendon and Senator Hardt

Senator Arzberger, in explaining his vote, reiterated his concern that the enabling legislation being discussed was too broad. Co-Chairman Burns explained that any proposed legislation would be brought to this committee for review and that it would go through the committee process and be reworked then.

At the request of Representative Williams, Senator Arzberger explained his concern again, saying that he is opposed to a "one package" situation, that it was too broad. He said he feels it should be split up into different industries. He stated again that he believes there are certain functions that government must perform to take care of its citizens and that he feels it is up to the Legislature to make sure they do this in an efficient and economical manner.

SOLID WASTE INDUSTRY PROBLEMS

Co-Chairman Burns brought up the proposal by the solid waste industry as the next item on the agenda, and Senator Patterson explained that the problem is, when cities perform annexation procedures they often bring in their municipal solid waste haulers, etc., and the people who have had private contracts in those areas are dismissed with sometimes very minimal notice and are left with a problem of what to do with their equipment and with everything they have invested. He stated he feels this is just an extension of condemnation proceedings generally. He emphasized that when annexation takes place and people are being deprived of their property and the equity they have in equipment, they should be properly and fairly compensated for it.

Senator Patterson made the following motion:

"That this Committee recommend to the Legislature that solid waste contractors be compensated or that their contracts be continued, when annexation occurs."

Representative Updike stated that she felt it was too general to put into a recommendation. She suggested that the wording be that when annexation occurs a city could not disrupt an existing contract without making compensation.

Representative Williams agreed with Representative Updike and said this could apply, not only to trash pick-up, but to many other areas that would be affected by annexation. He stated he agrees with the principle.

Senator Patterson explained this would apply to any service being affected when that service was taken over by a municipality. After discussion Senator Patterson restated his motion as follows:

"That this Committee recommend to the Legislature that when annexation occurs, any private companies who are providing services in the area to be annexed, either be continued or appropriately compensated."

Senator Wright seconded the motion, and after further discussion, the motion carried by a vote of 8-0-2.

Voting Aye: Represenatives Burns, Williams, Updike and Oetega
Senators Patterson, Wright, Corbet and Arzberger

Absent: Representative McLendon and Senator Hardt

Senator Wright then presented the following motion:

"That this Committee recommend to the Legislature, that certain areas of the correctional system be recommended for privatization."

Representative Williams seconded the motion.

Representative Updike asked if this would mean letting out contracts for food services to Marriot, etc., and Senator Wright explained that she was not making specific recommendations but the intent was for areas where it would be the most feasible, for instance the women's division of DOC, could be let out to a private contractor. She stated that certain prisons already let out food service contracts.

Senator Corbet asked if Senator Wright would accept a substitute motion, since in most areas of DOC they already have the power to contract with private firms for everything. He stated that it is in statute today that they have the authority to negotiate and contract with private firms for most everything.

Senator Corbet offered the following substitute motion:

"That this Committee make specific recommendation that the DOC be mandated to utilize the private sector where possible."

After considerable discussion it was suggested that the wording "concentrating on new facilities and private financing of construction" be added.

Senator Corbet agreed to this and Senator Wright seconded the motion, after the addition of the last phrase.

Senator Arzberger stated that he feels Senator Corbet's substitute motion is too broad. He stated again that he feels prisons should be run by the government. He said he is not opposed to private industry constructing the prison but he feels that guards and correctional officers should be controlled by the state. He explained that it costs a lot of money to train a guard or correctional officer and then many times they do not stay long; but go to work for the counties, etc.

Senator Patterson referred to Senator Arzberger's comments and said that if it is purely a philosophical problem with private enterprise performing certain functions there is nothing to be said that would be helpful, but the Committee

did receive a lot of testimony to the effect that even though there is not widespread experience on this there is getting to be a fair amount at different levels of government. He said he believes the problems of liability, the use of force and disciplinary procedures, of the accountability ultimately reverting to the State, have all been worked out and in practice there seemed to be no insurmountable problems. He stated most problems have already been worked out and these units are functioning satisfactorily to all concerned. He stressed that aside from a purely philosophical standpoint everything else is very manageable and the Committee has received much evidence to that point.

The vote on Senator Corbet's substitute motion was taken and by a vote of 6-1-1-2, the motion carried.

Voting Aye: Representatives Updike, Williams and Burns
Senators Patterson, Wright and Corbet

Voting No: Senator Arzberger

Voting Present: Representative Ortega

Absent: Representative McLendon and Senator Hardt

THE BRITISH COLUMBIA PRIVATIZATION ACTION PLAN

Co-Chairman Burns explained the Flow Chart, saying it starts off with an examination of specific government functions, usually keyed by private companies indicating they can perform these functions cheaper, or with persons within the government indicating areas that might be privatized. He continued that if that particular function is a candidate for contracting, the plan that British Columbia uses sets up a mechanism to indicate their intent. He explained that they used pamphlets, etc., to indicate their intent to their employees and then hold educational meetings for employees, explaining the contracting concept and explaining to them how their pensions would be affected, how their wages would be affected, etc. He stated they also assist the employees in setting up groups, or companies, and they provide assistance in how to establish a management function and how to acquire financing.

Co-Chairman Burns then explained that the next step in the British Columbia Plan was to call for an expression of interest, which is a public announcement to request proposals from parties who are interested. He said that if they receive expressions of interest from employees these would receive priority if they are qualified, and if qualified they would receive a 5% preference on the contract. He said there were also other concessions given to employees.

Mr. Burns stated that in the event there were no expressions of interest from employees, it would then go to bids from the private sector.

There was considerable discussion on this plan, with Senator Wright asking if this conflicts at all with the first recommendation from this Committee. Co-

Chairman Burns stated that he didn't believe it was in conflict, that if the mechanism for the petition of interest was put in place it would work with this proposal. He emphasized this would require further evaluation.

Senator Wright made the following motion:

"That this Committee recommend that further study of the British Columbia Privatization Action Plan be carried on."

Representative Updike seconded the motion.

Senator Patterson commented he feels what is referred to here is asset sales to employees and he said he has a problem with including a specific reference to British Columbia, since some people would not be familiar with this plan. He said this is also more specific than any of the other Committee recommendations. He stated that he would like for the recommendation to say that the Committee feels the concept of asset sales to employees should be pursued.

Senator Wright said she would be happy to have Senator Patterson rephrase the motion. After discussion Senator Wright agreed on the following:

"That this Committee recommend to the Legislature that further study of the British Columbia Privatization Action Plan, or similar plans, be carried on."

Co-Chairman Burns asked if the second was still in agreement and Representative Updike said she is concerned that the focus was being put on the purchasing of assets and not on procedures to develop a privatization plan, rather than selling state assets.

Co-Chairman Burns commented he was not sure it is just the sale of assets but was a contracting situation where there may not have been the sale of assets involved.

Senator Wright called for the question on her motion and by a vote of 9-0-1 the motion carried.

Voting Aye:	Representatives Williams, Updike, Ortega and Burns Senators Patterson, Wrights, Corbet, Hardt and Arzberger
Absent:	Representative McLendon

CONTINUATION OF THE COMMITTEE

Co-Chairman Burns asked for a formal motion that would recommend to leadership that this Committee be continued. He stated there were still many areas to look into.

Senator Wright moved the following:

"That recommendation be made to the Speaker of the House and the President of the Senate that the Joint Committee on Privatization be continued indefinitely."

Senator Patterson seconded the motion and by a vote of 9-0-1 the motion carried.

Voting Aye: Representatives Williams, Updike, Ortega and Burns
Senators Patterson, Wright, Corbet, Hardt and Arzberger

Absent: Representative McLendon

Senator Wright announced it was hoped that JLBC would have car pool data ready for the Committee before the end of the session.

Senator Hardt commented that all the members had benefited by serving on this Committee and that he was amazed to hear the testimony from DOC; that he did not know they were involved in that much private contracting.

There being no further business, the meeting was adjourned at 10:30 a.m.

Respectfully submitted,

Jean McFarland
Committee Secretary