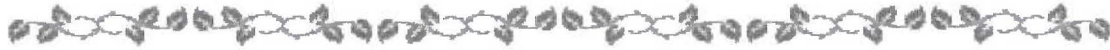


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COMMITTEE ON GOVERNMENT OPERATIONS

Chair: Sen. Donovan Dela Cruz

Vice Chair: Sen. Clarence Nishihara

Tuesday, February 17, 2015

1:20 p.m.

Room 414

LATE

SUPPORT w/ AMENDMENT for SB 1228

SPO to DEVELOP RULES FOR PUBLIC-PRIVATE PARTNERSHIPS

Aloha Chair Dela Cruz, Vice Chair and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for almost two decades. This testimony is respectfully offered on behalf of the 5,600 Hawai'i individuals living behind bars, always mindful that more than 1,600, and soon to be rising number of Hawai'i individuals who are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 1228 requires the state procurement office to develop draft rules regarding public-private partnerships in Hawai'i and to report the draft rules and any proposed legislation to the legislature.

Community Alliance on Prisons supports this measure provided that the bill is amended to read that the rules go out to public hearings for input from impacted communities.

Our deep concerns about public-private partnerships are ignited by statements such as this:

"Desperate government is our best customer.

There will be a lot of desperate governments out there"

Chairman of a major finance company specializing in infrastructure privatization,
addressing the annual meeting of the National Council for Public-Private Partnerships
in the midst of the financial crisis in 2008.

Hawai'i needs to do a better job of asking the right questions before a decision a decision is made with which we will all have to live.

Too often, the public good and public trust is ignored when basic questions are not asked and answered; vital information that is needed to decide whether it's a good idea.

There's an easy solution. Public officials, advocates and the media should ask these simple ten questions - and get the answers - before any final decision is made. It's a test to see if these deals will help, or hurt, the public interest.

Community Alliance on Prisons respectfully suggests that the SPO also consider the following questions in the public interest when reviewing agreements.¹

1. Does the contract limit the public's democratic rights?
2. Does the public still have the "Right To Know"?
3. Are there perverse incentives that could work against Hawai'i's public policy goals?
4. How will the state hold the contractors accountable to the public?
5. Does the state have a Plan B?
6. Will there be outsourced jobs and if so, how many, and will everyone still have health care benefits?
7. What are the limits on the private contractor's ability to raise fees or rates?
8. How long is the agreement and how often is it reviewed?
9. Has the public been notified about the contract and has it been made available for public review?
10. Is there a process for public review of any public-private partnership? If so, what is it?

An article that appeared in the November 2013 Issue of Governing magazine read:

There's a growing cadre of academics, activists, and state and federal auditors who question these public-private deals, but their voices aren't always heard. At that Senate hearing, for instance, none of those dissenting views was represented on the panel. Nor did the hearing highlight what *the governments' own accountants say about P3s—namely that they are unlikely to solve the country's infrastructure funding gap and, in some cases, may carry risks for state and local governments. "Whenever I see advocacy [for P3s], I look for real economic analysis that justifies privatization," Cate Long, a municipal finance blogger for Reuters, recently wrote. "It's never there."*

Increasingly, it seems the discussion of P3s isn't about whether it's wise for governments to enter the deals; it's about how governments can best facilitate them. Although former Congressman Jim Oberstar, who chaired the House Transportation Committee from 2007 to 2011, argued that P3 deals would trample the public's interest, today criticism from most lawmakers "has almost disappeared," says Robert Puentes, a P3 expert at the Brookings Institution. "It's not even political anymore."

A recent report from New York State Comptroller Thomas DiNapoli says that the deals can be viewed as a form of "backdoor borrowing" that helps lawmakers get around laws requiring voter approval for issuing certain types of debt.

At its best, private investment can save the public money and improve services in the long run. At worst, it can burden the public with costs that could have been avoided, while degrading the quality of or limiting access to essential services.

As New York explores the potential risks and benefits of P3s, policy makers should keep in mind that private financing does not alter the fact that the entire cost of public infrastructure will always be borne by the public.¹

A report released by In the Public Interest² in June 2014 concludes:

For decades, governments rushed to hand over control of public services to for profit and other private entities under the promise that services would be performed better, faster and cheaper. Unfortunately, all too often this promise failed to materialize – and communities across the country must deal with the disastrous results because they locked themselves into long-term contracts.

But the past few years produced a shift in the outsourcing debate, largely as a result of greater public awareness of the dangers of reckless outsourcing, emerging research and arguments for responsible contracting, and a robust effort by taxpayers to reclaim control of their services. ***To date, 19 states introduced responsible contracting reforms and four were signed into law. In the Public Interest anticipates this trend will continue as the public, lawmakers and the media continue to read the fine print of outsourcing deals and discover that taxpayers handed over too much control of their public services to private entities.***

From the article in Governing magazine:

The challenge lies in how governments analyze potential P3 deals. To do so, they estimate the cost of traditional procurement compared to a hypothetical P3 offer. But the analysis can include some factors that are subjective, and it may not consider factors that can't be easily quantified.

A recent California Legislative Analyst's Office (LAO) study of two P3 deals—one for the Presidio Parkway in San Francisco and one for a new courthouse in Long Beach—found that state officials were making assumptions that favored privatization. **By the LAO's own estimates, traditional procurement would have saved \$300 million on the two deals.**

In a famous case, the California Department of Transportation used a P3 to build and operate express lanes that opened in the center of California State Route 91 in Orange County in 1995. When the government wanted to expand parts of the roadway to alleviate congestion, it was blocked by a “non-compete” clause in the 35-year contract. Following litigation, the government ultimately bought out the private partner. Just seven years after the express lanes opened, the county's transportation authority paid \$207.5 million for the \$130 million project.³

¹ ***Private Financing of Public Infrastructure: Risks and Options for New York State***, Thomas P. DiNapoli, New York State Comptroller, June 2013. http://www.osc.state.ny.us/reports/infrastructure/p3_report_2013.pdf

² ***SHIFT How Taxpayers Began Reclaiming Control of Their Public Services***, In the Public Interest, June 2014. <http://www.inthepublicinterest.org/article/shift-how-taxpayers-began-reclaiming-control-their-public-services>

³ ***Public-Private Partnerships Are Popular, But Are They Practical?*** Public-private partnerships have become a trendy way to finance transportation projects. But there are big questions to ask before entering into a P3, BY RYAN HOLEYWELL, Governing magazine, NOVEMBER 2013. <http://www.governing.com/topics/transportation-infrastructure/gov-public-private-popular.html>

“Corrections Corporation of America apparently left ALEC in late 2010 in the wake of controversy over expanded seizure and warehousing of immigrants, but numerous bills approved while CCA led or had a seat on that task force--bills that privatize prisons, expand the use of low wage prison labor, extend the sentences of prisoners (and occupancy rates) and increase detention of immigrants—remained on ALEC’s agenda as templates for state policy long after CCA left. And ALEC has never repudiated the private prison agenda or worked to repeal bills that had been adopted across the country and that it previously touted as its successes.”

REGARDLESS OF ITS RECENT EFFORTS TO SPRUCE UP ITS IMAGE, ALEC PLANS TO FOCUS EVEN HARDER ON ITS CORE ECONOMIC AGENDA, WHICH IS ANTI-UNION, ANTI-REGULATORY AND PRO-PRIVATIZATION.⁴

According to a report by the Institute on Money in State Politics, between 2000 and 2004 private prison companies and companies that provide prison services gave a total of \$3.3 million in 44 states. Of that total, \$2.1 million was concentrated in 22 states that had “three-strikes” laws on their books. The industry has earned a huge return on that investment in political giving and lobbying. In June, the nonprofit Justice Policy Institute noted that the two largest private prison companies reported \$2.9 billion in profits in 2010.

Those profits are evidence that private prison companies such as the Corrections Corporation of America and their financial backers have powerful reasons to subvert public policies designed to reduce spending on incarceration and sensibly reduce the number of nonviolent offenders being held in the nation’s prisons. As Adam Sewer of The American Prospect noted in a review of the JPI report,

...every good idea criminal justice experts have come up with over the past twenty years to reduce prison costs and the devastating social impact of mass incarceration on marginalized communities, from non-custodial sentencing to reforming drug laws to innovation in parole and probation, hurts the CCA’s bottom line and it’s in their financial interest to oppose any change that might lead to fewer people being locked up.

GUPPIES IN THE SHARK TANK

Community Alliance on Prisons’ research into the corporations that negotiate these public-private partnership deals show that these corporations employ attorneys whose practice is nothing but deals like this. These “deals” generally work in stages. First they send in the salespeople who entice the local governments; next they send in the integrators who work with the state to ensure the advantages of their clients; and then they send in the mechanics that do the “work” of the deal.

⁴ *Predatory Privatization – Exploiting Financial Hardship, Enriching the 1%, Undermining Democracy*, People for the American Way, <http://www.pfaw.org/rww-in-focus/predatory-privatization-exploiting-financial-hardship-enriching-1-percent-undermining-d>

“...even though governments employ consultants in the negotiations, the lawmakers themselves ultimately have to approve the deal. Legislators face a huge disadvantage since few of them have negotiated those type of deals in the course of their careers. And lawmakers focused on re-election may not be as concerned with the implications of a 50- or 75-year deal, since those implications may only be fully understood long after a lawmaker has left office.

Where does that leave a state or local official? Schank of the Eno Center warns that the public and private sector have widely different goals that often aren't aligned.

The problem, he says, is that the private sector comes to the negotiating table with less to lose than the government, and it is also more willing to walk away.

That needs to change, critics argue, and a healthy degree of skepticism is needed to ensure the best outcome for the public.⁵

“While large corporations are the winners in this scenario, all too often taxpayers are the losers when transparency, accountability and the public interest are sold out to for-profit firms.”

Pay to Prey - Governors Facilitate the Predatory Outsourcing of America's Public Services
CENTER FOR MEDIA AND DEMOCRACY, October 2014

These are big public policy decisions that, in the interest of democracy, demand public scrutiny. Community Alliance on Prisons respectfully asks the committee to consider our amendments in the interest of transparency and accountability – the essential elements to a true democracy!

Mahalo for this opportunity to testify.

⁵ *Public-Private Partnerships Are Popular, But Are They Practical?*