

July 1999

PRIVATIZATION STUDY - BACKGROUND MEMORANDUM

Section 2 of Senate Bill No. 2411 (attached as an appendix) directs the Legislative Council to study privatizing and contracting for services provided by state agencies. The section requires that, as part of the study, information be requested from representatives of the executive branch, judicial branch, higher education, public employee organizations, entities that have contracted with state agencies for services, and businesses or other entities that are interested in providing services for, or in place of, state agencies.

1999 LEGISLATION

Section 1 of Senate Bill No. 2411 allows the state records administrator and the Office of Management and Budget to contract for microfilm services if the services can be provided more efficiently and economically through contracting.

The Governor recommended that, for the 1999-2001 biennium, the State Auditor's office contract for performance audits rather than conducting them with state personnel and recommended appropriating \$100,000 for this purpose. The Legislative Assembly continued funding for three performance auditor positions within the State Auditor's office that the Governor had recommended converting to information technology auditors and also appropriated \$100,000 from the general fund for contracting services relating to performance audits.

PRIVATIZATION - DEFINITION AND METHODS

Although there are many definitions of privatization, generally privatization is the involvement of the private sector in providing services or facilities usually provided by the public sector. Major methods of privatization include:

1. Contracting with the private sector to provide services.
2. Operating public facilities by the private sector.
3. Selling certain government assets to the private sector.

Other methods of privatization may include grants and subsidies, leases, public/private partnerships, and vouchers.

PREVIOUS STUDIES

The 1991-92 interim Budget Committee on Government Services studied the privatization of some state government services and also studied the privatization of services by the Department of Human Services and the feasibility and desirability of the Department of Human Services privatizing alcohol

and drug treatment services. The committee recommended House Bill No. 1026, which was not approved by the 1993 Legislative Assembly but which would have required a state agency to submit a report to the Senate and House Appropriations Committees during each legislative session on any action taken by the agency since the last legislative session to contract with the private sector for services and on any recommendations for future privatization of public services. In addition, the bill provided that when new positions or programs are requested by an agency, the agency must report to the Appropriations Committees on the consideration it gave to privatization in arriving at the request for additional FTE positions.

TRENDS IN PRIVATIZATION

State government services that have historically been contracted with the private sector include construction, information technology development, printing, and technical consulting.

A 1997 Council of State Governments report entitled *The Private Practices: A Review of Privatization in State Government*, reports that privatization has increased in the past five years and that the trend should continue for the next five years.

Agencies identified in the report as being the most involved in privatization activities include transportation, administration and general services, corrections, higher education, and social services. Agencies reporting the least amount of privatized services were education, labor, public safety, and the treasury.

The report indicates that although officials indicated the reason for privatizing services is to save money, the figures reported by survey respondents do not indicate impressive savings. This is due in part to the difficulty in calculating any savings resulting from privatizing services. Most respondents could not estimate the percentage of cost savings. Of those who did, most indicated a savings of less than five percent to state government.

The states responded that the major reasons for increasing privatization activity were:

1. Cost savings.
2. Increased support of political leadership.
3. Flexibility and less red tape.
4. Speedy implementation.
5. Lack of state personnel and expertise.
6. Increased innovation.
7. High-quality service.

The report identifies advantages and disadvantages of privatization. Advantages of privatization include:

1. Saving money in management and service delivery for the public.
2. Speedy implementation of certain programs.
3. High-quality services in some areas.
4. Provides expertise or personnel to carry out certain programs.
5. Private providers use more innovative approaches and technology.
6. Helps to dissolve unnecessary government monopolies.
7. Private providers offer services more effectively due to flexibility and less red tape.
8. Slowing the growth of government or downsizing government.
9. Introduces competition between government employees and private providers.
10. Provides an alternative to traditional ways of improving government productivity.

The disadvantages of privatization include:

1. Does not save government and taxpayer money.
2. Does not guarantee market competition and can result in private monopolies.
3. May lead to corruption, including political patronage, kickbacks, or bribes.
4. Policymakers and managers lose control over privatized services and functions.
5. Diminishes accountability of government officials.
6. Private gain and public good do not always correspond.
7. Other productivity improvement approaches may be available.

8. The quality of privatized services and functions are compromised due to private providers' profit motives.
9. Lowering state employee morale and bringing a fear of displacement to affected employees.
10. May destabilize economically marginal communities and neighborhoods.

STUDY OUTLINE

The committee may wish to proceed with this study as follows:

1. Review findings and recommendations of the 1991-92 interim study relating to privatization.
2. Survey state agencies on services privatized and the potential for privatizing other services of the agency.
3. Receive testimony on select services that are privatized and on potential services that may be privatized.
4. Receive information on privatization and suggestions for privatized services from the North Dakota Public Employees Association and other employee organizations, private businesses, and other organizations.
5. Receive testimony from other interested persons on privatization and suggestions for state government services to privatize.
6. Develop committee recommendations and prepare any necessary legislation to implement committee recommendations regarding privatization of state government services.

ATTACH:1

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE BILL NO. 2411
(Senator Kilzer)

AN ACT to amend and reenact section 54-46.1-01 of the North Dakota Century Code, relating to the provision of microfilm services; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-46.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-46.1-01. Central microfilm unit - Contracting for services. The state records administrator shall establish and maintain a central microfilm unit and microfilm any record of any state office, agency, or department in either the executive, legislative, or judicial branch of state government, if the administrator determines the cost of ~~such the~~ microfilming is reasonable in relation to the record's historical significance or the frequency and type of use of the record. If the administrator and the office of management and budget determine that the services called for in this chapter can be provided more efficiently and economically through contracting with private contractors, the administrator may enter into such contracts or require an agency to use the services of a contractor as allowed by section 54-46.1-05. Release of records to a contractor for microfilming under this section or section 54-46.1-05 is not a violation of section 12.1-13-01, 54-46.1-07, or any other law that provides for any civil or criminal penalty for the release of certain records. A contractor hired by the administrator under this section or by an agency under section 54-46.1-05 may not disclose any information from any record, disclose any record the contractor receives for microfilming services, or make or retain a copy or other reproduction of a record not required by the contract to be made. Any contractor hired by the administrator under this section or by an agency under section 54-46.1-05 is subject to the penalties provided by law for unauthorized release of public records, and the contractor must agree to fully comply with all applicable state or federal laws or rules prohibiting release or public records. Each office, agency, and department shall reimburse the central microfilm unit for the actual costs incurred in microfilming its records. The administrator shall deposit moneys received under this section in the information services operating fund. The administrator shall employ professional, technical, and clerical personnel as the administrator determines to be necessary to carry out the duties prescribed in this chapter and, within the limits of the legislative appropriation, shall fix the salaries of all employees within the central microfilm unit. All personnel within the central microfilm unit must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state. The administrator may perform microfilm services for any state institution and for any county, when the institution or county requests such services and the administrator agrees that the request is consistent with good records management practices.

SECTION 2. LEGISLATIVE COUNCIL STUDY OF PRIVATIZATION OF SERVICES PROVIDED BY STATE AGENCIES. During the 1999-2001 interim, the legislative council shall conduct a study of privatizing and contracting for services provided by state agencies. In conducting the study, the legislative council shall request information from representatives of the executive branch, the judicial branch, higher education, public employee organizations, entities that have contracted with state agencies for services, and businesses or other entities that are interested in providing services for or in place of state agencies. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.