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10/16/03
Date

2003 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1433

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1433

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2-06-03

Tape Number	Side A	Side B	Meter #
2	x		0-28.
1		x	19.-end
Committee Clerk Signature <i>Joseph Rinko</i>			

Minutes: Chairman Klein: called the hearing to order on HB 1433. All committee members were present.

Representative Dan Ruby: appeared in support of the bill and also sponsored the bill. There is a new approach to privatization idea that was being tried at the national level. **(SEE ATTACHED TESTIMONY).**

Representative Winrich: Choice of departments I find to be curious. In the state right now it is in the law to contract services, do you have some evidence to show the directors aren't identifying the services that can be provided by private contractors?

Representative Ruby: no, I'm not a witch hunt for any particular department.

Representative Winrich: what concerns me about your answer, is that you don't know that there might be other areas, and that you guess the state might be saving money by contracting out and so on. I suspect with a little investigation we might be able to answer these questions.

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House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1433

Hearing Date 2-06-03

I would guess that the internal audits ordered in this legislation are going to be rather expensive for these agencies and I don't think we need that added expense.

Representative Sitte: I think the purpose here is a good one, do you have any data at all, have we saved money as in contracting for the bill room?

Representative Ruby: that I'm not sure of.

Representative Amerman: aren't we looking at a tremendous impact on state employees, as in lay offs and state agencies folding up?

Representative Ruby: I don't know if there will be a huge amount of that happening, there maybe some reductions thats kind of the idea of privatization in a way.

Representative Potter: do you have any idea per department for audits because I know they don't come cheap.

Representative Ruby: no I don't, I'm sure they would vary, depending on the size of the department.

Pam Sharp, Interim Director, of OMB: testified in opposition of HB 1433. **(SEE ATTACHED TESTIMONY).**

Representative Kasper: can you define strategic business reasons?

Pam Sharp: I think there is a line that are things so poor to any agency that they need to do that themselves. I am talking about saving money for the tax payers of N.D.

Representative Sitte: do agency heads have any flexibility right now?

Pam Sharp: Yes, they do, they can make that determination right now.

Todd Krand, Kelsch Law Firm: appeared in opposition of HB 1433. The concept of out sourcing and privatization is something that they certainly support, the main concern that we have is,

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House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1433

Hearing Date 2-06-03

professional services cannot be bid out. With respect to the concept we are OK with, but the way it is defined is the bidding, special services are not bid out, and there are other ways to determine what professional services are.

Arvy Smith, Deputy, State Health Officer, N.D. Dept. of Health: appeared in opposition of HB 1433. **(SEE ATTACHED TESTIMONY).**

Curt Wolfe, Chief Information Officer, Director of Technology Dept.: appeared in opposition of HB 1433. In some cases it is not always cheaper, but because we need the services provided by someone else, we don't have the staffing to do it. And we certainly go out and bid for the best provider for those particular services.

Mike Gresler, Deputy Director ITD: appeared in opposition of HB 1433.

Dave Spryncznatyk, Director, of N.D. Dept. of Transportation: appeared in opposition of HB 1433, mainly because we continually monitor the services we provide and that we are responsible for the people of N.D. and we feel that this is going to add to the process and to the expense as well. **(SEE ATTACHED TESTIMONY).**

Elaine Little, Director of the Dept. of Corrections: appeared in opposition of HB 1433. **(SEE ATTACHED TESTIMONY).**

Chris Runge, Executive Director, Public Employees Association: appeared in opposition of HB 1433

The employees benefits, salaries should also be considered when looking at private sector, is the only thing I'd like to add.

Representative Kasper: made a **DO NOT PASS** motion.

Representative Sitte: **SECOND** the motion.

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House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1433

Hearing Date 2-06-03

VOTE: 11 YES 3 NO 0 ABSENT.

Motion carried.

Representative Winrich: will carry the bill to the floor.

Meeting adjourned.

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10/16/03
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FISCAL NOTE
Requested by Legislative Council
01/21/2003

Bill/Resolution No.: HB 1433

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

We are unable to determine the fiscal impact of this bill.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

We are unable to determine the fiscal impact of this bill.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

We are unable to determine the fiscal impact of this fund.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Pam Sharp	Agency:	OMB
Phone Number:	328-4606	Date Prepared:	01/27/2003

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10/16/03
Date

IP

Date: 2-6-03
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1433

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken D.N.P.

Motion Made By Rep. Kasper Seconded By Rep. Sitte

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein	X		B. Amerman	X	
Vice Chairman B.B. Grande		X	L. Potter	X	
W.R. Devlin		X	C. Williams	X	
C.B. Haas	X		L. Winrich	X	
J. Kasper	X				
L.R. Klemin	X				
L. Meier		X			
M. Sitte	X				
W.W. Tieman	X				
R.H. Wikenheiser	X				

Total (Yes) 11 No 3

Absent - 0 -

Floor Assignment Rep. Winrich

If the vote is on an amendment, briefly indicate intent:

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Yolanda Richardson 10/6/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 6, 2003 11:46 a.m.

Module No: HR-23-1826
Carrier: Winrich
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1433: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman)
recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
HB 1433 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-23-1826

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2003 TESTIMONY

HB 1433

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10/16/03
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Testimony in opposition of HB 1433
Government and Veteran's Affairs Committee

Good Morning Chairman Klein and members of the committee. For the record, my name is Pam Sharp. I am the Interim director for the Office of Management and Budget.

HB 1433 mandates that internal audits of four agencies be conducted on a regular basis with no clear end or goal. The Office of Management and Budget would decide which services should be bid.

OMB opposes this bill.

More specifically, this bill would require the director of the office of management and budget to determine as to which services could feasibly be let for bid for another agency. The four agencies mentioned in this bill are very specialized. They are far more qualified than OMB to make outsourcing decisions, as no agency can possibly know another agency's business in that detail.

In addition, outsourcing should only be done for strategic business reasons. Outsourcing for the sake of outsourcing makes no sense.

Over the years, as agency budgets have gotten tighter, and the FTE count has been scrutinized more and more, agencies have looked at alternative ways to fulfill their missions and to spend their money in the most efficient way possible. Frequently, this involves contracting for services, which has been a long-time common practice in state government.

During the hearing before this committee on HB 1180, which would require agencies to follow OMB guidelines when contracting for services, you heard the Auditor's Office testify that during their performance audit of service contracts, they identified over 2,200 contracts for services. In addition, in fiscal years 1997, 1998 and 1999, payments made in conjunction with those contracts for services exceeded \$272 million. I would dare to guess, that the volume of service contracts has grown since then.

One of management's fundamental responsibilities is to find the best way to get the job done – whether doing the job in house or outsourcing. In

making that determination, agencies are fulfilling what this bill would require – identifying and reviewing services they provide and determining which of those services would be appropriate to outsource.

I believe outsourcing is not only useful, it is a necessity in many applications of state government, however it must be done for the right reasons. The decision to outsource must be made based on careful analysis and strategic planning, and must be a good fit for the agency.

These four have a solid track record in making outsourcing decisions, as you will hear in their testimony. They are in the best position to decide whether to outsource or not.

For those reasons, I urge this committee to recommend a do not pass on this bill.

Chairman Klein, that concludes my testimony.

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10/16/03
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December 27, 2002

Printing office cuts price, wins bid to handle 2004 budget

By Brian Friel
bfriel@govexec.com

The Office of Management and Budget has picked the Government Printing Office to print the fiscal 2004 budget after threatening to contract out the job if the printing office couldn't underbid private contractors.

An OMB spokesman said the printing office, a legislative branch agency that handles much of the government's printing work, cut its price for printing the budget by 23 percent, from \$505,370 this year to \$387,000 next year. In a Dec. 24 memorandum, OMB told GPO that the printing office could print the budget in 2003.

Had GPO lost the competition, next year would be the first time the printing office didn't print the annual budget documents.

OMB put the budget job up for bid in October, bucking a congressional order to give the work to the printing office. Congress included a specific directive about the fiscal 2004 budget in several spending bills this fall.

But Bush administration officials argue that Congress cannot force executive branch agencies to use the printing office. In fact, the administration is preparing a change to federal procurement rules that would end a century-old requirement that agencies go through GPO for most printing work. The change would require agencies to seek private bidders to compete with the printing office.

In putting the budget out to bid, the administration was, in part, trying to demonstrate that competition cuts costs and improves service. OMB Director Mitch Daniels has said that competition could save the executive branch \$50 million to \$70 million per year in printing costs.

The printing office has fought OMB's effort, arguing that centralization is the most efficient way to handle the government's printing. They say the OMB approach would require agencies to set up their own printing procurement offices to do the same thing GPO already does, costing the government hundreds of millions of dollars a year. GPO contracts with private printers for much of the work it

<http://www.govexec.com/dailyfed/1202/122702b1.htm>

2/4/2003

handles for agencies.

Agencies may also run into trouble with the General Accounting Office, a legislative branch agency that oversees the use of federal funds. In a Dec. 16 decision, GAO General Counsel Anthony Gamboa said a Bureau of Land Management office cannot pay a \$20,000 bill for copying legal files at Kinko's because it should have gone through GPO for the copying job. The printing office could have handled the job for only \$6,000.

"Since there was no authority to contract with Kinko's for the photocopying services, the contract imposed no legal obligation on the government," Gamboa said. "The United States is [not] bound ... by the acts of its employees in entering into, approving or purporting to authorize the contract even though the government may have received the benefit of the photocopying."

The printing office will print the fiscal 2004 budget in January. The Bush administration will issue the budget in February.

<http://www.govexec.com/dailyfed/1202/122702b1.htm>

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HB1433
Rep. R. L. B. J.



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I. Context

In 1997 the City of Atlanta privatized their waterworks system, entering into a 20-year contract with United Water. At the time, it was the largest and longest privatization of infrastructure in U.S. history. The deal garnered many awards including one from the National Council on Public-Private Partnerships and the U.S. Conference of Mayors.

However, in the past few months several issues have arisen in Atlanta regarding the performance of the water system, contractor payments or change orders, and the status of the system before the contract was entered into. Ultimately, while not perfect, the Atlanta water privatization presents a valuable opportunity from which to learn—if nothing else, it teaches us what not to do.

In order to do this, we talked with many parties, including representatives from United Water, consultants, and city officials who were involved in the original privatization. Because of the continued contentiousness of the issue many people were not able to comment—at least not on the record. This report does not place blame on either party, nor does it have “the answer” to fixing the problems.

Related Links

Long-term Contracting for Water and Wastewater Services. Robin A. Johnson, John McCormally, and Adrian T. Moore, How-to Guide No. 19, May 2002. Examines the rapidly growing phenomenon of long-term contracts for water and wastewater services and provides lessons learned and best practices gleaned from the experiences of public and private practitioners. [More Info](#)

Opening the Floodgates: Why Water Privatization Will Continue by Robin Johnson, Policy Brief 17, August 2001. Explores several case studies and trends related to privatization of water and wastewater utilities. [Full Text](#)

Infrastructure Outsourcing: Leveraging Concrete, Steel, and Asphalt with Public-Private Partnerships By Adrian T. Moore, Geoffrey F. Segal, and John McCormally Policy Study No. 272, September 2000. Explores the record of outsourcing for infrastructure construction and management in lowering costs, improving quality, and achieving other goals. [Full Text](#) | [News Release](#) | [More Info](#)

Privatization Watch-The Water/Wastewater Issue (1/3) As public-private partnerships become increasingly important,

<http://www.rppi.org/atlantawaterprivatization.html>

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However, it does recognize that in order for the partnership to work, in the long run, both sides must be willing to make concessions.

The experience in Atlanta, while often cited as a failure of privatization, is not the death knell of water privatization. In fact, it is quite the contrary. The bottom line is that the drivers that originally pushed Atlanta toward privatization exist, worldwide—and in many ways still do in Atlanta. Even more importantly the experience gives us valuable lessons to apply to future water privatizations.

II. The Push Toward Privatization – The EPA and GAO Reports

In the last few years both President Clinton's Environmental Protection Agency (EPA)[1] and the U.S. General Accounting Office (GAO) have reported about the quality and environmental benefits associated with privatization of water and wastewater services.

The EPA endorsed privatization as a means by which local governments can meet environmental standards. Indeed the EPA wrote, "[Privatization case studies] provide concrete examples to local officials of how successful partnerships and other models can be used by communities to provide needed environmental services more efficiently. They also show how public-private partnerships can be used as a way to provide substantial benefits to both the public and private sectors, creating the classic 'win-win' situation." [2]

In August, the U.S. General Accounting Office (GAO) released a critical report on the status of U.S. water and wastewater infrastructure.[3] The report noted that municipalities have been

accurate, up-to-date information is critical. *Privatization Watch*, now 100% bigger with a circulation of almost 12,000, is here to fill that need. In the November issue, articles include: [Atlanta Water Privatization](#), [Performance-based Sewage Treatment](#), [Major Water Contracts](#), and many more. Click [here](#) for more info.

Privatization 2002. In its 16th year of publication, the Annual Privatization Report tracks the latest trends in privatization like no other document can. If you need to know what is happening in the fast-moving arena of government reform, privatization, outsourcing, and e-government, then the Annual Privatization Report is the ideal source. [Full Text PDF](#) | [News Release](#) | [Reader Survey](#) | [Email the Editor](#) | [More Info](#)

Thirsty for Solutions. (1/2) California's water wars received national attention recently when a potential water transfer from agricultural Imperial Valley to urban San Diego fell through at the last minute, resulting in a major loss of water for all of California. [Full text](#)

Politics as Usual Blocks Water Deal. (12/11) Officials in the farming community of Imperial County rejected a deal to transfer water to San Diego, invoking a federal mandate that could throw water usage from Sacramento to San Diego in disarray. [Full text](#)

Water Deal for San Diego (10/18) After more than a year of negotiations, officials have finally reached an agreement to transfer water from the Imperial Valley to San Diego County. [Full Text](#)

Indian Summary. (9/24) A recent trip to India highlighted how important development will be to environmental quality and biodiversity in that country. [Full Text](#)

Moving on from Sustainability. (8/21) The aims of the World Summit on

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HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
February 6, 2003

North Dakota Department of Transportation
David Sprynczynatyk, P.E., Director

HB 1433

Mr. Chairman and members of the committee: I'm David Sprynczynatyk, Director of the North Dakota Department of Transportation. Since the department already goes through a similar process and outsources a significant portion of its budget, HB 1433 adds unnecessary steps and expense. Thus the NDDOT is in opposition to HB 1433.

NDDOT is actively involved in auditing and monitoring work activities and outsourcing work activities to the private sector. The department's decision to outsource is based on many factors, including type of work activity, availability of NDDOT staff and equipment, availability of private-sector staff and equipment, cost to complete the project, and the urgency of the need for the activity.

During the 2001-2003 biennium, NDDOT will outsource more than \$450 million to the private sector (see attachment). Almost \$11.5 million is projected to be outsourced for preliminary engineering activities. More than \$7.6 million of the construction engineering will be outsourced. In addition, about \$11.6 million in preliminary and construction engineering projects that the department passes on to the cities and counties is outsourced. These projects are not included in the attachment.

Our Information Technology Division will outsource more than \$560,000 in equipment service contracts and about \$500,000 in printing contracts. Our district operations have also privatized several activities. Almost \$975,000 in weed control activities, and more than \$1 million in rest area maintenance, will be outsourced this biennium.

NDDOT's current budget for maintenance activities is about \$27 million, excluding snow and ice control. By the end of the biennium, the department will have outsourced almost \$19 million -- about 70 percent -- of the maintenance budget, for everything from contract patching to weather forecasting. Almost \$3.9 million -- 75 percent -- of state fleet vehicle repairs is outsourced, with the balance performed by district personnel.

Sixteen privatized branch offices issue vehicle registrations throughout the state. Although we do not pay for these offices to conduct business for the department, we allow the offices to charge a fee for the service provided. If the offices were operated by the department, we would incur an additional \$3.5 million in expenses per biennium. This includes about \$3.15 million in salaries for 44 employees, with the remainder going for rent, telephone, and office supplies.

NDDOT construction projects are also completed by the private sector. In the current biennium, the department will spend about \$411 million for construction contractor services.

Combining all outsourced activities, the attachment shows that the department will outsource more than \$458 million to the private sector this biennium. Our 2001-2003 budget estimated that the department would have about \$702 million in total expenditures, which means that about 65 percent of our expenditures are paid under contract to the private sector.

We have been actively involved in privatization and will continue to look at means of effectively serving the public. Our consultant services expenditures alone have increased more than 1,400 percent since 1990. We oppose HB 1433 because it does add additional expense and steps to a process that has been working very well.

Mr. Chairman, that concludes my testimony. I will be happy to answer any questions the committee may have.

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Attachment

NDDOT ACTIVITIES OUTSOURCED DURING 2001-2003 BIENNIUM	
Activity	Dollar Amount
Preliminary Engineering	\$11,488,000
Construction Engineering	\$7,601,000
Right-of-Way (appraisals, negotiations, etc.)	\$128,430
Misc. Activities in Bridge and Design Divisions*	\$264,300
Information Technology Division	
• Technical Training	\$161,450
• Equipment Service Contracts	\$566,640
• Outside Printing	\$500,000
• Other Services**	\$447,800
State Tourist and County Maps	\$132,400
District Operations	
• Janitorial Services	\$206,500
• Weed control	\$974,600
• Rest Area Maintenance	\$1,025,100
• Misc. Activities***	\$291,700
Maintenance Activities	
• Roadway Maint.(Excludes snow & ice control)****	\$19,246,000
• Weather/Maintenance Forecasts	\$100,000
• Consultants for Rest Area Projects	\$263,000
State Fleet Vehicle Repair/Vehicle Disposal	\$3,898,000
Public Relations	\$300,000
SUBTOTAL	\$47,494,920
Construction Contractor Payments	\$411,000,000
TOTAL	\$458,494,920

- Includes ecour analysis, USGS contracts, cultural resources, surveys, etc.
- ** Includes photo processing, presorting, computer consultant services, janitorial services, etc.
- *** Includes parts washer service, copier agreements, missile road repairs, field office rent, etc.
- **** Includes seal coats, thin lift overlays, contract patching, pavement markings ,etc.

Testimony

House Bill 1433

House Government and Veterans Affairs Committee

February 6, 2003

8:30 a.m.

North Dakota Department of Health

Good morning Chairman Klein and members of the House Government and Veterans Affairs Committee. My name is Arvy Smith, and I am the Deputy State Health Officer for the North Dakota Department of Health. I am here to provide testimony in opposition of House Bill 1433 regarding the bidding of services that are provided by various departments, including the Department of Health.

Although contracting for services through competitive bidding is typically sound fiscal policy, it is not always allowable or appropriate. House Bill 1433 provides adequate discretion as to what services are ultimately sent out for bids. However, it adds a lot of formality and bureaucracy to something we already do. In addition, it gives the Office of Management and Budget discretion about whether to contract services, as opposed to the department, the party ultimately accountable.

With the conservatism shown by the recent legislatures in awarding full-time equivalent (FTE) staff to state agencies, it is routine for the Department of Health to look for opportunities to contract services. Of the Department's \$120 million budget, \$57 million, or almost one-half, is awarded to various entities in the form of grants and contracts. More than \$42 million is passed through to local entities such as local public health units, natural resource entities, and other nonprofit entities in the form of grants to provide a multitude of programs or services for the department. In addition, more than \$15 million is contracted for operating fees, professional services, and information technology with entities such as other state agencies, universities, local associations, local units of government, private companies, and individuals. These contracts are for services such as training, architecture and engineering fees, research, and specialized lab services.

The accountability for performance of duties and responsibilities and for compliance with state and federal laws lies with the Department. The Department of Health is in the best position to determine whether or not contracting is most cost effective and in the best interest of public health in the state. For example, the Department is in the best position to determine whether a competitive market

for a highly technical service such as metabolic or Hepatitis C screening is in place.

The Department of Health has two other concerns with regard to bidding -- "low balling" and consistency in quality and service delivery. If there are not multiple providers readily available in the private sector there may not be a competitive sustainable market. A bidder could put in a low bid that didn't fully cover its direct costs, overhead, and profit; receive the contract the first year; and then increase its price the following year, above what it cost the Department to provide the service. Or, the contractor could fail to comply with contract requirements. Meanwhile the Department would have reduced the infrastructure needed to provide the service -- staff, equipment, and space -- and could no longer provide at that price without tremendous effort and startup costs. If there is not another competitive bidder in the market, the Department would be stuck with the higher price for the service or a potential disruption in service.

This leads to the next issue -- consistency in quality and service delivery. Awarding bids to the lowest responsible bidder can affect the timeliness, quality, and other factors of service delivery. To continually change providers would affect consistency of service delivery and increase our monitoring and oversight responsibilities with regard to the contract. One thing to keep in mind is that contracting does not reduce the requirements for documenting, reporting and compliance. This may be more costly for private providers to accomplish, and it will not eliminate our responsibility for oversight and quality assurance. We cannot tolerate lack of quality or service disruption of any sort.

The components the Department needs to look for in determining whether or not to contract a service are:

- State and federal authority
- Price
- Quality of service
- Stability of provider
- Availability of a competitive market
- Lack of Department resources or expertise such as staff and specialized equipment
- Need for services of a highly technical and nonroutine nature requiring specialization
- Need for independent review
- Desire for community ownership

We feel the Department of Health is in a better position to determine that these components are in place prior to the awarding of a contract.

This concludes my testimony on House Bill 1433. I would be happy to answer any questions you or other members of the committee may have. Thank you.



DEPARTMENT OF CORRECTIONS AND REHABILITATION

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February 6, 2003

Testimony on HB1433
House Government and Veterans Affairs Committee
Representative Matthew Klein, Chairman

The Department of Corrections and Rehabilitation (DOCOR) believes HB 1433 is unnecessary. The bill would require that the Department identify other services to contract out, in addition to those already provided on a contract basis. This would be difficult and I believe counterproductive since the Department already contracts out those services that can be provided most effectively by the private sector. Generally the services that the Department provides in-house are those direct services for which the State of North Dakota is responsible, primarily the direct housing, supervision and treatment of offenders.

Following is a list of the major services included in the Governor's executive recommendation for the Department of Corrections for the 2003-2005 biennium for which the Department contracts.

Prisons Division contract services:

• Medcenter One contract for physician services -----	\$ 243,720
• Dental services-----	360,000
• Optical services -----	27,360
• Psychiatric services -----	273,216
• Other medical services-----	43,368
• Chaplaincy services -----	168,000
• Outside prison/jail bed space -----	182,500
• Hospital care -----	1,645,540
Total Prisons Division -----	\$ 2,943,704

Field Services Division contract services:

• Bismarck Transition Center contract services -----	\$ 1,885,590
• Alcohol and drug treatment services – NDSH contract	1,875,472
• Halfway houses beds -----	2,263,634
• Community service contracts -----	380,000
• Cognitive Restructuring programs -----	130,658
• Community treatment contracts -----	373,937

Division of Juvenile Services (DJS)/Administration • 701-328-6390
DJS/North Dakota Youth Correctional Center • 701-687-1400

Prisons Division • 701-328-8100
Division of Field Services • 701-328-6190

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• Low -risk offender supervision ----- 138,700
 • Day Report Program ----- 220,643
 • Misc. other contracts ----- 194,037
 Total Field Services Division contracts -- \$ 7,462,671

Division of Juvenile Services contracts:

• Youth Correctional Center medical contracts ----- \$ 464,160
 • Youth Correctional Center chaplaincy services ----- 59,904
 • Youth Correctional Center janitorial services ----- 47,976
 • Youth Correctional Center waste disposal ----- 6,000
 • DJS community tracking services ----- 409,829
 • DJS community intensive in-home services ----- 118,669
 • DJS Day Treatment Programs with schools ----- 480,000
 • DJS care coordinator services ----- 43,461
 Total Division of Juvenile Services contracts -- \$ 1,629,999

The total of the contract services for all the DOCR divisions listed above is \$12,036,374.

The Department contracts with many different private sector entities and believes that many services can be provided as well and more cost effectively by the private sector. We do not plan to change this practice.

Submitted by
Elaine Little, Director

Division of Juvenile Services (DJS)/Administration - 701-328-6390
DJS/North Dakota Youth Correctional Center - 701-667-1400

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- We do outsource non-core services and contract for staff augmentation:

ITD contracted for the following services in 2002:

Internal wiring/network equipment install - Dell-Comm	\$ 311,627
Telephone Switch Maintenance and Support - Qwest	\$ 234,452
Network Transport - DCN/Local Telephone Companies	\$ 6,010,039
Long Distance - AT&T	\$ 664,040
Desktop Support and UPS Maintenance- Assn of Counties	\$ 89,513
Contract Programming - Various Vendors	\$ 2,422,964
Development of Electronic Data Mgmt Program-Binary Office	\$ 15,802
Development of Workflow Objects - Knowledge Lake	\$ 28,682
CD Creation - LTM Business Concepts	\$ 58,311
Document Design & Editing - Various Vendors	\$ 8,977
Technology Research - Meta, Gartner Group	\$ 105,805

Total Dollars Spent	\$9,952,212
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NORTH DAKOTA
PUBLIC EMPLOYEES ASSOCIATION



AMERICAN FEDERATION
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TESTIMONY IN OPPOSITION TO HB 1433
Before the House Government and Veteran's Affairs Committee
North Dakota Public Employees Association, AFT Local 4660, AFL-CIO
February 5, 2003

Chairman Klein, members of the House Government and Veterans Affairs

Committee, my name is Chris Runge and I am the Executive Director of the North Dakota Public Employees Association, AFT #4660. I am here to testify in opposition to HB 1433, a bill that would require certain state agencies to privatize government services. The bill, in its current form is overly broad and does not set out the parameters for privatization of government services.

Privatization is a term that has been used with frequently in state government and by the private sector. Those of us in public service know that concept well, too. It is the obligation and responsibility of this legislature to determine whether privatization is appropriate and to set the necessary limits on privatization. This bill does neither. If privatization of public sector services is going to be part of state government, then, we, as public employees want to be a part of that discussion. If the sponsors of this bill think that

Quality Services from Quality People

Testimony

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the government will save all sorts of money by privatizing certain agency functions, this bill then certainly lacks any accountability measures to prove its case.

As governments face ever-increasing pressures to cut taxes, without cutting services to the public, to redesign government to meet the needs of its population, one of the ways that government has chosen to meet that need is through privatization. Over the last few sessions we have seen bills privatizing county road services and privatizing the microfiche unit at ITD. Neither of those services were privatized.

The discussion on privatization comes down to one important question: Is the public better served when government relinquishes control and use of our tax dollars and responsibility for service delivery to the marketplace? NDPEA thinks it is critical to study this question before any wholesale privatization of any government service is allowed to occur.

Today, the privatization record around the country is mixed at best and some states have studied privatization such as Wisconsin and Kansas that resulted in privatization legislation. There were problems in Kansas and the privatization program was dismantled. We face the same issues those states did. This bill allows the Office of Management and Budget to determine the feasibility of privatizing an agency function and to request bids from interested bidders and from the department providing that service. How will state employees be involved in the process? What kind of training will they be provided on the bidding process? What mechanisms exists for citizens or legislators to be involved in the

privatization process? Where is the process or entity whereby the private sector, citizens, or legislators can make suggestions or lodge complaints about alleged competition or the use or misuse of privatized services? And where is the process that provides for the monitoring of services that have been privatized?

NDPEA believes strongly that before any legislation is passed allowing privatization as in HB 1433 that the Legislature take a close look at what is happening in the area of privatization. Saying that privatization works is not good enough without proof. Saying that privatization will be allowed simply by requiring an agency to identify a specific area is not good enough. Moving from a public sector monopoly to a private sector monopoly is not appropriate and not a good use of state resources in the long run. Short-term financial gains for loss of government control is not appropriate.

There are some areas in which public sector services have been privatized and short time later the government took back those services. There are many faulty assumptions concerning privatization:

1. Contracting out will save taxpayers money. How do you know?

Privatization is based on the assumption that free market competition will lower costs. But if the government agency that previously performed the service is shut down—if the public employees who staffed it are laid off, if the publicly owned equipment is mothballed or sold to the contractor, then competition withers away, costs go up and the public is not well-served. And

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most importantly, cost savings most often come from lower salaries and decreased benefits paid by the privatizer. In North Dakota government, the vast majority of our costs are labor related. So the natural conclusion is that the private bidder will automatically win the bid because it does not have to pay the wages and benefits the state pays its employees thus creating an inequitable bidding process. Will OMB require the private bidder to pay the same wages and benefits to its employees?

2. The competitive marketplace will revitalize government services.

Competition for government contracts exists more in theory than in practice. When competitive bids are opened to the private sector, frequently only one or two companies bid for a contract. Even when competitive bidding takes place at the time a contract is first awarded, it rarely occurs at renewal time—even when the original contractor is only marginally competent. Because of large start-up costs and the potential for service disruption, jurisdictions are hesitant to switch contractors, assuming others are even available. And in fact, a few years ago in Dickinson, the city purchased a garbage business to prevent it from being sold to a large out of state waste company. The city of Dickinson will now provide more public services in order to keep the costs down for the citizens of Dickinson. They did this because they knew it would result in increased costs and a private monopoly. The result of privatization

sometimes accomplishes just the opposite of competition—a virtual monopoly—leaving taxpayers vulnerable to higher costs and poorer service.

3. Quality improves when public services are privatized. Private contractors must find a way to sustain their profit margin, and that often comes at the expense of quality. Many governments have not renewed contracts and taken back the work themselves. A legislator spoke with me about his school district's experience with private janitorial services. The school district went back to hiring its own janitorial staff because the quality of services had decreased. My point here is that when public services are at stake, market forces are no substitute for a government agency that is held accountable for its performance by you and by the taxpayer. After all there can be serious health and safety consequences if these services are not carried out properly.

Now finally let me address the question that public employee organizations such as NDPEA are always asked when the issue of privatization is discussed. Aren't you just trying to keep your jobs, that if a service is privatized you will lose your jobs and that is really why you are here today? I won't pretend to that public employees are not concerned about their jobs. But I also won't defend to you the excellent work that public employees do for the citizens of this state. I believe that when you compare apples to apples you will see that government can provide cost efficient services to the taxpayers of this state.

When you look closely at this entire issue, we hope you will agree that private companies should not be able to get a public contract and make a profit by paying less in salaries and benefits than is currently being paid to the public employee. While this may look attractive to lawmakers and agency administrators in the short-term, in the long run there is much more at stake. Providing less than the current level of wages and benefits may lead to more people using the welfare system and in the end will cost the state more. Privatizing on the backs on public employees of this state is not the way to go. You need to know as lawmakers that services provided to the public by private companies are at least the same or better than those provided by the public sector. This bill does nothing to establish the parameters of privatization.

NDPEA urges a DO NOT PASS on HB 1433.

Thank you and I am available to answer any questions you may have.

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PRIVATIZATION COSTS THE TAXPAYERS

Privatization Costs Communities More

- Contracting out frequently costs more, not less, than in-house services. When governments are considering contracting out, the real costs to the jurisdiction are not usually taken into account. For instance, it costs more to administer the contract and to monitor the results; it takes additional money to train and supervise contractor personnel; and the use of public equipment and facilities is often not included in the costs of the contracted services.
- Even if the cost of the contract appears cheaper, the amount paid may be higher as the contractor renegotiates because of cost over runs or loopholes in the contract. Contractors often "lowball" the original bid to obtain the first contract and later raise prices significantly.

Privatization Often Leads to Layoffs, Which Costs the Workers and the Community

- When a state or local government lays off employees because of contracting out, substantial costs are incurred including:
 - **Unemployment Compensation.** The employer pays the entire cost of unemployment insurance benefits during the first 26 weeks of unemployment, and half the cost of extended benefits paid through week 39 of unemployment. Some laid-off workers may also qualify for public welfare programs.
 - **Loss of Tax Revenues.** Layoffs reduce a jurisdiction's tax revenues because people without jobs do not generally earn taxable income and don't spend as much.
 - **In-House Employee Morale.** One hard-to-calculate cost of layoffs is the effect on the morale of remaining public workers. The threat of job loss reduces productivity and represents another hidden cost of contracting out.

Privatization Often Jeopardizes High-Quality Services

- The contractor's goal is to maximize profits, which often leads to cutting corners on service quality — perhaps hiring inexperienced, transient personnel at low wages, skimping on contract requirements, or providing inadequate supervision.
- In bidding or negotiating for professional services contracts, many firms emphasize the expertise of their staff. The problem is that these "experts" are often spread thin, so the work may actually be done by inexperienced "generalists" rather than by experts.

Privatization Offers an Opportunity for Corruption

- Contracts for public services often become vehicles to reward cronies and campaign supporters, just as in the days when public jobs were doled out as patronage.

Privatization Leads to Loss of Flexibility

- When citizens complain about a contracted service, the government becomes only a "middleman" who can often do little more than complain in turn to the contractor or enter into costly contract renegotiations or termination proceedings.

Privatization Leads to Loss of Accountability

- Public officials are less accountable when services are privatized. They are still responsible for providing the service, but less able to meet their responsibility. As more public services are shifted to the private sector, we move from an open and accountable system to a closed, secretive society easily subject to manipulation.

Privatization Has a Harmful Impact on Women and People of Color

- Traditionally, the public sector has provided greater employment opportunities for women and minorities. Contracting out diminishes social and economic opportunities for these populations.

PRIVATIZATION OF CORRECTIONS

Private Prisons Don't Save Money

- Advocates of prison privatization claim that for-profit firms can operate prisons less expensively than the government can. In reality, the promise of savings (in the range of 15 to 20 percent) turns out to be a big exaggeration. Numerous studies show little or no difference in costs associated with public and for-profit correction facilities.
- A 1998 study conducted by the United States Attorney General at the request of Congress (Abt Associates Inc. *Private Prisons in the United States: An Assessment of Current Practice*, July 16, 1998) found that there was no strong evidence to support claims that privately run facilities were more cost effective.
- Despite this evidence, supporters of prison privatization persist in claiming that private prisons are cheaper than public prisons. These claims tend to be flawed for a number of reasons. First and foremost, they tend to compare "apples to oranges." For instance, government costs are averages that include maximum-and medium-

security inmates while only 2 percent of the inmate population in for-profit prisons are maximum-security inmates.

- Another flaw in most cost comparisons is the omission of the "hidden" costs associated with for-profit prisons. One such major hidden cost is the expense needed to capture escapees.
- Costs associated with the procurement process and indirect costs (such as legal work and administrative costs, including contract monitoring and other overhead costs) must be considered. These costs can range between 10 percent and 20 percent of contract costs.
- For-profit prison firms get plum contracts that wind up costing taxpayers more. Low bids by companies are tempting, but they leave governments to pick up the tab for unanticipated expenses and/or for costly mistakes.

Private Prisons are Bad Public Policy and Raise Quality Concerns

- For-profit firms can increase their profits by providing less programming than they are obligated to provide and by holding inmates longer than they should. A newspaper reported that some CCA guards in Tennessee say privately that they are encouraged to write up prisoners for minor infractions and place them in segregation. If a prisoner has another 30 days added to their sentence for an infraction, companies receive a bonus of nearly \$1,000 at some prisons. (*The Nation*, January 5, 1998)
- For-profit prison firms too often get out of paying property and income taxes — taxes that should go toward improving the lives of citizens.
- The pursuit of profits jeopardizes public safety. Cost-cutting leads to dangerous conditions both within the walls of prisons and in the nearby community. Prisons must be staffed by professional corrections personnel who are dedicated to preserving public safety, not by corporate bigwigs who are beholden to their stockholders.

Private Prisons are Bad for the Local Economy and are Bad for Employees

- For-profit prisons offer low wages and inadequate benefits to employees. In for-profit prisons, the high salaries for corporate executives and returns to shareholders are paid for in part by low pay and benefits for prison employees, who put their lives on the line every day.
- This leads to constant employee turnover, which means understaffed prisons with untrained employees.

- For-profit prison companies further reduce their labor costs by giving employees stock instead of a real pension. These retirement benefits could be wiped out in the blink of an eye.

Private Prisons Endanger the Community

- The high turnover, poor training, and understaffing common in for-profit prisons are a recipe for disaster in corrections.
- According to a study by the National Council on Crime and Delinquency, for-profit prisons have lower staffing, lower salaries and a higher rate of assaults on staff and inmates than public facilities. (*Tulsa World*, December 13, 1999)
- The low wages and benefits paid by for-profit corrections firms can attract workers not qualified to work in a public correctional setting. For instance, published reports revealed that Cornell Corrections knowingly hired convicted felons to work as guards inside Santa Fe County's juvenile jail. (Associated Press, April 27, 1999)
- High employee turnover also leads to a poorly trained staff because of the need to expeditiously fill empty positions. The danger of having improperly trained employees came to light when a prison guard was killed at a Wackenhut-run facility in Santa Rosa, New Mexico. It was discovered that the guard was not certified to work in an armed post as a corrections officer. Neither were five of his co-workers. (Associated Press, September 8, 1999)

The Public is Against Prison Privatization

A national survey by Lake, Snell, Perry and Associates of Washington D.C., 1999, shows that 58% of the public opposes private prisons. The same survey found that voters believe that government-run prisons do a better job of rehabilitating prisoners, are more accountable and protect public safety more effectively. By a strong margin, the public believes that for-profit prisons cut corners