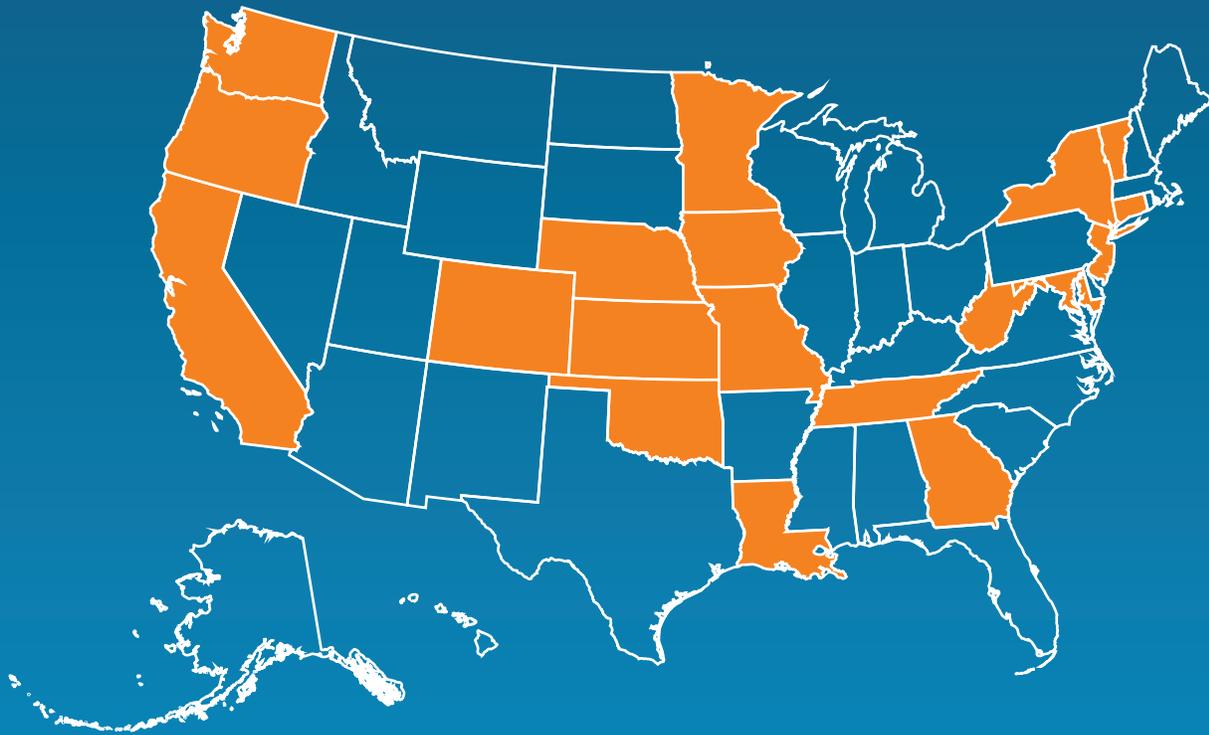


SHIFT

How Taxpayers Began Reclaiming
Control of Their Public Services



Shift: How Taxpayers Began Reclaiming Control of their Public Services

For decades, runaway outsourcing of public services and assets enjoyed nearly non-stop momentum at the state and local levels. Beginning in the 1970s and 1980s, lawmakers of all political stripes were lured by the siren song of the private sector administering public services “better, faster and cheaper” than the government.

In the early-1990s, the Democratic Clinton administration championed “reinventing government,” a slogan and framework that promoted handing over control of public services to the private sector. The Great Recession prompted privatizers to become even more brazen, as cash-strapped cities, counties and states looked under couch cushions for spare change to patch budget shortfalls. In the midst of the financial crisis in 2008, one chairman of a major finance company, addressing the annual meeting of the National Council for Public-Private Partnerships, proclaimed “desperate government is our best customer.”¹ Corrections Corporation of America (CCA), the largest private prison company in the United States, seemed to agree. CCA went so far as to send letters to 48 state governors proposing that CCA take over public prisons in exchange for a state guarantee to keep the prisons filled to 90 percent capacity – or to pay CCA for the empty beds if this prison quota was not reached.

However, signs suggest that taxpayers are beginning to question the rush to privatize, and in some cases they are demanding that services be returned to the public sector altogether. Generally speaking, there appears to be greater public awareness of outrageous outsourcing practices today than in the past. For example, last year In the Public Interest published a report that found an alarming 65 percent of state and local private prison contracts already include the kind of prison quotas that CCA sought in its letter to governors.



¹ <http://www.pfaw.org/rww-in-focus/predatory-privatization-exploiting-financial-hardship-enriching-1-percent-undermining-d>

In addition, arguments against reckless outsourcing emerged and evolved. For example, new research revealed that privatization contributes to income inequality and a degradation of middle-class communities.

The past few years provided specific watershed moments as well. In 2009, a massive privatization debacle unfolded in Chicago where Windy City taxpayers discovered they were on the losing end of a 75-year deal that handed over control of 36,000 city parking meters to a Wall Street-backed consortium. In 2013, private contractors badly bungled the federal healthcare.gov website and state-based websites in five states. The same year, respected media outlets including *Governing* and *Bloomberg BusinessWeek* published headlines like "[*Outsourced Government: Have We Gone Too Far?*](#)" and "[*Why Private Contractors Are Lousy at Public Services*](#)," respectively. Even the Reason Foundation – a leading proponent of privatization for decades – recently admitted that it is not a panacea. "Is privatization a magic wand? Is it always going to come in and save you money? No. You have to do this well. You have to do your due diligence. You have to do a good contract and then you have to monitor and enforce that contract," Reason's director of government reform Leonard Gilroy told the *Atlantic* in April.

But 2014 was the year that taxpayers truly began reclaiming control of their public services. As the *Atlantic* reported, "[i]n states and cities across the country, lawmakers are expressing new skepticism about privatization, imposing new conditions on government contracting, and demanding more oversight." To date, 19 states introduced proactive legislation to reign in reckless outsourcing and promote responsible contracting reforms this year. Some of these reforms were based on ITPI's Taxpayer Empowerment Agenda, common sense legislative proposals that promote transparency, accountability, shared prosperity and competition to contracting procedures. For example, it includes a ban on outrageous contract language that guarantees corporate profits, such as prison quotas; or a requirement that private entities that run public services open their books and meetings to the public just as government must.

To date, four of these 19 states saw responsible contracting measures become law. In addition, dozens of cities, counties and school districts are set to act on similar measures in the coming months. The following is a status report on responsible contracting reforms across the country.

2014 State Legislative Reforms

In 2014, responsible contracting reforms were introduced in 19 states, and, to date, four states have signed reforms into law. The following details specific state proposals:

<u>State</u>	<u>Bill #</u>	<u>Lead sponsor</u>	<u>Intro date</u>	<u>Signed into law</u>
CA	HR 29	Asm. J. Gomez	02/04/14	
CO	SB 197	Sens. M. Jones, B. Herpin Reps. M. Foote, T. Kraft-Tharp	04/16/14	
CT	HB 5312	Reps. B. McGee, H. Santiago, T. Hwang, D. Scribner, C. Ayala, J. Serra, E. Jutila Sens. A. Musto, J. Crisco	02/21/14	✓
GA	HB 941	Reps. D. Wilkerson, D. McClain	02/06/14	
	HB 932	Reps. S. Holcomb, B. Prince	02/05/14	
	HB 936	Reps. J. Beverly, H. Howard	02/06/14	
IA	SF 2235	Sen. J. Danielson	02/19/14	
KS	HB 2723	House Appropriations Committee Bill	02/17/14	
LA	HB 128	Reps. K. Havard, J. Berthelot, B. Geymann	02/07/14	
MD	HB 796/SB 669	Del. V. Turner Sen. V. Ramirez	02/03/14	✓
MN	HF 2459	Reps. F. Hornstein, M. Nelson, R. Hansen	02/27/14	
MO	HB 1715	Rep. J. Barnes	01/30/14	
NJ	S 770	Sens. L. Weinberg, S. Turner, S. Sweeney and Asms. V Huttle, P. Moriarty, G. Mosquera, D. Benson	1/14/14	
	SB 679	Sen. R. Lesniak	01/14/14	
NY	A9638	Asm. H. Farrell, Jr.	05/13/14	
	S07114	Sen. J. DeFrancisco	04/28/14	
NE	LB 1006	Sen. A. McGill	01/21/14	
	LB 371	Sen. H. Mello	01/18/13	✓
OK	SB 1640	Sen. C. Johnson	02/03/14	
	SB 1641	Sen. C. Johnson	02/03/14	
	SB 1642	Sen. C. Johnson	02/03/14	
OR	HB 4122/ SB 6548	Reps. M. Greenlick, N. Nathanson, P. Holvey Sens. R. Devlin, T. Ferrioli	02/03/14	✓
TN	HB 2197	Rep. M. Turner	01/28/14	
	SB 2394	Sen. T. Harper	02/03/14	
VT	HB 623/SB 240	Reps. M. Townsend, S. Buxton, K. Christie, J. Cole, G. Cross, S. Davis, J. Donovan, J. Krowinski, T. Macaig, C. Cormack, J. Moran, J. O'Sullivan, P. Poirier, K. Spengler, T. Stevens, C. Weed, S. Wizowaty Sen. J. White	01/07/14	
WA	HB 2743	Reps. S. Hunt, T. Green, S. Appleton, P. Sullivan, C. Reykdal, Z. Hudgins, S. Bergquist, L. Jinkins, D. Sawyer, M. Sells, T. Ormsby, M. Riccelli, J. Fitzgibbon, J. Robinson, J. Fey, M. H. Roberts, G. Pollet, R. Freeman	01/30/14	
	SB 6548	Sens. K. Fraser, M. Chase, S. Conway, J. McCoy, K. Keiser	02/04/14	
WV	HB 4323	Dels. N. P. Guthrie, I. Sponaugle, M. Poore, M. Caputo, S. Skinner, D. Perdue, R. Fragale, A. Young, M. Poling	01/24/14	

California

- [HR 29](#): On April 3, 2014, House Resolution No. 29 cleared the State Assembly. HR 29, introduced by Assembly Member Jimmy Gomez, resolved that the state Assembly opposed any outsourcing of public services and assets that did not meet standards of transparency, accountability, shared prosperity and competition. The resolution also urged local lawmakers to study the policy recommendations of ITPI's Taxpayer Empowerment Agenda.

In addition to HR 29, several specific responsible contracting reforms are considered in the Legislature, some attracting bipartisan support along the way.

Colorado

- [SB 197](#): Taxpayers were outraged to learn that state officials were about to sign a 50-year contract between an Australian-based company, Plenary Group, to transform a stretch of route U.S. 36, between Denver and Boulder, into a private toll road. In response to taxpayer anger, SB 197 was amended to provide more legislative oversight of outsourcing deals and limited large scale contracts to 35 years. Unfortunately, Governor Hickenlooper vetoed the oversight language on June 4, 2014.

Connecticut

- [HB 5312](#): On May 21, Governor Dannel Malloy signed into law HB 5312, legislation that made contracts more accessible to the public. HB 5312 requires the Department of Administrative Services to post online an explanation for any contract extension entered into without competitive bidding, and to submit an annual report of those explanations.

Georgia

- [HB 941](#) requires contracts to demonstrate a 10 percent cost savings for Georgia taxpayers.
- [HB 932](#) allows contracts to be cancelled if those cost savings were not met or the contractor failed to meet quality standards.
- [HB 936](#) requires private contractors, paid with public tax dollars to run public services, to open their books and meetings to the public, just as government must do.

Iowa

- [SF 2235](#): Sen. Jeff Danielson introduced SF 2235, which would give Iowa taxpayers more power to cancel contracts if for-profit corporations fail to meet performance standards. It would also require companies that are paid with tax dollars to provide a public service to maintain open records just as public agencies do. SF 2235 cleared the Iowa Senate but died in the House.

Kansas

- [HB 2723](#): In February, the Taxpayer Empowerment, Accountability and Transparency in State Contracting Act was introduced. The proposal would have, among other things, required a demonstrated cost savings of 10 percent before a service can be privatized, ended automatic contract renewals, and prohibited contract language that shields corporations from the risks of the free market by putting taxpayers on the hook for guaranteeing corporate profits.

Louisiana

- [HB 128](#): Reps, Kenneth Havard, John Berthelot, and Brett Geymann introduced HB 128, the Privatization Review Act, which would have required contracting proposals to be reported publicly and mandated any private company that takes over a public service to demonstrate cost savings without affecting the quality of the service. Additionally, the proposal would have banned companies, who broke state or federal law, from receiving contracts.

Maryland

- [SB 669](#): On April 14, Gov. Martin O'Malley signed into law SB 669, which protects taxpayers by prohibiting private contractors, who broke the law, from holding contracts with the state.

Minnesota

- [HF 2459](#): On Feb. 27, 2014, HF 2459 was introduced in the House, which would limit the length of contracts to two years, require contracts to save taxpayers at least 15 percent, require companies to disclose felonious activities or failure to pay taxes, and require contractors to compensate their workers with a living wage and reasonable benefits.
- [HF 2622](#): On May 16, Gov. Mark Dayton approved HF 2622, repealing the authority of cities and local governments to privatize "capital intensive public services."

Missouri

- [HB 1715](#): Rep. Jay Barnes introduced HB 1715, which would require the Office of Administration to post a copy of each contract and RFPs for goods and services purchased by the state. Further, HB 1715 permits agencies to enter into a service contract only if the cost of the proposed contract is less than the current costs.

New Jersey

- [SB 679](#): Sen. Raymond Lesniak introduced SB 679, legislation that would require an economic impact study before the state can outsource school

services, including cafeteria and custodial services. The study would determine the direct and indirect costs of outsourcing to the community as a whole.

A 2009 study conducted by Rutgers University found that outsourcing of school service workers resulted in a \$4-6 per hour reduction in pay, forcing many public service workers onto taxpayer-funded public assistance.

- [S770](#): As amended, S770 ensures that no public services are privatized unless the contractor produces actual cost savings, which are not based on increased charges or reduced services to the public, or lowered workforce standards. Potential contractors would be required to demonstrate cost reductions based on improvements such as management efficiencies or technical innovation, not based on added burdens imposed on the members of the public using the services or the employees producing them.

One primary sponsor [noted](#), “Providing public services through private contractors should be considered only if it promotes the public interest,” said Assemblywoman Valerie Vainieri Huttle (D-Englewood). “It makes fiscal sense to require a thorough review and analysis of potential cost impacts prior to entering into any privatization contract.”

New York

- [S07114/A9638](#): Introduced by Sen. John DeFrancisco and Asm. Herman Farrell, S07114/A9638 makes it easier for taxpayers to cancel an outsourcing contract if it ends up exceeding the original bid by more than 10 percent.

Nebraska

- [LB 371](#): Gov. Dave Heineman signed LB 371, which requires the Department of Administrative Services to create and make public an annual report detailing the number and value of contracts awarded by the state to domestic and foreign contractors.
- [LB 1006](#): Sen. Amanda McGill introduced LB 1006, which would prohibit contract language that guarantees corporate profits at taxpayer expense.

Oklahoma

- [SB 1640](#): Sen. Connie Johnson authored SB 1640, which would require adequate oversight by state agency personnel for each personnel services contract.
- [SB 1641](#): SB 1641 requires companies, which receive tax dollars to run public services, to open their books and meetings to the public, just as government does. Senator Johnson also sponsored this legislation.

- [SB 1642](#): Senator Johnson sponsored SB 1642, ensuring that taxpayers can track whether outsourcing deals really save them money through an online database. Additionally, SB 1642 required the costs of contracts to be reported in the governor’s annual budget.

Oregon

- [HB 4122](#): In March, Gov. John Kitzhaber signed HB 4122, which beefs up oversight of IT contracts in the wake of the Beaver State’s disastrous experience with outsourcing development of its health care website to Oracle.

Tennessee

- [HB 2197/SB 2394](#): Rep. Mike Turner and Sen. Thelma Harper introduced HB 2197 and SB 2394, respectively, a set of proposals that would curb reckless outsourcing. One proposal would ban contract language that guarantees corporate profits at taxpayers’ expense, including “lockup quotas” – language that mandates private prisons be filled at or near capacity or else taxpayers are forced to pay for empty beds.

Last year, ITPI found that 65 percent of state and local private prison contracts studied included lockup quotas, including the Metro Detention Facility in Nashville. An investigation conducted by the Tennessean found that Metro Government paid Corrections Corporation of America nearly \$500,000 for failing to meet a 90 percent lockup quota.

Vermont

- [HB 623/SB 240](#): HB 623 and SB 240 would ensure taxpayers maintain control of services, making it easier for taxpayers to cancel a contract if the company doesn’t provide promised quality and cost savings.

Washington

- [HB 2743](#) and [SB 6548](#) require community impact studies prior to outsourcing a service or asset. Additionally, the legislation requires that all oversight and monitoring of contracts be deemed part of the total costs of the contract, and each contract would be required to show a minimum 10 percent total cost savings. HB 2743 includes a requirement that specific performance standards and cancellation protections be included in all contracts, and requirements that the company open its books to the public. Further, the legislation barred any bad actors from receiving taxpayer dollars, and that biennial reports are made available to the public. Finally, HB 2743 prohibited the use of any public resources for private gain of any contractor.

HB 2743 passed the House on Feb. 14, 53 to 44 but died in the state Senate. It can easily be expected to be picked up early in the 2015 session.

West Virginia

- [HB 4323](#): HB 4323 would protect taxpayers by banning any company, which evaded taxes or broke the law, from receiving contracts; capping outsourcing contracts to five years; and requiring fair pay and reasonable benefits for private sector workers.

Conclusion

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.