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BUDGET BRIEF

The Great Ohio Sell-Off

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Ohio, home of the first concrete paved street in America, used to be known for making and building things. Now we seem to be more interested in selling them. The new state budget calls for a massive sell-off of Ohio public assets worth billions of dollars. Among the properties that may be privatized are the Ohio Turnpike, six prisons and the liquor distribution business. The budget also authorizes local and exempted village school districts to contract out their bus transportation, universities to enter into agreements transferring buildings and parking facilities to outside entities for up to 99 years, and cities to lease their parking meters for up to 30 years. Operators of a privatized turnpike or liquor business, as well as new entities holding university buildings, would not pay taxes.

Little evidence has been put forward that the public will benefit from this slew of privatization moves. In some instances, we may be giving away public assets, which taxpayers have spent considerable sums to build, for less than they are worth. Based on developments elsewhere, privatization also could limit our ability to make decisions about public infrastructure and deliver good service. Nearly all of these prospective deals raise the question: *Will the public be able to find out how well services are being delivered and keep tabs on the private monopolies that will be providing these services?*

Besides the privatization moves cited above, the new Ohio budget also includes changes in the governance of JobsOhio and a $1 million appropriation for the newly created nonprofit entity, which is taking over economic development for the state from the Department of Development. In addition, the budget contained numerous changes in the law affecting primary and secondary schools that allow for additional private-sector operation of K-12 schools and monies going to private schools. Policy Matters Ohio will address these policy changes involving public schools in a separate release. Here is a brief rundown on some of the privatization moves in the budget.

Liquor distribution business

The 25-year lease of the state's liquor distribution business to JobsOhio appears to be underpriced. That was the conclusion of state Sen. Tim Grendell, a Republican from Geauga County, as well as the Center for Community Solutions, a Cleveland research nonprofit. [1] And while the $1.2 billion to be paid for the business would provide $500 million to balance the upcoming two-year budget, after that, the state will no longer receive more than $100 million a year that has been going to support public services, creating a new budget hole.

Parking meters

The authorization for cities to lease parking meters for up to 30 years was slipped into the budget at the last moment, in the conference committee, without hearings or public input. After Chicago leased its parking meters in 2009 for 75 years, rates soared and many meters malfunctioned or were mislabeled. A report by the city's inspector general called it "a dubious financial deal" and concluded that the sale lacked meaningful public review.[2] Under the Chicago contract, the city can't reduce the number of meters it has, or it has to compensate the company that's leasing them. Before any Ohio municipality takes advantage of this authority, its elected officials should study such experiences and learn from them.

Prisons

The budget calls for six prisons to be sold, five of them through an RFP process that has resulted in three big private-prison companies proferring bids (awards are to be announced by Sept. 1). The sales are supposed to generate $75 million after debt sold to pay for the prisons is paid off. Though the sale of the prisons is based on supposed savings that would be achieved by private operation, the state has been unable to show it has a reliable way to compute such savings with two existing prisons run by a private company. A recent study for Policy Matters Ohio found the state's calculations not only to be riddled with errors, oversights and omissions of significant data, but also potentially tainted by controversial accounting assumptions that many experts consider deeply flawed.[3] The Department of Rehabilitation and Correction (DRC) has released a new set of numbers – effectively throwing out the old ones, and also, not surprisingly, touting dramatic savings – but its new calculations raise new questions by adopting rosy assumptions about likely savings in overhead costs, bulk purchases and selected medical costs. Apart from costs, private

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[1] Honeck, Jon, "Proposed Transfer of Liquor Enterprise Shortchanges State Treasury," The Center for Community Solutions, June 1, 2011 (Update), available at http://www.communitysolutions.com/assets/1/Page/LiquorPrivatizationUpdate_Honeck_060111.pdf

[2] Office of the Inspector General, City of Chicago, "Report of Inspector General's Findings and Recommendations: An Analysis of the Lease of the City's Parking Meters," June 2, 2009, available at http://www.inthepublicinterest.org/article/report-inspector-generals-findings-and-recommendations

[3] Paynter, Bob, "Cells for Sale: Understanding Prison Costs and Savings", Policy Matters Ohio, April 2011, available at http://www.policymattersohio.org/CellsForSale.htm

ownership of prisons raises other issues.[4] One is the creation of perverse incentives: Private prison owners want more prisoners, while as long as public safety is preserved, the public should want to keep people out of prison. After the DRC announced the layoff of 717 workers at prisons to be privatized, *The Akron Beacon Journal* noted in an editorial, "The likely loss of experienced employees translates into renewed questions about maintaining standards in a system responsible for public safety, empowered to deprive people of their liberty with the goal of providing rehabilitation. Those demands are not easily squared with those of a private business that must make money."[5]

College and university buildings

The budget authorizes state institutions of higher education to sell "auxiliary" facilities such as student services buildings, dining halls, athletic and health facilities to nonprofit conduit entities, which then enter into leaseback arrangements with a third-party independent funding source. These leases could last up to 99 years; the parties could negotiate that the property would revert back to the university at the end of the lease. The parties could agree to allow the university to administer the property, although this is not mandated. While this may give universities more financial flexibility, it raises a number of concerns. For one thing, the third-party financier does not have to be competitively selected. Second, it allows universities to create debts that are not shown on their balance sheets, which may be desirable in some circumstances but could lead to problems. Third, it creates the likelihood for a for-profit financier to benefit, while no property taxes are paid. Separately, the budget also authorizes higher-education institutions and university housing commissions to enter into lease agreements with nonpublic vendors to construct and operate new or existing campus housing facilities. More broadly, the budget calls for a report by Aug. 15 by the chancellor to develop a plan for designating higher education institutions as "charter universities."

The Ohio Turnpike

A turnpike lease could last up to 75 years, far longer than the existing interstate highway system. This would take out of public control a key piece of transportation infrastructure.[6] If

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[4] Many of these are summarized in a report by the American Civil Liberties Union of Ohio, "Prisons for Profit: A Look at Prison Privatization," April 2011, available at http://acluohio.org/issues/CriminalJustice/PrisonsForProfit2011_04.pdf

[5] "Private Agenda," editorial, *The Akron Beacon Journal*, July 25, 2011, available at http://www.ohio.com/editorial/editorials/private-agenda-1.226658. The DRC said it was trying to ensure that any employee who wanted to remain employed in the prison system could do so, but as the newspaper noted, "To make money, and meet a mandate to deliver savings of at least 5 percent, a private operator will have to reduce staffing and compensation. So, while the department is working on a deal it says would allow those who want to remain employed in prison work to do so, the likelihood of that happening must be seen in light of the profit motive that comes with shifting to the private sector."

[6] In a recent Toledo appearance with Gov. Kasich, Jerry Wray, director of the Ohio Department of Transportation, said that a lease would be limited to 50 years. See Patch, David, "Turnpike plan touted by

rising turnpike tolls cause drivers to use other roads instead, as a Northeast Ohio Areawide Coordinating Agency analysis noted, this would increase maintenance costs for these other roads.[7] Too often, privatization deals include clauses that require the public to compensate the buyer if steps are taken that might reduce the private owner's return. For instance, Virginia must pay the private contractor for one of its highways if carpooling grows beyond a certain amount, or until the contractor makes a specific profit.[8] Such clauses restrict our ability to make decisions on how to provide the best public services. Language in the budget says the turnpike contract *may* contain terms approved by the budget director including financial and other data reporting requirements. "May" is not the same as "shall." Thus, there is no certainty that Ohioans will be able to learn key details about a privatized system.

School transportation

The budget reinstitutes language in effect between 2005 and 2009 allowing local and exempted village school districts to terminate transportation employees "for reasons of economy and efficiency" and contract with an outside company instead. While existing law allows city school districts, which are covered by civil service rules, to privatize bus service, other districts were only given explicit authority to do so with the budget bill. Various incidents in recent years have illustrated the perils of school-bus privatization, such as when a Columbus driver was arrested after police found cocaine-filled syringes on his school bus in 2007 and missing background checks brought the district to a standstill.[9]

Indefinite "public private partnership" agreements for transportation facilities

The budget allows the Ohio Department of Transportation to enter into "public private partnership" agreements for transportation facilities that last indefinitely, removing a limitation that such arrangements could only last for the two-year period in which appropriations were made. The authority to enter into these agreements was provided by H.B. 114, the transportation budget act for FY 2012-FY 2013. The lack of any end date to

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Kasich in Toledo," *Toledo Blade*, July 26, 2011, available at http://www.toledoblade.com/State/2011/07/26/Turnpike-plan-touted-by-Kasich-in-Toledo.html. That is still an exceptionally long time to hand over control of such an asset. The language in the budget bill allows for a lease of up to 75 years.

[7] Davis, Bill, Northeast Ohio Areawide Coordinating Agency, Memo on NOACA staff analysis of Ohio Turnpike Lease to the NOACA Ohio Turnpike Lease Evaluation Committee, Feb. 25, 2011, available at http://www.noaca.org/tpleasenoaca.pdf

[8] Dannin, Ellen, "The Toll Road to Serfdom," Guest Post, ACSblog, the American Constitution Society for Law and Policy, http://www.acslaw.org/acsblog/node/18553. ODOT Director Wray tried to provide reassurances on such issues in a recent speech (see Gongwer News Service Ohio, "ODOT Chief Lays Out Conditions for Turnpike Lease, Plan for Local Funding," July 27, 2011). He said that the state would retain strict control over toll increases and that the administration won't sign a contract with a non-compete clause that keeps the state from improving parallel roads. However, Ohioans will need to watch the fine print in the deal closely.

[9] Smith Richards, Jennifer, "Columbus and other districts aren't fully monitoring private bus drivers, despite state warning to be vigilant," *The Columbus Dispatch*, Jan. 31, 2010.

such arrangements is inherently worrying. Who knows whether the financial arrangements we enter into now over transportation facilities will make any sense many decades from now?

Both the House and Senate wisely rejected the governor's original budget proposal to give the administration authority to contract out any state service for up to 75 years. Some other privatization proposals included in earlier versions of the budget, covering the Ohio Lottery and leases of county buildings, were not included in the final bill, though that doesn't mean they are dead.[10] It also added some requirements, such as with the bid requirements for the turnpike, for additional legislative approval.

Thus, while much of the sell-off is advancing, public debate is still possible on other privatization moves. And there are numerous questions that need to be asked and answered. Is there a back-up plan if the private buyer or operator fails? Will there be limits on how much the private operators of public assets can charge, and if so, how will they be set? Will private owners be able to fire existing employees and cut salaries and benefits; who will foot the bill if new employees don't have health care benefits? These are among the questions posed by In the Public Interest, a resource center on privatization and responsible contracting.[11] Ohioans should ask these questions and more, and ensure that privatization occurs only when it is truly merited.

[10] For instance, Senate Bill 197, introduced on July 12, 2011, would authorize a board of county commissioners of any county to enter into agreements for the sale and leaseback of county buildings. See http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_197

[11] In the Public Interest, "Ask the Right Questions before Privatizing," July 12, 2011, available at http://www.inthepublicinterest.org/blog/ask-right-questions-privatizing