E1381 - Q75

IN THE COMMON PLEAS COURT OF
FRANKLIN COUNTY, OHIO

PROGRESSOHIO.ORG. INC.. ET AL. — CASE NUMBER 11 CV 010807

Plaintiffs — Judge Beatty

v.

JOBSOHIO. ET AL..

Defendants

FILED
COMMON PLEAS COURT
2011 OCT 14 PM 3:06
CLERK OF COURTS-CV

PLAINTIFF'S MEMORANDUM CONTRA MOTIONS TO DISMISS

I. Procedural background

This suit challenges the constitutionality of R.C. 187.01 et seq. also referred to as the JobsOhio Act. Plaintiffs at first challenged the law by bringing an action in the Ohio Supreme Court pursuant to requirements within the act itself that the Supreme Court accept original jurisdiction of any declaratory judgment action challenging the constitutionality of the JobsOhio law. That portion of the bill was stuck down by the Ohio Supreme Court as a violation of separation of powers. *ProgressOhio.org v. Kasich*, 129 Ohio St.3d 449, 2011-Ohio-4101 (August 19. 2011). This legislation however remains constitutionally infirm in myriad ways and its attempt to unconstitutionally change the jurisdiction of the Ohio Supreme Court was just one of many. Subsequent to the plaintiffs' challenge in the Supreme Court, other unconstitutional aspects of the legislation were altered in Ohio's biennial budget, H.B. 153. But

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even with one Supreme Court opinion and legislative backtracking, this law defies the Ohio Constitution.

Despite all the obvious problems with this entire concept, the governor filed the papers to create this private corporation and named a board of directors. It is receiving funding from the state and is operating and expending funds. In the 1830 and 1840's, the Ohio state government became entangled with a number of private corporations in joint venture type agreements that resulted in huge financial losses to the government and the transfer of private debt obligations to the taxpayers. Public outcry led to a constitutional convention. In 1851, Ohio amended its constitution to include prohibitions that prevent the state from this sort of entanglement. JobsOhio is just such an unconstitutional arrangement.

Plaintiffs have made JobsOhio a defendant because its presence is necessary for the Court to make effective orders in the case. However, R.C. 187.01 et seq. constitutes a special act conferring corporate powers on JobsOhio in violation of O Constit.13 Sec. 1. R.C. 187.03 also exempts JobsOhio from most of the laws controlling corporate formation and governance found in Chapter 1701 et seq. It therefore violates O Constit Sec 13 Article 2 that requires corporations to be formed under the general laws of Ohio. It remains the position of the plaintiffs that JobsOhio does not legitimately exist and all its actions are void.

This unconstitutional law transfers substantial government power to the control of a private corporation with little accountability to the taxpayers. This private corporation will invest in and recommend distribution of state revenues to for-profit corporations with unlimited discretion and little public oversight. R. C. 187.01 et seq.

The defendants dispute this action arguing that taxpayers have no standing to bring an action challenging a far reaching government program that transfers vast amounts of state wealth provided by taxpayers to private corporations for private benefit. Although this expenditure of tax dollars is well underway, defendants further argue that the issues here are not ripe for court review.

I. Plaintiffs Have Standing to Assert Their Claims

Defendants erroneously posit that they are entitled to a dismissal of this action on the grounds that Plaintiffs lack standing to make this constitutional challenge to R.C. 187. In so doing, Defendants essentially argue that Plaintiffs have not suffered or been threatened with a "direct and concrete injury" and therefore they are not entitled to a common law grant of standing under the "personal stake" doctrine, as taxpayers, as state legislators, or under the "public action" doctrine. Plaintiffs oppose Defendants' motion to dismiss as Plaintiffs have standing both pursuant to the legislative grant under R.C. 187.09 and under the common law.

a. Standing Overview

It is generally accepted in Ohio that before a court can consider the merits of a constitutional challenge to a statute, the person or entity seeking relief must establish standing to sue. *Cuyahoga Cty. Bd. of Commrs. v. State*, (2006)112 Ohio St.3d 59, 2006 Ohio 6499, at P22, citing *Ohio Contrs. Assn. v. Bicking* (1994), 71 Ohio St. 3d 318, 320, 1994 Ohio 183. Fundamentally, standing is a "'party's right to make a legal claim or seek judicial enforcement of a duty or right.'" *State exrel.ButlerTwp. Bd. ofTrustees v.Montgomery Cty. Bd of Commrs.*, (2010) 124 Ohio St.3d 390, 2010 Ohio 169, P19, quoting Black's Law Dictionary (8th Ed.2004) 1442. This court explained in *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, 14, that "[i]t has been long and well established that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect." Accordingly, "[i]t has become settled judicial responsibility for courts to refrain from giving opinions on abstract propositions and to avoid the imposition by judgment of premature declarations or advice upon potential controversies." *Id. at* 14. Standing nonetheless is a self-imposed judicial rule of restraint. and courts "are free to dispense with the requirement for injury where the public interest so demands." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999). 86 Ohio St.3rd 451. 469-470. 1999 Ohio 123. Standing to maintain an action flows both from the common law and legislative grant. *Middletown v. Ferguson* (1986). 25 Ohio St.3d 71. 75. When there is a statutory grant of standing, common law standing is not determinative and the standing issue turns instead on statutory construction. *Ohio Valley Associated Builders & Contractors v. Industrial Power Systems, Inc.*. (Ohio App. 6 Dist. 2010) 190 Ohio App.3d 273 (where legislature conferred specific statutory authority for an " interested party" to file a prevailing-wage action); *Doran v. Northmont Bd. of Edn.* (Ohio App. 2 Dist. 2003) 153 Ohio App.3d 499. ¶ 20 (statutory right to bring an alleged Sunshine Law violation pursuant to R.C. 121.22(I)(1)).

Defendants' motion to dismiss should be overruled as Plaintiffs have standing from both the statutory authority of Section 3 of H.B.1 and the common law.

b. The Nature of the Claims

As part of the Court's consideration of standing. it is necessary to preliminarily review the constitutional challenges Plaintiffs are making with respect to JobsOhio established under H.B. 1.

i. The Ohio Constitution forbids joint ventures between the state and private enterprises.

The Ohio Constitution has long prohibited state involvement with private enterprise. *Grendell v. Ohio Environmental Protection Agency*. (Ohio App. 9 Dist. 2001) 146 Ohio App.3d 1. 8 "In general. Article VIII has been said to be an expression of concern with placing public tax dollars at risk to aid private enterprise." *citing State ex rel. Petroleum Underground Storage Tank Release Comp. Bd. v. Withrow* (1991), 62 Ohio St.3d 111, 114, 579 N.E.2d 705; *Walker v. Cincinnati* (1871), 21 Ohio St. 14, 53-56. O Constit. Article 8 Section 4 adopted as part of the 1851 Constitution, still in effect today, was designed to avoid entanglement of the state with private enterprise and the acquisition of private debt by the state. Courts have interpreted this to forbid any joint ventures between private companies and the state of Ohio. *Id.* Through voter-approved constitutional amendments, this prohibition has been modified during the 20th Century in order to allow the state to become more involved with promotion of private sector economic development, particularly with respect to debt. But none of those changes allows the state to directly or indirectly take equity positions in private companies or to privatize this quintessentially government function by creating a private corporation to be run secretively by the governor and corporate profiteers operating outside of ethical and other governmental controls and restraints.

ii. The Ohio Constitution Forbids Special Acts Conferring Special Corporate Powers

Article 13 Section 1 and Section 2 of the Ohio Constitution require that all corporations in this state be formed under the general laws of Ohio and be governed by laws applicable to all corporations in the state. The General Assembly is prohibited from creating private corporate entities with special legislation like H.B. 1.

Article XIII, Section 1 of the Ohio Constitution prohibits the General Assembly from passing any special act conferring corporate powers. This statute creates the nonprofit corporation JobsOhio. R.C. 187.01. It authorizes the existence of the corporation and includes statutory requirements setting forth everything from the name the organization to its structure and the qualifications of its board of directors. R.C. 187.01 et seq. R.C. 187.03 takes the extraordinary step of exempting JobsOhio from general laws governing corporations.[1] JobsOhio is expressly **not** being formed or governed by the general laws of Ohio. JobsOhio is a specific act conferring specific corporate powers to a specific corporation and therefore the General Assembly exceeded its constitutional authority by violating Article 13, Section 1of the Ohio Constitution.

c. R.C. 187 Confers Standing on Plaintiffs to Assert These Claims

R.C. 187.09 sets forth the procedures for bringing legal challenges regarding JobsOhio:

> (B) Except as provided in division (D) of this section, any claim asserting that any one or more sections of the Revised Code amended or enacted by H.B. 1 of the 129th general assembly, any section of Chapter 4313. of the Revised Code enacted by H.B. 153 of the 129th general assembly, or any portion of one or more of those sections, violates any provision of the Ohio Constitution shall be brought in the court of common pleas of Franklin county within ninety days after the effective date of the amendment of this section by H.B. 153 of the 129th general assembly.
> Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

This section obviously contemplated an immediate public interest lawsuit by taxpayer plaintiffs. If the arcane standing and ripeness argument presented by the defendants were valid, and they are not, then that renders this entire section unconstitutional since the 90 day limitations period would violate the open court provision of the Ohio Constitution which requires the courts to be open to provide redress. O Constit. 1.16. This highly truncated statute of limitations period would violate the constitution simply on its face, but there is no doubt of its unconstitutionality if the defendants' concepts of standing and ripeness are incorporated into that

[1] O.R.C. Sec. 187.03 (A). "JobsOhio and its board of directors are not subject to the following sections of Chapter 1702 of the Revised Code: sections 1702.03, 1702.08, 1702.09, 1702.21, 1702, 24, 1702.26, 1702.27, 1702.28, 1702.29, 1702.301, 1702.33, 1702.34, 1702.37, 1702.38, 1702.40 to 1702.52, 1702.521, 1702.54, 1702.57, 1702.58, 1702.59.1702.60, 1702.80, and 1702.99".

provision. But the case law in Ohio does not in any way support denial of standing to the plaintiffs in this cause.

The defendants raised the standing argument before the Ohio Supreme Court in the first action. The court implied in its jurisdiction determination that they consider plaintiffs to have standing here:

> "The provisions of 2011 Am.Sub.H.B. 153 do not apply retroactively and, therefore, do not resolve this present action. They do, however, provide a remedy for petitioners to institute an action challenging the constitutionality of amended R.C. 187.01 et seq. by way of an action in the Franklin County Court of Common Pleas." *Progress Ohio.org. vs. Kasich,* (2011) 129 Ohio St.3d 449, at 451.

Justice Pfeiffer dissented stating he wanted the case briefed and determined now:

> ...[T]his case challenges the constitutionality of legislation that makes significant changes to the organizational structure of state government but does not involve a complex factual scenario that would benefit from the development of a record in a trial court. We would be serving the interests of the state and of judicial economy by addressingpetitioners' claims now. *Id at 253.*

This dissent indicates that this Justice gave no weight whatsoever to the defendants' standing argument.

The statements made by the justices in *Progress Ohio.org. vs. Kasich.* (2011) 129 Ohio St.3d 449, at 451 reflect a long line of Ohio cases conferring standing on taxpayers and others litigating in the public interest. This Ohio Supreme Court has previously stated that "[s]tanding does not flow from the common-law "personal stake" doctrine alone. As the United States Supreme Court has recognized, standing may also be conferred by a specific statutory grant of authority:

> Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends on whether the party has alleged * * * a 'personal stake in the outcome of the controversy' [citation omitted] * * *. Where, however, * * * [a legislative authority] has * * * provided by statute for judicial

review * * *, the inquiry as to standing must begin with a determination of whether the statute in question authorizes review at the behest of the plaintiff." *Sierra Club v. Morton* (1972). 405 U.S. 727. 731-732. 92 S.Ct. 1361, 1364, 31 L.Ed.2d 636. *Middletown v. Ferguson* (1986). 25 Ohio St.3d 71. 75-76

Section B confers standing for public interest suits to challenge this act and to determine its constitutionality as soon as possible after passage. This provides public interest standing to bring a suit of this type. Any actual injury requirements are dispensed with by the language of this section and the 90 day statute of limitations on constitutional challenges.

d. Plaintiffs Skindell and Murray Have Standing as Legislators Who Will Suffer a Specific Injury.

There is particular harm to Plaintiffs Skindell and Murray as members of the General Assembly. Counts V and VII of the complaint deal with the unconstitutional encumbrances that R. C. 187 puts on the state and current and future General Assemblies. Legislator standing is usually discussed in the context of vote nullification (i.e.. the executive branch fails to enforce a law enacted by the legislature and a legislator who voted for the bill would have standing). This theory of legislative standing comes from U.S. Supreme Court case law and has been applied by the Ohio Supreme Court. *Ohio General Assembly v. Brunner* (2007) 114 Ohio St.3d 386. 390-91. The Court said that the voter nullification theory was applicable in State courts. Further, the Court noted that the U.S. Supreme Court had held that a legislator voting in the minority would not have standing on that legislation. However. it is quite clear that state courts need not be as restrictive as federal courts when it comes to standing.[2]

The legislature alone is granted the constitutional authority to. by law. appropriate money from the treasury of the State. O Const. Article 2, Section 22 limits appropriations to two years.

Legislation such as H.B.1, that obligates state moneys for more than two years, violates the constitution and prevents future General Assemblies, and the legislators thereof, from exercising their rights and duties as proscribed in Article 2. *See Sorrentino*, supra, 52 Ohio St.3d at 217. Plaintiff Skindell, as a State Senator, and Plaintiff Murray, as a State Representative, are uniquely situated and are "threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general." *Cuyahoga Cty Bd. Of Commrs. v. State of Ohio*, 112 Ohio St.3d 59, 2006-Ohio-6499, ¶ 22. Therefore, as legislators, Plaintiffs Skindell and Murray have standing to challenge the Constitutionality of H.B. 1 and the ability to seek injunctive relief in this action.

e. Plaintiffs Also Have Common Law Standing

The only arguments that defendants present in their motion to dismiss is that plaintiffs lack standing to bring this claim because they point to no actual injury personally suffered as a result of this legislation and because they cannot (and do not) assert "vote nullification". Although defendants pay much attention on these aspects of standing jurisprudence, they barely touch upon the entire line of cases that discuss the public right and the corresponding standing for taxpayers. Since plaintiffs are bringing this action as citizens and taxpayers to protect a public right, nothing cited or argued in defendant's memorandum bears on this question.

f. The General Assembly Has Designated the JobsOhio a Matter of Great Pubic Interest by Enacting R.C. 187.

JobsOhio is considered to be the cornerstone of this administration's policies and an initiative of utmost importance. The governor and the legislators that voted for this as well as the lobbyists that urged its passage, all consider the law to be of great public interest. However, the General Assembly is well aware that this radical law is potentially corruptive. If the governor is

[2] *See Sheward*, 86 Ohio St.3d 451 at 470, *infra*.

allowed to proceed with the disassembly of the Department of Development and the transfer of massive government wealth to a secretive private organization and the act is ruled unconstitutional in two or three years instead of now, the losses to the state could be astronomical.[3] All the contracts and grants signed by the entity would then become illegal as would all use of public monies. The General Assembly would naturally seek immediate judicial review with a time limit of their choosing for law that they think is highly important.

As the state is now organized, economic development and grants to private businesses are controlled by the Ohio Department of Development and administered by public servants in an open government agency that is fully accountable and required to hold grantees accountable as well. R. C. 187 transfers these proprietary functions and large amounts of public revenue into private hands in a secretive organization with little or no accountability. The JobsOhio entity will be receiving and directing millions of dollars in state revenues within months and all these monies will be moved to private entities.

This statute will dismantle the Department of Development and result in a massive lay off of state employees that have civil service protections and bumping rights. It will be a costly and disruptive procedure. .

g. Plaintiffs Have Standing to Challenge R.C. 187 as Citizens and Taxpayers Because It Is a Matter of Great Public Interest.

In Ohio, the courts are not limited by the strict constitutional requirements imposed on a federal court by the United States Constitution that requires direct and private injury. *State ex rel*

[3] Many of the other states that have privatized their economic development states have encountered significant problems, Ex. 1 and Florida, often cited as a model for Ohio, recently commenced a reversal of that ill-fated privatization plan at the Governor's behest. Ex. 2.

Ohio Academy of Trial Lawyers v. Sheward 86 Ohio St.3d 451, 470. [4] Standing based upon the public right is long and well established in Ohio and this had been the case for well over 100 years. *Id.*

In the 1800's, this Court determined that private or individual damage is not a necessary component to maintaining an action when the issues sought to be litigated are of great importance and interest to the public. *In re Assignment of Judges to Hold Dist. Courts* (1878), 34 Ohio St. 431. The right of a citizen to maintain action in the public interest was reinforced over fifty years ago in *State ex rel. Newell v. Brown* (1954), 162 Ohio St. 147:

> Ordinarily a person is not authorized to attack the constitutionality of a statute, where his private rights have suffered no interference or impairment, but as a matter of public policy a citizen does have such an interest in his government as to give him capacity to maintain a proper action to enforce the performance of a public duty affecting himself and citizens generally.... Where a public right, as distinguished from a purely private right, is involved, a citizen need not show any special interest therein, but he may maintain a proper action predicated on his citizenship relation to such public right. This doctrine has been steadily adhered to by this court over the years. *Id.* at 150-151.

When defendants do briefly mention public right standing, they incorrectly state that it applies only when the judiciary is attacked, citing *State ex rel. Ohio Academy of Trial Lawyers v. Sheward, Id.* A public right was found there based upon a legislative attack on the judiciary, but that case does not limit public right litigation only to those circumstances. It existed long before *Sheward*, was decided and it was never limited to only those circumstances.[5] Later., this Court

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[4] "Unlike the federal courts, state courts are not bound by constitutional strictures on standing; with state courts standing is a self-imposed rule of restraint. State courts need not become enmeshed in the federal complexities and technicalities involving standing and are free to reject procedural frustrations in favor of just and expeditious determination on the ultimate merits." *Id. quoting* 59 American Jurisprudence 2d (1987) 415, Parties, Section 30.

[5] *See, e.g., State ex rel. Trauger v. Nash* (1902) 66 Ohio St.612, 615-16 (a citizen/elector filed a mandamus action to compel the Governor to fill a vacancy of Lieutenant Governor, the court allowed the relator as a private citizen to "enforce the performance of a public duty affecting himself as a citizen and the citizens of the state at large...a majority of the courts ...have held that a private relator...must show a special interest in himself; but even in some of those

cited *Sheward to* find that a public right existed when the Bureau of Workers Compensation attempted to force injured workers to submit to drug testing as a condition of receiving workers' compensation benefits, *State ex rel. Ohio AFL-CIO v. Ohio Bur. of Workers' Comp.*, 97 Ohio St.3d 504.

III. This case is ripe for review

Despite the statutory language which indicates that the General Assembly wanted this case to be brought immediately, defendants grasp at methods to stop it by raising a ripeness argument. JobsOhio has already been allocated a one million-dollar appropriation in House Bill 1 Section 5 thus immediately violating the proscription against joint ventures:

> The Director of Development, in consultation with the Director of Budget and Management, shall find within the Department of Development's total unexpended and unencumbered fiscal year 2011 General Revenue Fund appropriation an amount not to exceed $1,000,000 in order to establish and operate the JobsOhio corporation established in Chapter 187. of the Revised Code. The Director of Development shall identify appropriation items within the General Revenue Fund that are to be reduced for this purpose, and any reduction in appropriations to these items pursuant to this section shall not collectively exceed $1,000,000. The amounts identified by the Director are hereby appropriated in General Revenue Fund appropriation item 195527, JobsOhio, for transition and start-up costs of the JobsOhio corporation. Nothing in this section shall be construed as increasing or decreasing the Department of Development's total fiscal year 2011 General Revenue Fund appropriation.

Ohio now has one million dollars of taxpayer money invested in a private corporation. This was not a grant and it was not a loan, but a direct investment, thus making the case ripe for review.

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jurisdictions it has been said that "the rule which rejects the intervention of private complainants against public grievances is one of discretion and not law… There are serious objections against allowing mere interlopers to meddle with the affairs of the state, and it is not usually allowed *unless under circumstances when the public injury by its refusal will be serious.*'" (1902) 66 Ohio St.612, 615-16, *quoting Ayers v. Board of State Auditors* (1880), 42 Mich. 422, 429, 4 N.W. 274, 278-279. *Emphasis added.*)

Defendants argue that since JobsOhio has not yet made any of the investments, which the Governor and Mr. Kvamme have repeatedly touted, and that no suit would be ripe until such investments are made. Pursuant to 187.09(C), plaintiffs would have (if the provision were constitutional and defendants were right), plaintiffs would have only 60 days to file such a challenge. But per 187.03(F), JobsOhio is only required to disclose its investments once per year, by March 1, or 59 days after the close of the last year. THAT is the very definition of an illusory remedy since one would have one day to read the report and file a complaint, unless it is a leap year and then there would literally be no time in which to file suit. Therefore, as to just this aspect of plaintiffs' challenge, defendants must either (1) concede that the case IS ripe for review, or (2) that the legislation's statute of limitations is unconstitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Public-Private Power Grab: The Risks in Privatizing State Economic Development Agencies

by

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January 2011

Ex 1

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Executive Summary

Transferring state business recruitment functions from government agencies to private entities is not the panacea that its proponents suggest. In fact, the track record of those few states that have taken the step is filled with examples of misuse of taxpayer funds, political interference, questionable subsidy awards, and conflicts of interest. Rather than making economic development activities more effective, privatization often is little more than a power grab by governors and powerful business interests.

Public interest in economic development privatization has surged recently because it is being promoted by newly elected governors in states such as Wisconsin, Ohio, Iowa and Arizona. They are pressing for state commerce or development agencies to be replaced by public-private partnerships (PPPs) that supposedly bring private-sector expertise to state efforts to attract new business investment and thereby create new employment opportunities for residents.

A Good Jobs First review of prior experiments with economic development PPPs finds the following:

- The idea is far from new but it is not a common or standard practice. Economic development PPPs date back more than 20 years, but only seven states currently allow private entities to control their business recruitment functions: Florida, Indiana, Michigan, Rhode Island, Utah, Virginia and Wyoming.

- Several other states previously employed PPPs but abandoned them because of performance problems. One of those states was Wisconsin, where the concept is now being presented as something new. From 1984 to 2007, a private entity called Forward Wisconsin handled recruitment for the state, though not on an exclusive basis.

- Most of the seven states that currently make use of economic development PPPs have experienced a variety of performance problems. These include the following:

  - Misuse of taxpayer funds (Rhode Island, Florida and Wyoming)
  - Excessive executive bonuses (Virginia, Florida, Michigan and Wyoming)
  - Questionable subsidy awards by the subset of PPPs that have a role in that process (Michigan and Rhode Island)

E1381 - Q91 Conflicts of interest in subsidy awards (Florida. Utah and Texas, which makes limited use of PPPs)

- Questionable claims by the PPP about its effectiveness (Wyoming, Florida, Utah and Indiana)
- Resistance to accountability (Florida and Michigan)

Based on these experiences, we conclude that the creation of economic development PPPs is not a wise course of action and recommend states focus instead on making their existing agencies more effective and accountable.

In states where a PPP already exists or a new one is being created, we recommend that the entity adopt strong accountability principles, including:

- Maximum transparency in decision-making and finances, including adherence to state open records rules;
- For PPPs that oversee subsidy awards, maximum transparency concerning recipients of those awards and their performance:
- Strict conflict of interest rules regarding staff members and boards of directors:
- Strict rules barring favoritism and "pay to play" in connection with companies doing business with the PPP;
- Appointment of a public ombudsperson to monitor PPP activities and respond to outside complaints: and
- Respect for the rights of employees to organize a union (or to transfer a representation agreement that was in place when the entity was a government agency).

As for the governance of PPPs. we recommend that the governor not chair the entity's board and not have absolute power to name all of the directors. We recommend that leaders of the state legislature be represented on the board and play a role in selecting directors. Board members should represent not only the private sector but also labor, the non-profit sector and other constituencies.

Finally, we recommend that PPPs be funded entirely out of public revenues with full legislative oversight. If private contributions are deemed necessary, they should be in the form of mandatory fees imposed on companies applying for and/or receiving subsidy awards. Barring voluntary contributions will make it easier to avoid the problems of favoritism and pay to play.

Whether or not a state makes use of a PPP, it is worth keeping in mind that the activities that go by the name of economic development or business recruitment are not magic bullets for improving economic conditions or job opportunities in a state. Those conditions are determined by a host of factors, most of which cannot be altered by persuading individual companies to invest in a state. In the end, the business basics are what really matter: proximity to suppliers and strong linkages, proximity to customers, an adequate supply of skilled labor, adoption of technological innovation, and well-maintained and efficient infrastructure. Growing those assets requires strategic public investments to benefit existing employers, not privatized smokestack-chasing.

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Current Economic Development Privatization Arenas

"It stands to reason that private sector business leaders would know best what it will take to attract more private sector business to our state."[1] This statement by an official of the Ohio branch of the National Federation of Independent Businesses represents a popular notion among some new state officeholders following the November 2010 elections.

These officials are promoting plans to transfer state activities designed to attract new investment—and thus new jobs—from government agencies to private entities that are described as quasi-public or public-private partnerships (PPPs). The concept is being pushed by incoming governors in Wisconsin, Ohio and Iowa as well as Arizona Gov. Jan Brewer.

In this report we look at the origins of this form of privatization and review the experiences of those states that have already adopted the practice. We begin by looking at the state of play in the four states where economic development privatization is on the front burner.

<u>Wisconsin</u>

During his campaign for governor, Scott Walker made some references to overhauling the state Department of Commerce, but it was only after he was elected in November 2010 that he formally proposed replacing the agency with a PPP focused on economic development.

The plan was said to be derive from a report – *Be Bold: The Wisconsin Prosperity Strategy* - that had been issued in November by the 2010 Wisconsin Economic Summit Series, an initiative of the University of Wisconsin System, Competitive Wisconsin Inc., the Wisconsin Technology Council, the Wisconsin Way and the Wisconsin Higher Education Business Roundtable.[2] The report claimed to "represent the best thinking and sincere efforts of hundreds of Wisconsin's business, academic, policy and community leaders." The project received "financial and intellectual support" from corporate sponsors such as Alliant Energy, AT&T Wisconsin and MillerCoors and from various trade associations.[3]

What the report did not mention—and what Walker did not highlight—was that the idea of privatizing the Department of Commerce originated in an earlier report with a similar title. In August 2010, Competitive Wisconsin Inc. and several other groups released *Be Bold Wisconsin: The Wisconsin Competitiveness Study*.[4] Whereas in the November *Be Bold* report junking of the Commerce Department was No. 8 in the list of recommendations, the August study put it as number one.

The August study described itself as "independent" and "non-partisan," yet it was produced by the consulting firms Deloitte and Newmark Knight Frank. Deloitte is a major booster of public-private partnerships: it makes a lot of money providing PPP-related services both in the United States and around the world. Deloitte executives William D. Eggers and Robert N. Campbell III have been described as "two of the intellectual leaders of the public sector privatization movement."[5]

The Deloitte/Newmark Knight Frank *Be Bold* report declared that "Wisconsin needs a change agent, a high-profile economic development champion empowered to aggressively pursue business retention, growth, and attraction." While admitting "there are many ways to structure, govern, fund, and transition responsibilities for this new entity," the report strongly argued in favor of a quasi-public agency, even offering a catchy name: Accelerate Wisconsin.

The entity, it was suggested, should have flexibility in hiring and firing employees and in setting compensation levels; should have a board with 60 percent of its members from the private sector; and should be funded from public funds already earmarked for the Commerce Department as well as private contributions. The report also suggested that Accelerate Wisconsin could impose private-sector assessments on economic development subsidies, the administration of which would be put in the hands of the quasi-public agency.[6]

Ohio

In August 2010 gubernatorial candidate John Kasich proposed that the state Department of Development be dismantled and replaced with a private corporation called JobsOhio. Although it would report to the governor, the entity would, Kasich's plan said, be headed by a CEO who is "a successful, experienced business leader capable of interacting as a peer with other board members and CEOs, and running the operations of the organization" and it would be "governed by a board of directors comprised of industry experts and current or former CEOs, with a strong presence from small and entrepreneurial growth companies. Board members will engage their CEO peers to identify problems before they begin, and provide essential feedback and guidance."[7] Those CEO peers and their companies would be allowed to make financial contributions to JobsOhio.

The Kasich plan argued that "JobsOhio will be more accountable to taxpayers than the current Department of Development because its work will be evaluated against established metrics, and leaders, staff and programs that fail to perform can be more easily replaced or changed—something [that] cannot easily be done now." The plan was silent, however, on whether the entity would be subject to the state's open records rules.

E1381 – 095 Kasich proposed that JobsOhio be put in charge of negotiating tax-break subsidy deals with companies "all the way to dotting T's and crossing I's [sic], (but) the final decision will remain inside the governor's office."[8]

Iowa

In August 2010 gubernatorial candidate Terry Branstad announced a proposal to replace the state's Department of Economic Development (IDED) with a public-private entity he called the Iowa Partnership for Economic Progress. The announcement, which came on the same day John Kasich issued his plan in Ohio, included the suggestion that the Partnership be headed by a CEO with a track record of "real world economic development success."[9]

Alluding to the controversy at IDED over the abuse of film production tax credits, Branstad said he wanted to replace a "dysfunctional and scandal-ridden" agency with a supposedly more nimble public-private entity.[10] Unlike those proposing privatization in other states, Branstad also vowed to review the state's subsidy programs.

Although Branstad has not yet released a detailed plan, it is clear, as the *Des Moines Register* pointed out, that the Partnership "will rely more heavily on business leaders to drive the state's development efforts."[11]

Arizona

In contrast to Wisconsin, Ohio and Iowa, Arizona's proposal to replace the state development agency came from a gubernatorial candidate who was already in office. In April 2010 Gov. Jan Brewer, who replaced Janet Napolitano in 2009 when she became U.S. Secretary of Homeland Security, announced plans to scrap the state Department of Commerce and replace it with an entity, the Arizona Commerce Authority (ACA), that would be overseen by the private sector.

The plan was based on the recommendations of a report issued the previous month by the Governor's Commerce Advisory Council, a body created by Brewer and made up mostly of prominent corporate executives in the state.[12] As envisioned by the Council, ACA would have a board chaired by the governor but otherwise populated by "CEO-level business, education and community leaders representing all areas of the state."

ACA would receive both state funding and private contributions in the form of fees charges to companies making use of state tax credit and grant programs. Those programs would be managed and administered by ACA.[13]

Although Brewer signed an executive order creating ACA last June, she has still not received authority from the legislature for it to take over the functions of the Department of Commerce. In the interim, she gave ACA control over $10 million in federal stimulus funds.

A Stale Concept

The economic development privatization proposals that emerged last year in Wisconsin, Ohio, Iowa and Arizona all made reference to similar "reforms" in other states such as Indiana and Michigan. Yet what the candidates often failed to mention was that those initiatives had mostly been adopted long ago. Replacing official state economic development functions with those of public-private partnerships is an old idea—one that has been around for more than 20 years.

Rather than being a revolutionary new concept that is sweeping the country, the economic development PPP is a stale notion that has been tried and abandoned in some states, while in others it has remained in place while suffering a mixed track record. In Louisiana the plan never got off the ground; voters there shot down a privatization proposal in 2000.[14]

Ironically, one of the places that tried and later dropped the PPP approach is the state where it is being pushed most aggressively now: Wisconsin. What has been ignored by Gov. Walker and hardly ever mentioned in the news media is that in 1984 a private corporation called Forward Wisconsin (FW) was created to help the state market itself to corporations. FW was part of the response by Gov. Anthony Earl to the decision by Kimberly-Clark to move its corporate headquarters to Texas, supposedly because of Wisconsin's unfriendly business climate.[15]

FW did not replace the Department of Development, but it was supposed to take the lead in business recruitment. The organization's early claims of success were challenged in a 1986 article in *The Business Journal-Milwaukee* which quoted various business executives as saying that FW played no role in their decision to invest in the state.[16] In subsequent years the mission of FW was frequently criticized for being ill-defined.

E1381 FW also got embroiled in a few scandals, including one relating to its 2001 role in arranging for Gov. Scott McCallum and his family to have the free use of a $20,000 boat provided by manufacturer Mercury Marine.[17] McCallum paid a $500 fine following a state Ethics Board Investigation.[18] In 2007, after FW President Pepi Randolph resigned, the state Department of Commerce took over management of the organization, eliminating the president's position and the salary that went with it.[19]

California dismantled its Technology, Trade and Commerce Agency in 2003, leaving business recruitment to private entities such as TeamCalifornia. A February 2010 report by the Little Hoover Commission was sharply critical of the private sector's performance and argued for the creation of a Governor's Office of Economic Development.[20] Gov. Schwarzenegger went along with the suggestion, thereby bringing recruitment functions back into the public sector.

The Michigan Economic Development Corporation (MEDC), often cited as a model by PPP proponents, was not the state's first foray into privatized business recruitment. In 1993 Gov. John Engler arranged for the state's efforts in that area to be taken over by a PPP called Michigan First Inc. Its track record proved disappointing, and in 1995 it was combined with the Michigan International Trade Authority to form a new state entity called the Michigan Jobs Commission.[21] Four years later, the Jobs Commission was split up, with its economic development functions given to a new PPP, the MEDC.

During the 1990s several other states opted for economic development PPPs and have retained them. The first of these was Florida, where the idea for a public-private partnership to handle economic development functions was first promoted in the early 1990s by the Florida Chamber of Commerce and was championed by Gov. Lawton Chiles, who sought to reduce the size of state government.[22]

Local government officials expressed concern that the plan would work to their disadvantage, but in 1992 the state legislature went ahead with the creation of what became known as Enterprise Florida (EF). Initially, the entity was supposed to strengthen and coordinate economic development of the state rather than completely take over that responsibility. But there was confusion on what its mission exactly was. A 1992 article in *Florida Trend* quoted Allen Lastinger Jr., president of Barnett Banks and co-chair (along with the governor) of EF, as saying: "It's premature to speculate on what [EF] is going to look like." A former legislative staffer who had drafted the bill creating EF told the magazine: "Have you figured out yet what Enterprise Florida is? I haven't."[23]

The Rhode Island Economic Development Corporation was created in 1995 at the urging of incoming Gov. Lincoln Almond to replace the state's Department of Economic Development and its Port Authority. The entity, which was supposed to treat companies as customers, was modeled on the Michigan Jobs Commission.[24]

In 1996 the Virginia General Assembly passed legislation transferring business recruitment functions from the Department of Economic Development to a private entity called the Virginia Economic Development Partnership that had been created the year before.[25]

In 1998 Wyoming handed over its economic development functions to the quasi-public Wyoming Business Council. The state legislature took the step on the recommendation of a study partially funded by the Heritage Society, the state's premier business and industry group.[26]

After Michigan created MEDC in 1999 it was several years before another of today's surviving PPPs came into existence. The Indiana Economic Development Corporation, cited as a model by Wisconsin Gov. Walker and other PPP proponents, is usually associated with Indiana Gov. Mitch Daniels, who took office in 2005. Yet the transfer of the state's economic development functions to the IEDC had been approved by the state legislature in 2003.[27] The switch was not scheduled to occur until July 1, 2005, but soon after taking office Daniels successfully pressed legislators to accelerate the process. He also persuaded them to make the governor rather than the lieutenant governor the chair of the IEDC and to reduce the size of the board, whose members would all be named by the governor.[28]

During the same time in Utah, newly elected governor Jon Huntsman Jr. was also promoting the PPP concept for his state's business recruitment function. Huntsman had not pushed the privatization idea during his campaign, but it became the centerpiece of his strategy after he chose as his chief economic adviser Chris Roybal, who had been serving as chief executive of the private non-profit Economic Development Corporation of Utah (EDCU).[29] In 2005 EDCU was awarded the contract to take over the state's business recruitment effort.

There was little subsequent action on the economic development privatization front until the wave of proposals of 2010. In addition to those, a variation on the economic privatization theme occurred in New Jersey that year. Gov. Chris Christie handed over the state's business recruitment efforts to the newly founded Choose New Jersey, a private entity funded by major corporations. Choose New Jersey was not given any public funds to support its efforts nor was it given any control over subsidy awards.

The fact that Choose New Jersey is not using taxpayer money eliminates some accountability issues but it potentially raises others. The watchdog group New Jersey Policy Perspective has expressed concern that the companies funding the marketing efforts may expect to receive something in return—such as business tax cuts—from the state.[30]

A Mixed Record

Not counting states that have turned over limited economic development functions to private entities—such as TexasOne—there are now seven states whose business recruitment is under the control of PPPs or similar entities. In order of seniority, they are:

- Enterprise Florida (1992)
- Rhode Island Economic Development Corporation (1995)
- Virginia Economic Development Partnership (1995)
- Michigan Economic Development Corporation (1999)
- Wyoming Business Council (1999)
- Indiana Economic Development Corporation (2005)
- Economic Development Corporation of Utah (2005)

The fact that these states have stuck with their PPPs does not mean that they have been free of performance problems, controversies or scandals. In the following sections we look at some of the blemishes on the track records of these privatized economic development agencies.

Mishandling of Funds

One of the arguments for PPPs is that they function more like businesses and thus supposedly have stricter financial controls than government agencies. That assertion has not always turned out to be valid.

In 1999 Rhode Island Economic Development Corporation director John Swen resigned following reports of inappropriate use of state credits cards by agency employees.[31]

That same year, a report by the state inspector general found what one newspaper called "a pervasive breakdown in Enterprise Florida's accounting practices." For example, the entity's president, John C. Anderson, was found to have been improperly reimbursed for his wife's travel expenses and to have received $171,250 in bonuses over three years (on top of a $200,000 salary) without a formal review or evaluation of his performance.[32]

A 2001 report by the state comptroller accused Enterprise Florida of improperly using taxpayer funds to pay for lobbying activities and private club memberships. In a cover message Comptroller Bob Milligan wrote: "Accountability at Enterprise Florida must be immediately and substantially improved."[33]

The Wyoming Business Council became embroiled in financial controversies shortly after it was created. In 2000 the organization was criticized for allowing spouses of Council employees to use a state airplane and for providing unauthorized bonuses to the pilots of those planes. That plus other performance problems prompted a state legislative committee to cancel out the Council's entire budget. The funding was restored after the Council's chief executive, John Reardon, resigned.[34]

Excessive Executive Bonuses

It is a given that the chief executive of an economic development PPP receives a large salary, often well above that of the governor. Privatization proponents argue that the hefty paychecks are necessary to lure top talent from the ranks of the private sector. Today, PPP chief executives have salaries of $250,000 or more.[35]

The problem is that those PPP heads start to think like corporate chief executives and expect to receive lucrative bonuses on top of their salaries. The businesspeople who populate the boards of the PPPs are usually happy to oblige.

For example, in 1998 Virginia Economic Development Partnership executive director Wayne Sterling was awarded a 20 percent bonus, worth $36,400, on top of his salary of $182,000. This put his total pay at nearly twice the salary of the state's Secretary of Labor and Commerce.[36]

The 1999 report by the Florida inspector general cited above also criticized Enterprise Florida for giving $171,250 in bonuses over three years (on top of a $200,000 salary) to its president without a formal review or evaluation of his performance. And the 2001 report by the Florida state comptroller accused EF of improperly using taxpayer funds to pay executive bonuses.

E1381 When the Michigan Economic Development Corporation was created in 1999 through a reorganization of the Michigan Jobs Commission, the head of the jobs commission, Doug Rothwell, was tapped by Gov. John Engler to head the new entity. *Crain's Detroit Business* wrote at the time: "Widespread speculation surfaced last week in Lansing that the new structure is, in part, a way to retain Rothwell and pay him more than the $108,000 he makes now as an unclassified state employee."[37] Rothwell denied there was a connection, but he apparently had no objection when the MEDC board later raised his base salary to $189,600 – well above that of the governor – and then gave him a $49,000 bonus.[38] Today the head of MEDC receives a salary of $250,000.[39]

One of the factors leading to the resignation of Wyoming Business Council chief executive in 2000 was criticism of the $30,000 bonus he was receiving in addition to his $135,000 salary.[40]

In 2009 Enterprise Florida head John Adams received a bonus of $90,000 on top of a base salary of $199,521.[41]

Questionable Subsidy Awards

Some of the state PPPs administer not only the marketing facets of business recruitment, but also the lucrative subsidies that states offer companies in economic development deals. The theory is that the privatized entities have a better sense of what kind of financial incentives companies want and will be more diligent in choosing worthy recipients. Among the states where the PPP has a role in approving or at least negotiating subsidy awards are Michigan, Rhode Island and Virginia.

The theory about PPP superiority in administering subsidy programs was blown to bits in Michigan last year. The Michigan Economic Development Corporation was at the center of two big scandals about tax credit awards.

First, it came to light that a company that had been approved by MEDC for $9 million in subsidies for a project in Flint was headed by convicted embezzler Richard A. Short. A former Genesee County prosecutor told the *Flint Journal* that Short, who was still on parole, had "an extensive criminal history…a history of scams. To give money to a project like that…shows gross negligence [by] the people who did the homework on this."[42] Amid the uproar over the case, MEDC head Greg Main offered his resignation, but Gov. Jennifer Granholm declined to accept it.[43] The legislature, nonetheless, held hearings on the matter.

E1381 Later in the year, the Mackinac Center, a long-time critic of MEDC from a free-market perspective, challenged claims by the developers of a new film studio slated to receive millions in subsidies that they had made a $45 million investment in the project.[44] An investigation of the matter by the state attorney general led to the filing of criminal charges.[45]

Also in 2010, the subsidy approval practices of the Rhode Island Economic Development Corporation became a major issue in the gubernatorial race when candidates Lincoln Chafee and Frank Caprio both lambasted the entity's decision to provide a $75 million loan guarantee to a company controlled by retired Boston Red Sox pitcher Curt Schilling for what they described as a risky video game venture.[46]

Conflicts of Interest in Subsidy Awards

Allowing private parties to play a role in making subsidy awards also creates the risk that they will favor their own companies or industries. There is also the danger that PPPs will show favoritism toward those companies that have made contributions to the quasi-public entity—or even that a "pay to play" situation will arise in which companies that make contributions will be favored for awards or given the largest subsidies.

A 6,000-word investigation published in the *St. Petersburg Times* in August 2006 reached such conclusions about Enterprise Florida. The paper found a pattern of conflicts of interest among EF board members, whose companies in many cases made contributions to EF and then received substantial state subsidies from programs promoted by EF. In at least one major case, BellSouth, the company was reported to have received help from EF staffers in preparing its application for such subsidies. The investigation, titled "Deal Me In," also raised questions about other transactions between EF and businesses represented on its board.[47]

In a follow-up editorial, the *Times* wrote that EF "has shown itself to be a public-private venture only in the sense that the public pays and the private receives. Despite critical audits, legislative questions and gubernatorial promises of reform, the group has proved to be virtually immune to the normal checks and balances."[48]

A check of current EF board members finds that several are affiliated with companies that have received state subsidies. For example, Embraer Aircraft Holding Inc., whose president Gary Spulak is an EF director, received $5.5 million from the Quick Action Closing Fund in 2008 and a $1.1 million Qualified Target Industry Tax Refund the following year.[49]

E1381 After Utah Gov. Huntsman got the legislature to approve his plan to privatize the state's business recruitment activities and a solicitation was published, it turned out that the only bidder for the contract was the Economic Development Corporation of Utah (EDCU), a private entity that had been headed by his chief economic adviser Chris Roybal, who appeared to have convinced Huntsman to push for the privatization.[50] Despite the obvious ethical issues. Huntsman did not hesitate to accept EDCU's bid.

Texas offers another egregious illustration of these problems. Although the state has not privatized its entire business recruitment function. Texas does use a PPP to administer its Emerging Technology Fund, which has disbursed more than $300 million in subsidies and equity investments to projects involving corporations and universities. In October 2010 the *Dallas Morning News* reported that more than $16 million from the fund had been awarded to companies with investors or officers who were large campaign donors to Gov. Rick Perry.[51]

The controversy was heightened when it came to light that one of the companies, Convergen Lifesciences, had gotten its award, worth $4.5 million, even though it had failed to gain the endorsement of a regional board that screens applications to the fund.[52] The head of the company, David Nance, had previously served on the fund's advisory committee, and his daughter's public relations firm had received a contract to promote the fund.[53]

Questionable Claims

In addition to these financial oversight and ethical issues, some of the state PPPs have also been criticized for exaggerating their role in business recruitment successes or for overestimating the job-creation results of their efforts.

As noted above, Forward Wisconsin—the earliest PPP we could find—was accused of such exaggerations in its early years.

In 2000 the methods used by the Wyoming Business Council for calculating economic gains for the state were challenged by members of the state legislature. The agency's claims about the number of companies it served were dismissed as "too anecdotal and not…analytical" by state Senator Cale Case. State research analysts and statisticians made the case that the Council was using the wrong methods to measure job growth.[54]

In 2001 the Florida Office of Program Policy Analysis and Government Accountability issued a report that criticized Enterprise Florida for exaggerating its role in creating new jobs, especially in urban distressed areas.[55] The report also noted that although EF claimed to have collected $65 million in private sector funds during the previous fiscal year, only $1.8

E1381 R5 million of that sum went toward EF's operating costs (the rest consisted mainly of matching funds paid by employers participating in the Quick Response Training Incentive Program). EF was thus found to be raising only 14 percent of its operating funds from private sector contributions.

A 2005 legislative audit expressed concerns that the state's contract with the Economic Development Corporation of Utah failed to provide for evaluation of outcomes such as the number of companies relocating to Utah or the number of jobs created, but rather focused on the organization's activities alone as measures of success.[56]

In 2010 the job-creation numbers claimed by the Indiana Economic Development Corporation were put into question after a television reporter found that many of the positions did not exist.[57] A former budget official in Indiana told a reporter that "most of the numbers [IEDC] gave us were either not true or could not be substantiated," adding that he considered IEDC "a political organization that really only served to make it seem like the governor was doing something about the economy."[58]

Inconsistent Practices Regarding Subsidy Transparency

The seven PPP states have a wide range of practices when it comes to disclosing the names of companies receiving subsidy awards and related information. Based on an assessment of state online transparency policies published by Good Jobs First in December 2010, they fall into three categories[59]:

- Two of the states—Indiana and Michigan—have good disclosure systems that are handled by the PPPs—the Indiana Economic Development Corporation and the Michigan Economic Development Corporation. Michigan ranked seventh and Indiana eighth in our study.

- Four of the states —Florida, Rhode Island, Utah and Virginia —have mediocre disclosure systems that are administered by state agencies rather than the PPPs. We did not explore the issue, but having a duplicative outside structure may be impairing the ability of the state agencies to receive and disclose data.

- One of the states—Wyoming—is among the 13 states that have no online recipient disclosure for their major subsidy programs.

PPP executives often seem to resent the fact that their organizations are still, to some extent. public entities and are thus accountable to elected representatives and the public.

In 2002 John C. Anderson. president of Enterprise Florida, complained to the state legislature about the amount of scrutiny—including a series of critical audits—his organization's activities were receiving. "We are spending an inordinate amount of time on administrative issues and responding to these things." he groused.[60] A few weeks later Anderson resigned.

In the wake of a series of scandals in 2010 about the Michigan Economic Development Corporation's handling of tax credit awards, the entity's executive committee issued an open letter of complaint to the media and the legislature. Rather than addressing MEDC's shortcomings, the letter made the dubious claim that the controversy might prompt companies to shun the state. "Political in-fighting is a clear warning to business that a state lacks a cohesive climate for economic development," the letter stated, "and a clear signal to invest elsewhere."[61]

The criticism. however, did not cease. An August 2010 report commissioned by six economic development organizations in the western part of the state found that MEDC was too susceptible to political pressures.[62] This was followed by a report from the Michigan Economic Developers Association which concluded that "MEDC no longer enjoys the pre-eminence in state government that it has enjoyed in the past" and had become "an entity comprised of program administrators rather than job creators and marketers on behalf of the state."[63]

Conclusion and Policy Recommendations

In this report we have frequently used the term "privatization" to refer to the transfer of economic development functions from state agencies to public-private partnerships. The creation of these PPPs is, in reality, somewhat different from what is typically meant by privatization: the contracting out of public services to for-profit companies or the sell-off of public assets to private investors.

E1381 Proponents of economic development PPPs, unlike advocates of other forms of privatization, never seem to argue that the practice will save money for the state, nor is the transfer of business recruitment functions out of the public sector explicitly designed to provide business opportunities for private-sector service providers.

Economic development PPPs, instead, are varieties of non-profit organizations and quasi-public entities that inhabit a gray area between the public and private sectors. Their proponents see this as a virtue, arguing that these entities need to be free from bureaucratic strictures while serving the public interest.

Yet this "liberated" status also creates risks, which became realities in numerous cases discussed above. These PPPs can end up lacking both the taxpayer accountability that is necessary in public agencies *and* the adherence to strict financial controls that is supposed to characterize well-functioning private-sector enterprises. The fact that PPPs typically intermingle public funds and private contributions makes the problem even more pronounced.

A case can be made that economic development PPPs are not examples of privatization at all. Given the control that governors have assumed over many of these entities, they can be seen instead as power grabs by state chief executives over the economic development process. From this perspective, the point of the PPP is not a matter of being "nimble," as proponents like to say, but instead to reduce or eliminate input and oversight from the legislative branch to which traditional state agencies are subject. They also sidestep the integrity safeguards that come from having staffers protected by civil service regulations.

The extreme case of this is seen in Texas, where the PPP controlled by Gov. Rick Perry to run the Texas Emerging Technology Fund has rewarded many of his major campaign contributors. As well, according to a series of journalistic investigations, Perry has also used TexasOne, a nonprofit business recruitment initiative that solicits funds from wealthy businesspeople, as a sort of slush fund to benefit his political ambitions and to cement his relations with the state's corporate elite.[64]

Based on this analysis, we offer the following policy recommendations:

- *Fix state economic development agencies, don't privatize them*

State economic development agencies vary greatly in their effectiveness and accountability. The creation of a PPP does not speak to typical agency deficiencies. Having a close sense of the state's economy and strengthening the assets that really matter are not inherently private-sector skills. In fact, the highest-impact strategies – such as "growing your own" by building linkages, improving critical labor force skills, assisting small businesses, and encouraging

E1381 technological adaptation and innovation – need sub-state public regional structures, not less accountable centralized systems.

- *If a PPP already exists—or a new one is created—make sure that adequate safeguards are put in place*

The fact that a PPP is not part of the regular structure of state government does not mean that it cannot adhere to principles of accountability. If the entity is set up as a private corporation, such principles can be written into its charter or adopted later by its board. Among the most important principles are:

- Maximum transparency in decision-making and finances, including adherence to state open records rules;
- For PPPs that oversee subsidy awards, maximum transparency concerning recipients of those awards and their performance;
- Strict conflict of interest rules regarding staff members and boards of directors;
- Strict rules barring favoritism and "pay to play" in connection with companies doing business with the PPP;
- Appointment of a public ombudsperson to monitor PPP activities and respond to outside complaints; and
- Respect for the rights of employees to organize a union (or to transfer a representation agreement that was in place when the entity was a government agency).

There are two other issues that require a bit more elaboration. The first is the governance of the PPP. Given both the potential risks and the actual problems seen in some states, we recommend that the governor not chair the PPP's board and not have absolute power to name all of its directors. We recommend that leaders of the state legislature be represented on the board and play a role in selecting some directors. Board members should represent not only the private-sector but also labor, the non-profit sector and other constituencies.

The second issue has to do with the funding of the PPP. The current practice of intermingling public money and private contributions is a recipe for ethical problems. Ideally, the PPP would be funded entirely out of public revenues with full legislative oversight. If private contributions are deemed necessary, they should be in the form of mandatory fees imposed on companies applying for and/or receiving subsidy awards. Barring voluntary contributions will make it easier to avoid the problems of favoritism and pay to play.

E1381R9 Whether or not a state makes use of a PPP, it is worth keeping in mind that the activities that go by the name of economic development or business recruitment are not magic bullets for improving economic conditions or job opportunities in a state. What really matters are business basics and how public investments build them: proximity to suppliers and strong linkages, proximity to customers, an adequate supply of skilled labor, adoption of technological innovation, and well-maintained and efficient infrastructure. Growing those assets requires strategic public investments to benefit existing employers, not privatized smokestack-chasing.

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Scott proposes restoring Fla. Commerce Department

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TALLAHASSEE, Fla. (AP) - Gov. Rick Scott has proposed restoring Florida's Commerce Department to streamline economic development efforts.

The new Republican governor announced his proposal Thursday at meeting of Enterprise Florida, a public-private partnership that assumed the department's economic development role when it was dissolved in 1996.

It will need legislative approval but drew immediate support from business interests.

Doing away with the department was a pet project of then-Gov. Lawton Chiles. The agency's tourism promotion functions were turned over to Visit Florida, another public-private partnership.

Scott was short on details but said he wants the agency's head to have an office near his own in the Capitol rather than in a separate building.

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