ALLEGHENY INSTITUTE FOR PUBLIC POLICY

"POISON PILLS" FOR PRIVATIZATION: LEGISLATIVE ATTEMPTS AT REGULATING COMPETITIVE CONTRACTING

By
Paul Kengor, Research Fellow
And
Grant Gulibon, Assistant Research Director

Allegheny Institute Report #96-22
December 1996

Key Findings

Legislation “regulating” privatization and competitive contracting, such as the bill recently introduced by Pittsburgh City Councilman Gene Ricciardi, purportedly ensures that the competitive-bidding arena is not "rigged" to the advantage of private-sector firms. The Allegheny Institute report, “Poison Pills For Privatization”, examines “living wage” ordinances and broader anti-privatization/competitive-contracting legislation which has been implemented across the United States, from New York City and Massachusetts to Pittsburgh and Los Angeles. The report finds that such legislation has made it more difficult for private firms to compete for government contracts due to the non-competitive provisions of these laws-- to the detriment of local taxpayers. Other findings of the report are as follows:

- Supporters of “poison pill” legislation maintain that their intent is to ensure that contracting, when it takes place, will guarantee that employees are paid "fair, living" wages -- which are usually well beyond the federal minimum-wage requirements. In New York City, for example, this practice has translated into a minimum wage of $12 per hour for janitors.
- While it is difficult to quantify the cost (in terms of lost taxpayer savings) of these types of legislation, such estimates range from $1.2 million annually in Baltimore to $15-16 million annually in New York City.
- Ironically, such legislation has taken place in cities and states with deteriorating fiscal situations, further compromising their ability to balance their budgets. Such legislation has almost always been introduced and passed by legislators over the opposition of the executive of the affected government, who has often considered implementing “right-sizing” initiatives designed to reduce the size and cost of government. The designers of this sort of legislation seem far more concerned with protecting public employee unions than with fiscal responsibility.
- This report offers insights into what has been done to combat such legislation in other cities. In most cases, the executive branch of the affected government has had little success at amending anti-privatization laws.
- Comparatively speaking, the City of Pittsburgh's Ricciardi bill may be unique in terms of its comprehensive nature-- the only parallel being the Pacheco bill in the Commonwealth of Massachusetts-- and may be unprecedented in its ambiguity, and thus potential for abuse by opponents of competitive contracting.
- Rather than "leveling the playing field" for the public and private sectors, as it purports to do, the Ricciardi bill is written in an ambiguous and sometimes punitive fashion that serves to deter private contractors from bidding in the first place.
- This “deterrent” effect of Ricciardi could prevent Pittsburgh from realizing millions of dollars in annual savings from contracting, including $7 to 8 million per year in refuse collection alone.

Overview

This report is in large part a reaction to, and recognition of, increasingly common attempts by cities and states to impose new kinds of requirements on government contractors, ranging from wage structures to health benefits to hiring practices to a guarantee of a certain pre-determined level of savings resulting from the outsourcing. While few can argue with the notion that contracting out a government service should only take place if the private sector can provide the function at a cheaper cost without impairing the quality of service, much of the legislation examined herein goes well beyond that reasonable goal. In many of these bills, it appears that the crafters of the legislation are either not well acquainted with business and the workings of the free enterprise system or are engaged in a deliberate attempt to prevent privatization or competitive contracting (perhaps due to political commitments to particular interest groups).

Essentially, this report considers three levels or types of anti-privatization/competitive-contracting legislation, a.k.a. "poison pills for privatization." The first type encompasses what have come to be called "living wage ordinances." These initiatives involve attempts by local governments to require that contractors pay employees a pre-determined minimum or "living" wage (added on top of federal wage requirements). Moreover, such legislation typically includes a broader wage structure to accompany the new minimum wage, usually requiring that the minimum wage be adjusted (i.e., raised) over a certain period of time. Variations have either been implemented or are under serious consideration in a number of cities and states. For instance, initiatives to raise the minimum wage as much as $2.75 above the federal floor of $4.75 an hour--scheduled to go up to $5.15 in the coming year-- are brewing in at least nine cities, including Houston, Chicago, Los Angeles, and Boston. Votes on the issues are expected by mid-1997. On November 5, voters in Denver and four states considered minimum wage increases.[1] This report briefly profiles living wage ordinances considered or implemented in New York City, Baltimore, and Los Angeles.

The other two types of anti-privatization/competitive contracting legislation are nearly identical, being separated only by a matter of degree. These attempts seek to impose greater conditions on contractors competing to provide a government service. Often, they include a "living wage" structure, but their requirements encompass far more than simply wages. At this second level is legislation such as New York City's Local Law 35, which requires that a savings be ***proven*** when outsourcing a particular function to the private sector, as well as other smaller stipulations. At the third (and most restrictive) level are laws such as the Pacheco initiative in the Commonwealth of Massachusetts and the Ricciardi bill in the City of Pittsburgh. As shall be shown, these two attempts impose a number of tight and often confounding restrictions on private sector groups to whom the government may turn in hopes of achieving cost savings and improved service quality.

In almost all cases, anti-privatization legislation has been pursued by governments that are facing severe budgetary constraints and are in desperate need of the cost savings and improved service quality that could be achieved by contracting out certain functions. In all of the cases considered herein, the impetus for such legislation has not come from the executive branch-- which is ultimately held most accountable for fiscal problems-- but by members of city councils and/or state legislatures. The mayors and governors of these and many other American cities and states are making common-sense decisions in order to reverse long-standing trends of increased taxes and government spending. They are doing so by implementing competition-oriented reforms which have succeeded in other American cities, as well as in the rest of the developed world. Yet

[1] "Wages Up?," *The Wall Street Journal*, November 5, 1996, p. A1.

many of them have been thwarted by anti-competitive barriers inserted by legislators allied with public-sector unions, whose members' jobs are threatened by competition. The ultimate effect of anti-privatization legislation is to eliminate potentially millions of dollars in savings, as well as the prospect of improved service, for taxpayers.

Legislation Aimed at Impeding Privatization and Competitive Contracting

This section analyzes a number of legislative attempts aimed at halting privatization and competitive bidding. The following table is a summary of the legislation examined in this report.

Legislation	Type of Legislation	Year Implemented or Considered	Main Stipulations	Response by Executive Office	Estimate of Costs and Lost Savings
New York City's Local Law 79	Living Wage Ordinance	August 1996	sets wages for four types of contract workers, including unarmed security guards ($7.25/hr) and janitors ($12/hr)	reject and veto, unable to amend bill	$15 to $16 M
Baltimore's Bill No. 716	Living Wage Ordinance	December 1994	contract workers get paid at least $6.10/hr, rising to $7.70 within 4 years	reject and veto, able to get some changes	$1.2 M
Los Angeles (no name, not yet introduced)	Living Wage Ordinance	1996-97 (under consideration)	contract workers get paid at least $7.50/hr, plus an extra $2/hr to purchase medical benefits; also mandates benefits on sick and vacation days	reject, may be working on effecting changes	NA
San Francisco legislation	conditions on contracting out	November 1996	requires city contractors to provide benefits to same-sex couples	support	NA
NYC's "Local Law 35"	broader anti-contracting/ privatization	1994	contractor must demonstrate savings	reject and veto, unable to amend bill	NA

Massachusetts' Pacheco Act	broader anti-contracting/ privatization	December 1993	contractors must prove a savings and pay average wages; places ceiling on private managers salaries; imposes revolving-door arrangements; gives veto power to state auditor general	reject and veto, able to get some changes	NA
Pittsburgh's Ricciardi bill	broader anti-contracting/ privatization	1996-97 (under consideration)	contractors must prove greater productivity, pay wages equal to 75% of public sector and health benefits of 80%, file quarterly payroll reports, among other stipulations	reject, may be working on effecting changes	NA

The following explains each of these initiatives in greater detail.

New York City's Living Wage Ordinance

Not surprisingly, the full tale behind New York City's living wage ordinance is long and amusing, but also troubling. The basic facts are these: In 1995, during initial consideration of a living wage ordinance, the city council originally called for a $12 per hour minimum wage for *all* workers employed under city contracts. Another bill would have required a wage payment sufficient enough to allow a family of four to live above the "poverty line." After a long process, by a vote of 41 to 7, legislation was ultimately passed on July 11, 1996 which allowed for wage levels that range from $7.25 to $12 per hour for unarmed security guards, food-service workers, office temps, and janitors-- about 3,000 workers. Mayor Rudolph Giuliani vetoed the legislation and was considering a court challenge, but never followed through. His veto was overridden by an even wider margin of 42 to 5 on September 11. When asked what the mayor did to water down the legislation or reach a compromise, one official said that Giuliani realized from the outset that he would not be able to impact or amend the legislation, and he was correct in thinking so. "This was a battle we could not have won in a million years," said the official. "Council made it look like we were the rich Republicans from the mayor's office, and they were protecting the little guy." In assessing the damages from the legislation, the deputy mayor asserted: "We must ask

ourselves: 'How do we pay for this? Where do we stop? When do we say enough is enough before we bury the city?'"[2]

The city council itself estimated that the legislation would cost New York City taxpayers **$15.6 million per year**. Importantly, the lost cost savings cited by the council do not include the costs incurred as a result of implementing and enforcing the legislation. Instead, the $15-16M figure accounts only for the potential savings that were lost as a result of the legislation. One official from the mayor's office stresses that the cost of implementing the bill and monitoring its provisions could ***easily add millions more***.

There is concern that the chair of the council's "contracts committee" will raise the issue again during next year's mayoral campaign, threatening to add yet more city industries to the list of services protected. The mayor already plans to get out his veto pen once again. Finally, one of the more odious aspects of the legislation is that it gives the city controller-- an elected official who happens to be running for mayor next year-- sole and unilateral authority to determine the prevailing wage, without an appeals process to a neutral body.

Baltimore's Living Wage Ordinance

In Baltimore, the city council initiated legislation requiring companies to pay workers on municipal contracts $6.10 per hour, with the figure rising to $7.70 per hour within three years. Mayor Kurt Schmoke, powerless to prevent the popular ordinance, was able to gain somewhat of a compromise by stretching the wage structure over a four-year period rather than the original three years. It is estimated that the legislation will cost Baltimore taxpayers $1.2 million.[3]

Table : Living Wage Ordinance Rate Structure for City of Baltimore.

Fiscal Year	Wage rate
1996	$6.10
1997	$6.60
1998	$7.10
1999	$7.70

Source: City of Baltimore, Council Bill No. 716, pp. 6-7

The legislation contains numerous stipulations and punitive provisions governing private contractors. For instance, a copy of the prevailing minimum wage rate for the service contract must be "kept posted" by the contractor "at the site of the work in a prominent place where it can be easily seen." Additionally, Section 26A (D) (3) of the law states: "In the event that any service worker is paid less than the compensation to which the service worker is entitled to under this section, the service contractor shall make restitution to the service worker for the amount due, and shall forfeit and pay to the city a penalty in the amount of $50 per day for each employee so underpaid." When a service contractor has paid "fines" on more than three service contracts in a two-year period, the Board of Estimates "may prohibit a service contract vendor from

[2] Sources for this section: Interview with James E. Berger, general counsel, Office of City Legislative Affairs, The City of New York, Office of the Mayor, November 7, 1996; New York *Newsday*, June 7, 1996, July 12, 1996, August 1, 1996, August 8, 1996, August 30, 1996, and September 12, 1996.

[3] Sources: *Baltimore Sun*, November 1, 1994, December 4, 1994, January 7, 1995, February 19, 1996, May 27, 1996, and October 15, 1996; and City of Baltimore, Council Bill No. 716, pp. 6-7.

participating in the bidding process for up to three years."[4] Many contractors understandably view such language as a red flag and opt out of the bidding process altogether.

Los Angeles' Living Wage Ordinance

In Los Angeles, the city council is currently debating an ordinance proposal that would require all city contractors and firms receiving city subsidies to pay at least $7.50 per hour to their employees, plus either medical coverage or an extra $2 per hour to allow the employee to buy medical coverage. The council made the move out of fear that some city employees in "low-end" jobs were receiving wages inadequate to bring them above the poverty level. The draft ordinance also contains mandated benefits for contract employees, including: 12 days of sick leave, six paid holidays, 10 vacation days, and full family health coverage.[5] The ordinance is opposed by Mayor Richard Riordan, who, like his colleagues elsewhere, is hoping to amend the legislation. Similarly, however, he faces a committed front from council members and unions.

The elements of the legislation are still evolving. On September 3, 1996, the Los Angeles City Council moved to establish a task force to examine the economic impact of a "living wage" for such employees. The task force is scheduled to provide its recommendations in mid-November.

San Francisco Legislation

In an unorthodox requirement, on November 4, 1996, the City Council of San Francisco approved 10 to 0 a provision -- the first of its kind in the nation -- that requires city contractors to provide "spousal" benefits to contract employees who are members of "same-sex couples." As of the writing of this report, there appears to be no threat to halting the legislation.

New York City Local Law 35

This piece of legislation is more explicitly aimed at contracting out than the 1996 living wage ordinance imposed by New York's city council. It applies to all private contracts over $100,000 that involve the displacement of public employees. In this case, "displacement" can even entail a government worker who is moved to another agency. The contractor is subject to a full cost-benefit analysis to ensure that savings are taking place. One official told the authors that contractors brought before council on such matters face a "rigorous" examination.[6] The actual cost of the legislation is not known.

The State of Massachusetts' Pacheco Law

Before the advent of the Ricciardi bill in Pittsburgh, the most comprehensive attempt to condition privatization came via the Pacheco bill in the Commonwealth of Massachusetts in 1993, sponsored by State Senator Marc Pacheco (D-Taunton). Unlike some of the living wage ordinances-- which advocates claim are strictly a response to wage concerns-- the target of Pacheco was first and foremost the process and goal of privatization itself. As noted, advocates of such bills are often assailed for protecting public employees at the expense of taxpayers. Critics

[4] See: Council Bill No. 716, Section 26A (D) (1), Section 26A (D) (3), and Section 26A (D) (4).
[5] Sources: *Los Angeles Daily News*, October 3, 1996 and October 17, 1996.
[6] Interview with James E. Berger.

of the Pacheco bill, such as the governor's spokesman, charged: "Senator Pacheco's real agenda is not accountability to the taxpayer; it's accountability to the public employee unions."[7]

Among the notable provisions of the Pacheco law are the following:[8]

- The original version of the Pacheco bill required proof that a private contractor could do a job at least 10% as cheaply as could state employees. The provision was removed because of fierce opposition by the Weld administration and others. It was changed to require a savings from privatization, but not at a fixed percentage. The bill also requires contractors to pay "average private-sector wages."

- The state Senate's Ways and Means Committee added, and secured, a provision to the original bill that includes a maximum salary of $78,000 for managers of private-provider organizations, setting the ceiling at the highest state salary for managers.

- The original Pacheco bill had prohibitions against conflicts of interest or "revolving-door" arrangements. The final, amended version prohibits managerial state employees who participate in privatization contracts from subsequently going to work for the successful contractor. This restriction applies for the life of the privatization contract, or for one year after the employee leaves state service. The State Ethics Commission and state prosecutors are charged with enforcing the provision. The governor may exempt an employee from this restriction only if, prior to the employee leaving his state employment, the governor determines that the employee's participation had no significant effect on the terms or implementation of the contract.[9]

- In a highly controversial move, the legislation endows state Auditor Joseph DeNucci, a Democrat, with extraordinary veto power over privatization initiatives. To cite just one example, any objection by the auditor general of a privatization contract "is final and binding."[10] Governor Weld worked hard to remove these provisions, but was unsuccessful. Even some Senate Democrats joined him in questioning the constitutionality of the provision.

Governor Weld vetoed the Massachusetts legislature's passage of Pacheco. The legislature, however, overrode his veto. (Of the 40 state senators in Massachusetts, 31 are Democrats.) Weld lobbied for a number of changes, and got some of them-- but only a few. He succeeded in removing the provision requiring a 10% savings from privatization; the bill was amended to require a savings, but at no fixed percentage. He was also able to gain more precise language involving the "revolving-door" arrangements, so that the provision could not be abused. On the other hand, he was unable to change two key provisions of the legislation: 1) the maximum-salary ceiling and 2) the powers of the auditor general remained unaltered.

The City of Pittsburgh's Ricciardi Bill

[7] *Boston Globe*, August 11, 1993.
[8] Sources for the following information: *Boston Globe*, March 1, 1993, May 25, 1993, October 24, 1993, November 21, 1993, December 9, 1993, December 11, 1993, December 12, 1993, and December 17, 1993.
[9] Chapter 268A, Section 5; and "Summary of Ch. 296 (As Amended)," p. 3.
[10] Ch. 7, Section 55(a); and "Summary of Ch. 296 (As Amended)," p. 3.

In October 1996, City of Pittsburgh Councilman Gene Ricciardi drafted a bill similar in language and purpose to other legislation analyzed in this report. (See Appendix for a full copy of the bill.) The bill attaches conditions to privatization and contracting in a comprehensive, Pacheco-like fashion. (In fact, there are at least three or four provisions in Ricciardi that are stated almost verbatim to those of Pacheco, suggesting the author of the former may have been influenced by the latter.) The legislation comes on the heels of a remarkable task force report commissioned by the mayor's office, which made serious suggestions for resolving the city's disastrous fiscal situation by recommending government spending cuts and competitive contracting.

At first glance, the Ricciardi bill appears to be nothing more than a means of holding free-market, pro-privatization advocates accountable to their theories. After all, such people (the authors included) argue that, compared to the public sector, private companies will usually be more productive at providing the same service, while still paying competitive wages and not jeopardizing service quality. In turn, this will create savings for the city that come from contracting out. By requiring greater "productivity" and comparable wages by the private firm, the Ricciardi bill is merely daring us to be consistent. If this is what we believe will occur, then what have we to fear? As shall be shown, however, there is much more to the bill than simply wages and productivity.

First, however, in comparison to similar legislation, the bill is not as bad as some might believe. For instance, unlike the living wage ordinances, the bill does not set a wage structure that must be followed by contractors. It does not even require that contractors pay the *same* wage level as city employees who provide the service. Instead, it calls on contractors to pay 75% of the prevailing wage level as established by the Pennsylvania Department of Labor and Industry-- an outside party.[11] Moreover, in being established in this fashion, the prevailing wage is not set arbitrarily, as it is in the case of New York City, for example. Another less negative aspect of the bill is that the Ricciardi legislation requires merely greater "productivity" by the private contractor, without specifying a certain pre-determined level of savings.[12] The original Pacheco bill, for instance, required a designated savings of at least 10%. (Of course, one would hope that the city would seek to contract out only if savings are presumed anyway.) Finally, in comparison to Pacheco, the Ricciardi bill contains no provisions that empower one particular individual to obstruct competitive contracting in a manner similar to that of the auditor general in the Commonwealth of Massachusetts. It also contains no "revolving-door" arrangements.

Yet, in many other ways the Ricciardi bill may be worse than the Pacheco bill and other "poison pills." The problem is that the bill entails much more than merely requiring greater productivity at comparable wages. Of all the pieces of legislation read by the authors, none is couched in language as unclear as that of the Ricciardi bill. This increases the potential for abuse and misinterpretation by opponents of competitive contracting. The sponsor of the bill claims that he merely wants to "level the playing field" for the public and private sectors, in order to ensure a fair competitive bidding process. He says it is "not an obstructionist piece of legislation."[13] But in reality, the bill is written so ambiguously that it may serve to deter contractors from bidding in the first place-- which is a desirable outcome for the opponents of privatization, and especially

[11] Ordinance, Section 4, 161.30 (b).

[12] See: Gene Ricciardi, "Ricciardi Bill Allows City Employees to Compete...," *Press Release*, October 8, 1996, p. 30.

[13] "Bill lets unions bid on jobs," *Pittsburgh Post-Gazette*, November 27, 1996, p. B3.

public-sector unions.[14] In fact, ironically, it has the potential to be a chiefly obstructionist piece of legislation.

Anti-Competitive Features of the Ricciardi Bill

1. The Ricciardi bill begins with the following statement:

> *The Council of the City of Pittsburgh hereby finds and declares that using outside contractors to provide public services formerly provided by City of Pittsburgh employees does not necessarily promote the public interest. Council further finds that the City employs nearly 4500 City residents; many of these workers being highly trained, experienced and capable professionals whose work compares favorably with industry standards. To ensure that taxpayers of the City receive high-quality public services at competitive prices, with due regard for the taxpayers of the City and the needs of public and private workers, Council finds it necessary to regulate such contracting out.*[15]

From the outset, the Ricciardi bill rests on a somewhat dubious premise. In the second sentence, it claims that city employees' work product "compares favorably with industry standards." In some cases this may be true (although we are unaware of them). In most cases, however, city departments are not as competitive as comparable industries in the private sector. This has been shown repeatedly in reports by the Allegheny Institute and by the mayor's own task force. One specific example of this was illustrated in a recent Allegheny Institute study of competitive contracting of residential refuse collection in the city of Pittsburgh. It found that local private-sector waste haulers move three times as much trash per worker as does the city's refuse bureau, and it costs the city more than twice the amount of the private companies to do the same job-- not a favorable performance for city workers with respect to "industry standards." Also, there are contradictions regarding the bill's assertion that legislation is necessary to protect "the needs of ...private workers." The Institute report on refuse found that the private firms' non-unionized workers make more per week than city refuse workers hired since 1990. In total, the study found that despite the higher wages among private firms, the city of Pittsburgh could save $7 to $8 million annually by contracting out refuse to a local firm.[16]

2. Yet, the Ricciardi bill could prevent such contracting in the first place, via convoluted provisions. One such provision is the following. While private firms would be required to bid on city contracts using real, tangible costs under the Ricciardi legislation, it appears that public agencies could be permitted to use speculative, "best-case-scenario" figures in preparing their bids. Section 161.30(d) of the Ricciardi bill states:

> *The Agency shall prepare a comprehensive written estimate of the costs of the Agency's employees' providing the subject services* ***in the most cost-effective manner****. The estimate shall include all direct and indirect costs of regular Agency employees' providing the subject services, including but not limited to, pension, insurance, and other*

---

[14] In its coverage of the bill, the *Pittsburgh Post-Gazette* noted that Ricciardi's brother-in-law, Bruno Delano, is director of Pittsburgh's American Federation of State, County, and Municipal Employees union, which represents 494 city employees, or about 12% of the city workforce. John M.R. Bull, "Ricciardi moves to protect city workers," *Pittsburgh Post-Gazette*, October 9, 1996.

[15] Council of the City of Pittsburgh, "Contracting Out Regulation and Review Act of 1996", October 8, 1996.

[16] Paul Kengor and C. Jake Haulk, "The Case for Competitive Contracting of Residential Refuse Collection in the City of Pittsburgh," Allegheny Institute for Public Policy, September 1996.

> *employee benefit costs. A copy of the estimate shall be provided to all employee organizations affected by the proposed contract. For the purpose of this estimate, any employee organization may, at any time before the final day for the Agency to receive sealed bids...propose amendments to any relevant collective bargaining agreement to which it is a party. Any such amendments shall take effect only if necessary to reduce the cost estimate pursuant to this paragraph below the contract cost pursuant to paragraph (e)* (which deals with bids from private firms).[17]

As in other passages, the above language sends mixed signals. Letting public unions submit bids based upon providing services "in the most cost-effective manner," rather than according to the actual cost of providing the service, not only "levels the playing field" but tilts in the opposite direction. Such a practice may cause agency bids to understate the true costs of providing such services, while private firms, which do allocate the full costs of providing any service, do not have this luxury. Likewise, the next sentence, which states that the cost estimate must include all direct and indirect costs of regular agency employees providing the same service, could be interpreted to exclude such items as administrative overhead, capital costs, and the like. The language of the ordinance does not clearly specify which costs are to be included in the agency estimate, and is not in accordance with the principles of activity-based costing (ABC) -- which is used by public unions and private firms alike in competition-oriented cities like Indianapolis and Charlotte.

The provisions as written could also be interpreted to mean that public unions could alter their collective bargaining agreements in order to underbid another provider, win the contract, and then re-amend the agreement after the contract is awarded. If this is the case, the fairness of allowing one bidder access to the bids of its competitors and then allowing that bidder to adjust its bid based upon that information is also highly questionable.

3. After the confusing and contradictory selection process outlined above, the City of Pittsburgh would publicly announce the winning bidder. The following would then be required:

> *The Agency shall prepare a comprehensive written analysis of the contract cost based upon the designated bid, specifically including the costs of transition from public to private operation, of additional unemployment and retirement benefits, if any, and of monitoring and otherwise administering contract performance. If the designated bidder proposes to perform any or all of the contract outside the boundaries of the Agency, said contract cost shall be increased by the amount of wage tax revenue, if any, which will be lost by the Agency by the corresponding elimination of Agency employees, as determined by the Department of Finance to the extent that it is able to do so.*[18]

This legislation forces the city to consider the impact of tax revenues lost due to privatization-driven layoffs. However, it completely ignores the city tax revenues which would be gained due to new private-sector activity created by the same transaction. In most cases, local tax revenues, such as those accruing from property or gross receipts ("business privilege" taxes), increase when services are transferred from public, tax-exempt entities to private, taxable concerns.

4. The bill's mandate that bidders who "propose to perform the contract outside the boundaries of the Agency" must pay "the amount of wage tax revenue, if any, lost to the Agency

[17] Council of the City of Pittsburgh, "Contracting Out Regulation and Review Act of 1996", October 8, 1996.
[18] *Ibid.*

by the corresponding elimination of Agency employees..." is also shortsighted, counterproductive, and unnecessary. Workers who would perform any privatization contract would likely be city residents making wages comparable to those paid to city employees who previously performed the service, so it is unclear that the city would lose revenue in any case. However, if concerns about the job and tax revenue impact of competitive contracting on city residents persist, they may be remedied by suggesting that preferential treatment in hiring for such positions be given to city residents.

5. After an agency wishing to contract has determined its preferred bidder, the Ricciardi bill mandates that the bid be submitted to a "Review Committee" consisting of a "representative from City Council, Controller of the Office of the City Controller and the Department of General Services." The head of such an agency, along with the Mayor's Office of Management and Budget, then must certify the following to the Review Committee:

- That the agency has complied with the Ricciardi bill and all other applicable laws;
- That the designated bidder will provide services which maintain or exceed the quality of service which could be accomplished by public employees;
- That the new contract cost will be "significantly less" than the previous cost;
- That the designated bidder has no record of non-compliance with all relevant labor, environmental, or other regulations; and
- "The proposed outside contract is otherwise in the public interest."

As with many of the features of the Ricciardi legislation, these provisions seem sensible and harmless when taken at face value. Indeed, the first and fourth would be required under any privatization program. However, the others are extremely subjective and arbitrary. Why, for instance, would an agency recommend contracting out if improved service quality and taxpayer savings were not likely? The ambiguity of the bill's language could give committee members a reason to reject a private bid based upon factors not related to the quality or cost of the proposed contractor's work.

The suggested structure of the Review Committee may ensure that two of the three seats could be held by individuals who, based upon past experience, may be sympathetic to public unions and hostile to private enterprise. In this respect, the bill could again advances the interests of Pittsburgh's public unions at the expense of all city residents and taxpayers.

6. On another matter, the Ricciardi bill regulates the sale or lease of City-owned recreational facilities. The legislation (as written) restricts private-sector firms from bidding on such facilities and gives the "first option" (or priority) in the bidding process to a Community-Based Organization (defined as a non-profit organization). The question then becomes the following: Why not allow a private firm equal opportunity/priority in the process, (especially in light of City Council's concern about the tax revenue impact of privatization)? Any such facilities could be sold or leased with a provision that mandates that the new operator continue to operate the facilities in the same fashion which they were prior to the transaction, thus ensuring that City residents would receive improved recreational opportunities due to privatization.

7. Finally, although we confess to not being fully informed of the city's policies concerning "nondiscrimination and equal opportunity", it seems that the Ricciardi bill's language in this area may have the potential to create some problems for private sector bidders. Again using the city's refuse service as an example: if such service was contracted out to a private firm-- possibly lowering the aggregate total of the city's racial composition regarding minority workers-- could a private firm's bid be rejected on the grounds that its incoming workforce contributes to a resulting loss in the percentage of city minority workers? This may or may not be an issue; nevertheless, it must be considered.

Would the Ricciardi Bill Deter Privatization? A Private Firm Replies

To attempt to gauge the impact of anti-privatization laws on potential Pittsburgh-area private-sector bidders, the authors presented a copy of the Ricciardi bill to a local private-sector firm which could conceivably compete for city work. The analysis provided by that company's legal office and upper management underscores the problems the legislation poses for such firms. In a written response and discussion with the authors, the private officials noted the following problems with the bill:

- In general, the labyrinth of provisions in the proposed law with which a private provider must comply ***will negatively impact competition for city contracts***.

- The bill's "living wage" and minimum benefit provisions will increase contract prices over those which would be charged in a free-market environment, where private firms could utilize their inherent productive efficiencies. Also, since private employee benefits are not always included in the calculation of the "prevailing wage" rate, firms could be further penalized.

- The bill's requirement that contracting firms submit payroll records on a quarterly basis imposes added administrative costs on such firms, which in turn increase contract costs.

- Instead of proposing a contractual provision that suggests that private contractors give qualified public employees preference in filling open positions (as has been done in contracts in other cities), the legislation would ***require*** private firms to offer jobs to former public workers.

- The bill should not stipulate that private firms must provide a fixed estimate of the number of employees "necessary for the efficient performance of the contract." The number of employees retained by such firms is usually determined by factors other than the "efficiencies" of a single contract, as most employees work on more than one contract at a time. It is also implausible that, as assumed in the legislation, a contractor would know the number of employees retained by a predecessor contractor.

- The sections of the legislation dealing with the preparation of bid cost estimates, the manner in which public and private bids are compared, and the process of awarding the final contract "are too ambiguous and will encourage the manipulation of numbers to reach a desired result" and "are too subjective and can lead to an arbitrary decision to reject a contract."

One company official the authors spoke to could not identify added, visible costs that would be incurred if his firm were to receive a contract with the city. For instance, his employees' wages are equal-- higher, even-- than comparable city workers; likewise with their health benefits, which well *exceed* the 80% minimum mandated by Ricciardi. Additionally, he saw no major

burdens due to the bill's required quarterly payroll reporting. Yet, the problem, he relayed, results from the bill's hidden costs and deceptive language. "The money isn't the problem," said the executive. "It's not like our workers are taken advantage of and unhappy. In fact, we pay our guys more than the city pays theirs. The problems and costs [in the bill] come with the questions and disputing. There are a lot of hidden costs in there that aren't quantifiable." He added: "It looks like a union guy sat down and wrote it."

It seems almost certain that this legislation was designed in the full knowledge that private firms will be unlikely to invest their valuable time, effort, and money in a process where the rules they must comply with may be subject to change at a moment's notice.

Conclusion

As noted in the case of Baltimore and New York City, the cost of living wage ordinances can be quite high, ranging from $1.2 million to $15 million, respectively. In light of that, one might think that much more comprehensive legislation, such as the Pacheco and Ricciardi bills could be even higher. Estimating the cost of such legislative is difficult, especially before it is implemented. One thing seems clear, however: legislation like "Ricciardi" is most damaging in that it could foil the competitive-contracting or privatization process altogether by dissuading private-sector parties from bidding in the first place. The result can mean the elimination of millions of dollars in annual savings from areas like city refuse collection, EMS, fleet management, and so on.

Indeed, lost savings are a critical issue. The very notion for undertaking privatization and competitive contracting in the first place is to help save taxpayers money and to reduce the cost of government, especially in debt-ridden states and cities teetering on the brink of bankruptcy. The City of Pittsburgh, for instance, faces a $42 million budget deficit by the end of 1997, with an immediate shortfall of $20 million.[19] City controller Tom Flaherty has characterized it as a potential "financial calamity" by 1998.[20] Credit analysts at Standard & Poor warn that Pittsburgh has until fiscal 1998 to balance its budget or it will trigger a rating downgrade.[21]

Mayor Tom Murphy's Competitive Pittsburgh Task Force has come up with real-world recommendations designed to help ameliorate this situation. Among the options it gave priority to are privatization and competitive contracting, both of which will be essential to saving the city from fiscal disaster. Yet, Councilman Ricciardi has produced a bill that could have the effect of jeopardizing everything that the mayor and task force have rightly decided to attempt to undertake. After reading the Ricciardi bill, one private-sector manager commented to us: "Personally, I don't like it.... Why do you even need something like this? Isn't the idea to save the city money?" He noted that he had no problem with being required to show an estimate that his firm could provide the service at a cheaper price using prevailing wages. On the other hand, he remarked, the Ricciardi bill is so packed with ambiguity, "legalese," and minutiae that it serves as a deterrent to companies like his to bother submitting a bid in the first place.

---

[19] Current budget problems have been masked by the $96 million received by the city through the sale of its water system to the Pittsburgh Water and Sewer Authority last year. That money will cover operating deficits until 1998, when it runs outs. Mark Belko, "City tax increase or deep cuts called likely," *Pittsburgh Post-Gazette*, March 27, 1996.

[20] Mark Belko, "Flaherty warns city of fiscal 'calamity,'" *Pittsburgh Post-Gazette*, May 1, 1996, p. A1.

[21] Katherine M. Reynolds, "Pittsburgh Needs a Balanced Budget by 1998, S&P Warns," *The Bond Buyer*, May 1996, p. 5.

Ironically, that manager may be closer to the truth than he realizes. In fact, the ambiguity in the Ricciardi bill-- far worse than clearer language in Pacheco and some of the living wage ordinances -- may very well have the intention of stifling privatization and competitive-contracting attempts. The hope may be to scare away potential private-sector bidders. Who benefits in the end? Certainly not the City, which continues its downward decline into bankruptcy. Certainly not the City's taxpayers, who will continue to pay public employees higher wages and benefits than found in the private sector. On the contrary, the biggest benefactors are the public-employee unions, soundly protected from competition, and the politicians who are closely tied to union support. The Ricciardi bill protects those parties the most.

The legislation examined herein-- from living wage ordinances to Pacheco and Ricciardi-- demonstrates that foes of privatization and competitive contracting have apparently found themselves some powerful, and costly, weapons. Apparently, whatever deficits or insolvency they leave in their wake is another issue for another time. Fiscal responsibility is not their aim.

Appendix: Copy of Ricciardi Bill