

### LWVFC Prepares for Privatization Consensus – Part 3

This is the third in the LWVFC's multi-part series of *E-Bulletin* articles providing our members information to help them participate effectively and efficiently in the Privatization Consensus meeting on March 27, 2012.

This week we consider state-level efforts to privatize various activities and we look at laws related to privatization. Virginia Delegate Jim Scott will review Virginia privatization proposals and efforts at the Privatization Lunch & Learn on Tuesday March 13. The following articles will give you additional perspective and includes some information specifically related to Virginia's laws. This week please review:

- Surveying State Laws Addressing Privatization by Diane DiIanni  
[http://www.lwv.org/files/BP\\_PrivSTudy\\_StateLawsSurvey.pdf](http://www.lwv.org/files/BP_PrivSTudy_StateLawsSurvey.pdf)
- Survey of State Privatization Statutes (table)  
[http://www.lwv.org/files/BP\\_PrivSTudy\\_StateLawsSurvey\\_table.pdf](http://www.lwv.org/files/BP_PrivSTudy_StateLawsSurvey_table.pdf)

#### **State Level Privatization 2011** by Ann Henkener

State governments have relied on the private sector for goods and services for many years. However, states have more fully embraced privatization since the 1980s. In the past year or two, states have accelerated their movement toward privatization, partially because of the economic crisis and the need for states to take more extreme measures to balance their budgets, and partially because of shifts in ideology.

In recent years, a number of states have established commissions and/or issued reports on privatization:

- Ohio – Ohio Budget Advisory Task Force Issue Paper, “Privatization in Ohio Government,” The Ohio Society of CPAs, September 2010
- New Jersey – New Jersey Privatization Task Force Report, 2010
- Virginia – Virginia Commonwealth Competition Council
- Illinois – “Government Privatization: History, Examples, and Issues,” Illinois Commission on Government Forecasting and Accountability 2006

Some states have tried to set parameters on the types of activities which could be performed by entities other than the state. For example, Virginia defined an “inherently governmental” activity as:

- the act of governing,
- authority to collect and spend public revenues, and
- entitlements (from the Constitution of Virginia).

The Virginia list also included these examples of inherently governmental activities:

- an effective system of education throughout the Commonwealth;
- free elections;
- transportation system;
- defense from enemy attack on the soil of Virginia;
- intercourse with other and foreign states;
- taxation and assessments at fair market value;
- ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the Commonwealth, including the collection, control or disbursement of appropriated and other state funds; and
- natural resources for the benefit, enjoyment and general welfare of the people of the Commonwealth.

The state also recognized that the greater the amount of discretion involved in performing the activity, the more it is inherently governmental. In addition, it looked at the effect of activities that committed the government and viewed those activities as inherently governmental.

The Ohio Society of CPAs proposed a much simpler test, the “Yellow Pages test.” In essence, if multiple vendors of the services or goods appeared in the Yellow Pages, it should be considered for privatization. Ohio’s Governor Kasich, while campaigning for governor, stated: “If we don’t need it, get rid of it. If it’s in the yellow pages, outsource it.”

*Read the complete document including some privatization efforts that were proposed in states during 2011. <http://www.lwv.org/files/StatePrivatization.pdf>.*

**Additional suggested reading for this week:**

- The Legal Framework of Transparency and Accountability within the Context of Privatization by Diane Dilanne  
[http://www.lwv.org/files/BP\\_PrivStudy\\_LegalFramework.pdf](http://www.lwv.org/files/BP_PrivStudy_LegalFramework.pdf)

**Link to all L WVUS Privatization Consensus Resources:** <http://www.lwv.org/member-resources/privatization>

Watch for the next L WVFC *E-Bulletin* the week of March 19 for a brief summary of the panel discussion at the March 13 Privatization Lunch & Learn and the L WVFC’s Fact Sheet for the consensus meeting on March 27.