

# VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

## CHAPTER 881

*An Act to amend and reenact §§ 9-6.25:1, 9-341, 9-342, 9-343, and 9-346 of the Code of Virginia and to repeal Chapter 42 (§§ 9-330 through 9-333) of Title 9 of the Code of Virginia, relating to the Virginia Competition Council; private enterprise.*

[H 1301]

Approved April 22, 1998

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 9-6.25:1, 9-341, 9-342, 9-343, and 9-346 of the Code of Virginia are amended and reenacted as follows:**

§ 9-6.25:1. Advisory boards, commissions and councils.

There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the following advisory boards, commissions and councils within the executive branch:

- Advisory Board for the Department for the Aging
- Advisory Board for the Department for the Deaf and Hard-of-Hearing
- Advisory Board on Child Abuse and Neglect
- Advisory Board on Medicare and Medicaid
- Advisory Board on Occupational Therapy
- Advisory Board on Physical Therapy to the Board of Medicine
- Advisory Board on Rehabilitation Providers
- Advisory Board on Respiratory Therapy to the Board of Medicine
- Advisory Board on Teacher Education and Licensure
- Advisory Commission on the Virginia Schools for the Deaf and the Blind
- Advisory Council on Revenue Estimates
- Advisory Council on the Virginia Business-Education Partnership Program
- Appomattox State Scenic River Advisory Board
- Aquaculture Advisory Board
- Art and Architectural Review Board
- Board for the Visually Handicapped
- Board of Directors, Virginia Truck and Ornaments Research Station
- Board of Forestry
- Board of Military Affairs
- Board of Rehabilitative Services
- Board of Transportation Safety
- Board of Trustees of the Family and Children's Trust Fund
- Board of Visitors, Gunston Hall Plantation
- Board on Veterans' Affairs
- Catoctin Creek State Scenic River Advisory Board
- Cave Board
- Chickahominy State Scenic River Advisory Board
- Clinch Scenic River Advisory Board
- Coal Surface Mining Reclamation Fund Advisory Board
- Coastal Land Management Advisory Council, Virginia
- Commonwealth Competition Council
- Council on Indians
- Council on the Status of Women
- Debt Capacity Advisory Committee
- Emergency Medical Services Advisory Board
- Falls of the James Committee
- Goose Creek Scenic River Advisory Board
- Governor's Council on Alcohol and Drug Abuse Problems
- Governor's Mined Land Reclamation Advisory Committee
- Hemophilia Advisory Board
- Human Services Information and Referral Advisory Council
- Interagency Coordinating Council on Housing for the Disabled
- Interdepartmental Board of the State Department of Minority Business Enterprise
- Litter Control and Recycling Fund Advisory Board
- Local Advisory Board to the Blue Ridge Community College
- Local Advisory Board to the Central Virginia Community College

Local Advisory Board to the Dabney S. Lancaster Community College  
Local Advisory Board to the Danville Community College  
Local Advisory Board to the Eastern Shore Community College  
Local Advisory Board to the Germanna Community College  
Local Advisory Board to the J. Sargeant Reynolds Community College  
Local Advisory Board to the John Tyler Community College  
Local Advisory Board to the Lord Fairfax Community College  
Local Advisory Board to the Mountain Empire Community College  
Local Advisory Board to the New River Community College  
Local Advisory Board to the Northern Virginia Community College  
Local Advisory Board to the Patrick Henry Community College  
Local Advisory Board to the Paul D. Camp Community College  
Local Advisory Board to the Piedmont Virginia Community College  
Local Advisory Board to the Rappahannock Community College  
Local Advisory Board to the Southside Virginia Community College  
Local Advisory Board to the Southwest Virginia Community College  
Local Advisory Board to the Thomas Nelson Community College  
Local Advisory Board to the Tidewater Community College  
Local Advisory Board to the Virginia Highlands Community College  
Local Advisory Board to the Virginia Western Community College  
Local Advisory Board to the Wytheville Community College  
Maternal and Child Health Council  
Medical Advisory Board, Department of Motor Vehicles  
Migrant and Seasonal Farmworkers Board  
Motor Vehicle Dealer's Advisory Board  
North Meherrin State Scenic River Advisory Board  
Nottoway State Scenic River Advisory Board  
Personnel Advisory Board  
Plant Pollination Advisory Board  
Private College Advisory Board  
~~Private Enterprise Commission~~  
Private Security Services Advisory Board  
Psychiatric Advisory Board  
Radiation Advisory Board  
Rappahannock Scenic River Advisory Board  
Recreational Fishing Advisory Board, Virginia  
Reforestation Board  
Rockfish State Scenic River Advisory Board  
Shenandoah State Scenic River Advisory Board  
Small Business Advisory Board  
Small Business Environmental Compliance Advisory Board  
St. Mary's Scenic River Advisory Committee  
State Advisory Board for the Virginia Employment Commission  
State Advisory Board on Air Pollution  
State Building Code Technical Review Board  
State Health Benefits Advisory Council  
State Land Evaluation Advisory Council  
State Networking Users Advisory Board  
State Public Records Advisory Council  
Statewide Independent Living Council  
Statewide Rehabilitation Advisory Council  
Statewide Rehabilitation Advisory Council for the Blind  
Staunton Scenic River Advisory Committee  
Telecommunications Relay Service Advisory Board  
Virginia-Israel Advisory Board  
Virginia Advisory Commission on Intergovernmental Relations  
Virginia Advisory Council for Adult Education and Literacy  
Virginia Coal Mine Safety Board  
Virginia Coal Research and Development Advisory Board  
Virginia Commission for the Arts  
Virginia Commission on the Bicentennial of the United States Constitution  
Virginia Correctional Enterprises Advisory Board  
Virginia Council on Coordinating Prevention  
Virginia Equal Employment Opportunity Council

Virginia Geographic Information Network Advisory Board  
Virginia Interagency Coordinating Council  
Virginia Military Advisory Council  
Virginia Public Buildings Board  
Virginia Recycling Markets Development Council  
Virginia Technology Council  
Virginia Transplant Council  
Virginia Veterans Cemetery Board  
Virginia Water Resources Research Center, Statewide Advisory Board  
Virginia Winegrowers Advisory Board.

§ 9-341. Definitions.

As used in this chapter, unless the context otherwise requires:

*"Commercial activity" means performing services or providing goods which can normally be obtained from private enterprise.*

*"Commercial source" means any business or other concern that is eligible for a contract award in accordance with the Virginia Public Procurement Act.*

*"Competitive process" means the process approved by the Council to determine the most cost-effective privatization technique.*

*"Council" means the Commonwealth Competition Council.*

*"Fully allocated cost" means a cost which includes all direct personnel costs, materials and supplies, equipment, capital and equipment depreciation costs, rent, maintenance and repairs, utilities, insurance, travel, operations overhead, and general administrative overhead as these terms are defined in the Council's "Compete" cost comparison program.*

*"Managed competition" means a competitive process between a state agency and the private sector in which (i) the state agency submits its own proposal after completing the fully allocated cost of the commercial activity and (ii) the proposal is based on its most efficient proposed organization to compete with a private sector bid or proposal for the provision of the commercial activity.*

*"Privatization" means a variety of techniques and activities which promote more involvement of the private sector in providing services that have traditionally been provided by government. It also includes methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector.*

*"State agency" means any board, council, authority, department, agency, or institution of the Commonwealth which employs state or nonstate personnel.*

§ 9-342. Commonwealth Competition Council created; duties.

There is hereby created in the executive branch the Commonwealth Competition Council. The Council shall:

1. Examine and promote methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector by a competitive contracting program, and advise the Governor, the General Assembly, and executive branch agencies of the Council's findings and recommendations.

2. Develop an institutional framework for a statewide competitive program to encourage innovation and competition within state government.

3. Establish a system to encourage the use of feasibility studies and innovation to determine where competition could reduce government costs without harming the public.

4. Monitor the products and services of state agencies to bring an element of competition and to ensure a spirit of innovation and entrepreneurship to compete with the private sector.

5. Advocate, develop and accelerate implementation of a competitive program for state entities to ensure competition for the provision or production of government services, or both, from both public and private sector entities.

6. Establish approval, planning, and reporting processes required to carry out the functions of the Council.

7. Determine the privatization potential of a program or activity; perform cost/benefit analyses; and conduct public and private performance analyses. The Secretary of Finance shall independently certify the results of the comparison.

8. Devise, in consultation with the Secretary of Finance, evaluation criteria to be used in conducting performance reviews of any program or activity which is subject to a privatization recommendation.

9. To the extent practicable and to the extent that resources are available, make its services available for a fair compensation to any political subdivision of the Commonwealth.

10. Review the practices of government agencies and nonprofit organizations which may constitute inappropriate competition with private enterprise. The Council shall develop proposals for (i) preserving the traditional role of private enterprise; (ii) encouraging the expansion of existing, and the creation of new, private enterprise; and (iii) monitoring inappropriate competition by nonprofit organizations.

§ 9-343. Membership; appointment; terms; vacancies; chairman; quorum; compensation.

A. The Council shall be composed of ~~ten~~ fifteen members to be appointed as follows: four employees

of executive branch agencies to be appointed by the Governor; ~~one member~~ *two members* of the House of Delegates to be appointed by the Speaker of the House; ~~one member~~ *two members* of the Senate to be appointed by the Senate Committee on Privileges and Elections; ~~two~~ *three* members of the private sector to be appointed by the Governor; ~~one member~~ *two members* of the private sector to be appointed by the Speaker of the House; and ~~one member~~ *two members* of the private sector, *who shall be private sector members of the Small Business Commission*, to be appointed by the Senate Committee on Privileges and Elections.

B. Legislative members shall serve on the Council until the expiration of their terms of office or until their successors shall qualify. Two of the members who are employees of executive branch agencies and one member from the private sector appointed by the Governor shall be appointed for terms of one year. Two of the members who are employees of executive branch agencies and ~~one member~~ *two members* from the private sector appointed by the Governor shall be appointed for terms of two years. The nonlegislative members appointed by the Speaker of the House of Delegates and the Senate Committee on Privileges and Elections shall be appointed for terms of three years. Thereafter all nonlegislative members of the Council shall be appointed for terms of three years.

C. Appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for or during more than two successive three-year terms. Executive branch agency members shall serve only as long as they retain their positions.

D. The Council shall annually elect its chairman and vice-chairman from among its members.

E. ~~Six~~ *Eight* members of the Council shall constitute a quorum. No action shall be taken by the Council without the concurrence of at least ~~six~~ *eight* members.

F. Legislative members shall be compensated as specified in § 14.1-18, and all members of the Council shall be reimbursed for their actual expenses incurred in the performance of their duties.

§ 9-346. Unsolicited proposals.

The Governor or the General Assembly may direct any state agency to perform a public/private performance analysis covering any ~~service~~ *commercial activity* for which the Council has received a qualifying unsolicited proposal from a private entity which is consistent with the Council's purposes and duties as provided in § 9-342.

*The provisions of this section shall not apply to transportation-related projects initiated pursuant to Chapter 22 (§ 56-556 et seq.) of Title 56.*

**2. That the provisions of this act shall not affect the terms of members currently serving on the Commonwealth Competition Council.**

**3. That Chapter 42 (§§ 9-330 through 9-333) of Title 9 of the Code of Virginia is repealed.**