

1998 RECONVENED SESSION

ENROLLED

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

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 Deaf and Hard-of-Hearing
Advisory Board for the Department for the Aging
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 Ornamentals 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

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- 57 Local Advisory Board to the Blue Ridge Community College
- 58 Local Advisory Board to the Central Virginia Community College
- 59 Local Advisory Board to the Dabney S. Lancaster Community College
- 60 Local Advisory Board to the Danville Community College
- 61 Local Advisory Board to the Eastern Shore Community College
- 62 Local Advisory Board to the Germanna Community College
- 63 Local Advisory Board to the J. Sargeant Reynolds Community College
- 64 Local Advisory Board to the John Tyler Community College
- 65 Local Advisory Board to the Lord Fairfax Community College
- 66 Local Advisory Board to the Mountain Empire Community College
- 67 Local Advisory Board to the New River Community College
- 68 Local Advisory Board to the Northern Virginia Community College
- 69 Local Advisory Board to the Patrick Henry Community College
- 70 Local Advisory Board to the Paul D. Camp Community College
- 71 Local Advisory Board to the Piedmont Virginia Community College
- 72 Local Advisory Board to the Rappahannock Community College
- 73 Local Advisory Board to the Southside Virginia Community College
- 74 Local Advisory Board to the Southwest Virginia Community College
- 75 Local Advisory Board to the Thomas Nelson Community College
- 76 Local Advisory Board to the Tidewater Community College
- 77 Local Advisory Board to the Virginia Highlands Community College
- 78 Local Advisory Board to the Virginia Western Community College
- 79 Local Advisory Board to the Wytheville Community College
- 80 Maternal and Child Health Council
- 81 Medical Advisory Board, Department of Motor Vehicles
- 82 Migrant and Seasonal Farmworkers Board
- 83 Motor Vehicle Dealer's Advisory Board
- 84 North Meherrin State Scenic River Advisory Board
- 85 Nottoway State Scenic River Advisory Board
- 86 Personnel Advisory Board
- 87 Plant Pollination Advisory Board
- 88 Private College Advisory Board
- 89 ~~Private Enterprise Commission~~
- 90 Private Security Services Advisory Board
- 91 Psychiatric Advisory Board
- 92 Radiation Advisory Board
- 93 Rappahannock Scenic River Advisory Board
- 94 Recreational Fishing Advisory Board, Virginia
- 95 Reforestation Board
- 96 Rockfish State Scenic River Advisory Board
- 97 Shenandoah State Scenic River Advisory Board
- 98 Small Business Advisory Board
- 99 Small Business Environmental Compliance Advisory Board
- 100 St. Mary's Scenic River Advisory Committee
- 101 State Advisory Board on Air Pollution
- 102 State Advisory Board for the Virginia Employment Commission
- 103 State Building Code Technical Review Board
- 104 State Health Benefits Advisory Council
- 105 State Land Evaluation Advisory Council
- 106 State Networking Users Advisory Board
- 107 State Public Records Advisory Council
- 108 Statewide Independent Living Council
- 109 Statewide Rehabilitation Advisory Council
- 110 Statewide Rehabilitation Advisory Council for the Blind
- 111 Staunton Scenic River Advisory Committee
- 112 Telecommunications Relay Service Advisory Board
- 113 Virginia-Israel Advisory Board
- 114 Virginia Advisory Commission on Intergovernmental Relations
- 115 Virginia Advisory Council for Adult Education and Literacy
- 116 Virginia Coal Mine Safety Board
- 117 Virginia Coal Research and Development Advisory Board

118 Virginia Commission for the Arts
 119 Virginia Commission on the Bicentennial of the United States Constitution
 120 Virginia Correctional Enterprises Advisory Board
 121 Virginia Council on Coordinating Prevention
 122 Virginia Equal Employment Opportunity Council
 123 Virginia Geographic Information Network Advisory Board
 124 Virginia Interagency Coordinating Council
 125 Virginia Military Advisory Council
 126 Virginia Public Buildings Board
 127 Virginia Recycling Markets Development Council
 128 Virginia Technology Council
 129 Virginia Transplant Council
 130 Virginia Veterans Cemetery Board
 131 Virginia Water Resources Research Center, Statewide Advisory Board
 132 Virginia Winegrowers Advisory Board.

133 § 9-341. Definitions.

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

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

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

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

141 *"Council" means the Commonwealth Competition Council.*

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

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

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

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

156 § 9-342. Commonwealth Competition Council created; duties.

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

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

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

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

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

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

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

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

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

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

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

185 § 9-343. Membership; appointment; terms; vacancies; chairman; quorum; compensation.

186 A. The Council shall be composed of ~~ten~~ *fifteen* members to be appointed as follows: four employees
 187 of executive branch agencies to be appointed by the Governor; ~~one member~~ *two members* of the House
 188 of Delegates to be appointed by the Speaker of the House; ~~one member~~ *two members* of the Senate to
 189 be appointed by the Senate Committee on Privileges and Elections; ~~two~~ *three* members of the private
 190 sector to be appointed by the Governor; ~~one member~~ *two members* of the private sector to be appointed
 191 by the Speaker of the House; and ~~one member~~ *two members* of the private sector, *who shall be private*
 192 *sector members of the Small Business Commission*, to be appointed by the Senate Committee on
 193 Privileges and Elections.

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

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

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

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

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

210 § 9-346. Unsolicited proposals.

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

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

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

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