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HOUSE BILL NO. 1301**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Joint Conference Committee
on March 13, 1998)

(Patron Prior to Substitute—Delegate Morgan)

*A BILL 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.***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

Local Advisory Board to the Blue Ridge Community College

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

- 122 Virginia Correctional Enterprises Advisory Board
- 123 Virginia Council on Coordinating Prevention
- 124 Virginia Equal Employment Opportunity Council
- 125 Virginia Geographic Information Network Advisory Board
- 126 Virginia Interagency Coordinating Council
- 127 Virginia Military Advisory Council
- 128 Virginia Public Buildings Board
- 129 Virginia Recycling Markets Development Council
- 130 Virginia Technology Council
- 131 Virginia Transplant Council
- 132 Virginia Veterans Cemetery Board
- 133 Virginia Water Resources Research Center, Statewide Advisory Board
- 134 Virginia Winegrowers Advisory Board.
- 135 § 9-341. Definitions.
- 136 As used in this chapter, unless the context otherwise requires:
- 137 *"Commercial activity" means performing services or providing goods which can normally be*
- 138 *obtained from private enterprise.*
- 139 *"Commercial source" means any business or other concern that is eligible for a contract award in*
- 140 *accordance with the Virginia Public Procurement Act.*
- 141 *"Competitive process" means the process approved by the Council to determine the most*
- 142 *cost-effective privatization technique.*
- 143 *"Council" means the Commonwealth Competition Council.*
- 144 *"Fully allocated cost" means a cost which includes all direct personnel costs, materials and supplies,*
- 145 *equipment, capital and equipment depreciation costs, rent, maintenance and repairs, utilities, insurance,*
- 146 *travel, operations overhead, and general administrative overhead as these terms are defined in the*
- 147 *Council's "Compete" cost comparison program.*
- 148 *"Managed competition" means a competitive process between a state agency and the private sector*
- 149 *in which (i) the state agency submits its own proposal after completing the fully allocated cost of the*
- 150 *commercial activity and (ii) the proposal is based on its most efficient proposed organization to compete*
- 151 *with a private sector bid or proposal for the provision of the commercial activity.*
- 152 *"Privatization" means a variety of techniques and activities which promote more involvement of the*
- 153 *private sector in providing services that have traditionally been provided by government. It also includes*
- 154 *methods of providing a portion or all of select government-provided or government-produced programs*
- 155 *and services through the private sector.*
- 156 *"State agency" means any board, council, authority, department, agency, or institution of the*
- 157 *Commonwealth which employs state or nonstate personnel.*
- 158 § 9-342. Commonwealth Competition Council created; duties.
- 159 There is hereby created in the executive branch the Commonwealth Competition Council. The
- 160 Council shall:
 - 161 1. Examine and promote methods of providing a portion or all of select government-provided or
 - 162 government-produced programs and services through the private sector by a competitive contracting
 - 163 program, and advise the Governor, the General Assembly, and executive branch agencies of the
 - 164 Council's findings and recommendations.
 - 165 2. Develop an institutional framework for a statewide competitive program to encourage innovation
 - 166 and competition within state government.
 - 167 3. Establish a system to encourage the use of feasibility studies and innovation to determine where
 - 168 competition could reduce government costs without harming the public.
 - 169 4. Monitor the products and services of state agencies to bring an element of competition and to
 - 170 ensure a spirit of innovation and entrepreneurship to compete with the private sector.
 - 171 5. Advocate, develop and accelerate implementation of a competitive program for state entities to
 - 172 ensure competition for the provision or production of government services, or both, from both public
 - 173 and private sector entities.
 - 174 6. Establish approval, planning, and reporting processes required to carry out the functions of the
 - 175 Council.
 - 176 7. Determine the privatization potential of a program or activity; perform cost/benefit analyses; and
 - 177 conduct public and private performance analyses. The Secretary of Finance shall independently certify
 - 178 the results of the comparison.
 - 179 8. Devise, in consultation with the Secretary of Finance, evaluation criteria to be used in conducting
 - 180 performance reviews of any program or activity which is subject to a privatization recommendation.
 - 181 9. To the extent practicable and to the extent that resources are available, make its services available
 - 182 for a fair compensation to any political subdivision of the Commonwealth.

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

187 § 9-343. Membership; appointment; terms; vacancies; chairman; quorum; compensation.

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

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

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

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

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

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

212 § 9-346. Unsolicited proposals.

213 A. The Governor ~~or~~, the General Assembly, *or the Council* may direct any state agency to perform a
214 public/private performance analysis covering any ~~service~~ *commercial activity* for which the Council has
215 received a qualifying unsolicited proposal from a private entity which is consistent with the Council's
216 purposes and duties as provided in § 9-342. *No state agency shall be required to perform more than one*
217 *such public/private performance analysis at the direction of the Council in a fiscal year on the same*
218 *commercial activity.*

219 B. *The Council, in cooperation with the Secretary of Administration, shall develop a process for state*
220 *agencies to follow in responding to unsolicited proposals, performing cost comparisons, and presenting*
221 *the findings to the Council. The Council shall take all necessary steps to ensure that state agencies are*
222 *trained in such process.*

223 C. *The provisions of subsections A and B shall not apply to transportation-related projects initiated*
224 *pursuant to Chapter 22 (§ 56-556 et seq.) of Title 56 that are conducted by the Department of*
225 *Transportation.*

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

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