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## HOUSE BILL NO. 1301

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Second Joint Conference Committee  
on March 16, 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

- 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

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.

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

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.**