

981506743

SENATE BILL NO. 332

Offered January 21, 1998

A *BILL to amend and reenact §§ 9-341, 9-343, and 9-346 of the Code of Virginia, relating to the Commonwealth Competition Council.*

Patrons—Stosch, Colgan, Hanger, Ticer and Watkins; Delegates: Behm, Diamonstein, Dickinson, Hall, Morgan, Nixon, Purkey and Rust

Referred to the Committee on General Laws

Whereas, the General Assembly finds that (i) the protection of taxpayers requires public goods and services to be provided at the lowest possible cost consistent with appropriate service and safety standards, (ii) private companies under competitive contracts often provide public goods and services at lower costs and with lower annual cost increases than do state agencies, (iii) decisions about whether a public good or service should be provided by a state agency using its own resources or procured through a private company should be based on economic considerations rather than on institutional considerations, and (iv) the cost-effective provision of public goods and services requires a competitive environment and a mechanism for competitive contracting for the goods and services; now, therefore,

Be it enacted by the General Assembly of Virginia:

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

§ 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.

§ 9-343. 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

INTRODUCED

SB332

60 nonlegislative members of the Council shall be appointed for terms of three years.

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

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

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

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

69 § 9-346. Unsolicited proposals.

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

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

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