

**FINAL REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

**PRIVATIZATION OF CERTAIN  
STATE GOVERNMENT FUNCTIONS**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 55**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1995**

## **MEMBERS OF THE JOINT SUBCOMMITTEE**

Senator Walter A. Stosch, *Chairman*  
Delegate Mitchell Van Yahres, *Vice Chairman*  
Senator Elliot S. Schewel  
Delegate V. Earl Dickinson  
Delegate Franklin P. Hall  
Delegate Harvey B. Morgan  
Delegate John C. Watkins  
The Honorable Michael E. Thomas  
The Honorable Paul W. Timmrick  
Adele Johnson Crawley  
M. Antionette Kelley  
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# **FINAL REPORT OF THE JOINT SUBCOMMITTEE STUDYING PRIVATIZATION OF CERTAIN STATE GOVERNMENT FUNCTIONS**

**To  
The Governor  
and the  
General Assembly of Virginia**

**Richmond, Virginia  
May, 1995**

## **I. INTRODUCTION**

Privatization of government functions continues to receive the attention of those persons seeking ways of providing government services in a more efficient and less expensive manner. Accordingly, the 1993 General Assembly adopted Senate Joint Resolution No. 241 (Appendix A), establishing the Joint Subcommittee Studying Privatization of Certain State Government Functions, and the 1994 General Assembly continued the study by Senate Joint Resolution No. 17 (Appendix B). An interim report of the joint subcommittee was issued in 1994.<sup>1</sup>

The original resolution called for an 11-member joint subcommittee composed of two members of the Senate, appointed by the Senate Committee on Privileges and Elections; five members of the House of Delegates, appointed by the Speaker of the House; and four members from the business community to be appointed by the Governor. However, SJR 17 expanded the membership to allow the Governor to appoint three additional members, including two members from the Governor's cabinet. Furthermore, the vice chairman of the 1993 joint subcommittee, Delegate Alson H. Smith, Jr., retired from the General Assembly and was replaced on the joint subcommittee by Delegate John C. Watkins. Senator Walter A. Stosch continued to serve as chairman of the joint subcommittee, and Delegate Mitchell Van Yahres was chosen vice chairman in 1994.

The joint subcommittee was directed by SJR 17 to continue to examine specific functions of state government as well as other issues such as impediments to privatization and ways to minimize any adverse effect privatization may have on public employees. In addition, the joint

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<sup>1</sup> Senate Document No. 64 (1994).

subcommittee agreed to undertake a study of the Qualifying Transportation Facilities Act of 1994 (SB 468, 1994) which was passed with a delayed effective date of July 1, 1995.

## **II. BACKGROUND**

### **A. PRIVATIZATION OVERVIEW**

Privatization, which has been defined as “a variety of techniques and activities to get more involvement of the private sector in providing traditional government or public services,”<sup>2</sup> has been attempted in various ways in Virginia and other states in recent years. During the course of its 1993 study, the joint subcommittee examined many of these efforts. A summary of these findings can be found in the joint subcommittee’s interim report.<sup>3</sup>

### **B. GOVERNOR’S STRIKE FORCE**

During 1994, the procurement and privatization committee (which was also chaired by Senator Stosch) of the Governor’s Commission on Government Reform (the Strike Force) examined many of the same issues which the joint subcommittee had discussed during its first year. During its second year of study, the joint subcommittee received regular updates on the work of the Strike Force. The procurement and privatization committee recommendations were as follows:

1. Develop an institutional framework for a statewide competitive program through legislative formation of a Governor’s Council on Competition.
2. All state agencies should inventory and justify the retention of each individual real estate holding.
3. Establish a Real Asset Commission to identify and recommend a plan to dispose of real property and other assets that are not best serving the needs of the Commonwealth.
4. Develop a simplified procedure for the leasing of real estate by state agencies.
5. Initiate a statewide program to assure efficient and effective delivery of legitimate government services and create an entrepreneurial environment in state government.

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<sup>2</sup> Donahue, *The Privatization Decision: Public Ends, Private Means*, p. 215 (1989).

<sup>3</sup> Senate Document No. 64, pp. 2-5 (1994).

6. Expedite completion of the ongoing activity based accounting test program and institute changes to the existing Commonwealth accounting program to permit the use of activity based accounting throughout state government.
7. Initiate competition leading to possible privatization in those areas where success has been achieved in other states and it is determined the service can be transferred to the private sector without injury to the public good and well being.
8. Initiate and evaluate competition with the private sector with particular emphases in the areas where unsolicited proposals were received by the Commission. Requests for proposals will be issued in compliance with the Public Procurement Act to ensure complete response from all potential vendors.
9. Require state agencies to review existing contracts in partnership with the private sector to improve the quality and cost effectiveness of the contracts.
10. Encourage local governments and school districts to competitively bid the delivery of some services to achieve competition in the delivery of public services.
11. Establish a privatization program for debt collection to increase collection rates, decrease collection time and reduce collection costs.
12. Privatize the electronic creation, reproduction, distribution and maintenance of key manuals, references and forms.

### **C. SENATE BILL 468**

Senate Bill 468 (1994), the Qualifying Transportation Facilities Act of 1994, was passed by the 1994 General Assembly with a delayed effective date of July 1, 1995. The Act permits the privatization of many types of transportation facilities while providing various forms of governmental oversight, including the issuance of certificates of authority and rate-approval functions by the State Corporation Commission.

As SB 468 was debated during the 1994 Session, the Secretary of Transportation expressed concerns that the bill might unduly restrict privatization efforts. In response to these concerns, the General Assembly passed the bill with a delayed effective date. Senator Stoschl agreed that the joint subcommittee would work with all interested parties during the 1994 interim and make recommendations for any needed changes to the 1994 Act during the 1995 Session.

### **III. WORK OF THE JOINT SUBCOMMITTEE**

#### **A. QUALIFYING TRANSPORTATION FACILITIES ACT OF 1994**

The primary focus of the joint subcommittee's work in 1994 was on the Qualifying Transportation Facilities Act of 1994 (the "1994 Act"). During the spring of 1994, Senator Stosch and the patron of SB 468, Senator Elliot S. Schewel, requested that the interested parties meet and attempt to agree on improvements to the 1994 Act for consideration by the joint subcommittee. During the remainder of 1994, representatives of the Office of the Secretary of Transportation and the State Corporation Commission, attorneys from the Hunton & Williams law firm and others met and reached a consensus regarding proposed amendments to the 1994 Act.

The first change recommended by the group was to change the name of the 1994 Act to the "Public-Private Transportation Act of 1995" (the "1995 Act"). Other significant changes recommended to the joint subcommittee are that:

- The role of the State Corporation Commission be modified.
  - Under the 1994 Act, the SCC was given broad regulatory powers over the operator and any tolls or other user fees imposed for the use of any transportation facility. In addition to obtaining the approval of the responsible public entity, the operator was required to obtain from the SCC (i) a certificate of public convenience and necessity and (ii) a final order approving any user fees. The operator and any user fees were regulated by the SCC as if the operator was a public service corporation or a public utility. The SCC has stated that this degree of regulation is unnecessarily burdensome.
  - Under the 1995 Act, the SCC's jurisdiction is limited to determining whether the responsible public entity may terminate the comprehensive agreement as a result of a material default by the operator. Although the SCC will have no jurisdiction to regulate user fees, adequate safeguards remain for the protection of the public against unreasonable tolls. The approval of any project (and the operator) remains within the sole discretion of the responsible public entity. Any user fees established by agreement in the comprehensive agreement must comply with statutory constraints requiring that the operator's return be reasonable and that any user fees not materially discourage use of the facility or be discriminatory. Ultimately, project feasibility and other free market considerations should be effective to keep user fees within reasonable limits.
- The definition of "transportation facility" be expanded to include parking facilities and inland ports.

- The statement of policy underlying the 1995 Act emphasize the public need for timely and cost-efficient transportation facilities that are compatible with state and local transportation plans.
- The process for approval of any transportation facility to be operated under the 1995 Act be initiated, in the alternative, by the private entity or by the responsible public entity under a request for proposals. This approach provides additional flexibility, since only the private entity could initiate the process under the 1994 Act.
- The provisions in the 1994 Act which prohibited the imposition of any tolls or user fees (i) on interstate highways or (ii) without the consent of the affected local jurisdiction, on existing roads, bridges, tunnels or overpasses be stricken. These provisions were added during the 1993 legislative process and may be unnecessary since federal law, not state law, controls the imposition of tolls on interstate highways, and economic considerations will govern the feasibility of imposing tolls on existing state roads.
- The 1995 Act makes it clear that state public procurement laws are not applicable to transportation facilities operated under this legislation.

At its meeting on August 2, 1994, the joint subcommittee heard from Shirley J. Ybarra, Deputy Secretary of Transportation; Anthony Gambardella, General Counsel for the State Corporation Commission; and private sector representatives, all of whom spoke in favor of the proposed 1995 Act. During extensive discussion, the joint subcommittee raised several concerns including the need for adequate public participation in the decision-making process and the need for use of public procurement procedures. Several of the speakers stated that they felt the 1995 Act provided adequate opportunity for public input and that the use of public procurement procedures would not work in a public-private partnership approach. However, the interested parties agreed to study these issues further and submit additional amendments at the next meeting of the joint subcommittee.

At the October 25, 1994 meeting, the joint subcommittee heard from various interested parties, including the Secretary of Transportation, Robert E. Martinez; again all spoke in favor of the proposed 1995 Act. After agreeing to some additional minor amendments to the 1995 Act, the joint subcommittee unanimously agreed to recommend it to the 1995 General Assembly.

Accordingly, Senator Schewel introduced SB 856 during the 1995 Session to create the Public-Private Transportation Act of 1995. Although several amendments to the Act were made during the legislative process, the bill which ultimately passed the General Assembly was nearly identical to the joint subcommittee's recommendation (Appendix C).



## **B. CONTINUATION OF STATE PRIVATIZATION EFFORTS**

The joint subcommittee expressed an interest in creating some type of formal structure to ensure that a permanent process to encourage innovation and competition in the Commonwealth be established.

A plan presented to the joint subcommittee by staff would establish a formal structure which combines some elements of the Governor's Strike Force on Governmental Reform with legislative guidance and oversight responsibilities. This plan would involve the Executive Branch, the General Assembly and the private sector in a joint undertaking to foster and oversee this effort to achieve greater competition and privatization. A Competition Council would be established with appointments to be made by the Governor and by the General Assembly. The Council would identify and encourage opportunities for competition and ensure that the state government is constantly evaluated and is run in a cost effective manner. The Council would have a small independent staff and the Council's annual report should be submitted at the same time as the budget bill so that the savings are highlighted.

The Council would establish a system to encourage the examination of feasibility studies to determine how greater competition would reduce costs and permit resources to be reallocated for other pressing State needs. The Council would receive agency and secretary recommendations and study results and, based on the established criteria, would directly submit its recommendations to the Governor for approval and implementation.

The joint subcommittee approved this approach in concept, and Senator Stosch introduced legislation during the 1995 Session to create the Commonwealth Competition Council. Senate Bill 994 was passed by the General Assembly and will take effect on July 1, 1995 (Appendix D).

## **IV. CONCLUSION**

In addition to its work on the Public-Private Transportation Act of 1995 and the Commonwealth Competition Council, the joint subcommittee considered various other issues involving privatization, including the development of state policies on the implementation of privatization and the fair treatment of state employees. However, since the executive branch will generally have the responsibility for implementing any privatization efforts, the joint subcommittee generally felt that it was unnecessary to offer any recommendations on those issues at this time.

The joint subcommittee extends its appreciation to all of those persons in the private and public sectors who offered assistance during the two years of this study.

Respectfully submitted,

Senator A. Stosch, *Chairman*  
Delegate Mitchell Van Yahres, *Vice Chairman*  
Senator Elliot S. Schewel  
Delegate V. Earl Dickinson  
Delegate Franklin P. Hall  
Delegate Harvey B. Morgan  
Delegate John C. Watkins  
The Honorable Michael E. Thomas  
The Honorable Paul W. Timmrick  
Adele Johnson Crawley  
M. Antionette Kelley  
Keven F. Russell  
Gary Thompson  
Michael E. Veve

## **V. APPENDICES**

**Appendix A: Senate Joint Resolution No. 241 (1993)**

**Appendix B: Senate Joint Resolution No. 17 (1994)**

**Appendix C: Senate Bill No. 856 (1995)**

**Appendix D: Senate Bill No. 994 (1995)**

## **Appendix A**

### **Senate Joint Resolution No. 241 (1993)**

## SENATE JOINT RESOLUTION NO. 241

*Establishing a joint subcommittee to examine functions of state government to determine which functions can be privatized.*

Agreed to by the Senate, February 25, 1993

Agreed to by the House of Delegates, February 24, 1993

WHEREAS, the Commonwealth, and all state governments, face enormous fiscal pressures due to demands for new services, increasing costs for current services, federal mandates, and significant needs for infrastructure construction, repair, and maintenance; and

WHEREAS, such demands require significant investments in assets and personnel to provide these services; and

WHEREAS, the private sector often has the capacity, in terms of assets, personnel, and experience, to provide many of the services government provides; and

WHEREAS, having the capacity to provide such services in both the public and private sectors may result in the duplication of effort, competition with each other, and the inefficient use of resources; and

WHEREAS, privatizing certain functions of state government could permit its restructuring and result in increased economic activity in the private sector, in turn generating increased tax revenues, and produce a "win-win" situation; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to examine the functions of state government to determine which can be successfully privatized. Such examination shall specifically include the following: (i) infrastructure projects, (ii) state motor vehicle fleet, (iii) highway maintenance, (iv) welfare job placement, (v) solid waste facilities, (vi) parking facilities, (vii) social services case management, and (viii) travel services signing program for interstate highways.

The joint subcommittee shall be composed of 11 members as follows: two members from the Senate to be appointed by the Senate Committee on Privileges and Elections; five members from the House of Delegates to be appointed by the Speaker of the House; and four members from the business community to be appointed by the Governor.

The Division of Legislative Services shall provide staff support to the joint subcommittee. All state agencies shall provide such assistance as needed for the work of the joint subcommittee.

The joint subcommittee shall complete its work in time to submit its findings and recommendations, if any, to the Governor and the 1994 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The indirect costs of this study are estimated to be \$13,465; the direct costs shall not exceed \$9,000.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

**Appendix B**  
**Senate Joint Resolution No. 17 (1994)**

## SENATE JOINT RESOLUTION NO. 17

*Continuing the Joint Subcommittee to Examine Functions of State Government to Determine Which Functions Can Be Privatized.*

Agreed to by the Senate, February 1, 1994

Agreed to by the House of Delegates, February 25, 1994

WHEREAS, Senate Joint Resolution No. 241, adopted by the 1993 Session of the General Assembly, established a joint subcommittee to examine functions of state government to determine which functions can be privatized; and

WHEREAS, the Commonwealth, and all state governments, continue to face enormous fiscal pressures due to demands for new services, increasing costs for current services, federal mandates, and significant needs for infrastructure construction, repair, and maintenance; and

WHEREAS, such demands require significant investments in assets and personnel to provide these services; and

WHEREAS, the private sector often has the capacity, in terms of assets, personnel, and experience, to provide many of the services government provides; and

WHEREAS, having the capacity to provide such services in both the public and private sectors may result in duplication of effort, competition with each other, and the inefficient use of resources; and

WHEREAS, privatizing certain functions of state government could permit its restructuring and result in increased economic activity in the private sector, in turn generating increased tax revenues and producing a "win-win" situation; and

WHEREAS, although the joint subcommittee has met a number of times during the interim and has agreed on several recommendations, it is the consensus of the joint subcommittee that, due to the complexity of the topic, there are many issues which deserve further attention by the joint subcommittee; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Subcommittee to Examine Functions of State Government to Determine Which Functions Can Be Privatized be continued. The joint subcommittee shall continue to examine specific functions of state government as well as other issues such as impediments to privatization and ways to minimize any adverse effect privatization may have on public employees.

The current 11 members of the joint subcommittee shall continue to serve with any vacancies to be filled in accordance with the original resolution. In addition, three new members are to be appointed by the Governor, at least two of whom shall be members of the Governor's cabinet, including the Secretary of Administration.

The direct costs of this study shall not exceed \$5,800.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

## **Appendix C**

### **Senate Bill No. 856 (1995)**



## CHAPTER 647

*An Act to amend and reenact § 33.1-257 of the Code of Virginia, §§ 56-556 and 56-557 of the Code of Virginia as will become effective July 1, 1995, a part of Chapter 855 of the 1994 Acts of Assembly, as carried by reference as § 56-558 of the Code of Virginia as will become effective July 1, 1995, §§ 56-559 through 56-561 and §§ 56-563 through 56-574 of the Code of Virginia as will become effective July 1, 1995; to amend the Code of Virginia by adding sections numbered 56-573.1 and 56-573.2; and to repeal §§ 33.1-263, 56-39 and 56-562 of the Code of Virginia, relating to the Public-Private Transportation Act of 1995.*

[S 856]

Approved March 25, 1995

Be it enacted by the General Assembly of Virginia:

1. That § 33.1-257 of the Code of Virginia, §§ 56-556 and 56-557 of the Code of Virginia as will become effective July 1, 1995, a part of Chapter 855 of the 1994 Acts of Assembly, as carried by reference as § 56-558 of the Code of Virginia as will become effective July 1, 1995, §§ 56-559 through 56-561 and §§ 56-563 through 56-574 of the Code of Virginia as will become effective July 1, 1995, are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 56-573.1 and 56-573.2 as follows:

§ 33.1-257. How right to demand tolls ascertained and rates fixed or changed.

No tolls shall be received for passing any such bridge until it shall appear to the circuit court of the county wherein the same is that it is completed according to the act authorizing it. The court shall ascertain whether it is or is not so completed by appointing three disinterested freeholders to view it. If they report in writing that it is so completed and their report be confirmed by the court, the person authorized to erect it, his heirs or assigns, may thenceforth demand and receive, on persons and things passing the same, tolls at the rates fixed by such act or, if none be so fixed, then at such rates as may, from time to time, be fixed by the ~~State Corporation Commission~~ or by law. Though rates of toll be specified in such act, they may, from time to time, be changed by law, unless in such act otherwise expressly provided.

## CHAPTER 22.

### ~~QUALIFYING TRANSPORTATION FACILITIES ACT OF 1994~~ ~~PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995.~~

§ 56-556. Title.

This chapter may be cited as the ~~"Qualifying Transportation Facilities Act of 1994."~~  
~~"Public-Private Transportation Act of 1995."~~

§ 56-557. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying transportation facility is located.

~~"Certificate" means the certificate of public convenience and necessity issued to an operator under this chapter that permits operation of a qualifying transportation facility.~~

~~"Commission" means the State Corporation Commission.~~

"Comprehensive agreement" means the comprehensive agreement between the operator and the responsible public entity required by § 56-566 of this chapter.

~~"Material default" means any default by the operator in the performance of its duties under subsection F of § 56-565 of this chapter that jeopardizes adequate service to the public from a qualifying transportation facility and remains unremedied after the responsible public entity has provided notice to the operator and a reasonable cure period has elapsed.~~

"Operator" means the private entity that is responsible for the acquisition, construction, improvement, maintenance and/or operation of a qualifying transportation facility.

"Private entity" means any natural person, corporation, limited liability company, partnership, joint venture or other private business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of any of the foregoing, *but shall not include any public*

*service company.*

"Qualifying transportation facility" means one or more transportation facilities *acquired, constructed, improved, maintained and/or operated* by a private entity pursuant to this chapter.

~~"Regulatory authority" means the State Corporation Commission.~~

"Responsible public entity" means a public entity that has the power to acquire, construct or improve, *maintain and/or operate* the applicable transportation facility.

"Revenues" means the user fees and/or service payments generated by a qualifying transportation facility.

"Service contract" means a contract entered into *between a public entity and the operator* pursuant to § 56-561 of this chapter.

"Service payments" means payments to the operator of a qualifying transportation facility pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, ~~seaport~~, mass transit facility, *vehicle parking facility, port facility* or similar commercial facility used for the transportation of persons or goods, together with any other property that is needed to operate the ~~same transportation facility~~, but shall exclude ~~railroads, railroad-related facilities and pipelines owned by a public service corporation and rail mass transit facilities owned by an interstate compact agency.~~

"User fees" mean the rates, fees or other charges imposed by the operator of a qualifying transportation facility for use of all or a portion of such qualifying transportation facility *pursuant to the comprehensive agreement.*

§ 56-558. Policy.

A. The General Assembly finds that:

1. There is a public need for timely acquisition or construction of and improvements to transportation facilities within the Commonwealth *that are compatible with state and local transportation plans;*

2. Such public need may not be wholly satisfied by existing ways in which transportation facilities are acquired, constructed or improved; and

3. Authorizing private entities to acquire, construct, improve ~~and/or, maintain, and/or~~ operate one or more transportation facilities may result in the ~~acquisition or construction of or improvements to availability of such transportation facilities to the public~~ in a more timely or less costly fashion, thereby serving the public safety and welfare.

B. An action, other than the approval of the responsible public entity under § ~~56-557~~ 56-560 of this chapter ~~or issuance of a certificate under § 56-559 of this chapter~~, shall serve the public purpose of this chapter if such action facilitates the timely acquisition or construction of or improvement to a qualifying transportation facility or the continued operation of a qualifying transportation facility.

C. It is the intent of this chapter, among other things, to facilitate to the greatest extent possible, the pooling and funding mechanisms of the Intermodal Surface Transportation Efficiency Act of 1991, *and any successor legislation*, to the end that transportation financing be expanded and accelerated to improve and add to the convenience of the public, and such that public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services which are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof.

§ 56-559. Prerequisite for operation.

~~No private entity may operate a transportation facility under this chapter without first obtaining approval of the responsible public entity, obtaining a certificate from the regulatory authority and entering into a comprehensive agreement with the responsible public entity.~~

*Any private entity seeking authorization under this chapter to acquire, construct, improve, maintain and/or operate a transportation facility shall first obtain approval of the responsible public entity under § 56-560. Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § 56-560 or the responsible public entity may request proposals pursuant to subsection B of § 56-560.*

§ 56-560. Approval by the responsible public entity.

A. Prior to the approval of the responsible public entity, the private entity shall provide *The*

private entity may request approval by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity with respect to the transportation facility or facilities that the private entity proposes to operate as a qualifying transportation facility:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;
2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;
3. The projected *total life-cycle* cost of the transportation facility or facilities and the proposed date for acquisition of or the beginning of construction of, or improvements to the transportation facility or facilities;
4. A statement setting forth the method by which the operator proposes to secure all property interests required for the transportation facility or facilities, ~~including:~~ *The statement shall include:* (i) *the names and addresses, if known, of the current owners of the property needed for the transportation facility or facilities,* (ii) *the nature of the interest in the property interests to be acquired, and* (iii) *any property that the responsible public entity is expected to be requested to condemn;*
5. Information relating to the current transportation plans, if any, of each affected local jurisdiction;
6. A list of all permits and approvals required for acquisition or construction of or improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
7. A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the operator to accommodate such crossings;
8. A statement setting forth the operator's general plans for ~~operation of~~ *financing and operating* the transportation facility or facilities; ~~and~~
9. *The names and addresses of the persons who may be contacted for further information concerning the request; and*
- 9- 10. Such additional material and information as the responsible public entity may reasonably request.

*B. The responsible public entity may request proposals from private entities for the acquisition, construction, improvement and/or operation of transportation facilities.*

~~B-~~ C. The responsible public entity ~~shall~~ *may* grant approval ~~if~~ *of* the acquisition, construction, improvement and/or operation of the transportation facility or facilities as a qualifying transportation facility *if the responsible public entity determines that it serves the public purpose of this chapter.* The responsible public entity may determine that the acquisition, construction, improvement and/or operation of the transportation facility or facilities as a qualifying transportation facility serves such public purpose if:

1. ~~The application is complete;~~
2. 1. There is a public need for the transportation facility or facilities of the type the private entity proposes to operate as a qualifying transportation facility;
3. 2. The transportation facility or facilities and the proposed interconnections with existing transportation facilities, *and the operator's plans for operation of the qualifying transportation facility or facilities, are reasonable and compatible with the existing transportation plan for the state the state transportation plan and with the local comprehensive plan or plans;*
4. 3. The estimated cost of the transportation facility or facilities is reasonable *in relation to similar facilities; and*
5. 4. The private entity's plans will result in the timely acquisition or construction of or improvements to the transportation facility or facilities or their more efficient operation; ~~and.~~
6. ~~The operator's plan for operation of the transportation facility or facilities is reasonable and is consistent with Commonwealth and local transportation plans.~~

*In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.*

~~C. D.~~ The responsible public entity may charge a reasonable fee to cover the costs of processing and reviewing and evaluating the request for approval, including without limitation, reasonable attorney's fees and fees for financial and other necessary advisors or consultants.

~~D. E.~~ The approval of the responsible public entity shall be subject to the private entity's entering into a comprehensive agreement with the responsible public entity.

~~E. F.~~ In connection with its approval of the operation of the transportation facility or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for the acquisition of or the beginning of construction of or improvements to the qualifying transportation facility. The responsible public entity may extend such date from time to time.

§ 56-561. Service contracts.

In addition to any authority otherwise conferred by law, any public entity may contract with an operator for transportation services to be provided by a qualifying transportation facility in exchange for such service payments and other consideration as such public entity may deem appropriate.

§ 56-563. Affected local jurisdictions.

A. Any private entity requesting approval from, or submitting a proposal to, ~~the a~~ responsible public entity ~~or the issuance of a certificate by the regulatory authority under § 56-560~~ shall notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction.

B. Each affected local jurisdiction ~~may submit comments relating to a proposed qualifying transportation facility to the responsible public entity or the regulatory authority that is not a responsible public entity for the respective qualifying transportation facility shall, within sixty days after receiving such notice, submit any comments it may have in writing on the proposed qualifying transportation facility to the responsible public entity and indicating whether the facility is compatible with the local comprehensive plan.~~

§ 56-564. Dedication of public property.

Any public entity may dedicate any property ~~in which it has an interest that it has~~ for public use as a qualified transportation facility if it finds that so doing ~~would will~~ serve the public purpose of this chapter. In connection with such dedication, ~~such a~~ public entity may convey any property interest that it has ~~in such property~~, subject to the conditions imposed by general law, to the operator, subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the operator to operate the qualifying transportation facility.

§ 56-565. Powers and duties of the operator.

A. The operator shall have all power allowed by law generally to a private entity having the same form of organization as the operator and shall have the power to *acquire, construct, improve or operate* the qualifying transportation facility and impose user fees and/or enter into service contracts in connection with the use thereof. No tolls or user fees may be imposed by the operator on any *existing* interstate highway ~~and~~. Furthermore, no tolls or user fees may be imposed by the operator on any *existing free* road, bridge, tunnel or overpass ~~without the consent of the affected local jurisdiction unless such road, bridge, tunnel or overpass is reconstructed to provide for increased capacity.~~

B. The operator may own, lease or acquire any other right to use or operate the qualifying transportation facility.

C. Any financing of the qualifying transportation facility may be in such amounts and upon such terms and conditions as may be determined by the operator. Without limiting the generality of the foregoing, the operator may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including ~~the certificate of authority, subject to the provisions of this chapter regarding transfer of the certificate of authority~~ all of its property interests in the qualifying transportation facility.

D. Subject to applicable permit requirements, the operator shall have the authority to cross any canal or navigable watercourse so long as the crossing does not unreasonably interfere with then current navigation and use of the waterway.

E. In operating the qualifying transportation facility, the operator may:

1. Make classifications according to reasonable categories for assessment of user fees; and
2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity could have made *may make and enforce* rules with respect to a similar transportation facility.

~~F. The powers granted to the operator in this section shall be subject to the power of the regulatory authority to approve user fees pursuant to subsection C of § 56-562 of this chapter.~~

~~G. F.~~ The operator shall:

1. Acquire, construct ~~or~~, improve, *maintain and/or operate* the qualifying transportation facility in a manner that meets the engineering standards of the responsible public entity for transportation facilities operated and maintained by such responsible public entity, all in accordance with the provisions of the comprehensive agreement;

2. Keep the qualifying transportation facility open for use by the members of the public at all times after its initial opening upon payment of the applicable user fees, *except when exempted by § 33.1-252*, and/or service payments; provided that the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance procedures;

3. Maintain, or provide by contract for the maintenance of, the qualifying transportation facility;

4. ~~File with the regulatory authority: (i) reports describing material contracts with affiliates of the operator, (ii) an accurate schedule of applicable user fees and/or service payments charged for use of the qualifying transportation facility, and (iii) any other information required by the regulatory authority; and~~

5. ~~4. Cooperate with the responsible public entity in establishing any interconnection with the qualifying transportation facility requested by the responsible public entity; and~~

5. ~~Comply with the provisions of the comprehensive agreement and any service contract.~~

~~§ 56-566. Comprehensive agreement.~~

~~A. Prior to acquiring or commencing construction of or improvements to, constructing, improving, maintaining, and/or operating the qualifying transportation facility, the operator shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:~~

1. Delivery of performance and payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity;

2. Review of plans and specifications for the qualifying transportation facility by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standard conditions of the responsible public entity;

3. Inspection of construction of or improvements to the qualifying transportation facility by the responsible public entity to ensure that they conform to the engineering standards acceptable to the responsible public entity;

4. Maintenance ~~by the operator~~ of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage), self-insurance, in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;

5. Monitoring of the maintenance practices of the operator by the responsible public entity and the taking of such actions as the responsible public entity finds appropriate to ensure that the qualifying transportation facility is properly maintained; ~~and~~

6. Reimbursement to be paid to the responsible public entity for ~~its cost to provide the services performed~~ *provided* by the responsible public entity;

7. ~~Filing of appropriate financial statements on a periodic basis;~~

8. ~~A reasonable maximum rate of return on investment for the operator; and~~

9. ~~The date of termination of the operator's authority and duties under this chapter and dedication to the appropriate public entity.~~

~~B. The comprehensive agreement shall provide for such user fees as may be established from time to time by agreement of the parties. Any user fees shall be set at a level that, taking into account any~~

service payments, allows the operator the rate of return on investment specified in the comprehensive agreement. A copy of any service contract shall be filed with the responsible public entity. A schedule of the current user fees shall be made available by the operator to any member of the public on request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying transportation facility. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees provided for therein comply with this chapter. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

~~B.~~ C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the operator from time to time from amounts received from the federal government or any ~~division~~ agency or instrumentality thereof.

~~C.~~ D. The comprehensive agreement shall incorporate the duties of the operator under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the operator and the persons specified therein as providing financing for the qualifying transportation facility. The comprehensive agreement may contain such other lawful terms and conditions to which the operator and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the operator to acquire, construct, improve, maintain and/or operate one or more qualifying transportation facilities.

E. The comprehensive agreement shall provide for the distribution of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement. Without limitation, excess earnings may be distributed to the Commonwealth's transportation trust fund, to the responsible public entity, or to the operator for debt reduction or they may be shared with affected local jurisdictions.

F. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

§ 56-567. Federal, state and local assistance.

The responsible public entity may take any action to obtain federal, state or local assistance for a qualifying transportation facility that serves the public purpose of this chapter and may enter into any contracts required to receive such federal assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying transportation facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state or federal government or any ~~division~~ agency or instrumentality thereof.

§ 56-568. Material default; remedies.

A. The regulatory authority may revoke a certificate for a qualifying transportation facility if:

1. A material default in the performance of the operator's duties under the comprehensive agreement or under the service contract, if any, has occurred and is continuing;
2. Acquisition or construction of or improvement to the qualifying transportation facility has not begun by the date established by the responsible public entity as such date has been extended;
3. For failure to provide reasonably adequate service and facilities at reasonable and uniform user fees as provided by law; or
4. For failure to comply with any lawful order of the regulatory authority.

B. Prior to any revocation of a certificate the regulatory authority shall give written notice to the operator and any person providing financing for the qualifying transportation facility, including any trustee or agent for any person providing financing. The operator and the persons providing financing for the qualifying transportation facility shall be entitled to a reasonable time period to cure the event that could lead to a revocation of the certificate. Prior to any revocation of the certificate, the regulatory authority shall conduct a hearing to determine if revocation of the certificate serves the public purpose of this chapter. Any interested party shall be entitled to participate in such hearing.

subject to rules established by the regulatory authority that may limit the appearance of parties with substantially identical interests.

*Except upon agreement of the operator and any other parties identified in the comprehensive agreement, no responsible public entity shall exercise any of the remedies provided in this section or in subsection B or C of § 56-569 unless the Commission, after notice to the operator and the secured parties (as may appear in the operator's records) and an opportunity for hearing, shall first issue a declaratory judgment that a material default, as defined in § 56-557, has occurred and is continuing.*

~~C. B.~~ Upon the revocation of a certificate of authority entry by the Commission of a declaratory judgment order pursuant to subsection A above, unless such order is stayed pending appeal to the Virginia Supreme Court, the responsible public entity may exercise any or all of the following remedies:

1. The responsible public entity may elect to take over the transportation facility or facilities and in such case it shall succeed to all of the right, title and interest in such transportation facility or facilities, subject to any liens on revenues previously granted by the operator to any person providing financing therefor and the provisions of subsection ~~D~~ C below. ~~Any liens on the real estate and tangible property comprising the transportation facility or facilities shall be deemed to be extinguished and shall be released on request if the responsible public entity takes over the qualifying transportation facility pursuant to this subsection.~~

2. Any responsible public entity having the power of condemnation under applicable state law may exercise such power of condemnation to acquire the qualifying transportation facility or facilities. Nothing in this chapter shall be construed to limit the exercise of the power of condemnation by any responsible public entity against a qualifying transportation facility after ~~revocation of the certificate the entry by the Commission of a final declaratory judgment order pursuant to subsection A above.~~ Any person that has provided financing for the qualifying transportation facility, and the operator, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

3. The responsible public entity may ~~terminate the comprehensive agreement and~~ exercise all any other rights and remedies which may be available to it at law or in equity.

4. ~~The responsible public entity may make or cause to be made any appropriate claims under the performance and/or payment bonds required by subdivision A 1 of § 56-566.~~

~~D. C.~~ In the event the responsible public entity elects to take over a qualifying transportation facility pursuant to ~~subsection C subdivision B~~ 1 of this section, the responsible public entity shall acquire, construct, improve, operate and maintain the transportation facility, impose user fees for the use thereof and comply with any service contracts as if it were the operator. ~~User fees shall remain subject to approval by the regulatory authority in accordance with the standards set forth in subsection C of § 56-562 and, solely for such purpose, the regulatory authority shall retain jurisdiction over the qualifying transportation facility.~~ Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the operator's obligations to secured parties, including the maintenance of reserves ~~and such liens shall be correspondingly reduced and, when paid off, released.~~ Before such any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the transportation facility or facilities, including compensation to the responsible public entity for its services in operating and maintaining the qualifying transportation facility. Remaining revenues, if any, after all such payments have been made or provided for in an amount not to exceed an amount that will provide the operator with the rate of return on its capital investment approved by the regulatory authority under § 56-562 of this chapter shall be paid to the operator over the time period that the certificate would have been in place had it not been revoked for operation and maintenance of the transportation facility or facilities, and to, or for the benefit of, secured parties, have been made, shall be paid to the operator, subject to the negotiated maximum rate of return. The right to receive such payment, if any, shall be considered just compensation for the transportation facility or facilities. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the operator by the election to take over the qualifying transportation facility. Assumption of operation of the qualifying transportation facility shall not obligate the responsible public entity to pay any obligation of the operator from sources other than

revenues.

§ 56-569. Condemnation.

A. At the request of the operator, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the operator.

B. Except as provided in subsection A of this section, until a ~~certificate has been revoked~~ *the Commission has entered a final declaratory judgment order under subsection A of § 56-568*, the power of condemnation may not be exercised against a qualifying transportation facility.

C. After the ~~certificate has been revoked~~ *entry of such final order by the Commission*, any responsible public entity having the power of condemnation under law may exercise such power of condemnation as provided in ~~subsection C subdivision B 2~~ *of § 56-568 in lieu of*, or at any time after taking over the transportation facility pursuant to ~~subsection C subdivision B 1~~ *of § 56-568*.

§ 56-570. Utility crossings.

The operator and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying transportation facility or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of or improvements to the qualifying transportation facility, which shall be construed to include construction of or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the operator. Should the operator and any such public service company, public utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the ~~regulatory authority~~ *Commission* may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The ~~regulatory authority~~ *Commission* may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the ~~regulatory authority~~ *Commission*. In such a case, the cost of the experts is to be borne by the operator.

§ 56-571. Police powers; violations of law.

A. All police officers of the Commonwealth and of each *affected* local jurisdiction, shall have the same powers and jurisdiction within the limits of such qualifying transportation facility as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying transportation facility at any time for the purpose of exercising such powers and jurisdiction. This authority does not extend to the private offices, buildings, garages and other improvements of the operator to any greater degree than the police power extends to any other private buildings and improvements.

B. To the extent the transportation facility is a road, bridge, tunnel, overpass or similar transportation facility for motor vehicles, the traffic and motor vehicle laws of the Commonwealth or, if applicable, any local jurisdiction shall be the same as those applying to conduct on similar transportation facilities in the Commonwealth *or such local jurisdiction*. Punishment for offenses shall be as prescribed by law for conduct occurring on similar transportation facilities in the Commonwealth *or such local jurisdiction*.

§ 56-572. Dedication of assets.

The ~~regulatory authority~~ shall determine the date of termination of the original permanent financing and shall terminate the operator's certificate on a date that shall not exceed ten years from the end of the term of the original permanent financing. The ~~regulatory authority~~ may change the termination date to take into account any refinancing of the original permanent financing, including any refinancing for the purpose of expansion, or any early termination of the original permanent financing to the extent that such modification serves the public purpose of this chapter. *The responsible public entity shall terminate the operator's authority and duties under this chapter on the*



date set forth in the comprehensive agreement. Upon the termination of the certificate, the authority and duties of the operator under this chapter shall cease, and the qualifying transportation facility shall be dedicated to the responsible public entity or, if the qualifying transportation facility was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

§ 56-573. Sovereign immunity.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying transportation facility or its operation, including but not limited to interconnection of the qualifying transportation facility with any other transportation facility. Counties, cities and towns in which a qualifying transportation facility is located shall possess sovereign immunity with respect to its construction and operation.

§ 56-573.1. Procurement.

*The Virginia Public Procurement Act (§ 11-35 et seq.) shall not apply to this chapter; however, a responsible public entity may enter into a comprehensive agreement only in accordance with procedures adopted by it which are consistent with those of § 11-37 to the extent such section applies to the procurement of "other than professional services" through competitive negotiation as defined in §§ 11-37 and 11-48. Such responsible public entities shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received.*

§ 56-573.2. Jurisdiction.

*The Commission shall have exclusive jurisdiction to adjudicate all matters specifically committed to its jurisdiction by this chapter.*

§ 56-574. Preservation of the Virginia Highway Corporation Act of 1988.

Nothing in this chapter shall be construed to repeal or change in any manner the Virginia Highway Corporation Act of 1988, as amended (§ 56-535 et seq.). *Nothing in the Virginia Highway Corporation Act of 1988, as amended, shall apply to qualifying transportation facilities undertaken pursuant to the authority of this chapter.*

2. That §§ 33.1-263, 56-39 and 56-562 of the Code of Virginia are repealed.

## **Appendix D**

### **Senate Bill No. 994 (1995)**

## CHAPTER 815

*An Act to amend and reenact §§ 2.1-1.3, 2.1-1.7, 2.1-20.4, 9-6.23, and 9-6.25:1 of the Code of Virginia and to amend the Code of Virginia by adding in Title 9 a chapter numbered 43, consisting of sections numbered 9-334 through 9-343, relating to the Virginia Government Competition Act of 1995, including the creation of the Commonwealth Competition Council.*

[S 994]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.3, 2.1-1.7, 2.1-20.4, 9-6.23, and 9-6.25:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 9 a chapter numbered 43, consisting of sections numbered 9-334 through 9-343, as follows:

§ 2.1-1.3. Entities subject to standard nomenclature.

The following independent administrative entities are subject to the standard nomenclature provisions of § 2.1-1.2:

Chesapeake Bay Local Assistance Department.

*Commonwealth Competition Council.*

Department of Accounts.

Department for the Aging.

Department of Agriculture and Consumer Services.

Department of Alcoholic Beverage Control.

Department of Aviation.

Department of Conservation and Recreation.

Department of Correctional Education.

Department of Corrections.

Department of Criminal Justice Services.

Department for the Deaf and Hard-of-Hearing.

Department of Economic Development.

Department of Education.

Department of Emergency Services.

Department of Environmental Quality.

Department of Employee Relations Counselors.

Department of Fire Programs.

Department of Forestry.

Department of Game and Inland Fisheries.

Department of General Services.

Department of Health.

Department of Health Professions.

Department of Historic Resources.

Department of Housing and Community Development.

Department of Information Technology.

Department of Labor and Industry.

Department of Medical Assistance Services.

Department of Mental Health, Mental Retardation and Substance Abuse Services.

Department of Military Affairs.

Department of Mines, Minerals and Energy.

Department of Minority Business Enterprise.

Department of Motor Vehicles.

Department of Personnel and Training.

Department of Planning and Budget.

Department of Professional and Occupational Regulation.

Department of Rail and Public Transportation.

Department of Rehabilitative Services.

Department for Rights of Virginians With Disabilities.  
 Department of Social Services.  
 Department of State Police.  
 Department of Taxation.  
 Department of Transportation.  
 Department of the Treasury.  
 Department of Veterans' Affairs.  
 Department for the Visually Handicapped.  
 Department of Youth and Family Services.  
 Governor's Employment and Training Department.

§ 2.1-1.7. State councils.

A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies either affiliated with more than one agency or independent of an agency within the executive branch:

Adult Education and Literacy, Virginia Advisory Council for  
 Agricultural Council, Virginia  
 Alcohol and Drug Abuse Problems, Governor's Council on  
 Apprenticeship Council  
 Blue Ridge Regional Education and Training Council  
 Child Day Care and Early Childhood Programs, Virginia Council on  
 Child Day-Care Council  
 Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion  
*Commonwealth Competition Council*  
 Commonwealth's Attorneys' Services Council  
 Developmental Disabilities Planning Council, Virginia  
 Disability Services Council  
 Equal Employment Opportunity Council, Virginia  
 Health Services Cost Review Council, Virginia  
 Housing for the Disabled, Interagency Coordinating Council on  
 Human Rights, Council on  
 Human Services Information and Referral Advisory Council  
 Indians, Council on  
 Interagency Coordinating Council, Virginia  
 Job Training Coordinating Council, Governor's  
 Land Evaluation Advisory Council  
 Local Debt, State Council on  
 Long-Term Care Council  
 Maternal and Child Health Council  
 Military Advisory Council, Virginia  
 Needs of Handicapped Persons, Overall Advisory Council on the  
 Prevention, Virginia Council on Coordinating  
 Public Records Advisory Council, State  
 Rate-setting for Children's Facilities, Interdepartmental Council on  
 Revenue Estimates, Advisory Council on  
 Southside Virginia Marketing Council  
 Specialized Transportation Council  
 State Health Benefits Advisory Council  
 Status of Women, Council on the  
 Technology Council, Virginia  
 Virginia Business-Education Partnership Program, Advisory Council on the  
 Virginia Recycling Markets Development Council.

B. Notwithstanding the definition for "council" as provided in § 2.1-1.2, the following entities shall be referred to as councils:

Council on Information Management

Higher Education, State Council of  
 Independent Living Council, Statewide  
 Rehabilitation Advisory Council, Statewide  
 Rehabilitation Advisory Council for the Blind, Statewide  
 World Trade Council, Virginia.

§ 2.1-20.4. Bodies receiving compensation.

A. Notwithstanding any other provision of law, the following commissions, boards, etc., shall be those which receive compensation from state funds pursuant to § 2.1-20.3:

Accountancy, Board for  
 Agriculture and Consumer Services, Board of  
 Air Pollution Control Board, State  
 Airports Authority, Virginia  
 Apprenticeship Council  
 Architects, Professional Engineers, Land Surveyors and Landscape Architects, State Board for  
 Athletic Board, Virginia  
 Auctioneers Board  
 Audiology and Speech-Language Pathology, Board of  
 Aviation Board, Virginia  
 Barbers, Board for  
 Branch Pilots, Board for  
 Building Code Technical Review Board, State  
 Chesapeake Bay Local Assistance Board  
 Child Day Care and Early Childhood Programs, Virginia Council on  
 Coal Mining Examiners, Board of  
 College Building Authority  
*Commonwealth Competition Council*  
 Commonwealth Transportation Board  
 Conservation and Development of Public Beaches, Board on  
 Conservation and Recreation, Board of  
 Contractors, Board for  
 Correctional Education, Board of  
 Corrections, Board of  
 Cosmetology, Board for  
 Criminal Justice Services Board  
 Deaf and Hard-of-Hearing, Advisory Board for the  
 Dentistry, Board of  
 Education, State Board of  
 Education Loan Authority, Virginia - Board of Directors  
 Elections, State Board of  
 Environment, Council on the  
 Fire Services Board, Virginia  
 Funeral Directors and Embalmers, Board of  
 Game and Inland Fisheries, Board of  
 Geology, Board for  
 Health, State Board of  
 Health Professions, Board of  
 Hearing Aid Specialists, Board for  
 Higher Education, State Council of  
 Historic Resources, Board of  
 Housing and Community Development, Board of  
 Information Management, Council on  
 Marine Resources Commission  
 Medical Assistance Services, Board of  
 Medical Complaint Investigation Committee

Medicine, Board of  
 Mental Health, Mental Retardation and Substance Abuse Services Board, State  
 Milk Commission  
 Mineral Mining Examiners, Board of  
 Nursing, Board of  
 Nursing Home Administrators, Board of  
 Occupational Therapy, Advisory Board on  
 Oil and Gas Conservation Board, Virginia  
 Opticians, Board for  
 Optometry, Board of  
 Pesticide Control Board  
 Pharmacy, Board of  
 Physical Therapy, Advisory Board on  
 Port Authority, Board of Commissioners of the Virginia  
 Professional and Occupational Regulation, Board for  
 Professional Counselors, Board of  
 Professional Soil Scientists, Board for  
 Psychology, Board of  
 Public Defender Commission  
 Public School Authority, Virginia  
 Purchases and Supply Appeals Board  
 Real Estate Appraiser Board  
 Real Estate Board  
 Recreation Specialists, Board of  
 Rehabilitative Services, Board of  
 Respiratory Therapy, Advisory Board on  
 Safety and Health Codes Board  
 Seed Potato Board  
 Social Services, Board of  
 Social Work, Board of  
 State Health Department Sewage Handling and Disposal Appeal Review Board  
 Substance Abuse Certification Board  
 Surface Mining Review, Board of  
 Treasury Board  
 Veterans' Affairs, Board on  
 Veterinary Medicine, Board of  
 Virginia Board for Asbestos Licensing  
 Virginia Health Planning Board  
 Virginia Manufactured Housing Board  
 Virginia Veterans Care Center Board of Trustees  
 Virginia Waste Management Board  
 Visually Handicapped, Virginia Board for the  
 Waste Management Facility Operators, Board for  
 Water Control Board, State  
 Waterworks and Wastewater Works Operators, Board for  
 Well Review Board, Virginia  
 Youth and Family Services, State Board of.

B. Individual members of boards, commissions, committees, councils, and other similar bodies appointed at the state level and receiving compensation for their services on January 1, 1980, but who will not receive compensation under the provisions of this article, shall continue to receive compensation at the January 1, 1980, rate until such member's current term expires.

§ 9-6.23. Prohibition against service by legislators on boards and commissions within the executive branch.

Members of the General Assembly shall be ineligible to serve on boards and commissions within

the executive branch which are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards and commissions engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board or commission in the executive branch which is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position. The provisions of this section shall not apply, however, to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board on Veterans' Affairs, who shall be appointed as provided for in § 2.1-741; to members of the Council on Indians, who shall be appointed as provided for in § 9-138.1; to members of the Virginia Technology Council, who shall be appointed as provided for in § 9-145.51; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided in § 23-231.3; to members of the Maternal and Child Health Council, who shall be appointed as provided for in § 9-318; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided in § 2.1-750; to members of the Advisory Council on the Virginia Business-Education Partnership Program, who shall be appointed as provided in § 9-326; to members of the Advisory Commission on Welfare Reform, who shall be appointed as provided in § 63.1-133.44; ~~or~~ to members of the Virginia Correctional Enterprises Advisory Board, who shall be appointed as provided in § 2.1-451.2; *or to members of the Commonwealth Competition Commission, who shall be appointed as provided in § 9-337.*

§ 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 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  
 (Effective until July 1, 1995) 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  
*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  
 Film Office Advisory Board  
 Forensic Science Advisory Board  
 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  
 Industrial Development Services Advisory Board  
 Interagency Coordinating Council on Housing for the Disabled  
 Interdepartmental Board of the State Department of Minority Business Enterprise  
 Laboratory Services 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 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  
 Long-Term Care Council  
 Maternal and Child Health Council  
 Medical Advisory Board, Department of Motor Vehicles  
 Medical Board of the Virginia Retirement System  
 Migrant and Seasonal Farmworkers Board  
 Motor Vehicle Dealer's 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  
 Retirement System Review 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 on Air Pollution  
 State Advisory Board for the Virginia Employment Commission  
 State Building Code Technical Review Board  
 State Council on Local Debt  
 State Health Benefits Advisory Council  
 State Insurance Advisory Board  
 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  
 Tourism and Travel Services Advisory Board  
 Toxic Substances 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 Interagency Coordinating Council  
 Virginia Military Advisory Council  
 Virginia Public Buildings Board  
 Virginia Recycling Markets Development Council  
 Virginia Technology Council  
 Virginia Transplant Council  
 Virginia Water Resources Research Center, Statewide Advisory Board  
 Virginia Winegrowers Advisory Board.

#### CHAPTER 43.

#### VIRGINIA GOVERNMENT COMPETITION ACT OF 1995.

##### § 9-334. Short title.

*This chapter shall be known and may be cited as the "Virginia Government Competition Act of 1995."*

##### § 9-335. Definitions.

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

*"Council" means the Commonwealth Competition Council.*

*"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.*

##### § 9-336. 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.*

*§ 9-337. Membership; appointment; terms; vacancies; chairman; quorum; compensation.*

A. *The Council shall be composed of ten members to be appointed as follows: four employees of executive branch agencies to be appointed by the Governor; one member of the House of Delegates to be appointed by the Speaker of the House; one member of the Senate to be appointed by the Senate Committee on Privileges and Elections; two members of the private sector to be appointed by the Governor; one member of the private sector to be appointed by the Speaker of the House; and one member of the private sector 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 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 members of the Council shall constitute a quorum. No action shall be taken by the Council without the concurrence of at least six 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.*

*§ 9-338. Cooperation of other state agencies.*

*All agencies of the Commonwealth shall cooperate with the Council and, upon request, assist the Council in the performance of its duties and responsibilities. The Council shall not impose unreasonable burdens or costs in connection with requests of agencies.*

*§ 9-339. Staff support; application for an acceptance of gifts and grants.*

A. *The Council shall employ such staff as necessary to enable it to perform its duties as directed*

in the appropriation act.

B. The Council may apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to better carry out its objectives. No entity which provides a gift, donation or grant shall be eligible for a contract award which results from action of a Council recommendation.

§ 9-340. *Unsolicited proposals.*

The Governor or the General Assembly may direct any state agency to perform a public/private performance analysis covering any service 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 § 9-336.

§ 9-341. *Public/private performance analysis.*

A. The Council shall use the procurement methods cited in the Virginia Public Procurement Act (§ 11-35 et seq.) to solicit proposals and bids from private entities in order to make cost comparison decisions. However, the Council shall not execute contracts.

B. The Council shall explore methods to encourage state agencies to compete for contracts.

§ 9-342. *Duties of the Department of Planning and Budget.*

The Department of Planning and Budget shall determine the amount of the existing appropriation no longer needed by the state agency or institution and shall unallot such funding. The Department shall also ensure that all appropriate reporting requirements to the Governor and the General Assembly are met. Nothing in this section shall preclude the Governor from recommending in future budget submissions the restoration of a portion of the original appropriation to the state agency or institution.

§ 9-343. *Reports to Governor and General Assembly.*

The Council shall annually by December 1 report its findings and recommendations to the Governor and the General Assembly. The Council may make interim reports to the Governor and the General Assembly as it deems advisable.