

COMMONWEALTH COMPETITION COUNCIL

2011 ANNUAL REPORT
TO THE
GOVERNOR,
GENERAL ASSEMBLY, AND
SMALL BUSINESS COMMISSION



DECEMBER 1, 2011

CURRENT MEMBERS COMMONWEALTH COMPETITION COUNCIL

CHAIRMAN

2011 CALENDAR YEAR
elected from the membership

The Honorable Emmett W. Hanger, Jr.
Member, Senate of Virginia
term concurrent with Senate term

VICE-CHAIRMAN

2011 CALENDAR YEAR
elected from the membership

Geoffrey F. Segal
VP, Gov't Relations, Macquarie.
term ending June 30, 2013

REMAINING MEMBERS

IN ORDER OF TERM

CONCURRENT WITH LEGISLATIVE TERM

The Honorable R. Edward Houck
Member, Senate of Virginia

The Honorable Thomas Davis Rust
Member, Virginia House of Delegates

The Honorable Timothy D. Hugo
Member, Virginia House of Delegates

TERM ENDING JUNE 30, 2013

Robert A. Archer
President, Blue Ridge Beverage Company, Inc.

Carlos Del Toro
CEO/President
SBG Technology Solutions, Inc

Howard P. Estes, Jr.
Estes and Associates

TERM ENDING JUNE 30, 2011

Daniel R. Odio-Paez
Founder/Owner
DROdio Real Estate
Member of the Small Business Commission

David Von Moll
State Comptroller
Department of Accounts

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2011 Report

Council members met once during 2011. However, the work of the Commonwealth Competition Council (Council) continued to provide a valuable service to state agencies and institutions since being established by the Virginia Government Competition Act of 1995. That Act directed the Council to examine and promote methods of providing a portion or all of select government-provided or government-produced programs through the private sector by a competitive contracting program. The Council has developed an institutional framework for a statewide competitive program to encourage innovation and competition within state government. Council staff continued to field questions from the public and media in 2011 mostly regarding state contract acquisitions and efficiency goals.

Projects of Interest the Competition Council

Since Governor McDonnell signed Executive Order Number Two (2010) in establishing the Commission of Government Reform and Restructuring, it has rightfully taken the lead, “to put forth bold and innovative ideas to ensure that duplicative, outdated, unnecessary and ineffective services and service delivery methods are eliminated and that state revenues are dedicated to the core functions of government.” Two members of the Competition Council (Messrs. Howard Estes, Jr. and Geoffrey Segal) also serve on the Commission. The reform recommendation made by the Commission that has garnered most of the media’s attention is the call to privatize the operations of the Commonwealth Alcohol and Beverage Control. Whether this recommendation is ever implemented remains to be seen, but it is part of the broad review and examination of government operations and services the Commission is undertaking.

Another ongoing enterprise which does not receive its share of attention is the Productivity Investment Fund (PIF). PIF was established to, “partner with Virginia Commonwealth agencies to identify, catalyze and implement innovative solutions which enable a more efficient and cost effective government for the benefit of the citizens of the Commonwealth.” Some of the more creative projects funded through PIF in 2011 are:

1) State Board of Elections

Project - Online Campaign Finance System

Award: \$75,000

This project will overhaul SBE's processes and system for over 600 candidates and political action committees each year. The documents are currently submitted in paper format, the new process will allow direct submission of electronic data.

2) Department of Rehabilitative Services

Project: Web Based decision software for the disabled

Award: \$301,000

The Web Based Decision Software for Disabled project was developed to migrate WorkWORLD decision support software to a Web-based platform to help people with disabilities, benefit

counselors, and others explore and understand how to best use work incentives associated with the various benefit programs. (This web based software project simplifies and consolidates the complex government programs so that people can find the assistance they need.)

Also, the Department of General Services (DGS) continues to generate savings with its Enterprise Fuel Initiative. Bulk fuel management adder fees were reduced 18 percent for gasoline, 34 percent for diesel. DGS and the Virginia Department of Transportation are saving over \$300,000 annually as a result of the initiative.

Overview of Reform and Cost Savings Measures of the Past

Jason Powell of the Virginia Joint Legislative Audit and Review Commission provided a brief summary of the 750 recommendations put forth by Special Commissions created by Governors Wilder, Allen, and Warner. The special commissions that were reviewed were:

- Governor Wilder's *Project Streamline* in 1992,
 - Organizational and operational efficiencies, most all recommendations implemented during Governor Wilder's term;
- Governor Allen's *Blue Ribbon Strike Force on Government Reform* in 1994,
 - Contained more than 400 recommendations
 - Focused on consolidation and outsourcing
- Governor Warner's *Commission on Efficiency and Effectiveness* in 2002,
 - Efficiency of managing state resources
 - Primarily in the areas of information technology, procurement, and general governance

“In reviewing the 735 recommendations contained within the gubernatorial initiatives, JLARC staff worked jointly with staff from the Department of Planning and Budget and the Auditor of Public Accounts, in addition to contacting staff at the affected agencies. The final status of these recommendations was determined jointly by the State Auditor, the Director of DPB, and the JLARC staff director.

More than 500 of the 735 recommendations, approximately 70 percent, were determined to have been fully implemented, did not address costs savings, or circumstances had changed rendering them no longer valid. Another 200 were determined to be worthy of further examination

At the time of the review, in 2006, approximately 60 recommendations remained unimplemented.

1992 – Governor Wilder's *Project Streamline* – was actually an ongoing initiative throughout Governor Wilder's term, the final report contained 288 recommendations which were acted on between 1991 and 1994. Only **three** recommendations from 1992 remained unimplemented in 2006. Those recommendations included:

- Eliminate per diem payments to members of gubernatorial boards, commissions, and councils;
- Discontinue local tax mapping program administered by the Department of Taxation; and,
- Privatize operations of Virginia Welcome Centers and Rest Areas.

1994 – Governor Allen’s *Blue Ribbon Strikeforce on Government Reform* – contained 445 recommendations, however 285 did not directly address cost savings. The remaining 160 recommendations focused on opportunities for privatization and outsourcing within the areas of education, transportation, and natural resources.

In 2006, more than 80 percent of these recommendations had been implemented to some extent; including substantial progress in equipment utilization and outsourcing within the transportation programs. Approximately 30 of these recommendations had not been implemented;

- Elimination of the Maximum Employment Levels in favor of budgeting program level positions based on programmatic need;
- Privatize State operated mental health, mental retardation, rehabilitation, and child support enforcement functions;
- Eliminate funding for the Center for Innovative Technology;
- Outsource VDOT maintenance programs (approximately 80 percent outsourced in 2008);
- Transfer law enforcement functions of ABC and DMV to State Police;
- Increase fees on civil warrants to enhance public safety revenues; and,
- Abolish the Compensation Board.

2002 – Governor Warner’s *Commission on Efficiency and Effectiveness* (also known as the “Wilder Commission”) – identified 60 recommendations to improve the effective use of State resources. In 2006, two-thirds of those recommendations had been implemented or were in the process of being implemented.

These recommendations were focused largely in the areas of information technology and procurement processes. In 2006, more than \$100 million in revenue had already been realized from these initiatives, primarily through enhanced tax collection efforts as part of Governor Warner’s tax amnesty program.

At that time, only 24 recommendations were identified as yet to be implemented including;

- Unifying payroll systems across state universities (would require upfront cash and increased difficulty with higher education restructuring);
- Merge or eliminate Chippokes Plantation and the Museum of Natural History (efforts were unsuccessful in 2008);
- Eliminate State funding for Constitutional officers; and,
- Privatize the retail functions of the Department of Alcoholic Beverage Control.

While these initiatives identified savings opportunities that were valuable at the time, only a handful of these recommendations remain viable today. Moreover, a cursory review of the 54

recommendations that had not been implemented in 2006 indicates that many of these recommendations have since been implemented to some extent including;

- A \$5 surcharge for in-person driver's license renewal;
- Integration of workforce development into the Virginia Community College System,
- Consolidation of the schools for the deaf and blind;
- Consolidation of the Department of Charitable Gaming (into the Department of Agriculture of Community Services in 2008);
- Outsource collections of uncollectible and unworked accounts receivable; and,
- Developing a common chart of accounts and unified system for managing budgetary appropriations and agency expenditures (currently underway).¹

Membership

There are currently eight vacancies on the council (one member short of a quorum). After much deliberation, the Governor's office, at the recommendation of the Commission of Government Reform and Restructuring, is planning to submit legislation during the 2012 General Assembly to eliminate the Council. According to the Commission:

The Commonwealth Competition Council was created in 1995 as independent advisory body within the executive branch with the goal of finding opportunities for privatization of state government functions. At the time, Virginia was on the cutting edge of privatization of government functions. Today, privatization is frequently discussed throughout government, and the Commonwealth Competition Council is often circumvented as vendors work directly with agencies and take advantage of the PPTA and PPEA processes.

The Competition Council meets approximately once a year and, in recent years, has primarily monitored actions happening elsewhere state government rather than taking the lead role on these efforts. The Commission on Government Reform and Restructuring recommended elimination of the Council in 2011.

The Commonwealth Competition Council was created with a laudable goal of promoting privatization. In the years since, it has succeeded in making privatization a common theme in state government and has served its purpose. Elimination of the Council is now appropriate.²

¹ *Remarks to the Commonwealth Competition Council*, Jason Powell, October 20, 2008

² *Reorganization Plan*, Commission on Reform and Restructuring, November 25, 2011

Appendix A

LEGISLATION ON THE COMMONWEALTH COMPETITION COUNCIL

CODE OF VIRGINIA

§ [2.2-203.2:1](#). Secretary [of Administration] to report state job elimination due to privatization.

On or before November 30 of each year, the Secretary shall report to the Governor and the General Assembly on the number of state jobs eliminated in the immediately preceding fiscal year due to the privatization of commercial activities to a commercial source. As used in this section, "commercial activities" and "commercial source" shall mean the same as those terms are defined in § [2.2-2620](#).

§ [2.2-2620](#). Definitions.

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

"Commercial activity" means performing services or providing goods that 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 (§ [2.2-4300](#) et seq.).

"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 that 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 that 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 that employs state or nonstate personnel.

§ [2.2-2621](#). Commonwealth Competition Council; membership; terms; chairman; quorum; compensation; staff.

A. The Commonwealth Competition Council (the Council) is established as an advisory council, within the meaning of § [2.2-2100](#), in the executive branch of state government. The Council shall be composed of 15 members to be appointed as follows: four employees of executive branch agencies to be appointed by the Governor; two members of the House of Delegates to be appointed by the Speaker of the House of Delegates; two members of the Senate to be appointed by the Senate Committee on Rules; three members of the private sector to be appointed by the Governor; two members of the private sector to be appointed by the Speaker of the House of Delegates; and 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 Rules.

B. Legislative members shall serve on the Council until the expiration of their terms of office or until their successors shall qualify. Executive branch agency members shall serve only as long as they retain their positions. After the initial staggering of terms, 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 nonlegislative citizen member shall be eligible to serve more than two successive three-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

D. The Council shall annually elect its chairman and vice-chairman from among its members. A majority of the members of the Council shall constitute a quorum.

E. Legislative members shall be compensated as specified in § [30-19.12](#), and members, who are private sector members of the Small Business Commission, shall be compensated as specified in § [30-182](#). All members of the Council shall be reimbursed for their reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#).

F. The Council shall employ such staff as necessary to enable it to perform its duties as directed in the appropriation act.

§ [2.2-2622](#). Duties of Council; acceptance of gifts and grants; annual report.

A. 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 that 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.

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

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 that provides a gift, donation or grant shall be eligible for a contract award that results from action of a Council recommendation.

C. The Council shall not impose unreasonable burdens or costs in connection with requests of agencies.

D. The Council shall annually by December 1 report its findings and recommendations to the Governor, the General Assembly and the Small Business Commission created pursuant to § [30-182](#). The Council may make interim reports to the Governor, the General Assembly and the Small Business Commission as it deems advisable.

§ [2.2-2623](#). Unsolicited proposals.

The Governor or the General Assembly may direct any state agency to perform a public/private performance analysis covering any commercial activity for which the Council has received a qualifying unsolicited proposal from a private entity that is consistent with the Council's purposes and duties as provided in § [2.2-2622](#).

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

§ [2.2-2624](#). Public/private performance analysis.

A. The Council shall use the procurement methods cited in the Virginia Public Procurement Act (§ [2.2-4300](#) 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.

§ [2.2-2625](#). 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 a state agency or institution where all or a portion of such agency's function has been privatized in accordance with the recommendations of the Council, 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.

§ [2.2-2101](#). (Effective until July 1, 2008, and on July 1, 2008) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that 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 to members of the Board for Branch Pilots, who shall be appointed as provided for in § [54.1-901](#); to members of the Council on Indians, who shall be appointed as provided for in § [2.2-2628](#); to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § [23-231.3](#); to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § [23-231.25](#); to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § [23-231.31](#); to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § [2.2-5204](#); to members of the Board of Veterans Services, who shall be appointed as provided for in § [2.2-2452](#); to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § [23-231.15](#); to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § [2.2-2621](#); to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § [2.2-2423](#); to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § [22.1-346.1](#); to members of the Substance Abuse Services Council, who shall be appointed as provided for in § [2.2-2696](#); to members of the Criminal Justice Services Board, who shall be appointed as provided in § [9.1-108](#); to members of the Council on Virginia's Future, who shall be appointed as provided for in § [2.2-2685](#); to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § [2.2-2648](#); to members of the Virginia Workforce Council, who shall be appointed as provided for in § [2.2-2669](#); to members of the Commission on Civics Education, who shall be appointed as provided for in § [22.1-212.18](#); to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § [51.1-1201](#); to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § [2.2-306](#); or to members of the Forensic Science Board, who shall be appointed as provided for in § [9.1-1109](#).

§ 2.2-5512 through 2.2-5513 - Competitive Government Act

§ [2.2-5512](#). Definitions.

As used in this chapter:

"Commercial activity" means an activity performed by or for state government that is not an inherently governmental activity and that may feasibly be obtained from a commercial source at lower cost than the activity being performed by state employees.

"Commercial source" means any business or other private concern that is eligible for contract awarded in accordance with the Public-Private Education and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) or the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.).

"State employee" means all persons employed by the Commonwealth to provide services, including both salaried and wage employees, and all persons engaged to perform work for or to provide services to the Commonwealth.

§ [2.2-5513](#). Responsibilities of Governor to ensure efficiency in government.

A. The Governor shall cause to be conducted an examination of the commercial activities that are being performed by state employees at state agencies and institutions to ensure such activities are being accomplished in the most cost-efficient and effective manner.

B. The examination required by subsection A shall be completed at least once in every two-year period and may be conducted entirely by a commercial source through a solicitation process as provided in the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.).

C. The examination required by subsection A shall consider at least three commercial activities as the Governor or the commercial source may identify.

D. Upon determination that outsourcing a commercial activity may result in reduced costs or otherwise provide a measurable benefit to the Commonwealth and to assure such activities are being accomplished in the most cost efficient and effective manner, the Governor shall cause that commercial activity to be competed in accordance with the Virginia Public Procurement Act or by using the processes described in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.).

APPROPRIATION ACT

Chapter 879 of the 2008 Virginia Acts of Assembly, Appropriation Act, Item 268, D1 – D3:

Department of Planning and Budget (122)

D.1. The Department of Planning and Budget shall provide staffing and operational support to the Commonwealth Competition Council. Other state agencies and institutions of the Commonwealth shall also assist the Commonwealth Competition Council in its work upon the request of the chairman of the Council.

2. There is hereby created upon the books of the Comptroller a special, nonreverting fund known as the "Commonwealth Competition Council Savings Recovery Fund." This Fund shall provide a nongeneral fund appropriation of \$250,000 each year for use by the Department of Planning and Budget in defraying the costs of providing staff and operational support to the council.

3. Prior to April 1 each year, the Director of the Department of Planning and Budget shall notify the Auditor of Public Accounts of any savings recommendations put forth by the Commonwealth Competition Council for which savings are likely to be realized in the current fiscal year or in the fiscal year beginning on the next July 1 after such notification. The Auditor of Public Accounts shall audit the implementation of these savings recommendations and shall certify to the State Comptroller by June 1 each year the total savings realized by state agencies or institutions as a result of the savings recommendations put forth by the Commonwealth Competition Council. By July 1 each year, the State Comptroller shall transfer 10 percent of these certified savings to the Commonwealth Competition Council Savings Recovery Fund for support of the council's operations. However, if these savings have since accrued to the benefit of the general fund, either by subsequent budgetary action or by reversion, then following the certification of the savings by the Auditor of Public Accounts, the State Comptroller shall transfer the equivalent of 10 percent of the affected certified savings from the general fund to the Commonwealth Competition Council Savings Recovery Fund. The total amount transferred to the Commonwealth Competition Council Savings Recovery Fund pursuant to these provisions shall not exceed \$500,000 in any one fiscal year.

CONTACT INFORMATION

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