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HOUSE BILL NO. 1238

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 2.2-203.2:1 and 2.2-2101, as it is currently effective and as it may become effective; to amend the Code of Virginia by adding in Title 30 a chapter numbered 45, consisting of sections numbered 30-293 through 30-302; and to repeal Article 8 (§ 2.2-2620 et seq.) of Chapter 26 of Title 2.2, relating to creation of the Commonwealth Realignment Commission.

Patrons—Saxman, Athey, Cole, Cosgrove, Crockett-Stark, Lingamfelter and Sherwood

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-203.2:1 and 2.2-2101, as it is currently effective and as it may become effective; of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 30 a chapter numbered 45, consisting of sections numbered 30-293 through 30-302 as follows:

§ 2.2-203.2:1. Secretary 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 30-293.

§ 2.2-2101. (Effective July 1, 2008, for contingent expiration date, see Editor's note) 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 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 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; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; or to members of the Virginia Commission on Immigration, who shall be appointed as provided in § 2.2-2530.

§ 2.2-2101. (Contingent effective date, see Editor's note) Prohibition against service by legislators on

INTRODUCED

HB1238

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CHAPTER 45.

COMMONWEALTH REALIGNMENT COMMISSION.

§ 30-293. Definitions.

As used in this chapter, 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.).

"Commission" means the Commonwealth Realignment Commission.

"Competitive process" means the process approved by the Commission to determine the most cost-effective privatization technique.

"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 Commission'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" or "agency" means all executive, judicial, and legislative entities of the Commonwealth as well as all constitutionally or statutorily created state entities.

§ 30-294. Commission created; purpose; composition; compensation and expenses; office space.

The Commonwealth Realignment Commission is established in the legislative branch of state government. The purpose of the Commission is to (i) review the operations of state agencies and state-funded programs with a view toward the reduction of nonessential programs and expenditures; (ii) 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 (iii) advise the Governor and the General Assembly of the Commission's findings and recommendations.

The Commission shall consist of 10 members of the House of Delegates appointed by the Speaker thereof, of whom at least five shall be members of the House Committee on Appropriations, and five members from the Senate appointed by the Senate Committee on Privileges and Elections, of whom at least two shall be members of the Senate Committee on Finance, and the Auditor of Public Accounts, ex officio, who shall have no voting privileges. Members of the Commission shall serve terms coincident with their terms of office. Members of the Commission shall receive compensation as provided in § 30-19.12 and for their necessary expenses incident to their work on the Commission. Adequate office space shall be provided by the Commonwealth.

§ 30-295. Director, executive staff, and personnel.

The Commission shall appoint, subject to confirmation by a majority of the members of the General Assembly, a Director and fix his duties and compensation. The Director may with prior approval of the Commission employ and fix the duties and compensation of an adequate executive staff as may be requisite to make the studies and research and budget analyses required by this chapter. The Director and the executive staff shall be appointed for a term of six years and shall consist of professional persons having experience and training in legislative budgetary procedures, management analyses, and cost accounting. The Director and any executive staff member may be removed from office for cause by a majority vote of the Commission. Other professional personnel, consultants, and secretarial and clerical employees may be engaged upon such terms and conditions as set forth by the Commission.

§ 30-296. Powers and duties of Commission.

A. The Commission shall have the following powers and duties:

1. Review operations of state agencies and state-funded programs to evaluate whether such programs are essential to the operation of state government;

2. Study on a continuing basis the operations of state agencies and state-funded programs, as they relate to the performance of essential state government functions;

3. Make such special studies and reports of the operations and functions of state agencies as it deems appropriate and as may be requested by the General Assembly;

4. Upon a majority vote of the Commission, make such special studies and reports of the operations and functions of state agencies as may be requested by any member of the General Assembly; and

5. Make such reports on its findings and recommendations at such time and in such manner as the Commission deems proper, submitting same to the agencies concerned, to the Governor, and to the General Assembly. Such reports as are submitted shall relate to areas in which functions of state agencies are duplicative, overlapping, or for any other reason should be redefined or redistributed.

B. In addition, the Commission 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 Commission'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 Commission.

7. Determine the privatization potential of a program or activity, perform cost/benefit analyses, and conduct public and private performance analyses. The Auditor of Public Accounts shall independently certify the results of the comparison.

8. Devise, in consultation with the Auditor of Public Accounts, 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 Commission shall develop proposals for (i) preserving the traditional role of private enterprise; (ii) encouraging the expansion of existing, and the

182 creation of new, private enterprise; and (iii) monitoring inappropriate competition by nonprofit
183 organizations.

184 11. Review the procurement process under the Public-Private Transportation Act of 1995 (§ 56-556
185 et seq.) and the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.)
186 and make recommendations for (i) improving the use and efficiency of the process, (ii) releasing
187 information to the public during all stages of the process, and (iii) ensuring accountability on the part
188 of public officials and employees involved in projects under the Acts.

189 C. The commercial activities list developed by the Commission in accordance with this section shall
190 be updated every two years.

191 D. The Commission may apply for, accept, and expend gifts, grants, or donations from public or
192 private sources to enable it to better carry out its objectives. No entity that provides a gift, donation or
193 grant shall be eligible for a contract award that results from action on a Commission recommendation.

194 E. The Commission shall not impose unreasonable burdens or costs in connection with requests of
195 agencies.

196 F. The Commission shall annually by December 1 report its findings and recommendations to the
197 Governor, the General Assembly and the Small Business Commission created pursuant to § 30-182. The
198 Commission may make interim reports to the Governor, the General Assembly, and the Small Business
199 Commission as it deems advisable.

200 § 30-297. Supplementary studies and reports.

201 The Commission shall prepare supplementary studies and reports of the program reviews and
202 evaluations called for in § 30-296 in the following manner:

203 1. At least once in each biennium and at such other times as the Commission deems necessary, a
204 report shall be made to the General Assembly that includes: (i) annotations of reports previously issued;
205 (ii) a summary of significant actions taken by executive agencies in response to reports and
206 recommendations previously issued; and (iii) matters pertaining to the report topics that may require
207 additional legislative attention and consideration.

208 2. From time to time, agencies involved in matters that have been studied under the provisions of
209 § 30-296 may be required to communicate to the Commission at a hearing called for such purpose or in
210 writing the status of actions completed or being taken in response to reports and recommendations
211 previously issued.

212 3. In the event a report of the Commission cites waste, extravagance, unauthorized activities, or
213 other significant deficiencies that result in the use of public funds for nonessential programs, a
214 supplementary report shall be made at such time as the Commission deems appropriate that provides
215 the General Assembly: (i) a review of the problem; (ii) recommendations made by the Commission or
216 other legislative committee to correct the problem; (iii) actions taken or planned by the agency to
217 correct the problem; and (iv) such other matters as may require additional legislative attention to
218 correct the problem.

219 Supplementary reports published by the Commission shall be issued to the Governor, agencies
220 concerned, and members of the General Assembly.

221 § 30-298. Annual report on state spending.

222 A. No later than November 15 of each year, the Commission shall provide to the Governor and the
223 General Assembly an annual report on its identification of nonessential programs that shall include,
224 among other things, (i) an identification and analysis of spending functions and programs that could be
225 consolidated with other programs without diminishing the quality of the services provided to the citizens
226 of the Commonwealth; (ii) an identification and analysis of those spending functions or programs that
227 no longer have a distinct and discernible mission; and (iii) such other related issues as it deems
228 appropriate.

229 B. All agencies of the Commonwealth shall provide assistance to the Commission in the preparation
230 of this report, upon request.

231 § 30-299. State agencies to furnish information and assistance.

232 All agencies of the Commonwealth, their staff, and employees shall provide the Commission with
233 necessary information for the performance of its duties, and to afford the Commission's staff ample
234 opportunity to observe agency operations.

235 § 30-300. Auditor of Public Accounts to render assistance upon request; relationship to Commission.

236 The Commission may request and receive the assistance of the staff of the Auditor of Public
237 Accounts in making desired special studies and fiscal reviews within the manpower limitations of his
238 office. The Commission may serve as an advisory and contact agency for the Auditor of Public Accounts
239 to make such special reports as he may be required by law to submit to the General Assembly.

240 § 30-301. Advisory committees.

241 The Commission may associate with itself such advisory committees of businessmen and others as it
242 may deem necessary to advise it. The expenses of the members of such committees shall be paid from
243 the funds of the Commission.

244 § 30-302. *Payment of expenses of Commission.*
245 *Commission expenses shall be payable from funds appropriated to the Commission.*
246 **2. That Article 8 (§ 2.2-2620 et seq.) of Chapter 26 of Title 2.2 is repealed.**

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HB1238