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HOUSE BILL NO. 609

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 2.2-2232, 23-50.16:8 and 30-58.2 of the Code of Virginia; to amend the Code of Virginia by adding in Title 30 a chapter numbered 49, consisting of sections numbered 30-319 through 30-328; and to repeal Chapter 8 (§§ 30-64 through 30-72) of Title 30 of the Code of Virginia, relating to the Government Efficiency Review Commission.

Patron—Purkey

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2232, 23-50.16:8 and 30-58.2 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 49, consisting of sections numbered 30-319 through 30-328, as follows:

§ 2.2-2232. Auxiliaries.

A. The Governor may provide for the formation of a nonstock corporation to carry out the purpose of this article. The board of directors of the nonstock corporation shall consist of the fifteen members of the Board of the Authority. The articles of incorporation of the nonstock corporation shall provide that upon dissolution the net assets of the corporation shall be transferred to the Commonwealth. The nonstock corporation shall ensure that the economic benefits attributable to the income and property rights arising from any transactions in which the nonstock corporation is involved are allocated on a basis that is equitable in the reasonable business judgment of the board of directors, with due account being given to the interest of the citizens of the Commonwealth and the needs of the nonstock corporation. Any such nonstock corporation shall not be deemed to be a state or governmental agency, advisory agency, public body or agency or instrumentality for purposes of Chapters 8 (§ 2.2-800 et seq.), 18 (§ 2.2-1800 et seq.), 24 (§ 2.2-2400 et seq.), 29 (§ 2.2-2900 et seq.), 31 (§ 2.2-3100 et seq.), 37 (§ 2.2-3700 et seq.), 38 (§ 2.2-3800 et seq.), 43 (§ 2.2-4300 et seq.), 44 (§ 2.2-4400 et seq.), 45 (§ 2.2-4500 et seq.), 46 (§ 2.2-4600 et seq.), and 47 (§ 2.2-4700 et seq.) of this title, Chapter 14 (§ 30-130 et seq.) of Title 30 or Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1. No director, officer or employee of any such nonstock corporation or entity be shall deemed to be an officer or employee for purposes of Chapter 31 (§ 2.2-3100 et seq.) of this title. Notwithstanding the foregoing, the Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the financial accounts of the Authority and any such nonstock corporation entity, provided that the working papers and files of the Auditor of Public Accounts relating to such audits shall not be subject to the provisions of The Freedom of Information Act (§ 2.2-3700 et seq.).

B. Notwithstanding the provisions of subsection A, as an entity receiving state funds, any such nonstock corporation shall be subject to periodic external review either (i) under the provisions of the ~~Legislative Program Review and Evaluation Act (§ 30-64 et seq.)~~ *Government Efficiency Review Act (§ 30-319 et seq.)* or (ii) by an entity appointed for that purpose by the Governor. Any such nonstock corporation shall be deemed to be an institution of higher education within the meaning of §§ 23-3.1 and 23-9.2, but only for the limited purposes therein stated.

§ 23-50.16:8. Audit.

The accounts of the Authority shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives, or by a certified public accounting firm, as selected by the Authority. The Authority shall select a certified public accounting firm or the Auditor of Public Accounts through a process of competitive negotiation. Copies of the annual audit shall be distributed to the Governor and to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance. The Auditor of Public Accounts and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the Authority; however, the Authority shall not be deemed to be a state or governmental agency, advisory agency, public body or agency or instrumentality for purposes of Chapter 14 (§ 30-130 et seq.) of Title 30. The Authority shall be subject to periodic external review under the provisions of the ~~Legislative Program Review and Evaluation Act (§ 30-65 et seq.)~~ *Government Efficiency Review Act (§ 30-319 et seq.)*.

§ 30-58.2. Supplementary studies and reports.

The Commission shall prepare supplementary studies and reports of the program reviews and evaluations called for in §§ 30-58.1 and 30-67 in the following manner:

1. At least once in each biennium and at such other times as the Commission deems necessary, a

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59 report shall be made to the General Assembly which includes: (i) annotations of reports previously
60 issued; (ii) a summary of significant actions taken by executive agencies in response to reports and
61 recommendations previously issued; and (iii) matters pertaining to the report topics that may require
62 additional legislative attention and consideration.

63 2. From time to time, agencies involved in matters which have been studied under the provisions of
64 § 30-58.1 ~~or § 30-67~~ may be required to communicate to the Commission at a hearing called for such
65 purpose or in writing, the status of actions completed or being taken in response to reports and
66 recommendations previously issued.

67 3. In the event a report of the Commission cites waste, extravagance, unauthorized activities, or other
68 significant deficiencies which result in the misuse of public funds, a supplementary report shall be made
69 at such time as the Commission deems appropriate, which provides the General Assembly: (i) a review
70 of the problem; (ii) recommendations made by the Commission or other legislative committee to correct
71 the problem; (iii) actions taken or planned by the agency to correct the problem; and (iv) such other
72 matters as may require additional legislative attention to correct the problem.

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

75 CHAPTER 49.

76 GOVERNMENT EFFICIENCY REVIEW COMMISSION.

77 § 30-319. *Short title.*

78 *This chapter shall be known and may be cited as the "Government Efficiency Review Act."*

79 § 30-320. *Definitions.*

80 *As used in this chapter:*

81 "Agency" means any agency, authority, board, department, division, commission, institution, bureau,
82 or like governmental entity of the Commonwealth and includes any entity, public or private, with which
83 any of the foregoing has entered into a contractual relationship to accomplish an agency program.

84 "Commission" means the Government Efficiency Review Commission.

85 "Functional area" means that grouping of state governmental activities, programs, and agencies that
86 constitute a single budget function as identified and classified in the Virginia State Government Program
87 Structure.

88 § 30-321. *Government Efficiency Review Commission established; membership; terms; quorum;*
89 *compensation.*

90 A. *The Government Efficiency Review Commission (the Commission) is established as an advisory*
91 *commission in the legislative branch. The purpose of the Commission shall be to review agencies on an*
92 *eight-year cycle and advise the General Assembly on the elimination of waste, duplication, and*
93 *inefficiency on the part of such agencies.*

94 B. *The Commission shall consist of 23 members as follows: (i) six members of the House of*
95 *Delegates and six nonlegislative members to be appointed by the Speaker of the House of Delegates, (ii)*
96 *three members of the Senate and six nonlegislative members to be appointed by the Senate Committee*
97 *on Rules, (iii) and 2 citizen members appointed by the Governor.*

98 C. *Legislative members shall serve terms coincident with their terms of office. After the initial*
99 *staggering of terms, nonlegislative citizen members shall be appointed for a term of four years.*
100 *Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All*
101 *members may be reappointed; however, no House member shall serve more than four consecutive*
102 *two-year terms, no Senate member shall serve more than two consecutive four-year terms, and no*
103 *nonlegislative citizen member shall serve more than two consecutive four-year terms.*

104 D. *The chair of the Commission shall be elected from the legislative members of the Commission.*

105 E. *Twelve members of the Commission shall constitute a quorum. A final action or recommendation*
106 *may not be made unless approved by a record vote of a majority of legislative members present and*
107 *voting.*

108 F. *Legislative members of the Commission shall receive such compensation as provided in*
109 *§ 30-19.12, and nonlegislative members shall receive such compensation as provided in § 2.2-2813.*

110 § 30-322. *Powers and duties of the Commission.*

111 *The Commission shall:*

112 1. *By January 1, 2011, establish a schedule of functional areas of state government for review and*
113 *evaluation pursuant to this chapter on an eight-year cycle;*

114 2. *Review and take action necessary to verify reports submitted pursuant to § 30-323;*

115 3. *Consult with the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts,*
116 *and the Department of Planning and Budget on the application to the agency of the criteria prescribed*
117 *in § 30-324;*

118 4. *Conduct a review of the agency-based criteria prescribed in § 30-324; and*

119 5. *Submit annually by December 1 to the Governor and General Assembly a report on agencies*
120 *reviewed containing the Commission's findings regarding the criteria prescribed by § 30-324 and any*

other information the Commission considers necessary for a complete review of the agency.

§ 30-323. Submission of agency report to Commission.

Pursuant to the schedule established by the Commission, every agency subject to the provisions of this chapter shall submit to the Commission a report on the application of the criteria in § 30-324 to such agency by September 1 of the year preceding the year in which the agency is scheduled for review.

§ 30-324. Criteria for agency reviews.

The Commission shall consider the following criteria in determining its findings and recommendations:

1. The efficiency and effectiveness of the agency's operation;

2. Identification of (i) the mission, goals, and objectives intended for the agency; (ii) the problem or need that the agency was intended to address; and (iii) the extent to which the mission, goals, and objectives have been achieved and the problem or need has been addressed;

3. Identification of any activities of that agency that are in addition to those granted by statute and of the authority for such activities;

4. Assessment of the agency's authority relating to fees, inspections, enforcement, and penalties;

5. Whether less restrictive or alternative methods of performing any function that the agency performs could adequately protect or provide services to the public;

6. The extent to which (i) the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies, (ii) the agency coordinates with those other agencies, and (iii) the programs administered by the agency can be consolidated with the programs of other agencies;

7. The promptness and effectiveness that the agency addresses complaints concerning entities or individuals affected by the agency, including an assessment of the agency's administrative hearing procedures;

8. An assessment of the agency's rulemaking process and the extent to which the agency encourages public participation in the process. Such assessment shall also include the extent to which public participation has resulted in rules that benefit the public;

9. Whether the agency has complied with (i) federal and state laws and applicable regarding equality of employment opportunity and the rights and privacy of individuals and (ii) the state law and applicable rules of any state agency regarding purchasing guidelines and programs for historically underutilized businesses;

10. Whether the agency issues and enforces rules relating to potential conflicts of interest of its employees;

11. The extent to which the agency complies with the Freedom of Information Act (§ 2.2-3700 *et seq.*) and follows records management practices that enable the agency to respond efficiently to requests from public records; and

12. The effect of federal intervention or loss of federal funds if the agency is abolished.

§ 30-325. Public hearings.

Before February 1 of the year in which an agency subject to this chapter is scheduled for review, the Commission shall conduct public hearings concerning but not limited to the application to the agency of the criteria provided by § 30-324. The Commission may hold the public hearings after the review of the agency is complete and available to the public.

§ 30-326. Commission recommendations; fiscal impact; legislation; monitoring.

A. The Commission report shall contain recommendations on (i) the abolition, continuation, or reorganization of each affected agency; (ii) the need for the performance of the functions of the agency; (iii) the consolidation, transfer, or reorganization of programs within other agencies that are not under review when the programs duplicate functions performed in agencies under review; and (iv) improvements that may be made to operations of the agency, including management recommendations that do not require an amendment to the agency's enabling statute.

B. The Commission shall include the estimated fiscal impact of its recommendations and may recommend appropriation levels for certain programs to improve the operations of the agency.

C. The Commission shall recommend legislation to implement its recommendations.

D. During each legislative session, the staff of the Commission shall monitor legislation affecting agencies that have undergone review and shall periodically report to the members of the Commission on proposed changes that will modify prior recommendations of the Commission.

§ 30-327. Executive director; staff; compensation.

The Commission shall appoint and employ and, at its pleasure, remove an executive director and such other persons as it deems necessary to assist it in carrying out its duties as set forth in this chapter. The Commission may determine the duties of such staff and fix their salaries or compensation within the amounts appropriated therefor.

§ 30-328. Operation and construction of chapter; subcommittees.

182 A. *The operation of this chapter shall not restrict the power of the General Assembly to study or act*
183 *on any matter at any time.*

184 B. *The operation of this chapter shall not imply or require the termination of any state agency or*
185 *program.*

186 C. *Nothing in this chapter shall be construed to restrict the Joint Legislative Audit and Review*
187 *Commission or the standing committees from holding hearings on any subject as may be required, nor*
188 *shall operation of this chapter limit the Commission or committees from such other activities as may be*
189 *authorized by law or custom.*

190 **2. That Chapter 8 (§§ 30-64 through 30-72) of Title 30 of the Code of Virginia is repealed.**