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SENATE JOINT RESOLUTION NO. 330

Offered January 23, 1995

Establishing a joint subcommittee to study the regulatory responsibilities, policies, and activities of the State Corporation Commission as they relate to successful economic development in the Commonwealth.

Patrons—Calhoun, Benedetti, Chichester, Earley, Norment, Stosch, Wampler and Woods; Delegates: Cox, Forbes and Wilkins

Referred to the Committee on Rules

WHEREAS, by Executive Order Number 16 (1994), the Governor established an economic development strategic planning initiative, called *Opportunity Virginia: A Strategic Plan for Jobs and Prosperity*; and

WHEREAS, that initiative involved over 800 persons and produced a comprehensive, statewide strategic plan for economic development in the Commonwealth published in December 1994;

WHEREAS, *Opportunity Virginia* has identified the renewal of Virginia's commitment to the economic principles and foundation that promote broad-based economic growth as a major goal of this economic development initiative; and

WHEREAS, *Opportunity Virginia* has recognized that excessive regulation stifles innovation, growth, and free enterprise and unnecessarily impinges on the rights of individuals and businesses; a pro-competitive regulatory climate is essential for a dynamic and competitive economy; and a strategy to minimize a regulatory burden on private business in Virginia should be implemented to stimulate investments and economic growth; and

WHEREAS, given the potential benefits of a pro-competitive regulatory climate for economic growth in Virginia, *Opportunity Virginia* recommends that, as a part of the regulatory reform strategy, a study be conducted of the State Corporation Commission to review its regulatory policies and responsibilities in light of the changing needs of industry and consumers and trends toward deregulation across the nation and the world; and

WHEREAS, as an independent commission originally established by the 1902 Virginia Constitution and re-established under Article IX of the 1971 Virginia Constitution, the State Corporation Commission has no inherent power, but has only such jurisdiction as is conferred directly by the Constitution or derived from statutes that are directed or authorized by the Constitution or that are within the inherent police power of the Commonwealth; and

WHEREAS, under the 1902 Virginia Constitution, the State Corporation Commission was originally granted authority to regulate only the rates, charges, and duties of transportation and transmissions companies, such as railroads and water carriers and telegraph and telephone companies, but the General Assembly subsequently enlarged the Commission's authority by statute to include regulation of insurance, banking and other state-chartered financial institutions, telephones, electric and gas companies, securities and broker licensing, motor carriers, branch pilots, the recordation of corporate charters and other corporate filings, trademark registrations, the collection of motor fuels surtax, central filings under the Uniform Commercial Code, and radio common carriers; and

WHEREAS, Article IX, Section 2 of the 1971 Virginia Constitution currently provides that the State Corporation Commission is responsible for regulating the rates, charges, and services and facilities of railroad, telephone, gas and electric companies and shall have such other powers and duties not inconsistent with the Constitution as may be prescribed by law; and

WHEREAS, the Virginia Supreme Court has held that the State Corporation Commission's regulatory authority to regulate public utilities expressly granted by Article IX, Section 2 of the Virginia Constitution of 1971 is subject to the power of the General Assembly to limit such authority by statute; and

WHEREAS, since the State Corporation Commission was reestablished in 1971, the General Assembly has continued to enlarge the Commission's jurisdiction to include regulation of retail franchising, cellular mobile radio communications carriers, filings by limited partnerships and limited liability companies and private toll road corporations; and

WHEREAS, Article IX, Section 3 of the 1971 Virginia Constitution provides that the State Corporation Commission may prescribe its own rules or practice and procedure not inconsistent with those made by the General Assembly and that the General Assembly shall have the power to adopt such rules, to amend, modify or set aside the Commission's rules or to substitute rules of its own; and

WHEREAS, although the State Corporation Commission exercises the legislative and executive

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60 powers of an administrative agency and the judicial powers of a court of record, the Commission is not
61 subject to the substantive provisions of the Virginia Administrative Process Act or the rules applicable to
62 circuit courts and has adopted its own rules of practice and procedure that substantially affect the quality
63 of proceedings before the Commission and the due process rights of participants in such proceedings,
64 including rules governing ex parte contacts with Commissioners and the role of the Commission's staff
65 in Commission proceedings; and

66 WHEREAS, the State Corporation Commission currently consists of three members, but Article IX,
67 Section 1 of the 1971 Virginia Constitution provides that the General Assembly may, by majority vote
68 of the members elected to each house, increase the size of the Commission to no more than five
69 members; and

70 WHEREAS, the facilities and activities of the State Corporation Commission are funded primarily
71 from special taxes that are imposed on the regulated services and products furnished to customers by the
72 companies regulated by the Commission and are usually paid by those customers either directly or
73 indirectly; and

74 WHEREAS, because of the extremely broad regulatory jurisdiction and extensive powers that have
75 been granted to the State Corporation Commission, no agency of the Commonwealth has more impact
76 than the Commission on the regulatory climate in Virginia or, consequently, more potential to affect
77 how business views Virginia as a venue for economic investment; and

78 WHEREAS, certain industries regulated by the State Corporation Commission, specifically including
79 telecommunications, natural gas companies and electric public utilities, are undergoing fundamental
80 structural changes brought about by increasing demands to replace regulation with competition as the
81 best means of protecting consumers and encouraging the development of better products and services
82 from which customers can choose to meet their needs; and

83 WHEREAS, it is essential that the State Corporation Commission's regulatory responsibilities,
84 policies and activities be consistent with the Commonwealth's plan to compete effectively in a more
85 competitive national and global marketplace by moving towards deregulation and open markets with
86 global capital flows; now, therefore, be it

87 RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be
88 established to study the regulatory responsibilities, policies and activities of the State Corporation
89 Commission as they relate to successful economic development in the Commonwealth, including, but
90 not limited to:

91 1. Whether the jurisdiction and powers that have been granted to the Commission over the years are
92 appropriate in today's more competitive, deregulated marketplace, or whether they should be more
93 limited to enhance the Commonwealth's economic climate for the future;

94 2. Whether it is appropriate that the broad powers granted to the Commission be exercised by only
95 three people, or whether the Commission should be expanded to five members;

96 3. Whether the Commission's internal structure and rules of practice and procedure promote the due
97 process rights of participants in proceedings before the Commission, as well as confidence in the quality
98 of the process;

99 4. Whether the Commission's regulatory policies and actions are consistent with the need for a
100 positive, procompetitive regulatory climate in Virginia; and

101 5. Whether the manner for funding the Commission's facilities and activities is appropriate, given
102 current trends towards less regulation in the future.

103 The joint subcommittee shall consist of 13 members to be appointed in the following manner: three
104 members of the Senate to be appointed by the Senate Committee on Privileges and Elections; four
105 members of the House of Delegates to be appointed by the Speaker; five members to be appointed by
106 the Governor; and the Attorney General of Virginia or his designee.

107 The State Corporation Commission shall provide such assistance and information as is needed for the
108 work of the joint subcommittee. All agencies of the Commonwealth shall provide assistance to the joint
109 subcommittee upon request.

110 The direct costs of this study shall not exceed \$7,770.

111 The joint subcommittee shall complete its work in time to submit its findings and recommendations
112 to the Governor and the 1996 Session of the General Assembly as provided in the procedures of the
113 Division of Legislative Automated Systems for the processing of legislative documents.

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