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HOUSE BILL NO. 589

Offered January 19, 1996

A BILL to amend and reenact §§ 13.1-620 and 13.1-627 of the Code of Virginia, relating to corporations; general powers and special kinds of business.

Patrons—Murphy, Callahan, Keating, Parrish, Plum and Scott; Senators: Benedetti, Chichester and Colgan

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:**1. That §§ 13.1-620 and 13.1-627 of the Code of Virginia are amended and reenacted as follows:**

§ 13.1-620. Special kinds of business.

A. If any corporation is to conduct the business of a bank or trust company, that shall be stated in the articles of incorporation and the corporation shall not have power to conduct other business except as may be related to or incidental to the banking or trust company business.

B. If any corporation is to conduct the business of an insurance company, that shall be stated in the articles of incorporation and the articles shall further set forth the class or classes of insurance the corporation proposes to undertake and the corporation shall not have power to conduct other business except as may be related to or incidental to the insurance business.

C. If any corporation is to conduct the business of a savings and loan association, that shall be stated in the articles of incorporation and the corporation shall not have power to conduct other business except as may be related to or incidental to the stated business.

D. If any corporation is to conduct the business of a railroad or other public service company, that shall be stated in the articles of incorporation and a brief description of the business shall be included. Otherwise the corporation shall not have the power to conduct a public service business or to exercise any of the privileges of a public service company. No corporation shall be organized under this chapter for the purpose of conducting in this Commonwealth more than one kind of public service business except that the telephone and telegraph businesses or the water and sewer businesses may be combined, but this provision shall not limit the powers of domestic corporations existing on January 1, 1986. No corporation organized under this chapter to conduct the business of a public service company shall have general business powers in this Commonwealth. Corporations organized under this chapter to conduct the business of a public service company may, however, conduct in this Commonwealth other public service business or nonpublic service business so far as may be related to or incidental to its stated business as a public service company and in any other state such business as may be authorized or permitted by the laws thereof. Nothing in this subsection shall limit the powers of such corporation in respect of the securities of other corporations or of limited liability companies. *For purposes of this section, "related to and incidental to its stated business" shall include the public service company's provision of goods or services (i) that complement or enhance the provision of public utility service or a customer's utilization of a public utility service or (ii) that are approved by the Commission.*

E. If one or more of the purposes set forth in the articles of incorporation is to own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages or for the production, transmission, delivery or furnishing of heat, light, power or water, including heated or chilled water, or sewerage facilities, either directly or indirectly, to or for the public, the Commission shall not issue a certificate of incorporation unless the articles of incorporation expressly state that the corporation is to conduct business as a public service company.

F. Whether or not classified elsewhere in the Code as public service companies the following are not required to incorporate as public service companies: a person authorized by the Federal Communications Commission to provide commercial mobile service, household goods carriers, petroleum tank truck carriers, bottled gas companies, taxicab companies, community television companies, charter party carriers, restricted parcel carriers, sight-seeing carriers, companies excluded from the definition of "public utility" by § 56-265.1 (b) (4) or by § 56-1.2 and compressed natural gas filling stations.

G. A water or sewer company that proposes to serve more than fifty customers shall incorporate as a public service company. A water or sewer company shall not serve more than fifty customers unless its articles of incorporation state that the corporation is to conduct business as a public service company. The two preceding sentences shall not apply to a water or sewer company incorporated before and operating a water or sewer system on January 1, 1970; however, as to any water or sewer system serving more than fifty customers, upon application to the Commission by a majority of the customers

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60 or by the company, a hearing may be held after thirty days' notice to the company and the system's
61 customers or a majority thereof, and the Commission may order such, if any, improvements or rate
62 changes or both as are just and reasonable. Upon ordering into effect any rate changes or improvements
63 found to be just and reasonable, the water or sewer system shall remain subject to the Commission's
64 regulatory authority in the same manner as a public utility for such reasonable period as the Commission
65 may direct. Nothing in this subsection shall apply to persons described in § 56-1.2.

66 § 13.1-627. General powers.

67 A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and
68 succession in its corporate name and has the same powers as an individual to do all things necessary or
69 convenient to carry out its business and affairs, including, without limitation, power:

70 1. To sue and be sued, complain and defend in its corporate name;

71 2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by
72 impressing or affixing it or in any other manner reproducing it;

73 3. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of
74 this Commonwealth, for managing the business and regulating the affairs of the corporation;

75 4. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal
76 with, real or personal property, or any legal or equitable interest in property, wherever located;

77 5. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its
78 property;

79 6. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage,
80 lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of,
81 any other entity;

82 7. To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and
83 other obligations, which may be convertible into or include the option to purchase other securities of the
84 corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises,
85 or income;

86 8. To lend money, invest and reinvest its funds, and receive and hold real and personal property as
87 security for repayment;

88 9. To conduct its business, locate offices, and exercise the powers granted by this Act within or
89 without this Commonwealth;

90 10. To elect directors and appoint officers, employees, and agents of the corporation, define their
91 duties, fix their compensation, and lend them money and credit;

92 11. To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus
93 plans, share option plans, share purchase plans and benefit and incentive plans for any or all of the
94 current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;

95 12. To make donations for the public welfare or for religious, charitable, scientific, literary or
96 educational purposes, except that corporations subject to regulation as to rates by the Commission shall
97 not have power to make donations in excess of five percent of net income computed before federal and
98 state taxes on income and without taking into account any deduction for gifts;

99 13. To make payments or donations, or do any other act, not inconsistent with this section or any
100 other applicable law, that furthers the business and affairs of the corporation;

101 14. To pay compensation, or to pay additional compensation, to any or all directors, officers and
102 employees on account of services previously rendered to the corporation, whether or not an agreement to
103 pay such compensation was made before such services were rendered;

104 15. To insure for its benefit the life of any of its directors, officers or employees, to insure the life of
105 any shareholder for the purpose of acquiring at his death shares owned by such shareholder and to
106 continue such insurance after the relationship terminates;

107 16. To cease its corporate activities and surrender its corporate franchise; and

108 17. To have and exercise all powers necessary or convenient to effect any or all of the purposes for
109 which the corporation is organized.

110 B. Each corporation other than a public service company, a banking corporation, an insurance
111 corporation, a savings and loan association or a credit union shall have power to enter into partnership
112 agreements, joint ventures, or other association of any kind with any person or persons. The foregoing
113 limitations on public service companies, banking corporations, insurance corporations, savings and loan
114 associations, credit unions and industrial loan associations shall not apply to the purchase by any such
115 entity of any security of a limited liability company. The term "public service company" as used in this
116 subsection shall not apply to railroads, which shall have the power given other corporations generally by
117 this subsection. The foregoing limitation on public service companies shall not apply to partnership
118 agreements, joint ventures or other associations where the purposes of such partnerships, joint ventures
119 or other associations are found by the Commission to be consistent with subsection D of § 13.1-620 and
120 Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 and are otherwise found by the Commission to be in the
121 public interest are activities that the public service company could lawfully engage in without

122 participation in a partnership, joint venture or association and will require the equity investment by the
123 public service company of an amount not more than one percent of its shareholders' equity as measured
124 at the end of the most recent fiscal year so long as all such partnerships, joint ventures and
125 associations collectively will require the equity investment of less than five percent of the shareholders'
126 equity of the public service company as measured at the end of the most recent fiscal year. Upon
127 application by the public service company, the Commission may approve any partnership agreements,
128 joint ventures or other associations that exceed the equity investment criteria set forth above. The
129 foregoing limitation on public service companies shall not apply to partnership agreements, joint
130 ventures or other associations between telephone companies and telephone companies, whether in
131 corporate or other form, or between telephone companies and commonly owned affiliates of telephone
132 companies for the purpose of providing domestic cellular radio telecommunication service.

133 C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the
134 Code on railroads or other public service companies, banking corporations, insurance corporations,
135 savings and loan associations, credit unions, industrial loan associations or other special types of
136 corporations, shall not be deemed repealed or amended by any provision of this Act except where
137 specifically so provided.

138 D. Each corporation which is deemed a private foundation, as defined in § 509 of the Internal
139 Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income
140 and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such
141 corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any
142 act of self-dealing, as defined in § 4941 (d) of the Internal Revenue Code, retain any excess business
143 holdings, as defined in § 4943 (c) of the Internal Revenue Code, make any investments in such manner
144 as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code or make any
145 taxable expenditures, as defined in § 4945 (d) of the Internal Revenue Code. This subsection shall apply
146 to any corporation organized after December 31, 1969, under this chapter or under the Virginia Stock
147 Corporation Act (§ 13.1-601 et seq.) enacted by Chapter 428 of the 1956 Acts of General Assembly;
148 and to any corporation organized before January 1, 1970, only for its taxable years beginning on and
149 after January 1, 1972, unless the exceptions provided in § 508 (e) (2) (A) or (B) of the Internal Revenue
150 Code shall apply or unless the board of directors of such corporation shall elect that such restrictions as
151 contained in this subsection shall not apply by filing written notice of such election with the Attorney
152 General and the clerk of the Commission on or before December 31, 1971. Each reference to a section
153 of the Internal Revenue Code made in this subsection shall include future amendments to such Code
154 sections and corresponding provisions of future internal revenue laws.