

961054376

HOUSE BILL NO. 589**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Corporations, Insurance and Banking)
on February 6, 1996)

(Patron Prior to Substitute—Delegate Murphy)

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

Be it enacted by the General Assembly of Virginia:

1. That § 13.1-627 of the Code of Virginia is amended and reenacted as follows:

§ 13.1-627. General powers.

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

1. To sue and be sued, complain and defend in its corporate name;
2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Each corporation other than a public service company, a banking corporation, an insurance corporation, a savings and loan association or a credit union shall have power to enter into partnership agreements, joint ventures, or other association of any kind with any person or persons. The foregoing limitations on public service companies, banking corporations, insurance corporations, savings and loan associations, credit unions and industrial loan associations shall not apply to the purchase by any such entity of any security of a limited liability company. The term "public service company" as used in this

HOUSE SUBSTITUTE

HB589H1

60 subsection shall not apply to railroads, which shall have the power given other corporations generally by
61 this subsection. The foregoing limitation on public service companies shall not apply to partnership
62 agreements, joint ventures or other associations where the purposes of such partnerships, joint ventures
63 or other associations are found by the Commission to be consistent with subsection D of § 13.1-620 and
64 Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 and are otherwise found by the Commission to be in the
65 public interest are activities that the public service company could lawfully engage in without
66 participation in a partnership, joint venture or association and will require an equity investment by the
67 public service company and debt with recourse to the public service company of an amount not more
68 than one percent of its net equity as measured at the end of the most recent fiscal year so long as all
69 such partnerships, joint ventures and associations collectively will require an equity investment by the
70 public service company and debt with recourse to the public service company of less than five percent
71 of the net equity of the public service company as measured at the end of the most recent fiscal year.
72 Upon application by the public service company, the Commission may approve any partnership
73 agreements, joint ventures or other associations that exceed the equity investment criteria set forth
74 above. The foregoing limitation on public service companies shall not apply to partnership agreements,
75 joint ventures or other associations between telephone companies and telephone companies, whether in
76 corporate or other form, or between telephone companies and commonly owned affiliates of telephone
77 companies for the purpose of providing domestic cellular radio telecommunication service.

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

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