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HOUSE JOINT RESOLUTION NO. 599

Offered January 9, 2013

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Establishing a joint subcommittee to study the Commerce Clause of the United States Constitution and Virginia's ability to regulate commerce. Report.

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Referred to Committee on Rules

WHEREAS, the United States Constitution enumerates certain powers for the federal government; and

WHEREAS, Article 1, Section 8, Clause 3, of the United States Constitution, often referred to as the Commerce Clause, empowers Congress "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"; and

WHEREAS, the Commerce Clause has historically been viewed as both a grant of congressional authority and as a restriction on states' powers to regulate commerce; and

WHEREAS, the legal doctrine known as the "dormant" Commerce Clause refers to the prohibition, implied in the Commerce Clause, against states passing legislation that discriminates against or excessively burdens interstate commerce; and

WHEREAS, the Tenth Amendment to the United States Constitution provides that any powers that are not enumerated in the Constitution are reserved for the states; and

WHEREAS, Congress has often used the Commerce Clause to justify exercising legislative power over the activities of states and their citizens, leading to significant and ongoing controversy regarding the balance of power between the federal government and the states; and

WHEREAS, proponents of recent federal laws that have a direct effect on state economies and the ability of elected state officials to adequately administer state government programs have relied heavily upon the Commerce Clause as the constitutional basis for the federal action; and

WHEREAS, despite the federal government's use of the Commerce Clause through the years, dispute remains over the extent to which it limits the ability of individual states to control and regulate intrastate commerce as well as other areas that have been reserved to the states by the Tenth Amendment; and

WHEREAS, in light of these disagreements and in the face of the pressing fiscal issues being addressed in the Commonwealth, a need exists to examine the extent to which the General Assembly may regulate commerce without violating the Commerce Clause; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the Commerce Clause of the United States Constitution and Virginia's ability to regulate commerce. The joint subcommittee shall have a total membership of eight legislative members. Members shall be appointed as follows: five members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates and three members of the Senate to be appointed by the Senate Committee on Rules. The joint subcommittee shall elect a chairman and vice-chairman from among its membership.

In conducting its study, the joint subcommittee shall review the status of the state's authority to regulate activities in areas including (i) agencies and instrumentalities of commerce, (ii) businesses affecting commerce, (iii) crimes involving commerce, (iv) state taxation of nondomiciliary corporations, and (v) license and privilege taxation.

Administrative staff support shall be provided by the Office of the Clerk of the House of Delegates. Legal, research, policy analysis, and other services as requested by the joint subcommittee shall be provided by the Division of Legislative Services. All agencies of the Commonwealth shall provide assistance to the joint subcommittee for this study, upon request.

The joint subcommittee shall be limited to four meetings for the 2013 interim, and the direct costs of this study shall not exceed \$15,040 without approval as set out in this resolution. Approval for unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required.

No recommendation of the joint subcommittee shall be adopted if a majority of the House members or a majority of the Senate members appointed to the joint subcommittee (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the joint subcommittee.

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59 The joint subcommittee shall complete its meetings by November 30, 2013, and the chairman shall
60 submit to the Division of Legislative Automated Systems an executive summary of its findings and
61 recommendations no later than the first day of the 2014 Regular Session of the General Assembly. The
62 executive summary shall state whether the joint subcommittee intends to submit to the General
63 Assembly and the Governor a report of its findings and recommendations for publication as a House or
64 Senate document. The executive summary and the report shall be submitted as provided in the
65 procedures of the Division of Legislative Automated Systems for the processing of legislative documents
66 and reports and shall be posted on the General Assembly's website.

67 Implementation of this resolution is subject to subsequent approval and certification by the Joint
68 Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or
69 delay the period for the conduct of the study, or authorize additional meetings during the 2013 interim.