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HOUSE BILL NO. 1359

Offered January 22, 2004

A *BILL to amend and reenact §§ 2.2-3101, 2.2-4343, 8.01-195.2, 13.1-543, 13.1-1102, 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.1:1, 23-3, 23-4.1, 23-4.2, 23-4.3, 23-4.4, 23-7.1:02, 23-7.4, 23-7.4:1, 23-7.4:2, 23-7.4:3, 23-7.5, 23-8.2:1, 23-9.1, 23-9.1:1, 23-9.2, 23-9.2:3, 23-9.2:3.1, 23-9.2:3.2, 23-9.2:3.3, 23-9.2:3.4, 23-9.2:4, 23-14, 23-30.23, 23-30.40, 23-38.10:2, 23-38.19:1, 23-38.19:3, 23-38.45, 23-38.53:1, 23-38.53:4, 23-38.53:11, 23-38.53:12, 23-38.55, 23-38.70, 23-38.72, 23-38.75, 23-232, 25.1-100, and 30-133 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 23-9.3:01 and 23-31.01, by adding in Title 23 a chapter numbered 4.10, consisting of articles numbered 1 through 6 and sections numbered 23-38.88 through 23-38.126, and by adding sections numbered 58.1-100.1, 58.1-2020.1, and 58.1-3000.1, relating to Commonwealth Chartered Universities and Colleges.*

Patrons—Callahan, Bryant and Dillard

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 2-3101, 2.2-4343, 8.01-195.2, 13.1-543, 13.1-1102, 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.1:1, 23-3, 23-4.1, 23-4.2, 23-4.3, 23-4.4, 23-7.1:02, 23-7.4, 23-7.4:1, 23-7.4:2, 23-7.4:3, 23-7.5, 23-8.2:1, 23-9.1, 23-9.1:1, 23-9.2, 23-9.2:3, 23-9.2:3.1, 23-9.2:3.2, 23-9.2:3.3, 23-9.2:3.4, 23-9.2:4, 23-14, 23-30.23, 23-30.40, 23-38.10:2, 23-38.19:1, 23-38.19:3, 23-38.45, 23-38.53:1, 23-38.53:4, 23-38.53:11, 23-38.53:12, 23-38.55, 23-38.70, 23-38.72, 23-38.75, 23-232, 25.1-100, and 30-133 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 23-9.3:01 and 23-31.01, by adding in Title 23 a chapter numbered 4.10, consisting of articles numbered 1 through 6 and sections numbered 23-38.88 through 23-38.126, and by adding sections numbered 58.1-100.1, 58.1-2020.1, and 58.1-3000.1, as follows:

§ 2.2-3101. Definitions.

As used in this chapter:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Affiliated business entity relationship" means a relationship, other than a parent-subsidary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item

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59 having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and
60 meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the
61 expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass
62 unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from
63 relatives. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt,
64 niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's
65 parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

66 "Governmental agency" means each component part of the legislative, executive or judicial branches
67 of state and local government, including each office, department, authority, post, commission,
68 committee, and each institution or board created by law, *including Commonwealth Chartered*
69 *Universities and Colleges as defined in Chapter 4.10 (§ 23-38.88 et seq.) of Title 23*, to exercise some
70 regulatory or sovereign power or duty as distinguished from purely advisory powers or duties.
71 Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for
72 purposes of this chapter.

73 "Immediate family" means (i) a spouse and (ii) any other person residing in the same household as
74 the officer or employee, who is a dependent of the officer or employee or of whom the officer or
75 employee is a dependent.

76 "Officer" means any person appointed or elected to any governmental or advisory agency including
77 local school boards, whether or not he receives compensation or other emolument of office. Unless the
78 context requires otherwise, "officer" includes members of the judiciary.

79 "Parent-subsidiary relationship" means a relationship that exists when one corporation directly or
80 indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

81 "Personal interest" means a financial benefit or liability accruing to an officer or employee or to a
82 member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the
83 ownership interest exceeds three percent of the total equity of the business; (ii) annual income that
84 exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal
85 property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of
86 property, or any combination thereof, paid or provided by a business or governmental agency that
87 exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or
88 personal property if the interest exceeds \$10,000 in value and excluding ownership in a business,
89 income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal
90 liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset
91 value of the business; or (vi) an option for ownership of a business or real or personal property if the
92 ownership interest will consist of (i) or (iv) above.

93 "Personal interest in a contract" means a personal interest that an officer or employee has in a
94 contract with a governmental agency, whether due to his being a party to the contract or due to a
95 personal interest in a business that is a party to the contract.

96 "Personal interest in a transaction" means a personal interest of an officer or employee in any matter
97 considered by his agency. Such personal interest exists when an officer or employee or a member of his
98 immediate family has a personal interest in property or a business or governmental agency, or represents
99 or provides services to any individual or business and such property, business or represented or served
100 individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable
101 direct or indirect benefit or detriment as a result of the action of the agency considering the transaction.
102 Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where an
103 elected member of a local governing body serves without remuneration as a member of the board of
104 trustees of a not-for-profit entity and such elected member or member of his immediate family has no
105 personal interest related to the not-for-profit entity.

106 "State and local government officers and employees" shall not include members of the General
107 Assembly.

108 "Transaction" means any matter considered by any governmental or advisory agency, whether in a
109 committee, subcommittee, or other entity of that agency or before the agency itself, on which official
110 action is taken or contemplated.

111 § 2.2-4343. Exemption from operation of chapter for certain transactions.

112 A. The provisions of this chapter shall not apply to:

113 1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10
114 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by
115 the Board of Commissioners and approved by the Department of General Services, procedures to ensure
116 fairness and competitiveness in the procurement of goods and services and in the administration of its
117 capital outlay program. This exemption shall be applicable only so long as such policies and procedures
118 meeting the requirements remain in effect.

119 2. The Virginia Retirement System for selection of services related to the management, purchase or
120 sale of authorized investments, including but not limited to actuarial services. Selection of these services

shall be governed by the standard set forth in § 51.1-124.30.

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. The University of Virginia in the selection of services related to the management and investment of its endowment funds, endowment income, or gifts pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1.

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23-38.80.

7. Public institutions of higher education for the purchase of Items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2011 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377.

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting which offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services set forth in subdivision 3 a of § 2.2-4301 in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$30,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

13. A public body which is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators which are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of services under this subdivision may deviate from the procurement procedures set forth in this chapter upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the

contract is awarded based on competitive principles.

14. Procurement of any construction or planning and design services for construction by a Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit corporation or organization is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether those federal procedures are in conformance with the provisions of this chapter.

15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.).

17. The Department of Corrections in the selection of pre-release and post-incarceration services.

18. The Board of the Chippokes Plantation Farm Foundation in entering into agreements with persons for the construction, operation, and maintenance of projects consistent with the Chippokes Plantation State Park Master Plan approved by the Director of the Department of Conservation and Recreation pursuant to the requirements of § 10.1-200.1 and designed to further an appreciation for rural living and the contributions of the agricultural, forestry, and natural resource based industries of the Commonwealth, provided such projects are supported solely by private or nonstate funding.

19. *Commonwealth Chartered Universities and Colleges in the exercise of any of the powers set forth in Chapter 4.10 (§ 23-38.88 et seq.) of Title 23, provided the chartered institution implements, by policy or regulation adopted by its board of visitors, procedures to ensure fairness and competitiveness in the procurement of goods and services. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.*

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

§ 8.01-195.2. Definitions.

As used in this article:

"Agency" means any department, institution, authority, instrumentality, board or other administrative agency of the government of the Commonwealth of Virginia and, any transportation district created pursuant to Chapter 45 (§ 15.2-4500 et seq.) of Title 15.2 and Chapter 630 of the 1964 Acts of Assembly, and any Commonwealth Chartered Universities and Colleges established pursuant to Chapter 4.10 (§ 23-38.88 et seq.) of Title 23.

"Employee" means any officer, employee or agent of any agency, or any person acting on behalf of an agency in an official capacity, temporarily or permanently in the service of the Commonwealth, or any transportation district, whether with or without compensation.

"School boards" as defined in § 22.1-1 are not state agencies nor are employees of school boards state employees.

"Transportation district" shall be limited to any transportation district or districts which have entered into an agreement in which the Northern Virginia Transportation District is a party with any firm or corporation as an agent to provide passenger rail services for such district or districts while such firm or corporation is performing in accordance with such agreement.

§ 13.1-543. Definitions.

A. As used in this chapter:

The term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service or use of such title the obtaining of a license, certification or other legal authorization and shall be limited to the personal services rendered by pharmacists, optometrists, practitioners of the healing arts, nurse practitioners, practitioners of the behavioral science professions, veterinarians, surgeons, dentists, architects, professional engineers, land surveyors, certified landscape architects, certified interior designers, public accountants, certified public accountants, attorneys-at-law, insurance consultants, audiologists or speech pathologists, and clinical nurse specialists. For the purposes of this chapter, the following shall be deemed to be rendering the same professional service:

1. Architects, professional engineers and land surveyors; and

2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, nurse practitioners, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of

Title 54.1, optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, physical therapists and physical therapist assistants, licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, practitioners of the behavioral science professions, licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) and 37 (§ 54.1-3700 et seq.) of Title 54.1, and one or more clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing.

The term "professional corporation" means a corporation whose articles of incorporation set forth a sole and specific purpose permitted by this chapter and which is either (i) organized under this chapter for the sole and specific purpose of rendering professional service other than that of architects, professional engineers or land surveyors, or using a title other than that of certified landscape architects or certified interior designers and, except as expressly otherwise permitted by this chapter, which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized to render the same professional service as the corporation and of which shareholders at least one is duly licensed or otherwise legally authorized to render such professional service within the Commonwealth; or (ii) organized under this chapter for the sole and specific purpose of rendering the professional services of architects, professional engineers or land surveyors, or using the title of certified landscape architects or certified interior designers, or any combination thereof, and at least two-thirds of whose shares are held by persons duly licensed within the Commonwealth to perform the services of an architect, professional engineer or land surveyor, or by persons legally authorized within the Commonwealth to use the title of certified landscape architect or certified interior designer; or (iii) organized under this chapter or under Chapter 10 (§ 13.1-801 et seq.) of this title for the sole and specific purpose of rendering the professional services of one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more optometrists licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, or one or more physical therapists and physical therapist assistants licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or more practitioners of the behavioral science professions, licensed under the provisions of Chapter 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or more practitioners of audiology or speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1, or one or more clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing, or any combination of practitioners of the healing arts, optometry, physical therapy, the behavioral science professions, and audiology or speech pathology, and all of whose shares are held by or all of whose members are persons duly licensed or otherwise legally authorized to perform the services of a practitioner of the healing arts, nurse practitioners, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or of a clinical nurse specialist who renders mental health services; however, nothing herein shall be construed so as to allow any member of the healing arts, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or a nurse practitioner or clinical nurse specialist to conduct his practice in a manner contrary to the standards of ethics of his branch of the healing arts, optometry, physical therapy, the behavioral science professions, audiology or speech pathology, or nursing, as the case may be.

B. Persons who practice the healing art of performing professional clinical laboratory services within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university that is an "educational institution" within the meaning of § 23-14, *including any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*.

§ 13.1-1102. Definitions.

A. As used in this chapter:

"Professional business entity" means (i) a professional limited liability company, (ii) a professional corporation within the meaning of § 13.1-543 A, or (iii) a partnership (including a professional registered limited liability partnership registered under § 54.1-3902) each of the partners of which is duly licensed or otherwise legally authorized to render the same professional services as those for which the partnership was organized.

"Professional limited liability company" means a limited liability company whose articles of organization set forth a sole and specific purpose permitted by this chapter and that is either (i) organized under this chapter for the sole and specific purpose of rendering professional service other than that of architects, professional engineers or land surveyors, or using a title other than that of certified landscape architects or certified interior designers and, except as expressly otherwise permitted by this chapter, that has as its members only persons or professional business entities that themselves are duly licensed or otherwise legally authorized to render the same professional service as the professional

305 limited liability company and of which members at least one is duly licensed or otherwise legally
306 authorized to render such professional service within the Commonwealth; or (ii) organized under this
307 chapter for the sole and specific purpose of rendering professional service of architects, professional
308 engineers or land surveyors, or using the title of certified landscape architects or certified interior
309 designers, or any combination thereof, and at least two-thirds of whose membership interests are held by
310 persons duly licensed within the Commonwealth to perform the services of an architect, professional
311 engineer or land surveyor, or by persons legally authorized within the Commonwealth to use the title of
312 certified landscape architect or certified interior designer; or (iii) organized under this chapter for the
313 sole and specific purpose of rendering the professional services of one or more practitioners of the
314 healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or
315 more nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more
316 optometrists licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, or one or
317 more physical therapists and physical therapist assistants licensed under the provisions of Chapter 34.1
318 (§ 54.1-3473 et seq.) of Title 54.1, or one or more practitioners of the behavioral science professions,
319 licensed under the provisions of Chapter 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37
320 (§ 54.1-3700 et seq.) of Title 54.1, or one or more practitioners of audiology or speech pathology,
321 licensed under the provisions of Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1, or one or more clinical
322 nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of
323 Title 54.1 and registered with the Board of Nursing, or any combination of practitioners of the healing
324 arts, of optometry, physical therapy, the behavioral science professions, and audiology or speech
325 pathology and all of whose members are persons or professional business entities duly licensed or
326 otherwise legally authorized to perform the services of a practitioner of the healing arts, nurse
327 practitioners, optometry, physical therapy, the behavioral science professions, audiology or speech
328 pathology or of a clinical nurse specialist who renders mental health services; however, nothing herein
329 shall be construed so as to allow any member of the healing arts, optometry, physical therapy, the
330 behavioral science professions, audiology or speech pathology or a nurse practitioner or clinical nurse
331 specialist to conduct that person's practice in a manner contrary to the standards of ethics of that
332 person's branch of the healing arts, optometry, physical therapy, the behavioral science professions, or
333 audiology or speech pathology, or nursing as the case may be.

334 "Professional services" means any type of personal service to the public that requires as a condition
335 precedent to the rendering of that service or the use of that title the obtaining of a license, certification,
336 or other legal authorization and shall be limited to the personal services rendered by pharmacists,
337 optometrists, physical therapists and physical therapist assistants, practitioners of the healing arts, nurse
338 practitioners, practitioners of the behavioral science professions, veterinarians, surgeons, dentists,
339 architects, professional engineers, land surveyors, certified landscape architects, certified interior
340 designers, public accountants, certified public accountants, attorneys at law, insurance consultants,
341 audiologists or speech pathologists and clinical nurse specialists. For the purposes of this chapter, the
342 following shall be deemed to be rendering the same professional services:

343 1. Architects, professional engineers, and land surveyors; and
344 2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.)
345 of Title 54.1, nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1,
346 optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, physical
347 therapists, licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, practitioners
348 of the behavioral science professions, licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.),
349 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of Title 54.1, and clinical nurse specialists who
350 render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and
351 registered with the Board of Nursing.

352 B. Persons who practice the healing art of performing professional clinical laboratory services within
353 a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such
354 persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical
355 laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university
356 that is an "educational institution" within the meaning of § 23-14, *including any Commonwealth*
357 *Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.).*

358 C. Except as expressly otherwise provided, all terms defined in § 13.1-1002 shall have the same
359 meanings for purposes of this chapter.

360 § 23-1.01. Annual reports required of boards of visitors.

361 The boards of visitors of each institution of higher education *and of any Commonwealth Chartered*
362 *Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)* shall submit an annual report
363 to the Governor and General Assembly on or before November 1 of each year. Such report shall
364 contain, at a minimum, the annual financial statements for the year ending the preceding June 30 and
365 the accounts and status of any ongoing capital projects. The annual report shall be distributed in
366 accordance with the provisions of § 2.2-1127.

§ 23-1.1. Report of athletic receipts and disbursements.

It shall be the duty of the president or chairman of the board of visitors or trustees of every state institution of higher learning ~~which~~ *and of any Commonwealth Chartered University or College, as defined in Chapter 4.10 (§ 23-38.88 et seq.)* that maintains an intercollegiate athletic program to cause to be made out by the proper officer of such institution, and forwarded to the Comptroller annually by December thirty-first a detailed statement of all athletic receipts and disbursements of such institution and of any affiliated committee, group, corporation or association charged with administering the athletic program. Such report shall include all receipts from admission tickets, programs, refreshment concessions, radio, television, newsreel or movie rights, and all other receipts related to any athletic contest or event. The report of disbursements shall include the name of each person, firm or corporation to whom such disbursement was made and the amount thereof. The report shall be kept on file by the Comptroller and shall be open to public inspection at all reasonable times.

§ 23-2. Penalty for failure to make report.

If the report required by § 23-1.01 is not made from any educational institution ~~which~~ *and any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)* that ~~receives~~ *receive* any portion of the revenue of the Literary Fund, or to which any loan has been made out of the fund, the Comptroller shall withhold, until the report is made, the payment of such portion of the Literary Fund, or proceed to enforce payment of the loan.

§ 23-2.1. Collection and dissemination of information concerning religious preferences and affiliations.

Notwithstanding any provision of law to the contrary, any state institution of higher learning *and any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)* may collect and disseminate information concerning the religious preferences and affiliations of its students; provided that no student may be required to indicate his religious preference or affiliation and that no dissemination of the information shall be made except to categories of persons as to whom the student has given his consent that dissemination may be made.

§ 23-2.1:1. Access to campus and student directory for certain persons and groups.

If a public institution of higher education *or any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, provides access to its campus and student directory to persons or groups for occupational, professional or educational recruitment, the institution shall provide access on the same basis to official recruiting representatives of the military forces of the Commonwealth and the United States.

§ 23-3. Expenses of visitors.

The members of the board of visitors of each educational institution owned and controlled by the Commonwealth *and any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, shall receive their actual expenses, when properly itemized, incurred in the discharge of their duties in attending the meetings of the board.

§ 23-4.1. Sale or lease of interest in real property granted by purchase, deed or gift; granting of easements.

The boards of visitors or trustees of all State educational institutions *and of any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, with the approval of the Governor first obtained, are hereby authorized to lease or sell and convey whatever interest they may have in real property that has been or may hereafter be acquired by purchase, will or deed of gift.

The proceeds from such leases, sales and conveyances shall be held, used and administered in the same manner as all other gifts and bequests are held, used and administered.

Nothing in this section shall be construed as authorizing or empowering the lease, or sale and conveyance of such real property contrary to the terms and conditions of the will or deed of gift.

Such boards of visitors or trustees are authorized to grant easements for roads, streets, sewers, waterlines, electric and other utility lines or other purposes on any property now owned or hereafter acquired by such boards of visitors or trustees, when, in the discretion of such visitors or trustees it is deemed proper to grant such easements.

§ 23-4.2. Disposition of unclaimed property.

The board of visitors or other governing body of every state institution of higher education *and of any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, and every private accredited nonprofit institution of higher education in the Commonwealth may provide by regulation for the care, restitution, sale, destruction or disposal of unclaimed personal property, whether lost or abandoned, in the possession of the institution. Whenever procedures in accordance with such regulations and this section are followed and ownership cannot be established with respect to certain property, the institution, and the employees and agents thereof, shall have no liability to any person claiming any interest in the property.

A. In the case of tangible personal property other than registered motor vehicles:

1. The institution, upon receipt of lost property, shall make reasonable efforts to give notice that the property has been found to any person the institution determines reasonably appears to be the owner. The property shall be held by the institution for a period of not less than 120 days. The institution shall allow a claim upon satisfactory proof of it and payment of the institution's reasonable charges for storage or other services necessary to preserve the property.

2. After the 120-day period, the institution may sell the property to the highest bidder at public auction or by sealed bid at whatever location the institution reasonably determines affords the most favorable market for the property. The institution may decline the highest bid and reoffer the property for sale if it considers the price bid insufficient. The net proceeds of any sale hereunder shall be held for a period of ninety days and if no claim is made thereon within that time, such funds shall be credited to the institution's operating fund. If the institution determines that the probable cost of sale of property will exceed the sale proceeds, the property is inherently dangerous, or the property may not lawfully be sold or used, the institution may provide for any such property, as appropriate under the circumstances, to be destroyed or discarded at an appropriate location, retained for use by the institution, or donated to an appropriate charitable organization.

3. Any sale held hereunder shall be preceded by reasonable notice thereof, considering the type and value of property. Such notice shall include as a minimum the posting on a student bulletin board and publication in a school newspaper. The institution, by the same time, shall mail notice of the sale to the last known address of any person the institution determines reasonably appears to be the owner.

B. Whenever a motor vehicle is abandoned on the campus of any institution that lies within a county, city, or town which has adopted an ordinance as provided in Chapter 12 of Title 46.2, such motor vehicle shall be disposed of as provided in that ordinance. Notwithstanding any provisions of Chapter 12 of Title 46.2, the proceeds of any sale of a motor vehicle abandoned and unclaimed on institutional property shall be credited to the institution's operating fund after the ninety-day holding period. The board of visitors or other governing body of an institution of higher education having a campus or part of a campus lying in a locality which has not adopted such an ordinance, may promulgate a regulation dealing with motor vehicles abandoned within such campus or part of campus. Such regulations shall comply with all provisions of Chapter 12 of Title 46.2 and shall have the same legal effect as though the institution were a political subdivision as defined in that chapter and the regulation was an ordinance. The proceeds from any sale resulting from such regulations shall be held for a period of ninety days and if no claim is made therefor within that time, such funds shall be credited to the institution's operating fund.

C. Whenever any intangible personal property is believed to be abandoned or unclaimed on the campus of a state institution of higher education, it shall be administered as provided in Article 4 (§ 55-210.12 et seq.) of Chapter 11.1 of Title 55.

D. Whenever any personal property, tangible or intangible, has been accepted for safekeeping during a patient's stay by any hospital operated by a state institution of higher education, and said property is believed by the appropriately designated official to be abandoned or unclaimed, it shall be administered as provided in Article 4 (§ 55-210.12 et seq.) of Chapter 11.1 of Title 55.

§ 23-4.3. Adoption of patent and copyright policies; employees to be bound by such policies.

A. The boards of visitors of state-supported institutions of higher education *and any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, and the State Board for Community Colleges shall adopt patent and copyright policies consistent with the policy guidelines promulgated by the State Council of Higher Education working in cooperation with the state-supported institutions of higher education pursuant to § 23-9.10:4. Such policies shall be submitted to the Council.

B. All employees of state-supported institutions of higher education, including the Virginia Community College System, *and of any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, as a condition of employment, shall be bound by the patent and copyright policies of the institution employing them. Anyone using facilities of a state-supported institution *or such Chartered University or College* who has not otherwise entered into a written contract with the institution concerning such use shall be subject to the institution's patent and copyright policies where the institution's Board of Visitors, the State Board for Community Colleges or their designees determine that such use constitutes a significant use of the institution's facilities.

§ 23-4.4. Authorization to transfer interest; Governor's approval required under certain circumstances.

A. ~~The Boards of Visitors,~~ *boards of visitors of public institutions of higher education and of any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, and the State Board for Community Colleges, or their designees may transfer any interest they possess in patents and copyrights or in materials in which the institution claims an interest under its patent or copyright policy. However, the Governor's prior written approval shall be required for transfers of such property developed wholly or significantly through the use of state general funds and either (i) such property was developed by an employee of the institution acting within the scope of his assigned duties,

or (ii) such property is to be transferred to an entity other than the Innovative Technology Authority, an entity whose purpose is to manage intellectual properties on behalf of nonprofit organizations, colleges and universities, or an entity whose purpose is to benefit the respective institutions. The Governor may attach conditions to these transfers as he deems necessary. In the event the Governor does not approve such transfer, the materials shall remain the property of the respective institutions and may be used and developed in any manner permitted by law. The State Council of Higher Education working in cooperation with the state-supported institutions of higher education and in accordance with § 23-9.10:4 shall adopt a uniform statement defining (i) the conditions under which a significant use of general funds occurs and (ii) the circumstances constituting an assigned duty.

B. Notwithstanding subsection A, the Governor's approval is not required to transfer such property to an entity described in clause (ii) of subsection A if (i) the interest was developed without the use of federal funds, (ii) such entity makes a clear and convincing case to the relevant board that its ownership of the interest is critical to its ability to commercialize that interest, and (iii) the institution receives, at a minimum, compensation equal to the anticipated revenue stream of licensing the interest.

§ 23-7.1:02. Participation in or eligibility for certain state-supported financial aid programs.

Participation in and eligibility for state-supported financial aid or other higher education programs designed to promote greater racial diversity in state-supported institutions of higher education *or any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, shall not be restricted on the basis of race or ethnic origin and any person who is a member of any federally recognized minority shall be eligible for and may participate in such programs, if all other qualifications for admission to the relevant institution and the specific program are met.

§ 23-7.4. Eligibility for in-state tuition charges.

A. For purposes of this section and §§ 23-7.4:1, 23-7.4:2 and 23-7.4:3, the following definitions shall apply:

"Date of the alleged entitlement" means the first official day of class within the term, semester or quarter of the student's program.

"Dependent student" means one who is listed as a dependent on the federal or state income tax return of his parents or legal guardian or who receives substantial financial support from his spouse, parents or legal guardian. It shall be presumed that a student under the age of twenty-four on the date of the alleged entitlement receives substantial financial support from his parents or legal guardian, and therefore is dependent on his parents or legal guardian, unless the student (i) is a veteran or an active duty member of the U.S. Armed Forces; (ii) is a graduate or professional student; (iii) is married; (iv) is a ward of the court or was a ward of the court until age 18; (v) has no adoptive or legal guardian when both parents are deceased; (vi) has legal dependents other than a spouse; or (vii) is able to present clear and convincing evidence that he is financially self-sufficient.

"Domicile" means the present, fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely. No individual may have more than one domicile at a time. Domicile, once established, shall not be affected by mere transient or temporary physical presence in another jurisdiction.

"Domiciliary intent" means present intent to remain indefinitely.

"Emancipated minor" means a student under the age of eighteen on the date of the alleged entitlement whose parents or guardians have surrendered the right to his care, custody and earnings and who no longer claim him as a dependent for tax purposes.

"Full-time employment" means employment resulting in, at least, an annual earned income reported for tax purposes equivalent to fifty work weeks of forty hours at minimum wage.

"Independent student" means one whose parents have surrendered the right to his care, custody and earnings, do not claim him as a dependent on federal or state income tax returns, and have ceased to provide him substantial financial support.

"Special arrangement contract" means a contract between a Virginia employer or the authorities controlling a federal installation or agency located in Virginia and a public institution of higher education *or any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, for reduced rate tuition charges as described in § 23-7.4:2 G.

"Substantial financial support" means financial support in an amount which equals or exceeds that required to qualify the individual to be listed as a dependent on federal and state income tax returns.

"Unemancipated minor" means a student under the age of eighteen on the date of the alleged entitlement who is under the legal control of and is financially supported by either of his parents, legal guardian or other person having legal custody.

"Virginia employer" means any employing unit organized under the laws of Virginia or having income from Virginia sources regardless of its organizational structure, or any public or nonprofit organization authorized to operate in Virginia.

B. To become eligible for in-state tuition, an independent student shall establish by clear and

551 convincing evidence that for a period of at least one year immediately prior to the date of the alleged
552 entitlement, he was domiciled in Virginia and had abandoned any previous domicile, if such existed.

553 To become eligible for in-state tuition, a dependent student or unemancipated minor shall establish
554 by clear and convincing evidence that for a period of at least one year prior to the date of the alleged
555 entitlement, the person through whom he claims eligibility was domiciled in Virginia and had abandoned
556 any previous domicile, if such existed. If the person through whom the dependent student or
557 unemancipated minor established such domicile and eligibility for in-state tuition abandons his Virginia
558 domicile, the dependent student or unemancipated minor shall be entitled to such in-state tuition for one
559 year from the date of such abandonment.

560 In determining domiciliary intent, all of the following applicable factors shall be considered:
561 continuous residence for at least one year prior to the date of alleged entitlement, state to which income
562 taxes are filed or paid, driver's license, motor vehicle registration, voter registration, employment,
563 property ownership, sources of financial support, military records, a written offer and acceptance of
564 employment following graduation, and any other social or economic relationships with the
565 Commonwealth and other jurisdictions.

566 Domiciliary status shall not ordinarily be conferred by the performance of acts which are auxiliary to
567 fulfilling educational objectives or are required or routinely performed by temporary residents of the
568 Commonwealth. Mere physical presence or residence primarily for educational purposes shall not confer
569 domiciliary status. A matriculating student who has entered an institution and is classified as an
570 out-of-state student shall be required to rebut by clear and convincing evidence the presumption that he
571 is in the Commonwealth for the purpose of attending school and not as a bona fide domiciliary.

572 Those factors presented in support of entitlement to in-state tuition shall have existed for the
573 one-year period prior to the date of the alleged entitlement. However, in determining the domiciliary
574 intent of active duty military personnel residing in the Commonwealth, or the domiciliary intent of their
575 dependent spouse or children who claim domicile through them, who voluntarily elect to establish
576 Virginia as their permanent residence for domiciliary purposes, the requirement of one year shall be
577 waived if all other conditions for establishing domicile are satisfied.

578 C. A married person may establish domicile in the same manner as an unmarried person.

579 An emancipated minor may establish domicile in the same manner as any other independent student.
580 A nonmilitary student whose parent or spouse is a member of the armed forces may establish domicile
581 in the same manner as any other student.

582 Any alien holding an immigration visa or classified as a political refugee shall also establish
583 eligibility for in-state tuition in the same manner as any other student. However, absent congressional
584 intent to the contrary, any person holding a student or other temporary visa shall not have the capacity
585 to intend to remain in Virginia indefinitely and, therefore, shall be ineligible for Virginia domicile and
586 for in-state tuition charges.

587 The domicile of a dependent student shall be rebuttably presumed to be the domicile of the parent or
588 legal guardian claiming him as an exemption on federal or state income tax returns currently and for the
589 tax year prior to the date of the alleged entitlement or providing him substantial financial support.

590 For the purposes of this section, the domicile of an unemancipated minor or a dependent student
591 eighteen years of age or older may be either the domicile of the parent with whom he resides, the parent
592 who claims the student as a dependent for federal and Virginia income tax purposes for the tax year
593 prior to the date of the alleged entitlement and is currently so claiming the student, or the parent who
594 provides the student substantial financial support. If there is no surviving parent or the whereabouts of
595 the parents are unknown, then the domicile of an unemancipated minor shall be the domicile of the legal
596 guardian of such unemancipated minor unless there are circumstances indicating that such guardianship
597 was created primarily for the purpose of conferring a Virginia domicile on the unemancipated minor.

598 D. It is incumbent on the student to apply for change in domiciliary status on becoming eligible for
599 such change. Changes in domiciliary status shall only be granted prospectively from the date such
600 application is received.

601 A student who knowingly provides erroneous information in an attempt to evade payment of
602 out-of-state fees shall be charged out-of-state tuition fees for each term, semester or quarter attended and
603 may be subject to dismissal from the institution. All disputes related to the veracity of information
604 provided to establish Virginia domicile shall be appealable through the due process procedure required
605 by § 23-7.4.3.

606 § 23-7.4.1. Waiver of tuition and required fees for certain students.

607 A. 1. All sums appropriated by law for the purpose of effecting the provisions of this subsection
608 shall be used for the sole purpose of providing for free tuition and required fees at the state-supported
609 institutions *and any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10*
610 *(§ 23-38.88 et seq.),* and institutional charges, general or college fees, or any charges by whatever term
611 referred to, board and room rent, and books and supplies at any education or training institution of
612 collegiate or secondary grade in the Commonwealth of Virginia approved in writing by the

Commissioner of the Department of Veterans Services for the use and benefit of the children not under 16 and not over 25 years of age either of whose parents was killed in action, is missing in action or a prisoner of war in any armed conflict subsequent to December 6, 1941, while serving in the Army, Navy, Marine Corps, Air Force or Coast Guard of the United States, or was or is or may hereafter become totally and permanently disabled due to service during such periods if such parent (i) was a citizen of Virginia at the time of entering such service; (ii) is and has been, for at least five years immediately prior to the date on which application was submitted by or on behalf of such child for admission to any education or training institution of collegiate or secondary grade in this Commonwealth, a citizen of Virginia; (iii) is deceased, was a citizen of Virginia on the date of his or her death and had been a citizen of Virginia for at least five years immediately prior to his or her death; or (iv) is deceased and the surviving parent had been, at some time previous to marrying the deceased parent, a citizen of Virginia for at least five years or is and has been a citizen of Virginia for at least five years immediately prior to the date on which application was submitted by or on behalf of such child for admission to any education or training institution of collegiate or secondary grade in this Commonwealth.

2. Such children, upon recommendation of the Commissioner of the Department of Veterans Services, shall be admitted to state institutions of secondary or higher education, free of tuition and all required fees. Each state-supported institution shall include in its catalogue or equivalent publication a statement describing the benefits provided by this subsection.

3. The amounts that may be or may become due by reason of attendance at any such educational or training institution, not in excess of the amount specified in subdivision 5, shall be payable on vouchers approved by the Commissioner of the Department of Veterans Services.

4. The Commissioner of the Department of Veterans Services shall determine the eligibility of the children who may make application for the benefits provided for in this subsection and shall satisfy himself of the attendance and satisfactory progress of such children at such institution and of the accuracy of the charge or charges submitted on account of the attendance of any such children at any such institution. However, neither the Commissioner nor any employee of the Department of Veterans Services shall receive any compensation for such services.

5. To carry out the provisions of this subsection, there may be expended such funds as shall be appropriated for the purpose in the general appropriation acts. However, the maximum amount to be expended for each such child shall not be more, when combined with any federal allowance which may be made for such tuition, charges, fees, rent, books and supplies, than the actual amount of the benefits provided for in this subsection.

6. For the purposes of this subsection, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required fees, educational and auxiliary, shall be waived along with tuition.

B. Any child between the ages of 16 and 25 whose parent or any person whose spouse has been killed in the line of duty while employed or serving as a law-enforcement officer, firefighter, including a special forest warden designated pursuant to § 10.1-1135, member of a rescue squad, sworn law-enforcement officer, special agent of the Department of Alcoholic Beverage Control, state correctional, regional or local jail officer, regional jail or jail farm superintendent, sheriff, deputy sheriff, or member of the Virginia National Guard while such member is serving in the Virginia National Guard or as a member of the United States Armed Forces, shall be entitled to free undergraduate tuition and required fees at any public institution of higher education in Virginia or any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.), under the following conditions:

1. The chief administrative officer of the Alcoholic Beverage Control Board, emergency medical services agency, law-enforcement agency, or other appropriate agency or the Superintendent of State Police certifies that the deceased parent or spouse was employed or serving as a law-enforcement officer or a firefighter, including a special forest warden designated pursuant to § 10.1-1135, or member of a rescue squad or in any other capacity as specified in this section and was killed in the line of duty while serving or living in the Commonwealth; and

2. The child or spouse shall have been offered admission to a public institution of higher education or any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.). Any child or spouse who believes he is eligible shall apply to the public institution of higher education to which he has been admitted for the benefits provided by this subsection. The institution shall determine the eligibility of the applicant for these benefits and shall also ascertain that the recipients are in attendance and are making satisfactory progress. The amounts payable for tuition and required fees for the applicants shall be waived by the institution accepting the students.

For the purposes of this subsection, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required fees, educational and auxiliary,

674 shall be waived along with tuition.

675 C. Senior citizens shall be entitled to free tuition and required fees pursuant to the provisions of
676 Chapter 4.5 (§ 23-38.54 et seq.) of Title 23.

677 D. Tuition and required fees may be waived for a student from a foreign country enrolled in a public
678 institution of higher education *or any Commonwealth Chartered Universities and Colleges, as defined in*
679 *Chapter 4.10 (§ 23-38.88 et seq.)*, through a student exchange program approved by such institution,
680 provided the number of foreign students does not exceed the number of students paying full tuition and
681 required fees to the institution under the provisions of the exchange program for a given three-year
682 period.

683 § 23-7.4:2. Eligibility for in-state or reduced tuition for students not domiciled in Virginia; tuition
684 grants for members of the National Guard of the Commonwealth of Virginia.

685 A. A nonmilitary student whose parent or spouse is a member of the armed forces may establish
686 domicile in the same manner as any other student. However, a nonmilitary student, not otherwise
687 eligible for in-state tuition, whose parent or spouse is a member of the military residing in the
688 Commonwealth pursuant to military orders and claiming a state other than Virginia on his State of Legal
689 Residence Certificate, shall be entitled to in-state tuition charges when the following conditions are met:
690 (i) if the student is a child of a member of the armed forces, then the nonmilitary parent shall have, for
691 at least one year immediately prior to the date of alleged entitlement for in-state tuition charges, resided
692 in Virginia, been employed full time and paid individual income taxes to Virginia. Such student shall be
693 eligible for in-state tuition charges only if the nonmilitary parent claims him as a dependent for Virginia
694 and federal income tax purposes, as evidenced by claiming him as a dependent on an individual or joint
695 return; or (ii) if the student is the spouse of a member of the armed forces, then such student shall have,
696 for at least one year immediately prior to the date of alleged entitlement for in-state tuition, resided in
697 Virginia, been employed full time and paid individual income taxes to Virginia; or (iii) if the student is
698 the child or the spouse of a member of the armed forces, then the student shall be entitled to in-state
699 tuition charges for a maximum of one year during the period that the military parent or spouse is
700 residing in the Commonwealth. Any student whose spouse or parent is a member of the armed forces
701 shall be eligible for in-state tuition charges for so long as the conditions of clauses (i) and (ii) of this
702 subsection continue to be met. Military dependents provided in-state tuition for one year during the
703 period the military parent or spouse is residing in Virginia shall be counted as out-of-state students for
704 admissions, enrollment and tuition and fee revenue policy purposes.

705 B. Students who live outside this Commonwealth and have been employed full time inside Virginia
706 for at least one year immediately prior to the date of the alleged entitlement for in-state tuition shall be
707 eligible for in-state tuition charges if such student has paid Virginia income taxes on all taxable income
708 earned in this Commonwealth for the tax year prior to the date of the alleged entitlement. Students
709 claimed as dependents for federal and Virginia income tax purposes who live outside this
710 Commonwealth shall become eligible for in-state tuition charges if the nonresident parents claiming
711 them as dependents have been employed full time inside Virginia for at least one year immediately prior
712 to the date of the alleged entitlement and paid Virginia income taxes on all taxable income earned in
713 this Commonwealth for the tax year prior to the date of the alleged entitlement. Such students shall
714 continue to be eligible for in-state tuition charges for so long as they or their qualifying parent is
715 employed full time in Virginia, paying Virginia income taxes on all taxable income earned in this
716 Commonwealth and the student is claimed as a dependent for Virginia and federal income tax purposes.

717 C. Any person who (i) is a member of the National Guard of the Commonwealth of Virginia and has
718 a minimum remaining obligation of two years, (ii) has satisfactorily completed required initial active
719 duty service, (iii) is satisfactorily performing duty in accordance with regulations of the National Guard,
720 and (iv) is enrolled in any state institution of higher education *or any Commonwealth Chartered*
721 *Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, any private, accredited and
722 nonprofit institution of higher education in the Commonwealth whose primary purpose is to provide
723 collegiate or graduate education and not to provide religious training or theological education, any
724 course or program offered by any such institution or any public career and technical education school
725 shall be eligible for a grant in the amount of the difference between the full cost of tuition and any
726 other educational benefits for which he is eligible as a member of the National Guard. Application for a
727 grant shall be made to the Department of Military Affairs. Grants shall be awarded from funds available
728 for the purpose by such Department.

729 D. Notwithstanding the provisions of § 23-7.4 or any other provision of the law to the contrary, the
730 governing board of any state institution of higher education ~~or the governing board of~~, *of any*
731 *Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, *or*
732 *of the Virginia Community College System* may charge the same tuition as is charged to any person
733 domiciled in Virginia pursuant to the provisions of § 23-7.4 to:

734 1. Any person enrolled in one of the institution's programs designated by the State Council of Higher
735 Education who is domiciled in and is entitled to reduced tuition charges in the institutions of higher

learning in any state which is a party to the Southern Regional Education Compact which has similar reciprocal provisions for persons domiciled in Virginia;

2. Any student from a foreign country who is enrolled in a foreign exchange program approved by the state institution during the same period that an exchange student from the same state institution, who is entitled to in-state tuition pursuant to § 23-7.4, is attending the foreign institution; and

3. Any high school or magnet school student, not otherwise qualified for in-state tuition, who is enrolled in courses specifically designed as part of the high school or magnet school curriculum in a community college for which he may, upon successful completion, receive high school and community college credit pursuant to a dual enrollment agreement between the high school or magnet school and the community college.

E. The governing board of the Virginia Community College System may charge reduced tuition to any person enrolled in one of the System's institutions who lives within a thirty-mile radius of a Virginia institution, is domiciled in, and is entitled to in-state tuition charges in the institutions of higher learning in any state which is contiguous to Virginia and which has similar reciprocal provisions for persons domiciled in Virginia.

F. The advisory board of the University of Virginia's College at Wise and the board of visitors of the University of Virginia may charge reduced tuition to any person enrolled at the University of Virginia's College at Wise who lives within a fifty-mile radius of the University of Virginia's College at Wise, is domiciled in, and is entitled to in-state tuition charges in the institutions of higher learning in Kentucky, if Kentucky has similar reciprocal provisions for persons domiciled in Virginia.

Any out-of-state students granted in-state tuition pursuant to this subsection and subsection E shall be counted as out-of-state students for the purposes of determining admissions, enrollment, and tuition and fee revenue policies.

G. Public institutions of higher education *and any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, may enter into special arrangement contracts with Virginia employers or authorities controlling federal installations or agencies located in Virginia. The special arrangement contracts shall be for the purpose of providing reduced rate tuition charges for the employees of the Virginia employers or federal personnel when the employers or federal authorities are assuming the liability for paying, to the extent permitted by federal law, the tuition for the employees or personnel in question and the employees or personnel are classified by the requirements of this section as out-of-state.

Special arrangement contracts with Virginia employers or federal installations or agencies may be for group instruction in facilities provided by the employer or federal authority or in the institution's facilities or on a student-by-student basis for specific employment-related programs.

Special arrangement contracts shall be valid for a period not to exceed two years and shall be reviewed for legal sufficiency by the Office of the Attorney General prior to signing. All rates agreed to by the public institutions shall be at least equal to in-state tuition and shall only be granted by the institution with which the employer or the federal authorities have a valid contract for students for whom the employer or federal authorities are paying the tuition charges.

All special arrangement contracts with authorities controlling federal installations or agencies shall include a specific number of students to be served at reduced rates.

Nothing in this subsection shall change the domiciliary status of any student for the purposes of enrollment reporting or calculating the proportions of general funds and tuition and fees contributed to the cost of education.

§ 23-7.4.3. Determinations of eligibility; appeals and guidelines.

A. Each public institution of higher education *and any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, shall establish an appeals process for those students who are aggrieved by decisions regarding eligibility for in-state or reduced tuition charges pursuant to §§ 23-7.4 and 23-7.4.2. The Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to these administrative reviews.

An initial determination shall be made. Each appeals process shall include an intermediate review of the initial determination and a final administrative review. The final administrative decision shall be in writing. A copy of this decision shall be sent to the student. Either the intermediate review or the final administrative review shall be conducted by an appeals committee consisting of an odd number of members. No person who serves at one level of this appeals process shall be eligible to serve at any other level of this review. All such due process procedures shall be in writing and shall include time limitations in order to provide for orderly and timely resolutions of all disputes.

Any party aggrieved by a final administrative decision shall have the right to review in the circuit court for the jurisdiction in which the relevant institution is located. A petition for review of the final administrative decision shall be filed within thirty days of receiving the written decision. In any such action, the institution shall forward the record to the court, whose function shall be only to determine

797 whether the decision reached by the institution could reasonably be said, on the basis of the record, not
798 to be arbitrary, capricious or otherwise contrary to law.

799 B. To ensure the application of uniform criteria in administering this section and determining
800 eligibility for in-state tuition charges, the State Council of Higher Education shall issue and from time to
801 time revise guidelines, including domiciliary status questions to be incorporated by all state institutions
802 of higher education *and any Commonwealth Chartered Universities and Colleges, as defined in Chapter*
803 *4.10 (§ 23-38.88 et seq.),* in their admissions applications. These guidelines shall not be subject to the
804 Administrative Process Act.

805 An advisory committee, composed of at least ten representatives of institutions of higher education *or*
806 *any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et*
807 *seq.),* shall be appointed by the Council each year to cooperate with the Council in developing the
808 guidelines for determining eligibility or revisions thereof. The Council shall consult with the Office of
809 the Attorney General and provide opportunity for public comment prior to issuing any such guidelines.

810 § 23-7.5. Health histories required; immunizations.

811 A. No full-time student shall be enrolled for the first time in any four-year, public institution of
812 higher education in this Commonwealth *or in any Commonwealth Chartered Universities and Colleges,*
813 *as defined in Chapter 4.10 (§ 23-38.88 et seq.),* unless he has furnished, before the beginning of the
814 second semester or quarter of enrollment, a health history consistent with guidelines adopted by each
815 institution's board of visitors, pursuant to the requirements of this section. Any student who fails to
816 furnish the history will not be eligible for registration for the second semester or quarter. Any student
817 who objects on religious grounds shall be exempt from the health history requirement set forth in this
818 section.

819 B. The health history shall include documented evidence, provided by a licensed health professional
820 or health facility, of the diseases for which the student has been immunized, the numbers of doses
821 given, the dates when administered and any further immunizations indicated. Prior to enrollment, all
822 students shall be immunized by vaccine against diphtheria, tetanus, poliomyelitis, measles (rubeola),
823 German measles (rubella), and mumps according to the guidelines of the American College Health
824 Association.

825 C. In addition to the immunization requirements set forth in subsection B, all incoming full-time
826 students, prior to enrollment in any public four-year institution of higher education *or such chartered*
827 *institution,* shall be vaccinated against meningococcal disease.

828 However, if the institution of higher education *or such chartered institution* provides the student or,
829 if the student is a minor, the student's parent or other legal representative, detailed information on the
830 risks associated with meningococcal disease and on the availability and effectiveness of any vaccine, the
831 student or, if the student is a minor, the student's parent or other legal representative may sign a written
832 waiver stating that he has received and reviewed the information on meningococcal disease and the
833 availability and effectiveness of any vaccine and has chosen not to be or not to have the student
834 vaccinated.

835 D. Any student shall be exempt from the immunization requirements set forth in this section who (i)
836 objects on the grounds that administration of immunizing agents conflicts with his religious tenets or
837 practices, unless an emergency or epidemic of disease has been declared by the Board of Health, or (ii)
838 presents a statement from a licensed physician which states that his physical condition is such that
839 administration of one or more of the required immunizing agents would be detrimental to his health.

840 E. The Board and Commissioner of Health shall cooperate with any board of visitors seeking
841 assistance in the implementation of this section.

842 F. Further, the State Council of Higher Education shall, in cooperation with the Board and
843 Commissioner of Health, encourage private colleges and universities to develop a procedure for
844 providing information about the risks associated with meningococcal disease and the availability and
845 effectiveness of any vaccine against meningococcal disease.

846 § 23-8.2:1. Compensation of cooperating teachers.

847 In addition to the provisions of § 22.1-290.1 relating to compensation of certain licensed teachers
848 while engaged in supervising and evaluating student teachers, any institution of higher education *or any*
849 *Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.),*
850 engaged in educating students to be teachers may, from such funds as may be available for such
851 purpose, develop and implement a program to compensate public-school or private-school teachers who
852 agree to be cooperating teachers as defined in this section. Such compensation programs may provide
853 for payment in the form of money or in the form of authorization to enroll, without charge, for a
854 designated number of credit hours in the school, department, or other unit of the relevant institution of
855 higher education *or chartered institution* in which the student teacher being supervised is enrolled.

856 For the purposes of this section, "cooperating teacher" means an individual licensed by the Board of
857 Education who meets the criteria established by the relevant institution of higher education *or chartered*
858 *institution* and is engaged in supervising and evaluating one or more student teachers.

§ 23-9.1. Granting easements across lands of certain schools and institutions.

The State Board of Education is authorized, subject to the approval of the Governor in writing first obtained, to convey upon such terms and conditions and for such consideration as it deems proper easements upon, over, across or under the property of any school or educational institution of which it serves as the governing body, to any political subdivision of this Commonwealth, *including any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, or to any public utility or public service company or to any cable television company for the purpose of erecting or maintaining power, telephone, cable television, water, sewer or gas lines and mains; provided, that any deed or other conveyance executed hereunder shall be in a form approved by the Attorney General; and provided, further, that any funds derived by the Board in consideration of the granting of any such easement shall be paid into the general fund of the state treasury.

Any such grant heretofore made by the Board subject to the approval of the General Assembly, is hereby ratified and confirmed.

§ 23-9.1:1. Reports of certain acts to State Police.

The board of visitors or the governing body of any public institution of higher education in Virginia *and of any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, shall make available to any interested party upon request a copy of that portion of the most recent report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in Virginia" pertaining to colleges and universities.

§ 23-9.2. Public policy of Commonwealth in respect to endowment funds of state-supported institutions of higher education.

Whereas, the state-supported system of higher education can be greatly strengthened by increases in the endowment funds and unrestricted gifts of the several institutions of higher education derived from private sources; and

Whereas, prospective donors to the endowment funds and donors of unrestricted gifts of the several institutions hesitate to contribute thereto on the ground that, to the extent that the income of the respective institutions is increased from private sources, the Commonwealth will withdraw its support; and

Whereas, in § 10 of Chapter 33 of the Acts of Assembly of 1927, the General Assembly, by setting endowment funds and income therefrom apart from other revenues of and appropriations to the institutions of higher education, indicated an intention that endowments and unrestricted gifts from private sources are to be in addition to such other revenues and appropriations; now, therefore,

(1) It is hereby declared to be the public policy of the Commonwealth to encourage the state-supported institutions of higher education in Virginia *and any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, in their attempts to increase their endowment funds and unrestricted gifts from private sources.

(2) It is further declared to be the public policy of the Commonwealth that, in measuring the extent to which the Commonwealth shall finance higher education in Virginia, the availability of the endowment funds and unrestricted gifts from private sources of institutions of higher education *or chartered institutions* received by such institutions shall not be taken into consideration in, nor used to reduce, state appropriations or payments, but such funds shall be used in accordance with the wishes of the donors thereof to strengthen the services rendered by these institutions to the people of the Commonwealth.

§ 23-9.2:3. Power of governing body of educational institution to establish rules and regulations; offenses occurring on property of institution; state direct student financial assistance.

A. In addition to the powers now enjoyed by it, the board of visitors or other governing body of every educational institution, *including any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, shall have the power:

1. To establish rules and regulations for the acceptance of students except that (i) individuals who have failed to meet the federal requirement to register for the selective service shall not be eligible to receive any state direct student assistance and (ii) the accreditation status of a Virginia public high school shall not be considered in making admissions determinations for students who have earned a diploma pursuant to the requirements established by the Board of Education.

2. To establish rules and regulations for the conduct of students while attending such institution.

3. To establish programs, in cooperation with the State Council of Higher Education and the Office of the Attorney General, to promote compliance among students with the Commonwealth's laws relating to the use of alcoholic beverages.

4. To establish rules and regulations for the rescission or restriction of financial aid, within the discretionary authority provided to the institution by federal or state law and regulations, and the suspension and dismissal of students who fail or refuse to abide by such rules and regulations for the conduct of students.

920 5. To establish rules and regulations for the employment of professors, teachers, instructors and all
921 other employees and provide for their dismissal for failure to abide by such rules and regulations.

922 6. To provide parking and traffic rules and regulations on property owned by such institution.

923 7. To establish guidelines for the initiation or induction into any social fraternity or sorority in
924 accordance with § 18.2-56.

925 B. Upon receipt of an appropriate resolution of the board of visitors or other governing body of an
926 educational institution *or such chartered institution*, the governing body of a political subdivision which
927 is contiguous to the institution shall enforce state statutes and local ordinances with respect to offenses
928 occurring on the property of the institution.

929 The governing bodies of the public institutions of higher education *and chartered institutions* shall
930 assist the State Council of Higher Education in enforcing the provisions related to eligibility for
931 financial aid.

932 C. In order to improve the quality of the Commonwealth's work force and educational programs, the
933 governing bodies of the public institutions of higher education *and of any chartered institutions* shall
934 establish programs to seek to ensure that all graduates have the technology skills necessary to compete
935 in the 21st Century and, particularly, that all students matriculating in teacher-training programs receive
936 instruction in the effective use of educational technology.

937 § 23-9.2:3.1. Authority to establish incentives for voluntary early retirement; eligibility; contents of
938 plans.

939 A. The board of visitors or other governing body of any public institution of higher education *and of*
940 *any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et*
941 *seq.)*, may establish a compensation plan designed to provide incentives for voluntary early retirement of
942 teaching and research staff employed in nonclassified, faculty positions. Participation in such
943 compensation plan shall be voluntary for eligible employees and no employee shall be penalized in any
944 way for not participating.

945 B. In order to qualify for participation in such compensation plan, an eligible faculty employee shall
946 (i) be at least sixty years of age; (ii) have completed at least ten years of full-time service at the
947 institution offering the plan; (iii) have been awarded tenure or have a contractual right to continued
948 employment; (iv) agree to withdraw from active membership in the Virginia Retirement System; and (v)
949 comply with any additional criteria established by the governing body of the institution.

950 C. Any compensation plan established pursuant to this section shall include the institutional needs
951 and objectives to be served, the kind of incentives to be offered, the sources of available funding for
952 implementation, and any additional qualifications required of eligible faculty employees established by
953 the governing body of the institution. Any such compensation plan shall explicitly reserve to the
954 governing body of the institution the authority to modify, amend or repeal the plan. However, no such
955 amendment, modification or repeal shall be effective as to any individual who retires under the plan
956 prior to the effective date of the amendment, modification or repeal.

957 D. The cash payments offered under any such compensation plan shall not exceed 150 percent of the
958 employee's base annual salary reflected in the Personnel Management Information System at the time of
959 election to participate. Any such payment shall be allocated over at least two years. Such compensation
960 may include payment of insurance benefits by the institution until the participant reaches the age of
961 sixty-five. The total cost in any fiscal year for any compensation plan established under this section shall
962 not exceed one percent of the institution's corresponding fiscal year state general fund appropriation for
963 faculty salaries and associated benefits.

964 E. The Governor may establish, with the assistance of the State Council of Higher Education,
965 uniform criteria for such compensation plans. Prior to the adoption, modification, amendment or repeal
966 of any such compensation plan, the Governor's approval shall be obtained by the governing body of the
967 institution. All compensation plans shall be reviewed for legal sufficiency by the Office of the Attorney
968 General prior to adoption, modification, amendment or repeal.

969 F. The Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the establishment of such
970 compensation plans or any implementing regulations or criteria.

971 G. Each public institution of higher education *and chartered institution* establishing such
972 compensation plan shall report to the Governor on the implementation of the plan by October 31 of
973 each year. A report on approved plans shall be provided by the Governor to the Chairmen of the House
974 Appropriations and Senate Finance Committees by December 15 of each year.

975 § 23-9.2:3.2. Education program on human immunodeficiency virus infection.

976 Virginia public colleges and universities, in cooperation with the State Council of Higher Education
977 and the Department of Health, shall develop and implement education programs for college students on
978 the etiology, effects and prevention of infection with human immunodeficiency virus. The Council shall
979 also encourage private colleges and universities to develop such programs.

980 § 23-9.2:3.3. Human research.

981 Each board of visitors or other governing body of any public or private institution of higher

education or any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.), in which human research, as defined in § 32.1-162.16, is conducted shall promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. The regulations shall require the human research committee to submit to the Governor, the General Assembly, and the president of the institution or his designee at least annually a report on the human research projects reviewed and approved by the committee and shall require the committee to report any significant deviations from approved proposals.

§ 23-9.2:3.4. Teacher education programs; reporting requirements.

A. The boards of visitors of those public institutions of higher education and of any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.), providing teacher education programs shall administer the entrance examination prescribed by the Board of Education pursuant to § 22.1-298 to all persons seeking entry into such teacher education programs.

Notwithstanding any other provision of this title to the contrary, such boards of visitors shall not deny candidates who fail to achieve the minimum score established by the Board entrance into the relevant teacher education programs solely on the basis of such failure, and shall require achievement of such minimum passing score as a condition of completing any approved teacher education program. Students failing to achieve the minimum passing score shall have the opportunity to address any deficiencies while enrolled in such teacher education program.

B. All Virginia public institutions of higher education and any such chartered institutions that offer teacher education programs, master's degree programs in education or master's degree programs in administration shall submit annual performance reports as set forth in Board of Education guidelines and as required by subsection F of § 22.1-298. Such reports shall include annual data on the pass rates of graduates of such Virginia institutions of higher education taking the state licensure examination and shall not include any information identifying individual graduates.

§ 23-9.2:4. Payments to institutions of higher education for certain courses taken by law-enforcement officers.

The State Department of Criminal Justice Services is hereby authorized and directed to enter into contracts to make payments to accredited institutions of higher education within this Commonwealth and to any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.), for tuition, books and mandatory fees for law-enforcement officers of the Commonwealth, or its political subdivisions, departments or authorities, or of any county, city or town thereof enrolled on a full-time or part-time basis in courses included in an undergraduate or graduate program which leads to a degree or certificate in an area related to law enforcement or an area suitable for law-enforcement officers. No payments shall be made pursuant to this section to any institution of higher education operating within this Commonwealth whose primary campus is outside this Commonwealth. Assistance under this section may be granted only on behalf of an applicant who enters into an agreement to continue to serve as a law-enforcement officer in Virginia upon completion of his course of study for a period at least as long as the length of the course of study undertaken and paid for under the provisions of this section, and in the event such service is not completed, to repay the full amount of such payments on the terms and in the manner the State Department of Criminal Justice Services may prescribe.

Any person receiving the benefit of funds expended pursuant to this section shall be required to make reimbursement of such funds if he fails to satisfactorily complete the course or courses for which the funds were expended.

Any reimbursement of money advanced under the provisions of this section shall be returned to the State Department of Criminal Justice Services and used in accordance with the purposes of this section.

§ 23-9.3:01. Chartered institutions subject to this chapter.

Unless otherwise provided herein, the provisions of this chapter applicable to public institutions of higher education shall apply to Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.).

§ 23-14. Certain educational institutions declared governmental instrumentalities; powers vested in majority of members of board.

The College of William and Mary in Virginia, at Williamsburg; the rector and visitors of Christopher Newport University, at Newport News; Longwood University, at Farmville; the Mary Washington College, at Fredericksburg; George Mason University, at Fairfax; the James Madison University, at Harrisonburg; Old Dominion University, at Norfolk; the State Board for Community Colleges, at Richmond; the Virginia Commonwealth University, at Richmond; the Radford University, at Radford; the Roanoke Higher Education Authority and Center; the rector and visitors of the University of Virginia, at Charlottesville; the University of Virginia's College at Wise; the Virginia Military Institute, at Lexington; the Virginia Polytechnic Institute and State University, at Blacksburg; the Virginia Schools

for the Deaf and the Blind; the Virginia State University, at Petersburg; Norfolk State University, at Norfolk; the Woodrow Wilson Rehabilitation Center, at Fishersville; the Eastern Virginia Medical School; and the Southwest Virginia Higher Education Center are hereby classified as educational institutions and are declared to be public bodies and constituted as governmental instrumentalities for the dissemination of education. The powers of every such institution derived directly or indirectly from this chapter shall be vested in and exercised by a majority of the members of its board, and a majority of such board shall be a quorum for the transaction of any business authorized by this chapter. Wherever the word "board" is used in this chapter, it shall be deemed to include the members of a governing body designated by another title.

Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.), shall be deemed educational institutions and institutions of higher education for the purposes of this chapter; however, bonds issued by such chartered institutions pursuant to Article 6 (§ 23-38.120 et seq.) of Chapter 4.10 of this title shall not be subject to any review or approval procedure, rules, or regulations required by or adopted pursuant to this chapter.

§ 23-30.23. Title; applicability.

This chapter shall be known and may be cited as the "Virginia College Building Authority Act of 1966." *Unless otherwise provided herein, the provisions of this chapter applicable to public institutions of higher education shall apply to Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.).*

§ 23-30.40. Title of chapter.

This chapter may be cited as the "Educational Facilities Authority Act." *Unless otherwise provided herein, the provisions of this chapter applicable to public institutions of higher education shall apply to Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.).*

§ 23-31.01. Applicability of chapter.

Unless otherwise provided herein, the provisions of this chapter applicable to public institutions of higher education shall apply to Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.).

§ 23-38.10:2. Definitions.

As used in this chapter:

1. "Council" means the State Council of Higher Education for Virginia.

2. "Fund" means a student loan fund.

3. "Institution" means a state institutions of higher education ~~which has~~ *and Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.) that have established a student loan fund from appropriations from the general fund of the state treasury for fellowships, scholarships and loans.*

4. "Student" means a medical student, dental student, intern, resident or undergraduate student who is entitled to reduced tuition charges pursuant to the provisions of § 23-7.4.

§ 23-38.19:1. Virginia Graduate and Undergraduate Assistance Program.

A. From such funds as may be appropriated and from other funds as might be received on its behalf, a program of tuition assistance is hereby established in the form of grants and fellowships awarded on a competitive basis to outstanding graduate and undergraduate students who are enrolled in or accepted for enrollment in any accredited, degree-granting public institution of higher education in Virginia, *including Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.).* The program shall be administered by the State Council on Higher Education for Virginia through such regulations as the Council may deem necessary and appropriate.

B. The full amount of each scholarship awarded to each recipient shall be used only for payment of charges for tuition, fees, room, board, or other educational expenses.

§ 23-38.19:3. Incentive scholarship program.

There is hereby created the Virginia Undergraduate Career and Technical Incentive Scholarship Program to provide incentive scholarships to students attending designated programs at four-year public *institutions of higher education, including Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.),* and private not-for-profit institutions of higher education in the Commonwealth.

§ 23-38.45. Program created; to be administered by State Council of Higher Education.

There is hereby created a scholarship assistance program to be administered by the State Council of Higher Education. The program shall assist certain students attending certain public *institutions of higher education, including Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.),* and private colleges whose principal campuses are located in Virginia.

§ 23-38.53:1. Program created; purpose; State Council of Higher Education to administer.

There is hereby created the Virginia Scholars Program for the purpose of fostering scholarship among the Commonwealth's postsecondary students and retaining Virginia's outstanding youth through awards based on scholarship and achievement. The Program shall be administered by the State Council

of Higher Education through such regulations as the Council shall deem necessary and appropriate. The Program shall consist of scholarships awarded to qualifying students attending eligible public or private four-year colleges or universities in Virginia. For purposes of this chapter, "scholarship" shall be defined as a grant to the student under certain conditions.

§ 23-38.53:4. State Council of Higher Education to administer; promulgation of regulations.

There is hereby created the Virginia Guaranteed Assistance Program to provide financial assistance to eligible students for the costs of attending a public institution of higher education in Virginia. Funds may be paid to any public institution of higher education on behalf of students who have been awarded financial assistance pursuant to § 23-38.53:6. The Council shall promulgate regulations for the implementation of the provisions of this chapter.

§ 23-38.53:11. Stephen J. Wright Scholars Program established.

The Graduate Student Recruitment Program and the Southern Regional Education Board Minority Doctoral Program, currently established only in the appropriation act, are hereby renamed and established as the Stephen J. Wright Scholars Program for the purpose of fostering scholarship among the Commonwealth's graduate students, and retaining Virginia's outstanding and promising young adults through awards based on scholarship and achievement.

§ 23-38.53:12. Definitions.

As used in this chapter:

"Council" shall mean the Virginia Workforce Council, created in § 2.2-2669.

"Degree" shall have the same meaning as defined in § 23-276.1.

"Degree-granting institution" shall mean an institution authorized to confer degrees pursuant to Chapter 21.1 (§ 23-276.1 et seq.) of this title and regulations promulgated under the authority of that chapter.

"Degree program" shall have the same meaning as defined in § 23-276.1.

"Eligible degree programs" shall mean degree programs that the Council shall designate as eligible for the Advantage Virginia Incentive Program pursuant to § 23-38.53:16.

"Eligible institutions" shall mean two or four-year Virginia (i) public institutions of higher education and (ii) private, nonprofit and for-profit, nonsectarian, degree-granting institutions of higher education that are institutionally accredited by an accrediting commission recognized by the United States Department of Education, and whose primary purpose is to provide collegiate, graduate, technical or professional education and not to provide religious training or theological education.

"Foundation" shall mean Advantage Virginia Incentive Program Foundation as created by this chapter.

"Fund" shall mean Advantage Virginia Incentive Fund established pursuant to this chapter.

"Planning district" means a contiguous area within the boundaries established by the Department of Housing and Community Development.

"Qualified job" means a job that is so designated by the Council, pursuant to § 23-38.53:16, as being in high demand in the Commonwealth.

§ 23-38.55. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed to them by this section:

"Course" means any course of study offered in any state institution of higher education including the regular curriculum of any department, or school, or subdivision of any such institution or any special course given for any purpose, including, but not limited to, adult education.

"Senior citizen" means any person who, before the beginning of any term, semester or quarter in which such person claims entitlement to the benefits of this chapter, (i) has reached 60 years of age, and (ii) has had his legal domicile in this Commonwealth for one year.

Nothing in this section shall be construed to exclude any other rules and requirements now or hereafter made applicable for all other persons with respect to residency in this Commonwealth by a state institution of higher learning.

§ 23-38.70. Program established; Council of Higher Education to administer.

In order to provide financial assistance to students attending eligible postsecondary institutions in the Commonwealth and to provide students, wherever possible, with employment related to public service and to their academic pursuits, there is hereby established the Virginia Work-Study Program. The program shall be implemented on July 1, 1988. The Council of Higher Education shall develop regulations and procedures for the operation of the program, and the institutions which desire to participate in the program shall identify appropriate employment opportunities.

The State Council of Higher Education shall administer the Virginia Work-Study Program and shall be authorized to enter into agreements with eligible institutions for the operation of the program. The Council shall adopt such regulations as may be necessary and appropriate for the administration of the program including, but not limited to, regulations to define public-service employment, to determine the

Commonwealth's share of compensation paid work-study students, and students' financial eligibility, to set limitations on hours of work, and to establish procedures governing institutional and employer participation.

For the purposes of this chapter, an eligible postsecondary institution shall include accredited, degree-granting institutions of higher education whose principal campuses are located in Virginia and business, trade and technical schools which are accredited by a national or regional accrediting agency for postsecondary institutions recognized by the United States Secretary of Education and which are certified to operate in the Commonwealth by the Board of Education pursuant to Chapter 16 (§ 22.1-319 et seq.) of Title 22.1.

§ 23-38.72. Purpose; program established; Council's authority; program to be advertised; estimate of family savings; report.

In order to encourage families to save for their children's higher education expenses, *including those for Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, and to provide a convenient method for such savings, there is hereby established the Virginia College Savings Program.

The State Council of Higher Education and the Department of the Treasury shall adopt such regulations and procedures as may be necessary to implement this program. The Council shall develop strategies to inform the public of the availability and desirability of the program. In developing this information, the Council shall seek the assistance of the Treasury and such other agencies as may be designated by the Governor. This information shall be designed to inform parents of the need to accumulate financial resources and the available options for financing higher education.

The Council of Higher Education shall prepare, and the Department of Taxation shall distribute to each person receiving state income tax information, a financial analysis of future higher education expenses. Such analysis shall inform persons of the amount of expected savings, based on national data, needed to pay for higher education.

The Council shall annually report to the Governor and the General Assembly on this program prior to December 1. The first report shall be issued in 1988.

§ 23-38.75. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of the Virginia College Savings Plan.

"Contributor" means a person who contributes money to a savings trust account established pursuant to this chapter on behalf of a qualified beneficiary and who is listed as the owner of the savings trust account.

"Plan" means the Virginia College Savings Plan.

"Prepaid tuition contract" means the contract entered into by the Board and a purchaser pursuant to this chapter for the advance payment of tuition at a fixed, guaranteed level by the purchaser for a qualified beneficiary to attend any two-year or four-year public institution of higher education in the Commonwealth, *including Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, to which the qualified beneficiary is admitted.

"Purchaser" means a person who makes or is obligated to make advance payments in accordance with a prepaid tuition contract and who is listed as the owner of the prepaid tuition contract.

"Qualified beneficiary" or "beneficiary" means (i) a resident of the Commonwealth, as determined by the Board, who is the beneficiary of a contract and who may apply advance tuition payments to tuition as set forth in this chapter; (ii) a beneficiary of a contract purchased by a resident of the Commonwealth, as determined by the Board, who may apply advance tuition payments to tuition as set forth in this chapter; or (iii) a beneficiary of a savings trust account established pursuant to this chapter.

"Savings trust account" means an account established by a contributor pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"Savings trust agreement" means the agreement entered into by the Board and a contributor establishing a savings trust account.

"Tuition" means the quarter, semester, or term charges imposed for undergraduate tuition by any two-year or four-year public institution of higher education in the Commonwealth, *including Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.)*, and all mandatory fees required as a condition of enrollment of all students. A beneficiary may apply benefits under a prepaid tuition contract and distributions from a savings trust account toward graduate-level tuition and toward tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the Board in its sole discretion.

Chapter 4.10.

Commonwealth Chartered Universities and Colleges.

Article 1.

General Provisions.

§ 23-38.88. Commonwealth Chartered Universities and Colleges.

This chapter shall be known and may be cited as "The Commonwealth Chartered Universities and Colleges Act of 2004."

§ 23-38.89. Findings and declaration of necessity.

The General Assembly finds that:

1. *The provision of higher education opportunities to citizens of the Commonwealth is an essential governmental function protecting and promoting the welfare of the citizens of the Commonwealth;*

2. *Virginia's public colleges and universities provide essential education, training and research programs that improve the lives and productivity of her citizens;*

3. *High quality student bodies, faculties, and teaching and research facilities are essential both to promote and ensure college and university educational opportunities for Virginia's citizens and to attract and retain college and university students and faculty of the quality necessary to maintain the high national standing and regard of Virginia's public colleges and universities;*

4. *No two public institutions of higher education are alike in their mission, facilities, faculty and alumni and other resources and all of them are at risk of fiscal uncertainty. If granted the necessary flexibility, some of these institutions have the ability to rely to a greater extent on their market position with regard to tuition, fees and other nongeneral fund revenues and to a lesser extent on additional state general fund appropriations, without jeopardizing the financial integrity and stability of the institution. Some of these same public colleges and universities also have the demonstrated ability to manage their own operations, subject to appropriate accountability measures and state audits;*

5. *Given this diversity among Virginia's public universities and colleges, it is incumbent upon the Commonwealth to provide its institutions of higher education with the opportunity to restructure their relationship with the Commonwealth so as to enable them to make greater use of their market position and to manage their own operations, subject to appropriate accountability measures and state audits, if and when the leadership of the institution can demonstrate that the institution has the ability to do so. The General Assembly finds that such restructuring is in the public interest because those institutions of higher education that meet the criteria set forth in this chapter will have improved ability to (i) continue the delivery of high quality educational services to Virginians; (ii) better manage their financial resources; (iii) develop and implement long range plans; and (iv) remain competitive with their peer institutions in the Commonwealth and other states;*

6. *It is in the best interests of the citizens of Virginia to establish by law a process for the chartering of state-assisted, public universities and colleges as political subdivisions of the Commonwealth, upon satisfaction of the criteria set forth in this chapter, with the result that such institutions would remain public institutions of higher education but (i) would constitute state agencies and (ii) become separate political subdivisions with the power and authority, within the limitations of the chartering legislation, to marshal resources, generate nontaxpayer revenues and generally carry out their educational missions within the restructured relationship with the Commonwealth, as provided in this chapter; and*

7. *The exercise of the powers enumerated herein by any institution chartered under the provisions of this chapter shall constitute the performance of essential governmental functions and matters of public necessity for the citizens of Virginia for which public moneys may be borrowed, spent or utilized and for which private property may be utilized or acquired.*

§ 23-38.90. Scope of chapter.

Any public university or college in Virginia that, prior to July 1, 2004, has been classified as a state agency within the executive branch of state government and complies with the chartering requirements of this chapter shall thereafter be classified as a political subdivision of the Commonwealth and shall have the powers and authority set forth in this chapter.

Such institution and the members of its governing body, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the institution had not been chartered under this chapter; provided further, that the Virginia Tort Claims Act (§ 8.01-195.1 et seq.) and its limitations on recoveries shall remain applicable to institutions chartered under this chapter.

Such institutions shall not be subject to local law or regulation except as the General Assembly may explicitly authorize.

Nothing in this chapter shall be construed as repealing by implication the power, authority and governance of the chartered institutions set forth in their respective enabling legislation in this title, as amended, and, in the event of a conflict between the provisions of this chapter and any provisions of such enabling legislation, the enabling legislation shall control; however, if a provision of law applicable generally to state agencies conflicts with any provision of this chapter as applied to a chartered institution for which the effective charter date has passed, the provisions of this chapter shall

1289 control.

1290 § 23-38.91. Definitions. As used in this chapter, the following terms have the following meanings,
1291 unless the context requires otherwise:

1292 "Bonds" means bonds, notes, revenue certificates, lease participation certificates or other evidences
1293 of indebtedness or deferred purchase financing arrangements.

1294 "Charter Agreement" means an agreement between the Commonwealth and a Commonwealth
1295 Chartered University or College as required by § 23-38.92.

1296 "Chartered institution" and "Commonwealth Chartered University or College" mean a public
1297 institution of higher education of the Commonwealth that has been granted a charter to operate as a
1298 Commonwealth Chartered University or College in accordance with the provisions of this chapter.

1299 "Cost of Education" means the sum of the amounts, calculated by the State Council of Higher
1300 Education for Virginia, necessary for that institution to achieve full funding of base adequacy, including
1301 appropriate funding of administrative and staff salaries and benefits, and full funding of the 60th
1302 percentile of that institution's benchmarks for faculty salaries, and related benefits, approved by the
1303 State Council of Higher Education for Virginia.

1304 "Costs" means all operating costs and all costs of construction, reconstruction, renovation, site work
1305 and acquisition of lands, structures, rights-of-way, franchises, easements and other property rights and
1306 interests; costs of demolition, removal or relocation of buildings or structures; costs of labor, materials,
1307 machinery and all other kinds of equipment; financing charges; costs of engineering and inspections;
1308 costs of financial, legal and accounting services; costs of plans, specifications, studies, and surveys;
1309 estimates of costs and of revenues; feasibility studies and administrative expenses, including
1310 administrative expenses during the start-up of any project; costs of issuance of bonds, including
1311 printing, engraving, advertising, legal and other similar expenses; credit enhancement and liquidity
1312 facility fees; fees for interest rate caps, collars, swaps or other financial derivative products; interest on
1313 bonds in connection with a project prior to and during construction or acquisition thereof and for a
1314 period not exceeding one year thereafter; provisions for working capital to be used in connection with
1315 any project; redemption premiums, obligations purchased to provide for the payment of bonds being
1316 refunded and other costs necessary or incident to refunding of bonds; operating and maintenance
1317 reserve funds, debt reserve funds and other reserves for the payment of principal and interest on bonds;
1318 and all other expenses necessary, desirable or incidental to the operation of the institution's facilities or
1319 the construction, reconstruction, renovation, acquisition or financing of projects or other facilities or
1320 equipment appropriate for carrying out the purposes of this chapter and the placing of the same in
1321 operation; or the refunding of bonds.

1322 "Effective Charter Date" means July 1 of the year following the December 31 or earlier date on
1323 which is submitted to the chairmen of the House Committee on Appropriations and Senate Committee on
1324 Finance a charter agreement executed by the Commonwealth and a public institution of higher
1325 education that has been designated as a Commonwealth Chartered University or College.

1326 "Effective Charter Amendment Date" means the date on which an amendment to a Charter
1327 Agreement is executed by the Commonwealth and a Commonwealth Chartered University or College,
1328 but no earlier than July 1 of the year following the year in which such amendment is executed.

1329 "Employee" means any person who is regularly employed on either a salaried or wage basis by any
1330 institution chartered under this chapter, whose tenure is not restricted as to temporary or provisional
1331 appointment and whose compensation is payable, no more often than biweekly, in whole or in part.

1332 "Enabling legislation" means those chapters of Title 23, as amended, creating, continuing, or
1333 otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher
1334 education.

1335 "Public institution of higher education" means those institutions enumerated in § 23-14.

1336 "Facilities" means all property or rights in property, real and personal, tangible and intangible,
1337 including but not limited to all facilities and infrastructure suitable for providing educational services
1338 and including any and all structures, buildings, improvements, additions, extensions, replacements,
1339 appurtenances, lands, rights in land, furnishings, landscaping, approaches, roadways and other related
1340 and supporting facilities, now or hereafter owned, leased, operated or used, in whole or in part, by a
1341 chartered institution.

1342 "Obligations" of a chartered institution means all debts or other obligations, contingent or certain,
1343 owing to any person or other entity on the transfer date, arising out of the operation of a chartered
1344 institution, and including all bonds and other debts for the purchase of goods and services, whether or
1345 not delivered, and obligations for the delivery of services, whether or not performed.

1346 "Project" means any research programs and any research or educational facility or equipment
1347 necessary or convenient to or consistent with the purposes of a chartered institution, whether or not
1348 owned by the institution, including, without limitation, research, training, teaching, dormitory and
1349 classroom facilities; all related and supporting facilities and equipment necessary or desirable in
1350 connection therewith or incidental thereto; or equipment alone, including, without limitation, office,

parking, kitchen, laundry, laboratory, wellness, pharmaceutical, administrative, communications, computer, and recreational and athletic facilities; hotels and related facilities; power plants and equipment; storage space; hospitals; nursing homes; continuing care facilities; self-care facilities; wellness and health maintenance centers; medical office facilities; clinics; outpatient clinics; surgical centers; alcohol, substance abuse, and drug treatment centers; laboratories; sanitariums; hospices; facilities for the residence or care of the elderly, the handicapped, or the chronically ill; residential facilities for nurses, interns, and physicians; other kinds of facilities for the treatment of sick, disturbed, or infirm persons or the prevention of disease or maintenance of health; colleges, schools or divisions offering undergraduate or graduate programs for the health professions and sciences and such other branches of learning as may be appropriate, together with mobile medical facilities; vehicles; air transport equipment and other equipment necessary or desirable for the transportation of medical equipment, medical personnel or patients; and all lands, buildings, improvements, approaches and appurtenances necessary or desirable in connection with or incidental to any project.

"Stable but restructured general fund appropriation commitment" means the stable commitment from the Commonwealth for future allocations of general funds that an institution chartered pursuant to this chapter individually negotiates with the Commonwealth and that is based on a percentage of that institution's cost of education funded by general fund appropriations but may be less, relative to other public colleges and universities in the Commonwealth, than the institution would have received if it had not been chartered under this chapter.

"Virginia Retirement System" means that retirement system, or other authorized retirement system, established pursuant to Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1.

Article 2.

Chartering Procedures; Governance and Authority.

§ 23-38.92. Chartering requirements.

Any institution of higher education that prior to July 1, 2004, was constituted as a public institution of higher education of the Commonwealth pursuant to this title may become a Commonwealth Chartered University or College by complying with the following requirements:

1. An absolute two-thirds, or more, of the institution's governing body shall have voted in the affirmative for a resolution expressing the sense of the body that the institution is qualified to become and therefore should become a Commonwealth Chartered University or College pursuant to this chapter.

2. Following an affirmative vote by such governing body, the institution shall submit to the Governor a written request for his approval for the conversion of the institution to political subdivision status as a Commonwealth Chartered University or College. A copy of such request shall be sent to the chairmen of the House Committee on Appropriations, the House Education Committee, the Senate Committee on Finance and the Senate Education and Health Committee. Such written request shall provide documentation substantiating that: (i) through its participation in past decentralization programs authorized by the General Assembly, the institution possesses the necessary administrative infrastructure, experience and expertise to perform successfully its public educational mission as a Commonwealth Chartered University or College; (ii) the institution is financially able to negotiate a stable but restructured state general fund appropriation commitment without jeopardizing the financial integrity and stability of the institution; (iii) the institution consistently meets the Commonwealth's Management Standards; and (iv) the institution's governing body has adopted performance and accountability standards against which its implementation of this additional authority can be measured.

If the Governor finds that the institution meets the criteria set forth in clause (ii) of this section, he shall authorize the Secretaries of Finance, Administration and Education to enter into a charter agreement with the governing body of that institution addressing such matters as that institution's cost of education, the extent to which state general fund appropriations will defray its per student cost of education, its in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students.

Any such charter agreement shall be submitted by no later than December 31 of any given year to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance and shall not become effective until its effective charter date.

§ 23-38.93. Governance of chartered universities and colleges.

Each chartered institution shall be governed and administered in the manner provided in this chapter, in the appropriation act, and in each such institution's enabling legislation.

§ 23-38.94. Powers and authority generally.

In addition to those powers granted in each such institution's enabling legislation, an institution chartered pursuant to this chapter shall have all the powers and authority necessary or convenient to carry out the purposes and provisions of this chapter, including, without limitation, the following powers and authority:

- 1412 1. To sue and be sued in its own name;
1413 2. To have and alter an official seal;
1414 3. To have perpetual duration and succession in its name;
1415 4. To manage its operations and finances, subject to such accountability measures and audits as are
1416 provided in this chapter or as may otherwise be specifically made applicable by other law to institutions
1417 chartered under this chapter;
1418 5. To make and execute contracts, guarantees or any other instruments and agreements necessary or
1419 convenient for the exercise of its powers, authority and functions including, without limitation, to make
1420 and execute contracts with persons to operate and manage any or all institution's facilities or
1421 operations, and to incur liabilities and secure the obligations of any entity or individual;
1422 6. To conduct or engage in any lawful business, activity, effort or project consistent with the
1423 institution's purposes or necessary or convenient to exercise its powers and authority;
1424 7. To determine the tuition and fees for its students, to determine rates and charges applicable to its
1425 other nongeneral fund revenue sources, to adopt the budget for the institution, and control the
1426 expenditures of all moneys generated or received by the institution, including tuition, fees and other
1427 nongeneral fund revenue sources; however, all state general funds to be allocated to the institution shall
1428 remain fully subject to the appropriations process, and the Commonwealth may require a chartered
1429 institution to transfer to the general fund any revenues derived from the operation of a capital project
1430 that have been pledged to provide security for the creation of state debt issued pursuant to §§ 9(c) and
1431 9(d) of the Constitution of Virginia;
1432 8. To accept, hold and enjoy any gift, devise or bequest to the institution or its predecessors, the
1433 same to be held for the uses and purposes designated by the donor, if any, or if not so designated, for
1434 the general purposes of the institution, whether given directly or indirectly; and to accept, execute and
1435 administer any trust or endowment fund in which it has or may have an interest under the terms of the
1436 instrument creating the trust or endowment fund;
1437 9. To borrow money and issue bonds as provided in this chapter and to purchase such bonds;
1438 10. To seek financing from, incur or assume indebtedness to and enter into contractual commitments
1439 with, the Virginia Public Building Authority and the Virginia College Building Authority, which
1440 authorities are authorized to borrow money and make and issue negotiable notes, bonds and other
1441 evidences of indebtedness to provide such financing relating to facilities or any project;
1442 11. In addition to powers granted pursuant to this chapter, to incur or assume indebtedness and
1443 enter into contractual commitments in accordance with the provisions of Chapter 3 of this title;
1444 12. To seek financing from, incur or assume indebtedness to, and enter into contractual commitments
1445 with the Commonwealth as otherwise provided by law relating to the institution's facilities or any
1446 project; and
1447 13. To procure such insurance, participate in such insurance plans, provide such self-insurance,
1448 continue participation in Commonwealth insurance or self-insurance plans, continue to participate in the
1449 Commonwealth's risk management system, establish one or more retirement plans, continue participation
1450 in the Virginia Retirement System, or any combination of the foregoing, as it deems necessary or
1451 convenient to carry out the purposes and provisions of this chapter. The purchase of insurance,
1452 participation in an insurance plan, or creation of a self-insurance plan by the institution shall not be
1453 deemed a waiver or relinquishment of any sovereign immunity to which the institution or its officers,
1454 directors, employees, or agents are otherwise entitled.
- 1455 The chartering of any institution pursuant to this chapter shall not disqualify it from participating in
1456 any Commonwealth insurance, self-insurance or risk management program on the same terms and
1457 conditions applicable to state agencies and unchartered institutions of higher education.
- 1458 § 23-38.95. Operation of projects.
- 1459 A. A chartered institution may acquire, plan, design, construct, own, rent as landlord or tenant,
1460 operate, control, remove, renovate, enlarge, equip, and maintain, directly or through stock or nonstock
1461 corporations or other entities, any project as defined in this chapter. Such projects may be owned or
1462 operated by the institution or other persons, or jointly by such institution and other persons, and may be
1463 operated within or without the Commonwealth, so long as their operations are necessary or desirable to
1464 assist the institution in carrying out its public purposes within the Commonwealth, and so long as any
1465 private benefit resulting to any such other private persons from any such project is merely incidental to
1466 the public benefit of such project.
- 1467 B. In the operation of any facility, including any hospital or other health-care and related facilities
1468 owned or operated by a chartered institution, such institution may make and enforce all rules and
1469 regulations necessary or desirable for such operation. Any such rules pertaining to the operation of
1470 hospital or other health care or related facilities may include, without limitation, rules relating to the
1471 conditions under which the privilege of practicing medicine may be available therein, the admission and
1472 treatment of patients, the procedures for determining the qualification of patients for indigent care or
1473 other programs, and the protection of patients and employees, provided that such rules and regulations

shall not discriminate on the basis of race, religion, color, sex or national origin or other factor prohibited by law.

§ 23-38.96. Law enforcement and public safety.

A. A chartered institution shall be empowered to adopt and enforce reasonable rules and regulations governing access to, conduct in or on, and use of its property and facilities and surrounding streets, sidewalks and other public areas, and governing other matters affecting the safety and security of its property and of those using or occupying its property. Such rules and regulations shall have the force and effect of law and shall be available at all time for public inspection at a convenient and accessible location and shall be publicly posted on the institution's website or other location where they may be conveniently seen.

B. Chartered institutions may continue to operate or establish a campus police department in accordance with the provisions of Chapter 17 (§ 23-232 et seq.). Such campus police department of a chartered institution may enforce on the institution's property the laws of the Commonwealth and rules and regulations adopted pursuant to subsection A.

§ 23-38.97. Acquisition and disposition of property; acceptance of grants and loans.

A. To continue its educational mission, a chartered institution may:

1. Continue to hold, possess and use any property, real or personal, tangible or intangible, that such institution owned, held or possessed prior to its becoming a chartered institution; however, following its conversion to chartered institution status, such institution may not use, dispose of or otherwise deal with such property in any manner in which it would have been prohibited had it not become a chartered institution, unless otherwise authorized to do so by any provision of this chapter or by such institution's enabling legislation;

2. Acquire property through the expenditure of a general fund appropriation by the General Assembly for that purpose or through the expenditure of funds received by the chartered institution as proceeds of state-supported debt and thereafter hold, use, and dispose of such property in accordance with general law applicable to state-owned property;

3. Acquire with any funds in its possession, other than general fund appropriations and other than funds received by the chartered institution as proceeds of state-supported debt, any real or personal property, tangible or intangible, and thereafter own, hold, improve, use and otherwise deal with such property, or any right, easement, estate or interest therein, acquired by purchase, exchange, gift, assignment, transfer, foreclosure, lease, bequest, devise, operation of law or other means on such terms and conditions and in such manner as it may deem proper;

4. Consistent with the provisions of subdivision 1 through 3 of this subsection, sell, assign, lease, encumber, mortgage or otherwise dispose of any project or any other real or personal property, tangible or intangible, or any right, easement, estate or interest therein, or any deed of trust or mortgage lien interest owned by it, under its control or custody or in its possession, and may release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it; and

5. Do any of the foregoing by public or private sale.

B. A chartered institution may accept loans, grants, contributions or other assistance from the federal government, the Commonwealth or any political subdivision thereof, or from any other public or private source to carry out its mission as a public institution of higher education of the Commonwealth and any of the purposes of this chapter.

A chartered institution may enter into any agreement or contract regarding or relating to the acceptance, use or repayment of any such loan, grant, contribution or assistance, and may enter into such other agreements with any such entity in furtherance of the purposes of this chapter. Counties, cities and towns are hereby authorized to lend or donate money or other property to a chartered institution for any of its purposes. Any local government making the grant or loan may restrict the use of the grant or loan to a specific project, within or without that locality.

§ 23-38.98. Procurement.

Chartered institutions shall be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.); however, a chartered institution shall adopt and comply with regulations for the procurement of goods and services, including professional services. Such regulations shall be based upon competitive principles and shall in each instance seek competition to the maximum practical degree.

The regulations shall implement a system of competitive negotiation for professional services that shall prohibit discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation or award of contracts and incorporate the prompt payment principles of §§ 2.2-4352 and 2.2-4354.

Such regulations may, among other things, (i) provide for consideration of the dollar amount of the intended procurement, the term of the anticipated contract, and the likely extent of competition; (ii)

1535 implement a prequalification procedure for contractors or products; and (iii) include provisions for
1536 cooperative arrangements with private health or educational institutions, or with the Commonwealth's
1537 state agencies or institutions of the several states, the District of Columbia, the territories, and the
1538 United States.

1539 § 23-38.99. Leases of property.

1540 The governing body of a chartered institution shall adopt such regulations relating to the leasing of
1541 real property, including capital leases, that reasonably ensure that such leases are efficiently procured
1542 on appropriate terms and for appropriate purposes. Such regulations relating to capital leases shall be
1543 consistent with any requirements applied to state agency capital leases by the State Treasurer.

1544 Unless otherwise specified by law, chartered institutions shall be exempt from any state or local
1545 rules, regulations, and guidelines relating to leases of real property by public entities.

1546 § 23-38.100. Licenses and permits.

1547 All licenses, permits, certificates of public need or other authorizations of the Commonwealth or any
1548 agency or locality or agency thereof that are held by any institution immediately prior to its conversion
1549 to a Commonwealth Chartered University or College shall remain in effect after the effective charter
1550 date for that institution. A chartered institution operating a medical center shall continue to be exempt
1551 from the provisions of §§ 32.1-123 through 32.1-136 of the Code of Virginia, including any rules,
1552 regulations and guidelines relating to licensure of hospitals by the Board of Health, and shall be
1553 deemed to be licensed as a hospital for purposes of other laws relating to operation of hospitals
1554 licensed by the Board of Health, except to the extent such law specifically excludes the Commonwealth
1555 or its agencies.

1556 § 23-38.101. Eminent domain.

1557 A chartered institution may exercise the power of eminent domain granted to those educational
1558 institutions designated in § 23-14, pursuant to the provisions of Title 25.1, to acquire by condemnation
1559 any real property, including fixtures and improvements, which it may deem necessary to carry out the
1560 purposes of this chapter. The institution's governing body shall have first adopted a resolution declaring
1561 that the acquisition of such property by condemnation is in the public interest and necessary for public
1562 use and the exercise of the power of eminent domain shall be subject to the prior approval of the
1563 Governor.

1564 A chartered institution may acquire property already devoted to a public use, provided that no
1565 property belonging to any city, town or county or to any government or to any religious or charitable
1566 corporation may be acquired without its consent.

1567 § 23-38.102. Fees, rentals and other charges.

1568 A chartered institution may fix, revise from time to time, charge and collect rates, rentals, fees and
1569 other charges for the services or facilities furnished by or on behalf of such institution, and may
1570 establish regulations regarding any such service rendered or the use, occupancy or operation of any
1571 such facility. The rates and amounts of such charges and regulations shall not be subject to supervision
1572 or regulation by any commission, board, bureau, or agency of the Commonwealth except as otherwise
1573 provided by law for the providers of health care.

1574 § 23-38.103. Creation of entities; participation in joint ventures; moneys; investments. A. A chartered
1575 institution may create or assist in the creation of; may own in whole or in part or otherwise control;
1576 may participate in or with any entities, public or private; and may purchase, receive, subscribe for,
1577 own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise acquire or dispose of any (i)
1578 shares or obligations of, or other interests in, any entities organized for any purpose within or without
1579 the Commonwealth, and (ii) obligations of any person or corporation. No part of the assets or net
1580 earnings of such institution shall inure to the benefit of, or be distributable to, any private individual,
1581 except that reasonable compensation may be paid for services rendered to or for such institution in
1582 furtherance of its public purposes, and benefits may be conferred that are in conformity with said
1583 purposes.

1584 B. A chartered institution may participate in joint ventures with individuals, corporations,
1585 governmental bodies or agencies, partnerships, associations, insurers or other entities to facilitate any
1586 activities or programs consistent with the public purposes and intent of this chapter.

1587 C. A chartered institution may create a nonprofit entity or entities for the purpose of soliciting,
1588 accepting and administering grants, gifts and bequests, endowment gifts and bequests, and gifts and
1589 bequests in trust.

1590 D. In carrying out any activities authorized by this chapter, a chartered institution may provide
1591 appropriate assistance, including making loans and providing time of employees, to corporations,
1592 partnerships, associations, joint ventures or other entities, whether or not such corporations,
1593 partnerships, associations, joint ventures or other entities are owned or controlled in whole or in part,
1594 directly or indirectly, by such institution.

1595 E. All moneys of a chartered institution, from whatever source derived, including moneys transferred
1596 to such institution pursuant to a general fund appropriation, shall be paid to the treasurer of such

institution or to such other officer as may be assigned duties normally attendant to the position of treasurer. Such moneys shall be deposited in the first instance by the treasurer or such other officer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give security for such deposits, if required by such institution. The moneys in such accounts shall be paid out on the warrant or other orders of the treasurer of such institution or such other person or persons as such institution may authorize to execute such warrants or orders.

F. A chartered institution may enter into any contract that the institution determines to be necessary or appropriate to place any bond or investment of the institution, in whole or in part, on the interest rate, cash flow or other basis desired by the institution, which contract may include, without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the institution in connection with, incidental to, entering into, or maintaining any (i) agreement that secures bonds or (ii) investment or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the institution, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. Any money set aside and pledged to secure payments of bonds or any of the contracts entered into pursuant to this section may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section.

§ 23-38.104. Exemption from taxation.

A chartered institution shall be exempt from the assessment and payment of all state and local taxes or assessments upon any of its projects, property, operations, and any income therefrom. The exemptions hereby granted shall not extend to private persons or entities authorized to conduct on such an institution's property businesses for which payment of state or local taxes are required.

Any bonds or notes issued by an institution chartered under the provisions of this chapter, the transfer thereof and the income therefrom, and all rents, fees, charges, gifts, grants, revenues, receipts and other moneys received or pledged to pay or secure the payment of such bonds or notes, shall at all times be free from taxation and assessment of every kind by the Commonwealth and its localities.

Article 3. Personnel.

§ 23-38.105. Personnel.

A. The governing body of each chartered institution may elect to adopt a personnel system to be administered by such institution for nonfaculty personnel that is consistent with the provisions of Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2, pertaining generally to state employees, or it may adopt such other personnel system for nonfaculty personnel as it determines to be appropriate.

Any personnel system adopted by the governing body of such institution shall be established by regulation and shall be based on merit principles and objective methods of appointment, promotion, transfer, layoff, removal, discipline, and other appropriate topics included in such personnel system based on such principles and methods.

B. Each such chartered institution may establish a system of personnel administration for faculty as provided in such institution's enabling legislation.

C. All nonfaculty employees of any such institution who were employed immediately prior to its effective charter date shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.) to the extent that they were subject to the State Grievance Procedure prior to the institution's effective charter date.

§ 23-38.106. Grievance procedures applicable to nonfaculty personnel.

A. The governing body of each chartered institution shall adopt policies that encourage the resolution of employment-related problems and complaints of the nonfaculty personnel of such institutions. Such policies shall provide that nonfaculty personnel of the institution shall be able to discuss freely, and without retaliation, their concerns with their immediate supervisors and management. To the extent that such concerns cannot be resolved informally, the affected institution's grievance policies shall afford access to the procedure under § 2.2-3000 et seq., which shall apply to the nonfaculty personnel of institutions chartered under this chapter.

B. To fully achieve the objectives of this chapter and to create uniformity, each chartered institution shall:

1. Require supervisory personnel to be trained in the applicable grievance procedures, personnel policies, and conflict resolution;

2. Familiarize nonfaculty personnel with their grievance rights and promote the services of the Department of Employment Dispute Resolution;

3. Cooperate with investigations conducted pursuant to clause (iii) of subdivision 4 of § 2.2-1001;

4. Establish a mediation program; and

5. Evaluate supervisors on the effectiveness of employee relations management, including, but not limited to, their handling of grievances.

§ 23-38.107. Discrimination prohibited; participation of small and women- or minority-owned business.

In the solicitation and awarding of contracts, no chartered institution shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each such institution shall include small and women- or and minority-owned businesses.

§ 23-38.108. Miscellaneous personnel matters.

A. All appointments to, and promotions and tenure in, positions in the service of a chartered institution shall be based upon merit and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications by that institution.

B. Any person who leaves the service of a chartered institution for service in any of the armed forces of the United States shall be entitled to be restored to his position upon the termination of his service with the armed forces, provided that, except for good cause shown, such person has filed an application for restoration to such position within 90 calendar days following such termination of military service, accompanied by a certificate attesting that the military duty was satisfactorily performed; and further provided that such person's position has not been abolished in the meantime. Such person shall thereafter hold such position as though he or she had received appointment under the terms of this chapter. Any such former employee returning to, or applying for, employment as provided by this section shall be considered as having at least as favorable a status with reference to this chapter as he would have occupied if his service with the institution had been continuous.

C. No establishment of a position or rate of pay, and no change in rate of pay, shall become effective except on order of the appointing institution.

D. No employee of or applicant for employment with any chartered institution shall be required, as a condition of employment, to smoke or use tobacco products on the job, or to abstain from smoking or using tobacco products outside the course of his employment, provided that this section shall not apply to those classes of employees to which § 27-40.1 or § 51.1-813 is applicable.

E. If any veteran applies for employment with any chartered institution for a position that is based on the passing of any written examination, the veteran's grade or rating on such examination shall be increased by five percent in a manner consistent with federal and state law. If the veteran has a service-connected disability rating fixed by the United States Department of Veterans Affairs, however, his grade or rating shall be increased by 10 percent on such written examination. Such increases shall apply only if the veteran passes such examination. If any veteran applies for employment with any chartered institution that is not based on the passing of any examination, such veteran's military service shall be taken into consideration by the institution during the selection process in a manner consistent with federal and state law, provided that such veteran meets all of the knowledge, skill, and ability requirements for the available position. If any veteran is denied employment by any such institution, he or she shall be entitled, to the extent permitted by law, to request and inspect information regarding the reasons for such denial. As used in this section, "veteran" means any person who has received an honorable discharge and has (i) provided more than 180 consecutive days of full-time, active-duty service in the armed forces of the United States or reserve components thereof, including the National Guard, or (ii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

F. For any employee who has been ordered to active military service in the armed forces of the United States or in the organized reserve forces of any of the armed services of the United States or of the Virginia National Guard, the affected chartered institution shall allow the use of accrued annual leave for active military duty according to personnel policies developed by that institution's governing body.

"Active military duty," as used in this subsection, means federally funded military duty as (i) a member of the armed forces of the United States on active duty pursuant to Title 10 U.S.C. or (ii) a member of the Virginia National Guard on active duty pursuant to either Title 10 or Title 32 U.S.C.

G. Clerical personnel of a chartered institution who have passed all parts of the certified professional secretary examination, evidenced by certification by the Institute for Certifying Secretaries, a department of the National Secretaries Association (International), or the professional legal secretary examination, evidenced by certification by the Certifying Board of the National Association of Legal Secretaries (International), shall be assured that this certification will be taken into consideration when opportunity for promotion becomes available.

Article 4.

Insurance and Retirement Plans.

§ 23-38.109. Insurance plans and retirement plans; definition.

As used in this article, the term "grandfathered employee" means any employee of a chartered institution who, immediately prior to the effective charter date for that institution, is a member of any plan for providing health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2, or is a member of the Virginia Retirement System or is a member of both such health insurance and retirement plans.

The term "nongrandfathered employee" means an employee of a chartered institution who is employed on or after the effective charter date of that institution.

§ 23-38.110. Health insurance plans.

Each chartered institution is authorized to (i) establish a health insurance plan for the benefit of its personnel or (ii) enter into agreements with the Department of Human Resource Management providing for the coverage of its personnel under the state employees' health insurance plan, or (iii) any combination of clauses (i) and (ii). All grandfathered employees shall have the right to continue to be a member of any health insurance plan for state employees that covered such employee prior to the institution's effective charter date under the same terms and conditions as if the institution had retained its prior status and each such institution may elect to continue its nongrandfathered employees in such health insurance plan. Alternatively, a grandfathered employee may elect to become a member of any health insurance plan established by such institution pursuant to the authority granted to it in this section. Any plan adopted by a chartered institution pursuant to this section shall be included in a charter agreement presented to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance pursuant to § 23-38.92. If such a plan, or an amendment to such a plan, has not been so presented, such plan or amendment shall be treated as a separate charter agreement and shall be submitted to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance as required by § 23-38.92 before it may become effective.

§ 23-38.111. Additional insurance plans.

Each chartered institution under this chapter shall purchase group life, accidental death and dismemberment, and disability insurance policies covering in whole or in part its employees. Such employees shall not be required to present evidence of insurability satisfactory to an insurance company for basic group life insurance coverage. All grandfathered employees shall be provided basic group life insurance that has at least the same level of coverage as provided by the Virginia Retirement System. All nongrandfathered employees shall be provided basic group life insurance at a level of coverage determined by such institution's governing body, provided that the level of coverage shall not be less than the equivalent of one times the employee's annual salary. A chartered institution may require nongrandfathered employees to pay all or a portion of the required basic group life insurance coverage, which may be collected through a payroll deduction program. Such institution may increase the insurance coverage under such policies to make available to active insured employees optional life, accidental death and dismemberment, and disability insurance. Such institution's employees shall not be covered by the Virginia Retirement System's group life, accidental death or dismemberment insurance program under § 51.1-501.

§ 23-38.112. Retirement plans for employees.

A. Each chartered institution shall have the authority to either (i) continue the participation of personnel in the Virginia Retirement System; (ii) establish one or more retirement plans for the benefit of its personnel; or (iii) any combination of clauses (i) and (ii). Each such institution shall develop and file with the Board of Trustees of the Virginia Retirement System policies and procedures for the administration of any retirement plan established by such institution pursuant to the authority granted by this section. The contribution on behalf of grandfathered employees and nongrandfathered employees by such institution to a retirement plan established under this section shall be determined by the institution's governing body. Any plan adopted by a chartered institution pursuant to this section shall be included in a charter agreement presented to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance pursuant to paragraph (3) of § 23-38.92. If such a plan, or an amendment to such a plan, has not been so presented, such plan or amendment shall be treated as a separate charter agreement and shall be submitted to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance as required by § 23-38.92 before it may become effective.

B. All grandfathered employees of a chartered institution shall have the option (i) to participate in a retirement plan established by that institution pursuant to the authority granted in this section or (ii) to continue to be a member of the Virginia Retirement System or, where applicable, to continue to be a member of any other authorized retirement plans, under the same terms and conditions that were in effect prior to that institution's effective charter date.

C. If a chartered institution's governing body determines to establish a retirement program under this section, it shall provide a 60-day open enrollment period established at such time as the institution may

determine. A grandfathered employee may elect to become a member of any such retirement program by causing the transfer of assets from the Virginia Retirement System that are equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. For purposes hereof, the basic benefits shall be the benefit accrued by the grandfathered employee under the Virginia Retirement System based on creditable service and average final compensation as defined in § 51.1-124.3 and determined as of the transfer date. The actuarial present value shall be determined on the same basis, using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System so that the transfer of assets to the retirement plan established by the institution will have no effect on the funded status and financial stability of the Virginia Retirement System. A chartered institution shall reimburse the Virginia Retirement System for the actual cost of actuarial services necessary to determine the present value of the accrued basic benefit of employees who elect to transfer to a retirement plan established by that institution. No employee of a chartered institution who is an active member of a retirement plan established under this section shall also be an active member of the Virginia Retirement System or a beneficiary of such retirement system.

D. If a chartered institution has adopted a retirement plan under § 51.1-126 for its employees who are engaged in the performance of teaching, administrative, or research duties, the plan established under this section shall offer similar investment opportunities as are available to the participants of the plan established pursuant to § 51.1-126.

Article 5.

Accountability.

§ 23-38.113. Education policies of the Commonwealth; other requirements.

A. For the purposes of §§ 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.1:1, 23-3, , 23-4.1, 23-4.2, 23-4.3, , 23-4.4, 23-7.1:02, 23-7.4, 23-7.4:1, 23-7.4:2, 23-7.4:3, 23-7.5, 23-8.2:1, 23-9.1, 23-9.2, 23-9.2:3, 23-9.2:3.1, and 23-9.2:3.2 through 23-9.2:5, each chartered institution shall remain a public institution of higher education of the Commonwealth following its conversion to chartered status, and shall retain the authority granted and any obligations required by such provisions.

In addition, each such institution shall retain the authority, and any obligations related to the exercise of such authority that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et seq.); Chapter 3 (§ 23-14 et seq.); Chapter 3.2 (§ 23-30.23 et seq.); Chapter 3.3 (§ 23-30.39 et seq.); Chapter 4 (§ 23-31 et seq.); Chapter 4.01 (§ 23-38.10:2 et seq.); Chapter 4.1 (§ 23-38.11 et seq.); Chapter 4.4 (§ 23-38.45 et seq.); Chapter 4.4:1 (§ 23-38.53:1 et seq.); Chapter 4.4:2 (§ 23-38.53:4 et seq.); Chapter 4.4:3 (§ 23-38.53:11); Chapter 4.4:4 (§ 23-38.53:12 et seq.); Chapter 4.5 (§ 23-38.54 et seq.); Chapter 4.7 (§ 23-38.70 et seq.); Chapter 4.8 (§ 23-38.72 et seq.); and Chapter 4.9 (§ 23-38.75 et seq.) of this title.

B. The incorporation into this chapter of one or more provisions of Virginia law by express cross-reference shall not operate by implication to render other provisions of Virginia law inapplicable to chartered institutions if (i) such other laws by their terms apply to such institutions in their capacity as political subdivisions of the Commonwealth and (ii) no provision of this chapter states that such other laws are inapplicable to chartered institutions.

§ 23-38.114. Public access to information.

A chartered institution shall be subject to the provisions of the Freedom of Information Act (§ 2.2-3700 et seq.).

§ 23-38.115. Conflicts of interests; other requirements.

The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) shall apply to the members of the governing body and the faculty and nonfaculty personnel of a chartered institution.

§ 23-38.116. Records of financial transactions.

A chartered institution shall adopt the system of bookkeeping and accounting that has been prescribed for governmental and nonprofit organizations by the Financial Accounting Foundation.

§ 23-38.117. Audits.

The Auditor of Public Accounts or his legally authorized representatives audit annually accounts of all chartered institutions and shall distribute copies of each annual audit to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

Pursuant to § 30-133, the Auditor of Public Accounts and his legally authorized representatives shall examine annually the accounts and books of each such institution; however, a chartered institution 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.

Each chartered institution shall be subject to periodic external review by the Joint Legislative and Audit Review Commission, and such other reviews and audits, as shall be required by law.

§ 23-38.118. Investments of funds.

As a political subdivision, a chartered institution may invest its operating funds in any obligations or securities that are considered legal investments for public funds in accordance with Chapter 45

(§ 2.2-4500 et seq.) of Title 2.2.

Such institution's governing body shall adopt written investment guidelines that provide that such investments shall be made solely in the interest of the chartered institution and shall be undertaken with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The governing body shall retain an independent investment advisory firm or consultant to review, at a minimum of every five years, the suitability of such institution's investments and their consistency with the investment guidelines.

§ 23-38.119. Capital projects.

A. All capital projects of a chartered institution, whether funded by an appropriation of the General Assembly or otherwise, shall be approved by such institution's governing body.

As a political subdivision, a chartered institution shall be exempt from any state legislative or executive branch rules, regulations, and guidelines pertaining to submission, review, approval or implementation of capital projects, and shall only be subject to regulations pertaining to capital projects adopted by the institution's governing body pursuant to subsection B of this section; however, a capital project funded in whole or in part by a general fund appropriation of the General Assembly shall remain subject to such preappropriation approvals as are in effect from time to time within the executive and legislative branches of state government.

In addition, a chartered institution shall ensure that the International Building Code requirements are met for all capital projects and that such projects are inspected by the State Fire Marshal or his designee prior to certification for building occupancy.

B. The governing body of chartered institution shall adopt regulations by which officers of the institution are required to oversee the implementation of all capital projects.

Article 6.

Additional Bond Issuance Authority.

§ 23-38.120. Authority to issue bonds.

A. A chartered institution may issue bonds from time to time for any purpose that would be appropriate had the institution remained a state agency, including to refund bonds or other obligations issued therefor by or on behalf of such institution, or otherwise, including bonds or obligations not then subject to redemption, and may guarantee, assume or otherwise agree to pay, in whole or in part, indebtedness issued by such institution or any other party resulting in the acquisition or construction of facilities for the benefit of such institution, or the refinancing thereof; provided, however, that nothing in this chapter shall preclude a chartered institution from participation in any financing program or bond issue established and implemented by the Commonwealth, or any agency thereof, if such institution is otherwise eligible for and approved for such participation and is otherwise able to fulfill any requirements that may be imposed upon it in relation to such participation.

Notwithstanding Article 1 (§ 2.2-1800 et seq.) of Chapter 18 of Title 2.2 and Chapter 3 (§ 23-14 et seq.) of Title 23, a chartered institution may issue bonds without obtaining the consent of any legislative body, elected official, commission, board, bureau or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by this chapter.

No bonds issued under the authority of this article shall constitute tax-supported debt of the Commonwealth nor shall they be subject to any review or approval procedure, rules, regulations or other procedures required by or adopted pursuant to Chapter 3 (§ 23-14 et seq.) of Title 23.

A chartered institution may issue such types of bonds as it may determine are appropriate, including, without limitation, bonds payable as to principal and interest from any one or more of the following sources: (i) its revenues generally; (ii) income and revenues derived from the operation, sale or lease of a particular project or projects, whether or not they are financed or refinanced from the proceeds of such bonds; (iii) funds realized from the enforcement of security interests or other liens or obligations securing such bonds; (iv) proceeds from the sale of bonds; (v) payments under letters of credit, policies of municipal bond insurance, guarantees or other credit enhancements; (vi) any reserve or sinking funds created to secure such payment; (vii) accounts receivable of such institution; or (viii) other available funds of such institution.

Any bonds may be additionally guaranteed by, or secured by a pledge of, any grant, contribution or appropriation from a participating political subdivision, the institution chartered under this chapter, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, partnership, association or individual.

Bonds of a chartered institution are declared to be for an essential public and governmental purpose.

§ 23-38.121. Liability on bonds.

No member of the governing body or officer, employee or agent of a chartered institution or any

1904 person executing bonds of such institution shall be liable personally on the bonds by reason of their
1905 issuance or execution. Bonds of a chartered institution shall not be a debt of the Commonwealth or any
1906 political subdivision thereof other than such institution and shall so state on their face.

1907 Neither the Commonwealth nor any political subdivision thereof other than the bond-issuing
1908 chartered institution shall be liable for payment of such bonds, nor shall such bonds be payable out of
1909 any funds or properties of the Commonwealth or any political subdivision thereof other than those of
1910 the bond-issuing institution chartered under this chapter, except as permitted by § 23-50.16:25.

1911 § 23-38.122. Form of bonds.

1912 A. Bonds of a chartered institution shall be authorized by resolution approved by an absolute
1913 majority of its governing body setting forth the maximum principal amount issuable and may be issued
1914 in one or more series, shall be dated, shall mature at such time or times not exceeding 40 years from
1915 their date and may be made redeemable or subject to tender before maturity, at the option of such
1916 institution, at such price or prices and under such terms and conditions as may be fixed by such
1917 institution or its agents prior to issuance. Bonds of a chartered institution shall bear interest payable at
1918 such times and at such rates as may be determined by such institution or as may be determined in such
1919 manner as such institution or its agents may provide, including rates approved by officers of the
1920 institution under authorization of such institution's governing body, rates tied to indices, rates of other
1921 securities or other standards and determinations by agents designated by such institution under
1922 guidelines established by the institution's governing body.

1923 B. A chartered institution shall determine the form of its bonds and the manner of execution and
1924 shall fix the denominations thereof and the place or places of payment of principal and interest, which
1925 may be at any bank or trust company or securities depository within or without the Commonwealth. The
1926 bonds may be issued in coupon or registered form, or both, and provision may be made for their
1927 registration in whole or in part. Bonds issued in registered form may be issued under a system of
1928 book-entry for recording the ownership and transfer of ownership of rights to receive payments thereon.
1929 If any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons
1930 shall cease to be such officer before delivery of such bond, such signature or such facsimile shall
1931 nevertheless be valid and sufficient for all purposes. A chartered institution may contract for the
1932 services of one or more banks, trust companies, financial institutions or other entities or persons, within
1933 or outside the Commonwealth, for the authentication, registration, transfer, exchange and payment of
1934 bonds, or may provide such services itself. A chartered institution may sell such bonds in such manner,
1935 either at public or private sale, and for such price, as it may determine is appropriate. Notwithstanding
1936 any of the other provisions of this chapter or any recitals in any bonds issued under the provisions of
1937 this chapter, all such bonds shall be deemed to be negotiable instruments under the laws of the
1938 Commonwealth.

1939 C. Prior to the preparation of definitive bonds, a chartered institution may issue interim receipts or
1940 temporary bonds, exchangeable for definitive bonds when such bonds shall have been executed and are
1941 available for delivery. Such institution may also provide for the replacement of any mutilated, destroyed,
1942 stolen or lost bonds.

1943 § 23-38.123. Trust indentures and mortgages; security for the bonds.

1944 A. Any bond issued by a chartered institution may be issued pursuant to or secured by a trust
1945 indenture, deed of trust or mortgage of any project or projects or any other property of such institution,
1946 whether or not financed, in whole or in part, from the proceeds of such bonds, by a trust or other
1947 agreement with a corporate trustee, which may be any trust company or bank having the powers of a
1948 trust company within or without the Commonwealth, or other agent for bondholders, or any combination
1949 thereof. Any such trust indenture or other agreement, or the resolution providing for the issuance of
1950 bonds, may pledge or assign fees, rents and other charges to be received and may contain provisions
1951 for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and
1952 proper and not in violation of law. Such provisions may include covenants: (i) providing for the
1953 collection and application of revenues and the repossession and sale by a bond-issuing institution
1954 chartered under this chapter, or any trustees under any trust indenture or agreement, of any project or
1955 other property upon default; (ii) setting forth duties of a chartered institution in relation to the
1956 acquisition, construction, maintenance, operation and insurance of any project or other property of such
1957 institution and the amounts of fees, rents and other charges to be charged; (iii) providing for the
1958 collection of such fees, rents and other charges, and the custody, safeguarding and application of all
1959 moneys of such institution; (iv) providing for the creation of sinking funds and the creation and
1960 maintenance of reserves; and (v) setting forth conditions or limitations with respect to the incurrence of
1961 indebtedness or the granting of mortgages or other liens. Such trust indenture, trust or other agreement
1962 or resolution may set forth the rights and remedies of the bondholders and of the trustee or other agent
1963 for bondholders and may restrict the individual right of action by bondholders.

1964 B. A chartered institution also may grant mortgages, deeds of trust, security interests and other liens
1965 on its real and personal property, including its accounts receivable, to secure bonds. All pledges of

revenues of a chartered institution for payment of bonds shall be valid and binding from the time when the pledge is made, and the revenues pledged and thereafter received by such institution shall be subject immediately to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against such institution, irrespective of whether such parties have notice thereof. A chartered institution also may provide for the recording or filing of any mortgage, deed of trust, security interest or other lien, or any financing statement or other instrument, necessary or desirable to create, perfect or evidence any lien created pursuant to this chapter.

C. It shall be lawful for any bank or trust company within or without the Commonwealth to serve as depository of the proceeds of bonds or of other revenues of a chartered institution and to furnish indemnifying bonds or to pledge such securities as may be required by such institution

D. All expenses incurred in carrying out the provisions of such trust indenture or agreement or resolution or other agreements relating to any project, including those to which a bond-issuing chartered institution may not be a party, may be treated as a part of the costs of a project.

§ 23-38.124. Remedies of bond obligees.

Except to the extent that the rights herein given may be restricted by such trust indenture or trust or other agreement, any holder of bonds or coupons issued by a chartered institution and the trustee or other agent for bondholders under any trust indenture or trust or other agreement may, either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this chapter or under such trust indenture, trust or other agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this chapter or by such trust indenture, trust or other agreement or resolution to be performed by a chartered institution or by any officer or agent thereof, including the fixing, charging and collecting of fees, rents and other charges.

§ 23-38.125. Bonds to be legal investments.

Bonds issued by a chartered institution are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

§ 23-38.126. Existing bonds or other obligations.

The conversion of an institution to a Commonwealth Chartered University or College shall neither enlarge nor diminish the rights or obligations of any party under any contract, bond, pledge or other agreement to which such institution was a party immediately prior to its conversion to chartered status.

§ 23-232. Establishment authorized; employment of officers.

A. The governing board of each public institution of higher learning named in § 23-14, hereafter sometimes referred to in this chapter as "institution," is authorized to establish a campus police department and to employ campus police officers and auxiliary forces upon appointment as provided in §§ 23-233 and 23-233.1. Such employment shall be governed by the Virginia Personnel Act, as set forth in Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.

B. The Virginia Commonwealth University Health System Authority shall be authorized to employ police officers and auxiliary forces as provided in this chapter and in § 23-50.15:11, except that the employment of such officers and forces shall not be governed by the Virginia Personnel Act.

C. Commonwealth Chartered Universities and Colleges established pursuant to Chapter 4.10 (§ 23-38.88 et seq.) of this title shall be authorized to employ police officers and auxiliary forces as provided in this chapter and in § 23-38.96, except that the employment of such officers and forces shall not be governed by the Virginia Personnel Act.

§ 25.1-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Body determining just compensation" means a panel of commissioners empanelled pursuant to § 25.1-227, jury selected pursuant to § 25.1-229, or the court if neither a panel of commissioners nor a jury is appointed or empanelled.

"Court" means the court having jurisdiction as provided in § 25.1-201.

"Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition pursuant to § 25.1-205, whichever occurs first.

"Freeholder" means any person owning an interest in land in fee, including a person owning a condominium unit.

"Land" means real estate and all rights and appurtenances thereto, together with the structures and

2027 other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

2028 "Locality" or "local government" means a county, city, or town, as the context may require.

2029 "Owner" means any person who owns property, provided that the person's ownership of the property
2030 is of record in the land records of the clerk's office of the circuit court of the county or city where the
2031 property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust,
2032 any person with a security interest in the property, or any person with a judgment or lien against the
2033 property. This definition of the term "owner" shall not affect in any way the valuation of property.

2034 "Person" means any individual; firm; cooperative; association; corporation; limited liability company;
2035 trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in
2036 bankruptcy or any other person acting in a fiduciary or representative capacity, whether appointed by a
2037 court or otherwise; club, society or other group or combination acting as a unit; the Commonwealth or
2038 any department, agency or instrumentality thereof; any city, county, town, or other political subdivision
2039 or any department, agency or instrumentality thereof; or any interstate body to which the
2040 Commonwealth is a party.

2041 "Petitioner" or "condemnor" means any person that possesses the power to exercise the right of
2042 eminent domain and that seeks to exercise such power under this chapter. The term "petitioner" or
2043 "condemnor" includes any person required to make an effort to purchase property as provided in
2044 § 25.1-204.

2045 "Property" means land and personal property, and any right, title, interest, estate or claim in or to
2046 such property.

2047 "State institution" means any (i) educational institution enumerated in § 23-14, *including any*
2048 *Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.),* or
2049 (ii) state hospital, state training school or state training center for the mentally retarded operated by the
2050 Department of Mental Health, Mental Retardation and Substance Abuse Services.

2051 § 30-133. Duties and powers generally.

2052 A. The Auditor of Public Accounts shall audit all the accounts of every state department, officer,
2053 board, commission, institution or other agency handling any state funds. In the performance of such
2054 duties and the exercise of such powers he may employ the services of certified public accountants,
2055 provided the cost thereof shall not exceed such sums as may be available out of the appropriation
2056 provided by law for the conduct of his office.

2057 B. The Auditor of Public Accounts shall review the information required in § 2.2-1501 to determine
2058 that state agencies are providing and reporting appropriate information on financial and performance
2059 measures, and the Auditor shall review the accuracy of the management systems used to accumulate and
2060 report the results. The Auditor shall report annually to the General Assembly the results of such audits
2061 and make recommendations, if indicated, for new or revised accountability or performance measures to
2062 be implemented for the agencies audited.

2063 C. The Auditor of Public Accounts shall prepare, by November 1, a summary of the results of all of
2064 the audits and other oversight responsibilities performed for the most recently ended fiscal year. The
2065 Auditor of Public Accounts shall present this summary to the Senate Finance, House Appropriations and
2066 House Finance Committees on the day the Governor presents to the General Assembly the Executive
2067 Budget in accordance with §§ 2.2-1508 and 2.2-1509 or at the direction of the respective Chairman of
2068 the Senate Finance, House Appropriations or House Finance Committees at one of their committee
2069 meetings prior to the meeting above.

2070 D. As part of his normal oversight responsibilities, the Auditor of Public Accounts shall incorporate
2071 into his audit procedures and processes a review process to ensure that the Commonwealth's payments
2072 for qualifying vehicles, as defined in § 58.1-3523, are consistent with the provisions of §§ 58.1-3525 and
2073 58.1-3526. The Auditor of Public Accounts shall report to the Governor and the Chairman of the Senate
2074 Finance Committee annually any material failure by a locality or the Commonwealth to comply with the
2075 provisions of Chapter 35.1 (§ 58.1-3523 et seq.) of Title 58.1.

2076 E. The Auditor of Public Accounts when called upon by the Governor shall examine the accounts of
2077 any institution maintained in whole or in part by the Commonwealth and, upon the direction of the
2078 Comptroller, shall examine the accounts of any officer required to settle his accounts with him; and
2079 upon the direction of any other state officer at the seat of government he shall examine the accounts of
2080 any person required to settle his accounts with such officer.

2081 F. Upon the written request of any member of the General Assembly, the Auditor of Public Accounts
2082 shall furnish the requested information and provide technical assistance upon any matter requested by
2083 such member.

2084 G. In compliance with the provisions of the federal Single Audit Act Amendments of 1996, Public
2085 Law 104-156, the Joint Legislative Audit and Review Commission may authorize the Auditor of Public
2086 Accounts to audit biennially the accounts pertaining to federal funds received by state departments,
2087 officers, boards, commissions, institutions or other agencies.

2088 H. *The Auditor and his legally authorized representatives shall examine annually the accounts and*

2089 books of any Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10
2090 (§ 23-38.88 et seq.). However, a chartered institution shall not be deemed to be a state or governmental
2091 agency, advisory agency, public body or agency or instrumentality for purposes of this chapter.

2092 § 58.1-100.1. Chartered institutions exempt.

2093 Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.),
2094 shall be exempt from the assessment and payment of all taxes imposed by this subtitle.

2095 § 58.1-2020.1. Chartered institutions exempt.

2096 Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.),
2097 shall be exempt from the assessment and payment of all taxes imposed by this subtitle.

2098 § 58.1-3000.1. Chartered institutions exempt.

2099 Commonwealth Chartered Universities and Colleges, as defined in Chapter 4.10 (§ 23-38.88 et seq.),
2100 shall be exempt from the assessment and payment of all taxes imposed by this subtitle.

2101 **2. That the University of Virginia, Virginia Polytechnic Institute and State University, and the**
2102 **College of William and Mary in Virginia are hereby declared to have satisfied the requirements of**
2103 **this chapter that are preliminary to conversion to the status of, and are hereby designated as,**
2104 **Commonwealth Chartered Universities; provided that each of these institutions still must enter**
2105 **into a Charter Agreement as required by this act.**