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**HOUSE BILL NO. 2866**

Offered January 21, 2005

A *BILL to amend the Code of Virginia by adding in Title 23 a chapter numbered 4.10, consisting of sections numbered 23-38.88 through 23-38.123, relating to the Restructured Higher Education Financial and Administrative Operations Act.*

Patrons—Callahan, Athey, Cox, Howell, W.J., Jones, S.C. and Welch

Referred to Committee on Appropriations

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Title 23 a chapter numbered 4.10, consisting of subchapters 1 through 4, articles numbered 1 through 6 in subchapter 4, and sections numbered 23-38.88 through 23-38.123 as follows:**

*Chapter 4.10**Restructured Higher Education Financial and Administrative Operations Act**Subchapter 1**General Provisions*

§ 23-38.88. A. In order to be eligible for the restructured financial and operational authority set forth in this chapter, the Board of Visitors of a public institution of higher education shall commit, through formal resolution adopted according to its own by-laws, to meeting the state goals specified below, and shall be responsible for ensuring that such goals are met, in addition to such other responsibilities as may be prescribed by law. Each such institution shall commit to:

1. Provide access to higher education for all citizens throughout the Commonwealth, including underrepresented populations, and, consistent with § 23.9.6:1.4 and in accordance with anticipated demand analysis, meet enrollment projections and degree estimates as agreed upon with the State Council of Higher Education for Virginia. It is the intent of the General Assembly that each institution bear a measure of responsibility for ensuring that the statewide demand among Virginia students for enrollment in either a public or private an institution of higher education in Virginia is met.

2. Ensure that higher education remains affordable, regardless of individual or family income, and through a periodic assessment, that tuition and fee levels net of financial aid do not inhibit the application and enrollment of any qualified student.

3. Offer a broad range of undergraduate, and where appropriate, graduate programs consistent with its mission, as approved by the State Council of Higher Education for Virginia.

4. Ensure that the institution's academic programs and course offerings maintain high academic standards, by undertaking a continuous review and improvement of academic programs, course availability, faculty productivity, and related issues.

5. Ensure that regular re-examination of curricula and academic programs addresses the need for more graduates in academic disciplines and professions and regions of the state, as defined by the Virginia Employment Commission and the State Council of Higher Education for Virginia, and to the extent appropriate for the particular institution.

6. Ensure that students progress from initial enrollment through graduation at an appropriate pace, and that the number of degrees conferred increases over time.

7. Enter into a uniform articulation agreement with the Virginia Community College System whereby associate degree graduates accepted at a four-year institution receive full academic credit when they enroll.

8. Actively contribute to efforts to stimulate the economic development of the state and of regions in which respective campuses are located, including, where appropriate, significantly increasing the level of externally funded research conducted at the institution.

9. Assume responsibility for improving elementary and secondary school systems throughout the Commonwealth, by working actively and cooperatively with administrators, teachers, and students in schools that are not accredited or accredited with warning to improve student achievement, upgrade the knowledge and skills of teachers, and strengthen leadership skills of school administrators, and by adopting agreements to increase the credits that may be transferred from high school to the institution.

10. Prepare a six-year financial plan that demonstrates its plan for nongeneral and general fund revenues and tuition increases, quantifies cost savings associated with increased administrative flexibility, and includes enrollment projections and projected state funding, and other assumptions as may be prescribed.

11. Conduct the institution's business affairs in a manner that maximizes operational efficiency,

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59 contributes to economies for state government as a whole, and meets the Commonwealth's Management  
60 Standards, as periodically revised.

61 B. The State Council of Higher Education for Virginia, in cooperation with the Chairmen of the  
62 House Committees on Education and Appropriations or their designees, the Senate Committees on  
63 Education and Health and Finance or their designees, such state officials as the Governor may  
64 designate, and representatives of the state colleges and universities, shall develop and recommend to the  
65 Governor and General Assembly a set of measurable indicators, by October 1, 2005, that can be used  
66 to assess whether or not an institution has met the goals set forth above. Further, the State Council  
67 shall ensure that data collected for such measures is accurate and reliable. Thereafter, the State Council  
68 shall periodically re-examine such indicators and recommend such revisions as it deems appropriate. By  
69 October 1 of each year, the State Council shall report to the Governor and General Assembly the  
70 performance of each state college and university in meeting the state goals set forth in this chapter.

71 C. In addition to receiving the restructured financial and administrative operational authority set  
72 forth in this chapter, any institution that meets the goals set forth in this chapter shall receive the  
73 following financial benefits:

- 74 1. retention of interest earnings on nongeneral funds in Educational and General Programs;
- 75 2. the institution's share of rebates on small purchase charge cards or similar programs identified by  
76 the Secretary of Finance;
- 77 3. the right to have unexpended appropriations regarded as mandatory re-appropriations;
- 78 4. the right to have appropriations of nongeneral funds for Educational and General Programs,  
79 Sponsored Programs, and Auxiliary Enterprises be budgeted as sum sufficient; and
- 80 5. such other benefits or delegations of authority as may be designated by the Governor or the  
81 General Assembly.

82 § 23-38.89. Definitions. — As used in this chapter, the following terms have the following meanings,  
83 unless the context requires otherwise:

84 "Bonds, notes or other obligations" means bonds, notes, commercial paper, bond anticipation notes,  
85 revenue certificates, capital leases, lease participation certificates or other evidences of indebtedness or  
86 deferred purchase financing arrangements.

87 "Capital project" means the acquisition of any interest in land, including improvements on the  
88 acquired land, new construction of 5,000 square feet or more, new construction costing \$1 million or  
89 more, improvements or renovations costing \$1 million or more, or capital leases.

90 "Covered Employee" means any person who is employed by a covered institution on either a salaried  
91 or wage basis.

92 "Covered institution" means, on and after its management agreement effective date, a public  
93 institution of higher education of the Commonwealth that has entered into a management agreement  
94 with the Commonwealth to be governed by the provisions of subchapter 4.

95 "Enabling legislation" means those chapters, other than this chapter, of Title 23, as amended,  
96 creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual  
97 public institutions of higher education of the Commonwealth, and as provided in §§ 2.2-2817.2,  
98 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of Virginia Medical Center, unless  
99 otherwise expressly provided in this subchapter.

100 "Facilities" means all property or rights in property, real and personal, tangible and intangible,  
101 including but not limited to all facilities and infrastructure suitable for supporting a covered institution's  
102 mission and ancillary activities and including any and all structures, buildings, improvements, additions,  
103 extensions, replacements, appurtenances, lands, rights in land, furnishings, landscaping, approaches,  
104 roadways and other related and supporting facilities, now or hereafter held, possessed, owned, leased,  
105 operated or used, in whole or in part, by a covered institution.

106 "Management agreement" means an agreement required by subchapter 4 between the Commonwealth  
107 and a public institution of higher education seeking to become governed by subchapter 4.

108 "Management Agreement Effective Date" means July 1 of the calendar year following the calendar  
109 year in which an executed copy of a management agreement between the Commonwealth and a public  
110 institution of higher education is submitted to the Chairmen of the House Committee on Appropriations,  
111 the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on  
112 Education and Health.

113 "Project" means any research programs and any research or educational facility of an institution  
114 governed by subchapter 4 or equipment necessary or convenient to or consistent with the purposes of  
115 such institution, whether or not owned by the institution, including, without limitation, research,  
116 training, teaching, dormitory and classroom facilities; all related and supporting facilities and  
117 equipment necessary or desirable in connection therewith or incidental thereto; or equipment alone; and  
118 also including, without limitation, office, parking, kitchen, laundry, laboratory, wellness, pharmaceutical,  
119 administrative, communications, computer, and recreational and athletic facilities; hotels and related  
120 facilities; power plants and equipment; storage space; hospitals; nursing homes; continuing care

facilities; self-care facilities; 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, graduate, professional or extension programs, or any combination of such programs, for such branches of learning as may be appropriate; vehicles and other transportation equipment, together with mobile medical facilities; air transport equipment, including 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 such program, facility or equipment.

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

"Virginia Retirement System" means that retirement system, or other authorized retirement system, established pursuant to Title 51.1.

## Subchapter 2

### Financial and Administrative Operations Generally

§ 23-38.90. Financial and administrative operations. — The following powers and authority are hereby granted to each public institution of higher education the Board of Visitors of which, by Board resolution transmitted to the Governor, the Speaker of the House of Delegates, the President pro tempore of the Senate of Virginia, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, elects to exercise such powers and authority, or certain of such powers and authority. The exercise of any or all of the following powers and authority shall be subject to such post-audit accountability measures as are deemed appropriate by the Governor, provided that such accountability measures are first reported to the Speaker of the House of Delegates, the President pro tempore of the Senate of Virginia, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health:

1. The Board of Visitors of each public institution of higher education shall, consistent with that institution's enabling legislation in Title 23, set the tuition and fees for that institution, subject to written policies adopted by the Board governing tuition and fees and to a phase-in of tuition and fee increases, and shall determine the expenditure of all nongeneral fund revenues. Such institutions shall continue to be eligible for state financial aid programs within established guidelines while continuing their efforts to meet unmet student needs for financial aid from nonstate resources.

2. Each institution shall retain the interest on its tuition and fees and other nongeneral Educational and General revenues, with the procedures for such retention being subject to an agreement mutually acceptable to the institution and the Secretary of Finance, provided that such agreement is first provided to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

3. All appropriated funds for each institution, regardless of source, shall be carried over and re-appropriated effective July 1 of the next fiscal year.

4. All general fund and nongeneral fund capital projects with an estimated cost of less than \$1 million shall be exempt from the state capital outlay review and approval process, but shall be subject to policies and procedures adopted by each institution's Board of Visitors governing such projects.

5. Each institution shall have the authority to enter into design-build and construction management contracts for capital projects.

6. Notwithstanding the provisions of § 2.2-1303, each institution shall be exempt from the Commonwealth of Virginia Information Technology Resource Management Policy for any institutional information technology procurement, project or telecommunications service of \$1 million or less, but shall be subject to policies and procedures adopted by its Board of Visitors for such procurements, projects and telecommunications services. Subject to such Board-approved policies and procedures, each institution shall have the authority (i) to determine what information technology equipment, software and services to procure in order to best meet the needs of that institution, and (ii) to manage its information technology systems and projects inclusive of providing independent verification and validation.

7. As provided in § 23-38.115, each institution shall have authority over building and land acquisitions, dispositions, and demolitions, subject to policies and procedures adopted by its Board of Visitors governing such acquisitions, dispositions, and demolitions, and subject to appropriate review by the Department of Historic Resources, the Art and Architectural Review Board, and the Department of Environmental Quality.

8. As provided in § 23-38.115, each institution shall have authority over surplus property disposition, subject to policies and procedures adopted by its Board of Visitors governing such disposition and the appropriate distribution of proceeds.

9. Each institution shall have the authority to enter into income and expense leases, subject to policies and procedures adopted by its Board of Visitors governing such leases.

10. Each institution shall have to authority to grant and acquire easements, subject to policies and procedures adopted by its Board of Visitors governing such grants and acquisitions.

11. Each institution shall have to authority for debt collection, subject to policies and procedures adopted by its Board of Visitors governing such debt collection.

12. Each institution shall have the authority, within the current State personnel system, to manage classifications and compensation, subject to policies and procedures adopted by its Board of Visitors governing such classifications and compensation.

13. No institution shall be required to obtain the approval of the Virginia Department of Transportation for the purchase or lease of motor vehicles.

#### Subchapter 3

##### Financial and Administrative

##### Memoranda of Understanding

§ 23-38.91. Memoranda of understanding. —

A. A public institution of higher education may enter into a memorandum of understanding with the Secretary of Administration or the Secretary of Finance, or both, as appropriate, for additional operational authority in any one or more of the financial and administrative areas described in the following sections of subchapter 4: §§ 23-38.105 through 23-38.109, Article 5 (§ 23-38.112 et seq.), and Article 6 (§ 23-38.117 et seq.). Such autonomy may be less than but may not exceed the autonomy permitted by those sections and articles, and the degree of autonomy granted by a memorandum of understanding to a particular public college or university shall be consistent with that institution's ability to manage its financial or administrative operations in the particular area or areas included in that memorandum of understanding. Nothing in this section shall preclude an institution from entering into one or more additional memoranda of understanding with the Secretary of Administration or the Secretary of Finance, or both, as appropriate, granting the institution additional autonomy in a particular area or areas of financial or administrative operations governed by a prior memorandum of understanding, or into one or more additional memoranda of understanding governing one or more additional areas of financial or administrative operations.

B. Within 15 days of receipt of a request from a public institution of higher education to enter into a memorandum of understanding pursuant to subsection A of this section, the Cabinet Secretary or Secretaries receiving that request shall notify the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance of the request. The Cabinet Secretary or Secretaries shall determine within 90 calendar days whether or not to enter into the requested memorandum of understanding, or some variation thereof. If the determination is to enter into a memorandum of understanding with the institution, the Cabinet Secretary or Secretaries shall forward a copy of the memorandum of understanding to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance. If the determination is not to enter into a memorandum of understanding with the institution, the Cabinet Secretary or Secretaries shall notify the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance of the reasons for denying the institution's request. If an institution's request is denied, nothing in this subsection shall prohibit the institution from submitting a future request to enter into a memorandum of understanding pursuant to subsection A of this section.

#### Subchapter 4

##### Alternative Authority for Covered Institutions

##### Article 1

##### Governance; Scope of Subchapter; Other Laws

§ 23-38.92. Responsibility and accountability for management of institution; governance. —

A. The Board of Visitors and administration of a public university or college of the Commonwealth that meets the requirements of this subchapter to demonstrate the ability to manage successfully the administrative and financial operations of the institution without jeopardizing the financial integrity and stability of the institution shall be granted the authority to enter into a management agreement with the Commonwealth, as provided in this subchapter, to assume full responsibility for management of the institution, subject to the requirements and conditions set forth in this subchapter and the management agreement with the Commonwealth, and shall be fully accountable for that management as provided in this subchapter and the management agreement with the Commonwealth.

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

§ 23-38.93. Scope of subchapter. —

A. Any public institution of higher education that complies with the requirements of this subchapter shall thereafter have the powers and authority set forth in this subchapter.

B. No provision of Title 2.2 relating generally to the operation, management, supervision, regulation

and control of state agencies shall apply to institutions governed by this subchapter unless such provision expressly applies to public institutions of higher education and its application to covered institutions is not otherwise negated by the express provisions of this subchapter.

C. In the event of a conflict between any provision of this subchapter and any provision of law incorporated by reference in § 23-38.94, the provision of this chapter shall control. In the event of a conflict between any provision of this subchapter and the enabling legislation of a covered institution, the enabling legislation shall control.

§ 23-38.94. Incorporation of other laws. — The incorporation into this subchapter 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 a covered institution if (i) such other laws by their terms expressly apply to Virginia public institutions of higher education or to institutions governed by this subchapter and (ii) no provision of this subchapter expressly provides that such other laws are inapplicable to covered institutions.

§ 23-38.95. Educational policies of the Commonwealth; other requirements. —

A. For purposes of §§ 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.1:1, 23-3, 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 through 23-9.2:5, each covered institution shall remain a public institution of higher education of the Commonwealth following its conversion to a covered institution governed by this chapter, and shall retain the authority granted and any obligations required by such provisions. In addition, each covered 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. State government-owned or operated and state-owned teaching hospitals that are a part of a covered institution as of the institution's Management Agreement Effective Date shall continue to be characterized as state government-owned or operated and state-owned teaching hospitals for purposes of payments under the State Plan for Medicaid Services adopted pursuant to § 32.1-325 et seq., provided that the covered institution commits to serve indigent and medically indigent patients, in which event the Commonwealth, through the Department of Medical Assistance Services, shall continue to reimburse the full cost of the provision of care, treatment, health-related and educational services to indigent and medically indigent patients and continue to treat hospitals that were part of a covered institution and that were Type One Hospitals prior to the institution's Management Agreement Effective Date as Type One Hospitals for purposes of such reimbursement.

§ 23-38.96. Audits. — The Auditor of Public Accounts or his legally authorized representatives shall audit annually accounts of all covered 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 covered 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 covered 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.

§ 23-38.97. Public access to information. — A covered institution shall continue to be subject to § 2.2-4342 and to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), but shall be entitled to conduct business pursuant to § 2.2-3709, in the case of a public institution of higher education to which that section applies, and, in all cases, may conduct business as a "state public body" for purposes of subsection B of § 2.2-3708.

§ 23-38.98. Conflicts of interests. — The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the governing body and the Covered Employees of a covered institution.

## Article 2

### Eligibility Requirements and Procedures; Management Agreement

§ 23-38.99. Eligibility requirements and procedures; management agreement. —

A. Any public institution of higher education may initiate the process to be governed by this subchapter 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 be, and

305 *should be, governed by this subchapter.*

306 2. *Following such affirmative vote by such governing body, the institution shall submit to the*  
307 *Governor a written request for his approval to be governed by this subchapter. A copy of such request*  
308 *shall be sent to the Chairmen of the House Committee on Appropriations, the House Committee on*  
309 *Education, the Senate Committee on Finance and the Senate Committee on Education and Health. Such*  
310 *written request shall provide documentation substantiating that: (i) the institution possesses the*  
311 *necessary administrative infrastructure, experience and expertise to perform successfully its public*  
312 *educational mission as a covered institution; (ii) the institution is financially able to operate as a*  
313 *covered institution without jeopardizing the financial integrity and stability of the institution; (iii) the*  
314 *institution consistently meets the Commonwealth's Management Standards; and (iv) the institution's*  
315 *governing body has adopted performance and accountability standards against which its implementation*  
316 *of this additional authority can be measured.*

317 *B. If the Governor finds that the institution meets the criteria set forth in paragraph 2 of subsection*  
318 *A of this section, he shall authorize those Cabinet Secretaries he deems appropriate to enter into a*  
319 *management agreement with the governing body of that institution addressing such matters as that*  
320 *institution's in-state undergraduate student enrollment, its financial aid requirements and capabilities,*  
321 *and its tuition policy for in-state undergraduate students.*

322 *C. Any such management agreement, executed by the designated Cabinet Secretaries and governing*  
323 *body of the institution, and signed as "seen and acknowledged" by the Speaker of the House of*  
324 *Delegates, the President pro tempore of the Senate of Virginia, and the Chairmen of the House*  
325 *Committee on Appropriations and the Senate Committee on Finance, shall be submitted by no later than*  
326 *December 31 of any given year to the House Committee on Appropriations, the House Committee on*  
327 *Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, and*  
328 *shall not become effective until its Management Agreement Effective Date.*

329 *§ 23-38.100. Expiration of, amendments to, and revocation of management agreement. <sup>3/4</sup>*

330 *A. A management agreement shall remain in effect until it is amended or it expires by its terms and*  
331 *has been replaced by a new or extended management agreement. Any amendment to a management*  
332 *agreement shall be executed by the covered institution and the Cabinet Secretaries deemed appropriate*  
333 *by the Governor, shall be signed as "seen and acknowledged" by the Speaker of the House of Delegates,*  
334 *the President pro tempore of the Senate of Virginia, and the Chairmen of the House Committee on*  
335 *Appropriations and the Senate Committee on Finance, shall be submitted to the House Committee on*  
336 *Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate*  
337 *Committee on Education and Health no later than 30 days prior to the effective date of such*  
338 *amendment, and shall be effective on the effective date of such amendment. An institution's status as a*  
339 *covered institution shall not revert to the status quo ante if the institution and the Commonwealth are*  
340 *unable to agree to the terms of a new or extended management agreement, in which case the terms of*  
341 *the prior management agreement shall remain in effect.*

342 *B. An institution's status as a covered institution may be revoked by an act of the General Assembly*  
343 *(i) if the institution fails to meet the requirements of this subchapter or (ii) if, following the expiration*  
344 *date of a management agreement, the Commonwealth and the institution are unable to agree to the*  
345 *terms of a new or extended management agreement.*

### 346 *Article 3*

#### 347 *Powers and Authority Generally*

348 *§ 23-38.101. Powers and authority generally. — In addition to those powers granted in each covered*  
349 *institution's enabling legislation and in the appropriation act, a covered institution shall have all the*  
350 *powers and authority necessary or convenient to carry out the purposes and provisions of this*  
351 *subchapter, including, without limitation, the following powers and authority:*

352 *1. To make and execute contracts, guarantees or any other instruments and agreements necessary or*  
353 *convenient for the exercise of its powers, authority and functions including, without limitation, to make*  
354 *and execute contracts with persons to operate and manage any or all of the institution's facilities or*  
355 *operations, and to incur liabilities and secure the obligations of any entity or individual; provided,*  
356 *however, that no covered institution may pledge the faith and credit of the Commonwealth or enter into*  
357 *an indemnification agreement or binding arbitration agreement contrary to the law of Virginia*  
358 *applicable to state agencies.*

359 *2. To conduct or engage in any lawful business, activity, effort or project consistent with the*  
360 *institution's purposes or necessary or convenient to exercise its powers and authority.*

361 *3. To procure such insurance, participate in such insurance plans, provide such self-insurance,*  
362 *continue participation in the Commonwealth's insurance or self-insurance plans, continue to participate*  
363 *in the Commonwealth's risk management programs, continue participation in the Virginia Retirement*  
364 *System or other Commonwealth sponsored retirement plans, or any combination of the foregoing, as*  
365 *provided in this subchapter. The purchase of insurance, participation in an insurance plan, or creation*  
366 *of a self-insurance plan by the institution shall not be deemed a waiver or relinquishment of any*

sovereign immunity to which the institution or its officers, directors, employees, or agents are otherwise entitled. The fact that a covered institution is governed by this subchapter shall not disqualify it from participating in any Commonwealth or Virginia Retirement System insurance, self-insurance or risk management program on the same terms and conditions applicable to other state agencies and other public institutions of higher education.

§ 23-38.102. Operation of projects. —

A. A covered institution may acquire, plan, design, construct, own, rent as landlord or tenant, operate, control, remove, renovate, enlarge, equip, and maintain, directly or through stock or nonstock corporations or other entities, any project as defined in this subchapter. Such projects may be owned or operated by the institution or other persons, or jointly by such institution and other persons, and may be operated within or without the Commonwealth, so long as their operations are necessary or desirable to assist the institution in carrying out its public purposes within the Commonwealth, and so long as any private benefit resulting to any such other private persons from any such project is merely incidental to the public benefit of such project.

B. In the operation of any facility, including any veterinary facility or any hospital or other health-care and related facilities owned or operated by a covered institution, such institution may continue in effect or adopt and enforce all policies necessary or desirable for such operation. Any such policies pertaining to the operation of veterinary, hospital or other health care or related facilities may include, without limitation, rules relating to the conditions under which the privilege of practicing any health profession or veterinary medicine may be available therein, the admission and treatment of patients, the procedures for determining the qualification of patients for indigent care or other programs, and the protection of patients and employees, provided that such policies shall not discriminate on the basis of race, religion, color, sex or national origin or other factor prohibited by law.

§ 23-38.103. Creation of entities; participation in joint ventures. —

A. A covered institution may create or assist in the creation of; may own in whole or in part or otherwise control; may participate in or with any entities, public or private; and may purchase, receive, subscribe for, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise acquire or dispose of any (i) shares or obligations of, or other interests in, any entities organized for any purpose within or without the Commonwealth, and (ii) obligations of any person or corporation. No part of the assets or net earnings of such institution shall inure to the benefit of, or be distributable to, any private individual, except that reasonable compensation may be paid for services rendered to or for such institution in furtherance of its public purposes, and benefits may be conferred that are in conformity with said purposes.

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

C. A covered institution may create or continue the existence of one or more nonprofit entities for the purpose of soliciting, accepting, managing, and administering grants, gifts and bequests, endowment gifts and bequests, and gifts and bequests in trust.

D. In carrying out any activities authorized by this subchapter, a covered institution may provide appropriate assistance, including (i) making loans from its funds, other than general fund appropriations or proceeds of a general obligation bond issue under Article X, Section 9(a) or 9(b) of the Constitution of Virginia, and (ii) providing the time of its employees, to corporations, partnerships, associations, joint ventures or other entities, whether or not such corporations, partnerships, associations, joint ventures or other entities are owned or controlled in whole or in part, directly or indirectly, by such institution.

§ 23-38.104. Campus police. — A covered institution may continue to operate or establish a campus police department in accordance with the provisions of Chapter 17 (§ 23-232 et seq.) of this Title, as those provisions are modified by this subchapter. Campus police shall possess the powers provided in Chapter 17; provided however, that a covered institution's employment of campus police shall be governed by the provisions of this subchapter rather than by Chapter 28 (§ 2.2-2800 et seq.) and Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. Such campus police department of a covered institution may enforce on the institution's property, or property under the control of the institution, the laws of the Commonwealth and policies adopted by the institution's Board of Visitors for the safety and security of such institution's property.

#### Article 4

##### Financial Management

§ 23-38.105. Six-Year Financial Plan. — Each covered institution shall develop, and its Board of Visitors shall approve, a six-year financial plan, to be updated at least every two years. Such plan shall reflect the priorities of the institution, planned expenditures to accomplish these priorities, and alternative funding plans to support such expenditures based on various levels of support from the



428 *Commonwealth's general fund.*

429 *§ 23-38.106. Tuition, fees, rentals and other charges; moneys. —*

430 *A. A covered institution may fix, revise from time to time, charge and collect tuition, rates, rentals,*  
431 *fees and other charges for the services, goods or facilities furnished by or on behalf of such institution,*  
432 *and may adopt policies regarding any such service rendered or the use, occupancy or operation of any*  
433 *such facility. The rates and amounts of such charges and policies shall not be subject to supervision or*  
434 *regulation by any commission, board, bureau, or agency of the Commonwealth except as otherwise*  
435 *provided by law for the providers of health care.*

436 *B. All moneys of a covered institution, from whatever source derived, including moneys transferred*  
437 *to such institution pursuant to a general fund appropriation, shall be paid to the treasurer of such*  
438 *institution or to such other officer as may be assigned duties normally attendant to the position of*  
439 *treasurer. Each covered institution may appoint an Assistant State Treasurer for the deposit and*  
440 *handling of moneys of the institution. Such moneys shall be deposited in the first instance by the*  
441 *treasurer or such other officer in one or more banks or trust companies, in one or more special*  
442 *accounts. All banks and trust companies are authorized to give security for such deposits, if required by*  
443 *such institution. The moneys in such accounts shall be paid out on the warrant or other orders of the*  
444 *treasurer of such institution or such other person or persons as such institution may authorize to*  
445 *execute such warrants or orders.*

446 *§ 23-38.107. Financial operations of covered institutions. —*

447 *A. Subject to such accountability measures and audits as are provided in this subchapter or as may*  
448 *otherwise be specifically made applicable by other law to institutions governed by this subchapter, a*  
449 *covered institution shall have the authority (i) to independently manage its operations and finances,*  
450 *including holding and investing its tuition, fees, research funds, auxiliary enterprise funds, and all other*  
451 *public funds, (ii) to create any and all financial policies deemed necessary to conduct its financial*  
452 *operations, (iii) to record any and all financial transactions in its financial and accounting systems, and*  
453 *not in the financial and accounting systems for state agencies, including procurement, personnel and*  
454 *other such systems, (iv) to adopt the budget for the institution, and (v) to control the expenditures of all*  
455 *moneys generated or received by the institution, including tuition, fees and other nongeneral fund*  
456 *revenue sources.*

457 *B. In managing its operations and finances, the Board of Visitors of a covered institution shall have*  
458 *sole authority to establish tuition, fee, room, board, and other charges consistent with sum sufficient*  
459 *appropriation authority for all nongeneral funds as provided by the Governor and the General Assembly*  
460 *in the Commonwealth's biennial appropriations authorization. In the event that any or all of the*  
461 *nongeneral funds are retained by the institution, the institution shall invest such funds consistent with an*  
462 *investment policy established by the Board of Visitors and retain all income earned on such investments.*  
463 *In the event that any or all of the nongeneral funds are held on behalf of the institution by the*  
464 *Commonwealth of Virginia, the institution shall receive a share of the income earned by the*  
465 *Commonwealth on the investment of such funds reflecting the proportion of the institution's nongeneral*  
466 *funds as a percentage of the total funds invested by the Commonwealth*

467 *C. A covered institution may enter into any contract which the institution determines to be necessary*  
468 *or appropriate to place any bond or investment of the institution, in whole or in part, on the interest*  
469 *rate, cash flow or other basis desired by the institution, which contract may include, without limitation,*  
470 *contracts commonly known as interest rate swap agreements, and futures or contracts providing for*  
471 *payments based on levels of, or changes in, interest rates. These contracts or arrangements may be*  
472 *entered into by the institution in connection with, incidental to, entering into, or maintaining any (i)*  
473 *agreement that secures bonds, notes or other obligations or (ii) investment or contract providing for*  
474 *investment, otherwise authorized by law, including but not limited to § 23-38.108. These contracts and*  
475 *arrangements may contain such payment, security, default, remedy, and other terms and conditions as*  
476 *determined by the institution, after giving due consideration to the creditworthiness of the counterpart or*  
477 *other obligated party, including any rating by any nationally recognized rating agency, and any other*  
478 *criteria as may be appropriate. Any money set aside and pledged to secure payments of bonds, note or*  
479 *other obligations or any of the contracts entered into pursuant to this section may be pledged to and*  
480 *used to service any of the contracts or agreements entered into pursuant to this section.*

481 *§ 23-38.108. Investments of operating funds. — A covered institution may invest its operating funds*  
482 *in any obligations or securities that are considered legal investments for public funds in accordance*  
483 *with Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2. Such institution's governing body shall adopt written*  
484 *investment guidelines which provide that such investments shall be made solely in the interest of the*  
485 *covered institution and shall be undertaken with the care, skill, prudence and diligence under the*  
486 *circumstances then prevailing that a prudent person acting in a like capacity and familiar with such*  
487 *matters would use in the conduct of an enterprise of a like character and with like aims.*

488 *§ 23-38.109. Records of financial transactions. — The governing body of a covered institution shall*  
489 *adopt a system of independent financial management that includes bookkeeping and accounting*



procedures that have been prescribed for governmental organizations by the Financial Accounting Foundation.

§ 23-38.110. Financing and indebtedness. — A covered institution shall have the authority to:

1. Borrow money and issue bonds, notes or other obligations as provided in this subchapter and to purchase such bonds, notes or other obligations;

2. Seek financing from, incur or assume indebtedness to and enter into contractual commitments with, the Virginia Public Building Authority and the Virginia College Building Authority, which authorities are authorized to borrow money and make and issue negotiable notes, bonds, notes or other obligations and other evidences of indebtedness to provide such financing relating to facilities or any project; and

3. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments with the Commonwealth as otherwise provided by law relating to the institution's facilities or any project.

§ 23-38.111. Power to issue bonds, notes or other obligations. —

A. Notwithstanding the provisions of § 23-29, which shall be inapplicable to the exercise by a covered institution of the authority granted in this article, a covered institution may issue bonds, notes or other obligations from time to time for any purpose that is consistent with its institutional mission, including, without limitation, to finance or refinance any project, to appropriately manage operational cash flows, to provide for short term financing, to refund bonds, notes or other obligations issued therefor by or on behalf of such institution, or otherwise, including bonds, note or other obligations 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 for managing operational cash flows or resulting in the acquisition or construction of facilities for the benefit of such institution, or the refinancing thereof; provided, however, that nothing in this subchapter shall preclude a covered institution from participation in any financing program or bond issue established and implemented by the Commonwealth, or any agency thereof, including, without limitation, any financing program or bond issue under Section 9(b) or 9(c) of Article X of the Constitution of Virginia, or any financing program or bond issue under Section 9(d) of Article X of the Constitution of Virginia undertaken by the Treasury Board, the Virginia College Building Authority or the Virginia Public Building Authority, 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.

B. Notwithstanding Article 8 (§ 2.2-2415 et seq.) of Chapter 24 of Title 2.2, Chapter 3 (§ 23-14 et seq.) of Title 23, and § 23-65, covered institutions may issue bonds, notes or other obligations 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 subchapter. Bonds, notes or other obligations may be issued for the benefit of covered institutions without the approval required by the provisions of Article 8 (§ 2.2-2415 et seq.) of Chapter 24 of Title 2.2. No bonds, notes or other obligations 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 procedures adopted pursuant to Chapter 3 (§ 23-14 et seq.) of Title 23.

C. A covered institution may issue such types of bonds, notes or other obligations as it may determine are appropriate, including, without limitation, bonds, notes or other obligations 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, notes or other obligations; (iii) funds realized from the enforcement of security interests or other liens or obligations securing such bonds, notes or other obligations; (iv) proceeds from the sale of bonds, notes or other obligations; (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.

D. Any bonds, notes or other obligations may be additionally guaranteed by, or secured by a pledge of, any grant, contribution or appropriation from a participating political subdivision, the covered institution, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, partnership, association or individual.

E. Bonds, notes or other obligations of a covered institution are declared to be for an essential public and governmental purpose.

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

## Article 5

*Capital Projects; Procurement; Property Generally**§ 23-38.112. Capital projects. —*

A. All capital projects of a covered institution, whether funded by an appropriation of the General Assembly or otherwise, shall be approved by such institution's governing body, and the governing body of each covered institution shall adopt policies for the review, approval, and implementation of all capital projects undertaken by the institution.

B. Except as otherwise provided in paragraph 2 of subsection C of this section, capital projects undertaken at a covered institution shall be exempt from any state statutes, rules, regulations or guidelines pertaining to the review, approval, administrative or other policy or procedure functions performed or required by the Department of General Services, the Division of Engineering and Buildings, the Department of Planning and Budget and any other state agency that supports the functions performed by these departments.

C. Capital projects undertaken at a covered institution shall be subject to the institution's capital project policies adopted pursuant to subsection A of this section, and:

1. Any capital project undertaken at a covered institution shall be subject to the environmental, historic preservation and conservation requirements of state statutes that are generally applicable to capital projects in the Commonwealth, other than those described in subsection B of this section; and

2. If the capital project is funded in whole or in part with a general fund appropriation for that purpose or proceeds from a general obligation bond issue under Article X, Section 9(a) or (b) of the Constitution of Virginia, the project shall remain subject to such pre-appropriation approvals as are in effect from time to time within the executive and legislative branches of state government, but such project shall nevertheless be exempt from any and all state post-appropriation review, approval, administrative or other policy or procedure functions performed or required by the Department of General Services, the Division of Engineering and Buildings, the Department of Planning and Budget and any other state agency that supports the functions performed by these departments.

3. If a covered institution constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from a general obligation bond issue under Article X, Section 9(a) or (b) of the Constitution of Virginia, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly, such improvements or renovations must be consistent with such institution's master plan approved by its governing body and, if the cost of such improvements or renovations is reasonably expected to exceed two million dollars, the institution's decision to undertake such improvements or renovations shall be communicated to the Governor and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations no later than 60 days prior to (i) commencement of construction or renovation or (ii) issuance of bonds, notes or other obligations to finance such construction or renovation.

D. A covered institution shall have the authority to designate its own building official who is hereby authorized to determine the suitability for occupancy of, and to issue certifications for building occupancy for, all capital projects undertaken at that institution, and who, prior to issuing any such certification, shall ensure that the Virginia Uniform Statewide Building Code requirements are met for that capital project and that such project has been inspected by the State Fire Marshal or his designee.

*§ 23-38.113. Procurement; discrimination prohibited; participation of women- or minority-owned and small businesses. —*

A. covered institutions shall be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except for § 2.2-4342 (which section shall not be construed to require compliance with the prequalification application procedures of subsection B of § 2.2-4317), and from any other state statutes, rules, regulations or requirements relating to procurement of goods and services; provided, however, that the governing body of a covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of goods and services, including professional services, that shall be based upon competitive principles and shall in each instance seek competition to the maximum practical degree. The policies shall implement a system of competitive negotiation for professional services, 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 shall incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354.

B. Such policies 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) implement a prequalification procedure for contractors or products; and (iii) include provisions for cooperative arrangements with other covered institutions, other public or private educational institutions, other public or private organizations or entities, including public-private partnerships, public bodies, charitable organizations, health care provider alliances or purchasing organizations or entities, state agencies or institutions of the Commonwealth or the several states, the District of

Columbia, the territories and the United States, and any combination thereof. Nothing in this section shall preclude a covered institution from requesting and utilizing, and covered institutions are hereby encouraged to utilize, the assistance of the Virginia Information Technologies Agency in information technology procurements when the covered institution determines that it is more cost-effective to obtain such assistance than to engage in such procurements through other means.

C. In the solicitation and awarding of contracts, no covered 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 or federal law. The procurement policies of a covered institution shall provide that, whenever solicitations are made seeking competitive procurement of goods or services, it shall be a priority of the institution to provide for fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

§ 23-38.114. Information technology. Covered institutions shall be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the Information Technologies Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title 2.2; provided, however, that the governing body of a covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of information technology goods and services, including professional services, that are consistent with the requirements of § 23-38.113 and that include provisions addressing cooperative arrangements for such procurement as described in § 23-38.113, and shall adopt and comply with institutional policies regarding information technology planning, budgeting, projects, infrastructure, security, and ongoing operations.

§ 23-38.115. Acquisition, possession, operation, and disposition of property; acceptance of grants and loans. —

A. Nothing in this subsection shall limit or reduce the authority granted to a covered institution in §§ 23-38.112 and 23-38.116, which shall govern the planning, design, construction and implementation of capital projects and leases by covered institutions. In order to continue its mission as a public institution of higher education, a covered institution:

1. May continue to hold, possess, operate, and dispose of any property, real or personal, tangible or intangible, that such covered institution held, possessed, or operated prior to its Management Agreement Effective Date as follows:

a. If the property is real property, including land, buildings, and any improvements to land or buildings, and it was acquired or constructed in whole or in part with general fund appropriations or proceeds from a general obligation bond issue under Article X, Section 9(a) or 9(b) of the Constitution of Virginia, the covered institution (i) shall hold, possess, and operate such property in accordance with the institution's enabling legislation, with this subchapter, and with any policies adopted by the governing body of the institution pursuant thereto, and (ii) shall dispose of such property in accordance with general law applicable to state-owned property and with the institution's enabling legislation.

b. If the property is real property, including land, buildings, and any improvements to land or buildings, and it was acquired or constructed either (i) entirely with nongeneral fund appropriations or proceeds from a nongeneral fund revenue bond issue under Article X, Section 9(c) or 9(d) of the Constitution of Virginia, or (ii) entirely with funds other than funds appropriated by the General Assembly or proceeds from a general obligation bond issue under Article X, Section 9(a) or 9(b) of the Constitution of Virginia, the covered institution shall hold, possess, operate, and dispose of such property in accordance with the institution's enabling legislation, notwithstanding the approval requirements of § 23-77.1, with this subchapter, and with any policies adopted by the governing body of the institution pursuant thereto.

c. If the property is personal property, the covered institution shall hold, possess, operate, and dispose of such property in accordance with the institution's enabling legislation, with this subchapter, and with any policies adopted by the governing body of the institution pursuant thereto.

2. After its Management Agreement Effective Date, may acquire any real property, construct improvements thereon in accordance with § 23-38.112, and acquire any personal property, tangible or intangible, and hold, possess, operate and dispose of such real and personal property as follows:

a. If the property is real property, including land, buildings, and improvements to land or buildings, and it is acquired or constructed with funds appropriated by the General Assembly for that purpose or with proceeds from a general obligation bond issue under Article X, Section 9(a) or 9(b) of the Constitution of Virginia, the covered institution (i) shall hold, possess, and operate such property in accordance with the institution's enabling legislation, with this subchapter, and with any policies adopted by the governing body of the institution pursuant thereto, and (ii) shall dispose of such property in accordance with general law applicable to state-owned property and with the covered institution's enabling legislation.

b. If the property is real property, including land, buildings, and improvements to land or buildings, and the property is acquired with any funds in the covered institution's possession, other than any funds

674 appropriated by the General Assembly or proceeds from a general obligation bond issue under Article,  
675 X, Section 9(a) or 9(b) of the Constitution of Virginia, the institution shall hold, possess, operate,  
676 dispose of, and otherwise deal with such property, or any right, easement, estate or interest therein,  
677 acquired by purchase, exchange, gift, assignment, transfer, foreclosure, lease, bequest, devise, operation  
678 of law or other means, in accordance with the covered institution's enabling legislation, notwithstanding  
679 the approval requirements of § 23-77.1, with this subchapter, and with any policies adopted by the  
680 governing body of the institution pursuant thereto.

681 c. If the property is personal property, the institution shall hold, possess, operate, and dispose of  
682 such property in accordance with the institution's enabling legislation, with this subchapter, and with  
683 any policies adopted by the governing body of the institution pursuant thereto.

684 3. Consistent with the provisions of paragraphs 1 and 2 of this subsection, may sell, assign,  
685 encumber, mortgage, demolish or otherwise dispose of any project or any other property, real or  
686 personal, tangible or intangible, or any right, easement, estate or interest therein, or any deed of trust  
687 or mortgage lien interest owned by it, under its control or custody or in its possession, and may release  
688 or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any  
689 equity or right of redemption in property foreclosed by it; and

690 4. May do any of the foregoing by public or private transaction.

691 B. A covered institution may accept loans, grants, contributions or other assistance from the federal  
692 government, the Commonwealth or any political subdivision thereof, or from any other public or private  
693 source to carry out its mission as a public institution of higher education of the Commonwealth and any  
694 of the purposes of this subchapter. A covered institution may enter into any agreement or contract  
695 regarding or relating to the acceptance, use, or repayment of any such loan, grant, contribution or  
696 assistance, and may enter into such other agreements with any such entity in furtherance of the  
697 purposes of this subchapter. Counties, cities and towns are hereby authorized to lend or donate money  
698 or other property to a covered institution for any of its purposes. Any local government making the  
699 grant or loan may restrict the use of the grant or loan to a specific project, within or without that  
700 locality.

701 § 23-38.116. Leases of property. — The governing body of a covered institution shall adopt such  
702 policies relating to the leasing of real property, including capital, operating or income leases, that  
703 reasonably ensure that such leases are efficiently procured on appropriate terms and for appropriate  
704 purposes. Other than applicable policies adopted by a covered institution's board of visitors and  
705 provisions of general law that expressly apply to covered institutions, such institutions shall be exempt  
706 from any state or local statutes or ordinances, rules, regulations and guidelines relating to operating  
707 and income leases of real or personal property by public entities and, except as otherwise provided in  
708 § 23-38.112, to capital leases.

#### 709 Article 6

#### 710 Human Resources

711 § 23-38.117. Human resources systems. —

712 A. Covered Employees are state employees of a covered institution of the Commonwealth of Virginia.  
713 As used in this article, the term "grandfathered" Covered Employee means any Covered Employee who  
714 was hired prior to the Management Agreement Effective Date for that covered institution, except that  
715 such term shall not include employees of the University of Virginia Medical Center. The term  
716 "nongrandfathered" Covered Employee means a Covered Employee who is employed on or after the  
717 Management Agreement Effective Date of a covered institution, and employees of the University of  
718 Virginia Medical Center without regard to when they were hired.

719 B. The governing body of each covered institution may elect to adopt either (i) one or more human  
720 resources systems for nonfaculty Covered Employees that is or are generally consistent with the  
721 provisions of Chapters 28 (§ 2.2-2800 et seq.) and Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2,  
722 pertaining generally to state employees, or (ii) such other human resources system or systems for  
723 nonfaculty Covered Employees as it determines to be appropriate. The covered institution may  
724 administer such human resources system or systems itself or may contract with another covered  
725 institution or with the Department of Human Resources Management to administer some or all of its  
726 human resources systems, subject to the execution of any participation or operating agreement as the  
727 parties to that agreement may deem necessary and appropriate.

728 C. Each covered institution may establish a human resources system or systems for Covered  
729 Employees not included in subsection B of this section, including a system or systems relating to those  
730 other personnel that its enabling legislation authorizes it to employ. In addition, such institution may, in  
731 its discretion, contract for such consultants, attorneys, accountants and financial experts, and such  
732 independent providers of expert advice and consultation as may be necessary or desirable in the  
733 judgment of the covered institution.

734 D. Any human resources system adopted by the governing body of a covered institution for Covered  
735 Employees shall be based on merit principles and objective methods of appointment, promotion, transfer,

layoff, removal, severance, discipline and other appropriate topics included in such a human resources system based on such principles and methods.

§ 23-38.118. Grievance procedures. —

A. The governing body of each covered institution shall adopt policies that encourage the resolution of employment-related problems and complaints of the nonfaculty Covered Employees of that institution. Such policies shall provide that nonfaculty Covered Employees of the institution shall be able to discuss their concerns with their immediate supervisors and management freely and without retaliation. To the extent that such concerns cannot be resolved informally, the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 shall apply to the covered institution's nonfaculty Covered Employees to the same extent that it applied to the same classifications of nonfaculty employees prior to the institution's Management Agreement Effective Date.

B. A covered institution shall continue to make grievance policies available to faculty Covered Employees to the extent that such policies were applicable to faculty Covered Employees prior to its Management Agreement Effective Date, and may amend any such policies.

C. A covered institution is not required to adopt grievance policies governing Covered Employees not included in subsections A and B of this section, but it may, in its discretion, do so for some or all such Covered Employees, and such grievance policies may be the same as or different from the grievance policies adopted pursuant to subsection A of this section.

§ 23-38.119. Miscellaneous personnel matters. —

A. All appointments to, and promotions and tenure in, positions in the service of a covered 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. 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 covered institution.

C. No Covered Employee of, or applicant for employment with, any covered 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.

D. The human resources policies adopted by the governing body of a covered institution shall, consistent with applicable federal law, address (i) employment of Covered Employees who leave the service of a covered institution for service in any of the armed forces of the United States, and the employment of other veterans of such military service, following the termination of their military service; and (ii) leave and other policies affecting the employment of Covered Employees who have 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. "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 of the United States Code or (ii) a member of the Virginia National Guard on active duty pursuant to either Title 10 or Title 32 of the United States Code.

§ 23-38.120. Insurance plans and retirement plans; legal process and assignment. — Insurance provided under this article and all proceeds therefrom shall be subject to the same provisions regarding exemption from levy, garnishment and other legal process as is provided to Virginia Retirement System plans under § 51.1-510; provided, however, that permitted assignments shall be effected through completion of forms provided by the covered institution or its vendor, and provided further, that for insurance plans established by a covered institution, the authority granted to the Board of the Virginia Retirement System in § 51.1-510 is hereby granted to and shall be exercised by the covered institution.

§ 23-38.121. Health insurance plans. — Each covered institution is authorized to (i) have its eligible Covered Employees participate in the state employees' health insurance plan established pursuant to § 2.2-2818, under the same terms and conditions that apply to, and with the same benefits that are available to, other state employees, (ii) establish a health insurance plan for the benefit of at least those of its Covered Employees who would be eligible to participate in the state employees' health insurance plan pursuant to clause (i), or (iii) elect any combination of clauses (i) and (ii).

§ 23-38.122. Additional insurance plans. —

A. Each covered institution (i) shall purchase or make available group life and accidental death and dismemberment insurance policies covering in whole or in part those of its Covered Employees eligible to participate in the Virginia Retirement System, and (ii) may purchase or make available such additional insurance policies covering its salaried Covered Employees, and such insurance policies covering its other Covered Employees, as it deems appropriate. Covered employees shall not be required to present evidence of insurability satisfactory to an insurance company for basic group life insurance coverage. A covered institution shall offer (i) to all grandfathered Covered Employees, at least as much insurance coverage of the type described in this subsection as they were provided

797 immediately prior to the institution's Management Agreement Effective Date, and (ii) to those  
798 grandfathered Covered Employees who are active participants in a Virginia Retirement System  
799 administered retirement plan, basic group life insurance that has at least the same level of benefits as  
800 provided by the Virginia Retirement System group life insurance plan for state employees that was in  
801 effect immediately prior to the institution's Management Agreement Effective Date, unless and until the  
802 Virginia Retirement System reduces those benefits. All nongrandfathered salaried Covered Employees  
803 shall be offered basic group life insurance at a level of coverage determined by such institution's  
804 governing body. A covered institution may require nongrandfathered Covered Employees to pay all or a  
805 portion of the cost of the insurance coverage offered pursuant to this subsection, which may be collected  
806 through a payroll deduction program. If the institution's governing body so elects, and subject to the  
807 execution of such participation agreements as the Virginia Retirement System may require, the covered  
808 institution's Covered Employees may be covered by the Virginia Retirement System's group insurance  
809 programs established pursuant to § 51.1-500 et seq. under the same terms and conditions that apply to,  
810 and with the same benefits that are available to, other state employees.

811 B. For those of its Covered Employees eligible to participate in the Virginia Retirement System, a  
812 covered institution shall (i) purchase disability insurance, (ii) subject to the execution of such  
813 participation agreements as may be necessary, appropriate, and in the best interests of the  
814 Commonwealth, continue to participate in the disability insurance program established for state  
815 agencies, (iii) establish a self-insured disability insurance program, or (iv) any combination of clauses  
816 (i) through (iii). A covered institution may require nongrandfathered Covered Employees to pay all or a  
817 portion of the cost of the insurance coverage offered pursuant to this subsection, which may be collected  
818 through a payroll deduction program. However, the covered institution shall not be required to  
819 contribute to the program established for state agencies on behalf of Covered Employees who do not  
820 participate in that program.

821 C. At the election of a covered institution's governing body, such institution (i) may purchase  
822 workers' compensation insurance, (ii) subject to the execution of such participation agreements as may  
823 be necessary, appropriate, and in the best interests of the Commonwealth, may continue to participate in  
824 the program established for state agencies in accordance with the provisions of Title 65.2, or (iii) may  
825 establish a self-insured workers' compensation program in accordance with § 65.2-801.

826 D. If a covered institution's governing body so elects, and subject to the execution of such  
827 participation agreements as may be necessary, appropriate, and in the best interests of the  
828 Commonwealth, each such institution or its Covered Employees, or both, may participate in any future  
829 insurance programs established for state employees under the same terms and conditions that apply to,  
830 and with the same benefits that are available to, other state employees.

831 § 23-38.123. Severance Policies. —

832 A. Each covered institution shall adopt one or more severance policies for its Covered Employees,  
833 applicable to voluntary or involuntary separations, including reductions in workforce. The provisions of  
834 the Workforce Transition Act (§ 2.2-3200 et seq.) shall not apply to Covered Employees.

835 B. The terms and conditions of a covered institution's severance policy or policies shall be  
836 determined by the institution's governing body, except that a covered institution shall provide severance  
837 benefits to Covered Employees who were its employees prior to its Management Agreement Effective  
838 Date and who otherwise would be eligible for severance benefits under the Workforce Transition Act  
839 (§ 2.2-3200 et seq.) that are no less than the severance benefits that such Covered Employees would  
840 receive under §§ 2.2-3203 and 2.2-3204 if the institution were not a covered institution. Each full year  
841 of service rendered to a covered institution by such Covered Employees shall be treated as an  
842 equivalent year of service to the Commonwealth for purposes of § 2.2-3203, and for purposes of  
843 § 2.2-3204 for such Covered Employees who are eligible for credits under that section. The terms and  
844 conditions of the covered institution's severance policy or policies for Covered Employees who are hired  
845 by a covered institution on or after the institution's Management Agreement Effective Date shall be  
846 determined by the institution's governing body. The covered institution and the Board of the Virginia  
847 Retirement System shall negotiate a formula according to which cash severance benefits may be  
848 converted to years of age or creditable service for Covered Employees who participate in the Virginia  
849 Retirement System.

850 C. In the event that a separation is in response to a reduction in the portion of the covered  
851 institution's budget that is appropriated by the General Assembly, the Commonwealth shall bear the cost  
852 of the reduction in workforce up to the amount that otherwise would be incurred if the covered  
853 institution paid a severance benefit equal to the transitional severance benefit conferred under  
854 § 2.2-3203 or 2.2-3204.

855 D. Covered Employees who were employees of a covered institution and were covered by the  
856 provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 prior to its Management Agreement Effective  
857 Date, who otherwise would be eligible for severance benefits under the Workforce Transition Act  
858 (§ 2.2-3200 et seq.), and who are separated by a covered institution because of a reduction in workforce

shall have the same preferential hiring rights with state agencies and other executive branch institutions as state employees have under § 2.2-3201. Conversely, the covered institution shall recognize the hiring preference conferred by § 2.2-3201 on state employees who were hired by a state agency or executive branch institution before the covered institution's Management Agreement Effective Date. In the event a covered institution has adopted a classification system pursuant to § 23-38.117 that differs from the classification system administered by the Department of Human Resources Management, the hiring agency, institution, or covered institution shall classify the terminated employee according to its classification system and shall place the terminated employee appropriately. Classification decisions made under this subsection and applying to employees transferring between covered institutions and state agencies or other executive branch institutions, or between covered institutions, as a result of a reduction in force and with the preferential hiring rights provided in this subsection and in § 2.2-3201 shall be presumed appropriate, and a terminated employee who grieves the classification decision shall bear the burden of demonstrating that the classification violates the terminated employee's preferential hiring rights.

E. An employee's transition on a covered institution's Management Agreement Effective Date from being an employee of a public institution of higher education to being a Covered Employee of a covered institution shall not, in and of itself, constitute a severance of that employee or a reduction in force that would make either the covered institution's severance policy or policies adopted pursuant to subsection A of this section or the Workforce Transition Act (§ 2.2-3200 et seq.) applicable to that employee.

2. That if, pursuant to authorization from the Governor and prior to December 31, 2005, the Cabinet Secretaries so designated by the Governor enter into a management agreement with any public institution of higher education of the Commonwealth, the Management Agreement Effective Date for that public institution of higher education shall be the effective date of the management agreement and not July 1, 2006, and the provisions of Chapter 4.10 of Title 23 of the Code of Virginia, except § 23-38.99, shall apply to that institution as of the effective date of that management agreement. For purposes of this enactment, the meanings of "management agreement" and "public institution of higher education" shall be as are set forth in § 23-38.89 of the Code of Virginia.

3. That the Virginia Retirement System shall (i) complete an actuarial analysis of the potential impact on the Commonwealth's retirement system for state employees if public institutions of higher education in the Commonwealth included in subchapter 3 or 4 of Chapter 4.10 of Title 23, or in both subchapters, or all public institutions of higher education in the Commonwealth, were permitted to offer an optional retirement plan to classified employees who are, or who prior to the effective date of this Act were, covered by the State Personnel Act, and (ii) report the results of this analysis to the Chairmen of the House Appropriations Committee and the Senate Finance Committee no later than November 1, 2005.