

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 2.2-1124, 2.2-1132, 2.2-1149, 2.2-1150, 2.2-1153, 2.2-1514, 2.2-2007, 2.2-2901, 23-9.6:1, 36-98.1, 51.1-124.3, 51.1-505, and 51.1-506 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 2.2-1404.1, by adding in Title 2.2 a chapter numbered 50.1 consisting of sections numbered 2.2-5004 and 2.2-5005, by adding sections numbered 23-9.2:3.02 and 23-9.6:1.01, by adding in Title 23 a chapter numbered 4.10, consisting of Subchapters 1, 2, and 3 and sections numbered 23-38.88 through 23-38.122, and by adding a section numbered 30-133.1; relating to public institutions of higher education.*

[H 2866]

Approved

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

**1. That §§ 2.2-1124, 2.2-1132, 2.2-1149, 2.2-1150, 2.2-1153, 2.2-1514, 2.2-2007, 2.2-2901, 23-9.6:1, 36-98.1, 51.1-124.3, 51.1-505, and 51.1-506 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 2.2-1404.1, by adding in Title 2.2 a chapter numbered 50.1, consisting of sections numbered 2.2-5004 and 2.2-5005, by adding sections numbered 23-9.2:3.02 and 23-9.6:1.01, by adding in Title 23 a chapter numbered 4.10, consisting of Subchapters 1, 2, and 3 and sections numbered 23-38.88 through 23-38.122, and by adding a section numbered 30-133.1 as follows:**

§ 2.2-1124. Disposition of surplus materials.

A. "Surplus materials" means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but shall not include property as defined in § 2.2-1147 that is determined to be surplus. Surplus materials shall not include finished products that a mental health or mental retardation facility sells for the benefit of its patients or residents, provided that (i) most of the supplies, equipment, or products have been donated to the facility; (ii) the patients or residents of the facility have substantially altered the supplies, equipment, or products in the course of occupational or other therapy; and (iii) the substantial alterations have resulted in a finished product.

B. The Department shall establish procedures for the disposition of surplus materials from departments, divisions, institutions, and agencies of the Commonwealth. Such procedures shall:

1. Permit surplus materials to be transferred between or sold to departments, divisions, institutions, or agencies of the Commonwealth;

2. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge;

3. Permit public sales or auctions, provided that the procedures provide for sale to all political subdivisions and any volunteer rescue squad or volunteer fire department established pursuant to § 15.2-955 any surplus materials prior to the public sale or auction;

4. Permit surplus motor vehicles to be sold prior to public sale or auction to local social service departments for the purpose of resale at cost to TANF recipients;

5. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as children's homes;

6. Permit donations to political subdivisions of the Commonwealth under the circumstances specified in this section;

7. Permit other methods of disposal when (a) the cost of the sale will exceed the potential revenue to be derived therefrom or (b) the surplus material is not suitable for sale;

8. Permit any dog especially trained for police work to be sold at an appropriate price to the handler who last was in control of the dog, which sale shall not be deemed a violation of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.);

9. Permit the transfer of surplus clothing to an appropriate department, division, institution, or agency of the Commonwealth for distribution to needy individuals by and through local social services boards;

10. Encourage the recycling of paper products, beverage containers, and used motor oil;

11. Require the proceeds from any sale or recycling of surplus materials be promptly deposited into the state treasury in accordance with § 2.2-1802 and report the deposit to the State Comptroller;

12. Permit donations of surplus computers and related equipment to public schools in the Commonwealth and Virginia charitable corporations granted tax-exempt status under § 501 (c) (3) of the

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58 Internal Revenue Code and providing services to persons with disabilities, at-risk youths, or low-income  
 59 families. For the purposes of this subdivision, "at-risk youths" means school-age children approved  
 60 eligible to receive free or reduced price meals in the federally funded lunch program; and

61 13. Permit surplus materials to be transferred or sold, prior to public sale or auction, to public  
 62 television stations located in the state and other nonprofit organizations approved for the distribution of  
 63 federal surplus materials; and

64 14. *Permit a public institution of higher education to dispose of its surplus materials at the location*  
 65 *where the surplus materials are held and to retain any proceeds from such disposal, provided that the*  
 66 *institution meets the conditions prescribed in subsection B of § 23-38.88.*

67 C. The Department shall dispose of surplus materials pursuant to the procedures established in  
 68 subsection B or permit any department, division, institution, or agency of the Commonwealth to dispose  
 69 of its surplus materials consistent with the procedures so established. No surplus materials shall be  
 70 disposed of without prior consent of the head of the department, division, institution, or agency of the  
 71 Commonwealth in possession of such surplus materials or the Governor.

72 D. Departments, divisions, institutions, or agencies of the Commonwealth or the Governor may  
 73 donate surplus materials only under the following circumstances:

74 1. Emergencies declared in accordance with § 44-146.18:2 or § 44-146.28;

75 2. As set forth in the budget bill as defined by § 2.2-1509, provided that (a) the budget bill contains  
 76 a description of the surplus materials, the method by which the surplus materials shall be distributed,  
 77 and the anticipated recipients, and (b) such information shall be provided by the Department to the  
 78 Department of Planning and Budget in sufficient time for inclusion in the budget bill;

79 3. When the market value of the surplus materials, which shall be donated for a public purpose, is  
 80 less than \$500; however, the total market value of all surplus materials so donated by any department,  
 81 division, institution, or agency shall not exceed 25 percent of the revenue generated by such  
 82 department's, division's, institution's, or agency's sale of surplus materials in the fiscal year, except these  
 83 limits shall not apply in the case of surplus computer equipment and related items donated to Virginia  
 84 public schools; or

85 4. During a local emergency, upon written request of the head of a local government or a political  
 86 subdivision in the Commonwealth to the head of a department, division, institution, or agency.

87 E. On or before October 1 of each year, the Department shall prepare, and file with the Secretary of  
 88 the Commonwealth, a plan that describes the expected disposition of surplus materials in the upcoming  
 89 fiscal year pursuant to subdivision B 6.

90 § 2.2-1132. Administration of capital outlay construction; exception for certain educational  
 91 institutions.

92 A. The Division shall provide assistance in the administration of capital outlay construction projects  
 93 set forth in the appropriation act, other than highway construction undertaken by the Department of  
 94 Transportation and the acquisition or improvement of specialized cargo-handling equipment and related  
 95 port infrastructure including, but not limited to, port construction, renovation, and demolition that is  
 96 required in a timely manner to meet market demands to enhance commerce through the Virginia Port  
 97 Authority, the review and approval of plans and specifications, and acceptance of completed projects.

98 B. The Division may establish standards, as needed, for construction by the Commonwealth and may,  
 99 with the advice of the Attorney General, establish standard contract provisions and procedures for the  
 100 procurement and administration of construction and for the procurement and administration of  
 101 architectural and engineering services relating to construction, which shall be used by all departments,  
 102 agencies and institutions of the Commonwealth. The standards may provide for incentive contracting that  
 103 offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the  
 104 Commonwealth when project costs are reduced by the contractor, without affecting project quality,  
 105 during construction of the project. The fee, if any, charged by the project engineer or architect for  
 106 determining the cost savings shall be paid as a separate cost and shall not be calculated as part of any  
 107 cost savings.

108 C. *Notwithstanding any standards established by the Division or law to the contrary except as*  
 109 *provided in this subsection, any public institution of higher education that has in effect a signed*  
 110 *memorandum of understanding with the Secretary of Administration regarding participation in the*  
 111 *nongeneral fund decentralization program as set forth in the appropriation act may enter into contracts*  
 112 *for specific construction projects without the review and approval of the Bureau of Capital Outlay*  
 113 *Management, provided such institutions are in compliance with the requirements of the Virginia Public*  
 114 *Procurement Act (§ 2.2-4300 et seq.). The authority granted in this subsection shall only become*  
 115 *effective if the institution meets the conditions prescribed in subsection B of § 23-38.88. The Secretary of*  
 116 *Administration shall establish guidelines to assist institutions in evaluating alternative project delivery*  
 117 *methods prior to entering into a contract.*

118 For purposes of this section, "construction" shall include new construction, reconstruction, renovation,

restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned or to be acquired by the Commonwealth. It shall not include buildings or other facilities ancillary to the use of state highways that are located within the right-of-way of any state highway, or assets for use by the Virginia Port Authority within the boundaries of property owned or leased by the Virginia Port Authority.

§ 2.2-1149. Department to review proposed acquisitions of real property; approval by the Governor; exceptions.

Notwithstanding any provision of law to the contrary, no state department, agency or institution shall acquire real property by gift, lease, purchase or any other means without following the guidelines adopted by the Department and obtaining the prior approval of the Governor. The Department shall review every proposed acquisition of real property by gift, lease, purchase or any other means by any department, agency or institution of the Commonwealth and recommend either approval or disapproval of the transactions to the Governor based on cost, demonstrated need, and compliance with the Department's guidelines.

The provisions of this section shall not apply to the ~~(i)~~ acquisition:

1. Acquisition of real property for open space preservations pursuant to the purposes of § 10.1-1800 and subdivision A- 4- of § 10.1-2204, if it does not require as a condition of acceptance, an appropriation of any state funds for the continued maintenance of such property;

~~(ii)~~ 2. Acquisition of easements pursuant to the purposes of §§ 10.1-1020 and 10.1-1021 or §§ 10.1-1700, 10.1-1702, and 10.1-1702;

~~(iii)~~ 3. Acquisition through the temporary lease or donation of real property for a period of six months or less duration;

4. Acquisition of easements by public institutions of higher education provided that the particular institution meets the conditions prescribed in subsection B of § 23-38.88;

5. Acquisition of an operating/income lease or a capital lease by a public institution of higher education, provided that (i) the capital lease does not impact the Commonwealth's debt capacity, (ii) the institution meets the conditions prescribed in subsection B of § 23-38.88, and (iii) for purposes of the acquisition of a capital lease, the institution shall have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act. For the purposes of this subdivision, an operating/income lease or a capital lease shall be determined using generally accepted accounting principles; or

~~(iv)~~ 6. Acquisition of real property for the construction, improvement or maintenance of highways and transportation facilities and purposes incidental thereto by the Department of Transportation; however, acquisitions of real property by the Department of Transportation for office space, district offices, residencies, area headquarters, or correctional facilities shall be subject to the Department's review and the Governor's approval.

§ 2.2-1150. Conveyance and transfers of real property by state agencies; approval of Governor and Attorney General.

A. When it is deemed to be in the public interest,

1. Property owned by the Commonwealth may be sold, leased, or other interests therein conveyed to political subdivisions, public authorities, or the federal government, for such consideration as is deemed proper; and

2. Property owned by the Commonwealth and held in the possession of a department, agency or institution of the Commonwealth may be transferred to the possession of another department, agency or institution of the Commonwealth by the execution of an agreement between the heads of such departments, agencies or institutions.

B. No transaction authorized by this section shall be made without the prior written recommendation of the Department to the Governor, the written approval of the Governor of the transaction itself, and the approval of the Attorney General as to the form of the instruments prior to execution.

C. Notwithstanding the provisions of subsection B, a public institution of higher education may convey an easement pertaining to any property such institution owns or controls provided that the institution meets the conditions prescribed in subsection B of § 23-38.88.

§ 2.2-1153. State agencies and institutions to notify Division of property not used or required; criteria.

A. Whenever any department, agency or institution of state government possesses or has under its control state-owned property that is not being used or is not required for the programs of the department, agency or institution, it shall so notify the Division. Each department, agency and institution shall submit to the Division a land use plan for property it possesses or has under its control showing present and planned uses of such property. Such plan shall be approved by the cognizant board or governing body of the department, agency or institution holding title to or otherwise controlling the state-owned property or the agency head in the absence of a board or governing body, with a

recommendation on whether any property should be declared surplus by the department, agency or institution. Development of such land use plans shall be based on guidelines promulgated by the Division. The guidelines shall provide that each land use plan shall be updated and copies provided to the Division by September 1 of each year. The Division may exempt properties that are held and used for conservation purposes from the requirements of this section. The Division shall review the land use plans and determine whether the property or any portion thereof should be declared surplus to the needs of the Commonwealth. By October 1 of each year, the Division shall provide a report to the Chairmen of the House Appropriations and Senate Finance Committees setting forth the Division's findings, the sale or marketing of properties identified pursuant to this section, and recommending any actions that may be required by the Governor and the General Assembly to identify and dispose of property not being efficiently and effectively utilized.

Until permanent disposition of the property determined to be surplus is effected, the property shall continue to be maintained by the department, agency or institution possessing or controlling it, unless upon the recommendation of the Department, the Governor authorizes the transfer of the property to the possession or control of the Department. In this event, the department, agency or institution formerly possessing or controlling the property shall have no further interest in it.

B. The Division shall establish criteria for ascertaining whether property under the control of a department, agency or institution should be classified as "surplus" to its current or proposed needs. Such criteria shall provide that the cognizant board or governing body, if any, of the department, agency or institution holding the title to or otherwise controlling the state-owned property, or the agency head in the absence of a board or governing body, shall approve the designation of the property as surplus.

C. Notwithstanding the provisions of subsection A:

1. The property known as College Woods, which includes Lake Matoaka and is possessed and controlled by a college founded in 1693, regardless of whether such property has been declared surplus pursuant to this section, shall not be transferred or disposed of without the approval of the board of visitors of such college by a two-thirds vote of all board members at a regularly scheduled board meeting. The General Assembly shall also approve the disposal or transfer.

2. *Surplus real property valued at less than \$5 million that is possessed and controlled by a public institution of higher education may be sold by such institution, provided that the institution gives written notification to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees at least 30 days prior to the sale of the property. Proceeds from the sale of such property shall be retained by the public institution of higher education if the property was acquired by the institution through the use of nongeneral funds. If the institution originally acquired the property through a mix of general and nongeneral funds, 50 percent of the proceeds shall be distributed to the institution and 50 percent of the proceeds shall be deposited into the State Park Conservation Resources Fund established under subsection A of § 10.1-202. The authority of a public institution of higher education to sell surplus property or to retain any proceeds from the sale of surplus property shall be subject to the institution meeting the conditions prescribed in subsection B of § 23-38.88.*

§ 2.2-1404.1. *Use of vendors identified by public institutions of higher education as minority business enterprises.*

*For purposes of compliance with § 2.2-4310, a public institution of higher education may procure goods, services, and construction from vendors identified by such public institutions of higher education as a minority business enterprise based on criteria approved by the Department. The certification shall remain in effect unless and until the Department notifies the institution that the vendor does not meet the certification requirements. However, if the public institution of higher education does not meet the conditions prescribed in subsection B of § 23-38.88, the institution shall not receive any credit for minority business procurement for procuring goods, services, and construction from vendors it had identified as minority business enterprises that are subsequently not certified as such by the Department for the period in which the goods, services, or construction were procured.*

§ 2.2-1514. Designation of general fund for nonrecurring expenditures.

A. As used in this section:

"The Budget Bill" means the "The Budget Bill" submitted pursuant to § 2.2-1509, including any amendments to a general appropriation act pursuant to such section.

"Nonrecurring expenditures" means the acquisition or construction of capital outlay projects as defined in § 2.2-1503.2, the acquisition or construction of capital improvements, the acquisition of land, the acquisition of equipment, or other expenditures of a one-time nature as specified in the general appropriation act.

B. At the end of each fiscal year, the Comptroller shall designate within his annual report pursuant to § 2.2-813 an amount for nonrecurring expenditures, which shall equal the remaining amount of the general fund balance that is not otherwise reserved or designated. No such designation shall be made unless the full amounts required for other reserves or designations including, but not limited to, (i) the

Revenue Stabilization Fund deposit pursuant to § 2.2-1829, (ii) the Virginia Water Quality Improvement Fund deposit pursuant to § 10.1-2128, (iii) capital outlay reappropriations pursuant to the general appropriation act, (iv) operating expense reappropriations pursuant to the general appropriation act, (v) *interest payments on deposits of certain public institutions of higher education pursuant to § 2.2-5005*, (vi) *reappropriations and allotments for expenditure of unexpended appropriations of certain public institutions of higher education pursuant to § 2.2-5005*, (vii) *pro rata rebate payments to certain public institutions of higher education pursuant to § 2.2-5005*, and ~~(viii)~~ (viii) the unappropriated balance anticipated in the general appropriation act for the end of such fiscal year are set aside.

C. The Governor shall include in "The Budget Bill" pursuant to § 2.2-1509 recommended appropriations from the general fund or recommended amendments to general fund appropriations in the general appropriation act in effect at that time an amount for nonrecurring expenditures equal to the amount designated by the Comptroller for such purpose pursuant to the provisions of subsection B of this section.

§ 2.2-2007. Powers of the CIO.

A. In addition to such other duties as the Board may assign, the CIO shall:

1. Monitor trends and advances in information technology; develop a comprehensive, statewide, four-year strategic plan for information technology to include specific projects that implement the plan; and plan for the acquisition, management, and use of information technology by state agencies. The statewide plan shall be updated annually and submitted to the Board for approval. In developing and updating the plan, the CIO shall consider the advice and recommendations of the Council on Technology Services created pursuant to § 2.2-2651.

2. Direct the formulation and promulgation of policies, guidelines, standards, and specifications for the purchase, development, and maintenance of information technology for state agencies, including, but not limited to, those (i) required to support state and local government exchange, acquisition, storage, use, sharing, and distribution of geographic or base map data and related technologies, (ii) concerned with the development of electronic transactions including the use of electronic signatures as provided in § 59.1-496, and (iii) necessary to support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the Commonwealth receive the greatest possible security, value, and convenience from investments made in technology.

3. Direct the development of policies and procedures, in consultation with the Department of Planning and Budget, that are integrated into the Commonwealth's strategic planning and performance budgeting processes, and that state agencies and public institutions of higher education shall follow in developing information technology plans and technology-related budget requests. Such policies and procedures shall require consideration of the contribution of current and proposed technology expenditures to the support of agency and institution priority functional activities, as well as current and future operating expenses, and shall be utilized by all state agencies and public institutions of higher education in preparing budget requests.

4. Review budget requests for information technology from state agencies and public institutions of higher education and recommend budget priorities to the Information Technology Investment Board.

This Review of such budget requests shall include, but not be limited to, all data processing or other related projects for amounts exceeding \$100,000 in which the agency or institution has entered into or plans to enter into a contract, agreement or other financing agreement or such other arrangement that requires that the Commonwealth either pay for the contract by foregoing revenue collections, or allows or assigns to another party the collection on behalf of or for the Commonwealth any fees, charges, or other assessments or revenues to pay for the project. For each project, the agency or institution, *with the exception of public institutions of higher education that meet the conditions prescribed in subsection B of § 23-38.88*, shall provide the CIO (i) a summary of the terms, (ii) the anticipated duration, and (iii) the cost or charges to any user, whether a state agency or institution or other party not directly a party to the project arrangements. The description shall also include any terms or conditions that bind the Commonwealth or restrict the Commonwealth's operations and the methods of procurement employed to reach such terms.

5. Direct the development of policies and procedures for the effective management of information technology investments throughout their entire life cycles, including, but not limited to, project definition, procurement, development, implementation, operation, performance evaluation, and enhancement or retirement. Such policies and procedures shall include, at a minimum, the periodic review by the CIO of agency and public institution of higher education information technology projects estimated to cost \$1 million or more or deemed to be mission-critical or of statewide application by the CIO.

6. Oversee and administer the Virginia Technology Infrastructure Fund created pursuant to § 2.2-2023.

7. Periodically evaluate the feasibility of outsourcing information technology resources and services,

and outsource those resources and services that are feasible and beneficial to the Commonwealth.

8. Report annually to the Governor and the Joint Commission on Technology and Science created pursuant to § 30-85 on the use and application of information technology by state agencies and public institutions of higher education to increase economic efficiency, citizen convenience, and public access to state government.

9. Direct the development of policies and procedures that require VITA to review information technology projects proposed by state agencies and institutions exceeding \$100,000, and recommend whether such projects be approved or disapproved. The CIO shall disapprove projects between \$100,000 and \$1 million that do not conform to the statewide information plan or to the individual plans of state agencies or institutions of higher education.

B. Consistent with § 2.2-2012, the CIO may enter into public-private partnership contracts to finance or implement information technology programs and projects. The CIO may issue a request for information to seek out potential private partners interested in providing programs or projects pursuant to an agreement under this subsection. The compensation for such services shall be computed with reference to and paid from the increased revenue or cost savings attributable to the successful implementation of the program or project for the period specified in the contract. The CIO shall be responsible for reviewing and approving the programs and projects and the terms of contracts for same under this subsection. The CIO shall determine annually the total amount of increased revenue or cost savings attributable to the successful implementation of a program or project under this subsection and such amount shall be deposited in the Virginia Technology Infrastructure Fund created in § 2.2-2023. The CIO is authorized to use moneys deposited in the Fund to pay private partners pursuant to the terms of contracts under this subsection. All moneys in excess of that required to be paid to private partners, as determined by the CIO, shall be reported to the Comptroller and retained in the Fund. The CIO shall prepare an annual report to the Governor and General Assembly on all contracts under this subsection, describing each information technology program or project, its progress, revenue impact, and such other information as may be relevant.

§ 2.2-2901. Appointments, promotions and tenure based upon merit and fitness.

A. In accordance with the provisions of this chapter all appointments and promotions to and tenure in positions in the service of the Commonwealth shall be based upon merit and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications by the respective appointing authorities.

Persons holding positions in the service of the Commonwealth on July 1, 1952, shall be deemed to be holding their positions as though they had received appointment under the terms of this chapter.

B. Persons who leave the service of the Commonwealth for service in any of the armed forces of the United States shall be entitled to be restored to such positions upon the termination of their service with the armed forces, provided such persons, except for good cause shown, have filed an application for restoration to such positions within ~~ninety~~ 90 calendar days following such termination of military service, accompanied by a certificate attesting that the military duty was satisfactorily performed. Such persons shall thereafter hold such positions as though they had received appointment under the terms of this chapter, except as to any such position which, in the meantime, may have been abolished. Any such former employee returning to, or applying for, employment in the state service, 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 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 authority and approval by the Governor. This subsection shall not apply to any position the compensation of which is at a rate of \$1,200 per annum or less.

D. In order to attract and retain professional auditors, accountants and staff members in the service of the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission may establish scales of pay for such positions notwithstanding the provisions of this chapter. Such scales when established and certified to the Department of Human Resource Management and the Comptroller shall be applicable in the stead of the scales established under the personnel plan.

*E. The Board of Visitors of public institutions of higher education shall establish policies for the designation of administrative and professional faculty positions at institutions of higher education. Those designations shall be reserved for positions that require a high level of administrative independence, responsibility, and oversight within the organization or specialized expertise within a given field as defined by the Board of Visitors. The authority under this subsection to establish policies for the designation of administrative and professional faculty positions shall be granted only to those institutions that meet the conditions prescribed in subsection B of § 23-38.88.*

#### CHAPTER 50.1.

#### MANAGEMENT STANDARDS.

§ 2.2-5004. *Financial and administrative management standards for public institutions of higher*

education.

For purposes of this chapter:

"Public institution of higher education" means the same as that term is defined in § 23-38.89.

A. Every public institution of higher education in the Commonwealth shall take all appropriate actions to meet the following financial management standards:

1. An unqualified opinion from the Auditor of Public Accounts upon the audit of the public institution's financial statements;

2. No significant audit deficiencies attested to by the Auditor of Public Accounts;

3. Substantial compliance with all financial reporting standards approved by the State Comptroller;

4. Substantial attainment of accounts receivable standards approved by the State Comptroller, including, but not limited to, any standards for outstanding receivables and bad debts; and

5. Substantial attainment of accounts payable standards approved by the State Comptroller including, but not limited to, any standards for accounts payable past due.

B. Any public institution of higher education that does not meet all of the standards in subsection A as determined in a written certification by the Auditor of Public Accounts pursuant to § 30-133.1 shall develop and implement a plan of corrective action for purposes of meeting such standards as soon as practicable. The Chairman of the Board of Visitors or other governing body of the public institution of higher education shall provide a copy of the written plan to the Auditor of Public Accounts and the Secretaries of Education and Finance promptly upon completion of the development of the written plan.

C. In addition, any public institution of higher education that does not meet all administrative management standards currently in effect for such institutions as determined in a written certification by the Auditor of Public Accounts pursuant to § 30-133.1 shall develop and implement a plan of corrective action for purposes of meeting such standards as soon as practical. Copies of the plan shall be provided to the same persons included under subsection B upon completion of the development of the written plan.

§ 2.2-5005. Incentive performance benefits to certain public institutions of higher education.

Beginning with the Commonwealth's 2006-2007 fiscal year, each public institution of higher education that (i) has been certified during the fiscal year by the State Council of Higher Education of Virginia pursuant to § 23-9.6:1.01 as having met all of the institutional performance benchmarks for public institutions of higher education and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive the following financial benefits:

1. Interest shall be paid on the tuition and fees and other nongeneral fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education. The interest shall be credited by August 15 of the fiscal year immediately following the fiscal year of certification.

The interest shall be paid from the general fund and shall be an appropriate and equitable amount as determined and certified in writing by the Secretary of Finance to the Comptroller by June 1 of the fiscal year of certification;

2. Any unexpended appropriations of the public institution of higher education at the close of the fiscal year shall be reappropriated and allotted for expenditure by the institution in the immediately following fiscal year; and

3. The public institution of higher education shall be paid a pro rata amount of the total rebate due to the Commonwealth on credit card purchases of \$5,000 or less made during the fiscal year. The amount to be paid to each institution shall equal a pro rata share based upon its total transactions of \$5,000 or less using the credit card that is approved for use by all state agencies as compared to all transactions of \$5,000 or less using such card by all state agencies. The Comptroller shall determine the public institution's pro rata share and shall credit the account of the institution by August 15 of the fiscal year immediately following the year of certification.

The payment to an institution of its pro rata share under this subdivision shall also be applicable to other rebate or refund programs in effect that are similar to that of the credit card rebate program described in this subdivision. The Secretary of Finance shall identify such other rebate or refund programs and shall determine the pro rata share to be paid to the public institution of higher education.

§ 23-9.2:3.02. Six-year institutional plans; annual assessment by State Council.

A. The governing boards of the public institutions of higher education shall develop and adopt biennially a six-year plan for the relevant institution. Each governing board shall submit the plan to the State Council, the Governor, and the respective chairs of the House Committee on Appropriations and the Senate Committee on Finance no later than October 1 of each odd-numbered year.

B. Each plan shall address the institution's academic, financial, and enrollment plans (to include the proportion of in-state and out-of-state students) for the six-year period. The plans shall be structured in accordance with the goals and objectives included subsection B of § 23-38.88.

C. Such plans shall include financial planning reflecting the level of resources anticipated from the general fund assuming (i) no increase in general fund support for the subsequent biennial budget cycles

and (ii) incremental general fund support based upon a general fund share for costs for all in-state students as set forth in the current biennial budget. The plan shall also include the anticipated tuition and fee charges required by (a) degree level and (b) domiciliary status to generate sufficient nongeneral fund revenues, as well as the institution's strategies for providing sufficient financial aid to mitigate the impact of tuition and fee increases on students and their families. The plan shall further include the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant subsection A of § 23-38.88 and Subchapter 3 (§ 23-38.91 et seq.) of Chapter 4.10 of this title.

The plans shall be based upon assumptions for achieving adequate base funding as prescribed by the State Council and shall be aligned with six-year enrollment projections.

D. The State Council shall annually review and assess the six-year institutional plans required by this section to determine the degree to which the Commonwealth's system of public higher education is meeting statewide educational needs and objectives, as identified in subsection B of § 23-38.88. The State Council shall identify any disparities between such institutional plans and such statewide needs and objectives and shall make recommendations for the revision of such plans for consideration by the respective public institutions, the Governor, and the General Assembly.

§ 23-9.6:1. Duties of Council generally.

In addition to such other duties as may be prescribed elsewhere, the State Council of Higher Education shall have the duty, responsibility and authority:

1. To prepare plans under which the several state-supported institutions of higher education of Virginia shall constitute a coordinating system. In developing such plans, the Council shall consider Develop a statewide strategic plan that reflects the goals set forth in subsection B of § 23-38.88 for higher education in the Commonwealth, identifies a coordinated approach to such state and regional goals, and emphasizes the future needs for higher education in Virginia at both the undergraduate and the graduate levels, as well as the mission, programs, facilities and location of each of the existing institutions of higher education, each public institution's six-year plan, and such other matters as the Council deems appropriate. The Council shall revise such plans at least once every four six years and shall submit such recommendations as are necessary for the implementation of the plan to the Governor and the General Assembly.

2. To Review and approve or disapprove any proposed change in the statement of mission of any presently existing public institution of higher education and to define the mission of all public institutions of higher education created after the effective date of this provision. The Council shall, within the time prescribed in subdivision 1, make a report to the Governor and the General Assembly with respect to its actions hereunder. No such actions shall become effective until 30 days after adjournment of the session of the General Assembly next following the filing of such a report. Nothing contained in this provision shall be construed to authorize the Council to modify any mission statement adopted by the General Assembly, nor to empower the Council to affect, either directly or indirectly, the selection of faculty or the standards and criteria for admission of any public institution, whether related to academic standards, residence or other criteria; it being the intention of this section that faculty selection and student admission policies shall remain a function of the individual institutions.

3. To Study any proposed escalation of any public institution to a degree-granting level higher than that level to which it is presently restricted and to submit a report and recommendation to the Governor and the General Assembly relating to the proposal. The study shall include the need for and benefits or detriments to be derived from the escalation. No such institution shall implement any such proposed escalation until the Council's report and recommendation have been submitted to the General Assembly and the General Assembly approves the institution's proposal.

4. To Review and approve or disapprove all enrollment projections proposed by each public institution of higher education. The Council's projections shall be in numerical terms by level of enrollment and shall be used for budgetary and fiscal planning purposes only. The Council shall develop estimates of the number of degrees to be awarded by each institution and include those estimates in its reports of enrollment projections. The student admissions policies for the institutions and their specific programs shall remain the sole responsibility of the individual boards of visitors.

5. To Review and approve or disapprove all new academic programs which any public institution of higher education proposes. As used herein, "academic programs" include both undergraduate and graduate programs.

6. To Review and require the discontinuance of any undergraduate or graduate academic program that is presently offered by any public institution of higher education when the Council determines that such academic program is (i) nonproductive in terms of the number of degrees granted, the number of students served by the program, the program's effectiveness, and budgetary considerations, or (ii) supported by state funds and is unnecessarily duplicative of academic programs offered at other public institutions of higher education in the Commonwealth. The Council shall make a report to the Governor and the General Assembly with respect to the discontinuance of any such academic program. No such



discontinuance shall become effective until 30 days after the adjournment of the session of the General Assembly next following the filing of such report.

7. To Review and approve or disapprove the creation and establishment of any department, school, college, branch, division or extension of any public institution of higher education that such institution proposes to create and establish. This duty and responsibility shall be applicable to the proposed creation and establishment of departments, schools, colleges, branches, divisions and extensions, whether located on or off the main campus of the institution in question. If any organizational change is determined by the Council to be proposed solely for the purpose of internal management and the institution's curricular offerings remain constant, the Council shall approve the proposed change. Nothing in this provision shall be construed to authorize the Council to disapprove the creation and establishment of any department, school, college, branch, division or extension of any institution that has been created and established by the General Assembly.

8. To Review the proposed closure of any academic program in a high demand or critical shortage area, as defined by the Council, by any public institution of higher education and assist in the development of an orderly closure plan, when needed.

9. To Develop a uniform, comprehensive data information system designed to gather all information necessary to the performance of the Council's duties. The system shall include information on admissions, enrollments, self-identified students with documented disabilities, personnel, programs, financing, space inventory, facilities and such other areas as the Council deems appropriate.

10. To Develop in cooperation with institutions of higher education guidelines for the assessment of student achievement. An institution shall use an approved program that complies with the guidelines of the Council and is consistent with the institution's mission and educational objectives in the development of such assessment. The Council shall report the institutions' assessments of student achievement in the biennial revisions to the state's master plan for higher education.

11. To Develop in cooperation with the appropriate state financial and accounting officials and to establish uniform standards and systems of accounting, record keeping and statistical reporting for the public institutions of higher education.

12. To Review biennially and approve or disapprove all changes in the inventory of educational and general space that any public institution of higher education may propose, and to make a report to the Governor and the General Assembly with respect thereto. No such change shall be made until 30 days after the adjournment of the session of the General Assembly next following the filing of such report.

13. To Visit and study the operations of each of the public institutions of higher education at such times as the Council shall deem appropriate and to conduct such other studies in the field of higher education as the Council deems appropriate or as may be requested by the Governor or the General Assembly.

14. To Provide advisory services to private, accredited and nonprofit institutions of higher education, whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education, on academic, administrative, financial and space utilization matters. The Council may also review and advise on joint activities, including contracts for services between such public and private institutions of higher education or between such private institutions and any agency of the Commonwealth or political subdivision thereof.

15. To Adopt such rules and regulations as the Council believes necessary to implement all of the Council's duties and responsibilities as set forth in this Code. The various public institutions of higher education shall comply with such rules and regulations.

16. To Issue guidelines consistent with the provisions of the federal Family Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g requiring public institutions of higher education to release a student's academic and disciplinary record to a student's parent.

17. To Develop and revise, as it deems necessary, in consultation with the Coordinator of Emergency Management, a model institutional crisis and emergency management plan for the purpose of assisting public and private two-year and four-year institutions of higher education in establishing, operating, and maintaining emergency services and disaster preparedness activities.

18. To Require that each institution of higher education formed, chartered, or established in the Commonwealth after July 1, 1980, shall ensure the preservation of student transcripts in the event of institutional closure or revocation of approval to operate in the Commonwealth of Virginia. An institution may provide for the preservation of student transcripts by binding agreement with another institution of higher education with which it is not corporately connected or in such other way as the Council may authorize by regulation. In the event an institution closes, or has its approval to operate in the Commonwealth revoked, the Council, through its Director, may take such action as is necessary to secure and preserve the student transcripts until such time as an appropriate institution accepts all or some of the transcripts. Nothing in this section shall be deemed to interfere with the right of a student to his own transcripts; nor shall this section authorize disclosure of student records except as may

otherwise be authorized by law.

19. ~~To~~ Develop, in cooperation with the institutions of higher education, the Board of Nursing, and the Advisory Council on the Future of Nursing in Virginia, a strategic statewide plan to ensure an adequate supply of nurses. The Council shall recommend to the Governor and the General Assembly such changes in public policy as may be necessary to meet the state's current and future need for essential nursing services.

20. ~~To~~ Facilitate the development of dual admissions and articulation agreements between two- and four-year public and private institutions of higher education in Virginia. Such agreements shall be subject to the admissions requirements of the four-year institutions.

21. *Provide periodic updates of base adequacy funding guidelines adopted by the Joint Subcommittee Studying Higher Education Funding Policies for the various public institutions.*

In carrying out its duties and responsibilities, the Council, insofar as practicable, shall preserve the individuality, traditions and sense of responsibility of the respective institutions. The Council, insofar as practicable, shall seek the assistance and advice of the respective institutions in fulfilling all of its duties and responsibilities.

§ 23-9.6:1.01. *Assessments of institutional performance.*

A. *The State Council shall develop and revise from time to time, in consultation with the respective chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health or their designees, representatives of public institutions of higher education, and such other state officials as may be designated by the Governor, objective measures of institutional performance and institutional performance benchmarks for such objective measures. At a minimum, the State Council shall develop objective measures and institutional performance benchmarks for the goals and objectives set forth in subsection B of § 23-38.88.*

*The State Council shall develop the initial objective measures and performance benchmarks for consideration by the Governor and the General Assembly no later than October 1, 2005.*

B. *The Governor shall include objective measures of institutional performance and institutional performance benchmarks in the amendments to the budget bill submitted as required by subsection E of § 2.2-1509.*

C. *The State Council shall annually assess the degree to which the individual public institutions have met the institutional performance benchmarks set forth in the appropriation act in effect. Such annual assessment shall be based upon the objective measures and institutional performance benchmarks proposed by the Governor and included in the annual appropriation act.*

*No later than June 1 of each year, the State Council shall provide a certified written report of the results of such annual assessment to the Governor and the respective chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health.*

*Beginning with the Commonwealth's 2006-2007 fiscal year, those institutions that have met the institutional performance benchmarks shall be entitled to the benefits set forth in § 2.2-5005.*

#### CHAPTER 4.10.

### RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT.

#### SUBCHAPTER 1.

#### GENERAL PROVISIONS.

§ 23-38.88. *Eligibility for restructured financial and administrative operational authority.*

A. *Public institutions of higher education shall be eligible for the following restructured financial and operational authority:*

1. *To dispose of their surplus materials at the location where the surplus materials are held and to retain any proceeds from such disposal as provided in subdivision B 14 of § 2.2-1124;*

2. *For those public institutions of higher education that have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act, as provided in subsection C of § 2.2-1132, to enter into contracts for specific construction projects without the review and approval of the Bureau of Capital Outlay Management, provided such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.);*

3. *To acquire easements as provided in subdivision 4 of § 2.2-1149;*

4. *To acquire an operating or capital lease, provided that the capital lease does not impact the Commonwealth's debt capacity, as provided in subdivision 5 of § 2.2-1149;*

5. *To convey an easement pertaining to any property such institution owns or controls as provided in subsection C of § 2.2-1150;*

6. *To sell surplus property valued at less than \$5 million that is possessed and controlled by the institution and to retain a portion of the proceeds from the sale of such property as provided in subdivision C 2 of § 2.2-1153;*

7. *For purposes of compliance with § 2.2-4310, to procure goods, services, and construction from a*

607 vendor that the institution has identified as a minority business enterprise as provided in § 2.2-1404.1;  
 608 8. To be exempt from reporting data processing or other related projects to the CIO as provided in  
 609 subdivision A 4 of § 2.2-2007;

610 9. To be allowed to establish policies for the designation of administrative and professional faculty  
 611 positions at the institution as provided in subsection E of § 2.2-2901;

612 10. To receive the financial benefits described under § 2.2-5005 and under the conditions of such  
 613 section;

614 11. To have the authority to contract with a building official of the locality in which construction for  
 615 the institution is taking place for such official to perform, on behalf of the Department of General  
 616 Services, any inspection and certifications required for the purpose of complying with the Uniform  
 617 Statewide Building Code (§ 36-97 et seq.) pursuant to subsection B of § 36-98.1;

618 12. For sole source procurements made by the institution in accordance with subsection E of  
 619 § 2.2-4303, to be exempt from any transaction fees for using a vendor who is not registered with the  
 620 Department of General Services' web-based electronic procurement program commonly known as "eVA";

621 13. To be exempt from reporting its purchases to the Secretary of Education and from any review of  
 622 its purchases by the Secretary; and

623 14. The restructured financial and operational authority set forth in Subchapter 2 (§ 23-38.90) and  
 624 Subchapter 3 (§ 23-38.91 et seq.) of this chapter.

625 No such authority shall be granted unless the institution meets the conditions set forth in this  
 626 chapter.

627 B. In order to be eligible for the restructured financial and operational authority set forth in  
 628 subdivisions A 1 through A 13 of § 23-38.88, the Board of Visitors of a public institution of higher  
 629 education shall commit to the Governor and the General Assembly by August 1, 2005, through formal  
 630 resolution adopted according to its own bylaws, to meeting the state goals specified below, and shall be  
 631 responsible for ensuring that such goals are met, in addition to such other responsibilities as may be  
 632 prescribed by law. Each such institution shall commit to the Governor and the General Assembly to:

633 1. Consistent with its institutional mission, provide access to higher education for all citizens  
 634 throughout the Commonwealth, including underrepresented populations, and, consistent with subdivision  
 635 4 of § 23-9.6:1 and in accordance with anticipated demand analysis, meet enrollment projections and  
 636 degree estimates as agreed upon with the State Council of Higher Education for Virginia;

637 2. Consistent with § 23-9.2:3.02, ensure that higher education remains affordable, regardless of  
 638 individual or family income, and through a periodic assessment, determine the impact of tuition and fee  
 639 levels net of financial aid on applications, enrollment, and student indebtedness incurred for the  
 640 payment of tuition and fees. Each public institution of higher education shall give consideration to  
 641 potential future impacts of tuition increases on the Virginia College Savings Plan (§ 23-38.75) and shall  
 642 discuss such potential impacts with the Plan. The executive director of the Virginia College Savings  
 643 Plan shall provide to each institution its assumptions underlying the contract pricing of the program;

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

646 4. Ensure that the institution's academic programs and course offerings maintain high academic  
 647 standards, by undertaking a continuous review and improvement of academic programs, course  
 648 availability, faculty productivity, and other relevant factors;

649 5. Ensure that students progress from initial enrollment to a timely graduation within the prescribed  
 650 credit hours of the degree program, and that the number of degrees conferred increases over time;

651 6. Consistent with the institution's mission, develop articulation agreements that have uniform  
 652 application to all Virginia community colleges and meet appropriate general education and program  
 653 requirements at the four-year institution, and provide additional opportunities for associate degree  
 654 graduates to be admitted and enrolled;

655 7. Actively contribute to efforts to stimulate the economic development of the Commonwealth and the  
 656 area in which the institution is located. Such objective shall include, but shall not be limited to, (i)  
 657 assessing regularly the extent to which the institution's curricula and degree programs address the  
 658 Commonwealth's need for sufficient graduates in particular shortage areas, including specific academic  
 659 disciplines, professions, and geographic regions as identified by the Virginia Employment Commission  
 660 and the State Council of Higher Education; and (ii) where appropriate, increasing the level of externally  
 661 funded research conducted at the institution;

662 8. Work actively and cooperatively with elementary and secondary school administrators, teachers,  
 663 and students in those public schools and school divisions that have not achieved full accreditation  
 664 pursuant to the Standards of Accreditation required by Chapter 13.2 (§ 22.1-253.13:1 et seq.) of Title  
 665 22.1 to improve student achievement, upgrade the knowledge and skills of teachers, and strengthen  
 666 leadership skills of school administrators;

667 9. Prepare a six-year financial plan consistent with § 23-9.2:3.02; and

10. Conduct the institution's business affairs in a manner that maximizes operational efficiency, contributes to economies for state government as a whole, and meets the financial and administrative management standards currently in effect for public institutions of higher education pursuant to § 2.2-5004 and as may be included in the appropriation act that is in effect.

Upon making such commitments to the Governor and the General Assembly by August 1, 2005, the public institution of higher education shall be allowed to exercise the restructured financial and operational authority set forth in subdivisions A 1 through A 13 of § 23-38.88, subject to such conditions as may be provided under the enabling statutes granting the additional authority.

C. As provided in subsection C of § 23-9.6:1.01, the State Council of Higher Education shall in consultation with the respective chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health or their designees, representatives of public institutions of higher education, and such other state officials as may be designated by the Governor, develop objective measures of institutional performance and institutional performance benchmarks for such objective measures. At a minimum, the State Council shall develop objective measures and institutional performance benchmarks for the goals and objectives set forth in subsection B.

As provided in subsection C of § 23-9.6:1.01, beginning with the 2006-2007 fiscal year, any public institution of higher education that has been certified during the fiscal year by the State Council of Higher Education for Virginia as meeting all such institutional performance benchmarks shall be provided the financial benefits under § 2.2-5005.

D. 1. The restructured financial and operational authority set forth in Subchapter 3 (§ 23-38.91 et seq.) of this chapter shall be granted in accordance with the expressed terms of a management agreement between the public institution of higher education and the Commonwealth.

No restructured financial or operational authority set forth in Subchapter 3 (§ 23-38.91 et seq.) of this chapter shall be granted to a public institution of higher education unless such authority is expressly included in the management agreement. In addition, the only implied authority that shall be granted from entering into a management agreement is that implied authority that is actually necessary to carry out the expressed grant of restructured financial or operational authority. As a matter of law, the initial presumption shall be that any restructured financial or operational authority set forth in Subchapter 3 is not included in the management agreement. These requirements shall also apply to any other provision included in Subchapter 3.

2. No public institution of higher education shall enter into a management agreement unless:

a. (i). Within the last five years of the date that the initial agreement is entered into, the institution has received an affirmed bond rating of at least AA- (i.e., AA minus) or its equivalent from (a) Moody's Investors Service, Inc., (b) Standard & Poor's, Inc., or (c) Fitch Investor's Services, Inc. or (ii) the institution has (a) participated in decentralization pilot programs in the areas of finance and capital outlay, (b) demonstrated management competency in those two areas as evidenced by a written certification from the Cabinet Secretary or Secretaries designated by the Governor, (c) received additional operational authority under a memorandum of understanding pursuant to § 23-38.90 in at least one functional area, and (d) demonstrated management competency in that area for a period of at least two years. In submitting "The Budget Bill" for calendar year 2005 pursuant to subsection A of § 2.2-1509, the Governor shall include criteria for determining whether or not an institution has demonstrated the management competency required by clause (ii) of this subdivision;

b. 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 should be, governed by the provisions of Subchapter 3 (§ 23-38.91 et seq.) of this chapter, which resolution shall be included in the initial management agreement; and

c. The institution agrees to reimburse the Commonwealth for any additional costs to the Commonwealth in providing health or other group insurance benefits to employees, and in undertaking any risk management program, that are attributable to the institution's exercise of any restructured financial or operational authority set forth in Subchapter 3. The institution's agreement to reimburse the Commonwealth for such additional costs shall be expressly included in each management agreement with the institution.

In developing management agreements, public institutions of higher education shall give consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ 23-38.75) and shall discuss such potential impacts with parties participating in development of such agreements. The executive director of the Virginia College Savings Plan shall provide to the institution and such parties its assumptions underlying the contract pricing of the program.

3. Each initial management agreement with an institution shall remain in effect for a period of three years. Subsequent management agreements with the institution shall remain in effect for a period of five years.

If an existing agreement is not renewed or a new agreement executed prior to the expiration of the three-year or five-year term, as applicable, the existing agreement shall remain in effect on a provisional basis for a period not to exceed one year. If, after the expiration of the provisional one-year period, the management agreement has not been renewed or a new agreement executed, the institution shall no longer be granted the financial or operational authority set forth in Subchapter 3 (§ 23-38.91 et seq.) of this chapter, unless and until such time as a new management agreement is entered into between the institution and the Commonwealth.

The Joint Legislative Audit and Review Commission, in cooperation with the Auditor of Public Accounts, shall conduct a review relating to the initial management agreement with each public institution of higher education. The review shall cover a period of at least the first 24 months from the effective date of the management agreement. The review shall include, but shall not be limited to, the degree of compliance with the expressed terms of the management agreement, the degree to which the institution has demonstrated its ability to manage successfully the administrative and financial operations of the institution without jeopardizing the financial integrity and stability of the institution, the degree to which the institution is meeting the objectives described in subsection B, and any related impact on students and employees of the institution from execution of the management agreement. The Joint Legislative Audit and Review Commission shall make a written report of its review no later than June 30 of the third year of the management agreement. The Joint Legislative Audit and Review Commission is authorized, but not required, to conduct a similar review of any management agreement entered into subsequent to the initial agreement.

4. The right and power by the Governor to void a management agreement shall be expressly included in each management agreement. The management agreement shall provide that if the Governor makes a written determination that a public institution of higher education that has entered into a management agreement with the Commonwealth is not in substantial compliance with the terms of the agreement or with the requirements of this chapter in general, (i) the Governor shall provide a copy of that written determination to the chairmen of the Board of Visitors or other governing body of the public institution of higher education and to the members of the General Assembly, and (ii) the institution shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of the management agreement or with the requirements of this chapter, or both, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the institution, the Governor determines that the institution is not yet in substantial compliance with the management agreement or the requirements of this chapter, the Governor may void the management agreement. Upon the Governor voiding a management agreement, the affected public institution of higher education shall not be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 (§ 23-38.91 et seq.) unless and until the institution enters into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the void management agreement is reinstated by the General Assembly.

5. A management agreement with a public institution of higher education shall not grant any of the restructured financial or operational authority set forth in Subchapter 3 (§ 23-38.91 et seq.) of this chapter to the Virginia Cooperative Extension and Agricultural Experiment Station, the University of Virginia College at Wise, or the Virginia Institute of Marine Sciences or to an affiliated entity of the institution unless such intent, as well as the degree of the restructured financial or operational authority to be granted, is expressly included in the management agreement.

6. Following the execution and submission of a management agreement with a public institution of higher education and submission of that management agreement to 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 pursuant to § 23-38.97, the Governor shall include a recommendation for approval of each management agreement with that institution in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his gubernatorial amendments submitted pursuant to subsection E of § 2.2-1509. If such recommendation is adopted as part of the general appropriation act, the initial management agreement shall become effective on the effective date of such general appropriation act. However, no management agreement shall be entered into by a public institution of higher education and the Secretary or Secretaries designated by the Governor on or after November 15 of a calendar year.

E. A covered 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 were not governed by this chapter; provided further, that the Virginia Tort Claims Act (§ 8.01-195.1 et seq.) and its limitations on recoveries shall remain applicable with respect to institutions governed by this chapter.

§ 23-38.89. Definitions.

As used in this chapter, the following terms have the following meanings, unless the context requires otherwise:

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

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

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

"Covered institution" means, on and after its Management Agreement Effective Date, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 (§ 23-38.91 et seq.) of this chapter.

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

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

"Management agreement" means an agreement required by subsection D of § 23-38.88 between the Commonwealth and a public institution of higher education seeking to become governed by Subchapter 3 (§ 23-38.91 et seq.) of this chapter.

"Management Agreement Effective Date" means, except as provided in subdivision D 6 of § 23-38.88, July 1 of the calendar year following the calendar year in which a management agreement is entered into between the Commonwealth and a public institution of higher education.

"Project" means any research programs and any research or educational facility of an institution governed by Subchapter 3 (§ 23-38.91 et seq.) of this chapter or equipment necessary or convenient to or consistent with the purposes of such institution, whether or not owned by the institution, including, without limitation, research, training, teaching, dormitory, and classroom facilities; all related and supporting facilities, and equipment necessary or desirable in connection therewith or incidental thereto; or equipment alone; and also 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; 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 a two-year or four-year public institution of higher education.

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

## SUBCHAPTER 2.

### FINANCIAL AND ADMINISTRATIVE MEMORANDA OF UNDERSTANDING.

§ 23-38.90. Memoranda of understanding.

A. 1. The Governor shall recommend to the General Assembly operational areas in addition to decentralization programs in finance and capital outlay established as of June 30, 2005, under which

public institutions of higher education may seek to enter into a memorandum of understanding with the Commonwealth. In submitting "The Budget Bill" for calendar year 2005 pursuant to subsection A of § 2.2-1509, the Governor shall include eligibility criteria for each operational area along with the functional authority that could be granted in each area. In each operational area, the functional authority granted through a memorandum of understanding shall not exceed the level of autonomy permitted under Subchapter 3 (§ 23-38.91 et seq.) of this chapter.

2. Effective July 1, 2006, any public institution of higher education may enter into a memorandum of understanding with the appropriate Cabinet Secretary or Secretaries, as designated by the Governor, for additional operational authority in any operational area or areas adopted by the General Assembly in accordance with subdivision A 1 provided that the authority granted in the memorandum of understanding is consistent with that institution's ability to manage its operations in the particular area or areas.

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, 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 3.

#### ALTERNATIVE AUTHORITY FOR COVERED INSTITUTIONS.

##### Article 1.

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

§ 23-38.91. 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 may enter into negotiation with the Governor to develop a management agreement with the Commonwealth, as provided in this subchapter. Consistent with the terms of the management agreement, the Board of Visitors shall assume full responsibility for management of the institution, subject to the requirements and conditions set forth in this subchapter, the general requirements for management agreements as provided in § 23-38.88, and the specific management agreement with the Commonwealth. The Board of Visitors shall be fully accountable for (i) the management of the institution of higher education as provided in this subchapter, (ii) meeting the requirements of §§ 2.2-5004, 23-9.2:3.02, and 23-9.6:1.01, and (iii) meeting such other provisions as may be set forth in the management agreement with the Commonwealth.

B. Each covered institution shall be governed and administered in the manner provided in this subchapter but subject to the expressed terms of the management agreement entered into pursuant to § 23-38.88, in the appropriation act, and in each such institution's enabling legislation.

§ 23-38.92. 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 that are expressly included in the management agreement described in § 23-38.88.

B. Except as specifically made inapplicable under this subchapter and the express terms of a management agreement described in § 23-38.88, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to covered institutions as provided by the express terms of the management agreement described in § 23-38.88.

C. In the event of a conflict between any provision of Title 2.2 and any provision of this subchapter as expressed by the management agreement, the provisions of the management agreement shall control. In the event of a conflict between any provision of this subchapter and an institution's enabling legislation, the enabling legislation shall control.

§ 23-38.93. Educational policies of the Commonwealth; other requirements.

A. For purposes of §§ 2.2-5004, 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, 23-9.2:3.02, 23-9.2:3.1 through 23-9.2:5, 23-9.6:1.01, and Chapter 4.9 (§ 23-38.75 et seq.), 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.).

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, subject to the appropriation in the appropriation act in effect, 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.

§ 23-38.94. 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 except for those provisions in such chapter that relate to requirements for financial recordkeeping and bookkeeping. 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.

§ 23-38.95. 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.

§ 23-38.96. 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.

§ 23-38.97. 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 should be, governed by this subchapter.

2. Following such affirmative vote by such governing body, the institution shall submit to the Governor a written request for his approval to be governed by this subchapter. A copy of such request shall be sent to 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. Such written request shall provide documentation substantiating that: (i) the institution possesses the necessary administrative infrastructure, experience, and expertise to perform successfully its public educational mission as a covered institution; (ii) the institution is financially able to operate as a covered institution without jeopardizing the financial integrity and stability of the institution; (iii) the institution consistently meets the financial and administrative management standards pursuant to § 2.2-5004; and (iv) the institution's governing body has adopted performance and accountability



standards, in addition to those developed by the State Council of Higher Education pursuant to § 23-9.6:1.01, against which its implementation of this additional authority can be measured.

B. If the Governor finds that the institution meets the criteria set forth in subdivision A 2, he shall authorize those Cabinet Secretaries he deems appropriate to enter into a management agreement, as described in § 23-38.88, with the governing body of that institution addressing such matters as that institution's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students.

C. Any such management agreement, executed by the designated Cabinet Secretaries and governing body of the institution shall be submitted by no later than November 15 of any given year to the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health. The Governor shall include a recommendation for approval of the management agreement with the public institution of higher education in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his gubernatorial amendments submitted pursuant to subsection E of § 2.2-1509, and the management agreement shall become effective as provided in subdivision D 6 of § 23-38.88 and § 23-38.89.

§ 23-38.98. Amendments to, and revocation of, management agreement.

A. Any amendment to a management agreement shall be executed by the covered institution and the Cabinet Secretaries deemed appropriate by the Governor, shall be submitted to the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health no later than 30 days prior to the effective date of such amendment, and shall be effective on the effective date of such amendment.

B. An institution's status as a covered institution may be revoked by an act of the General Assembly (i) if the institution fails to meet the requirements of this subchapter, or (ii) if the institution fails to meet the requirements of the management agreement as provided in § 23-38.88. An institution's status as a covered institution shall terminate upon the Governor voiding the management agreement with the institution as provided under subdivision D 4 of § 23-38.88.

#### Article 3.

#### Powers and Authority Generally.

§ 23-38.99. Powers and authority generally.

In addition to those powers granted in each covered institution's enabling legislation and in the appropriation act, a covered institution, subject to the express provisions of the management agreement as provided in § 23-38.88, shall have all the powers and authority necessary or convenient to carry out the purposes and provisions of this subchapter. The powers of the Board of Visitors of the institution shall include:

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

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

3. To procure such insurance, participate in such insurance plans, provide such self-insurance, continue participation in the Commonwealth's insurance or self-insurance plans, continue to participate in the Commonwealth's risk management programs, continue participation in the Virginia Retirement System or other Commonwealth sponsored retirement plans, or any combination of the foregoing, as provided in this subchapter. The purchase of insurance, participation in an insurance plan, or creation 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.

§ 23-38.100. 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, national origin, or other factor prohibited by law.

§ 23-38.101. 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.

§ 23-38.102. 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.), 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.

#### Article 4.

#### Institutional Management.

§ 23-38.103. Six-Year Plan.

Each covered institution shall develop, and its Board of Visitors shall approve, a six-year plan, to be updated at least every two years. Such plan shall be consistent with the provisions of § 23-9.2:3.02.

§ 23-38.104. Tuition, fees, rentals, and other charges; moneys.

A covered institution may fix, revise from time to time, charge and collect tuition, rates, rentals, fees and other charges for the services, goods, or facilities furnished by or on behalf of such institution, and may adopt policies regarding any such service rendered or the use, occupancy, or operation of any such facility.

§ 23-38.105. Financial operations of covered institutions.

A. Subject to such accountability measures and audits as are provided in this subchapter or as may otherwise be specifically made applicable by other law to institutions governed by this subchapter and subject to the expressed terms of the management agreement described in § 23-38.88, a covered institution may be permitted (i) to independently manage its operations and finances, including holding and investing its tuition, fees, research funds, auxiliary enterprise funds, and all other public funds after initially being deposited into the state treasury; (ii) to create any and all financial policies deemed necessary to conduct its financial operations; (iii) to adopt the budget for the institution; and (iv) to control the expenditures of all moneys generated or received by the institution, including tuition, fees and other nongeneral fund revenue sources.

B. Subject to the express terms of the management agreement described in § 23-38.88, in managing its operations and finances, the Board of Visitors of a covered institution shall have sole authority to

establish tuition, fee, room, board, and other charges consistent with sum sufficient appropriation authority for all nongeneral funds as provided by the Governor and the General Assembly in the Commonwealth's biennial appropriations authorization. The Board of Visitors shall include the institution's commitment to meet all remaining financial need above the level that the Commonwealth has stated as its goal in § 4-5.01 of the appropriations act. In the event that any or all of the nongeneral funds are retained by the institution, the institution shall invest such funds consistent with an investment policy established by the Board of Visitors and retain all income earned on such investments. In the event that any or all of the nongeneral funds are held on behalf of the institution by the Commonwealth of Virginia, the institution shall receive a share of the income earned by the Commonwealth on the investment of such funds as provided in § 2.2-5005.

C. A covered institution may enter into any contract which 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, notes, or other obligations or (ii) investment or contract providing for investment, otherwise authorized by law, including but not limited to § 23-38.106. 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 counterpart 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, notes or other obligations 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.

§ 23-38.106. Investments of operating funds.

A covered 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 which provide that such investments shall be made solely in the interest of the covered 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.

§ 23-38.107. Records of financial transactions.

The governing body of a covered institution shall adopt a system of independent financial management that includes bookkeeping and accounting procedures that have been prescribed for governmental organizations by the Government Accounting Standards Board.

§ 23-38.108. 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.

§ 23-38.109. 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 therefore by or on behalf of such institution, or otherwise, including bonds, notes, 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 Article X, Section 9(b) or 9(c) of the Constitution of Virginia, or any financing program or bond issue under Article X Section 9(d) 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 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.

##### § 23-38.110. 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 subdivision C 2, 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, 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; 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 9(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 9(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 \$2 million, 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 (§ 36-97 et seq.) requirements are met for that capital project and that such project has been inspected by the State Fire Marshal or his designee. The building official shall report directly to the Board of Visitors of the institution and shall be subject to review by the appropriate personnel in the Department of General Services.

§ 23-38.111. Procurement; discrimination prohibited; participation of women- or minority-owned and small businesses.

A. Subject to the express provisions of the management agreement described in § 23-38.88, 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 pursuant to subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" under § 2.2-4301, shall prohibit discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation or award of contracts, shall incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354, and shall consider the impact on correctional enterprises under § 53.1-47.

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-, minority-owned, and small businesses and to promote and encourage a diversity of suppliers.

§ 23-38.112. 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 § 23-38.111 and that include provisions addressing cooperative arrangements for such procurement as described in § 23-38.111, and shall adopt and comply with institutional policies regarding information technology planning, budgeting, projects, infrastructure, security, and ongoing operations.

§ 23-38.113. 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 §§ 23-38.110 and 23-38.114, 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:

1. A covered institution 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 as provided in § 23-38.88, a covered institution may acquire any real property, construct improvements thereon in accordance with § 23-38.110, 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 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 institution shall hold, possess, operate, dispose of, 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, in accordance with the covered 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 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.

3. Consistent with the provisions of subdivisions 1 and 2 of this subsection, may sell, assign, encumber, mortgage, demolish, or otherwise dispose of any project or any other property, real or personal, 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

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

B. A covered 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 subchapter. A covered 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 subchapter. Counties, cities, and towns are hereby authorized to lend or donate money or other property to a covered 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.

§ 23-38.114. Leases of property.

The governing body of a covered institution shall adopt such policies relating to the leasing of real property, including capital, operating, or income leases, that reasonably ensure that such leases are efficiently procured on appropriate terms and for appropriate purposes. Other than applicable policies adopted by a covered institution's board of visitors and provisions of general law that expressly apply to covered institutions, such institutions shall be exempt from any state or local statutes or ordinances, rules, regulations, and guidelines relating to operating and income leases of real or personal property by public entities and, except as otherwise provided in § 23-38.110, to capital leases.

#### Article 6.

#### Human Resources.

§ 23-38.115. Human resources systems.

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

B. The governing body of each covered institution may elect to adopt either (i) one or more human resources systems for nonfaculty Covered Employees that is or are generally 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 (ii) such other human resources system or systems for nonfaculty Covered Employees as it determines to be appropriate. The covered institution may administer such human resources system or systems itself or may contract with another covered institution or with the Department of Human Resources Management to administer some or all of its human resources systems, subject to the execution of any participation or operating agreement as the parties to that agreement may deem necessary and appropriate.

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

D. Any human resources system adopted by the governing body of a covered institution for Covered 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.

§ 23-38.116. 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.

§ 23-38.117. 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.

§ 23-38.118. Insurance 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.

§ 23-38.119. 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).

§ 23-38.120. 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 immediately prior to the institution's Management Agreement Effective Date, and (ii) to those grandfathered Covered Employees who are active participants in a Virginia Retirement System administered retirement plan, basic group life insurance that has at least the same level of benefits as provided by the Virginia Retirement System group life insurance plan for state employees that was in effect immediately prior to the institution's Management Agreement Effective Date, unless and until the Virginia Retirement System reduces those benefits. All nongrandfathered salaried Covered Employees shall be offered basic group life insurance at a level of coverage determined by such institution's governing body. A covered institution may require nongrandfathered Covered Employees to pay all or a portion of the cost of the insurance coverage offered pursuant to this subsection, which may be collected through a payroll deduction program. If the institution's governing body so elects, and subject to the execution of such participation agreements as the Virginia Retirement System may require, the covered institution's Covered Employees may be covered by the Virginia Retirement System's group insurance programs established pursuant to Chapter 5 (§ 51.1-500 et seq.) of Title 51.1 under the same terms and conditions that apply to, and with the same benefits that are available to, other state employees.

B. For those of its Covered Employees eligible to participate in the Virginia Retirement System, a covered institution shall (i) purchase disability insurance, (ii) subject to the execution of such participation agreements as may be necessary, appropriate, and in the best interests of the



Commonwealth, continue to participate in the disability insurance program established for state agencies, (iii) establish a self-insured disability insurance program, or (iv) any combination of clauses (i) through (iii). A covered institution may require nongrandfathered Covered Employees to pay all or a portion of the cost of the insurance coverage offered pursuant to this subsection, which may be collected through a payroll deduction program. However, the covered institution shall not be required to contribute to the program established for state agencies on behalf of Covered Employees who do not participate in that program.

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

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

§ 23-38.121. Severance Policies.

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

B. The terms and conditions of a covered institution's severance policy or policies shall be determined by the institution's governing body, except that a covered institution shall provide severance benefits to Covered Employees who were its employees prior to its Management Agreement Effective Date and who otherwise would be eligible for severance benefits under the Workforce Transition Act (§ 2.2-3200 et seq.) that are no less than the severance benefits that such Covered Employees would receive under §§ 2.2-3203 and 2.2-3204 if the institution were not a covered institution. Each full year of service rendered to a covered institution by such Covered Employees shall be treated as an equivalent year of service to the Commonwealth for purposes of § 2.2-3203, and for purposes of § 2.2-3204 for such Covered Employees who are eligible for credits under that section. The terms and conditions of the covered institution's severance policy or policies for Covered Employees who are hired by a covered institution on or after the institution's Management Agreement Effective Date shall be determined by the institution's governing body; provided that the value of the severance benefits for any Covered Employee hired on or after the Management Agreement Effective Date who would otherwise be eligible for severance benefits under the Workforce Transition Act (§ 2.2-3200 et seq.) shall not be less than two-thirds of the value of the benefits that would have been paid under the Workforce Transition Act (§ 2.2-3200 et seq.). The covered institution and the Board of the Virginia Retirement System shall negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Covered Employees who participate in the Virginia Retirement System.

C. Covered Employees who were employees of a covered institution and were covered by the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 prior to its Management Agreement Effective Date, who otherwise would be eligible for severance benefits under the Workforce Transition Act (§ 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 § 23-38.115 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.

D. 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 or the Workforce Transition Act (§ 2.2-3200 et seq.) applicable to that employee.*

*Article 7.*

*Additional Authority Subject to Management Agreement.*

*§ 23-38.122. Restructured authority subject to management agreement.*

*As provided in subsection D of § 23-38.88, no restructured financial or operational authority set forth in Subchapter 3 (§ 23-38.91 et seq.) of this chapter or any other provision of such chapter shall become effective unless and until the authority or provision is expressly included in a management agreement and all other conditions of subdivisions D 1 and D 2 of § 23-38.88 have been met.*

*§ 30-133.1. Additional certifications for public institutions of higher education.*

*In addition to all other responsibilities and duties required under law, the Auditor of Public Accounts shall, promptly upon completion of the annual audit for each public institution of higher education, certify in writing to the Chairman of the Board of Visitors or other governing body of the institution, the Secretaries of Education and Finance, and the Chairmen of the House Committee on Appropriations, the House Committee on Finance, and the Senate Committee on Finance whether or not the institution meets all of the financial and administrative management standards currently in effect for public institutions of higher education pursuant to § 2.2-5004 and as may be included in the appropriation act currently in effect. In addition, for any public institution of higher education required to develop and implement a plan of corrective action under § 2.2-5004, the Auditor shall at the time of making the certification provide a written evaluation of the institution's progress in implementation of the plan and in meeting all of the financial and administrative management standards currently in effect.*

*For purposes of this section "public institution of higher education" means the same as that term is defined in § 23-38.89.*

*§ 36-98.1. State buildings.*

*A. The Building Code shall be applicable to all state-owned buildings and structures, with the exception that §§ 2.2-1159 through 2.2-1161 shall provide the standards for ready access to and use of state-owned buildings by the physically handicapped.*

*Any state-owned building or structure for which preliminary plans were prepared or on which construction commenced after the initial effective date of the Uniform Statewide Building Code, shall remain subject to the provisions of the Uniform Statewide Building Code that were in effect at the time such plans were completed or such construction commenced. Subsequent reconstruction, renovation or demolition of such building or structure shall be subject to the pertinent provisions of the Building Code.*

*Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for state-owned buildings. The Department shall review and approve plans and specifications, grant modifications, and establish such rules and regulations as may be necessary to implement this section. It shall provide for the inspection of state-owned buildings and enforcement of the Building Code and standards for access by the physically handicapped by delegating inspection and Building Code enforcement duties to the State Fire Marshal's Office, to other appropriate state agencies having needed expertise, and to local building departments, all of which shall provide such assistance within a reasonable time and in the manner requested. State agencies and institutions occupying buildings shall pay to the local building department the same fees as would be paid by a private citizen for the services rendered when such services are requested by the Department of General Services. The Department of General Services may alter or overrule any decision of the local building department after having first considered the local building department's report or other rationale given for its decision. When altering or overruling any decision of a local building department, the Department of General Services shall provide the local building department with a written summary of its reasons for doing so.*

*B. Except as provided in subsection D of § 23-38.110, and notwithstanding the provisions of subsection A, at the request of a public institution of higher education, the Department shall authorize that institution of higher education to contract with a building official of the locality in which the construction is taking place to perform on behalf of the Department any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.). The authority granted to a public institution of higher education under this subsection to contract with a building official of the locality shall be subject to the institution meeting the conditions prescribed in subsection B of § 23-38.88.*

*§ 51.1-124.3. Definitions.*

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

*"Abolished system" means the Virginia Retirement Act, §§ 51-30 through 51-111, repealed by Chapter 1 of the Acts of Assembly of 1952.*

*"Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, all amounts the*

member may contribute to purchase creditable service, all member contributions contributed by the employer on behalf of the employee, on or after July 1, 1990, except those amounts contributed on behalf of members of the General Assembly who are otherwise retired under the provisions of this chapter, and all interest accruing to these funds. If a member is retired for disability from a cause which is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), dies in service prior to retirement, or requests a refund of contributions in accordance with § 51.1-161, "accumulated contributions" shall include all member contributions paid by the employer on behalf of the member on and after July 1, 1980, and all interest which would have accrued to these funds.

"Actuarial equivalent" means a benefit of equal value when computed upon the basis of actuarial tables adopted by the Board.

"Average final compensation" means the average annual creditable compensation of a member during his 36 highest consecutive months of creditable service or during the entire period of his creditable service if less than 36 months. If a member ceased employment prior to July 1, 1974, "average final compensation" means the average annual creditable compensation during the five highest consecutive years of creditable service.

"Beneficiary" means any person entitled to receive benefits under this chapter.

"Board" means the Board of Trustees of the Virginia Retirement System.

"Creditable compensation" means the full compensation payable annually to an employee working full time in his covered position. *For any state employee of a public institution of higher education or a teaching hospital affiliated with a public institution of higher education who is (i) compensated on a salaried basis, and (ii) working full time in a covered position pursuant to a contract of employment for a period of at least nine months, creditable compensation means the full compensation payable over the term of any contract entered into between the employee and the employer, without regard to whether or not the term of the contract coincides with the normal scholastic year. However, if the contract is for more than one year, creditable compensation means that compensation paid for the current year of the contract.*

Remuneration received by members of the General Assembly not otherwise retired under the provisions of this chapter pursuant to §§ 30-19.11 and 30-19.12 shall be deemed creditable compensation. In addition, for any member of the General Assembly, creditable compensation shall include the full amount of salaries payable to such member for working in covered positions, regardless of whether a contractual salary is reduced and not paid to such member because of service in the General Assembly.

"Creditable service" means prior service as set forth in § 51.1-142.2 plus membership service for which credit is allowable.

"Employee" means any teacher, state employee, officer, or employee of a locality participating in the Retirement System.

"Employer" means the Commonwealth in the case of a state employee, the local public school board in the case of a teacher, or the political subdivision participating in the Retirement System.

"Joint Rules Committee" means those members of the House of Delegates and the Senate designated by the Speaker of the House and the Chairman of the Senate Committee on Rules, respectively, to meet with each other and to act jointly on behalf of the Committee on Rules for each house.

"Local officer" means the treasurer, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, or sheriff of any county or city, or deputy or employee of any such officer.

"Medical Board" means the board of physicians as provided by this chapter.

"Member" means any person included in the membership of the Retirement System.

"Membership service" means service as an employee rendered while a contributing member of the Retirement System except as provided in this chapter.

"Normal retirement date" means a member's sixty-fifth birthday.

"Political subdivision" means any county, city, or town, any political entity, subdivision, branch, or unit of the Commonwealth, or any commission, public authority, or body corporate created by or under an act of the General Assembly specifying the powers, privileges, or authority capable of exercise by the commission, public authority, or body corporate.

"Primary social security benefit" means, with respect to any member, the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the provisions of the federal Social Security Act as in effect at his date of retirement, under the provisions of this chapter except as otherwise specifically provided.

"Prior service" means service rendered prior to becoming a member of the Retirement System.

"Purchase of service contract" means a contract entered into by the member and the Retirement System for the purchase of service credit by the member as provided in § 51.1-142.2.

"Retirement allowance" means the retirement payments to which a member is entitled.

"Retirement System" means the Virginia Retirement System.

1644 "Service" means service as an employee.

1645 "State employee" means any person who is regularly employed full time on a salaried basis, whose  
 1646 tenure is not restricted as to temporary or provisional appointment, in the service of, and whose  
 1647 compensation is payable, no more often than biweekly, in whole or in part, by the Commonwealth or  
 1648 any department, institution, or agency thereof. "State employee" shall include the Governor, Lieutenant  
 1649 Governor, Attorney General, and members of the General Assembly but shall not include (i) any local  
 1650 officer, (ii) any employee of a political subdivision of the Commonwealth, (iii) individuals employed by  
 1651 the Department for the Blind and Vision Impaired pursuant to § 51.5-72, (iv) any member of the State  
 1652 Police Officers' Retirement System, (v) any member of the Judicial Retirement System, ~~or~~ (vi) any  
 1653 member of the Virginia Law Officers' Retirement System, *or (vii) any faculty member, but not including*  
 1654 *adjunct faculty, of a public institution of higher education (a) who is compensated on a salaried basis,*  
 1655 *(b) whose tenure is not restricted as to temporary or provisional appointment, and (c) who regularly*  
 1656 *works at least 20 hours but less than 40 hours per week (or works the equivalent of one-half of a*  
 1657 *full-time equivalent position) engaged in the performance of teaching, administrative, or research duties*  
 1658 *at such institution. Such faculty member described in clause (vii) shall be deemed an eligible employee*  
 1659 *for purposes of the retirement provisions under §§ 51.1-126, 51.1-126.1, and 51.1-126.3.*

1660 "Teacher" means any person who is regularly employed full time on a salaried basis as a professional  
 1661 or clerical employee of a county, city, or other local public school board.

1662 § 51.1-505. Amounts of life and accident insurance for each employee; reduction and termination of  
 1663 insurance.

1664 A. Each employee to whom this chapter applies shall, subject to the terms and conditions thereof, be  
 1665 eligible to be insured for an amount of group life insurance plus an amount of group accidental death  
 1666 and dismemberment insurance, each amount equal to twice the amount of his annual salary. If an  
 1667 employee's annual salary is not an even multiple of \$1,000, his annual salary for purposes of this section  
 1668 shall be considered to be the next higher \$1,000. For purposes of this section, the annual salary of a  
 1669 member of the General Assembly shall be his creditable compensation for his last full calendar year of  
 1670 service or his salary under § 30-19.11, whichever is greater, and shall include the full amount of any  
 1671 salaries payable to such member for working in covered positions, regardless of whether such salaries  
 1672 were paid, reduced, or not paid because of such member's service in the General Assembly. The annual  
 1673 salary for an employee retired for service or disability on an immediate retirement allowance may be  
 1674 adjusted by the Board in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of this title.

1675 Subject to the conditions and limitations of the group insurance policy, the accidental death and  
 1676 dismemberment insurance shall provide payments as follows:

|      |                     |   |
|------|---------------------|---|
| 1677 | Loss                | Amount Payable                                  |
| 1678 | For loss of life    | Full amount determined in accordance with the   |
| 1679 |                     | provisions of this section                      |
| 1680 | Loss of one hand or | One-half of the amount                          |
| 1681 | of one foot or loss | determined in accordance                        |
| 1682 | of sight of one eye | with the provisions of this section             |
| 1683 | Loss of two or      | Full amount determined in                       |
| 1684 | more such members   | accordance with the provisions of this section. |

1685 For any one accident, the aggregate amount of accidental death and dismemberment insurance that  
 1686 may be paid shall not exceed the maximum amount of accidental death and dismemberment insurance  
 1687 determined in accordance with this section.

1688 Notwithstanding the provisions of § 51.1-124.8, the amount of life insurance for which an employee  
 1689 shall be eligible shall be equal to twice the amount of his annual salary without regard to the date of the  
 1690 employee's qualification for a retirement allowance.

1691 B. The amount of life insurance on an employee who retires for service on an immediate retirement  
 1692 allowance or who elects to postpone the receipt of his retirement allowance to some date other than his  
 1693 last day of service shall be the amount set forth in subsection A, reduced by an amount equal to 25  
 1694 percent thereof on the January 1 following the first full year from the date the employee is separated  
 1695 from service and each January 1 thereafter. The amount of life insurance on an employee who retires for  
 1696 disability on an immediate retirement allowance shall be the amount set forth in subsection A on the  
 1697 date the employee last rendered service reduced by an amount equal to 25 percent thereof on January 1  
 1698 of the first full year following the date the employee attains age 65, and each January 1 thereafter. If the  
 1699 employee by statute or Board regulation has been construed to be in service to the beginning of the next  
 1700 school year, the reduction shall not apply until the beginning of the next school year. The reduction  
 1701 shall not decrease the amount of life insurance on an employee to less than 25 percent of the amount of  
 1702 life insurance to which the initial reduction is applied. For purposes of this subsection, an employee  
 1703 shall be deemed to have retired only if the employee has five or more years of service as an employee  
 1704 prior to the date of retirement. This requirement shall not be applicable if the employee is retired for

disability.

Any employee who was denied membership in the Retirement System because of having attained age 60 at the time of being employed or reemployed and who has five or more years of service immediately prior to separation from service shall retain the life insurance coverage as though he had retired on an immediate retirement allowance.

C. For any employee, who at any time has at least 20 years of creditable service in any retirement plan administered by the Virginia Retirement System or other Virginia public plan participating in the group life program established by this chapter, the amount of group life insurance shall be an amount equal to twice the amount of the highest annual salary earned during such employment. For any employee who returns to covered employment after retiring with at least 20 years of creditable service in any retirement plan administered by the Virginia Retirement System or other Virginia public plan participating in the group life program established by this chapter, the amount of insurance shall be the greater of the amount of insurance he would have been eligible for had he remained a retiree or twice the amount of his current annual salary.

The provisions of subsection B providing a reduction in the amount of life insurance shall apply to the amount of group life insurance as determined under this subsection for such employees with at least 20 years of creditable service.

D. The amount of life insurance for an employee who is retired for disability on an immediate retirement allowance, who also has attained age 55, and who elects to receive a retirement allowance as set forth in subsection C of § 51.1-160, shall be reduced as set forth in subsection B of this section. The reduction shall begin the January 1 following the first full year from the date the employee elects a service retirement allowance.

E. All accidental death and dismemberment insurance on an employee shall cease upon the earliest of (i) his separation from service, (ii) his failure to pay, in the manner prescribed by the Board, the contribution required for the first 24 months of leave without pay, (iii) if the employee has not returned to pay status, the expiration of 24 months of leave without pay, or (iv) his retirement.

F. Except in case of retirement as provided in subsections B, C, and D of this section, all life insurance on an employee shall cease upon the earliest of (i) his separation from service, or (ii) his failure to pay, in the manner prescribed by the Board, the contribution required for the first 24 months of leave without pay, or, (iii) if the employee has not returned to pay status, the expiration of 24 months of leave without pay. Except in the case of retirement, life insurance shall be subject to a temporary extension of 31 days. During this 31-day extension, the employee may convert his life insurance into an individual policy of life insurance (without disability or other supplementary benefits) in any one of the forms, except term insurance, then customarily issued by the insuring company. The amount of life insurance which may be converted shall not exceed the amount of his life insurance under the group insurance policy at the time coverage is terminated. The insurance shall be converted to an individual policy (a) without evidence of insurability, (b) at the premium applicable to the class of risk to which he belongs, and (c) to the form and amount of the individual policy at his then attained age, provided application for the individual policy and payment of the first premium thereon is made to the issuing company within the 31 days. The right to convert to an individual policy as provided in § 38.2-3333 shall not apply upon termination of this group policy or elimination of a class of insured employees.

Except as provided in subsection C, the amount of life insurance on each insured employee who retires shall be determined under the provisions of this chapter as it exists on the employee's date of retirement.

G. Each employee of a state institution of higher education or of a local school board who remains in service until the completion of the school year and who makes contributions required to provide insurance coverage until service normally will be resumed the beginning of the next school year shall be deemed to be in service as an employee through the period to which the payments apply. If the employee is retired for service or disability during this period, contributions made by the employee shall be accepted and retained as proper.

*Each state employee of a public institution of higher education or a teaching hospital affiliated with a public institution of higher education who (i) is employed pursuant to a contract (a) that is for a term of employment of at least nine months and (b) that does not coincide with the normal scholastic year, (ii) remains in service until the completion of the contract year, and (iii) makes contributions required to provide insurance coverage until service normally will be resumed at the beginning of the next contract year shall be deemed to be in service as an employee through the period to which the payments apply. If the employee is retired for service or disability during this period, contributions made by the employee shall be accepted and retained as proper.*

H. That the provisions of this section shall apply to all members of the Virginia Retirement System who, on and after July 1, 1995, are covered under the group life insurance program created pursuant to this section and whose effective date of retirement is (i) before July 1, 1970, or (ii) on and after July 1,

1766 1970.

1767 § 51.1-506. Employee contributions; payroll deductions; effect of failure to deduct.

1768 Each insured employee shall contribute to the cost of his insurance an amount to be determined by  
 1769 the Board but not to exceed the rate of seventy cents per month for each \$1,000 of annual salary. If the  
 1770 annual salary is not an even multiple of \$1,000, annual salary shall be considered to be the next higher  
 1771 \$1,000. The employer shall deduct the premium from the salary payable to the insured employee. An  
 1772 employee who is paid on other than a monthly basis shall have an amount deducted at a proportionate  
 1773 rate, adjusted to the nearest cent. All deductions shall be retained by or paid to the State Treasurer to  
 1774 the credit of the Board and shall be available to the Board for the purposes of carrying out the  
 1775 provisions of this chapter. Nothing contained in this section shall prohibit any employer from making  
 1776 the contributions required herein for his employees, in whole or in part.

1777 If the premium is not deducted from the employee's salary and the failure to deduct is not the fault  
 1778 of the employee, the employee shall be insured and the employee shall not be required to pay the  
 1779 amount which should have been deducted.

1780 Employees retired for service or disability shall not be required to contribute to the cost of their life  
 1781 insurance. If an employee is separated from the service of any state institution of higher education or of  
 1782 any local school board prior to completing a school year, the premiums paid shall be accepted and  
 1783 retained as proper to date of separation. *If a state employee of a public institution of higher education or*  
 1784 *a teaching hospital affiliated with a public institution of higher education (i) is employed pursuant to a*  
 1785 *contract (a) that is for a term of employment of at least nine months and (b) that does not coincide with*  
 1786 *the normal scholastic year, and (ii) separated from service prior to completing the contract year, the*  
 1787 *premiums paid shall be accepted and retained as proper to the date of separation.*

1788 2. That the Secretary of Finance, in consultation with representatives of public institutions of  
 1789 higher education in the Commonwealth and other interested persons, shall develop procedures for  
 1790 determining an appropriate and equitable amount of interest to be paid to certain public  
 1791 institutions of higher education as provided in § 2.2-5005 of the Code of Virginia pursuant to this  
 1792 act. The Secretary of Finance shall by January 1, 2006, provide to the Governor and to the  
 1793 General Assembly the procedures that shall be used for such purposes.

1794 3. That § 2.2-5005 of the first enactment of this act shall become effective on July 1, 2006.

1795 4. That the Governor shall review the financial management standards included in § 2.2-5004 of  
 1796 the Code of Virginia and shall recommend, as he deems appropriate, additional financial  
 1797 management standards in "The Budget Bill" submitted in calendar year 2005 pursuant to  
 1798 subsection A of § 2.2-1509 of the Code of Virginia.

1799 The Governor shall also establish, by August 15, 2005, an independent advisory board consisting  
 1800 of members with professional expertise in the areas of capital project management, personnel  
 1801 management, and purchasing to develop administrative management standards for public  
 1802 institutions of higher education. The advisory board shall submit a written report to the Governor  
 1803 and the General Assembly by October 1, 2005, prescribing administrative management standards  
 1804 for public institutions of higher education. The Governor shall include recommendations for  
 1805 administrative management standards for public institutions of higher education in "The Budget  
 1806 Bill" submitted in calendar year 2005 pursuant to subsection A of § 2.2-1509 of the Code of  
 1807 Virginia. In making such recommendations, the Governor shall take into consideration the report  
 1808 of the independent advisory board.

1809 5. That the Secretary of Administration shall work with public institutions of higher education  
 1810 and other interested persons to develop uniform government procurement rules and procedures  
 1811 that shall be adopted by public institutions of higher education that have been granted the express  
 1812 authority under a management agreement to establish an alternative system of government  
 1813 procurement. The Secretary shall provide a copy of the rules and procedures to the Governor and  
 1814 to the General Assembly no later than October 1, 2005.

1815 6. That the Virginia Retirement System shall (i) complete an actuarial analysis of the potential  
 1816 impact on the Commonwealth's retirement system and group insurance programs for state  
 1817 employees if public institutions of higher education in the Commonwealth included in subchapter 2  
 1818 or 3 of Chapter 4.10 of Title 23, or in both subchapters, or all public institutions of higher  
 1819 education in the Commonwealth, were permitted to offer an optional retirement plan and optional  
 1820 group insurance programs to classified employees who are, or who prior to the effective date of  
 1821 this Act were, covered by the State Personnel Act, and (ii) report the results of this analysis to the  
 1822 Chairmen of the House Appropriations Committee and the Senate Finance Committee no later  
 1823 than November 1, 2005. The Department of Human Resource Management shall conduct the same  
 1824 analysis for the group insurance programs that it administers and shall report the results of the  
 1825 analysis to the Chairmen of the House Appropriations Committee and the Senate Finance  
 1826 Committee no later than November 1, 2005. In addition, the Department of the Treasury shall

1827 conduct the same analysis for all risk management programs it administers and shall have the  
1828 same reporting responsibility described herein.  
1829 7. That the Virginia Retirement System shall work with representatives of public institutions of  
1830 higher education in the Commonwealth and other interested persons to develop procedures for the  
1831 reporting of creditable compensation and creditable service for state employees of such institutions  
1832 that are employed pursuant to a contract with a term of employment that does not coincide with  
1833 the normal scholastic year. The Director of the Virginia Retirement System shall by October 1,  
1834 2005, provide the procedures to the Governor and to the General Assembly.

**ENROLLED**

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