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## SENATE BILL NO. 1314

Offered January 21, 2005

*A BILL 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, 2.2-4301, 23-9.6:1, and 36-98.1 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, and by adding sections numbered 23-9.2:3.02, 23-9.6:1.01, and 30-133.1, relating to public institutions of higher education.*

Patron—Chichester

Referred to Committee on Education and Health

**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, 2.2-4301, 23-9.6:1, and 36-98.1 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, and by adding sections numbered 23-9.2:3.02, 23-9.6:1.01, and 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 Internal Revenue Code and providing services to persons with disabilities, at-risk youths, or low-income families. For the purposes of this subdivision, "at-risk youths" means school-age children approved eligible to receive free or reduced price meals in the federally funded lunch program; and

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SB1314

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

62 14. *Permit a public institution of higher education to dispose of its surplus materials at the location*  
63 *where the surplus materials are held and to retain any proceeds from such disposals.*

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

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

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

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

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

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

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

87 § 2.2-1132. Administration of capital outlay construction; exception for certain educational  
88 institutions.

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

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

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

113 For purposes of this section, "construction" shall include new construction, reconstruction, renovation,  
114 restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned  
115 or to be acquired by the Commonwealth. It shall not include buildings or other facilities ancillary to the  
116 use of state highways that are located within the right-of-way of any state highway, or assets for use by  
117 the Virginia Port Authority within the boundaries of property owned or leased by the Virginia Port  
118 Authority.

119 § 2.2-1149. Department to review proposed acquisitions of real property; approval by the Governor;  
120 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) acquisition~~ 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) acquisition~~ 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;

5. Acquisition of an operating or capital lease by a public institution of higher education, provided that the capital lease does not impact the Commonwealth's debt capacity. For the purposes of this subdivision, an operating or capital lease shall be determined using generally accepted accounting principles; or

~~(iv) acquisition~~ 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.

§ 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, ~~the~~:

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 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 required 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 Conservation Resources Fund.*

*§ 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 the Department notifies the institution that the vendor does not meet the certification requirements.*

§ 2.2-1514. (See Editor's note) 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 ~~(v)~~ (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~~ *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, *other than public institutions of higher education*, 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 § 2.2-1012, 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 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.*

§ 2.2-4301. Definitions.

As used in this chapter:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites. Effective July 1, 2002, publishing by state agencies, departments and institutions on the public Internet procurement website designated by the Department of General Services shall be required. In addition, proposals may be solicited directly from potential contractors. *Public institutions of higher education shall not be required to post notice by publication in a newspaper or newspapers of general circulation*

*in the area in which the contract is to be performed provided such notice is posted on the electronic procurement website of the institution requesting the proposals.*

3. a. Procurement of professional services. The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by a public body, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. For state public bodies, such contract, except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner may be renewable for four additional one-year terms at the option of the public body. For local public bodies, such contract may be renewable for two additional one-year terms at the option of the public body. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed; (b) except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the sum of all projects performed in one contract term shall not exceed \$500,000 or, in the case of a state agency, as defined in § 2.2-4347, such greater amount as may be determined by the Director of the Department of General Services, not to exceed \$1 million, except that in any locality or any authority or sanitation district with a population in excess of 80,000, the sum of all such projects shall not exceed \$1 million; and (c) except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the project fee of any single project shall not exceed \$100,000 or, in the case of a state agency, such greater amount as may be determined by the Director of the Department of General Services not to exceed \$200,000, except that in any locality or any authority or sanitation district with a population in excess of 80,000, such fee shall not exceed \$200,000. Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the Request for Proposal so states and (2) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. For contracts for environmental location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the sum of all projects in one contract term shall not exceed \$2 million and such contract may be renewable for two additional one-year terms at the option of the Commissioner.

Multiphase professional services contracts satisfactory and advantageous to the Department of Transportation for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.

Multiphase professional services contracts satisfactory and advantageous to a local public body for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a

428 fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the local  
429 public body shall state the anticipated intended total scope of the project and determine in writing that  
430 the nature of the work is such that the best interests of such public body require awarding the contract.

431 b. Procurement of other than professional services. Selection shall be made of two or more offerors  
432 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the  
433 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.  
434 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but  
435 need not be the sole determining factor. After negotiations have been conducted with each offeror so  
436 selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and  
437 shall award the contract to that offeror. When the terms and conditions of multiple awards are so  
438 provided in the Request for Proposal, awards may be made to more than one offeror. Should the public  
439 body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one  
440 offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated  
441 and awarded to that offeror.

442 "Competitive sealed bidding" is a method of contractor selection, other than for professional services,  
443 which includes the following elements:

444 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications  
445 and contractual terms and conditions applicable to the procurement. Unless the public body has provided  
446 for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite  
447 qualifications of potential contractors. When it is impractical to prepare initially a purchase description  
448 to support an award based on prices, an Invitation to Bid may be issued requesting the submission of  
449 unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been  
450 qualified under the criteria set forth in the first solicitation.

451 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by  
452 posting in a designated public area, or publication in a newspaper of general circulation, or both. Public  
453 notice may also be published on the Department of General Services' central electronic procurement  
454 website and other appropriate websites. Effective July 1, 2002, posting by state agencies, departments  
455 and institutions on the public Internet procurement website designated by the Department of General  
456 Services shall be required. *Public institutions of higher education shall not be required to post notice by*  
457 *publication in a newspaper or newspapers of general circulation in the area in which the contract is to*  
458 *be performed provided such notice is posted on the electronic procurement website of the institution*  
459 *requesting the proposals.* In addition, bids may be solicited directly from potential contractors. Any  
460 additional solicitations shall include businesses selected from a list made available by the Department of  
461 Minority Business Enterprise.

462 3. Public opening and announcement of all bids received.

463 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include  
464 special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria  
465 such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which  
466 are helpful in determining acceptability.

467 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple  
468 awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

469 "Construction" means building, altering, repairing, improving or demolishing any structure, building  
470 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

471 "Construction management contract" means a contract in which a party is retained by the owner to  
472 coordinate and administer contracts for construction services for the benefit of the owner, and may also  
473 include, if provided in the contract, the furnishing of construction services to the owner.

474 "Design-build contract" means a contract between a public body and another party in which the party  
475 contracting with the public body agrees to both design and build the structure, roadway or other item  
476 specified in the contract.

477 "Goods" means all material, equipment, supplies, printing, and automated data processing hardware  
478 and software.

479 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of  
480 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or  
481 delivery schedule for the goods, services or construction being procured.

482 "Multiphase professional services contract" means a contract for the providing of professional  
483 services where the total scope of work of the second or subsequent phase of the contract cannot be  
484 specified without the results of the first or prior phase of the contract.

485 "Nonprofessional services" means any services not specifically identified as professional services in  
486 the definition of professional services.

487 "Potential bidder or offeror" for the purposes of §§ 2.2-4360 and 2.2-4364 means a person who, at  
488 the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or  
489 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the



contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter.

"Public contract" means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

#### 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 a public institution of higher education or a teaching hospital affiliated with a public institution of higher education.

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, and within the same time frame.

§ 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 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

551 public institutions of higher education shall receive the following financial benefits:

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

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

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

561 3. The public institution of higher education shall be paid a pro rata amount of the total rebate due  
562 to the Commonwealth on credit card purchases of \$5,000 or less made during the fiscal year. The  
563 amount to be paid to each institution shall equal a pro rata share based upon its total transactions of  
564 \$5,000 or less using the credit card that is approved for use by all state agencies as compared to all  
565 transactions of \$5,000 or less using such card by all state agencies. The Comptroller shall determine  
566 the public institution's pro rata share and shall credit the account of the institution by August 15 of the  
567 fiscal year immediately following the year of certification.

568 The payment to an institution of its pro rata share under this subdivision shall also be applicable to  
569 other rebate or refund programs in effect that are similar to that of the credit card rebate program  
570 described in this subdivision. The Secretary of Finance shall identify such other rebate or refund  
571 programs and shall determine the pro rata share to be paid to the public institution of higher education.  
572 § 23-9.2:3.02. Six-year institutional plans; annual assessment by State Council.

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

577 B. Each plan shall address the institution's academic, financial, and enrollment plans for the six-year  
578 period.

579 The plans shall include objectives for, among other things:

580 1. Increasing institutional access for citizens of the Commonwealth, including underrepresented  
581 populations;

582 2. Meeting enrollment projections for students domiciled in Virginia, as defined in § 23-7.4;

583 3. Examining the affordability of tuition and fees at the institution and assessing periodically (i) the  
584 impact of tuition and fee levels on applicants and current students and (ii) levels of student indebtedness  
585 incurred for the payment of tuition and fees;

586 4. Providing undergraduate and, as the case may be, graduate curricula and degree programs  
587 consistent with the institution's stated mission and as approved by the State Council of Higher  
588 Education;

589 5. Maintaining high academic standards within the curricula and degree programs through the  
590 ongoing improvement of academic programs and the periodic review of course availability, faculty  
591 productivity, and other relevant factors;

592 6. Increasing the number of (i) degrees awarded and (ii) students graduating in the standard number  
593 of semesters;

594 7. Enhancing the institution's participation in dual admissions and articulation agreements and  
595 assisting in the development of the State Transfer Module required to be developed by the State Council  
596 pursuant to § 23-9.14:2;

597 8. Increasing coordination with those public schools and school divisions in the Commonwealth that  
598 have not achieved full accreditation pursuant to the Standards of Accreditation required by  
599 § 22.1-253.13:1 to assist in school division efforts to improve instruction and student achievement;

600 9. Contributing to the economic development of the Commonwealth and the area in which the  
601 institution is located. Such objective shall include, but shall not be limited to, (i) assessing regularly the  
602 extent to which the institution's curricula and degree programs address the Commonwealth's need for  
603 sufficient graduates in particular shortage areas, including specific academic disciplines, professions,  
604 and geographic regions as identified by the Virginia Employment Commission and the State Council of  
605 Higher Education; and (ii) where appropriate, increasing the level of externally funded research at the  
606 institution; and

607 10. Implementing business practices designed to (i) enhance the institution's operational efficiency;  
608 (ii) satisfy the financial and administrative management standards currently in effect for public  
609 institutions of higher education pursuant to § 2.2-5004 and as may be included in the appropriation act  
610 currently in effect; and (iii) promote economies through state government.

611 C. Such plans shall include financial planning reflecting the level of resources anticipated from the  
612 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.

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 by the State Council. 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 establishes state and regional goals 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~~ 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~~ 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~~ 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~~ 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~~ 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~~ 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~~ *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~~ *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~~ *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~~ *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~~ *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~~ *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~~ *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~~ *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~~ *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~~ *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~~ *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~~ *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~~ *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.*

*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. Such annual assessment shall be based upon the objective measures 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.*

§ 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 Chairman of the House Committee on Appropriations, House Committee on Finance, and 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 a public institution of higher education or a teaching hospital affiliated with a public institution of higher education.*

§ 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*

797 inspection and Building Code enforcement duties to the State Fire Marshal's Office, to other appropriate  
798 state agencies having needed expertise, and to local building departments, all of which shall provide  
799 such assistance within a reasonable time and in the manner requested. State agencies and institutions  
800 occupying buildings shall pay to the local building department the same fees as would be paid by a  
801 private citizen for the services rendered when such services are requested by the Department of General  
802 Services. The Department of General Services may alter or overrule any decision of the local building  
803 department after having first considered the local building department's report or other rationale given  
804 for its decision. When altering or overruling any decision of a local building department, the Department  
805 of General Services shall provide the local building department with a written summary of its reasons  
806 for doing so.

807 *B. Notwithstanding the provisions of subsection A:*

808 *1. The Department may authorize staff designated by a public institution of higher education to*  
809 *perform any inspection and certifications required for the purpose of complying with the Uniform*  
810 *Statewide Building Code (§ 36-97 et seq.), provided the staff designated by the institution meets*  
811 *qualification criteria established by the Department.*

812 *2. At the request of a public institution of higher education, the Department shall authorize that*  
813 *institution of higher education to contract with a building official of the locality in which the*  
814 *construction is taking place to perform on behalf of the Department any inspection and certifications*  
815 *required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.).*

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

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

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

827 **The Governor shall also establish, by August 15, 2005, an independent advisory board consisting**  
828 **of members with professional expertise in the areas of capital project management, personnel**  
829 **management, and purchasing to develop administrative management standards for public**  
830 **institutions of higher education. The advisory board shall submit a written report to the Governor**  
831 **and the General Assembly by October 1, 2005, prescribing administrative management standards**  
832 **for public institutions of higher education. The Governor shall include recommendations for**  
833 **administrative management standards for public institutions of higher education in "The Budget**  
834 **Bill" submitted in calendar year 2005 pursuant to subsection A of § 2.2-1509 of the Code of**  
835 **Virginia. In making such recommendations, the Governor shall take into consideration the report**  
836 **of the independent advisory board.**

837 **5. That in the event of sole source procurements made by a public institution of higher education**  
838 **in accordance with subsection E of § 2.2-4303 of the Code of Virginia using a vendor who is not**  
839 **registered with the Department of General Services' web-based electronic procurement program**  
840 **commonly known as "eVA," the transaction fee shall not be assessed.**

841 **6. That, notwithstanding anything to the contrary contained in § 2.2-2825 of the Code of Virginia**  
842 **or in any other provision of law, a public institution of higher education may establish purchasing**  
843 **and travel credit card arrangements for use by employees of such institution.**

844 **7. That, notwithstanding any provision of law, all purchases made by public institutions of higher**  
845 **education shall not be subject to review by or required to be reported to the Secretary of**  
846 **Education.**

847 **8. That no public institution of higher education, or a teaching hospital affiliated with a public**  
848 **institution of higher education, shall be eligible for the financial benefits or the enhanced**  
849 **administrative or operational powers under § 2.2-1124, 2.2-1132, 2.2-1149, 2.2-1150, 2.2-1153,**  
850 **2.2-1404.1, 2.2-2007, 2.2-4301, 2.2-5005, or 36-98.1 of the Code of Virginia or under any enactment**  
851 **pursuant to the provisions of this act unless and until the Board of Visitors or other governing**  
852 **body of the institution or teaching hospital commits, through formal resolution adopted according**  
853 **to its own by-laws, to meeting and being responsible for meeting all objective measures of**  
854 **institutional performance and institutional performance benchmarks for such objective measures**  
855 **that may be adopted pursuant to § 23-9.6:1.01 of the Code of Virginia as provided in this act. The**  
856 **public institution or teaching hospital shall provide a copy of the resolution to the Governor.**