

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 184

An Act to amend and reenact §§ 2.2-4343, 2.2-4515, 3.1-1109.1, 15.2-5205, 15.2-5340.1, 15.2-5374, 23-76.1, 32.1-361.1, and 51.5-63 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 15 of Title 55 an article numbered 1.2, consisting of sections numbered 55-268.11 through 55-268.20, and to repeal Article 1.1 (§§ 55-268.1 through 55-268.10) of Chapter 15 of Title 55 of the Code of Virginia, relating to the Uniform Prudent Management of Institutional Funds Act.

[H 951]

Approved March 3, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4343, 2.2-4515, 3.1-1109.1, 15.2-5205, 15.2-5340.1, 15.2-5374, 23-76.1, 32.1-361.1, and 51.5-63 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 15 of Title 55 an article numbered 1.2, consisting of sections numbered 55-268.11 through 55-268.20, as follows:

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

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

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

2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, actuarial services, and disability determination services. Selection of these services shall be governed by the standard set forth in § 51.1-124.30.

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

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

5. The University of Virginia in the selection of services related to the management and investment of its endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the University pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform *Prudent Management of Institutional Funds Act* (§ ~~55-268.1~~ 55-268.11 et seq.) as required by § 23-76.1.

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

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

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

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

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

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee,

if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

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

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

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

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

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

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

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

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform *Prudent* Management of Institutional Funds Act (§ ~~55-268.1~~ 55-268.11 et seq.).

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

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

19. The University of Virginia Medical Center to the extent provided by subdivision B 3 of § 23-77.4.

20. The purchase of goods and services by a local governing body or any authority, board, department, instrumentality, institution, agency or other unit of state government when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

21. The contract by community services boards or behavioral health authorities with an administrator or management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.

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

§ 2.2-4515. Collateral and safekeeping arrangements.

Securities purchased pursuant to the provisions of this chapter shall be held by the public official, municipal corporation or other political subdivision or public body or its custodial agent who may not otherwise be a counterparty to the investment transaction. Securities held on the books of the custodial agent by a custodial agent shall be held in the name of the municipal corporation, political subdivision or other public body subject to the public body's order of withdrawal. The responsibilities of the public official, municipal corporation, political subdivision or other public body shall be evidenced by a written agreement that shall provide for delivery of the securities by the custodial agent in the event of default by a counterparty to the investment transaction.

As used in this section, "counterparty" means the issuer or seller of a security, an agent purchasing a security on behalf of a public official, municipal corporation, political subdivision or other public body or the party responsible for repurchasing securities underlying a repurchase agreement.

The provisions of this section shall not apply to (i) investments with a maturity of less than ~~thirty-one~~ 31 calendar days or (ii) the State Treasurer, who shall comply with safekeeping guidelines issued by the Treasury Board or to endowment funds invested in accordance with the provisions of the Uniform ~~Investment~~ *Prudent Management* of Institutional Funds Act, Article ~~4-1~~ 1.2 (§ ~~55-268.1~~ 55-268.11 et seq.) of Chapter 15 of Title 55.

§ 3.1-1109.1. Tobacco Indemnification and Community Revitalization Endowment.

A. There is hereby established in the state treasury a special fund to be designated the "Tobacco Indemnification and Community Revitalization Endowment" (the "Endowment"). The Endowment shall receive any proceeds from any sale of all or any portion of the Commission Allocation, and any gifts, grants and contributions that are specifically designated for inclusion in such Endowment. No part of the Endowment, neither corpus nor income, or interest thereon, shall revert to the general fund of the state treasury. The Endowment shall be under the management and control of the Treasury Board, and the Treasury Board shall have such powers and authority as may be necessary to exercise such management and control consistent with the provisions of this section. The income of the Endowment shall be paid out, not less than annually, to the Fund. In addition, up to ~~ten~~ 10 percent of the corpus of the Endowment shall be paid to the Fund annually upon request of the Commission to the Treasury Board; provided, however, that upon two-thirds vote of the Commission, up to ~~fifteen~~ 15 percent of the corpus of the Endowment shall be so paid. No use of proceeds shall be made that would cause bonds issued on a tax-exempt basis to be deemed taxable. For purposes of this section, "income" of the Endowment means at the time of determination the lesser of the available cash in, or the realized investment income for the applicable period of, the Endowment, and "corpus" of the Endowment means at the time of determination the sum of the proceeds from the sale of all or any portion of the Commission Allocation, any gifts, grants and contributions that have been credited to such Endowment, and any income not appropriated and withdrawn from the Endowment prior to June 30 of each year, less withdrawals from the corpus. Determinations by the Treasury Board, or the State Treasurer on behalf of the Treasury Board, as to the amount of income or the amount of the corpus shall be conclusive.

B. The Treasury Board shall serve as trustee of the Endowment and the corpus and income of the Endowment shall be withdrawn and credited to the Fund by order of the Treasury Board as provided in subsection A. The State Treasurer shall be custodian of the funds credited to the Endowment. The Treasury Board shall have full power to invest and reinvest funds credited to the Endowment in accordance with the provisions of the Uniform *Prudent Management* of Institutional Funds Act (§ ~~55-268.1~~ 55-268.11 et seq.) and, in addition, as otherwise provided by law. The Treasury Board may borrow money in such amounts as may be necessary whenever in its judgment it would be more advantageous to borrow money than to sell securities held for the Fund. Any debt so incurred may be evidenced by notes duly authorized by resolution of the Treasury Board, such notes to be retired no later than the end of the biennium in which such debt is incurred. The Treasury Board may commingle, for purposes of investment, the corpus of the Endowment provided that it shall appropriately account for the investments credited to the Endowment. The Treasury Board may hire independent investment advisors and managers as it deems appropriate to assist with investing the Endowment. The expenses of making and disposing of investments, such as brokerage commissions, legal expenses related to a particular transaction, investment advisory and management fees and expenses, transfer taxes and other customary transactional expenses shall be payable out of the income of the Endowment.

Not less than annually and more frequently if so desired by the Commission or requested by the Treasury Board, the Commission shall provide to the Treasury Board schedules of anticipated disbursements from the Fund for the current and succeeding fiscal year, and the Treasury Board shall, to the extent practicable, take into account such schedules and changes thereto in scheduling maturities and redemptions of its investments of the Endowment.

§ 15.2-5205. Powers of commission.

Any hospital or health center commission established hereunder shall have all powers necessary or convenient to carry out the general purposes of this chapter, including the power to:

1. Sue and be sued; to adopt a seal and alter the same at pleasure; to have perpetual succession; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

2. Employ such technical experts and such other officers, agents and employees as it may require, to fix their qualifications, duties and compensation and to remove such employees at pleasure.
3. Acquire within the territorial limits of the political subdivisions for which it is formed, by purchase, lease, gift or otherwise, whatever lands, buildings and structures as may be reasonably necessary for the purpose of establishing, constructing, enlarging, maintaining and operating one or more hospitals or health centers.
4. Sell, lease, exchange, transfer, or assign any of its real or personal property, or any portion thereof or interest therein, to any person, firm, or corporation, whenever the commission finds such action to be in furtherance of the purposes for which the commission was created.
5. Acquire, establish, construct, enlarge, improve, maintain, equip and operate any hospital or health center, and any other facilities and services for the care and treatment of sick persons.
6. Make and enforce rules and regulations for the management and conduct of its business and affairs and for the use, maintenance and operation of its facilities and properties.
7. Accept gifts and grants, including real or personal property, from the Commonwealth or any political subdivision thereof and from the United States and any of its agencies; and to accept donations of money, personal property or real estate, and take title thereto from any person.
8. Make rules and regulations governing the admission, care and treatment of patients in such hospital or health center, to classify patients as to charges to be paid by them, if any, and to determine the nature and extent of the service to be rendered patients.
9. Comply with the provisions of the laws of the United States and the Commonwealth, and any rules and regulations made thereunder, for the expenditures of federal or state money in connection with hospitals or health centers and to accept, receive and receipt for federal and state money granted the commission, or granted any of the political subdivisions for which it is formed, for hospital or health center purposes.
10. Borrow money upon its bonds, notes, debentures, or other evidences of indebtedness issued for the purpose only of acquiring, constructing, improving, furnishing or equipping buildings or structures for use as a hospital or health center, and to secure the same by pledges of its revenues and property as hereafter provided. This power shall include the power to refinance all or any portion of such debt, to renegotiate the terms of all or any portion of such debt, and to retire all or any portion of such debt prior to its maturity date.
11. Execute all instruments necessary or convenient in connection with the borrowing of money and issuing bonds as herein authorized.
12. Enter into leases and agreements with persons for the construction or operation or both of a hospital or health center by such persons on land of the commission.
13. Contract for the management and operation of any hospital or health center subject to the control of the commission; however, the commission may charge such rates for service as will enable it to make reasonable compensation for such management and operation.
14. Assist in or provide for the creation of domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations or other entities and to purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, shares of or other interests in, or obligations of, any domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities organized for any purpose, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any other obligations of any domestic or foreign stock or nonstock corporation, limited liability company, partnership, limited partnership, association, foundation or other supporting organization, joint venture or other entity organized for any purpose or any individual. The investments of any entity wholly owned or controlled by a hospital or health center commission that is an "institution," as such term is defined in § 55-268.1, as amended, 55-268.12 shall be governed by the Uniform *Prudent* Management of Institutional Funds Act (§ 55-268.1 55-268.11 et seq.) of the Code of Virginia.
15. Participate in joint ventures with individuals, domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations or other entities for providing medical care or related services or other activities that the hospital or health center commission may undertake to the extent that such undertakings assist the hospital or health center commission in carrying out the purposes and intent of this chapter.
16. Provide domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities owned in whole or in part or controlled, directly or indirectly, in whole or in part, by the hospital or health center commission with appropriate assistance, including making loans and providing time of employees, in carrying out any activities authorized by this chapter.
17. Make loans and provide other assistance to domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other

supporting organizations, joint ventures or other entities.

18. Transact its business, locate its offices and control, directly or through domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities, facilities that will assist or aid the hospital or health center commission in carrying out the purposes and intent of this chapter.

19. Procure such insurance, participate in such insurance plans, or provide such self-insurance, or any combination thereof, as it deems necessary or convenient to carry out the purposes and provisions of this chapter. The purchase of insurance, participation in an insurance plan, or creation of a self-insurance plan by the hospital or health center commission shall not be deemed a waiver or relinquishment of any sovereign immunity to which the hospital or health center commission or its members, officers, directors, employees, or agents are otherwise entitled.

20. Exercise all other powers granted to nonstock corporations pursuant to § 13.1-826.

§ 15.2-5340.1. Joint ventures; subsidiaries; investments.

An authority shall have the power to:

1. Assist in or provide for the creation of domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations or other entities and to purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, shares of or other interests in, or obligations of, any domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities organized for any purpose, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any other obligations of any domestic or foreign stock or nonstock corporation, limited liability company, partnership, limited partnership, association, foundation or other supporting organization, joint venture or other entity organized for any purpose or any individual. The investments of any entity wholly owned or controlled by a hospital authority that is an "institution," as such term is defined in § ~~55-268.1~~, as amended, 55-268.12 shall be governed by the Uniform *Prudent* Management of Institutional Funds Act (§ ~~55-268.1~~ 55-268.11 et seq.) of the Code of Virginia.

2. Participate in joint ventures with individuals, domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations or other entities for providing medical care or related services or other activities that the authority may undertake to the extent that such undertakings assist the authority in carrying out the purposes and intent of this chapter.

3. Provide domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities owned in whole or in part or controlled, directly or indirectly, in whole or in part, by the authority with appropriate assistance, including making loans and providing time of employees, in carrying out any activities authorized by this chapter.

4. Make loans and provide other assistance to domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities.

5. Transact its business, locate its offices and control, directly or through domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities, facilities that will assist or aid the authority in carrying out the purposes and intent of this chapter.

§ 15.2-5374. Powers of Authority.

The Authority shall have all powers necessary or convenient to carry out the general purposes of this chapter, including the power to:

1. Sue and be sued; adopt a seal and alter the same at pleasure; have perpetual succession; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

2. Employ such technical experts and such other officers, agents, and employees as it may require, to fix their qualifications, duties, and compensation, and to remove such employees at pleasure.

3. Acquire within the territorial limits of the participating localities embraced by it, by purchase, lease, gift, or otherwise, whatever lands, buildings, and structures as may be reasonably necessary for the purpose of establishing, constructing, enlarging, maintaining, and operating one or more hospitals or health centers.

4. Sell, lease, exchange, transfer, or assign any of its real or personal property or any portion thereof or interest therein to any person, firm, or corporation whenever the Authority finds such action to be in furtherance of the purposes for which the Authority was created.

5. Acquire, establish, construct, enlarge, improve, maintain, equip, and operate any hospital or health center and any other facility and service for the care and treatment of sick persons.

6. Make and enforce rules and regulations for the management and conduct of its business and affairs and for the use, maintenance and operation of its facilities and properties.

7. Accept gifts and grants, including real or personal property, from the Commonwealth or any

political subdivision thereof and from the United States and any of its agencies; and accept donations of money, personal property, or real estate and take title thereto from any person.

8. Make rules and regulations governing the admission, care, and treatment of patients in such hospital or health center, classify patients as to charges to be paid by them, if any, and determine the nature and extent of the service to be rendered patients.

9. Comply with the provisions of the laws of the United States and the Commonwealth and any rules and regulations made thereunder for the expenditures of federal or state money in connection with hospitals or health centers and to accept, receive, and receipt for federal and state money granted the Authority or granted any of the participating localities embraced by it for hospital or health center purposes.

10. Borrow money upon its bonds, notes, debentures, or other evidences of indebtedness issued for the purpose only of acquiring, constructing, improving, furnishing, or equipping buildings or structures for use as a hospital or health center, and to secure the same by pledges of its revenues and property as hereafter provided. This power shall include the power to refinance all or any portion of such debt, to renegotiate the terms of all or any portion of such debt, and to retire all or any portion of such debt prior to its maturity date.

11. Execute all instruments necessary or convenient in connection with the borrowing of money and issuing bonds as herein authorized.

12. Enter into leases and agreements with persons for the construction or operation or both of a hospital or health center by such persons on land of the Authority.

13. Contract for the management and operation of any hospital or health center subject to the control of the Authority; however, the Authority may charge such rates for service as will enable it to make reasonable compensation for such management and operation.

14. Assist in or provide for the creation of domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations, or other supporting organizations or other entities and to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of shares of or other interests in or obligations of any domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations, or other supporting organizations, joint ventures, or other entities organized for any purpose, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any other obligations of any domestic or foreign stock or nonstock corporation, limited liability company, partnership, limited partnership, association, foundation, or other supporting organization, joint venture or other entity organized for any purpose or any individual. The investments of any entity wholly owned or controlled by the Authority that is an "institution," as such term is defined in § 55-268.1, as amended, 55-268.12 shall be governed by the Uniform *Prudent* Management of Institutional Funds Act (§ 55-268.1 55-268.12 et seq.) of the Code of Virginia.

15. Participate in joint ventures with individuals, domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations, or other supporting organizations or other entities for providing medical care or related services or other activities that the Authority may undertake to the extent that such undertakings assist the Authority in carrying out the purposes and intent of this chapter.

16. Provide domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities owned in whole or in part or controlled, directly or indirectly, in whole or in part, by the Authority with appropriate assistance, including making loans and providing time of employees, in carrying out any activities authorized by this chapter.

17. Make loans and provide other assistance to domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures, or other entities.

18. Transact its business, locate its offices and control, directly or through domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures, or other entities, facilities that will assist or aid the Authority in carrying out the purposes and intent of this chapter.

19. Procure such insurance, participate in such insurance plans, or provide such self-insurance, or any combination thereof, as it deems necessary or convenient to carry out the purposes and provisions of this chapter. The purchase of insurance, participation in an insurance plan, or creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its members, officers, directors, employees, or agents are otherwise entitled.

20. Exercise all other powers granted to nonstock corporations pursuant to § 13.1-826.

§ 23-76.1. Investment of endowment funds, endowment income, and gifts; standard of care; liability; exemption from the Virginia Public Procurement Act.

A. The board of visitors shall invest and manage the endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, and local funds of or held by the University in accordance

with this section and the provisions of the Uniform *Prudent* Management of Institutional Funds Act (§ ~~55-268.1~~ 55-268.11 et seq.).

B. No member of the board of visitors shall be personally liable for losses suffered by an endowment fund, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the University, arising from investments made pursuant to the provisions of subsection A.

C. The investment and management of endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the University shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

D. In addition to the investment practices authorized by the Uniform *Prudent* Management of Institutional Funds Act (§ ~~55-268.1~~ 55-268.11 et seq.), the board of visitors may also invest or reinvest the endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, and local funds of or held by the University in derivatives, options, and financial securities.

1. In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments, including, without limitation, any contract commonly known as a "swap," which gives the University the right or obligation to deliver or receive delivery of, or make or receive payments based on, changes in the price, value, yield or other characteristic of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

2. In this section, an "option" means an agreement or contract whereby the University may grant or receive the right to purchase or sell, or pay or receive the value of, any personal property asset including, without limitation, any agreement or contract which relates to any security, contract or agreement.

3. In this section, "financial security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

E. The authority as provided in this section as it relates to nongeneral fund reserves and balances of or held by the University is predicated upon an approved management agreement between the University and the Commonwealth of Virginia.

§ 32.1-361.1. Virginia Tobacco Settlement Foundation Endowment.

A. There is hereby established in the state treasury a special fund to be designated the "Virginia Tobacco Settlement Foundation Endowment" (the Endowment). The Endowment shall receive any proceeds from any sale of all or any portion of the Foundation Allocation, deposits from the Fund as determined by the Board pursuant to subparagraph 5 of § 32.1-356, and any gifts, grants, and contributions that are specifically designated for inclusion in such Endowment. No part of the Endowment, neither corpus nor income, or interest thereon, shall revert to the general fund of the state treasury. The Endowment shall be under the management and control of the Treasury Board and the Treasury Board shall have such powers and authority as may be necessary to exercise such management and control consistent with the provisions of this section. The income of the Endowment shall be paid out, not less than annually, to the Fund. In addition, up to 10 percent of the corpus of the Endowment shall be paid to the Fund annually upon request of the Board to the Treasury Board; provided, however, that upon two-thirds vote of the Board, up to 15 percent of the corpus of the Endowment shall be so paid. No use of proceeds shall be made that would cause bonds issued on a tax-exempt basis to be considered taxable. For purposes of this section, "income" of the Endowment means at the time of determination the lesser of the available cash in, or the realized investment income for the applicable period of the Endowment, and "corpus" of the endowment means at the time of determination the sum of the proceeds from the sale of all or any portion of the Foundation Allocation, deposits from the Fund as determined by the Board pursuant to subparagraph 5 of § 32.1-356, any gifts, grants, and contributions that have been credited to such Endowment, and any income not appropriated and withdrawn from the Endowment before June 30 of each year, less withdrawals from the corpus. Determinations by the Treasury Board, or the State Treasurer on behalf of the Treasury Board, as to the amount of income or the amount of the corpus shall be conclusive.

B. The Treasury Board shall serve as trustee of the Endowment and the corpus and income of the Endowment shall be withdrawn and credited to the Fund by order of the Treasury Board as provided in subsection A. The State Treasurer shall be custodian of the funds credited to the Endowment. The Treasury Board shall have full power to invest and reinvest funds credited to the Endowment in accordance with the provisions of the Uniform *Prudent* Management of Institutional Funds Act (§

~~55-268.1~~ 55-268.11 et seq.) and, in addition, as otherwise provided by law. The Treasury Board may borrow money in such amounts as may be necessary whenever in its judgment it would be more advantageous to borrow money than to sell securities held for the Fund. Any debt so incurred may be evidenced by notes duly authorized by resolution of the Treasury Board, such notes to be retired no later than the end of the biennium in which such debt is incurred. The Treasury Board may commingle, for purposes of investment, the corpus of the Endowment provided that it shall appropriately account for the investments credited to the Endowment. The Treasury Board may hire independent investment advisors and managers as it deems appropriate to assist with investing the Endowment. The expenses of making and disposing of investments, such as brokerage commissions, legal expenses related to a particular transaction, investment advisory and management fees and expenses, transfer taxes and other customary transactional expenses shall be payable out of the income of the Endowment.

C. Not less than annually and more frequently if desired by the Board or requested by the Treasury Board, the Board shall provide to the Treasury Board schedules of anticipated disbursements from the Fund for the current and succeeding fiscal year, and the Treasury Board shall, to the extent practicable, take into account such schedules and changes thereto in scheduling maturities and redemptions of its investments of the Endowment.

§ 51.5-63. Board to administer institutional fund.

The Board is authorized to create and hold an institutional fund for its exclusive use and purposes into which it may deposit the proceeds of any gift, grant, bequest, allotment, or devise of any nature received from private sources. Such fund shall be subject to the Uniform *Prudent Management of Institutional Funds Act* (§ ~~55-268.1~~ 55-268.11 et seq.). The fund and the income from such fund shall not be subject to the provisions of § 2.2-1802. The availability of such fund shall not be taken into consideration in, nor used to reduce, state appropriations or payments, but such funds shall be used in accordance with the wishes of the donors thereof to strengthen the services rendered to the blind and vision impaired of this Commonwealth.

Article 1.2.

§ 55-268.11. *Short title.*

This article may be cited as the Uniform Prudent Management of Institutional Funds Act.

§ 55-268.12. *Definitions.*

In this article:

"Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental or municipal purpose, or any other purpose the achievement of which is beneficial to the community.

"Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

"Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

"Institution" means:

1. A person, other than an individual, organized and operated exclusively for charitable purposes;
2. A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or
3. A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

"Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

1. Program-related assets;
2. A fund held for an institution by a trustee that is not an institution, unless the fund is held by the trustee as a component trust of a community trust or foundation; or
3. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 55-268.13. *Standard of conduct in managing and investing institutional fund.*

A. Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

B. In addition to complying with the duty of loyalty imposed by law other than this article, each

person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

C. In managing and investing an institutional fund, an institution:

1. May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

2. Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

D. An institution may pool two or more institutional funds for purposes of management and investment.

E. Except as otherwise provided by a gift instrument, the following rules apply:

1. In managing and investing an institutional fund, the following factors, if relevant, shall be considered:

a. General economic conditions;

b. The possible effect of inflation or deflation;

c. The expected tax consequences, if any, of investment decisions or strategies;

d. The role that each investment or course of action plays within the overall investment portfolio of the fund;

e. The expected total return from income and the appreciation of investments;

f. Other resources of the institution;

g. The needs of the institution and the fund to make distributions and to preserve capital; and

h. An asset's special relationship or special value, if any, to the charitable purposes of the institution.

2. Management and investment decisions about an individual asset shall be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

3. Except as otherwise provided by law other than this article, an institution may invest in any kind of property or type of investment consistent with this section.

4. An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

5. Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this article.

6. A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

§ 55-268.14. Appropriation for expenditure or accumulation of endowment fund; rules of construction.

A. Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

1. The duration and preservation of the endowment fund;

2. The purposes of the institution and the endowment fund;

3. General economic conditions;

4. The possible effect of inflation or deflation;

5. The expected total return from income and the appreciation of investments;

6. Other resources of the institution; and

7. The investment policy of the institution.

B. To limit the authority to appropriate for expenditure or accumulate under subsection A, a gift instrument shall specifically state the limitation.

C. Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

1. Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purposes of the fund; and

2. Do not otherwise limit the authority to appropriate for expenditure or accumulate under

subsection A.

§ 55-268.15. *Delegation of management and investment functions.*

A. Subject to any specific limitation set forth in a gift instrument or in law other than this article, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

1. Selecting an agent;
2. Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

B. In performing a designated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

C. An institution that complies with subsection A is not liable for the decisions or actions of an agent to which the function was delegated.

D. By accepting delegation of a management or investment function from an institution that is subject to the laws of the Commonwealth, an agent submits to the jurisdiction of the courts of the Commonwealth in all proceedings arising from or related to the delegation or the performance of the delegated function.

E. An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of the Commonwealth other than this article.

§ 55-268.16. *Release of modification of restrictions on management, investment, or purpose.*

A. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

B. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

C. If a particular charitable purpose or restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard.

D. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, without application to the court but with the consent of the Attorney General, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument if the fund subject to the restriction has a total value of less than \$250,000.

E. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

1. The institutional fund subject to the restriction has a total value of less than \$50,000;
2. More than 20 years have elapsed since the fund was established; and
3. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

§ 55-268.17. *Reviewing compliance.*

Compliance with this article is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

§ 55-268.18. *Application to existing institutional funds.*

This article applies to institutional funds existing on or established after July 1, 2008. As it applies to institutional funds existing on July 1, 2008, this article governs only decisions made or actions taken on or after that date.

§ 55-268.19. *Relation to Electronic Signatures in Global and National Commerce Act.*

This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede § 101 of that

act, 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the notices described in § 103 of that act, 15 U.S.C. Section 7001(b).

§ 55-268.20. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

2. That Article 1.1 (§§ 55-268.1 through 55-268.10) of Chapter 15 of Title 55 of the Code of Virginia is repealed.