

VIRGINIA ACTS OF ASSEMBLY -- 2011 RECONVENED SESSION

CHAPTER 828

An Act to amend and reenact §§ 23-9.2:3.02, 23-9.6:1, 23-9.6:1.01, 23-38.88, 23-38.90, 23-38.91, and 23-38.93 of the Code of Virginia; to amend the Code of Virginia by adding in Title 23 a chapter numbered 4.9:1, consisting of sections numbered 23-38.87:10 through 23-38.87:21; and to repeal § 23-9.2:3.03 of the Code of Virginia, relating to reform and restructuring of the Commonwealth's system of higher education.

[H 2510]

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-9.2:3.02, 23-9.6:1, 23-9.6:1.01, 23-38.88, 23-38.90, 23-38.91, and 23-38.93 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 23 a chapter numbered 4.9:1, consisting of sections numbered 23-38.87:10 through 23-38.87:21, as follows:

§ 23-9.2:3.02. Articulation, transfer, and dual enrollment and admissions agreements; admission of certain community college graduates.

A. The governing board of each four-year public institution of higher education shall develop, consistent with the State Council of Higher Education Guidelines and the institution's six-year plan as set forth in ~~§ 23-9.2:3.03~~ § 23-38.87:17, articulation, transfer, and dual enrollment and admissions agreements with uniform application to all institutions within the Virginia Community College System and any two-year public institution of higher education that (i) meet appropriate general education and program requirements at the four-year institutions; (ii) provide additional opportunities for associate degree graduates to be admitted and enrolled; and (iii) establish dual admissions programs for qualified students to be simultaneously accepted by a community college and, contingent upon the successful completion of an acceptable associate degree program from the community college, by the four-year public institution of higher education.

B. A *Uniform Certificate of General Studies* shall be developed by the State Council of Higher Education, the Virginia Community College System, and the public institutions of higher education as set forth in subdivision 20 of § 23-9.6:1. All credits earned by students attending a two-year college who complete an approved one-year certificate of general studies program shall be transferrable to a four-year public institution of higher education in accordance with Council guidelines. Credits earned by high school students who earn a transfer associate degree from a Virginia community college while completing high school shall be transferrable to the four-year public institution of higher education to which they have been admitted.

C. The State Council of Higher Education for Virginia shall submit an annual report to the Senate Committee on Education and Health and the House Committee on Education specifying the total number of transfer students each institution of higher education admitted, enrolled, and graduated from institutions within the Virginia Community College System.

~~C.~~ D. Students enrolling at an institution within the Virginia Community College System or a two-year public institution of higher education may declare an intention in writing to transfer to a four-year public institution of higher education in Virginia having an articulation agreement with the relevant community college or two-year public institution. If a student (i) completes an associate degree within four years of submitting a written declaration of intent to transfer to a four-year public institution of higher education in Virginia and (ii) enrolls in such an institution within 18 months of completing an associate degree, the articulation agreement in force at the time of the student's declaration shall determine those credits that will be transferred from the community college or two-year public institution to the four-year public institution upon successful completion of an associate degree.

~~D.~~ E. Nothing in this section shall be construed to require the admission of students of the Virginia Community College System by a four-year public institution of higher education.

~~E.~~ F. The State Council of Higher Education, consistent with its responsibility to facilitate the development of articulation, transfer, and dual enrollment and admissions agreements set forth in §§ 23-9.6:1 and 23-9.14:2, shall develop guidelines for such agreements, including the conditions required to establish dual admissions programs for qualified students to be simultaneously accepted by a community college and a four-year public institution of higher education and, upon successful completion of an acceptable associate degree program from the community college, to be automatically enrolled in the four-year institution of higher education. Dual admissions agreements shall set forth (i) the obligations of the students accepted in such programs, including grade point average requirements, acceptable associate degree majors, and completion timetables; and (ii) the student's access to the privileges of enrollment in both institutions during the time enrolled in either institution.

§ 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:

1. Develop a statewide strategic plan that (i) reflects the goals set forth in subsection B of § 23-38.88 or (ii) once adopted, reflects the goals and objectives developed pursuant to subdivision B 5 of § 23-38.87:20 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 six years and shall submit such recommendations as are necessary for the implementation of the plan to the Governor and the General Assembly.

2. 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. 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. 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; however, all four-year institutions shall adopt dual admissions policies with the community colleges, as required by § 23-9.2:3.02.

5. 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. 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. 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. 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. 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. When consistent with the Government Data Collection and Dissemination Practices Act, the Virginia Unemployment Compensation Act, and applicable federal law, the Council, acting solely or in partnership with the Virginia Department of Education or the Virginia Employment Commission, may contract with private entities to create de-identified student records for the purpose of assessing the performance of institutions and specific programs relative to the workforce needs of the Commonwealth. For the purposes of this section, "de-identified student records" means records in which all personally identifiable information has been removed.

10. 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. 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. 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. 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. 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. 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. 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. 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.

18. Require the development and submission of articulation, transfer, and dual enrollment and admissions agreements between two- and four-year public institutions of higher education in Virginia, including programs for qualified students to be simultaneously accepted by a community college and a four-year public institution of higher education and, upon successful completion of an associate degree program from the community college, to be automatically enrolled in the four-year institution of higher education. Dual admissions agreements shall set forth (i) the obligations of the students accepted in such programs, including grade point average requirements, acceptable associate degree majors, and completion timetables; and (ii) the student's access to the privileges of enrollment in both institutions during the time enrolled in either institution. Such agreements shall be subject to the admissions requirements of the four-year institutions, except as provided in § 23-9.2:3.02.

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

20. Develop a uniform certificate of general studies program, in consultation with the Virginia Community College System and Virginia public institutions of higher education, to be offered at each community college in Virginia. Such program shall ensure that a community college student who completes the one-year certificate program shall be able to transfer all credits to a four-year public institution of higher education in the Commonwealth upon acceptance to the institution.

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. 1. 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 educational-related performance and institutional performance benchmarks for such objective measures. At a minimum, the State Council shall develop objective measures and institutional performance benchmarks for the goals and objectives set forth in subdivisions B 1 through B 10 of § 23-38.88.

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

2. The Governor shall develop and revise from time to time objective measures of financial and administrative management performance and related institutional performance benchmarks for the goals and objectives set forth in subdivision B 11 of § 23-38.88. The Governor shall develop the initial measures and performance benchmarks and report his recommendations to the General Assembly prior to November 15, 2005.

B. The Governor shall include objective measures of financial and administrative management and educational-related performance and related institutional performance benchmarks as described in subsection A in "The Budget Bill" submitted as required by subsection A of § 2.2-1509 or in his proposed gubernatorial amendments to the general appropriation act pursuant to subsection E of § 2.2-1509.

C. The State Council shall annually assess the degree to which each individual public institution of higher education has met the financial and administrative management and educational-related performance benchmarks set forth in the appropriation act in effect. Such annual assessment shall be based upon the objective measures and institutional performance benchmarks included in the annual appropriation act in effect. The State Council shall request assistance from the Secretaries of Finance and Administration, who shall provide such assistance, for purposes of assessing whether or not public institutions of higher education have met the financial and administrative management performance benchmarks.

No later than June 1 of every fiscal year beginning with the fiscal year that immediately follows the fiscal year of implementation as defined in § 2.2-5005, 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.

Those institutions that are certified by the State Council as having met the financial and administrative management and educational-related performance benchmarks in effect for the fiscal year as set forth in the general appropriation act shall be entitled to the financial benefits set forth in § 2.2-5005. Such benefits shall first be provided as determined under such section.

D. Notwithstanding any other provision of this section, no institution shall be required to submit documentation that it has met the financial and administrative management and educational-related performance benchmarks set forth in the general appropriations act for the fiscal years 2011-2012 and 2012-2013. If an institution is certified by the State Council as having met the financial and administrative management and educational-related performance benchmarks for the fiscal year 2010-2011, then such institution shall be entitled to the financial benefits set forth in subdivision B 14 of § 2.2-1124, subsection C of § 2.2-1132, subdivisions 4 and 5 of § 2.2-1149, subsection C of § 2.2-1150, subdivision C 2 of § 2.2-1153, § 2.2-1404.1, subdivision A 4 of § 2.2-2007, subsection E of § 2.2-2901, § 2.2-5005, subdivisions 1 and 3 of § 23-38.90, and subsection C of § 36-98.1 for the fiscal years 2011-2012 and 2012-2013.

CHAPTER 4.9:1.

THE VIRGINIA HIGHER EDUCATION OPPORTUNITY ACT OF 2011.

§ 23-38.87:10. Short title; purpose.

This chapter may be cited as the "Preparing for the Top Jobs of the 21st Century: The Virginia Higher Education Opportunity Act of 2011," the "Top Jobs Act," or "TJ21." The objective of this chapter is to fuel strong economic growth in the Commonwealth and prepare Virginians for the top job opportunities in the knowledge-driven economy of the 21st century by establishing a long-term commitment, policy, and framework for sustained investment and innovation that will enable the Commonwealth to build upon the strengths of its excellent higher education system and achieve national and international leadership in college degree attainment and personal income, and that will ensure these educational and economic opportunities are accessible and affordable for all capable and committed Virginia students.

In furtherance of this objective, the following purposes shall inform the development and implementation of funding policies, performance criteria, economic opportunity metrics, and recommendations required by this chapter:

1. To ensure an educated workforce in Virginia through a public-private higher education system whose hallmarks are instructional excellence, affordable access, economic impact, institutional diversity and managerial autonomy, cost-efficient operation, technological and pedagogical innovation, and reform-based investment;

2. To take optimal advantage of the demonstrated correlation between higher education and economic growth by investing in a manner that will generate economic growth, job creation, personal income growth, and revenues generated for state and local government in Virginia;

3. To place Virginia among the most highly educated states and countries by conferring approximately 100,000 cumulative additional undergraduate degrees on Virginians between 2011 and 2025, accompanied by a comparable percentage increase in privately conferred Virginia undergraduate degrees over the same period, and to achieve these targets by expanding enrollment of Virginians at public and private higher education institutions in the Commonwealth, improving undergraduate graduation and retention rates in the Virginia higher education system, and increasing degree completion by Virginians with partial credit toward a college degree, including students with ongoing job and family commitments who need access to nontraditional college-level educational opportunities;

4. To enhance personal opportunity and earning power for individual Virginians by increasing college degree attainment in the Commonwealth, especially in high-demand, high-income fields such as science, technology, engineering, mathematics, and health care, and by providing information about the economic value and impact of individual degree programs by institution;

5. To promote university-based research that produces outside investment in Virginia, fuels economic advances, triggers commercialization of new products and processes, fosters the formation of new businesses, leads businesses to bring their facilities and jobs to Virginia, and in other ways helps place the Commonwealth on the leading edge in the knowledge-driven economy;

6. To support the national effort to enhance the security and economic competitiveness of the United States of America, and to secure a leading economic position for the Commonwealth of Virginia, through increased research and instruction in science, technology, engineering, mathematics, and related fields, which require qualified faculty, appropriate research facilities and equipment, public-private and intergovernmental collaboration, and sustained state support;

7. To preserve and enhance the Virginia higher education system's excellence and cost-efficiency through reform-based investment that promotes innovative instructional models and pathways to degree attainment, including optimal use of physical facilities and instructional resources throughout the year, technology-enhanced instruction, sharing of instructional resources between and among colleges, universities, and other degree-granting entities in the Commonwealth, increased online learning opportunities for nontraditional students, improved rate and pace of degree completion, expanded availability of dual enrollment and advanced placement options and early college commitment programs, expanded community college transfer options leading to bachelor's degree completion, and enhanced college readiness before matriculation, among other reforms;

8. To realize the potential for enhanced benefits from the Restructured Higher Education Financial and Administrative Operations Act of 2005 (§ 23-38.88 et seq.), through a sustained commitment to the principles of autonomy, accountability, affordable access, and mutual trust and obligation underlying the restructuring initiative;

9. To establish a higher education funding framework and policy that promotes stable, predictable, equitable, and adequate funding, facilitates effective planning at the institutional and state levels, provides incentives for increased enrollment of Virginia students at public and private nonprofit colleges and universities in the Commonwealth, provides need-based financial aid for low-income and middle-income students and families, relieves the upward pressure on tuition associated with loss of state support due to economic downturns or other causes, and provides financial incentives to promote innovation and enhanced economic opportunity in furtherance of the objective of this chapter; and

10. To recognize that the unique mission and contributions of each institution of higher education in the Commonwealth is consistent with the desire to build upon the strengths of the Commonwealth's excellent system of higher education, to afford these unique missions and contributions appropriate safeguards, and to allow these attributes to inform the development and implementation of funding policies, performance criteria, economic opportunity metrics, and recommendations in the furtherance of this chapter's objectives.

§ 23-38.87:11. Definitions.

For purposes of this chapter, unless the context clearly requires otherwise:

"College degree" means an undergraduate degree from an accredited two-year or four-year public or private institution of higher education.

"Cost of education" means the operating funds necessary during a fiscal year to provide educational and general services, other than research and public service, to students attending an institution in that fiscal year.

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

"Educational and general fees" means fees over and above tuition charged for certain educational and general services.

"Educational and general services" means services associated with instruction, academic support, student services, institutional support, research, public service, and operation and maintenance of physical plant, with adjustments based on particular state policies related to specific institutional conditions, but does not include services associated with programs and administrative services that are required to be self-supporting or are otherwise supported by funds other than general funds, such as food services, university-owned or university-leased dormitories or other living facilities, athletic programs, and other self-supporting programs.

"Enrollment" or "student enrollment" means the number of full-time equivalent students.

"Fiscal year" means the period from July 1 of one calendar year to June 30 of the next calendar year.

"Institution" or "public institution of higher education" means each two-year and four-year public institution of higher education in the Commonwealth and, in the case of the Virginia Community College System, the system as a whole, not each community college.

"Peer institutions" for an institution means those institutions determined by the Council, in consultation with the institution, the Secretary of Education or his designee, the Director of the Department of Planning and Budget or his designee, and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance or their designees, to be most similar to the institution and therefore to provide a fair comparison in determining what the appropriate and competitive faculty salaries for that institution should be.

"STEM" means science, technology, engineering, and mathematics.

"Student" means a full-time or part-time undergraduate, graduate, or professional student attending a public institution of higher education and enrolled in a degree program.

"Virginia student" means a student who is eligible for in-state tuition pursuant to § 23-7.4.

§ 23-38.87:12. Higher education funding policy.

The funding policy for public institutions of higher education shall be comprised of amounts for each institution from the state general fund, from funds other than the state general fund, or both, for each fiscal year of a biennium for:

1. Basic operations and instruction, as provided in § 23-38.87:13;
2. Each Virginia undergraduate student actually enrolled at the institution, as provided in § 23-38.87:14;
3. Need-based financial aid, as provided in § 23-38.87:15; and
4. Support for targeted financial incentives that encourage and reward progress toward the policy objectives specified in this chapter, as provided in § 23-38.87:16.

§ 23-38.87:13. Calculation of state general fund share of an institution's basic operations and instruction funding need; cost of education.

A. Following consultation with each institution and the Higher Education Advisory Committee described in § 23-38.87:20, the Council shall calculate each institution's basic operations and instruction funding need as provided in subsection B for each year of the next biennium and shall make that calculation available to the Governor, the General Assembly, and all public institutions of higher education. Each institution's basic operations and instruction funding need, and the Commonwealth's funding split policy by which 67 percent of an institution's cost of education for Virginia students is funded from the state general fund and 33 percent from funds other than the state general fund, shall be taken into account by the Governor during the preparation of his proposed biennial budget bill recommending the appropriation act for the next biennium and by the General Assembly in enacting that act. Between these biennial recalculations, an institution's appropriated basic operations and instruction funding may be increased or decreased for (i) an increase or decrease in Virginia undergraduate student enrollment as provided in § 23-38.87:14, (ii) meeting or not meeting targeted financial incentives listed in § 23-38.87:16, and (iii) any other purpose deemed appropriate by the General Assembly.

B. An institution's basic operations and instruction funding need for each fiscal year of the biennium shall be the sum of (i) the institution's cost of education for the total enrollment of students who actually attended that institution during the fiscal year that ended on June 30 of each odd-numbered year, which shall be determined using a cost-based funding policy that consists of a set of formulas for calculating educational cost based on faculty-student ratios by discipline and level, and the educational and general programs of instruction, academic support, student services, institutional support, and operation and maintenance of physical plant, with adjustments to the funding policy based on particular state policies or specific institutional missions or conditions, (ii) the amount required to reach the Commonwealth's faculty salary goal of the 60th percentile of the most recently reported average faculty salaries paid by that institution's peer institutions, and (iii) such other funding for educational and general services as the General Assembly may appropriate.

C. State general funds shall be allocated and appropriated to institutions in a fair and equitable

manner such that, to the extent practicable, the percentage of the cost of education for Virginia students enrolled at an institution to be funded from state general funds is the same for each institution. To the extent that the percentages differ among institutions, that fact shall be taken into account as the Governor deems appropriate in his budget bill and by the General Assembly as it deems appropriate in the appropriation act.

§ 23-38.87:14. *Per student enrollment-based funding.*

A. In order to incentivize Virginia undergraduate student enrollment growth at the Commonwealth's public institutions of higher education in furtherance of the increased degree conferral objectives of this chapter, the Governor shall recommend and the General Assembly shall determine and appropriate to the institutions a per student amount that shall follow each Virginia undergraduate student to the institution in which the student enrolls. Recommendations regarding this Virginia undergraduate student enrollment growth incentive shall be developed and reviewed as provided in subdivision B 1 of § 23-38.87:20.

B. The Governor shall consider and recommend as he deems appropriate and the General Assembly shall consider and provide as it deems appropriate additional general fund appropriations to address the unfunded enrollment growth that occurred between the 2005-2006 fiscal year and the enactment of this chapter.

C. In order to assist the General Assembly in determining the per student amount provided for in subsection A and its relation to the per student amount provided to private nonprofit institutions of higher education pursuant to the Tuition Assistance Grant Act (§ 23-38.11 et seq.), each private nonprofit institution of higher education eligible to participate in the Tuition Assistance Grant Program shall submit to the Council its Virginia student enrollment projections for that fiscal year and its actual Virginia student enrollment for the prior fiscal year in a manner determined by the Council. The student admissions policies for the private institutions and their specific programs shall remain the sole responsibility of the governing boards of the individual institutions.

§ 23-38.87:15. *Need-based financial aid.*

Each institution shall include in its six-year plan required by § 23-38.87:17 an institutional student financial aid commitment that, in conjunction with general funds appropriated for that purpose, provides assistance to students from both low-income and middle-income families. Each institution's six-year plan required by § 23-38.87:17 shall take into account the information and recommendations resulting from the review of federal and state financial aid programs and institutional practices conducted pursuant to subdivisions B 2 and C 1 of § 23-38.87:20. The definitions of "low-income family" and "middle-income family" shall be developed and reviewed pursuant to subdivision B 2 of § 23-38.87:20.

§ 23-38.87:16. *Targeted economic and innovation incentives.*

A. The Governor shall consider and may recommend and the General Assembly shall consider and may fund targeted economic and innovation incentives to achieve the purposes of this chapter. Such incentives may include, but are not limited to:

1. Increased enrollment of Virginia students, in addition to the per student funding provided by § 23-38.87:14;

2. Increased degree completion for Virginia residents who have partial credit completion for a degree;

3. Increased degree completion in a timely or expedited manner;

4. Improved retention and graduation rates;

5. Increased degree production in the areas of science, technology, engineering, and mathematics and other high-need areas such as the health care-related professions;

6. Increased research, including regional and public-private collaboration;

7. Optimal year-round utilization of resources and other efficiency reforms designed to reduce total institutional cost;

8. Technology-enhanced instruction, including course redesign, online instruction, and resource sharing among institutions;

9. Enhanced community college transfer programs and grants and other enhanced degree path programs; and

10. Other incentives based on the economic opportunity metrics developed pursuant to subdivision B 4 of § 23-38.87:20.

Maintenance of effort initiatives shall also be considered for individual institutions with unique missions and demonstrable performance in specific incentive areas.

B. The criteria for measuring whether the incentives in subsection A have been met, and the benefits or consequences for meeting or not meeting such incentives, shall be developed and reviewed as provided in subdivisions B 3 and B 4 of § 23-38.87:20.

§ 23-38.87:17. *Institutional six-year plans.*

A. The governing board of each public institution of higher education shall develop and adopt biennially and amend or affirm annually a six-year plan for the institution and shall submit that plan to the Council, the Governor, and the Chairs of the House Committee on Appropriations and the Senate Committee on Finance no later than July 1 of each odd-numbered year, and shall submit amendments to

or an affirmation of that plan no later than July 1 of each even-numbered year or at any other time permitted by the Governor or General Assembly.

B. The Secretary of Finance, Secretary of Education, Director of the Department of Planning and Budget, Executive Director of the Council, Staff Director of the House Committee on Appropriations, and Staff Director of the Senate Committee on Finance, or their designees, shall review each institution's plan or amendments and provide comments to the institution on that plan by September 1 of the relevant year. Each institution shall respond to any such comments by October 1 of that year.

C. Each plan shall be structured in accordance with, and be consistent with, the purposes of this chapter set forth in § 23-38.87:10 and the criteria developed pursuant to § 23-38.87:20, and shall be in a form and manner prescribed by the Council, in consultation with the Secretary of Finance, Secretary of Education, Director of the Department of Planning and Budget, Executive Director of the Council, Staff Director of the House Committee on Appropriations, and Staff Director of the Senate Committee on Finance, or their designees.

D. Each plan shall address the institution's academic, financial, and enrollment plans, to include the number of Virginia and out-of-state students, for the six-year period and shall include:

1. Financial planning reflecting the institution's anticipated level of general fund, tuition, and other nongeneral fund support for each year of the next biennium. The plan also shall include the institution's anticipated annual tuition and educational and general fee charges required by (i) degree level and (ii) domiciliary status, as provided in § 23-38.87:18, and shall indicate the planned use of any projected increase in general fund, tuition, or other nongeneral fund revenues. The plan shall be based upon any assumptions provided by the Council, following consultation with the Department of Planning and Budget and the staffs of the House Committee on Appropriations and the Senate Committee on Finance, for funding related to state general fund support pursuant to §§ 23-38.87:13, 23-38.87:14, 23-38.87:15, and 23-38.87:16, and shall be aligned with the institution's six-year enrollment projections;

2. Plans for providing financial aid to help mitigate the impact of tuition and fee increases on low-income and middle-income students and their families as described in § 23-38.87:15, including the projected mix of grants and loans;

3. Degree conferral targets for Virginia undergraduate students;

4. Plans for optimal year-round use of the institution's facilities and instructional resources;

5. Plans for the development of an instructional resource sharing program with other institutions of higher education in the Commonwealth;

6. Plans with regard to any other incentives set forth in § 23-38.87:16 or to any other matters the institution deems appropriate; and

7. The identification of (i) new programs or initiatives including quality improvements and (ii) institution-specific funding based on particular state policies or institution-specific programs, or both, as provided in subsection C of § 23-38.87:18.

E. In developing such plans, each public institution of higher education shall give consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ 23-38.75 et seq.) and shall discuss such potential impacts with the Virginia College Savings Plan. The chief executive officer of the Virginia College Savings Plan shall provide to each institution the Plan's assumptions underlying the contract pricing of the program.

§ 23-38.87:18. Tuition and fees.

A. The board of visitors of each of the Commonwealth's public institutions of higher education, or in the case of the Virginia Community College System the State Board for Community Colleges, shall continue to fix, revise from time to time, charge and collect tuition, fees, rates, rentals, and other charges for the services, goods, or facilities furnished by or on behalf of such institution and may adopt policies regarding any such service rendered or the use, occupancy, or operation of any such facility.

B. Except to the extent included in the institution's six-year plan as provided in subsection C, if the total of an institution's tuition and educational and general fees for a fiscal year for Virginia students exceeds the difference for that fiscal year between (i) the institution's cost of education for all students, as calculated pursuant to clause (i) of subsection B of § 23-38.87:13, and (ii) the sum of the tuition and educational and general fees for non-Virginia students, the state general funds appropriated for its basic operations and instruction pursuant to subsection A of § 23-38.87:13, and its per student funding provided pursuant to § 23-38.87:14, the institution shall forego new state funding at a level above the general funds received by the institution during the 2011-2012 fiscal year, at the discretion of the General Assembly, and shall be obligated to provide increased financial aid to maintain affordability for students from low-income and middle-income families. This limitation shall not apply to any portion of tuition and educational and general fees for Virginia students allocated to student financial aid, to an institution's share of state-mandated salary or fringe benefit increases, to increases with funds other than state general funds for the improvement of faculty salary competitiveness above the level included in the calculation in clause (i) of subsection B of § 23-38.87:13, to the institution's share of any of the targeted financial incentives described in § 23-38.87:16, to unavoidable cost increases such as operation and maintenance for new facilities and utility rate increases, or to other items directly attributable to an institution's unique mission and contributions.

C. Nothing in subsection B shall prohibit an institution from including in its six-year plan required by § 23-38.87:17 (i) new programs or initiatives including quality improvements or (ii) institution-specific funding based on particular state policies or institution-specific programs, or both, that will cause the total of the institution's tuition and educational and general fees for a fiscal year for Virginia students to exceed the difference for that fiscal year between (a) the institution's cost of education for all students, as calculated pursuant to clause (i) of subsection B of § 23-38.87:13, and (b) the sum of the tuition and educational and general fees for the institution's non-Virginia students, the state general funds appropriated for its basic operations and instruction pursuant to subsection A of § 23-38.87:13, and its per student funding provided pursuant to § 23-38.87:14.

§ 23-38.87:19. Creation of STEM public-private partnership; duties and responsibilities.

In order to increase the number of students completing degrees in the high-demand, high-impact fields of science, technology, engineering, and mathematics (STEM), and other high-demand, anticipated-shortage fields such as the health care-related professions, and to help develop and guide the implementation of a comprehensive plan for higher degree attainment in these fields, the Secretaries of Education and Finance, in cooperation with the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health, shall cause to be formed a public-private partnership comprised of private-sector leaders, distinguished representatives from the scientific community (including retired military personnel, government scientists, and researchers), educational experts, relevant state and local government officials, and others as they deem appropriate. The partnership shall advise on, and may collaborate with public and private entities to develop and implement strategies to address, such priority issues as (i) determining the need for additional high-demand degree enrollment, capacity, and resources at the Commonwealth's public and private institutions of higher education; (ii) incentivizing greater coordination, innovation, and private collaboration in kindergarten through secondary school STEM and other high-demand degree initiatives; (iii) determining and refining best practices in STEM instruction and leveraging those best practices to promote STEM education in both the Commonwealth's higher education institutions and its elementary and secondary schools; (iv) enhancing teacher education and professional development in STEM disciplines; (v) strengthening mathematics readiness in secondary schools through earlier diagnosis and remediation of deficiencies; (vi) providing financial incentives to increase STEM enrollment and degree production at the Commonwealth's public and private colleges and universities; (vii) providing assistance to the Commonwealth's public and private colleges and universities in the acquisition and improvement of STEM-related facilities and equipment; (viii) providing STEM incentives in early college and university pathway programs and in the community college transfer grant program; (ix) assessing degree programs using such economic opportunity metrics as marketplace demand, earning potential, employer satisfaction, and other indicators of the historical and projected economic value and impact of degrees to provide useful information on degrees to students as they make career choices and to state policy makers and university decision makers as they decide how to allocate scarce resources; (x) aligning state higher education efforts with marketplace demands; and (xi) determining such other issues as the partnership deems relevant to increasing the number of students completing college and university degrees in STEM and other high-demand fields.

§ 23-38.87:20. Creation of Higher Education Advisory Committee; duties and responsibilities.

A. The Secretary of Education, in consultation with the Chairs of the House Committee on Appropriations and the Senate Committee on Finance, the Secretary of Finance and the public institutions of higher education in the Commonwealth, shall convene a Higher Education Advisory Committee (Advisory Committee) to provide advice and make recommendations on the matters set forth in subsections B, C and D. The Advisory Committee shall consist of 10 members as follows: a representative of the Office of the Secretary of Education, to be appointed by the Secretary of Education, and who shall serve as chair of the Advisory Committee; a representative of the Office of the Secretary of Finance, to be appointed by the Secretary of Finance; a representative of the Council, to be appointed by the Chairman of the Council; the staff directors of the House Appropriations Committee and the Senate Finance Committee, or their designees; and the presidents or their designees of five public institutions of higher education, including two doctoral institutions, two comprehensive institutions, and one from the Virginia Community College System. The presidents of all of the public institutions of higher education shall select the institutions to be represented on the Advisory Committee, subject to the parameters set forth in this section. The Governor shall also appoint a representative from a private, nonprofit institution of higher education; however, such representative shall not provide advice or make recommendations concerning policies that solely impact public institutions of higher education. Both the Governor and the Advisory Committee may designate other persons to serve on the Advisory Committee, including but not limited to representatives of academic and instructional faculty or fiscal officers from state institutions of higher education.

B. Consistent with the objectives of this chapter identified in § 23-38.87:10, the Advisory Committee, in consultation with and with assistance from the staff of the Council and such other assistance it may need, shall develop and review at least every five years, in consultation with the respective Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on

Education and Health, or their designees, representatives of public institutions of higher education in the Commonwealth, and such other state officials as may be designated by the Governor:

1. The methodology pursuant to subsection A of § 23-38.87:14 for determining how a significant increment of state funding shall follow the student to the two-year or four-year institution in which the student enrolls, how the amount of such per student funding for four-year institutions will be made to correspond as nearly as practical to the per student allocation envisioned under the then-existing appropriation for the Tuition Assistance Grant Act (§ 23-38.11 et seq.) for students attending private nonprofit higher education institutions in the Commonwealth, how and as of what date an institution's student enrollment shall be calculated, how an increase or decrease in Virginia undergraduate student enrollment above or below the enrollment level used to calculate the institution's funding under § 23-38.87:13 shall be reflected in the institution's appropriation pursuant to subsection A of § 23-38.87:14, and the standards and process for determining whether an increase or decrease in Virginia undergraduate student enrollment qualifies for funding under § 23-38.87:14;

2. Criteria for determining which families qualify as "low-income" and "middle-income" for purposes of § 23-38.87:15 and how they relate to federal, state and institutional policies governing the provision of financial assistance to students of such families;

3. Objective performance criteria for measuring the financial incentives set forth in § 23-38.87:16, and benefits or consequences for meeting or not meeting the incentives included in an institution's six-year plan pursuant to § 23-38.87:17;

4. Economic opportunity metrics, such as marketplace demand, earning potential, and employer satisfaction, and other indicators of the historical and projected economic value of degrees that can be used to assess degree programs in order to provide useful information on the economic impact of degrees to students as they make career choices and to state policy makers and university decision makers as they decide how to allocate scarce resources;

5. The additional authority that should be granted to all public institutions of higher education under the Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.), state goals and objectives each public institution of higher education should be expected to achieve, objective criteria for measuring educational-related performance with regard to those goals and objectives, and the benefits or consequences for meeting or not meeting those goals and objectives, including those set forth in § 2.2-5005; and

6. The role of nonpublic institutions in addressing the goals set forth in this chapter and make recommendations regarding such matters.

The Advisory Committee shall submit its recommendations to the Council, which shall review the recommendations and report its recommendations to the Governor and the Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health.

C. Consistent with the purposes of this chapter identified in § 23-38.87:10, the Advisory Committee, in consultation with and with assistance from the staff of the Council and such other assistance as it may need, shall review at least every five years, in consultation with the respective Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health, or their designees, representatives of public institutions of higher education in the Commonwealth, and such other state officials as may be designated by the Governor:

1. Federal and state financial aid programs and institutional practices to ensure that the appropriate level of financial assistance is being provided to both low-income and middle-income families, as required by § 23-38.87:15, including loan forgiveness programs targeted by purpose in furtherance of the objective of this chapter; and

2. The Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.) to identify additional ways to reduce costs and enhance efficiency by increasing managerial autonomy with accountability at the institutional level.

The Advisory Committee shall submit its recommendations to the Council, which shall review the recommendations and report its recommendations to the Governor and the Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health.

D. The Advisory Committee shall periodically assess, based upon the institutions' six-year plans and other relevant factors, the degree to which the Commonwealth's system of higher education is meeting the statewide objectives of economic impact, reform, affordability, and access reflected in this chapter, as well as the strategic impact of new general fund investments on achieving those objectives. The Advisory Committee shall submit its assessment and recommendations to the Council, which shall review the assessment and recommendations and report its recommendations to the Governor and the Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health.

E. In addition to providing advice and making recommendations on the matters set forth in subsections B, C and D, the Advisory Committee shall perform such other duties and undertake such other responsibilities as requested by the Governor or the General Assembly.

§ 23-38.87:21. Certification by Council.

Upon the completion of the development of the objective criteria for measuring goals and objectives described in subdivision B 5 of § 23-38.87:20, and each year thereafter, the Council shall annually assess the degree to which each institution has satisfied any goals or criteria developed by the Higher Education Advisory Committee pursuant to § 23-38.87:20, and shall, by no later than October 1 of each fiscal year, provide a certified written report of the results of such annual assessment to the Governor and the Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health. In order to assist the Council in its assessment, each public institution, and each private nonprofit institution eligible for and seeking to qualify for state general funds, shall furnish periodic reports and other pertinent information, including student-level data, as may be required by the Council. The reports shall include, but not be limited to, copies of institutional financial aid audit reports and audited financial statements.

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

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

1. To dispose of their surplus materials at the location where the surplus materials are held and to retain any proceeds from such disposal as provided in subdivision B 14 of § 2.2-1124;
2. To have the option, as provided in subsection C of § 2.2-1132 and pursuant to the conditions and provisions under such subsection, to contract with a building official of the locality in which construction is taking place and for such official to perform any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) pursuant to subsection C of § 36-98.1;
3. For those public institutions of higher education that have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act, as provided in subsection C of § 2.2-1132, to enter into contracts for specific construction projects without the preliminary review and approval of the Division of Engineering and Buildings of the Department of General Services, provided such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and utilize the general terms and conditions for those forms of procurement approved by the Division and the Office of the Attorney General;
4. To acquire easements as provided in subdivision 4 of § 2.2-1149;
5. To enter into an operating/income lease or capital lease pursuant to the conditions and provisions provided in subdivision 5 of § 2.2-1149;
6. To convey an easement pertaining to any property such institution owns or controls as provided in subsection C of § 2.2-1150;
7. In accordance with the conditions and provisions of subdivision C 2 of § 2.2-1153, to sell surplus real property valued at less than \$5 million, which is possessed and controlled by the institution;
8. For purposes of compliance with § 2.2-4310, to procure goods, services, and construction from a vendor that the institution has certified as a small, women-, and minority-owned business enterprise pursuant to the conditions and provisions provided in § 2.2-1404.1;
9. To be exempt from review of their budget request for information technology by the CIO as provided in subdivision A 4 of § 2.2-2007;
10. To be allowed to establish policies for the designation of administrative and professional faculty positions at the institution pursuant to the conditions and provisions provided in subsection E of § 2.2-2901;
11. To receive the financial benefits described under § 2.2-5005 pursuant to the conditions and provisions of such section;
12. To be exempt from reporting its purchases to the Secretary of Education, provided that all purchases, including sole source purchases, are placed through the Commonwealth's electronic procurement system using proper system codes for the methods of procurement;
13. To utilize as methods of procurement a fixed price, design-build or construction management contract notwithstanding the provisions of § 2.2-4306; and
14. The restructured financial and operational authority set forth in Subchapter 2 (§ 23-38.90) and Subchapter 3 (§ 23-38.91 et seq.) of this chapter.

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

B. The Board of Visitors of a public institution of higher education shall commit to the Governor and the General Assembly by August 1, 2005, through formal resolution adopted according to its own bylaws, to meeting the state goals specified below, and shall be responsible for ensuring that such goals are met, in addition to such other responsibilities as may be prescribed by law. Each such institution shall commit to the Governor and the General Assembly to:

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

institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is met;

2. Consistent with § ~~23-9.2:3.03~~ 23-38.87:17, ensure that higher education remains affordable, regardless of individual or family income, and through a periodic assessment, determine the impact of tuition and fee levels net of financial aid on applications, enrollment, and student indebtedness incurred for the payment of tuition and fees;

3. Offer a broad range of undergraduate and, where appropriate, graduate programs consistent with its mission and assess regularly the extent to which the institution's curricula and degree programs address the Commonwealth's need for sufficient graduates in particular shortage areas, including specific academic disciplines, professions, and geographic regions;

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

5. Improve student retention such that students progress from initial enrollment to a timely graduation, and that the number of degrees conferred increases as enrollment increases;

6. Consistent with its institutional mission, develop articulation agreements that have uniform application to all Virginia community colleges and meet appropriate general education and program requirements at the four-year institution, provide additional opportunities for associate degree graduates to be admitted and enrolled, and offer dual enrollment programs in cooperation with high schools;

7. Actively contribute to efforts to stimulate the economic development of the Commonwealth and the area in which the institution is located, and for those institutions subject to a management agreement set forth in Subchapter 3 (§ 23-38.91 et seq.) of this chapter, in areas that lag the Commonwealth in terms of income, employment, and other factors;

8. Consistent with its institutional mission, increase the level of externally funded research conducted at the institution and facilitate the transfer of technology from university research centers to private sector companies;

9. Work actively and cooperatively with elementary and secondary school administrators, teachers, and students in public schools and school divisions to improve student achievement, upgrade the knowledge and skills of teachers, and strengthen leadership skills of school administrators;

10. Prepare a six-year financial plan consistent with § ~~23-9.2:3.03~~ 23-38.87:17;

11. Conduct the institution's business affairs in a manner that maximizes operational efficiencies and economies for the institution, contributes to maximum efficiencies and economies of state government as a whole, and meets the financial and administrative management standards as specified by the Governor pursuant to § 2.2-5004 and included in the appropriation act that is in effect, which shall include best practices for electronic procurement and leveraged purchasing, information technology, real estate portfolio management, and diversity of suppliers through fair and reasonable consideration of small, women-, and minority-owned business enterprises; and

12. Seek to ensure the safety and security of the Commonwealth's students on college and university campuses.

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

C. As provided in § 23-9.6:1.01, the State Council of Higher Education shall in consultation with the respective chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health or their designees, representatives of public institutions of higher education, and such other state officials as may be designated by the Governor, develop objective measures of educational-related performance and institutional performance benchmarks for such objective measures. At a minimum, the State Council shall develop such objective measures and institutional performance benchmarks for the goals and objectives set forth in subdivisions B 1 through B 10 and B 12. In addition, the Governor shall develop objective measures of financial and administrative management performance and related institutional performance benchmarks for the goals and objectives set forth in subdivision B 11.

As provided in subsection C of § 23-9.6:1.01, any public institution of higher education that has been certified during the fiscal year by the State Council of Higher Education for Virginia as meeting the institutional performance benchmarks in effect for the fiscal year as set forth in the general appropriation act shall be provided the financial benefits under § 2.2-5005. Such benefits shall first be provided as determined under such section. *Objective criteria for measuring performance with regard to the state goals and objectives developed pursuant to subsection B, and benefits or consequences for meeting or not meeting those goals and objectives, shall be developed as provided in subdivision B 5 of § 23-38.87:20.*

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

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

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

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

b. An absolute two-thirds, or more, of the institution's governing body shall have voted in the affirmative for a resolution expressing the sense of the body that the institution is qualified to be, and should be, governed by the provisions of Subchapter 3 (§ 23-38.91 et seq.) of this chapter, which resolution shall be included in the initial management agreement;

c. The institution agrees to reimburse the Commonwealth for any additional costs to the Commonwealth in providing health or other group insurance benefits to employees, and in undertaking any risk management program, that are attributable to the institution's exercise of any restructured financial or operational authority set forth in Subchapter 3. The institution's agreement to reimburse the Commonwealth for such additional costs shall be expressly included in each management agreement with the institution. The Secretary of Finance and the Secretary of Administration, in consultation with the Virginia Retirement System and the affected institutions, shall establish procedures for determining any amounts to be paid by each institution and a mechanism for transferring the appropriate amounts directly and solely to the programs whose costs have been affected.

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

d. Before executing a management agreement with the Commonwealth that affects insurance or benefit programs administered by the Virginia Retirement System, the Governor shall transmit a draft of the relevant provisions to the Board of Trustees of the Virginia Retirement System, which shall review the relevant provisions in order to ensure compliance with the applicable provisions of Title 51.1, administrative policies and procedures and federal regulations governing retirement plans. The Board shall advise the Governor and appropriate Cabinet Secretaries of any conflicts.

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

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

The Joint Legislative Audit and Review Commission, in cooperation with the Auditor of Public Accounts, shall conduct a review relating to the initial management agreement with each public institution of higher education. The review shall cover a period of at least the first 24 months from the effective date of the management agreement. The review shall include, but shall not be limited to, the degree of compliance with the expressed terms of the management agreement, the degree to which the institution has demonstrated its ability to manage successfully the administrative and financial operations of the institution without jeopardizing the financial integrity and stability of the institution, the degree to which the institution is meeting the objectives described in subsection B, and any related impact on students and employees of the institution from execution of the management agreement. The Joint

Legislative Audit and Review Commission shall make a written report of its review no later than June 30 of the third year of the management agreement. The Joint Legislative Audit and Review Commission is authorized, but not required, to conduct a similar review of any management agreement entered into subsequent to the initial agreement.

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

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

6. Following the execution of each management agreement with a public institution of higher education and submission of that management agreement to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health pursuant to § 23-38.97, the Governor shall include a recommendation for approval of the management agreement in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his gubernatorial amendments submitted pursuant to subsection E of § 2.2-1509 due by the December 20 that immediately follows the date of submission of the management agreement to such Committees. Following the General Assembly's consideration of whether to approve or disapprove the management agreement as recommended, if the management agreement is approved as part of the general appropriation act, it shall become effective on the effective date of such general appropriation act. However, no management agreement shall be entered into by a public institution of higher education and the Secretary or Secretaries designated by the Governor after November 15 of a calendar year.

E. A covered institution and the members of its governing body, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the institution were not governed by this chapter; provided further, that the Virginia Tort Claims Act (§ 8.01-195.1 et seq.) and its limitations on recoveries shall remain applicable with respect to institutions governed by this chapter.

§ 23-38.90. Memoranda of understanding.

Effective July 1, 2008, any public institution of higher education may enter into a memorandum of understanding with the appropriate Cabinet Secretary or Secretaries, as designated by the Governor, for additional operational authority in any operational area or areas adopted by the General Assembly in accordance with law provided that the authority granted in the memorandum of understanding is consistent with that institution's ability to manage its operations in the particular area or areas and provided that the following general criteria are met:

1. The institution has received and maintained Council certification (i) pursuant to § 23-9.6:1.01, or (ii) upon the completion of the development of the objective criteria for measuring goals and objectives described in subdivision B 5 of § 23-38.87:20, pursuant to § 23-38.87:21 for the most recent year that the Council has completed certification;

2. An absolute two-thirds or more of the institution's governing body shall have voted in the affirmative for a resolution expressing the sense of the body that the institution is qualified to be, and should be, governed by memoranda of understanding as provided in this chapter; and

3. The institution must adopt at least one new education-related measure for each area of operational authority for which a memorandum of understanding is requested. Each education-related measure and its respective target shall be developed in consultation with the Secretary of Finance, Secretary of Education, the appropriate Cabinet Secretary, and the Council. Each education-related measure and its

respective target must be approved by the Council and shall become part of the certification (i) required by § 23-9.6:1.01, or (ii) upon the completion of the development of the objective criteria for measuring goals and objectives described in subdivision B 5 of § 23-38.87:20, pursuant to § 23-38.87:21.

Within 15 days of receipt of a request from a public institution of higher education to enter into a memorandum of understanding as provided herein, the Cabinet Secretary or Secretaries receiving that request shall notify the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance of the request. The Cabinet Secretary or Secretaries shall determine within 90 calendar days whether or not to enter into the requested memorandum of understanding, or some variation thereof. If the determination is to enter into a memorandum of understanding with the institution, the Cabinet Secretary or Secretaries shall forward a copy of the governing body's resolution and a copy of the memorandum of understanding to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance. Each initial memorandum of understanding shall remain in effect for a period of three years. Subsequent memoranda of understanding shall remain in effect for a period of five years. If the determination is not to enter into a memorandum of understanding with the institution, the Cabinet Secretary or Secretaries shall notify the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance of the reasons for denying the institution's request. If an institution's request is denied, nothing in this section shall prohibit the institution from submitting a future request to enter into a memorandum of understanding pursuant to this section.

§ 23-38.91. Responsibility and accountability for management of institution; governance.

A. The Board of Visitors and administration of a public university or college of the Commonwealth that meets the requirements of this subchapter to demonstrate the ability to manage successfully the administrative and financial operations of the institution without jeopardizing the financial integrity and stability of the institution may enter into negotiation with the Governor to develop a management agreement with the Commonwealth, as provided in this subchapter. Consistent with the terms of the management agreement, the Board of Visitors shall assume full responsibility for management of the institution, subject to the requirements and conditions set forth in this subchapter, the general requirements for management agreements as provided in § 23-38.88, and the specific management agreement with the Commonwealth. The Board of Visitors shall be fully accountable for (a) the management of the institution of higher education as provided in this subchapter, (b) meeting the requirements of §§ 2.2-5004, ~~23-9.2:3.03~~ 23-9.6:1.01, and 23-38.87:17 or, upon the completion of the development of the objective criteria for measuring goals and objectives described in subdivision B 5 of § 23-38.87:20, § 23-38.87:21, and (c) meeting such other provisions as may be set forth in the management agreement with the Commonwealth.

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

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

A. For purposes of §§ 2.2-5004, 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.1:1, 23-3, 23-4.2, 23-4.3, 23-4.4, 23-7.1:02, 23-7.4, 23-7.4:1, 23-7.4:2, 23-7.4:3, 23-7.5, 23-8.2:1, 23-9.1, 23-9.2, 23-9.2:3, ~~23-9.2:3.03~~, 23-9.2:3.1 through 23-9.2:5, 23-9.6:1.01, and Chapter 4.9 (§ 23-38.75 et seq.), and § 23-38.87:17, each covered institution shall remain a public institution of higher education of the Commonwealth following its conversion to a covered institution governed by this chapter, and shall retain the authority granted and any obligations required by such provisions. In addition, each covered institution shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et seq.); Chapter 3 (§ 23-14 et seq.); Chapter 3.2 (§ 23-30.23 et seq.); Chapter 3.3 (§ 23-30.39 et seq.); Chapter 4 (§ 23-31 et seq.); Chapter 4.01 (§ 23-38.10:2 et seq.); Chapter 4.1 (§ 23-38.11 et seq.); Chapter 4.4 (§ 23-38.45 et seq.); Chapter 4.4:1 (§ 23-38.53:1 et seq.); Chapter 4.4:2 (§ 23-38.53:4 et seq.); Chapter 4.4:3 (§ 23-38.53:11); Chapter 4.4:4 (§ 23-38.53:12 et seq.); Chapter 4.5 (§ 23-38.54 et seq.); Chapter 4.7 (§ 23-38.70 et seq.); Chapter 4.8 (§ 23-38.72 et seq.); and Chapter 4.9 (§ 23-38.75 et seq.).

B. State government-owned or operated and state-owned teaching hospitals that are a part of a covered institution as of the institution's effective date of the initial Management Agreement shall continue to be characterized as state government-owned or operated and state-owned teaching hospitals for purposes of payments under the State Plan for Medicaid Services adopted pursuant to § 32.1-325 et seq., provided that the covered institution commits to serve indigent and medically indigent patients, in which event the Commonwealth, through the Department of Medical Assistance Services, shall, subject to the appropriation in the appropriation act in effect, continue to reimburse the full cost of the provision of care, treatment, health-related and educational services to indigent and medically indigent patients and continue to treat hospitals that were part of a covered institution and that were Type One Hospitals prior to the institution's effective date of the initial Management Agreement as Type One Hospitals for purposes of such reimbursement.

2. That, unless specified to the contrary in the appropriation act, the funding policy referenced in subsection B of § 23-38.87:13 of this act is intended to be the model that was adopted by the Joint Subcommittee on Higher Education Funding Policies, as amended.

- 3. That, notwithstanding the provisions of § 23-9.6:1.01 of the Code of Virginia, the institutional plan due in 2011 shall be due on July 1, 2011. The Governor may, in consultation with the Chairmen of the House Committees on Appropriations and Education and the Senate Committees on Finance and Education and Health, modify, delay, or suspend some or all of the requirements for the plan due on July 1, 2011.**
- 4. That the Higher Education Advisory Committee created in § 28-38.87:21 of this act, in consultation with and with the assistance from the staff of the State Council of Higher Education, shall review developing a Higher Education Revenue Stabilization Fund and a Higher Education Institutional Revenue Stabilization Fund. The Advisory Committee shall submit its recommendations to the Governor, the Chairman of the House Appropriations Committee, and the Chairman of the Senate Finance Committee.**
- 5. That § 23-9.2:3.03 of the Code of Virginia is repealed.**