

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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*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

**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,

57 acceptable associate degree majors, and completion timetables; and (ii) the student's access to the  
58 privileges of enrollment in both institutions during the time enrolled in either institution.

59 § 23-9.6:1. Duties of Council generally.

60 In addition to such other duties as may be prescribed elsewhere, the State Council of Higher  
61 Education shall:

62 1. Develop a statewide strategic plan that (i) reflects the goals set forth in subsection B of § 23-38.88  
63 or (ii) *once adopted, reflects the goals and objectives developed pursuant to subdivision B 5 of*  
64 § 23-38.87:20 for higher education in the Commonwealth, identifies a coordinated approach to such state  
65 and regional goals, and emphasizes the future needs for higher education in Virginia at both the  
66 undergraduate and the graduate levels, as well as the mission, programs, facilities and location of each  
67 of the existing institutions of higher education, each public institution's six-year plan, and such other  
68 matters as the Council deems appropriate. The Council shall revise such plans at least once every six  
69 years and shall submit such recommendations as are necessary for the implementation of the plan to the  
70 Governor and the General Assembly.

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

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

88 4. Review and approve or disapprove all enrollment projections proposed by each public institution  
89 of higher education. The Council's projections shall be in numerical terms by level of enrollment and  
90 shall be used for budgetary and fiscal planning purposes only. The Council shall develop estimates of  
91 the number of degrees to be awarded by each institution and include those estimates in its reports of  
92 enrollment projections. The student admissions policies for the institutions and their specific programs  
93 shall remain the sole responsibility of the individual boards of visitors; however, all four-year  
94 institutions shall adopt dual admissions policies with the community colleges, as required by  
95 § 23-9.2:3.02.

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

99 6. Review and require the discontinuance of any undergraduate or graduate academic program that is  
100 presently offered by any public institution of higher education when the Council determines that such  
101 academic program is (i) nonproductive in terms of the number of degrees granted, the number of  
102 students served by the program, the program's effectiveness, and budgetary considerations, or (ii)  
103 supported by state funds and is unnecessarily duplicative of academic programs offered at other public  
104 institutions of higher education in the Commonwealth. The Council shall make a report to the Governor  
105 and the General Assembly with respect to the discontinuance of any such academic program. No such  
106 discontinuance shall become effective until 30 days after the adjournment of the session of the General  
107 Assembly next following the filing of such report.

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

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

121 9. Develop a uniform, comprehensive data information system designed to gather all information  
122 necessary to the performance of the Council's duties. The system shall include information on  
123 admissions, enrollments, self-identified students with documented disabilities, personnel, programs,  
124 financing, space inventory, facilities and such other areas as the Council deems appropriate. When  
125 consistent with the Government Data Collection and Dissemination Practices Act, the Virginia  
126 Unemployment Compensation Act, and applicable federal law, the Council, acting solely or in  
127 partnership with the Virginia Department of Education or the Virginia Employment Commission, may  
128 contract with private entities to create de-identified student records for the purpose of assessing the  
129 performance of institutions and specific programs relative to the workforce needs of the Commonwealth.  
130 For the purposes of this section, "de-identified student records" means records in which all personally  
131 identifiable information has been removed.

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

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

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

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

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

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

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

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

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

179 requirements of the four-year institutions, except as provided in § 23-9.2:3.02.

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

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

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

191 § 23-9.6:1.01. Assessments of institutional performance.

192 A. 1. The State Council shall develop and revise from time to time, in consultation with the  
193 respective chairmen of the House Committees on Education and Appropriations and the Senate  
194 Committees on Finance and Education and Health or their designees, representatives of public  
195 institutions of higher education, and such other state officials as may be designated by the Governor,  
196 objective measures of educational-related performance and institutional performance benchmarks for such  
197 objective measures. At a minimum, the State Council shall develop objective measures and institutional  
198 performance benchmarks for the goals and objectives set forth in subdivisions B 1 through B 10 of  
199 § 23-38.88.

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

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

207 B. The Governor shall include objective measures of financial and administrative management and  
208 educational-related performance and related institutional performance benchmarks as described in  
209 subsection A in "The Budget Bill" submitted as required by subsection A of § 2.2-1509 or in his  
210 proposed gubernatorial amendments to the general appropriation act pursuant to subsection E of  
211 § 2.2-1509.

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

220 No later than June 1 of every fiscal year beginning with the fiscal year that immediately follows the  
221 fiscal year of implementation as defined in § 2.2-5005, the State Council shall provide a certified written  
222 report of the results of such annual assessment to the Governor and the respective chairmen of the  
223 House Committees on Education and Appropriations and the Senate Committees on Finance and  
224 Education and Health.

225 Those institutions that are certified by the State Council as having met the financial and  
226 administrative management and educational-related performance benchmarks in effect for the fiscal year  
227 as set forth in the general appropriation act shall be entitled to the financial benefits set forth in  
228 § 2.2-5005. Such benefits shall first be provided as determined under such section.

229 *D. Notwithstanding any other provision of this section, no institution shall be required to submit*  
230 *documentation that it has met the financial and administrative management and educational-related*  
231 *performance benchmarks set forth in the general appropriations act for the fiscal years 2011-2012 and*  
232 *2012-2013. If an institution is certified by the State Council as having met the financial and*  
233 *administrative management and educational-related performance benchmarks for the fiscal year*  
234 *2010-2011, then such institution shall be entitled to the financial benefits set forth in subdivision B 14*  
235 *of § 2.2-1124, subsection C of § 2.2-1132, subdivisions 4 and 5 of § 2.2-1149, subsection C of*  
236 *§ 2.2-1150, subdivision C 2 of § 2.2-1153, § 2.2-1404.1, subdivision A 4 of § 2.2-2007, subsection E of*  
237 *§ 2.2-2901, § 2.2-5005, subdivisions 1 and 3 of § 23-38.90, and subsection C of § 36-98.1 for the fiscal*  
238 *years 2011-2012 and 2012-2013.*

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240 *THE VIRGINIA HIGHER EDUCATION OPPORTUNITY ACT OF 2011.*

241 § 23-38.87:10. Short title; purpose.

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

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

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

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

261 *3. To place Virginia among the most highly educated states and countries by conferring*  
 262 *approximately 100,000 cumulative additional undergraduate degrees on Virginians between 2011 and*  
 263 *2025, accompanied by a comparable percentage increase in privately conferred Virginia undergraduate*  
 264 *degrees over the same period, and to achieve these targets by expanding enrollment of Virginians at*  
 265 *public and private higher education institutions in the Commonwealth, improving undergraduate*  
 266 *graduation and retention rates in the Virginia higher education system, and increasing degree*  
 267 *completion by Virginians with partial credit toward a college degree, including students with ongoing*  
 268 *job and family commitments who need access to nontraditional college-level educational opportunities;*

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

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

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

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

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

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

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

308 § 23-38.87:11. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

341 § 23-38.87:12. Higher education funding policy.

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

345 1. Basic operations and instruction, as provided in § 23-38.87:13;

346 2. Each Virginia undergraduate student actually enrolled at the institution, as provided in  
 347 § 23-38.87:14;

348 3. Need-based financial aid, as provided in § 23-38.87:15; and

349 4. Support for targeted financial incentives that encourage and reward progress toward the policy  
 350 objectives specified in this chapter, as provided in § 23-38.87:16.

351 § 23-38.87:13. Calculation of state general fund share of an institution's basic operations and  
 352 instruction funding need; cost of education.

353 A. Following consultation with each institution and the Higher Education Advisory Committee  
 354 described in § 23-38.87:20, the Council shall calculate each institution's basic operations and  
 355 instruction funding need as provided in subsection B for each year of the next biennium and shall make  
 356 that calculation available to the Governor, the General Assembly, and all public institutions of higher  
 357 education. Each institution's basic operations and instruction funding need, and the Commonwealth's  
 358 funding split policy by which 67 percent of an institution's cost of education for Virginia students is  
 359 funded from the state general fund and 33 percent from funds other than the state general fund, shall be  
 360 taken into account by the Governor during the preparation of his proposed biennial budget bill  
 361 recommending the appropriation act for the next biennium and by the General Assembly in enacting

362 that act. Between these biennial recalculations, an institution's appropriated basic operations and  
 363 instruction funding may be increased or decreased for (i) an increase or decrease in Virginia  
 364 undergraduate student enrollment as provided in § 23-38.87:14, (ii) meeting or not meeting targeted  
 365 financial incentives listed in § 23-38.87:16, and (iii) any other purpose deemed appropriate by the  
 366 General Assembly.

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

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

384 § 23-38.87:14. Per student enrollment-based funding.

385 A. In order to incentivize Virginia undergraduate student enrollment growth at the Commonwealth's  
 386 public institutions of higher education in furtherance of the increased degree conferral objectives of this  
 387 chapter, the Governor shall recommend and the General Assembly shall determine and appropriate to  
 388 the institutions a per student amount that shall follow each Virginia undergraduate student to the  
 389 institution in which the student enrolls. Recommendations regarding this Virginia undergraduate student  
 390 enrollment growth incentive shall be developed and reviewed as provided in subdivision B 1 of  
 391 § 23-38.87:20.

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

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

404 § 23-38.87:15. Need-based financial aid.

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

412 § 23-38.87:16. Targeted economic and innovation incentives.

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

416 1. Increased enrollment of Virginia students, in addition to the per student funding provided by  
 417 § 23-38.87:14;

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

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

421 4. Improved retention and graduation rates;

422 5. Increased degree production in the areas of science, technology, engineering, and mathematics

423 *and other high-need areas such as the health care-related professions;*  
424 *6. Increased research, including regional and public-private collaboration;*  
425 *7. Optimal year-round utilization of resources and other efficiency reforms designed to reduce total*  
426 *institutional cost;*  
427 *8. Technology-enhanced instruction, including course redesign, online instruction, and resource*  
428 *sharing among institutions;*  
429 *9. Enhanced community college transfer programs and grants and other enhanced degree path*  
430 *programs; and*  
431 *10. Other incentives based on the economic opportunity metrics developed pursuant to subdivision B*  
432 *4 of § 23-38.87:20.*  
433 *Maintenance of effort initiatives shall also be considered for individual institutions with unique*  
434 *missions and demonstrable performance in specific incentive areas.*  
435 *B. The criteria for measuring whether the incentives in subsection A have been met, and the benefits*  
436 *or consequences for meeting or not meeting such incentives, shall be developed and reviewed as*  
437 *provided in subdivisions B 3 and B 4 of § 23-38.87:20.*  
438 *§ 23-38.87:17. Institutional six-year plans.*  
439 *A. The governing board of each public institution of higher education shall develop and adopt*  
440 *biennially and amend or affirm annually a six-year plan for the institution and shall submit that plan to*  
441 *the Council, the Governor, and the Chairs of the House Committee on Appropriations and the Senate*  
442 *Committee on Finance no later than July 1 of each odd-numbered year, and shall submit amendments to*  
443 *or an affirmation of that plan no later than July 1 of each even-numbered year or at any other time*  
444 *permitted by the Governor or General Assembly.*  
445 *B. The Secretary of Finance, Secretary of Education, Director of the Department of Planning and*  
446 *Budget, Executive Director of the Council, Staff Director of the House Committee on Appropriations,*  
447 *and Staff Director of the Senate Committee on Finance, or their designees, shall review each*  
448 *institution's plan or amendments and provide comments to the institution on that plan by September 1 of*  
449 *the relevant year. Each institution shall respond to any such comments by October 1 of that year.*  
450 *C. Each plan shall be structured in accordance with, and be consistent with, the purposes of this*  
451 *chapter set forth in § 23-38.87:10 and the criteria developed pursuant to § 23-38.87:20, and shall be in*  
452 *a form and manner prescribed by the Council, in consultation with the Secretary of Finance, Secretary*  
453 *of Education, Director of the Department of Planning and Budget, Executive Director of the Council,*  
454 *Staff Director of the House Committee on Appropriations, and Staff Director of the Senate Committee*  
455 *on Finance, or their designees.*  
456 *D. Each plan shall address the institution's academic, financial, and enrollment plans, to include the*  
457 *number of Virginia and out-of-state students, for the six-year period and shall include:*  
458 *1. Financial planning reflecting the institution's anticipated level of general fund, tuition, and other*  
459 *nongeneral fund support for each year of the next biennium. The plan also shall include the institution's*  
460 *anticipated annual tuition and educational and general fee charges required by (i) degree level and (ii)*  
461 *domiciliary status, as provided in § 23-38.87:18, and shall indicate the planned use of any projected*  
462 *increase in general fund, tuition, or other nongeneral fund revenues. The plan shall be based upon any*  
463 *assumptions provided by the Council, following consultation with the Department of Planning and*  
464 *Budget and the staffs of the House Committee on Appropriations and the Senate Committee on Finance,*  
465 *for funding related to state general fund support pursuant to §§ 23-38.87:13, 23-38.87:14, 23-38.87:15,*  
466 *and 23-38.87:16, and shall be aligned with the institution's six-year enrollment projections;*  
467 *2. Plans for providing financial aid to help mitigate the impact of tuition and fee increases on*  
468 *low-income and middle-income students and their families as described in § 23-38.87:15, including the*  
469 *projected mix of grants and loans;*  
470 *3. Degree conferral targets for Virginia undergraduate students;*  
471 *4. Plans for optimal year-round use of the institution's facilities and instructional resources;*  
472 *5. Plans for the development of an instructional resource sharing program with other institutions of*  
473 *higher education in the Commonwealth;*  
474 *6. Plans with regard to any other incentives set forth in § 23-38.87:16 or to any other matters the*  
475 *institution deems appropriate; and*  
476 *7. The identification of (i) new programs or initiatives including quality improvements and (ii)*  
477 *institution-specific funding based on particular state policies or institution-specific programs, or both, as*  
478 *provided in subsection C of § 23-38.87:18.*  
479 *E. In developing such plans, each public institution of higher education shall give consideration to*  
480 *potential future impacts of tuition increases on the Virginia College Savings Plan (§ 23-38.75 et seq.)*  
481 *and shall discuss such potential impacts with the Virginia College Savings Plan. The chief executive*  
482 *officer of the Virginia College Savings Plan shall provide to each institution the Plan's assumptions*  
483 *underlying the contract pricing of the program.*



484 § 23-38.87:18. Tuition and fees.

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

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

507 C. Nothing in subsection B shall prohibit an institution from including in its six-year plan required  
 508 by § 23-38.87:17 (i) new programs or initiatives including quality improvements or (ii)  
 509 institution-specific funding based on particular state policies or institution-specific programs, or both,  
 510 that will cause the total of the institution's tuition and educational and general fees for a fiscal year for  
 511 Virginia students to exceed the difference for that fiscal year between (a) the institution's cost of  
 512 education for all students, as calculated pursuant to clause (i) of subsection B of § 23-38.87:13, and (b)  
 513 the sum of the tuition and educational and general fees for the institution's non-Virginia students, the  
 514 state general funds appropriated for its basic operations and instruction pursuant to subsection A of  
 515 § 23-38.87:13, and its per student funding provided pursuant to § 23-38.87:14.

516 § 23-38.87:19. Creation of STEM public-private partnership; duties and responsibilities.

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

545 as the partnership deems relevant to increasing the number of students completing college and  
 546 university degrees in STEM and other high-demand fields.

547 § 23-38.87:20. Creation of Higher Education Advisory Committee; duties and responsibilities.

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

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

573 1. The methodology pursuant to subsection A of § 23-38.87:14 for determining how a significant  
 574 increment of state funding shall follow the student to the two-year or four-year institution in which the  
 575 student enrolls, how the amount of such per student funding for four-year institutions will be made to  
 576 correspond as nearly as practical to the per student allocation envisioned under the then-existing  
 577 appropriation for the Tuition Assistance Grant Act (§ 23-38.11 et seq.) for students attending private  
 578 nonprofit higher education institutions in the Commonwealth, how and as of what date an institution's  
 579 student enrollment shall be calculated, how an increase or decrease in Virginia undergraduate student  
 580 enrollment above or below the enrollment level used to calculate the institution's funding under  
 581 § 23-38.87:13 shall be reflected in the institution's appropriation pursuant to subsection A of  
 582 § 23-38.87:14, and the standards and process for determining whether an increase or decrease in  
 583 Virginia undergraduate student enrollment qualifies for funding under § 23-38.87:14;

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

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

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

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

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

605 C. Consistent with the purposes of this chapter identified in § 23-38.87:10, the Advisory Committee,

606 in consultation with and with assistance from the staff of the Council and such other assistance as it  
 607 may need, shall review at least every five years, in consultation with the respective Chairs of the House  
 608 Committees on Appropriations and Education and the Senate Committees on Finance and on Education  
 609 and Health, or their designees, representatives of public institutions of higher education in the  
 610 Commonwealth, and such other state officials as may be designated by the Governor:

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

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

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

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

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

633 § 23-38.87:21. Certification by Council.

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

645 § 23-38.88. Eligibility for restructured financial and administrative operational authority.

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

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

650 2. To have the option, as provided in subsection C of § 2.2-1132 and pursuant to the conditions and  
 651 provisions under such subsection, to contract with a building official of the locality in which  
 652 construction is taking place and for such official to perform any inspection and certifications required for  
 653 the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) pursuant to  
 654 subsection C of § 36-98.1;

655 3. For those public institutions of higher education that have in effect a signed memorandum of  
 656 understanding with the Secretary of Administration regarding participation in the nongeneral fund  
 657 decentralization program as set forth in the appropriation act, as provided in subsection C of § 2.2-1132,  
 658 to enter into contracts for specific construction projects without the preliminary review and approval of  
 659 the Division of Engineering and Buildings of the Department of General Services, provided such  
 660 institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300  
 661 et seq.) and utilize the general terms and conditions for those forms of procurement approved by the  
 662 Division and the Office of the Attorney General;

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

664 5. To enter into an operating/income lease or capital lease pursuant to the conditions and provisions  
 665 provided in subdivision 5 of § 2.2-1149;

666 6. To convey an easement pertaining to any property such institution owns or controls as provided in

667 subsection C of § 2.2-1150;

668 7. In accordance with the conditions and provisions of subdivision C 2 of § 2.2-1153, to sell surplus  
669 real property valued at less than \$5 million, which is possessed and controlled by the institution;

670 8. For purposes of compliance with § 2.2-4310, to procure goods, services, and construction from a  
671 vendor that the institution has certified as a small, women-, and minority-owned business enterprise  
672 pursuant to the conditions and provisions provided in § 2.2-1404.1;

673 9. To be exempt from review of their budget request for information technology by the CIO as  
674 provided in subdivision A 4 of § 2.2-2007;

675 10. To be allowed to establish policies for the designation of administrative and professional faculty  
676 positions at the institution pursuant to the conditions and provisions provided in subsection E of  
677 § 2.2-2901;

678 11. To receive the financial benefits described under § 2.2-5005 pursuant to the conditions and  
679 provisions of such section;

680 12. To be exempt from reporting its purchases to the Secretary of Education, provided that all  
681 purchases, including sole source purchases, are placed through the Commonwealth's electronic  
682 procurement system using proper system codes for the methods of procurement;

683 13. To utilize as methods of procurement a fixed price, design-build or construction management  
684 contract notwithstanding the provisions of § 2.2-4306; and

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

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

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

693 1. Consistent with its institutional mission, provide access to higher education for all citizens  
694 throughout the Commonwealth, including underrepresented populations, and, consistent with subdivision  
695 4 of § 23-9.6:1 and in accordance with anticipated demand analysis, meet enrollment projections and  
696 degree estimates as agreed upon with the State Council of Higher Education for Virginia. Each such  
697 institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is  
698 met;

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

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

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

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

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

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

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

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

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

727 11. Conduct the institution's business affairs in a manner that maximizes operational efficiencies and

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

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

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

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

750 As provided in subsection C of § 23-9.6:1.01, any public institution of higher education that has been  
 751 certified during the fiscal year by the State Council of Higher Education for Virginia as meeting the  
 752 institutional performance benchmarks in effect for the fiscal year as set forth in the general appropriation  
 753 act shall be provided the financial benefits under § 2.2-5005. Such benefits shall first be provided as  
 754 determined under such section. *Objective criteria for measuring performance with regard to the state*  
 755 *goals and objectives developed pursuant to subsection B, and benefits or consequences for meeting or*  
 756 *not meeting those goals and objectives, shall be developed as provided in subdivision B 5 of*  
 757 *§ 23-38.87:20.*

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

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

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

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

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

786 c. The institution agrees to reimburse the Commonwealth for any additional costs to the  
 787 Commonwealth in providing health or other group insurance benefits to employees, and in undertaking  
 788 any risk management program, that are attributable to the institution's exercise of any restructured

789 financial or operational authority set forth in Subchapter 3. The institution's agreement to reimburse the  
 790 Commonwealth for such additional costs shall be expressly included in each management agreement  
 791 with the institution. The Secretary of Finance and the Secretary of Administration, in consultation with  
 792 the Virginia Retirement System and the affected institutions, shall establish procedures for determining  
 793 any amounts to be paid by each institution and a mechanism for transferring the appropriate amounts  
 794 directly and solely to the programs whose costs have been affected.

795 In developing management agreements, public institutions of higher education shall give  
 796 consideration to potential future impacts of tuition increases on the Virginia College Savings Plan  
 797 (§ 23-38.75) and shall discuss such potential impacts with parties participating in development of such  
 798 agreements. The chief executive officer of the Virginia College Savings Plan shall provide to the  
 799 institution and such parties the Plan's assumptions underlying the contract pricing of the program; and

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

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

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

816 The Joint Legislative Audit and Review Commission, in cooperation with the Auditor of Public  
 817 Accounts, shall conduct a review relating to the initial management agreement with each public  
 818 institution of higher education. The review shall cover a period of at least the first 24 months from the  
 819 effective date of the management agreement. The review shall include, but shall not be limited to, the  
 820 degree of compliance with the expressed terms of the management agreement, the degree to which the  
 821 institution has demonstrated its ability to manage successfully the administrative and financial operations  
 822 of the institution without jeopardizing the financial integrity and stability of the institution, the degree to  
 823 which the institution is meeting the objectives described in subsection B, and any related impact on  
 824 students and employees of the institution from execution of the management agreement. The Joint  
 825 Legislative Audit and Review Commission shall make a written report of its review no later than June  
 826 30 of the third year of the management agreement. The Joint Legislative Audit and Review Commission  
 827 is authorized, but not required, to conduct a similar review of any management agreement entered into  
 828 subsequent to the initial agreement.

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

847 5. A management agreement with a public institution of higher education shall not grant any of the  
 848 restructured financial or operational authority set forth in Subchapter 3 (§ 23-38.91 et seq.) of this  
 849 chapter to the Virginia Cooperative Extension and Agricultural Experiment Station, the University of

850 Virginia College at Wise, or the Virginia Institute of Marine Sciences or to an affiliated entity of the  
 851 institution unless such intent, as well as the degree of the restructured financial or operational authority  
 852 to be granted, is expressly included in the management agreement.

853 6. Following the execution of each management agreement with a public institution of higher  
 854 education and submission of that management agreement to the Chairmen of the House Committee on  
 855 Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate  
 856 Committee on Education and Health pursuant to § 23-38.97, the Governor shall include a  
 857 recommendation for approval of the management agreement in "The Budget Bill" submitted pursuant to  
 858 subsection A of § 2.2-1509 or in his gubernatorial amendments submitted pursuant to subsection E of  
 859 § 2.2-1509 due by the December 20 that immediately follows the date of submission of the management  
 860 agreement to such Committees. Following the General Assembly's consideration of whether to approve  
 861 or disapprove the management agreement as recommended, if the management agreement is approved as  
 862 part of the general appropriation act, it shall become effective on the effective date of such general  
 863 appropriation act. However, no management agreement shall be entered into by a public institution of  
 864 higher education and the Secretary or Secretaries designated by the Governor after November 15 of a  
 865 calendar year.

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

871 § 23-38.90. Memoranda of understanding.

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

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

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

885 3. The institution must adopt at least one new education-related measure for each area of operational  
 886 authority for which a memorandum of understanding is requested. Each education-related measure and  
 887 its respective target shall be developed in consultation with the Secretary of Finance, Secretary of  
 888 Education, the appropriate Cabinet Secretary, and the Council. Each education-related measure and its  
 889 respective target must be approved by the Council and shall become part of the certification (i) required  
 890 by § 23-9.6:1.01, or (ii) upon the completion of the development of the objective criteria for measuring  
 891 goals and objectives described in subdivision B 5 of § 23-38.87:20, pursuant to § 23-38.87:21.

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

907 § 23-38.91. Responsibility and accountability for management of institution; governance.

908 A. The Board of Visitors and administration of a public university or college of the Commonwealth  
 909 that meets the requirements of this subchapter to demonstrate the ability to manage successfully the  
 910 administrative and financial operations of the institution without jeopardizing the financial integrity and

911 stability of the institution may enter into negotiation with the Governor to develop a management  
 912 agreement with the Commonwealth, as provided in this subchapter. Consistent with the terms of the  
 913 management agreement, the Board of Visitors shall assume full responsibility for management of the  
 914 institution, subject to the requirements and conditions set forth in this subchapter, the general  
 915 requirements for management agreements as provided in § 23-38.88, and the specific management  
 916 agreement with the Commonwealth. The Board of Visitors shall be fully accountable for (a) the  
 917 management of the institution of higher education as provided in this subchapter, (b) meeting the  
 918 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*  
 919 *development of the objective criteria for measuring goals and objectives described in subdivision B 5 of*  
 920 *§ 23-38.87:20, § 23-38.87:21, and (c) meeting such other provisions as may be set forth in the*  
 921 management agreement with the Commonwealth.

922 B. Each covered institution shall be governed and administered in the manner provided in this  
 923 subchapter but subject to the expressed terms of the management agreement entered into pursuant to  
 924 § 23-38.88, in the appropriation act, and in each such institution's enabling legislation.

925 § 23-38.93. Educational policies of the Commonwealth; other requirements.

926 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,  
 927 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,~~  
 928 *and 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,*  
 929 each covered institution shall remain a public institution of higher education of the Commonwealth  
 930 following its conversion to a covered institution governed by this chapter, and shall retain the authority  
 931 granted and any obligations required by such provisions. In addition, each covered institution shall retain  
 932 the authority, and any obligations related to the exercise of such authority, that is granted to institutions  
 933 of higher education pursuant to Chapter 1.1 (§ 23-9.3 et seq.); Chapter 3 (§ 23-14 et seq.); Chapter 3.2  
 934 (§ 23-30.23 et seq.); Chapter 3.3 (§ 23-30.39 et seq.); Chapter 4 (§ 23-31 et seq.); Chapter 4.01  
 935 (§ 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  
 936 (§ 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  
 937 (§ 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  
 938 (§ 23-38.72 et seq.); and Chapter 4.9 (§ 23-38.75 et seq.).

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

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

953 **3. That the Higher Education Advisory Committee created in § 28-38.87:21 of this act, in**  
 954 **consultation with and with the assistance from the staff of the State Council of Higher Education,**  
 955 **shall review developing a Higher Education Revenue Stabilization Fund and a Higher Education**  
 956 **Institutional Revenue Stabilization Fund. The Advisory Committee shall submit its**  
 957 **recommendations to the Governor, the Chairman of the House Appropriations Committee, and the**  
 958 **Chairman of the Senate Finance Committee.**

959 **4. That § 23-9.2:3.03 of the Code of Virginia is repealed.**